

1/31/05

## **U.S. EPA Region 8 State Review Framework – Pilot Phase**

### **Review of Colorado's Air, NPDES, and RCRA Enforcement and Compliance Programs for FY2003**

#### **EXECUTIVE SUMMARY**

##### **Overall Picture**

- Colorado's continues to implement effective enforcement programs and improvements have been made since the previous year's review.
- The State has a strong compliance monitoring presence and has generally met or exceeded its inspection commitments in all areas except for stormwater inspections.
- Enforcement actions are generally appropriate, however, in the Air and NPDES programs many of the formal actions reviewed were not taken in a timely manner.
- EPA and Colorado are working to improve the process used to identify and report to RCRAInfo significant non-compliers (SNCs) in the RCRA enforcement program. This will be an area of focus with all Region 8 RCRA programs during FY05.

##### **Information Sources Included in Review**

- Information sources included in the review are described in detail in the program-specific portions of this report and include information from the national databases, Performance Partnership Agreement, inspection plans, End of Year Reports, national guidance and, information contained in State enforcement files.

##### **Inspection Implementation**

- **CAA** — Colorado's inspection and Title V certification review commitments exceeded the core requirements of the national guidance. Colorado conducted FCEs at 89% of the planned inspections, most of the sources not inspected were true minors. Inspection reports documented thorough inspections and identified violations. Overall, Colorado did a good job of meeting the commitments outlined in the national CMS.
- **CWA** — Colorado inspected virtually all of its NPDES majors in FY03; well above the national average of 67%. The State also conducted over twice as many NPDES minor inspections as it had committed to inspect. The State had committed to conduct 50 stormwater inspections and only accomplished 31.
- **RCRA** — Colorado's inspection implementation during FY03 has been excellent with inspection commitments exceeded by over 50%. Inspection reports continue to be timely and of high quality.

##### **Enforcement Activity**

- **CAA** — The State accurately identified HPVs and did so in a timely manner. Under the State's expedited settlement process, the State issued Compliance Advisories to all HPVs and then settled the case with either a formal or informal action. Not all enforcement actions were resolved in accordance with the Timely & Appropriate guidelines. The HPV settlements required injunctive relief with a compliance schedule when appropriate, otherwise the source was required to comply immediately. In addition the State calculated the gravity portion of the penalty in all cases. The State did not calculate the

economic benefit in 5 cases. Overall, the State did good job of identifying and resolving HPVs.

- **CWA** — Notably, all enforcement actions reviewed included appropriate injunctive relief and resulted in return to compliance. Also, penalty calculations, adjustment rationale, and SEPs were generally appropriate and documentation was clear and useful. None of the reviewed formal enforcement actions taken to address SNCs were taken in a timely manner.
- **RCRA** — The State's enforcement actions are timely and include appropriate injunctive relief and penalties. Violator determinations are timely when made, however, identification of SNCs needs to be improved.

### **Commitments in Annual Agreements**

- **CAA** — The State met its FY03 PPA commitments.
- **CWA** — PPA commitments were met and deliverables were of high quality, with the exception of the unmet stormwater inspection commitments described above.
- **RCRA** — Colorado has met its PPA commitments.

### **Data Integrity**

- **CAA** — Colorado enters data weekly into the State's data base and uploads the information bi-weekly into AIRS. Overall the required data elements are accurate and submitted into AIRS in a timely manner, with a few minor exceptions.
- **CWA** — PCS data was generally found to be timely and accurate, however, only 61% of the required Water Enforcement National Data Base (WENDB) data elements were entered in PCS.
- **RCRA** — Data in RCRAInfo is generally entered accurately and in a timely manner, however, several violations appear in the database even though return to compliance (RTC) has been achieved.

### **Any Additional Program Elements or Activities Reviewed**

- The optional Element 13 was not used in this review.

## AIR PROGRAM EVALUATION RESULTS

Date: 11/30/04

Information Sources Included in the Review: Compliance Monitoring Strategy, T&A Response to HPVs, AIRS Database, Penalty Policies

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State Contact: Bob Jorgenson Phone: (303) 692-3171

### Section 1: Review of State Inspection Implementation

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

#### Identification and Evaluation Information

Clean Air Act Source Universe Information	Number of Sources in Universe
Universe of Major Sources (Title V)	185
Universe of Synthetic Minor 80% Sources	59
Universe of Synthetic Minor Sources	824
Total Number of Sources	1068
Number of inspection files for review	19

#### Data Metrics

Metric a	CAA Major Full Compliance Evaluation (FCE) Coverage in last two complete fiscal years.	73.1%
Metric b	CAA Synthetic Minor 80% sources (SM-80) FCE Coverage in last five completed fiscal years.	51.4%
Metric c	Inspection coverage - Synthetic Minors - 5 years.	72.7%
Metric d	Review of Self-certifications completed.	89.7%
Metric e	Number of facilities with unknown compliance status.	5

#### File Review Metric

Metric r	Regions can optionally track additional elements here such as yearly commitments, or multi-year plans. Reserved for inspection/evaluation plan targets negotiated between the Region and state. (Regional Source-specific or Numeric Inspection Plan Tracking. Regions should add elements here if a negotiated agreement is above or below the national guidance.)	CMS - CO planned to conduct FCEs at 859 sources (this includes minor sources)
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## **Review Discussion Questions**

### **Metrics a, b & c**

Colorado's CMS indicates that the State would conduct FCEs at high risk Title V sources annually, low risk Title V sources biannually, SM 80% and synthetic minor sources every three years, and minor sources every five years. In FY03 Colorado's universe included 185 Title V, 59 SM 80% and 824 synthetic minor sources for a total of 1068 (excluding minor sources). Colorado planned to conduct FCE's at 166 Title V, 59 SM 80% and 157 synthetic minor sources. In addition, the State planned to inspect 477 true minor sources.

Colorado completed FCE's at 161 of 166 Title V sources, 183 of 216 synthetic minor sources and 417 of the 477 true minor sources. Colorado completed 89% of its CMS commitment.

Based on the data metric results by OECA, Colorado conducted FCE's at 73.1% of the Title V sources during fiscal years FY02 and FY03. Colorado disputed this claim and indicated they conducted FCE's at 93.05% of the Title V sources during that two year period. It is unclear why there is a discrepancy.

Based on the data metric results by OECA, Colorado conducted FCE's at 51.4% of the SM 80% sources and 72.7% of the synthetic minor sources. This is on target to conduct inspections at synthetic minor sources (including SM 80%) every five years.

### **Metric d**

In FY03 Colorado planned to review 100% of the Title V certifications and to enter the required data into AIRS. Based on the data metrics results by OECA, Colorado reviewed 89.7% of the Title V certifications. Colorado indicated that they reviewed 100% of the Title V certifications in FY03.

### **Metric e**

Colorado agreed that there were five facilities with an unknown compliance status as reported by data metrics. These FCE's had not been uploaded into AIRS from the State's database (probably due to the "bug" problem the State was having with its Transaction Generator). The State updated AIRS to reflect the correct compliance status for these five facilities.

### **Metric r**

Colorado's PPA requires the State to submit a Compliance Monitoring Plan to EPA annually. As mentioned above Colorado planned to conduct FCE's at 166 of the 185 Title V sources, 59 of the 59 SM 80% and 157 of the 824 synthetic minor sources. In addition, the State planned to inspect 477 true minor sources. This exceeds the national guidance of conducting FCE's at 100% of the Title V sources every 2 years and synthetic minor sources (includes SM 80%) every 5 years. However, the State didn't complete 100% of the FCE's planned in the CMS due to resignation of one inspector.

*Findings:* Colorado's inspection and Title V certification review commitments in the FY03 CMS covered the core requirements of the national guidance - CAA Stationary Source Compliance Monitoring Strategy, April 25, 2001. Overall, Colorado does a good job of meeting the commitments outlined in the national CMS.

*Recommendations if corrective action is needed:* No recommendations.

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

**Identification and Evaluation Information**

Clean Air Act Source Universe Information	Number of Sources in Universe
Full Compliance Evaluations	798
Partial Compliance Evaluations	0
Total Number of Evaluations	798
Number of inspection files for review	19

**File Review Metric**

Metric a	Percentage of adequately documented Compliance Monitoring Reports/Inspection Reports.	See Findings
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**Review Discussion Questions**

**Metric a**

EPA selected 19 inspection reports to review. The inspection reports were categorized as follows: 13 Title V, 3 SM 80%, 2 synthetic minor and 1 minor source.

*Findings:* A total of 19 inspection reports were reviewed. Two of the 19 inspection reports indicated that it was a routine inspection, when it was a full compliance evaluation. Three reports did not include a mailing address. In addition, all 19 inspection reports did not include the facility's compliance history or indicate whether the inspector offered any compliance assistance during the inspection. Overall the inspection reports documented thorough compliance evaluations including identification of violations.

*Recommendations if corrective action is needed:* One of the basic elements that must be addressed in an inspection report is information on previous enforcement actions. This information will make it easier for the next inspector to verify in its inspection that the source has corrected past violations. Also, the inspection reports should indicate whether an inspector offered any compliance assistance during the inspection.

During the FY03 end of year meeting, EPA and Colorado discussed the basic elements of an inspection report that are outlined in the CMS. Colorado did not realize that information on previous enforcement actions were to be included in the inspection reports. CDPHE agreed that the compliance history is important and would include past enforcement activities in future

inspection reports.

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

**Identification and Evaluation Information**

Clean Air Act Source Universe Information	Number of Sources in Universe
Full Compliance Evaluations	798
Partial Compliance Evaluations	0
Total Number of Evaluations	798
Number of inspection files for review	19

**File Review Metric**

Metric a	Percentage of Compliance Monitoring Reports/Inspection Reports which identify violations in the file within a given time frame established by the Region and state. This should not exceed one quarter (90 days).	79%
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**Review Discussion Questions**

**Metric a**

EPA reviewed 19 inspection reports to determine if the reports were written within 60 days of the FCE and if findings of violation were reported in a timely manner.

*Findings:* 15 of the 19 inspection reports were completed within 60 days of the inspection. 6 of the 19 inspection reports identified violations. Only three of the violations meet the definition of HPV. Of the 6 violations identified, only one was not reported in a timely manner.

*Recommendations if corrective action is needed:* EPA recommends that State inspectors complete their inspection reports as close to the inspection date as possible, so that HPVs (if any) can be identified in AIRS in a timely manner.

**Section 2: Review of State Enforcement Actions**

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

**Identification and Evaluation Information**

Clean Air Act Source Universe Information	Number of Sources in Universe
High Priority Violations	17
Number of inspection files for review	17

**Data Metrics**

Metric a	High Priority Violation Discovery Rate - (per PCE/FCE coverage at majors)	8.4%
Metric b	High Priority Violation Discovery Rate (per facility universe - major)	5.9%
Metric c	No activity indicator	14

**File Review Metrics**

Metric d	Number of HPV determinations that are reported to EPA within 45 days.	16
Metric e	Number of HPV determinations that are accurately reported.	17

**Review Discussion Questions**

**Metrics a & b**

Colorado identified 17 HPVs to Region 8 in FY03. The 19 source files selected for review included three HPVs and four non-HPV violators. The State reported two of the three HPVs to EPA in a timely manner.

**Metric c**

Based on the data metric results from OECA, Colorado identified 14 new HPVs in FY03. Colorado reported 17 HPVs to Region 8 in FY03. The State identifies HPVs in AIRS and in monthly meetings with Region 8.

**Metric d & e**

The State meets monthly with Region 8 to discuss new HPVs, the status of unresolved HPVs, and most recent HPV settlements. The State accurately identifies HPVs and does so in a timely manner.

*Findings:* Based on the file review, the State accurately identifies HPVs , identifies all HPVs and does so in a timely manner.

*Recommendations if corrective action is needed:* No recommendations.

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

**Identification and Evaluation Information**

Clean Air Act Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	14
State informal enforcement actions	2

Total number of enforcement actions	16
Number of enforcement files for review	16

### File Review Metrics

Metric a	State enforcement actions that contain a compliance schedule of required actions or activities designed to return the source to compliance. This can be in the form of injunctive relief or other complying actions.	62.5%
Metric b	Percentage of formal or informal enforcement responses that return sources to compliance.	100%

### Review Discussion Questions

#### Metric a

The State resolved 14 HPVs with a formal enforcement action (Compliance Order on Consent pursuant to the Division’s authority under § 25-7-115(3)(b), C.R.S.) In each Compliance Order on Consent, the State ordered the company to immediately comply with the applicable requirements for which the source was in violation of. In addition, 6 of the settlements included injunctive relief along with a compliance schedule.

#### Metric b

The State resolved two HPVs using informal enforcement. The State settled the violations with a proposed settlement letter that identified the violations and proposed a penalty offer. The company agreed to the offer; signed and returned the letter with a check for the penalty amount. No injunctive relief was required.

The State uses an expedited settlement process to begin its enforcement process. This begins with an informal Compliance Advisory in lieu of a Notice of Violation. The Compliance Advisory identifies the noncompliance issues and gives the company the opportunity to discuss the noncompliance issues and negotiate a settlement in principle. A final Compliance Order on Consent is signed by both parties to resolve all violations. If the company delays settlement, or both parties can’t come to a resolution, then the State issues a formal Notice of Violation. Once an NOV is issued, the State continues with its formal enforcement process.

*Findings:* Based on the HPVs reviewed, Colorado settles 87.5% of its enforcement cases by formal enforcement. The settlements required injunctive relief with a compliance schedule when appropriate, otherwise the source was required to comply immediately.

*Recommendations if corrective action is needed:* No recommendations.



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

**Identification and Evaluation Information**

Clean Air Act Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	16
State informal enforcement actions	2
Total number of enforcement actions	16
Number of enforcement files for review	16

**Data Metric**

Metric a	Timely action taken to address HPV Results in Declining Watch List facilities.	5.6%
Metric b	% of HPVs that exceed the 270 day timeliness threshold.	97%
Metric c	Percentage of HPVs addressed or resolved appropriately.	

**Review Discussion Questions**

**Metric a**

The State falls below the national average of 23.4% for sources on the Watch List. Currently the State has one source on the Watch List.

**Metric b**

Based on the data metrics results, 97% of Colorado’s HPVs were not addressed by day 270. Region’s 8 file review indicates that 65% Colorado’s HPVs were addressed by day 270. This in an improvement over FY02 in which 55% of the HPVs were addressed by day 270.

*Findings:* Of the 17 HPV’s reviewed, 6 did not meet the timelines outlined in the HPV policy - resolution by day 270. However, 5 of those 6 HPVs have been resolved. The State has reached an agreement in principle with the remaining HPV.

*Recommendations if corrective action is needed:* Colorado should determine early in the settlement process (within 45 days) if a source is not adhering to the intent of the State’s expedited settlement process. If the source is not, then the State should proceed with the issuance of a Notice of Violation. The State should also consider whether EPA should take over the lead on cases that go beyond day 270.

EPA and Colorado have discussed timely enforcement the past few years. EPA has seen improvement during FY04. Colorado agreed that the State’s early settlement process may not fit all cases and traditional enforcement (issuance of Notice of Violation by day 60) may be

necessary in some cases. Colorado agreed to continue its efforts to improve the timeliness of enforcement cases.

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

**Identification and Evaluation Information**

Clean Air Act Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	16
State informal enforcement actions	2
Total number of enforcement actions	16
Number of enforcement files for review	16

**File Review Metric**

Metric a	Percentage of formal enforcement actions that include calculation for gravity and economic benefit.	70%
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**Review Discussion Questions**

**Metric a**

Colorado uses its State penalty policy to calculate the gravity component of the penalty and the BEN Model for the economic benefit component. The State also requires a major source to calculate and submit its economic benefit calculation for State review.

*Findings:* Of the 17 HPVs reviewed, the State calculated the gravity portion of the penalty in all 17 cases. However, the State did not calculate the economic benefit in 5 cases.

*Recommendations if corrective action is needed:* EPA’s Stationary Source Civil Penalty Policy requires both the gravity and economic benefit be calculated for all HPVs; therefore, EPA recommends that the State document both.

Colorado acknowledged that some of its settlements did not specifically address economic benefit. However, Colorado determined that the economic benefit was negligible and therefore did not document it in the file or settlement agreements. Colorado has agreed to document the economic benefit for those cases that have a negligible economic benefit.

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

**Identification and Evaluation Information**

Clean Air Act Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	16
State informal enforcement actions	2
Total number of enforcement actions	16
Number of enforcement files for review	16

**Date Metrics**

Metric a	Penalties Normally Included with Formal Enforcement Actions at HPVs	0%
Metric b	No activity indicator - actions	0%
Metric c	No activity indicator - penalties	0%
Metric d	Number of final enforcement settlements using appropriate penalties.	

**Review Discussion Questions**

**Metric a, b & c**

Based on the data metric results from OECA, Colorado did not collect any penalties. Colorado does assess and collect penalties for its HPVs. In addition, the AIRS data base included the settlement amount for each HPV. The Region is not sure why OECA’s data base pull for penalties reflected zero for Colorado.

Colorado’s settlements required either a cash penalty, an economic benefit penalty, a SEP, or all three, in 15 of the 16 HPV settlements.

**Metric d**

*Findings:* Of the 16 HPVs resolved, the State collected a cash penalty in 11 settlements. In four of those cases the State offset 100% of the penalty for SEPs. In the other case, the State required the source to install controls instead of a cash penalty. The State collected the economic benefit in 6 cases and 5 cases had little or no economic benefit.

Of the 16 HPVs settled, the State collected a total of \$90,714 for gravity, \$110,973 for economic benefit, and required \$323,010 of SEPs, for a grand total of \$524,697. Overall, the State did good job of resolving its HPVs.

*Recommendations if corrective action is needed:* No recommendations.

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

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

**Identification and Evaluation Information**

Clean Air Act Source Universe Information	Number of Agreements
Performance Partnership Agreements	1
Performance Partnership Grants	0
PPA/PPGs	
Categorical Grants (SEAs)	
Other applicable agreements (enforcement agreements, etc)	
Total number of agreements	1
Number of agreements reviewed	1

**File Review Metric**

Metric a	State agreements (PPA/PPG/SEA, etc.) contain enforcement and compliance commitments that are met.	Yes
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**Review Discussion Questions**

**Metric a**

Colorado’s FY03 PPA requires the State to: 1) submit a compliance monitoring strategy, 2) perform stack testing, source audits and CEM certifications, 3) update AIRS, 4) assess penalties commensurate with economic benefit and the necessary gravity component, and 5) conduct timely and appropriate enforcement.

Findings: Colorado submitted its CMS plan on 10/22/02. The PPA requires the State to submit the plan to EPA by 11/15/02. The plan includes the commitments outline in the PPA. Colorado has met its PPA commitments.

Recommendations if corrective action is needed: No recommendations.

**Section 4: Review of Database Integrity**

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

**Identification and Evaluation Information**

Clean Air Act Source Universe Information	Number of Sources in Universe
Full Compliance Evaluations	798
Partial Compliance Evaluations	0
Total Number of Evaluations	798
Number of inspection files for review	19

**Data Metric**

Metric a	HPV being entered in a timely manner (normally 45 days from inspection/file review).	
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**File Review Metric**

Metric r	Regions should evaluate what is maintained in AFS by the State and ensure that all minimum data required fields are properly tracked and entered according to accepted schedules.	
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**Review Discussion Questions**

**Metric a**

EPA is unable to determine exactly when the State entered HPV information into AIRS. However, the State submits HPV information into its data base weekly and uploads the information into AIRS bi-weekly.

**Metric r**

The State maintains its data base on a weekly basis and uploads the data into AIRS bi-weekly.

*Findings:* Based on the data reviewed in AIRS, Colorado does enter data and the required data elements in a timely manner.

*Recommendations if corrective action is needed:* No recommendations.

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

**Identification and Evaluation Information**

Clean Air Act Source Universe Information	Number of Sources in Universe
Full Compliance Evaluations	798
Partial Compliance Evaluations	0
Total Number of Evaluations	798
Number of inspection files for review	19

**Data Metrics**

Metric a	Response to AFS data errors from Integrated Error Correction Process (IECP) averages less than 60 days.	
Metric b	Violation/noncompliance data are accurate	43/50
Metric c	Stack Test Results	71.9%

**File Review Metric**

Metric d	Accuracy of minimum data requirements	
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**Review Discussion Questions**

**Metric a**

Colorado uses the Error Tracking System to make corrections and appropriate updates.

**Metric b**

Based on the data metric results by OECA, Colorado’s violation rate is higher than the HPV rate. Colorado changes the violation code after a source has completed all the requirements of the settlement. For example, a source may have SEP projects that are not completed for a period of time after the settlement.

**Metric c**

Based on the data metric results by OECA, Colorado reviewed 71.9% of the stack tests. Colorado reviewed 96 tests and only 2 have not been uploaded to AIRS. Therefore, Colorado reviewed 97.9% of the stack test.

**Metric d**

*Findings:* There were 19 inspection reports reviewed for data quality. There were 471 total “accuracy” points available in which Colorado received 418. Overall, the data for Colorado looked good.

*Recommendations if corrective action is needed:* Continue to upkeep the data base.

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

**Identification and Evaluation Information**

Clean Air Act Source Universe Information	Number of Sources in Universe
Full Compliance Evaluations	798
Partial Compliance Evaluations	0
Total Number of Evaluations	798
Number of inspection files for review	19

**Data Metrics**

Metric a	Title V universe (permit in place or application received) is reflected in AFS.	223
Metric b	State agrees with facility count from AFS/OTIS for Major, SM-80, SM, NESHAP minor facilities.	1,081
Metric c	Subprogram universe is accurate in AFS (MACT, NSR, etc.).	
Metric d	Inspection Counts Complete	333
Metric e	Violation Counts Complete	63
Metric f	Notice of Violation Counts Complete	10
Metric g	HPV Counts Complete	45
Metric h	Formal Action Counts Complete	0
Metric i	Assessed Penalties Complete	0
Metric j	CMS Frequency Universe	88

**Review Discussion Questions**

**Metrics a, b, c, d & f**

Based on the data pulls from OECA, these numbers are very close to what the State has reported to EPA.

**Metric e**

The violation count is high. Colorado will have to update the data base for those sources that are back into compliance based on settlements that have occurred.

**Metric g**

Colorado identified 17 new HPVs in FY03. The HPV count of 45 by OECA is high.

### **Metric h& i**

Colorado has completed enforcement actions and collected penalties. These actions are in AIRS, but not reflected in the pull by OECA.

### **Metric j**

In July 2004, the State was notified that there were sources in AIRS that had no CMS policy applicability. The State has corrected this in AIRS.

*Findings:* Overall, Colorado does a good job of submitting information into AIRS. The State is very prompt in making changes that are reported to them by EPA.

*Recommendations if corrective action is needed:* No recommendations.

### **Section 5: Optional**

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

N/A.



## NPDES PROGRAM EVALUATION RESULTS

Date: 1/31/05

Information Sources Included in the Review: See below.

EPA Evaluator: Lee Hanley Phone: 303 312-6555

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### *Section 1: Review of State Inspection Implementation*

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

Findings (including successful performance and areas for improvement):

#### **Data Metrics**

Metric a	Inspection coverage – NPDES majors.	94%
Metric b	Inspection coverage – NPDES minors	53%
Metric c	Wet Weather and Priority Area Inspection Coverage	81

OECA's Facility List reported 109 major facilities in CO (CWA01AD). However, the OECA list contained four Federal Facilities that are permitted by EPA. Region 8's PCS retrieval as of 9/24/04, however does confirm 109 major facilities in CO.

Region 8's PCS retrieval show 102 of the 108 were inspected in FY03 (94% of the major universe). The 108 major facility number was taken from the CO FY03 inspection plan and is the more appropriate number to use given the data available in FY03. The PCS retrieval was conducted on 11/17/03. On 1/6/05, EPA conducted an OTIS retrieval on CO's FY03 major inspections. This review found inspections at 107 of the 108 facilities entered into PCS (99%). It should be noted that the Inspection Year is July 1 to June 30 for NPDES. PCS retrievals are normally conducted after October 1st. The pull that is done in early October by EPA HQ is considered to be final and the PCS database is considered closed at that point for inspections although inspections can be entered after that date. The EPA HQ's pull in early October is used for reports to Congress and

inspections entered after that pull are not credited. The current retrieval deadline allows the State 90 days to complete its reports and to enter the inspections into PCS. For FY03, EPA conducted a PCS retrieval 137 days after the end of the Inspection Year. EPA believes there was sufficient time to enter data into PCS. To address future discrepancies in PCS data, Region 8 has instituted a process whereby the State will receive a PCS retrieval for the past Inspection Year in August. This will allow the State to correct any deficiencies prior to the final PCS retrieval in October. Of course, the State is free to pull additional PCS retrievals on inspections to verify data entry.

OECA's Facility List reported 278 minor facilities in CO (CWA 01BD) as of 9/15/04. The Region 8 PCS retrieval, however, show 276 minor facilities (wastewater treatment facilities). Region 8's PCS retrieval show 144 minor facilities (of the 276 minor facilities inventory) inspected in FY03 (52% of the minor universe).

The Colorado PPA End-Of-Year Report is the source of the data provided below.

Tabulation of the wet weather commitments/inspections are as follows:

	<u>Commitment</u>	<u>Accomplished</u>	<u>%</u>
Storm water	50	31	62
CAFO	---	27	-
SSOs	6	6	100

### File Review Metric

Metric r	Reserved for PPA/PPG negotiated inspection plan targets.	See below
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The Colorado Department of Public Health and Environment, Water Quality Control Division, Technical Services Unit prepares an Inspection Plan that identifies the inspection commitments for major facilities, minor facilities, and SSO inspections. The Inspection Plan is a separate document but a component of the EPA/State Performance Partnership Agreement. The Inspection Plan for FY03 commitment to inspecting 100% of the majors, 20% of the minors and 20% of the reported SSOs. These commitments equivalent to the EPA inspections goals.

The OECA Facility List (CWA01ANS) indicated 103 facilities inspected in FY03. However, Region's PCS retrieval on Nov. 17, 2003 (4.5 months following the end of the fiscal year) showed only 102 inspections at major facilities. The difference between the OECA and Region 8 data sets may be result of when the retrievals were conducted.

Region 8 used the 102 inspections in its FY03 Uniform Enforcement Oversight System report and believes it is accurate to use in this report also.

The OECA Facility List (CWA01BD) indicated 278 minor facilities (only minor wastewater treatment facilities, not including general permitted facilities). The Region 8 list, printed Sept 23, 2004 listed 276 minor facilities. The differences between the OECA and Region 8 data sets may be due to the time difference when the retrievals were made. The Inspection Plan commits to do 20% minor facility inspections. However, the Inspection Plan identifies many more minor facility categories other than wastewater treatment facilities. The Inspection Plan includes minor facilities in the following categories: coal bed methane, coal mining, groundwater cleanup, aquatic animal hatcheries, lagoons treating less than 100,000 gal/day, water treatment plants, general domestic facilities with surface water discharges, and individual industrial, domestic and groundwater discharges.

To determine the percent of minor sources inspected, the PCS retrieval on Sep. 23, 2004 was used (minor source list and the minor source inspections conducted in FY03). The minor source list included 276 facilities; 146 of these facilities were inspected. Thus, 53% of the minor sources were inspected.

Citation of information reviewed for this criterion:

- PCS retrieval on 11/17/03 for industrial facilities
- CDPHE IY03 Inspection Plan
- CDPHE manual reporting (email) for number of storm water inspections
- CDPHE End-of-Year Report

Recommendations if corrective action is needed:

EPA has committed to continue its workshare efforts in the storm water and CAFO areas. As the Division hires additional personnel and/or develops future Inspection Plans, EPA would expect the Division to increase its inspection commitments in these priority areas.

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

Findings (including successful performance and areas for improvement):

**File Review Metric**

Metric a	Percentage of inspection reports that are adequately documented in files.	NA
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NA. No oversight inspections were conducted in FY03.

Citation of information reviewed for this criterion: None.

Recommendations if corrective action is needed: None.

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

Findings (including successful performance and areas for improvement):

**File Review Metric**

Metric a	Percentage of Inspection Reports with findings documented within a given time frame established by Region and state.	77%
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Inspections reports received by EPA were used to evaluate this measure. A total of 47 inspections reports were reviewed. Thirty-six of these inspection reports were completed within 45 days of the inspection or the receipt of sampling results, 11 were completed in excess of 45 days after the inspection or the receipt of sampling results. Deficiencies are noted on the cover letter for the inspection reports. For violations noted during the inspection, the cover letters require the facility to respond within a set time frame on how the violations will be rectified.

Citation of information reviewed for this criterion: 47 inspection reports.

Recommendations if corrective action is needed:

EPA recommends that inspections reports should be completed within 45 days of a compliance evaluation inspection (CEI) and 45 days from receipt of the lab results from a compliance sampling inspection (CSI). The 45 day for report completion is outline in the Inspection Plan. Past discussions on timeliness of inspection reports have occurred during the development of the Inspection Plan. EPA will agree to have discussions on this matter in the future if concerns are identified.

Section 2: Review of State Enforcement Activity

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

Findings (including successful performance and areas for improvement):

**Data Metric**

Metric a	Percentage of SNC reported to database in timely manner.	100
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This question does not apply to NPDES since the QNCR automatically lists facilities in significant non-compliance, assuming the PCS database is properly maintained.

To explain the CO process, the Division has in place an Enforcement Management System (EMS) which includes a communication process, action description, and record keeping requirements to address Discharge Monitoring Reports (DMRs), Whole Effluent Toxicity (WET), citizen complaints, spills and bypasses, and inspections. The EMS includes an Enforcement Response Guide to address violations at major and minor industrial facilities (not including storm water or CAFOs). The EMS has a time control goal, procedures for case development, and penalties assessment. Timely and appropriate enforcement responses for major facilities are largely determined and identified through the quarterly non-compliance report (QNCR). During FY03, 6% of Colorado's major facilities appeared in SNC. This is below the national average of 21% and represents a positive trend where the number major facilities in SNC status over the past four years have decreased. Reduction in SNC status may be due to the DMR review program the State has instituted over the past couple of years to evaluate reports within a given period of time to identify violations, problems in reports, or late reports.

**File Review Metric**

Metric b	Number of SNC determinations that are accurately reported.	NA
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Citation of information reviewed for this criterion:

Recommendations if corrective action is needed:

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

Findings (including successful performance and areas for improvement):

**File Review Metrics**

Metric a	The state enforcement actions specifically require the appropriate measures that must be performed to attain compliance and that specify a reasonable compliance schedule for completing such activity and attaining compliance.	5 of 5
Metric b	Percentage of formal or informal enforcement responses that return sources to compliance.	100

Facility	Permit #	Type of Action	Description of Enforcement Action
5 Star Feedlot, Inc	(unpermitted)	Final Settlement Agreement and Stipulated Order	<ul style="list-style-type: none"> <li>- requires that the facility cease all discharges of process water to waters of the State, except as a consequence of a storm in excess of a 25-year, 24-hour event</li> <li>- facility to develop a monitoring program for potential sources of discharges and a recording system to document that monitoring system, and complete the CAFO permit application within a specified time frame</li> <li>- consequences of failing to meet the requirements of the Stipulated Order are outlined</li> <li>- contains set schedules for all injunctive relief to be completed.</li> </ul>
AngloGold (Colorado) Corp.)	CO-0004562 & CO0043658	Final Order on Consent	<ul style="list-style-type: none"> <li>- requires the facility to comply with the Clean Water Act and associated permits</li> <li>- requires that AngloGold: develop and submit an Arequa Gulch Operating Plan to address how flows which discharge to the Arequa Gulch will be managed; monitor the impact of the Cresson mine on flows to the Roosevelt Tunnel via documented inspections into the tunnel; apply for a discharge permit for seeps occurring below the Carlton Tunnel Ponds; and if significant noncompliance is recorded at the Carlton Tunnel Outfall(s), a treatment plant must be designed and constructed</li> <li>- consequences of failing to meet the requirements of the Order are outlined</li> <li>- contains set schedules for all injunctive relief to be completed</li> </ul>

Moose Haven Condominiums Homeowner's Association, Inc.	(unpermitted)	Notice of Violation/Cease and Desist Order	<ul style="list-style-type: none"> <li>- requires the facility to cease all discharges to waters of the state and cease and desist all violations of the Colorado Water Quality Control Act</li> <li>- requires the facility to retain a qualified professional engineer to evaluate improvements; prepare and submit a preliminary engineering report, apply for a CDPS permit, and submit progress reports</li> <li>- contains set schedules for all injunctive relief to be completed and outlines the consequences of failing to meet the requirements of the Order</li> </ul>
Parsons Transportation Group Inc.	COR-033975	NOV/CDO	<ul style="list-style-type: none"> <li>- requires the facility to cease all violations of the Colorado Water Quality Control Act and to take any actions necessary to prevent further violations of its CDPS permit</li> <li>- requires the facility to: develop and submit an updated storm water management plan (SWMP); evaluate and modify all Best Management Practices (BMPs); provide information on training of staff; conduct inspections and provide inspection logs to the Division; and evaluate storm water detention basins for sediment buildup.</li> <li>- contains set schedules for all injunctive relief to be completed and outlines the consequences of failing to meet the requirements of the Order</li> </ul>
Kiewit Western Co.	COR-033975	NOV/CDO	<ul style="list-style-type: none"> <li>- requires the facility to cease all violations of the Colorado Water Quality Control Act and to take any actions necessary to prevent further violations of its CDPS permit</li> <li>- requires the facility to: develop and submit an updated SWMP; evaluate and modify all BMPs; provide information on training of staff; conduct inspections and provide inspection logs to the Division; and evaluate storm water detention basins for sediment buildup</li> <li>- contains set schedules for all injunctive relief to be completed and outlines the consequences of failing to meet the requirements of the Order</li> </ul>

Based on discussions with the State and on PCS retrievals, 16 Administrative Orders (AOs) were issued by the Division in FY03. A PCS retrieval stating the enforcement actions conducted by the State in FY03 (not including CAFO enforcement actions) was attached to the FY03 UEOS Report. EPA reviewed only the enforcement actions that were settled or proposed for settlement in the fiscal year. Therefore, only five penalty calculations were reviewed in FY03. A summary of enforcement actions reviewed for settlement is provided above.

The Division has in place an Enforcement Management System (EMS) which includes a communication process, action description, and record keeping requirements to address Discharge Monitoring Reports (DMRs). In FY03, the Division identified 12 informal enforcement actions in PCS. The facilities returned to compliance by a formal enforcement action, Penalty AO, or by responding to a notification letter from the Division.

Citation of information reviewed for this criterion: See above.

Recommendations if corrective action is needed: None.

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

Findings (including successful performance and areas for improvement):

**Data Metric**

Metric a	Timely action taken to address SNC.	2.7% *
Metric b	No activity indicator.	---

\* Facilities without timely action as a percentage of the active major universe.

**File Review Metric**

Metric c	Percentage of SNCs addressed appropriately.	100%

In FY03, three major facilities appeared on the QNCR as SNC for the same violation for more than one quarter in a row. The Division initiated formal enforcement action against two of the facilities, and made a decision not to pursue enforcement in the third case. The Enforcement Agreement between EPA Region 8 and the State of Colorado states that a formal enforcement action should have been taken prior to any of these facilities appearing on the QNCR as SNC for the second consecutive quarter for the same violations.

Two of the three facilities were issued a Consent Order. The Division made a decision to relax the cyanide limitations in the District's CDPS permit. For this reason, the Division decided not to pursue formal enforcement in this case. See below for specific information of these enforcement actions.

The Division has in place an Enforcement Management System (EMS) which includes a communication process, action description, and record keeping requirements to address Discharge Monitoring Reports (DMRs), Whole Effluent Toxicity (WET), citizen complaints, spills and bypasses, and inspections. The EMS includes an Enforcement Response Guide to address violations at major and minor industrial facilities (not including storm water or CAFOs). The EMS has a time control goal, procedures for case development, and a methodology for calculating penalties. Timely and appropriate enforcement responses for major facilities are largely determined and identified through the quarterly non-compliance report (QNCR). The Division's EMS is generally consistent with that of EPA's.



Facility	Enforcement Action Description	addressed within two qtrs on QNCR (metric a)	no enforcement activity (metric b)	appropriate action (metric c)
Eagle River Water and Sanitation District (CO-0021369)	The District appeared in SNC for silver violations in the 4 <sup>th</sup> quarter of FY02, the 1 <sup>st</sup> and 2 <sup>nd</sup> quarters of FY03. A Consent Order was entered into on May 30, 2003. While the Division has taken a formal enforcement action against this facility, the action was completed after the facility appeared on the QNCR as SNC for the same violation for the second consecutive quarter.	No	NA	Yes
City of Longmont (CO-0026671)	The City appeared in SNC for ammonia violations in the 3 <sup>rd</sup> and 4 <sup>th</sup> quarters of FY02 and the 1 <sup>st</sup> quarter of FY03. The City was implementing an informal compliance schedule while negotiating a settlement agreement with the Division. A Consent Order was entered into on June 23, 2003. While the Division has taken a formal enforcement action against this facility, the action was completed after the facility appeared on the QNCR as SNC for the same violation for the second consecutive quarter.	No	NA	Yes  Where a compliance schedule is needed, an NOV/CDO should have been issued prior to the facility appearing on the QNCR as SNC for two quarters in a row. This would allow the Division and the City to negotiate an appropriate settlement while an enforceable compliance schedule is in place to address the violations.
Security Sanitation District (CO0024392)	The District appeared in SNC for cyanide violations in the 2 <sup>nd</sup> and 3 <sup>rd</sup> quarters of FY03. The Division made a decision to relax the cyanide limitations in the District's CDPS permit. For this reason, the Division decided not to pursue formal enforcement in this case.	No	Yes	Yes

Citation of information reviewed for this criterion:FY03 QNCRs

Recommendations if corrective action is needed:

Timeliness of an enforcement action where a permittee appears on the QNCR for two consecutive quarters for the same violation is defined as follows: *Prior to a permittee appearing on the subsequent QNCR for the same violation, the permittee should either be in compliance or the Division should have taken formal enforcement action to achieve final compliance where appropriate.* For cases such as the City of Longmont where a compliance schedule is needed, an NOV/CDO should have been issued prior to the facility appearing on the QNCR as SNC for two quarters in a row. This would allow the

Division and the City to negotiate an appropriate settlement while an enforceable compliance schedule is in place to address the violations.

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

Findings (including successful performance and areas for improvement):

**File Review Metric**

Metric a	Percentage of formal enforcement actions that include calculation for gravity and economic benefit.	66%
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Facility	Review Conducted	Enforcement Action	Discussion of State Action
Monte Vista	yes	-Consent Order dated 6/23/03 - copy of the penalty calculation work sheet	Three penalty actions concluded during FY03 were reviewed for this question. To EPA's knowledge, a total of six formal penalty actions were concluded during FY03. Of these three actions, all considered gravity factors and economic benefit of noncompliance in the initial penalty calculations, but one (Monte Vista) did not include actual economic benefit calculations. The penalty rationale which accompanied these calculations explained the Division's reasoning on why it did not believe the facility experienced an economic benefit of noncompliance. While EPA disagreed with this assessment, a penalty calculated by EPA using the Clean Water Act Settlement Penalty Policy and the National Municipal Litigation Considerations, which included costs associated with the economic benefit of noncompliance, did not result in a higher penalty amount in either case.
Eagle River Water and Sanitation District	yes	Administrative Consent Order, dated 8/28/03 - copy of the penalty calculation work sheet	
City of Longmont	yes	Administrative Consent Order, dated 9/16/03 - copy of the penalty calculation work sheet	
Town of Silt	no	Settlement Agreement and Stipulated Order, dated 1/24/03	
Paint Brush Hills Metro District	no	Settlement Agreement and Stipulated Order, dated 12/13/02	
Arapahoe County Water & Wastewater Authority	no	Consent Order dated 8/19/02	

Citation of information reviewed for this criterion: See above.

Recommendations if corrective action is needed:

Colorado should attempt to calculate the economic benefit of noncompliance for all cases.

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

Findings (including successful performance and areas for improvement):

**Date Metrics**

Metric a	No activity indicator - actions	NA
Metric b	Penalties normally included with formal enforcement actions.	NA

**File Review Metric**

Metric c	Number of final enforcement settlements incorporating penalties that account for economic benefit.	3 known
Metric d	Number of final penalties collected by state.	6

Metrics A and B not applicable since enforcement actions were taken by CO in FY03. The Region does not have data to indicate if CO is below the national average for percentage of actions with penalties.

All three of the enforcement actions (Monte Vista, Eagle River Water and Sanitation District, and City of Longmont) reviewed collected penalties which reflected the gravity and economic benefit amount calculated by EPA using the Clean Water Act Settlement Penalty Policy and the National Municipal Litigation Considerations. Two of the settlements included Supplemental Environmental Projects (SEPs). The Division gave a one to one trade off in penalty for the SEPs, which is allowed by the Colorado SEP policy. The SEPs were well defined in the settlement agreements, including: costs; scope of the agreements; deadlines; reporting periods; statements that costs for the SEPs could not be used for any tax advantage; statements that the SEPs could not be publicized without stating that the performance of the SEP was part of a settlement agreement; and the requirement that penalties are due if the SEP is not completed and/or operated as agreed upon. One action (Monta Vista) only collected the economic benefit of noncompliance, as calculated by the Division. However, this penalty amount

did not differ significantly in the gravity and economic benefit calculations completed by EPA using the Clean Water Act Settlement Penalty Policy and the National Municipal Litigation Considerations.

See table in 7. above that identifies the six enforcement actions where penalties were collected. The enforcement actions not reviewed were due in part to the actions finalized by CO without copies of the penalty calculation provided to EPA.

Citation of information reviewed for this criterion: Same as question 7.

Recommendations if corrective action is needed:

The use of penalty justification/rationales in the case files makes it very easy to understand the application of the penalty policy and reasoning for any adjustment to the calculated penalty amount. EPA recommends that these justifications continue to be used in the future. Improvements are also seen in the SEP projects, descriptions and requirements in the actions reviewed this year.

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

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

Findings (including successful performance and areas for improvement):

**File Review Metric**

Metric a	State agreements (PPA/PPG/SEA, etc.) contain enforcement and compliance commitments that are met.	2 of 2
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For the FY03 PPA, the following deliverables were reviewed:

Annual Noncompliance Report for Nonmajor NPDES Permittees  
IY04 Wastewater Inspection Plan

The quality of the submittals was generally high. The inspection plan and noncompliance report for nonmajors were well designed and written. As described in review element number 1 above, stormwater inspection commitments were not met.

Citation of information reviewed for this criterion: See above.

Recommendations if corrective action is needed:

PPA deliverables were discussed during the quarterly meetings between EPA and the Division. Discussions during these meeting helped to reach agreement on the important elements, thus improving the overall quality of the submittals.

Section 4: Review of Database Integrity

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

Findings (including successful performance and areas for improvement):

**File Review Metric**

Metric a	Regions should evaluate what is maintained in PCS by the State and ensure that all minimum data elements are properly tracked and entered according to accepted schedules.	64%
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This measure was evaluated by comparing FY03 Quarterly Non-Compliance Reports (QNCR) to a FY03 formal enforcement action report pulled from the National Permit Compliance System (PCS) to verify if enforcement actions were entered in a timely manner in PCS. Colorado issued enforcement actions against fourteen (14) facilities during FY03. Nine (9) of the enforcement actions were entered in PCS in a timely manner. Colorado issued five (5) enforcement actions (see Section 5 of this report) that were not entered in PCS.

Citation of information reviewed for this criterion:

The Quarterly Non-Compliance Reports for FY03 and a PCS State Enforcement Action Retrieval for the time period October 1, 2002 to September 30, 2003. The PCS retrieval was pulled on January 20, 2004.

Recommendations if corrective action is needed:

All formal enforcement actions need to be entered in PCS.

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

Findings (including successful performance and areas for improvement):

**Data Metrics**

Metric a	Response to PCS data errors from Integrated Error Correction Process (IECP) averages less than 60 days.	NA
Metric b	Actions are linked to the violations they address.	<b>22</b>
Metric c	Facility Universe Data and Overall Uploads from States/Locals Produce Accurate Data	NA

Ref: Summary on the State Data Review Framework Data Results - August 5, 2003.

Metric a: Data not available during pilot

Metric b: 22

Metric c: Metric not included during pilot

**File Review Metric**

Metric r	File review needs to sample inspection reports with violations and report the number of those violations that are found in PCS/IDEA.	Not evaluated
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File review comparing violations in files to those in PCS was not done, however, 111 major inspections and 151 minor inspections (multiple inspections at some facilities) were entered in PCS for IY03. None of the 27 AFO/CAFO or the 31 storm water inspections were entered in PCS however the State is not required to enter these inspections in PCS. The State has separate data tracking systems for these programs. Colorado reported conducting 108 major inspections, 166 minor inspections, 31 storm water inspections, 27 AFO/CAFO inspections and 6 SSO inspections in it's End-of-Year report for IY03.

Citation of information reviewed for this criterion:

EPA reviewed the following PCS reports: (1) A PCS report showing all inspections conducted and entered in PCS on major facilities for IY03 (7/1/02-6/30/03); (2) a PCS

reports showing all inspections conducted and entered in PCS on minor facilities for IY03 (7/1/02-6/30/03); and the 2003 End-of-Year Report.

Recommendations if corrective action is needed:

Although not required for all inspection types, the State should consider entering all inspections conducted in PCS. The codes for entering these different types of inspections in PCS are: (1) AFO/CAFO inspections **K**; (2) Storm Water inspections **W**; and (3) Sanitary Sewer Overflow inspections **V**.

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

Findings (including successful performance and areas for improvement):

**Data Metrics**

Metric a	Active Facility Universe Counts Accurate for all NPDES permit types.	110 majors 285 minors -Total 395
Metric b	Permit limits complete in PCS.	99%
Metric c	Inspection Counts Complete	280
Metric d	DMR entry for majors complete.	100%
Metric e	DMR entry for minors complete.	94%
Metric f	Notice of Violation Counts Complete	2
Metric g	SNC Counts Complete	256
Metric h	Formal Action Counts Complete	23
Metric i	Assessed penalties complete	8
Metric j	Inspection-related violations identified. No activity indicator.	9

Ref: Totals for metrics a, b, c, d, e, f, g, h, i, & j. from - Summary on the State Data Review Framework Data Results - August 5, 2003.

This measure was evaluated on how well all of the WENDB data elements are entered in PCS. Sixty-one percent of the required Water Enforcement National Data Base

(WENDB) data elements were entered in PCS. In FY03 Colorado showed an improvement on WENDB data elements entered over what was entered in PCS for FY02.

Citation of information reviewed for this criterion:

EPA reviewed the PCS WENDB Data Summary Report. This report is on the Internet and has a Website address of [http://clients.limno.com/protected/pcs\\_cleanup/reg08](http://clients.limno.com/protected/pcs_cleanup/reg08). The report shows the data completeness for PCS WENDB data elements.

Recommendations if corrective action is needed:

Colorado's files are available on the Internet so the State can view an updated spreadsheet on a regular basis to monitor and assess changes made to their data through the States efforts of through changes made in conjunction with Headquarters Contractor, Limnotech. The information used for this measure was last updated in November 2003.

Colorado needs to continue to work with EPA Headquarters and Region 8 to identify discrepancies and missing WENDB data in PCS. Discrepancies need to be corrected and required WENDB data elements need to be entered in PCS so all of the respective data fields are correctly populated.

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

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

Citation of information reviewed for this criterion:

Recommendations if corrective action is needed:



## RCRA PROGRAM EVALUATION RESULTS

Date: 1/28/05

Information Sources Included in the Review: See below.

EPA Evaluator: Randy Lamdin Phone: (303) 312-6350

State Contact: Joyce Williams Phone: (303) 692-3361

### Section I. Review Area: Inspections

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

#### Identification and Evaluation Information

RCRA Source Universe Information	Number of Sources in Universe
Universe of TSDs	12/(12) CO#/(USEPAR8 #)
Universe of LQGs	111/(116) CO#/(USEPAR8 #)
Universe of SQGs	990/(992) CO#/(USEPAR8 #)
Total Number of Sources	1113/(1120) CO#/(USEPAR8 #)
Number of inspection files for review	21 (7 inspection/14 enforcement)

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

#### Data Metrics

Metric a	Inspection coverage - Treatment, Storage and Disposal Facilities.	100%
Metric b	annual Inspection coverage - Large Quantity Generators.	21.5%
Metric c	Five-year inspection coverage - Large Quantity Generators.	72.6%

Metric d	Inspection coverage - Small Quantity Generators.	84.9%
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**File Review Metric**

Metric r	Reserved for PPA/PPG negotiated inspection plan targets.	95%+
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**Metric a** - CO, in FY02-03, inspected 100% of their active TSD facilities. This is above the national average for states (88.9%).

**Metric b** - CO, in FY03, inspected 21.5% of their LQG universe. This is 5.6% above the national average for states (16.9%). CO has exceeded the requisite 20% annual inspection coverage for their LQG universe by 1.5%.

**Metric c** - CO, in FY99-03, inspected 72.6% of their LQG universe. This is 26.7% above the national average for states (45.9%). While admirable being significantly above the national average for states, it's still 27.4% below the requirement that all their LQGs should be inspected every five (5) years.

**Metric d** - In FY99-03, USEPAR8 and CO, inspected 84.9% of the state's SQG universe. This is 0.5% below the national average for SQGs (85.4%). While an informational metric which depicts the percent coverage by USEPA and the states nationwide, the difference of 0.5% is statistically insignificant.

**Metric r** - CO, in FY99-03, has annually committed to inspecting two-hundred (200) hazardous waste inspections. This commitment is reflective of all of the required annual inspections (e.g., Metrics a-d above, Table X, etc.) plus an additional workload. On an annual basis, CO has consistently conducted between three-hundred (300) and three-hundred and twenty-five (325) inspections and met or come extremely close to conducting the requisite annual inspections (95%+). It should be mentioned that when taking into account the CO deficiencies noted in Metric c above, that in many cases each and every active LQG isn't necessarily inspected within the required timeframe, rather there are occasions when particular LQGs are inspected numerous times in a particular FY (e.g., compliance schedule or enforcement followup). As such, state agency resources are being devoted to those LQG facilities which warrant such extra attention. Consequently, these scenarios can unfairly distort or skew data metric percentages.

*Citation of information reviewed:* Inspection Plan, RCRAInfo

*Recommendations if corrective action is needed:*

In summary, USEPAR8 has no issue with CO in regard to annually exceeding their PPA negotiated inspection commitment by approximately 50%-62.5%. However, within the framework of these three-hundred (300) to three-hundred and twenty-five (325) inspections conducted annually, CO needs to make a concerted effort to ensure that deficiencies noted in Metric c above are addressed.

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

**Identification and Evaluation Information**

RCRA Source Universe Information	Number of Sources in Universe
TSD Inspections	29 CEIs (no SPLs/OAMs identified)
LQG Inspections	54 CEIs (no SPLs/OAMs identified)
SQG Inspections	116 CEIs (no SPLs/OAMs identified)
Total Number of Inspections	199 CEIs (no SPLs/OAMs identified)
Number of inspection files for review	7 (National pilot)/31 (Regional UEOS)

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

**File Review Metric**

Metric a	Percentage of inspection reports that are adequately documented in files.	100%/100%
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**Metric a** - CO inspectors' inspection reports have traditionally been clear, comprehensive and concise and reflect inspection findings, including accurate descriptions of observations to sufficiently identify violations. For the purpose of this National pilot, seven (7), FY03 CO inspection reports were reviewed and all (100%)

fulfilled this criterion. From a USEPAR8 Regional UEOS perspective, thirty-one (31), FY03 CO inspection reports were reviewed and all (100%) fulfilled this criterion. In summary, CO has no deficiencies in this particular area.

*Citation of information reviewed:* 38 Inspection Reports

*Recommendations if corrective action is needed:* None.

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

**Identification and Evaluation Information**

RCRA Source Universe Information	Number of Sources in Universe
TSD Inspections	29 CEIs (no SPLs/OAMs identified)
LQG Inspections	54 CEIs (no SPLs/OAMs identified)
SQG Inspections	116 CEIs (no SPLs/OAMs identified)
Total Number of Inspections	199 CEIs (no SPLs/OAMs identified)
Number of inspection files for review	7 (National pilot)/31 (Regional UEOS)

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

**File Review Metric**

Metric a	Percentage of Inspection Reports with findings documented within a given time frame established by Region and state.	86%/94%
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**Metric a** - CO inspectors' inspection reports, per a negotiated agreement with USEPAR8, are to be completed within forty-five (45) calendar days of the inspection date. CO inspection reports have traditionally been completed in a relatively timely fashion, including the timely identification of violations. For the purpose of this National UEOS pilot, seven (7), FY03 CO inspection reports were reviewed and six (6) of seven (7) were timely (86%). From a USEPAR8 Regional UEOS perspective, thirty-one (31), FY03 CO inspection reports were reviewed and twenty-nine (29) of thirty-one (31) were timely (94%). It should be noted that both of these percentages reflect taking into account "mitigating circumstances" (e.g., sampling results which caused an inspection report to exceed the forty-five [45] day threshold). On another salient note, for the thirty-eight (38) FY03 CO inspection reports reviewed, all (100%) of them reviewed for violation identification timeliness met the ninety (90) day standard for timeliness.

*Citation of information reviewed:* 38 inspection reports.

*Recommendations if corrective action is needed:*

In summary, CO has no noteworthy deficiencies in this particular area. However, CO, as well as USEPA Regions and other states, need to strive for perfection regarding inspection report completion timeliness.

**Section II. Review Area: Enforcement Activity**

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

**Identification and Evaluation Information**

RCRA Source Universe Information	Number of Sources in Universe
Number of Handlers in SNC	3
Number of Active TSDs & LQGs in SNC	1
Number of SNCs	3
Number of inspection files for review	7

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

### **Data Metrics**

Metric a	SNC Identification Rate (per 100 inspections).	1%
Metric b	SNC Identification Rate (per universe).	1%
Metric c	Timely entry of SNC determinations.	NA
Metric d	No activity indicator.	2

### **File Review Metrics**

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

**Metric a** - Based upon a RCRAInfo database "pull", in FY03 CO made one (1) SNC identification per one-hundred (100) inspections conducted (of all handlers a total of three [3] SNC identifications were made by CO). The 1.0% in Metric a above reflects the combined FY03 USEPAR8/CO SNC identifications per one-hundred (100) inspections conducted. As such, USEPAR8/CO are 66.0% below the national average (3.0%) for SNC identifications per (100) inspections conducted.

**Metric b** - Based upon a RCRAInfo database "pull", in FY03 CO made one (1) SNC identification per universe (active TSDs and LQGs). The 1.0% in Metric b above reflects the combined FY03 USEPAR8/CO SNC identification per universe. As such, USEPAR8/CO are equivalent to the national average (1.0%) for SNC identifications per universe.

**Metric c** - Per Metric a and Metric b criteria above, in FY03, there was an unknown percent (currently not being tracked) of SNC determinations completed within the one-hundred and fifty (150) days of "Day 0" (the inspection date). Although the National (average or total) and CO reflect "Not Applicable", the goal for this metric is to achieve 100% timeliness in regard to the timely entry of SNC determinations into RCRAInfo.

**Metric d** - The August 5, 2004 RCRA Framework Metric Results (see 4. Metric d, CO) indicates that two (2) SNCs were identified during FY03.

**Metric e** - None of the files reviewed included handlers that had been identified as

SNC.

**Metric f** - None of the files reviewed included handlers that had been identified as SNC.

*Citation of information reviewed:* 7 inspection reports, RCRAInfo

*Recommendations if corrective action is needed:*

In summary, historically CO has never reported Secondary Violators (SVs) and has infrequently reported SNCs. Procedurally, USEPAR8 and its states need to place an emphasis on SNC and SV identification, reporting and RCRAInfo database entering, albeit, the latter isn't done for SVs. The State and EPA R8 have agreed to meet and discuss the State's process for SNC identification with the objective of improving the process. EPA R8 believes that State staff, managers, and data entry personnel involved in the process need to become more familiar with the process for violation determination and reporting to the RCRAInfo database. EPA R8 will contact OECA regarding this and request that training be made available to Regional and State personnel.

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

**Identification and Evaluation Information**

RCRA Universe Information	Number of Enforcement Actions
State formal enforcement actions	18 (counting 210s/310s only)
State informal enforcement actions	75 (counting 175s only)
Total number of enforcement actions	93 (counting 175s, 210s, 310s only)
Number of enforcement files for review	14 (9 informal/5 formal)

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

**File Review Metrics**

Metric a	State enforcement actions that contain a compliance schedule of required actions or activities designed to return the source to compliance. This can be in the form of injunctive relief or other complying actions.	100%
Metric b	Percentage of formal or informal enforcement responses that return sources to compliance.	100%

**Metric a** - CO formal enforcement actions have traditionally included an injunctive relief component to facilitate facility Return to Compliance (RTC). For the purpose of this National UEOS pilot, five (5) FY03 CO formal enforcement actions were reviewed. Of the five (5), four (4) were Compliance Orders on Consent (COCs) and one (1) was a Unilateral Order (UO). All of these formal enforcement actions had injunctive relief language with specified timeframes to return facilities to compliance.

**Metric b** - CO informal enforcement actions (Compliance Advisories) have traditionally included an injunctive relief component to facilitate facility Return to Compliance (RTC). For the purpose of this National UEOA pilot, fourteen (14) FY03 CO informal enforcement actions were reviewed. Of these, five (5) were elevated to formal enforcement actions (see Metric a above). Of the nine (9) that resulted in Compliance Advisories only, all resulted in the facilities returning to compliance.

*Citation of information reviewed:* 14 enforcement files.

*Recommendations if corrective action is needed:* None.

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

**Identification and Evaluation Information**

RCRA Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	18 (counting 210s/310s only)
State informal enforcement actions	75 (counting 175s only)
Total number of enforcement actions	93 (counting 175s, 210s, 310s only)
Number of enforcement files for review	14 (9 informal/5 formal)



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

**Data Metric**

Metric a	Timely action taken to address SNC.	0/3 (0%)
Metric b	No activity indicator.	\$ 309,675

**File Review Metric**

Metric c	Percentage of HPVs addressed or resolved appropriately.	Delete ? HPVs (CAA)?
Metric d	Percentage of SNCs addressed or resolved appropriately.	NA

**Metric a** - 0/3 (0.0%) figures seem to indicate that CO has three (3) SNC "flagged" entries which have yet to be addressed (via enforcement in a timely manner)/resolved (returned to compliance ... i.e., subsequently de-SNCed). CO, upon being advised by USEPAR8 (MT, ND, SD, UT, WY as well), recently "cleaned up" their SNCs universe. To date, CO should have no SNC "flagged" entries which have yet to be addressed. Also, the 3 SNCs that are reflected here as having been identified during FY03 is not consistent with the 2 SNCs reflected in Data Metric 4.d. Metric 6.a appears to include SNCs that were identified prior to FY03.

**Metric b** - This dollar amount reflects what CO collected in penalties in FY03.

**Metric c** - This file review metric should be deleted as the RCRA/hazardous waste program has no HPVs, rather HPVs are associated with the CAA/air program. File review Metric d is applicable.

**Metric d** - None of the files reviewed included handlers that had been identified as SNC, however, it appears that five (5) should have been SNC "flagged".

*Citation of information reviewed:* 14 enforcement files.

*Recommendations if corrective action is needed:* None.

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

**Identification and Evaluation Information**

RCRA Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	18 (counting 210s/310s only)
State informal enforcement actions	75 (counting 175s only)
Total number of enforcement actions	93 (counting 175s, 210s, 310s only)
Number of enforcement files for review	14 (9 informal/5 formal)

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

**File Review Metric**

Metric a	Percentage of formal enforcement actions that include calculation for gravity and economic benefit.	80% (w 1 pending [UO])
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**Metric a** - CO formal enforcement actions (Compliance Orders on Consent (COCs) and Unilateral Orders (UOs)) have traditionally included penalties, in conjunction with the injunctive relief component. On a per count basis, CO routinely includes gravity and economic benefit calculations, as well as adjustments for history of noncompliance, good faith effort(s)/lack of good faith effort(s) and multi-day. CO formal enforcement actions typically reflect penalty calculations which are well documented and supported. In regard to the Metric a figure noted above, USEPAR8 reviewed five (5), CO FY03 formal enforcement actions (4 COCs, 1 UO). All of the COCs had adequate penalty calculations, to included gravity and economic benefit calculations. A review of the CO FY03 UO, which was issued to a Federal facility, indicated that the penalty component of the order was pending resolution of the injunctive relief component of the order (i.e., the latter is still being negotiated). As such, a score of 80% with an asterisk (\*) is appropriate.

*Citation of information reviewed:* 5 formal enforcement action files.

*Recommendations if corrective action is needed:* None.

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

**Identification and Evaluation Information**

RCRA Source Universe Information	Number of Enforcement Actions
State formal enforcement actions	18 (counting 210s/310s only)
State informal enforcement actions	75 (counting 175s only)
Total number of enforcement actions	93 (counting 175s, 210s, 310s only)
Number of enforcement files for review	14 (9 informal/5 formal)

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

**Date Metrics**

Metric a	No activity indicator - actions	24
Metric b	Penalties normally included with formal enforcement actions.	46%

**File Review Metric**

Metric c	Percentage of final enforcement settlements incorporating penalties that account for economic benefit.	50% (100*)
Metric d	Number of final penalties collected	80% (w/1 pending [UO])

**Metrics a & b** - And the "24" noted for CO in Metric a reflects what specifically ? In regard to Metric b, the National percentage is 48% and for CO the percentage is 46%. As noted under the RCRA Framework Metric Results' (dated 8/5/04) "Guidance Requirement or Goal" ... "Program review necessary if state is one half below the National average for % of actions with penalty." As such, if CO's percentage was at or below 24%, then program review would be warranted. Since CO's percentage is 46%

(only 2% below the National average) program review is unnecessary.

In summary, in regard to Metrics a & b, USEPAR8 questions the relevancy of whatever these metrics are attempting/suppose to be addressing. Clearly Metric a's National and CO figures aren't understood. Metric b, based upon the RCRA Framework Metric Results' (dated 8/5/04) "Name" and "Description", appears to initially be attempting to identify "the universe" of those state formal enforcement actions that should typically include penalties. Subsequently, once the purported "universe" has been identified, then those that "carry any penalty" are positively noted percentage wise (e.g., National 48%, CO 46%).

The inherent problem with Metric b is USEPAR8/CO don't know what the criteria is in regard to defining "the universe". Precisely what is being included in the final enforcement action "universe" ? Ideally "the universe" should be "310's/620's only". Surely the "entire universe" (e.g., 210s, 310s, 240s, 340s, 620s) isn't being utilized to determine Metric b percentages ?

**Metric c** - Of the four (4) CO COCs reviewed, two (2) of the four (4) had final enforcement action settlements in which economic benefit comprised a portion of the settlement (50%). However, it should be noted that not all formal enforcement action (i.e., 210s/310s) penalty calculations result in having an economic benefit component. As such, that doesn't mean that the state hasn't ascertained the relevancy of an economic benefit penalty component for each and every one of their formal enforcement action cases, on a count by count basis (100%\*).

**Metric d** - Of the five (5) CO formal enforcement actions reviewed (COCs and UO), four (4) of the five (5) have collected appropriate penalties to include gravity and economic benefit portions of the final penalty amount collected. A review of the CO UO, which was issued to a Federal facility, indicated that the penalty component of the order was pending resolution of the injunctive relief component of the order (the latter is still being negotiated). As such, a score of 80% with an asterisk (\*) is appropriate.

Citation of information reviewed: 5 enforcement files.

Recommendations if corrective action is needed: None.

### Section III. Review Area: Agreements

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

## Identification and Evaluation Information

RCRA Source Universe Information	Number of Agreements
Performance Partnership Agreements	1
Performance Partnership Grants	1
PPA/PPGs	1/1
Categorical Grants (SEAs)	0
Other applicable agreements (enforcement agreements, etc)	2 (MOA/EA)
Total number of agreements	4 (PPA, PPG, MOA, EA)
Number of agreements reviewed	4

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

### File Review Metric

Metric a	State agreements (PPA/PPG/SEA, etc.) contain enforcement and compliance commitments that are met.	100%
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**Metric a** - Without belaboring the issue, the CO Hazardous Waste Program has historically addressed national and regional priorities within the framework of making compliance and enforcement commitments in their PPA/PPG. Working USEPAR8/CO documents include the recently updated (8/03) MOA and EA. CO compliance and enforcement commitments are typically reached and exceeded (e.g., 50% to 62.5% inspections conducted exceedance annually). In FY03, there were no product(s) or project(s) deliverables funded by a PPG. In summary, the CO Hazardous Waste Program needs no improvement in this area.

*Citation of information reviewed:* PPA, End-of-Year Report

*Recommendations if corrective action is needed:* None.

**Section IV. Review Area: Data Integrity**

**Identification and Evaluation Information**

RCRA Source Universe Information	Number of Sources in Universe
TSD Inspections	29 CEIs (no SPLs/OAMs indentified)
LQG Inspections	54 CEIs (no SPLs/OAMs indentified)
SQG Inspections	116 CEIs (no SPLs/OAMs indentified)
Total Number of Inspections	199 CEIs (no SPLs/OAMs indentified)
Number of inspection files for review	7 (National pilot)/31 (Regional UEOS)

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

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

**File Review Metric**

Metric a	Regions should evaluate what is maintained in RCRAInfo by the State and ensure that all minimum data elements are properly tracked and entered according to accepted schedules.	100%
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**Metric a** - CO is required to enter state Minimum Data Requirements compliance and enforcement data into RCRAInfo by no later than the 15th of the following month for the previous month. Based upon the thirty-eight (38) file reviews/RCRAInfo "reviews" done, this monthly deadline appears to be met on a consistent basis. The importance of this RCRAInfo data entry is evidenced by CO having two (2) staff members dedicated to performing this task on or before the stipulated monthly deadline. In summary, CO is doing excellent work in this particular area.

*Citation of information reviewed:* 38 inspection files, RCRAInfo.

*Recommendations if corrective action is needed:* None.

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

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

**Data Metrics**

Metric a	Response to RCRAInfo data errors from Integrated Error Correction Process (IECP) averages less than 60 days.	Data not available for this pilot
Metric b	Violation/noncompliance data are accurate.	81

**File Review Metric**

Metric c	Facility Universe Data and Overall Uploads from States/Locals Produce Accurate Data	See USEPAHQ (OECA) comment directly below
Metric d	Accuracy of data reporting	99%

**Metric a** - data is currently not available for this National pilot.

**Metric b** - CO needs to reconcile the figure for CO (81) from an OTIS 6/04 Refresh. USEPAR8 suspects that this figure relates to historical (alias "old") non-SNC violations which haven't been "turned off" on appropriate dates (e.g., no Returned to Compliance [RTC] date entries, etc.).

**Metric c** - See USEPAHQ (OECA) comment directly below.

**Metric d** - CO RCRAInfo Minimum Data Requirements compliance and enforcement data entry is predominately accurate. Of the seventy-one (71) file reviews conducted (predominately compliance reviews) seventy (70) of seventy-one (71) were accurate (99%). In summary, CO is doing excellent work in this particular area.

*Citation of information reviewed:* 71 inspection/enforcement files.

*Recommendations if corrective action is needed:* None

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

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

**Data Metrics**

Metric a	Active Facility Universe Counts Accurate for TSD, LQG, SQG, All Handlers.*	On hold until 2005
Metric b	Inspection Counts Complete	387
Metric c	Violation Counts Complete	174
Metric d	Notice of Violation Counts Complete	0
Metric e	SNC Counts Complete	2
Metric f	Formal Action Counts Complete	24
Metric g	Assessed penalties complete	\$309,675

**Metrics a** - On hold until 2005 (pending RCRAInfo Active/Inactive Workgroup report conclusion).

**Metrics b-g** - As these metric numbers pertain to CO, USEPAR8 should provide the counts to CO from OTIS Management Reports. CO should review these counts and reconcile any discrepancies with USEPAR8. Corrections should be made once agreement is between USEPAR8/CO is reached.

*Citation of information reviewed:* RCRAInfo

Recommendations if corrective action is needed:

**Section 5: Optional**

**13. Optional Evaluation Element could include program areas such as compliance assistance, pollution prevention, innovation, incentive or self-disclosure programs, outcome measures, environmental indicators, relationships with state Attorneys General or other legal offices, etc.**

Not Applicable.