

STATE REVIEW FRAMEWORK AND INTEGRATED CLEAN WATER ACT PERMIT QUALITY REVIEW

Texas

**Clean Water Act, Clean Air Act, and
Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2011**

**U.S. Environmental Protection Agency
Region 6, Dallas**

**Final Report
December, 2013**

Note to Users

This report is structured in four parts, with three media sections and one overarching Executive Summary. The intent of this structure is to allow the user to choose to look exclusively at one media-specific set of information, to look at just CWA-NPDES Permit Quality Review (PQR) or State Review State Review Framework (SRF) information individually, or to look at all issues across all media programs.

To review Clean Water Act (CWA) information only, see the sections titled “CWA-NPDES Integrated PQR & SRF Review,” “CWA-NPDES Permit Quality Review,” and “State Review Framework Report: Clean Water Act Review.”

If you are interested in reviewing the CWA-NPDES PQR information only, see the section titled “CWA-NPDES Permit Quality Review.”

If you are interested in reviewing the SRF information across all programs, look to the section titled State Review Framework Report.

If you are interested in reviewing information related to the Resource Conservation and Recovery Act only, look to the section titled Resource Conservation and Recovery Act.

If you are interested in reviewing information related to the Clean Air Act, look to the section titled Clean Air Act.

Information in this report related to the CWA National Pollutant Discharge Elimination System (NPDES) permit reviews under the PQR and enforcement under the SRF have been integrated as part of the EPA’s 2009 Clean Water Act Action Plan. Information is not integrated in this report for reviews of the state’s Clean Air Act (CAA) and RCRA programs because the SRF only examines enforcement information, and permit oversight under the CAA and RCRA programs are conducted through different mechanisms not associated with this review process.

The NPDES integrated oversight effort is a way provide EPA with a comprehensive understanding of permitting and compliance elements of the NPDES program. Integrated reviews reduce the burden on states by having one joint visit and integrated report. The integrated reviews provide EPA and the public with a greater understanding of the challenges of a state NPDES program, and increases transparency through making PQR and SRF results publicly available on EPA’s website.

SRF and Integrated CWA PQR Executive Summary

Introduction

A State Review Framework (SRF) oversight review of the Texas Commission on Environmental Quality (TCEQ) was conducted in 2012 by EPA enforcement staff. The TCEQ CWA-NPDES-PQR review was part of a Regional review of all Region 6 state CWA-NPDES permitting programs conducted in 2009 as well as an on-site review with TCEQ in 2011.

The Clean Water Act National Pollutant Discharge Elimination System (CWA-NPDES) program was reviewed under both SRF and PQR. The SRF reviews enforcement components of the program, while the PQR reviews the permitting elements of the NPDES program. The Clean Air Act (CAA) Stationary Source and Resource Conservation and Recovery Act (RCRA) Subtitle C programs were reviewed only under SRF.

SRF findings are based on file metrics derived from file reviews, data metrics, and conversations with program staff. PQR findings are based on reviews of a small sample of TPDES permits issued by TCEQ, and interviews conducted in 2009 and 2011 by the EPA Headquarters. The results do not include findings from Region 6 real time review of TPDES permits as specified in the 1998 NPDES Memorandum of Agreement between EPA and TCEQ or the changes that have alleviated some of these issues outside the scope of this review.

Priority Issues to Address

The following are the top priority issues affecting the state's program performance:

- The need for development of a reasonable potential approach to address lethal and sublethal toxicity effects.
- Addressing a list of 80 permits identified by Region 6 in a letter dated December 2010.

CWA-NPDES Integrated Findings

The following issues are affecting performance of both the permitting and enforcement program:

- None identified at this time.

Major CWA-NPDES PQR Permitting Findings

- At the time of the CWA-NPDES PQR, state priorities include addressing a list of 80 permits identified by Region 6 in a letter dated December 2, 2010. TCEQ had previously received an Interim Objection and Request for Additional Information for most of these permits and had not provided a response to Region 6. Issuance of these permits had been

delayed for various reasons but the Water Quality Division (WQD) of TCEQ indicated that these permits are on track.

- Permit applications appear to require one priority pollutant scan for POTWs, whereas the federal application requires three priority pollutant scans as specified in 40 CFR 122.21(j).
- Secondary treatment requirements at 40 CFR 133.102 require, in part, that BOD₅ (or CBOD₅) and TSS 30-day average percent removal must not be less than 85 percent. The WQD permits include a standard condition that for POTWs the 30-day average percent removal for BOD and TSS must not be less than 85 percent; however, this provision is not included in the limits table. POTW permits reviewed included limits for CBOD₅, although the standard condition in these permits does not require 85 percent removal for CBOD₅ and, thus, these permits do not meet the federal regulatory requirement. The permits reviewed also do not require influent monitoring for BOD₅ (or CBOD₅) or TSS to determine compliance with the 85 percent removal requirement. TCEQ includes limits in some POTW permits for BOD₅ (or CBOD₅) and TSS that are lower than required by secondary treatment. WQD staff asserted that these lower limits ensure that the 85 percent removal requirement is being met; however, this has not been demonstrated in the permit.
- Fact sheet and permit file documentation does not provide a sufficient explanation of the development of all permit limits (for example where limits are in exceedance of State water quality standards) in accordance with federal regulations 40 CFR 124.8.

Major Whole Effluent Toxicity (WET) Program Findings

- In 2005, Region 6 began working with its States to fully implement federal regulations at 40 CFR 122.44(d)(1) to establish procedures for assessing reasonable potential for WET and to incorporate WET limits into permits for lethal and/or sublethal effects when appropriate. At the time of the PQR, EPA Region 6 was continuing to develop a reasonable potential procedure for WET, and will continue to work with and coordinate with TCEQ to develop a strategy to implement an adequately predictive Reasonable Potential (RP) approach for State issued NPDES permits.

Major Pretreatment Program Findings

- Eight permits from Texas were reviewed. Four permits clearly designate that pretreatment programs are required. The permits contain all pretreatment program requirements at 40 CFR part 403, 40 CFR 122.42(b) and 40 CFR 122.44(j) except for the requirement at 40 CFR 122.44(j) (2) (ii) to evaluate local limits following permit issuance or reissuance.

Major CAFO Program Findings:

- To date, TCEQ has not addressed the 2008 CAFO rule revisions. The EPA revised the CAFO regulations in response to the *Waterkeeper* decision issued by the U.S. Court of Appeals for the Second Circuit Court in February 2005 (*Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2d Cir.2005)). States had until December 4, 2009, to update their CAFO NPDES regulations to address the November 2008 rule revisions as specified by 40 CFR 123.62(e).

Major Thermal Discharges (CWA Section 316(a) & 316(b) Findings:

- EPA reviewed CWA section 316(a) and/or section 316(b) conditions in select NPDES permits. Section 316(a) addresses thermal variances from effluent limitations, and section 316(b) addresses impacts from cooling water intake structures (CWISs).

316(a): The permits for Knox Lee, Bertron, and Dupont set temperature limits in excess of state WQS, but they do not discuss the derivation of the limit or a section 316(a) variance.

316(b): The permit for Knox Lee requires the submittal of materials as specified in the now-suspended 2004 Phase II rule. The permits for Bertron and Dupont do not discuss 316(b) requirements.

Major SRF CWA Enforcement Program Findings

Major NPDES Program Findings

- Our review indicates that the overall enforcement process in Texas limits TCEQ's ability to consistently complete enforcement actions in a timely manner per EPA guidance and delegation agreements.
- During the file review, documents discovered in the file revealed several files had Notice of Violations issued to the facility, but the documentation was not put into ICIS. A few of the files had Pretreatment Compliance Inspections performed at the facility, but were coded into ICIS as a Compliance Evaluation Inspection. It is recommended the state begin entering the appropriate actions into the national database with linkage to the specific violation, and, the state begin entering the correct inspection type into the national database.
- Single Event Violations (SEVs) are not currently being entered into the national database. However, there are 1276 SEVs entered into the state database (CCEDS) for FY2011. It is recommended the state finish work on a grant which will allow the state database (CCEDS) to interface with the national database (ICIS). This project is expected to be completed by the end of calendar year 2013.
- TCEQ is entering the penalty amounts incorrectly into the national database. The state is entering the total of the penalty collected, deferred amount, and SEP amount into ICIS as the amount of penalty collected. TCEQ should begin entering only the penalty collected as the penalty amount, and should begin entering the SEP amount in the national database. See Chapter 6 of MOA, Page 6-57, Includes formal actions including SEPs.

The deferred amount is not recognized in the national database. The Federal Penalty Policy does not have a deferred option.

Major STORMWATER Program Findings

- TCEQ is not required to enter data for stormwater into the national database (ICIS) at this time. All data is tracked in the state-owned database known as CCEDS. Currently, there are 288 stormwater files in CCEDS. It is recommended that stormwater data, including inspections, be entered into the national database. TCEQ notes that because this data is not a requirement it should not be included as a finding until such time as there is a written agreement that requires such items to be included. Changing requirements or requirements outside current agreements continue to cause data issues for States and the EPA. TCEQ recommends only including items in the SRF that are negotiated and then included in written agreements as data requirements. It is recommended that stormwater data, including inspections, be entered into the national database.

Major CAFO Program Findings

- EPA authorized TCEQ to implement the TPDES program. The Texas Legislature has delegated the authority to investigate dry litter poultry CAFOs to another agency, the Texas State Soil and Water Conservation Board (TSSWCB). The TSSWCB is only authorized to certify water quality management plans (WQMP's) that must be implemented by poultry CAFO's. The TSSWCB does not have authority to address enforcement issues, their mission is to offer assistance. EPA is concerned that the TSSWCB may not have the necessary regulatory authority to address any compliance and enforcement issues that may arise at these poultry CAFOs. However, the MOU between the TSSWCB and TCEQ outlines actions to be taken regarding potential enforcement. For example there is a 3 strike rule; the facility is given 3 chances by the TSSWCB for compliance before it is referred back to TCEQ for enforcement action. EPA is concerned that this process may not result in adequate inspection coverage and timely enforcement as defined by the Compliance Monitoring Strategy.
- TCEQ's penalty amounts appear to be lower than what EPA might have assessed for the same type of violations. Changes to the TCEQ enforcement policy effective September 2011 may address this observation due to increased penalty authorization and will be evaluated in future SRF reviews.

Major SRF CAA Stationary Source Program Findings

- Data completeness and accuracy of minimum reporting requirements are of concern for SM 80. TCEQ is making significant progress on this issue through hiring of contract support to help resolve technical concerns.

Major SRF RCRA Subtitle C Program Findings

Inspection and enforcement data in the national data system is not complete. While TCEQ expends significant resources for data management, there continue to be significant instances of incomplete data in the national data system RCRAInfo. TCEQ notes that they are aware of investigations at facilities which are not required to have EPA IDs (such as conditionally exempt small quantity generators (CESQGs)). These facilities will not upload to RCRAInfo because RCRAInfo requires an EPA ID. TCEQ reports these investigations to EPA Region 6 as part of the mid-year and end of year reviews under the RCRA PPG. TCEQ recommends that EPA add applicable fields in RCRAInfo to include these types of situations.

Major Follow-Up Actions

Actions to address the findings found during the PQR will be implemented and tracked in an Office of Water database. Recommendations and actions identified from the SRF review will be tracked in the SRF Tracker.

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CWA-NPDES Integrated SRF and PQR Review

I. Introduction

EPA reviews regional and state Clean Water Act National Pollutant Discharge Elimination System (NPDES) permitting and enforcement programs every four years. During these reviews, EPA staff review topics related to NPDES program implementation and enforcement. A component of each review is the Permit Quality Review (PQR), which evaluates program implementation based on the evaluation of a select set of permits issued by the state. A second primary component of these reviews is the State Review Framework, which evaluates 12 elements of state enforcement programs.

Through this review, EPA promotes national consistency, identifies successes in implementation of the base NPDES program, and identifies opportunities for improvement in the development of NPDES permits and enforcement. The findings of the review may be used by EPA headquarters to identify areas for training or guidance, and by the EPA region to help identify or assist states in determining action items to improve their and the EPA's NPDES programs.

The PQR was designed to assess how well the State implements the requirements of the NPDES program as reflected in the select set of permits and fact sheets reviewed. The PQR review was conducted on May 18-20, 2011, and looked at topics of national importance including: mercury methods, impaired waters, TMDLs, antidegradation, mixing zones, thermal discharges, cooling water intake structures, sanitary sewer overflows, concentrated animal feeding operations, and whole effluent toxicity.

The SRF review is designed to ensure a minimum baseline of consistent performance across states, and that EPA conducts oversight of state enforcement and compliance programs in a nationally consistent and efficient manner. The SRF review looks at 12 program elements covering data (completeness, timeliness, and quality); inspections (coverage and quality); identification of violations; enforcement actions (appropriateness and timeliness); and penalties (calculation, assessment, and collection).

The integrated review examined data and files generated and kept by the state's Texas Commission on Environmental Quality. This section focuses only on the integrated PQR and Clean Water Act (CWA) SRF NPDES program findings.

The integrated review was conducted in three phases: analyzing information from the national data systems, reviewing a limited set of state files, and development of findings and recommendations.

The report is designed to capture the information and agreements developed during the review process in order to facilitate program improvements. The report is designed to provide factual information. EPA also uses the information from the integrated reviews to draw a "national picture" of the NPDES program, to develop comparable state performance dashboards, and to identify any issues that require a national response.

TCEQ offers the following comment: Because of the federal definitions and differences in some

state's programs (TCEQ in particular) this system does not lend itself to an actual representation of a state's overall performance. Because this information is now on a "dashboard" to show a state's performance it is imperative to show an actual representation of a state's performance that takes into account the varying nature of a state's compliance and enforcement activities. The TCEQ suggests that the definitions regarding day zero and the date a violation is considered resolved be modified to capture the actual way a state administers its enforcement program or at the very minimum caveat the information on the EPA's dashboards to make sure the differences in EPA's definition and the way a state conducts its business is accurately reflected and transparent to the public.

II. Coordination between Permitting and Enforcement

The Texas Commission on Environmental Quality was authorized to implement the Clean Water Act NPDES program in September 1998. In the Texas Commission on Environmental Quality (TCEQ), the Office of Water, Water Quality Division (WQD) issues Texas Pollutant Discharge Elimination System (TPDES) permits and administers the Texas Land Application Permit program.¹ This division includes a Wastewater Permitting Section composed of an Industrial Permits Team, a Municipal Permits Team, a Stormwater and Pretreatment Team and a Water Quality Assessment Section that includes a CAFO Team. A Water Quality Planning Division supports permitting through administering several related programs (e.g., TMDLs, WQS, surface water quality monitoring [SWQM], estuary programs, watershed planning, and water data management). TCEQ has 16 regional offices that perform mostly monitoring and compliance functions. WQD administers TPDES permits for a total of 4,174 non-stormwater facilities (610 major TPDES individual permits, 2,268 minor individual permits, and 1,296 general permit authorizations under 8 non-stormwater general permits). WQD also administers stormwater permits for 26,713 dischargers (not including 26 Phase I MS4 permittees).

For more background information on the permitting and enforcement programs, please refer to the PQR section of this report and for the enforcement program, please refer to the SRF section of this report and Appendix E, Program Overview.

III. Integrated Review Background

The core PQR process involves evaluating selected permits and support materials using basic NPDES program criteria. Reviewers complete the core review by examining selected permits and supporting documentation, assessing these materials using PQR checklists, talking with permit managers regarding the permit development process, and reviewing permit files and documentation.

¹ Domestic facilities that dispose of treated effluent by land application (surface irrigation, evaporation, drainfields or subsurface land application) are required to obtain a TLAP permit.

The majority of the permits were chosen at random from a list of permits issued after January 1, 2009, to ensure a review of recently issued permits at the time of the review. The remaining permits were selected on the basis of discussions with state and Region 6 staff. An effort was made to primarily include major facilities, with an equal distribution of industrial and municipal permits. For this PQR 32 Texas permits were reviewed (reviews were conducted in 2009 and in 2011).

IV. How Report Findings Are Made

The findings in this report were made by EPA Region 6's permitting and enforcement staff after analyzing data in the national data systems and reviewing facility files at the state. However, the report does not include the more detailed findings related to Region 6 real-time permit reviews as required by oversight state programs. Findings cover both positive and negative aspects of the state's performance. Where the state program was doing particularly well or was meeting all of its requirements, EPA identified these areas in the reports below. Where EPA found the state had opportunities to improve both permitting and enforcement, EPA suggested an appropriate course of action.

V. Common Findings

Penalty Calculation and Economic Benefit

Finding: Most enforcement cases are handled through the Agreed Order process. For these actions, the Enforcement Division drafts a proposed order that typically includes a penalty. The proposed penalty is developed using the TCEQ Penalty Policy (This Policy applies to all media and program areas.) At NPDES Program assumption, the approved TCEQ Penalty Policy was the Policy effective October 1, 1997. A new TCEQ Penalty Policy was effective September 1, 2002. The 2002 Penalty Policy had no substantial changes to the 1997 Policy, though the economic benefit matrix became a bit more stringent. In the 2002 policy, the economic benefit component is calculated as follows: Economic benefit is determined from avoided/delayed capital expenditures and costs. If the economic benefit amount is greater than or equal to \$15,000, then there is a 50% adjustment to the calculated base penalty (i.e., gravity component). This adjustment is the economic benefit component and it is added back into the base penalty amount. If the economic benefit is determined to be less than \$15,000, then there is no adjustment made to the base penalty for economic benefit. TCEQ notes that they do collect all avoided costs (except for political subdivisions and non-profit organizations) in cases where applicable, even when the \$15,000 dollar economic benefit penalty adjustment threshold is not met. Additionally, it was discovered during the review of penalty calculation for municipalities, no adjustment is added for the economic benefit component of the penalty calculation. This is a recent change/decision made by the commission after hearing arguments from a municipality regarding penalty's and is being applied only to municipalities.

Recommendation: EPA recommends TCEQ evaluate its Penalty Policy with respect to the economic benefit threshold to ensure that it provides the flexibility to recover economic benefit gained from non-compliance.

State Response:

TCEQ will continue to assess penalties in accordance with state laws, regulations, and the Commission Penalty Policy to ensure economic benefit is considered.

Inspection Reports

Finding: During the file review the state's inspection reports were determined to be well written and easy to follow with a clear rationale for compliance or non-compliance determinations. A minor suggestion and minor recommendation follow:

Suggestion: It is suggested photographs should be more widely used for improving the inspection reports. Additional TCEQ training was held the week of July 15, 2013, which included a segment regarding the appropriate use of photographic evidence. Some, but not all of the inspection reports reviewed had photographs which accompanied the report and added visually to the description of the non-compliance. It is suggested more inspectors should be adding photographs to the inspection reports.

Recommendation: It is recommended when the inspector states in the inspection report a facility's permit has expired, the inspector should additionally state whether a complete permit application has been received and if the permit is administratively continued or not. The inspection reports reviewed only state if a permit is effective or that the permit has expired, without the additional information on the expired permits.

State Response: TCEQ believes that the investigations conducted by staff are of high quality and there are few instances where a report is found inadequate during the enforcement process or during the course of litigation proceedings. TCEQ requests that the focus of any future reviews on a state's performance should focus on specific instances that have impacted a state's enforcement authority instead of minor or perceived deficiencies that have not been found to impact a state's enforcement capabilities. While the EPA reviewers suggest that photographic evidence and other types of actions be included in reports there is no evidence where the lack of this information has hindered any enforcement authority. TCEQ would like future reviews of investigative or enforcement files to be focused on measureable and documented problems rather than preferences or differences of opinion in investigative procedures.

In regard to the Suggestion that photographic evidence be included more widely in investigations, additional training was held the week of July 15, 2013, as part of annual training that included the practical use of photographic evidence.

In regard to the recommendation of including whether there has been a complete permit application submitted or if the permit is administratively continued or not the TCEQ offers the following comment. The majority of the time the investigation report is completed prior to any permit submission – when facilities submit permit applications prior to completion of the

investigation report the information is included in the report. Most investigations are completed in approximately 30 days. In addition, the following provision is specified within the executed TPDES permits:

The permittee must apply for an amendment or renewal at least 180 days prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. If an application is submitted prior to the expiration date of the permit, the existing permit shall remain in effect until the application is approved, denied, or returned. If the application is returned or denied, authorization to continue such activity shall terminate upon the effective date of the action. If an application is not submitted prior to the expiration date of the permit, the permit shall expire and authorization to continue such activity shall terminate unless a permit application is under review or development.

The degree significant violations are reported to EPA in a timely and accurate manner

Finding: TCEQ identifies and addresses all significant non-compliance violations (SNC) using Federal criteria as outlined in the program authorization documents. EPA is notified of significant violations via state submittal to EPA of copies of all TCEQ inspection reports and enforcement actions. EPA reviews the reports and enforcement actions as part of its program oversight. In accordance with the Memorandum of Agreement (MOA), TCEQ also submits a list of facilities that appear as SNC on the QNCR for which enforcement action has been initiated for development of an order. In addition, EPA thoroughly reviews the state facilities appearing on the QNCR.

Once identified, TCEQ takes appropriate action by issuing Agreed Orders on facilities in SNC for effluent violations. TCEQ issued 48 Agreed orders. The orders were issued with penalties and schedules to bring the facilities back into compliance.

According to the Metric chart 8a.1 the number of major facilities in SNC is 230. The percentage of Texas majors in SNC is 36.2% the national average is 22.3%. Some of the increase in the SNC rate in the state of Texas was due to increased priority to delegate remaining facilities from EPA to the state. Additionally, non-receipt of DMR data contributes to greater than 50% of the 230 majors facilities flagged for SNC. The no discharge indicators in the national data base for non-receipt of DMR data contribute to flags for SNC. These two factors play a vital role in the SNC rates being significantly high. There are a number of reports identified as SNC for non-receipt. Since not all of the reports required by the permit are sent directly to data entry for enforcement compliance, these reports appear delinquent and consequently SNC.

The length of time it takes TCEQ to process enforcement cases is bound by the processes outlined in state laws, regulations, and policies. When a violation is identified that appears to warrant enforcement, an Enforcement Action Referral (EAR) is prepared, which is screened by the Enforcement Division. Typically a proposed Agreed Order, which contains administrative penalties and technical requirements, is then drafted and sent to the violator for consideration. If accepted and signed, the order is published in the *Texas Register* for public notice, and then scheduled for consideration at the Commission Agenda. If approved by the Commission, the order is issued with an effective date. The process from the time the EAR is prepared to the

Commission Agenda generally takes a minimum of 180 days; however, if agreement is not reached on the proposed order, the case is referred to the TCEQ Litigation Division for further action. There may be additional settlement negotiations, with the possibility of a higher penalty, and/or the case might be filed for administrative hearing. TCEQ can also refer cases to the Attorney General's Office for civil or criminal prosecution

Recommendation: On a monthly basis, TCEQ needs to continue to review all non-receipt of DMR and Schedule data. Once these violations are identified and reviewed and an analysis is made on any No Discharge non-receipt of DMR data, an appropriate enforcement action should be initiated.

Other Major and Minor Single Event Violations

TCEQ records single event violations in the state database, CCEDS, not in ICIS. Beyond the activities in ICIS, an additional 1276 major and non-major single event violations were recorded in the state database.

State Response: The TCEQ does review all DMR submissions on a monthly basis and will continue to follow the approved Enforcement Initiation Criteria (EIC).

Frequent changing data requirements or requirements outside current agreements continue to cause data issues for States and the EPA. TCEQ requests that the EPA work with states to come up with a five year data plan and draft an agreement on a set of data metrics that will not be changed for the full five year period. Having set standards for a five year period would allow for states to properly research, develop, fund, and implement data changes in a more efficient manner for both the EPA and States.

CWA-NPDES Permit Quality Review

I. PQR Background

National Pollutant Discharge Elimination System (NPDES) Permit Quality Reviews (PQRs) are an evaluation of a select set of NPDES permits to determine whether permits are developed in a manner consistent with applicable requirements established in the Clean Water Act (CWA) and NPDES regulations. Through this review mechanism, EPA promotes national consistency, identifies successes in implementation of the NPDES program as well as opportunities for improvement in the development of NPDES permits.

EPA's Texas PQR consisted of two components, permit reviews and special focus area reviews. The permit reviews focused on core permit quality and included a review of the permit application, permit, fact sheet, correspondence, documentation, administrative process, and select core topic areas, as well as other factors.

EPA conducted a core review in Texas, including an on-site visit in Austin, Texas, on May 18-20, 2011. The core permit review process involves evaluating selected permits and supporting materials using basic NPDES program criteria. Reviewers complete the core review by examining selected permits and supporting documentation, assessing these materials using standard PQR tools, and talking with permit managers regarding technical questions related to the permit development process. The core review focuses on evaluation of the aspects identified in the central tenets of the NPDES permitting program. In addition, discussions between EPA and state staff addressed a range of topics including program status, the permitting process, relative responsibilities, organization, and staffing. Core topic area permit reviews are conducted to evaluate specific issues or types of permits in all states while special focus area reviews target specific types or aspects of permits, selected by EPA Regions on a state-by-state basis. The results of these reviews provide important information to the EPA Region, EPA Headquarters and the public. The PQR review looked at one core topic areas of national importance (pretreatment) and numerous special focus areas of regional importance including: mercury methods, impaired waters, TMDLs, antidegradation, mixing zones, thermal discharges, cooling water intake structures, sanitary sewer overflows, concentrated animal feeding operations, and whole effluent toxicity. A total of 32 permits were reviewed (11 for Core Review and the remainder for topic specific areas).

II. State Permitting Program Overview

A. Program Structure In the Texas Commission on Environmental Quality (TCEQ), the Office of Water, Water Quality Division (WQD) issues Texas Pollutant Discharge Elimination System (TPDES) permits and administers the Texas Land Application Permit program.² This division includes a Wastewater Permitting Section composed of an Industrial Permits Team, a Municipal Permits Team, a Stormwater and Pretreatment Team and a Water Quality Assessment Section that includes a CAFO Team. A Water Quality Planning Division supports permitting through administering several related programs (e.g., TMDLs, WQS, surface water quality monitoring [SWQM], estuary programs, watershed planning, and water data management). TCEQ has 16 regional offices that perform mostly monitoring and compliance functions.

Data Systems: WQD uses a variety of data systems to support a range of functions. WQD uses ICIS and is uploading new e-DMR data. WQD is developing a new Permit Application Review and Implementation System (PARIS), which will be an integrated database that can be used to develop permits. All relevant documents will be included in this system once WQD begins its use of PARIS in 2013. An older system (PARADOX) has been used for processing industrial permits, but it is very basic and includes tables that are difficult to use. Another legacy system (TRACs) includes records, paper file information, and billing information. There is also a compliance system (CEEDs) that contains biomonitoring information, and the commission's integrated database, which houses public notices issued and the agenda for the commission. CAFO and sludge data are maintained in an Access database. For general permits, WQD uses a central registry to maintain permit information, and an e-permitting program (STEERs) to track e-NOI submittals for CAFOs, stormwater, and aquaculture general permits. The use rate of STEERs is about 50 percent and is increasing.

Permit Development: WQD has Word templates for fact sheets and permits, and both are updated on an ongoing basis as needed. WQD also has developed extensive *Procedures to Implement the Texas Surface Water Quality Standards* (pg. 1-279, June 2010), which addresses designated uses, key parameters (e.g., DO, nutrients, bacteria), endangered species, antidegradation, mixing zones, whole effluent toxicity (WET) testing/biomonitoring, toxic pollutants, total dissolved solids (TDS), stormwater, and site-specific standards and variances.³ TCEQ also publishes regular updates to the *Texas Water Quality Management Plan*. WQD develops fact sheets for TPDES permits that generally include key information from the technical memoranda developed for the permit and reference relevant documentation.

Quality assurance and quality control (QC) varies by team. In general, there is a peer review and a management review for each permit. Significant actions, such as major permits, new permits,

² Domestic facilities that dispose of treated effluent by land application (surface irrigation, evaporation, drainfields or subsurface land application) are required to obtain a TLAP permit.

³ WQD staff noted that they rely on approved procedures to issue consistent permits in a timely manner and to limit unexpected objections. As of the date of the site visit, Region 6 had not approved WQD's June 2010 implementation procedures.

and certain modifications, are reviewed by an executive review committee that includes representatives from various programs. Checklists may be used if determined appropriate by each team. A CAFO checklist is used for individual permits. The teams also follow relevant written procedures. CAFOs can be subject to special requirements (e.g., the Bosque watershed is subject to specific statutes and significant political attention).

Applications and Permit Development: With regard to the permitting process, WQD indicated that it uses state application forms, available on TCEQ's website. Reminders to submit renewal applications are sent out one year before permit expiration. Relevant parts of completed applications are entered in TRACs, ICIS, and PARADOX, and a notice of completeness is published. WQD has a dual-notice process whereby notice is issued for administrative completeness and when a draft permit is technically complete. The technical staff gets a copy of the application, and a water quality assessment is conducted from which one or more technical memoranda are developed and provided to the permit writer. These memoranda reflect the key analyses used to develop the permit limits and conditions. For example, they reflect, as relevant, the topics addressed in the WQD WQS guidance. The permit writer uses the information in the memos, develops any TBELs, and determines RP for toxicity. He or she also determines whether receiving waters are impaired or subject to a relevant TMDL.

WQD has an RP procedure that is different from EPA's technical support document (TSD). Testing is required for what is anticipated to be in the effluent including four samples that are collected a week apart. Permit writers use the TEXTOX spreadsheet and focus on two values: 70 and 85 percent of relevant water quality criteria. If calculations of effluent data exceed 85 percent, there is RP, and a limit is included in the permit. If calculations are between 70 and 85 percent, monitoring is required. If calculations are below 70 percent, no limit or monitoring is required. Also, permit writers review two years of DMR data for every permit action. The water quality assessment is typically documented in the fact sheet, with some modeling contained in the permit file.

At the time of the PQR, WQD was continuing to develop an RP procedure for WET. At the time of the PQR, Texas had not resolved all sublethal WET program issues, but was working with Region 6 on these issues. Permits include conditions that require compliance with narrative water quality criteria included in state regulations.

For pathogens, TCEQ indicated that *Escherichia coli* or *Enterococcus* limits are established as necessary in permits as both are in the state's 2010 WQS. Region 6 continues to work with TCEQ to ensure that appropriate pathogen limits are included in permits as required (i.e., in permits which have application data reflecting levels of pathogens exceeding the WQS.) Monitoring rules are in TAC Title 30, Part 1, Chapter 319, Subchapter A, and WQD has developed monitoring guidance that is cited in each fact sheet. For industrial facilities, monitoring requirements are based on best professional judgment. For municipal facilities, such requirements are based on flow.

The pretreatment team does a technical review of each permit and determines the appropriate option. There are 72 approved pretreatment programs in the state. Texas is authorized to administer the biosolids program and uses standard comprehensive language in the TPDES permits. The state also has a land application biosolids program that imposes more stringent requirements than are required by federal regulations.

WQD uses Crankshaft for tracking permit processing time. Major TPDES permits are expected to be processed in 330 days, covering receipt to issuance with limited exceptions. Minor permits must be processed in 300 days.

CWA section 401 certifications are performed by the Water Quality Assessment Section and focus on one federal permit and U.S. Army Corps of Engineers CWA section 404 permits.

Two opportunities for public comment are provided for each permit. First, there is an opportunity to provide public comment on the draft permit. Second, a public meeting may be held if officially requested or there is significant public interest (i.e., more than 100 people express interest). Approximately 25–30 such meetings are held each year. WQD must consider and respond to all significant comments received. There also can be a request for a public hearing, which is held by the State Office of Administrative Hearings (SOAH) before an administrative law judge (ALJ). The ALJ will render findings that go to the State Commission, and the commission issues a final decision.

B. Universe and Permit Issuance

WQD administers TPDES permits for a total of 4,174 non-stormwater facilities (610 major TPDES individual permits, 2,268 minor individual permits, and 1,296 general permit authorizations under 8 non-stormwater general permits). WQD also administers stormwater permits for 26,713 dischargers (not including 26 Phase I MS4 permittees).

Permit Issuance: The WQD has 32 permit writers and 4 vacancies; however, there was a hiring freeze at the time of the site visit. Permits are assigned according to comparative workload and expertise. EPA backlog data indicates that 95.3 percent of permits are current, although issues and objections raised by Region 6 have increased somewhat, which has affected the backlog rate. Most of the issues being raised are for major permits, and EPA has waived its review of many minor permits. Currently the pesticide program is imposing a new workload on the WQD permit staff. At the time of the PQR, state priorities include addressing a list of 80 permits identified by Region 6 in a letter dated December 2010. TCEQ had previously received an Interim Objection and Request for Additional Information for most of these permits and had not provided a response to Region 6. Issuance of these permits had been delayed for various reasons but WQD indicated that these permits are on track. WQD is on track with its priority permits commitment and is making progress on significantly delayed permits that have expired by more than 10 years.

C. State-Specific Challenges

According to TCEQ, the pesticide program is imposing a new workload on the WQD permit staff.

D. Current State Initiatives

None identified at this time

III. Core Review Findings

Noteworthy Program Elements

WQD has established several program elements that are utilized in developing NPDES permits. These are the following:

- WQD has developed extensive implementation procedures that are updated regularly. These procedures address many aspects of implementation of Texas Surface Water Quality Standards.
- The permit applications developed by the state appear to be thorough and are accompanied by instructions. (The PQR did not evaluate whether all federal requirements are met by the state forms.)
- The limits development tables included in fact sheets for major permits provide some rationale for permit limit decisions.
- The fact sheets for TPDES permits are detailed, with headings for all relevant topics. These fact sheets incorporate information developed in a variety of technical memoranda developed by different offices. They indicate what data were screened and what if any permit action was taken.
- WET test method requirements are included for all major municipal permits and as appropriate for minor municipals and industrial facilities.

Application Data Requirements

Applications appear to require one priority pollutant scan for POTWs, whereas the federal application requires three priority pollutant scans as specified in 40 CFR 122.21(j).

Internal Outfalls

Fact sheets reviewed do not provide adequate information where a limit is applied at an internal outfall. In this situation, the fact sheet must document the circumstance that makes such an approach necessary. (40 CFR 122.45(a) and (h)).

Requirement for 85% Removal of BOD and TSS

Secondary treatment requirements at 40 CFR 133.102 require, in part, that BOD₅ (or CBOD₅) and TSS 30-day average percent removal must not be less than 85 percent. The WQD permits include a standard condition that for POTWs the 30-day average percent removal for BOD and TSS must not be less than 85 percent; however, this provision is not included in the limits table. POTW permits reviewed included limits for CBOD₅, although the standard condition in these permits does not require 85 percent removal for CBOD₅ and, thus, these permits do not meet the federal regulatory requirement. The permits reviewed also do not require influent monitoring for BOD₅ (or CBOD₅) or TSS to determine compliance with the 85 percent removal requirement. TCEQ includes limits in some POTW permits for BOD₅ (or CBOD₅) and TSS that are lower

than required by secondary treatment. WQD staff asserted that these lower limits ensure that the 85 percent removal requirement is being met; however, this has not been demonstrated in the permit.

Pollutants of Concern

The fact sheets for the permits reviewed indicate that the pollutant data from the permit applications were screened to determine the need for WQBELs, and they described when limits and/or monitoring would be required. Given EPA's experience reviewing state WQD permits, in some cases it appears that not all pollutants have been considered, and, thus, additional narrative is needed to explain how all required pollutants are considered and evaluated.

Documentation of Limits Calculations

Fact sheet and permit file documentation do not provide a sufficient explanation of how DO modeling was used in permit development (e.g., to derive the ammonia nitrogen limit). In addition, WQD did not provide a thorough explanation of the use of the TEXTOX model or reference existing documentation, which is needed to explain output tables included in the fact sheets.

One permit (City of Cleburne [TX0047155]) retains limits from the previous permits but does not clearly explain why these limits remain appropriate for current discharge conditions and identify relevant documentation. This documentation is necessary to establish a valid basis and record for the current permit limits.

The development and use of technical memoranda to support permit and fact sheet development appears to be an effective method for integrating permit information. However, some of the memos are relatively brief and do not include all the supporting information (e.g., the data used, the underlying calculations or results, the relevant regulations), which is necessary to make the record more transparent and robust.

Core Topic Areas

Core topic areas are specific aspects of the NPDES permit program that warrant review based on the specific requirements applicable to the selected topic areas. These topic areas have been determined to be important on a national level. Core topic areas are reviewed for all state PQRs.

1. Pretreatment

The pretreatment program review assessed Texas pretreatment programs and permit language in POTW permits. Regarding NPDES permits, focus was on regulatory requirements for pretreatment activities and pretreatment programs (40 CFR 122.42(b), 122.44(j), 403, and 403.12(i)). Texas has an approved state pretreatment program and is not classified as a 40 CFR 403.10(e) state (i.e., state-administered pretreatment programs).

As part of this PQR, EPA reviewed the following:

- Streamlining Rule implementation status of regulatory requirements from the 2005 revisions to the pretreatment regulation (40 CFR part 403)
- Database entry consistency for pretreatment categories

- Adherence to the Compliance Monitoring Strategy (CMS) program policy for frequency of regional and state reviews of POTW pretreatment programs
- Special programs conducted in Region 3.

General Findings

Streamlining Rule: Texas has modified its state code to incorporate requirements of streamlining rules by reference.

Data Comparison: The PQR compared ICIS database entry consistency with numbers of approved pretreatment programs; significant industrial users (SIU) in approved pretreatment programs; categorical industrial users (CIU) discharging to municipalities that do not have approved pretreatment programs; and audits and inspections conducted. This review used data provided by Region 6 and data retrieved from PCS and ICIS to assist in determining where database cleanup might be most needed.

Approved Pretreatment Programs: According to 2006 Governmental Performance Results Act (GPRA) data, 72 approved pretreatment programs are in Texas. This data was the best available at the time this PQR began.

- **SIUs in Approved Pretreatment Programs:** ICIS data were compared to the number of SIUs across Region 6 for POTWs that have unexpired control mechanisms. 100 percent of the SIUs had unexpired control mechanisms. From the 2006 state-provided data, 99.7 percent of the SIUs had current control mechanisms. GPRA 2006 data show that Texas has 1,309 SIUs in approved POTW programs.
- **CIUs in Non-Approved Programs:** According to 2006 GPRA data, CIUs discharging to POTWs that do not have approved pretreatment programs are as follows: 36 in Texas. In Texas, 32 of 36 CIUs in non-pretreatment programs had control mechanisms in 2006.
- **Audits and Inspections:** 2008 ICIS and PCS data were used to determine whether Approval Authorities are meeting CMS goals of one Pretreatment Compliance Audit and two Pretreatment Compliance Inspections (PCI) per 5-year NPDES permit term. Across Region 6, an average of 17 percent of all Region 6 POTWs were audited, and an average of 44 percent of the POTWs were inspected.
 - In Texas, 8 audits and 27 inspections were conducted. Texas conducted audits at 14 percent of its POTWs and inspections at 35 percent of them.

Compliance Monitoring Strategy Goals: ICIS data were used to determine whether states are meeting CMS goals of one audit and two PCIs conducted per 5-year NPDES permit term. The PQR does not look at each POTW's NPDES permit term but at compliance from 2004 through 2008. Texas met the goal at 46 percent of its POTWs.

Special Programs: A review was conducted by Region 6 permitting staff to determine whether Texas has adopted/implemented special programs such as mercury, dental amalgam, pharmaceutical take-back, oil and grease, or removal credits. Texas has implemented a mercury reduction or information dissemination program, and identified drug disposal contacts. Texas also provides information about used oil and fats, oil, and grease disposal. According to state websites, Texas is the only state that has adopted the removal credit provision of the streamlining rule.

Texas Program-specific Findings

Eight permits from Texas were reviewed. Four permits clearly designate that pretreatment programs are required. The permits contain all pretreatment program requirements at 40 CFR part 403, 40 CFR 122.42(b) and 40 CFR 122.44(j) except for the requirement at 40 CFR 122.44(j) (2) (ii) to evaluate local limits following permit issuance or reissuance. Three (Gulf Coast, Fort Worth, South Houston) require incorporation of streamlining rule provisions, Houston WCID No. 47 does not (issued August 2008). The permit for Jackrabbit Road requires the POTW conduct an Industrial Waste Survey (IWS) so that the state can determine whether a pretreatment program is required. The remaining permits for POTWs that are not required to have pretreatment programs (Snyder, Harris County No. 51, Trinity Bay) include prohibited discharges and reporting requirements at 40 CFR 122.42(b).

None of the fact sheets are specific about whether a pretreatment program is required. They state, “The draft permit includes pretreatment requirements that are appropriate for a facility of this size and complexity. The facility appears to receive significant industrial wastewater contributions.” The fact sheets do not refer to final permits and do not clearly state whether a pretreatment program is required or is not required.

None of the permits or fact sheets for the POTWs that are required to have pretreatment programs, describe the types of industries that discharge to their systems. The fact sheets either say that the POTW does or does not appear to receive significant industrial wastewater contributions.

The Texas permits for the POTWs that do not have programs do not require the POTWs to conduct an IWS.

IV. Special Focus Area Findings

In addition to reviewing core permits from Texas, this report includes topic-specific reviews for certain permit program areas. All the findings of the topic-specific review were based on desktop reviews of permits and fact sheets completed in 2009 and not based on complete file review or interviews of state staff.

Mercury Methods

EPA’s regulations require that measurements included on NPDES permit applications and on reports required to be submitted under the permit must generally be made using analytical methods approved by EPA under 40 CFR part 136. See 40 CFR 122.21(g) (7), 122.41(j), 136.1, 136.3, and 136.6. Four analytical methods for mercury in wastewater have been approved for use under part 136: Method 245.1, Method 245.2, Method 245.7, and Method 1631E. Methods 245.1 and 245.2, approved by EPA in 1974, can achieve measurement of mercury to 200 nanograms per liter (ng/L). Method 245.7, approved March 12, 2007, has a quantitation level of 5.0 ng/L. EPA also approved Method 1631 Revision E in 2002, with a quantitation level of 0.5 ng/L. The sensitivity of Methods 245.1 and 245.2 are well above most state mercury water quality criteria adopted for the protection of aquatic life and human health, which generally fall in the range of 1 to 50 ng/L. In contrast, Methods 245.7 and 1631E do support the measurement of mercury at these low levels.

An August 23, 2007, memorandum from James A. Hanlon to the Water Division Directors explains that, in light of existing regulatory requirements for NPDES permits, only the most sensitive methods, such as Methods 1631E and 245.7, are appropriate in most instances for use in deciding whether to set a permit limitation for mercury and for sampling and analysis of mercury pursuant to the monitoring requirements in a permit. See *Analytical Methods for Mercury in National Pollutant Discharge Elimination System (NPDES) Permits*, at http://www.epa.gov/npdes/pubs/mercurymemo_analyticalmethods.pdf.

No permits were reviewed specifically for the purpose of determining whether sufficiently sensitive methods are being used for mercury sampling. Information below is from the site visit and state policy documents.

TCEQ staff indicated that the state will require use of the new more sensitive methods (245.7 or 1631E) in its June 2010 implementation procedures.⁴ The existing procedures, completed in January 2003, identify 245.1 and 1631 as methods for mercury analysis. Under TCEQ implementation procedures, analytical methods must be consistent with 40 CFR Part 136 or *Standard Methods for the Examination of Water and Wastewater*. TCEQ should revise their implementation procedures to cite only 40 CFR Part 136.

Impaired Waters

Section 303(d) of the CWA requires states to identify and establish a priority ranking for waters not attaining WQS despite implementation of technology-based requirements (i.e., impaired waters). For these priority waters, the states must establish TMDLs for pollutants causing impairments. The focus of the impaired waters review is to verify that permits and fact sheets acknowledge the 303(d) status of receiving waters and to verify that impairing pollutants are being addressed in NPDES permits before TMDLs are completed. With regard to the findings below, note that in some cases a facility might discharge to a water segment that is impaired but may not discharge a pollutant of concern.

Impaired Waters Findings

EPA examined one permit from Texas (City of Alvin [TX0024554]). The fact sheet for this permit indicates that the downstream receiving water is impaired for bacteria in oyster waters. The permit prescribes that the facility provide proper disinfection and the fact sheet explains that the facility should not contribute to the impairment. Based on the Texas WQS, this permit adds an *E. coli* limit (126 colonies per 100 milliliter [mL]).

Total Maximum Daily Load (TMDL)

A TMDL is a calculation of the maximum quantity of a given pollutant that may be added to a waterbody from all sources without exceeding its applicable WQS. States must establish TMDLs for all impairing pollutants, more stringent effluent limitations (e.g., state or local authority

⁴ At the time of the PQR, these procedures were not yet approved by EPA.

pursuant to CWA section 510 or federal authority), and other pollution control requirements (e.g., best management practices). Where a TMDL has been established and approved by EPA for a waterbody, WQBELs should be consistent with the assumptions and requirements of any wasteload allocation for the discharge.

The focus of the TMDL review has been to verify that final TMDL requirements applicable to point sources are being implemented in NPDES permits. For the TMDL review, EPA examined a total of four Texas non-stormwater NPDES permits.

TMDL Findings

With regard to TMDL implementation in the four Texas permits reviewed, the PQR team found the following:

- The fact sheets for four permits reviewed discuss relevant TMDLs and three of the four permits appear to be consistent with the relevant TMDLs. One of these permits is subject to a wasteload allocation; however, it does not include a relevant limit.
 - The City of Mount Pleasant (TX0024554) discharges to an unnamed tributary, then to Hart Creek, then to Cypress Creek (segment 0404 of the Cypress Creek Basin). Hart Creek and Big Cypress Creek are listed as impaired for bacteria. The fact sheet indicates that the facility provides disinfection by chlorination and that it is not expected to cause or contribute to elevated levels of bacteria in Hart or Big Cypress Creek. An implementation plan for the Lake O' the Pines Dissolved Oxygen TMDL (July 9, 2008) includes a total phosphorus load allocation for this facility (2180 lbs/yr); however, this TMDL is not mentioned in the fact sheet. The permit does not include bacteria or DO limits or monitoring, nor does it include limits or monitoring for phosphorus. The implementation plan indicates that facilities, including Mount Pleasant, could participate in a group permit to address total phosphorus reductions; however, this group permit is not mentioned in the fact sheet.
 - The Randy Wyly Dairy (TX130893) fact sheet discusses a relevant TMDL for phosphorus developed in 2001. Although the fact sheet indicates that the CAFO is not a point source, it discusses how the facility will meet the TMDL target of 50 percent reduction in soluble reactive phosphorus. For example, the fact sheet indicates that the phosphorus-based nutrient management plan will result in a 40 percent reduction in land applied phosphorus. Other management practices, such as more stringent retention control structure standards (e.g., 25-year, 10-day) are expected to achieve additional reductions. The permit also requires continued implementation of a nutrient management plan.
 - The Dow Chemical Company (TX0002933) fact sheet identifies a 2003 nickel TMDL (part of a 14-part Nickel TMDL for the Houston Ship Channel). The fact sheet indicates that the discharge for this facility was considered in developing the TMDL and, based on the TMDL, the WQS for dissolved nickel are being met in the Houston Ship Channel. This appears to be consistent with the TMDL. The permit does not include a limit or monitoring for nickel.
 - The NRG Texas Power Company (TX0006378) fact sheet indicates that the receiving water is impaired for dioxin in crab and fish tissue, and PCBs and pesticides in fish tissue. The fact sheet states that the permit application indicates there are no dioxins,

PCBs, or pesticides in the discharge. The fact sheet also identifies a 2003 nickel TMDL (part of a 14-part Nickel TMDL for the Houston Ship Channel). The fact sheet indicates that the discharge for this facility was considered in developing the TMDL and, based on the TMDL, the WQS for dissolved nickel are being met in the Houston Ship Channel. The permit does not include a limit or monitoring for nickel.

Antidegradation and Mixing Zones

As part of the PQR review, select permits were evaluated to assess if the state implemented antidegradation policies and applied mixing zones. EPA did not conduct a comprehensive review of the state policies and implementation procedures.

TCEQ's antidegradation policy (TAC 30, Sec. 307.5(b)) reflects the Tier I, II and III provisions of the federal regulations. Implementation procedures exist under section 307.5(c). Region 6 has received several inquiries regarding concerns about the adequacy of TCEQ's antidegradation policy and its implementation in permits.

TCEQ mixing zone provisions are at section 307.8(b) of Texas WQS. Individual permits assume mixing in all cases except for minor municipal permits (less than 1 million gallons per day) and stormwater permits.

Thermal Discharges and Cooling Water Intake Structures (CWA section 316(a) & (b))

EPA reviewed CWA section 316(a) and/or section 316(b) conditions in select NPDES permits issued in Region 6. Section 316(a) addresses thermal variances from effluent limitations, and section 316(b) addresses impacts from cooling water intake structures (CWISs). The goal of the review was to identify how the permitting authority incorporated section 316 provisions into permit requirements.

The universe of potential NPDES permits for review was determined using EPA's Permit Compliance System (PCS) database and the lists of facilities developed during the rulemaking for the 316(b) Phase II and Phase III rules.

Three permits in Texas were reviewed: Knox Lee (TX0000540), Bertron (TX0000637) and Dupont (TX0006050). The fact sheet for Bertron and DuPont were not available for review. The permits and fact sheets for Nacogdoches (TX0124842) and Cook (TXG830319) were not available at the time of this review.

316(a): The permits for Knox Lee, Bertron, and Dupont set temperature limits in excess of state WQS, but they do not discuss the derivation of the limit or a section 316(a) variance.

316(b): The permit for Knox Lee requires the submittal of materials as specified in the now-suspended 2004 Phase II rule. The permits for Bertron and Dupont do not discuss 316(b) requirements.

Sanitary Sewer Overflows and Peak Flows

Sanitary Sewer Overflows (SSOs)

A critical step in controlling wet-weather discharges from municipal wastewater sources is to ensure reporting of overflows to the NPDES authority. EPA believes that most combined sewer

overflows (CSOs) and bypasses at treatment plants are being adequately reported. However, information obtained in developing the 2004 Report to Congress on the Impacts and Control of CSOs and SSOs indicates that some NPDES authorities need to improve permittee reporting of SSOs.

Sewage overflows and bypasses at sewage treatment plants can endanger human health. Appropriate third party notification can reduce health risks associated with these releases. Permits can establish a process for requiring the permittee or the NPDES authority to notify specified third parties of overflows that might endanger health because of a likelihood of human exposure, or to notify third parties of unanticipated bypass and upset that exceeds any effluent limitation in the permit or that could endanger health because of a likelihood of human exposure.

In April 2005, EPA's WPD distributed a draft fact sheet describing NPDES permit requirements for SSOs. The draft fact sheet is available at http://www.epa.gov/npdes/pubs/sso_fact_sheet_model_permit_cond.pdf. The draft fact sheet addresses how NPDES permits should be clarified to ensure SSOs and unanticipated bypasses and upsets are reported, along with other issues.

Peak Flows at Treatment Facilities

During heavy wet-weather events, most municipal sewer collection systems and treatment facilities receive increased flows that can cause sewage overflows and backups in the collection system and create operational challenges at the plant. To maximize treatment of flows at the plant, minimize overflows of raw sewage in the collection system, and avoid plant damage and operating problems, during wet weather, POTWs may route the portion of flow exceeding the capacity of the secondary units around the units.

Discharges from POTWs must meet effluent limitations based on the secondary treatment regulations (which establish 7-day and 30-day limits for TSS, BOD, and pH) and more stringent WQBELs. In addition, the NPDES regulations establish standard permit conditions that apply to all NPDES permits. One standard condition that is important to peak wet-weather diversions is the bypass provision at 40 CFR 122.41(m).

EPA addressed peak wet-weather bypasses at POTWs that serve combined sewers in the CSO Control Policy. On December 22, 2005, EPA proposed a policy for implementing requirements for wet-weather discharges at POTWs served by sanitary sewers. The December 2005 draft policy specifies that the bypass provision would apply to wet-weather diversions at POTWs serving separate sanitary sewer collection systems under all circumstances. Under the draft policy, NPDES authorities would be able to approve—in the NPDES permit—wet-weather diversions around secondary treatment based on a demonstration that, among other things, there are no feasible alternatives to the anticipated bypass.

SSO and Peak Flow Findings

SSO Reporting

EPA reviewed a number of permits with regard to SSO reporting language. Permits in Texas rely on noncompliance reporting and do not specifically require reporting of SSOs that do not discharge to waters of the U.S., including building backups. Municipal satellite collection systems are generally not required to obtain permit coverage and are not required to report SSOs from their systems.

Notification of Drinking Water Facilities

Texas appears to provide follow-up to SSO reports it receives on a case-by-case basis.

Peak Excess Flow Treatment Facilities (PEFTFs)

The region issued permits for four peak excess flow treatment facilities (PEFTFs) in Houston in the 1990s. The PEFTFs are essentially storage devices without substantial treatment. TCEQ took over the permits, which expired during the 2000–2003 time-frame, and EPA issued interim objections to draft permit renewals in 2004 and 2005. The region commented on the permits but they have not yet been issued by the state. Overflow facilities are no longer to be permitted. Region 6 enforcement continues to work with the city regarding ongoing collection system deficiencies.

Peak Flows

Three ballasted flocculation units have been installed for wet-weather treatment and blending at POTWs in Region 6. One of the facilities is in Fort Worth, Texas (TX0047295). The Fort Worth, Texas, permit was reissued in December 20, 2007 and December 29, 2011. In Texas, the Bridge City permit (TX0025500), which expired on March 1, 2001, and the Port Neches permit (TX0022926), which expired on August 1, 2006, authorize *bypass/blending*. Region 6 has objected to draft renewals of these permits and has been working with Texas regarding resolution. After Region 6 objected to an approved bypass in a permit for Port Neches, a No Feasible Alternative analysis was submitted to the region on December 5, 2008. The Region's interpretation of the analysis indicated that feasible alternatives do exist, hence, the objection to the permit remains.

Concentrated Animal Feeding Operations

EPA reviewed general permits issued by Texas for CAFOs that cover all animal sectors and were chosen because of their widespread applicability. This section includes a brief discussion of Texas's procedures, then a discussion of findings from the permit review.

The TCEQ has been authorized to administer the NPDES program in Texas. According to information the region provided to EPA headquarters, 1,204 CAFOs are in Texas.

TCEQ issued a general permit for CAFOs on July 20, 2004, and reissued this permit in July 2009. The 2004 permit provided a good interim step during the period between the vacating of certain parts of the 2003 CAFO regulations and the 2008 revisions to the CAFO regulations. That permit is also very comprehensive (i.e., it addresses all animal sectors, all potential pollution sources at CAFOs, including source that affect air quality, documentation of the lack of a hydrologic connection, and a groundwater monitoring plan under certain conditions) and it specifies relevant administrative procedures.

EPA revised the CAFO regulations in response to the *Waterkeeper* decision issued by the U.S. Court of Appeals for the Second Circuit Court in February 2005 (*Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2d Cir.2005)). States had until December 4, 2009, to update their CAFO NPDES regulations to address the November 2008 rule revisions as specified by 40 CFR 123.62(e). To date, TCEQ has not addressed the 2008 CAFO rule revisions.

Whole Effluent Toxicity

EPA reviewed one industrial permit and one municipal permit from Texas. After reviewing the states' WET WQS and criteria, EPA assessed whether provisions in permits and related fact sheets adequately protect the state's aquatic life criteria.

EPA reviewed permits and fact sheets for the following items: references to 40 CFR part 136 and/or WET test methods, whether and how WET RP determinations were made, whether the monitoring frequency is representative of the permitted effluent discharge, and if an adequate basis and/or rationale was provided to support the permitting authorities' decision to include or not include certain permit requirements.

Permits and fact sheets were also reviewed for inconsistent references to EPA's 2002 WET test methods in standard or special conditions, in accordance with 40 CFR 136.1 and 136.3. The regulations at 40 CFR 122.44(i)(1)(iv) require that permits include monitoring using EPA test methods. EPA also recommends that the state reference the current WET test methods by citation or reference.

In 2005, Region 6 started working with its States to fully implement federal regulations at 40 CFR 122.44(d)(1) to establish procedures for assessing reasonable potential for WET and to incorporate WET limits into permits for lethal and/or sublethal effects when appropriate. At the time of the PQR, WQD was continuing to develop a reasonable potential procedure for WET. EPA Region 6 will continue to work with and coordinate with TCEQ to develop a strategy to implement an adequately predictive Reasonable Potential (RP) approach for State issued NPDES permits.

Currently, Region 6 and Texas are negotiating the inclusion of chronic sublethal WET limits on a case-by-case basis in permits where RP has been demonstrated based on Region 6 procedures.

Texas Summary of Permit/Fact Sheet Findings

WET WQS and Permit Documentation: State WQS have a general narrative criteria for toxicity that protects both acute and chronic sublethal endpoints but has no specific narrative or numeric criteria for toxicity. The industrial permit (TX0003824) describes WET WQS and implementation procedures in the permit's statement of basis. The municipal permit (TX0126098) lacks adequate explanation of how WET limits were derived from state's WET WQS. Neither permit indicates that WET RP analyses were conducted and lethal WET limits were included in the permit based solely on a history of WET test failures. The rationale behind the permit's RP is considered insufficient because it failed to assess chronic sublethal toxicity (and a more recent assessment of the acute lethal toxicity). The permit does provide the history of WET test failures indicating lethal toxicity-based RP. However, because RP for sub-lethality was not conducted, and given the history of sublethal test failures, a sublethal WET permit limit is warranted for both permits but is not included.

EPA WET Test Methods: Both the municipal and industrial permits require acute and chronic WET tests and cite the 2002 EPA methods to be used by the permittee. Neither permit contains requirements for conducting reference toxicant testing to evaluate lab performance and ensure organism health as recommended by EPA WET test methods.

WET Test Data Interpretation and Decisions/Rationale: Both permits (TX0126098, TX0003824) require evaluations of the concentration-responses for WET tests conducted, the coefficient of variation and PMSD. The municipal permit indicates there is no dilution, thus no

mixing zone available. The industrial permit describes the initial lack of mixing zone in the intermittent stream and presence of a mixing zone in the perennial stream further downstream.

Permit Conditions/Monitoring: Both permits require quarterly monitoring and additional WET testing at an accelerated frequency of once per month upon an exceedance. However, monthly WET testing of a toxic effluent might not be frequent enough to detect persistent toxicity before in-stream impairment occurs.

V. Action Items

This section provides a summary of the main findings of the review and provides proposed Action Items to improve the Texas NPDES permit programs. These findings and Action Items are intended to supplement real-time and program reviews routinely conducted by EPA Region 6. Given that this PQR is an assessment conducted during a specific period of time, some Action Items may have already been resolved and additional Action Items could be identified from ongoing Region 6 reviews and oversight activities. This list of proposed Action Items will serve as the basis for ongoing discussions between EPA Region 6 and TCEQ as well as between EPA Region 6 and EPA HQ. These discussions should focus on eliminating program deficiencies to improve performance by enabling good quality, defensible permits issued in a timely fashion.

The proposed Action Items are divided into three categories to identify the priority that should be placed on each Item and facilitate discussions between Regions and states.

- **Critical Findings** (Category One) - Most Significant: Proposed Action Items will address a current deficiency or noncompliance with respect to a federal regulation.
- **Recommended Actions** (Category Two) - Recommended: Proposed Action Items will address a current deficiency with respect to EPA guidance or policy.
- **Suggested Practices** (Category Three) - Suggested: Proposed Action Items are listed as recommendations to increase the effectiveness of the state's or Region's NPDES permit program.

The Critical Findings and Recommended Action proposed Action Items should be used to augment the existing list of "follow up actions" currently established as an indicator performance measure and tracked under EPA's Strategic Plan Water Quality Goals and/or may serve as a roadmap for modifications to the Region's program management.

Core Review/Core Topic Areas

Proposed Actions Items for core review/core topic areas are provided below.

TCEQ follows a systematic approach based on extensive procedures and useful permitting tools, and coordinated input from various offices. The core review indicated that WQD is working on some permitting issues with Region 6 and that permits could benefit in some areas from improved documentation. Proposed Action Items to help the state strengthen its NPDES permit program are the following:

- WQD should continue to work with Region 6 to issue the permits which have Interim Objections and Requests for Additional Information (Category 1 & 2)
- Region 6 and WQD should confirm that TPDES municipal applications provide all data required by state and federal regulations. (Category 1)
- WQD should develop a WET RP approach which ensures compliance with the Texas WQS for the protection of aquatic life in all cases. (Category 1)
- Include adequate documentation in the fact sheet that explains how more stringent limits achieve 85 percent removal of BOD and TSS consistent with 40 CFR 133. Where 85 percent removal is required in a permit, require influent monitoring to demonstrate compliance with the 85 percent removal requirement. (Category 1)
- Document in the fact sheet which pollutants were considered in the evaluation of water quality-based limits and why. (Category 1)
- Describe in the fact sheet how DO modeling is used in permit development. (Category 2)
- Explain the use of the TEXTOX model and RP determination more clearly. This would help explain output tables included in the fact sheets. (Category 2)
- Explain why permit limits that were carried forward from the prior permit remain appropriate for current discharge conditions and identify relevant documentation. (Category 2)
- Where technical memoranda rely on additional analyses or data, include or reference such information. (Category 2)
- Rationale for all permit limits shall be included in the fact sheets (40 CFR Part 124.8). For example, where limits do not equal standards (e.g., pH or temperature), document why. (Category 1)
- TCEQ must include all required pretreatment program components under 40 CFR 122.44(j)(2)(ii) in its permits. (Category 1)
- TCEQ should revise its fact sheets to explicitly state whether pretreatment programs are required. (Category 3)
- Region 6 should ensure that NPDES permits contain requirements for POTWs without pretreatment programs to conduct IWSs during the life of a permit to continually monitor potential nondomestic discharges to their systems.
- Region 6 should ensure that TCEQ is implementing sufficiently sensitive methods with regard to mercury, using specific analytical methods consistent with 40 CFR part 136.

Impaired Waters

- No Action Items were identified.

TMDLs

Where a final, relevant TMDL was identified, the TMDL is discussed in the fact sheet and, except for one permit, the permits are consistent with the TMDL requirements.

Antidegradation

At the time of the PQR, TCEQ's regulations contained both the antidegradation policy and implementation procedures. The proposed Action Item to help Texas strengthen its NPDES permit program is the following:

- TCEQ should ensure all fact sheets include a basic and consistent discussion of antidegradation to demonstrate the state applies its antidegradation policy in every permit. (Category 2).

Mixing Zones

TCEQ mixing zone provisions are at section 307.8(b) of state WQS. Individual permits assume mixing in all cases except for minor municipal permits (less than 1 million gallons per day) and stormwater permits. The proposed Action Item to help Texas strengthen its NPDES permit program is the following:

- For those permits where mixing is assumed and dilution is granted, develop consistent discussions for the fact sheet to illustrate how the dilution allowance was determined for the discharge (i.e., size of the mixing zone, contributions from other facilities, background concentrations considered in the application of mixing zones, and the derivation of the percentage applied to the WQBELs calculations. (Category 2)

Thermal Discharges and Cooling Water Intake Structures (CWA section 316(a) & (b))

Permit requirements and determinations of Best Technology Available for CWISs in accordance with CWA section 316(b) are missing in some of the permits reviewed. Region 6 should implement the following Action Items to improve implementation of section 316(a) and (b) requirements in permits:

- TCEQ should include section 316(b) CWIS permit conditions for existing facilities on a BPJ basis, and the basis for determining Best Technology Available should be documented in the permit fact sheet. (Category 1)
- Permits writers should reevaluate any 316(a) thermal variances and 316(b) requirements at each permit renewal and document the basis in the permit fact sheet. Prior determinations should also be documented in the fact sheet and reflected in the current permit, as appropriate. (Category 1)

Sanitary Sewer Overflows

Proposed Action Items to improve SSO implementation and management of Peak Flows in Texas are the following:

- Texas provided an update on the status of the City of Houston SSO discharges (Category 3) in July 2013, covering the January 2008 through May 2013 time period.

Concentrated Animal Feeding Operations

Below are proposed Action Items that Texas should consider to improve the quality of the state's permits.

- TCEQ must update their CAFO NPDES regulations to address the November 2008 rule revisions as specified by 40 CRF 123.62(e). (Category 1)

Whole Effluent Toxicity

Region 6 should continue to work closely with Texas to ensure that the state is fully and appropriately implementing WET requirements. Region 6 should ensure that the Texas permits thoroughly discuss and document the rationale behind each of the permit requirements or decisions to not include requirements. The state permits, at a minimum, should clearly document their decisions on WET permit requirements and include a summary or reference to the WET data and RP assessment.

- TCEQ must implement a WET RP methodology that is protective of the state's WET WQS. If WET RP is demonstrated for lethal and/or sublethal effects, permits must include the appropriate WET limit(s). (Category 1)
- Texas permits must include a description of the state's WQS for the protection of aquatic life and how it is implemented into the permit. (Category 1)
- Texas permits should require the inclusion of reference toxicant procedures and documentation of the evaluation of lab variability and organism response. (Category 3)
- To adequately determine the duration of lethal or sublethal toxicity detrimental to aquatic life use, Texas permits should require more frequent than monthly WET testing. (Category 2)

State Review Framework

I. Background on the State Review Framework

The State Review Framework (SRF) is designed to ensure that EPA conducts nationally consistent oversight. It reviews the following local, state, and EPA compliance and enforcement programs:

- Clean Air Act Stationary Source
- Clean Water Act National Pollutant Discharge Elimination System
- Resource Conservation and Recovery Act Subtitle C

Reviews cover these program areas:

- Data — completeness, timeliness, and quality
- Compliance monitoring — inspection coverage, inspection quality, identification of violations, meeting commitments
- Enforcement actions — appropriateness and timeliness, returning facilities to compliance
- Penalties — calculation, assessment, and collection

Reviews are conducted in three phases:

- Analyzing information from the national data systems
- Reviewing a limited set of state files
- Development of findings and recommendations

Consultation is also built into the process. This ensures that EPA and the state understand the causes of issues and seek agreement on actions needed to address them.

SRF reports are designed to capture the information and agreements developed during the review process in order to facilitate federal and state program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify any issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state programs.

Each state's programs are intended to be reviewed once every four years. The first round of SRF reviews began in FY 2004. Round 2 of the SRF was conducted for TCEQ using Round 3 SRF metrics. The round 3 metrics had not been formal approved when the review was initiated. Specifically, the CAA, RCRA and CWA file and data metrics were still draft when the audit began. The third round of reviews began in FY 2012 and will continue through FY 2017.

II. SRF Review Process

Review period: FY 2011

Key dates:

- Kickoff letter sent to state: May 22, 2012
- Kickoff meeting conducted: March 1, 2012
- Data metric analysis and file selection list sent to state: Water - March 30, 2012, Air - May 15, 2012 (addendum sent June 5, 2012)
- On-site file review conducted: July 9-13, 2012 (Water), June 11-15, 2012 (Air)
- Draft report sent to state:
- Report finalized:

Communication with the state:

WATER -

- The initial meeting to discuss the framework was held on March 1, 2012, by Mark Potts at the TCEQ office in Austin, Texas. Mark met with Bryan Sinclair, Michelle Harris, David Bower, Sal Tahiri, and David Van Soest. Additionally, Mark provided an overview of Round 3 and how it was different from the last review.
- The Water file review occurred at the TCEQ central office in Austin Texas during the week of July 9, 2012. TCEQ operates 16 Regional offices across the State. The 16 Regional offices are divided among 4 geographical areas. The 4 geographic areas can be distinguished by the nature of their regulated communities and the environmental challenges they present. The North Central and West Texas Area have a large agri-business base with a growing number of concentrated animal feeding operations. The Border and Permian Basin Area have the distinction of sharing air and water sheds with Mexico. TCEQ's Central Texas and North Central and West Texas Areas have the Interstate 35 corridor of large metropolitan areas (e.g. San Antonio-Austin, Dallas-Ft. Worth) and a sizeable agri-business community. The Coastal and East Texas Area has one third of the US petro-chemical industries.
- The Regional offices conducted inspections for NPDES facilities and the Enforcement Division's Compliance Monitoring Section in Austin conducted record reviews of self-reported data. Any violations requiring formal enforcement were referred to, and handled by, the Enforcement Division in Austin. No Regional offices were visited for this review. Information needed from the Regional offices were compiled by TCEQ's Central Office and made available to EPA in Austin.
- The purpose of this review was to ensure that the TCEQ NPDES program was being operated in a manner consistent with the CWA NPDES MOA between EPA and TCEQ, the TCEQ Authorization Position Description, TCEQ EIC, and all applicable Federal Regulations, guidelines, and policies that implement the CWA. This review was based on the FY 2011 data and using the new Round 3 criteria.

- The exit meeting was held on the morning of July 13, 2012, at the offices of the TCEQ in Austin, Texas. EPA discussed with TCEQ the initial findings of the file review.
- Since the SRF File Review, EPA has been in communication with TCEQ via e-mails and phone conversations regarding specific questions pertaining to information in the state database (CCEDS), which is not captured in the national database (ICIS).
- The state will resolve significant issues by either commenting on the findings, drafting a formal request to change EPA metrics or procedures to better reflect a state's enforcement process and/or agreeing to a schedule to resolve the issue.

State and EPA regional lead contacts for review:

EPA Region 6 Contacts - Mark Hansen (214) 665-7548, Carol Peters-Wagnon (214) 665-3145, Abu Senkayi (214) 665-8403, Diana McDonald (214) 665-7495, Alan Vaughn (214) 665-7487, Debra Berry (214) 665-8058, Judy Edelbrock (214) 665-8582

EPA Headquarters - Chad Carbone (202) 564-2523.

TCEQ Contacts - Bryan Sinclair (512) 239-2171, Michelle Harris (512) 239-0492, David Bower (512) 239-2953, Sal Tahiri (512) 239-2217 (retired August 31, 2012), David Van Soest (512) 239-0468, Susan Johnson (512) 239-2555, Michael Beatty (512) 239-5118, Danielle Clements (512) 239-3205, June Ella Martinez (512) 239-3242, Candy Garrett (512) 239-1457, Maggie Dennis (512) 239-2578, Sharon Blue (512) 239-2223, Brenda Loggins (512) 239-5136, James Gradney (512) 239-6549, Tracy Miller (512) 239-4127, and Rebecca Villalba (512) 239-4784.

AIR –

Communication with the state: EPA and TCEQ held a kick-off meeting with Bryan Sinclair, Michelle Harris, David Bower, Salal Tahiri, and David Van Soest to discuss the general process for conducting an integrated Round 3 SRF/PQR review and how that differs from the last review process (Round 1). Other topics of the meeting included working with TCEQ counterparts on the file selection process, selection of dates for the on-site review for each media, outstanding issues from the Round 1 review and any concerns TCEQ identified mainly that it is inappropriate to use R3 metrics since at that time it was not approved and we would be “reviewed” under a set of metrics that are not known and one generation past R1.

EPA reviewers met with TCEQ managers and staff during an entrance conference on Monday, June 11, to discuss the various aspects of the SRF on-site review and the CAA Review Team's projected schedule for the week. Managers and staff answered questions and provided an overview of TCEQ processes of the Office of Compliance and Enforcement. TCEQ provided a copy of its “TCEQ Investigator Guidance Documents” used by the Field Operations Support Division as its standard operating procedure (SOP). TCEQ also provided a copy of its Enforcement SOP, once a determination is made to initiate enforcement. The current Enforcement SOP, dated May 28, 2008, was provided to the Team by TCEQ. This SOP is

currently being revised, but was the SOP applicable during FY2011.

An exit meeting was held on the final day of the on-site review, June 15. The Review Team presented the preliminary findings from the SRF on-site review. TCEQ management in attendance included David Van Soest, Special Assistant to the Deputy Director of the Office of Compliance and Enforcement, and Michael De La Cruz, Manager, Air Section, Enforcement Division. Ronnie Kramer, Work Leader, and Cathy Remmert, Team Leader, Monitoring Division, were also present.

On-site review process:

As a point of reference in FY2012, the TCEQ conducted 18,868 total investigations and 13% of the 1,826 enforcement orders were air related. During the on-site review, EPA reviewed all compliance monitoring and enforcement information present in TCEQ's files for the 36 facilities selected by EPA. The scope of the review covered the Federal Fiscal Year (FFY) 2011 period, in addition to compliance and enforcement records with dates before and/or after the FFY 2011 period, if those records were related to state compliance and/or enforcement activities in FFY 2011. For example, if a compliance monitoring file/action in FFY 2011 had an enforcement action associated with it, both activities will be reviewed regardless of when the enforcement action occurred. Similarly, if a facility was selected for a federal enforcement action during FY 2011, EPA reviewed not only the enforcement records but also any associated compliance monitoring files/actions that supported the decision to take enforcement, regardless of the date of the compliance monitoring event(s).

EPA also held conversations with TCEQ staff responsible for data tracking in TCEQ's Comprehensive Compliance and Enforcement Data System (CCEDS). Managers and staff were available throughout the week to answer questions, and to provide information and/or explanation about specific files/actions.

State and EPA regional lead contacts for review:

- TCEQ
 - (CAA) Salal Tahari (retired August 31, 2012)
 - (CAA) Michael De La Cruz, 512.239.0259, michael.delacruz@tceq.texas.gov
 - (CAA) Ronnie Kramer, 512.239.0194, ronnie.kramer@tceq.texas.gov
 - (CAA) Cathy Remmert (retired June 30, 2012)
 - (CAA) Carol Piza, 512.239.6729, carol.piza@tceq.texas.gov

- EPA:
 - (CAA) Toni Allen, 214.665.7271, allen.toni@epa.gov
 - (CAA) Esteban Herrera, 214.665.7348, herrera.esteban@epa.gov
 - (CAA) Dominique Duplechain, 214.665.7484, duplechain.dominique@epa.gov
 - (CAA) Mark Hansen, 214.665.7548, hansen.mark@epa.gov
 - (CAA) Robert Lischinsky, 202.564.2628, lischinsky.robert@epa.gov

RCRA

State Review Framework (SRF) oversight reviews of the Texas Commission on Environmental Quality (TCEQ) for the RCRA program were conducted on May 7, 2012 by EPA Region 6 permitting and enforcement staff.

This Framework Review was conducted at the central office in Austin. No Regional Offices were visited. TCEQ compiled files and information as needed based upon the files selected for review, and provided them to the EPA RCRA review team.

On-Site Review Process

In Federal FY2011, the TCEQ conducted 652, EPA Compliance Monitoring Strategy recognized inspections as reflected in the EPA national data systems (ICIS and RCRAInfo). It also issued 82 formal and 367 informal enforcement actions. A total of 40 facilities were initially selected for review. TCEQ requested that 6 of these facilities be removed from the list due to current ongoing litigation or AG referrals. Facilities were selected for review, randomly by using the File Selection Tool to select numbers that were linked to the facilities, with a focus on selecting all SNC's (4) identified in FY11, as well as ensuring a representative sampling of informal and formal actions with penalties, facility universe and State Regional offices. File selection did consider regional or geographic distribution, to a small degree. Thirty-four (34) facilities with a total of 40 inspections (conducted in FY 2011) were reviewed.

FY 2011 RCRA Facilities Reviewed by Universe

Treatment, Storage and Disposal Facilities	5
Large Quantity Generators	12
Small Quantity Generators	6
Conditionally Exempt Small Quantity Generators	4
Transporters	3
No Universe	4
FY2011 RCRA Formal Enforcement Actions with Penalties Reviewed	17
FY2011 RCRA Informal Enforcement Actions Reviewed	21

III. SRF Findings

Findings represent EPA's conclusions regarding state performance, and may be based on:

- Initial findings made during the data and/or file reviews
- Follow-up conversations with state agency personnel
- Additional information collected to determine an issue's severity and root causes
- Review of previous SRF reports, MOAs, and other data sources

There are four types of findings:

Good Practice: Activities, processes, or policies that the SRF metrics show are being implemented at the level of Meets Expectations, and are innovative and noteworthy, and can serve as models for other states. The explanation must discuss these innovative and noteworthy activities in detail. Furthermore, the state should be able to maintain high performance.

Meets Expectations: Describes a situation where either: a) no performance deficiencies are identified, or b) single or infrequent deficiencies are identified that do not constitute a pattern or problem. Generally, states are meeting expectations when falling between 91 to 100 percent of a national goal. The state is expected to maintain high performance.

Area for State Attention: The state has single or infrequent deficiencies that constitute a minor pattern or problem that does not pose a risk to human health or the environment. Generally, performance requires state attention when the state falls between 85 to 90 percent of a national goal. The state should correct these issues without additional EPA oversight. The state is expected to improve and achieve high performance. EPA may make recommendations to improve performance but they will not be monitored for completion.

Area for State Improvement: Activities, processes, or policies that SRF data and/or file metrics show as major problems requiring EPA oversight. These will generally be significant recurrent issues. However, there may be instances where single or infrequent cases reflect a major problem, particularly in instances where the total number of facilities under consideration is small. Generally, performance requires state improvement when the state falls below 85 percent of a national goal. Recommendations are required to address the root causes of these problems, and they must have well-defined timelines and milestones for completion. Recommendations will be monitored in the SRF Tracker.

Clean Water Act Findings

Element 1 — Data Completeness: Completeness of Minimum Data Requirements.

Finding 1-1 Area for State Attention

Description

The State's Permit Limit data entry rates and DMR data entry rates for major facilities are exceptional with a 99.2% and a 99.5% accuracy rate. While these values exceed the national average, EPA's file review is also tied to the findings which indicated deficiencies with complete data.

Please see Appendix B, CWA metric 2b, which shows a completeness of 42.4 % with a national goal of 100%.

Total Penalties Assessed were entered incorrectly into the national data system.

The state is entering the total of the Supplemental Environmental Project (SEP), Deferred Penalty, and Dollar amount collected as the Total Penalty Assessed.

Explanation

The state should begin entering the dollar amount collected as the Total Penalty Assessed, and begin entering the SEP amount, into the national data system.

1b1 – Permit Limit data entry rates for major facilities = 99.2%

- National Goal: 95%
- National Average: 98.6%

1b2 – DMR data entry rate for major facilities = 99.5%

- National Goal: 95%
- National Average: 96.5%

Relevant metrics

1g1 – Number of Enforcement Actions with Penalties = 48

1g2 – Total Penalty Assessed = \$1,591,785

The State CCEDS database showed that TCEQ issued an additional 339 Formal Enforcement Actions with payable Penalties in the amount of \$4,908,762 and SEP's totaling \$591,816.

State response

TCEQ believes this data metric should at a minimum be reclassified as a “Meets Expectations” because as described in the definition it “Describes a situation where either: a) no performance deficiencies are identified, or b) single or infrequent deficiencies are identified that do not constitute a pattern or problem. Generally, states are meeting expectations when falling between 91 to 100 percent of a national goal. The state is expected to maintain high performance.

TCEQ does not agree with the 42.4% calculation and should be 78.8% (refer to 2-1 for further detail).

TCEQ does not agree that any data completeness or data definition restrictions constitute a deficiency in the TCEQ’s Enforcement program. The issues raised above are either data limitations or the result of a rigid definition of review matrix. This issue has, and will continue to be, an issue because of the way the TCEQ is required by state law to implement its enforcement program. TCEQ requests that the EPA update its data metric definitions and processes that allow for the variability of states enforcement program to better meet the EPA’s goal of measuring enforcement effectiveness and transparency.

In regard to the specific issues raised above the TCEQ offers the additional comments below.

Penalty Issues: There is not a definition of which amount (total assessed or payable) is expected to be entered into the national data system, nor is there a requirement under the MOA for SEP information to be entered.

TCEQ believes that the Total Penalty Assessed is a more accurate representation of the state’s program and what should be reflected in the national data system so as to increase the EPAs goal of transparency. The “Payable” penalty amount is what was collected or negotiated to be collected at the time of settlement and does not include deferred amounts or amounts required to be paid on SEPs, which are conditional terms in an Agreed Order. If a Respondent fails to comply with the terms of the order, including any SEP requirements, the full “Total Assessed Penalty” amount becomes payable.

TCEQ recommends that additional fields be added to the national data system to capture deferred costs, better reflect variability of a state’s enforcement program to better meet the EPA’s goal of measuring

enforcement effectiveness and transparency.

Recommendation

Element 1 — Data Completeness: Completeness of Minimum Data Requirements.

Finding 1-2 Meets Expectations

Description

The State is not required to monitor facilities covered under the Stormwater Construction General Permit, the Stormwater Multi-Sector Permit or the Small Municipal Separate Storm Sewer System (sMS4).

Explanation

There are no requirements for monitoring of minor facilities under the MOA. Stormwater inspections are conducted on a complaint basis. The State is also not required to enter any data for stormwater facilities into the national database. All inspections and actions go into the State's database CCEDS which, at the current time, is not downloaded to ICIS, the national database. The State has a grant which the TCEQ will develop and implement a program to upload a limited set of Stormwater data from CCEDS into the national data system (ICIS).

Relevant metrics

N/A

State response

Since there are no requirements for monitoring of minor facilities under the MOA and the information is not required to be entered into the national system the TCEQ believes this requirement should not be included in the SRF.

Items not required by an MOA or delegation Agreement should be removed as an item eligible for review and comments. Frequent changing of requirements or requirements outside current agreements will continue to cause confusion and data issues for States and the EPA. TCEQ recommends only including items in the SRF that are negotiated, agreed upon and then included in written agreements.

It is TCEQ's understanding that these fields were included in the PPG and that work is not yet complete at this time. Once complete any items not covered in the MOA, but part of a PPG, should be discussed and incorporated into the MOA.

Recommendation

Element 2 — Data Accuracy: Accuracy of Minimum Data Requirements.

Finding 2-1 Area for State Improvement

Description Files reviewed where data are accurately reflected in the national data system.

Explanation Fourteen of the thirty-three files reviewed discovered data (i.e., Notice of Violations, inaccurate Permit Information, Inspection Type) was either not entered or was entered incorrectly into the national data system.

Relevant metrics 2a1 – Number of formal enforcement actions taken against majors with accurate enforcement action type codes entered in the national data system = 100 %.

Goal = 95 %

2b -- Files reviewed where data are accurately reflected in the national data system = 42.4 %

Goal = 100 %

State response TCEQ requests that the overall Data Accuracy status be changed to “Area of State Attention”. 2b is incorrectly calculated based upon EPA SRF CWA Plain Language Guide (July 2012). The state’s accuracy should have been calculated by dividing the numerator (number of files where file data is the same as PCS or ICIS-NPDES data) with the denominator (number of files reviewed under this metric). Correct percentage based upon initial findings is 57.6% (19/33). Upon reviewing of EPA’s 2b findings, TCEQ does not agree that most of the findings 2b are required under the EPA/TCEQ MOA or ICIS-NPDES minimum data requirement. TCEQ requests that findings not required should be removed from the percentage calculation. TCEQ calculates that the actual accuracy percentage should be 78.7% (26/33).

TCEQ will review its practices and procedures and will implement changes if it identifies areas needing improvement. In FY14, training will be conducted regarding TCEQ/EPA agreed upon required data fields to ensure accuracy and completeness.

The TCEQ would again like to reiterate that frequent changes to data requirements, and/or requirements outside current agreements continue to cause data issues for States and the EPA. TCEQ recommends only including items in the SRF that are negotiated and then included in written agreements as data requirements. In addition, TCEQ requests that the EPA

work with states to come up with a five year plan to and agree upon a set of data metrics that will be not be changed for the full five year period. Having set standards for a five year period would allow for states to properly research, develop, fund and implement data changes in a more efficient manner for both the EPA and States.

Recommendation

The state should begin entering data correctly into the national data system. This includes but is not limited to inspection type, permit information, enforcement actions, etc.

Element 2 — Data Accuracy: Accuracy of Minimum Data Requirements.

Finding 2-2 Meets Expectations

Description The State is not required to monitor facilities covered under the Stormwater Construction General Permit, the Stormwater Multi-Sector Permit or the Small Municipal Separate Storm Sewer System (sMS4).

Explanation There are no requirements for monitoring of minor facilities under the MOA. Stormwater inspections are on a complaint basis. The State is also not required to enter any data for stormwater facilities into the national database. All inspections and actions go into the State's database CCEDS which, at the current time, is not downloaded to ICIS, the national database. The State has a grant which the TCEQ will develop and implement a program to upload a limited set of stormwater data from CCEDS into the national data system (ICIS).

Relevant metrics N/A

State response Since there are no requirements for monitoring facilities covered under the Stormwater Construction General Permit, the Stormwater Multi-Sector Permit or the sMS4 under the MOA and the information is not required to be entered into the national system the TCEQ believes this requirement should not be included in the SRF.

Items not required by a MOA or delegation Agreement should be removed as an item eligible for review and comments. Frequent changing of requirements or requirements outside current agreements continue to cause confusion and data issues for States and the EPA. TCEQ recommends only including items in the SRF that are negotiated, agreed upon and then included in written agreements.

It is TCEQ's understanding that these fields were included in the PPG and that work is not yet complete at this time. Once complete any items not covered in the MOA but part of a PPG should be discussed and incorporated into the MOA.

Element 3 — Timeliness of Data Entry: Timely entry of Minimum Data Requirements.

Finding 3-1

Area for State Attention

Description

Mandatory data not being entered into the national data system in a timely manner, or not being entered into the national data system at all.

Explanation

Twenty-eight of the thirty-three files reviewed discovered a document/s which were in the files, but were not entered into the national data system. The primary documents are NOV's and warning letters. The state should enter mandatory data in the national data system in a timely manner.

Relevant metrics

3a – Timeliness of mandatory data entered in the national data system = 84.8 %.
Goal - 100 %

State response

TCEQ disagrees with overall status and requests it be updated to “Meets Expectations” and the relevant metric percentage be changed to 100%. The provided EPA findings cite that no Inspection related Warning Letters were documented in ICIS-NPDES. Presently, EPA/TCEQ MOA nor federal minimum data standards require the entry of Inspection related Warning Letters.

The CMS indicates that the corresponding ICIS-NPDES code for pretreatment is CEI (compliance evaluation inspection). Therefore it is unknown what the correct type is. EPA will need to provide what the appropriate code is to be used in reference to the specific findings. EPA provided training to OCE staff on 3560 data entry forms. At that time staff was instructed to use CEI as the Compliance Monitoring Type for all mandatory facilities. Per reference tables TCEQ was provided from EPA, there is no PCI code.

TCEQ will review its practices and procedures and will implement changes if it identifies areas needing improvement. TCEQ currently manually enters inspection data provided on 3560 forms for all mandatory facilities. NOV's and correspondence are not a component of that data entry. In FY14, training will be conducted regarding TCEQ/EPA agreed upon required data fields to ensure accuracy and completeness.

Recommendation

Element 3 — Timeliness of Data Entry: Timely entry of Minimum Data Requirements.

Finding 3-2 Meets Expectations

Description The State is not required to monitor facilities covered under the Stormwater Construction General Permit, the Stormwater Multi-Sector Permit or the Small Municipal Separate Storm Sewer System (sMS4).

Explanation There are no requirements for monitoring of minor facilities under the MOA. Stormwater inspections are on a complaint basis. The State is also not required to enter any data for stormwater facilities into the national database. All inspections and actions go into the State's database CCEDS which, at the current time, is not downloaded to ICIS, the national database. The State has a grant that provides for TCEQ to develop and implement a program to upload a limited set of stormwater data from CCEDS into the national data system (ICIS).

Relevant metrics N/A

State response Since there are no requirements for monitoring facilities covered under the Stormwater Construction General Permit, the Stormwater Multi-Sector Permit or the sMS4 under the MOA and the information is not required to be entered into the national system the TCEQ believes this requirement should not be included in the SRF.

Items not required by a MOA or delegation Agreement should be removed as an item eligible for review and comments. Frequent changing of requirements or requirements outside current agreements will continue to cause confusion and data issues for States and the EPA. TCEQ recommends only including items in the SRF that are negotiated, agreed upon and then included in written agreements.

It is TCEQ's understanding that these fields were included in the PPG and that work is not yet complete at this time. Once complete any items not covered in the MOA but part of a PPG should be discussed and incorporated into the MOA.

Recommendation

Element 4 — Completion of Commitments: Meeting all enforcement and compliance commitments made in state/EPA agreements.

Finding 4-1 Meets Expectations

Description Inspection commitment

Explanation The state committed to conduct 322 Major facility inspections, 210 Minor facility inspections, and 20 Pretreatment Inspections, for the state of Texas' fiscal year (Sept. 1 – Aug. 30). For the state's fiscal year (Sept 1 – Aug. 30), the state entered 313 Major facility inspections and 199 Minor facility inspections into the national database. This number is different than the metrics number due to the federal fiscal year dates of Oct. 1 – Sept 30. Subsequent conversations with the state revealed some additional inspections which should have been entered into the national data system, were not entered.

The state should, at a minimum, qa/qc the inspection data entered into the national database at the end of each inspection year.

Relevant metrics Data pulled for federal fiscal year (October 1 – September 30)
4a1 – Pretreatment Compliance Inspection and Audits > 100% Goal = 100%
4a3 – EPA and State Oversight SIU Inspections by approved POTW's = 98.7% Goal = 100%
5a1 – Inspection Coverage – NPDES Majors = 281
5b1 – Inspection Coverage – NPDES Non-Majors = 175

State response TCEQ believes it does take careful efforts to ensure the state is meeting its inspection commitments and that the data is captured in the national data system. Annually, TCEQ conducts a detailed manual examination and comparison of inspection data in CCEDS and ICIS. Every effort is taken to determine what inspections were conducted and entered into CCEDS and what has subsequently been entered into ICIS. If data is not showing up in ICIS, CCEDS is examined to determine what may be the cause of the problem and contact is made with regional staff to ensure the investigations are completed or justifications obtained for any alternative plan.

It is TCEQ's understanding that these fields were included in the PPG and that work is not yet complete at this time. Once complete any items not covered in the MOA but part of a PPG should be discussed and incorporated into the MOA.

Recommendation

Element 4 — Completion of Commitments: Meeting all enforcement and compliance commitments made in state/EPA agreements.

Finding 4-2 Meets Expectations

Description TCEQ and EPA agreed to inspect 100% of the CAFOs in the Bosque River Watershed each year.

Explanation TCEQ met its commitment to inspect 100% of all CAFOs in the Bosque River Watershed. They also completed inspections at 100% of CAFOs in the Lake Fork Watershed. Most of the 418 CAFO inspections conducted were in these two watersheds which constitute what is known as the Dairy Outreach Program Area (DOPA). TCEQ is committed to inspecting each permitted CAFO located in the DOPA Bosque River area at least once a year.

There is currently no stormwater enforcement or compliance commitment between TCEQ and EPA under the current MOA, however, the State has responsibilities under the Clean Water Act for stormwater. EPA provides oversight under NPDES including the stormwater program, and permits are issued by the State. The state is not required to monitor facilities covered under the Stormwater Construction General Permit, the Stormwater Multi-Sector Permit or the Small Municipal Separate Storm Sewer System (sMS4). Stormwater inspections are on a complaint basis. The State is also not required to enter any data for stormwater facilities into the national database. All inspections and actions go into the State's database CCEDS which, at the current time, is not downloaded to ICIS, the national database.

Relevant metrics N/A

State response Since there are no requirements for monitoring facilities covered under the Stormwater Construction General Permit, the Stormwater Multi-Sector Permit or the sMS4 under the MOA and the information is not required to be entered into the national system the TCEQ believes this requirement should not be included in the SRF.

Additionally, because the complaints involving this sector have significantly reduced, the TCEQ requests that discussions begin to look at the need and effectiveness of this commitment.

Recommendation

Element 5 — Inspection Coverage: Completion of planned inspections.

Finding 5-1 Meets Expectations

Description Major Inspection Coverage

Explanation The state conducted and input into the national data system 313, of the 322 (97.2%) major facility inspections committed. This number is different than the metrics number of 281 due to the state fiscal inspection year covering the time period from September 1 – August 31, and the metric query pulls the federal fiscal inspection year from October 1 – September 30. This also changes the coverage of NPDES Majors from 46.8 % to 52.2%.

The state shall verify at the end of each fiscal year that the inspections committed to be conducted during the fiscal year are actually input into the national data system.

Relevant metrics 5a1 -- Inspection Coverage - NPDES Majors = 44.6 %
Goal : 50% Percent of Goal: 93.66 %
National Average: 54.4%

State response TCEQ believes it does take careful efforts to ensure the state is meeting its inspection commitments and that the data is captured in the national data system. Annually, TCEQ conducts a detailed manual examination and comparison of inspection data in CCEDS and ICIS. Every effort is taken to determine what inspections were conducted and entered into CCEDS and what has subsequently been entered into ICIS. If data is not showing up in ICIS, CCEDS is examined to determine what may be the cause of the problem and contact is made with regional staff to ensure the investigations are completed or justifications obtained for any alternative plan.

Recommendation

Element 5 — Inspection Coverage: Completion of planned inspections.

Finding 5-2 Good Practice

Description More than 70% of all permitted CAFOs were inspected and non-majors with a General Permit Inspection Coverage - Stormwater.

Explanation The total number of permitted CAFOs in Texas is 584. TCEQ conducted 418 inspections, including 97 mandatory inspections, 269 discretionary inspections, 33 follow-up inspections and 19 reconnaissance inspections. Mandatory inspections are inspections which are either required to be conducted or have been previously committed to be performed by TCEQ. Discretionary inspection are those inspections conducted on an as needed basis, or to collect additional information, or as a response to a citizen's complaint and are left up to the discretion of the TCEQ.

TCEQ does not inspect dry litter poultry operations. These poultry CAFOs are inspected by another state agency known as the Texas State Soil and Water Conservation Board (TSSWCB). Large dry litter CAFOs with noncompliance issues are referred by TSSWCB to TCEQ, as required by the memorandum of agreement (MOA) between these two agencies.

TCEQ and EPA agreed that each CAFO located within the DOPA (dairy outreach program area) must be inspected at least once per year. These CAFO inspections reports are very carefully prepared and written, producing a high quality product. As a result of the agreement and the citizen's group interest, TCEQ has put a lot of resources towards CAFO inspections in these areas. Due to this commitment from the TCEQ, the number of citizen's complaints has substantially decreased.

Under the current MOA, TCEQ has no stormwater commitment to conduct, document or enter into the national database stormwater inspections. Inspections are generally conducted on a complaint basis throughout the State's Regions. Of the approximately 1,885 stormwater records in CCEDS, 25 files (10 industrial, 10 construction, 5 SMS4's) were reviewed for content.

Relevant metrics N/A

State response Since there are no commitments for stormwater activities under the MOA and the information is not required to be entered into the national system the TCEQ believes this requirement should not be included in the SRF.

Items not required by a MOA or delegation Agreement should be removed

as an item eligible for review and comments. Frequent changing of requirements or requirements outside current agreements continue to cause confusion and data issues for States and the EPA. TCEQ recommends only including items in the SRF that are negotiated, agreed upon and then included in written agreements.

It is TCEQ's understanding that these fields were included in the PPG and that work is not yet complete at this time. Once complete any items not covered in the MOA but part of a PPG should be discussed and incorporated into the MOA.

Recommendation

Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.

Finding 6-1 Meets Expectations

Description Inspection reports reviewed provided sufficient documentation to determine compliance, and the inspection reports were completed in a timely manner.

Explanation Twenty-Seven of the twenty-seven files reviewed, which had inspections, led to the determination the inspection reports provided sufficient documentation to determine compliance. Twenty-six of the twenty-seven files reviewed indicated the inspection reports were written/completed in a timely manner.

The inspection reports reviewed were well written and documented, however, a few improvements could be made. Although most of the inspections did have photographic evidence, it is recommended all inspection reports provide photographic evidence. Facilities inspected which have expired permits should have additional documentation in the inspection report indicating whether a complete permit application has been submitted and the permit is administratively extended until the new permit is issued.

Relevant metrics Metric 6a – 27 of the 27 files reviewed had inspections that were properly and accurately written = 100% Goal = 100%

Metric 6b – 26 of the 27 files reviewed were issued in a timely manner. = 96.3% Goal = 100%

State response TCEQ believes that the investigations conducted by staff are of high quality and there are few instances where a report is found inadequate during the enforcement process or during the course of litigation proceedings. TCEQ requests that the focus of any future reviews on a state’s performance should focus on specific instances that have impacted a state’s enforcement authority instead of minor or perceived deficiencies that have not been found to impact a state’s enforcement capabilities. While the EPA reviewers suggest that photographic evidence and other types of actions be included in reports there is no evidence where the lack of this information has hindered any enforcement authority. TCEQ would like future reviews of investigative or enforcement files to be focused on measureable and documented problems rather than preferences or differences of opinion in investigative procedures.

In regard to the Suggestion that photographic evidence be included more

widely in investigations additional training was held the week of July 15, 2013, as part of annual training that included the practical use of photographic evidence.

In regard to the recommendation of including whether there has been a complete permit application submitted or if the permit is administratively continued or not the TCEQ offers the following comment. The majority of the time the investigation report is completed prior to any permit submission – when facilities submit permit applications prior to completion of the investigation report the information is included in the report. Most investigations are completed in approximately 30 days. In addition, the following provision is specified within the executed TPDES permits:

The permittee must apply for an amendment or renewal at least 180 days prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. If an application is submitted prior to the expiration date of the permit, the existing permit shall remain in effect until the application is approved, denied, or returned. If the application is returned or denied, authorization to continue such activity shall terminate upon the effective date of the action. If an application is not submitted prior to the expiration date of the permit, the permit shall expire and authorization to continue such activity shall terminate unless a permit application is under review or development.

Recommendation

Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.

Finding 6-2

Meets Expectations

Description

Inspection reports reviewed provided sufficient documentation to determine compliance, and the inspection reports were completed in a timely manner.

Explanation

All 11 of the CAFO files reviewed provided sufficient documentation to determine compliance, and the inspection reports were completed in a timely manner.

The quality of the CAFO inspection reports was excellent and the reports were comprehensive and easy to follow. Each report included a summary of the violations found and any previous violations, if any, and whether or not these previous violations had been addressed or were still ongoing.

The stormwater inspection reports reviewed were well written and documented conditions at the site at the time of the inspection. Twenty-three of the twenty-five filed stormwater reports were issued within the 30-day timeframe.

A few of the stormwater inspection reports had photographs attached to record issues at the sites. It is recommended that all stormwater inspection reports provide photographic evidence, if possible.

Relevant metrics

Metric 6a – 25 of the 25 files reviewed had inspections that were properly and accurately written (100%)

Metric 6b – 4 of the 25 files reviewed were issued more than 30 days after the inspection (City of Alamo Heights, City of Brenham – TXR05R338, Rio Grande Valley Sugar Growers – TXR050480, and Peach Creek Plantation, LTD – TXR15MV11). However, 21 of the 25 files reviewed were issued in a timely manner. = 84%

State response

TCEQ believes that the investigations conducted by staff are of high quality and there are few instances where a report is found inadequate during the enforcement process or during the course of litigation proceedings. TCEQ requests that the focus of any future reviews on a state's performance should focus on specific instances that have impacted a state's enforcement authority instead of minor or perceived deficiencies that have not been found to impact a state's enforcement capabilities. While the EPA reviewers suggest that photographic evidence and other

types of actions be included in reports there is no evidence where the lack of this information has hindered any enforcement authority. TCEQ would like future reviews of investigative or enforcement files to be focused on measureable and documented problems rather than preferences or differences of opinion in investigative procedures.

In regard to the Suggestion that photographic evidence be included more widely in investigations additional training was held the week of July 15, 2013, as part of annual training that included the practical use of photographic evidence.

Recommendation

Element 7 — Identification of Alleged Violations: Compliance determinations accurately made and promptly reported in national database based on inspection reports and other compliance monitoring information.

Finding 7-1

Area for State Improvement

Description

Accurate identification of Alleged Violations into the national database

Explanation

The state enters single event violations (SEVs), into the state data system (CCEDS), but does not enter the SEVs in the national data system. Single event violations are required to be entered for major facilities and pretreatment minor facilities (see Appendix C of the ICIS addendum to the PCS policy statement)

The State is not required by the MOA to enter single events into the national database for non-major facilities. The inspection reports do, however, identify violations citing permit requirements and corrective action required.

Relevant metrics

7a1 – Number of Major Facilities with Single Event Violations = 7
7a2 - Number of Non-Major Facilities with Single Event Violations = 8
7b1 - Compliance Schedule Violations = 7
7c1 - Permit Schedule Violations = 26

State response

Under current practices, entry of SEVs would have to be done manually, which is resource-intensive. TCEQ is continuing to finalize the program that will upload inspection information from CCEDS into the national data system.

The TCEQ would again like to reiterate that frequent changes to data requirements, and/or requirements outside current agreements continue to cause data issues for States and the EPA. TCEQ recommends only including items in the SRF that are negotiated and then included in written agreements as data requirements. In addition, TCEQ requests that the EPA work with states to come up with a five year plan to and agree upon a set of data metrics that will not be changed for the full five year period. Having set standards for a five year period would allow for states to properly research, develop, fund and implement data changes in a more efficient manner for both the EPA and States.

It is TCEQ's understanding that these fields were included in the PPG and that work is not yet complete at this time. Once complete any items not covered in the MOA but part of a PPG should be discussed and incorporated into the MOA.

Recommendation

As required by the MOA, the state should develop and implement a program to upload the information from the state data system into the national data system. It is recommended the state should implement the data flow into the national data system, with a completion date of July 1, 2013. The following data flows should be transmitted into the national data system: SSO Events, Compliance Monitoring, SEVs, Compliance Monitoring Linkage, Formal and Informal Enforcement Actions, and Compliance Schedules. EPA will continue to track the progress of the implementation program on the monthly TCEQ/EPA enforcement update conference calls. This will be an agenda item and discussed until EPA and TCEQ are satisfied with the final product/implementation has been achieved.

Element 8 — Identification of SNC and HPV: Accurate identification of significant noncompliance and high-priority violations, and timely entry into the national database.

Finding 8-1 Area for State Improvement

Description Major facilities in SNC

Explanation 5 of the 8 Files reviewed (62.5%) resulted SNC was reported timely.

Relevant metrics 8a2 - Percent of Major Facilities in SNC = 36.2 %
National Average = 22.3 %

8c - SEVs identified as SNC that are reported timely = 62.5 %

8a2 –TCEQ agrees the increased SNC rate is in part caused by the transfer of delegation of the remaining non-compliant facilities from EPA to TCEQ and due to the EPA SNC policy change in the no discharge indicators in the national database. TCEQ believes that these reasons should be taken into consideration.

8c – Beginning September 1, 2013, TCEQ will implement a more frequent schedule from monthly to weekly for entering DMR batches into the national data system.

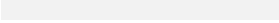
State response TCEQ agrees the increased SNC rate is in part caused by the transfer of delegation of the remaining non-compliant facilities from EPA to TCEQ and due to the EPA SNC policy change in the no discharge indicators in the national database. TCEQ believes that these reasons should be taken into consideration.

Again TCEQ would like to reiterate that frequent changes to data requirements, and/or requirements outside current agreements continue to cause data issues for States and the EPA. TCEQ recommends only including items in the SRF that are negotiated and then included in written agreements as data requirements. In addition, TCEQ requests that the EPA work with states to come up with a five year plan to and agree upon a set of data metrics that will be not be changed for the full five year period. Having set standards for a five year period would allow for states to properly research, develop, fund and implement data changes in a more efficient manner for both the EPA and States.

It is TCEQ’s understanding that these fields were included in the PPG and that work is not yet complete at this time. Once complete any items not covered in the MOA but part of a PPG should be discussed and incorporated into the MOA.


Recommendation

The state should develop and implement a program to upload the information from the state data system into the national data system. It is recommended the state should implement the data flow into the national data system. The following data flows should be transmitted into the national data system: SSO Events, Compliance Monitoring, SEVs, Compliance Monitoring Linkage, Formal and Informal Enforcement Actions, and Compliance Schedules. EPA will continue to track the progress of the program implementation on the monthly TCEQ/EPA enforcement update conference calls. This will be an agenda item and discussed until EPA and TCEQ are satisfied that the final product has been achieved.



Element 8 — Identification of SNC and HPV: Accurate identification of significant noncompliance and high-priority violations, and timely entry into the national database.

Finding 8-2 Meets Expectations

Description The State is not required to monitor facilities covered under the Stormwater Construction General Permit, the Stormwater Multi-Sector Permit or the Small Municipal Separate Storm Sewer System (sMS4).

Explanation There are no requirements for monitoring of minor facilities under the MOA. Stormwater inspections are on a complaint basis. The State is also not required to enter any data for stormwater facilities into the national database. All inspections and actions go into the State’s database CCEDS which, at the current time, is not downloaded to ICIS, the national database.

Relevant metrics N/A

State response Since there are no requirements for monitoring facilities covered under the Stormwater Construction General Permit, the Stormwater Multi-Sector Permit or the sMS4 under the MOA and the information is not required to be entered into the national system the TCEQ believes this requirement should not be included in the SRF.

Items not required by a MOA or delegation Agreement should be removed as an item eligible for review and comments. Frequent changing of requirements or requirements outside current agreements continues to cause confusion and data issues for States and the EPA. TCEQ recommends only including items in the SRF that are negotiated, agreed upon and then included in written agreements.

It is TCEQ’s understanding that these fields were included in the PPG and that work is not yet complete at this time. Once complete any items not covered in the MOA but part of a PPG should be discussed and incorporated into the MOA.

Recommendation

Element 9 — Enforcement Actions Promote Return to Compliance: Enforcement actions include required corrective action that will return facilities to compliance in specified timeframe.

Finding 9-1

Area for State Attention

Description

Formal Enforcement Action taken by the state did not always return the facility back into compliance in the specified timeframe.

Explanation

During the file review 20 of the 23 (87%) files had enforcement actions where the facility returned to compliance in the specified timeframe. Three (3) facilities were deficient due to no documentation indicating the facility returned to compliance in the required timeframe.

The state should review their tracking system to ensure compliance schedules are met and the documentation is appropriately filed in the compliance file.

Relevant metrics

9a – Enforcement responses that return source in violation to compliance = 87%. Goal = 100%

State response

TCEQ works diligently with the regulated community to promote and achieve compliance. The three facilities noted as deficient all returned to compliance in a timely manner warranting a change in EPA’s finding. East Bank WWTP (TX0076953) submitted documentation demonstrating compliance on September 21, 2011. The City of Deport (TX0054721) submitted extension requests on April 20, 2011, December 23, 2011, and July 3, 2012 extending approved compliance due dates to November 29, 2011, June 20, 2012, and January 3, 2013, respectively. The City of Deport submitted documentation demonstrating compliance on December 28, 2012. Lastly, the City of Tatum (TX0022551) submitted an extension request on May 14, 2012 extending the approved compliance due date to November 24, 2012. The City of Tatum submitted documentation demonstrating compliance on August 20, 2013.

TCEQ requests that for future reviews of the state’s performance of this element, that files deemed deficient be flagged or brought to the attention of TCEQ staff immediately to begin researching any perceived deficiency. Based on the data, 23 of the 23 facilities (100%) returned to compliance in the specified timeframes. The finding for this data metric should at a minimum be reclassified as “Meets Expectations”.

Recommendation

Element 9 — Enforcement Actions Promote Return to Compliance: Enforcement actions include required corrective action that will return facilities to compliance in specified timeframe.

Finding 9-2

Meets Expectations

Description

The stormwater reports generated appropriate enforcement actions. The files with enforcement actions (14 of 25) also had a Notice of Compliance to indicate the action had generated compliance. Stormwater violations were not identified as SNC, although this is not currently a requirement for non-major stormwater facilities. Although the State does not have commitments with EPA for conducting inspections at stormwater facilities, but they do operate a permitting program for facilities in the State of Texas.

The CAFO information reviewed indicated that TCEQ’s enforcement actions did not promote timely return to compliance at two of the 11 facilities reviewed. However, CAFO violations were promptly resolved at three of the 11 facilities inspected by TCEQ. No CAFO violations were found at four of the 11 facilities inspected by TCEQ. Two of the 11 CAFO facilities inspected were found to be inactive or abandoned.

One of the 11 CAFO facilities reviewed was required by its permit to increase its wastewater storage capacity within 180 days following permit issuance. However, this CAFO facility failed to comply with this schedule although it requested and received from TCEQ several deadline extensions. TCEQ eventually issued a penalty enforcement order to bring the facility into compliance.

In 2007, TCEQ identified CAFO violations at another facility. The violations identified in 2007 remain unresolved until 3/25/2010 when TCEQ issued an Agreed Order. The violations involved failure to remove solids from the facility’s lagoons. The presence of excess solids in lagoons indicated that this facility did not have adequate capacity to store all the wastes generated by the facility, as required by its permit.

TCEQ should not allow CAFOs with serious violations, such as inadequate storage capacity to contain all process-generated wastewater and runoff generated during 25-year, 24-hour storm events, to operate for extended periods of time, as was the case at the two CAFO facilities described above.

Explanation

8 – MSGP
5 – CGP
1 – sMS4
56% of files reviewed generated a NOV

NOTE: The sMS4 General Permit was in the first round permitting cycle for fiscal year 2011. The one NOV issued was for non-submittal of the annual report.

Relevant metrics

N/A

State response

TCEQ will continue to follow state laws, regulations, and policies to ensure that Stormwater and CAFO enforcement actions promote return to compliance.

Regarding the Randy Wyly Dairy, RN102065166. Once the violation was identified and referred to the Enforcement Division, a Commission Order (effective 5/8/11) was issued. The Order required the respondent to certify compliance with the completion of modifications outlined in the permit by Nov 4, 2011. Documentation demonstrating compliance with the order was submitted to the TCEQ on Nov 3, 2011, prior to the enforcement order being issued in 2011. No compliance extensions to the order were submitted or approved.

Since there are no requirements to identify stormwater violations as SNC under the MOA and the information is not required to be entered into the national system the TCEQ believes this requirement should not be included in the SRF.

Items not required by a MOA or delegation Agreement should be removed as an item eligible for review and comments. Frequent changing of requirements or requirements outside current agreements continues to cause confusion and data issues for States and the EPA.

It is TCEQ's understanding that these fields were included in the PPG and that work is not yet complete at this time. Once complete any items not covered in the MOA but part of a PPG should be discussed and incorporated into the MOA.

Recommendation

Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.

Finding 10-1 Area for State Attention

Description The state is not able to take timely and appropriate enforcement action in accordance with national policy.

Explanation The length of time it takes the state to process enforcement cases is bound by the processes outlined in the state laws, regulations, and policies. The process timeframe from the time the enforcement action recommendation is prepared to the Commission Agenda (if approved, is issued with the effective date) generally takes a minimum of 180 days, and can take up to 255 days.

Since the process is bound by the processes outlined in the state laws, regulations, and policies, it is recommended the state continue to adhere to the NPDES MOA which says the state will notify EPA Region 6 in writing if it will not meet the EPA timely criteria, and provide an alternate schedule.

Relevant metrics 10a1 - Major facilities with timely action as appropriate = 13.8 %, National Goal =98%

State response TCEQ cannot recreate this data metric regarding the 13.8% calculation mentioned under “Relevant Metrics” so it is difficult to respond specifically to this item.

The primary reason that Texas does not consistently issue timely enforcement actions under EPA’s SNC guidance is because TCEQ is bound by the requirements outlined in state laws, regulations, and policies to provide due process. When a violation is identified that appears to warrant formal enforcement, an Enforcement Action Referral (EAR) is prepared, which is screened by the Enforcement Division. Typically a proposed Agreed Order, which contains administrative penalties and technical requirements, is then drafted and sent to the violator for consideration. If accepted and signed, the order is required under Texas Water Code Section 7.075, to be published in the *Texas Register* for 30 days to allow for public comment. After closure of the public comment period, the matter is then scheduled for consideration at the Commission Agenda. If approved by the Commission, the order is issued with an effective date. The process from the time the EAR is prepared to the Commission Agenda generally takes a minimum of 180 days; however, if agreement is not reached on the proposed order, the case is referred to the TCEQ Litigation Division for further action. There may be additional

settlement negotiations, with the possibility of a higher penalty, and/or the case might be filed for administrative hearing. TCEQ can also refer cases to the Attorney General's Office for civil or criminal prosecution.

TCEQ recommends that EPA revise the SNC Policy to increase the number of days for timely action to 360 days and/or to revise the definitions for "SNC identification" and "timely action" to provide flexibility to states that are bound by their individual enforcement statutes and regulations. TCEQ believes that the SNC start date should begin on the approval date of the inspection that addresses the violations.

As mentioned in the Major CAFO Program Findings section on page 6. The TSSWCB and TCEQ have an MOU that outlines actions to be taken regarding potential enforcement. All actions direct the TSSWCB to refer to the TCEQ. For example:

(10) Refer to the commission (TCEQ) for possible enforcement action any complaint or violation related to a certified water quality management plan for an AFO, a law or rule relating to agricultural or silvicultural nonpoint source pollution for which the board has determined that the necessary corrective action has not been taken. The board, upon referral, shall provide the commission documentation, including but not limited to, any original documents or "certified copies" of the original documents and hard copies of all photographs, sample analyses, correspondence, records and other documents relating to the complaint.

(14) Refer to the Commission for possible enforcement action, complaints which were initially resolved by an agreement to develop a site specific certified water quality management plan for the involved facility and for which the facility owner/operator has not signed such a plan within 90 days of the date their request for planning assistance was approved by the Soil and Water Conservation District.

(15) Refer to the Commission for possible enforcement any complaint received for which there has been an immediate impact to aquatic life. Any investigation by the Board of a complaint related to an AFO holding a certified water quality management plan and for which a violation is documented that causes a situation in which exposure of contaminants to the air, water or land is affecting human health and safety, or will cause serious impact to the environment unless immediate actions are taken, shall be automatically referred to the Commission for possible enforcement action.

Recommendation

Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.

Finding 10-2 Meets Expectations

Description TCEQ’s enforcement actions against 3 of the 11 CAFO facilities reviewed were timely and appropriate enforcement actions in accordance with EPA policy. However, TCEQ’s enforcement actions against 2 of the 11 CAFO facilities reviewed did not promptly return the facilities to compliance status. 3 of 11 CAFO inspections received timely and appropriate enforcement actions. 4 of 11 inspections did not reveal any violation; hence no need for enforcement actions. 2 of 11 inspections found inactive CAFOs; hence no need for enforcement actions. 2 of 11 CAFO inspections did not achieve timely and appropriate enforcement actions.

The state took timely and appropriate stormwater enforcement action according to their enforcement policy.

Explanation TCEQ discovered the violations at one of the two CAFO facilities in 2007. However, the violations were not addressed until TCEQ signed an Agreed Order on 2/16/10. TCEQ investigated this facility at least four times (on 8/1/2006, 12/11/2006, 8/23/2007, and 8/25/2008) before issuing the Compliance Order on 2/16/10. The violations involved failure by the facility to remove solids from its lagoons.

Serious violations that reduce the facility’s capacity to contain and store all process-generated wastewater plus runoff generated during 25-year, 24-hour storm events should be addressed as promptly as possible.

The stormwater enforcement actions were generally issued the same day the inspections were issued. Permit conditions found in non-compliance were noted in the inspection reports and repeated in the enforcement actions issued. Actions were generally issued the same day the inspection report was signed and issued.

Relevant metrics N/A

State response It is TCEQ’s understanding that these fields were included in the PPG and that work is not yet complete at this time. Once complete any items not covered in the MOA but part of a PPG should be discussed and incorporated into the MOA.

Recommendation

Element 11 — Penalty Calculation Method: Documentation of gravity and economic benefit in initial penalty calculations using BEN model or other method to produce results consistent with national policy and guidance.

Finding 11-1

Meets Expectations

Description

The state is calculating economic benefit and gravity to produce results consistent with national policy and guidance.

Explanation

The state is calculating economic benefit; however, the state does not collect the calculated amount. Though this is not consistent with national policy, it is very similar to the state approved penalty policy that was in affect at the time the NPDES program was delegated to the state in 1998. Note: Only one of the files had penalties but they were not for stormwater.

At NPDES Program assumption, the approved TCEQ Penalty Policy was the Policy effective October 1, 1997. A new TCEQ Penalty Policy was effective September 1, 2002. The 2002 Penalty Policy had no substantial changes to the 1997 Policy, though the economic benefit matrix became a bit more stringent. In the 2002 policy, the economic benefit component is calculated as follows: Economic benefit is determined from avoided/delayed capital expenditures and costs. If the economic benefit amount is greater than or equal to \$15,000, then there is a 50% adjustment to the calculated base penalty (i.e., gravity component). This adjustment is the economic benefit component and it is added back into the base penalty amount. If the economic benefit is determined to be less than \$15,000, then there is no adjustment made to the base penalty for economic benefit. TCEQ notes that they do collect all avoided costs (except for political subdivisions and non-profit organizations) in cases where applicable even when the \$15,000 dollar economic benefit penalty adjustment threshold is not met. By comparison, EPA uses \$2500 as its economic benefit threshold. In the 1997 Penalty Policy, the economic benefit trigger amount was \$25,000. Though this does not recover any of the economic benefit for a calculation of less than \$25,000, it adds a percentage (25% or 50%) of the base penalty amount for an economic benefit calculation greater than \$25,000. Additionally, it was discovered during the review of penalty calculation for municipalities, no adjustment is added for the economic benefit component of the penalty calculation. This is a recent change/decision made by the commission after hearing arguments from a municipality regarding penalties and is being applied only to municipalities.

EPA suggests that TCEQ continue implementing the state penalty policy with the goal of eventually making changes to be consistent with national policy and guidance.

Relevant metrics 11a - 16 of 16 (100%) files reviewed calculated economic benefit and gravity.

State response TCEQ will continue to assess penalties in accordance with state laws, regulations, and the Commission Penalty Policy to ensure economic benefit is considered.

Recommendation

Element 11 — Penalty Calculation Method: Documentation of gravity and economic benefit in initial penalty calculations using BEN model or other method to produce results consistent with national policy and guidance.

Finding 11-2

Area for State Attention

Description

Some of the penalties assessed by TCEQ are so small that they do not serve as deterrent to would be violators.

Explanation

For example, one of the CAFO files reviewed indicated that TCEQ assessed a small penalty of \$1010 to settle violations involving land application of manure on fields with high phosphorus concentrations, without a nutrient utilization plan, as required by the TCEQ CAFO permit. Respondent paid only \$808.00 because \$202.00 was deferred, contingent to satisfactory compliance with TCEQ’s Agreed Order. Such a small amount of penalty cannot be a deterrent to would be violators and would not be consistent with the EPA penalty calculation policy. Another CAFO file reviewed indicated that TCEQ assessed a penalty of \$2520 against a facility for operating with inadequate wastewater containment capacity, in violation of its permit requirements. About \$500.00 of the \$2520.00 was deferred, contingent to satisfactory compliance with TCEQ’s Settlement Order.

TCEQ’s penalty calculation procedures should be revised to be consistent with EPA’s penalty calculation policy for appropriately calculating gravity and economic benefit.

Relevant metrics

N/A

State response

TCEQ believes that its penalty amounts are sufficient to deter future noncompliance at CAFOs. The description and explanation are not findings regarding the effectiveness of TCEQ’s enforcement program but a comparison of the federal and state program and an opinion that has no basis or information to support.

Of the two examples cited, both facilities have been inspected annually since the orders were issued and each received a notice of violation, in which minor violations dissimilar to those addressed in the enforcement actions were corrected immediately. In the most recent inspections at these facilities, no violations were documented.

Additionally, TCEQ is required to assess penalties in accordance with state laws, regulations, and the Commission policies. In September 2011, there was a change to the statutory maximum for water quality violations. Violations that occurred or were documented prior to September 1, 2011

have a statutory maximum of \$10,000 and violations that occur or are documented after this date have a statutory maximum of \$25,000.

Recommendation

Element 12 — Final Penalty Assessment and Collection: Differences between initial and final penalty and collection of final penalty documented in file.

Finding 12-1 Meets Expectations

Description The state is calculating and documenting penalty calculations and the penalty calculation worksheets are in the file.

Explanation 16 of the 16 (100%) files reviewed with penalty calculations had adequate documentation of initial and/or final penalty calculation/rationale. 11 of the 16 (68.8%) files reviewed documented penalties were collected. The 5 files which did not collect a penalty, documented the facility performed a Supplemental Environmental Project (SEP) in lieu of penalty payment. The SEP costs completely offset the penalty.

Continue implementing the state penalty policy.

Relevant metrics 12a - Documenting difference between initial and final penalty and rationale = 100.0 %
12b. - Penalties collected = 68.8 % (The remaining 32.2% had a SEP in lieu of a penalty collected) = 100% of the 16 files either and Penalty and/or SEP

State response TCEQ will continue to follow state laws, regulations, and policies to ensure the differences between initial and final penalty and collection of penalty are documented in the files.

Recommendation

Element 12 — Final Penalty Assessment and Collection: Differences between initial and final penalty and collection of final penalty documented in file.

Finding 12-2

Meets Expectations

Description

TCEQ initiated 14 CAFO administrative enforcement actions and 2 judicial enforcement actions during 2011. The total administrative penalty amount assessed to CAFOs was \$67,830 and the total CAFO judicial penalty amount assessed was \$634,423. The total CAFO administrative penalty deferred was \$9301 and the total CAFO judicial penalty deferred was \$218. The total payable penalty for all 14 CAFO administrative enforcement actions was \$58,529 (about 4,180 per case) and the total payable CAFO penalty for the 2 judicial enforcement actions was \$634,205 (about 317,100 per case).

Texas' stormwater AOs contain penalty amounts that have been negotiated with and agreed to by the Respondent.

Explanation

In general, TCEQ's average CAFO penalty amount of about \$4000 assessed for the 14 administrative enforcement actions appears to be lower than what EPA might have assessed. In addition, one of the CAFO files reviewed indicated that TCEQ was unable to collect a penalty amount of about \$15,000 because the CAFO operator abandoned the facility and fled from the country.

Relevant metrics

N/A

State response

TCEQ has procedures in place to ensure Respondents that do not timely make their penalty payments are addressed through a Collections Agency, often with the assistance of the Texas Office of the Attorney General.

TCEQ will continue to follow state laws, regulations, and policies to ensure the differences between initial and final penalty and collection of penalty are documented in the files. As stated above TCEQ believes that its penalty amounts are sufficient to deter future noncompliance and the reference to EPA penalties is irrelevant to the effectiveness of the state's program.

Recommendation

Clean Air Act Findings

Element 1 — Data Completeness: Completeness of Minimum Data Requirements.

Finding 1-1 Area for State Improvement

Description Number of Active Synthetic Minors – 0

The State does not currently have a good mechanism to identify Synthetic Minors (SM) in their permitting process. TCEQ requested approval from EPA Region 6 during FY2011 to remove the SM classification as the State could not assure the determination was accurate.

Explanation The State Legislature appropriated money to develop and create an Air Permits Allowable Database (APAD), and it is our understanding that the APAD has been developed. Once the APAD is implemented, as new permits are issued and/or existing permits renewed, TCEQ will start to calculate the Major source's threshold and will be able to identify SM80s and populate the AFS database with the universe of SM80% facilities and other synthetic minor sources.

Relevant metrics 1a2 - Number of Active Synthetic Minors = 0

State response The TCEQ has established an authorization to address every level of emissions through its minor NSR program as required by Texas Clean Air Act - TCAA (Tex. Health & Safety Code § 382.0518). As a result, the Texas NSR permit program requires stationary sources of air pollution to obtain authorization before construction or alteration of a facility regardless of being a major or minor source. This regulatory framework is more comprehensive than simply tracking what EPA defines as synthetic minors. Further, maintaining data about synthetic minors is not a direct requirement of the FCAA, Texas' SIP or Texas' Air Permitting PPG commitments,

Also, the TCEQ does not electronically track what EPA defines as a “synthetic minor.” Rather, when individual companies certify emissions below major source thresholds, this documentation becomes part of the compliance files.

There may be too much reliance on APAD to deliver all numerical authorized potential to emit data for a source. For example, many PBRs do not require certification or registration of emissions. So when APAD has all the data, there will still be situations without a true numerical PTE.

Recommendation

EPA recommends that TCEQ follow through with the implementation of the APAD. Region 6 and TCEQ will discuss progress on implementation of the APAD at the next quarterly meeting (by September 30, 2013). Once the APAD is implemented and the SM80% universe has been populated in AFS, this recommendation will be considered complete with a goal of completion by January 2014.

Element 1 — Data Completeness: Completeness of Minimum Data Requirements.

Finding 1-2 Area for State Attention

Description Completeness of Minimum Data Requirements in AFS

Explanation The review found that TCEQ had not entered all applicable Subparts in AFS, according to the information found in the facility permit and/or the compliance monitoring report.

Relevant metrics 2a – Data Accuracy

TCEQ understands that this is an ongoing issue with other states and the EPA. TCEQ understands that EPA believes that the MDRs are more extensive than those currently reported by Texas and many other states. For several years, the TCEQ has been reporting through AFS regarding permits and enforcement activity through batch uploads of data from the TCEQ's enforcement database and from manual entries of permit information. Through that transfer of information "applicable Subparts" are not tracked, recorded, or reported separately. Title V permits are reported and those permits contain applicable requirements where applicable subparts can be identified as needed.

State response

Additionally, TCEQ would like to reiterate that frequent changes to data requirements, and/or requirements outside current agreements continue to cause data issues for States and the EPA. TCEQ recommends only including items in the SRF that are negotiated and then included in written agreements as data requirements. In addition, TCEQ requests that the EPA work with states to come up with a five year plan to and agree upon a set of data metrics that will not be changed for the full five year period. Having set standards for a five year period would allow for states to properly research, develop, fund and implement data changes in a more efficient manner for both the EPA and States.

Recommendation TCEQ should research, verify and enter the applicable subparts for the

facilities identified in the file review in accordance with the Title V Permit for each facility. Additionally, we recommend that TCEQ enter the applicable subparts for any Part 61 NESHAP minor facilities pursuant to the Minimum Data Requirements and the guidance on Federally Reportable Violations.

Element 2 — Data Accuracy: Accuracy of Minimum Data Requirements.

Finding 2-1 Area for State Attention

Description Major sources missing CMS Source Category Code – 213

Explanation The frozen Data Metrics data for FY2011 indicated that 213 major sources in AFS did not have the CMS Source Category Code “A” or “M” or the CMS Minimum Frequency Indicator.

The current 2013 Production Date for Data Metric 2a indicates there are 33 major sources without a CMS Source Category or CMS Minimum Frequency Indicator in AFS. However, 3 of the 33 sources classified as major were entered by EPA, whereas Texas has a different classification on the source. The difference between state classification and EPA classification will need to be researched and necessary corrections made (if applicable). We recommend that the CMS Code and CMS Minimum Frequency Indicator be entered on the 33 major sources.

The file review indicated 15 of 36 actions did not have accurate MDR information when the permit/investigation report/enforcement action was compared with data contained in AFS. There were missing air programs (corresponding to a regulation) and/or subpart information in AFS.

On a positive note, we would like to commend TCEQ for its efforts to match the universe of majors in CCEDS (1208) with the universe in AFS (2011 frozen data reported 1211, current AFS universe 1213).

Relevant metrics 2a - Data accuracy

State response In 2012, TCEQ OCE worked with EPA Region 6 to gain approval for an alternative CMS frequency. This alternative frequency, based on mega sites, non-mega sites, and off-site qualifying FCE sites, and whether the site was located in a coastal or non-coastal region, was approved on December 18, 2012 for the state’s FY2013 year plan. As a result of this plan, and a review of sites in preparation for FY2014, OCE now has a CMS source category for all Title V major sources. The source category can be matched with the minimum alternative frequency and loaded into AFS. TCEQ reconciled major source status prior to the beginning of the state’s FY for internal planning purposes. TCEQ will continue to work with EPA Region 6 in meeting the alternative CMS frequency, updating AFS with the state’s categories, reporting the FCEs each year and determining any need for adjustments.

In order to identify and properly address where potential issues may be

originating more information and the resolution process will be needed. Specifically, TCEQ will require more information to research and correct any potential issues. Since there is a difference in the TCEQ and EPA designation, TCEQ would request information on the process of how a determination is made when there is competing information. Additionally, TCEQ would like to request a meeting to discuss specific instances of inaccurate information and documentation provided where it requires that subpart information be provided.

Recommendation

Element 3 — Timeliness of Data Entry: Timely entry of Minimum Data Requirements.

Finding 3-1 Meets Expectations

Description The AFS Information Collection Request (ICR) requires Minimum Data Requirements (MDRs) be entered into AFS within 60 days of the date of the event.

Explanation Data Metric 3 tracks and reports the timeliness of entering MDRs into the national database.

Relevant metrics 3a1 and 3a2 – Timely entry of HPV determinations:
114 of 127 HPV day zero actions in FY2011 (90%). 13 (10%) were entered 60 days or more past the day zero. However, 9 of the 13 were entered within 75 days or less of the date of the event (day zero).

3b1 – Timely reporting of compliance monitoring MDRs:
1723/1733 – 99.4%; National average 78.6%

3b2 – Timely reporting of stack test MDRs:
728/733 – 99.3%; National average 75.5%

3b3 – Timely reporting of enforcement MDRs:
211/230 – 91.7%; National average 76.1%

- Goal: 100% of data entered timely

State response The TCEQ appreciates the recognition of meeting 2011 commitments in this metric.

Recommendation

Element 4 — Completion of Commitments: Meeting all enforcement and compliance commitments made in state/EPA agreements.

Finding 4-1 Meets Expectations

Description Field Inspections and Complaint Response (PPG Strategy Code 03-01-01) and Enforcement and Compliance Support (PPG Strategy Code 03-01-02); List of Risk Based Investigation Strategy (RBIS) ranked air facilities and Air projected numbers for FY2011

Explanation TCEQ Field Operations continued its RBIS 3-year pilot, of which FY2011 was the third and final year. TCEQ projected a total of 209 on-site full compliance evaluations (FCEs) at Title V majors. In addition, TCEQ projected 389 on-site partial compliance evaluations (PCEs) to provide additional inspection coverage at Title V majors. The total number of Title V Annual Compliance Certifications (ACCs) to be reviewed was projected to be 1,600.

Relevant metrics File Metric 4A1 - Completed FCEs at 314 Title V Majors -150% of Commitment

State response The TCEQ appreciates the recognition of meeting 2011 commitments in this metric. Please note the RBIS method of planning investigations ended in 2011, and the TCEQ pursued and gained EPA's approval of an alternative CMS frequency in its place (discussed in Element 5).

Recommendation

Element 5 — Inspection Coverage: Completion of planned inspections.

Finding 5-1 Area for State Attention

Description Inspection Coverage: Degree to which State completed the universe of planned compliance evaluation.

Explanation FY2011 was third and final year of a RBIS Pilot Project. Texas projected FCEs at 209 facilities and actually conducted FCEs at 314, or 150.2%. The National Average is 90%, Texas also conducted onsite Partial Compliance Evaluations (PCEs) at 378 facilities, 919 offsite PCEs and reviewed 1574 Annual Compliance Certifications in order to provide an enforcement presence.

Texas submitted a draft Alternative CMS Plan for FY2012 on January 9, 2012 and again on November 7, 2012, and was approved by EPA on December 18, 2012. AFS has been updated consistent with the plan. The CMS Source Categories and Frequencies have been changed to reflect this plan.

Relevant metrics 5a – FCE Coverage Major, National Avg =88.6%, Texas=80.2
5b – FCE Coverage SM-80 – N/A, National Avg = 89.6%, Texas=0%
5c – FCE Coverage Synthetic Minors (non SM-80) – N/A, National Avg=61.8%, Texas=0%
5d – FCE Coverage Minors – N/A, National Avg = 36.7%, Texas=0%
5e – Review of the Title V Annual Compliance Certifications Completed, National Avg=72.5%, Texas = 85.9

National Goal for these Metrics= 100%

State response The TCEQ is committed to meeting the plan as approved, continuing into FY2014 and beyond.

Recommendation

Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.

Finding 6-1 Area for State Improvement

Description Air investigation reports do not consistently contain all the elements suggested by the Compliance Monitoring Strategy guidance or collect and document sufficient information to make a compliance determination for the facility.

TCEQ uses the date the Supervisor (generally the Air Section Manager in the Region) concurs on the Investigation Report as the date the investigation was approved not the actual on-site date. The AFS ICR requires an action be entered into AFS within 60 days of the date of the event.

Explanation Thirty-six Compliance Monitoring Reports (CMRs) and/or source files were evaluated during this review. Of the thirty-six, 28 were Full Compliance Evaluations (FCEs) and eight were Partial Compliance Evaluations (PCEs). Ten reports were missing applicable requirements and/or inventory/description of regulated emission units; the report listed specific conditions, not regulatory cites; it was unclear as to whether an FCE was conducted by reading the report; and/or there was insufficient information provided in report; accuracy of compliance determination unclear. Inspector references "approved exceptions" format.

Relevant metrics 6a – Documentation of FCE elements: $18/28 = 64.3\%$
6b – CMRs or facility files reviewed that provide sufficient documentation to determine the compliance of the facility – $26/28 = 92.9\%$

State response It appears too much information is being required for no discernible benefit. If compliance rates can be determined with 93% accuracy using only 64% of the information that EPA requires, why are additional elements needed?

Additionally, regarding the ten reports missing applicable requirements and/or inventory/description of regulated emission units, this information is in the permit, therefore, there is no need for an investigation report to repeat these items. This may be a situation where the FCE elements are located in documents other than the investigation report, such as the Title V permit, the Deviation Report, or the Permit Compliance Certification. Adding this type of information is redundant and not a good use of staff time to recapture information that is readily available from other existing resources.

The TCEQ and any regulatory agency with jurisdiction, can determine compliance with the information at hand, in a file and by requesting from the permit holder. Texas data in AFS will be a reflection of the FCE elements listed in the September 10, 2010, EPA Policy. In regards to the investigation in “approved exceptions” format, the report stated: “During the investigation, the report was documented using the approved “exceptions” format. Only alleged violations or areas of concern are documented in detail even though the scope of the investigation covered all applicable regulations and permit provisions. The absence of specific written details in this report denotes that the investigator found the permit holder to be in compliance.”

This is consistent with the manner that compliance is certified in Texas (by exception). The permit (annual) compliance certification is a statement made by the responsible official for the permit holder stating they are in compliance with the exception of the deviations reported. The investigation report is made in the same manner.

With respect to the date compliance was determined, the TCEQ uses the date the supervisor approves an investigation report to ensure a quality report and accurately allege violations with the best information at hand. The existing protocol requires a report approval within 60 days of the start date to meet the AFS ICR. On rare occasions, there are extenuating circumstances that cause the deadline to be exceeded. The investigation approval date has been the agreed date for Texas to use since the 2000s.

The use of the Approved Date of the Investigation was negotiated and agreed upon when the AFS Extract was under development in 2006. Due to the approved business practices of the Office of Compliance and Enforcement, an investigation is only official once approved. If that investigation includes an HPV that must be reported to EPA, use of the start date would often result in a significant loss of time between that date and the date that the Enforcement Division would receive a referral.

As per TCEQ standards, an investigation is not official until it is set to Approved. The approval date is the only acceptable choice given that until an investigation is reviewed and approved it is still a draft and this would be consistent and accurate in regard to the actual TCEQ compliance and enforcement process.

TCEQ requests the EPA adjust its definition to allow for the use of the Approved date as the start date or “day zero” for its timeliness purposes.

Recommendation

We recommend that the actual on-site date of the investigation/FCE be reported, not the date the supervisor signed the report, to be accurate. We recommend that TCEQ submit a plan with a timeframe to EPA to remedy the incorrect date being entered. We also recommend that sufficient information be provided in CMRs to make a compliance determination.

Element 7 — Identification of Alleged Violations: Compliance determinations accurately made and promptly reported in national database based on inspection reports and other compliance monitoring information.

Finding 7-1

Area for State Attention

Description

Compliance determinations accurately made and promptly reported in national database based on inspection reports and other compliance monitoring information.

Explanation

The SRF review team reviewed 28 CMRs and a correct compliance determination was made in 26 of 28. Accurate compliance determinations were made in 93% of inspection reports reviewed, but whenever NOVs were identified, corresponding pollutant compliance status was not changed in AFS. This may be a result of TCEQ not tracking violations at the pollutant level. We recommend that compliance monitoring information be reported to the national database and pollutant compliance status be updated per the MDRs for all violations, not just HPVs.

Relevant metrics

File Metric 7A – 26 of 28 CMRS - 93% accuracy of compliance determinations.

7b1 – Alleged Violations Reported per Informal Enforcement Actions (Tier I only)
54/88 – 61.4%; National Average 62.2%

7b2 – Alleged Violations Per Failed Stack Tests
6/10 – 60%; National Average 54%

7b3 – Alleged Violations per HPV Identified
55/87 – 63.2%; National Average 69.6%

- National Goal 100%

State response

The TCEQ reports violations through batch uploads of investigation results. Violations are not reported separately, and cases of multiple violations may be reported containing multiple pollutants. Because violations are not reported separately, pollutants are not reported separately and are not identified in the AFS upload from TCEQ. In addition, some HPVs are not associated to a single pollutant. This could be the case in an owner/operator violating a permit compliance certification deadline, or a requirement to obtain a Title V permit.

The TCEQ recommends continued discussions with EPA in resolving what may appear to be insignificant shortfalls to data expectations, while the TCEQ has successfully maintained a 93% success rate for element 7A, and the data reporting rate remains on par for the national average for elements 7b1-3.

Recommendation

Element 8 — Identification of SNC and HPV: Accurate identification of significant noncompliance and high-priority violations, and timely entry into the national database.

Finding 8-1 Meets Expectations

Description Identification of SNC and HPV: Degree to which the State accurately identifies significant noncompliance/high priority violations and enters data into the national data system.

Explanation TCEQ is to be commended for its rate of identification of HPVs. Although there were 87 facilities identified to be HPVs, there were 129 day zero actions added in FY2011.

Relevant metrics 8a – HPV Discovery Rate per Major Source Universe during the reporting year: 87/1211 – 7.2%

- National average 3.9%

8b – HPV Reporting Indicator at Majors with Failed Stack Tests 10/10 – 100%

- National average 20.5%

State response TCEQ will continue to accurately identify SNC and HPV and enter data into the national data system.

Recommendation

Element 9 — Enforcement Actions Promote Return to Compliance: Enforcement actions include required corrective action that will return facilities to compliance in specified timeframe.

Finding 9-1

Good Practice

Description

All 16 formal enforcement actions reviewed by EPA required corrective actions by the violator by a specified date. All 16 reviewed succeeded in getting a return to compliance, with issuance of an Administrative Order, with an administrative penalty, compliance schedule, and/or a supplemental environmental project. All 16 were HPVs. In every instance where a complying action was needed, TCEQ specified what actions were necessary and the time frame for completing those actions.

Explanation

Relevant metrics

9a – Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame: 16/16 = 100%

- National goal 100%

State response

TCEQ appreciates the recognition and distinction as warranting a “Good Practice” and will continue implement the TCEQs enforcement program in accordance with state laws, regulations, and the Commission Penalty Policy.

Recommendation

Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.

Finding 10-1 Area for State Improvement

Description Formal enforcement actions (Agreed Order) in Texas are not issued timely in accordance with the guidance of EPA’s HPV Policy in all cases, largely due to Texas’ administrative process necessitating approval by three full-time Commissioners that are appointed by the Governor to make final determinations on permitting and enforcement matters.

Explanation Under the HPV Policy, a timely action must occur within 270 days of the day zero (the date violations were identified plus 45 days/90 days if more information is required). An appropriate action must either address or resolve the violation (i.e., on a legally-enforceable and expeditious administrative or judicial order, or be the subject of a referral to the attorney general for further action). All state enforcement actions addressing HPVs should also assess civil penalties where applicable.

TCEQ enforcement responses are guided by its Enforcement Initiation Criteria. The response is either the issuance of a Notice of Violation by the Region office for minor violations or the initiation of a formal enforcement process for more serious violations. All HPV violations require formal enforcement action. Formal enforcement responses include an Agreed Order (AO); Contested Case Processing, Default Order (Executive Director’s petition to the State Hearings Office), referral to the State AG’s office, referral to EPA, and criminal action. All AOs are scheduled to be reviewed and approved/disapproved by the Commissioners prior to becoming effective.

Of the 16 enforcement files reviewed, nine were addressed timely (56.3%).

Overall, TCEQ’s timeliness has improved and we commend the state for this improvement. The data metrics indicate TCEQ timeliness has improved from 17% in 2005 to 61.4% in 2011.

Relevant metrics 10a – HPV cases which meet the timeliness goal of the HPV Policy 94/153, 61.4%. Of the 59 cases that were not addressed timely, 14 were addressed within 300 days. The remaining 45 cases all involved large, complex facilities with multiple processes and violations.

- National average 63.7%

State response

The primary reason that Texas does not consistently issue timely enforcement actions under EPA’s SNC guidance is because TCEQ is bound by the requirements outlined in state laws, regulations, and policies to provide due process. When a violation is identified that appears to warrant formal enforcement, an Enforcement Action Referral (EAR) is prepared, which is screened by the Enforcement Division. Typically a proposed Agreed Order, which contains administrative penalties and technical requirements, is then drafted and sent to the violator for consideration. If accepted and signed, the order is required under Texas Water Code Section 7.075, to be published in the *Texas Register* for 30 days to allow for public comment. After closure of the public comment period, the matter is then scheduled for consideration at the Commission Agenda. If approved by the Commission, the order is issued with an effective date. The process from the time the EAR is prepared to the Commission Agenda generally takes a minimum of 180 days; however, if agreement is not reached on the proposed order, the case is referred to the TCEQ Litigation Division for further action. There may be additional settlement negotiations, with the possibility of a higher penalty, and/or the case might be filed for administrative hearing. TCEQ can also refer cases to the Attorney General’s Office for civil or criminal prosecution.

In addition, numerous formal enforcement actions for HPVs at the same regulated entity may be combined and addressed in one agreed order with administrative penalties. As a result, TCEQ has a high settlement rate for addressing HPVs. During the negotiation process, a regulated entity may opt to participate in a supplemental environmental project (SEP) and/or may provide additional information for Texas’ consideration; therefore, a revised agreed order may have to be prepared and presented to the regulated entity for consideration. Although, this additional negotiation may delay the issuance of the agreed order, this practice has also attributed to the TCEQ’s high settlement rate, as well as providing funding for SEPs.

TCEQ recommends that EPA consider revising the HPV Policy to increase the number of days for timely action to 360 days and/or to revise the definition of the meaning of “timely action” to provide flexibility to states that are bound by their individual enforcement statutes and regulations.

Recommendation

We recommend that TCEQ and EPA discuss ways to further improve timeliness by examining other TCEQ enforcement responses that might be considered addressing actions under the HPV policy and as requested by TCEQ entering into discussion about allowing for flexibility within the HPV Policy.

Element 11 — Penalty Calculation Method: Documentation of gravity and economic benefit in initial penalty calculations using BEN model or other method to produce results consistent with national policy and guidance.

Finding 11-1 Meets Expectations

Description The Penalty Policy of the Texas Commission on Environmental Quality (Penalty Policy) guides TCEQ penalty calculations. The Policy divides violations into two categories: actual/potential harm and documentation/programmatic. It also distinguishes major from minor facilities. A base penalty amount is calculated from a set a matrices that consider the gravity of the violation (e.g., actual release, extent of deviation, etc.). The Policy calls for the calculation of economic benefit. If the calculated economic benefit is equal to or greater than \$15,000, the base amount is multiplied by 50% and that figure is then added to the base amount. For administrative air cases, the State’s statutory maximum is \$10,000 per violation per day for violations that occurred or were documented before September 1, 2011, and is \$25,000 per violation per day for violations that occurred or were documented on or after September 1, 2011.

Economic benefit and gravity are consistently included in the Penalty Calculation Worksheet (PCW)

Explanation EPA reviewed 16 enforcement actions, which all contained a penalty. In each file, penalty calculations, including gravity and economic, were documented. TCEQ does a good job of calculating both gravity and economic benefit in keeping with its penalty policy. From the 16 penalties reviewed, the penalties appeared to be comparable to the amount EPA’s penalty policy would generate notwithstanding the differences between the Agencies’ penalty policies (e.g., economic benefit thresholds and statutory maximum).

Relevant metrics 11a – Penalty calculations reviewed that consider and include gravity and economic benefit: 16/16 = 100%
National Goal 100%

State response TCEQ will continue to assess penalties in accordance with state laws, regulations, and the Commission Penalty Policy to ensure economic benefit is considered.

Recommendation

Element 12 — Final Penalty Assessment and Collection: Differences between initial and final penalty and collection of final penalty documented in file.

Finding 12-1 Meets Expectations

Description Texas’ AOs contain penalty amounts that have been negotiated with and agreed to by the Respondent.

Explanation All 16 final penalty actions reviewed were assessed in final AOs, approved by the Commissioners. The standard procedure calls for the calculation of a proposed penalty as described in element 11. The facility is offered a 20% reduction in the proposed penalty figure if it signs the AO. This 20% reduction was prorated across the gravity and economic benefit components in all the final penalties reviewed. TCEQ captures the two amounts in AFS as the penalty amount associated with the AO, and then enters a “penalty paid” action with the reduced amount as the penalty amount. Payment of the penalty is documented in the files, usually a letter to the Respondent acknowledging payment of the penalty and/or completion of all requirements of the AO

Relevant metrics 12a – Documentation on difference between initial and final penalty and rational: 16/16 = 100%
12b – Penalties collected: 16/16 = 100%

- National Goal 100%

State response TCEQ will continue to follow state laws, regulations, and policies to ensure the differences between initial and final penalty and collection of penalty are documented in the files.

Recommendation

Resource Conservation and Recovery Act Findings

Element 1 — Data Completeness: Completeness of Minimum Data Requirements.

Finding 1-1 Area for State Improvement

Description

FY2011 inspection data in RCRAInfo is inaccurate.

Out of the 652 inspections reflected in the FY2011 frozen data, 113 appear to be duplicate entries (i.e. same type of inspections conducted at the same facility on the same day). Some of these could be related to mislabeling of inspection types by state staff or duplicate entries due to known translation issues from the state data system into the National data system (RCRAInfo). TCEQ has indicated that some of the records in RCRAInfo identified as “duplicates” are accurate, and explained that two or more inspections were conducted at one facility on the same day. A list of records that EPA believes are inaccurate, have been provided to TCEQ.

The state provided information (obtained from their state data system), that reflects additional inspections conducted by the state for their 2011 grant year, that are not reflected in RCRAInfo. The facilities associated with these inspections do not have (and are not required to have) an EPA RCRA ID number and therefore cannot be uploaded into RCRAInfo. This is not considered an issue, but could skew calculations used in the State Review Framework data and the States total activities conducted during the Fiscal Year. This may be something that the State should think about as it relates to a true accounting of their activities recorded in the National Data systems.

Explanation

The translation issue was discussed in the previous TCEQ SRF. The state is aware of these issues and has recently obtained funding to resolve the translator issue. In the interim, the state has been diligently trying to correct the data manually in RCRAInfo, as the errors are identified. Some of the records identified by EPA as being duplicative or inaccurate are actually correct (i.e. two or more inspections being conducted at a single facility on the same day). TCEQ enters inspection information in an internal data system, the Consolidated Compliance and Enforcement Data System (CCEDS). Inspection data is entered based on internally defined work plan activity types that are conducted as part of an inspection. Several work plan activity types may be conducted during a single inspection and later entered into CCEDS as being associated to a single inspection. One example is a complaint inspection that also includes an evaluation of a container storage area as well as collecting a waste sample. This type of inspection would be reflected as three focused compliance

inspections (FCIs) in RCRAInfo since three CCEDS work plan activity types were associated to a single on-site inspection. TCEQ enters and tracks inspection data in CCEDS in this manner for reporting on performance measures and commitments that are required by the Texas Legislative Budget Board.

In the interest of consistency with how EPA defines inspection types in RCRAInfo, TCEQ made changes to the RCRAInfo extract in FY13. One change implemented is that ten FCIs that were translating as compliance evaluation inspections (CEIs) in RCRAInfo will translate as FCIs instead of CEIs. The other change is that FCIs that are conducted as a component of and in conjunction with a CEI will not upload to RCRAInfo. In this instance, only the CEI will be reflected in RCRAInfo.

Relevant metrics

- 1a1 - 91 Operating treatment, storage and disposal facilities (TSDFs)
- 1a2 - 1,364 Active large quantity generators
- 1a3 - 3,015 Active small quantity generators
- 1a4 - 6,516 All other active sites
- 1a5 - 896 Number of BR LQGs
- 1b1 - 500 number of sites inspected
- 1b2 - Number of inspections: 652
- 1c1 - 297 number of sites with new violations during review year
- 1c2 - 1,765 number of sites in violation at any time during the review year
- 1d1 - 246 number of sites with informal enforcement actions
- 1d2 - 367 number of informal enforcement actions
- 1e1 - 4 number of new sites with new SNCs during the year
- 1e2 - 44 number of sites in SNC regardless of determination date
- 1f1 - 72 number of sites with formal enforcement actions
- 1f2 - 82 number of formal enforcement actions
- 1g - \$6,899,837 total dollar amount of final penalties
- 1h - 54 number of final formal enforcement actions with penalties in last FY

State response

TCEQ Comments: The comments submitted by the TCEQ as part of the FY11 Data Verification Process should be considered during the SRF. It is unclear why data accuracy is being evaluated under Element 1, as this should be evaluated under Element 2.

Number of Inspections: Regarding the 652 inspections reflected in the FY2011 frozen data set, it should be noted that 652 reflects the number of inspections reflected in ECHO, not in RCRAInfo. ECHO does not reflect

Record Reviews; therefore, sites that were inspected via only a Record Review are not included in the 652. The 652 also does not reflect the number of inspections conducted at facilities that do not have EPA ID numbers, such as conditionally exempt small quantity generators (CESQGs). This issue is an EPA data limitation in that it is a limitation of RCRAInfo that a facility must have an EPA ID for an inspection conducted at the facility to upload to RCRAInfo. Because CESQGs are not required to have an EPA ID, the regulated entities may not be in favor of the TCEQ assigning EPA IDs to them just so that our investigations are reflected in RCRAInfo. TCEQ recommends that EPA add applicable fields to include these types of situations.

Duplicate Inspections: The list of “duplicate” records that EPA provided are not duplicates, but rather a result of how TCEQ enters inspection information into CCEDS. Inspection data is entered based on internally defined work plan activity types that are conducted as part of an inspection. Several work plan activity types may be conducted during a single inspection and later entered into CCEDS as being associated to a single inspection. TCEQ enters and tracks inspection data in CCEDS in this manner for reporting on performance measures and commitments that are required by the Texas Legislative Budget Board.

Translation Issue: TCEQ made changes to the RCRAInfo extract in FY13. One change implemented is that ten FCIs that were translating as CEIs in RCRAInfo will translate as FCIs instead of CEIs. The other change is that FCIs that are conducted as a component of and in conjunction with a CEI will not upload to RCRAInfo. In this instance, only the CEI will be reflected in RCRAInfo. These changes will help to alleviate some of the appearance of “duplicate” inspections, as discussed above. TCEQ does not believe changing past information that is related to the translation issues that have now been addressed is appropriate.

Additionally, TCEQ would like to reiterate that frequent changes to data requirements, and/or data limitations continue to cause data issues for States and the EPA. TCEQ requests that the EPA work with states to come up with a five year plan to and agree upon a set of data metrics that will be not be changed for the full five year period. Having set standards for a five year period would allow for states to properly research, develop, fund and implement data changes in a more efficient manner for both the EPA and States.

Recommendation

EPA recommends that TCEQ continue to manually correct the inaccuracies or missing data in RCRAInfo, train staff on correctly coding actions, and

correct the coding used to translate data from the state data system to RCRAInfo. The State should provide a plan to the Region that includes timelines and activities that will address the areas of concern identified above and report the status to the Region on a quarterly basis. In addition, the Region and TCEQ with consultation from HQ's, need to discuss the state's rationale for entering numerous inspections for a single facility on a single day and whether this meets the guidance outlined in the EPA Compliance Monitoring Strategy.

Element 2 — Data Accuracy: Accuracy of Minimum Data Requirements.

Finding 2-1 Area for State Improvement

Description Inspection and enforcement data in RCRAInfo is inaccurate and incomplete.

Explanation Data for FY2011 shows 1,474 long standing secondary violators that are reflected as not having returned to compliance. The state has indicated that some of these are due to the translation issue (mentioned in Element 1 and throughout the rest of this document), a small number are under long-term compliance, and the majority are violations that were predetermined prior to 1998 and pre-date the current state database, and thus have never been updated with data that would show the facility is now in compliance. Additionally, there were some inspections that were not entered, a SNC designation was entered for a facility in error (involves a facility that was designated by the state as an SV but a SNC code was entered into RCRAInfo) and a SNC designation was not entered into RCRAInfo for a facility that EPA believes warrants a SNC status. 9 out of the 34 facilities reviewed had an issue with inaccurate entry of data. Most of these were related to mislabeling of inspection types in RCRAInfo or duplicate entries due to translation issues from the state data system into RCRAInfo. A small number were attributed to inaccurate coding by staff or no entry at all. EPA provided a list of the records that appear to be inaccurate to TCEQ.

These findings were identified in the prior SRF review. The state has been working on these issues and funding became available in FY12 to utilize contractors to re-write the code that translates and uploads data from the state data system into RCRAInfo.

Relevant metrics 2a – 1,474 Long-standing secondary violators
2b – Accurate entry of mandatory data (Goal is 100%, TCEQ=76.5%)
8c – Appropriate SNC identification. (Goal is 100%, TCEQ=66.7%)

The state is aware of both of these issues and has recently obtained funding to resolve the translator issue. In the interim, the state has been diligently trying to correct the data manually in RCRAInfo, as the errors are identified. For long standing secondary violators some of these violations are associated with long-term compliance schedule enforcement cases, but the majority, are not. The state is currently trying to determine the best way to address the long standing SV violator's issue.

State response

General Comments: The comments submitted by the TCEQ as part of the FY11 Data Verification Process should be considered during the SRF. It is unclear why data completeness is being evaluated under Element 2, as this should be evaluated under Element 1.

Long Standing Secondary Violators: There is no relation to the long standing secondary violators and the translation issue discussed in Element 1. TCEQ will continue to discuss options internally regarding the long standing SVs and train staff on correct entry where applicable.

SNC Designation: Regarding the inspection conducted at Sweetwater, after carefully evaluating all the case specific factors, the TCEQ determined that the case did not warrant a SNC designation based on the inspection findings; however, the SV designation may be elevated to a SNC if the facility does not come into compliance within the specified timeframe. TCEQ will continue to discuss options internally regarding SNC designation and train staff on correct entry where applicable.

Data Entry: TCEQ is unclear on what is meant by “some inspections that were not entered”. As discussed in the State response under Element 1, inspections conducted at facilities that do not have EPA ID numbers will not be reflected in RCRAInfo.

Data Accuracy: TCEQ is unclear on what is meant by “mislabeling of inspection types in RCRAInfo”. As discussed in the State response under Element 1, TCEQ made changes to the RCRAInfo extract in FY13. One change implemented is that ten FCIs that were translating as CEIs in RCRAInfo will translate as FCIs instead of CEIs. The other change is that FCIs that are conducted as a component of and in conjunction with a CEI will not upload to RCRAInfo. In this instance, only the CEI will be reflected in RCRAInfo. TCEQ is unclear on what is meant by “inaccurate coding by staff or no entry at all”. The TCEQ is aware of the FCIs that were translating incorrectly as CEIs, but not aware of inaccurate coding by staff. TCEQ does not believe changing past information that is related to the translation issues that have now been addressed is appropriate.

As previously stated frequent changes to data requirements, and/or data limitations continue to cause data issues for States and the EPA. In addition, TCEQ requests that the EPA work with states to come up with a five year plan to and agree upon a set of data metrics that will be not be changed for the full five year period. Having set standards for a five year period would allow for states to properly research, develop, fund and implement data changes in a more efficient manner for both the EPA and States.

Recommendation

EPA recommends that TCEQ continue to manually correct the inaccuracies or missing data in RCRAInfo, train staff on correctly coding actions, correct the coding used to translate data from the state data system to RCRAInfo and develop a plan to begin addressing the long standing SV's. The State should provide a plan to the Region that includes timelines and activities that will address the areas of concern identified above and report the status to the Region on a quarterly basis.

Element 3 — Timeliness of Data Entry: Timely entry of Minimum Data Requirements.

Finding 3-1 Area for State Improvement

Description Minimum data requirements are not being entered timely for some actions.

Explanation Minimum data requirements for 29 out of the 34 files reviewed were entered timely. Issues found during review involved the following untimely entry (lack of) of returned to compliance dates, inspections not entered timely, SNC not entered timely (this involves a facility that was designated by the state as an SV and EPA believes it should be a SNC (we believe this is more of a data issue than a SNC vs SV interpretation, as well as some enforcement actions not being entered timely.

Relevant metrics 3a – Timely entry of mandatory data: (Goal 100%; State = 85.3%)
2b – Accurate entry of mandatory data (Goal is 100%, TCEQ=76.5%)
8c – Appropriate SNC designation (Goal is 100%, TCEQ=66.7%)

State response Inspections: As discussed under Element 6, the two inspections that did not meet the 60 day requirement for completion, (2 out of 40 exceeded 60 days for completion) there was sufficient documentation in the file to justify the delay in the completion of the reports.

Returned to Compliance Dates: TCEQ will continue to discuss options internally regarding the long standing SVs and train staff on correct entry where applicable.

SNC Designation: Regarding the inspection conducted at Sweetwater, after carefully evaluating all the case specific factors, the TCEQ determined that the case did not warrant a SNC designation based on the inspection findings; however, the SV designation may be elevated to a SNC if the facility does not come into compliance within the specified timeframe. TCEQ will continue to discuss options internally regarding SNC designation and train staff on correct entry where applicable

Recommendation EPA recommends that TCEQ continue to manually correct the inaccuracies or missing data in RCRAInfo, train staff on correctly coding actions, and correct the coding used to translate data from the state data system to RCRAInfo. The State should provide a plan to the Region that includes timelines and activities will address the areas of concern identified above and report the status to the Region on a quarterly basis.

Element 4 — Completion of Commitments: Meeting all enforcement and compliance commitments made in state/EPA agreements.

Finding 4-1 Meets Expectations

Description The state met all enforcement and compliance commitments.

Explanation The TCEQ was allowed to deviate from the prescribed investigation frequencies outlined in the Compliance Monitoring Strategy under their Risk Based Investigation Strategy (RBIS) 3 year pilot project. Under RBIS, TCEQ established a 3 year maximum time between full compliance evaluation inspections at TSDFs. The RBIS program ranked all permitted or registered facilities in the State in a specific program based on that facility's risk related to all other facilities in that specific universe. TCEQ committed to conduct 900 total inspections during their 2011 grant period. They conducted 1,190 total inspections (this number includes all inspections at all facilities including those that do not have an EPA ID and thus would not be reflected in RCRAInfo.) This number was obtained from the State from information pulled from their State database.

4a1 – TSDF's: committed to inspect 46 facilities, inspected 46 facilities

4a4 – LQG's: committed to inspect 180 facilities, inspected 182 facilities

4a5 - SQG's: no commitment, conducted 79 facilities

4a6 – CESQG's: no commitment, inspected 123 facilities

4a7 – Not Any: no commitment, inspected 88 facilities

4a8 – Transporters: no commitment, inspected 10 facilities

The TCEQ provides an annual report describing key aspects of supplemental environmental projects approved by TCEQ which are available to EPA and the public (via their State website), as committed to under “planned non-inspections” (metric 4b).

Relevant metrics 4a – Planned inspections completed: Goal 100%; State = 100%
4b – Planned non-inspection commitments completed: Goal 100%; State = 100%

State response The TCEQ will continue to meet all enforcement and compliance commitments.

Recommendation

Element 5 — Inspection Coverage: Completion of planned inspections.

Finding 5-1 Meets Expectations

Description TCEQ met the inspection coverage of the various facility universes, as required in either the RCRA Compliance Monitoring Strategy, National Program Managers Guidance or their Risk Based Investigation Strategy.

Explanation The TCEQ was allowed to deviate from the prescribed investigation frequencies outlined in the Compliance Monitoring Strategy under their Risk Based Investigation Strategy (RBIS) 3 year pilot project. Under RBIS, TCEQ established a 3 year maximum time between full compliance evaluation inspections at TSDFs. The RBIS program ranked all permitted or registered facilities in the State in a specific program based on that facility's risk (based on a number of risk factors) related to all other facilities in that specific universe.

Relevant metrics

- 5a – Two year inspection coverage for operating TSDFs: Goal = 100% of operating TSDFs; National Average = 89.4%; State = 81.3%
- 5b – Annual inspection coverage for LQGs: Goal = 20% or 100% of alternative commitment; National Average = 22.6%; State = 18.6%
- 5c – Five-year inspection coverage of LQGs: Goal = 100% of LQGs or 100% of alternative commitment; National Average = 62.9%; State = 58.3
- 5d – Five-year inspection coverage for active SQGs: National Average = 11%; State = 13.6
- 5e1 – Five year inspection coverage at other sites (CESQGS): State = 602
- 5e2 – Five year inspection coverage at other sites (Transporters): State = 258
- 5e3 – Five year inspection coverage at other sites (Non-notifiers): State = 7

Five additional TSDFs were inspected in Fiscal Year 2009, and one in Fiscal Year 2010; therefore, the TCEQ's inspection coverage for operating TSDFs for the last 3 Fiscal Years under the RBIS 3 year pilot project was 89.2%. As part of the Data Verification Process for Fiscal Year 2011 data, TCEQ verified the number of operating TSDFs in the state by evaluating the accuracy of the TSDF unit operating status, and corrected inaccurate information in RCRAInfo.

State response The TCEQ will continue to meet inspection coverage compliance commitments.

Recommendation

Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.

Finding 6-1 Meets Expectations

Description 100% of the FY2011 inspections reviewed were complete and sufficient to determine compliance.

95% of the FY2011 inspections reviewed were within the timeliness guidelines required by TCEQ (within 60 days)

Explanation 100% of the FY2011 inspections (34 inspections reviewed) were complete and provided excellent documentation (photos, site maps, process diagrams, inspector observations, statements made by facility personnel, process and site descriptions, copies of facility documents pertinent to the inspection) to determine compliance.

94.1% of the FY2011 inspections reviewed, met the 60 day requirement as outlined in the TCEQ Field Operations Division Standard Operating Procedure – Investigation Guidance (with the average being within 30 days or less). For the two inspections that did not meet the 60 day requirement for completion, (2 out of 40 exceeded 60 days for completion) there was sufficient documentation in the file to justify the delay in the completion of the reports.

Relevant metrics 6a – Inspection reports complete and sufficient to determine compliance: Goal 100%; State 100%
6b – Timeliness of inspection report completion: Goal 100%; State 94.1%

State response The TCEQ will continue to meet inspection coverage compliance commitments.

Recommendation

Element 7 — Identification of Alleged Violations: Compliance determinations accurately made and promptly reported in national database based on inspection reports and other compliance monitoring information.

Finding 7-1 Area for State Attention

Description SNC Identification

Explanation One SNC not correctly coded in the National Data System. This involves a facility that was designated by the state in the National Data system as an SV, however, EPA believes based on the review of the documents that the violations found and level of non-compliance would meet the definition of a SNC. (This could potentially be a data entry issue.) In addition, a SNC action was entered for a facility in error, due to a coding error. This entry has been corrected by the State.

Relevant metrics 7a – Accurate compliance determinations: Goal = 100%; State = 94.1%
7b – Violations found during inspections: National Average = 32.5%;
State = 50.4%

State response SNC Designation: Regarding the inspection conducted at Sweetwater, after carefully evaluating all the case specific factors, the TCEQ determined that the case did not warrant a SNC designation based on the inspection findings; however, the SV designation may be elevated to a SNC if the facility does not come into compliance within the specified timeframe. TCEQ will continue to discuss options internally regarding SNC designation and train staff on correct entry where applicable.

Recommendation

Element 8 — Identification of SNC and HPV: Accurate identification of significant noncompliance and high-priority violations, and timely entry into the national database.

Finding 8-1

Area for State Attention

Description

One facility designated as an SNC was a data entry error. One facility designated as a SV in the National Data System is believed by the Region to warrant designation as an SNC.

Explanation

FY2011 frozen data from OTIS indicated that 4 Significant Non-Compliers were identified during this period. However, one facility was identified as a SNC in error. Thus lowering the number of actual SNCs identified in FY2011 to 3, which is a .6% SNC identification rate.

Relevant metrics

8a – SNC identification rate: Goal = .8% (half of National Average); National Average = 1.6%; State = .8%
8b – Timeliness of SNC determinations: Goal = 100%; National Average = 81.7%; State = 100%
8c – Appropriate SNC determination: Goal=100% of files with appropriate determination of SNC, TCEQ=67%

State response

SNC Designation: Regarding the inspection conducted at Sweetwater, after carefully evaluating all the case specific factors, the TCEQ determined that the case did not warrant a SNC designation based on the inspection findings; however, the SV designation may be elevated to a SNC if the facility does not come into compliance within the specified timeframe. TCEQ will continue to discuss options internally regarding SNC designation and train staff on correct entry where applicable.

Recommendation

Element 9 — Enforcement Actions Promote Return to Compliance: Enforcement actions include required corrective action that will return facilities to compliance in specified timeframe.

Finding 9-1 Meets Expectations

Description Enforcement actions promote return to compliance.

Explanation All SNC enforcement action files that were reviewed contained formal enforcement and documented that the site had returned to compliance, under an ongoing enforcement action or complying with a compliance schedule.

Relevant metrics 9a – Enforcement that returns SNC sites to compliance: Goal 100%; State = 100%

State response TCEQ will continue to focus on ensuring all enforcement actions promote a violator’s return to compliance.

Recommendation

Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.

Finding 10-1

Area for State Attention

Description

State issued initial formal enforcement to SNC's within 360 days, however, issuance of final formal enforcement is not timely.

Explanation

Data for metric 10a for FY2011 data reflects a count of 4 SNC designations (from previous years) that were addressed with a formal enforcement action or referral in the review year within 360 days for a 100% achievement of the goal for this metric. However, the count is inaccurate due to duplicate SNY entries for the same facility on the same day. The correct count for this metric should be 2. Although initial formal enforcement actions were issued to these 2 facilities within 360 days, the 2003 Hazardous Waste Civil Enforcement Response Policy (ERP) allows 360 days from the first day of the inspection (day zero) for "final" formal enforcement to be issued or referral to EPA or the state Attorney General. Final formal enforcement for one of these facilities was issued approximately 691 days after day zero and the other facility has not been issued final enforcement to date (approximately 635 days from day zero). The ERP identifies a ceiling of 20% per year for exceedances to the established timeframes, with discussions between the state and EPA about complexity and alternate timeframes for issuance of enforcement. Discussions between the state and Region 6 should be initiated relative to exceedances for the established enforcement timeframes and the process for requesting an alternative enforcement schedule for difficult enforcement cases, as outlined in the ERP

Relevant metrics

10a – Timely enforcement taken to address SNC: Goal = 80%; National Average 81.8%; State = 100% (this metric measures any formal enforcement, not just final formal enforcement)
10b – Appropriate enforcement taken to address violations: Goal = 100%; State = 100%
2b – Accurate entry of mandatory data: Goal=100%, Texas=76.5%

State response

The primary reason that Texas does not consistently issue timely enforcement actions under EPA's SNC guidance is because TCEQ is bound by the requirements outlined in state laws, regulations, and policies to provide due process. When a violation is identified that appears to warrant formal enforcement, an Enforcement Action Referral (EAR) is

prepared, which is screened by the Enforcement Division. Typically a proposed Agreed Order, which contains administrative penalties and technical requirements, is then drafted and sent to the violator for consideration. If accepted and signed, the order is required under Texas Water Code Section 7.075, to be published in the *Texas Register* for 30 days to allow for public comment. After closure of the public comment period, the matter is then scheduled for consideration at the Commission Agenda. If approved by the Commission, the order is issued with an effective date. The process from the time the EAR is prepared to the Commission Agenda generally takes a minimum of 180 days; however, if agreement is not reached on the proposed order, the case is referred to the TCEQ Litigation Division for further action. There may be additional settlement negotiations, with the possibility of a higher penalty, and/or the case might be filed for administrative hearing. TCEQ can also refer cases to the Attorney General's Office for civil or criminal prosecution.

In addition, numerous formal enforcement actions for HPVs at the same regulated entity may be combined and addressed in one agreed order with administrative penalties. As a result, TCEQ has a high settlement rate for addressing HPVs. During the negotiation process, a regulated entity may opt to participate in a supplemental environmental project (SEP) and/or may provide additional information for Texas' consideration; therefore, a revised agreed order may have to be prepared and presented to the regulated entity for consideration. Although, this additional negotiation may delay the issuance of the agreed order, this practice has also attributed to the TCEQ's high settlement rate, as well as providing funding for SEPs.

TCEQ recommends that EPA consider revising the HPV Policy to increase the number of days for timely action to 360 days and/or to revise the definition of the meaning of "timely action" to provide flexibility to states that are bound by their individual enforcement statutes and regulations.

Recommendation

Element 11 — Penalty Calculation Method: Documentation of gravity and economic benefit in initial penalty calculations using BEN model or other method to produce results consistent with national policy and guidance.

Finding 11-1 Meets Expectations

Description 100% of all FY2011 penalty calculations reviewed included gravity and economic benefit consistent with national policy and guidance.

Explanation 100% of all FY2011 penalty calculations reviewed (17) included gravity and economic benefit and were documented by a worksheet used by TCEQ enforcement staff. All of the calculations reviewed were consistent with national policy and guidance.

Relevant metrics 11a – Penalty calculations include gravity and BEN as appropriate:
Goal =100%; State =100%

State response TCEQ will continue to assess penalties in accordance with state laws, regulations, and the Commission Penalty Policy to ensure economic benefit is considered.

Recommendation

Element 12 — Final Penalty Assessment and Collection: Differences between initial and final penalty and collection of final penalty documented in file.

Finding 12-1 Meets Expectations

Description 100% of the FY2011 penalties reviewed that involved differences, contained documentation in the file that identified the reduction and rationale. 100% of the FY2011 penalties that had been fully collected at the time of this review had documentation of collection.

Explanation Seventeen FY2011 formal enforcement actions were reviewed.

Twelve of the seventeen actions reviewed, had no difference between the initial penalty amount and the final penalty amount assessed. The remaining five actions did involve a reduction from the initial amount assessed. Documentation was included in each of those files, with one being adjusted for good faith and expedited settlement and the other four being adjusted for expedited settlement.

TCEQ's Financial Administration Office tracks the official payment of penalties and provides that information to the TCEQ RCRA program office. Two of the seventeen files reviewed had documentation in the actual program file to indicate collection of the penalty. However, upon request, the TCEQ's Financial Administration Office provided a report on the status of issued and collected penalties, for the files reviewed. Of the seventeen actions reviewed, nine were documented as being collected in full, two were being paid on a payment plan and were current, but not completed yet, three had been defaulted on, for which TCEQ was perusing enforcement to address, two of the facilities had since been abandoned and had been referred to the Superfund and/or Attorney General's office for further action and one had not been finalized. Although, some of the penalty actions reviewed have not been collected in full for various reasons, there is documentation available as to the status of those penalties. State should provide a better process in-house to report collection of penalties in RCRAinfo.

Relevant metrics 12a – Documentation on difference between initial and final assessed penalty: Goal = 100%; State = 100%

12b – Penalties collected: Goal =100%, State=52.9%

State response TCEQ will continue to follow state laws, regulations, and policies to ensure the differences between initial and final penalty and collection of penalty are documented in the files.

Recommendation

Appendix A: Data Metric Analysis

Attached below are the results of the SRF data metric analyses. All data metrics are analyzed prior to the on-site file review. This provides reviewers with essential advance knowledge of potential problems. It also guides the file selection process as these potential problems highlight areas for supplemental file review.

The initial findings are preliminary observations. They are used as a basis for further investigation during the file review and through dialogue with the state. Where applicable, this analysis evaluates state performance against the national goal and average. Final findings are developed only after evaluating the data alongside file review results and details from conversations with the state. Through this process, initial findings may be confirmed or modified. Final findings are presented in Section III of this report.

Clean Water Act

SRF Round 3 Data Metric Analysis - CWA FY 2011 Frozen Data											
Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Texas	Count	Universe	Not Counted	Initial Observations	Explanation
1a1	Number of Active NPDES Majors with Individual Permits	Data Verification	State			630				Needs State Attention	State QA/QC
1a2	Number of Active NPDES Majors with General Permits	Data Verification	State			0				Meets Requirements	
1a3	Number of Active NPDES Non-Majors with Individual Permits	Data Verification	State			2200				Meets Requirements	
1a4	Number of Active NPDES Non-Majors with General Permits	Data Verification	State			1758				Meets Requirements	
1b1	Permit Limits Rate for Major Facilities	Goal	State	>= 95%	98.6%	99.2%	625	630	5	Meets Requirements	
1b2	DMR Entry Rate for Major	Goal	State	>= 95%	96.5%	99.5%	21220	21332	112	Meets Requirements	

	Facilities.										
1b3	Number of Major Facilities with a Manual Override of RNC/SNC to a Compliant Status	Data Verification	State			4					Meets Requirements
1c1	Permit Limits Rate for Non-Major Facilities	Informational only	State		66.1%	96.5%	2124	2200	76		Meets Requirements
1c2	DMR Entry Rate for Non-Major Facilities.	Informational only	State		72.6%	93.5%	34494	36906	2412		Meets Requirements
1e1	Facilities with Informal Actions	Data Verification	State			980					Meets Requirements
1e2	Total Number of Informal Actions at CWA NPDES Facilities	Data Verification	State			1625					Meets Requirements
1f1	Facilities with Formal Actions	Data Verification	State			48					Meets Requirements
1f2	Total Number of Formal Actions at CWA NPDES Facilities	Data Verification	State			48					Meets Requirements
1g1	Number of Enforcement Actions with Penalties	Data Verification	State			48					Meets Requirements
1g2	Total Penalties Assessed	Data Verification	State			\$1,591,785					Meets Requirements
2a1	Number of formal enforcement actions, taken against major facilities, with enforcement violation type codes entered.	Data Verification	State		95%	32					Meets Requirements
5a1	Inspection Coverage - NPDES Majors	Goal metric	State	100% of state specified CMS Plan commitment	54.4%	44.6%	281	630	349	Needs State Attention	Additional Data in State Database (582/48.3%)

5b1	Inspection Coverage - NPDES Non-Majors	Goal metric	State	100% of state specified CMS Plan commitment	23.7%	8%	175	2200	2025	Needs State Attention	Additional Data in State Database
5b2	Inspection Coverage - NPDES Non-Majors with General Permits	Goal metric	State	100% of state specified CMS Plan commitment	19.2%	.1%	1	0	1770	Needs State Attention	Additional Data in State Database
7a1	Number of Major Facilities with Single Event Violations	Data Verification	State			7				Meets Requirements	
7a2	Number of Non-Major Facilities with Single Event Violations	Informational only	State			8				Meets Requirements	
7b1	Compliance schedule violations	Data Verification	State			7				Meets Requirements	
7c1	Permit schedule violations	Data Verification	State			26				Meets Requirements	

7d1	Major Facilities in Noncompliance	Review Indicator	State		71.2%	67.9%	428	630	202	Needs State Attention	State QA/QC. TCEQ INPUT: The TCEQ Compliance Monitoring Procedures have remained relatively the same as agreed upon and specified in the EPA/TCEQ NPDES MOU. Procedural adjustments have been made to accommodate for changes in State and Federal policies and requirements. TCEQ Enforcement Compliance Monitoring staff conduct bi-quarterly Coordinator QNCR (Quarterly Noncompliance Report) reviews of DMRs and Compliance Reports to determine if the required reports are submitted timely, completely, accurately, and within permitted limitations for all delegated Major and Federally Granted (92-500 Minor) permittees. Bi-Quarterly QNCR reviews are initiated on or at the earliest available ICIS RNC/QNCR run schedule date in order to evaluate the most currently detected noncompliance violations. Upon QNCR identification, all outstanding noncompliance violations are addressed within 30 days, in which permittees are directly requested to comply with all non-reporting violations either written or verbally within 7 to 14 days of notification. Any subsequent or noncompliance non-reporting requests are either requested again or evaluated for formal enforcement. All effluent violations that meet or exceed Federal Significant Noncompliance Criteria (SNC) are referred for formal enforcement. All formal and informal actions are documented in ICIS-NPDES. In addition to bi-quarterly QNCR reviews, TCEQ staff also conducts quarterly Selective QNCR and CWA Watch List compliance monitoring reviews in coordination with EPA Region 6.
7f1	Non-Major Facilities in Category 1 Noncompliance	Data Verification	State			1596				Meets Requirements	
7g1	Non-Major Facilities in Category 2 Noncompliance	Data Verification	State			251				Meets Requirements	

7h1	Non-Major Facilities in Noncompliance	Informational only	State			84.4%	1857	2200	343	Needs State Attention	State QA/QC <i>TCEQ INPUT: Given the vast quantity of noncompliance violations for non-major facilities the TCEQ Enforcement Compliance Monitoring staff initiate compliance and enforcement reviews focusing on the most significant effluent and/or non-reporting violations. Approximately since late 2008, TCEQ compliance monitoring staff receives weekly compliance review assignments in which they assess whether noncompliance reporting or significant effluent violations warrant formal or informal enforcement action. During the screening, Federal SNC standards are applied to non-major effluent noncompliances. For non-reporting violations, permittees with 4 or more whole missing effluent reports (for the same outfall or limit set) within a 12 month period are reviewed for formal enforcement consideration. Non-reporting violations that are less than the 4 or more missing threshold are addressed with informal enforcement action. All formal and informal actions are documented in ICIS-NPDES.</i>
8a1	Major Facilities in SNC	Review indicator metric	State			230				Needs State Attention	State QA/QC <u>See 7d1 Explanation</u>
8a2	Percent of Major Facilities in SNC	Review indicator metric	State		22.3%	36.2%	230	636	406	Needs State Attention	State QA/QC <u>See 7d1 Explanation</u>

10a1	Major facilities with Timely Action as Appropriate	Goal metric	State	98%		13.8%	11	80	69	Needs State Attention	<p><i>TCEQ INPUT: The length of time it takes TCEQ to process enforcement cases is bound by the processes outlined in state laws, regulations, and policies. When a violation is identified that appears to warrant enforcement, an Enforcement Action Referral (EAR) is prepared, which is screened by the Enforcement Division. Typically a proposed Agreed Order, which contains administrative penalties and technical requirements, is then drafted and sent to the violator for consideration. If accepted and signed, the order is published in the Texas Register for public notice, and then scheduled for consideration at the Commission Agenda. If approved by the Commission, the order is issued with an effective date. The process from the time the EAR is prepared to the Commission Agenda generally takes a minimum of 180 days; however, if agreement is not reached on the proposed order, the case is referred to the TCEQ Litigation Division for further action. There may be additional settlement negotiations, with the possibility of a higher penalty, and/or the case might be filed for administrative hearing. TCEQ can also refer cases to the Attorney General's Office for civil or criminal prosecution.</i></p> <p><i>Under TCEQ's enforcement process, described above, it is difficult for the TCEQ to consistently meet the Federal criteria for timely action. In accordance with the NPDES Program Assumption Memorandum of Agreement, TCEQ notifies EPA Region 6 in writing if it will not meet the EPA timely criteria and provides an alternate schedule.</i></p>
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Clean Air Act

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Texas	Count	Universe	Not Counted	Initial Finding	Explanation
1a1	Number of Active Major Facilities (Tier I)	Data Verification	State			1211				Meets Requirements	
1a2	Number of Active Synthetic Minors (Tier I)	Data Verification	State			0				State Attention	TCEQ is aware of issue and working on database solution
1a3	Number of Active NESHAP Part 61 Minors (Tier I)	Data Verification	State			24				Meets Requirements	
1a4	Number of Active CMS Minors and Facilities with Unknown Classification (Not counted in metric 1a3) that are Federally-Reportable (Tier I)	Data Verification	State			91				State Attention	EPA to QA
1a5	Number of Active HPV Minors and Facilities with Unknown Classification (Not counted in metrics 1a3 or 1a4) that are Federally-Reportable (Tier I)	Data Verification	State			21				State Attention	EPA to QA
1a6	Number of Active Minors and Facilities with Unknown Classification Subject to a Formal Enforcement Action (Not counted in metrics 1a3, 1a4 or 1a5) that are Federally-Reportable (Tier II)	Data Verification	State			37				State Attention	EPA to QA
1b1	Number of Active Federally-Reportable NSPS (40 C.F.R. Part 60) Facilities	Data Verification	State			949				Meets Requirements	
1b2	Number of Active Federally-Reportable NESHAP (40 C.F.R. Part 61) Facilities	Data Verification	State			218				Meets Requirements	
1b3	Number of Active Federally-Reportable MACT (40 C.F.R. Part 63) Facilities	Data Verification	State			637				Meets Requirements	
1b4	Number of Active Federally-Reportable Title V Facilities	Data Verification	State			1359				Meets Requirements	
1c1	Number of Tier I Facilities with an FCE (Facility Count)	Data Verification	State			248				Meets Requirements	
1c2	Number of FCEs at Tier I Facilities (Activity Count)	Data Verification	State			250				State Attention	QA with 1c1 above
1c3	Number of Tier II Facilities with FCE (Facility Count)	Data Verification	State			2				Meets Requirements	

1c4	Number of FCEs at Tier II Facilities (Activity Count)	Data Verification	State			2				Meets Requirements	
1d1	Number of Tier I Facilities with Noncompliance Identified (Facility Count)	Data Verification	State			260				Meets Requirements	
1d2	Number of Tier II Facilities with Noncompliance Identified (Facility Count)	Data Verification	State			7				Meets Requirements	
1e1	Number of Informal Enforcement Actions Issued to Tier I Facilities (Activity Count)	Data Verification	State			121				Inconclusive	EPA to QA/QC
1e2	Number of Tier I Facilities Subject to an Informal Enforcement Action (Facility Count)	Data Verification	State			88				Inconclusive	EPA to QA/QC
1f1	Number of HPVs Identified (Activity Count)	Data Verification	State			127				Meets Requirements	
1f2	Number of Facilities with an HPV Identified (Facility Count)	Data Verification	State			90				Meets Requirements	
1g1	Number of Formal Enforcement Actions Issued to Tier I Facilities (Activity Count)	Data Verification	State			109				Meets Requirements	
1g2	Number of Tier I Facilities Subject to a Formal Enforcement Action (Facility Count)	Data Verification	State			70				Meets Requirements	
1g3	Number of Formal Enforcement Actions Issued to Tier II Facilities (Activity Count)	Data Verification	State			0				Meets Requirements	
1g4	Number of Tier II Facilities Subject to a Formal Enforcement Action (Facility Count)	Data Verification	State			0				Meets Requirements	
1h1	Total Amount of Assessed Penalties	Data Verification	State			\$4,149,216				Meets Requirements	
1h2	Number of Formal Enforcement Actions with an Assessed Penalty	Data Verification	State			108				State Attention	QA with 1g1 above
1i1	Number of Stack Tests with Passing Results	Data Verification	State			707				Meets Requirements	
1i2	Number of Stack Tests with Failing Results	Data Verification	State			26				Meets Requirements	
1i3	Number of Stack Tests with Pending Results	Data Verification	State			0				No Activity	
1i4	Number of Stack Tests with No Results Reported	Data Verification	State			0				No Activity	

1i5	Number of Stack Tests Observed & Reviewed	Data Verification	State			125				Meets Requirements	
1i6	Number of Stack Tests Reviewed Only	Data Verification	State			608				Meets Requirements	
1j	Number of Title V Annual Compliance Certifications Reviewed	Data Verification	State			1481				Meets Requirements	
2a	Major Sources Missing CMS Source Category Code	Review Indicator	State			213				State Attention	
3a1	Timely Entry of HPV Determinations	Review Indicator	State	<=60 days		114				State Attention	
3a2	Untimely Entry of HPV Determinations	Goal	State	0		13				State Attention	
3b1	Timely Reporting of Compliance Monitoring Minimum Data Requirements	Goal	State	100%	78.6%	99.4%	1723	1733	10	Meets Requirements	
3b2	Timely Reporting of Stack Test Minimum Data Requirements	Goal	State	100%	75.5%	99.3%	728	733	5	Meets Requirements	
3b3	Timely Reporting of Enforcement Minimum Data Requirements	Goal	State	100%	76.1%	91.7%	211	230	19	State Attention	
5a	FCE Coverage Major	Goal	State	100%	88.6%	80.2%	207	258	51	State Attention	
5b	FCE Coverage SM-80	Goal	State	100%	89.6%	0/0	0	0	0	Meets Requirements	
5c	FCE Coverage Synthetic Minors (non SM-80)	Goal	State	100%	61.8%	0/0	0	0	0	Meets Requirements	
5d	FCE Coverage Minors	Goal	State	100%	36.7%	0/0	0	0	0	Meets Requirements	
5e	Review of Title V Annual Compliance Certifications Completed	Goal	State	100%	72.5%	85.9%	1180	1373	193	State Attention	EPA to QA
7b1	Alleged Violations Reported Per Informal Enforcement Actions (Tier I only)	Goal	State	100%	62.2%	61.4%	54	88	34	State Attention	
7b2	Alleged Violations Reported Per Failed Stack Tests	Review Indicator	State		54%	60%	6	10	4	State Attention	
7b3	Alleged Violations Reported Per HPV Identified	Goal	State	100%	69.6%	63.2%	55	87	32	State Attention	
8a	HPV Discovery Rate Per Major Facility Universe	Review Indicator	State		3.9%	7.2%	87	1211	1124	Meets Requirements	

8b	HPV Reporting Indicator at Majors with Failed Stack Tests	Review Indicator	State		20.5%	100%	10	10	0	Meets Requirements	
10a	HPV cases which meet the timeliness goal of the HPV Policy	Review Indicator	State		63.7%	61.4%	94	153	59	State Attention	

Resource Conservation and Recovery Act

Metric	Metric Name	Metric Type	Agency	National Goal	National Average	Texas	Count	Universe	Not Counted	Initial Findings	Explanations
1a1	Number of operating TSDFs	Data Verification	State			91				Meets Expectations	
1a2	Number of active LQGs	Data Verification	State			1364				Meets Expectations	
1a3	Number of active SQGs	Data Verification	State			3015				Meets Expectations	
1a4	All other active sites	Data Verification	State			6516				Meets Expectations	
1a5	Number of BR LQGs	Data Verification	State			896				Meets Expectations	
1b1	Number of sites inspected	Data Verification	State			500				Meets Expectations	

											Commitment for State 2011 was 900. State Fiscal Year does not follow Federal FY, thus the numbers are somewhat inaccurate, because TCEQ conducts inspections that do not get uploaded into RCRAInfo due to lack of EPA ID. Also, issue with data entry on inspections due to translation issue.
1b2	Number of inspections	Data Verification	State			652				Supplemental Review	
1c1	Number of sites with new violations during review year	Data Verification	State			297				Meets Expectations	
1c2	Number of sites in violation at any time during the review year regardless of determination date	Data Verification	State			1765				State Attention	
1d1	Number of sites with informal enforcement actions	Data Verification	State			246				Meets Expectations	
1d2	Number of informal enforcement actions	Data Verification	State			367				Meets Expectations	
1e1	Number of sites with new SNC during year	Data Verification	State			4				Meets Expectations	
1e2	Number of sites in SNC regardless of determination date	Data Verification	State			44				Meets Expectations	
1f1	Number of sites with formal enforcement actions	Data Verification	State			72				Meets Expectations	
1f2	Number of formal enforcement actions	Data Verification	State			82				Meets Expectations	
1g	Total dollar amount of final penalties	Data Verification	State			\$6,899,837				Meets Expectations	
1h	Number of final formal actions with penalty in last 1 FY	Data Verification	State			54				Meets Expectations	
2a	Long-standing secondary violators	Review Indicator	State			1474				State Attention	

5a	Two-year inspection coverage for operating TSDFs	Goal	State	100%	89.4%	81.3%	74	91	17	Meets Expectations	RBIS Project
5b	Annual inspection coverage for LQGs	Goal	State	20%	22.6%	18.6%	167	896	729	Meets Expectations	RBIS Project
5c	Five-year inspection coverage for LQGs	Goal	State	100%	62.9%	58.3%	522	896	374	Meets Expectations	RBIS Project
5d	Five-year inspection coverage for active SQGs	Informational Only	State		11%	13.6%	410	3015	2605	Meets Expectations	
5e1	Five-year inspection coverage at other sites (CESQGs)	Informational Only	State			602				Meets Expectations	
5e2	Five-year inspection coverage at other sites (Transporters)	Informational Only	State			258				Meets Expectations	
5e3	Five-year inspection coverage at other sites (Non-notifiers)	Informational Only	State			7				Meets Expectations	
5e4	Five-year inspection coverage at other sites (not covered by metrics 5a-5e3)	Informational Only	State			639				Meets Expectations	
7b	Violations found during inspections	Review Indicator	State		32.5%	50.4%	243	482	239	Meets Expectations	
8a	SNC identification rate	Review Indicator	State		1.6%	.8%	4	482	478	Supplemental Review	
8b	Timeliness of SNC determinations	Goal	State	100%	81.7%	100%	4	4	0	Supplemental Review	
10a	Timely enforcement taken to address SNC	Review Indicator	State	80%	81.8%	100%	4	4	0	Supplemental Review	Duplicate data for one of the facilities used in the calculation of this metric (Effective Environmental) has 3 SNY codes entered in RCRAInfo, should only be one. Translation issue. Revised data should only be 2 facilities.

Appendix B: File Metric Analysis

This section presents file metric values with EPA’s initial observations on program performance. Initial findings are developed by EPA at the conclusion of the file review.

Initial findings are statements of fact about observed performance. They should indicate whether there is a potential issue and the nature of the issue. They are developed after comparing the data metrics to the file metrics and talking to the state.

Final findings are presented above in the Findings section.

Because of limited sample size, statistical comparisons among programs or across states cannot be made.

State: TEXAS							Year Reviewed: FY 2011
CWA Metric #	Description	Numerator	Denominator	Metric Value	Goal	Initial Findings	Details
2b	Files reviewed where data are accurately reflected in the national data system: Percentage of files reviewed where data in the file are accurately reflected in the national data systems	14	33	42.4%	95%	State Improvement	Some NOVs and Inspections which were found in the file were not coded into ICIS
3a	Timeliness of mandatory data entered in the national data system	28	33	84.8%	100%	State Attention	Some NOVs which were found in the file were not coded into ICIS
4a1	Pretreatment compliance inspections and audits	65	31	209.7%	100%		
4a2	Significant industrial user (SIU) inspections for SIUs discharging to non-authorized POTWs	16	0	N/A	100%	N/A	TCEQ had no commitments for this metric
4a3	EPA and state oversight of SIU inspections by approved POTWs	228	231	98.7%	100%	Meets Requirements	

4a4	Major CSO inspections	0	0	N/A	100%	N/A	TCEQ had no commitments for this metric
4a5	SSO inspections	11	0	N/A	100%		TCEQ had no commitments for this metric
4a6	Phase I MS4 audits or inspections	68	0	N/A	100%		TCEQ had no commitments for this metric
4a7	Phase II MS4 audits or inspections	0	0	N/A	100%		TCEQ had no commitments for this metric
4a8	Industrial stormwater inspections	387	0	N/A	100%		TCEQ had no commitments for this metric
4a9	Phase I and II stormwater construction inspections	467	0	N/A	100%		TCEQ had no commitments for this metric
4a10	Inspections of large and medium NPDES-permitted CAFOs	*	0	N/A	100%		TCEQ had no commitments for this metric
4a11	Inspections of non-permitted CAFOs	*	0	N/A	100%		TCEQ had no commitments for this metric
4b	Planned commitments completed: CWA compliance and enforcement commitments other than CMS commitments, including work products/commitments in PPAs, PPGs, grant agreements, MOAs, MOUs or other relevant agreements	N/A	N/A	N/A	100%	N/A	No non-CMS commitments
6a	Inspection reports reviewed that provide sufficient documentation to determine compliance at the facility	27	27	100.0%	100%	Meets Requirements	

6b	Inspection reports completed within prescribed timeframe: Percentage of inspection reports reviewed that are timely	26	27	96.3%	100%	Meets Requirements	
7e	Inspection reports reviewed that led to an accurate compliance determination	22	25	88.0%	100%	State Attention	It was unclear from information in the inspection if accurate compliance determination was made on 3 of the inspections. SEVs are not being updated to the national database by TCEQ. Grant funding implementation is currently underway and TCEQ database CCEDS will be prepared to implement SEV data in Mid 2013. SEVs are not being updated to the national database by TCEQ. Grant funding implementation is currently underway and TCEQ database CCEDS will be prepared to implement SEV data in Mid 2013. The facilities which had not reached the final milestone date for compliance did not meet the criteria. It was not because a facility failed to come into compliance in the timeframe stated in the Agreed Order
8b	Single-event violation(s) accurately identified as SNC or non-SNC	12	15	80.0%	100%	State Improvement	
8c	Percentage of SEVs Identified as SNC Reported Timely: Percentage of SEVs accurately identified as SNC that were reported timely	5	8	62.5%	100%	State Improvement	
9a	Percentage of enforcement responses that return or will return source in SNC to compliance	20	23	87.0%	100%	State Attention	
10b	Enforcement responses reviewed that address SNC that are appropriate to the violations	19	21	90.5%	100%	Meets Requirements	
11a	Penalty calculations that include gravity and economic benefit: Percentage of penalty calculations reviewed that consider and include, where appropriate, gravity and economic benefit	16	16	100.0%	100%	Meets Requirements	
12a	Documentation on difference between initial and final penalty: Percentage of penalties reviewed that document the difference between the initial and final assessed penalty, and the rationale for that difference	16	16	100.0%	100%	Meets Requirements	

12b **Penalties collected:** Percentage of penalty files reviewed that document collection of penalty

11 16 68.8% 100%

State Improvement

Penalties not collected were due to either a SEP being performed in lieu of paying a penalty, or, the penalty payment date had not come due.

Finding Categories

Good Practice: Activities, processes, or policies that the SRF metrics show are being implemented at the level of Meets Expectations, and are innovative and noteworthy, and can serve as models for other states.

Meets Expectations: Describes a situation where either: a) no performance deficiencies are identified, or b) single or infrequent deficiencies are identified that do not constitute a pattern or problem. Generally, states are meeting expectations when falling between 91 to 100 percent of a national goal.

Area for State Attention: The state has single or infrequent deficiencies that constitute a minor pattern or problem that does not pose a risk to human health or the environment. Generally, performance requires state attention when the state falls between 85 to 90 percent of a national goal.

Area for State Improvement: Activities, processes, or policies that SRF data and/or file metrics show as major problems requiring EPA oversight. These will generally be significant recurrent issues. However, there may be instances where single or infrequent cases reflect a major problem, particularly in instances where the total number of facilities under consideration is small. Generally, performance requires state improvement when the state falls below 85 percent of a national goal.

Clean Air Act

State: Texas

Year Reviewed: FY 2011

CAA Metric #	CAA File Review Metric Description	Numerator	Denominator	Percentage	Goal	Initial Findings	Details
2b	Accurate MDR data in AFS: Percentage of files reviewed where MDR data are accurately reflected in AFS	21		58.3%	100%	State Improvement	
4a1	Planned evaluations completed: Title V Major FCEs	314	209	150.2%	100%	Meets Requirements	
4a2	Planned evaluations completed: SM-80 FCEs	0	36	0.0%	100%		
4a3	Planned evaluations completed: Synthetic Minor FCEs	0	0	0.0%	100%		
4a4	Planned evaluations completed: Other Minor FCEs	0	0	0.0%	100%		

4a5	Planned evaluations completed: Title V Major PCEs	378	389	97.1%	100%	Meets Requirement	TX also conducted 919 offsite PCEs & reviewed 1574 ACCs; offsite PCEs may have been done in lieu of onsite, plus the ACC review. TCEQ agreed to not continue the RBIS & submit an inspection plan using CMS guidance, which they did on 1/9/12 for FY12
4a6	Planned evaluations completed: SM-80 PCEs	0	0	0.0%	100%		
4a7	Planned evaluations completed: Synthetic Minor PCEs	0	0	0.0%	100%		
4a8	Planned evaluations completed: Other Minor PCEs	0	0	0.0%	100%		
4b	Planned commitments completed: CAA compliance and enforcement commitments other than CMS commitments	1	3	33.3%	100%	State Improvement	
6a	Documentation of FCE elements: Percentage of FCEs in the files reviewed that meet the definition of a FCE per the CMS policy	18	28	64.3%	100%	State Improvement	
6b	Compliance Monitoring Reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility: Percentage of CMRs or facility files reviewed that provide sufficient documentation to determine facility compliance	25	28	89.3%	100%	State Attention	
7a	Accuracy of compliance determinations: Percentage of CMRs or facility files reviewed that led to accurate compliance determinations	26	28	92.9%	100%	State Attention	
8c	Accuracy of HPV determinations: Percentage of violations in files reviewed that were accurately determined to be HPVs	15	16	93.8%	100%	Meets Requirements	

9a	Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame: Percentage of formal enforcement responses reviewed that include required corrective actions that will return the facility to compliance in a specified time frame	16	16	100.0%	100%	Meets Requirements
10a	Timely action taken to address HPVs: Percentage of HPV addressing actions that meet the timeliness standard in the HPV Policy	9	16	56.3%	100%	State Improvement
10b	Appropriate Enforcement Responses for HPVs: Percentage of enforcement responses for HPVs that appropriately address the violations	15	16	93.8%	100%	State Attention
11a	Penalty calculations reviewed that consider and include gravity and economic benefit: Percentage of penalty calculations reviewed that consider and include, where appropriate, gravity and economic benefit	16	16	100.0%	100%	Meets Requirements
12a	Documentation on difference between initial and final penalty and rationale: Percentage of penalties reviewed that document the difference between the initial and final assessed penalty, and the rationale for that difference	16	16	100.0%	100%	Meets Requirements
12b	Penalties collected: Percentage of penalty files reviewed that document collection of penalty	16	16	100.0%	100%	Meets Requirements

Finding Category Descriptions

Good Practice: Activities, processes, or policies that the SRF metrics show are being implemented at the level of Meets Expectations, and are innovative and noteworthy, and can serve as models for other states.

Meets Expectations: Describes a situation where either: a) no performance deficiencies are identified, or b) single or infrequent deficiencies are identified that do not constitute a pattern or problem. Generally, states are meeting expectations when falling between 91 to 100 percent of a national goal.

Area for State Attention: The state has single or infrequent deficiencies that constitute a minor pattern or problem that does not pose a risk to human health or the environment. Generally, performance requires state attention when the state falls between 85 to 90 percent of a national goal.

Area for State Improvement: Activities, processes, or policies that SRF data and/or file metrics show as major problems requiring EPA oversight. These will generally be significant recurrent issues. However, there may be instances where single or infrequent cases reflect a major problem, particularly in instances where the total number of facilities under consideration is small. Generally, performance requires state improvement when the state falls below 85 percent of a national goal.

Instructions:

Numerator, Denominator, Percentage: Pulls values automatically from other worksheets.

Initial Findings: Choose one of four finding categories listed in the drop-down menu.

Details: Provide additional details to substantiate the initial finding.

RCRA

RCRA Metric #	Name and Description	Numerator	Denominator	Metric %	Goal	Initial Findings	Details
2b	Accurate entry of mandatory data: Percentage of files reviewed where mandatory data are accurately reflected in the national data system	26	34	76.5%	100%	Area for Attention	Part of the issue is a translation problem with data uploading correctly from the state data system to RCRAInfo. There are some instances where data was not entered (i.e. returned to compliance dates not being entered for some violations, SNN designation or incorrect entry of SNN designation, etc.) TCEQ is working on acquiring a contractor to correct the translation issues as well as training staff on coding inspections and enforcement actions correctly.
3a	Timely entry of mandatory data: Percentage of files reviewed where mandatory data are entered in the national data system in a timely manner	29	34	85.3%	100%	Area for Attention	There are some instances where data was not entered (i.e. returned to compliance dates not being entered for some violations, SNN designation or incorrect entry of SNN designation, etc.)
4a1	Planned inspections completed: Operating TSDFs	46	46	100.0%	100%	Meets Requirements	Under RBIS
4a2	Planned inspections completed: Operating non-governmental TSDFs	0	0	0.0%	100%	Meets Requirements	
4a3	Planned inspections completed: Operating state, local, or tribal government TSDFs	0	0	0.0%	100%	Meets Requirements	
4a4	Planned inspections completed: Operating LQGs	182	180	101.1%	100%	Meets Requirements	Under RBIS

4a5	Planned inspections completed: Operating SQGs	79	0	N/A	100%	Meets Requirements	Under RBIS – No Commitments made for this metric
4a6	Planned inspections completed: CESQGs	123	0	N/A	100%	Meets Requirements	Under RBIS – No Commitments made for this metric
4a7	Planned inspections completed: Transporters	10	0	N/A	100%	Meets Requirements	Under RBIS – No Commitments made for this metric
4b	Planned non-inspection commitments completed: Percentage of non-inspection commitments completed in the review year	1	1	100.0%	100%	Meets Requirements	The TCEQ makes available via their website an annual report describing key aspects of supplemental environmental projects approved by the TCEQ during the year.
6a	Inspection reports complete and sufficient to determine compliance: Percentage of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance	34	34	100.0%	N/A	Meets Requirements	TCEQ inspection reports that were reviewed were complete and provided excellent documentation (photos, site maps, observations, process diagrams, descriptions, etc.) to determine compliance.
6b	Timeliness of inspection report completion: Percentage of inspection reports reviewed that are completed in a timely manner	32	34	94.1%	100%	Meets Requirements	TCEQ inspection reports are completed within 60 days and are usually completed in less than 60 days. 2 reports were outside that timeframe due to the nature of the facility and facility submissions.
7a	Accurate compliance determinations: Percentage of inspection reports reviewed that led to accurate compliance determinations	33	34	97.1%	100%	Area for Attention	Based on the violations cited in report, EPA would designate the Sweetwater facility as a SNC. The identification of the SNC status should have already been entered into RCRAInfo within 150 days. TCEQ INPUT: Regarding Sweetwater, after considering the case specific factors, the Houston Region did not designate the facility as a SNC. The issue was accumulation of waste on-site associated with financial issues for the facility. The site exceeded the storage requirements, hence the

							permit required citation. However, the site will not be obtaining a permit to continue to operate in excess of 90 day storage. The Houston Region is unaware if the company has financial inability to pay or bankruptcy filed.
8c	<p>Appropriate SNC determinations: Percentage of files reviewed in which significant noncompliance (SNC) status was appropriately determined during the review year</p>	2	3	66.7%	100%	Area for Attention	<p>Based on the violations cited in report, EPA would designate the Sweetwater facility as a SNC. RCRAInfo data and file review indicate that there has been a proposed consent order issued with a proposed penalty and at the time of the review, TCEQ was awaiting ability to pay information before proceeding. Enforcement for this facility is overdue and has not been identified as a SNC as EPA believes it should. The identification of the SNC status should have already been entered into RCRAInfo within 150 days. TCEQ is researching and will provide additional information.</p> <p>TCEQ INPUT: See comment on 7a above</p>
9a	<p>Enforcement that returns SNC sites to compliance: Percentage of enforcement responses that have returned or will return a site in SNC to compliance</p>	3	3	100.0%	100%	Meets Requirements	
10b	<p>Appropriate enforcement taken to address violations: Percentage of files with enforcement responses that are appropriate to the violations</p>	27	27	100.0%	100%	Meets Requirements	

11a	Penalty calculations include gravity and economic benefit: Percentage of reviewed penalty calculations that consider and include, where appropriate, gravity and economic benefit	17	17	100.0%	100%	Meets Requirements	All files reviewed included a worksheet developed by TCEQ in determining and calculating Economic Benefit and Gravity.
12a	Documentation on difference between initial and final penalty: Percentage of penalties reviewed that document the difference between the initial and final assessed penalty, and the rationale for that difference	5	5	100.0%	100%	Meets Requirements	All files reviewed where there were differences between the initial and final penalty included documentation.
12b	Penalties collected: Percentage of files that document collection of penalty	9	17	52.9%	100%	Meets Requirements	Documentation of collection of penalties is kept in the TCEQ Finance Department, not in the RCRA media enforcement files. This information was easily obtained from the TCEQ Finance Department, when requested. The information provided included the facility name, the penalty amount issued, the status of payments if a facility is on a payment plan, or a statement that the total penalty was received and the check number associated with the payment. In those instances where a "N" has been entered for this category, it is either due to the fact that the penalty has either not been finalized, the facility has not completed making payments, or the facility has defaulted on the payment.

Appendix C: File Selection

Files are selected according to a standard protocol using a web-based file selection tool. These are designed to provide consistency and transparency to the process. Based on the description of the file selection process below, states should be able to recreate the results in the table.

Clean Water Act

File Selection Process

Texas has 630 NPDES Major Permitted facilities, 2200 NPDES Non-Majors Permitted facilities, and 1758 NPDES Non-Majors with General Permit facilities. Based on the total of 4588 facilities, the file selection tool states that greater than 1000 facilities suggest 35 to 40 facilities to review.

Region 6 selected 24 NPDES Major Facilities, 9 NPDES Non-Major Facilities, 11 NPDES CAFO Facilities, 20 NPDES Stormwater Facilities, and 5 MS4 for a total of 63 Facilities selected for the file review.

The 33 NPDES Major and Non-Major Facilities were selected using the OTIS File Selection Tool. Over half of the facilities selected had compliance monitoring activities, over half of the facilities had enforcement activity, and over half of the facilities selected were SNC. The mix of universe types (i.e. major, minors, etc.), sectors, geographical locations and regional offices were considered when choosing the list of facilities.

File Selection Table

FILE REVIEW - TEXAS FY 11 MAJOR & NON-MAJORS FACILITIES FROM FILE SELECTION TOOL 032912 DRAFT

f_name	Program ID	f_city	State Regic	Permit Con	Inspection	Violation	Single	Ever	SNC	Informal Ac	Formal Act	Penalty	Universe	Select
BAYTOWN CHEMICAL PLAN	TX0007013	BAYTOWN	12 TX		1	0	0	0	0	0	0	0	0 Major	
BRUSHY CREEK REGIONAL W	TX0101940	ROUND RO	11 POT PRE		1	4	0	0	0	0	0	0	0 Major	
CITGO REFINING & CHEMIC	TX0006211	CORPUS CH	14 TX		0	4	0	1	0	1	1	303,294	Major	
CITY OF ALVIN WWTP	TX0024554	ALVIN	12 POT PRE		1	4	0	1	0	1	1	68,160	Major	
CITY OF BRENHAM WWTP	TX0025470	BRENHAM	9 POT PRE		1	2	0	2	0	0	0	0	0 Major	
CITY OF LA FERIA WWTF	TX0128112	LA FERIA	15 POT		0	1	0	0	1	0	0	0	0 Major	
CITY OF RAYMONDVILLE WW	TX0024546	RAYMOND	15 POT		0	6	0	2	0	1	1	7,150	Major	
CITY OF SWEETWATER WW	TX0118346	SWEETWA	3 POT		0	0	0	0	1	0	0	0	0 Major	
CITY OF WHARTON WWTP 1	TX0021288	WHARTON	12 POT		1	1	0	0	1	0	0	0	0 Major	
DEER PARK FACILITY*	TX0007048	DEER PARK	12 TX		1	10	0	2	0	1	1	35,800	Major	
EAST BANK WWTP	TX0076953	CENTER	10 POT		1	6	0	1	0	1	1	8,692	Major	
FORMOSA POINT COMFORT	TX0085570	POINT CON	14 TX		0	1	0	0	0	1	1	68,600	Major	
GERDAU AMERISTEEL US INI	TX0067695	ROSE CITY	10 TX		1	3	0	0	0	0	0	0	0 Major	
GREEN LAKE PLANT	TX0077577	BLOOMING	14 TX		1	6	0	4	0	0	0	0	0 Major	
INGLESIDE WWTP	TX0020401	INGLESIDE	14 POT		1	22	0	2	1	0	0	0	0 Major	
MEADOWHILL REGIONAL M	TX0046663	HOUSTON	12 POT		1	0	0	0	0	0	0	0	0 Major	
N MUSTANG ISLAND WWTP	TX0024287	PORT ARAN	14 POT		1	2	0	0	0	0	0	0	0 Major	
NORTHSIDE WWTP	TX0070831	CROCKETT	10 POT		0	2	0	2	0	1	1	9,850	Major	
PAW PAW WWTP	TX0047228	DENISON	4 POT PRE		2	1	0	0	0	0	0	0	0 Major	
RIVER ROAD WWTF	TX0025801	AMARILLO	1 POT PRE		1	5	0	4	0	0	0	0	0 Major	
SOUTHEAST WATER RECLAM	TX0106071	LUBBOCK	2 POT PRE		1	24	0	3	0	0	0	0	0 Major	
WILLOW CREEK WWTP	TX0023779	MINERAL V	4 POT PRE		1	8	0	4	0	0	0	0	0 Major	
WINCHESTER COUNTRY REG	TX0082317	HOUSTON	12 POT		1	3	0	3	0	1	1	2,300	Major	
WYMAN GORDON FORGING	TX0042129	HOUSTON	12 TX		1	5	0	1	0	0	0	0	0 Major	
CITY OF BUFFALO WWTP	TX0053627	BUFFALO	9 POT		1	10	0	2	0	0	0	0	0 Minor	
CITY OF CHICO	TX0023787	CHICO	4 POT		1	6	0	1	0	1	1	208,475	Minor	
CITY OF DE KALB WWTP	TX0069671	DE KALB	5 POT		1	16	0	2	0	1	1	20,960	Minor	
CITY OF DEPORT WWTP	TX0054721	DEPORT	5 POT		1	19	0	1	0	1	1	11,600	Minor	
CITY OF HICO WWTP	TX0026590	HICO	9 POT		1	16	0	4	1	0	0	0	0 Minor	
CITY OF HUDSON WWTP	TX0068985	HUDSON	10 POT		1	1	0	0	0	1	1	8,249	Minor	
CITY OF JOAQUIN WWTP	TX0069213	JOAQUIN	10 POT		1	13	0	3	0	1	1	3,280	Minor	
CITY OF SPRINGTOWN - WW	TX0032646	SPRINGTON	4 POT		1	31	0	4	0	0	0	0	0 Minor	
CITY OF TATUM WWTP	TX0022551	TATUM	5 POT		1	19	0	3	0	1	1	11,120	Minor	

Stormwater – Multi-Sector

ADDN_IDS	REF_NUM_TXT	REG_ENT_NAME	PRIN_NAME
TXR05G338	RN100210095	CITY OF BRENHAM	CITY OF BRENHAM
TXR05N228	RN101834224	VALLEY PROTEINS AMARILLO PLANT	VALLEY PROTEINS INC
TXR05O480	RN100825405	RIO GRANDE VALLEY SUGAR GROWERS W R COWLEY SUGAR HOUSE	RIO GRANDE VALLEY SUGAR GROWERS INC
TXR05R800	RN104578398	WHEATCRAFT RED ROSE RANCH QUARRY	WHEATCRAFT INC
TXR05U115	RN105292445	PINEY FOREST PRODUCTS LLC	D & I WOOD PRODUCTS INC
TXR05U914	RN105222087	ROBERTS AUTO PARTS	MICHAEL ROBERTS DBA ROBERTS AUTO PARTS
TXR05W854	RN105418032	BAYTOWN SAND PIT	SMART MATERIALS
TXR05Y435	RN101993830	EXTERRAN VICTORIA	EXTERRAN ENERGY SOLUTIONS LP
TXR05Y787	RN105759450	ENVIRO SOLUTIONS WINNIE	PETROFUELS QUALITY MARKETING LP
TXR05Z914	RN106021876	TEJAS TEXTURED STONE	VENEERSTONE LP

TXR05G338
 City of Brenham
 2005 Old Chappell Hill Rd.
 Brenham, TX 77833

TXR05N228
 Valley Proteins
 8415 SE 1st Avenue
 Amarillo, TX 79118

TXR05O480
 Rio Grande Valley Sugar Growers, Inc.
 P. O. Box 459
 Santa Rosa, TX 78503

TXR05U115
D & I Wood Products, Inc.
201 E. FM 3451
San Augustine, TX 75972

TXR05R800
Wheatcraft, Inc.
P. O. Box 290068
Kerrville, TX 78209

TXR05U914
Michael Roberts dba Roberts Auto Parts
1411 W. Omega St.
Henrietta, TX 76365

TXR05W854
Smart Materials, Inc.
1404 Wallisville Rd.
Liberty, TX 77575

TXR05Y435
Exterran Victoria
8193 Lone Tree Rd. N
Victoria, TX 77905-3792

TXR05Y787
Enviro Solutions Winnie/Petrofuel Quality Marketing
29565 Highway 124
Winnie, TX 77665

TXR05Z914

Veneerstone
 1720 Couch Drive
 Dallas, TX 75069

Stormwater - Construction

ADDN_IDS	REF_NUM_TXT	REG_ENT_NAME	PRIN_NAME
TXR15KZ85	RN105537021	NORTH RIDGE DEVELOPMENT	CLIFFORD & CLYDE KITTEN LP
TXR15MV11	RN105639280	PEACH CREEK PLANTATION LP	PEACH CREEK PLANTATION LTD
TXR15OP97	RN105745624	BULVERDE RD FROM US 281 TO SMITHSON VALLEY RD	BEXAR COUNTY
TXR15PQ35	RN105652267	TEXAS A&M UNIVERSITY TEXARKANA	TEXAS A&M UNIVERSITY-TEXARKANA
TXR15PS07	RN105916092	CITY VIEW PROJECT	CITY VIEW INVESTORS LLC
TXR15QF24	RN104824651	PERRY WILLIAMS HILLSIDE TERRACE ESTATES	HOMES BY CALLOWAY LLC
TXR15QY56	RN106040835	WAL-MART SUPERCENTER STORE 5898-00	SATTERFIELD & PONTIKES CONSTRUCTION INC
TXR15RE26	RN105119838	R & B HOMES SANDSTONE ESTATES	GREEN, RICHARD
TXR15RQ07	RN102685393	CEDAR POINT	VACATION HOME BUILDERS INC
TXR15RU23	RN106120801	MUSTANG HEIGHTS APARTMENTS	GG MACDONALD INC

TXR15KZ85
 Clifford and Clyde Kitten, LP
 161 N. Ridge Dr.
 Justiceburg, TX 79330

TXR15MV11
 Peach Creek Plantation, LTD
 3601 Duck Creek
 Cleveland, TX 77328

TXR15OP97
 Bexar County

101 W. Nueva
San Antonio, TX 78205

TXR15PQ35
Texas A&M University – Texarkana
7101 University Avenue
Texarkana, TX 75503

TXR15NG70
Southwest Growth Corp.
1600 E. 4th Avneue
El Paso, TX 79901

TXR15QF24
Homes by Calloway, LLC
1100 W. 1st. Avenue
Amarillo, TX 79106

TXR15QY56
Walmart (Satterfield & Pontikes Construction)
6101 Saratoga Blvd.
Corpus Christi, TX 78414

TXR15RE26
Richard Green dba R&B Homes
Sandstone Estates
1701 Azle Highway
Weatherford, TX 76689

TXR15RU23
G. G. MacDonald, Inc.
815 E. Arizona Avenue
Sweetwater, TX 79556

TXR15RQ07
Vacation Home Builders
Cedar Point Rd.
Onalaska, TX 77360

MS4

START_DT
CITY OF ALAMO HEIGHTS
TOWN OF HORIZON CITY
CITY OF WHITE OAK
LUBBOCK COUNTY
CITY OF WHITEHOUSE

TXR040048
City of Alamo Heights
6116 Broadway St.
San Antonio, TX 78209-4545

TXR040057
City of Horizon city
14999 Darrington Road
Horizon City, TX 79928-7348

TXR040324
Lubbock County
P. O. Box 10536
Lubbock, TX 79408-3536

TXR040402
City of Whitehouse

P. O. Box 776
Whitehouse, TX 75791

TXR040097
City of White Oak
906 S. White Oak Road
White Oak, TX 75693

CAFO

ADDN_IDS	REF_NUM_TXT	REG_ENT_NAME	PRIN_NAME
TX0120103, TXG921152	RN101608230	PRAIRIE VIEW DAIRY	LLOYD, DAVID
TXG920086	RN101519742	BILLY LASATER DAIRY	LASATER, WILLIAM MCKENDR
TXG920224	RN102498508	STRUBE EGG FARMS 1 AND 2	PILGRIMS PRIDE CORPORATION
TXG920266	RN102817293	STONE FEEDLOT	STONE, GARY DON
TXG920318	RN102095726	CROUCH DAIRY FARM	CROUCH, LEWIS
TXG920708	RN103711081	ABO DAIRY	MILLER, KENNETH
TXG920952	RN102336807	ALLROUNDER DAIRY 2	TUINIER, TJITTE
TXG921134	RN102081056	KUIPER DAIRY 2	KUIPER DAIRY LLC
WQ0003211000	RN102743267	ERATH CO DAIRY SALES & LIVESTOCK COMMISSION	BEYER, JIMMY GAYLON
WQ0004908000	RN101519841	SOUTHFORK DAIRY	HALL, DOUG
TX0130893, WQ0003160000	RN102065166	RANDY WYLY DAIRY	WYLY, RANDY EARL

Clean Air Act

File Selection Process

Region 6 utilized the SRF File Selection Tool accessed in OTIS to generate a list of all Title V Majors in Texas that were subject to various CAA compliance monitoring and/or enforcement activities in FFY 2011. The total number of records returned was 501 using the File Selection Tool for Texas.

Of the 501 total records, 235 records indicated an FCE had been conducted during FFY 2011. Sixteen (16) facilities were selected for review (every 16th facility). Additionally, five (5) additional facilities were selected randomly for a total of 21 compliance monitoring files to review.

For facilities with enforcement actions, there were a total of 70 records. Fifteen (15) facilities selected for review (every 7th facility, plus three (3) additional facilities randomly selected from a list of FY2011 enforcement cases generated from TCEQ's database.


235 Facilities Total

15 Files selected for review = X (every 16th facility)

File Selection Table

f_name	Program ID	f_city	LC ON	f_state	f_zip	FCE	PCE	Violation	Stack Test Failure	Title V Deviation	HPV	Informal Action	Formal Action	Penalty	Universe	Select	RN
CARDELL TIMCO PLANT	4802900184	SAN ANTONIO	13	TX	78238	1	1	0	0	0	0	0	0	0	MAJOR	X	RN100210053
SILAS RAY POWER PLANT	4806100005	BROWN SVILLE	15	TX	78520	1	1	0	0	0	0	0	0	0	MAJOR	X	RN100219540
TEXAS INSTRUMENTS NORTH CAMPUS	4811300006	DALLAS	4	TX	75243	1	1	0	0	1	0	0	0	0	MAJOR	X	RN102505195
RANGER GAS GATHERING RANGER PLANT	4813300139	RANGER		TX	76470	0	3	0	0	1	1	0	1	58,900	MAJOR	X	RN100219534
GOLDSMITH GAS PLANT	4813500022	GOLDS MITH	7	TX	79741	1	6	4	0	1	1	0	2	779,126	MAJOR	X	RN100222330
ARCELORMITTAL VINTON	48141	EL PASO	6	TX	7983	1	4	4	0	3	0	0	0	0	MAJOR	X	

	00002				5										R		RN10021 3941
SOUTH HOUSTON GREEN POWER SITE	48167 00147	TEXAS CITY	12	TX	7759 0	1	1	0	0	1	0	0	0	0	MAJ R	X	RN10393 4493
COLETO CREEK POWER STATION	48175 00002	FANNIN	14	TX	7796 0	1	1	0	0	1	0	0	0	0	MAJ R	X	RN10022 6919
KINGSMILL COMPLEX	48179 00018	PAMPA	1	TX	7906 5	1	2	3	0	1	1	0	1	7,72 3	MAJ R	X	RN10252 7397
ALBEMARLE HOUSTON PLANT	48201 00015	PASADE NA	12	TX	7750 3	0	5	2	0	3	0	0	1	12,6 90	MAJ R	X	RN10021 8247
LUBRIZOL DEER PARK PLANT	48201 00109	DEER PARK	12	TX	7753 6	1	8	2	0	7	0	0	0	0	MAJ R	X	RN10022 1589
LBC HOUSTON BAYPORT TERMINAL	48201 00183	SEABRO OK	12	TX	7758 6	0	1	2	0	2	1	1	1	1,92 0	MAJ R	X	RN10104 1598
EXXON MOBIL CHEMICAL BAYTOWN OLEFINS PLA	48201 00257	BAYTO WN	12	TX	7752 0	0	2	4	0	1	1	0	1	40,0 00	MAJ R	X	RN10221 2925
PASADENA COGENERATION LP	48201 01474	PASADE NA	12	TX	7750 6									883	MAJ R	X	RN10022 2041
STATELINE COMPRESSOR	48203 00055	WASKO M	7	TX	7569 1	5		2	0	0	0	0	0	0	MAJ OR	X	RN10082 5256
SID RICHARDSON CARBON BIG SPRING FACILIT	48227 00002	BIG SPRINGS	7	TX	7972 1	1	2	0	0	1	0	0	0	0	MAJ R	X	RN10022 6026
ROCK CREEK GAS PLANT	48233 00006	BORGER	1	TX	7900 7	0	1	4	0	1	1	1	1	15,0 50	MAJ R	X	RN10021 6613
HUNTSMAN PORT NECHES	48245 00006	PORT NECHES	10	TX	7765 1	0	9	3	0	4	13	4	4	71,3 00	MAJ R	X	RN10021 9252
MOBIL BEAUMONT POLYETHYLENE PLANT	48245 00064	BEAUM ONT	10	TX	7771 3	0	2	4	0	2	1	0	2	16,6 82	MAJ R	X	RN10021 1903
FORNEY POWER PLANT	48257 00680	FORNEY	4	TX	7512 6	1	1	0	0	0	0	0	0	0	MAJ R	X	RN10021 3420
NUCOR STEEL-TEXAS	48289 00001	JEWETT	9	TX	7584 6	1	12	4	0	1	0	0	0	0	MAJ R	X	RN10021 1093
PYCO INDUSTRIES	48303	LUBBOC	2	TX	7940	1	1	0	0	1	0	0	0	0	MAJ	X	

	00065	K			4										R		RN10021 3693
STATION 581	48321 00057	MARKH AM	12	TX	7745 6	1	2	0	0	1	0	0	0	0	MAJ R	X	RN10198 7741
TRAWICK CENTRAL TREATING STATION	48347 00027	NACOG DOCHES	10	TX	7596 4	0	2	2	0	1	2	2	1	6,55 0	MAJ R	X	RN10021 1077
VALERO CORPUS CHRISTI REFINERY WEST PLAN	48355 00050	CORPUS CHRISTI	14	TX	7840 7	0	1	4	0	1	1	0	3	302, 349	MAJ R	X	RN10021 438
HANSON BRICK - MINERAL WELLS FACILITY	48363 00012	MINERA L WELLS	4	TX	7606 7	1	1	0	0	1	1	0	0	0	MAJ R	X	RN10021 5714
ENBRIDGE G & P NORTH TEXAS LP	48367 00156	WEATH ERFORD	4	TX	7608 8	1	2	0	0	1	0	0	2	7,80 0	MAJ R	X	RN10509 3512
INDIAN SPRINGS GAS PLANT	48373 00018	LIVINGS TON	10	TX	7735 1	1	1	2	0	1	0	0	0	0	MAJ R	X	RN10022 8998
FAIN GAS PLANT	48375 00006	MASTER SON	1	TX	7905 8	0	2	4	0	0	0	0	1	30,5 16	MAJ R	X	RN10022 6943
MIDKIFF GAS PLANT	48383 00002	MIDKIFF	8	TX	7975 5		1	1	0	0	0	0	0	0	MAJ R	X	RN10021 5714
BIG LAKE GAS PLANT	48383 00003	BIG LAKE	8	TX	7693 2	0	2	2	0	1	1	1	1	0	MAJ R	X	RN10021 7686
GE ENGINE SERVICES - DALLAS LP	48439 00580	FORT WORTH	4	TX	7615 5	1	1	3	0	1	1	0	0	0	MAJ R	X	RN10196 0615
WASTE MANAGEMENT OF TEXAS AUSTIN COMMUNI	48453 00074	AUSTIN	11	TX	7875 4	1	3	0	0	0	0	0	0	0	MAJ R	X	RN10021 5938
PEMBROOK COMPRESSOR STATION	48461 00028	MIDKIFF	7	TX	7975 5	2	2	0	0	1	0	0	0	0	MAJ R	X	RN10021 7314
SIGNAL HILL WICHITA FALLS	48485 00027	WICHIT A FALLS	3	TX	7631 0	1	1	0	0	1	0	0	0	0	MAJ R	X	RN10021 6134
COMPRESSOR STATION 155	48497 00021	CHICO	4	TX	7643 1	1	1	0	0	0	0	0	2	18,7 50	MAJ R	X	RN10022 2736

Resource Conservation and Recovery Act

File Selection Process

- In FY2011, the TCEQ conducted 652 inspections at 500 facilities. It also issued 82 formal and 367 informal enforcement actions. A total of 40 facilities were initially selected for review. TCEQ requested that 6 of these facilities be removed from the list due to current ongoing litigation or AG referrals. Facilities were selected for review, randomly by using the File Selection Tool to select numbers that were linked to the facilities, with a focus on selecting all SNC's (4) identified in FY11, as well as ensuring a representative sampling of informal and formal actions with penalties, facility universe and State Regional offices. File selection did consider regional or geographic location, to a small degree. There are 16 Regions in Texas. Once the file selection tool was used to select facilities with and without (formal and informal; penalty and non-penalty) enforcement actions, inspections with and without violations found and all SNC's identified for the year, a review of those facilities selected was conducted to determine how many TCEQ Regional Offices were represented. Nine TCEQ Regional offices were included through that selection and were considered to be an adequate representative sampling of geographic location. Thirty-four (34) facilities with a total of 40 inspections (conducted in FY 2011) were reviewed.

FY 2011 RCRA Facilities Reviewed by Universe

Treatment, Storage and Disposal Facilities	5
Large Quantity Generators	
Small Quantity Generators	
Conditionally Exempt Small Quantity Generators	4
Transporters	
No Universe	

FY2011 RCRA Formal Enforcement Actions with Penalties Reviewed

FY2011 RCRA Informal Enforcement Actions Reviewed	21
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6

12

File Selection Table

Program ID	City	Zip	Evaluation	Violation	SNC	Informal Action	Formal Action	Penalty	Universe	Select
TXD065078826	HOUSTON	77053	8	7	0	3	1	5,730	LQG	R
TXD073186389	MIDLAND	79711	1	1	0	0	0	0	TSD(TSF)	R
TXR000052837	WICHITA FALLS	76306	0	0	0	1	1	10,080	SQG	R
TXD980796338	DALLAS	75212	3	10	0	0	0	0	TRA	R
TXD037307329	AUSTIN	78752	1	0	0	0	0	0	LQG	R
TXD046844700	AVALON	76623	0	7	0	0	0	0	TSD(TSF)	R
TXD981901713	HOUSTON	77049	0	1	0	1	1	14,571	CES	R
TXR000078038	CEDAR HILL	75105	0	0	0	0	2	7,281	CES	R
TXR000040097	TAYLOR	76574	1	5	0	1	0	0	SQG	R
TXR000036780	DAYTON	77535	2	5	0	2	0	0	TRA	R
TXR000078023	EMORY	75440	2	6	0	0	1	1,500,000	SQG	R
TXR000032102	HOUSTON	77086	0	0	0	0	1	5,176	LQG	R
TXR000042929	MARION	78124	1	0	0	0	0	0	CES	R
TXR000079796	BRADY	76825	0	0	0	0	1	79,600	OTH	R
TXD981055635	WACO	76715	1	2	1	0	0	0	LQG	R
TXR000052175	PASADENA	77507	1	0	0	0	1	2,576	TSD(COM)	R
TXD096805387	WACO	76712	2	0	0	1	1	1,016	OTH	R
TXD980867345	ENNIS	75119	2	0	0	0	0	0	LQG	R
TXR000079084	GLADEWATER	75647	0	0	0	0	1	500,000	LQG	R
TXD077603371	DENTON	76208	3	0	0	1	1	4,000	TSD(TSF)	R
TXD008129983	GREGORY	78359	1	0	0	1	1	1,320	SQG	R
TXR000080110	PORT ARTHUR	77640	2	0	0	0	2	4,250	CES	R
TXD981592850	LUBBOCK	79407	1	0	0	0	0	0	OTH	R
TXR000048579	HUMBLE	77396	2	11	0	0	0	0	LQG	R
TXR000067827	LAREDO	78045	1	0	0	0	0	0	LQG	R
TXD980879118	EL PASO	79924	1	0	0	0	0	0	LQG	R

TXD987990207	WACO	76712	1	2	0	0	0	0	LQG	R
TXD000829325	HOUSTON	77044	0	1	0	0	0	0	LQG	R
TXR000012609	HOUSTON	77081	1	10	0	2	0	0	LQG	R
TX7170022787	CORPUS CHRISTI	78419	1	2	0	1	1	69,794	TSD(TSF)	R
TXD026152637	COMBES	78535	1	0	0	0	0	0	TRA	R
TXR000079107	HOUSTON	77032	0	8	0	0	0	0	SQG	R
TXR000019299	CHANNELVIEW	77530	0	0	0	0	2	93,520	SQG	R
TXR000013599	WESLACO	78596	0	0	0	0	1	11,550	OTH	R

Appendix D: Status of Past SRF Recommendations

During the Round 1 and 2 SRF reviews of Select a state’s compliance and enforcement programs, Select office recommended actions to address issues found during the review. The following table contains all outstanding recommendations for Round 1, and all completed and outstanding actions for Round 2. The statuses in this table are current as of Select date.

For a complete and up-to-date list of recommendations from Rounds 1 and 2, visit the [SRF website](#).

Status	Due Date	Media	E#	Element	Finding	Explanation	State Comments	Completion Verification	Due
Completed	7/31/2009	CAA	E3	Violations ID'ed Timely	TCEQ and Region 6 negotiated inspection levels reflected in the State's annual compliance monitoring strategy (PPG) deviate from the levels called for in the national CAA compliance monitoring strategy.	TCEQ and Region 6 will negotiate, and collaborate on, major source inspections to maximize coverage under the national CMS and meet the State's inspection mandate to use a risk based approach.	TCEQ and Region 6 negotiated inspection levels reflected in the State's annual compliance monitoring strategy (PPG) deviate from the levels called for in the national CAA compliance monitoring strategy.	RBIS 3 year pilot project MOA signed 7/23/09	
Not Completed in Round 1 - Identified in Round 2	4/30/2010	CAA	E1 , E4 , E10, E11, E12	Insp Universe, SNC Accuracy, Data Timely, Data Accurate, Data Complete	Not all minimum data requirements are timely, complete and/or accurate in AFS.	Region 6 will identify to TCEQ any remaining data accuracy or completeness issues not addressed in the master plan. TCEQ and the Region will negotiate details of addressing the remaining data issues. The outcome of this discussion will be a set of written guidelines from Region 6 to TCEQ. TCEQ will update its master plan accordingly. These activities are projected to be completed by December 1, 2007.	Not all minimum data requirements are timely, complete and/or accurate in AFS.		X

Not Completed in Round 1 - Identified in Round 2	9/28/2012	CAA	E1 , E11	Insp Universe, Data Accurate	CMS data in AFS (universe, frequency) not up to date.	TCEQ has agreed to update and maintain the CMS universe on an annual basis. With respect to ACC data, see elements 11 and 12.	CMS data in AFS (universe, frequency) not up to date.		X
Not Completed in Round 1 - Identified in Round 2	9/28/2012	CAA	E9	Grant Commitments	Some HPV addressing actions exceed 270 days	<p>EPA and TCEQ are exploring options for increasing the percentage of HPV addressing actions taken within 270 days of day zero.</p> <p>According to TCEQ, during 2004 and 2005, the TCEQ underwent an extensive self-review of its enforcement function. The review resulted in a number of recommended changes which have been implemented. TCEQ's Enforcement Division streamlined the enforcement process (violation discovery to Commission's agenda) from approximately 292 days to 185 days on average for those cases where expedited settlement has been achieved. The data metrics indicate TCEQ timeliness has improved from 17% in 2005 to 50% in 2007.</p> <p>TCEQ and the EPA are examining other TCEQ enforcement responses (e.g., Executive Director's petition) that might be considered addressing actions under the HPV policy.</p>	Some HPV addressing actions exceed 270 days		X

Completed	11/1/2006	CAA	E12	Data Complete	Not all stack test data in AFS	While previous stack test pass/fail information is not populated, the issue has been addressed as of November 2006 and all current and future uploads correctly indicate the pass/fail status. Also, the information for Title V ACCs, required to be entered by the State, has been uploaded according to verbal agreement with EPA.	Not all stack test data in AFS		
Completed	9/30/2008	RCRA	E1	Insp Universe	historic negotiated LQG coverage deviated from national program goals	TCEQ and Region 6 will work together in optimizing LQG coverage, including flexibilities such as a 2:1 ratio of SQG/CESQGs to LQGs.	historic negotiated LQG coverage deviated from national program goals		

Completed	9/30/2008	RCRA	E4 , E10	SNC Accuracy, Data Timely	Instances identified where EPA might have designated SNC, but State did not.	<p>TCEQ examined the instances identified above where EPA might have designated additional SNCs. In three out of the four inspection reports for two facilities, TCEQ does not disagree (agrees) with EPA's assessment. TCEQ is in the process of making modifications to the coding for uploading SNC designations to RCRAInfo. The changes have been tested and put into production for the RCRAInfo uploads.</p> <p>Since the end of FY05, TCEQ has re-organized the Enforcement Division by Media (i.e., Water, Waste and Air). According to TCEQ, this allows Enforcement staff to be cognizant of the subtleties of each program, specifically the conditions where violations need to be designated as SNCs and their appropriate time frames for enforcement response. Additionally, CCEDS has been upgraded to allow for SNC designations to be affixed to specific violations in the enforcement side of the case. This allows cases to be flagged where the SNC designations were missed in the Field Investigation Report of CCEDS. This capability was not available during FY05.</p> <p>TCEQ and Region 6 will schedule SNC training in FY 2008 for field investigators and enforcement coordinators.</p>	Instances identified where EPA might have designated SNC, but State did not.		
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						TCEQ plans to complete its analysis of SNC designations and discuss any additional measures with the Region in conjunction with scheduling SNC training. A working session on SNC identification was provided at the annual RCRA inspector work shop, attended by TCEQ field investigators, in May 2007.			
Completed	10/2/2006	RCRA	E11	Data Accurate	Some informal actions coded as formal enforcement in RCRAInfo	TCEQ will begin coding proposed Administrative Orders as informal enforcement actions (code 126) starting in FY 2007.	Some informal actions coded as formal enforcement in RCRAInfo		

Completed	9/30/2008	RCRA	E10	Data Timely	<p>TCEQ uses a translator program to upload data from CCEDS into RCRAInfo. In FY 2005, TCEQ was not able to upload data to RCRAInfo on a routine basis because of issues with the translator program. Data was uploaded in October 2004, February 2005 (mid-year) and September (end-of-year).</p>	<p>The Region has assisted TCEQ with uploads by verifying data quality before migrating into RCRAInfo. Region 6 provided the QA tools to TCEQ and trained TCEQ Enforcement staff on how to run the QA checks independently. TCEQ has developed and is implementing a master plan to address issues with the translator program. Beginning in FY 2006, TCEQ uploaded data to RCRAInfo on a monthly basis from October 2005 until March 2006 when RCRAInfo became unavailable for uploads due to conversion to Version 3. TCEQ resumed uploads after EPA's CDX portal for Version 3 became operational in September 2006. The conversion to Version 3, however, has introduced the need for additional testing and coding adjustments. TCEQ is working towards performing more regular uploads to RCRAInfo with intent of returning to monthly uploads as soon as possible.</p>	<p>TCEQ uses a translator program to upload data from CCEDS into RCRAInfo. In FY 2005, TCEQ was not able to upload data to RCRAInfo on a routine basis because of issues with the translator program. Data was uploaded in October 2004, February 2005 (mid-year) and September (end-of-year).</p>		
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Completed	12/3/2007	RCRA	E12	Data Complete	<p>The file review revealed some missing data in RCRAInfo. Most of these pertained to missing informal actions (NOVs) in RCRAInfo. The data problems were discussed with TCEQ.</p> <p>Resolution of the translator issues has been affected by the move from RCRAInfo Version 2 to RCRAInfo Version 3. In addition, there were coding errors and some data were not uploaded. These issues have been communicated to TCEQ.</p>	<p>In regards to the informal enforcement data discrepancies, TCEQ is reviewing each of these items and will take action to correct any necessary data changes in CCEDS for a future upload to RCRAInfo.</p> <p>Region 6 will identify to TCEQ any remaining data accuracy or completeness issues not addressed in the master plan. TCEQ and the Region will negotiate details of addressing the remaining data issues. The outcome of this discussion will be a set of written guidelines from Region 6 to TCEQ. TCEQ will update its master plan accordingly. These activities are projected to be completed by December 1, 2007.</p>	<p>The file review revealed some missing data in RCRAInfo. Most of these pertained to missing informal actions (NOVs) in RCRAInfo. The data problems were discussed with TCEQ.</p> <p>Resolution of the translator issues has been affected by the move from RCRAInfo Version 2 to RCRAInfo Version 3. In addition, there were coding errors and some data were not uploaded. These issues have been communicated to TCEQ.</p>	<p>The original recommendation envisioned the need to amend TCEQ's data master plan. This was not necessary. Uploads from CCEDS into RCRAInfo are taking place dependably.</p>	
Working	4/30/2012	CWA	E13	Other	<p>TCEQ records single event violations in the state database, CCEDS, not in PCS. For FY2005, the number of major single event violations in CCEDS is 216. The number of non-major single event violations in CCEDS is 598 for TCEQ. PCS shows 12 EPA Region 6 non-major single event violations. The combined number of non-major single event violations is 610.</p>	<p>EPA Region 6 will work with TCEQ to get the single event data into ICIS-NPDES. To do this, TCEQ plans to build an upload program to electronically transfer all required data elements from the state CCEDS database to ICIS-NPDES. TCEQ will develop the upload program once EPA provides an XML schema for inspection and enforcement data for ICIS-NPDES.</p>	<p>TCEQ records single event violations in the state database, CCEDS, not in PCS. For FY2005, the number of major single event violations in CCEDS is 216. The number of non-major single event violations in CCEDS is 598 for TCEQ. PCS shows 12 EPA Region 6 non-major single event violations. The combined number of non-major single event violations is 610.</p>		X

Working	3/29/2013	CWA	E13	Other	Non-SNC formal enforcement data not in PCS	TCEQ plans to provide formal enforcement action data for non-SNC cases and more minors by developing an upload program to transfer data electronically from CCEDS to ICIS-NPDES. TCEQ will work with Region 6 to implement an upload program. The upload program will be developed once EPA provides an XML schema for inspection and enforcement data for ICIS-NPDES.	Non-SNC formal enforcement data not in PCS		
Completed	9/28/2007	CWA	E11	Data Accurate	Isolated enforcement and inspection data inaccuracies identified from the file review.	TCEQ has corrected the inspection data and enforcement data. TCEQ will either complete corrections of the enforcement DMR data or provide a schedule for completion by September 28, 2007.	Isolated enforcement and inspection data inaccuracies identified from the file review.		

Appendix E: Program Overview

Agency Structure

TCEQ Organization Chart link -
www.tceq.texas.gov/about/organization/orgchart.html

TCEQ is made up of a Headquarters in Austin and Regional Offices spread across the State. The following link provides information for each of the 16 Regional Offices.
<http://www.tceq.texas.gov/about/directory/region/reglist.html>

Compliance and Enforcement Program Structure

http://www.tceq.texas.gov/about/directory/oce_directory.html

Roles and Responsibilities

The TCEQ has primary oversight of the state NPDES program with the exception of offshore NPDES oversight which is performed by EPA Region 6 and NPDES related oil, gas, and geothermal exploration and development activities which are overseen by the Texas Railroad Commission

Local Agencies Included and Excluded From Review

N/A

Resources

TCEQ Resources – June 2011
m.tceq.texas.gov/agency/legislation/leg82.html/at_download/file

Staffing and Training

The Water Team of the Program Support Section (PSS) within the Office of Compliance and Enforcement at the TCEQ is heavily involved in the coordination efforts to ensure that the TCEQ's regional workplans include the EPA commitments in the Compliance Monitoring Strategy (CMS). A Wastewater Liaison is tasked with leading the coordination efforts of the NPDES program with the regional offices, Central Office and EPA. The Wastewater Liaison is a Natural Resource Specialist IV position which requires years of experience, technical knowledge of the program and excellent work ethics. This position is a competitive career path position which requires qualified and dedicated staff.

The Area and Regional Offices are responsible for conducting the performance measures required in the CMS. There are sixteen (16) regional offices across the state which develop individual workplans to ensure that the overall EPA commitments are performed. The TCEQ manages its resources effectively relative to the agency's obligations, including responding to manmade and natural disaster/emergency events, such as drought or flooding conditions, and ensuring that CMS commitments are met. TCEQ has successfully placed resources where needed to address state concerns. All new hires for the Area and Regional Offices start at the entry level of an Environmental Investigator (EI) II. An EI II position is a career ladder position in which stepped promotions are awarded with time and demonstrated job knowledge.

The primary duties of the Water Quality Compliance Monitoring (CM) Team of the Office of Compliance and Enforcement's Enforcement Division is to routinely monitor compliance with the TPDES self-reporting program and initiate enforcement using the Significant Non-Compliance (SNC) criteria. With a focus on core requirements and instituting improved work efficiencies, the CM Team has successfully met and continues to meet State TPDES and Federal NPDES requirements. All new hires for the CM Team start at the entry level of a Natural Resource Specialist II. A NRS II position is a career ladder position in which stepped promotions are awarded with time and demonstrated job knowledge. The CM Team has experienced a relatively successful retention cycle with qualified staff, with an average staff retention time of 9 years.

Data Reporting Systems and Architecture

The regional offices conduct the required program investigations and complete the EPA 3560 Forms, which contain the minimum data elements that are required to be entered into ICIS-NPDES. Upon receipt of the EPA 3560 Forms, the PSS staff verifies the information with the TCEQ's Consolidated Compliance and Enforcement Database System (CCEDS), and manually enters the data into ICIS-NPDES. CCEDS allows the Office of Compliance and Enforcement to track, monitor and implement enforcement actions across the agency. Because this system touches every area in the TCEQ, it draws upon information throughout the life cycle of TCEQ business.

The CM Team has three primary sources of federal MDRs; they are discharge monitoring reports (DMRs), compliance schedule reports, and enforcement documentation. In mid-2005, the TCEQ developed and deployed the first Texas electronic DMR reporting system (eDMR). In mid-2009, the TCEQ deployed an enhanced eDMR system named Texas NetDMR. At present, approximately 63% of the DMR reporting universe has been electronically submitting one or more records through the Texas NetDMR application each month. While this percentage does fluctuate with the number of approved permits/authorizations, the maximum participation rate experienced in electronic reporting to date has been 70%. Currently all compliance schedule MDR records are manually downloaded into the federal tracking systems on a monthly basis. In 2008, the TCEQ received federal funding to review, design, and build the capability to electronically transmit TPDES-related violation, inspection and enforcement data from the state CCEDS application to the federal ICIS-NPDES tracking system. The TCEQ has

completed review and specification requirements, as well as the design and development phases of this project. TCEQ is currently in the user test phase and the production release is expected by the end of December 2013.

Major State Priorities and Accomplishments

During the FY12 State Review Framework, EPA commented on the TCEQ's Stormwater investigation checklists that the regional offices use to conduct investigations. EPA expressed interest in the checklists that were located in the stormwater files that were reviewed and requested to receive templates for their use. Additionally, during FY12, the TCEQ created an internal Sanitary Sewer Overflow Initiative (SSOI) workgroup to update existing public documents, as well as create a new reporting form for SSOI participants and a new Agency webpage: <http://www.tceq.texas.gov/field/ssoinitiative>.

In FY2009, the CM Team began a program to directly initiate formal enforcement on TPDES permittees with excessive non-reporting violations. The purpose of this program is to efficiently require permittees to return to compliance as well as preventing any interference from the agency to perform regulatory oversight and/or determine compliance status. At present the CM Team has initiated over 360 formal enforcement action reviews since September 2010.

Appendix F: SRF Correspondence



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

May 22, 2012

Mr. Ramiro Garcia, Jr.
Deputy Director
Office of Compliance and Enforcement
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Dear Mr. Garcia:

I am writing to initiate our review of TCEQ's Air, Water and RCRA enforcement programs under the State Review Framework (SRF). Mark Hansen of my staff will be working with your staff and met with them on March 1 to lay the groundwork for the review. It will consist of data and file reviews examining inspection and enforcement activity for fiscal year 2011.

The official data sets for Air, Water and RCRA that will be used for the review are available on-line for TCEQ's review at <http://www.epa-otis.gov/otis/srf/>. This letter will also be sent electronically along with the Air, Water and RCRA data metric spreadsheets (enclosed).

Mark Hansen is the primary Region 6 contact for the SRF. He will work with Sal Tahiri on overall project coordination and in implementation according to the SRF protocol.

EPA is beginning a new round of SRF reviews of all the States which will span 2012-2016. There have been some changes since the last SRF review we did with TCEQ (2007) and these changes were covered in the March 1 meeting with your staff.

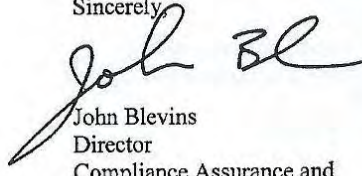
Also new for this round of reviews, EPA will be conducting integrated NPDES program reviews combining permit quality reviews with the NPDES portion of the SRF. Since TCEQ had a TPDES permit quality review in May 2011, we plan to include a summary of that review in the report we generate from the SRF review. The NPDES permit quality and SRF reviews will be integrated in that there will be overlap in some of the facilities selected for SRF file reviews.

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Re: TCEQ State Review Framework

We appreciate TCEQ's cooperation and support and look forward to working with you. If you have any questions, please contact me at (214) 665-2210, blevins.john@epa.gov, or Mark Hansen at (214) 665-7548, hansen.mark@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins". The signature is written in a cursive style with a large initial "J" and "B".

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosures

cc: William Honker, Acting Director
Water Quality Protection Division
U.S. EPA, Region 6