

**Final State Review Framework
Direct Implementation Region 9 NPDES, CAA, and RCRA Programs in
The Pacific Islands for FY 2006**

Review Place and Date

Region 9, San Francisco, California

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Overview and Summary

Introduction and Scope of the Review

This is OECA's report for the State Review Framework review of Region 9's direct implementation of environmental programs in the U.S. Pacific territories. The scope of the review is CAA Stationary Source, CWA NPDES, and RCRA Subtitle C enforcement and compliance programs in the Pacific Islands, which includes Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (CNMI). The review was conducted in collaboration with managers and staff of the Pacific Islands Office (PIO), the air, water, and RCRA compliance units, and the enforcement coordinator in Region 9. The review was conducted through conference calls, informal phone conversations, email, and an on-site visit to the Region 9 office in San Francisco, California. The review was based on FY 2006 data, which was the most complete data available at the time of the review.

The purpose of an OECA led SRF review is to assess a region's implementation of air,

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water, and RCRA programs that are not authorized to states. None of the three territories (Guam, American Samoa, and CNMI) are authorized for the CWA NPDES program, but Guam was recently approved for the CAA Title V, and the RCRA Subtitle C programs was authorized several years ago. Because these programs have only recently been approved, and Region 9 inspectors continue to conduct the bulk of compliance inspections, it was decided that OECA would include all three programs for all three of the territories in this review. Due to the organization of the Pacific Islands program – one office overseeing the programs in three small territories with few major sources – it was also decided to prepare one consolidated report and not separate reports for each of the territories.

Review Process

The review process began with a conference call on October 18, 2006 to introduce the review to the Region 9 staff and begin to plan for the on-site review. The data metrics in OTIS for the air, water, and RCRA programs in Guam, Northern Marianas, and American Samoa were organized and shared with Region 9 on January 19, 2007. On February 29, 2007, an additional spreadsheet with the summary of the OTIS data was shared with the PIO and the Region 9 program offices for air, water, and waste. The preliminary data analysis was discussed with the PIO staff in a series of follow-up phone calls. The calls with Region 9, PIO, and compliance program managers and staff were used to discuss the data and to gather information about the PIO program and EPA’s environmental programs in the Islands. On March 31, 2007, the review team sent the entrance letter to the Region 9 enforcement coordinator and the manager of the PIO. The letter included the main findings of the preliminary data analysis of the data metrics for the three media programs in the three territories. The review team conducted the on-site review at the Region 9 offices in San Francisco, California on April 11 & 12, 2007. During the on-site visit, the review team held an entrance meeting with the Region 9 enforcement coordinator and the manager of the PIO. A close out meeting was held with manager of the PIO to discuss the preliminary findings from the on-site review. During the on-site review, the review team held separate meetings with the managers and inspectors of the PIO, and the air, water, and waste compliance units. Since air compliance inspectors were not in San Francisco that week, a follow-up conference call was held with them on May 2.

Data Issues and File Selection

Data for the air, water, and waste programs in Guam, American Samoa, and CNMI were obtained from OTIS. Since there were no NPDES data in OTIS, the review team checked PCS and ICIS-NPDES as an alternative source for the data. The air and RCRA compliance programs have the most complete data in OTIS.

The universe of sources in the three territories is arrayed in the table below:

Pacific Islands Universe of Sources			
	CAA	CWA	RCRA

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	Majors	SM-80s	SM	Majors	Non-majors	TSDs	LQGs	SQGs
Guam	15	0	4	6	16	3	34	32
CNMI	3	0	3	2	1	0	0	0
American Samoa	0	0	0	4	3	0	1	1
Total	21	0	7	12	20	3	35	33

The number of files available to review is arrayed below:

Pacific Islands Inspection Reports Available for Review						
	CAA		CWA		RCRA	
	EPA	Territory	EPA	Territory	EPA	Territory
Guam	13	0	0	0	23	2
CNMI	0	0	0	0	0	0
American Samoa	0	0	0	6	0	0
Total	13	0	0	6	23	2

The number of files for headquarters review was 13 for CAA, 6 for CWA, and 25 for RCRA. Given this low number of files, the File Selection Protocol suggests that all of these files be reviewed. It was decided that it was not necessary to send air, water, and RCRA staff to Region 9 to review such a low number of files. Since these inspection reports could be sent either electronically or by mail to OECA, it was decided the reports would be reviewed in headquarters prior to the on-site review. A detailed discussion of the number of inspections and the files that were or were not available is found under Element 2.

Organizational Structure

Region 9's Pacific Islands Office (PIO) consists of a manager and five staff and is responsible for coordinating all of Region 9's environmental programs, including enforcement and compliance assurance, in the Pacific Islands. The PIO's manager reports to the Director of the Communities and Ecosystems Division. The PIO also coordinates with the enforcement coordinator in the Region 9 Office of Planning and Public Affairs, and the compliance chiefs in the Air Division, Water Division, and the Waste Management Division. The PIO staff conducts all of the NPDES inspections and staff in the Air and Waste Management Divisions conducts the air and RCRA inspections. The Office of Regional Counsel takes the lead for follow-up enforcement actions.

Pacific Islands Background

The Pacific Islands Office oversees environmental programs in the United States territories in the Pacific Ocean. This includes Guam, American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), and Wake Island. In addition, the PIO coordinates EPA technical assistance to the Freely Associated States of Palau,

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the Marshall Islands, and the Federated States of Micronesia. These territories are spread over vast distances. For instance: Guam is 6,000 miles west of San Francisco and 3,700 miles west-southwest of Honolulu, and American Samoa is 2,500 miles southwest of Hawaii. The islands are up to eight time zones away from San Francisco; most are on the other side of the International Date Line. This places significant limits on direct communications with the islands.

The overarching goals for PIO are to:

- Safeguard the environmental health of the U.S. – Affiliated Pacific Islands, by addressing environmental deficiencies such as inadequate water infrastructure, open dumping, and unaddressed hazardous wastes sites.
- Building local environmental protection capacity by providing resources, technical assistance, and training.

The U.S.-affiliated Pacific Islands suffer from some very basic and severe public health and environmental problems. For example, many people are not able to turn on the faucet and drink clean, safe water. The island of Saipan, CNMI, with a population of about 70,000, is the only municipality of its size in the U.S without 24-hour water. Most residents there get water only one or two hours per day and the water that comes out of the tap is too salty to drink.

In the territories, there is also a lack of potable water, beach closures, contaminated fish, old munitions from WWII, illegal dumps, leaking fuel tanks, and frequent typhoons, which impact people's daily lives in the Pacific to a degree that most Americans would find surprising.

PIO manages its program in the territories based on the goals and objectives of their strategic plan. Approximately ninety percent of PIO's efforts are concentrated in the following areas: 1) safe drinking water; 2) groundwater management and protection, wastewater and water construction planning, design, and construction; 3) coastal, near-shore, and coral reef water quality management for point source and nonpoint source (nonpoint being the problem); and 4) UST's & SPCC & LUST & FUDS & UXO and Brownfields; toxics; pesticides; and Superfund removals. Air Stationary Sources and RCRA C are lower priorities of the program because they are not perceived to be the cause the major environmental problems in the territories.

PIO manages domestic programs and grants in the flag areas: Guam, American Samoa, and CNMI. This consists of consolidated environmental program grants for water, wastewater construction grants, and other special grants (e.g., SDW, pesticides, UST, NPS, Superfund, Brownfields, Sec. 106, CAA, etc.). These grants establish the environmental priorities and help fund the implementation of each of the territories' environmental protection programs. PIO also has several ongoing initiatives in non-flag areas. This includes involvement in the implementation of the treaty obligations in the Republic of Palau and the Republic of the Marshall Islands. In the Marshall Islands,

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PIO works closely with the Army's Space and Missile Defense Command and the Marshall Islands EPA to develop and implement environmental standards for the Kwajalein Missile Range. In Palau, PIO along with other U.S. and Palauan agencies is working to ensure that the U.S. funded Babeldaob road project goes forward in an environmentally responsible manner. On Wake Atoll, PIO is working with the Army to achieve compliance with applicable environmental standards.

In addition to the program activities described above, PIO has in the past few years placed an increased emphasis on enforcement and compliance. The PIO staff conducts a number of compliance inspections for UST, RCRA Subtitle D, and SPCC, which have resulted in a number of formal enforcement actions, including the first monetary penalties ever in American Samoa for environmental violations. One PIO staff member conducts NPDES inspections each year, some of which have resulted in large enforcement actions, although none were concluded during FY 2006. PIO has also worked with other programs in Region 9, such as the Pesticides Office, to increase its inspections and enforcement in recent years.

Significantly, PIO has used the enforcement process to improve the environmental health of people in the Pacific. A referral to DOJ over CWA and SDWA violations in Guam led to a court-enforced Stipulated Order, resulting in a 99.9% reduction in sewage spills since 2003 and the safest drinking water there in decades -- a dramatic turnaround. The Guam Stipulated Order covered all 5 POTWs on the island. Oversight and enforcement of the Stipulated Order is ongoing. In 2005, PIO sent another referral to DOJ over CWA violations in the CNMI. A Stipulated Order is currently under negotiation that will hopefully lead to similar improvements there.

PIO has worked with CID to expand EPA's criminal enforcement presence in the Pacific Islands. Prior to 2003 there had never been a visit to the islands by a CID special agent. Since that time there have been several investigations, and three prosecutions resulting in two guilty verdicts, and one settlement.

PIO also provides travel funds for inspectors from Region 9's air and RCRA compliance units to conduct inspections in Guam, American Samoa, and CNMI. The major air facilities are inspected once every two years by Region 9 air inspectors. Recently these inspections have been used to train inspectors in the Guam EPA. The RCRA inspectors conduct yearly inspections. Since 2005, PIO has maintained a spreadsheet to track enforcement actions initiated by their inspections. Currently, 33 enforcement actions, mainly for the UST and SPCC programs, as well as for pesticides are being tracked. A number of enforcement tools, including judicial referrals, consent decrees, administrative orders, and expedited settlements, are used to address noncompliance. PIO has also been incorporating Supplemental Environmental Programs (SEPs) into the settlements for a number of the enforcement actions in order to obtain additional environmental benefits.

Overarching Findings

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During the course of the review it became apparent that the PIO has increased its responsibility for enforcement and compliance in the territories. However, as noted above, most of the PIO enforcement activities are in environmental programs that are not covered by the current Framework structure. Only the CWA NPDES program is part of the PIO's enforcement activities, while CAA stationary sources and RCRA Subtitle C are not. The review findings indicate that the RCRA and CAA programs have an interest in enforcement and compliance issues in the territories and that they are able to make resources available to conduct inspections there. PIO has been able to leverage its resources and make available funding for Region 9 air and waste inspectors to travel and work in the territories. There is follow-up and communications between PIO and those Region 9 programs, but this is ad hoc with no formal feedback process. PIO has the resources to conduct the NPDES inspections, but there is no regular feedback process with Region 9 NPDES compliance unit and some program requirements were not being addressed. An example of this is the reporting of NPDES inspection data into ICIS-NPDES. The PIO and the NPDES compliance unit are discussing this and will address the issue.

During the course of the review, the leadership of PIO, the compliance units, and the enforcement coordinator began to discuss emerging issues requiring their joint attention. It was apparent that discussions were already under way to resolve issues that were identified prior to the on-site visit (e.g., the ICIS-NPDES reporting issue). This report does not specify a single recommendation to address this issue; however, many of the recommendations in the body of the report require attention by PIO, the enforcement coordinator, and the compliance units, which will lead to improved coordination and communications.

Summary of Findings

- The Pacific Islands program is complex. The program covers territories that are as far away from San Francisco as San Francisco is from London and covers an area larger than the continental United States. Time zone differences complicate communications. Travel to the territories is expensive. The average cost of an inspector's visit to Guam is \$5,000.
- PIO has increased its enforcement and compliance activities in the territories in recent years.
- Inspection coverage in Guam, American Samoa, and CNMI for the air and NPDES programs is above the national average.
- Inspection coverage for RCRA does not meet the standard for inspecting 100% of LQGs in five years.
- Enforcement and compliance activities in the Pacific Islands are not always captured in OECA's annual planning and annual reporting process.
- Inspection reports for air and water are neither complete nor timely.
- RCRA inspection reports are complete, but not timely.
- Compliance data is an issue for air, water, and RCRA, but the lack of water

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compliance data in PCS and ICIS-NPDES is of particular concern.

Summary of Recommendations

- Inspection commitments for the air, water, and RCRA programs should be captured in EPA's Annual Commitment System (ACS) in order to identify the work conducted in the Pacific Islands.
- Inspection reports should be prepared for NPDES inspections in order to document those inspections and to create the data for inclusion in the national databases.
- Air Compliance Monitoring Reports need to meet the criteria of the CMS.
- Improve timeliness of preparing inspection reports.
- Improve review of air compliance monitoring reports in order to ensure that HPVs are properly identified.
- Identify Single Event Violations from the NPDES inspections and enter them into ICIS-NPDES.

Section 1: Review of State Inspection Implementation

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

Findings:

Air Program

Metric 1a – According to the FY 2006 data in OTIS, 86.7% (13 of 15) of the major sources in Guam had Full Compliance Evaluations (FCE) during the two year period from FY 2005 and 2006. This is above the national average of 81% combined EPA and state coverage. 100% (3 of 3) of the major sources in CNMI had FCEs during the same time period.

Metric 1b – According to the FY 2006 data in OTIS, there are no SM-80s in either Guam or CNMI.

Metric 1c. – According to the FY 2006 data in OTIS, 100% (4 of 4) synthetic minor sources in Guam had an FCE over a five year period. 100% (3 of 3) of the synthetic minor sources in CNMI had FCEs during the same period of time.

Metric 1d – There were no minor source Partial Compliance Evaluations in Guam or CNMI during FY 2006.

Metric 1e – There were no reviews of self-certifications completed in Guam or CNMI during FY 2006.

Metric 1f – There were no sources with an unknown compliance status in Guam or

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CNMI during FY 2006.

Metric r – In FY 2006 Region 9 committed to conducting 6 FCEs at major sources in Guam. There were no specific air compliance recommendations for the other Pacific Islands. The data show that Region 9 conducted 13 FCEs in Guam and 3 FCEs in CNMI at major sources during the FY 2005 - FY 2006 time frame. These FCEs were conducted in FY 2005 and no air FCEs were conducted in FY 2006.

Region 9 has a Compliance Management Strategy in place with Guam.

CWA Program

Metric 1a, b, c – According to the OTIS data, there were no NPDES major source inspections in Guam, American Samoa, and CNMI during FY 2006. There are a total of 12 NPDES major sources and 20 NPDES non-major sources in these three territories. PIO provided data showing that they conducted 21 NPDES inspections in Guam and CNMI during that year.

Metric 1r – According to the FY 2006 ACS commitments, Region 9 committed to conducting 5 inspections at CWA NPDES major sources in the Pacific Islands. There is no record in the ACS stating whether this commitment was met. The PIO staff provided data showing that in FY 2006, they conducted 6 NPDES major source inspections in Guam and 6 inspections in CNMI.

RCRA Program

Metric 1a – According to the OTIS data, 100% (3 of 3) of the TSDs in Guam were inspected in FY 2006 and none in American Samoa or CNMI.

Metric 1b – 14.7% (5 of 34) of LQGs in Guam were inspected in 2006. All five inspections were conducted by Region 9 inspectors.

Metric 1c – The five year coverage rate of LQGs inspected in Guam was 45.5% (12 of 34), of which 7 inspections were conducted by Region 9 inspectors. No LQGs were inspected in American Samoa and CNMI.

Metric 1d – 21.9% (7 of 32) of SQGs were inspected in Guam in FY 2006, 6 of which were conducted by Region 7 inspectors. There were no SQG inspections in American Samoa and CNMI.

Metric 1e – There were 5 inspections at other types of facilities in Guam and 2 inspections at other types of facilities in American Samoa.

Metric 1r – In FY 2006, the ACS indicates that Region 9 negotiated no RCRA inspection commitments for the Pacific Islands and no inspection results were recorded for that

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year.

Recommendations:

Region 9 conducts inspections at as many air, water, and waste facilities as possible, but is not getting credit for those inspections due to a lack of reporting including the ACS. Region 9 should identify the inspection commitments for air, water, and RCRA in Guam, American Samoa, and CNMI in the comments field in ACS. The RCRA commitments would only be for TSDFs and LQGs inspections. The CWA and CAA commitments would be listed after they those inspections are identified by the programs. The accomplishments should then be identified in the end of year ACS reporting. This should be coordinated by the Region 9 enforcement coordinator in conjunction with the staff of PIO and the other media compliance units. (This recommendation is not meant to be a new reporting requirement or a new measure. These commitments should only be identified in the comments field of the regular inspection commitments.)

Region 9 RCRA program should work with the Guam EPA to develop a plan for meeting the five year LQG inspection standard in Guam.

Citation of information reviewed for this criterion: **CAA CMS, RCRA EPR, and CWA EMS**

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

Findings:

According to the OTIS data, in FY 2006, Region 9 conducted 13 air, no NPDES, and 24 RCRA inspections in the Pacific Islands. During the preparation for the on-site review, it was learned that PIO conducted 6 NPDES inspections in American Samoa that year. Since there were so few inspection reports to review for all three media, it was decided that inspection reports could be send electronically or in hard copy to OECA for review prior to the on-site visit.

The reports shared with OECA were: CWA/NPDES – 6 inspection reports prepared by American Samoa EPA inspectors; RCRA – 25 inspection reports (23 prepared by Region 9 inspectors and 2 by Guam EPA inspectors); CAA – 10 air inspection reports or Compliance Monitoring Reports for sources in Guam and 3 air inspection reports for sources in American Samoa. See table below.

Pacific Islands Inspection Reports Submitted by Region 9						
	CAA		CWA		RCRA	
	EPA	Territory	EPA	Territory	EPA	Territory

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Guam	13	0	0	0	23	2
CNMI	0	0	0	0	0	0
American Samoa		0	0	6	0	0
Total	13	0	0	6	23	2

CAA Program

Metric 2a for the air program is the percentage of Compliance Monitoring Reports (CMR) adequately documented in the files. The seven criteria for a CMR are:

1. General information - date, compliance monitoring category (i.e., full compliance evaluations, partial compliance evaluation, investigation), and official submitting the report.
2. Facility information - name, location, mailing address, facility contact and phone number, Title V designation and mega-site designation.
3. Applicable requirements - all applicable requirements including regulatory requirements and permit requirements.
4. Inventory and description of regulated emission units and processes.
5. Information on previous enforcement actions.
6. Compliance monitoring activities - processes and emissions units evaluated, on-site observations, whether compliance assistance was provided and if so, nature of assistance, any action taken by facility to come back into compliance during on-site visit.
7. Findings and recommendations relayed to the facility during the compliance evaluation.

Based on these criteria, none of the ten air compliance monitoring reports reviewed was complete. The reports are based on inspections conducted by EPA Region 9 inspectors from the air compliance unit and Guam EPA inspectors. The inspection reports lack the applicable requirements, the inventory and description of regulated emission units and processes, information on previous enforcement actions, and compliance monitoring activities. The reports lacked: a description of the facility, permit information (except where there was no permit), an inventory and description of regulated emissions units and processes, previous enforcement information, monitoring activities, etc.

In general, the reports are not detailed enough to help determine the compliance status of each sources or whether significant problems exist. Two of the air reports indicate that the facilities have stacks that are too short and two of the reports indicate that additional information is required. The reports do not indicate, nor is there data in OTIS to indicate, whether additional follow-up actions were taken.

These inspections were used as an opportunity to train the Guam EPA inspectors. However, if the reports do not meet the basic requirements for compliance monitoring reports, then the value of the inspections as a training exercise may be in question.

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CWA Program

Metric 2a – PIO conducted 12 NPDES inspections at 7 major source facilities in Guam. No reports were written for these inspections. A list of the inspections was shared with the review team. The facilities inspected were all major sources: 5 were POTWs, 1 was industrial, and 1 was a federal facility. Four of the inspections were at Guam Waterworks Authority POTWs and were conducted as part of the oversight of the June 2003 court ordered Stipulated Order for Preliminary Relief. The Stipulated Order was an interim step that required GWA to address some of its more immediate needs and complete a comprehensive master plan, which will be used as a road map for and CWA compliance, and which is a precursor to negotiations for a consent decree in 2007. Inspection reports need to be prepared to document the findings of each inspection. Six of the inspections were at the Commonwealth Utility Cooperation (CUC) POTWs in CNMI, and were also in support of an enforcement action against CUC. There is no data in ICIS-NPDES for these inspections, which is a problem.

PIO also shared with the review team 6 inspection reports written by water inspectors at the American Samoa EPA. Five of these inspections were at major sources and 1 was at a non-major source. The reports are not complete because they did not include the form 3560 cover sheet required by the NPDES program. Without the form 3560 there is no clear description of the facility, nor is there an indication that the report was reviewed by a manager. Each report does include a narrative description of the findings and photographs to support those findings. The reports were prepared and forwarded to PIO. Each of the six reports included a section on deficiencies and recommendations.

RCRA Program

Region 9 sent the review team an initial list of 17 inspections conducted in the territories in FY 2006: 11 in Guam, 2 in American Samoa, and 4 in CNMI. Region 9 then provided the review team with 25 inspection reports, in hard copy, conducted in Guam, American Samoa, and CNMI. For the list of reported inspections: 10 corresponded to the reports received and the records were found in OTIS; 4 had no report; and 8 had no records in OTIS. See table below.

Pacific Islands RCRA Inspection Reported Compared with Reports Received by OECA				
	Report sent by Region	No Report sent by Region	No Record in OTIS	Reports w/o Records in OTIS
Guam	8	3	0	2
American Samoa	0	1	1	0
CNMI	2	0	2	6
Total	10	4	3	8

One Region 9 RCRA inspector conducted 96% (23 of 25) of these inspections and prepared the inspection reports. The reports were succinct and to the point. They included a narrative description of the inspection, the findings, the potential violation if

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any, and recommendations for correcting problems. Each report was accompanied by photographs as supporting documentation. Potential violations were found in 8 of the 25 inspections. Each inspection report was accompanied by a letter from the RCRA compliance branch chief indicating whether potential violations were discovered during the inspections, indicating there was management review of the inspection reports. Based on the 25 inspection reports, there were 6 warning letters issued, and 2 certifications of violation correction were submitted stating that the facilities had corrected problems identified during the inspections. The 2 Guam EPA inspection reports contained a narrative report, a checklist, and photographs. The narrative reports were not thorough and lacked a set of findings by which to make a compliance determination. It appears that the inspector did not identify any potential violations. There was no indication that these inspection reports were reviewed by a Guam EPA manager.

A review of the 8 reports that were not recorded in OTIS shows that they are facilities in Guam and CNMI that were identified facilities that were previously not on EPA or Guam EPA's radar screen. These facilities were determined by the EPA inspector to be CESQGs based on his review of the manifest reports. CESQGs typically do not have identification numbers in RCRA Info, but the inspections are recorded in ICIS, which means that the Region is keeping track of these facilities.

Recommendations for improvement:

CAA – The Region 9 air compliance monitoring reports should be complete and consistent with the requirements of the CMS. The reports should set an example for the inspectors in the Guam EPA to follow. The air compliance program needs to have a process in place to show how Full Compliance Evaluations and Partial Compliance Evaluations conducted in the Pacific Islands meet the requirements of the air program's CMS.

RCRA – Region 9 RCRA program should work with the Guam EPA RCRA inspectors to improve their inspection reports. For example, this could include using an on-the-job training format or helping the Guam EPA inspectors to obtain inspector training provided by EPA.

CWA – Region 9 should begin to prepare inspection reports for each NPDES inspection conducted in the Pacific Islands territories. The reports should use the form 3560 as the cover sheet for the inspection report. This issue was discovered during the preliminary review of the PIO program before the on-site visit. PIO is aware of this problem and has indicated that they will take steps to correct it. This may require coordination with the Region 9 NPDES compliance branch to ensure that PIO inspectors have the latest requirements for documenting inspections. PIO inspectors should take advantage of inspector training provided by EPA.

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There needs to be a timeframe and milestones for implementing these recommendations.

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

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

Findings:

CAA Program

Metric 3a – This metric is the percentage of Compliance Monitoring Reports, which identify potential violations, and meet the 60-day maximum time period for filing. The timeframe for meeting the 60-day filing requirement is established by the Region and state. Each of the 7 reports reviewed had the date of the inspection, but none of the reports had a date when the reports were prepared. Thus, it is not possible to assess if the reports were timely. Based on the inspection reports, follow up actions were identified for 4 of the 7 sources, either to consider following up with a 114 letter to obtain additional information or asking that the source obtain a permit. Two of the reports noted problems with the height of stacks, for which there are no apparent remedies given the situation with the current fuel and units in place.

CWA Program

Metric 3a – This metric is the percentage of inspection reports which identify potential violations within a given time frame established by the Region and state. The six inspection reports prepared by the American Samoa EPA were completed between 8 and 81 days. The average length of time to complete a report was 43 days. Each of the reports identified deficiencies at the facilities that may be potential violations and/or potential single event violations.

RCRA Program

Metric 3a – The metric is the percentage of inspection reports in which potential violations are identified within a given time frame established by the Region and state. The standard for completing RCRA reports is 30 days. The Region 9 inspection reports took between 64 and 137 days to complete. The average length of time to complete an inspection report was 80 days. All of the 25 RCRA inspections reviewed were conducted by one inspector between August 7 and 18 and all but one of the reports were completed before the end of November. These inspection reports did identify potential violations. As noted in Element 2, based on the 25 inspection reports, there were 6 warning letters and 2 certifications of violation correction, which stated that those facilities had corrected problems identified during the inspections.

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Timeliness of preparing inspection reports for inspections conducted in the Pacific Islands is an issue. The only Region 9 inspection reports that can be fully evaluated for this review are for the RCRA program because they are well documented with dates of the inspection and the report. The air program reports did not have the report dates and could not be evaluated. There are resource challenges for Region 9 in conducting inspections in the Pacific Islands. Because of the distances involved and the expense, a limited number of inspectors are required to conduct a maximum number of inspections, which means that they need to prepare a number of reports at one time. Thirty days may be an ambitious standard for the Region to meet. Nonetheless, the Region should consider ways of reducing the length of time they now take to prepare these reports.

Citation of information reviewed for this criterion: **CAA CMS, RCRA ERP, and CWA EMS**

Recommendations if corrective action is needed:

Region 9 (PIO and the air, water, and waste compliance units) should improve the length of time that it takes to prepare inspections reports. Specifically:

The air program should begin immediately to include the date that inspection reports are completed on those reports.

Given the time and distances involved, and the potential need to obtain additional information through the section 3007 process, traditional timelines are not reasonable. Also, it is understood that it is a challenge for one inspector to prepare so many reports within the 30 or 45 day time frame. However, it may be possible for the Region to improve its efficiency in preparing these reports. OECA suggests that the Region 9 RCRA program assess the timeliness of preparing reports for inspections conducted in Guam and establish reasonable reporting standards.

There needs to be a timeframe and milestones for implementing these recommendations.

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

Findings:

CAA Program

Metric 4a – No HPVs were identified in FY 2006 in either Guam or CNMI where inspections were conducted.

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The inspection reports reviewed by the review team identified issues at those facilities, but did not make HPV determinations. Since the inspection or compliance monitoring reports reviewed do not rise to the level of a full compliance evaluation, it is not clear that the major air facilities in Guam and CNMI are evaluated as well as they should be. It was noted during the on-site review, and during a subsequent conversation with the Region 9 air compliance inspectors, that Guam and CNMI are in non-attainment for SO₂.

The Guam EPA now has an approved Title V program, and is writing the major source permits; however, their inspectors are still inexperienced in conducting CAA inspections. Region 9 inspectors continue to travel to Guam to conduct inspections and train the Guam EPA inspectors. Region 9 also arranges for the Guam inspectors to attend training in Hawaii conducted by California's Air Resources Board. The lack of permits means a lack of permit fees to manage the compliance program. Region 9 continues to provide Guam EPA with \$50,000 in section 105 grant funds in the consolidated grant to the agency. Guam EPA is working to issue these permits and since January 2007 has been conducting their "Air Amnesty Program" as an outreach program to facilities to apply for new permits and permit renewals.

CWA Program

Metric 4a – No Single Event Violations (SEV) were reported in the Pacific Islands in FY 2006.

Single Event Violations are violations of the CWA's NPDES requirements documented during a compliance inspection, reported by the facility, or determined through other compliance monitoring methods by the permitting authority. They are required to be entered into the national system (PCS or ICIS-NPDES) for all NPDES major permittees, and the Final Single Event Violation Data Entry Guide for PCS issued in June 2006 contains the latest information on the subject. (OECA strongly encourages the entry of single event violations at non-major facilities; however, at this time, this requirement is pending the issuance of the ICIS-NPDES Policy Statement.) SEV tracking is important to forming an historic electronic record of inspection and compliance determinations. Tracking inspection results can impact future enforcement decisions, particularly when a permittee continues to exhibit the same violation over the course of several years. Electronic documentation of violations also improves the accuracy of public information. It should be noted that the new 3560 form (distributed in January 2006) contains a list of single event violations to facilitate data entry. While not every single event violation is SNC, they should still be reported.

The inspections conducted by PIO in Guam and CNMI were in support of pending consent decrees. Without inspection reports there is no documentation of single event violations that might have occurred. Nonetheless, from conversations about the NPDES program during the on-site review, it appears that Region 9 does not report SEVs to ICIS-NPDES.

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There are no SEVs reported based on the inspection reports prepared by the American Samoa EPA inspectors. The reports themselves do not indicate that any of the deficiencies identified were determined to be violations that should be reported as SEVs.

Metric 4b – According to the OTIS data, there were 5 facilities in Guam and 4 facilities in American Samoa that were in SNC in FY 2006. A review of the same metric for FY 2007 shows that there are no Guam facilities in SNC, but the facility reports do not show that these SNCs were resolved. The reason for this is that OTIS has not yet been programmed to bring in the ICIS-NPDES data. Data in ICIS-NPDES indicate that these facilities are still in SNC.

RCRA Program

Metric 4a – Region 9 identified no SNC in the Pacific Islands during FY 2006. Potential violations were identified in a number of the inspection reports described in Elements 2 and 3, and follow-up warning letters and certifications of violation correction, but none of these facilities are designated in the OTIS reports as being in SNC. The Region 9 RCRA compliance unit told the review team that none of the potential violations identified during the FY 2006 inspections merited a formal enforcement action and thus were not determined to be in SNC.

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

Recommendations if corrective action is needed:

Region 9 air compliance program needs to be making critical assessments of the Compliance Monitoring Reports and FCEs to ensure that HPVs are properly identified and addressed. If there are SO₂ non-attainment areas in Guam and CNMI, there may be HPVs that have not been identified. In conjunction with the recommendation under Element 2 regarding completeness of CMRs and FCEs, Region 9's air program should have a process in place to ensure that reports are complete and that HPVs are properly identified.

The Region needs to begin entering single event violations in the CWA NPDES program into ICIS-NPDES. However, at this time, this requirement is pending the issuance of the ICIS-NPDES Policy Statement.

The Region needs to review NPDES facilities with long-term SNC determinations to assess what enforcement actions may be required to bring them into compliance.

5. Degree to which Regional enforcement actions require complying actions

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that will return facilities to compliance in a specific time frame.

Findings:

CAA, CWA, and RCRA Programs

Metric A – The metric for each of the three programs is the percentage of formal state enforcement actions that contain a compliance schedule of required actions or activities designed to return the source to compliance using either injunctive relief or other complying actions. According to the FY 2006 OTIS data, there were no concluded CAA, CWA and RCRA enforcement actions in the Pacific Islands.

While no enforcement actions were concluded for the SRF target programs in FY 2006, PIO is tracking over 40 enforcement actions initiated since 2005. These enforcement actions are mainly for violations under the SPSS, UST, and SDWA programs. There is also ongoing work being conducted leading to CWA consent decrees with the Guam Waterworks Authority and the Commonwealth Utility Corporation in CNMI, which is described under Element 2. This shows that PIO has a full complement of ongoing enforcement activity, which is conducted jointly with the Office of Regional Counsel.

During the on-site visit, the tracking database was also shared with the Region 9 enforcement coordinator, who was not aware of the extent of PIO's enforcement work. This led to a discussion on the need for better coordination and collaboration between the two offices. Establishing this interaction would be beneficial on several levels including helping to set priorities, improving data quality (i.e., ensuring that data for concluded enforcement actions are entered into ICIS and that the benefits of those actions are captured in OECA's regular reporting), and ensuring that PIO is able to tap into enforcement resources for travel and equipment.

Citation of information reviewed for this criterion: **CWA EMS, CWA Civil Penalty Policy.**

Recommendations if corrective action is needed:

PIO and the Region 9 enforcement coordinator should establish communications in order to ensure that enforcement data is entered into ICIS and to leverage resources for travel and equipment.

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

Findings:

CAA Program

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Metric 6a – No CAA enforcement actions were reviewed for this report.

CWA Program

Metric 6a – For Guam, 66.7% (4 of 6) facilities in SNC were not addressed in a timely manner in FY 2006. For American Samoa and NCMI no SNC were addressed in a timely manner in FY 2006.

The OTIS data indicates that all four of these facilities were still in SNC and unaddressed as of the second quarter of FY 2006. These facilities do not appear in the year-to-date data for FY 2007 as continuing to be unaddressed. The reason for this is that OTIS has not yet been programmed to bring in the ICIS-NPDES data. Data in ICIS-NPDES indicate that each of the four facilities is still in SNC.

The Region indicates that the four facilities that are listed in SNC have been identified in a Stipulated Order for Preliminary Relief issued in June 2003 against the Guam Waterworks Authority and the Government of Guam. In October 2006 the Stipulated Order was reaffirmed, and it was amended to modify deadlines and add requirements, in addition to some other changes. The issuance of the 2003 Stipulated Order and its 2006 amendments, however, were not entered into ICIS-NPDES because they did not include interim limits or specific dates by which these four facilities would be required to reach compliance. Furthermore, prior to FY 2006, the data for the Pacific Islands were reviewed manually and were not entered into ICIS-NPDES. Until a compliance schedule is set with specific dates or interim limits are issued, the enforcement actions cannot be entered into ICIS-NPDES and these facilities will continue to be identified as SNC rather than "Resolved Pending." Therefore, while these facilities are still identified in the database as being SNC, they are being addressed and the status will change once the dates and interim limits are issued.

It should also be noted that in 2007, EPA has issued penalty actions against Guam for failure to meet certain requirements, as stipulated in the order. Currently, Guam is contesting these actions.

RCRA Program

Metric 6a – No RCRA enforcement actions were reviewed for this report.

Citation of information reviewed for this criterion: CAA CMS, CWA EMS, RCRA ERP

Recommendations if corrective action is needed:

No recommendation required.

7. Degree to which the Region includes both gravity and economic benefit

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Findings:

No enforcement actions for CAA, CWA, and RCRA in the Pacific Islands were reviewed in FY 2006.

Citation of information reviewed for this criterion: **CAA Civil Penalty Policy, CWA Civil Penalty Policy, RCRA Civil Penalty Policy, SEP Policy and BEN Model**

Recommendations if corrective action is needed:

The Region should take enforcement actions where SNC is identified.

- 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:

No enforcement actions for CAA, CWA, and RCRA in the Pacific Islands were reviewed in FY 2006.

Citation of information reviewed for this criterion: **CWA Civil Penalty and BEN Model**

Recommendations if corrective action is needed:

No recommendation

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

9. Enforcement commitments in EPA's Annual Commitment System.

CAA – In FY 2006 Region 9 committed to conducting 6 FCEs at major sources in Guam. There were no specific air compliance recommendations for the other Pacific Islands. The OTIS data show that Region 9 conducted 13 FCEs in Guam and 3 FCEs in CNMI at major sources during the FY 2005-FY 2006 time frame. According to the staff of the air compliance unit, these FCEs were conducted in FY 2005 and no air FCEs were conducted in FY 2006.

RCRA – In FY 2006, the ACS shows that that Region 9 negotiated no RCRA inspection commitments for the Pacific Islands and no inspection results were recorded for that

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year.

CWA – According to the FY 2006 ACS commitments, Region 9 committed to conducting 5 inspections at CWA NPDES major sources in the Pacific Islands. There is no record in the ACS stating whether this commitment was met. The OPI staff provided data showing that in FY 2006, they conducted 6 NPDES major source inspections and in Guam and 6 inspections in CNMI.

Citation of information reviewed for this criterion: **FY 2005 – FY 2006 National Program Guidance**

Recommendations if corrective action is needed:

See recommendation under Element 1.54

Section 4: Review of Database Integrity

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

Findings:

CAA Program

Metric 10a – No HPVs were unaddressed for more than 270 days in FY 2006. There were indications from the Compliance Monitoring Reports reviewed that there were potential violations at the facilities inspected in FY 2005. However, it is not clear that those reports were thorough enough to constitute complete CMRs. If HPVs were missed and not reported, then reporting in a timely manner, as well as reporting accuracy, would be an issue. Otherwise, the indication from the OTIS data is that the Minimum Data Requirements for CAA are entered into AFS in a timely manner.

CWA Program

Metric 10 – The metric is to evaluate what is maintained in PCS by the Region and ensure that all Water Enforcement National Database (WENDB) data elements are properly tracked and entered according to accepted schedules. As noted above, data from NPDES inspections in the Pacific Islands is not entered into either PCS or ICIS-NPDES. DMR data was being entered into PCS.

RCRA Program

Metric 10 – The metric is the percent of inspections, enforcement actions, or other compliance or enforcement related activities for which there is a Nationally Required Data Element, that are entered into RCRA INFO in a timely manner.

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Citation of information reviewed for this criterion: **PCS, RCRA Info, OTIS, File Reviews**

Recommendations if corrective action is needed:

See recommendation under Element 2.

Region 9 should ensure that the DMR reporting rate improves for the NPDES programs in the Pacific Islands.

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

Findings:

CAA Program

Metric 11a – There are no HPVs or results of stack tests identified in the AFS for Guam, American Samoa, and CNMI.

CWA Program

Metric 11a – The data metrics show that no actions are linked to violations in PCS or ICIS-NPDES for Guam, American Samoa, and CNMI. This is required information, and can be accomplished through the use of the event type (EVTP) field (a WENDB required element) in PCS and other means in ICIS-NPDES. Without this data, OECA cannot determine with any certainty why an action was taken. In addition, if the action includes a compliance schedule, it is impossible to tell which monitoring periods, parameters, or events are associated with the compliance schedule if EVTP and other applicable fields (EVMD, EVPR, EVSC, EVSD, etc.) are not entered. Linking an action to a violation has the additional benefit of resolving RNC/SNC at the violation level, and may result in fewer facilities on the Watch List.

RCRA Program

There are no data metrics for this element. The file review metric is the review of inspection reports and other enforcement related data to assess accuracy of data reporting. Based on the inspection reports reviewed and compared with the facility reports in OTIS, the data were accurate.

Citation of information reviewed for this criterion: **AFS, PCS, RCRA Info, OTIS, File Reviews**

Recommendations if corrective action is needed:

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No recommendation required.

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

Data tables for Element 12 metrics are attached as appendices to the report.

CAA Program

No data issues under Element 12.

CWA Program

There are two main finding for the Element 12 CWA metrics.

Metric 12b – NPDES major sources with correctly coded limits is 100% for Guam, American Samoa, and CNMI. DMR entry rates for expected DMRs (1 quarter) for Guam are 85.7%, American Samoa is 80.8%, and CNMI is 85.7. The standard according to the enforcement monitoring strategy (EMS) is 95%. The national average is 92.4%.

Metric 12d – No NPDES inspections were conducted in FY 2006. This lack of data for inspections has been discussed and addressed in previous elements of this report.

RCRA Program

No data issues under Element 12.

Citation of information reviewed for this criterion: **AFS, EMS, PCS, OTIS**

Recommendations if corrective action is needed:

Region 9 should ensure that the DMR reporting rate improves for the NPDES programs in the Pacific Islands.