

**SRF Round 2 Missouri Air Program**

**FY07**

September 23, 2009 – Final Report

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## **I. EXECUTIVE SUMMARY**

The State Review Framework (SRF) is a program designed to ensure EPA conducts oversight of state compliance and enforcement programs in a nationally consistent and efficient manner. Reviews look at 12 program elements covering: data (completeness, timeliness, and quality); inspections (coverage and quality); identification of violations, enforcement actions (appropriateness and timeliness); and, penalties (calculation, assessment and collection). Reviews are conducted in three phases: analyzing information from the national data systems; reviewing a limited set of state files; and development of findings and recommendations. Considerable consultation is built into the process, to ensure EPA and the state understand the causes of issues, and to seek agreement on identifying the actions needed to address problems. The Reports generated by the reviews are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. The reports are designed to provide factual information and do not make determinations of program adequacy. EPA also uses the information in the reports to draw a “national picture” of enforcement and compliance, and to identify any issues that require a national response. Reports are not used to compare or rank state programs.

Of the 12 SRF elements, Missouri’s Air Program met expectations for 10 of these elements where no issues were identified for recommendations. EPA is making recommendations for improvement for the remaining two elements to improve the quality of inspection reports and to establish a formal penalty policy.

### **A. MAJOR STATE AIR PRIORITIES AND ACOMPLISHMENTS**

- **Priorities:** MDNR’s Air Program uses EPA national priorities as a guide, but is also driven by State specific issues and priorities of the department director. Enforcement initiatives are discussed and developed at the department and division level and implemented by the Air Pollution Control Program (APCP). Regional Offices also often develop priorities of their own, and subsequently coordinate with the APCP.
- **Accomplishments:** The Air Program inspects a very high percentage of all Major and Synthetic Minor sources each year and maintains a high rate of compliance. APCP observes virtually all emissions tests and holds testing companies to rigid

standards. While MDNR's Air HPV numbers are low, the Air Program does initiate more enforcement actions than any other media program in DNR. The air sources' high compliance rates are due in part to frequency of inspections and the implementation of MDNR's Environmental Assistance Visit program (EAV). The EAV program was implemented in 2005 by the MDNR director in order to provide compliance assistance to the regulated community. The Director developed a goal of 4,500 EAVs to be conducted each year for all media. Approximately 800 air EAVs were conducted at air sources each year, including the SRF period of FY07. These visits were conducted to any size of regulated facility, from individuals open burning to Title V sources. The EAV program has experienced mixed results, with increased compliance rates at major and minor sources, but minimal improvement in other areas. The EAV program has been scaled back significantly since January 2009.

## **B. SUMMARY OF RESULTS**

- There are no incomplete actions that remain in the SRF Tracker from the previous SRF review. There is one unresolved issue, which is EPA's recommendation that MDNR establish a formal penalty policy. The establishment of a formal penalty policy continues to be a recommendation for this SRF review.
- 1. For most of the elements, Missouri's Air Program was either at or near the target goals for the SRF. With some exceptions, the data entered into AFS was complete, accurate, and timely. Missouri exceeded the national goals for inspection coverage for both major and synthetic minor sources.
- 2. One element that is an area for state improvement is Element 2 – Data Accuracy. While most of the data in AFS is accurate, there is a small but significant subset of data that have “illogical assignments” or unknown compliance status.
- 3. One element that is a concern is Element 3 – Timeliness of Data Entry. In Fiscal Year 2007, Missouri sent batch reports to Region 7 for both Title V certifications and stack tests. Region 7 negotiated with MDNR to submit the batch reports quarterly for stack tests and annually for the Title V certifications. While the batch reports were entered accurately, there was a significant delay from the time MDNR received these documents to the time that they were readied for batch submittal to Region 7 and ultimately entered into AFS. Region 7 no longer has the capability to enter batch submittals to AFS, so MDNR has agreed to enter both stack tests and Title V certifications directly into AFS. Unfortunately, the

internal database that MDNR uses to store the Title V certification data had a catastrophic failure and is currently unusable to the air program staff. If the database cannot be repaired, Region 7 recommends that MDNR individually enter each Title V certification into AFS directly.

4. Another element that initially raised concern is Element 8 - Identification of HPVs, where Missouri's numbers are lower than the national average. After consultation with MDNR, it was discovered that MDNR initiated a Compliance Assistance program throughout the state. Inspection coverage of major sources increased and Environmental Assistance Visits were performed for over 800 sources. With an increased emphasis on compliance, it is to be expected that the compliance rate would increase and the number of HPVs would drop.
5. There are three areas for state attention: Element 1 – Data Completeness, Element 2 – Data Accuracy and Element 3 – Timeliness of Data Entry.
6. There are two elements with areas for state improvements and corresponding recommendations, Element 6 – Quality of Inspection or Compliance Evaluation Reports and Element 11 – Penalty Calculation Method.

#### **Element 1: Data Completeness**

- The EPA review team found that Missouri met the SRF program requirements for most portions of this Element, but that the Discovery Action metric is below the national average. While this metric is improving in subsequent fiscal years, it should continue to be monitored in subsequent years. This is an area for further state attention.

#### **Element 2: Data Accuracy**

- The EPA review team found that most of the SRF program requirements for this Element were met, but there continues to be data problems with source classifications and illogical assignments. This is an area for further state attention.

#### **Element 3: Timeliness of Data Entry**

- The EPA review team found that Missouri met the SRF program requirements for this Element during FY07, but that there are significant internal database issues currently that need to be addressed. This is an area for further state attention.

#### **Element 4: Completion of Commitments**

- The EPA review team found that Missouri met the SRF program requirements for this Element.

#### **Element 5: Inspection Coverage**

- The EPA review team found that Missouri met the SRF program requirements for this Element.

#### **Element 6: Quality of Inspection or Compliance Evaluation Reports**

- The EPA review team found that the quality of inspection reports varied widely. While some reports had thorough documentation and narrative explanations, others had little or no narrative comments.
- EPA recommends that MDNR management reviews draft inspection reports to ensure that the applicable requirements are addressed and sufficient narrative is included.
- EPA also recommends that MDNR implement a comprehensive permits and compliance evaluation program to complement the inspection program and enhance the enforcement program.
- This is an area for state improvement.

#### **Element 7: Identification of Alleged Violations**

- The EPA review team found that Missouri met the SRF program requirements for this Element.

#### **Element 8: Identification of HPVs**

- The EPA review team found that Missouri met the SRF program requirements for this Element.

#### **Element 9: Enforcement Actions Promote Return to Compliance**

- The EPA review team found that Missouri met the SRF program requirements for this Element.

#### **Element 10: Timely and Appropriate Action**

- The EPA review team found that Missouri met the SRF program requirements for this Element.

#### **Element 11: Penalty Calculation Method**

- The EPA review team found that MDNR's Air Program does not have a formal penalty policy.
- EPA recommends that MDNR's Air Program establish a formal penalty policy within two months.
- This is an area for state improvement.

**Element 12: Final Penalty Assessment and Collections**

- The EPA review team found that Missouri met the SRF program requirements for this Element.

**C. SIGNIFICANT CROSS-MEDIA FINDINGS AND RECOMMENDATIONS**

Reserved for Multi-Media report.

## II. BACKGROUND INFORMATION ON STATE PROGRAM AND REVIEW PROCESS

### A. GENERAL PROGRAM OVERVIEW

- **Agency Structure:** The Missouri Air Program is composed of two distinct offices – the Air Pollution Control Program (APCP) within the Division of Environmental Quality and the Regional Offices, which are located organizationally under the Field Services Division. Missouri is divided into 5 regions: Northeast, Kansas City, Southeast, Southwest and St. Louis. The majority of field work (i.e., inspections, complaint response, environmental assistance visits) is conducted out of these Regional Offices. Permitting, Enforcement, Rule, SIP and Policy Development and Emission Inventory responsibilities are done in APCP Central Office. The Regional Offices do not report directly to the APCP.
- **Compliance/Enforcement Program Structure:** The Regional Offices conduct inspections and compliance assistance visits with multi-media inspectors, while all enforcement is centralized in the APCP. Once an inspection is completed, the Regional Office staff complete an inspection report and forward it to Steve Feeler, the APCP chief. All follow up enforcement actions are taken by the APCP, with legal assistance from the Attorney General’s Office. All compliance documents (MACT reports, Title V certifications) are submitted to the APCP for review and filing. APCP staff review all compliance documents and maintain the facility files at the central office.
- **Roles and responsibilities:** Missouri also has 4 delegated local agencies (St. Louis City, St. Louis County, Kansas City and Springfield). Each year the APCP develops a State/Local Agency agreement with each entity outlining what work these local agencies will perform and how much grant money they will receive. They are required to submit monthly and quarterly reports on their activities and their progress toward completing the tasks in the agreement. The Local Agencies perform inspections within their jurisdiction, but due to statutory penalty caps, all follow up enforcement actions are performed by MDNR. The Local Agencies will issue NOVs, and subsequently forward them monthly to APCP for enforcement response. The Missouri Attorney General’s Office provides most legal services, such as settlement agreements, litigation and general legal counsel.

- **Local Agencies excluded from review:** There are four local agencies in Missouri – Kansas City, Springfield, St. Louis City and St. Louis County. None of the local agencies enter data into the AFS database, not do any of the local agencies issue enforcement actions, due to statutory penalty caps. Region 7 used the “Guidelines for Including Local Agencies in the State Review Framework” and concluded that the Local Agencies should not be included in this SRF.
- **Resources:**
  - The APCP has 20 FTE in the APCP Compliance/Enforcement Section. The Regional Offices and Local Agencies have approximately 40 FTE for multi-media field work.
  - The Northeast Regional Office has 4 FTE, Southwest Regional Office has 4 FTE, Southeast Regional Office has 4 FTE, Kansas City Regional Office has 5 FTE, St. Louis Regional Office has 7 FTE. For the local agencies, St. Louis County has 5 FTE, St. Louis City has 5 FTE, Kansas City has 5 FTE, Springfield has 3 FTE.
- **Staffing/Training:**
  - The APCP is fully staffed at present, but a hiring freeze is expected.
  - In APCP, each Unit Chief is responsible for developing a training plan with each employee and also to maintain a training plan for entry level employees. A lot of training is on the job training by a mentor, but the program sends employees to APTI and CenSARA courses when possible.
- **Data reporting systems/architecture:** The Missouri data manager, Jeanette Barnett, reports all minimum data requirements (MDRs) to the EPA national data system (AFS). None of the local agencies in Missouri submit data to AFS. All inspection reports are forwarded to MDNR from the local agencies on a monthly basis for AFS entry. All inspection reports are forwarded to MDNR from the Regional Offices for AFS entry.

## **B. MAJOR STATE PRIORITIES AND ACOMPLISHMENTS**

- **Priorities:** MDNR uses EPA national priorities as a guide, but is also driven by State specific issues and priorities of the department Director. Enforcement initiatives are discussed and developed at the department and division level and implemented by the Air Pollution Control Program (APCP). Regional Offices also often develop priorities of their own, and subsequently coordinate with the APCP.

- **Accomplishments:** The Air Program inspects a very high percentage of all Major and Synthetic Minor sources each year and maintains a high rate of compliance. APCP observes virtually all emissions tests and holds testing companies to rigid standards. While MDNR's Air HPV numbers are low, they do initiate more enforcement actions than any other media program in DNR. The air program's high compliance rates are due in part to frequency of inspections and the implementation of the Environmental Assistance Visit program. Approximately 800 air EAVs were conducted last year.

### **C. PROCESS FOR SRF REVIEW**

- **Review Period:** This review covers FY07 for the air program.
- **Key Dates:** The initial state notification kickoff letter was sent to MDNR September 25, 2008. The original data pull was transmitted October 3, 2008, comments were received October 7, 2008 and the Preliminary Data Analysis was transmitted October 23, 2008. The file review file list was sent December 1, 2008 and the on-site review occurred January 6-8, 2009.
- **Communication with the State:** Regular communication with Missouri occurred in the months leading up to the SRF review. A kickoff meeting occurred at the commencement of the on-site file review January 6, 2009. During the file review, the EPA staff held discussions with the MDNR enforcement program manager, AFS manager, and enforcement staff. A close out meeting was held on January 9, 2009, after the completion of the file review and preliminary findings were discussed.
- **State and regional lead contacts for review.** Lisa Hanlon was the lead program staff and was joined by Eric Sturm and Joe McCullough for the on-site file review. Steve Feeler is the APCP enforcement manager and Jeanette Barnett is the MDNR AFS manager.

### **III. STATUS OF RECOMMENDATIONS FROM PREVIOUS REVIEWS**

During the first SRF review of Missouri's compliance and enforcement program, Region 7 identified a number of actions to be taken to address issues found during the review. The table below shows the status of progress toward completing those actions.

| <b>State</b>    | <b>Status</b> | <b>Due Date</b> | <b>Media</b> | <b>Element</b>                            | <b>Title</b>                                 | <b>Finding</b>   |
|-----------------|---------------|-----------------|--------------|---|--|--|
| MO- Round<br>1  | Completed     | 9/15/2005       | CAA          | E2 Violations Identified<br>Appropriately | Inspection form too basic, needs updating    | More comprehensive form will<br>improve inspection<br>documentation. |
| MO - Round<br>1 | Unresolved    | 12/31/2008      | CAA          | E7 Penalty Calculations                   | Establish official penalty policy            | Penalties are not adequate<br>due to lack of penalty policy.         |
| MO - Round<br>1 | Completed     | 12/31/2006      | CAA          | E12 Data Completion                       | Correct source classification for facilities | 87 major sources were missing<br>a CMS flag.                         |

#### IV. FINDINGS

#### Element 1: Data Completeness. Degree to which the Minimum Data Requirements are complete.

|   |   |   |
|---|---|---|
|   |   |   |
| 1 | Finding   | Missouri's minimum data requirements are complete.  |
|   | Is this finding an<br>(select one)  | <input type="checkbox"/> Good practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input checked="" type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement – Recommendations required   |
|   | Explanation<br>(If area for state attention, describe why action not required. If area for state improvement, provide a recommended action. | <p>The Minimum Data Requirements are complete for MDNR. The data sets from the metrics are very close in number and Missouri exceeds the national average for NSPS, NESHAP and MACT sources with FCEs conducted. The one metric where Missouri did not meet the national goal is 1(h)(1)(Discovery action) where Region 7 links all HPV data. Although only 40% HPVs had a discovery action associated with them in the SRF review year of FY07, this number has greatly improved (71% in FY08). It should continue to be monitored given that any values significantly below 100% are supposed to be investigated further.</p> |
|   | Metric(s) and Quantitative Value  | Metric 1a-k Data completeness   |

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|--|---|--|
|  | State Response  |  |
|  | Actions(s)<br>(Include any uncompleted actions from Round 1 that address this issue.) |  |

**Element 2: Data Accuracy. Degree to which Minimum Data Requirements are accurate.**

|   |  |   |
|---|--|---|
| 2 | Finding  | Missouri's Minimum Data Requirements are accurate.  |
|   | Is this finding an (select one)  | <input type="checkbox"/> Good practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input checked="" type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement – Recommendations required   |
|   | Explanation<br>(If area for state attention, describe why action not required. If area for state improvement, provide a recommended action.) | While the majority of the Minimum Data Requirements entered by MDNR are accurate, there continues to be data problems concerning source classification/source universe which need to be addressed. The major universe classifications do not fully match those identified in CMS as major and currently there are 69 sources with “illogical assignments.” There also continues to be many sources with an unknown compliance status. All stack tests had a results code entered, and stack test failures were accurately reported in AFS. With the noncompliance rate so low for the state, 10 out of 12 violations were found to be HPVs. This indicates that MDNR is finding widespread compliance. When noncompliance is discovered, the violations are significant enough to warrant HPV status. EPA recommends that MDNR utilize assistance from the Regional AFS Data Steward and the AFS National Manager to help reconcile the remaining data discrepancies. |
|   | Metric(s) and  | Metric 2a and 2b – Indicator of accurate violations/noncompliance, stack test results.  |

|  |   |  |
|--|---|--|
|  | Quantitative Value  |  |
|  | State Response  |  |
|  | Actions(s)<br>(Include any uncompleted actions from Round 1 that address this issue.) |  |

| Element 3: Timeliness of Data Entry. Degree to which Minimum Data Requirements are timely. |  |   |
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|  |  |   |
| 3  | Finding  | Missouri is meeting or exceeding the national average for most of the timeliness of data entry elements.  |
|  | Is this finding an<br>(select one)   | <input type="checkbox"/> Good practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input checked="" type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement – Recommendations required   |
|  | Explanation<br>(If area for state attention, describe why action not required. If area for | <p>During the SRF review year, Missouri exceeded the national average for HPV entry. Since Region 7 performs all of the HPV linking, there is a considerable data lag for entering the HPV data. During the SRF review year, Missouri sent quarterly batch reports for stack tests, which did not meet the timeliness criteria due to the lag time of the quarterly batch. Since FY08, Missouri has been entering stack tests directly, greatly reducing the data entry lag. During the SRF review year, Missouri also sent batch reports for all Title V annual compliance certifications. This significantly delayed the data entry timeliness for these certifications. During FY09, it was expected</p> |

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|  | state improvement, provide a recommended action.)                                  | that Missouri would begin entering directly the Title V certifications, which will reduce the data entry lag. However, due to a catastrophic failure of MDNR's internal certifications database, the data currently cannot be extracted to upload into AFS. If this cannot be corrected, EPA recommends that MDNR individually enter the Title V certifications into AFS directly. The Regional AFS Data Steward and the AFS National Manager are additional resources MDNR can utilize for data issues. 67% of all enforcement related MDRs were entered timely by MDNR, matching the national average of 67%. |
|  | Metric(s) and Quantitative Value   | Metric 3a, 3b, 3c – timely entry.   |
|  | State Response   |   |
|  | Actions(s) (Include any uncompleted actions from Round 1 that address this issue.) |   |

|  |                                 |   |
|--|---------------------------------|---|
| <b>Element 4: Completion of commitments. Degree to which all enforcement/compliance commitments in relevant agreements are met any products or projects completed.</b> |                                 |   |
|  |                                 |   |
| 4  | Finding                         | Missouri is meeting all commitments of their PPG  |
|  | Is this finding an (select one) | <input type="checkbox"/> Good practice<br><input checked="" type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement – Recommendations required |

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|  | <p>Explanation<br/>(If area for state attention, describe why action not required. If area for state improvement, provide a recommended action.)</p> | <p>Missouri has a Performance Partnership Grant with Region 7 that addresses many different aspects of their air planning, permitting and enforcement activities. Missouri is meeting all of their commitments for enforcement and compliance activities.</p> |
|  | <p>Metric(s) and<br/>Quantitative Value</p>  |   |
|  | <p>State Response</p>  |   |
|  | <p>Actions(s)<br/>(Include any uncompleted actions from Round 1 that address this issue.)</p>  |   |

**Element 5: Inspection coverage. Degree to which state completed the universe of planned inspections/compliance evaluations (addressing core requirements and federal, state and regional priorities).**

| 5 | Finding   | Missouri exceeds the national average for inspection coverage in all categories.  |
|---|---|---|
|   | Is this finding an<br>(select one)  | <input type="checkbox"/> Good practice<br><input checked="" type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement – Recommendations required   |
|   | Explanation<br>If area for state attention, describe why action not required. If area for state improvement, provide a recommended action.) | Missouri attempts to inspect every major source every year, which exceeds the CMS requirement of every two years. Missouri also attempts to inspect every SM source every two years, which exceeds the CMS requirement of every five years. While Missouri has been implementing the Compliance Assistance program, they have not allowed their inspection numbers to slip. |
|   | Metric(s) and Quantitative Value  | Metric 5 – inspection coverage.   |
|   | State Response  |   |
|   | Actions(s)<br>(Include any uncompleted actions from Round 1 that address this issue.)   |   |

**Element 6 Quality of Inspection or Compliance Evaluation Reports. Degree to which inspection or compliance evaluation need evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.**

|  |   |
|--|---|
| 6 Finding  | The quality of inspection reports vary widely. Some reports are very thorough and document each applicable requirement and its compliance status. Other reports are minimally documented with no narrative description of inspection activities.  |
| Is this finding a(n) (select one):   | <input type="checkbox"/> Good practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations required   |
| Explanation.<br>(If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | EPA recommends that MDNR management review draft inspection reports to ensure that the applicable requirements are addressed and sufficient narrative is included. EPA also recommends that the MDNR air program initiate a comprehensive permits and compliance evaluation program for major sources, utilizing both the permitting and enforcement staff as a complement to the inspection program. Since the inspector staff is housed in a different division and are located in different offices throughout the state, the enforcement staff has minimal contact with the inspectors. Because of this, the enforcement staff cannot easily monitor the inspector’s activities or provide feedback on specific facilities or inspection reports. This separation between the divisions makes it difficult for the air enforcement staff to communicate with the inspectors on recent permitting or enforcement activities at sources, or upcoming regulatory changes. It also makes it difficult for the inspectors to keep the air enforcement staff informed of changes that may have occurred at a facility. An in-depth evaluation with inspectors, enforcement staff and permitting staff could ensure that not only are these facilities in compliance with their permits, but also that they have the appropriate permits necessary for the emissions produced. In-depth evaluations of sources would provide more thorough coverage of these facilities and could uncover potential PSD modifications and violations. These evaluations would not replace inspections, but serve as a complement to the inspections and add to the overall enforcement strategy. |
| Metric(s) and Quantitative Value   | Metric 6c Percent of CMRs or facility files reviewed that provide sufficient documentation to determine compliance at the facility.   |
| State Response   |   |

|        |   |
|--------|---|
| Action | <p>EPA recommends that MDNR management review draft inspection reports to ensure that the applicable requirements are addressed and sufficient narrative is included. Region 7 will follow-up and review a sampling of inspection reports in the latter part of 2010 to ensure that improvements are made. EPA also recommends that the MDNR air program initiate a comprehensive permits and compliance evaluation program for major sources, utilizing both the permitting and enforcement staff as a complement to the inspection program. Since the inspector staff is housed in a different division and are located in different offices throughout the state, the enforcement staff has minimal contact with the inspectors. Because of this, the enforcement staff cannot easily monitor the inspector's activities or provide feedback on specific facilities or inspection reports. This separation between the divisions makes it difficult for the air enforcement staff to communicate with the inspectors on recent permitting or enforcement activities at sources, or upcoming regulatory changes. It also makes it difficult for the inspectors to keep the air enforcement staff informed of changes that may have occurred at a facility. An in-depth evaluation with inspectors, enforcement staff and permitting staff could ensure that not only are these facilities in compliance with their permits, but also that they have the appropriate permits necessary for the emissions produced. In-depth evaluations of sources would provide more thorough coverage of these facilities and could uncover potential PSD modifications and violations. These evaluations would not replace inspections, but serve as a complement to the inspections and add to the overall enforcement strategy.</p> |
|--------|---|

| <b>Element 7: Identification of alleged violations; degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information.</b> |                                 |   |
|--|---------------------------------|---|
|  |                                 |   |
| 7  | Finding                         | Missouri has few facilities in noncompliance that have had an FCE   |
|  | Is this finding an (select one) | <input type="checkbox"/> Good practice<br><input checked="" type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement – Recommendations required |

|  |  |   |
|--|--|---|
|  | Explanation<br>(If area for state attention, describe why action not required. If area for state improvement, provide a recommended action.) | Missouri conducted 463 full compliance evaluations or stack tests during FY07. 22 facilities were identified during this time as being out of compliance, giving a 4.8% identification rate. While this rate is lower than the national average of 19%, it is not surprising, given Missouri's compliance assistance initiative conducted throughout the state. |
|  | Metric(s) and Quantitative Value   | Metric 7 – percent facilities in noncompliance. Missouri has 22 facilities in noncompliance and 463 FCEs, stack tests, or enforcement (4.8% discovery rate).  |
|  | State Response   |   |
|  | Actions(s)<br>(Include any uncompleted actions from Round 1 that address this issue.)  |   |
| <b>Element 8: Identification of SNC and HPV; degree to which the state accurately identifies significant noncompliance &amp; high priority violations and enters information into the national data system in a timely manner.</b> |  |   |
| 8  | Finding  | Missouri's HPV identification rate is lower than the national average, which is to be expected following a large compliance assistance program.   |

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|  | Is this finding an (select one)  | <input type="checkbox"/> Good practice<br><input checked="" type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement – Recommendations required   |
|  | Explanation<br>(If area for state attention, describe why action not required. If area for state improvement, provide a recommended action.) | Missouri embarked on a large multi-media compliance assistance program, initiated 2 fiscal years prior to the SRF review year, which lasted 4 years total. Given the scope of this program, along with the increased presence and visibility of the compliance staff, it is to be expected that compliance rates would be lower during and following this initiative. If, however the compliance assistance program is scaled back significantly, it is expected that noncompliance rates would rise. EPA will monitor the noncompliance rates in the future to determine if the HPV identification rate remains low. |
|  | Metric(s) and Quantitative Value   | Metric 8 – HPV discovery rate. Missouri’s HPV discovery rate for the SRF review year was 2.5%, compared to the national average of 9.2%.  |
|  | State Response   |   |
|  | Actions(s)<br>(Include any uncompleted actions from Round 1 that address this issue.)  |   |

**Element 9: Enforcement actions promote return to compliance. Degree to which state enforcement actions include required corrective action (i.e. injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.**

|   |   |   |
|---|---|---|
|   |   |   |
| 9 | Finding   | Missouri's enforcement actions promote return to compliance.  |
|   | Is this finding an (select one)   | <input type="checkbox"/> Good practice<br><input checked="" type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement – Recommendations required |
|   | Explanation (If area for state attention, describe why action not required. If area for state improvement, provide a recommended action.) | During the file review, it was discovered that all of the formal enforcement actions reviewed included corrective action that returned facilities to compliance.  |
|   | Metric(s) and Quantitative Value  | Metric 9a and 9b - % of formal actions that return the source to physical compliance. 6 of 6 files reviewed with enforcement actions successfully required the facility to take corrective action to return the source to compliance.               |
|   | State Response  |   |
|   | Actions(s) (Include any   |   |

|  |  |  |
|--|--|--|
|  | uncompleted actions from Round 1 that address this issue.) |  |
|--|--|--|

**Element 10 - Timely and Appropriate Action. Degree to which a state takes timely and appropriate enforcement actions in accordance with the HPV Policy.**

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|----|---|---|
|    |   |   |
| 10 | Finding   | Given the lack of administrative authority, Missouri is near the national average for timely and appropriate enforcement HPV actions.   |
|    | Is this finding an (select one)   | <input type="checkbox"/> Good practice<br><input checked="" type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement – Recommendations required   |
|    | Explanation (If area for state attention, describe why action not required. If area for state improvement, provide a recommended action.) | <p>Missouri lacks administrative authority to issue Administrative Penalty Orders or Administrative Compliance Orders. Therefore, all enforcement actions are either settled by a Settlement Agreement (most cases) or referred to the Attorney General’s office (few cases). Once an NOV is issued, MDNR goes straight into settlement negotiations, which can significantly slow down enforcement proceedings and the HPV process. While some facilities can move swiftly and willingly through the settlement process, others are more reluctant to do so. Therefore, it is encouraging that Missouri has concluded close to half of their HPV cases with settlement agreements within the Timely and Appropriate timelines.</p> |
|    | Metric(s) and Quantitative Value  | Metric 10a – percent HPVs not meeting timeliness goals. 14 of 27 HPVs (51%) did not meet timeliness goals.  |
|    | State Response  |   |

|  |   |  |
|--|---|--|
|  | Action(s)<br>(Include any<br>uncompleted actions<br>from Round 1 that<br>address this issue.) |  |
|--|---|--|

**Element 11 – Penalty Calculation Method. Degree to which state documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using BEN model or other method that produces results consistent with national policy.**

|  |  |
|--|--|
| 11 Finding   | Lack of formal penalty policy results in penalties that do not formally account for both gravity and economic benefit.   |
| Is this finding a(n) (select one):   | <input type="checkbox"/> Good practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations required  |
| Explanation.<br>(If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | Missouri’s air program does not have an official penalty policy. Without administrative authority to assess penalties, or a penalty policy to uniformly define penalties for violations, the penalties assessed by MDNR’s air program tend to be low and do not formally include both gravity and economic benefit. We recommend that MDNR’s air program develop an official penalty policy to resolve this issue. |
| Metric(s) and Quantitative Value   | Element 11 – Penalty Calculation Method  |
| State Response   |  |
| Action(s)<br>(Include any uncompleted actions from Round 1 that address this issue.)                                   | This is an unresolved action from Round 1 and continues to be an area of multi-media concern and recommendation for Round 2. Region 7 recommends that a formal penalty policy be developed within two months.  |

**Element 12: Final penalty assessment and collection. Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.**

|    |   |   |
|----|---|---|
| 12 | Finding   | 90% of HPVs were assessed penalties. There is no difference between initial and final penalty.  |
|    | Is this finding an (select one)   | <input type="checkbox"/> Good practice<br><input checked="" type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement – Recommendations required |
|    | Explanation (If area for state attention, describe why action not required. If area for state improvement, provide a recommended action.) | Since all HPVs are completed through settlement agreements, there is no initial penalty assessed. Also, 90% of all HPVs were assessed penalties, which is above the national goal of 80% and the national average of 86%.                           |
|    | Metric(s) and Quantitative Value  | Element 12b is the percent of enforcement actions taken at HPVs that carry any penalty. Missouri had 9 of 10 HPVs with penalties.   |
|    | State Response  |   |
|    | Actions(s) (Include any   | None  |

|  |  |  |
|--|--|--|
|  | uncompleted actions<br>from Round 1 that<br>address this issue.) |  |
|--|--|--|

## Appendix A: Status of Recommendations from Previous Reviews

During the first SRF review of Missouri’s compliance and enforcement program, Region 7 identified a number of actions to be taken to address issues found during the review. The table below shows the status of progress toward completing those actions.

| <b>Status</b> | <b>Due Date</b> | <b>Media</b> | <b>Element</b>                         | <b>Title</b>                                 | <b>Finding</b>   |
|---------------|-----------------|--------------|--|--|--|
| Completed     | 9/15/2005       | CAA          | E2 Violations Identified Appropriately | Inspection form too basic, needs updating    | More comprehensive form will improve inspection documentation. |
| Unresolved    | 12/31/2008      | CAA          | E7 Penalty Calculations                | Establish official penalty policy            | Penalties are not adequate due to lack of penalty policy.      |
| Completed     | 12/31/2006      | CAA          | E12 Data Completion                    | Correct source classification for facilities | 87 major sources were missing a CMS flag.                      |

## **Appendix B: Preliminary Data Analysis**

| Metric | Metric Des  | Metric Typ  | Agency   | National G | National A | MissouriM | Count | Universe | Not Counte |
|--------|-------------|-------------|----------|------------|------------|-----------|-------|----------|------------|
| A01A1S | Title V Uni | Data Quali  | State    |            |            | 314       | NA    | NA       | NA         |
| A01A1C | Title V Uni | Data Quali  | Combined |            |            | 314       | NA    | NA       | NA         |
| A01A2S | Title V Uni | Data Quali  | State    |            |            | 309       | NA    | NA       | NA         |
| A01A2C | Title V Uni | Data Quali  | Combined |            |            | 309       | NA    | NA       | NA         |
| A01B1S | Source Co   | Data Quali  | State    |            |            | 351       | NA    | NA       | NA         |
| A01B1C | Source Co   | Data Quali  | Combined |            |            | 351       | NA    | NA       | NA         |
| A01B2S | Source Co   | Data Quali  | State    |            |            | 16        | NA    | NA       | NA         |
| A01B2C | Source Co   | Data Quali  | Combined |            |            | 16        | NA    | NA       | NA         |
| A01B3S | Source Co   | Informatior | State    |            |            | 1,508     | NA    | NA       | NA         |
| A01B3C | Source Co   | Informatior | Combined |            |            | 1,508     | NA    | NA       | NA         |
| A01C1S | CAA Subp    | Data Quali  | State    |            |            | 283       | NA    | NA       | NA         |
| A01C1C | CAA Subp    | Data Quali  | Combined |            |            | 283       | NA    | NA       | NA         |
| A01C2S | CAA Subp    | Data Quali  | State    |            |            | 52        | NA    | NA       | NA         |
| A01C2C | CAA Subp    | Data Quali  | Combined |            |            | 52        | NA    | NA       | NA         |
| A01C3S | CAA Subp    | Data Quali  | State    |            |            | 172       | NA    | NA       | NA         |
| A01C3C | CAA Subp    | Data Quali  | Combined |            |            | 172       | NA    | NA       | NA         |
| A01C4S | CAA Subp    | Data Quali  | State    | 73.3%      | 93.3%      | 461       | 494   | 33       |            |
| A01C5S | CAA Subp    | Data Quali  | State    | 31.5%      | 78.6%      | 44        | 56    | 12       |            |
| A01C6S | CAA Subp    | Data Quali  | State    | 89.3%      | 96.2%      | 407       | 423   | 16       |            |
| A01C6C | CAA Subp    | Data Quali  | Combined | 86.4%      | 95.5%      | 407       | 426   | 19       |            |
| A01D1S | Complianc   | Data Quali  | State    |            |            | 439       | NA    | NA       | NA         |
| A01D2S | Complianc   | Data Quali  | State    |            |            | 505       | NA    | NA       | NA         |
| A01D3S | Complianc   | Informatior | State    |            |            | 0         | NA    | NA       | NA         |
| A01E0S | Historical  | Data Quali  | State    |            |            | 38        | NA    | NA       | NA         |
| A01E0C | Historical  | Data Quali  | Combined |            |            | 87        | NA    | NA       | NA         |
| A01F1S | Informal Er | Data Quali  | State    |            |            | 67        | NA    | NA       | NA         |
| A01F2S | Informal Er | Data Quali  | State    |            |            | 66        | NA    | NA       | NA         |
| A01G1S | HPV: Num    | Data Quali  | State    |            |            | 10        | NA    | NA       | NA         |
| A01G2S | HPV: Num    | Data Quali  | State    |            |            | 10        | NA    | NA       | NA         |
| A01H1S | HPV Day 2   | Data Quali  | State    | 100%       | 45.3%      | 40.0%     | 4     | 10       | 6          |
| A01H2S | HPV Day 2   | Data Quali  | State    | 100%       | 67.0%      | 100.0%    | 10    | 10       | 0          |
| A01H3S | HPV Day 2   | Data Quali  | State    | 100%       | 57.7%      | 100.0%    | 10    | 10       | 0          |
| A01I1S | Formal Ac   | Data Quali  | State    |            |            | 39        | NA    | NA       | NA         |
| A01I2S | Formal Ac   | Data Quali  | State    |            |            | 38        | NA    | NA       | NA         |
| A01J0S | Assessed    | Data Quali  | State    |            |            | \$235,000 | NA    | NA       | NA         |
| A01K0S | Major Sour  | Review Ind  | State    |            |            | 2         | NA    | NA       | NA         |
| A02A0S | Number of   | Data Quali  | State    | <= 50%     | 71.0%      | 83.3%     | 10    | 12       | 2          |
| A02A0C | Number of   | Data Quali  | Combined | <= 50%     | 68.3%      | 73.3%     | 11    | 15       | 4          |
| A02B1S | Stack Test  | Goal        | State    | 0%         | 5.7%       | 0.0%      | 0     | 78       | 78         |
| A02B2S | Stack Test  | Data Quali  | State    |            |            | 4         | NA    | NA       | NA         |
| A03A0S | Percent H   | Goal        | State    | 100%       | 24.6%      | 40.0%     | 4     | 10       | 6          |

### **Appendix C: PDA Analysis Chart**

This section provides the results of the Preliminary Data Analysis (PDA). The Preliminary Data Analysis forms the initial structure for the SRF report, and helps ensure that the data metrics are adequately analyzed prior to the on-site review. This is a critical component of the SRF process, because it allows the reviewers to be prepared and knowledgeable about potential problem areas before initiating the on-site portion of the review. In addition, it gives the region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metrics results. The full PDA is available in Appendix A of this report.

The PDA reviews each data metric and evaluates state performance against the national goal or average, if appropriate. The PDA Chart in this section of the SRF report only includes metrics where potential concerns are identified or potential areas of exemplary performance. The full PDA contains every metric positive, neutral or negative. Initial Findings indicate the observed results. Initial Findings are preliminary observations and are used as a basis for further investigation. Findings are developed only after evaluating them against the file review results where appropriate, and dialogue with the state have occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

| Metric | Metric Description   | Metric Type        | Agenc | National | Go | National | Av | Missouri | Metric    | Count | Universe | Not | Counted | Sta | St | Sta | Di | Initial Findings   |
|--------|--|--------------------|-------|----------|----|----------|----|----------|-----------|-------|----------|-----|---------|-----|----|-----|----|--|
| A01A1S | Title V Universe: AFS Operating Majors (Current)   | Data Quality       | State |          |    |          |    |          | 314       | NA    | NA       | NA  |         |     |    |     |    |  |
| A01A2S | Title V Universe: AFS Operating Majors with Air Program Code = V (Current)   | Data Quality       | State |          |    |          |    |          | 309       | NA    | NA       | NA  |         |     |    |     |    |  |
| A01B1S | Source Count: Synthetic Minors (Current)   | Data Quality       | State |          |    |          |    |          | 351       | NA    | NA       | NA  |         |     |    |     |    |  |
| A01B2S | Source Count: NESHAP Minors (Current)  | Data Quality       | State |          |    |          |    |          | 16        | NA    | NA       | NA  |         |     |    |     |    |  |
| A01B3S | Source Count: Active Minor facilities or otherwise FedRep, not including NESHAP Part 61 (Current)                  | Informational Only | State |          |    |          |    |          | 1,508     | NA    | NA       | NA  |         |     |    |     |    |  |
| A01C1S | CAA Subprogram Designation: NSPS (Current)   | Data Quality       | State |          |    |          |    |          | 283       | NA    | NA       | NA  |         |     |    |     |    |  |
| A01C2S | CAA Subprogram Designation: NESHAP (Current)   | Data Quality       | State |          |    |          |    |          | 52        | NA    | NA       | NA  |         |     |    |     |    |  |
| A01C3S | CAA Subprogram Designation: MACT (Current)   | Data Quality       | State |          |    |          |    |          | 172       | NA    | NA       | NA  |         |     |    |     |    |  |
| A01C4S | CAA Subprogram Designation: Percent NSPS facilities with FCEs conducted after 10/1/2005                            | Data Quality       | State |          |    | 73.30%   |    | 93.30%   | 461       | 494   | 33       |     |         |     |    |     |    |  |
| A01C5S | CAA Subprogram Designation: Percent NESHAP facilities with FCEs conducted after 10/1/2005                          | Data Quality       | State |          |    | 31.50%   |    | 78.60%   | 44        | 56    | 12       |     |         |     |    |     |    |  |
| A01C6S | CAA Subprogram Designation: Percent MACT facilities with FCEs conducted after 10/1/2005                            | Data Quality       | State |          |    | 89.30%   |    | 96.20%   | 407       | 423   | 16       |     |         |     |    |     |    |  |
| A01D1S | Compliance Monitoring: Sources with FCEs (1 FY)  | Data Quality       | State |          |    |          |    |          | 439       | NA    | NA       | NA  |         |     |    |     |    |  |
| A01D2S | Compliance Monitoring: Number of FCEs (1 FY)   | Data Quality       | State |          |    |          |    |          | 505       | NA    | NA       | NA  |         |     |    |     |    |  |
| A01D3S | Compliance Monitoring: Number of PCEs (1 FY)   | Informational Only | State |          |    |          |    |          | 0         | NA    | NA       | NA  |         |     |    |     |    |  |
| A01E0S | Historical Non-Compliance Counts (1 FY)  | Data Quality       | State |          |    |          |    |          | 38        | NA    | NA       | NA  |         |     |    |     |    |  |
| A01F1S | Informal Enforcement Actions: Number Issued (1 FY)   | Data Quality       | State |          |    |          |    |          | 67        | NA    | NA       | NA  |         |     |    |     |    |  |
| A01F2S | Informal Enforcement Actions: Number of Sources (1 FY)   | Data Quality       | State |          |    |          |    |          | 66        | NA    | NA       | NA  |         |     |    |     |    |  |
| A01G1S | HPV: Number of New Pathways (1 FY)   | Data Quality       | State |          |    |          |    |          | 10        | NA    | NA       | NA  |         |     |    |     |    |  |
| A01G2S | HPV: Number of New Sources (1 FY)  | Data Quality       | State |          |    |          |    |          | 10        | NA    | NA       | NA  |         |     |    |     |    |  |
| A01H1S | HPV Day Zero Pathway Discovery date: Percent DZs reported after 10/01/2005 with discovery                          | Data Quality       | State | 100%     |    | 45.30%   |    | 40.00%   | 4         | 10    | 6        |     |         |     |    |     |    | The Region links the HPV pathway and the discovery action is improving in FY08 data. |
| A01H2S | HPV Day Zero Pathway Violating Pollutants: Percent DZs reported after 10/01/2005                                   | Data Quality       | State | 100%     |    | 67.00%   |    | 100.00%  | 10        | 10    | 0        |     |         |     |    |     |    |  |
| A01H3S | HPV Day Zero Pathway Violation Type Code(s): Percent DZs reported after 10/01/2005 with HPV Violation Type Code(s) | Data Quality       | State | 100%     |    | 57.70%   |    | 100.00%  | 10        | 10    | 0        |     |         |     |    |     |    |  |
| A01I1S | Formal Action: Number Issued (1 FY)  | Data Quality       | State |          |    |          |    |          | 39        | NA    | NA       | NA  |         |     |    |     |    |  |
| A01I2S | Formal Action: Number of Sources (1 FY)  | Data Quality       | State |          |    |          |    |          | 38        | NA    | NA       | NA  |         |     |    |     |    |  |
| A01J0S | Assessed Penalties: Total Dollar Amount (1 FY)   | Data Quality       | State |          |    |          |    |          | \$235,000 | NA    | NA       | NA  |         |     |    |     |    |  |
| A01K0S | Major Sources Missing CMS Policy Applicability (Current)   | Review Indicator   | State |          |    |          |    |          | 2         | NA    | NA       | NA  |         |     |    |     |    |  |
| A02A0S | Number of HPVs/Number of NC Sources (1 FY)   | Data Quality       | State | <= 50%   |    | 71.00%   |    | 83.30%   | 10        | 12    | 2        |     |         |     |    |     |    | With a small data set, this metric needs further investigation in file review.       |
| A02B1S | Stack Test Results at Federally-Reportable Sources - % Without Pass/Fail Results (1 FY)                            | Goal               | State | 0%       |    | 5.70%    |    | 0.00%    | 0         | 78    | 78       |     |         |     |    |     |    |  |
| A02B2S | Stack Test Results at Federally-Reportable Sources - Number of Failures (1 FY)                                     | Data Quality       | State |          |    |          |    |          | 4         | NA    | NA       | NA  |         |     |    |     |    |  |

**Appendix D: PDA Worksheet**

| Original Data Pulled from Online Tracking Information System (OTIS) |  |              |        |               |                  |                 | EPA Preliminary Analysis   |
|---|--|--------------|--------|---------------|------------------|-----------------|--|
| Metric  | Metric Description   | Metric Type  | Agency | National Goal | National Average | Missouri Metric | Initial Findings   |
| I H   | HPV Day Zero Pathway<br>Discovery Date:<br>Percent DZs reported after 10/01/05 with discovery. | Data Quality | State  | 100%          | 45.3%            | 40%             | The Region is partially responsible for this activity, as Region 7 links the HPV pathway in AFS. For this metric, 4 HPVs had discovery actions, while 6 HPVs did not. 5 of these 6 HPVs lacking a discovery action were for failure to submit Title V certifications. Since there is not an inherent discovery action for this violation, a PCE (off-site review) must be created to be considered the discovery action for this type of HPV. Recognizing this, Region 7 has begun creating these discovery actions and the rate is improving. (71% in FY08) |
| 3A  | Percent HPVs Entered <= 60 Days After Designation, Timely Entry (1FY)                          | Goal         | State  | 100%          | 24.6%            | 40%             | While Missouri is better than the national average, they fall short of the national goal. Since the Region links the HPV pathway, this contributes to the data lag.  |
| 3B  | Percent Compliance Monitoring related MDR actions reported <= 60                               | Goal         | State  | 100%          | 52.6%            | 42%             | Missouri sent batch reports for all stack tests and Title V cert reviews for Regional entry in FY07. Region 7 will no longer have the capability to enter batch reports, so Missouri will be entering these directly into AFS individually. Direct entry will significantly shorten the data lag time.   |

|    |   |                  |       |                    |      |      |  |
|----|---|------------------|-------|--------------------|------|------|--|
|    | Days After Designation, Timely Entry (1FY)                      |                  |       |                    |      |      |  |
| 5E | Number of Sources with Unknown Compliance Status (Current)      | Review Indicator | State |                    |      | 19   | The number of sources with unknown compliance status seems high. Further review is warranted. Upon investigation, the number of sources with unknown compliance status is now down to 6. This does not seem to be a significant issue. |
| 8A | High Priority Violation Discovery Rate – Per Major Source (1FY) | Review Indicator | State | >1/2 National Avg. | 9.2% | 2.5% | The number of violations seems low and warrants further file review. Upon further discussion with MDNR, the state has implemented a Compliance Assistance program, which has significantly improved the compliance rate for sources.   |

## Appendix E File Selection

Files to be reviewed are selected according to a standard protocol and using a web-based file selection tool (available to EPA and state users here: [http://www.epa-otis.gov/cgi-bin/test/srf/srf\\_fileselection.cgi](http://www.epa-otis.gov/cgi-bin/test/srf/srf_fileselection.cgi) ). The protocol and tool are designed to provide consistency and transparency in the process. Based on the description of the file selection process in section A, states should be able to recreate the results in the table in section B.

### **A File Selection Process**

The Region used the OTIS File Selection Tool to select the files for the on-site file review. The Selection Tool recommended that 20-35 files be reviewed for Missouri, based on the number of facilities in the universe of 300-700 facilities. The Region followed the guidance provided in the File Selection Tool to select 12 sources with informal enforcement actions and 18 sources without enforcement actions. There were 6 sources designated as HPVs and 3 sources with stack tests. There were no supplemental files selected.

| Program ID | f_city            | f_zip | FCE | PCE | Violation | Stack Test Failure | Title V Deviation | HPV | Informal Action |
|------------|-------------------|-------|-----|-----|-----------|--------------------|-------------------|-----|-----------------|
| 2916300047 | BOWLING GREEN     | 63334 | yes | no  | no        | no                 | no                | no  | no              |
| 2909900016 | FESTUS            | 63028 | yes | no  | no        | no                 | yes               | no  | no              |
| 2918300001 | WEST ALTON        | 63386 | yes | no  | no        | no                 | yes               | no  | no              |
| 2951002545 | ST. LOUIS         | 63101 | yes | no  | no        | no                 | yes               | no  | yes             |
| 2902100056 | ST. JOSEPH        | 64504 | yes | no  | no        | no                 | no                | no  | yes             |
| 2918600003 | STE. GENEVIEVE    | 63670 | yes | no  | no        | no                 | no                | no  | yes             |
| 2904700040 | NORTH KANSAS CITY |       | yes | no  | yes       | no                 | no                | yes | yes             |
| 2951001416 | ST. LOUIS         | 63110 | no  | no  | yes       | no                 | no                | yes | no              |
| 2918300206 | ST. CHARLES       | 63304 | no  | no  | no        | no                 | no                | no  | no              |
| 2902700051 | HOLTS SUMMIT      | 65043 | yes | no  | no        | no                 | no                | no  | yes             |
| 2915900056 | SEDALIA           | 65301 | yes | no  | yes       | no                 | yes               | yes | yes             |
| 2909700104 | JOPLIN            | 64801 | yes | no  | no        | no                 | yes               | no  | no              |
| 2910100023 | WARRENSBURG       | 64093 | yes | no  | no        | yes                | no                | no  | no              |
| 2918300136 | ST. PETERS        | 63376 | yes | no  | no        | no                 | no                | no  | yes             |
| 2918901071 | ST. LOUIS         | 63132 | yes | no  | no        | no                 | no                | no  | yes             |
| 2918700017 | PARK HILLS        | 63601 | yes | no  | no        | no                 | yes               | yes | yes             |
| 2909500271 | BLUE SPRINGS      | 64015 | yes | no  | no        | no                 | no                | no  | no              |
| 2951000070 | ST. LOUIS         | 63111 | yes | no  | no        | no                 | yes               | yes | no              |
| 2904700096 | MISSOURI CITY     | 64072 | yes | no  | no        | no                 | yes               | no  | no              |
| 2921900042 | WRIGHT CITY       | 63390 | no  | no  | no        | yes                | no                | no  | no              |
| 2915500045 | HAYTI             | 63851 | yes | no  | no        | yes                | no                | no  | no              |
| 2907100154 | UNION             | 63084 | no  | no  | yes       | no                 | no                | no  | no              |
| 2918700002 | BONNE TERRE       | 63628 | yes | no  | no        | no                 | yes               | no  | no              |
| 2918900238 | ST. LOUIS         | 63123 | yes | no  | no        | no                 | no                | no  | yes             |

|            |             |       |     |    |     |    |     |     |     |
|------------|-------------|-------|-----|----|-----|----|-----|-----|-----|
| 2907700028 | SPRINGFIELD | 65804 | yes | no | no  | no | no  | no  | no  |
| 2920900007 | BRANSON     | 65616 | no  | no | yes | no | no  | no  | no  |
| 2921300003 | BRANSON     | 65616 | yes | no | yes | no | no  | no  | no  |
| 2915700019 | PERRYVILLE  | 63775 | yes | no | no  | no | yes | no  | yes |
| 2916700028 | BOLIVAR     | 65613 | yes | no | no  | no | no  | yes | no  |
| 2908300031 | CLINTON     | 64735 | yes | no | no  | no | no  | no  | yes |

## **Appendix F: File Review Analysis**

This section presents the initial observations of the Region regarding program performance against file metrics. Initial Findings are developed by the region at the conclusion of the File Review process. The Initial Finding is a statement of fact about the observed performance, and should indicate whether the performance indicates a practice to be highlighted or a potential issue, along with some explanation about the nature of good practice or the potential issue. The File Review Analysis Chart in the report only includes metrics where potential concerns are identified, or potential areas of exemplary performance.

Initial Findings indicate the observed results. Initial Findings are preliminary observations and are used as a basis for further investigation. Findings are developed only after evaluating them against the PDA results where appropriate, and dialogue with the state have occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section VI of this report.

The quantitative metrics developed from the file reviews are initial indicators of performance based on available information and are used by the reviewers to identify areas for further investigation. Because of the limited sample size, statistical comparisons among programs or across states cannot be made.

# Clean Air Act Program

Name of State:

Review Period:

| CAA Metric # | CAA File Review Metric Description:  | Metric Value | Initial Findings  |
|--------------|--|--------------|---|
| Metric 2c    | % of files reviewed where MDR data are accurately reflected in AFS.  | 90%          | 27 of the 30 files reviewed contained documentation to confirm that the MDRs were reported accurately into AFS. The three files reviewed that had data discrepancies, these were minor data entry issues (NOV was entered as an FCE, etc.).   |
| Metric 4a    | Confirm whether all commitments pursuant to a traditional CMS plan (FCE every 2 yrs at Title V majors; 3 yrs at mega-sites; 5 yrs at SM80s) or an alternative CMS plan were completed. Did the state/local agency complete all planned evaluations negotiated in a CMS plan? Yes or no? If a state/local agency implemented CMS by following a traditional CMS plan, details concerning evaluation coverage are to be discussed pursuant to the metrics under Element 5. If a state/local agency had negotiated and received approval for conducting its compliance monitoring program pursuant to an alternative plan, details concerning the alternative plan and the S/L agency's implementation (including evaluation coverage) are to be discussed under this Metric. | 100%         | The state committed to conducting a traditional CMS plan that includes FCEs at 100% of the major sources over 2 years and 100% of SMs over 5 years. During the review period (FY 2007), the state committed to conducting FCEs at 157 majors and 70 SMs. The state completed all of these FCEs based on the data provided in Metrics 5a1 and 5b1.   |
| Metric 4b    | Delineate the air compliance and enforcement commitments for the FY under review. This should include commitments in PPAs, PPGs, grant agreements, MOAs, or other relevant agreements. The compliance and enforcement commitments should be delineated.  | NA           | The state made commitments in the PPG to enter all CAA MDRs into AFS accurately and in a timely manner. Based on the data metrics and review of files, the state maintained an accuracy rate of over 90% and a timeliness rate of nearly 90%.   |
| Metric 6a    | # of files reviewed with FCEs.   | 27           | 27 FCEs were reviewed.  |
| Metric 6b    | % of FCEs that meet the definition of an FCE per the CMS policy.   | 100%         | 27 of the 27 FCEs reviewed had documentation in the files to show that they contained all of the elements of the FCE, per the national CMS. Missouri's CMS plan specifically identifies that some reports are submitted to and reviewed by the enforcement section (EIQs and Title V certs). 21 of the 27 inspection reports also contain documentation that these reports were also reviewed by the inspector. |
| Metric 6c    | % of CMRs or facility files reviewed that provide sufficient documentation to determine compliance at the facility.  | 89%          | 24 of the 27 inspection reports reviewed contained all of the CMR requirements listed in the CMS and contained sufficient documentation to determine compliance at the facility. The quality of the inspection reports vary widely, and the 3 files that did not contain all of the elements of an FCE were poor with minimal documentation.  |
| Metric 7a    | % of CMRs or facility files reviewed that led to accurate compliance determinations.   | 100%         | We did not discover any potential violations that were overlooked by the inspectors. Neither did we find any violations identified by the inspector that were not actual violations.  |
| Metric 7b    | % of inon-HPVs reviewed where the compliance determination was timely reported to AFS.   | 90%          | 9 of the 10 FCEs reviewed with non-HPV compliance determinations were entered timely into AFS.  |
| Metric 8f    | % of violations in files reviewed that were accurately determined to be HPV.   | 100%         | All 6 of the HPVs reviewed were correctly determined to be HPVs by Missouri, according to the HPV policy.   |

## **Appendix G: Correspondence**

September 25, 2008

Jim Kavanaugh  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102

Dear Mr. Kavanaugh:

Through this letter, the Environmental Protection Agency (EPA) Region 7 is initiating a review of the Missouri Department of Natural Resources (MDNR) Clean Air Act Stationary Source Enforcement Programs. We will review inspection and enforcement activity from Federal Fiscal Year 2007.

In FY2007, EPA regions completed the first round of reviews using the State Review Framework (SRF) protocol. This work created a baseline of performance from which future oversight of state compliance and enforcement programs can be tracked and managed. In early FY2008, the first round of reviews was evaluated and a work group composed of EPA headquarters, regional managers and staff, ECOS, state media associations and other state representatives revised the SRF elements, metrics, process and guidance.

In the second round of the SRF (SRF/2), the review cycle has been extended by a year such that all states will be reviewed within a 4 year cycle, or by the end of Fiscal Year 2012.

SRF/2 is a continuation of a national effort that allows Region 7 to ensure that MDNR meets agreed upon minimum performance levels in providing environmental and public health protection. The review will include:

- ▶ discussions between Region 7 and MDNR program managers and staff,
- ▶ examination of data in EPA and MDNR data systems, and
- ▶ review of selected MDNR inspection and enforcement files and policies.

Region 7 and MDNR have the option of agreeing to examine state programs that broaden the scope of traditional enforcement. This may include programs such as pollution prevention, compliance assistance, innovative approaches to achieving compliance, documenting and reporting

outputs, outcomes and indicators, or supplemental environmental projects. We welcome MDNR suggesting other compliance programs for inclusion.

We expect to complete the MDNR review, including the final report, by June, 2009.

Our intent is to assist MDNR in achieving implementation of programs that meet federal standards and are based on the goals we have agreed to in MDNR's Performance Partnership Agreement. Region 7 and MDNR are partners in carrying out the review. If we find issues, we want to address them in the most constructive manner possible.

Region 7 has established a cross program team of managers and senior staff to implement the MDNR review. Lisa Hanlon will be Region 7's primary contact for the review. She will lead the review team, directing all aspects of the review for the region. Mark Hague of the Region 7 Enforcement Coordination Office is the Region 7 senior manager with overall responsibility for the review.

The SRF/2 protocol includes numerous program specific worksheets, metrics, and report templates that Region 7 and MDNR will use to complete the review. We believe it will assist us in carrying out an efficient, focused review. All of these materials have been developed jointly by EPA regional and HQ staff and numerous state officials.

EPA has designed the SRF Tracker as the repository for holding all SRF products including draft and final documents, letters, data sets etc. It is also a management tool used to track the progress of a state review and to follow-up on the recommendations. Regions will enter and update all information for their states in the SRF Tracker. OECA will use the Tracker to monitor implementation of SRF/2. States can view and comment on their information securely on the internet.

All information and materials used in this review may be subject to federal and/or state disclosure laws. While EPA does not intend to post this information on any public website, EPA will release the information in response to a request under the Freedom of Information Act that is properly submitted.

For further information, please contact Mark Smith at (913) 551-7876 or Lisa Hanlon at (913) 551-7599. We look forward to working with you on this project.

Sincerely,

Becky Weber, Director  
Air and Waste Management Division

cc: Steve Feeler, MDNR  
Mark Hague, ECO

State Review Framework

Review of Missouri's  
National Pollutant Discharge Elimination System  
Compliance and Enforcement Program  
In Federal Fiscal Year 2009

U.S. Environmental Protection Agency, Region 7

Final Report  
September 24, 2010

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## I. EXECUTIVE SUMMARY

The State Review Framework (SRF) is a program designed to ensure the Environmental Protection Agency (EPA) conducts oversight of state compliance and enforcement programs in a nationally consistent and efficient manner. Reviews look at 12 program elements covering the following: data (completeness, timeliness, and quality); inspections (coverage and quality); identification of violations; enforcement actions (appropriateness and timeliness); and, penalties (calculation, assessment and collection). Reviews are conducted in three phases: analyzing information from the national data systems; reviewing a limited set of state files; and development of findings and recommendations. Considerable consultation is built into the process, to ensure EPA and the state understand the causes of issues, and to seek agreement on identifying the actions needed to address problems. Reports generated by the reviews are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. The reports are designed to provide factual information and do not make determinations of program adequacy. EPA also uses the information in the reports to draw a “national picture” of enforcement and compliance, and to identify any issues that require a national response. Reports are not used to compare or rank state programs.

### A. MAJOR STATE PRIORITIES AND ACCOMPLISHMENTS

Missouri’s National Pollutant Discharge Elimination System (NPDES) compliance and enforcement program is administered by the Missouri Department of Natural Resources (MDNR). Following is a summary of priorities, operating principles, and accomplishments within the state’s NPDES program areas for Federal Fiscal Year (FFY) 2009.

#### Wastewater

- MDNR monitors the compliance of major and minor wastewater dischargers through inspections and self-reported Discharge Monitoring Reports (DMRs). Inspections and DMR reviews are conducted by MDNR staff in the state’s regional offices, who also make compliance determinations based on this information.
- In its Compliance Monitoring Strategy (CMS) with EPA, the state committed to conduct a compliance inspection at one-half of all major dischargers and approximately one-fifth of all minor dischargers in FFY 2009.
- The state’s priority for wastewater enforcement is to eliminate Sanitary Sewer Overflows (SSOs) from communities’ collection systems. MDNR guidance to state inspectors emphasizes EPA’s Wet Weather Significant Noncompliance (SNC) Policy as it pertains to SSOs, and EPA reviewed the extent to which state wastewater inspections focused on collection system integrity and identification of ways to minimize overflows.

### Stormwater

- Compliance monitoring of entities with NPDES permits for construction, industrial, and Municipal Separate Storm Sewer System (MS4) discharges is conducted mostly on a complaint basis, while a limited number of inspections are planned through targeting.
- MDNR conducted the first wave of planned inspections of MS4 communities in 2008 and 2009, with four MS4 inspections conducted in FFY 2009.
- The state's enforcement priority for stormwater is land disturbance sites. The MDNR Operations Manual sets a goal of promptly responding to land disturbance complaints and producing an investigation report within 10 days, which stands apart from the 30-day turn-around time for all other inspection reports.

### Confined Animal Feeding Operations (CAFOs)

- Missouri has more than 500 CAFOs with individual and general NPDES permits.
- Reducing environmental harm due to runoff from CAFOs is an enforcement priority for the state. MDNR staff inspect Class IA large CAFOs once quarterly, as required by state law, and inspects other CAFOs on a rotating basis and in response to citizen complaints.
- State inspectors use a checklist specific to CAFOs when documenting compliance during inspections. EPA found wide variations across regional offices in the use of narrative and supporting information to describe findings from CAFO inspections.

### Pretreatment

- The Missouri Pretreatment Program consists of 41 cities with approved programs and a smaller number of Significant Industrial Users (SIUs) in non-Pretreatment Program cities.
- MDNR does not have authority to issue permits to industrial users; therefore, SIUs outside Pretreatment Program cities are not permitted in Missouri. MDNR's central office pretreatment coordinator reviews semi-annual monitoring reports and inspects a limited number of such SIUs each year.

## B. SUMMARY OF RESULTS

The previous review of Missouri's NPDES program, covering FFY 2005, led to 12 recommendations for improvement, all of which have been addressed in some fashion. One recommendation remained open as a working task up through the time of the current program review. Specifically, EPA and MDNR worked with limited success to identify and resolve issues with batching state data to the Permit Compliance System (PCS). In a new wave of discussions coinciding with the Round 2 review, the two parties have developed a plan of action to clean up PCS data for majors and ensure that new data for majors is accepted as accurate by PCS. This effort will continue until MDNR begins to batch data to the Integrated Compliance Information System (ICIS-NPDES) from its new

state database. All 12 recommendations are currently marked complete in the SRF Tracker.

For FFY 2009, EPA reviewed Missouri's NPDES compliance and enforcement program against 11 national program elements. EPA identified positive state accomplishments across most of the elements. For 10 of the 11 elements, EPA also identified areas with minor deficiencies needing state attention and other areas needing recommendations to ensure program improvement. For 1 element, EPA found the state's performance to be fully satisfactory. Across all 11 elements, EPA made a total of 21 findings, which include 17 recommendations for areas needing improvement, 1 finding of fully satisfactory performance, and 3 minor deficiencies needing state attention. Following is a summary of the findings grouped by finding type. Findings are numbered to match the corresponding program element, which also matches the detailed discussion of findings in Part IV of this report. Note that EPA did not evaluate Element 3<sup>1</sup> in FFY 2009.

1. Elements where performance was good or no improvement was needed. For this element, EPA's review found the state's performance to be satisfactory:
  - **Element 9—Enforcement Actions Promote Return to Compliance**
2. Elements with areas for state attention
  - **Element 6—Quality of Inspection Reports**
    - b. Finding 6-2: Most land disturbance inspections were not completed and transmitted within the state's 10-day timeframe for turn-around.
  - **Element 12—Final Penalty Assessment and Collection**
    - c. Finding 12-1: Enforcement records did not indicate what rationale the state used to justify particular alternative penalty amounts during negotiations.
    - d. Finding 12-2: Enforcement records did not consistently contain proof that civil penalties had been paid.
3. Elements with areas for state improvement requiring recommendations.

#### *Data Quality*

- **Element 1—Data Completeness**
  - a. Finding 1-1: Permit data for many major facilities was incomplete and inaccurate.
    - Recommendation 1-1: Repair permit data problems in PCS for majors, with help from EPA, until ICIS-NPDES is ready for MDNR to batch majors data from the state's new database.
  - b. Finding 1-2: DMR data for many major facilities was incomplete and inaccurate.

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<sup>1</sup> Element 3 of the SRF evaluates the degree to which the state entered Minimum Data Requirements into PCS in a timely manner. EPA Region 7 had to pull the Official Data Set for the review from the live database before EPA Headquarters could make the frozen data set available, which precluded any analysis under this metric.EPA.

Recommendation 1-2: Repair DMR data problems in PCS for majors, with help from EPA, until ICIS-NPDES is ready for MDNR to batch majors data from the state's new database.

- c. Finding 1-3: The state does not enter all of its enforcement actions in PCS for major and P.L. 92-500 minor facilities.

Recommendation 1-3: Enter this data into ICIS-NPDES when the national database is prepared for it; until then, EPA will enter formal actions for majors into PCS.

▪ **Element 2—Data Accuracy**

- a. Finding 2-1: Violations are not linked to formal enforcement actions against major facilities.

Recommendation 2-1: Make linkages between formal actions and violations in the state's new database, and batch this data to ICIS-NPDES when the national database is prepared for it.

*Completion of Inspections and Other Commitments*

▪ **Element 4—Completion of Commitments**

- a. Finding 4-1: The state is consistently late in submission of QNCR responses.

Recommendation 4-1: Evaluate the state's protocol for processing the QNCR out of PCS to determine how it could be streamlined for processing out of ICIS-NPDES .

- b. Finding 4-2: Inspection commitments for four NPDES program areas (excluding majors) were not satisfied.

Recommendation 4-2: Use consistent and accurate universe numbers for types of facilities during the development of annual inspection commitments.

▪ **Element 5—Inspection Coverage**

- a. Finding 5-1: The state did not inspect 50% of its major dischargers in FFY 2009.

Recommendation 5-1: Maintain open communication with EPA through the fiscal year on progress toward inspection commitments and any mid-course changes to compliance monitoring priorities.

*Quality of Inspections and Violation Identification*

▪ **Element 6—Quality of Inspection Reports**

- a. Finding 6-1: Inspection reports present detailed, thorough information on facilities' compliance status, but EPA identified several areas needing improvement.

Recommendation 6-1: Consistently incorporate the specified items in inspections and inspection reports.

- b. Finding 6-3: Inspections at mechanical treatment plants did not evaluate sludge handling.

Recommendation 6-3: Begin using EPA's sludge handling checklist or some modification thereof.

▪ **Element 7—Identification of Alleged Violations**

- a. Finding 7-1: The state identifies single-event violations (SEVs) during inspections but does not enter SEVs in PCS.  
Recommendation 7-1: Track SEVs in the new state database and begin to batch this data to ICIS-NPDES when the national database is prepared for it.
- b. Finding 7-2: The state Compliance Manual does not describe the appropriate range of responses for deficiencies found during Municipal Separate Storm Sewer System (MS4) inspections.  
Recommendation 7-2: Update the Compliance Manual to cover responses to MS4 violations.
- c. Finding 7-3: The state did not identify all self-reported effluent exceedances as violations.  
Recommendation 7-3: Use the new state database to more consistently identify DMR violations.
- d. Finding 7-4: The state did not actively monitor, update, and enforce against permit compliance schedules.  
Recommendation 7-4: Actively monitor and update compliance schedules tracked in the new state database and respond appropriately when scheduled milestones are not met.
- **Element 8—Identification of SNC**
  - a. Finding 8-1: The state identifies SNC during inspections at major dischargers but does not currently enter SEVs that are SNC into PCS.  
Recommendation 8-1: Track SEVs in the new state database and begin to batch this data to ICIS-NPDES when the national database is prepared for it.

*Violation Response*

- **Element 10—Timely and Appropriate Action**
  - a. Finding 10-1: Initial responses to violations were timely and appropriate, but in several cases regional offices did not refer continuing noncompliance to the central office in a timely manner.  
Recommendation 10-1: The central office should communicate to the regional offices on the importance of coordinating early in the escalation process while continuing to elicit voluntary complying actions in the interim; and regional offices should make progress toward that end.
  - b. Finding 10-2: Settlement negotiations in some cases persisted through a long and protracted period before reaching settlement.  
Recommendation 10-2: Prepare cases for referral to the Attorney General when negotiations at the MDNR level stall, in accordance with the state's Compliance Manual.
  - c. Finding 10-3: State enforcement guidance allows compliance schedules to be used in permits as a means to resolve permit violations.  
Recommendation 10-3: Re-evaluate Compliance Manual guidance on using schedules of compliance and consult with EPA regarding any appropriate changes.

*Penalty Assessment*

**b. Element 11—Penalty Calculation Method**

- a. Finding 11-1: Penalties in administrative and judicial orders account for gravity, but most penalties do not account for the economic benefit of noncompliance.

Recommendation 11-1: Continue to account for and describe delayed and avoided costs in penalty cases; where the state determines that it is not appropriate to include economic benefit, note the rationale for that decision on the penalty calculation worksheet.

EPA did not review Missouri's other media programs at the time of the NPDES program review. Therefore, EPA did not identify any cross-media findings or recommendations during this review.

## **II. BACKGROUND ON MISSOURI'S PROGRAM AND THE REVIEW PROCESS**

The following discussion of Missouri's NPDES compliance and enforcement program is the product of dialog between EPA Region 7 and MDNR prior to and during the week of April 19, 2010, and also reflects other information shared by MDNR during the drafting of this report. Also included in this part of the report is a description of the review process.

The background information in this report pertains to Missouri's program as it operated at the time this report was written. In cases where the program operated differently during FFY 2009, the year under review, EPA notes those changes accordingly.

### **A. Overview of Missouri's Program**

#### **A1. Program Structure and Roles/Responsibilities**

All NPDES compliance and enforcement program components in Missouri are implemented by the MDNR Division of Environmental Quality. Responsibilities within the Division of Environmental Quality are divided between the Water Pollution Control Branch (WPCB), housed in MDNR's central office in Jefferson City, and the Environmental Services Program, which operates five regional offices and associated satellite offices throughout the state. Except for the pretreatment program, all compliance monitoring takes place at the regional office level, where MDNR staff familiar with local facilities conduct inspections, respond to complaints, and review DMRs. When regional office staff discover NPDES noncompliance through these means, they begin the process of Conference, Conciliation, and Persuasion (CC&P) to informally resolve the violations through voluntary means. CC&P encompasses telephone calls, technical assistance, and informal enforcement. Informal enforcement at the regional office level includes issuance of Letters of Warning (LOWs) and Notices of Violation (NOVs) in accordance with thresholds outlined in MDNR's Compliance Manual, which is discussed in Section A4.

If the CC&P process is unsuccessful at returning a violator to compliance, regional offices refer the matter to the WPCB for formal enforcement. WPCB staff determine whether to attempt to negotiate a settlement agreement with the violator, to issue an administrative order for compliance and/or penalty, or to refer a case to the state Attorney General (AG) for assistance in negotiating or to initiate a judicial action. MDNR follows the guidance in its Compliance Manual to make decisions on appropriateness of various informal and formal enforcement tools. In addition to handling referrals from the WPCB, the AG also signs final negotiated settlements and orders after all other parties have signed. Attorneys in MDNR's Office of General Counsel play the role of reviewing enforcement documents before MDNR sends them outside the department.

## A2. Staffing, Resources, and Training

Staff resources available to MDNR to implement its NPDES compliance and enforcement program include 48 full-time equivalent staff, 39 of which are in the Environmental Services Program and 9 of which are in the WPCB. Approximately 57% of these staff is funded by MDNR's Environmental Performance Partnership Grant from EPA. WPCB staff consists of 6 cases officers, 1 clerical assistant, the unit chief, and the section chief. Each of the five regional offices has an average of 8 individuals assigned to NPDES duties. NPDES personnel in the regional offices perform an average of 44 planned inspections and complaint investigations per year while also performing work requests and providing technical assistance either in person or via the phone. In addition, several attorneys in the Office of General Counsel offer legal assistance to the WPCB to develop enforcement cases.

The WPCB, Compliance and Enforcement Section, had one vacancy at the time of EPA's review that was slated to be filled shortly after the review. MDNR had no information to provide at the time of review concerning vacancies in the regional offices. Due to a declining state budget through the previous ten years, the number of compliance and enforcement staff in the WPCB has dropped by approximately one-third, and a similar effect has been felt in the Environmental Services Program. WPCB staff carry a caseload of approximately 50-60 enforcement cases per person at any given time, as these include cases from referral through termination.

The WPCB and regional offices provide on-the-job training to new employees. In regional offices, new inspectors learn how to conduct inspections by shadowing experienced staff. After some period of shadowing, the new staff begin to conduct inspections with oversight from experienced staff and learn how to write inspection reports under their guidance. Before conducting their own independent inspections, regional office inspectors also attend basic inspector training, become Hazwoper certified, and learn the intricacies of state and federal regulations. In the WPCB, the supervisor provides training on the regulations to be enforced and how to engage in the enforcement process. New case officers also attend training on the enforcement process and litigation, which is offered by the Midwest Environmental Enforcement Association. New case officers gain experience by first taking simple cases under the guidance of experienced staff. Only after one to one-and-a-half years do new case officers begin to develop more complex cases on their own.

## A3. Data Reporting and Tracking Systems

MDNR used two databases to track NPDES program activities in FFY 2009. The central office's WPCB maintained permit data in the Water Quality Information System (WQIS), while the regional offices entered DMR data into WQIS upon receiving hard-copy DMRs from facilities. As the storehouse of permit and DMR data, WQIS served as the means to identify and track discharge violations and was the source of data that

MDNR uploaded to PCS. EPA's experience with MDNR in past years revealed that the central and regional offices followed well established protocols to assure the quality of permit and DMR data in WQIS. For tracking state NPDES inspections, the regional offices used their own databases while the central office independently entered inspection records into WQIS upon receiving inspection report information from the regional offices. Inspection counts in the two databases have not always agreed, leaving some questions between EPA and MDNR on how many inspections the state actually completes in various NPDES categories. The tracking of formal and informal enforcement actions in the central and regional offices was decentralized, with different offices using different databases through FFY 2009.

Beginning in early 2010, MDNR implemented a new database, developed in-house, to replace and consolidate the functions of all disparate databases that the department had been previously using to manage the NPDES program. At the time of review, the Missouri Clean Water Information System (MoCWIS) was being used by the central and regional offices to track information on inspections, enforcement, permit data, and DMR data. MDNR developed MoCWIS to also serve the purpose of batching NPDES data to ICIS-NPDES once that database is prepared to accept data from batch states, scheduled to begin in 2011.

For several years through FFY 2009, MDNR faced numerous and unabated challenges in getting complete and accurate data to populate PCS. The previous program review, covering FFY 2005, revealed that data in PCS frequently did not match what the state maintained in WQIS or in its facility files. Most notable were widespread cases of incomplete and inaccurate DMR data. MDNR suspected that the process of batching from WQIS to PCS was at fault for much of the poor data quality, although EPA and MDNR have not been able to resolve these issues since the FFY 2005 review. For these reasons, EPA's strategy for evaluating data management during the FFY 2009 review was to: 1) determine whether the legacy issues described above are associated with the potential concerns that arose in the Preliminary Data Analysis for the FFY 2009 review (see Appendix A); and 2) prioritize the deficient data that should be repaired and maintained, using limited state and EPA resources, until MDNR begins batching data from MoCWIS to ICIS-NPDES. EPA and MDNR anticipate that the new batching arrangement will eliminate most if not all of the legacy issues that have plagued Missouri's NPDES data.

#### A4. Enforcement Policy and Escalation Process

The guidance that MDNR follows to assure compliance and conduct enforcement is described in the department's Compliance Manual, which was created in 2007 and most recently updated in October 2008. The Compliance Manual describes the circumstances in which CC&P is to be used to voluntarily resolve violations and when MDNR should escalate noncompliance to formal enforcement. MDNR developed the Compliance Manual as guidance for all department entities with an enforcement role, and it provides specific guidance for MDNR's NPDES program. EPA and MDNR staff

discussed the content of the Compliance Manual during the on-site review, and the following paragraphs summarize the guidance as it pertains to enforcement escalation.

Regional offices begin the CC&P process upon discovering a violation through inspection, DMR review, facility self-reporting, etc. The presence of CC&P at the forefront of the Compliance Manual reflects the requirement in Chapter 644 of the Missouri Revised Statutes that it be used as the first line of defense in enforcement. If CC&P does not yield a voluntary return to compliance by 90 days, with some exceptions, the regional office is expected to issue an LOW or NOV. Staff are expected to document the progress of all CC&P activities in facility files as well as the regional offices' tracking database. Once an NOV or LOW is issued, staff should continue using CC&P, as the state's preferred method for resolving noncompliance is voluntary action with state compliance assistance.

The LOW is described as a written notification issued for first-time violations. It should describe the violation in specific terms and provide a deadline for responding with complying actions taken. The Compliance Manual describes the NOV as a written notification issued for violations that warrant legal action if not corrected. Like the LOW, the NOV should also describe the specific violation and require a facility response. Serious violations meeting certain criteria merit an NOV within 10 days of discovery, in which case the mandate for first attempting CC&P is not applicable. Among these criteria are violations that meet the definition of SNC for major and federal grant-awarded minor dischargers. An NOV is also to be issued to any facility that did not respond favorably to CC&P efforts or an LOW. For the purpose of tracking in the national database, EPA considers the LOW and NOV to be informal enforcement.

Upon issuing an NOV, regional offices should discuss the violations with the WPCB and determine whether to refer the matter to the WPCB for enforcement. The tools available to the WPCB include settlement agreements, abatement orders, administrative orders, referral to the state AG, and other lesser used options. These tools, as MDNR uses them, meet EPA's definition of formal enforcement actions, provided that penalty orders also include mandatory injunctive relief as part of the order or agreement.

The Compliance Manual states that violations not resolved through CC&P or informal enforcement should be addressed through a compliance schedule in a formal action or in a revised permit within 180 days of discovery. Hence, 180 days is considered the limit of CC&P and informal enforcement. For SNC violations at major dischargers, EPA expects a formal action to be issued by the time the violation appears (or would appear if not entered into the database) on the second QNCR, which would be between 150 and 240 days after discovery depending on when in the quarter the violation occurred. Also, EPA considers a compliance schedule in a revised permit not to be an acceptable tool for resolving a permit violation. Finding 10-3 in Part IV addresses this provision of the Compliance Manual.

The state AG becomes involved in enforcement by being a signatory party to all settlement agreements and administrative orders. According to the Compliance Manual,

the WPCB may refer enforcement cases to the AG if settlement negotiations between MDNR and the violator stall or if the administrative route otherwise proves ineffective. MDNR prefers to conduct formal enforcement through consent, by negotiating settlement agreements or abatement orders, and violators have an incentive to settle with MDNR before the department determines that referral to the AG is necessary. Issuing orders and agreements on consent also precludes the possibility of protracted appeals. As the preferred formal enforcement tool, settlement agreements comprise more than 90 percent of the state's formal actions.

Penalty calculation and collection in the state is guided by Missouri Clean Water Law Sections 644.076 and 644.096. MDNR may assess up to \$10,000 per day of violation. Pursuant to the statute, MDNR developed its Penalty Assessment Protocol, which is codified in the Code of State Regulations. The rule states that factors to consider in assessing a penalty include gravity, the number of days of violation, the number of violations per day, and economic benefit. MDNR's penalty calculation worksheet, which is completed for each penalty assessment, facilitates consideration of all four of these factors. In practice, however, the WPCB does not include economic benefit in its penalty calculations for most cases. Although economic benefit has a place on the worksheet, in accordance with the state's rule, WPCB staff indicated that calculation of economic benefit for all cases in the regimented manner preferred by EPA would require more staff time than what the WPCB can afford to invest. The WPCB does, at a minimum, determine an estimate of economic benefit to use as a minimum acceptable penalty during negotiations with the violator.

## B. State Priorities, Activities, and Accomplishments for NPDES Program Components

Missouri's enforcement priorities at the time of the program review were SSOs, CAFOs, and land disturbance. MDNR management emphasized during the on-site program review that these priorities are frequently revised, but they provide an adequate summary of the priorities that guided the department's work in FFY 2009. This section also discusses important aspects of how the state implements its NPDES program components. Noteworthy activities and accomplishments that MDNR has conducted and realized through its implementation of these program components are also discussed.

A common aspect of all NPDES program areas is the use of a CMS to establish expectations for how many inspections MDNR and EPA will perform in a given fiscal year. EPA and MDNR negotiated a CMS at the beginning of FFY 2009, and the negotiated inspection commitments form the benchmark for measuring the state's performance under the topics of inspection coverage and inspection-related commitments.

### B1. Wastewater

MDNR's priority for wastewater enforcement is to eliminate SSOs from communities' collection systems. MDNR has acknowledged EPA's Wet Weather SNC Policy, as it pertains to SSOs, in the state's internal policy documents dated 2007 and

2008. MDNR policy documents emphasize that, during wastewater inspections, staff should identify SSOs occurring as a result of mechanical or hydraulic problems. The central office has also provided a sewer system evaluation checklist for inspectors to use. MDNR indicated during the on-site review that its message to communities regarding SSOs is three-fold. First, communities must adhere to the state's SSO reporting requirements for wet and dry weather-induced overflows. Second, communities should track their SSOs to gauge the frequency and magnitude of the problem. Third, communities should assess, with help from MDNR, how much their wet versus dry weather flows contribute to the collection system and treatment plant to determine whether an inflow and infiltration plan is necessary. If corrective work by the communities is needed, MDNR's policy documents stress that regional office staff should assist communities in developing robust sanitary sewer system evaluation plans. Finally, MDNR received an SSO training grant from EPA in 2008, which the state plans to use in 2010-2011 to host 40 workshops throughout the state to train communities to develop appropriate sanitary sewer collection system operation, maintenance, and rehabilitation plans, with the ultimate objective of mitigating and minimizing SSOs. During the on-site review, EPA evaluated how well the state's emphasis on eliminating SSOs was reflected in the compliance monitoring records of facility files, especially wastewater inspections.

Aside from SSOs, MDNR prioritizes its enforcement of wastewater violations at major and P.L. 92-500s using the federal SNC criteria, with the addition of other thresholds in the Compliance Manual that could trigger the need for an NOV or expedited enforcement. Violations that do not rise above this high-priority threshold are described in the Compliance Manual with respect to whether or not an LOW is merited.

The number of major wastewater facilities meeting SNC criteria during one or more quarters during a fiscal year has gradually risen in recent years, starting with 12.7% in FFY 2007 and rising to 22.0% in FFY 2009. WPCB management suspect that this might be due to a slight shift in focus on quickly resolving DMR non-receipt. While regional offices continue to remind major facilities of overdue or missing DMR data, staff have placed more focus in recent years on doing this as promptly as possible for minor facilities and might not be as prompt as in the past for majors.

The core element of Missouri's NPDES compliance and enforcement program is the state's regular inspections of wastewater dischargers. As discussed in Appendix F of this report, MDNR committed to inspecting one-half of all major dischargers and one-fifth of all minor dischargers in FFY 2009. The findings from these inspections, combined with review of facility DMRs, form the backbone of the state's discovery of NPDES violations. Part IV and Appendix D of this report discuss EPA's findings relative to the state's performance in compliance monitoring.

To document wastewater inspections, MDNR inspectors across all regional offices write a narrative report. Some inspectors in some regional offices include with the narrative report a checklist to specify important data elements for entry of inspection records into state databases. In addition, EPA evaluated the extent to which MDNR

inspectors documented sludge handling practices at mechanical WWTPs, for which EPA's finding is described in Finding 6-3.

## B2. Stormwater

MDNR's general permits for land disturbance and industrial stormwater are written by the central office but the applications and fees are collected by the appropriate regional office, which also issues the permits. In the event that an individual permit is required, it is usually written and issued by the appropriate regional office, although a very complex permit may be written in the central office. Missouri issues individual Phase I MS4 permits and a general permit for Phase II MS4s. All MS4 permits are written and issued by the central office. LOWs and NOVs are issued from the regional offices. If it is necessary to escalate the enforcement response, the case is referred to the central office.

MDNR's compliance monitoring for construction stormwater consists mainly of investigations in response to complaints, although some construction stormwater inspections are initiated as routine inspections and a few others are targeted. Furthermore, sites where deficiencies have been noted and an LOW or NOV issued are usually re-inspected to determine the site's compliance status.

MDNR performs some routine inspections of facilities holding any of the state's general industrial stormwater permits and also those with individual permits. Inspections are also conducted in response to complaints.

The SRF file review included review of two MS4 communities. In the last couple of years, MDNR has begun performing inspections of communities and other entities with MS4 permits. MS4 inspections require a significant amount of preparation including review of the permit, Stormwater Management Plan, ordinances, most recent annual report(s) and any other documentation deemed necessary. Holt's Summit was inspected in 2009 and an LOW was issued. A memo in the file indicated that the regional offices were advised not to follow-up on deficiencies noted during MS4 inspections until guidance is provided by the Water Protection Program; see Finding 7-2 in Part IV.

## B3. Concentrated Animal Feeding Operations (CAFOs)

CAFOs represent a subset of the much larger AFO universe that operates in Missouri. Missouri has a large and diverse animal industry which includes swine, poultry, cattle and dairy. More than 500 facilities have general and individual NPDES permits for CAFO discharges.

Reducing environmental harm due to runoff from CAFOs is one of MDNR's enforcement priorities for its NPDES program. As required by state law, MDNR inspects Class IA large CAFOs once every calendar quarter and inspects other CAFOs on a rotating basis and in response to citizen complaints. According to MDNR's FFY 2009

year-end progress report for PPG activities, MDNR completing 147 inspections at CAFO facilities. With a universe of NPDES-permitted CAFOs exceeding 500 facilities, MDNR exceeded its CMS commitment to inspect 20% of CAFO facilities in FFY 2009.

CAFO inspectors rely primarily on a checklist format for documenting compliance at CAFOs/AFOs. Typically these checklists are coupled with a narrative, photos and samples to complete a well rounded inspection. The compliance monitoring activities mentioned above resulted in MDNR issuing 13 LOWs and 2 NOVs for a total of 15 informal enforcement actions during FFY 2009 at CAFOs. MDNR issued 1 CAFO settlement agreement and 1 referral to the state Attorney General for a total of 2 formal enforcement actions in FFY 2009.

#### B4. Pretreatment

The Missouri Pretreatment Program consists of 41 cities with approved programs and a smaller number of Significant Industrial Users (SIUs) in non-Pretreatment Program cities. MDNR's central office pretreatment coordinator conducts Pretreatment Compliance Inspections and audits of program cities on a rotating basis.

MDNR does not have authority to issue permits to indirect dischargers; therefore, industrial users outside Pretreatment Program cities are not permitted in Missouri. MDNR's central office pretreatment coordinator reviews semi-annual monitoring reports and inspects a limited number of such industrial users each year. Because these industries are not permitted, enforcement is based on their compliance with the appropriate Categorical standard and the directly implemented requirements of the General Pretreatment Regulations.

#### C. Process for SRF Review

The following is a summary of the key inputs, milestones, and channels of communication that guided the FFY 2009 SRF review of Missouri's NPDES compliance and enforcement program. The Water Enforcement Branch at EPA Region 7 was responsible for conducting the review. Michael Boeglin, under the direction of Diane Huffman, was the coordinator and lead reviewer. Other program reviewers included Melissa Bagley, Don Hamera, Paul Marshall, Linda McKenzie, and Cynthia Sans. The SRF Coordinator for EPA Region 7 is Pam Johnson.

Throughout the preparation, execution, and follow-up for the SRF review, all communication was channeled between the Water Enforcement Branch and the WPCB at the MDNR central office. Kevin Mohammadi, the chief of the Compliance and Enforcement Section within the WPCB, served as the primary point of contact for MDNR. Paul Dickerson, the chief of the Enforcement Unit, works under the direction of Kevin Mohammadi and was also present throughout the on-site SRF review.

Following are the major milestones in the EPA review of Missouri's NPDES compliance and enforcement program for FFY 2009:

- 2/16/2010—EPA sent an opening letter to MDNR to initiate the SRF review and transmit the Official Data Set (ODS). The ODS formed the basis of EPA’s analysis of the state’s compliance and enforcement data and activities in FFY 2009, as contained in PCS.
- 3/3/2010—EPA and MDNR discussed the ODS and determined that several data elements were incomplete. In order to proceed with the review, EPA requested replacement data for several elements, particularly those concerning enforcement counts. MDNR responded with all necessary replacement data within 5 business days. The corrected ODS, with state discrepancies, can be found in Appendix B.
- 3/24/2010—EPA sent a final file selection list to MDNR central and regional office contacts via email, to ensure that MDNR had four weeks to pull the selected files prior to the on-site review. MDNR transported all of the selected facility files to the MDNR central office in Jefferson City.
- 3/24/2010—EPA sent a letter to MDNR transmitting the file selection list and initial findings from the Preliminary Data Analysis (PDA) using the ODS. The PDA is discussed in Appendices A and B of this report, while the file selection process is discussed in Appendix C.
- 4/19-22/09—EPA’s teams for the SRF review and permits program review conducted a joint on-site review in Jefferson City, Missouri, at MDNR’s central office. During the on-site review, EPA reviewed facility files, discussed programmatic matters with MDNR staff and management, and held an exit conference to report preliminary findings.

EPA’s process for reviewing each file during the on-site review began with identifying the documents from FFY 2009 that were expected to be present in the file. Any additional documents from other fiscal years that were germane to the inspection and enforcement documents of primary interest were also identified. EPA then reviewed the documents, creating a complete chronology showing how the state handled any compliance concerns at the facility.

Programmatic discussions during the on-site review involved management and staff of the WPCB within MDNR. Discussions enabled EPA to answer questions about the content of facility files and to gain a thorough understanding of how the department processes information and makes decisions regarding compliance and enforcement. An exit briefing on preliminary findings was held on the final day of the on-site review. In attendance were most members of the EPA review team; management from EPA’s Water, Wetlands, and Pesticides Division; and MDNR’s Water Protection Program director and WPCB management.

Issuance of this report is the culmination of the on-site review and the entire SRF process. The state’s response to the report is incorporated into the findings in Part IV and appears in its entirety in Appendix I.

### III. STATUS OF RECOMMENDATIONS FROM PREVIOUS REVIEWS

During the previous review of Missouri's NPDES compliance and enforcement program, covering FFY 2005, EPA and Missouri identified a number of actions to be taken to address issues found during the review. The table below shows the status of progress toward completing those actions. Actions with a status of "completed" are those for which EPA determined, at approximately the time of the due date, that the state satisfied the recommended action. This information was extracted from the SRF Tracker on 5/18/2010.

| Element                      | Status    | Due Date  | Title/Description   | Finding   | Recommendation   |
|------------------------------|-----------|-----------|---|---|--|
| Timely & Appropriate Actions | Completed | 1/30/2008 | Stop issuing permit compliance schedules to resolve permit violations | MDNR places Schedules of Compliance, including interim limits, in permits to resolve violations.  | MDNR should stop issuing NPDES permits that contain Schedules of Compliance.   |
| Data Complete                | Completed | 8/31/2008 | Ensure timely, accurate, and complete DMRs                            | DMRs submitted by permitted facilities did not always include complete, accurate, or timely information.  | Develop a policy and process to ensure DMRs are submitted in a timely manner and with accuracy. Use appropriate informal and formal enforcement tools to address late or non-reporting violations. Require each permitted facility that submits DMRs and quarterly reports to MDNR regional offices to submit the correct DMR form with accurate information; Ensure that the reported effluent parameters identified in DMRs are complete; and include enforceable, standard definitions in permits for sample collections. |
| Data Accurate                | Completed | 6/1/2010  | Resolve the DMR batch data submission issue                           | EPA found that PCS data did not always clearly identify noncompliance for the DMRs submitted by facilities. Data were occasionally distorted when transferred from WQIS to PCS during FY2005, including incomplete data, incorrect data, and misreporting of the DMR received date. EPA and MDNR data management staff were unable to determine a pattern or a cause for the data distortion incidents. | EPA recommends that MDNR work towards resolving the DMR batch data submission issue and provide goal timeframes for resolution to EPA in the status report. In April 2010, EPA Region 7, EPA Headquarters, and MDNR reached agreement on a PCS data management plan to correct and maintain PCS data for majors until the state begins to batch data from its new database to ICIS-NPDES. State and EPA to begin implementing the plan by the due date.  |

| Element  | Status    | Due Date  | Title/Description   | Finding  | Recommendation  |
|--|-----------|-----------|---|--|---|
| Violations ID'ed Appropriately                     | Completed | 8/31/2008 | Improve identification and communication of stormwater violations | Identification and communication of stormwater violations could be improved. EPA could not find a clear statement of what constitutes a violation in the I&E Manual; however, there is a provision for an NOV to be issued for violations. Response to stormwater violations was inconsistent among the field offices. For example, some regions sent multiple NOV's before seeking enforcement, while other regions sent one or none.   | For stormwater/land disturbance sites, MDNR must demonstrate consistent implementation of the inspection processes outlined in the I&E Manual, including: Collecting full and accurate evidence of compliance or violations; Documenting evidence clearly and accurately in the inspection report; Clarifying violations in the I&E Manual; Ensuring that an inspected facility receives a clear and timely message about its compliance or noncompliance status; Retaining full and complete information regarding inspections and findings in the facility files. Note: It appears that MDNR has made improvements in this area since the time of the review. |
| Return to Compliance, Timely & Appropriate Actions | Completed | 8/31/2008 | Improve escalation of noncompliant facilities                     | EPA observed inconsistent application of enforcement escalation timeframes. EPA recognizes that it is necessary to exercise enforcement discretion. However, MDNR should provide instruction on when it is appropriate to utilize this discretion. In order to improve consistency, MDNR acknowledged the need to develop and document a clear escalation process for POTWs, CAFOs, stormwater land disturbance sites, and other wastewater facilities. EPA requests that MDNR indicate a timeframe in the status report to develop these guidances. | MDNR should provide instruction on when it is appropriate to utilize this discretion. EPA requests that MDNR indicate a timeframe in the status report to develop these guidances.  |
| Timely & Appropriate Actions                       | Completed | 6/29/2008 | Develop a protocol to address SNC                                 | Although the I&E Manual identifies when an NOV should be issued, EPA could not find a clear statement of what constitutes a significant violation in the I&E Manual. EPA could not find a provision regarding how MDNR addresses SNC violations.   | Develop a protocol to address SNC for inclusion in the I & E Manual or other written document. Clearly specify what constitutes significant noncompliance; Timely address inspection findings of significant noncompliance and initiate timely enforcement responses at facilities with SNC violations. Ensure that enforcement actions address SNC, and enter appropriate enforcement related information into PCS.  |

| Element   | Status    | Due Date  | Title/Description  | Finding   | Recommendation  |
|---|-----------|-----------|--|---|---|
| Penalty Calculations  | Completed | 8/31/2008 | Incorporate economic benefit into penalty calculations   | EPA concluded that even though MDNR systematically calculated penalties for its enforcement actions during FY2005, MDNR did not include penalty calculations for capturing the economic benefit of noncompliance as EPA defines economic benefit. MDNR does assess a portion of the penalty for economic benefit, but the costs reflected in this estimate tend to capture restoration and costs incurred by MDNR for conducting the case.  | While penalties are calculated systematically, economic benefit should be included to ensure that violators are placed in the same financial position as they would have been if they had complied on time (see Metric 8 in Appendix A). According to EPA's definition of economic benefit, this portion of the penalty should reflect items such as: delayed or avoided cost of installing controls, sampling, capital equipment improvements, and operation and maintenance. Often, the cost associated with the proposed injunctive relief is used as the basis for economic benefit to reflect the cost that should have been incurred to achieve compliance. EPA recommends that MDNR assess economic benefit for the factors mentioned above. |
| Violations ID'ed Appropriately, Violations ID'ed Timely, Timely & Appropriate Actions | Completed | 8/31/2008 | Develop a plan to rebuild the pretreatment program       | Develop a plan to rebuild Missouri's Pretreatment Program. The plan should include timely inspections, oversight, timely and appropriate enforcement, and documented follow-up actions. MDNR has requested six cities to develop Pretreatment programs since 2002: Poplar Bluff, NPSD, Cuba, Rolla, Union and Milan. Industries outside of Pretreatment Programs do not have individual control mechanisms because MDNR does not have the permitting authority for facilities that indirectly discharge to waters of the state. | MDNR should develop a plan to rebuild its Pretreatment Program. The plan should include timely inspections, oversight, timely and appropriate enforcement, and documented follow-up actions. MDNR should review and approve the cities' Pretreatment programs in the fastest practicable timeframe. EPA Region 7 is available to assist MDNR, if needed.  |
| Violations ID'ed Appropriately  | Completed | 8/31/2008 | Define and identify sludge violations during inspections | EPA could not find a clear statement of what constitutes a violation of requirements for biosolids or land application of sludge in the I&E Manual. EPA could not find a provision regarding how MDNR addresses biosolids or sludge violations.   | MDNR needs to define and improve communication with EPA regarding sludge violations. MDNR should clearly state what constitutes a violation of biosolids or land application requirements, especially if water quality is impacted.; Review sludge specific issues during compliance inspections, in order to timely and appropriately address sludge handling problems that have led to water quality issues at NPDES permitted facilities; The biosolids program is not authorized. However, state inspectors should have an awareness of the definition of a sludge violation when visiting facilities.  |

| <b>Element</b>   | <b>Status</b> | <b>Due Date</b> | <b>Title/Description</b>  | <b>Finding</b>   | <b>Recommendation</b>   |
|--|---------------|-----------------|---|--|---|
| Violations ID'ed Appropriately, Timely & Appropriate Actions | Completed     | 9/29/2008       | Develop and execute procedures for sampling pretreatment industries                   | Pretreatment cases could be improved with the support of sampling as evidence.   | MDNR should develop and implement a Standard Operating Procedure for sampling pretreatment industries and facilities. MDNR should perform sampling at pretreatment industries outside of the approved Pretreatment program cities, as required by the General Pretreatment Regulations to ensure effective Pretreatment program implementation. |
| Violations ID'ed Appropriately, Timely & Appropriate Actions | Completed     | 12/30/2008      | Conduct oversight of MS4 permitted communities  | MDNR is still in the process of starting its MS4 program.  | MDNR should consider how to conduct oversight of MS4s and begin implementation as soon as possible, with implementation beginning no later than October 2007.   |
| Violations ID'ed Appropriately, Timely & Appropriate Actions | Completed     | 8/31/2008       | Provide training to improve CAFO inspections and consistency in enforcement referrals | There are some inconsistencies as to how CAFO inspection findings are documented in the report, identification of violations, and which facilities are referred for enforcement. | MDNR should provide additional CAFO inspector training to improve inspection report consistency and to achieve more consistent referrals for CAFO dischargers.  |

## IV. FINDINGS AND RECOMMENDATIONS

The findings and recommendations from EPA's review of Missouri's compliance and enforcement program are divided into two components. The first component includes findings and recommendations that pertain solely to the state's pretreatment program. Because the twelve SRF metrics do not provide a thorough review of pretreatment program requirements, the report discusses this component separately in the narrative below. The second component is a table presenting the findings and recommendations under the twelve metrics, which apply to all NPDES program components.

### A. Pretreatment Program Findings and Recommendations

#### 1. Finding:

EPA found that the state does not consistently identify and respond to SNC at cities with approved pretreatment programs. Of particular concern was the example of Poplar Bluff, which for more than two years has not issued permits to all three of its industrial users and has not begun conducting inspections at its SIUs.

#### Recommendation:

The state must require all approved pretreatment cities to implement the pretreatment regulations. In the case of Poplar Bluff, MDNR needs to modify the city's NPDES permit to require program implementation and needs to consider the city in SNC. Appropriate enforcement action needs to be taken to require compliance with pretreatment regulations.

#### State Response:

The Water Pollution Control Branch in Jefferson City and MDNR's pretreatment coordinator will develop criteria for conducting enforcement and permit modifications for approved pretreatment cities. They will also insert language in the Compliance Manual to shift pretreatment enforcement responsibilities to MDNR's regional offices.

#### 2. Finding:

EPA found that none of the industries outside cities with approved programs is certifying the contents of its semiannual reports. All reports on periodic compliance are required at 40 CFR 403.12(1) to contain the certification statement that appears at 40 CFR 403.6(a)(ii), which is reproduced below:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Recommendation:

Because MDNR does not have permitting authority for indirect dischargers, requirements that would easily be covered by permits are easy to overlook. Therefore, EPA recommends that MDNR prepare a letter to send to all categorical industries outside pretreatment cities that reminds them of the specific certification statement that must be used. Alternatively, MDNR might consider developing a report form that would standardize all aspects of reporting for these industries. This would simplify numerous tasks for the state, including the required 6-month compliance status determination to identify which facilities are in significant noncompliance (SNC).

State Response:

Following the on-site review, the MDNR pretreatment coordinator sent a letter to all categorical industries outside approved cities to remind them to include the correct certification statement on their semiannual reports. This is complete.

B. Findings and Recommendations Under the SRF Metrics

| Element 1: Data Completeness. Degree to which the Minimum Data Requirements are complete. |  |   |
|---|--|---|
| 1-1   | Finding  | Permit data for many major facilities was incomplete and inaccurate.  |
|   | Is this finding a(n)<br>(select one):  | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required   |
|   | Explanation.<br>(If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | <p>The number of major facility records in PCS does not match the number maintained in the state’s database. As many as 5 majors did not have PCS records at the time of review. This discrepancy needs to be reconciled.</p> <p>Permit limit data for 6 of the 9 majors reviewed by EPA did not have correct limits active in PCS. Final limits were entered and active for Butler, Mexico, Nixa, MSD Lemay, Sullivan, and Caruthersville. The permits for these 6 facilities, however, specified that interim limits were still effective at the time of review. EPA also found three instances (Mexico, Mississippi Lime Co., and Caruthersville) of seasons not being coded correctly in PCS, such that if a parameter had two seasons, there was a month for a specified parameter not appearing in PCS as the permit required.</p> <p>MDNR needs to ensure that permit limit data is correctly coded into MoCWIS with respect to when interim limits expire and final limits take effect and also with respect to seasons. The state also needs to ensure that this data is accurately batched to ICIS-NPDES once the state resumes batching to the national database.</p> <p>Until the state begins batching permit data to ICIS-NPDES, EPA and MDNR will address these data deficiencies for majors through the coordinated efforts of the PCS Data Plan created in May 2010.</p> |

|     |  |  |
|-----|--|--|
|     | Metric(s) and Quantitative Value   | 1a1 – Active facility universe: NPDES major individual permits (current); Value: 173.<br>1b1 – Major individual permits: Correctly coded limits (current); Value: 91.9%.   |
|     | State Response   | Missouri acknowledges the discrepancies between PCS and the state WQIS database during FFY 2009. There have been systematic issues with the batch process which have propagated over time.   |
|     | Action(s)<br>(Include any uncompleted actions from Round 1 that address this issue.)                                   | The Missouri PCS Data Plan, a plan written cooperatively by EPA HQ, EPA R7 and Missouri, will address PCS data issues for majors. See Appendix H for the Missouri PCS Data Plan. Once the ICIS-NPDES Batch Phase I is live in Feb. 2011, data quality issues for major permits are expected to be resolved.  |
|     |  |  |
| 1-2 | Finding  | DMR data for many major facilities was incomplete and inaccurate.  |
|     | Is this finding a(n)<br>(select one):  | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required  |
|     | Explanation.<br>(If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | <p>A large number of major facilities were flagged under metric 1b2 for missing DMRs, metric 1b4 for RNC/SNC override, metric 7d for majors with DMR violations, and metric 10a for lack of timely enforcement response. EPA reviewed 8 facilities, each flagged under at least 2 of these metrics, and found that all of them were problematic due to DMRs being absent from PCS for one or more quarters in FFY 2009. DMRs were missing from PCS despite that, for each of the 8 facilities, most if not all of the DMRs were present in the state files. With respect to Metric 1b4, EPA found that the state has been overriding instances of RNC/SNC that were due to missing DMR data without first correcting the underlying problem—i.e. that DMRs had been received from facilities but were not recognized by PCS.</p> <p>When batching data from the new MoCWIS to ICIS-NPDES, the state needs to ensure that DMR data is accurately and completely batched and use edit/audit reports to correct erroneously batched data. The state must not override RNC/SNC due to missing data if received DMRs are not first batched accurately to ICIS-NPDES.</p> <p>Until the state begins batching DMR data to ICIS-NPDES, EPA and MDNR will address these data deficiencies for majors through the coordinated efforts of the PCS Data Plan created in May 2010</p> |
|     | Metric(s) and Quantitative Value   | 1b2 – Major individual permits: DMR entry rate based on DMRs expected (Forms/Forms) (4 <sup>th</sup> Quarter); Value: 60.0%. The national goal is >= 95%. The national average is 92.6%.<br>1b4 – Major individual permits: Manual RNC/SNC override rate (1FY); Value: 81%. There is no numeric goal or national average for this data metric.<br>7d – Percentage major facilities with DMR violations (1 FY); Value: 51.4%. There is no numeric goal for this metric. The national average is 53.6%.<br>10a – Major facilities without timely action (1 FY); Value: 24, or 13.9%. The national goal is <2%. The national average is 18.8%.  |

|     |  |  |
|-----|--|--|
|     | State Response   | Missouri acknowledges the discrepancies between PCS and the state WQIS database during FFY 2009. There have been systematic issues with the batch process which have propagated over time. There were historically many discrepancies between limits in PCS and limits in Missouri's permits. Missouri's permits are accurately reflected in Missouri's database. Because limits were incorrect in PCS, PCS generated large numbers of false DMR violations.   |
|     | Action(s)<br>(Include any uncompleted actions from Round 1 that address this issue.)                                   | The Missouri PCS Data Plan, a plan written cooperatively by EPA HQ, EPA R7 and Missouri, will address PCS data issues for majors including a plan to provide updated DMR data for a period of five years for all majors (once the limits are updated and correct in PCS). See Appendix H for the Missouri PCS Data Plan. Once the ICIS-NPDES Batch Phase I is live in Feb. 2011, data quality issues for major permits, including DMRs are expected to be resolved.  |
|     |  |  |
| 1-3 | Finding  | The state does not enter all of its enforcement actions in PCS for major and P.L. 92-500 minor facilities.   |
|     | Is this finding a(n)<br>(select one):  | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required  |
|     | Explanation.<br>(If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | The state initiated or settled 77 formal enforcement actions in FFY 2009, including settlement agreements, court orders, administrative orders, petitions filed with the court, and referrals to the state AG. The state also issued 648 informal actions in FFY 2009, consisting of 440 LOWs and 208 NOVs. At least 5 formal actions and 15 informal actions were issued to major and P.L. 92-500 minor facilities and are therefore required records in the national database. Among these enforcement actions, however, only 2 informal and 1 formal action had been entered into PCS. The state needs to begin entering the required records in PCS and, when applicable, ICIS-NPDES. EPA will assist the state with entry of enforcement records in PCS, if necessary, until batching of these records to ICIS-NPDES commences. |
|     | Metric(s) and Quantitative Value   | 1e2 – Informal actions: number of actions at major facilities (1FY); Value: 15. There is no numeric goal or national average for this data metric.<br>1e4 – Informal actions: number of actions at non-major facilities (1FY); Value: 633. There is no numeric goal or national average for this data metric.<br>1f2 – Formal actions: number of actions at major facilities (1FY); Value: 5. There is no numeric goal or national average for this data metric.<br>1f4 – Formal actions: number of actions at non-major facilities (1FY); Value: 72. There is no numeric goal or national average for this data metric.   |
|     | State Response   | Missouri and EPA were operating under different definitions of 'formal enforcement action.' Now that the description has been clarified, Missouri will begin to provide formal enforcement action information as outlined in the Missouri PCS Data Plan.   |

|  |  |   |
|--|--|---|
|  | Action(s)<br>(Include any uncompleted actions from Round 1 that address this issue.) | Formal enforcement actions will be provided to PCS as outlined in the Missouri PCS Data Plan, which calls for MDNR and EPA to jointly enter state enforcement actions through March 2013. See Appendix H for the Missouri PCS Data Plan. Once ICIS-NPDES Batch Phase III is in production, currently scheduled for March 2013, Missouri will begin to provide formal enforcement action data to ICIS-NPDES via the online ICIS-NPDES interface. |
|--|--|---|

**Element 2: Data Accuracy. Degree to which the Minimum Data Requirements are accurate. (example, correct codes used, dates are correct, etc.)**

|     |  |  |
|-----|--|--|
| 2-1 | Finding  | Violations are not linked to formal enforcement actions against major facilities.  |
|     | Is this finding a(n)<br>(select one):  | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required  |
|     | Explanation.<br>(If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | The state issued formal enforcement actions against 5 major facilities in FFY 2009, 4 of which were neither entered in PCS nor linked to the violation type codes. In addition, the 1 action present in PCS is not linked to the underlying violation(s). The state needs to begin entering and linking violation type codes to formal enforcement actions against majors once the state begins to batch enforcement data to ICIS-NPDES, currently scheduled for FFY 2013.   |
|     | Metric(s) and Quantitative Value   | 2a – # actions linked to violations (major facilities); Value: 0. The national goal is >=80%. There is no national average for this data metric.   |
|     | State Response   | This finding results from the history of issues with the batch between Missouri’s data system and PCS and the fact that Missouri and EPA were operating under different definitions of ‘formal enforcement action.’  |
|     | Action(s)<br>(Include any uncompleted actions from Round 1 that address this issue.)                                   | Now that the description has been clarified, Missouri will begin to provide links between formal enforcement actions and violation data according to the schedule in the Missouri PCS Data Plan, which calls for MDNR and EPA to jointly enter state enforcement action data through March 2013. See Appendix H for the Missouri PCS Data Plan. Once ICIS-NPDES Batch Phase III is in production, currently scheduled for March 2013, Missouri will begin to provide formal enforcement action data to ICIS-NPDES via the online ICIS-NPDES interface. |

**Element 3: Timeliness of Data Entry. Degree to which the Minimum Data Requirements are timely.**

|  |   |   |
|--|---|---|
| 3-1  | Finding   | EPA did not evaluate this metric for Missouri in FFY 2009. Element 3 of the SRF evaluates the degree to which the state entered Minimum Data Requirements into PCS in a timely manner. To evaluate this metric, EPA Headquarters must 'freeze' the official data set for the review year in advance of EPA Region 7 pulling the live data against which the frozen data is compared. In this case, EPA Region 7 had to pull the live data before EPA Headquarters could make the frozen data set available, which precludes any analysis for this metric.   |
|  |   |   |
| <b>Element 4: Completion of Commitments. Degree to which all enforcement/compliance commitments in relevant agreements (i.e., PPAs, PPGs, categorical grants, CMS plans, authorization agreements, etc.) are met and any products or projects are completed.</b> |   |   |
| 4-1  | Finding   | The state met most of its commitments from MDNR's FFY 2008-2009 PPG Workplan that did not pertain to inspections but has a track record of late QNCR submission.  |
|  | Is this finding a(n) (select one):  | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required   |
|  | Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | <p>The state satisfied 15 of 17 compliance and enforcement commitments for FFY 2009, not inspection-related, as specified in the FFY 2008-2009 PPG Workplan. The evaluation for each commitment, and the initial findings that result, are explained in detail in Attachment G of this report. One of the two commitments not satisfied was timely submission of Quarterly Non-Compliance Reports to EPA. While MDNR submitted the required reports, all four QNCRs were sent two to five weeks later than required by federal regulation. Belated submission of QNCRs has continued through the drafting of this report. The due dates in the 2008-2009 PPG workplan for QNCR submission were in sync with federal regulation. EPA recommends that the state submit QNCR responses before the due dates listed in federal regulation.</p> <p>The other unsatisfied commitment was the need to maintain required program data in PCS. Recommendations pertaining to the quality of PCS data can be found in Findings 1-1 through 1-3 in this table.</p> |
|  | Metric(s) and Quantitative Value  | 4b – Planned commitments completed; Value: 88%  |
|  | State Response  | MDNR has been unable to enter all DMRs, batch the data, analyze violations, and coordinate with the regional offices entering the data to generate responses, within the 30 days allotted following facilities' submission of DMRs. MDNR has requested 120 days following the end of the quarter to accomplish this, as opposed to the 60 days currently allowed by EPA.  |
|  | Action(s) (Include any uncompleted actions from Round 1 that address this issue.)                                   | In order to meet the federally required due dates for QNCRs, MDNR will evaluate its old protocol for processing the QNCR using PCS data to determine how the protocol can be streamlined for processing the QNCR out of ICIS-NPDES when the state begins to batch DMR data to ICIS-NPDES in February 2011. To be complete by February 2011.   |
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| 4-2  | Finding   | The state met inspection commitments in FFY 2009 for 5 of the 10 NPDES program areas, as listed in the CMS for FFY 2009 and the FFY 2008-2009 PPG Workplan.   |
|  | Is this finding a(n) (select one):  | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required   |
|  | Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | <p>The state satisfied inspection commitments for 5 of the 10 NPDES program areas in the CMS for FFY 2009. Four of the program areas without satisfied commitments are addressed in this finding, while the fifth program area (major municipals) is addressed under Metric 5.</p> <p>For SSO communities, MDNR inspected 90% or more of the facilities necessary to meet the commitments. Categories of stormwater facilities—i.e. construction (land disturbance), industrial, and MS4—comprise the other 3 program areas for which commitments were not satisfied. In these cases, EPA found that MDNR was evaluating its progress toward the commitments using a baseline in the CMS that did not match the baseline expressed in the PPG Workplan. This baseline is the universe of facilities for each stormwater program area, and the state needs to ensure that universe numbers in the CMS agree with universe numbers in the PPG Workplan. EPA also found discrepancies in universe numbers for the CAFO program. Determining correct universe numbers is a prerequisite to deriving meaningful and realistic inspection commitments. The evaluation for each inspection commitment, and the initial findings that result, are explained in detail in Attachment F of this report.</p> |
|  | Metric(s) and Quantitative Value  | 4a – Planned inspections completed; A numeric value for this metric is inappropriate given that inspection commitments are distributed unevenly across NPDES program areas.   |
|  | State Response  | MDNR shifted inspection resources during the course of the fiscal year and conducted more environmental assistance visits in exchange for compliance inspections. MDNR also acknowledges the discrepancies in universe denominators.  |
|  | Action(s) (Include any uncompleted actions from Round 1 that address this issue.)                                   | EPA and MDNR will communicate with one another during the development of CMS and PPG commitments for subsequent performance periods, beginning with FFY 2011, to ensure that consistent and accurate universe numbers are used when formulating inspection commitments. To be complete for FFY 2011 by September 30, 2010.  |
| <b>Element 5: Inspection Coverage. Degree to which state completed the universe of planned inspections/compliance evaluations (addressing core requirements and federal, state and regional priorities).</b> |   |   |
| 5-1  | Finding   | The state did not inspect 50% of its major dischargers in FFY 2009 and should improve its method of tracking completed inspections.   |

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|  | Is this finding a(n) (select one):   | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required  |
|  | Explanation.<br>(If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | <p>In the CMS for FFY 2009, the state committed to inspecting 50% of its majors universe in order to achieve a total coverage of 100% every two years. The state missed its 50% commitment for FFY 2009, with 62 instead of 89 majors receiving a state inspection. In contrast, the state exceeded its inspection commitment for minor wastewater facilities but did not meet the PPG Workplan commitment of inspecting 117 P.L. 92-500 minors, which are a subset of the total minors universe.</p> <p>In the final PPG Workplan report to EPA, the state listed 80 inspections at majors as its accomplishment, but a closer look at WQIS data revealed that the 80 inspections were distributed across 62 facilities. When allocating resources to the various NPDES inspection categories each year and planning its inspections, the state needs to be cognizant of the fact that performance against this metric and the CMS commitment is measured in terms of the number of unique facilities receiving an inspection. If a facility receives multiple inspections, the facility itself—and not the number of inspections it received—is counted toward the goal. The state also needs to ensure that appropriate resources are allocated to each category. For example, the state would have satisfied its commitment for P.L. 92-500 minors and minors overall with the same resource expenditure if 23 of the non-P.L. 92-500 inspections would have instead been conducted at P.L. 92-500s. It is important that majors and federal grant recipients receive the agreed-upon level of scrutiny each year through compliance monitoring, given the heightened public attention that these facilities receive due to their potential to impact the environment.</p> <p>Dialog between EPA and the state revealed that counts of completed inspections in WQIS, PCS, regional office databases, and the PPG workplan progress report were inconsistent. MDNR indicated that use of MoCWIS statewide will eliminate these inconsistencies. (MoCWIS is described on page 11 of this report.)</p> |
|  | Metric(s) and Quantitative Value   | <p>5a – Inspections at NPDES majors with individual permits or general permits; Value: 37.6%. The national goal is 100%. The national average is 57.9%.</p> <p>5b1 – Inspections at NPDES non-majors with individual permits, excluding those permits that address solely stormwater, pretreatment, CAFOs, or CSOs; Value: 30.1%. There is no numeric goal or national average for this data metric.</p> <p>5b2 – Inspections at NPDES non-majors with general permits, excluding those permits that address solely stormwater, pretreatment, CAFOs, or CSOs; Value: 6.4%. There is no numeric goal or national average for this data metric.</p> <p>5c – Inspection coverage: NPDES other (those facilities not indicated in 5a or 5b); Value: 3.4%. There is no numeric goal or national average for this data metric.</p>   |
|  | State Response   | <p>The Department acknowledges the finding. The reason for not meeting this commitment was that the state shifted its resources to doing more environmental assistance visits. The Department would like to work closely with EPA to ensure that our limited resources are being directed at providing the most benefit to the environment. This may include discussions of changing the numbers of inspections in various categories.</p>   |
|  | Action(s) (Include any uncompleted actions from Round 1 that address this issue.)                                      | <p>EPA and MDNR will jointly evaluate their progress toward completing CMS commitments through the course of the fiscal year and discuss any changes in compliance monitoring priorities. This communication will take place at least once at mid-year (i.e. March 31) and more frequently if needed. EPA and MDNR will apply this approach to the CMS for FFY 2011 and, at the end of FFY 2011, evaluate how well it served both organizations' needs.</p>  |

| <b>Element 6: Quality of Inspection or Compliance Evaluation Reports. Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.</b> |  |  |
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| 6-1   | Finding  | Most inspection reports reviewed by EPA included detailed, thorough information on the compliance status of the facility and led to compliance determinations, but there are several areas of inspections and inspection reports that need improvement.  |
|   | Is this finding a(n) (select one):   | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required  |
|   | Explanation.<br>(If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | <p>Based on the review of 62 inspection reports, EPA found that the state thoroughly documented observations from most inspections and ultimately made accurate, objective compliance determinations following all except four inspections. Compliance determinations appeared to be appropriate given the facts presented in the inspections, with the exception of 3 reports and/or cover letters in which the determination was inaccurate and not supported by the facts in the report.</p> <p>EPA identified several areas for improvement in conducting inspections and writing reports. The following are important items that need to be covered in every inspection and report:</p> <ul style="list-style-type: none"> <li>• An evaluation of receiving water quality. The state needs to identify receiving water bodies, evaluate whether the facility has made an adverse water quality impact, and discuss these items in the report.</li> <li>• Recent compliance history of the facility.</li> <li>• A review of DMRs from the recent past.</li> <li>• For CAFO inspections, an aerial photograph of the facility should be included in each report. Aerial photos were used in a few of the inspection reports reviewed, but many did not have one. An aerial photograph helps the reviewer see a bird's eye view of the facility and understand the facility operations more easily.</li> <li>• For CAFO inspection reports, a summary of facility operations and current CAFO status.</li> <li>• Also for CAFO inspections, lagoon levels should be given some context. The inspector should describe if lagoon levels are measured from the berm downward or the depth of the lagoon. Reports should also include the start pump or max level of the lagoon. Without these parameters, measurements themselves have little meaning.</li> <li>• The "U" or "M" listed in the CAFO checklist should be accompanied by a corresponding written comment to explain its meaning (i.e., how the facility violated the permit or BMPs).</li> <li>• Discussion of sample results needs to describe the significance of those results. The results should be compared to a benchmark or water quality standard to aid in identification of violations.</li> </ul> <p>EPA also found that inspection reports varied widely in format from one regional office to the next and from one inspector to another. To improve consistency in reports, EPA recommends that all inspectors include a narrative component to the report to routinely accompany any checklists that are used. The narrative component of all reports should follow a consistent format to ensure that all supporting documentation is adequately described.</p> |

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|     | Metric(s) and Quantitative Value   | 6b – % of inspection reports reviewed that are complete; Value: 18%<br>6c – % of inspection reports reviewed that provide sufficient documentation to lead to an accurate compliance determination; Value: 98%<br>7e – % of inspection reports or facility files reviewed that led to accurate compliance determinations; Value: 89%   |
|     | State Response   | The Department recently modified the inspection report provision of its Compliance Manual for all regional offices to streamline and provide consistency. The Department will be working closely with its regional offices to improve consistency.   |
|     | Action(s)<br>(Include any uncompleted actions from Round 1 that address this issue.)                                   | By December 31, 2010, MDNR should consistently incorporate the recommended items in inspections and reports as described in the Explanation section above and include in each inspection report a narrative component that follows a consistent format; the narrative component would routinely accompany any checklists that are used. To assist MDNR with implementing improvements, EPA region 7 will periodically check a sample of inspection reports when appropriate to help ensure that necessary changes have been made.”   |
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| 6-2 | Finding  | More than half of all inspection reports were completed and transmitted to the facility within 30 days of the inspection, but most land disturbance inspections were not completed and transmitted within the 10-day goal timeframe for that NPDES program area.   |
|     | Is this finding a(n)<br>(select one):  | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input checked="" type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement – Recommendations Required  |
|     | Explanation.<br>(If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | <p>EPA found sufficient information in the files to evaluate this metric for 60 inspection reports. Duration from date of inspection to date of report transmittal was the measure used for this metric. 31 of 60 reports were completed within the goal timeframe specified in the state’s Operations Manual. 1 of 9 reports for inspection of land disturbance sites were completed within 10 days of inspection, while 30 of 51 reports for non-land disturbance inspections were completed within 30 days of the inspection. The average duration from inspection to report transmittal was 16 days for land disturbance inspections and 33 days for all others, with an average overall duration of 30 days.</p> <p>Except for inspections with unusual circumstances, the state should more consistently complete and transmit its inspection reports. For land disturbance inspections, the state should evaluate whether the 10-day turn-around timeframe is realistic. If it is realistic, the state should emphasize its importance to regional office inspectors; if not, the state should consider revising this goal.</p> |
|     | Metric(s) and Quantitative Value   | 6c – % of inspection reports reviewed that are timely; Value: 52%  |
|     | State Response   | The 10-day timeframe for turnaround was in field offices’ Operations Manual.   |

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|     | Action(s)<br>(Include any uncompleted actions from Round 1 that address this issue.)                                   | The Program will work with the regional offices to identify any problems with meeting the 10-day timeframe and work to resolve them. As an Area for State Attention, this finding does not require a target date for follow-up.  |
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| 6-3 | Finding  | Inspections at mechanical WWTFs did not evaluate sludge handling using EPA's sludge handling checklist or comparable protocol and, in at least one instance, identified blending that was occurring.   |
|     | Is this finding a(n)<br>(select one):  | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required  |
|     | Explanation.<br>(If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | <p>In response to the previous program review, the state agreed to begin using a checklist comparable to EPA's sludge handling checklist at mechanical WWTFs as a consistent means to provide compliance monitoring data to EPA's biosolids program. EPA reviewed inspection reports for 11 mechanical WWTFs but found that none of them evaluated the biosolids program according to the sludge handling checklist or otherwise. The state needs to begin using the checklist.</p> <p>During the file review, EPA identified one facility—i.e. Sedalia Central WWTP – for which the inspection report noted that blending of wastewater was occurring at the facility but did not identify the practice as a violation of the CWA. EPA and MDNR checked this facility's permit and found that it authorizes blending. Although blending in this circumstance was therefore not a violation of the permit, EPA refers here to the permitting program review report—issued concurrently with this report—for a discussion of blending provisions in Missouri. That report notes that authorization of blending without meeting the federal bypass requirements isn't being allowed anymore, and new permits being issued by MDNR do not allow blending.</p> |
|     | Metric(s) and Quantitative Value   | 6b – % of inspection reports reviewed that are complete; Value: 18%<br>7e – % of inspection reports or facility files reviewed that led to accurate compliance determinations; Value: 89%  |
|     | State Response   | The Department will evaluate the checklist form developed by EPA for sludge handling at mechanical plants for use during inspection by regional offices. Facilities utilizing blending have a provision acknowledging its use in their permit; therefore this will not be identified as a violation. If EPA is aware of other facilities utilizing blending, please provide a list.  |
|     | Action(s)<br>(Include any uncompleted actions from Round 1 that address this issue.)                                   | Upon evaluating EPA's sludge handling checklist, MDNR needs to begin using the checklist or some modification thereof by February 28, 2011.  |
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**Element 7: Identification of Alleged Violations. Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information (e.g. facility-reported information).**

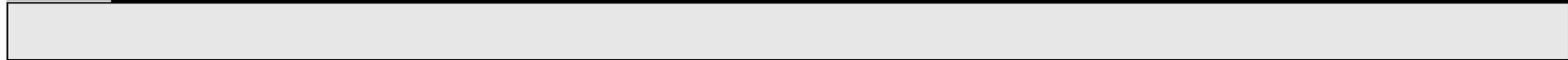
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| 7-1 | Finding   | Single-event violations (SEVs) are identified during inspections, but the state did not enter SEVs in PCS in FFY 2009 for major dischargers and has not yet begun doing so.  |
|     | Is this finding a(n) (select one):  | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required  |
|     | Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | <p>SEVs are required to be entered into the national data system for majors. Although SEVs data entry is not required for non-majors, accurate compliance determinations and internal state tracking of violations should be demonstrated. Based on EPA's file reviews, the state identifies SEVs during inspections; however, only 1 SEV was uploaded to PCS for FFY 2009.</p> <p>EPA requests that the state provide a schedule for beginning to enter SEVs into MoCWIS and then for batching that data into ICIS-NPDES for major facilities when the national program database is ready for such data entry, currently expected in FFY 2012. EPA Region 7 began entering SEVs in ICIS-NPDES effective October 1, 2008, and will offer guidance on the process of SEV entry, if requested.</p> |
|     | Metric(s) and Quantitative Value  | <p>7a1 – # of single-event violations at majors (1 FY); Value: 1. There is no numeric goal or national average for this data metric.</p> <p>7a2 – # of single-event violations at non-majors (1 FY); Value: 3. There is no numeric goal or national average for this data metric.</p> <p>7e – % of inspection reports or facility files reviewed that led to accurate compliance determinations; Value: 89%</p> <p>8b – % of single event violations that are SNC, by comparing the # according to OTIS facility reports to the # determined by reviewing inspection reports; Value: 0%</p> <p>8c – % of single event violations identified as SNC that are reported timely; Value: 0%</p>   |
|     | State Response  | Missouri will provide SEV information as outlined in EPA policy documents according to the schedule outlined in the Missouri PCS Data Plan; see Appendix H. Once ICIS-NPDES Batch Phase I is in production, currently scheduled for March 2012, Missouri will continue to provide SEV data to ICIS-NPDES via the online ICIS-NPDES interface.  |
|     | Action(s) (Include any uncompleted actions from Round 1 that address this issue.)                                   | MDNR will track SEVs internally using MoCWIS and will begin to batch SEVs for majors to ICIS-NPDES once the Batch Phase II is in production, currently scheduled for March 2012.   |
| 7-2 | Finding   | The state Compliance Manual does not describe the appropriate range of responses for deficiencies found during MS4 inspections.  |

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|     | Is this finding a(n) (select one):  | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required   |
|     | Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | <p>The MDNR Compliance Manual outlines the state’s enforcement priorities for construction and industrial stormwater, including the appropriate circumstances for issuing LOWs, NOVs, and guidance describing when a case should be elevated for formal enforcement by the central office. The compliance manual should be updated to provide the same guidance for deficiencies noted during inspections of MS4 communities.</p> <p>During file reviews, EPA also identified a memo in the Holts Summit file indicating that the WPCB had advised regional offices not to follow-up on deficiencies noted during MS4 inspections until further guidance is provided. The state should issue the necessary guidance so that regional offices may pursue issues discovered during MS4 inspections.</p> |
|     | Metric(s) and Quantitative Value  | <p>7a1 – # of single-event violations at majors (1 FY); Value: 1. There is no numeric goal or national average for this data metric.</p> <p>7a2 – # of single-event violations at non-majors (1 FY); Value: 3. There is no numeric goal or national average for this data metric.</p> <p>7e – % of inspection reports or facility files reviewed that led to accurate compliance determinations; Value: 89%</p>   |
|     | State Response  | The Department acknowledges this deficiency.  |
|     | Action(s) (Include any uncompleted actions from Round 1 that address this issue.)                                   | The Compliance Manual will be updated to address this deficiency by September 30, 2010.   |
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| 7-3 | Finding   | The state did not identify all self-reported effluent exceedances as violations in a timely manner.   |
|     | Is this finding a(n) (select one):  | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required   |

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|     | Explanation.<br>(If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | EPA reviewed 7 wastewater facility files that involved DMR-reported permit limit exceedances and for which EPA was able to ascertain the state's response. For 4 of the 7 facilities, the state accurately identified the exceedances as violations via inspection reports and/or LOWs or NOVs, although for one of those 4 facilities (Lake Cattails Subdivision) the violation identification took place more than 2 years after the violation occurred. The other 3 facilities were majors and reported multiple effluent exceedances in FFY 2009, many of which were SNC in the case of Sullivan WWTF, but the state did not in any manner identify these exceedances as violations. Two of the three instances occurred in the SLRO (Sullivan and MSD – LeMay) and the other in the SWRO (New Eagle Picher). It is important that the state consistently make accurate compliance determinations based on DMRs and communicate violations to facilities in some fashion.<br>The state should explain how it intends to achieve greater consistency in violation identification. |
|     | Metric(s) and Quantitative Value   | 7e – % of inspection reports or facility files reviewed that led to accurate compliance determinations; Value: 89%   |
|     | State Response   | MoCWIS will become an important tool in helping regional offices identify and track violations. Regional office staff are more engaged with MoCWIS than they ever were with WQIS.  |
|     | Action(s)<br>(Include any uncompleted actions from Round 1 that address this issue.)                                   | MDNR regional office staff will use the state's new database, MoCWIS, to more consistently identify DMR violations. MDNR will report to EPA on its effectiveness in using MoCWIS for this purpose by December 31, 2010, and EPA will follow-up at that time to ensure that this problem does not continue. As appropriate, Region 7 will periodically check thereafter.”   |
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| 7-4 | Finding  | The state did not actively monitor, update, and enforce against permit compliance schedules.   |
|     | Is this finding a(n)<br>(select one):  | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required  |
|     | Explanation.<br>(If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | EPA reviewed 8 facilities with permit compliance schedules that were unresolved at the end of the FFY 2009 review period. For 4 of the facilities, EPA reviewed the contents of the files to determine whether the scheduled deliverables had been received by the state and found that the deliverable(s) in question was not in the file for 2 of the 4 facilities (i.e. Mexico WWTP and Fair Grove WWTF). For a third facility (Montrose WWTF), the compliance schedule in question could not be found in the facility's permit, which raises a question about the accuracy of this data in PCS. For the fourth facility and for the other 4 of 8 facilities that EPA did not investigate in depth, EPA could not reach a conclusion about the nature of the compliance schedule violation and how the state handled it.<br>Permit compliance schedules need to be actively monitored and updated in the state and national program databases. When unachieved milestone due dates elapse, the state needs to raise them to the attention of the facility as violations.          |

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|   | Metric(s) and Quantitative Value   | 7c – % of facilities with unresolved permit schedule violations (at end of FY); Value: 52.4%. There is no numeric goal for this data metric. The national average is 28.3%.  |
|   | State Response   | MDNR acknowledges this deficiency and will correct it with implementation of the new state database.   |
|   | Action(s)<br>(Include any uncompleted actions from Round 1 that address this issue.)                                   | Regional office staff will use the new state database, MoCWIS, and work with the Compliance and Enforcement Section to make sure that permittees with a schedule of compliance are complying with the requirements of the schedule, or enforcement action will be taken to compel compliance. This recommended action should be implemented by December 31, 2010; by that time, MDNR will also report to EPA and confirm the status of fully implementing this action.   |
| <b>Element 8: Identification of SNC and HPV. Degree to which the state accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner.</b> |  |  |
| 8-1   | Finding  | The state identified SEVs that are SNC during inspections at major facilities but did not enter SEVs into PCS during FFY 2009.   |
|   | Is this finding a(n)<br>(select one):  | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required  |
|   | Explanation.<br>(If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | <p>EPA reviewed compliance monitoring files for 8 major facilities at which 9 instances of violations (SEVs) were identified, of which 6 the state accurately characterized as SNC versus non-SNC. The SNC-level SEVs that EPA observed in the files included SSOs, a bypass, solids reaching waters of the state, and lime slurry overflow into waters of the state. EPA is pleased to see that the state has adopted the national emphasis on SSOs, as communicated in memos from MDNR's central office to the regional offices.</p> <p>EPA requests that the state provide a timeline for beginning to track SEVs—both SNC and non-SNC—in MoCWIS for major facilities and for uploading that data to ICIS-NPDES. EPA Region 7 began entering SEVs in the national database effective October 1, 2008, and will offer guidance for the process of SEV entry, if requested.</p> |
|   | Metric(s) and Quantitative Value   | 8b – % of single event violations that are SNC, by comparing the # according to OTIS facility reports to the # determined by reviewing inspection reports; Value: 0%<br>8c – % of single event violations identified as SNC that are reported timely; Value: 0%  |
|   | State Response   | Missouri will provide SEV information as outlined in EPA policy documents according to the schedule outlined in the Missouri PCS Data Plan; see Appendix H. Once ICIS-NPDES Batch Phase I is in production, currently scheduled for March 2012, Missouri will continue to provide SEV data to ICIS-NPDES via the online ICIS-NPDES interface.  |

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|  | Action(s)<br>(Include any uncompleted actions from Round 1 that address this issue.) | MDNR will track SEVs internally using MoCWIS and will begin to batch SEVs for majors to ICIS-NPDES once the Batch Phase II is in production, currently scheduled for March 2012. |
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**Element 9: Enforcement Actions Promote Return to Compliance. Degree to which state enforcement actions include required corrective action (i.e., injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.**

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| 9-1 | Finding | The state executes its enforcement actions in a manner that, with some exceptions, results in violators returning to compliance. |
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|  | Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice<br><input checked="" type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement – Recommendations Required |
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|  | Explanation.<br>(If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | EPA reviewed 4 informal enforcement actions and 2 formal enforcement actions that addressed SNC violations, all of which returned the source to compliance or required the source to take actions necessary to return to compliance. With regard to facilities having non-SNC violations, EPA found that 14 of 36 informal enforcement actions and 9 of 9 formal enforcement actions resulted in the facility returning to compliance or required the source to take actions that will return it to compliance. Most of the 19 informal enforcement actions that did not result in a return to compliance contained language requesting a response from the facility. When these LOWs and NOVs did not yield a response and a return to compliance by the facility, they served as precursors to formal actions that did or will achieve a return to compliance. Not counted in this metric are 3 referrals to the state Attorney General that, at the time of the review, have not yet had an opportunity to result in enforceable schedules. |
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|  | Metric(s) and Quantitative Value | 9b – % of enforcement responses that have returned or will return a source in SNC to compliance; Value: 100%<br>9c – % of enforcement responses that have returned or will return a source with non-SNC violations to compliance; Value: 55% |
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|  | State Response |  |
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|  | Action(s)<br>(Include any uncompleted actions from Round 1 that address this issue.) | None required. |
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**Element 10: Timely and Appropriate Action. Degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.**

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|------|--|--|
| 10-1 | Finding  | Initial responses to both SNC and non-SNC violations within the CC&P timeframe were timely and appropriate, but in several cases reviewed by EPA, regional offices did not refer continuing noncompliance to the central office by the 90-day milestone in the CC&P period.  |
|      | Is this finding a(n) (select one):   | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required  |
|      | Explanation.<br>(If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | <p>4 of 13 formal enforcement actions and 37 of 40 informal enforcement actions reviewed by EPA were issued in a timely manner according to state and EPA guidance for response to SNC and non-SNC violations. All 15 formal and 35 of 40 informal actions reviewed by EPA were appropriate to the type of violation being addressed. When viewed in isolation, most of the LOWs, NOVs and formal actions issued by the state were timely and appropriate given the particular violation(s) under consideration.</p> <p>Included in the above numbers are multiple LOWs and/or NOVs that were issued to the same facility before the escalation process resulted in a formal enforcement proceeding. 11 facilities reviewed by EPA were the subject of at least one informal action that regional offices issued before referring the matter to the central office for formal enforcement. EPA found that the regional offices did not refer the continuing noncompliance to the central office by the end of the first 90 days of CC&amp;P for 4 of the 11 cases (Shilo Warehouse, Conoco Foodstore, Shady Gators, and Gravois Bluffs). As stated in MDNR’s Compliance Manual, regional offices should refer continuing noncompliance to the central office to begin formal negotiations or other enforcement if the violator has not responded favorably to CC&amp;P (in which informal enforcement is a tool) within 90 days following violation discovery. EPA recommends that regional offices coordinate with the Compliance and Enforcement Section of the WPCB sooner in the escalation process to ensure that ongoing noncompliance is effectively addressed more promptly.</p> |
|      | Metric(s) and Quantitative Value   | 10b – % of reviewed enforcement responses to address SNC that are taken in a timely manner; Value: 50%<br>10c – % of enforcement responses reviewed that address SNC that are appropriate to the violations; Value: 86%<br>10d – % of enforcement responses reviewed that appropriately address non-SNC violations; Value: 92%<br>10e – % of enforcement responses for non-SNC violations where a response was taken in a timely manner; Value: 81%  |
|      | State Response   | <p>The Department acknowledges this deficiency; this issue continues to be a problem due to inadequate staffing. This has been exacerbated by the financial problems the program has faced for several years. The Department continually strives to balance its workload with limited resources by prioritizing work according to environmental benefit. This issue is related to a prior comment regarding the Department’s desire to work with EPA regarding shifting the number of inspections in various categories.</p>   |
|      | Action(s)<br>(Include any uncompleted actions from Round 1 that address this issue.)                                   | <p>The WPCB in the central office needs to communicate to the regional offices on the importance of coordinating with the Compliance and Enforcement Section of the WPCB early enough in the escalation process to ensure that ongoing noncompliance is addressed in accordance with the Compliance Manual. Regional offices should be reminded in writing to continue using informal enforcement and CC&amp;P until the Compliance and Enforcement Section initially contacts the violator.</p> <ol style="list-style-type: none"> <li>1. This communication should occur by December 31, 2010, at which time MDNR will report on what was communicated.</li> <li>2. MDNR should monitor improvements in the process and report to EPA on the status of improvements by October 31, 2011.</li> </ol>  |

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| 10-2 | Finding   | Settlement negotiations in some enforcement cases persisted through a long and protracted period before reaching settlement and frequently extended beyond the time by which violators should be placed under enforceable schedules.   |
|      | Is this finding a(n) (select one):  | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required  |
|      | Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | 3 of the formal enforcement cases reviewed by EPA (Conoco Foodstore, Rick McVickers, and Focal Dairies) involved a period of settlement negotiations that extended beyond one year from the date of referral from the regional office. Additional cases involving a shorter period of time likewise did not result in the violator being placed under an enforceable schedule within 180 days of violation discovery. During negotiations, the Compliance and Enforcement Section should communicate more strict expectations to respondents regarding the allowable time to reach a settlement, and the state should adhere more closely to those expectations and the guidance in MDNR's Compliance Manual.  |
|      | Metric(s) and Quantitative Value  | 10b – % of reviewed enforcement responses to address SNC that are taken in a timely manner; Value: 50%<br>10e – % of enforcement responses for non-SNC violations where a response was taken in a timely manner; Value: 81%  |
|      | State Response  | 2 of the 3 cases cited with the longest negotiation period (Rick McVickers and Focal Dairies) entailed circumstances that MDNR had little control over—e.g. owner agreeing to settle but then refusing to communicate for weeks; new violations coming to light mid-way through negotiations. The other case cited (Conoco Foodstore) had two owners that complicated things and was a low-priority case at a time when MDNR was very busy with higher-priority cases. MDNR will commit to preparing cases for referral to the Attorney General when negotiations at the MDNR level stall, in accordance with the Compliance Manual; but the downside to this is that more cases will accumulate in the AG office, shifting some of the backlog from MDNR to the AG. |
|      | Action(s) (Include any uncompleted actions from Round 1 that address this issue.)                                   | MDNR will prepare cases for referral to the Attorney General when negotiations at the MDNR level stall, in accordance with the Compliance Manual, and strive to meet the guidelines in its Compliance Manual in FFY 2011. MDNR will report to EPA on its progress by October 31, 2011, and EPA will follow-up that first quarter if any problems persist and thereafter during FY 2011 as appropriate.   |
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| 10-3 | Finding   | State enforcement guidance allows compliance schedules to be used in permits as a means to resolve permit violations.  |

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|  | Is this finding a(n) (select one):  | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required  |
|  | Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | During the FFY 2005 program review, EPA recommended MDNR stop using schedules of compliance in permits to resolve permit violations. During the current program review, EPA did not identify any permits with schedules of compliance added for this purpose, but EPA did observe that the MDNR Compliance Manual states that one of the tools available during CC&P is to modify a NPDES permit with a schedule of compliance that will bring the facility back into compliance. EPA requests that the state remove this language from the Compliance Manual and ensure that permit compliance schedules are not used for this purpose. Per 40 CFR 122.47(a), a state program may use a schedule of compliance in a permit to address noncompliance with the CWA only if the noncompliance concerns new or revised Water Quality Based Effluent Limits. |
|  | Metric(s) and Quantitative Value  | 10e – Timely and appropriate action. Degree to which a state takes timely and appropriate enforcement action in accordance with policy relating to specific media.   |
|  | State Response  | The Program views the use of Schedules of Compliance as a Conference, Conciliation, and Persuasion process required by state statute. The Program believes Schedules of Compliance are a useful tool in certain circumstances.   |
|  | Action(s) (Include any uncompleted actions from Round 1 that address this issue.)                                   | MDNR will re-evaluate the guidance and determine when and how it is appropriate to use Schedules of Compliance. MDNR will then consult with EPA and make any necessary changes to the guidance, to be complete by February 28, 2011.   |
| <b>Element 11: Penalty Calculation Method. Degree to which state documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.</b> |   |  |
| 11-1   | Finding   | Penalties in administrative and judicial orders account for gravity, but most penalties did not ensure that economic benefit of noncompliance was recouped.  |
|  | Is this finding a(n) (select one):  | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required  |

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|  | <p>Explanation.<br/>(If Area of Concern, describe why action not required, if Recommendation, provide recommended action.)</p> | <p>EPA reviewed 11 enforcement files that assessed actual or stipulated penalties, all of which accounted for gravity of the violations. Only 3 of the 11 actions with a penalty assessment accounted for economic benefit of noncompliance. The state uses a penalty calculation worksheet that has a placeholder for economic benefit, but case development staff did not routinely calculate specific delayed and avoided costs for incorporation into the proposed penalty. Doing so, according to MDNR staff, would impose a large burden of time on case development staff.</p> <p>This deficiency was identified during the Round 1 review. In response to the Round 1 recommendation, MDNR stated that it accounts for economic benefit in its enforcement actions and provided examples of specific delayed and avoided costs that are included in penalty calculations. Although EPA had reason to believe that the state had corrected this deficiency at the conclusion of Round 1, the current review reveals that state penalty justifications do not routinely include economic benefit calculations or justify why economic benefit is omitted from the penalty.</p> <p>EPA's national policy framework sets the expectation that enforcement programs will recoup the economic benefit of noncompliance except in situations involving one or more of four circumstances, including inability to pay or litigation-related reasons. EPA's Interim CWA Settlement Penalty Policy provides an example of how to incorporate these exceptions into a framework for considering appropriate economic benefit. EPA recommends that MDNR present a plan for ensuring that all proposed penalties include an amount at least equal to the specific delayed and avoided costs of compliance, except where MDNR uses enforcement discretion to decide that one or more of the four exceptions above applies to the case. If the state uses enforcement discretion to exempt the penalty from covering economic benefit, this needs to be justified in the facility's enforcement file. This will lead to enforcement referral packages and penalty actions that, whether taken administratively or by the state Attorney General, are consistent with national policy.</p> |
|  | <p>Metric(s) and Quantitative Value</p>  | <p>11a – % of penalty calculations that consider and include where appropriate gravity and economic benefit; Value: 27%</p>  |
|  | <p>State Response</p>  | <p>Even though MDNR does not use a formal method to calculate economic benefit, the state does try to ensure that all penalty amounts account for at least the estimated economic benefit of noncompliance.</p>  |
|  | <p>Action(s)<br/>(Include any uncompleted actions from Round 1 that address this issue.)</p>                                   | <p>MDNR will continue to account for and describe delayed and avoided costs of noncompliance in cases where the state determines it is appropriate to recoup economic benefit. In cases where a penalty is assessed but economic benefit is not included, MDNR will briefly note the rationale of its decision on the penalty calculation worksheet. To be implemented by December 31, 2010.</p>   |
|  |  |  |
| <p><b>Element 12: Final Penalty Assessment and Collection. Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.</b></p> |  |  |
| <p>12-1</p>  | <p>Finding</p>   | <p>Enforcement files for penalty cases had a record of penalty collection and demonstrated the history of how the state and respondent negotiated down to reach a reduced assessed penalty, but most records did not indicate what rationale the state used to justify a particular alternative penalty amount.</p>  |

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|      | Is this finding a(n) (select one):  | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input checked="" type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement – Recommendations Required   |
|      | Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | EPA reviewed 11 final penalties in settlement agreements and orders, 10 of which had documentation in the file at the time of review explaining how the state and respondent negotiated any differences between the initial and final assessed penalties. The correspondence frequently indicated that it was “in the spirit of compromise” for the state to agree to a lower penalty. The records did not indicate, however, what rationale the state used to justify one particular alternative, lower penalty amount versus another hypothetical amount that might also be consistent with a willingness to compromise. Enforcement records should document whatever rationale the state uses—e.g. inability to pay, predetermined bottom-line amount, consistency with final penalties for similar past cases, etc. |
|      | Metric(s) and Quantitative Value  | 12a – % of penalties reviewed that document the difference and rationale between the initial and final assessed penalty; Value: 91%   |
|      | State Response  | All penalty negotiations and reductions take into consideration litigation risks, time delay in litigating the case, economic benefits obtained for violation of the Missouri Clean Water Law and future deterrence.  |
|      | Action(s) (Include any uncompleted actions from Round 1 that address this issue.)                                   | None required.  |
|      |   |   |
| 12-2 | Finding   | Enforcement files did not consistently contain proof that civil penalties had been paid.  |
|      | Is this finding a(n) (select one):  | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input checked="" type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement – Recommendations Required   |
|      | Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.) | EPA reviewed 9 final penalties in settlement agreements and orders that were scheduled for payment to the state at the time of review. For 5 of the 9 cases, the file included documentation showing that the penalties had in fact been collected. This evidence was in the form of copies of checks, copies of deposits, and memos to the file. In some of the cases without proof of penalty payment, the file indicated that state investigative or natural resource damages had been paid, but no evidence could be found for the civil penalty. The state should ensure that civil penalties are paid in full and that a copy of the check, a database record, memo to the file, or some other record is placed in the file to document this.   |

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|  | Metric(s) and Quantitative Value   | 12b – % of enforcement actions with penalties that document collection of penalties; Value: 56%  |
|  | State Response   | None of the enforcement cases are considered resolved unless all penalty, damages, costs and mitigation requirements are met. This is documented in the case resolution memos. |
|  | Action(s)<br>(Include any uncompleted actions from Round 1 that address this issue.) | The state will coordinate with the AG Office to get a proof of payment. As an Area for State Attention, this finding does not require a target date for follow-up.             |
|  |  |  |

**V. ELEMENT 13**

Missouri did not submit any information to EPA for consideration under Element 13 of the SRF Process. Element 13 is an optional opportunity for the state to give EPA information about achievements in compliance assistance, pollution prevention, innovation, self disclosure programs, outcome measures, etc. to educate EPA about the scope of the state's program.

**APPENDIX A**

**PRELIMINARY DATA ANALYSIS SUMMARY**

This section provides the results of the Preliminary Data Analysis (PDA) for only those data metrics where potential concerns or potential areas of exemplary performance were identified. The full PDA, available in Appendix B, contains every metric—positive, neutral or negative.

The PDA forms the initial structure for the SRF report and helps ensure that the data metrics are adequately analyzed prior to the on-site review. This is a critical component of the SRF process, because it allows the reviewers to be prepared and knowledgeable about potential problem areas before initiating the on-site portion of the review. In addition, potential concerns raised during the PDA are the basis for EPA to request any supplemental files that may be necessary to review.

The PDA covers each data metric and evaluates state performance against the national goal or average, if appropriate. Initial Findings indicate the observed results, as they are preliminary observations and are used as a basis for further investigation. Findings are developed only after evaluating Initial Findings against the file review results where appropriate and after dialogue with the state has occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Part IV of the report.

| Original Data Pulled from Online Tracking Information System (OTIS) |  |              |          |               |                  |                 | EPA Preliminary Analysis  |
|---|--|--------------|----------|---------------|------------------|-----------------|---|
| Metric  | Metric Description   | Metric Type  | Agency*  | National Goal | National Average | Missouri Metric | Initial Findings  |
| 1b2   | Major individual permits: DMR entry rate based on MRs expected (Forms/Forms) (1 Qtr) | Goal         | Combined | >=; 95%       | 92.6%            | 60.0%           | A large portion of majors are missing one-third or more DMRs for the 4th Qtr. EPA needs to ensure that some of these are selected for file review.                              |
| 1b4   | Major individual permits: manual RNC/SNC override rate (1 FY)                        | Data Quality | Combined |               |                  | 81.0%           | Most cases of RNC and SNC appear to be due to triggering of reporting violations in PCS, the majority of which were manually overridden. Discussion and file review are needed. |

| Original Data Pulled from Online Tracking Information System (OTIS) |  |              |         |               |                  |                 | EPA Preliminary Analysis  |
|---|--|--------------|---------|---------------|------------------|-----------------|---|
| Metric  | Metric Description   | Metric Type  | Agency* | National Goal | National Average | Missouri Metric | Initial Findings  |
| 1e1   | Informal actions: number of major facilities (1 FY)                | Data Quality | State   |               |                  | 0               | MDNR has not been entering this information into PCS, which is required for majors.   |
| 1e2   | Informal actions: number of actions at major facilities (1 FY)     | Data Quality | State   |               |                  | 0               | MDNR has not been entering this information into PCS, which is required for majors.   |
| 1e3   | Informal actions: number of non-major facilities (1 FY)            | Data Quality | State   |               |                  | 2               | Consists of LOWs and NOVs, which are required in PCS only for P.L. 92-500 facilities. MDNR did not enter this information into PCS. |
| 1e4   | Informal actions: number of actions at non-major facilities (1 FY) | Data Quality | State   |               |                  | 2               | Consists of LOWs and NOVs, which are required in PCS only for P.L. 92-500 facilities. MDNR did not enter this information into PCS. |
| 1f1   | Formal actions: number of major facilities (1 FY)                  | Data Quality | State   |               |                  | 1               | MDNR did not enter most of these required records into PCS.   |
| 1f2   | Formal actions: number of actions at major facilities (1 FY)       | Data Quality | State   |               |                  | 1               | MDNR did not enter most of these required records into PCS.   |
| 1f3   | Formal actions: number of non-major facilities (1 FY)              | Data Quality | State   |               |                  | 0               | MDNR did not enter any of these records into PCS, which are required for P.L. 92-500 minors.  |
| 1f4   | Formal actions: number of actions at non-major facilities (1 FY)   | Data Quality | State   |               |                  | 0               | MDNR did not enter any of these records into PCS, which are required for P.L. 92-500 minors.  |

| Original Data Pulled from Online Tracking Information System (OTIS) |  |                  |          |               |                  |                 | EPA Preliminary Analysis   |
|---|--|------------------|----------|---------------|------------------|-----------------|--|
| Metric  | Metric Description   | Metric Type      | Agency*  | National Goal | National Average | Missouri Metric | Initial Findings   |
| 1g1   | Penalties: total number of penalties (1 FY)                              | Data Quality     | State    |               |                  | 0               | 5 of 20 actions with penalties were taken via court order, which has a PCS data entry requirement for all facilities.  |
| 1g2   | Penalties: total penalties (1 FY)  | Data Quality     | State    |               |                  | \$0             | 5 of 20 actions with penalties were taken via court order, which has a PCS data entry requirement for all facilities.  |
| 1g3   | Penalties: total collected pursuant to civil judicial actions (3 FY)     | Data Quality     | State    |               |                  | \$3,000         | Most penalties collected judicially by MDNR appear to be absent from PCS.  |
| 1g5   | No activity indicator - total number of penalties (1 FY)                 | Data Quality     | State    |               |                  | \$0             | EPA and the state need to discuss how MDNR will upload penalty info to PCS from its new database.  |
| 2a  | Actions linked to violations: major facilities (1 FY)                    | Data Quality     | State    | >=; 80%       |                  | 0.0%            | Violations are required to be linked to 5 enforcement actions against majors, 4 of which MDNR did not enter in PCS.  |
| 7a1   | Single-event violations at majors (1 FY)                                 | Review Indicator | Combined |               |                  | 1               | EPA and the state need to discuss whether the state tracks SEVs internally, and file review needs to examine whether SEVs are being adequately identified.                   |
| 7b  | Facilities with unresolved compliance schedule violations (at end of FY) | Data Quality     | Combined |               | 35.8%            | 33.3%           | EPA and the state need to discuss how many enforcement action compliance schedules are open for majors and how the state tracks them, given the small number tracked in PCS. |

| Original Data Pulled from Online Tracking Information System (OTIS) |  |                  |          |               |                  |                 | EPA Preliminary Analysis  |
|---|--|------------------|----------|---------------|------------------|-----------------|---|
| Metric  | Metric Description   | Metric Type      | Agency*  | National Goal | National Average | Missouri Metric | Initial Findings  |
| 7c  | Facilities with unresolved permit schedule violations (at end of FY) | Data Quality     | Combined |               | 28.3%            | 52.4%           | File review is needed to determine if the violations are being accurately reported and if the state is taking appropriate action in response to legitimate violations.                  |
| 7d  | Percentage major facilities with DMR violations (1 FY)               | Data Quality     | Combined |               | 53.6%            | 51.4%           | File review should focus on the nature of DMR violations and how the state is responding to them.   |
| 8a1   | Major facilities in SNC (1 FY)                                       | Review Indicator | Combined |               |                  | 38              | 33 of 38 facilities had at least one quarter of RNC/SNC overridden with a 'compliant' marker, while other quarters retained their effluent or reporting violations. File review needed. |
| 8a2   | SNC rate: percent majors in SNC (1 FY)                               | Review Indicator | Combined |               | 24.2%            | 22.0%           | This metric is below the national average but higher than Missouri's metric for FY07 (12.7%) and FY08 (16.8%). Discussion needed.   |
| 10a   | Major facilities without timely action (1 FY)                        | Goal             | Combined | < 2%          | 18.8%            | 13.9%           | EPA will review several to examine the circumstances at these facilities and the level of state response.   |

\*Denotes whether the metric describes activity for the state alone or for the state and EPA.

**APPENDIX B**

**Complete Preliminary Data Analysis (PDA) with State Corrections**

This appendix to the report contains the complete PDA for all metrics reviewed under the SRF. The table also includes the state’s discrepancies with the data used by EPA to conduct the PDA. EPA’s analysis of state discrepancies is included within the final column, Initial Findings.

| Metric | Metric Description   | Measure Type | Metric Type | National Goal | National Average | Mis-souri Metric | Count | Uni-verse | Not Counted | State Discrep-ancy (Yes/No) | State Cor-rection | State Data Source | Discrepancy Explanation | Evalu-ation        | Initial Findings  |
|--------|--|--------------|-------------|---------------|------------------|------------------|-------|-----------|-------------|-----------------------------|-------------------|-------------------|-------------------------|--------------------|---|
| 1a1    | Active facility universe: NPDES major individual permits (Current)     | Data Quality | Combi ned   |               |                  | 173              | NA    | NA        | NA          | No                          |                   |                   |                         | Minor issue        | 5 majors are missing from this list, according to MDNR records. |
| 1a2    | Active facility universe: NPDES major general permits (Current)        | Data Quality | Combi ned   |               | -                | 0                | NA    | NA        | NA          | No                          |                   |                   |                         | Not reviewed       |   |
| 1a3    | Active facility universe: NPDES non-major individual permits (Current) | Data Quality | Combi ned   |               |                  | 3,125            | NA    | NA        | NA          | No                          |                   |                   |                         | Appears acceptable |   |

| Metric | Metric Description   | Measure Type | Metric Type | National Goal | National Average | Mis-souri Metric | Count | Uni-verse | Not Counted | State Discrepancy (Yes/No) | State Cor-rection | State Data Source | Discrepancy Explanation | Evalu-ation         | Initial Findings   |
|--------|--|--------------|-------------|---------------|------------------|------------------|-------|-----------|-------------|----------------------------|-------------------|-------------------|-------------------------|---------------------|--|
| 1a4    | Active facility universe: NPDES non-major general permits (Current)                  | Data Quality | Combi ned   |               |                  | 2,195            | NA    | NA        | NA          | No                         |                   |                   |                         | Appears acceptab le | This universe consists of facilities with non-stormwater general permit authorizations, including 525 CAFOs.   |
| 1b1    | Major individual permits: correctly coded limits (Current)                           | Goal         | Combi ned   | >=; 95%       | 92.9%            | 91.9%            | 159   | 173       | 14          | No                         |                   |                   |                         | Minor issue         | Most permits without correctly coded limits appear to have been reissued shortly before this data pull. Need to discuss state process for changing limit data. |
| 1b2    | Major individual permits: DMR entry rate based on MRs expected (Forms/Forms) (1 Qtr) | Goal         | Combi ned   | >=; 95%       | 92.6%            | 60.0%            | 993   | 1,655     | 662         | No                         |                   |                   |                         | Potential concern   | Large portion of majors are missing one-third or more DMRs for the 4th Qtr. Need to ensure that some of these are selected for file review.                    |

| Metric | Metric Description  | Measure Type        | Metric Type | National Goal | National Average | Mis-souri Metric | Count | Uni-verse | Not Counted | State Discrepancy (Yes/No) | State Cor-rection | State Data Source | Discrepancy Explanation | Evalu-ation         | Initial Findings  |
|--------|---|---------------------|-------------|---------------|------------------|------------------|-------|-----------|-------------|----------------------------|-------------------|-------------------|-------------------------|---------------------|---|
| 1b3    | Major individual permits: DMR entry rate based on DMRs expected (Permits/Permits) (1 Qtr) | Goal                | Combi ned   | >=; 95%       | 92.7%            | 91.3%            | 158   | 173       | 15          | No                         |                   |                   |                         | Minor issue         | Many of the 15 majors without any DMRs in the 4th Qtr are the same as those without correctly coded limits in 1b1; need to discuss with the state.                              |
| 1b4    | Major individual permits: manual RNC/SNC override rate (1 FY)                             | Data Quality        | Combi ned   |               |                  | 81.0%            | 64    | 79        | 15          | No                         |                   |                   |                         | Potential concern   | Most cases of RNC and SNC appear to be due to triggering of reporting violations in PCS, the majority of which were manually overridden. Discussion and file review are needed. |
| 1c1    | Non-major individual permits: correctly coded limits (Current)                            | Informati onal Only | Combi ned   |               |                  | 78.3%            | 2,447 | 3,125     | 678         | No                         |                   |                   |                         | Appears acceptab le |   |

| Metric | Metric Description  | Measure Type       | Metric Type | National Goal | National Average | Mis-souri Metric | Count | Uni-verse | Not Counted | State Discrepancy (Yes/No) | State Cor-rection | State Data Source | Discrepancy Explanation | Evalu-ation | Initial Findings   |
|--------|---|--------------------|-------------|---------------|------------------|------------------|-------|-----------|-------------|----------------------------|-------------------|-------------------|-------------------------|-------------|--|
| 1c2    | Non-major individual permits: DMR entry rate based on DMRs expected (Forms/Forms) (1 Qtr)     | Informational Only | Combined    |               |                  | 60.8%            | 4,513 | 7,423     | 2,910       | No                         |                   |                   |                         | Minor issue | Why did the universe of minors under this metric decrease from 7423 on the 1/16/2010 refresh to 5809 one month later? EPA and the state need to discuss reliability of this data.                            |
| 1c3    | Non-major individual permits: DMR entry rate based on DMRs expected (Permits/Permits) (1 Qtr) | Informational Only | Combined    |               |                  | 63.1%            | 1,835 | 2,909     | 1,074       | No                         |                   |                   |                         | Minor issue | The number of non-majors with at least one DMR in PCS for the 4th Qtr decreased from 1835 on the 1/16/2010 refresh to 1364 one month later. As with 1c2, EPA and the state need to discuss data reliability. |
| 1d1    | Violations at non-majors: noncompliance rate (1 FY)   | Informational Only | Combined    |               |                  | 41.7%            | 1,303 | 3,125     | 1,822       | No                         |                   |                   |                         | Minor issue | EPA and the state need to discuss how many of these reported violations are due to data quality.   |

| Metric | Metric Description   | Measure Type       | Metric Type | National Goal | National Average | Mis-souri Metric | Count | Uni-verse | Not Counted | State Discrepancy (Yes/No) | State Cor-rection | State Data Source | Discrepancy Explanation | Evalu-ation        | Initial Findings  |
|--------|--|--------------------|-------------|---------------|------------------|------------------|-------|-----------|-------------|----------------------------|-------------------|-------------------|-------------------------|--------------------|---|
| 1d2    | Violations at non-majors: noncompliance rate in the annual noncompliance report (ANCR)(1 CY) | Informational Only | Combined    |               |                  | 0 / 0            | 0     | 0         | 0           | No                         |                   |                   |                         | Not reviewed       | EPA has not yet requested the ANCR from the state for FFY 2009.   |
| 1d3    | Violations at non-majors: DMR non-receipt (3 FY)   | Informational Only | Combined    |               |                  | 1                | NA    | NA        | NA          | No                         |                   |                   |                         | Appears Acceptable | Discussion is needed to determine why this metric is so low compared to the high one-year noncompliance rate in 1d1, which consists of many reporting violations. |
| 1e1    | Informal actions: number of major facilities (1 FY)  | Data Quality       | State       |               |                  | 0                | NA    | NA        | NA          | Yes                        | 15                | WQIS and ACE      |                         | Potential concern  | MDNR has not been entering this information into PCS, which is required for majors.   |
| 1e2    | Informal actions: number of actions at major facilities (1 FY)                               | Data Quality       | State       |               |                  | 0                | NA    | NA        | NA          | Yes                        | 15                | WQIS and ACE      |                         | Potential concern  | MDNR has not been entering this information into PCS, which is required for majors.   |

| Metric | Metric Description   | Measure Type | Metric Type | National Goal | National Average | Mis-souri Metric | Count | Uni-verse | Not Counted | State Discrep-ancy (Yes/No) | State Cor-rection | State Data Source | Discrepancy Explanation | Evalu-ation       | Initial Findings  |
|--------|--|--------------|-------------|---------------|------------------|------------------|-------|-----------|-------------|-----------------------------|-------------------|-------------------|-------------------------|-------------------|---|
| 1e3    | Informal actions: number of non-major facilities (1 FY)            | Data Quality | State       |               |                  | 2                | NA    | NA        | NA          | Yes                         | 544               | WQIS and ACE      |                         | Potential concern | Consists of LOWs and NOVs, which are required in PCS only for P.L. 92-500 facilities. MDNR did not enter this information into PCS. |
| 1e4    | Informal actions: number of actions at non-major facilities (1 FY) | Data Quality | State       |               |                  | 2                | NA    | NA        | NA          | Yes                         | 633               | WQIS and ACE      |                         | Potential concern | Consists of LOWs and NOVs, which are required in PCS only for P.L. 92-500 facilities. MDNR did not enter this information into PCS. |
| 1f1    | Formal actions: number of major facilities (1 FY)                  | Data Quality | State       |               |                  | 1                | NA    | NA        | NA          | Yes                         | 5                 | WQIS              |                         | Potential concern | MDNR did not enter most of these required records into PCS.   |
| 1f2    | Formal actions: number of actions at major facilities (1 FY)       | Data Quality | State       |               |                  | 1                | NA    | NA        | NA          | Yes                         | 5                 | WQIS              |                         | Potential concern | MDNR did not enter most of these required records into PCS.   |

| Metric | Metric Description   | Measure Type | Metric Type | National Goal | National Average | Mis-souri Metric | Count | Uni-verse | Not Counted | State Discrep-ancy (Yes/No) | State Cor-rection | State Data Source | Discrepancy Explanation                                       | Evalu-ation       | Initial Findings  |
|--------|--|--------------|-------------|---------------|------------------|------------------|-------|-----------|-------------|-----------------------------|-------------------|-------------------|---|-------------------|---|
| 1f3    | Formal actions: number of non-major facilities (1 FY)                | Data Quality | State       |               |                  | 0                | NA    | NA        | NA          | Yes                         | 67                | WQIS              |   | Potential concern | MDNR did not enter any of these records into PCS, which are required for P.L. 92-500 minors.                          |
| 1f4    | Formal actions: number of actions at non-major facilities (1 FY)     | Data Quality | State       |               |                  | 0                | NA    | NA        | NA          | Yes                         | 72                | WQIS              |   | Potential concern | MDNR did not enter any of these records into PCS, which are required for P.L. 92-500 minors.                          |
| 1g1    | Penalties: total number of penalties (1 FY)                          | Data Quality | State       |               |                  | 0                | NA    | NA        | NA          | Yes                         | 20                | WQIS              | Penalties collected via orders and agreements signed in FY09. | Potential concern | 5 of 20 actions with penalties were taken via court order, which has a PCS data entry requirement for all facilities. |
| 1g2    | Penalties: total penalties (1 FY)                                    | Data Quality | State       |               |                  | \$0              | NA    | NA        | NA          | Yes                         | \$290,817         | WQIS              | Penalties collected via orders and agreements signed in FY09. | Potential concern | 5 of 20 actions with penalties were taken via court order, which has a PCS data entry requirement for all facilities. |
| 1g3    | Penalties: total collected pursuant to civil judicial actions (3 FY) | Data Quality | State       |               |                  | \$3,000          | NA    | NA        | NA          | No                          |                   |                   |   | Potential concern | Most penalties collected judicially by MDNR appear to be absent from PCS.   |

| Metric | Metric Description   | Measure Type       | Metric Type | National Goal | National Average | Mis-souri Metric | Count | Uni-verse | Not Counted | State Discrepancy (Yes/No) | State Correction | State Data Source | Discrepancy Explanation              | Evalu-ation        | Initial Findings   |
|--------|--|--------------------|-------------|---------------|------------------|------------------|-------|-----------|-------------|----------------------------|------------------|-------------------|--------------------------------------|--------------------|--|
| 1g4    | Penalties: total collected pursuant to administrative actions (3 FY) | Informational Only | State       |               |                  | \$0              | NA    | NA        | NA          | Yes                        | \$219,317        | WQIS              |                                      | Appears acceptable | Penalties collected via administrative actions are not required to be entered into PCS.  |
| 1g5    | No activity indicator - total number of penalties (1 FY)             | Data Quality       | State       |               |                  | \$0              | NA    | NA        | NA          | Yes                        |                  | WQIS              | See 1g1 and 1g2                      | Potential concern  | EPA and the state need to discuss how MDNR will upload penalty info to PCS from its new database.  |
| 2a     | Actions linked to violations: major facilities (1 FY)                | Data Quality       | State       | >=; 80%       |                  | 0.0%             | 0     | 1         | 1           | No                         |                  |                   |                                      | Potential concern  | Violations are required to be linked to 5 enforcement actions against majors, 4 of which MDNR did not enter in PCS.                              |
| 5a     | Inspection coverage: NPDES majors (1 FY)                             | Goal               | State       | 100%          | 57.9%            | 23.7%            | 41    | 173       | 132         | Yes                        | 62               | WQIS              | Problems uploading this data to PCS? | Minor Issue        | Including majors inspected by EPA in FY09 (17), the state fell slightly short (45.7%) of the 50% annual coverage commitment in its PPG Workplan. |

| Metric | Metric Description   | Measure Type     | Metric Type   | National Goal | National Average | Mis-souri Metric | Count | Uni-verse | Not Counted | State Discrep-ancy (Yes/No) | State Cor-rection | State Data Source | Discrepancy Explanation                    | Evalu-ation        | Initial Findings   |
|--------|--|------------------|---------------|---------------|------------------|------------------|-------|-----------|-------------|-----------------------------|-------------------|-------------------|--|--------------------|--|
| 5b1    | Inspection coverage: NPDES non-major individual permits (1 FY) | Goal             | State         |               |                  | 15.3%            | 479   | 3,125     | 2,646       | Yes                         | 718               | WQIS              | 2874 traditional minors, according to WQIS | Appears Acceptable | 783 is 25% of the minors universe, which exceeds the CMS goal.   |
| 5b2    | Inspection coverage: NPDES non-major general permits (1 FY)    | Goal             | State         |               |                  | 6.4%             | 141   | 2,195     | 2,054       | Yes                         | 272               | WQIS              |  | Incon-clusive      | The state's inspection commitments for CAFOs and other non-stormwater general permittees are addressed under metric 4.                                     |
| 5c     | Inspection coverage: NPDES other (not 5a or 5b) (1 FY)         | Goal             | State         |               |                  | 3.4%             | 235   | 6,970     | 6,735       | Yes                         | 386               | WQIS              |  | Incon-clusive      | The state's inspection commitments for stormwater permittees are addressed under metric 4.   |
| 7a1    | Single-event violations at majors (1 FY)                       | Review Indicator | Combi-<br>ned |               |                  | 1                | NA    | NA        | NA          | No                          |                   |                   |  | Potential concern  | EPA and the state need to discuss whether the state tracks SEVs internally, and file review needs to examine whether SEVs are being adequately identified. |

| Metric | Metric Description   | Measure Type       | Metric Type | National Goal | National Average | Mis-souri Metric | Count | Uni-verse | Not Counted | State Discrep-ancy (Yes/No) | State Cor-rection | State Data Source | Discrepancy Explanation | Evalu-ation        | Initial Findings   |
|--------|--|--------------------|-------------|---------------|------------------|------------------|-------|-----------|-------------|-----------------------------|-------------------|-------------------|-------------------------|--------------------|--|
| 7a2    | Single-event violations at non-majors (1 FY)                             | Informational Only | Combined    |               |                  | 3                | NA    | NA        | NA          | No                          |                   |                   |                         | Appears acceptable | The state does not need to enter this information in PCS, but it does need to track SEVs internally.   |
| 7b     | Facilities with unresolved compliance schedule violations (at end of FY) | Data Quality       | Combined    |               | 35.8%            | 33.3%            | 1     | 3         | 2           | No                          |                   |                   |                         | Potential concern  | EPA and the state need to discuss how many enforcement action compliance schedules are open for majors and how the state tracks them, given the small number tracked in PCS. |
| 7c     | Facilities with unresolved permit schedule violations (at end of FY)     | Data Quality       | Combined    |               | 28.3%            | 52.4%            | 88    | 168       | 80          | No                          |                   |                   |                         | Potential concern  | File review is needed to determine if the violations are being accurately reported and if the state is taking appropriate action in response to legitimate violations.       |

| Metric | Metric Description                                     | Measure Type     | Metric Type | National Goal | National Average | Missouri Metric | Count | Universe | Not Counted | State Discrepancy (Yes/No) | State Correction | State Data Source | Discrepancy Explanation | Evaluation        | Initial Findings  |
|--------|--|------------------|-------------|---------------|------------------|-----------------|-------|----------|-------------|----------------------------|------------------|-------------------|-------------------------|-------------------|---|
| 7d     | Percentage major facilities with DMR violations (1 FY) | Data Quality     | Combined    |               | 53.6%            | 51.4%           | 89    | 173      | 84          | No                         |                  |                   |                         | Potential Concern | File review should focus on the nature of DMR violations and how the state is responding to them.   |
| 8a1    | Major facilities in SNC (1 FY)                         | Review Indicator | Combined    |               |                  | 38              | NA    | NA       | NA          | No                         |                  |                   |                         | Potential concern | 33 of 38 facilities had at least one quarter of RNC/SNC overridden with a 'compliant' marker, while other quarters retained their effluent or reporting violations. File review needed. |
| 8a2    | SNC rate: percent majors in SNC (1 FY)                 | Review Indicator | Combined    |               | 24.2%            | 22.0%           | 38    | 173      | 135         | No                         |                  |                   |                         | Potential concern | This metric is below the national average but higher than Missouri's metric for FY07 (12.7%) and FY08 (16.8%). Discussion needed.   |
| 10a    | Major facilities without timely action (1 FY)          | Goal             | Combined    | < 2%          | 18.8%            | 13.9%           | 24    | 173      | 149         | No                         |                  |                   |                         | Potential concern | EPA will review several to examine the circumstances at these facilities and the level of state response.   |

## APPENDIX C

### FILE SELECTION

#### A. File Selection Process

EPA Region 7 followed the SRF File Selection Protocol to select 58 files for the on-site review. This includes 54 regulated entities that were chosen to be representative of the universe of NPDES entities in Missouri that were the subject of compliance monitoring or enforcement activity in federal fiscal year 2009 (FFY 2009). The remaining 4 files were chosen as supplemental files to help EPA better understand whether any potential areas of concern identified via the Preliminary Data Analysis are substantiated. All 58 files are listed below in this appendix.

The 54 representative files were chosen to provide a cross-section of permit types and, within each permit type, to represent entities that were subject to an inspection or an enforcement action. Altogether, 18 files were selected as representative inspections, 24 as representative formal or informal enforcement activities, and 12 as representative cities and industries subject to pretreatment requirements. Regulated entities were also chosen to represent the variety of compliance history information in the national program database and to ensure roughly even representation of MDNR's five regional offices.

EPA attempted to use random selection as much as possible to select particular entities within each representative category. For inspections at core program major and minor facilities, EPA used the Online Tracking Information System (OTIS) SRF File Selection Tool for random, representative selections. The File Selection Tool is available to EPA and state users at the following web address: [http://www.epa-otis.gov/cgi-bin/test/srf/srf\\_fileselection.cgi](http://www.epa-otis.gov/cgi-bin/test/srf/srf_fileselection.cgi). For inspections at CAFO and stormwater entities, as well as all enforcement actions, EPA relied on records pulled by MDNR from its internal databases due to incomplete data in the Permit Compliance System (PCS). Most file selections from MDNR data sets were random, while others were more targeted to ensure that selections from small sample sizes proportionately represented the regional offices that performed the activities. Samples of pretreatment industries and program cities were drawn using random selection.

For the Pretreatment program, 12 files were chosen for review. The mix was evenly split between 6 cities having approved Pretreatment Programs and 6 industries located in cities not having approved programs. These 6 industries, all Categorical Industrial Users, have the state as their Control Authority. All 12 files were chosen completely at random. No determination was made before their selection on whether they had been inspected in FFY 2009, or if there had been an enforcement action in the fiscal year or tied to events that occurred during the fiscal year.

For each representative file, EPA plans to review all compliance monitoring and enforcement information that is present in MDNR's records and relevant to FFY 2009. Even though the time period of interest is FFY 2009, any activity associated with the activity for which an entity was selected will be reviewed as well if it is part of the same compliance monitoring and enforcement chain of events, regardless of whether the associated activity is dated prior to or subsequent to this period of interest. For example, if a file selected for representative enforcement has an inspection record associated with it that is dated FFY 2008, both activities will be reviewed (and vice-versa when a selected inspection has an associated enforcement record).

The 4 supplemental files were selected after EPA determined that the representative selections might, by themselves, be insufficient to fully understand the nature of two potential concerns identified in the Preliminary Data Analysis (i.e. Metrics 7c and 8a). File review for supplemental files will focus on the potential concerns for which they were selected.

#### B. File Selection Table

The following table presents all of the facility files that EPA selected for review, including files selected using the online File Selection Tool as well as those selected through other means, as discussed above. The table lists the rationale for selection and the regional office in the state where the facility is located.

| <b>File Review List for Missouri SRF Enforcement Review, CWA FY09</b> |                           |                        |   |
|---|---------------------------|------------------------|---|
| <u>Permit #</u>   | <u>Facility Name</u>      | <u>Regional Office</u> | <u>Selection Rationale (representative or supplemental)</u> |
| <b>Core Program - Majors &amp; SSOs</b>                               |                           |                        |   |
| MO0023019   | Sedalia Central WWTP      | KCR                    | Representative Enforcement (formal)                         |
| MO0106852   | Mississippi Lime Company  | SER                    | Representative Enforcement (formal)                         |
| MO0036242   | Mexico WWTP               | NER                    | Representative Enforcement (formal)                         |
| MO0099465   | St. Clair WWTF            | SLR                    | Representative Enforcement (informal)                       |
| MO0028037   | Nixa WWTF                 | SWR                    | Representative Enforcement (informal)                       |
| MO0002348   | New Eagle Picher Tech LLC | SWR                    | Representative Inspection                                   |
| MO0025151   | MSD, LeMay WWTP           | SLR                    | Representative Inspection                                   |
| MO0096229   | Butler WWTP               | KCR                    | Representative Inspection                                   |
| <b>Core Program - Minors</b>  |                           |                        |   |
| MO0058297   | Shilo Warehouse           | SLR                    | Representative Enforcement (formal)                         |
| MO0112674   | Conoco Food Store         | NER                    | Representative Enforcement (formal)                         |
| MO0116912   | Sun Valley Subdivision    | KCR                    | Representative Enforcement (formal)                         |
| MO0117501   | Shady Gators WWTF         | SWR                    | Representative Enforcement (formal)                         |

|                      |                                 |     |                                       |
|----------------------|---------------------------------|-----|---------------------------------------|
| MO0100129            | Dixon WWTF                      | SER | Representative Enforcement (informal) |
| MO0129844            | Bucksaw Resort RV Park          | KCR | Representative Enforcement (informal) |
| MO0116157            | Fastop #119                     | NER | Representative Enforcement (informal) |
| MO0096865            | MoDOT, Doolittle Rest Area      | SER | Repr Inspection                       |
| MO0106747            | Lake Cattails Subdivision       | SLR | Repr Inspection                       |
| MO0113905            | Riverwood II Estates            | KCR | Repr Inspection                       |
| MO0116271            | Oak Creek Parkway Subdivision   | SWR | Repr Inspection                       |
| <b>Pretreatment</b>  |                                 |     |                                       |
| Farmington           | Little Tyke Play Systems        | SER | Industry, random                      |
| Salem                | Heartland Metal Finishing       | SER | Industry, random                      |
| Sullivan             | Sullivan Precision MF           | SLR | Industry, random                      |
| Charleston           | Gates Rubber Co.                | SER | Industry, random                      |
| Kennett              | Parker Hannifin                 | SER | Industry, random                      |
| Ava                  | Copeland Corporation            | SWR | Industry, random                      |
| MO0039926            | Neosho                          | SWR | Program city, random                  |
| MO0055905            | Warrensburg                     | KCR | Program city, random                  |
| MO0108227            | Chillicothe                     | NER | Program city, random                  |
| MO0094919            | Cuba                            | SER | Program city, random                  |
| MO0043648            | Poplar Bluff                    | SER | Program city, random                  |
| MO0103349            | Joplin                          | SWR | Program city, random                  |
| <b>CAFOs</b>         |                                 |     |                                       |
| MOG010548            | Rick L McVicker                 | NER | Representative Enforcement (formal)   |
| MOG010629            | Focal Dairies                   | SWR | Representative Enforcement (formal)   |
| MOG010160            | Honse Farm                      | SER | Representative Enforcement (informal) |
| MOG010499            | 2-M Farms                       | NER | Representative Enforcement (informal) |
| MO0107026            | Lincoln County Egg Farm         | SLR | Representative Inspection             |
| MOG010186            | Rocky Cochran                   | SER | Representative Inspection             |
| MOG010436            | Warren And Gary Oberdiek        | KCR | Representative Inspection             |
| MOG010498            | Rhino Farm (Chu Thao)           | SWR | Representative Inspection             |
| <b>SW industrial</b> |                                 |     |                                       |
| MOR23A127            | Natural Biodiesel Plant         | SER | Representative Enforcement (formal)   |
| MOR60A194            | Algiers Salvage, LLC            | NER | Representative Enforcement (formal)   |
| MOR240139            | MFA Bulk Retail Plant - Chamois | NER | Representative Enforcement (informal) |
| MOR80C434            | Trailer Corporation             | SWR | Representative Enforcement (informal) |
| MOR12A100            | Cargill Pork, LLC               | KCR | Representative Inspection             |
| MOR203296            | Canam Steel Corporation         | SLR | Representative Inspection             |

|                                      |                               |     |                                       |
|--------------------------------------|-------------------------------|-----|---------------------------------------|
| MOR240413                            | Ray-Carroll Co. Grain Growers | NER | Representative Inspection             |
| <b>SW construction</b>               |                               |     |                                       |
| MOR109D70                            | Branson Hills 29 Acres        | SWR | Representative Enforcement (formal)   |
| MOR109Q88                            | Castle Heights                | SLR | Representative Enforcement (formal)   |
| MOR10A196                            | Gravois Bluffs Estates        | SLR | Representative Enforcement (informal) |
| MOR10C493                            | East RT B Property            | NER | Representative Inspection             |
| MOR109BR3                            | Stewart Brothers Construction | SER | Representative Inspection             |
| MOR109CZ7                            | Raymore Recreational          | KCR | Representative Inspection             |
| <b>SW--MS4</b>                       |                               |     |                                       |
| MOR040064                            | Holts Summit Small MS4        | NER | Representative Enforcement (informal) |
| MOR040073                            | Jackson City Small MS4        | SER | Representative Inspection             |
| <b>Supplemental Files for Review</b> |                               |     |                                       |
| MO0022373                            | Bolivar WWTF                  | SWR | Supplemental                          |
| MO0091723                            | Montrose WWTF                 | KCR | Supplemental                          |
| MO0095028                            | Caruthersville WWTF           | SER | Supplemental                          |
| MO0111708                            | Fair Grove WWTF               | SWR | Supplemental                          |

## APPENDIX D

### FILE REVIEW ANALYSIS

The table in this section presents the initial observations of EPA regarding Missouri's program performance as measured against file metrics. Initial Findings are developed by EPA at the conclusion of the file review process. Narrative summaries of what EPA found in each of the fifty-eight facility files can be found in Appendix F. An Initial Finding is a statement of fact about the observed performance against file metrics and states whether the performance indicates a practice to be highlighted or a potential issue, along with some explanation about the nature of the good practice or potential issue. Initial Findings are preliminary observations; the quantitative metrics in the table are based on available information and are used by the reviewers to identify areas for further investigation. Due to the limited sample size, statistical comparisons among programs or across states cannot be made.

EPA used the results of the preliminary data analysis, dialogue with the state, and the file review Initial Findings below to develop Findings, which are presented in Part IV of the report.

| CWA Metric #   | CWA File Review Metric Description  | Metric Value | Initial Findings  |
|--|---|--------------|---|
| <b>2. Data Accuracy. Degree to which the Minimum Data Requirements are accurate. (example, correct codes used, dates are correct, etc.)</b>  |   |              |   |
| 2b   | % of files reviewed where data is accurately reflected in the national data system. | 96%          | 48 of 50 files that EPA reviewed had the required data accurately entered in PCS. This metric does not consider missing informal and formal enforcement actions and penalties, which are documented by metrics 1e, 1f, and 1g, respectively. Nor does it consider missing SEVs, which are documented by metric 8a.<br>Instances of missing or inaccurate data included two missing inspections for one pretreatment city and one facility name change that was not reflected in PCS data. |
| <b>4. Completion of Commitments. Degree to which all enforcement/compliance commitments in relevant agreements (i.e., PPAs, PPGs, categorical grants, CMS plans, authorization agreements, etc.) are met and any products or projects are completed.</b> |   |              |   |
| 4a   | % of planned inspections completed.   | N/A          | The state committed to inspecting a specified number of facilities across various NPDES and pretreatment categories during the two-year period covered by MDNR's FFY 2008-2009 PPG Workplan. Refer to Appendix G for initial findings. Inspection commitments for core program major and minor dischargers are evaluated in metrics 5a through 5c.  |

| CWA Metric #  | CWA File Review Metric Description   | Metric Value | Initial Findings   |
|---|--|--------------|--|
| 4b  | Delineate the commitments for the FY under review and describe what was accomplished. This should include commitments in PPAs, PPGs, grant agreements, MOAs, or other relevant agreements. The commitments should be broken out and identified. The types of commitments to include would be for inspections, pretreatment reviews, DMR entry, compliance data entry, follow-up on SRF recommendations, etc. | 88%          | The state satisfied 15 of 17 compliance and enforcement commitments for FFY 2009, not inspection-related, as specified in the FFY 2008-2009 PPG Workplan. The evaluation for each commitment, and the initial findings that result, are explained in detail in Attachment H of this report.  |
| <b>6. Quality of Inspection or Compliance Evaluation Reports. Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.</b> |  |              |  |
| 6a  | # of inspection reports reviewed.  | 62           | EPA reviewed 62 inspection reports during the file review process.   |
| 6b  | % of inspection reports reviewed that are complete.  | 18%          | 11 of 62 inspection reports that EPA reviewed contained all components on EPA's NPDES Inspection File Evaluation Checklist. Of the 51 reports that did not contain all components on the checklist, 13 were missing only time of day of inspection and/or telephone number of the facility. Other components missing from multiple reports were receiving water information, narrative description of violations, and information to support the inspector's observations. The 11 reports that had all components from the checklist were divided between pretreatment inspections throughout the state and non-pretreatment inspections from the Northeast Regional Office. |
| 6c  | % of inspection reports reviewed that provide sufficient documentation to lead to an accurate compliance determination.  | 98%          | 61 of 62 inspection reports reviewed by EPA provided sufficient documentation to lead to an accurate compliance determination. This performance is satisfactory.   |
| 6d  | % of inspection reports reviewed that are timely.  | 52%          | EPA found sufficient information in the files to evaluate this metric for 60 inspection reports. Duration from date of inspection to date of report transmittal was the measure used for this metric. 31 of 60 reports were completed within the goal timeframe specified in the state's Operations Manual. 1 of 9 reports for inspection of land disturbance sites were completed within 10 days of inspection, while 30 of 51 reports for non-land disturbance inspections were completed within 30 days of the inspection. The average duration from inspection to report transmittal was 16 days for   |

| CWA Metric #   | CWA File Review Metric Description   | Metric Value | Initial Findings  |
|--|--|--------------|---|
|  |  |              | land disturbance inspections and 33 days for all others, with an average overall duration of 30 days.   |
| <b>7. Identification of Alleged Violations. Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information (e.g., facility-reported information).</b> |  |              |   |
| 7e   | % of inspection reports or facility files reviewed that led to accurate compliance determinations.   | 89%          | 55 of 62 inspection reports led to an accurate compliance determination. Among the 7 reports without determinations, 3 involved one or more inaccuracies whereby the inspector identified a deficiency in the report that should have been characterized as a violation needing correction, but the report did not characterize it as such and/or the report or cover letter stated that the facility was in compliance. For the remaining 4 instances, the report, report transmittal (when present), and other documents in the file did not clearly articulate whether or not the state had identified specific violations. The numbers of reports with accurate determinations are as follows for NPDES program components: 19 of 21 wastewater inspections; 10 of 11 CAFO inspections; 18 of 20 stormwater inspections; and 8 of 10 pretreatment city or industrial user inspections. The 7 reports without accurate determinations were written in the following regional offices: 2 in the KCRO, 2 in the SERO, 1 in the SWRO, and 2 pretreatment program inspections. |
| <b>8. Identification of SNC and HPV. Degree to which the state accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner.</b>  |  |              |   |
| 8b   | % of single event violation(s) that are SNC according to OTIS facility reports. EPA compares the # of SEVs that are SNC according to OTIS facility reports to the # of SEVs that are SNC determined by reviewing the inspection reports. | 0%           | The state did not enter SEVs in PCS in FFY 2009. EPA reviewed compliance monitoring files for 8 major facilities at which 9 instances of violations (SEVs) were identified, of which 6 the state accurately characterized as SNC versus non-SNC. The SNC-level SEVs that EPA observed in the files included SSOs, a bypass, solids reaching waters of the state, and lime slurry overflow into waters of the state. Performance against this metric needs to be addressed with a recommendation.  |
| 8c   | % of single event violation(s) identified as SNC that are reported timely.   | 0%           | The state did not enter SEVs in PCS in FFY 2009. Therefore, EPA could not assess the timeliness of reporting SEVs that are SNC.   |
| <b>9. Enforcement Actions Promote Return to Compliance. Degree to which state enforcement actions include required corrective action (i.e., injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.</b>                                    |  |              |   |
| 9a   | # of formal/informal enforcement responses reviewed  | 54           | EPA reviewed 40 informal enforcement actions (LOWs and NOVs) and 14 formal enforcement actions (settlement agreements, attorney general referrals, court orders, and petitions to the court).   |

| <b>CWA Metric #</b>  | <b>CWA File Review Metric Description</b>  | <b>Metric Value</b> | <b>Initial Findings</b>  |
|--|--|---------------------|--|
| 9b   | % of enforcement responses that have returned or will return a source in SNC to compliance.                  | 100%                | EPA reviewed 4 informal enforcement actions and 2 formal enforcement actions that addressed SNC violations, all of which returned the source to compliance or required the source to take actions necessary to return to compliance.   |
| 9c   | % of enforcement responses that have returned or will return a source with non-SNC violations to compliance. | 55%                 | 14 of 36 informal enforcement actions and 9 of 9 formal enforcement actions that EPA reviewed pertaining to non-SNC violations resulted in the facility returning to compliance or required the source to take actions that will return it to compliance. Most of the 19 informal enforcement actions that did not result in a return to compliance were precursors to formal actions that did or will achieve a return to compliance. Not counted in this metric are 3 referrals to the state Attorney General that have not yet had an opportunity to result in enforceable schedules. |
| <b>10. Timely and Appropriate Action. Degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.</b>   |  |                     |  |
| 10b  | % of reviewed enforcement responses to address SNC that are taken in a timely manner.                        | 50%                 | EPA reviewed 7 enforcement actions that were part of the response to SNC violations at 4 major facilities. For measurement of this metric, EPA considered 6 actions at 3 of those facilities and disregarded the referral to the City of Mexico, in which case timeliness was complicated by EPA involvement. 3 of 4 informal enforcement actions and 0 of 2 formal enforcement actions were issued in a timely manner according to state and EPA guidance for response to SNC.  |
| 10c  | % of enforcement responses reviewed that address SNC that are appropriate to the violations.                 | 86%                 | EPA reviewed 7 enforcement actions that were part of the response to SNC violations at 4 major facilities. 3 of 4 informal enforcement actions and 3 of 3 formal enforcement actions were appropriate responses to the SNC violation according to state and EPA guidance.  |
| 10d  | % of enforcement responses reviewed that appropriately address non-SNC violations.                           | 92%                 | EPA reviewed 48 enforcement actions that were part of the response to non-SNC violations at 23 facilities of all types. 32 of 36 informal enforcement actions and 12 of 12 formal enforcement actions were appropriate responses according to state and EPA guidance.  |
| 10e  | % enforcement responses for non-SNC violations where a response was taken in a timely manner.                | 81%                 | EPA reviewed 48 enforcement actions that were part of the response to non-SNC violations at 23 facilities of all types. For measurement of this metric, EPA did not consider the referral to the City of Mexico, in which case timeliness was complicated by EPA involvement. 34 of 36 informal enforcement actions and 4 of 11 formal enforcement actions were issued in a timely manner according to state and EPA guidance.   |
| <b>11. Penalty Calculation Method. Degree to which state documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.</b> |  |                     |  |

| CWA Metric #  | CWA File Review Metric Description   | Metric Value | Initial Findings  |
|---|--|--------------|---|
| 11a   | % of penalty calculations that consider and include where appropriate gravity and economic benefit.                | 27%          | EPA reviewed 11 enforcement files that assessed actual or stipulated penalties, all of which accounted for gravity of the violations. Only 3 of the 11 actions with a penalty assessment accounted for economic benefit of noncompliance. The state uses a penalty calculation worksheet that has a placeholder for economic benefit, but case development staff did not routinely calculate specific delayed and avoided costs for incorporation into the proposed penalty.  |
| <b>12. Final Penalty Assessment and Collection. Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.</b> |  |              |   |
| 12a   | % of penalties reviewed that document the difference and rationale between the initial and final assessed penalty. | 91%          | EPA reviewed 11 final penalties in settlement agreements and orders, 10 of which had documentation in the file at the time of review explaining how the state and respondent negotiated any differences between the initial and final assessed penalties. Although this history of correspondence was in the files, the records did not indicate what rationale the state used to justify a particular alternative, lower penalty amount.   |
| 12b   | % of enforcement actions with penalties that document collection of penalties.                                     | 56%          | EPA reviewed 9 final penalties in settlement agreements and orders that were scheduled for payment to the state at the time of review. For 5 of the 9 cases, the file included documentation showing that the penalties had in fact been collected. This evidence was in the form of copies of checks, copies of deposits, and memos to the file. In some of the cases without proof of penalty payment, the file indicated that state investigative or natural resource damages had been paid, but no evidence could be found for the civil penalty. |

## APPENDIX E

### File Review Summaries for Facilities

This appendix to the report includes a summary of findings for each of the fifty-eight facility files reviewed by EPA. Each summary discusses the following: 1) the state's compliance monitoring and/or enforcement activities at the facility that were the reason for the review; 2) the documents in the file that EPA reviewed; and 3) EPA's findings from the review. The summaries are organized by NPDES permit type. The summaries in the final section of the appendix—Section 4—describe facilities that were reviewed for potential concerns associated with particular metrics. Nine of the facilities in Section 4 are also discussed in Sections 1 through 3.

#### 1. Wastewater Permittees

##### *Direct Dischargers—Majors*

##### Sedalia Central WWTP (MO0023019) (enforcement involved Sedalia North and Southeast WWTPs also)

EPA selected this facility as a representative enforcement action. MDNR inspected the Sedalia WWTP on 6/11/08 and made an environmental assistance visit on 10/29/08. MDNR did not issue any LOWs or NOVs. However, the state did complete a Settlement agreement (SA), signed 7/1/09.

The report for the 6/11/08 inspection included most of the items from the Inspection File Evaluation Checklist and was transmitted on time; however, it was deficient in identifying certain bypass violations in the report. The inspections seem to target only a particular issue at the WWTP by allowing the facility to eliminate a straight-pipe bypass by creating a blended bypass. **The continuing bypass scenario should have been identified as a violation and addressed through enforcement.** In addition, the inspections and reports to MDNR identify numerous SSOs in the WWTP. The SSOs are not being entered into the database as SEVs, nor characterized as SNC. The file reveals that the facility was not reporting the SSOs until April 2008. MDNR reached settlement with Sedalia WWTP in July 2009 to submit a plan to address the SSOs in October 2009, but this schedule was extended to July 2010. The plan is to be implemented by July 2016. No penalty was sought. While the enforcement response seems appropriate, it was not timely.

##### Mississippi Lime Company (MO0106852)

EPA selected this facility as a representative enforcement action. This facility was party to an SA with the State of Missouri, issued 10/21/08. Mississippi Lime Company (MLC) also received NOVs from MDNR dated 5/19/05, 11/18/05, 12/27/06, 12/14/07, and 6/17/09 for various violations at two or more outfalls. EPA evaluated the SA as well as the 12/27/06 NOV, which was part of the enforcement chain leading up to the SA, and the 6/17/09 NOV. There were no inspections conducted at this facility in FFY 2009 or that were relevant to the enforcement actions.

The MLC was responsible for two lime slurry overflows into receiving creeks during the recent past, one on 5/5/05 and the other on 12/12/06. MDNR initially responded to both events with an NOV. The NOVs were issued 14 and 15 days following the overflows, respectively, and MLC responded accordingly. The 12/27/06 NOV, in particular, required the facility to outline

corrective actions to prevent recurrence of an overflow, and MLC responded with a letter (date unknown) describing several corrective actions. The purpose of the SA was primarily to assess penalties for the two lime slurry overflows and for several pH and TSS violations that MDNR initially addressed with NOV's, but the SA also memorialized several Pollution Mitigation Projects that MLC had earlier agreed to perform as corrective actions.

EPA views the 12/27/06 NOV as a timely and appropriate enforcement response that got the facility back on track to compliance. This assessment considers the state's previous history with the facility, which consisted of a SA amended on 2/10/03 to address upgrades or closure of each outfall. MDNR inspected the facility on 4/13/03 and found MLC in compliance with the terms of its SA. The record suggests that MDNR viewed its role following the 2005 and 2006 lime slurry overflows to be one of steering the facility back to the compliance status it has achieved under the 2003 SA. Because the 10/21/08 SA reflected the mitigative work the facility had elected to perform in response to the 12/27/06 NOV, the NOV and SA in combination were successful at returning the facility to compliance. **The SA itself, however, would not be considered a timely response given that it was finalized nearly two years following discovery of the last violation cited in the agreement.**

The 10/21/08 SA file contained documentation that the proposed penalty considered gravity but not economic benefit. The cost of any improvements that MLC did not fully implement following the 2005 slurry overflow, which might have prevented the 2006 fishkill, is a category of economic benefit that would be appropriate in this case. The file contained evidence that the penalty was collected.

The NOV dated 6/17/09 was issued to address effluent violations reported on the facility's April 2009 DMR at Outfall 014. The NOV required a response within 15 days addressing corrective actions to be taken. This NOV was issued in a timely manner, identified the violations as SNC, and was appropriate to the violations.

#### Mexico WWTP (MO0036242)

EPA selected this facility as a representative enforcement action. MDNR inspected the Mexico WWTP on 12/7/08 and 1/2/09. EPA evaluated these inspections.

The inspection reports included most of the items from the Inspection File Evaluation Checklist and led to a compliance determination. The reports for the two inspections were transmitted to the facility 60 or more days after the inspection. The violations were appropriately described in the report and reflect the violations characterized in the 11 NOV's issued by MDNR to Mexico WWTP between 7/21/06 and 12/16/08. The 11 NOV's address numerous pretreatment violations, water quality standard exceedances, effluent limit exceedances, sludge discharges, unpermitted discharges, and DMR deficiencies. Additionally, MDNR identified several SSOs. MDNR referred the matter to the Attorney General's office on 12/16/08, following the December inspection. This was an appropriate follow-up to the inspection, but on the surface it does not appear timely considering that MDNR first began documenting unresolved violations more than two years earlier. Review of this file was unique, however, in that EPA became involved with this case in early 2007 and ultimately took the lead in pursuing enforcement to address the pretreatment violations and related effluent violations and sludge discharges. For this reason, timeliness of the state response was not evaluated for this case.

EPA filed an Administrative Compliance Order in October 2009. The file indicates that MDNR will turn its focus on addressing the SSO issues. At the time of review, EPA could not determine whether Mexico has returned to compliance.

#### St. Clair WWTF (MO0099465)

EPA selected this facility as a representative enforcement action. MDNR inspected the St. Clair WWTF on 9/23-24/09 and sent the facility an NOV on 10/5/09. MDNR also sent St. Clair an LOW on 4/21/09. EPA evaluated all three records.

The inspection report included most of the items from the Inspection File Evaluation Checklist and led to a compliance determination. The report was transmitted to the facility 22 days after the inspection with an NOV in the cover letter. The violation, which was failure to prevent the accumulation of sludge and solids in the waters of the state, was appropriately described in the report as a “serious violation,” which EPA translates as SNC. The NOV required a response from the City within 15 days of receipt, and the City responded on 10/20/09 with a letter describing rehabilitation planned for the facility. This was a timely and appropriate response by the state.

St. Clair WWTF received an LOW from MDNR dated 4/21/09 in response to exceedances of ammonia limits in October and November 2008. The LOW required a response from the City within 10 days of receipt. This was not an appropriate response because **the LOW did not properly identify the exceedances as SNC**. An NOV that identified the SNC violation and required a prompt response would have been the minimum appropriate response, which would have also been consistent with the state’s Compliance Manual. **The response was also not timely**, as MDNR sent the LOW 111 days after the due date of the DMR showing the exceedances.

#### Nixa WWTF (MO0028037)

EPA selected this facility as a representative enforcement action because records indicated that an LOW was issued following an inspection on 7/28/09. EPA and MDNR were unable to locate an LOW with this date and determined that the database record showing this LOW was an error. However, MDNR did issue an LOW to the facility on 1/27/10 following an inspection that began on 8/19/09. Because the inspection occurred in FFY 2009 and was linked to the LOW issued later, EPA evaluated both activities during the file review.

The MDNR inspection began on 8/19/09 but resumed on 11/12/09 and 11/20/09 with an investigation into alleged SSOs from the City’s collection system. The one report and cover letter addressed all of the state’s findings from this chain of site visits. The report contained most of the items on the Inspection File Evaluation Checklist and led to a compliance determination. The report was completed and transmitted to the facility 161 days following the start of the inspection and 68 days following its completion, neither of which conforms to the state’s goal of 30 days.

The LOW was an appropriate response given that none of the violations discovered during the site visits rose to the level of SNC. The LOW was also timely, taking place during the state’s period of CC&P. In the LOW, MDNR requested a response from the City regarding the two most serious deficiencies. EPA was unable to determine whether the City returned to compliance.

#### New Eagle Picher Technologies LLC (MO0002348)

EPA selected this facility as a representative inspection. MDNR inspected New Eagle Picher on 7/14/09 and transmitted the report 80 days later, which is in excess of the 30-day goal. The report lacked several important pieces of information about the facility and the scope of the inspection, but it did lead to a compliance determination. Minor violations concerning sampling and recordkeeping were identified in the report, but the file does not include any evidence of a response from the facility to address the deficiencies.

### MSD, LeMay WWTP (MO0025151)

EPA selected this facility as a representative inspection. MDNR inspected MSD LeMay on 2/10/09 and transmitted the report to the facility 14 days later. The report contained most of the items from the Inspection File Evaluation Checklist and led to a compliance determination. No violations were found during the inspection; however, review of DMRs shows that multiple violations of effluent limits occurred in the second and third quarters of FFY 2009. The file does not give any evidence that the state identified these exceedances as permit violations.

### Butler WWTP (MO0096229)

EPA selected this facility as a representative inspection. MDNR inspected the Butler WWTP on 7/16/09 and transmitted the report to the facility 63 days later, which exceeds the 30-day goal. The report provided sufficient information to enable a compliance determination, but the inspection file does not give any evidence that a compliance determination was made. Most of the other items on the Inspection File Evaluation Checklist were found to be in the report.

The inspection report noted that 18 SSOs had occurred from Butler's collection system in the recent past and were reported to the state. MDNR did not make an assessment of the environmental impact of any SSOs. In particular, the SSO summary table in the report indicates which SSOs were likely to reach waters of the state, and at least one SSO (recorded 4/27/09) appears likely to have done so. However, **MDNR did not assess this or similar SSOs as potentially SNC or otherwise indicate the serious nature of the violations.**

### *Direct Dischargers—Non-majors*

### Shilo Warehouse (MO0058297)

This facility was selected as a representative enforcement action. MDNR issued NOV's to Shilo Warehouse on 9/14/06 and 11/13/08 and executed a Settlement Agreement on 8/5/09. The state also inspected the facility prior to both NOV's, on 9/12/06 and 11/4/08. EPA evaluated the first NOV, which started the enforcement chain of events, as well as the SA. EPA also evaluated the 11/4/08 inspection, which took place in FFY 2009.

The MDNR inspection on 9/12/06 found a poorly operating facility. The inspection report identified failure to submit DMRs in 2004 and BOD and TSS exceedances, which were the subject of the accompanying NOV issued 9/14/06. This NOV was a timely and appropriate initial action for the violations, although it did not ultimately result in the facility's return to compliance. Continued noncompliance was documented during the state's 11/4/08 inspection, when the facility was noted to still be poorly operated and to have BOD and TSS exceedances in September and October 2008. MDNR issued the second NOV on 11/13/08.

MDNR invited the facility to enter into settlement negotiations with a letter dated 3/6/09. An SA was ultimately reached and executed 8/5/09. It specified corrective actions that, if performed as required, will return the facility to compliance. The SA also provided for a penalty of \$3000 plus stipulated penalties for failure to meet the terms of the SA. **The penalty calculation incorporated gravity but not economic benefit.** The record showed how the penalty was negotiated down from \$4000 to \$3000 and provided proof of penalty payment.

Commencement of formal enforcement negotiations on 3/6/09 occurred 16 months after the DMR record should have made clear that the facility was continuing to have compliance problems after issuance of the first NOV. High TSS exceedances resurfaced in January and March 2007 and recurred in September 2007, when BOD was also grossly exceeded. Hence, by the date of review for the September 2007 DMR—i.e. the end of October—the MDNR field office should have referred the noncompliance to the central office for formal action. **Far more**

**than 180 days elapsed from the time noncompliance resurfaced to the date that formal negotiations commenced.**

The report for the 11/4/08 inspection consisted of a transmittal letter and NOV without any substantive report narrative. The NOV itself assumed the format of a checklist. As such, the report included only about half of the items on the Inspection File Evaluation Checklist. The report did lead to a compliance determination and was transmitted to the facility in only 9 days.

#### Conoco Food Store (MO0112674)

EPA selected this facility as a representative enforcement action. MDNR executed a Settlement Agreement with Conoco Foodstore on 3/27/09, which followed two NOV's in 2005 and 2006 as well as three inspections between 2005 and 2007. EPA evaluated the SA, both NOV's, and the final inspection dated 2/9/07.

MDNR first inspected the facility on 3/10/05, when the inspector found deficiencies in operation and maintenance. An NOV promptly followed, to which the facility responded on 4/20/05. This was a timely and appropriate initial course of action for the state. MDNR conducted a follow-up inspection on 4/12/06 and observed a continuation of many of the same operation and maintenance violations, indicating that the first NOV was not successful at returning the facility to compliance. A second NOV was then issued, indicating that the regional office was preparing to refer the case to the central office for formal enforcement. Because more than a year had elapsed since the initial discovery of violations, **the second NOV was neither timely nor appropriate in keeping with the terms of MDNR's Compliance Manual.** Non-submittal of DMRs to the regional office during the period between the two NOV's should have resulted in a more prompt escalation of the matter. The regional office referred the case to the central office on 6/20/06.

An SA was executed between MDNR and Conoco Foodstore on 3/27/09. The record indicates that compliance was achieved by approximately August 2007. Ownership of the facility changed hands in 2008, and permit responsibility was transferred accordingly on 8/22/08. Considering these facts, MDNR might have experienced some complications in finalizing the SA or lowered this case's priority. Nonetheless, more than 33 months elapsed from the time of referral to the time of settlement. **A penalty of \$1400 was assessed in the SA, which incorporated gravity but not economic benefit.** Differences between the proposed and assessed penalties were documented, and the file offered proof that the penalty was collected.

The third MDNR inspection, on 2/9/07, resulted in a report that included most of the items on the Inspection File Evaluation Checklist. The report led to a compliance determination and was transmitted to the facility in a timely manner.

#### Sun Valley Subdivision (MO0116912)

EPA selected this facility as a representative enforcement action. A court order was issued by the Benton County Circuit Judge on 8/28/09 to Irma Bain and Barry Hurst as owners of the property known as Sun Valley Subdivision. MDNR discovered noncompliance at the wastewater lagoons for the site during several inspections between 2000 and 2002, and the state inspected the facility again on 6/5/07. EPA evaluated the court order and the 2007 inspection.

MDNR issued several NOV's to the Sun Valley Subdivision as follow-up to inspections, up to and including one issued on 11/26/02. In that NOV, the regional office stated that the case would be referred to the central office for formal enforcement, and the date of actual referral was 1/10/03. Eight months earlier, on 4/24/02, the state inspected the facility for at least the third time. During all of these inspections, MDNR observed the same violations. In order to get the violator on an enforceable schedule within 180 days of violation discovery, however, the

regional office should have referred the case no later than April 2002 following that month's inspection. After the central office promptly referred the case to the AG's office in May 2003, the Benton County Circuit Court set a hearing date for August 2008. Altogether, approximately nine years elapsed from the time of initial violation discovery to the date that the district court issued its order. Nonetheless, the court order was an appropriate action and specified measures necessary to move the facility into compliance. The central office file for the referral to the AG demonstrated that the \$10,000 penalty included gravity and economic benefit, but it did not include any evidence that the penalty had been collected.

The report for the 6/5/07 MDNR inspection assumed the form of a checklist and lacked most of the elements on the Inspection File Evaluation Checklist. The inspection file lacked any evidence that the report was transmitted to the site owner. The report did, however, lead to a compliance determination.

#### Shady Gators WWTF (MO0117501)

EPA selected this facility as a representative enforcement action. MDNR inspected the Shady Gators WWTF on 10/8/09 prior to the Attorney General filing a petition in November 2009. MDNR had previously issued 10 LOWs from June 2007 through July 2008, an NOV in August 2008, and referred the matter to the Attorney General on 8/25/08.

The inspection report did not seem complete, as it did not contain adequate facility information and description of the observations of the inspection. Despite these deficiencies, there appeared to be enough information to determine the compliance status of the Shady Gators WWTF. It is unclear from the file when this inspection report was transmitted to the WWTF. The violations identified, beginning in June 2007 and extending through July 2008, included continual failure to apply for a permit, fees and DMRs. These violations were identified by the numerous LOWs. An LOW does not seem to be an appropriate response to the continual failures to apply for a permit and repeated failures to submit DMRs. However, the NOV was issued upon identification of significant operation and maintenance deficiencies and after effluent limit exceedances were identified by an MDNR inspection. Furthermore, MDNR proceeded to refer the case to the Attorney General. **Referral of the noncompliance to the AG was an appropriate response but followed a long period of noncompliance during which the state could have escalated the matter earlier.**

#### Dixon WWTF (MO0100129)

EPA selected this facility as a representative enforcement action. MDNR issued NOVs to the facility on 6/19/09, 7/9/09, and 9/8/09 and inspected the facility on 7/21/09. EPA evaluated the first and third NOVs, as the initial and final documentation of violations, and the 7/21/09 inspection.

MDNR became aware of SSOs and operational problems in the Dixon collection system starting in June 2009. MDNR issued a quick succession of NOVs to the facility, the first of which required a response to MDNR. The third NOV, though lacking a requirement for the facility to respond, kept Dixon on notice of its violations during the CC&P timeframe. The state's response culminated with a regional office referral of the matter to the central office on 9/14/09. All of MDNR's enforcement responses in this case were timely and appropriate according to federal and state guidance. At the time of review, the state had not yet issued a final enforcement agreement or order.

The MDNR inspection on 7/21/09 was documented in a report that contained most of the items on the Inspection File Evaluation Checklist. The report led to a compliance determination

and was transmitted to the facility 55 days after the inspection, which exceeds the state's goal of 30 days.

#### Bucksaw Resort RV Park (MO0129844)

EPA selected this facility as a representative enforcement action. MDNR inspected the facility on 8/20/09 and issued an NOV the same day. EPA evaluated both of these actions as part of the review.

The report for the 8/20/09 inspection contained most of the items on the Inspection File Evaluation Checklist and led to a compliance determination via the NOV. The report was transmitted to the facility 44 days after inspection, which exceeds the state's goal of 30 days.

MDNR issued the NOV to Bucksaw Resort RV Park in response to late DMRs and effluent exceedances. DMR non-receipt first appeared on the record in July 2007 and continued unabated through August 2008 without any notice from the state. **Although the NOV was an appropriate initial response, it was two years late.** The NOV required the facility to respond with a statement of corrective actions. MDNR received a response dated 9/18/09 that addressed corrective maintenance to prevent future effluent exceedances but that did not address the timeliness of reporting. Since issuance of the NOV, the facility has had continued violations of Total Residual Chlorine in August 2009 and BOD in October 2009, both of which were followed with LOWs from MDNR. It is not clear from the file whether the facility has taken any additional actions and if the violations have ceased.

#### Fastop #119 (MO0116157)

EPA selected this facility as a representative enforcement action. MDNR issued Fastop #119 an LOW on 7/16/09 following an inspection at the facility on 6/17/09. EPA evaluated both records during the review.

The report for MDNR's inspection contained all except one of the items on the Inspection File Evaluation Checklist. The report led to a compliance determination and was transmitted to the facility 29 days after the inspection. An LOW was sent to the facility following the inspection, on 7/16/09, to advise the owner to terminate the permit and cease operations of the facility. The owner followed this advice, as documented in the file. The LOW was a timely and appropriate enforcement response, especially considering the circumstances of the small facility and the change in ownership that occurred prior to the MDNR inspection.

#### MoDOT Doolittle Rest Area, MO-0096865

This minor facility file was selected as a representative inspection. On 9/22/09 MDNR's Southeast Regional Office conducted a sampling inspection of the lagoon wastewater treatment system. The inspection was complete with the exception of the time the inspection was performed. The inspection report was in narrative format and included results of samples collected during the inspection. The facility was found to be in compliance with the requirements of its permit. The report was transmitted to the permittee with a cover letter dated 10/27/09, 35 days after the inspection. The inspection report and cover letter state that the facility was in compliance with its permit at the time of the inspection.

#### Lake Cattails Subdivision, MO-0106747

This minor facility file was selected as a representative inspection. On 8/31/09 MDNR's Saint Louis Regional Office conducted a sampling inspection of this mechanical facility. The inspection report consisted of a completed checklist and a narrative report and also included results of samples collected during the inspection. On 9/22/09, 22 days after the inspection,

MDNR transmitted the inspection report to the facility covered by a LOW. The LOW stated that the facility had exceeded its TRC limit on 7/10/07 and that the facility must provide a response to MDNR detailing corrective action taken to address the non-compliance. **The regional office should have identified this self-reported violation in a more timely manner, rather than during an inspection more than 2 years after the violation occurred.**

A response to the LOW was due to MDNR by 10/15/09. On 10/20/09 MDNR sent a letter to the facility stating that the LOW required a response by 10/15/09 and to date it had not been received. On 10/23/09 the facility sent a letter to MDNR stating that immediately following the TRC exceedance in 7/07 the facility had tweaked treatment to allow it to meet the TRC permit limit and that TRC had not been exceeded since, at that time a period of over two years. On 10/26/09 MDNR sent a letter to the facility stating that the response was satisfactory and MDNR considers the facility to be in compliance.

#### Riverwood II Estates (MO0113905)

EPA selected this facility as a representative inspection. MDNR inspected the Riverwood II Estates wastewater treatment system on 6/10/09 and followed the inspection with an LOW on 7/14/09. The state conducted a follow-up inspection on 9/17/09. EPA evaluated all of these activities as part of the file review.

Both MDNR inspections contained most of the items on the Inspection File Evaluation Checklist and led to compliance determinations. The first inspection report was completed and transmitted to the facility 34 days following the visit, and the second report followed the visit by 82 days. Both time periods exceed the state's goal of 30 days to completion.

During the initial state inspection, MDNR identified operation and maintenance violations, for which the 7/14/09 LOW was a timely and appropriate response. The LOW requested a response from the facility, and the state received a response dated 8/3/09 describing the facility's corrective actions. MDNR further confirmed the elimination of deficiencies with the follow-up inspection on 9/17/09.

#### Oak Creek Parkway Subdivision, MO-0116271

This minor file was selected as a representative inspection. On 2/9/09 MDNR received a complaint about this facility. On 2/18/09 MDNR's Southwest Regional Office (SWRO) conducted a sampling inspection of the wastewater treatment system. The inspection was complete with the exception of the time the inspection was performed. The inspection report was in narrative format and included results of samples collected during the inspection and photos of the wastewater treatment facility. On 3/6/09, 16 days after the inspection, the report was transmitted to the permittee covered by a LOW. The LOW and inspection report stated that the facility had not submitted its September 2008 and December 2008 DMRs and that the DMR submitted in March 2008 was incomplete. The LOW further stated that a Statement of Works, completed by an engineer, (from a recent expansion) was due on 3/21/09, along with confirmation that the facility had a flow recording device, a completed Form B and a permit modification fee of \$200 for expansion of the facility. On 3/12/09 the facility responded to the LOW by providing the September 2008 and December 2008 DMRs and an explanation that the DMR for March 2008 was incomplete because the facility had not realized that the permit had changed and therefore had not sampled for all parameters. On 4/23/09 a letter was sent from the SWRO to the facility stating that the Form B had been received but they still needed to know that a flow recording device was in place, a signed Statement of Works, an application for transfer of ownership from Oak Creek Parkway Subdivision to OCCPOA, and a modification fee of \$200. On 5/7/09 MDNR sent the facility a letter stating that the Form B and \$200 permit fee had been

received but MDNR still needed an additional \$200 to change the facility name on the permit. In June 2009 MDNR has a memo to the file stating that the \$200 name change fee had been waived. On 7/1/09 MDNR transmitted the new permit to the facility.

There was no documentation in the file that the Statement of Works and confirmation of a flow recording device were received by MDNR. It is possible that these documents are in a new file titled OCCPOA since that is now the permitted entity. OTIS indicates that an inspection of the facility was conducted on 1/13/10 but the inspection report and transmittal are not in the file. They may be in a file with the OCCPOA name because it does not appear that the permit number changed.

### *Pretreatment – Facilities Outside Pretreatment Cities*

#### Little Tikes Play Systems, Farmington, Missouri

Little Tikes manufactures playground equipment and performs phosphate conversion coating as a manufacturing step on two production lines. Therefore, Little Tikes is subject to the 40 CFR Part 433 Metal Finishing standards. The industry normally samples twice per year for each production line and submits the sample results in its semi-annual compliance reports. However, one of its two samples taken in early June 2009 showed a zinc violation (9.38 mg/l versus a monthly average limit of 1.48 mg/l and a daily maximum limit of 2.61 mg/l). As required by the regulations, the facility notified MDNR and re-sampled its effluent. In fact, Little Tikes sampled twice even though only one sample was required. Both samples measured zinc well below 1 mg/l, which is the historic level for Little Tikes. MDNR properly identified Little Tikes as being in Infrequent Noncompliance for the six month reporting period; however, no additional enforcement was warranted because of Little Tikes' return to compliance.

MDNR inspected Little Tikes on 5/28/09 and transmitted its report the next day. No violations were observed during the inspection.

Like other facilities subject to the Metal Finishing standards, Little Tikes certifies compliance with Total Toxic Organics (TTO), using the regulatory required certification statement. However, **Little Tykes is not using an overall certification statement, let alone the one required by the General Pretreatment Regulations.**

In the facility's second semi-annual report for 2009, Little Tikes reported that they would no longer be manufacturing in Farmington and would convert the facility to a warehouse. In response, MDNR performed a follow-up inspection in February 2010 and verified that manufacturing had ceased.

#### Heartland Metal Finishing, Salem, Missouri

Heartland is a job shop zinc plating facility that began business after the new source date of the 40 CFR Part 433 Metal Finishing regulations. As part of its manufacturing operations, Heartland uses hexavalent chromium and zinc and must treat for both prior to discharge to the city Publicly-Owned Treatment Works (POTW). Because of sludge contamination many years ago at the POTW, the city samples Heartland on average twice per week. The city provides the sample results to Heartland and also will fax the results to MDNR on a non-routine basis. If the city observes a violation, Heartland will send a letter to MDNR explaining the cause and their activities to correct it. In addition to the city's samples, Heartland has a consultant sample its wastestream twice per year as required by the General Pretreatment regulations. Heartland submits its sample results in its semi-annual compliance reports and includes a table of all of the city's samples for that period. The state correctly uses all sample results when determining the industry's compliance status for the six-month period.

Because Heartland is subject to the Metal Finishing Point Source Category, it has limits for TTO. As allowed by the standard, Heartland may certify compliance with TTO since it has developed a solvent management plan. Heartland provides this TTO certification with all of its semi-annual reports; however, **it does not provide the overall certification statement required by the General Pretreatment Regulations.** They must be required to modify their semi-annual compliance report to include this certification statement.

Heartland was inspected by MDNR on 4/16/09 but the report was not transmitted to them until June 1, 16 days outside the 30 day period of the SRF. Heartland was found to be in compliance at the time of the inspection; however, it was noted that a few months earlier Heartland had experienced some isolated zinc violations. These violations had been reported to MDNR earlier together with the steps Heartland had taken to correct the violations. Hence, no enforcement was warranted.

#### Sullivan Precision Metal Finishing, Sullivan, Missouri

Sullivan Precision Metal Finishing performs chromate conversion coating and anodizing on aluminum and titanium aircraft parts. These operations are regulated by the 40 CFR Part 433 Metal Finishing Regulations. Waste streams are pretreated prior to discharge. Chromium is first reduced from hexavalent to trivalent and then precipitated and clarified.

Sullivan Precision Metal Finishing samples and reports twice per year, as required by the General Pretreatment Regulations. To demonstrate compliance with its TTO limits, the industry has been submitting a certification statement. The facility also submits an overall certification statement covering its sample results; however, it does not quite meet the regulatory requirements, as explained below.

MDNR inspected the industry on 6/16/09 and found the facility to be operating in compliance. The inspection report was transmitted six days later on 6/22/09. However, on the inspection checklist, the state indicated that Sullivan Precision Metal Finishing did not have a solvent management plan. This is a requirement that allows for them to use certification rather than sampling to show compliance with TTO requirements. It is possible that the industry developed the plan years ago and the current staff are not familiar with it. If so, it would be advisable that a new solvent management plan be developed.

On 2/17/10, MDNR approved the City of Sullivan to implement a local Pretreatment program. Hence, the state is no longer the control authority for Sullivan Precision Metal Finishing. **The city should be informed of the inadequate certification statement submitted by the industry as well as the need to update or develop a solvent management plan.**

#### Gates Rubber Company, Charleston, Missouri

Gates Rubber Company is subject to the 40 CFR Part 428 Rubber Manufacturing standards because it manufactures rubber hose. As required by the General Pretreatment Regulations, Gates samples and reports every six months. A review of the file indicated that the semiannual report covering the last half of calendar year 2009 (which would include three months of FFY 2009) was not present. A table prepared by MDNR showed that the report had been received late but that the discharge limits in the report had been met. All other reports due or covering the time frame of FFY 2009 had been received on time and the reports showed compliance with standards. Like all other reports reviewed from industries located in cities without Pretreatment programs, **Gates is not submitting a certification statement as required by the General Pretreatment Regulations.**

MDNR inspected Gates early in the fiscal year on 10/9/08. The inspection checklist indicated that Gates was operating in compliance with its standards. A copy of the report was transmitted to Gates on 11/4/08 within the 30 day turn-around period.

#### Parker Hannifin, Kennett, Missouri

Parker Hannifin manufactures automotive and air conditioning rubber hose. As such, it is subject to the 40 CFR Part 428 Rubber Manufacturing Point Source Category. As required by the General Pretreatment Regulations, it must sample and report once every six months. For FFY 2009 both reports were submitted and both indicated full compliance with the Categorical limits.

A review of the facility's reports found a certification statement is submitted with each report. However, it does not meet the requirements of the General Pretreatment Regulations, which provides a specific statement that must be used verbatim. Parker Hannifin will need to be instructed to modify their certification statement to conform to the regulation.

The industry was inspected on 6/2/09 and the inspection report was transmitted to the facility on June 23, well within the thirty day turn-around period. The state used an industrial user checklist that covers all elements of the SRF.

Because the facility was found to be in compliance during the inspection and because it met its discharge limits in the semi-annual compliance reports, there was no need for enforcement action.

#### Copeland Corporation

This facility was found to have an EPA-only inspection during FFY 2009 and was therefore not reviewed for state performance.

#### *Pretreatment – Cities with Approved Programs*

#### Neosho

The state performed a Pretreatment Compliance Inspection (PCI) of Neosho on 2/4/09 and transmitted the report in only five days, on 2/9/09. Overall, the PCI checklist was complete with the exception of the compliance status determination for each of the facilities. This information, however, was available in the annual report submitted for calendar year 2008 (the time period covered by the PCI).

The calendar year 2008 annual report contained some conflicting information that was not resolved in the PCI checklist or report. The annual report stated that two of its industries, Golden Oval Egg and MoArk Productions, were published in the newspaper for being in Significant Noncompliance (SNC); however, the table of compliance status determinations for the Significant Industrial Users (SIUs) shows these two industries in Infrequent Noncompliance. This does not mean the city is failing to implement its Pretreatment program, but it does indicate that some additional training may be needed on program requirements.

#### Warrensburg

This city was found to have an EPA-only inspection during FFY 2009 and was therefore not reviewed for state performance.

#### Chillicothe

The state performed a PCI of the Chillicothe approved Pretreatment program on 4/22/09. The Report was completed and transmitted to the facility on 6/3/09, 12 days outside the 30 day

window used as the benchmark. The PCI found the Chillicothe program to be running well. All program elements that EPA considers essential to a properly implemented program were being met. Chillicothe has two SIUs, both of which were in 100% compliance for the period covered by the PCI.

### Cuba

Cuba is one of the most recent cities to obtain an approved Pretreatment program, having received approval on 2/13/08. In May 2009 MDNR assisted Cuba with SIU inspections as a form of training. On 9/16/09 MDNR returned to Cuba and performed a Pretreatment audit that evaluated the city's implementation activities. The audit report was finalized and transmitted to Cuba on 9/29/09, well within the 30 day turn-around period.

From documentation in the file, it appears that the city's NPDES permit was modified on 6/5/09, requiring the implementation of the city's approved Pretreatment program.

The Pretreatment audit report was reviewed to determine if Cuba was properly implementing its Pretreatment program. One of the most important pieces of information needed is to know the compliance status of each industrial user and, if noncompliant, what enforcement the city has taken to return the facility to compliance. **The audit report did not contain an inventory of SIUs** (other sources in the file indicated there are 8 SIUs), so no compliance status was presented. As a consequence, it could not be determined from the documentation in the file the level of performance of the city implementing its Pretreatment program.

### Poplar Bluff

Poplar Bluff's Pretreatment program was approved 6/15/07. According to PCS, no Pretreatment audits or PCIs have been conducted; however, found in the state's file for the city was documentation of an audit that appears to have occurred on 1/9/09. There was no record the audit was ever completed or transmitted to the facility.

Beginning on 4/3/09 another Pretreatment audit was started but not completed. The state returned to Poplar Bluff on 8/5/09 to complete the fieldwork. The report was transmitted on 8/20/09, well within the 30 day turn-around window. The transmittal letter acknowledged that the city had made progress with implementation but noted that additional work needed to be done. However, the elements that the city had yet to implement are those that EPA considers critical to program implementation, and failure to conduct these activities constitutes SNC. **Specifically, the city for over two years had still not issued permits to all three of its industrial users, nor had they begun conducting inspections of its SIUs.** The audit checklist, while vague, also indicates that the city may not even be sampling its industries to determine compliance with permit limits and Categorical standards.

From the audit checklist, it does not appear that the state has modified Poplar Bluff's NPDES permit to require program implementation. This needs to be done as soon as practicable. Moreover, **Poplar Bluff needs to be considered in SNC and the appropriate enforcement taken** to bring the city into compliance with implementation of the Pretreatment regulations.

### Joplin

This city was found to have an EPA-only inspection during FFY 2009 and was therefore not reviewed for state performance.

## **2. Concentrated Animal Feeding Operations (CAFOs)**

### Rick L. McVicker (MO010548)

This file was selected as a representative facility that received an enforcement action during the FFY 2009 review period. MDNR initially investigated this facility on 8/18/08 after a complaint was received by the Northeast Regional Office (NERO). The complaint indicated that the facility was spreading waste onto a State Highway from a Center Pivot. An LOW was issued on 9/17/2008. MDNR conducted another inspection at this facility on 9/28/2008 following another complaint. The investigation revealed that swine effluent was running out of a cornfield and into a nearby river. An NOV was issued on 10/21/2008. These actions culminated in a Settlement Agreement being signed by MDNR on 11/3/2009.

The first inspection/investigation was completed on 8/18/2008 with an LOW being issued on 9/17/2009. This took approximately 29 days and was within MDNR's allowable timeframe for using CC&P (i.e. 90 days). The inspection report did not include the CAFO and AFO Checklist, most likely because this was considered a complaint investigation. No Photos were in the report. The report did provide an explanatory narrative which described activities that took place during the investigation. Format of the report was as follows: Introduction, Operation Description, Findings/Observations, Compliance Determination, Unsatisfactory Features, and Recommendations. According to file information, no response was received from the facility in response to the LOW as requested.

The second inspection/investigation was completed on 9/28/2008 with an NOV issued to the facility on 10/21/2008. This took approximately 23 days and is within MDNR's allowable timeframe (i.e. 90 days). This investigation did not include the CAFO and AFO Checklists, most likely because this was considered a complaint investigation. Photos were included in this report. The report did provide an extensive write-up describing activities and sample results.

On 10/21/08, NERO referred this case to the WPCB for follow-up enforcement action. From approximately January 2009 to June 2009, MDNR attempted to negotiate an out-of-court settlement for past violations. On September 2, 2009, the Missouri Clean Water Commission referred this matter to the Missouri Attorney General's Office. Ultimately a SA was signed by MDNR on 11/3/2009.

**Overall thoughts/ Summary:** The LOW and NOV were issued efficiently and based upon thorough investigative work. From the file information it appears that MDNR started out with a \$12,000 civil penalty, which was negotiated down to \$3,000. EPA could not locate any documentation in the file that justified this decrease (i.e. no ability-to-pay determination). File information indicates that the facility also paid \$826 for state investigative costs. EPA could not locate any information indicating that economic benefit was calculated. This case took about 1 year from the time the case was referred to the WPCB to MDNR signing an SA.

### Focal Dairies (MOG010629)

This file was selected as a representative facility that received both an inspection and enforcement action during the FFY 2009 review period. MDNR initially investigated this facility on 1/3/07. The facility is a dairy operation with approximately 3000 cows. There was an extensive history of compliance issues. 5 NOV's were issued to this facility, including 4 in the Spring of 2007 and 1 in the Spring of 2008. This culminated in a Settlement Agreement (SA) being signed by MDNR on 3/13/2009. It appears that most if not all the work required under the SA was completed.

The first inspection report reviewed was dated 1/19/2007 and documented the investigation of complaint occurring 1/3/2007. This inspection was a sampling CAFO inspection that included the CAFO and AFO Checklist. No Photos were included with this report. The report did not contain all the components on EPA's NPDES Inspection File Evaluation

Checklist. The report did provide an explanatory narrative that gave a good description of field activities. The format of this report had 3 major sections: Introduction, Unsatisfactory Features, and comments. Inclusion of photos and an aerial photograph would assist the reviewer in better understanding the facility. Also, there were 13 “U”s and/or “M”s listed in the checklist. It would be helpful to explain in the text or comment section each “U” or “M” that is listed in the checklist. Some explanation was provided, but more would be helpful. **The report noted that an NOV was issued to this facility for an apparent discharge; however, the 1/19/2007 inspection determined the facility to be “in compliance”. These statements seem to be incongruent.** The inspection was completed on 1/3/2007 and transmitted to the facility (along with an NOV) on 1/19/2007. This was a timely turn-around (i.e. 16 days).

The second inspection reviewed was dated 6/26/2009. This inspection was a non-sampling CAFO inspection that included the CAFO and AFO Checklist. One of the main reasons for this inspection was to check the facility’s compliance with the SA. Photos were included with this inspection. The report did not contain all the components on EPA’s NPDES Inspection File Evaluation Checklist. The report did provide a narrative description of the field activities. The format for this report has 4 major sections: Introduction, Unsatisfactory Features, Comments, and Comments regarding Settlement Agreement. This report did a good job explaining issues found in the checklist in the comment section. EPA suggests that an aerial photo would be helpful. This inspection was completed on 6/10/2009 and transmitted to the facility on 6/26/2009. This was a timely turn-around (i.e. 16 days).

In regard to the enforcement aspects of this case, the 1/3/2007 complaint investigation initiated a series of follow-up activities by MDNR. The 1/3/2007 complaint investigation centered on a broken cable on 2 irrigation units which caused wastewater to be over applied in one area. Sampling showed a discharge had occurred. NOV number 11864 was issued to this facility on 1/19/2007. In total, 4 NOVs were issued to this facility in the Spring of 2007 for various violations.

An MDNR timeline located in the file shows an entry of 4/27/07 in which MDNR received correspondence from the facility explaining the specific measures that have been implemented and it included a timeline.

On 4/27/2007 the Southwest Regional Office referred this case to the Water Protection Program in Jefferson City for follow-up enforcement.

Another NOV was issued to the facility on 3/12/2008 for allegedly discharging from the land application area. MDNR and Missouri Department of Conservation staff observed dead fish.

**Within approximately a 97-day period in the Spring of 2007, MDNR issued 4 NOVs to this facility.** The complaint investigations were completed timely and the NOVs were issued in a timely manner; however it doesn’t appear that the problems at this facility were addressed by the issuance of these NOVs. Another discharge occurred in the Spring of 2008. An NOV was also issued at this time.

On 8/23/07 MDNR sent a certified letter to Focal Dairies attempting to settle the violations, offering to resolve these violations through an out-of-court settlement agreement and payment of a civil penalty. In a document dated 4/4/08, MDNR prepares a document which recommends the Missouri Clean Water Commission request the Missouri Attorney General to institute appropriate legal action against the facility.

An MDNR document dated 6/1/08 indicates that a tentative agreement has been reached between MDNR and the facility, which culminated in the final SA being signed 3/13/09.

**Overall Thoughts/Summary:** The NOVs were issued to the facility in a timely manner and based upon thorough and timely investigative work. MDNR may want to consider referring

this type of facility earlier to the Water Protection Program (after the first or second NOV and/or documented fish kills). EPA could not locate information where any economic benefit has been calculated. The state should provide justification in the file why the original penalty was reduced.

The other concerning issue is that the facility (despite having been issued 4 NOVs and being engaged in ongoing settlement negotiations with MDNR) was issued another NOV in March 2008 for similar infractions (land application issues). EPA questions whether another enforcement route could have been taken earlier that would have put this facility on more formal notice that discharges would result in severe ramifications, and whether there is a way to make the SA negotiation process move along faster. Only after the SA was signed, was the facility formally on a compliance schedule.

#### Honse Farm (MOG010160)

This file was selected as a representative facility that received both an inspection and informal enforcement action during the FFY 2009 review period. The specific inspection occurred on 7/9/2009 and subsequent LOW was issued on 7/14/2009 (i.e. 5 days later). A response was received from the facility on 7/31/2009. This inspection was a non-sampling CAFO inspection that included the CAFO and AFO Checklist. The format was as follows: Introduction, Participants, Deficiencies and Recommendations, and Conclusions. Overall this was a good write-up. The inspector made good use of photos and aerial photography. This helps the reviewer understand more completely the nature of this operation. EPA recommends adding a brief summary of facility operations, current CAFO status, and compliance history. Also, the inspector should add receiving tributary information to the narrative or checklist. The inspection led to the regional office issuing an LOW to the facility. The LOW was appropriate and timely. The LOW was issued on 7/14/2009. The Southeast Regional Office received a response from the facility on 7/31/2009 indicating that violations had been addressed. MDNR sent back a letter to the facility acknowledging the response on 8/5/2009. The total time from inspection to issuance of LOW to field office receiving a response back from facility (7/31/2009) was 22 days.

#### 2-M Farms (MOG010499)

This file was selected as a representative facility that received both an inspection and informal enforcement action during the FFY 2009 review period. The specific inspection occurred on 2/3/2009 and a subsequent LOW was issued on 3/10/2009 (i.e. 35 days later). This inspection was the result of a complaint received on 1/30/2009. This inspection was a non-sampling CAFO inspection that included the CAFO and AFO Checklist. Format consisted of the following: Operational Description/History, Discussion of Inspections and Observations, Compliance Determination, Compliance Issues, and Recommendations. Overall this was an excellent inspection report. This write-up thoroughly tied back violations found to the requirements of the permit. EPA suggests including aerial photos of the facility as well as adding CAFO status and compliance history. The inspector should also add receiving tributary information to the narrative. The inspection led to the regional office issuing an LOW to the facility. The LOW was appropriate and timely and was issued on 3/10/2009. The field office received a response from the facility on 3/31/2009 indicating that violations had been addressed. The total time from initial complaint (1/30/2009) to issuance of LOW to field office receiving a response back from facility (3/31/2009) was approximately 60 days.

#### Lincoln County Egg Farm (MO0107026)

This file was selected as a representative facility that received an inspection during the FFY 2009 review period. The specific inspections occurred on 3/30/2009 and 12/29/2009. These inspections were CAFO inspections that included the CAFO and AFO Checklist. Samples were taken. Limited narrative was provided with these reports. No photos were included in these inspections. A total of 4 inspections were completed at this facility during the FFY 2009 review period because Lincoln County Egg Farm is a Class 1 A facility. With minor variations, the narrative was identical on all reports. Additional narrative would be helpful for the reviewer. Format for these reports included Facility Description, Findings, and Comments. Regarding the 12/29/2009 report, in the section on significance of findings #2, samples results were listed. However, a discussion regarding these results would be helpful, and comparing them to some benchmarks or expected parameters would make the write-up much more complete. The report does not explicitly state whether the results were within expected parameters. Also, in the section on Findings #3, the report should have included additional information about start pump levels or maximum levels to give some context to what these levels mean. It is not clear whether the results were from the top of lagoon down or how full the lagoon is. The 3/30/2009 report was transmitted to the facility on 5/15/2009 (i.e. 46 days). The 12/29/2009 inspection report was transmitted to the facility on 1/4/2010 (i.e. 6 days).

#### Rocky Cochran (MOG010186)

This file was selected as a representative facility that received an inspection during the FFY 2009 review period. The specific inspection occurred on 12/2/2008 and was the only inspection reviewed. This inspection was a non-sampling CAFO inspection that included the CAFO and AFO Checklist. No narrative was provided with this inspection, making it the only CAFO inspection report reviewed with no narrative. The facility was found to be in compliance. Two photos were provided with the checklist. The report did not contain all the components on EPA's NPDES Inspection File Evaluation Checklist. Narrative would make this inspection report much more complete. It is difficult for the reviewer to fully understand this facility with only the checklist and no narrative. The inspection was completed on 12/2/2008 and the report transmitted to the facility on 12/3/2008. This was completed in only one day.

#### Warren and Gary Oberdiek (MO010436)

This file was selected as a representative facility that received an inspection during the FFY 2009 review period. The specific inspection occurred on 2/2/2009 and was the only inspection reviewed. This inspection was a non-sampling CAFO inspection that included the CAFO and AFO Checklist. Receiving water/drainage information would be helpful information on this checklist. One photo was included with this inspection report. No violations were noted in the inspection report. The report did not contain all the components on EPA's NPDES Inspection File Evaluation Checklist. The report provided a good narrative write-up that included the following format: Introduction, Facility Description, Participants, Compliance, Observations, Recommendations, and Conclusion. The inspection was completed on 2/2/2009 and transmitted to the facility on 3/12/2009. This was completed in 38 days.

#### Rhino Farm (Chu Thao) (MOG010498)

This file was selected as a representative facility that received an inspection during the FFY 2009 review period. The specific inspection occurred on 2/23/2009 and was the only inspection reviewed. This inspection was a non-sampling CAFO inspection that included the Concentrated Animal Feeding Operations (CAFO) and Animal Feeding Operation (AFO) checklist. Photos were included with this inspection report. No violations were noted in the

inspection report. The report did not contain all the components on EPA's NPDES Inspection File Evaluation Checklist. Very little explanatory narrative was included in this report. More narrative would be helpful in the areas of field activities. Also a brief summary of facility operations, current CAFO status and compliance history would make the inspection report more complete. Receiving water information would also be helpful. The format of this report had four major sections: Introduction, Facility Description, Unsatisfactory Features, and Comments. The inspection was completed on 2/23/2009 and transmitted to the facility in a timely manner on 3/10/2009 (i.e. 16 days later).

### **3. Stormwater Permittees**

#### *Industrial Non-construction*

##### Natural Biodiesel Plant (MOR23A127)

This facility file was selected as a representative industrial stormwater enforcement file. On 9/30/07 MDNR received a complaint of a fish kill in Pemiscot County and on 10/13/07 MDNR and EPA emergency responders received notification of a milky discoloration in Bellefontaine Ditch. An investigation was conducted by MDNR and the EPA Region 7 Criminal Investigations Division into the fish kill and stream discoloration. MDNR performed an inspection of the Natural Biodiesel facility on 11/1/07. The inspection report was complete with the exception that it included only the date the inspection was performed, not the time. The inspection report is narrative in format and includes pictures. Sample results from the investigation that occurred in early October are included. The inspection was transmitted to the facility on 12/7/07, 36 days after the inspection. The report is covered by NOV 18415 SE. The violations cited in the NOV are based on the 11/1/07 inspection. On 12/12/07, the Southeast Regional Office sent a request for enforcement to the WPCB in the central office. On 12/3/08 MDNR conducted another inspection of the Natural Biodiesel facility and determined that the facility was in compliance with its permit. The inspection includes photos and the report is written in narrative format. The report is complete, except it includes the date of the inspection but not the time. The report was transmitted with a cover letter on 1/9/09, 37 days after the inspection.

On 12/10/08 the AG sent a letter to MDNR stating that the criminal matter had been resolved and MDNR can begin addressing its civil demands. Leading up to that announcement, there was an email from the AG's office to MDNR on 2/27/08 stating, that having concluded the criminal component of the case, EPA is fine with MDNR pursuing civil claims. On 4/23/08 MDNR sent Natural Biodiesel a letter stating that MDNR's request for enforcement will be heard by the Clean Water Commission in July 2008. The file includes three penalty calculations drafted on 1/18/08: one for violations discovered during the 11/1/07 inspection (\$8,000), one for unauthorized discharges (\$15,000), and one for the unpermitted land application and subsequent fish kill (\$48,000). MDNR also calculated economic benefit of \$38,000 for the avoided cost of transporting waste glycerin to an incinerator. Furthermore, MDNR calculated its costs in investigating the case and for the fish kill to be \$32,164.69. The entire penalty amount and costs were approved by MDNR management in an approval memo dated 4/8/08 but regarding the calculated economic benefit, management stated in its approval memo that, "This figure will not be directly sought after as a penalty, but will be used in the negotiations to ensure that an appropriate civil penalty is reached."

The AG presented an offer plus costs but Natural Biodiesel presented ability to pay information and the resulting settlement, memorialized in the settlement agreement, states Natural Biodiesel will “pay a civil penalty of Eighty-One Thousand, Eight Hundred Thirty-Five Dollars and 31/100 (\$81,835.31), of which Forty-Four Thousand Dollars and 00/100 (\$44,000.00) shall be suspended as described in paragraph 3 below. The remaining Thirty-Seven Thousand, Eight Hundred Thirty-Five Dollars and 31/100 (\$37,835.31) shall be paid simultaneously with Natural Biodiesel's execution of this Agreement.” The settlement agreement also has a provision for MDNR to be reimbursed for its costs in addition to the civil penalty. The settlement agreement is dated 9/21/09. A copy of the check for reimbursement of MDNR's costs was in the file, but EPA did not find a check for payment of the civil penalty.

#### Algiers Salvage, LLC (MOR60A194)

This industrial stormwater file was selected as a representative enforcement file. MDNR's file had a record of conversation to the site owner dated 1/22/09 stating that an inspection of the facility would occur on 1/26/09. MDNR's Northeast Regional Office (NERO) inspected the facility on 1/26/09 and discovered that the facility's industrial stormwater permit had expired and was not renewed and that land disturbance in excess of one acre was occurring on the site and Algiers had not applied for and received a land disturbance permit. The inspection report was in narrative form and was complete, even identifying the time the inspector inspected the site and including photos of the site. The report was covered by an LOW and transmitted to the facility owner on 2/9/09, 14 days after the inspection occurred.

On 2/23/09 MDNR issued an NOV to Algiers because no response to the 2/9/09 LOW had been received. On 3/30/09 NERO referred the matter to the WPCB for formal enforcement because Algiers did not respond to the NOV. A second inspection was conducted on 4/29/09 and was transmitted to the facility on 5/12/09 covered by an NOV. The transmittal occurred 14 days after the inspection. The inspection report was in narrative form and was complete with the exception of the time it occurred. The inspector found that the facility still needed an industrial stormwater permit and a land disturbance permit but was delinquent in obtaining both permits.

MDNR drafted a penalty calculation for \$3,000 on 4/15/09. On 5/1/09 MDNR sent a letter to Algiers to initiate negotiations to settle the matter and requested Algiers respond to MDNR telling them if they intend to negotiate. On 6/3/09 MDNR sent a letter to Algiers stating they must respond to the invitation to negotiate an out-of-court settlement of the matter. On 6/12/09 MDNR sent a letter stating they would allow Algiers 5 more days to respond to the invitation to negotiate a settlement. On 6/30/09 MDNR sent a letter to Algiers reminding them they need to respond to MDNR's offer to settle for a civil penalty in the amount of \$3,000 plus Algiers would have to apply for all necessary permits and pay all permit fees. On 8/12/09 MDNR sent a letter to Algiers stating that a request for referral to the AG would be heard by the Clean Water Commission on 8/12/09. On 10/28/09 MDNR sent a letter to the AG requesting appropriate action be initiated against Algiers. On 12/2/09 the AG sent a letter to Algiers stating the case could be settled for \$1,500 plus all permit fees. The AG decided on \$1,500 because Algiers had stated in a letter to MDNR that they could not afford \$3,000. More ability to pay information was exchanged and Algiers settled the case for a penalty of \$1,500 with \$500 suspended. The penalty would be paid in six installments, the first \$500 would be due with the fully executed SA, and five subsequent monthly payments of \$100 would be made. The fully executed SA is dated 2/2/10. The file had an LOW dated 2/28/10 and an NOV dated 3/6/10 for failure to pay all delinquent permit fees. There was a copy of a check in the file for the permit fees. There were no copies of checks for payment of the civil penalty.

#### MFA Bulk Retail Plant – Chamois (MOR240139)

This industrial stormwater file was selected as a representative enforcement file. On 8/25/09 MDNR NERO conducted an inspection of this facility. The inspection report was in narrative format and included photos of the facility. The report was complete with the exception of the time the inspection occurred. The inspection report was covered by an LOW and transmitted to the facility on 9/10/09, 16 days after the inspection. The LOW stated that the permittee did not have a backflow prevention device as required by the permit and must install one and respond to MDNR when the device had been installed. MDNR sent another letter to MFA on 10/30/09 saying that MFA must take appropriate action and respond to the LOW. On 10/30/09 MFA sent a letter to MDNR stating that a contractor had been hired and would install the backflow prevention device. On 11/18/09 MDNR sent a letter to MFA thanking them for taking corrective action and returning to compliance.

#### Trailer Corporation (MOR80C434 & MO0136166)

This facility file was selected as a representative inspection. MDNR conducted an inspection of this motor freight transportation facility on 5/26/09. The facility was covered by a general permit, MOR80C434. During the inspection, the inspector noticed that the facility's outfalls were less than 1,000 feet from what was thought to be a losing stream. Discharges less than 1,000 feet from a losing stream are ineligible for coverage under a general permit. The inspection report was in narrative format and included photos of the facility. The report was complete with the exception of the time the inspection occurred. The inspection report was covered by an LOW and transmitted to the facility on 6/8/09, 13 days after the inspection.

The LOW stated that the permittee's general permit had expired in October 2007, that the facility may not be eligible for a general permit, that the facility had never developed a SWPPP as required by the permit, that onsite BMPs were inadequate and needed improvement, and that storage of materials needed to be improved so that stormwater would not pick up pollutants from materials stored outside. The LOW required a response by 7/6/09 and also stated that MDNR would conduct a geohydrologic evaluation of the receiving waterbody and let Trailiner know if they needed to apply for an individual permit. On 6/25/09 Trailiner responded to the LOW and addressed all of the BMP and storage issues. On 7/16/09 MDNR notified Trailiner that they must complete forms A & C and apply for an individual permit since the receiving waterbody was a losing stream. On 8/6/09 Trailiner sent a letter to MDNR asking for help with two questions on Forms A & C. On 10/23/09 MDNR sent a letter to Trailiner advising the company that there remained two items on the application for the individual permit that had to be completed correctly. On 2/16/10 MDNR issued individual permit MO0136166 to Trailiner and terminated the general permit. The individual permit contains the requirement that a SWPPP be developed and implemented within 30 days of permit issuance.

#### Cargill Pork, LLC (MOR12A100)

This facility file was selected as a representative inspection. On 10/27/08 MDNR's Kansas City Regional Office conducted an inspection of this facility. The inspection report was in narrative format and was complete with the exception of the time the inspection occurred. The report was transmitted to the facility with a cover letter on 1/8/09, 73 days after the inspection occurred. This transmittal was more than a month overdue according to MDNR guidance. The cover letter and the narrative of the report include statements that on the day of the inspection the facility was in compliance with the requirements of its permit.

#### Canam Steel Corporation (MOR203296)

On 7/9/09 MDNR's Saint Louis Regional Office conducted an inspection of this facility. The inspection report was in narrative format and was complete, with the exception of the time the inspection occurred. The inspection report included a site map of the facility. The report was transmitted to the facility with a cover letter on 7/23/09, 14 days after the inspection occurred. Some language about the nature of deficiencies was vague. The recommendations section of the report noted that several of the outfall markers had been destroyed and should be replaced. This was noted as a minor deficiency and not as serious noncompliance with the permit.

#### Ray-Carroll Co. Grain Growers (MOR240413)

This facility file was selected as a representative inspection. On 4/2/09 MDNR NERO conducted an inspection at this facility at the request of the facility, because the facility was requesting termination of its permit due to cessation of operations at this location. The facility later realized it sent the letter in error because operations at this location were ongoing and the request was actually for termination of another facility that had its permit terminated already. Nevertheless, MDNR went to the facility and determined that the site was operational. The inspector did not review the site for compliance with the requirements of the permit. The file contains a cover memo dated 6/30/09, 89 days after the inspection that describes the error regarding facility operation status. It was not clear if the memo and report were transmitted to the facility and no compliance determination was made in the inspection report or memo. A WQIS sheet was in the file, however, and the facility was noted to be in compliance. MDNR had inspected the facility in FFY 2007 on 7/26/07 and the facility was determined to be in compliance with the requirements of its permit at that time.

#### *Construction Stormwater*

#### Branson Hills (MOR109T32 & MOR109T33)

This construction stormwater file was selected as a representative enforcement file. MDNR first inspected the site on 2/25/08. The inspection was complete with the exception of the time the inspection was performed and a site contact telephone number. The inspection report was in narrative format and included photos of the site. The inspection report was covered by an LOW and transmitted to the facility on 2/25/08, 3 days after the inspection. This meets the 10 day report transmittal requirement MDNR has for land disturbance inspections. On 3/11/08 MDNR sent NOV #12470SW to the facility because it determined that the deficiencies noted during the inspection (lack of BMPs, lack of stabilization over large areas, and stream impact) were too severe for an LOW. On 3/3/08 MDNR returned to the site to take samples of the discharge. All sample results exceeded the permit limit of 0.5/mg/L/hr of settleable solids. On 3/20/08 MDNR's Southwest Regional Office (SWRO) sent a request to Jefferson City to initiate formal enforcement against the site. On 5/16/08 MDNR sent a memo to Branson Hills summarizing the results of an informal site visit SWRO made on 4/30/08 to determine if sod that was supposed to be laid by no later than 4/9/08 had been installed. The site had agreed to lay sod over large areas in its response to the LOW/NOV. At the time of MDNR's 4/30/08 visit, only half of the sod had been laid.

On 6/9/08 MDNR calculated a penalty for violations at the site. There is a memo in the file titled "Branson Hills – Economic Benefit" that details the site's lack of installation and maintenance of BMPS and that silt fence is \$3.00/linear foot and the site is 1,200 acres, but there is **no calculation of a dollar amount for economic benefit**; therefore, it is unlikely that the

penalty of \$60,000 actually includes economic benefit. On 9/23/08, the MDNR Division of Environmental Quality approved the penalty in the amount of \$60,000.

On 10/2/08 MDNR met with the site owner and presented the state's case and told the Respondent they were seeking a penalty of \$60,000. On 10/24/08 Branson Hills sent an email to MDNR offering \$15,000 to settle. On 11/8/08 MDNR sent a letter to the site owner telling him that in the spirit of compromise, MDNR would accept a penalty of \$50,000 to settle the case. On 11/26/08 Branson Hills wrote to MDNR offering \$25,000 to settle. On 12/2/08 MDNR sent a letter to the site owner telling him that in the spirit of compromise, MDNR would accept a penalty of \$40,000 to settle the case. On 12/8/08 Branson Hills sent a letter to MDNR saying they would settle for \$40,000 if they could make 8 monthly payments of \$5,000. On 12/12/08 MDNR sent a letter to Branson Hills saying they would accept the penalty in 2 payments. On 12/13/08 Branson Hills sent MDNR an email accepting the terms of settlement.

On 1/12/09 MDNR inspected the site to determine if the site had achieved compliance. The inspection was complete with the exception of the time the inspection was performed and a site contact telephone number. The inspection was transmitted to the facility with a cover letter on 1/29/09, 17 days after the inspection. (Land disturbance inspection reports are supposed to be completed and transmitted to the facility within 10 days of the inspection). The cover letter and body of the narrative inspection report state that the facility had achieved compliance.

A fully executed Settlement Agreement (SA) detailing the terms of settlement and the \$40,000 penalty is dated 4/30/09. A memo in the file drafted by the case officer dated 4/14/10 requests closure of the case because the SA was fully executed, the site achieved compliance, and the penalty had been paid in full. The request to close the case was approved on 4/15/10. Copies of the checks in payment of the penalty were not in the file.

#### Castle Heights (MOR109Q88)

This construction stormwater file was selected as a representative enforcement file. MDNR initially inspected this land disturbance site on 5/25/07. The inspection was complete with the exception of the time the inspection was conducted. The report was in narrative format and included photos of the site. The inspection report was transmitted on 6/11/07 with an LOW. Transmittal of the report occurred 17 days after the inspection occurred. Land disturbance inspection reports are supposed to be completed and transmitted to the facility within 10 days of the inspection. MDNR received a complaint about the site on 8/23/07 and performed another site inspection on 9/6/07. An NOV was issued on 9/20/07. On 4/25/08 MDNR inspected the site again and transmitted the inspection report on 5/16/08 with an NOV. MDNR inspected the site again on 9/4/08 and issued an NOV on 9/17/08 which accompanied transmittal of the inspection report.

On 11/6/08 SLRO sent a memo to Jefferson City requesting formal enforcement be initiated against the permit holder. On 12/8/08 MDNR calculated a penalty of \$30,000. On 1/9/09, the Water Protection Program sent a memo to the Division of Environmental Quality requesting approval of the calculated penalty. On 1/15/09 MDNR sent a letter to the permit holder, Mr. Mathis, informing him that MDNR was initiating formal enforcement and inviting him to negotiate an out of court settlement. On 4/3/09 MDNR sent Mr. Mathis another letter stating that MDNR needs a response to their offer to negotiate a settlement of the matter.

On 4/27/09 MDNR inspected the site again. The inspection is complete with the exception of the time the inspection was conducted. The inspection report is in narrative format and includes photos. The inspection was not transmitted to the site owner/permit holder. Narrative in the report states that the inspection was conducted to determine the compliance status of the site since there was ongoing formal enforcement. The site was found to be in

compliance as stated in the body of the report and the memo to file dated 6/5/09, 39 days after the inspection occurred. This report was not transmitted in a timely manner.

On 4/29/09 MDNR sent Mr. Hunzeker a letter inviting him to also enter negotiations to settle the matter because MDNR discovered he is a partner/owner of the site. On 6/17/09 MDNR sent notice to Messrs. Mathis and Hunzeker that MDNR's request for enforcement in this matter by the AG would be heard by the Clean Water Commission on 7/1/09. On 8/24/09 the AG sent letters to Messrs. Mathis and Hunzeker seeking a penalty in the matter of \$40,000. On 10/3/09 MDNR offered to settle its claims against Mr. Hunzeker for \$10,000, \$5,000 of which would be suspended if the site was in compliance for 2 years. On 10/30/09 Mr. Hunzeker's attorney agreed to settle for \$7,500, \$5,000 of which would be suspended. On 11/30/09 the AG agreed to settle the matter for \$10,000, \$7,500 to be suspended. A fully executed settlement agreement memorializes the terms of the agreement and is dated 1/20/10.

A motion dated 2/2/10 presents the AG's motion for default judgment against Mr. Mathis. A 3/9/10 email from the AG to MDNR informs MDNR that Mr. Mathis got the hearing extended until 4/30/10 and that the AG informed Mr. Mathis that the most prudent thing for him to do would be to make a reasonable offer to settle the matter since a penalty of \$30,000 would be considered at the hearing. The AG told Mr. Mathis he could provide 5 years of tax returns if he wanted to substantiate his claim that he cannot afford the full penalty. A memo from the AG to MDNR dated 3/31/10 states that the AG's office reviewed Mr. Mathis' tax documents and recommends that MDNR seek a penalty of \$20,000 with \$10,000 suspended. An email dated 3/31/10 from MDNR to the AG's office approves settlement as proposed by the AG. On 3/31/10 the AG offered settlement for \$20,000 with \$10,000 suspended to Mr. Mathis. There are no more recent documents in the file.

#### Gravois Bluffs Estates (MOR10A196)

This construction stormwater file was selected as a representative enforcement file. On 2/11/09 MDNR received a complaint and pictures from a citizen complaining about runoff from the site. On 2/27/09 MDNR conducted an inspection at the site. The inspection was complete with the exception of the time the inspection was performed. The inspection report was in narrative format and included photos of the site. The inspection report was covered by an NOV and transmitted to the facility on 3/13/09, 14 days after the inspection. This exceeds MDNR's 10-day report transmittal requirement for land disturbance inspections. On 4/17/09 MDNR received another complaint about site conditions. MDNR conducted another inspection on 6/2/09 and transmitted the inspection report covered by another NOV on 6/22/09. MDNR conducted another inspection on 9/16/09. The inspection was complete with the exception of the time the inspection was performed. The inspection report was in narrative format. The inspection report was covered by an LOW and transmitted to the facility on 10/5/09, 19 days after the inspection. This exceeds MDNR's 10-day report transmittal requirement for land disturbance inspections. MDNR conducted a follow-up inspection to determine progress made improving BMPs on the site on 11/4/09. MDNR noted that several BMPs were still missing, contrary to the actions the site owner said would be taken in response to the 10/5/09 LOW. In fact, there is correspondence and notes in the file from April 2009, May 2009, October 2009, and February 2010 from the site representative stating actions that were being taken to address deficiencies observed during MDNR's inspections. On 1/21/10 MDNR conducted another inspection of the site and transmitted the report on 2/3/10 covered by an NOV. On 2/8/10 MDNR SLRO sent a memo to Jefferson City requesting that formal enforcement be initiated against the site. A note in the file dated 4/15/10 stated that formal enforcement was about to begin.

### East Route B Property (MOR10C493)

This construction stormwater file was selected as a representative inspection. On 7/29/09 MDNR NERO conducted an inspection of this site. The report states it was a “routine inspection.” Advance notice of the inspection was provided to the facility “to ensure timely access.” The inspection was complete with the exception of the time the inspection was performed. The inspection report was in narrative format and states that land disturbance had not yet begun at the site because the site owner was waiting for 404 approvals. The facility was determined to be in compliance since land disturbance had not yet begun. A WQIS data sheet also states that the facility was found to be in compliance. The inspection and a cover letter were transmitted to the facility on 8/18/09, 20 days after the inspection. Because land disturbance inspection reports are supposed to be completed and transmitted to the facility within ten days of the inspection, this was not a timely turn-around.

### Raymore Recreational (MOR109CZ7)

This construction stormwater file was selected as a representative inspection. On 6/5/09 MDNR KCRO inspected this land disturbance site. The inspection was complete with the exception of the time the inspection was performed. The inspection report was in narrative format and there was also a 5-page completed land disturbance checklist. The inspection report states that this was a follow-up inspection but there were no other inspection reports in the file. The inspection also states that an Environmental Assistance Visit (EAV) had been conducted at this site but there is no documentation of this. It is possible that the EAV is the “other inspection” noted in the report from the 6/5/09 inspection. The site was found to be in compliance with the requirements of its permit and there is a comment in the report that all issues noted during the EAV were fixed. The report was transmitted to the permittee with a cover letter dated 6/26/09, 21 days after the inspection. This exceeds MDNR’s 10-day turn-around time for land disturbance inspection reports. There is also a note in the file that the concerned party and City of Raymore were informed of the results of the inspection.

### Stewart Brothers Construction (MOR109BR3)

This construction stormwater file was selected as a representative inspection. The inspection was conducted in response to a complaint. The site was inspected by the MDNR Southeast Regional Office’s satellite office in Howell County on 2/9/09. The inspection was complete with the exception of the time the inspection was performed and a phone number for a site contact. The inspection report was in narrative format and included photos of the site. The inspection report was transmitted to the facility with a cover letter on 2/25/09, 16 days after the inspection, thus exceeding MDNR’s 10-day turn-around time for land disturbance inspection reports. The cover letter states that the site owner should “review and correct any deficiencies noted.” The WQIS data sheet states that the site was found to be in compliance and no follow-up is forthcoming. However, the facility was not in compliance and a different determination should have been made by the inspector. The inspection report details deficiencies at the site. The deficiencies include inadequate BMPs along the site border with Highway 63 and recommended that BMPs be installed at that location. The inspection report states that the site entrance is inadequate and suggests that the entrance be improved to prevent track-out. The inspection report also states that no site inspections had been performed by the permit holder and that these must be conducted at the frequency required by the permit. **The determination that this site was in compliance was in error and this site should have received an LOW or NOV along with transmittal of the inspection report.**

## *Municipal Separate Storm Sewer Systems (MS4s)*

### Holt's Summit, Phase II MS4 (MOR040064)

This MS4 file was selected as a representative enforcement file. On 6/9/09 MDNR NERO conducted an inspection (audit) of the city's Phase II MS4 program. The inspection report was covered by an LOW and transmitted to the facility on 6/30/09, 21 days after the inspection. The LOW stated that the inspection revealed some unsatisfactory features. The LOW also provided recommendations and required a response to NERO by 7/21/09. A letter to MDNR from the City dated 7/21/09 requested an extension for submittal of the response to the LOW until 7/28/09. A letter from an attorney for the City dated 7/31/09 requested a further extension for submittal of the response until 8/4/09. A memo in the file dated 1/27/10 from the inspector to the file states that on 9/21/09, **the Water Protection Program directed regional offices to withhold any additional actions concerning MS4s until further direction was provided by WPP.** The memo goes on to state that accordingly, NERO will not take further action regarding the LOW it issued on 6/30/09 until further guidance is provided. This is the most recent document in the file and a response from the city regarding the deficiencies noted during the inspection has not yet been received.

### City of Jackson, Phase II MS4 (MOR040073)

This MS4 file was selected as a representative inspection. Jackson was inspected by MDNR SERO on 6/12/09. The inspection was transmitted with a cover letter on 6/30/09, 18 days after the inspection. The inspection report was complete with the exception of the time the inspection was conducted. The inspection report consists of a checklist, list of questions, and a narrative report. The Stormwater Management Plan and most recent annual report were reviewed by the inspector prior to his conducting the inspection. These documents were present in the file. The inspection report and cover letter state that the city was found to be in compliance with its MS4 permit and furthermore, that the city was on its way to being a model to other Phase II MS4s.

The findings of the inspection are at odds with this conclusion. The city had not passed an ordinance for illicit discharge detection and elimination. Obtaining legal authority to run a comprehensive program is a fundamental requirement of the program and was required to have been achieved by 3/8/09 when the first general permit expired. The inspector also found that the city's pollution prevention and good housekeeping (municipal operations) program component was lacking along with other more minor findings and suggestions. **The finding that the city was in compliance with its permit was in error and the inspection report should have been transmitted with an LOW or NOV that required the city to come into compliance with its permit.**

## **4. Facilities Reviewed for Potential Concerns under Particular Data Metrics**

EPA developed the questions that follow in advance of the on-site program review and answered them as thoroughly as possible while reviewing facility files.

### Sedalia Central WWTP (MO0023019)

Metrics 1b2, 1b3

Q: Are the missing DMRs in the facility file? If so, did the state enter them late?

A: All of the DMRs were in the file, although PCS shows DMR non-receipts for the months of May, June and July of 2009 for the parameters of Dissolved Oxygen, PH, Total Suspended Solids, Oil & Grease, CBOD5 / NH3-N, Ammonia, Zinc, Lead, Carbonaceous Biochemical Oxygen Demand, and Copper. Some of the parameters have more than one monitoring location and the DMRs are not getting to PCS for the required monitoring locations.

Metric 1b4

Q: Why did the state override the RNC/SNC flag (e.g. was it legitimate), and for what reason was the facility in RNC/SNC?

A: PCS continues to show DMR non-receipts for May, June and July and **it was not appropriate for the state to override the RNC/SNC flag.**

#### Mississippi Lime Company (MO0106852)

Metrics 1b2, 1b3

Q: Are the missing DMRs in the facility file? If so, did the state enter them late?

A: Only 1 of 12 DMRs (months) was late, i.e., July '09 (4<sup>th</sup> Quarter).

Metric 1b4

Q: Why did the state override the RNC/SNC flag (e.g. was it legitimate), and for what reason was the facility in RNC/SNC?

A: The state overrode the RNC/SNC flag to correct the D generated by PCS when the DMR was not entered in PCS on time and SNC was calculated, thereby applying the D for the quarter. **It was not appropriate for the state to perform manual overrides** as PCS continues to show missing DMR data for the months of January, May, June and July of 2009.

Metric 7d

Q: Are these violations exclusively the fault of the facility, or is the state not entering DMRs appropriately or timely?

A: DMRs are missing from PCS but not from the facility file.

Metric 10a

Q: What are the circumstances surrounding the underlying SNC violation(s) and the state's lack of enforcement response?

A: The only legitimate DMR non-receipt was July '09, when a DMR was just slightly late. The cause of the other non-receipts in the prior three FFY 2009 quarters is unclear.

#### Mexico WWTP (MO0036242)

Metric 1b1

Q: Why were active limits absent? Consider how recently the permit was renewed.

A: The permit was reissued October 9, 2009 and PCS reflects the final limits with a final limit start date of October 9, 2009, but **there are seasons not accurately reflected in PCS**. For example, the parameter BOD is scheduled to report for June 1 thru September 30 and October 1 thru May 31, but the month of May is not appearing in PCS as a month PCS will accept DMR data for that parameter.

Metric 1b4

Q: Why did the state override the RNC/SNC flag (e.g. was it legitimate), and for what reason was the facility in RNC/SNC?

A: Fourth quarter 2009 shows there was a manual override. The state should not have entered a manual override for this quarter, as there is no DMR data currently in PCS. The file contained all of the DMRs in the file with the exceptions of October '08 and December '09, which are in the first quarter of 2010. EPA assumes the state overrode the RNC/SNC flag because the DMR data was submitted after the RNC/SNC status flag was generated at the facility level. **It was not appropriate for Missouri to perform a manual override in PCS because there is no DMR data currently in PCS for fiscal year 2009.**

Metric 7c

Q: Does PCS show an accurate status of permit schedule milestones? If marked violations are legitimate, did the state take appropriate action in response?

A: There is one pretreatment program submission that has not been received and which was due on March 31, 2009. This submission has not been received according to PCS and will continue to show non-compliance until the actual/received date is indicated in PCS.

Metric 7d

Q: Are these violations exclusively the fault of the facility, or is the state not entering DMRs appropriately or timely?

A: Most of the DMRs were on time, but unable to locate October of 2008 and December of 2009. The November 2009 DMR was not submitted until March 23, 2010.

As a side-note, this permit has an effective date of October 9, 2009 and an expiration date of October 8, 2014. There were interim limits taking effect upon issuance and remaining in effect three years at which time the final limits would become effective. PCS shows all the limits as final with no interim limits, but **interim limits need to be captured in PCS and final limits reflected at the appropriate time according to the terms and requirements of the permit.**

Metric 10a

Q: What are the circumstances surrounding the underlying SNC violation(s) and the state's lack of enforcement response?

A: DMR is missing from PCS despite that most of it is present in the file.

St. Clair WWTF (MO0099465)

Metrics 1b2, 1b3

Q: Are the missing DMRs in the facility file? If so, did the state enter them late?

A: All of the DMRs are in the file.

Metric 1b4

Q: Why did the state override the RNC/SNC flag (e.g. was it legitimate), and for what reason was the facility in RNC/SNC?

A: The state overrode the RNC/SNC flag as the DMR data was batched to PCS after the RNC/SNC status flag of D was calculated. There are three missing parameters for the month of September but there was a manual override. **All parameters with DMRs due should have all their DMR data for all of the months.**

Metric 7d

Q: Are these violations exclusively the fault of the facility, or is the state not entering DMRs appropriately or timely?

A: DMRs, which are in the file, do not appear to have been received late.

Metric 8a

Q: How did the state respond to any SNC violations that were legitimate?

A: MDNR responded to ammonia exceedances in October and November 2008 with an NOV.

Nixa WWTF (MO0028037)

Metrics 1b2, 1b3

Q: Are the missing DMRs in the facility file? If so, did the state enter them late?

A: There were no missing DMRs. All DMRs were in the file, including those for fourth quarter 2009.

Metric 1b4

Q: Why did the state override the RNC/SNC flag (e.g. was it legitimate), and for what reason was the facility in RNC/SNC?

A: The state overrode the RNC/SNC flag because PCS generated a D for DMR non-receipt. **The state was not correct in manually overriding the RNC/SNC flag with a C for compliance as none of the FY2009 DMR data was in PCS** at the time of review.

New Eagle Picher Tech, LLC (MO0002348)

Metrics 1b2, 1b3

Q: Are the missing DMRs in the facility file? If so, did the state enter them late?

A: The fourth-quarter DMRs were all received on time.

Metric 1b4

Q: Why did the state override the RNC/SNC flag (e.g. was it legitimate), and for what reason was the facility in RNC/SNC?

A: The facility was in RNC/SNC due to DMRs not being in PCS at the time RNC/SNC was calculated. There are several monitoring locations, and not all of the DMRs are getting into PCS for the correct monitoring locations and monitoring period end date. There are missing DMRs for May, June and July, and the **status flags should not have been manually overridden when the DMR data was not in PCS.**

Metric 7d

Q: Are these violations exclusively the fault of the facility, or is the state not entering DMRs appropriately or timely?

A: DMRs, which are in the file, do not appear to have been received late.

Metric 10a

Q: What are the circumstances surrounding the underlying SNC violation(s) and the state's lack of enforcement response?

A: **DMR data is not getting batched to PCS timely.** The state would not take enforcement for DMRs that have been received but were late getting batched to PCS.

MSD LeMay WWTP (MO0025151)

Metrics 1b2, 1b3

Q: Are the missing DMRs in the facility file? If so, did the state enter them late?

A: All of the DMRs were submitted on time and are in PCS. There is a fourth-quarter FFY 2009 compliance schedule reporting violation appearing in OTIS, but this report has been received in PCS. The status flag could be overridden to a C.

Metric 1b4

Q: Why did the state override the RNC/SNC flag (e.g. was it legitimate), and for what reason was the facility in RNC/SNC?

A: The state overrode the RNC/SNC flag because PCS generated a D for DMR non-receipt violations. After the D was generated in PCS, the DMR data was batched to PCS. All

2009 DMRs were received by the state on time; however, **it was not appropriate for the state to override the SNC flags, as DMR data is missing from PCS for the months of January, May, June, and July of 2009.**

Metric 7d

Q: Are these violations exclusively the fault of the facility, or is the state not entering DMRs appropriately or timely?

A: DMRs, which are in the file, do not appear to have been received late.

Metric 8a

Q: How did the state respond to any SNC violations that were legitimate?

A: SNC violations were due to DMR non-receipt despite that DMRs were present in the file.

#### Butler WWTP (MO0096229)

Metrics 1b2, 1b3

Q: Are the missing DMRs in the facility file? If so, did the state enter them late?

A: All four quarters of 2009 DMR data are in the file. **DMRs were received on time but none of the DMR data is in PCS.** PCS reflects the current limits with the current permit issued 02/11/2010 and an expiration date of 02/10/2015. It is likely that RNC/SNC tracking may not have been turned on during FFY 2009. This will be rectified during the state and EPA's cleanup of majors data.

#### Sullivan WWTF (MO0104736)

Metric 8a

Q: How did the state respond to any SNC violations that were legitimate?

A: For the first quarter of FFY 2009, PCS generated an E; second quarter has no SNC status flag; third quarter has an N; and fourth quarter has C. There are DMRs missing for July, and **the override was not appropriate.** MDNR did not respond appropriately to this missing data.

Metric 10a

Q: What are the circumstances surrounding the underlying SNC violation(s) and the state's lack of enforcement response? Did the state take any action to address noncompliance due to effluent violations?

A: MDNR does not have any record in its enforcement databases of response to the effluent violations that occurred in the first and second quarters of FFY 2009. **The state should have responded in some fashion to these exceedances.**

#### Montrose WWTF (MO0091723)

Metric 7c

Q: Does PCS show an accurate status of permit schedule milestones? If marked violations are legitimate, did the state take appropriate action in response?

A: Milestones that were violated extend beyond the expiration of the old permit, and neither the old 2003 permit nor the new 2008 permit include any provisions on infiltration reports. EPA cannot conclude whether these milestone exceedances are legitimate.

#### Caruthersville WWTF (MO0095028)

Metric 7c

Q: Does PCS show an accurate status of permit schedule milestones? If marked violations are legitimate, did the state take appropriate action in response?

A: A missing infiltration report shows a violation date in PCS of December 31, 2008. There is no received date in PCS indicating this report has been received. The infiltration report was not found in the file. **EPA concludes that the state did not receive this report and needs to follow-up with the facility.**

Note: The current permit was issued May 18, 2007 and will expire May 17, 2012. There were interim limits for the first three years and final limits would become effective. PCS shows final limits as of May 18, 2007 but no interim limits.

Fair Grove WWTF (MO0111708)

Metric 7c

Q: Does PCS show an accurate status of permit schedule milestones? If marked violations are legitimate, did the state take appropriate action in response?

A: PCS has not received a Sub-Final Engineering Report that was due on November 28, 2008, nor an Operating and Maintenance Report, which was due on January 28, 2009. There are previous compliance schedule deliverables that have not been received, which continue to show non-compliance for this facility (sludge monitoring report due 1/28/01; infiltration report due on 1/29/01; infiltration report due on 7/29/01; sludge monitoring report due on 1/28/02; infiltration report due on 1/29/02; infiltration report due on 7/29/02). **These compliance schedules need to contain a received date in PCS,** otherwise PCS will continue to show ongoing violations for these compliance schedules. EPA located sludge monitoring reports in the file for calendar years 2007, 2006, and 2004, but did not find reports for 2001, 2002, 2003, or 2005 in the file. It is possible that these older file components were not transported to the central office for review. Based on what EPA was able to see in the files, however, it appears that the milestone dates not achieved in PCS correspond to deliverables not received by the state, at least for the more recent years.

**APPENDIX F**

**Metric 4a in Detail—Inspection Commitments Analysis**

| Permit Type  | Negotiated CMS Commitment for FY09 <sup>1</sup> | Accomplishment for FY09 <sup>2</sup> | Evaluation <sup>3</sup> | Initial Findings  |
|--|---|--------------------------------------|-------------------------|---|
| Majors   | 89  | 62                                   | Potential concern       | MDNR conducted 80 inspections at 62 unique facilities, which falls short of the CMS commitment for majors.  |
| Traditional minors                                       | 566   | 959                                  | Minor issue             | The state committed to inspecting 117 P.L. 92-500 minors (as expressed in the PPG Workplan), which are a subset of this category, but inspected 94 in FFY 2009.                       |
| Pretreatment Compliance Inspections                      | 16  | 39                                   | Appears acceptable      |   |
| Pretreatment industry inspections outside program cities | 5   | 24                                   | Appears acceptable      |   |
| CSOs at major municipals                                 | 2   | 5                                    | Appears acceptable      |   |
| SSOs   | 100   | 94                                   | Potential concern       | MDNR fell slightly short of its CMS commitment.   |
| MS4 Phase II audits and inspections                      | 6   | 4                                    | Potential concern       | This is the first year MDNR conducted any audits or inspections of Phase II MS4s. MDNR performed fewer than projected due to the level of effort found to be required for each.       |
| Stormwater - construction                                | 389   | 379                                  | Potential concern       | Large differences between the universe of facilities reported in the PPG workplan and in the CMS spreadsheet might result in an uncertain baseline against which to measure the goal. |
| Stormwater - industrial                                  | 183   | 141                                  | Potential concern       | Large differences between the universe of facilities reported in the PPG workplan and in the CMS spreadsheet might result in an uncertain baseline against which to measure the goal. |
| CAFOs – permitted, large & medium                        | 92  | 147                                  | Appears acceptable      | The state exceeded its commitment.  |

Notes:

- 1 Commitments for MDNR activities only, excluding EPA planned inspections that contribute to the overall CMS goals.
- 2 Actual inspections conducted were obtained from the state's PPG Workplan progress report for FFY 2009.
- 3 Evaluation criteria: **Minor Issue/Appears Acceptable** – No EPA recommendation required. **Potential Concern** – Not a significant issue. Issues that the state may be able to correct without specific recommendation. May require additional analysis. **Significant Issue** – File review shows a pattern that indicates a significant problem. Will require an EPA Recommendation.

APPENDIX G

**Metric 4b in Detail—Accomplishments Pursuant to State Commitments**

| <b>Metric 4b</b>                | Delineate the NPDES compliance and enforcement commitments for the FY under review. This should include commitments in PPAs, PPGs, grant agreements, MOAs, or other relevant agreements. The compliance and enforcement commitments should be delineated. Incorporate by reference any independent regional assessment of state performance against commitments for the review year. Where an independent assessment has not previously been performed by the Region, delineate the commitments for the FFY under review and describe what was accomplished. This should include commitments in PPAs, PPGs, grant agreements, MOAs, or other relevant agreements. The commitments should be broken out and identified. The types of commitments to include would be for inspections, pretreatment reviews, DMR entry, compliance data entry, follow-up on SRF recommendations, etc. Information on accomplishments may be found in databases, official correspondence between the state and EPA, and submission of deliverables. |  |                                    |                    |   |
|---------------------------------|--|--|------------------------------------|--------------------|---|
| <b>PPG Workplan paragraph #</b> | <b>State Commitment</b>  | <b>Accomplishments</b>   | <b>Data Source</b>                 | <b>Evaluation*</b> | <b>Initial Findings</b>   |
| 23                              | Maintain accurate data in PCS.   | MDNR maintained data in WQIS in FFY 2009 but did not consistently maintain accurate and complete data in PCS.  | PCS                                | Significant Issue  | Problems with completeness and accuracy of data are described in the findings and recommendations for Metric 1; See Part IV of the report, Findings 1-1, 1-2, and 1-3.                            |
| 24                              | Provide ANCRs and QNCRs; update the Watch List.  | MDNR completed these reports and submitted them to EPA, but all 4 QNCRs for FFY 2009 were submitted late.  | EPA correspondence file            | Potential Concern  | Only 1 of the 4 QNCRs for FFY 2008 was received within 90 days following the end of the applicable quarter. Therefore, 3 of the 4 QNCRs were not submitted in accordance with the PPG commitment. |
| 25                              | Coordinate with EPA on the transition from PCS to ICIS-NPDES.  | EPA and MDNR cooperated in creating a draft PCS data plan for maintaining PCS until the state begins batching data to ICIS-NPDES.                                      | EPA correspondence file            | Appears Acceptable | EPA will provide assistance to MDNR in maintaining PCS data until the state begins batching to ICIS-NPDES. This assistance strategy is described in the draft PCS data plan.                      |
| 2                               | Pursue appropriate enforcement action in accordance with EPA's 60/90-day policy.   | MDNR issued 77 formal and 648 informal enforcement actions in FFY 2009.  | WQIS                               | Appears Acceptable | Initial findings pertaining to timely and appropriate enforcement are discussed in Appendix D and Part IV of the report.  |
| 3                               | Respond to citizen complaints.   | MDNR regional office inspectors responded to 1476 citizen complaints in FFY 2009.  | PPG Workplan final progress report | Appears Acceptable | MDNR appears to be fulfilling this commitment on an ongoing basis.  |
| 5                               | Collect samples in response to citizen complaints.   | MDNR regional office inspectors collected 762 samples in response to citizen complaints in FFY 2009.   | PPG Workplan final progress report | Appears Acceptable | MDNR appears to be fulfilling this commitment on an ongoing basis.  |
| 6                               | MDNR will continue to implement state and federal CSO requirements.  | MDNR is addressing all CSO commitments for which the state agreed to assume the lead role. The state needs to complete the abatement order for the City of St. Joseph. | EPA correspondence file            | Appears Acceptable | MDNR made satisfactory progress in fulfilling this commitment.  |

|   |                                  |  |                         |                    |   |
|---|----------------------------------|--|-------------------------|--------------------|---|
| 8-10, 12-19   | Pretreatment program commitments | EPA's pretreatment coordinator verified that statements in MDNR's PPG Workplan progress report accurately represent what the state accomplished under these tasks. | EPA correspondence file | Appears Acceptable | The state completed its pretreatment program tasks to EPA's satisfaction. |
| <b>*Evaluation Criteria:</b>  |                                  |  |                         |                    |   |
| <b>Minor Issues/Appears Acceptable</b> -- No EPA recommendation required.   |                                  |  |                         |                    |   |
| <b>Potential Concern</b> -- Not a significant issue. Issues that the state may be able to correct without specific recommendation. May require additional analysis. |                                  |  |                         |                    |   |
| <b>Significant Issue</b> -- File review shows a pattern that indicates a significant problem. Will require an EPA Recommendation.                                   |                                  |  |                         |                    |   |

**APPENDIX H**

**Missouri PCS Data Plan**

**State of Missouri  
Department of Natural Resources  
Environmental Protection Agency**

**Project: Missouri PCS Data**

**Missouri PCS Data Plan  
Draft**

**1.01**

## DOCUMENT CHANGE HISTORY

### Revision History

| Ver. # | Issue Date | Author   | Summary of Changes   |
|--------|------------|--|--|
| 1.00   | 04/26/2010 | Kimberly Hoke                                      | Initial Draft  |
| 1.01   | 05/27/10   | Kimberly Hoke,<br>Jeffrey Clark,<br>Linda McKenzie | Document sent for approval based on initial draft and comments by project resources and management teams |

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## Missouri PCS Data Plan Purpose

The purpose of this document is to describe the steps needed to correct Missouri's PCS data, keep the data updated, and prepare the data for conversion to ICIS-NPDES. The document is broken out into the following sections:

- Project Background
- Data Identification
- Data Cleanup
- Data Maintenance
- Preparation for ICIS-NPDES Migration

## 1.0 Project Background

### 1.1 Introduction

The Missouri Department of Natural Resources (department) has been a batch user of PCS for over 20 years. Missouri's legacy Water Quality Information System (WQIS) provided batch updates to PCS twice a week in the form of PCS batch cards. It became apparent that there are serious data quality issues with Missouri's PCS data. These errors propagated over time, increasing in complexity and making manual resolution nearly impossible.

The WQIS was recently decommissioned and Missouri began using their modernized Missouri Clean Water Information System (MoCWIS). Some, but not all, data was converted from WQIS to MoCWIS.

MoCWIS was designed for compatibility with EPA's ICIS-NPDES system, the federal modernized system for NPDES data. MoCWIS and ICIS-NPDES share a similar data structure and MoCWIS has incorporated most of the most recently available RIDE elements. When MoCWIS went into production in March 2010, ICIS-NPDES full batch Phase I was not available.

The department began an effort to develop code that would create PCS batch cards from MoCWIS. Once an initial specification was drafted and under review, it became apparent that such an effort would be very costly and would delay MoCWIS implementation. Due to this, and to the certainty that any batch process from MoCWIS would only exacerbate the data quality issues in PCS, Missouri elected not to provide MoCWIS data to PCS via a batch process.

### 1.2 Project Purpose

The purpose of this project is to implement a systematic plan to correct inaccuracies in Missouri's PCS data and update PCS so Missouri's data is complete, accurate, and ready for conversion to ICIS-NPDES. This project will consist of four components: Data Identification, Data Cleanup, Data Maintenance and Data Migration Preparation.

Missouri is a pilot state for ICIS-NPDES full batch Phase I. All items in this project must be completed prior to migration of Missouri's data from PCS to ICIS-NPDES.

### 1.3 Constraints

The successful on-time completion of this task is dependent on the following:

- Project resources within DNR and EPA are willing and able to participate in the project and meet project deadlines for completing tasks.
- Issues that require resolution by the Management Team are resolved within a reasonable timeframe in order to keep the project on schedule.

### 1.4 Project Management

#### 1.4.1 Project Files

Project files will be maintained on EPA's Webspaces portal. Project resources are able to upload documents to this shared location.

#### 1.4.2 Resources

To successfully implement this plan resources from both EPA and the department have been identified. Because resources are distributed in different locations meetings will be held to a minimum and all meetings will be held via teleconference. Each project resource and their percent allocation to this project are listed, followed by a description of each role.

| Role   | Resources         | Agency     | % Allocation |
|--|-------------------|------------|--------------|
| Management Team  | Scott Totten      | DNR        | 2%           |
|  | Diane Huffman     | EPA - RVII | 2%           |
|  | Lucy Reed         | EPA - HQ   | 2%           |
|  | Glendora Spinelli | EPA-HQ     | 2%           |
|  | David Meredith    | EPA-HQ     | 2%           |
| PCS Online Updates and Retrieval Subject Matter Expert | James Blodgett    | EPA-HQ     | 5%           |
|  | Jeff Clark        | EPA - HQ   | 10%          |
|  | Linda McKenzie    | EPA - RVII | 20%          |
| ICIS-NPDES Data and Migration Subject Matter Expert    | Nasrin Lescure    | EPA-HQ     | 5%           |
| MoCWIS and Missouri Permits Subject Matter Expert      | Kimberly Hoke     | DNR        | 20%          |
|  | Cindy Graves      | DNR        | 10%          |
| Project Manager  | Kimberly Hoke     | DNR        | 5%           |

#### Management Team

- Ensure all project resources are available for participation in this project
- Review status reports and communicate issues or concerns to project resources or project manager
- Review and provide resolution on issues brought to the Management Team by the project manager or project resources

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PCS Online Updates and Retrievals Subject Matter Expert

EPA Headquarters

- Set up batch DMR submissions, including converting excel files to batch format and submitting batches. This includes reviewing batch edit audit reports and update audit reports. Generate step by step instructions so others could perform this function.
- Assist Region VII to determine what pipe and limit changes are needed
- Assist Region VII with review of pipe and limit audit reports
- Assist Missouri and Region VII with generation of NODIs or deletes to clear DMR NRTs
- Assist with PCS retrievals run for comparison of the Missouri data extracts
- Report progress on assigned tasks in the project schedule

EPA Region VII

- Assist HQ with review of batch DMR submission
- Assist with review of batch edit audit reports and update audit reports
- Run PCS retrievals used for comparison of Missouri data extracts and reports
- Determine pipe and limit changes needed along with Missouri and HQ
- Enter pipe and limit changes, deletes and adds as needed
- Test step by step instructions for submitting DMR batches
- Review pipe and limit audit reports and work with Missouri and HQ to resolve issues
- Generate NODIs or deletes to clear DMR NRTs and train Missouri to perform this task
- Enter and later assist Missouri with entering new pipes and limits for reissued permits
- Assist Missouri with entering inspections, EAs and other data using online entry
- Report progress on assigned tasks in the project schedule

ICIS-NPDES Data and Migration Subject Matter Expert

- Assist with review of Missouri's data for proper migration to ICIS-NPDES
- Advise project resources regarding PCS data and how updates to PCS will affect migration
- Work with Missouri to evaluate whether migration of all permit data is possible
- Work with Missouri to develop a plan to migrate data from Missouri's system to ICIS-NPDES if necessary
- Report progress on assigned tasks in the project schedule

MoCWIS and Missouri Permits Subject Matter Expert

- Generate extracts of data from Missouri database that can be used for comparison against PCS data
- Respond to questions regarding Missouri data
- Provide data to PCS during data maintenance
- Use the step by step instructions to upload DMR data to PCS via batch file submission (once developed and tested)
- Continue to provide manual entry of Pretreatment Annual Report and PCI data via online PCS screens
- Enter Inspections and EAs via online PCS screens after training/instruction is provided
- Work with EPA to determine plan to populate ICIS-NPDES with data that will not be migrated
- Report progress on assigned tasks in the project schedule

## Missouri PCS Data Plan

### Project Manager

- Compile weekly status reports from resources
- Document issues for management team
- Maintain project files
- Write and distribute the Project Status Report to all project resources
- Update project schedule

### 1.4.3 Project Schedule

Tasks associated to this project are outlined in the Missouri PCS Data Plan Project Schedule (separate document). This schedule was developed using the Microsoft Project Application. Updated schedules as well as a PDF export of the updated schedules will be maintained with the project files.

Each task in the schedule identifies an estimated start and end date and a duration of elapsed time needed to complete the task. Special attention must be paid to the resource allocation for these tasks. **The schedule is built with many dependencies and tasks that do not complete on time have the potential to affect the ability to successfully complete this project.** All tasks in this project must be completed by final PCS to ICIS-NPDES migration. The final schedule for migration is still to be determined, but it is estimated to be sometime in February 2011.

### 1.4.4 Individual Status Reports

The project schedule assigns one or more resources to each task. Project Resources will provide weekly reports to the project manager outlining the status of their assigned tasks. Individual Status Reports (ISRs) will be e-mailed to the project manager by noon Central Daylight Time on Fridays. An example ISR is provided in Appendix A.

If a project resource anticipates difficulty in achieving any project task in the time allotted, they will bring it to the project manager's attention as early as possible so the schedule may be adjusted and/or the issues can be addressed.

### 1.4.5 Project Status Reports

The project manager will prepare a Project Status Report (PSR) and distribute it to all project resources (including Management Team) weekly. This report will be distributed by 3pm Central Daylight Time on Mondays. The PSR will allow the management team to easily track the progress of the project.

### 1.4.6 Issue Management

During the course of this project, SMEs will be identifying and resolving a number of issues related to Missouri's PCS data and the migration of Missouri's PCS data to ICIS-NPDES. Issues that cannot be resolved by the project resources will be documented and presented to the management team for resolution. Decisions will be documented in project files.

## 2.0 Data Identification

### 2.1 Data Universe

Missouri has approximately 32,000 permits in PCS. Of these nearly 13,000 are active (non-terminated) permits. Due to time and resource constraints this project will focus on active permits within broad permit categories. The following table represents approximate numbers of Missouri NPDES universe as of April 2010 along with the priority for consideration within the context of this plan.

| Priority | Permit Category                            | Number |
|----------|--|--------|
| 1.       | Majors                                     | 168    |
| 2.       | Minor Municipals                           | 686    |
| 3.       | Minor Non-Municipals                       | 2273   |
| 4.       | General (non-storm water)                  | 2227   |
| 5.       | General Storm Water (not land disturbance) | 1938   |
| 6.       | General Storm Water Land Disturbance       | 5666   |

### 2.2 List Comparison

For each permit category, the first step is to generate a list of those permits from both MoCWIS and PCS. The lists will be compared and discrepancies will be resolved. See Appendix B for a list of fields that will be listed on each report.

EPA will generate a similar list from PCS and will compare the list to identify any discrepancies. In the first list of major facilities, the lists need to be carefully scrutinized.

For any identified discrepancies, the department will investigate permit files (including Major Permit Rating Sheets if applicable), discuss with Permit management, and make a recommendation. In some cases, project resources may need to coordinate with the appropriate EPA staff to reach a proper conclusion. Once a resolution has been agreed upon, MoCWIS and/or PCS will be updated to reflect the decision.

## 3.0 Data Cleanup

Due to time and resource constraints, data cleanup will focus on major permits. All data will be verified and corrected for majors, including updating of DMR data going back to January 2005. Other permits (non-major site specifics and general and storm water permits) will be verified and corrected for permit basic information. Discussion in this plan and activities in the project schedule that reference permit segment data beyond basic information is referring only to major permits.

Once these tasks are complete, the team will assess the methodology used and determine whether there are sufficient time and resources to perform full cleanup on other data categories.

### 3.1 Ghosted Permits

During the comparison of permit limit sets, limits, and DMR data, errors in permits that are no longer in effect will be discovered (ghosted permits – those replaced by a renewal or modification). The only way to correct these errors is to remove the current version of the permit (and all DMR data), unghost the old permit, fix the limit errors, add back the DMR data, then re-issue the permit again and add back the more recent DMRs. Because this process is extremely labor and time-intensive, the default decision will be to leave the ghosted permits as-is and resolve the false DMR violations using a NODI code and/or SNC resolution codes. This is consistent with how other states are managing similar situations.

### 3.2 Data Cleanup for Majors Only

#### 3.2.1 Limit Sets and Limits

The initial cleanup will focus on limit sets (pipe schedules), limit details, DMR data, and permit schedule events. Missouri SMEs will generate a report with limit set and limit data for major permits. The list will be compared to similar reports from PCS and PCS data will be corrected as necessary. PCS SMEs will resolve any false DMR violations that resulted from incorrect limit set or limit data in PCS. Refer to Appendix B for the fields that will be included in each report from MoCWIS.

#### 3.2.2 DMR Data

Once the limit sets and limits between PCS and MoCWIS match, the department will provide DMR data for major permits. This report will contain DMR data for the monitoring periods 01/31/2005 – 03/31/2010. PCS SMEs will update PCS with the corrected DMR data. Later DMRs will be provided under the Data Maintenance portion of the plan. This time period allows at least 5 years worth of data to be complete in PCS. If time allows, SMEs may decide to begin providing DMR data prior to major data cleanup. This will be determined during the initial cleanup phases of the project and the decision to pursue this based on time and resource availability. Refer to Appendix B for the fields that will be included in each report from MoCWIS.

#### 3.2.3 Permit Schedule Events

Missouri will generate an initial report containing permit schedule events for major permits with a due date beginning 01/01/2005. Any schedule with an actual date will be reported at this time. Later actual dates will be reported under the Data Maintenance portion of the plan. This time period allows at least 5 years worth of data to be complete in PCS. Sludge reports will not be included in Missouri's data since Missouri no longer tracks receipt of sludge management plans; those reports are managed by EPA Region VII. Refer to Appendix B for the fields that will be included in each report from MoCWIS.

#### 3.2.4 Permitted Features (Pipes)

Missouri will generate reports containing permitted feature information, including waste type, location data, treatment type and active/inactive dates. The list will be compared to similar reports from PCS and PCS data will be corrected as necessary. Refer to Appendix B for the fields that will be included in each report from MoCWIS.

### 3.3 Cleanup For All Permits

## Missouri PCS Data Plan

Once the cleanup for majors is complete, the effort will shift to focus more broadly on the data within an entire permit category including basic permit information, enforcement (both active and closed cases) and compliance monitoring.

### 3.3.1 Basic Permit Information

Basic permit information includes facility names and addresses, owner names and addresses and other permit information. Missouri will generate lists of this data by permit category and these lists will be compared to similar reports from PCS and PCS data will be corrected as necessary. Refer to Appendix B for the fields that will be included in each report from MoCWIS.

### 3.3.2 Enforcement

Missouri and EPA now have a clearer understanding of what enforcement needs to be reported to PCS. EPA considers formal enforcement action to be any that requires a responsible party to adhere to a timetable and contains consequences for noncompliance that are independently enforceable without having to prove the original violation. This would encompass Missouri's Settlement Agreements, Administrative Orders, as well as any action resulting in referral to the state Attorney General's Office.

In order to ensure accurate representation of formal enforcement actions in PCS, Missouri will provide EPA with a list of all formal enforcement actions for each permit category. Missouri will provide any enforcement activity within that category beginning October 1, 2004. Missouri will provide the data even if a case is currently resolved. This ensures at least five fiscal years of data is available in PCS. PCS SMEs will update PCS as appropriate and will link enforcement actions to the appropriate DMR violations. Violations that are false due to data errors in PCS will be resolved as appropriate. Refer to Appendix B for the fields that will be included in each report from MoCWIS.

### 3.3.3 Inspections

For each permit category, Missouri will provide a list of compliance monitoring activities to EPA. Those inspections previously entered into Missouri's legacy WQIS system from October 1, 2004 through March 26, 2010 will be provided. Later inspections will be provided under the Data Maintenance portion of the project. Refer to Appendix B for the fields that will be included in each report from WQIS.

### 3.3.4 Other Permit Information

The final step in PCS data cleanup is comparison and correction of other data related to the permits within a category. This includes facility names and addresses, owner names and addresses, permitted feature details and location data, and other information. The cleanup of this data is important, but will be considered a lower priority than limit set, limit, DMR and violation data.

## 4.0 Data Cleanup Evaluation and Next Step Planning

Once the data cleanup on major permits and permit basic information for other permits is complete, the data cleanup methods will be evaluated. Project members will conduct a lessons learned meeting (conference call) to evaluate the successes and identify areas that need improvement. Project SMEs and the management team will determine, based on time and resource constraints, whether additional cleanup can and should proceed for non-major permits.

## 5.0 Data Maintenance

Once data for each permit category is cleaned up, the focus will be on maintaining the data to avoid errors in the future and to prepare it for migration to ICIS-NPDES.

### 5.1 New Permits and Reissuances

The department will provide EPA a weekly list of issued permits for any category that has completed cleanup. This includes new permits, renewed permits, and modified permits. Each of these will need to be reissued or edited in PCS in order to stay consistent with Missouri's data. PCS SMEs will monitor rejection reports to ensure that all data was successfully updated to PCS.

### 5.2 DMR and Permit Schedule Events

DMR and permit compliance schedule data will be maintained for major permits (Category 1) once cleanup is complete. The reports will include monitoring period end dates (MPED) and permit compliance schedule due dates of 04/02/2010 and later. These reports will be provided to EPA monthly after MoCWIS has run the DMR violation batch. The table below illustrates examples of when DMRs will be provided to EPA.

| MPED       | DMR Due to Missouri | Missouri DMR Batch Violation | Earliest DMR Data to EPA |
|------------|---------------------|------------------------------|--------------------------|
| 04/30/2010 | 05/28/2010          | 06/02/2010                   | 6/15/2010                |
| 05/31/2010 | 06/28/2010          | 07/02/2010                   | 07/15/2010               |

Each month, the department will provide all DMR data going back to a MPED of 04/30/2010. This is to ensure that any updates made to Missouri's DMR data (for example, receipt of a late DMR) are accurately reflected in PCS. The department will permit compliance schedule data to EPA for major permits on a monthly basis.

### 5.3 Enforcement and Inspections

Once enforcement and inspection data is verified and cleaned up for a category, the department will provide monthly updates on the enforcement and compliance monitoring activities of interest to EPA. MoCWIS contains many types of compliance monitoring activities beginning March 31, 2010 and later. This includes inspections as well as assistance activities, delinquent permit fee

## Missouri PCS Data Plan

actions, and data and record reviews. The data will be filtered so the appropriate activities will be provided to EPA.

### **5.4 Pretreatment**

The department will continue to manually update PCS for Pretreatment Audits, PCIs and Pretreatment Annual Reports. This data entry is generally done within two weeks of receipt of the report from the inspector or facility.

## 6.0 Preparation for ICIS-NPDES migration

Proper preparation of PCS data for migration to ICIS-NPDES includes cleaning up existing data, addressing any errors discovered during data migration testing, and preparing data for proper loading into ICIS-NPDES. Missouri is a pilot state for ICIS-Batch Phase I and intends to begin batching data to ICIS-NPDES as the batch schedule allows. In order to avoid the data errors that are common in PCS it is crucial that ICIS-NPDES is populated with good quality data from the onset. Otherwise, data quality issues will continue to hamper EPA's ability to rely on ICIS-NPDES data for Missouri.

Appendix C contains a table of all data families and the Permit Categories used in this plan. It outlines whether this plan currently allows for the migration of each data family for each permit category. The contents of this table may change as the project progresses. Due to time constraints it may not be possible to migrate all of Missouri's permit data from PCS to ICIS-NPDES.

### 6.1 Data Verification and Cleanup

Previous sections of this plan describe the approach to verify and correct data discrepancies to ensure that PCS has correct data. Many of these data errors would not be recognized during migration because they do not break data migration rules. This is why data review and cleanup is so crucial to providing ICIS-NPDES a good foundation of data.

### 6.2 Data Migration Errors

Missouri participates in the Data Migration team and has been receiving the data migration error reports. Due to time and resource constraints Missouri has not been able to dedicate time to cleanup related to the error reports. The following table lists the number of errors for each PCS data family as of the Iteration 2 error report. If a data family is not listed, then no errors were identified in Missouri's data. The numbers provided here reflect all permits that are currently flagged to migrate to ICIS-NPDES. Once terminated permits are flagged not to migrate, these errors should decrease.

| PCS Data Family     | # of Errors | Comments  |
|---------------------|-------------|---|
| Permit Facility     | 7216        |   |
| Address             | 2           |   |
| Enforcement Action  | 44          |   |
| Compliance Schedule | 114         | Actual number of records with errors is higher – 114 represents the number of types of error message combinations |
| Pipe                | 12780       |   |
| Limit               | 4215        |   |

Resolution of these errors will include batch retrieval and updates (for example, many facilities are missing the facility state code) and online update (for example, addresses). Some of these errors however may require additional research and resolution.

## Missouri PCS Data Plan

As data cleanup and maintenance progresses, some errors may be resolved, but new errors may begin to appear. It is crucial that project resources pay attention to the impact of data migration on any data cleanup.

The project schedule contains the dates of each migration iteration and contains timelines for correction of data for permit categories that have been cleaned up.

### 6.3 Data Preparation

Data preparation tasks generally include adding appropriate data to PCS so the migration code correctly processes the data. For example:

- Permits that will not be converted to ICIS-NPDES
- DMR non-receipt turned off for non-majors
- Setting up MGPs
- Setting up Permit Types
- Setting up Permit Components
- Establishing the link between MGPs and GPCFs

Data preparation tasks will be accomplished as appropriate once each permit category is cleaned up.

### 6.4 ICIS-NPDES Data Load from MoCWIS

Given the short time frame of this plan and the potential for limited resource availability, we must recognize the possibility that not all data will be cleaned up in time for migration to ICIS-NPDES from PCS. If this is the case, the project resources will need to identify which permit categories should not migrate or which data families within each permit type should not migrate. The PCS data needs to be edited to ensure migration does not occur on permits or data families that have not undergone cleanup and verification.

In the event that permits or permit categories cannot be migrated from PCS, EPA and Missouri will work together to devise a plan to provide the necessary data to ICIS-NPDES from MoCWIS after MoCWIS Phase I batch is in production. This may include a plan to batch new or replace transactions for permitted features, limit sets, limits and DMR data for non-majors.

Missouri PCS Data Plan

## Appendix A ISR Template Individual Status Report Template

Individual Status Report – Resource Name  
Period Ending – xx/xx/xxxx

### *Planned Accomplishments for Current Period*

| Task ID | Task Description | % Complete | Date Started /Completed (if applicable) |
|---------|------------------|------------|---|
|         |                  |            |   |
|         |                  |            |   |
|         |                  |            |   |

### *Planned for Next Period*

| Task ID | Task Description | Expected % Complete (by end of next period) | Expected Date Start/Complete (if applicable) |
|---------|------------------|---|--|
|         |                  |   |  |
|         |                  |   |  |
|         |                  |   |  |

## Appendix B Report Templates

Each area will have a Master Report List where the status of data verification and cleanup will be tracked. These lists will originate from MoCWIS. Appendix B lists the fields that, at a minimum, will appear on each Master Report List. These lists will need to be manipulated by PCS SMEs in order to be transformed into batch file formats.

### B.1 Master Permit Category List

Work related to each of the 6 permit categories will begin with comparison of the lists of permits in those categories. The Master Permit Category list from MoCWIS will contain the following fields:

1. Permit Number
2. Facility Name
3. Major Flag
4. Issue Date
5. Effective Date
6. Expiration Date
7. Category
8. SIC Code
9. SIC Code Description
10. Design Flow (MGD)
11. Application Received Date (partial)

The following fields will be added and completed during cleanup:

12. Do Limits Apply? (for Generals and Storm Water only)
13. Do Permit Schedule Events Apply? (for Generals and Storm Water only)
14. Initial Data Match?
15. Resolution Description
16. Final Data Match (date)

### B.2 Master Limit Set List

The Master Limit Set list from MoCWIS will contain the following fields:

1. Permit Number
2. Facility Name
3. Outfall
4. Designator
5. DMR Reporting Frequency (months)
6. DMR Submission Frequency (months)
7. Initial Monitoring Date
8. Initial DMR Due Date

The following fields will be added and completed during cleanup:

9. Initial Data Match?
10. Resolution Description

Missouri PCS Data Plan

11. Final Data Match (date)

**B.3 Master Limit List**

The Master Limit list from MoCWIS will contain the following fields:

1. Permit Number
2. Facility Name
3. Outfall
4. Designator
5. Parameter Description
6. Parameter PCS Code
7. Frequency of Analysis
8. Monitoring Location
9. Limit Start Date
10. Limit End Date
11. Seasons
12. Interim/Final Flag
13. Concentration Unit Code (PCS Code)
14. Concentration 1 Stat Base Code (PCS Code)
15. Concentration 1 Limit
16. Concentration 1 Mon Req. Flag
17. Concentration 2 Stat Base Code (PCS Code)
18. Concentration 2 Limit
19. Concentration 2 Mon Req. Flag
20. Concentration 3 Stat Base Code (PCS Code)
21. Concentration 3 Limit
22. Concentration 3 Mon Req. Flag
23. Mass Unit Code (PCS Code)
24. Mass 1 Stat Base Code (PCS Code)
25. Mass 1 Limit
26. Mass 1 Mon Req. Flag
27. Mass 2 Stat Base Code (PCS Code)
28. Mass 2 Limit
29. Mass 2 Mon Req. Flag

The following fields will be added and completed during cleanup:

30. Initial Data Match?
31. Resolution Description
32. Final Data Match (date)

**B.4 DMR Data**

Dmr data will be provided by the department. MoCWIS has a standard report which compiles DMR data from both WQIS and PCS; however the display of the report separates the data sources into two columns. The department will standardize each report for ease of uploading it into PCS. The DMR data report will contain the following fields:

1. Permit Number
2. Facility Name

## Missouri PCS Data Plan

3. Outfall
4. Designator
5. MPED
6. Parameter Description
7. Parameter PCS Code
8. Monitoring Location PCS Code
9. DMR Received Date
10. Violation Code
11. NODI Code
12. Concentration Minimum DMR Value
13. Concentration Average DMR Value
14. Concentration Maximum DMR Value
15. Mass Average DMR Value
16. Mass Max DMR Value

The following fields will be added and completed during cleanup:

17. Data uploaded into PCS (date)

### B.5 Permit Schedule Event Data

The department will provide lists of permit schedule events for each permit category. The permit schedule events report from MoCWIS will contain the following fields:

1. Permit Number
2. Facility Name
3. Schedule Event Code (PCS Code)
4. Schedule Event Description
5. Due Date
6. Actual Date

The following fields will be added and completed during cleanup:

7. Initial Data Match?
8. Resolution Description
9. Final Data Match (date)

### B.6 Permitted Feature Data

The department will provide lists of permitted feature data. The report from MoCWIS will contain the following fields:

1. Permit Number
2. Facility Name
3. Permitted Feature (Outfall) Number
4. Permitted Feature Active Date
5. Permitted Feature Inactive Date
6. Waste Type (PCS Code)
7. Treatment Types 1 – 4 (PCS Codes)
8. Latitude
9. Longitude
10. Location Metadata

## Missouri PCS Data Plan

The following fields will be added and completed during cleanup:

11. Initial Data Match?
12. Resolution Description
13. Final Data Match (date)

### **B.7 Basic Permit Information**

The department will provide lists of permitted feature data. The report from MoCWIS will contain the following fields:

1. Permit Number
2. Facility Name
3. Facility Address
4. Owner Name
5. Owner Address

The following fields will be added and completed during cleanup:

6. Initial Data Match?
7. Resolution Description
8. Final Data Match (date)

### **B.8 Enforcement Data**

The department will provide enforcement data for dates going back to October 1, 2004 for each completed permit category. The enforcement report from MoCWIS will contain the following fields:

1. Permit Number
2. Facility Name
3. Enforcement Action begin date
4. Enforcement Action end date
5. Enforcement Milestone Description
6. Enforcement Milestone PCS Code
7. Enforcement Milestone Date
8. Enforcement Compliance Schedule Event Description
9. Enforcement Compliance Schedule Event Code (PCS Code)
10. Enforcement Compliance Schedule Due Date
11. Enforcement Compliance Schedule Actual Date

The following fields will be added and completed during cleanup:

12. Initial Data Match?
13. Resolution Description
14. Resolution Date

Missouri PCS Data Plan

**B.9 Inspection Data**

The department will provide inspection data from WQIS from October 1, 2004 through March 26, 2010. Data from March 31, 2010 to the present will be provided from WQIS.

The following fields will be on the Inspection report from WQIS and MoCWIS:

1. Permit Number
2. Facility Name
3. Inspection Code (PCS Code)
4. Inspection Date

The following fields will be added and completed during cleanup:

5. Initial Data Match?
6. Resolution Description
7. Resolution Date

## Appendix C Missouri PCS Data Families

Missouri Data Migration to ICIS-NPDES (subject to change)

| PCS Data Family               | 1 – Major Permits (Municipal & Non-Municipal) | 2 – Minor Municipals | 3 – Minor Non-Municipals | Master General Permits                           | 4 – General Permits (non-Storm Water) | 5 – General Storm Water (not Construction) | 6 – General Storm Water Construction |
|-------------------------------|---|----------------------|--------------------------|--|---------------------------------------|--|--------------------------------------|
| Permit Facility               | Migrate                                       | Migrate              | Migrate                  | Migrate (Permit data only, no facilities)<br>N/A | Migrate                               | Migrate                                    | Migrate                              |
| Permit Tracking Event         | Migrate*                                      | Do Not Migrate       | Do Not Migrate           | N/A  | Do Not Migrate                        | Do Not Migrate                             | Do Not Migrate                       |
| Pipe Schedule                 | Migrate                                       | Do Not Migrate       | Do Not Migrate           | Migrate**  | Do Not Migrate                        | Do Not Migrate                             | Do Not Migrate                       |
| Parameter Limit               | Migrate                                       | Do Not Migrate       | Do Not Migrate           | Migrate**  | Do Not Migrate                        | Do Not Migrate                             | N/A                                  |
| Measurement Violation         | Migrate                                       | Do Not Migrate       | Do Not Migrate           | N/A  | Do Not Migrate                        | Do Not Migrate                             | N/A                                  |
| Compliance Schedule           | Migrate                                       | Do Not Migrate       | Do Not Migrate           | Migrate**  | Do Not Migrate                        | Do Not Migrate                             | N/A                                  |
| Compliance Schedule Violation | Migrate                                       | Do Not Migrate       | Do Not Migrate           | N/A  | Do Not Migrate                        | Do Not Migrate                             | N/A                                  |
| Single Event Violation        | Migrate*                                      | Migrate*             | Migrate*                 | N/A  | Migrate*                              | Migrate*                                   | Migrate*                             |
| Enforcement Action            | Migrate                                       | Migrate              | Migrate                  | N/A  | Migrate                               | Migrate                                    | Migrate                              |
| Enforcement Action Violation  | Migrate                                       | Migrate              | Migrate                  | N/A  | Migrate                               | Migrate                                    | Migrate                              |
| Inspection                    | Migrate                                       | Migrate              | Migrate                  | N/A  | Migrate                               | Migrate                                    | Migrate                              |
| Pretreatment Audit            | Migrate                                       | Migrate              | N/A                      | N/A  | N/A                                   | N/A  | N/A                                  |

Missouri PCS Data Plan

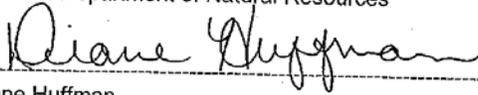
N/A – This data family does not apply to permits in this category  
\* If data is in PCS for this data family and category it will be migrated; data may not be complete in PCS  
\*\* This data family does not apply to all permits within this category

## Approval Signature

I have reviewed this Missouri PCS Data Plan and by signing below agree to the stipulations herein:

-----  
Scott Totten  
Acting Director – Water Protection Program  
Missouri Department of Natural Resources

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DATE

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Diane Huffman  
Chief, Water Enforcement Branch  
WWPD/WENF  
Environmental Protection Agency – Region VII

6-10-10

DATE

-----  
Cynthia Dickinson  
Acting Chief  
Data Systems & Information Management  
ETDD/OC/OECA  
Environmental Protection Agency – Headquarters

-----  
DATE

APPENDIX I

State Correspondence

*Glen  
Diane*



Jeremiah W. (Jay) Nixon, Governor • Mark N. Templeton, Director

DEPARTMENT OF NATURAL RESOURCES

www.dnr.mo.gov

JUL 20 2010

Mr. Art Spratlin, Director  
Water, Wetlands and Pesticide Division  
U.S. Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

WWPD Rec'd JUL 23 2010

Re: EPA Review of Water Program

Dear Mr. Spratlin:

Thank you for the recent review of the Water Protection Program's efforts. We appreciate EPA's thoughts on our implementation of the Clean Water Act. We will strive to improve those areas showing problems, while maintaining the other responsibilities in these challenging budget times.

The enclosed table shows our responses and plans corresponding to each of the comments and recommendations from the review. We trust these answers satisfy the matters, and look forward to making the indicated improvements in the program.

If there are any questions, please let me know.

Sincerely,

DIVISION OF ENVIRONMENTAL QUALITY

Leanne Tippett Mosby  
Acting Director

LTM/kml

Enclosure

- c: Mr. Scott B. Totten, Water Protection Program
- Mr. Kevin Mohammadi, Compliance and Enforcement Section
- Mr. Refaat Mefrakis, Permits and Engineering Section



| Comments/ Recommendation   | DNR Response   | Action Plan  |
|--|--|--|
| Permits for POTWs contained correct limits requiring secondary treatment limits for BOD and TSS appropriate to the treatment technology. Some permits include tighter limits for losing streams, etc. Although percent removal requirements are included in permits, MDNR regulations omit this requirement and should be updated. | The Department agrees in part. The Department does not believe changes to state regulation are required. The Department has statutory authority to implement federal requirements.   | No changes are required. We recommend EPA remove the recommendation.                 |
| POTW permits are not including mass limits for BOD and TSS as required by 40 CFR 122.45(f). (See NPDES Permit Writers Manual, Page 76 for more discussion.)  | Permits contain mass limits when appropriate.  | The Department is requesting a clarification of 122.45 (f) as it relates to permits. |
| Permits for industrial permits routinely incorporate technology limits based on the Effluent Guidelines or Best Professional Judgment as appropriate. Note: MDNR regulations omit the requirement of using federal effluent guidelines to derive permit limits.  | The Department relies on the federal regulation to support decisions made in permits. Therefore, no action is needed to revise state rule.   | No action is needed. We recommend EPA remove the recommendation.                     |
| EPA would urge more detailed descriptions of outfalls to better define sampling vs. discharge location, and the nature of the outfall.   | The Department will continue to improve the outfall description. The Department requires samples to be taken from outfall locations. We will seek additional clarification from EPA. |  |
| Fact sheets are greatly improved and show clearly how technology or water quality-based limits are calculated. In some cases fact sheets could use more explanation. For instance, when a limit is removed or increased, a short discussion of backsliding would be appropriate.   | Agreed.  | We will continue to improve the factsheet as suggested.                              |
| In one case, an application for a major POTW did not include a flow diagram. Flow diagrams could be essential in assessing wet weather flow handling, etc. Detailed flow diagrams are also important for industrial permits.   | Agreed.  | We will be revising the permit application to include it as a requirement.           |
| While permits for major POTWs routinely require WET testing, the frequency of WET testing may not be enough to meet permit applications. As required by 40 CFR 122.21(j)(ii) and (iv), applications must include a   | The Department believes adequate WET test frequency is being required. Major facilities are required to conduct 4 tests per year.  | The Department will provide a copy of its guidelines for WET testing to EPA.         |

|   |   |   |
|---|---|---|
| minimum of four quarterly WET tests. It was not clear that permit writers are reviewing WET data.   |   |   |
| 40 CFR 122(j)(iv) and (vi) requires three sets of priority pollutant scans for major POTWs. Our review was limited, but we did not find sets of priority pollutants scans in the files.   | The Department will ensure the requirements under 40 CFR 122(j)(IV) and (VI) are being satisfied.   |   |
| MDNR has a variance procedure involving the Clean Water Commission to allow some flexibility that does not result in changes to Water Quality Standards. For changes to state water quality standards, regulations require EPA approval prior to inclusion in permits. EPA has provided materials related to variances in the past and can provide these again if needed. | Agreed.   | The Department will seek changes to the WQS to allow greater flexibility for the permit writer and reduce unnecessary timeframe for developing schedules of compliance.   |
| For POTW permits with bacterial limits, limits should include daily or weekly maximums as required by 40 CFR 122.45(d).   | The Department acknowledges this comment.   | The Department is currently discussing how we will address this comment and the Interim Objection on a permit it received from EPA.   |
| Permits often use two miles as a rule of thumb for consideration of bacterial limits. EPA suggests that MDNR calculate die-off rates to assure that downstream uses are protected.  | The Department is currently undergoing a change in the standards to classify additional streams, which will have a bearing on this issue. | The classification of additional streams is planned for the next WQS triennial review. The triennial review is scheduled for completion in 2012.  |
| The organizational structure regarding central office and regional offices present challenges to ensuring consistent permit program implementation, as the central office doesn't have the ability to compel consistent permitting practices.   | The Department agrees that any organization structure can present challenges.   | The Department reorganized in November 2009 bringing the regions and program back into the same division. We believe this structure will lend itself to improving consistency by enhancing communication between the program and regions. |
| Due to the anticipated volume of expiring permits next year, MDNR should consider strategies to reduce the potential for backlog. One such strategy might be to have regional offices with the lighter permit load draft permits for those regional offices with the heavier permit renewal load.   | The Department acknowledges the expected increase in volume.  | The Department will take this into consideration as it is planning for the work in the coming year.   |
| In addition to the restructuring and personnel changes, MDNR has been attempting to make needed   | Since last the EPA audit, Permits and Engineering section along with the permitting staff at the  | Consistency in all aspects of its work is a priority for improvement in the Water   |

|   |   |  |
|---|---|--|
| <p>changes to permitting procedures and trying to standardize permitting procedures across Missouri. The decentralization of permitting responsibility makes the process of standardization more challenging, especially given that central office permitting personnel and management do not have direct authority over the permitting activities of regional office permitting activities. MDNR does have monthly conference calls between the central office and the five regional offices to foster communication and coordination among permitting personnel.</p>  | <p>regions have made significant improvements in ensuring permits are consistent. Some of these improvements are related to permit processing as well as technical guidance. Consequently backlog has been greatly reduced from about 17 % to less than 8%.</p> <p>The Program occasionally schedules conference calls between the permitting staff in the central and regional offices to foster communication and coordination in permitting practices. Timely resolution of identified issues into written guidance that is distributed to all staff would improve consistency and reduce backlogged permits.</p> <p>Decentralization of permitting responsibility necessitates the need for clear and timely written guidance to ensure that permitting practices are standardized between the central and all regional offices. Consistency audits would help identify any consistency issues that need to be addressed.</p> | <p>Protection Program and the Regional Offices. The Department is currently evaluating several mechanisms for improving consistency.</p>   |
| <p>Appendix B – Element 1<br/>Finding 1-1<br/>A large number of major facilities were flagged under metric 1b2 for missing DMRs, metric 1b4 for RNC/SNC override, metric 7d for majors with DMR violations, and metric 10a for lack of timely enforcement response. EPA reviewed 8 facilities, each flagged under at least 2 of these metrics, and found that all of them were problematic due to DMRs being absent from PCS for one or more quarters in FFY 2009. DMRs were missing from PCS despite that, for each of the 8 facilities, most if not all of the DMRs were present in the state files. With respect to Metric 1b4, EPA found that the state has been overriding instances of RNC/SNC that were due to missing DMR data without first correcting</p> | <p>Missouri acknowledges the discrepancies between PCS and the state WQIS database during FFY 2009. There have been systematic issues with the batch process which have propagated over time.</p>   | <p>The Missouri PCS Data Plan, a plan written cooperatively by EPA HQ, EPA R7 and Missouri will address PCS data issues for majors. Once the ICIS-NPDES Batch Phase I is live in Feb. 2011, data quality issues for major permits is expected to be resolved. A draft copy of the Missouri PCS Data Plan and scheduled is attached as part of Missouri's response.</p> |

|   |   |   |
|---|---|---|
| <p>the underlying problem—i.e. that DMRs had been received from facilities but were not recognized by PCS.</p> <p>When batching data from the new MoCWIS to ICIS-NPDES, the state needs to ensure that DMR data is accurately and completely batched and use edit/audit reports to correct erroneously batched data. The state must not override RNC/SNC due to missing data if received DMRs are not first batched accurately to ICIS-NPDES.</p> <p>Until the state begins batching DMR data to ICIS-NPDES, EPA and MDNR will address these data deficiencies for majors through the coordinated efforts of the PCS Data Plan created in May 2010</p>  |   |   |
| <p>Appendix B – Element 1<br/>Finding 1-2</p> <p>A large number of major facilities were flagged under metric 1b2 for missing DMRs, metric 1b4 for RNC/SNC override, metric 7d for majors with DMR violations, and metric 10a for lack of timely enforcement response. EPA reviewed 8 facilities, each flagged under at least 2 of these metrics, and found that all of them were problematic due to DMRs being absent from PCS for one or more quarters in FFY 2009. DMRs were missing from PCS despite that, for each of the 8 facilities, most if not all of the DMRs were present in the state files. With respect to Metric 1b4, EPA found that the state has been overriding instances of RNC/SNC that were due to missing DMR data without first correcting the underlying problem—i.e. that DMRs had been received from facilities but were not recognized by PCS.</p> <p>When batching data from the new MoCWIS to ICIS-NPDES, the state needs to ensure that DMR data is accurately and completely batched and use edit/audit reports to correct erroneously batched data. The state must not override RNC/SNC due to missing data if received DMRs are not first batched</p> | <p>Missouri acknowledges the discrepancies between PCS and the state WQIS database during FFY 2009. There have been systematic issues with the batch process which have propagated over time. There were historically many discrepancies between limits in PCS and limits in Missouri's permits. Missouri's permits are accurately reflected in Missouri's database. Because limits were incorrect in PCS, PCS generated large numbers of false DMR violations. The Missouri PCS Data Plan, a plan written cooperatively by EPA HQ, EPA R7 and Missouri will address PCS data issues for majors including a plan to provide updated DMR data for a period of five years for all majors (once the limits are updated and correct in PCS). Once the ICIS-NPDES Batch Phase I is live in Feb. 2011, data quality issues for major permits, including DMRs is expected to be resolved. A draft copy of the Missouri PCS Data Plan and scheduled is attached as part of Missouri's response.</p> | <p>The Missouri PCS Data Plan, a plan written cooperatively by EPA HQ, EPA R7 and Missouri will address PCS data issues for majors including a plan to provide updated DMR data for a period of five years for all majors (once the limits are updated and correct in PCS). Once the ICIS-NPDES Batch Phase I is live in Feb. 2011, data quality issues for major permits, including DMRs is expected to be resolved. A draft copy of the Missouri PCS Data Plan and scheduled is attached as part of Missouri's response.</p> <p>As of July 2010, Missouri and EPA have been working collaboratively and have been addressing data discrepancies in PCS according to the plan.</p> |

|  |   |   |
|--|---|---|
| <p>accurately to ICIS-NPDES.</p> <p>Until the state begins batching DMR data to ICIS-NPDES, EPA and MDNR will address these data deficiencies for majors through the coordinated efforts of the PCS Data Plan created in May 2010</p>  |   |   |
| <p>Appendix B – Element 1<br/>Finding 1-3</p> <p>The state initiated or settled 77 formal enforcement actions in FFY 2009, including settlement agreements, court orders, administrative orders, petitions filed with the court, and referrals to the state AG. The state also issued 648 informal actions in FFY 2009, consisting of 440 LOWs and 208 NOV.s. At least 5 formal actions and 15 informal actions were issued to major and P.L. 92-500 minor facilities and are therefore required records in the national database. Among these enforcement actions, however, only 2 informal and 1 formal action had been entered into PCS. The state needs to begin entering the required records in PCS and, when applicable, ICIS-NPDES. EPA will assist the state with entry of enforcement records in PCS, if necessary, until batching of these records to ICIS-NPDES commences.</p> | <p>Missouri and EPA were operating under different definitions of 'formal enforcement action'. Now that the description has been clarified, Missouri will begin to provide formal enforcement action information as outlined in the Missouri PCS Data Plan.</p> | <p>Formal enforcement actions will be provided to PCS as outlined in this plan. Once ICIS-NPDES Batch Phase I is in production (Feb. 2011), Missouri will continue to provide formal enforcement action data to ICIS-NPDES via the online ICIS-NPDES interface.</p>   |
| <p>Appendix B – Element 1<br/>Finding 2-1</p> <p>The state issued formal enforcement actions against 5 major facilities in FFY 2009, 4 of which were neither entered in PCS nor linked to the violation type codes. In addition, the 1 action present in PCS is not linked to the underlying violation(s). The state needs to begin entering and linking violation type codes to formal enforcement actions against majors once the state begins to batch enforcement data to ICIS-NPDES, currently scheduled for FFY 2013.</p>  | <p>This finding results from the history of issues with the batch between Missouri's data system and PCS and the fact that Missouri and EPA were operating under different definitions of 'formal enforcement action'.</p>                                      | <p>Now that the description has been clarified, Missouri will begin to provide links between formal enforcement actions and violation data according to the schedule in the Missouri PCS Data Plan. Once ICIS-NPDES Batch Phase I is in production (Feb. 2011), Missouri will continue to provide formal enforcement action data and linked violations to ICIS-NPDES via the online ICIS-NPDES interface.</p> |
| <p>Appendix B – Element 1<br/>Finding 7-1</p>  | <p>Missouri will provide SEV information as outlined in EPA policy documents according to</p>   | <p>Missouri will provide SEV information as outlined in EPA policy documents according to</p>   |

|  |   |   |
|--|---|---|
| <p>SEVs are required to be entered into the national data system for majors. Although SEVs data entry is not required for non-majors, accurate compliance determinations and internal state tracking of violations should be demonstrated. Based on EPA's file reviews, the state identifies SEVs during inspections; however, only 1 SEV was uploaded to PCS for FFY 2009.</p> <p>EPA requests that the state provide a schedule for beginning to enter SEVs into MoCWIS and then for batching that data into ICIS-NPDES for major facilities when the national program database is ready for such data entry, currently expected in FFY 2012. EPA Region 7 began entering SEVs in ICIS-NPDES effective October 1, 2008, and will offer guidance on the process of SEV entry, if requested.</p> | <p>the schedule outlined in the Missouri PCS Data Plan. Once ICIS-NPDES Batch Phase I is in production (Feb. 2011), Missouri will continue to provide SEV data to ICIS-NPDES via the online ICIS-NPDES interface.</p>       | <p>the schedule outlined in the Missouri PCS Data Plan. Once ICIS-NPDES Batch Phase I is in production (Feb. 2011), Missouri will continue to provide SEV data to ICIS-NPDES via the online ICIS-NPDES interface.</p> |
| <p><u>Element 4—Completion of Commitments</u><br/><u>Finding 4-1:</u> The state met most of its non-inspection commitments from the PPG Workplan but was consistently late in submitting Quarterly Non-Compliance Reports (QNCRs).</p>   | <p>In Federal Fiscal 2009 PPG Work Plan, the State negotiated with EPA Region VII 120 days for completion and submission of QNCR versus regulatory 60 days. The State has consistently met the 120 days deadline.</p>       |   |
| <p><u>Element 6—Quality of Inspection Reports</u><br/><u>Finding 6-2:</u> Most land disturbance inspections were not completed and transmitted within the state's 10-day timeframe for turn-around.</p>  | <p>The 10-day timeframe for turnaround was in field offices' operational manual.</p>  | <p>The Program will work with the regional offices to identify any problems with meeting the 10-day timeframe and work to resolve them.</p>   |
| <p><u>Element 12—Final Penalty Assessment and Collection</u><br/><u>Finding 12-1: Enforcement records did not indicate what rationale the state used to justify particular alternative penalty amounts during negotiations.</u></p>  | <p>All penalty negotiations and reductions take into consideration litigation risks, time delay in litigating the case, economic benefits obtained for violation of the Missouri Clean Water Law and future deterrence.</p> | <p>No Action</p>  |
| <p><u>Element 12—Final Penalty Assessment and Collection</u><br/><u>Finding 12-2:</u> Enforcement records did not consistently contain proof that civil penalties had been paid.</p>   | <p>None of the enforcement cases are considered resolved unless all penalty, damages, costs and mitigation requirements are met. This is documented in the case resolution memos.</p>                                       | <p>State will coordinate with AGO to get a proof of payment.</p>  |

|   |  |  |
|---|--|--|
| <p><u>Element 5—Inspection Coverage</u><br/> <u>Finding 5-1: The state did not inspect 50% of its major dischargers in FFY 2009.</u><br/> <u>Recommendation 5-1: Allocate resources proportional to inspection commitments; interpret the inspection commitment as the number of unique facilities needing an inspection.</u></p>   | <p>The Department acknowledges the finding. The reason for not meeting this commitment was that the State shifted its resources to more problematic areas such as SSO communities.</p>   | <p>The Department would like to work closely with EPA to ensure that our limited resources are being directed at providing the most benefit to the environment. This may include discussions of changing the numbers of inspections in various categories.</p> |
| <p><u>Element 6—Quality of Inspection Reports</u><br/> <u>Finding 6-1: Inspection reports present detailed, thorough information on facilities' compliance status, but EPA identified several areas needing improvement.</u><br/> <u>Recommendation 6-1: Cover specified items in every inspection and inspection report, and reduce variability across reports by following a consistent narrative format.</u></p> | <p>The Department recently modified the inspection report provision of its compliance manual for all regional offices to streamline and provide consistency.</p>   | <p>The Department will be working closely with its regional offices to improve consistency.</p>  |
| <p><u>Element 6—Quality of Inspection Reports</u><br/> <u>Finding 6-3: Inspections at mechanical treatment plants did not evaluate sludge handling and did not properly identify blending as a CWA violation.</u><br/> <u>Recommendation 6-3: Evaluate sludge handling at mechanical treatment facilities and identify blending as a CWA violation.</u></p>   | <p>The Department will evaluate the checklist form developed by EPA for sludge handling at mechanical plants for use during inspection by regional offices.</p> <p>Facilities utilizing blending have a provision acknowledging its use in their permit, therefore this will not be identified as a violation.</p> <p>If EPA is aware of facilities utilizing blending, please provide a list.</p> |  |
| <p><u>Element 7—Identification of Alleged Violations</u><br/> <u>Finding 7-2: The State Compliance Manual does not describe the appropriate range of responses for deficiencies found during Municipal Separate Storm Sewer System (MS4) inspections.</u></p>   | <p>The Department acknowledges this deficiency.</p>  | <p>The compliance manual will be updated to address this deficiency.</p>   |
| <p><u>Element 10—Timely and Appropriate Action</u><br/> <u>Finding 10-1: Initial responses to violations were timely and appropriate, but in several cases regional offices did not refer</u></p>   | <p>The Department acknowledges this deficiency; this issue continues to be a problem due to inadequate staffing. This has been exacerbated by the financial problems the program has faced</p>   | <p>The Department continually strives to balance its workload with limited resources by prioritizing work according to environmental benefit.</p>  |

|   |   |   |
|---|---|---|
| <p><u>continuing noncompliance to the central office in a timely manner.</u><br/> <u>Recommendation</u><br/> <u>10-1: Regional offices should begin coordinating with the central office sooner on matters of continuing noncompliance, in keeping with guidance in the state's Compliance Manual.</u></p>  | <p>for several years.</p>   | <p>This issue is related to a prior comment regarding the Department's desire to work with EPA regarding shifting the number of inspections in various categories.</p>  |
| <p><u>Element 10—Timely and Appropriate Action</u><br/> <u>Finding 10-2: Settlement negotiations in some cases persisted through a long and protracted period before reaching settlement.</u><br/> <u>Recommendation</u><br/> <u>10-2: Communicate more strict expectations to respondents regarding allowable time to reach a settlement, and adhere more closely to Compliance Manual guidance.</u></p> | <p>We are not aware of any specific cases where settlement negotiations were protracted.</p>  | <p>If EPA can provide specific information regarding cases of concern, the Department can evaluate the cases and provide a response.</p>  |
| <p><u>Element 10—Timely and Appropriate Action</u><br/> <u>Finding 10-3: State enforcement guidance allows compliance schedules to be used in permits as a means to resolve permit violations.</u><br/> <u>Recommendation 10-3: Revise the Compliance Manual language and stop using compliance schedules in permits for this purpose.</u></p>  | <p>The Program views the use of Schedules of Compliance as a Conference, Conciliation, and Persuasion process required by state statute. The Program believes Schedules of Compliance are a useful tool in certain circumstances.</p> | <p>The Department will review the guidance and determine when and how it is appropriate to use Schedules of Compliance. The Department will then consult with EPA and make any necessary changes to the guidance.</p> |

**Final Report**

**March 23, 2011**

## **State Review Framework**

# **Review of Missouri Department of Natural Resources Department of Environmental Quality Hazardous Waste Program for Federal Fiscal Year 2008**

**September 2009**

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## **I. Executive Summary**

This is a State Review Framework review of the Missouri Department of Natural Resource's (MDNR) implementation of the RCRA Subtitle C program in Missouri for Federal fiscal year 2008.

The State Review Framework (SRF) is a program designed to ensure EPA conducts oversight of state implementation, compliance and enforcement programs in a nationally consistent and efficient manner. Reviews look at 12 program elements covering: data (completeness, timeliness, and quality); inspections (coverage and quality); identification of violations, enforcement actions (appropriateness and timeliness); and, penalties (calculation, assessment and collection). Reviews are conducted in three phases: analyzing information from the national data systems; reviewing a limited set of state files; and development of findings and recommendations. Considerable consultation is built into the process, to ensure EPA and the state understand the causes of issues, and to seek agreement on identifying the actions needed to address problems. The Reports generated by the reviews are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. The reports are designed to provide factual information and do not make determinations of program adequacy. EPA also uses the information in the reports to draw a "national picture" of enforcement and compliance, and to identify any issues that require a national response. Reports are not used to compare or rank state programs.

### **A. Major State Priorities and Accomplishments**

#### **Priorities**

In FY08, the Director of the Department of Natural Resources set as a priority for the Hazardous Waste Program the completion of Environmental Assistance Visits (EAVs) at all newly notified hazardous waste generators and other facilities as identified by inspectors during field operations.

#### **Accomplishments**

During FY2008, senior compliance staff within the Hazardous Waste Program prepared and held one of several regularly scheduled Hazardous Waste Forum Meetings for the regulated community, public and other stakeholders. These meetings cover a variety of topics as suggested by the aforementioned groups.

#### **Element 13**

This information is being provided for EPA's information. The Hazardous Waste Forum meetings and Environmental Assistance Visits serve to inform and educate regulated entities within the State. In FFY08, MDNR also provided presentations on timely topics to various waste management groups within the State and visited local college campuses to recruit for the Department.

## **B. Summary of Results**

### **Summary of Round 2 Results**

The State meets program requirements in the findings for three of the 12 elements. They are Elements 3 (timeliness of data entry), 4 (completion of commitments), and 9 (enforcement actions promote return to compliance).

The State needs to focus attention on issues noted in findings for nine of the 12 elements. They are Elements 1 (data completeness), 2 (data accuracy), 5 (inspection coverage), 6 (completeness of inspection reports), 7 (identification of alleged violations), 8 (SNC identification), 10 (timely and appropriate action), 11 (penalty calculation method), and 12 (final penalty assessment and collection).

### **Significant Issues Identified in the RCRA Subtitle C Program**

Five of the nine review elements noted in the previous paragraph are checked as areas for State improvement with specific recommendations, as a result of this review. These areas are: Elements 1 (data completeness), 6 (completeness of inspection reports), 8 (SNC identification), 11 (penalty calculation method) and 12 (final penalty assessment and collection).

## **II. Background Information on State program and Review Process**

### **A. GENERAL PROGRAM OVERVIEW**

#### **Agency Structure**

The MDNR is made up of five (5) different Divisions and the Office of the Director. The Division of Environmental Quality (DEQ) within the MDNR is further divided into six (6) programs, including the Air Pollution Control Program, Hazardous Waste Program, Land Reclamation Program, Solid Waste Management Program, Environmental Services Program and Water Protection Program. The Hazardous Waste Program is responsible for regulating the management of hazardous waste within the State of Missouri, overseeing clean-up of contamination caused by releases of hazardous waste and hazardous waste constituents, inspection of commercial TSDs, and encouraging the reduction of hazardous waste generation. The five Regional Offices provide staff support to conduct compliance evaluation inspections at the majority of the regulated facilities within the State. MDNR's Environmental Services Program provides emergency response and field services staff.

The State Attorney General's Office provides legal support to MDNR for filing Settlement Agreements. The MDNR also refers cases to the AG for enforcement where MDNR is not able to reach settlement.

#### **Hazardous Waste Program Roles and Responsibilities**

The DEQ maintains primary responsibility for implementation of the Subtitle C program in Missouri. The Hazardous Waste Program (HWP) monitors the compliance of facilities in Missouri and is responsible for taking the necessary enforcement actions. The HWP and the Regional Offices target inspections to ensure adequate coverage of all parts of the regulated universe in Missouri. The HWP also coordinates inspection targets with the Region 7 RCRA program to further ensure that all OECA NPM guidance commitments are met with respect to inspection coverage.

After a facility is inspected, the inspector works with the facility to return any noted violations to compliance. In most cases, a letter of warning is issued from the Regional Office giving notice of the violations, directions for return to compliance and a specific deadline for response. A notice of violation follows the letter of warning if the facility fails to respond to the initial informal enforcement action, or the violations continue for more than 30 days. Inspections revealing high priority violations (those that cause actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous constituents) are referred to the HWP for enforcement follow-up. These violations are equivalent to those that could result in a SNC determination for the facility.

HWP staff work with referred facilities through a state-mandated process of Conference, Conciliation and Persuasion to achieve compliance with the hazardous waste requirements. Once compliance is achieved, HWP uses its administrative enforcement authority to pursue and negotiate a Settlement Agreement if penalties are appropriate for the violations. DEQ legal counsel assists in the preparation of these agreements, which are then referred to the AG for filing. HWP can refer cases to the AG for legal action to compel compliance, to collect monetary penalties, or to take other actions as necessary. HWP will also refer cases in instances where the violations are imminently or immediately harmful to human health or the environment.

(Source: MDNR Compliance Manual, August 2007)

HWP staff also addresses questions from regulated entities, provide compliance and technical assistance to regulated entities, issue EPA ID numbers to new facilities, collect biennial report information, input compliance and enforcement information into RCRAInfo and maintain inspection and enforcement files.

**Local Agencies included/excluded from review**

Missouri has no local agencies who are involved in implementing the RCRA program.

**Resources**

| <b>Positions in RCRA Subtitle C Program</b> | <b>number of FTE's</b>  |
|---|---|
| Enforcement                                 | 5 (includes unit chief)   |
| Inspections                                 | 15.5  |
| Legal Counsel                               | Resources provided as needed by DEQ in-house legal counsel and Attorney General's office. |

**Staffing/Training**

In FFY08, the HWP enforcement section was not fully staffed. Only two enforcement case managers were in the section during the FFY reviewed. An additional two enforcement staff have since joined the HWP for a total of four enforcement staff and one unit chief.

**Data Reporting Systems/Architecture**

MDNR enters all RCRA compliance and enforcement activities in RCRAInfo, which is the EPA database of record for capturing RCRA facility information, compliance, enforcement, corrective action, and permit activities. The HWP also maintains a Fees and Taxes database which tracks inspection and enforcement information, as well as the payment of state-specific fees associated with generator status and permit modifications.

**B. MAJOR PROGRAM PRIORITIES AND ACCOMPLISHMENTS**

**Priorities**

The Director of the Department of Natural Resources set as a priority for the Hazardous Waste Program the completion of Environmental Assistance Visits (EAVs) at all newly notified hazardous waste generators and other facilities as identified by inspectors during field operations. The purpose of the EAV is to ensure that the facility is familiar with the various hazardous waste regulations that may apply to the its operations, and provide on-site compliance assistance. During FY2008, the Hazardous Waste Program provided EAVs to 488 facilities in Missouri.

## **Accomplishments**

During FY2008, senior compliance staff within the Hazardous Waste Program prepared and held one of several regularly scheduled Hazardous Waste Forum Meetings for the regulated community, public and other stakeholders. These meetings cover a variety of topics as suggested by the aforementioned groups. The meeting agenda and presentations are placed on the DNR website for future reference. Examples of past discussion topics include financial assurance, Environmental Assistance Visits, Satellite Accumulation, Redefinition of Solid Waste, Hazardous Waste Rule Update, and Electronic Scrap.

The Hazardous Waste Program authors the Enforcement and Compliance Assistance Listserv for hazardous waste generators wherein regular e-mails are sent to interested parties including current environmental regulatory topics. The topics are placed in an archive that can be searched for future reference.

Five settlement agreements were filed in FY08, one judicial consent decree was lodged, and two referrals to the Attorney General's office were filed. Considerable time and effort was also expended in the Greenleaf facility cleanup. MDNR enforcement staff conducted several site inspections to oversee waste characterization and removal from the site.

## **Element 13**

The Hazardous Waste Forum meetings and Environmental Assistance Visits serve to inform and educate regulated entities within the State. In FFY08, MDNR also provided presentations on timely topics to various waste management groups within the State and visited local college campuses to recruit for the Department. Providing such outreach is assessed in staff performance appraisals. The development of hazardous waste technical bulletins and guidance documents by HWP staff contributes to this outreach as well.

Legislation regarding the recycling of electronics was drafted in Missouri in 2007. HWP staff worked with the legislature, and sent comments on the legislation in the spring of 2008. HWP continues an aggressive electronics recycling program.

Applications for high school lab clean-outs were reviewed by HWP staff, and prioritized for waste pick-up. Funding for this endeavor is provided by the MDNR's solid waste management program, and HWP lends its expertise in the areas of hazardous waste management to the effort. The lab clean-out took place in the spring and summer of 2008.

HWP staff also participates in the State's Mercury Reduction Task Force, in its continued effort to reduce the presence of mercury in the environment in general. The task force brings together staff from HWP, the Missouri Department of Education, the Missouri Department of Health and Senior Services and the Missouri Department of Conservation. The task force has developed a web site for schools to use in their efforts to reduce mercury in schools.

## **Best Practices**

HWP's efforts at outreach to regulated entities through the Hazardous Waste Forum, various speaking engagements at environmental group meetings, the development of technical guidance documents, and technical assistance provide many avenues for hazardous waste generators to obtain information regarding the proper management of waste in Missouri. HWP's coordination with other State agencies, such as with the Mercury Reduction Task Force, provides additional avenues for information sharing among state entities.

### **C. PROCESS FOR SRF REVIEW**

**Review Period:** FY 2008

#### **Key Dates and Communications with Region**

Initial state notification: The Kick-Off Letter was sent to the State on May 15, 2009.

Data: The data for the PDA was generated on July 28, 2009.

On-Site Review: The On-Site Review was conducted in the MDNR offices in Jefferson City, Missouri on August 24-26, 2009.

Exit Meeting: The EPA review team conducted the exit meeting for the On-Site Review with MDNR management on August 26, 2009, in Jefferson City, Missouri.

#### **EPA and MDNR Lead Contacts for Review**

##### **EPA Evaluators**

|                |                                    |              |
|----------------|------------------------------------|--------------|
| Beth Koesterer | Environmental Engineer, AWMD/RESP  | 913-551-7673 |
| Stacie Tucker  | Environmental Scientist, AWMD/RESP | 913-551-7715 |
| Nicole Cruise  | Environmental Scientist, AWMD/RESP | 913-551-7641 |

##### **State Contacts:**

|                |  |              |
|----------------|--|--------------|
| Kathy Flippin  | Chief, Compliance and Enforcement Section          | 573-751-1718 |
| Dennis Hansen  | Chief, Enforcement Unit                            | 573-751-2347 |
| Kendall Blythe | Division of Administrative Support, Internal Audit | 573-751-1348 |

### III Status of Outstanding Recommendations From Previous Reviews

During the first SRF review of Missouri's hazardous waste compliance and enforcement program, EPA Region 7 identified several actions to be taken to address issues found during the review. The table below shows the actions that have not been completed at the time of the current SRT review. (Appendix A contains a comprehensive list of completed and outstanding actions for reference.)

| State | Status  | Due Date | Media | Element | Title                 | Finding   |
|-------|---------|----------|-------|---------|-----------------------|---|
| MO    | working |          | RCRA  | 8       | Identification of SNC | State is inconsistent in entering SNC data into the national database.                        |
| MO    | working |          | RCRA  | 11      | Penalty Calculation   | State does not consistently calculate separate economic benefit component in civil penalties. |

#### IV. Findings

Findings represent the Region's conclusions regarding the issue identified. Findings are based on the Initial Findings identified during the data or file review, as well as from follow-up conversations or additional information collected to determine the severity and root causes of the issue. There are four types of findings, which are described below:

**Good Practices** – this describes activities, processes, or policies that the SRF data metrics and/or the file reviews show are being implemented exceptionally well and which the State is expected to maintain at a high level of performance. Additionally, the report may single out specific innovative and noteworthy activities, processes, or policies that have the potential to be replicated by other States and that can be highlighted as a practice for other states to emulate. No further action is required by either EPA or the State.

**Meets SRF Program Requirements** – this indicates that no issues were identified under this Element.

**Areas for State\* Attention** – this describes activities, processes, or policies that the SRF data metrics and/or the file reviews show are being implemented with minor deficiencies that the State needs to pay attention to strengthen its performance, but are not significant enough to require the Region to identify and track State actions to correct. This can describe a situation where a State is implementing either EPA or State policy in a manner that requires self-correction to resolve concerns identified during the review. These are single or infrequent instances that do not constitute a pattern of deficiencies or a significant problem. These are minor issues that the State should self-correct without additional EPA oversight. However, the State is expected to improve and maintain a high level of performance.

**Areas for State\* Improvement-Recommendations Required** – this describes activities, processes, or policies that the metrics and/or the file reviews show are being implemented by the state that have significant problems that need to be addressed and that require follow-up EPA oversight. This can describe a situation where a state is implementing either EPA or State policy in a manner requiring EPA attention. For example, these would be areas where the metrics indicate that the State is not meeting its commitments, there is a pattern of incorrect implementation in updating compliance data in the data systems, there are incomplete or incorrect inspection reports, and/or there is ineffective enforcement response. These would be significant issues and not merely random occurrences. Recommendations are required for these problems that will have well defined timelines and milestones for completion. Recommendations will be monitored in the SRF Tracker.

\*Or, EPA Region's attention, where program is directly implemented.

**[RCRA] Element 1 – Data Completeness**

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

|                          |                                    |  |
|--------------------------|------------------------------------|--|
| Element + Finding Number | Finding 1.1                        | MDNR's RCRA compliance data for Missouri is not complete for some sites.   |
|                          | Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement (Recommendation Required)   |
|                          | Explanation of the Finding         | <p>At the time of the on-site review, HWP staff provided a list of 147 informal enforcement actions for FFY08 (Letters of Warning and Notices of Violation). This list included 22 actions (15%) that did not have corresponding entries in RCRAInfo. During FFY08, the HWP issued 8 formal enforcement actions. At the time of the on-site review, three of these actions (37%) were not entered into RCRAInfo. As a result, some SNY flags and assessed penalties were missing from the database.</p> <p>The Region brought these to the attention of HWP staff after the on-site review. When the draft report was prepared, the enforcement action data for two of the three formal actions has been entered by the HWP. On September 27, 2010, the Region provided a specific list of the remaining missing data to the HWP for the three formal enforcement actions, including any SNC designation data, penalty information and formal enforcement action data.</p> |
|                          | Metric(s) and Quantitative Value   | Data Metrics 1D2, 1F1, 1F2, 1G – Number of informal and formal actions, and associated SNC designations and penalties assessed in RCRAInfo.  |
|                          | State's Response                   |  |
|                          | Action(s)                          | <p>Area for State Improvement:<br/>         Operating procedures provided by the HWP on December 30, 2010, address the issues above of data entry for enforcement and compliance data. The HWP staff members were trained on these procedures and the procedures were finalized and implemented by the State on December 30, 2010. A copy of the procedures is included in the State's response to the draft review report, included in Appendix H.</p>  |

**[RCRA] Element 2 – Data Accuracy**

**Degree to which data reported into the national system is accurately entered and maintained (example, correct codes used, dates are correct, etc.).**

|                          |                                    |  |
|--------------------------|------------------------------------|--|
| Element + Finding Number | Finding 2.1                        | MDNR's compliance and enforcement data in RCRAInfo was accurate where entered. There was an infrequent pattern noted of missing return to compliance dates and linking issues.   |
|                          | Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input checked="" type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement (Recommendation Required)   |
|                          | Explanation of the Finding         | <p>The majority of the inspection information from the reviewed files was accurately reflected in the national data system. Aside from the data issues mentioned in metric 1, above, some return-to-compliance data was missing for some facilities and some enforcement actions were not linked to the associated violations. As this information was located during file review, it was noted by the EPA evaluators. RCRAInfo printouts for seven facilities were subsequently provided to the HWP indicating where data was missing. As of the date of the draft review report, data for six of the seven facilities has been entered into RCRAInfo by the State. Based on subsequent discussion between the Region and the State, violations at the seventh facility cannot be resolved.</p> |
|                          | Metric(s) and Quantitative Value   | File Review Metric 2c – Percentage of files reviewed where mandatory data are accurately reflected in the national data system. (80%)  |
|                          | State's Response                   |  |
|                          | Action(s)                          | <p>Area for State Attention :</p> <p>Operating procedures provided by the HWP on December 30, 2010, address the issues above of data entry for enforcement and compliance data. The HWP staff members were trained on these procedures and the procedures were finalized and implemented by the State on December 30, 2010. A copy of the procedures is included in the State's response to the draft review report, included in Appendix H.</p>   |

**[RCRA] Element 3 - Timeliness of Data Entry**

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

|                          |                                    |  |
|--------------------------|------------------------------------|--|
| Element + Finding Number | Finding 3.1                        | There appeared to be little change between the Production data set and the Frozen data set, indicating that where data was entered, it was entered in a timely fashion.  |
|                          | Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice<br><input checked="" type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement (Recommendation Required)   |
|                          | Explanation of the Finding         | There is little change between the frozen data set and the production data set, indicating that the data, where it has been entered, is entered in a timely manner. In instances where the data is missing, however, this will not be reflected if not entered before the production data set is pulled. |
|                          | Metric(s) and Quantitative Value   | File Review Metric 3b – comparison of the production data set results with the frozen data set.  |
|                          | State's Response                   |  |
|                          | Action(s)                          | Any missing or incorrect data will be brought to the State's attention, as discussed in Finding 2.1, above. Therefore, no further action is necessary for element 3.   |

**[RCRA] Element 4 - Completion of Commitments.**

**Degree to which all enforcement/compliance commitments in relevant agreements (i.e., PPAs, PPGs, categorical grants, CMS plans, authorization agreements, etc.) are met and any products or projects are completed.**

|                          |                                    |  |
|--------------------------|------------------------------------|--|
| Element + Finding Number | Finding                            | MDNR generally met their 2008 PPG goals in their FFY08 workplan.   |
|                          | Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice<br><input checked="" type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement (Recommendation Required)   |
|                          | Explanation of the Finding         | Per MDNR's end of year report for FY08, the State completed a total of 885 inspections (including CAC, CAV, CDI, CEI, CSE, GME and OAM) and 44 financial reviews, assessed 6 civil penalties, filed 4 settlement agreements and referred 2 cases to the AG. More specifically, 6 TSDf inspections were conducted and 83 LQG inspections. |
|                          | Metric(s) and Quantitative Value   | File Review Metric – Planned inspections completed. (TSDFs = 4, LQGs = 74)   |
|                          | State's Response                   |  |
|                          | Action(s)                          | Meets SRF Program Requirements:<br>No further action necessary.  |

**[RCRA] Element 5 – Inspection Coverage**

**Degree to which state completed the universe of planned inspections/compliance evaluations (addressing core requirements and federal, state and State priorities).**

| Element + Finding Number | Finding                            | MDNR did not meet the two-year goal for TSDf inspections, or five-year goal for LQG inspections.   |
|--------------------------|------------------------------------|--|
|                          | Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input checked="" type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement (Recommendation Required)   |
|                          | Explanation of the Finding         | <p>The combined inspection coverage for operating TSDfS in Missouri over a two year period is 83.3%. Four out of 24 operating TSDfS did not receive an inspection within the two-year period, either by MDNR or EPA. In evaluating the operating status of these four TSDfS, it is noted that three are considered operating TSDs due to emergency permits issued by the State. At least two of these are for CERCLA purposes. The fourth facility appears to be an operating TSDf only for corrective action treatment purposes (LNAPL treatment). The status of these four TSDfS has been subsequently evaluated by the HWP, and determined that none were typical operating TSDfS that would be subject to biennial inspection. The HWP is working to revise the legal and operating status codes for these facilities in RCRAInfo, so that they will not be included in the operating TSDfS universe calculations.</p> <p>The combined inspection coverage for LQGs in Missouri over a five year period is 88.1%. This exceeds the national average of 73.3%, but is less than the goal of 100%. Per the SRF data results, 28 LQGs were not inspected in the 5 year period. The status of these facilities has been reviewed and as of the date of the draft review report, 18 remain in RCRAInfo as LQGs. Of these 18 LQGs, 14 have received an evaluation in FFY 2009 or FFY10. Subsequent evaluation by the HWP of the remaining 4 LQGs indicates that two of the LQGs were relatively newly registered LQGs. The other two LQGs had received compliance assistance visit (CAV) evaluations in lieu of CEIs during the five-year period. The CAVs were part of the Department Director's compliance initiative at that time.</p> <p>EPA and the HWP continue to evaluate the TSDf and LQG universe for proper inspection coverage annually during inspection planning and coordination.</p> |
|                          | Metric(s) and Quantitative Value   | Data Metric 5a – Inspection coverage for operating TSDfS (2 FYs) (83.3%)<br>Data Metric 5b – Inspection coverage for LQGs (1 FY). (33.9%)<br>Data Metric 5c1 – Inspection coverage for LQGs (5 FYs) (88.1%)<br>Data Metric 5c2 – Inspection coverage for active SQGs (5 FYs) (21.7%)<br>Data Metric 5e1 – Inspections at active CESQGs (5 FYs) (264)   |
|                          | State's Response                   |  |
|                          | Action(s)                          | Area for State Attention:<br>MDNR should ensure that the requisite number of TSDs and LQGs are inspected when preparing annual inspection targets.   |

**[RCRA] Element 6 – Quality of Inspection or Compliance Evaluation Reports**

**Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.**

|                          |                                    |  |
|--------------------------|------------------------------------|--|
| Element + Finding Number | Finding 6.1                        | MDNR's inspection reports were not consistent in the level of detail provided to describe and document observations. The reports were completed in a timely manner.  |
|                          | Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement (Recommendation Required)   |
|                          | Explanation of the Finding         | 8 of 26 inspection reports lacked the level of detail necessary to determine if observations were properly documented and described. Some reports consisted only of checklists with no accompanying narrative to describe field observations, how waste streams are generated, or photo documentation. Others consisted of cover letters to the facility with an attached description of violations. The remaining inspection reports (18 of 26) contained sufficient detail, photos, narrative, and attachments to document the observations and violations noted by the inspector. The need for consistency in inspection reports amongst inspectors from different Regional Offices was discussed at the exit briefing. The MDNR Inspection and Enforcement Manual (I&E Manual) includes information regarding the level of detail necessary in inspection reports. This manual was revised in January 2011, and staff was provided training on the revised manual in the spring of 2011. |
|                          | Metric(s) and Quantitative Value   | File Review Metric 6b – Percentage of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance at the facility. (70%)  |
|                          | State's Response                   |  |
|                          | Action                             | <b>Area for State Improvement:</b><br>Per the HWP's comments on the draft review report, included in Appendix H, Department management continues to review inspection reports for consistent level of detail and documentation.  |

**[RCRA] Element 7 - Identification of Alleged Violations.**

**Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information (e.g., facility-reported information).**

|                          |                                    |   |
|--------------------------|------------------------------------|---|
| Element + Finding Number | Finding 7.1                        | Due to the brevity of some of the inspection reports, it was difficult to determine if accurate compliance determinations were made and recorded. In some instances, the SNC determination was missing, but the formal enforcement was taken. Where the determinations are accurately made, the data is entered in a timely manner.   |
|                          | Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input checked="" type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement (Recommendation Required)  |
|                          | Explanation of the Finding         | <p>83% (20 of 24) of the files reviewed contained the necessary information to indicate that the compliance determinations were accurate. In those instances where the reviewers were not able to conclude accurate compliance determinations were made, it was due to the lack of documentation in the inspection report. See the discussion in Element 6, above, regarding inspection reports consisting of only checklists, and little to no narrative to document observations or violations (or compliance), attachments or photos.</p> <p>100% of the violation determinations as made by MDNR were entered in a timely manner.</p> |
|                          | Metric(s) and Quantitative Value   | <p>File Review Metric 7a – Percentage of accurate compliance determinations based on inspection reports. (85%)</p> <p>File Review Metric 7b – of violation determinations in the files reviewed that are reported timely to the national database (within 150 days). (100%)</p>   |
|                          | State's Response                   |   |
|                          | Action(s)                          | <p>Area for State Attention:</p> <p>As the consistency of inspection report detail is addressed, so should this Element.</p>  |

**[RCRA] Element 8 - Identification of SNC and HPV**

**Degree to which the state accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner.**

|                          |                                    |   |
|--------------------------|------------------------------------|---|
| Element + Finding Number | Finding 8.1                        | Based on the files reviewed, a number of facilities were not identified as SNCs in RCRAInfo. It does not appear that MDNR is consistently entering SNC information into RCRAInfo for facilities where formal enforcement actions are taken. This is a continuing problem from the SRF Round 1 review.   |
|                          | Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement (Recommendation Required)  |
|                          | Explanation of the Finding         | <p>55% (13 of 24) files reviewed indicate that MDNR correctly identified the facility as a SV.<br/>         8% (2 of 24) files reviewed indicate that MDNR correctly identified the facility as a SNC and entered the SNC into RCRAInfo in a timely manner.<br/>         25% (6 of 24) files reviewed indicate that MDNR correctly identified the facility as a SNC but did not enter the SNC into RCRAInfo.<br/>         12% (3 of 24) files reviewed could have been identified as SNCs. MDNR took informal enforcement actions at these facilities as secondary violators. It is possible that additional case development could have resulted in formal enforcement, but the informal enforcement actions achieved the desired result of return to compliance.<br/>         The SNC determinations that were entered into RCRAInfo were done so in a timely manner. The remainder of the SNCs were accurately identified by MDNR, but not entered into RCRAInfo as such. The file review indicates that MDNR does not consistently enter SNC designations into RCRAInfo.<br/>         This is a continuing problem from the SRF Round 1 review.</p> |
|                          | Metric(s) and Quantitative Value   | <p>Data Metric 8a – SNC identification rate at sites with inspections (1 FY). (0.5%)<br/>         Data Metric 8b – Percent of SNC determinations made within 150 days (1 FY). (100%)<br/>         Data Metric 8c – Percent of formal actions taken that received a prior SNC listing (1 FY). (25%)<br/>         File Review Metric 8h – Percentage of violations in files reviewed that was accurately determined to be SNC. (100%)</p>   |
|                          | State's Response                   |   |
|                          | Action(s)                          | <p>Area for State Improvement :<br/>         MDNR HWP developed an SOP for ensuring SNC evaluations are entered into RCRAInfo at the time such determinations are made, and that the data is entered in a timely manner. This SOP was submitted to Region 7 on December 30, 2010 and found to address the issued noted in the program review. The SOP was implemented by the HWP on December 30, 2010.</p>  |

**[RCRA] Element 9 - Enforcement Actions Promote Return to Compliance**

**Degree to which state enforcement actions include required corrective action (i.e., injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.**

| Element + Finding Number | Finding 9.1                        | MDNR documents return to compliance for SNC in the program files.   |
|--------------------------|------------------------------------|---|
|                          | Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice<br><input checked="" type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement (Recommendation Required)  |
|                          | Explanation of the Finding         | 88% (7 of 8) of the files reviewed for facilities that were in SNC contained documentation that the facility has or will return to compliance. Only one facility file lacked information regarding return to compliance, due in part to the age of the case. (In this case, after the various motions and petitions were filed, and the final judicial action levied the penalty, almost 9 years had transpired between the initial inspection and the final penalty action.) All of the cases that were in SNC status were addressed with a formal enforcement action. Usually, compliance was achieved before the formal action was taken, as a result of MDNR's Conference, Conciliation and Persuasion process. |
|                          | Metric(s) and Quantitative Value   | File Review Metric 9b – Percentage of enforcement responses that have returned or will return a source in SNC to compliance. (88%)  |
|                          | State's Response                   |   |
|                          | Action(s)                          | Meets SRF Program Requirements :<br><br>No further action required.   |

|                                |                                    |  |
|--------------------------------|------------------------------------|--|
| Element +<br>Finding<br>Number | Finding 9.2                        | MDNR documents return to compliance for secondary violations in the RCRA files for Missouri.   |
|                                | Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice<br><input checked="" type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement (Recommendation Required)   |
|                                | Explanation of the Finding         | 75% (9 of 12) of the files reviewed for facilities that were in SV contained documentation that the facility has or will return to compliance. Three facility files lacked information regarding return to compliance. In one case, the facility changed its generator status to conditionally exempt, and was no longer required to meet certain hazardous waste requirements. At the second facility, the facility did not follow through on the actions described in its response letter to the state, and a subsequent inspection by the state resulted in a formal enforcement action for repeat violations. At the third facility, the findings were brought to the facility's attention, but no response was required from the facility. The files indicate extensive effort put forth by the inspectors to return facilities to compliance after an inspection. In the rest of the files, return to compliance is well documented. |
|                                | Metric(s) and Quantitative Value   | File Review Metric 9c – Percentage of enforcement responses that have returned or will return Secondary Violators (SV's) to compliance. (75%)  |
|                                | State's Response                   |  |
|                                | Action(s)                          | Meets SRF Program Requirements :<br><br>Return to compliance should be documented in all cases.  |

**[RCRA] Element 10 – Timely and Appropriate Action**

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

|                          |                                    |  |
|--------------------------|------------------------------------|--|
| Element + Finding Number | Finding 10.1                       | Formal enforcement actions are generally taken by MDNR in a timely manner with a few exceptions.   |
|                          | Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input checked="" type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement (Recommendation Required)   |
|                          | Explanation of the Finding         | 75% (6 of 8) of the files reviewed with formal enforcement actions indicate the actions were taken in a timely manner. Two formal actions did take longer than the prescribed timeframe. The required use of the Conference, Conciliation and Persuasion (CC&P) process by the State can result in a longer formal enforcement timeframe for some cases. The State works with the facility to return the facility to compliance with the hazardous waste requirements prior to, or concurrent with the development of the formal enforcement action. 100% of the informal enforcement actions reviewed were taken well within the 150 day timeframe. |
|                          | Metric(s) and Quantitative Value   | File Review Metric 10c – Percentage of enforcement responses reviewed taken in a timely manner. (75% formal, 100% informal)  |
|                          | State's Response                   |  |
|                          | Action(s)                          | Area for State Attention:<br>The State should evaluate efforts to move settlement negotiations along that have languished or taken an inordinate length of time to complete. In its response to the draft review report (attached in Appendix H), the HWP describes its efforts to keep enforcement cases moving forward to settlement.  |

|                                |                                    |  |
|--------------------------------|------------------------------------|--|
| Element +<br>Finding<br>Number | Finding 10.2                       | Enforcement responses taken by MDNR are appropriate to the violations.   |
|                                | Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input checked="" type="checkbox"/> Area for State Attention<br><input type="checkbox"/> Area for State Improvement (Recommendation Required)   |
|                                | Explanation of the Finding         | With the exception of the three cases discussed in Element 8, above, the remaining files reviewed indicate appropriate enforcement actions were taken in response to the violations found as a result of the inspections conducted by MDNR. In one of the three cases, the pursuit of suspended civil penalties should have been evaluated. In those cases where penalties are suspended for a certain length of time so long as no violations are found to exist as a condition of settlement, but violations are noted in subsequent inspections, then it would appear appropriate to call in the suspended penalties. |
|                                | Metric(s) and Quantitative Value   | File Review Metric 10d – Percentage of enforcement responses reviewed are appropriate to the violations. (88%) (21 of 24)  |
|                                | State's Response                   |  |
|                                | Action(s)                          | Area for State Attention:<br>Refer to Element 8 for discussion of the 3 situations that should have been identified as SNC instead of secondary violations. The State needs to ensure that enforcement responses are appropriate to the violations in all cases.   |

**[RCRA] Element 11 - Penalty Calculation Method**

**Degree to which state documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.**

|                          |                                    |  |
|--------------------------|------------------------------------|--|
| Element + Finding Number | Finding                            | MDNR does not consistently document in the files that initial penalty calculations include gravity and economic benefit components. Economic benefit is not consistently calculated. This is a continuing problem from the SRF Round 1 review.   |
|                          | Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement (Recommendation Required).  |
|                          | Explanation of the Finding         | Files for seven penalty actions were reviewed. Two of these files included information to document that economic benefit was calculated as a separate component of the penalty for the violations pursued in the enforcement action.   |
|                          | Metric(s) and Quantitative Value   | File Review Metric 11a – Percentage of reviewed penalty calculations that consider and include where appropriate gravity and economic benefit. (28%)   |
|                          | State's Response                   |  |
|                          | Action(s)                          | Area for State Improvement:<br>MDNR HWP developed an SOP to ensure economic benefit is consistently considered and calculated for each penalty action. This SOP was submitted to Region 7 on December 30, 2010 and found to address the issued noted in the program review. The SOP was implemented by the HWP on December 30, 2010. |

**[RCRA] Element 12 - Final Penalty Assessment and Collection**

**Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.**

|                          |                                    |  |
|--------------------------|------------------------------------|--|
| Element + Finding Number | Finding                            | MDNR does not consistently document the difference between initial and final penalties. MDNR files also lack documentation that penalties have been collected after settlement has been reached with Respondents.  |
|                          | Is this finding a(n) (select one): | <input type="checkbox"/> Good Practice<br><input type="checkbox"/> Meets SRF Program Requirements<br><input type="checkbox"/> Area for State Attention<br><input checked="" type="checkbox"/> Area for State Improvement (Recommendation Required)   |
|                          | Explanation of the Finding         | <p>Five formal actions included initial and final penalty assessments. Only three of the five files for these cases included documentation of the differences between the penalty figures.</p> <p>Six formal actions included penalties that were due and payable. Of these six actions, only two files included documentation that the penalties had been paid by the Respondent.</p> |
|                          | Metric(s) and Quantitative Value   | <p>Data Metric 12b – Percent of final formal actions with penalty (1 FY). (100%)</p> <p>File Review Metric 12a – Percentage of penalties reviewed that document the difference and rationale between the initial and final assessed penalty. (60%)</p> <p>File Review Metric 12b – Percentage of files that document collection of penalty. (33%)</p>                                  |
|                          | State's Response                   |  |
|                          | Action(s)                          | <p>Area for State Improvement :</p> <p>MDNR HWP developed an SOP for the documentation of penalty adjustments made during negotiation and collection of said penalties. This SOP was submitted to Region 7 on December 30, 2010 and found to address the issued noted in the program review. The SOP was implemented by the HWP on December 30, 2010.</p>                              |

**Appendix A: Status of Recommendations from Previous Reviews**

During the first SRF review of Missouri's hazardous waste compliance and enforcement program, Region 7 identified several actions to be taken to address issues found during the review. The table below shows the status of progress toward completing those actions.

| State       | Status  | Due Date | Element  | Finding  |
|-------------|---------|----------|--|--|
| MO- Round 1 | Working |          | Degree to which significant violations are reported to EPA in a timely and accurate manner.  | MDNR was not routinely identifying all SNCs in the RCRAInfo database system. For those SNCs that were identified, all but one was identified within the 150-day time frame established by the Enforcement Response Policy. |
| MO- Round 1 | Working |          | Degree to which the state includes both gravity and economic benefit calculations for all penalties, appropriately using the BEN model or consistent state policy. | The use of the BEN model to calculate economic benefit of noncompliance (EBN) was not evident in the file review. EBN was not calculated or assessed separately.   |
| MO- Round 1 | Working |          | Degree to which penalties in final enforcement actions include economic benefit and gravity in accordance with applicable penalty policies.                        | Economic benefit is not calculated as a separate portion of the penalty.   |

Appendix B  
**Official Data Pull**  
**FY 2008 Data**

| Metric  | Metric Description  | Metric Type  | Agency | Nat'l Goal | Nat'l Avg | Missouri Result | Count | Universe | Not Counted |
|---|---|--------------|--------|------------|-----------|-----------------|-------|----------|-------------|
| Date completeness, degree to which the minimum data requirements are complete |   |              |        |            |           |                 |       |          |             |
| 1A1   | Number of operating TSDFs in RCRAInfo                         | Data Quality | State  |            |           | 24              | NA    | NA       | NA          |
| 1A2   | Number of active LQGs in RCRAInfo                             | Data Quality | State  |            |           | 474             | NA    | NA       | NA          |
| 1A3   | Number of active SQGs in RCRAInfo                             | Data Quality | State  |            |           | 2467            | NA    | NA       | NA          |
| 1A4   | Number of all other active sites in RCRAInfo                  | Data Quality | State  |            |           | 2493            | NA    | NA       | NA          |
| 1A5   | Number of LQGs per latest official biennial report            | Data Quality | State  |            |           | 236             | NA    | NA       | NA          |
| 1B1   | Compliance monitoring: number of inspections (1 FY)           | Data Quality | State  |            |           | 476             | NA    | NA       | NA          |
|   |   |              | EPA    |            |           | 38              | NA    | NA       | NA          |
| 1B2   | Compliance monitoring: sites inspected (1 FY)                 | Data Quality | State  |            |           | 414             | NA    | NA       | NA          |
|   |   |              | EPA    |            |           | 38              | NA    | NA       | NA          |
| 1C1   | Number of sites with violations determined at any time (1 FY) | Data Quality | State  |            |           | 409             | NA    | NA       | NA          |
|   |   |              | EPA    |            |           | 61              | NA    | NA       | NA          |
| 1C2   | Number of sites with violations determined during the FY      | Data Quality | State  |            |           | 280             | NA    | NA       | NA          |
|   |   |              | EPA    |            |           | 18              | NA    | NA       | NA          |
| 1D1   | Informal actions: number of sites (1 FY)                      | Data Quality | State  |            |           | 130             | NA    | NA       | NA          |
|   |   |              | EPA    |            |           | 28              | NA    | NA       | NA          |
|   |   |              | EPA    |            |           | 33              | NA    | NA       | NA          |

| Metric  | Metric Description   | Metric Type      | Agency | Nat'l Goal | Nat'l Avg | Missouri Result | Count | Universe | Not Counted |
|---|--|------------------|--------|------------|-----------|-----------------|-------|----------|-------------|
| Date completeness, degree to which the minimum data requirements are complete         |  |                  |        |            |           |                 |       |          |             |
| 1E1   | SNC: number of sites with new SNC (1 FY)                               | Data Quality     | State  |            |           | 2               | NA    | NA       | NA          |
|   |  |                  | EPA    |            |           | 7               | NA    | NA       | NA          |
| 1E2   | SNC: Number of sites in SNC (1 FY)                                     | Data Quality     | State  |            |           | 4               | NA    | NA       | NA          |
|   |  |                  | EPA    |            |           | 41              | NA    | NA       | NA          |
| 1F1   | Formal action: number of sites (1 FY)                                  | Data Quality     | State  |            |           | 4               | NA    | NA       | NA          |
|   |  |                  | EPA    |            |           | 3               | NA    | NA       | NA          |
| 1F2   | Formal action: number taken (1 FY)                                     | Data Quality     | State  |            |           | 4               | NA    | NA       | NA          |
|   |  |                  | EPA    |            |           | 3               | NA    | NA       | NA          |
| 1G  | Total amount of final penalties (1 FY)                                 | Data Quality     | State  |            |           | \$12,950        | NA    | NA       | NA          |
|   |  |                  | EPA    |            |           | \$124,052       | NA    | NA       | NA          |
| Data accuracy, degree to which the minimum data requirements are accurate.            |  |                  |        |            |           |                 |       |          |             |
| 2A1   | Number of sites SNC-determined on day of formal action (1 FY)          | Data Quality     | State  |            |           | 0               | NA    | NA       | NA          |
| 2A2   | Number of sites SNC-determined within one week of formal action (1 FY) | Data Quality     | State  |            |           | 0               | NA    | NA       | NA          |
| 2B  | Number of sites in violation for greater than 240 days                 | Data Quality     | State  |            |           | 133             | NA    | NA       | NA          |
|   |  |                  | EPA    |            |           | 12              | NA    | NA       | NA          |
| Timeliness of data entry, degree to which the minimum data requirements are complete. |  |                  |        |            |           |                 |       |          |             |
| 3A  | Percent SNCs entered more than 60 days after designation (1 FY)        | Review Indicator | State  |            |           | 50.0%           | NA    | NA       | NA          |
|   |  |                  | EPA    |            |           | 16.7%           | NA    | NA       | NA          |

| Metric   | Metric Description  | Metric Type      | Agency   | Nat'l Goal | Nat'l Avg | Missouri Result | Count | Universe | Not Counted |
|--|---|------------------|----------|------------|-----------|-----------------|-------|----------|-------------|
| Inspection coverage, degree to which state completed the universe of planned inspections/compliance evaluations.   |   |                  |          |            |           |                 |       |          |             |
| 5A   | Inspection coverage for operating TSDFs (2 FYs)                                 | Goal             | State    | 100%       | 87.9%     | 75.0%           | 18    | 24       | 6           |
|  |   |                  | Combined | 100%       | 92.1%     | 83.3%           | 20    | 24       | 4           |
| 5B   | Inspection coverage for LQGs (1 FY)   | Goal             | State    | 20%        | 23.5%     | 28.0%           | 66    | 236      | 170         |
|  |   |                  | Combined | 20%        | 25.9%     | 33.9%           | 80    | 236      | 156         |
| 5C   | Inspection coverage for LQGs (5 FYs)  | Goal             | State    | 100%       | 67.9%     | 79.2%           | 187   | 236      | 49          |
|  |   |                  | Combined | 100%       | 73.3%     | 88.1%           | 208   | 236      | 28          |
| 5DC  | Inspection coverage for active SQGs (5 FYs)                                     | Information Only | State    |            |           | 20.2%           | 499   | 2467     | 1968        |
|  |   |                  | Combined |            |           | 21.7%           | 536   | 2467     | 1931        |
| 5E1  | Inspections at active CESQGs (5 FYs)  | Information Only | State    |            |           | 241             | NA    | NA       | NA          |
|  |   |                  | Combined |            |           | 264             | NA    | NA       | NA          |
| 5E2  | Inspections at active transporters (5 FYs)                                      | Information Only | State    |            |           | 164             | NA    | NA       | NA          |
|  |   |                  | Combined |            |           | 172             | NA    | NA       | NA          |
| 5E3  | Inspections at non-notifiers (5 FYs)  | Information Only | State    |            |           | 6               | NA    | NA       | NA          |
|  |   |                  | Combined |            |           | 8               | NA    | NA       | NA          |
| 5E4  | Inspections at active sites other than those listed in 5a-d and 5e1-5e3 (5 FYs) | Information Only | State    |            |           | 17              | NA    | NA       | NA          |
|  |   |                  | Combined |            |           | 18              | NA    | NA       | NA          |
| Identification of alleged violations, degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information. |   |                  |          |            |           |                 |       |          |             |
| 7C   | Violation identification rate at sites with inspections (1 FY)                  | Review Indicator | State    |            |           | 67.6%           | 280   | 414      | 134         |
|  |   |                  | EPA      |            |           | 47.4%           | 18    | 38       | 20          |

| Metric   | Metric Description   | Metric Type      | Agency   | Nat'l Goal      | Nat'l Avg | Missouri Result | Count | Universe | Not Counted |
|--|--|------------------|----------|-----------------|-----------|-----------------|-------|----------|-------------|
| Identification of SNC and HPV, degree to which the state accurately identifies significant noncompliance & high priority violations and enters information into the national system in a timely manner.        |  |                  |          |                 |           |                 |       |          |             |
| 8A   | SNC identification rate at sites with evaluations (1 FY)                 | Review Indicator | State    | ½ Nat'l Avg     | 3.5%      | 0.5%            | 2     | 414      | 412         |
|  |  |                  | Combined | ½ Nat'l Avg     | 3.7%      | 2.0%            | 9     | 449      | 440         |
| 8B   | Percent of SNC determinations made within 150 days (1 FY)                | Goal             | State    | 100%            | 79.6%     | 100.0%          | 2     | 2        | 0           |
|  |  |                  | EPA      | 100%            | 65.1%     | 100.0%          | 7     | 7        | 0           |
| 8C   | Percent of formal actions taken that received a prior SNC listing (1 FY) | Review Indicator | State    | ½ Nat'l Avg     | 58.1%     | 25.0%           | 1     | 4        | 3           |
|  |  |                  | EPA      | ½ Nat'l Avg     | 81.0%     | 0/0             | 0     | 0        | 0           |
| Timely and appropriate action, degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.  |  |                  |          |                 |           |                 |       |          |             |
| 10A  | Percent of SNCs with formal action/referral taken within 360 days (1 FY) | Review Indicator | State    | 80%             | 27.6%     | 0.0%            | 0     | 2        | 2           |
|  |  |                  | Combined | 80%             | 25.7%     | 0.0%            | 0     | 9        | 9           |
| 10B  | No activity indicator - number of formal actions (1 FY)                  | Review Indicator | State    |                 |           | 4               | NA    | NA       | NA          |
| Final penalty assessment and collection, degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected. |  |                  |          |                 |           |                 |       |          |             |
| 12A  | No activity indicator - penalties (1 FY)                                 | Review Indicator | State    |                 |           | \$12,950        | NA    | NA       | NA          |
| 12B  | Percent of final formal actions with penalty (1 FY)                      | Review Indicator | State    | ½ Nat'l Average | 79.5%     | 100.0%          | 3     | 3        | 0           |
|  |  |                  | Combined | ½ Nat'l Average | 78.8%     | 83.3%           | 5     | 6        | 1           |

Appendix C  
PDA Transmittal Letter

Appendices C, D and E provide the results of the Preliminary Data Analysis (PDA). The PDA forms the initial structure for the SRF report, and helps ensure that the data metrics are adequately analyzed prior to the on-site review. This is a critical component of the SRF process because it allows the reviewers to be prepared and knowledgeable about potential problem areas before initiating the on-site portion of the review. In addition, it gives the Region focus during the file review and/or basis for requesting supplemental files based on potential concerns raised by the data metrics results.

This section, Appendix C, contains the letter transmitting the results of the PDA to the state. This letter identifies areas that the data review suggests the need for further examination and discussion during the review process.

(In this case, the PDA was not separately transmitted to the State. It was provided to program review participants at the time of the on-site program review. Therefore, no letter is attached here.)

## Appendix D

### Preliminary Data Analysis Chart

This section provides the results of the Preliminary Data Analysis (PDA). The PDA forms the initial structure for the SRF report, and helps ensure that the data metrics are adequately analyzed prior to the on-site review. This is a critical component of the SRF process because it allows the reviewers to be prepared and knowledgeable about potential problem areas before initiating the on-site portion of the review. In addition, it gives the Region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metrics results.

The PDA reviews each data metric and evaluates state performance against the national goal or average, if appropriate. The PDA Chart in this section of the SRF report only includes metrics where potential concerns are identified or potential areas of exemplary performance. The full PDA Worksheet (Appendix E) contains every metric: positive, neutral or negative. Initial Findings indicate the observed results. Initial Findings are preliminary observations and are used as a basis of further investigation that takes place during the file review and through dialogue with the state. Final Findings are developed only after evaluating them against the file review results where appropriate, and dialogue with the state have occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

| Metric | Metric Description   | Metric Type      | Agency | Nat'l Goal | Nat'l Avg | Missouri Result | EPA Preliminary Analysis           |
|--------|--|------------------|--------|------------|-----------|-----------------|------------------------------------|
| 1E2    | SNC: Number of sites in SNC (1 FY)                                       | Data Quality     | State  |            |           | 4               | Review process for SNC designation |
| 2B     | Number of sites in violation for greater than 240 days                   | Data Quality     | State  |            |           | 133             | Data missing?                      |
| 10A    | Percent of SNCs with formal action/referral taken within 360 days (1 FY) | Review Indicator | State  | 80%        | 27.6%     | 0.0%            | Review formal enforcement actions. |

**Appendix E**

**PDA Worksheet (with Regional and State Comments)**

| Metric  | Metric Description  | Metric Type  | Agency | Nat'l Goal | Nat'l Avg | Missouri Result | Count | Universe | Not Counted | Discrepancy explanation | Regional evaluation |
|---|---|--------------|--------|------------|-----------|-----------------|-------|----------|-------------|-------------------------|---------------------|
| Date completeness, degree to which the minimum data requirements are complete |   |              |        |            |           |                 |       |          |             |                         |                     |
| 1A1   | Number of operating TSDFs in RCRAInfo                         | Data Quality | State  |            |           | 24              | NA    | NA       | NA          |                         |                     |
| 1A2   | Number of active LQGs in RCRAInfo                             | Data Quality | State  |            |           | 474             | NA    | NA       | NA          |                         |                     |
| 1A3   | Number of active SQGs in RCRAInfo                             | Data Quality | State  |            |           | 2467            | NA    | NA       | NA          |                         |                     |
| 1A4   | Number of all other active sites in RCRAInfo                  | Data Quality | State  |            |           | 2493            | NA    | NA       | NA          |                         |                     |
| 1A5   | Number of LQGs per latest official biennial report            | Data Quality | State  |            |           | 236             | NA    | NA       | NA          |                         |                     |
| 1B1   | Compliance monitoring: number of inspections (1 FY)           | Data Quality | State  |            |           | 476             | NA    | NA       | NA          |                         |                     |
|   |   |              | EPA    |            |           | 38              | NA    | NA       | NA          |                         |                     |
| 1B2   | Compliance monitoring: sites inspected (1 FY)                 | Data Quality | State  |            |           | 414             | NA    | NA       | NA          |                         |                     |
|   |   |              | EPA    |            |           | 38              | NA    | NA       | NA          |                         |                     |
| 1C1   | Number of sites with violations determined at any time (1 FY) | Data Quality | State  |            |           | 409             | NA    | NA       | NA          |                         |                     |
|   |   |              | EPA    |            |           | 61              | NA    | NA       | NA          |                         |                     |
| 1C2   | Number of sites with violations determined during the FY      | Data Quality | State  |            |           | 280             | NA    | NA       | NA          |                         |                     |
|   |   |              | EPA    |            |           | 18              | NA    | NA       | NA          |                         |                     |
| 1D1   | Informal actions: number of sites (1 FY)                      | Data Quality | State  |            |           | 130             | NA    | NA       | NA          |                         |                     |
|   |   |              | EPA    |            |           | 28              | NA    | NA       | NA          |                         |                     |
|   |   |              | EPA    |            |           | 33              | NA    | NA       | NA          |                         |                     |

| Metric  | Metric Description   | Metric Type      | Agency | Nat'l Goal | Nat'l Avg | Missouri Result | Count | Universe | Not Counted | Discrepancy explanation | Regional evaluation                |
|---|--|------------------|--------|------------|-----------|-----------------|-------|----------|-------------|-------------------------|------------------------------------|
| Date completeness, degree to which the minimum data requirements are complete         |  |                  |        |            |           |                 |       |          |             |                         |                                    |
| 1E1   | SNC: number of sites with new SNC (1 FY)                               | Data Quality     | State  |            |           | 2               | NA    | NA       | NA          |                         |                                    |
|   |  |                  | EPA    |            |           | 7               | NA    | NA       | NA          |                         |                                    |
| 1E2   | SNC: Number of sites in SNC (1 FY)                                     | Data Quality     | State  |            |           | 4               | NA    | NA       | NA          |                         | Review process for SNC designation |
|   |  |                  | EPA    |            |           | 41              | NA    | NA       | NA          |                         |                                    |
| 1F1   | Formal action: number of sites (1 FY)                                  | Data Quality     | State  |            |           | 4               | NA    | NA       | NA          |                         |                                    |
|   |  |                  | EPA    |            |           | 3               | NA    | NA       | NA          |                         |                                    |
| 1F2   | Formal action: number taken (1 FY)                                     | Data Quality     | State  |            |           | 4               | NA    | NA       | NA          |                         |                                    |
|   |  |                  | EPA    |            |           | 3               | NA    | NA       | NA          |                         |                                    |
| 1G  | Total amount of final penalties (1 FY)                                 | Data Quality     | State  |            |           | \$12,950        | NA    | NA       | NA          |                         |                                    |
|   |  |                  | EPA    |            |           | \$124,052       | NA    | NA       | NA          |                         |                                    |
| Data accuracy, degree to which the minimum data requirements are accurate.            |  |                  |        |            |           |                 |       |          |             |                         |                                    |
| 2A1   | Number of sites SNC-determined on day of formal action (1 FY)          | Data Quality     | State  |            |           | 0               | NA    | NA       | NA          |                         |                                    |
| 2A2   | Number of sites SNC-determined within one week of formal action (1 FY) | Data Quality     | State  |            |           | 0               | NA    | NA       | NA          |                         |                                    |
| 2B  | Number of sites in violation for greater than 240 days                 | Data Quality     | State  |            |           | 133             | NA    | NA       | NA          |                         | Data missing?                      |
|   |  |                  | EPA    |            |           | 12              | NA    | NA       | NA          |                         |                                    |
| Timeliness of data entry, degree to which the minimum data requirements are complete. |  |                  |        |            |           |                 |       |          |             |                         |                                    |
| 3A  | Percent SNCs entered more than 60 days after designation (1 FY)        | Review Indicator | State  |            |           | 50.0%           | NA    | NA       | NA          |                         |                                    |
|   |  |                  | EPA    |            |           | 16.7%           | NA    | NA       | NA          |                         |                                    |

| Metric   | Metric Description  | Metric Type      | Agency   | Nat'l Goal | Nat'l Avg | Missouri Result | Count | Universe | Not Counted | Discrepancy explanation | Regional evaluation           |
|--|---|------------------|----------|------------|-----------|-----------------|-------|----------|-------------|-------------------------|-------------------------------|
| Inspection coverage, degree to which state completed the universe of planned inspections/compliance evaluations.   |   |                  |          |            |           |                 |       |          |             |                         |                               |
| 5A   | Inspection coverage for operating TSDFs (2 FYs)                                 | Goal             | State    | 100%       | 87.9%     | 75.0%           | 18    | 24       | 6           |                         |                               |
|  |   |                  | Combined | 100%       | 92.1%     | 83.3%           | 20    | 24       | 4           |                         |                               |
| 5B   | Inspection coverage for LQGs (1 FY)   | Goal             | State    | 20%        | 23.5%     | 28.0%           | 66    | 236      | 170         |                         |                               |
|  |   |                  | Combined | 20%        | 25.9%     | 33.9%           | 80    | 236      | 156         |                         |                               |
| 5C   | Inspection coverage for LQGs (5 FYs)  | Goal             | State    | 100%       | 67.9%     | 79.2%           | 187   | 236      | 49          |                         | Are LQGs properly classified? |
|  |   |                  | Combined | 100%       | 73.3%     | 88.1%           | 208   | 236      | 28          |                         |                               |
| 5DC  | Inspection coverage for active SQGs (5 FYs)                                     | Information Only | State    |            |           | 20.2%           | 499   | 2467     | 1968        |                         |                               |
|  |   |                  | Combined |            |           | 21.7%           | 536   | 2467     | 1931        |                         |                               |
| 5E1  | Inspections at active CESQGs (5 FYs)  | Information Only | State    |            |           | 241             | NA    | NA       | NA          |                         |                               |
|  |   |                  | Combined |            |           | 264             | NA    | NA       | NA          |                         |                               |
| 5E2  | Inspections at active transporters (5 FYs)                                      | Information Only | State    |            |           | 164             | NA    | NA       | NA          |                         |                               |
|  |   |                  | Combined |            |           | 172             | NA    | NA       | NA          |                         |                               |
| 5E3  | Inspections at non-notifiers (5 FYs)  | Information Only | State    |            |           | 6               | NA    | NA       | NA          |                         |                               |
|  |   |                  | Combined |            |           | 8               | NA    | NA       | NA          |                         |                               |
| 5E4  | Inspections at active sites other than those listed in 5a-d and 5e1-5e3 (5 FYs) | Information Only | State    |            |           | 17              | NA    | NA       | NA          |                         |                               |
|  |   |                  | Combined |            |           | 18              | NA    | NA       | NA          |                         |                               |
| Identification of alleged violations, degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information. |   |                  |          |            |           |                 |       |          |             |                         |                               |
| 7C   | Violation identification rate at sites with inspections (1 FY)                  | Review Indicator | State    |            |           | 67.6%           | 280   | 414      | 134         |                         |                               |
|  |   |                  | EPA      |            |           | 47.4%           | 18    | 38       | 20          |                         |                               |

| Metric   | Metric Description   | Metric Type      | Agency   | Nat'l Goal      | Nat'l Avg | Missouri Result | Count | Universe | Not Counted | Discrepancy explanation | Regional evaluation                |
|--|--|------------------|----------|-----------------|-----------|-----------------|-------|----------|-------------|-------------------------|------------------------------------|
| Identification of SNC and HPV, degree to which the state accurately identifies significant noncompliance & high priority violations and enters information into the national system in a timely manner.        |  |                  |          |                 |           |                 |       |          |             |                         |                                    |
| 8A   | SNC identification rate at sites with evaluations (1 FY)                 | Review Indicator | State    | ½ Nat'l Avg     | 3.5%      | 0.5%            | 2     | 414      | 412         |                         |                                    |
|  |  |                  | Combined | ½ Nat'l Avg     | 3.7%      | 2.0%            | 9     | 449      | 440         |                         |                                    |
| 8B   | Percent of SNC determinations made within 150 days (1 FY)                | Goal             | State    | 100%            | 79.6%     | 100.0%          | 2     | 2        | 0           |                         |                                    |
|  |  |                  | EPA      | 100%            | 65.1%     | 100.0%          | 7     | 7        | 0           |                         |                                    |
| 8C   | Percent of formal actions taken that received a prior SNC listing (1 FY) | Review Indicator | State    | ½ Nat'l Avg     | 58.1%     | 25.0%           | 1     | 4        | 3           |                         |                                    |
|  |  |                  | EPA      | ½ Nat'l Avg     | 81.0%     | 0/0             | 0     | 0        | 0           |                         |                                    |
| Timely and appropriate action, degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.  |  |                  |          |                 |           |                 |       |          |             |                         |                                    |
| 10A  | Percent of SNCs with formal action/referral taken within 360 days (1 FY) | Review Indicator | State    | 80%             | 27.6%     | 0.0%            | 0     | 2        | 2           |                         | Review formal enforcement actions. |
|  |  |                  | Combined | 80%             | 25.7%     | 0.0%            | 0     | 9        | 9           |                         |                                    |
| 10B  | No activity indicator - number of formal actions (1 FY)                  | Review Indicator | State    |                 |           | 4               | NA    | NA       | NA          |                         |                                    |
| Final penalty assessment and collection, degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected. |  |                  |          |                 |           |                 |       |          |             |                         |                                    |
| 12A  | No activity indicator - penalties (1 FY)                                 | Review Indicator | State    |                 |           | \$12,950        | NA    | NA       | NA          |                         |                                    |
| 12B  | Percent of final formal actions with penalty (1 FY)                      | Review Indicator | State    | ½ Nat'l Average | 79.5%     | 100.0%          | 3     | 3        | 0           |                         |                                    |
|  |  |                  | Combined | ½ Nat'l Average | 78.8%     | 83.3%           | 5     | 6        | 1           |                         |                                    |

## Appendix F

### File Selection

The files were selected randomly by using the OTIS File Selection Tool. The total number of files in the selection universe was over 300. Therefore, approximately 27 files were selected, representing facilities with inspections, enforcement actions, SNC violations, and minor violations during the review period.

| ## | Facility City | Evaluation | Violation | SNC | Informal Action | Formal Action | Penalty | Universe | Select  |
|----|---------------|------------|-----------|-----|-----------------|---------------|---------|----------|---------|
| 1  | Independence  | 4          | 0         | 0   | 0               | 0             | 0       | (tsf)TSD | Acc/Rep |
| 2  | Ozark         | 0          | 0         | 0   | 0               | 1             | \$2750  | SQG      | Acc/Rep |
| 3  | Hannibal      | 4          | 2         | 0   | 1               | 0             | 0       | (com)TSD | Acc/Rep |
| 4  | Sullivan.     | 2          | 0         | 0   | 0               | 0             | 0       | (ldf)TSD | Acc/Rep |
| 5  | St. Louis     | 2          | 28        | 0   | 2               | 0             | 0       | SQG      | Acc/Rep |
| 6  | Lebanon       | 1          | 39        | 0   | 1               | 0             | 0       | SQG      | Acc/Rep |
| 7  | Pagedale      | 1          | 15        | 0   | 1               | 0             | 0       | LQG      | Acc/Rep |
| 8  | Deerefield    | 0          | 0         | 0   | 0               | 1             | \$5000  | OTH      | Acc/Rep |
| 9  | Joplin        | 4          | 3         | 0   | 2               | 0             | 0       | (com)TSD | Acc/Rep |
| 10 | Kansas City   | 4          | 4         | 0   | 3               | 0             | 0       | (tsf)TSD | Acc/Rep |
| 11 | Columbia      | 0          | 0         | 0   | 0               | 1             | \$5200  | LQG      | Acc/Rep |
| 12 | Kaiser        | 4          | 0         | 0   | 1               | 0             | 0       | (tsf)TSD | Acc/Rep |
| 13 | Bonne Terre   | 1          | 0         | 0   | 0               | 0             | 0       | SQG      | Acc/Rep |
| 14 | Centralia     | 1          | 11        | 0   | 0               | 0             | 0       | LQG      | Acc/Rep |
| 15 | St. Louis     | 0          | 0         | 0   | 1               | 0             | 0       | (ldf)TSD | Acc/Rep |
| 16 | Clarksville   | 4          | 0         | 0   | 0               | 0             | 0       | (com)TSD | Acc/Rep |
| 17 | Kansas City   | 4          | 0         | 0   | 0               | 0             | 0       | (tsf)TSD | Acc/Rep |
| 18 | St. Louis     | 1          | 0         | 0   | 0               | 0             | 0       | LQG      | Acc/Rep |
| 19 | N Kansas City | 1          | 1         | 0   | 0               | 0             | 0       | LQG      | Acc/Rep |
| 20 | St. Louis     | 2          | 15        | 1   | 2               | 0             | 0       | LQG      | Acc/Rep |
| 21 | Neosho        | 3          | 18        | 1   | 1               | 0             | 0       | OTH      | Acc/Rep |
| 22 | St. Louis     | 1          | 4         | 0   | 1               | 0             | 0       | LQG      | Acc/Rep |
| 23 | Independence  | 1          | 10        | 0   | 0               | 0             | 0       | LQG      | Acc/Rep |
| 24 | Billings      | 1          | 0         | 0   | 0               | 0             | 0       | LQG      | Acc/Rep |
| 25 | Kansas City   | 5          | 5         | 0   | 2               | 0             | 0       | (tsf)TSD | Acc/Rep |
| 26 | St. Louis     | 1          | 10        | 0   | 1               | 0             | 0       | LQG      | Acc/Rep |
| 27 | Monett        | 2          | 14        | 0   | 0               | 0             | 0       | LQG      | Acc/Rep |

## Appendix G

### File Review Analysis

This section presents the initial observations of the Region regarding program performance against file metrics. Initial Findings are developed by the Region at the conclusion of the File Review process. The Initial Finding is a statement of fact about the observed performance, and should indicate whether the performance indicates a practice to be highlighted or a potential issue, along with some explanation about the nature of good practice or the potential issue. The File Review Metrics Analysis Form in the report only includes metrics where potential concerns are identified, or potential areas of exemplary performance.

Initial Findings indicate the observed results. Initial Findings are preliminary observations and are used as a basis for further investigation. Findings are developed only after evaluating them against the PDA results where appropriate, and dialogue with the state have occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

The quantitative metrics developed from the file reviews are initial indicators of performance based on available information and are used by the reviewers to identify areas for further investigation. Because of the limited sample size, statistical comparisons among programs or across states cannot be made.

| Metric # | File Review Metric Description  | Metric Value | Initial Findings   |
|----------|---|--------------|--|
| 2C       | Percentage of files reviewed where mandatory data are accurately reflected in the national data system                                    | 80%          | The majority of the inspection information from the reviewed files was accurately reflected in the national data system. Aside from the data issues mentioned in metric 1, above, some return-to-compliance data was missing for some facilities. As this information was located during file review, it was noted on a RCRAInfo printout, and will be provided to the State so that the database can be reconciled with the file information. There were some instances where violations were not linked to the inspection or enforcement action, and this will likewise be brought to the State's attention. |
| 3B       | Comparison of the production data set results with the frozen data set.   | NA           | There is little change between the frozen data set and the production data set, indicating that the data, where it has been entered, is entered in a timely manner.  |
| 4        | Planned inspections completed   | NA           | Per MDNR's end of year report for FY08, the State completed a total of 885 inspections (including CAC, CAV, CDI, CEI, CSE, GME and OAM) and 44 financial reviews, assessed 6 civil penalties, filed 4 settlement agreements and referred 2 cases to the AG. More specifically, 6 TSDF inspections were conducted and 83 LQG inspections.   |
| 6B       | Percentage of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance at the facility. | 70%          | 8 of 26 inspection reports lacked the level of detail necessary to determine if observations were properly documented and described. Some reports consisted only of checklists with no accompanying narrative to describe field observations, how waste streams are generated, or photo documentation. Others consisted of cover letters to the facility with an attached description of violations. The remaining inspection reports (18 of 26) contained sufficient detail, photos, narrative, and attachments to document the observations and violations noted by the inspector.                           |

| Metric # | File Review Metric Description  | Metric Value                 | Initial Findings  |
|----------|---|------------------------------|---|
| 7A       | Percentage of accurate compliance determinations based on inspection reports.   | 83%                          | 83% (20 of 24) of the files reviewed contained the necessary information to indicate that the compliance determinations were accurate. In those instances where the reviewers were not able to conclude accurate compliance determinations were made, it was due to the lack of documentation in the inspection report. See the discussion in Element 6, above, regarding inspection reports consisting of only checklists, and little to no narrative to document observations or violations (or compliance), attachments or photos. |
| 7B       | Percentage of violation determinations in the files reviewed that are reported timely to the national database (within 150 days). | 100%                         | 100% of the violation determinations as made by MDNR were entered in a timely manner.   |
| 8H       | Percent of formal actions taken that received a prior SNC listing (1 FY).   | 8%                           | 8% (2 of 24) files reviewed indicate that MDNR correctly identified the facility as a SNC and entered the SNC into RCRAInfo in a timely manner. The SNC determinations that were entered into RCRAInfo were done so in a timely manner. The remainder of the SNCs were accurately identified by MDNR, but not entered into RCRAInfo as such. The file review indicates that MDNR does not consistently enter SNC designations into RCRAInfo.  |
| 9B       | Percentage of enforcement responses that have returned or will return a source in SNC to compliance.                              | 88%                          | 88% (7 of 8) of the files reviewed for facilities that were in SNC contained documentation that the facility has or will return to compliance. Only one facility file lacked information regarding return to compliance. All of these were addressed with formal enforcement actions, and in most cases, compliance was achieved before the formal action was taken.  |
| 9C       | Percentage of enforcement responses that have returned or will return Secondary Violators (SV's) to compliance.                   | 75%                          | 75% (9 of 12) of the files reviewed for facilities that were in SV contained documentation that the facility has or will return to compliance. Three facility files lacked information regarding return to compliance. The files indicate extensive effort put forth by the inspectors to return facilities to compliance after an inspection. In most cases, return to compliance is well documented.  |
| 10C      | Percentage of enforcement responses reviewed taken in a timely manner.  | 75% formal,<br>100% informal | 75% (6 of 8) of the files reviewed with formal enforcement actions indicate the actions were taken in a timely manner. Two formal actions did take longer than the prescribed timeframe. 100% of the informal enforcement actions reviewed were taken well within the 150 day timeframe.  |
| 10D      | Percentage of enforcement responses reviewed are appropriate to the violations.   | 88%                          | With the exception of the three cases discussed in Element 8, above, the remaining files reviewed indicate appropriate enforcement actions were taken in response to the violations found as a result of the inspections conducted by MDNR. (21 of 24)  |
| 11A      | Percentage of reviewed penalty calculations that consider and include where appropriate gravity and economic benefit.             | 28%                          | Files for seven penalty actions were reviewed. Two of these files included information to document that economic benefit was calculated as a separate component of the penalty for the violations pursued in the enforcement action.  |

| Metric # | File Review Metric Description  | Metric Value | Initial Findings  |
|----------|---|--------------|---|
| 12A      | Percentage of penalties reviewed that document the difference and rationale between the initial and final assessed penalty. | 60%          | Five formal actions included initial and final penalty assessments. Only three of the five files for these cases included documentation of the differences between the penalty figures. |
| 12B      | Percentage of files that document collection of penalty.  | 33%          | Six formal actions included penalties that were due and payable. Of these six actions, only two files included documentation that the penalties had been paid by the Respondent.        |

**Appendix H**  
**Correspondence**

STATE OF MISSOURI  
Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director  
**DEPARTMENT OF NATURAL RESOURCES**

www.dnr.mo.gov

MAR 11 2011

Mr. Donald Toensing, Chief  
Waste Enforcement and Materials Management Branch  
Air and Waste Management Division  
US Environmental Protection Agency, Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, KS 66101

AWMD / WEMM  
MAR 14 2011  
RECEIVED

Dear Mr. Toensing:

The following is in response to the US Environmental Protection Agency (EPA) Resource Conservation and Recovery Act (RCRA) Hazardous Waste Enforcement Program review conducted in our offices on August 24 – 26, 2009, for inspection and enforcement activities completed in federal fiscal year (FFY) 2008.

**Element 1 – Data Completeness**

**Program Response**

During the first three months of FFY2008, the Missouri Department of Natural Resources (MDNR), Hazardous Waste Program's (HWP) Enforcement Unit (EU) was without a Unit Chief. Unfortunately, within four months of hiring a new Unit Chief, two EU staff positions were vacated. One staff member passed away and another sought other employment. Not until mid summer of 2008 were the positions filled. Data entry into Fees & Taxes and RCRAInfo suffered as a result of the shortage of staff during this period. The HWP has re-emphasized the importance of data entry to staff and made significant progress with filling the two vacant positions and with the timely input of data into RCRAInfo. In particular, progress was made on the entry of information regarding informal enforcement actions. Prior to October 30, 2010, Missouri entered the missing formal enforcement actions, significant non-complier (SNC) flags, and penalty data referenced in the Data Completeness Table and double-checked it for accuracy. The process is as follows:

1. Upon receiving either a Letter of Warning (LOW) or a Notice of Violation (NOV), support staff for the HWP's EU attach routing slips to the documents. In the case of NOVs, a folder is prepared for a case manager to be assigned.

2. The LOWs and NOVs are then forwarded for entry into the Fees & Taxes database. Prior to data entry, the report information is evaluated for completeness and correctness by the EU's Environmental Specialist (ES) responsible for data entry.
3. If information is incorrect, the ES makes appropriate corrective changes to data and then enters the data into the Fees & Taxes database.
4. During the review process, the ES also assures that the Handler Evaluation Log (HEL) is correct. If information is incorrect, the ES makes appropriate changes to the HEL prior to forwarding the HEL on to the RCRAInfo data entry specialist.
5. Upon receipt of the HEL, the RCRAInfo data entry specialist enters data into RCRAInfo.

This entire process may take up to two weeks to complete. This does not include the time it takes to receive the information from the inspectors from the regional offices.

## **Element 2 – Data Accuracy**

### **Program Response**

As noted in Element 1 above, the HWP has made significant progress with the timely input of data into RCRAInfo. We must note that according to HWP procedures at the time, in certain instances where only Class II violations were observed during an inspection (Class II violations being ones without danger to public health or the environment), the inspector did not require documentation providing compliance. This practice was initiated as a way to reduce the amount of time an inspector would have to follow up on an inspection to allow for more sites to be inspected under the director's Environmental Assistance Initiative. (The seventh facility listed in the Data Accuracy table of the HWP review is one of those involving only Class II violations. The record has since been updated.)

While this also allowed inspectors the ability to focus on facilities that had more serious violations, it proved to be a problem when a return to compliance (RTC) date needed to be entered. Consequently, this practice has been discontinued. Now the process is as follows:

1. In instances where all Class II violations are observed to have returned to compliance during the inspection, the inspector will note the RTC date as the date of the inspection.
2. In instances where all Class II violations have not been corrected during the inspection, the inspector will require documentation to prove a RTC.

### **Element 3 – Timeliness of Data Entry**

#### **Program Response**

The HWP will strive to continue to enter data in a timely manner.

### **Element 4 – Completion of Commitments**

#### **Program Response**

The HWP will strive to continue to meet the requirements of its work plan.

### **Element 5 – Inspection Coverage**

#### **Program Response**

The HWP has reviewed the status of the state's treatment, storage, or disposal facilities (TSDFs) to assure correct status of the facilities. Since not specifically referenced by name or EPA identification number, we are assuming that the four TSDFs reportedly not inspected by MDNR or EPA during the subject period include sites we have reviewed and identified. We will send further information on the status of these sites to EPA. On the sites to which we believe EPA might be referring, three similarly named facilities were historically issued short-term emergency permits by MDNR (all intended to support EPA Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Remedial Action Plan (RAP) actions). All three emergency permits have long since expired and the unit status of "operating" has not been valid for several years; hence, there has been no reason to conduct any TSDf type inspections at these facilities. The emergency permits were superseded by RAPs issued by EPA at two of the sites. EPA withdrew the RAP proposal at the third site and in April 2010, MDNR performed an emergency permit closure inspection to form the basis for final administrative disposition of the former permitted storage area at that site. As noted in the HWP review findings, we agree that RCRAInfo needs to be updated to reflect the current legal and operating status codes for these prior emergency permits and related closure activities. We intend to do so as soon as we can figure out the appropriate RCRAInfo coding and may need EPA's assistance in defining those codes.

A third facility is currently permitted for post-closure care and corrective action and, as noted, is an "operating" TSDF only in the sense of corrective action "treatment." The facility operates a wastewater treatment unit (WWTU) only to treat contaminated groundwater and recover free product (light non-aqueous phase liquid). The WWTU was originally exempt from HW permitting (i.e., permitted under Missouri Clean Water Law and Regulations). The WWTU later lost its HW permitting exemption due to a release to the environment from the WWTU and was subsequently permitted as a Miscellaneous (Subpart X) Unit. The WWTU has since operated for

Mr. Donald Toensing

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several years without incident. This site is not a typical "operating" TSDf and has not been routinely inspected as such. The free product generated from the WWTU is collected and managed according to the HW generator regulations and the facility was recently inspected by EPA with respect to these requirements. Oversight of corrective action activities, including financial assurance at this facility, are and have been routinely conducted by the state and appropriate inspection entries input into RCRAInfo.

We do not feel it is appropriate to include emergency permits issued for CERCLA purposes in determining the percentage of TSDfS inspected.

The HWP has reviewed the four Large Quantity Generators (LQGs) that did not receive an inspection within the five year time frame to determine whether they are still in LQG status and are in need of an inspection. The four LQGs have been evaluated for inspections. All four are still registered as LQGs.

The HWP would like to comment that two of the four LQGs were still within the five year time frame for inspection based on a FFY2008 evaluation. The remaining two LQGs had received Compliance Assistance Visits (CAVs) in calendar years 2007 and 2008. While it is understood that a Compliance Evaluation Inspection (CEI) is the inspection type required for compliance, CAVs were conducted under the specific direction of the Department director. Part of that direction specified that a CEI was only to be conducted if a high priority violation (HPV) was observed. In addition, the HWP no longer conducts CAVs at LQGs.

#### **Element 6 – Quality of Inspection or Compliance Evaluation Reports**

##### **Program Response**

The HWP is addressing inconsistencies in inspection report writing. Prior to December 2010, HWP had discussions with each regional office unit chief regarding the level of detail expected in inspection reports and continues to review reports for a consistent level of detail and documentation. In January 2011, the HWP completed updates to the Operations Manual used by the HWP and the regional offices for conducting all aspects of RCRA inspections. The HWP is currently working with regional offices to finalize this draft to incorporate their comments and changes. Additional training will be provided to HWP and regional office staff during the spring of 2011.

#### **Element 7 – Identification of Alleged Violations**

##### **Program Response**

As noted in Element 6, the HWP has discussed with each regional office unit chief the necessity of including narrative in reports to document observations, violations, and compliance. The

HWP will also provide training to regional office staff regarding report writing consistency during the spring of 2011.

#### **Element 8 – Identification of SNC and HPV**

##### **Program Response**

The HWP has developed the following Standard Operating Procedure (SOP) for SNC determination and entry into Fees & Taxes and RCRAInfo.

1. When an acute or HPV is observed during an inspection, the regional office inspector and the respective unit chief will call the HWP's Compliance and Enforcement Section Chief and the EU chief as soon as possible. Discussion will include whether this facility will meet SNC criteria.
2. The regional office will send the inspection report, checklist, HEL and NOV via e-mail (either scanned or with electronic signatures attached to official copies). The e-mail will be sent to the Compliance and Enforcement Section Chief, the EU chief, the ES responsible for data entry, and the EU's support staff. The EU chief will fill out the SNC yes (SNY) HEL and send it via "high importance" e-mail to the ES responsible for data entry so that it can be data entered as soon as possible.
3. Upon receipt of the NOV, support staff will prepare a priority marked folder and attach routing slips to the documents.
4. The priority folder with the NOV is then forwarded to be entered in to the Fees & Taxes database. Prior to data entry, the report information is evaluated for completeness and correctness by the EU's ES responsible for data entry.
5. If information is incorrect, the ES makes appropriate changes to data to correct it and then enters the data into the Fees & Taxes database.
6. During the review process, the ES also assures that the HEL is correct. If information is incorrect, the ES makes appropriate changes to the HEL prior to forwarding it on to the RCRAInfo data entry specialist.
7. The SNY inspection will be attributed to the EU chief who will make the final decision to SNC the facility. The EU chief will also run a query of SNYs each month to determine if all are still appropriate, and provide direction to staff on cases where it appears they should prepare and submit a SNC no HEL.

8. Upon receipt of the CEI HEL and the SNY HEL, the RCRAInfo data entry specialist enters data into RCRAInfo.

Staff has been trained on this procedure, it was sent to the EPA via e-mail, and the procedure was implemented by December 30, 2010.

#### **Element 9 – Enforcement Actions Promote Return to Compliance**

##### **Program Response**

The HWP will continue its efforts in returning facilities to compliance within specified time frames.

#### **Element 10 – Timely and Appropriate Action**

##### **Program Response**

For cases where a RTC has not occurred or settlement negotiations have stalled, the HWP will refer to the Attorney General's Office (AGO). Once a referral has been made, the HWP has limited ability to influence the progress of the case. The HWP held several meetings with the AGO in an attempt to expedite referred cases. In addition, the HWP worked with the AGO to produce a format for referrals with specific information in a particular order whereby the AGO might be able to expedite action on cases. It is thought that providing the AGO with case information in this format will help cases flow through the enforcement process quicker.

Also, as noted in Element 8, the HWP has initiated a procedure for both identifying and entering in a timely manner facilities designated as SNCs.

Finding 10.2 – We question EPA's comment that in one of three cases discussed in Element 8 that the pursuit of suspended penalties should have been evaluated. We are aware of no directive or guidance from EPA that is prescriptive in regard to evaluating suspended penalties.

#### **Element 11 – Penalty Calculation Method**

##### **Program Response**

As SOP, the HWP has modified its Penalty Narrative Justification Worksheet templates to include Economic Benefit, and has provided training to enforcement staff on the need to evaluate this and explain the reasons for pursuit or non-pursuit on each worksheet. Staff will use the EPA guidelines for determining economic benefit in each penalty action. A SOP was drafted and submitted to EPA via e-mail by December 30, 2010. This information will also be included in the "Penalties" section of the Compliance Manual.

Mr. Donald Toensing

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## **Element 12 – Final Penalty Assessment and Collection**

### **Program Response**

This finding is very general and the HWP cannot confirm its validity. The HWP does have a process for documenting and retaining information on the difference between initial and final penalties. The initial penalty is outlined in the penalty negotiation letter and entered into the Fees & Taxes database as "penalty assessed." Later, the "penalty collected" amount is entered into the Fees & Taxes database and RCRAInfo. Enforcement staff is trained to document for the file all discussions, negotiations, and amounts offered and accepted, to show how final amounts have been negotiated. A description of this process is enclosed. These documents are sent to the file for the facility either as a meeting record or memo to the file. The HWP will work closely with the AGO in requesting and filing information regarding penalty payment(s). Further, enforcement case managers will conduct follow up on cases where settlement agreements include penalty payment schedules or suspended penalties. This process will be included in the "Penalties" section of the Compliance Manual. This information will be entered into the Fees & Taxes database as well as RCRAInfo.

The HWP will continue to make progress toward improvements in the areas identified. Please contact either Ms. Kathy Flippin at (573) 751-1718 or Mr. Dennis Hansen at (573) 751-2347, if you have questions regarding this letter.

Sincerely,

**HAZARDOUS WASTE PROGRAM**



David J. Lamb  
Director

DJL:kfh

Enclosures

**Guidance/Training for Hazardous Waste Case Managers on  
Completing Penalty Narrative Justifications  
According to the RCRA Civil Penalty Policy  
Hazardous Waste Program  
Compliance and Enforcement Section  
October 2010**

1. The U.S. EPA requires thoroughly completed Penalty Narrative Justification Worksheets (PNJs) to show how penalties were calculated for violations. The PNJ will serve as initial documentation of the state's penalty and the amounts will be entered into the Penalty Negotiation Letter sent to the facility and its representatives following department management approval.
2. Because every enforcement case warrants penalties, Case Managers (CMs) must do a PNJ for every case. This guidance is prepared for CM use.
3. PNJs are always "Attorney-Client Privileged" documentation.
4. Use the latest H-drive penalty narrative justification template for the information that must be included and explained for your case. An EPA Narrative Justification was provided as an example of the types of information that could be included (It is not a template). This is the currently approved version for use: H:\Sections\Enforcement\ENF-UNIT\1. \$20,000 or Less Settlement Approval Process\Penalty Calculation Worksheet - Prior to Phase I\Penalty Calculation Template.doc
5. Write the PNJ in first person—active voice and with specific facts. (Example: write "The SLRO inspector issued a NOV on X date for the violations listed on the summary sheet of this document...", rather than "a NOV was issued for 10 violations...")
6. Once you have drafted the PNJ and reviewed it for accuracy, obtain PNJ approval from your Unit Chief and the Section Chief. The Section Chief will either return it to you for corrections, or request that it be finalized by one of the administrative assistants, a copy sent to you, and the original placed in the "Confidential File" for the facility. You will use this document to prepare for penalty negotiations. You will share a copy of the PNJ and all associated Confidential documents with the Attorney General's Office if the case must be referred.
7. Use the PNJs early in the case development process to document facts relevant to each violation (the concept of "beginning with the end in mind"). Completing each section of the PNJ has great value in helping you frame the case. You will be summarizing information about the facility, responsible parties, generator and compliance status in a couple paragraphs (that can be cut and pasted into future documents); finding areas where verification or further information or evidence is needed; deciding how serious the situation is relative to your other cases and for work prioritization; documenting and describing details and supporting evidence for the violations and checking facts and whether citations are appropriate and complete.
8. Violation information on the penalty sheets must be accurate and complete, so check (and if necessary, correct) violation information from the inspection report or other enforcement document. Violations may be grouped in

appropriate categories, but must be listed separately on the sheets and in the tables. Do not paraphrase violations. Use complete citations. If a violation does not appear appropriate or supportable, discuss with your Unit Chief. If your Unit Chief approves, explain on the worksheet that you did not calculate a penalty for a particular cited violation and the reasons why.

9. Check to see if there are other violations that should be added to the case. Inform your Unit Chief if you are adding violations to the case and the means you will use to notify the facility.
10. **Penalty Total Summary Page - Always include summary information about the site and situation on or after this page about the facility following the Penalty Summary Page. This should include, but not be limited to:**
  - A. The name of the facility (that the AGO would use on any enforcement documents)
  - B. Who owns the business/the facility? Note who is responsible for the site and correcting the violations. This could be both the site owner and the business operator, though your document should note who is responsible by regulation. It is a good idea to note how and when you verified ownership/responsibility as this information will need to be transferred to the Referral Form if necessary.
  - C. Other locations of this company in Missouri under same ownership? Do or did they have recent enforcement actions? If so, what were they and when were they resolved?
  - D. What does the company do? What type of manufacturing/processes?
  - E. How large is the site (e.g., covers how many acres, in how many buildings, etc.)?
  - F. How many employees?
  - G. Operated at the site for how long?
  - H. Hours of operation?
  - I. Facility status (e.g., Treatment, Storage or Disposal Facility (noting which); large quantity generator, small quantity generator and relevant facts (whether they're consistently in a category, or not and why not).
11. In your summary, note when inspections were done that you are including in this calculation (including those that are "historic" if you included them in the adjustments). Note who did the inspection (which regional office or other entity).
12. Briefly summarize the basis for your calculation, which violations and why, how many violations and whether or not they were consolidated (into 3 groups). This is where you might say that the violations were in certain categories (e.g., 3 preparedness and prevention violations grouped). The EPA example shows a quick way to do this.
13. Focus on documenting FACTS—note what happened, and how you know this fact. For example – "Based on the SLRO hazardous waste compliance inspection report of January 1, 2010 the following violations were observed"

Or—"based on the company's response to the SLRO's hazardous waste Notice of Violation dated January 1, 2010..."

### **PENALTY POLICY**

Study and be knowledgeable on the use of all elements of the Penalty Policy which include the following factors:

#### **Potential for Harm –**

**\*\*The risk of human or environmental exposure to hazardous waste and/or hazardous constituents that may be posed by noncompliance**

**AND**

**\*\*The adverse effect non-compliance may have on statutory or regulatory purposes or procedures for implementing the regulatory program.**

**Consider and document the relevant factors in this calculation, including, but not limited to:**

**Quantity and toxicity of wastes potentially released**

**Likelihood of transport through media**

**Existence and size/number of receptors**

#### **Regulatory Harm:**

**Examples of very serious regulatory harm:**

**Failure to notify as a generator or transporter and owner of new facility**

**Financial responsibility**

**Failure to respond to a formal information request**

**Operation without a permit**

**Failure to prepare or maintain a manifest**

**Failure to perform groundwater monitoring**

#### **The degree to which one complies:**

**Substantially in compliance**

**OR**

**Totally disregarded the requirement**

**Multi-Day - # of days you can document that a violation persisted. Use multi-day matrix to calculate and match the ranges to your gravity-based matrix ranges.**

**Multi-"days" can be based on:**

- **separate inspections where the violation was noted**
- **number of manifests**
- **reasonable assumptions (such as # of days without a groundwater monitoring well)**
- **Days shipped**
- **# of days drums stored**

**Multi-days are mandatory for days 2-180 of Major/Major, Major/Moderate and Moderate/Major (However, multi-day penalties may make the penalty too large relative**

to the potential harm or overly egregious based on the circumstances surrounding the violation. Document this fact if appropriate.)

There is a presumption in favor of multi-day penalties for days 2-180 of Major/Minor; Moderate/Moderate and Minor/Major

Multi-day penalties are discretionary for Moderate/Minor; Minor-Moderate and Minor/Minor

### **ECONOMIC BENEFIT (EB)**

You must consider EB in every penalty calculation and document your determinations and calculations on each Penalty Computation Worksheet. EPA notes that economic incentives for non-compliance are to be eliminated. For grouped violations, it is possible that one or more may justify an EB calculation. Examples of when EB of non-compliance are most likely: Improper land disposal of restricted waste; failure to cleanup discharges; lack of groundwater monitoring; lack of financial responsibility; failures in closure/post-closure care, failure to perform surface impoundment retrofitting.

Document on the EB section of the Penalty Computation Worksheet if and when the EB is less than \$2,500 as calculated by the EB model; if there are compelling public concerns that are not served by taking the case to trial and if you are unlikely to recover the EB in litigation and if the company has documented an inability to pay. These are the reasons that EB may not be appropriate, and you should list and describe your determination if one or more of these are applicable.

EB includes:

Delayed costs = Such as failure to timely install groundwater monitoring or failure to prepare a waste analysis plan that is done later.

Avoided costs = Examples: failure to perform sampling and analysis yearly; not using a licensed hazardous waste transporter; failure to perform waste analysis before putting the waste in a sanitary landfill; secondary containment around a tank not done before closure.

Calculating EB - Install and use EPA's Economic Benefit Computer Model to enter appropriate data relevant to the violation. File this documentation along with your PNJs in the appropriate confidential file for the facility.

### **PENALTY ADJUSTMENTS (p. 30 of Penalty Policy)**

Adjustments can increase, decrease or have no effect on the penalty.

Do not adjust for simple compliance--this is expected.

Can adjust as much as 1% - 25% up or down - in normal circumstances or 26-40% in unusual circumstances

- A. **Good Faith AND Lack of Good Faith (- or +) – Penalty can be reduced if there was an admission or detection prior to correction but not for “lack of knowledge” of the requirement. Good faith can be shown by a cooperative attitude and detecting and reporting violations before the department discovers the violation.**
- B. **Degree of willfulness/negligence – factors to consider**
- **How much control the violator had over the events surrounding the violation (and were delays in correction outside the violator’s control)**
  - **Foreseeability of events tied to violation**
  - **Reasonable precautions to prevent the violation**
  - **Violator knew or should have known the hazards of the conduct**
  - **Violator knew or should have known the legal requirement (never used as basis to reduce penalty)**
- C. **History of non-compliance (+ only) – factors to consider**
- **How similar the previous violation was**
  - **How recent the previous violation was**
  - **The number of previous violations and**
  - **How well the violator responded to the previous violations and corrected the problem**
- It is important to find out and note who in the organization had the control and oversight responsibility for the previous violations and if the same person had responsibility for oversight on the current violations.**
- D. **Ability to Pay (- only) factors to consider**  
**Evaluate using EPA’s ABEL computer model. If the model indicates an inability to pay, we may consider:**
- **An installment payment plan**
  - **Delayed payment schedule with interest (may be contingent upon an increase in sales or some other indicator of improved business) or**
  - **Straight penalty reductions as last recourse**

## **ENVIRONMENTAL PROJECTS**

**Use the current Missouri Attorney General’s Office Supplemental Environmental Policy (SEP) as guidance for assessing the possibility of a SEP in settlement. Note the potential for SEP use on your Worksheets.**

**Other Unique Factors – Litigation risk; strength and ability to prove the violation; probability that the government’s legal arguments will be accepted, evidence, strength of defenses. These factors should not shape the calculation, but considered after calculation.**

**Review pages 42, 44, 45, 46 for basic elements of a calculation and the “hypotheticals” on page 48-52 on how specific information on adjustments can be presented.**

**Please ask the Hazardous Waste Compliance and Enforcement Section Chief if you have questions regarding this guidance.**

## **Documenting and Retaining Information on the Difference Between Initial and Final Penalties**

- A. Transfer the penalty information and amounts from the PNJ to a penalty negotiation letter using the template posted on the H:drive ENF-UNIT templates.
- B. Obtain management approval of the PNJ using standard processes. Mail the PNJ and track the facility's response within 30 days as required. (Notify the unit chief if the facility does not respond within the required 30 day timeframe. The unit chief will call the facility.)
- C. Set up a meeting with the unit and section chief and the facility to negotiate the penalty. The meeting may be by phone or in person at the facility's preference. Penalties are negotiated at DNR offices in Jefferson City, but an alternate location can be arranged if necessary.
- D. Document all penalty-related discussions with the facility and its representatives for the facility's confidential file. Document telephone calls by sending a confidential e-mail to your unit chief and section chief that outlines offers provided, justifications for the offers, mitigating information provided, etc.) Make sure that a copy of the e-mail is sent to the facility's confidential file. Do not accept or make alternative offers without unit or section chief approval.
- E. Formal penalty negotiation meeting discussions and decisions should be documented as Memos to the confidential file. Obtain the unit chief's approval on the content before sending to the file. The memo should be written as meeting notes (noting who attended and their titles, dates, locations, what was discussed, what was offered and reasons, counteroffers and reasons, final terms and any reasons, etc.)
- F. After a penalty has been negotiated, ask that the facility document its penalty offer and all terms of settlement in an e-mail and send it to you. File this in the facility's open (not confidential) file. If you are unsure of any amount or term, send an e-mail requesting clarification of this (or these) point(s).
- G. Proceed to draft a settlement agreement for transmittal to the AGO for approval according to standard procedures.
- H. Enter all penalty amounts into appropriate databases (initial penalty in the penalty negotiation letter is entered into the Fees and Taxes database as "penalty assessed." Later, the "penalty collected" amount is entered in the Fees and Taxes Database and RCRAInfo.) Track penalty payments, assure that you get all payment information from the AGO and enter into appropriate databases. Also, enter information on suspended penalties into all databases as appropriate. When all payments and agreement terms are final, assure that complete and final database entries are made to close the case.

**Missouri Hazardous Waste Enforcement Process for  
Identifying Significant Non-Compliers (SNCs) and High Priority Violators**

The Hazardous Waste Program has developed the following Standard Operating Procedure (SOP) for SNC determination and entry into Fees & Taxes and RCRAInfo.

1. When an Acute or High Priority Violation is observed during an inspection, the Regional Office inspector and the respective Unit Chief will call the Hazardous Waste Program's Compliance and Enforcement Section Chief and the Enforcement Unit Chief as soon as possible. Discussion will include whether this facility will meet SNC criteria.
2. The Regional Office will send the inspection report, checklist, HEL and NOV via e-mail (either scanned or with electronic signatures attached to be official copies). The e-mail will be sent to the Compliance & Enforcement Section Chief, the Enforcement Unit Chief, and the Environmental Specialist responsible for data entry and the Enforcement Unit's support staff. The Enforcement Unit Chief will fill out the SNY HEL and send it via "high importance" e-mail to the Environmental Specialist responsible for data entry so that it can be data entered as soon as possible.
3. Upon receipt of the (NOV), support staff will prepare a Priority-marked folder and attach routing slips to the documents.
4. The Priority Folder with the NOV is then forwarded to be entered into the Fees & Taxes data base. Prior to data entry, the report information is evaluated for completeness and correctness by the Enforcement Environmental Specialist responsible for data entry.
5. If information is incorrect, the ES makes appropriate changes to data to correct it and then enters the data into the Fees & Taxes data base.
6. During the review process, the ES also assures that the Handler Evaluation Log (HEL) is correct. If information is incorrect, the ES makes appropriate changes to the HEL prior to forwarding the HEL on to the RCRAInfo data entry specialist.
7. The SNY inspection will be attributed to the Enforcement Unit Chief who will make the final decision to SNC the facility. The Enforcement Unit Chief will also run a query of SNYs each month to determine if all are still appropriate, and provide direction to staff on cases where it appears they should prepare and submit a SNN HEL.
8. Upon receipt of the Compliance Evaluation Inspection HEL and the SNY HEL, the RCRAInfo data entry specialist enters data into RCRAInfo.

Staff has been trained on this procedure and it was implemented as of December 30, 2010.