

**Region 10 Hazardous Waste Compliance Program Review  
Program Evaluation Report for  
Federal Fiscal Years 2000, 2001, 2002**

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Prepared by the  
United States Environmental Protection Agency  
Region 10  
Office of Compliance and Enforcement

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## **Executive Summary**

This Hazardous Waste Compliance Program Review is a comprehensive look at the EPA Region 10, Idaho, Oregon and Washington state environmental agencies' compliance and enforcement performance for three years starting October 1, 1999. We identified some issues common throughout the region as well as issues specific to each state program (EPA Region 10 implements the program in Alaska.) We did not make any direct comparisons between programs but we have presented the information in each state section of the report using a standard format with the same criteria. A consolidated presentation of measurements for the four states is included in Appendix E. While each state program has unique aspects, they all work to achieve the goal of improving compliance with the regulations that ensure safe hazardous waste management.

There are eight evaluation areas in the scope of this review, with the primary focus on these three areas:

- ▶ Timely and appropriate response to significant violations;
- ▶ Accurate record keeping and reporting, including tracking significant noncompliers;
- ▶ Clear and enforceable requirements in enforcement orders.

All the programs need to improve in timely and appropriate enforcement response to meet the expectations in the Hazardous Waste Civil Enforcement Response Policy (the ERP.) The ERP directs EPA and the states to classify facilities with violations as significant noncompliers (SNC) or secondary violators (SV) and respond appropriately. The SNC response should be formal enforcement that compels compliance and imposes penalties. Penalties should recover the economic benefit of noncompliance as well as an amount that reflects the gravity of the violations. Violations that are proved to be repeated or continuous should have gravity penalties imposed for multiple day violations. The agencies may mitigate a portion of the gravity penalty through a commitment by the violator to implement one or more Supplemental Environmental Projects (SEPs.) It is important that SEPs reflect the real net cost to the violator of the proposed project and that they won't undermine the deterrent effect of the original penalty. The program review evaluated all programs with the ERP expectations to reach the findings and recommendations presented below.

### Regional Overview

This program review relied heavily upon the data in the national hazardous waste information system, RCRAInfo. We found that all the programs had good data in the system, that is, inspection and enforcement events were accurately reported, return to compliance dates were entered, and data in the system mostly matched the information we found in the agencies' files. All programs performed well in this important area so that the performance measures in this report are based upon accurate and complete data.

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We found all the programs had strong compliance monitoring efforts, with good coverage of all segments of the regulated community. The relative compliance monitoring activity levels for the four states are shown in Figure 1. The activity levels were proportional to the relative size of the states' regulated universes. For these activities, we found all state's compliance inspection reports thorough and well written, for the most part, and notices of violations were usually sent promptly to facilities following inspections. Most violators responded appropriately to return to compliance after they were notified.

The authorized state programs made good efforts to provide technical assistance to the regulated community to improve compliance and reduce the amount of hazardous waste generated. We did not conduct a full

review of compliance and

technical assistance program activities but Idaho, Oregon and Washington showed us that they have invested substantial resources in improving compliance through their assistance efforts. We support the integration of compliance assistance strategically into well-rounded compliance programs that include incentives, monitoring and enforcement components. State programs should gather and publish information that helps measure the results achieved through compliance assistance work, such as, quantifiable improvements in safe waste management practices, reductions of hazardous waste generated, and increased recycling of hazardous materials. Improved measurements will help evaluate program effectiveness and demonstrate the returns on resources invested.

All the programs in Region 10 need to improve their implementation of the Enforcement Response Policy (ERP) to designate and address significant noncompliers (SNC.) We found examples in the files of violators that met one or more of the SNC designation criteria that had not been evaluated for, or identified as SNCs. Designation is an important step to ensure

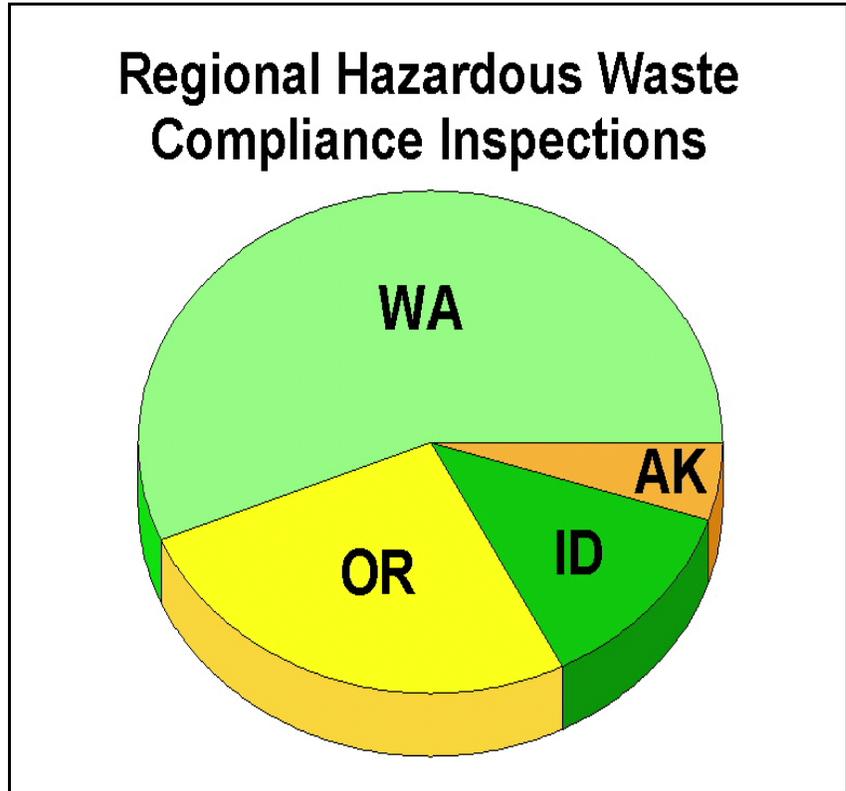


Figure 1

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appropriate enforcement responses and for tracking how effectively the programs find and fix significant breaches of safety in hazardous waste management.

All the authorized state programs need to improve their assessment and imposition of penalties in enforcement cases. It is important that the calculations of both initial and final penalties follow the applicable penalty policies and that they be clearly documented in the files. Authorized state programs need to consistently determine and assess the economic benefit violators gained through noncompliance and add that to gravity-based penalties in order to take away any competitive advantage for violators and maintain a level playing field for other businesses. In addition, multiple day penalties need to be assessed for significant repeat or continuous violations.

All the authorized state programs need to be careful when mitigating penalties for supplemental environmental projects (SEPs) so that they don't allow a benefit to accrue to the violator in lieu of a penalty payment. Settlements need to have clear expectations about what the SEPs entail and what they really cost the violators before allowing penalty reductions. We support the use of creative SEPs to mitigate penalties for tangible public and environmental benefits. We found some good examples of SEPs in this review, such as creating a program to remove hazardous laboratory chemicals from local schools. On the other hand, SEPs that allowed violators to fund their own training or management systems and substantially reduced their penalties were hard for us to validate. Agencies need to document justifications for the SEPs, how the project net present values were calculated, and how mitigation figures were determined for the final settlements, in accordance with applicable policies.

The authorized state programs need to be more consistent when issuing final orders to ensure that enforceable requirements (injunctive relief) are in place to achieve full compliance with applicable hazardous waste regulations that protect human health and the environment. We found some cases that were not fully resolved by the RCRA enforcement orders, for example, when further work was referred to a state voluntary cleanup program to investigate potential and actual releases of hazardous waste. We support the use of a variety of state program tools where necessary to address environmental and public health risk. However, we also expect orders to be in accordance with the ERP which states, "The formal enforcement response actions should also seek injunctive relief that ensures that the noncompliant facility expeditiously returns to full physical compliance."

Following is a brief summary of the program strengths and areas needing improvement for the four state programs. Detailed information is included in the state chapters that make up the consolidated Program Review Report that starts on page 10.

EPA Alaska Program

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Strengths

- Good coverage of the regulated universe using staff in Alaska and other Region 10 offices
- Thorough inspections of complex facilities, especially military bases
- Timely and complete data entered in the RCRAInfo system.

Needs Improvement

- Issue timely Notices of Violations and make significant noncomplier determinations
- Escalate violators that don't timely return to compliance to SNC
- Complete formal enforcement actions timely for SNCs.

Idaho Department of Environmental Quality Program

Strengths

- Thorough coverage of all segments of the regulated universe
- Effectively used informal enforcement actions to get prompt return to compliance
- Appropriately identified most of the SNCs found during the review period
- Provided additional compliance assistance to small businesses.

Needs Improvement

- Continue to improve the timeliness with which enforcement cases are referred for formal action and the time in which violators return to compliance
- Consistently calculate and assess multiple day penalties where appropriate and recover economic benefit in penalties unless they are too small or document the inability to pay
- Better selection and documentation of SEPs using applicable guidance
- Include injunctive relief in formal enforcement orders that require full physical compliance.

Oregon Department of Environmental Quality Program

Strengths

- Thorough inspections that identified noncompliance
- Promptly returned violators to compliance
- Completed a large number of formal enforcement actions
- Provided additional compliance assistance for toxic use and waste reduction.

Needs Improvement

- Restore inspection coverage following a fifty percent drop in inspections in 2002
- Appropriately designate SNCs and assess appropriate penalties
- Consistently determine economic benefit of noncompliance and recover it in penalties unless too small or documented inability to pay

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- Increase penalties for multiple day violations where appropriate
- Include injunctive relief in formal enforcement orders that require full physical compliance.

Washington Department of Ecology

Strengths

- Increased compliance inspections to improve coverage of the states large universe of small generators
- Used informal enforcement notices to return the majority of violators to compliance
- Thorough coverage of the operating treatment, storage and disposal facilities
- Provided additional compliance assistance to regulated community.

Needs Improvement

- Apply the RCRA Enforcement Response Policy to identify SNCs timely and pursue appropriate formal actions
- Consistently determine economic benefit of noncompliance and recover it in penalties unless too small or documented inability to pay
- Justify and document penalty reductions
- Better selection and documentation of SEPs using applicable guidance
- Include injunctive relief in formal enforcement orders that require full physical compliance.

## **Purpose of the Review**

The Environmental Protection Agency (EPA) Region 10 and the state environmental agencies in Alaska, Idaho, Oregon and Washington established the Compliance Assurance Program Evaluation Principles in July 1998. This Hazardous Waste Compliance Program Review follows those principles and fulfills EPA's oversight role by evaluating state program adequacy and consistency in implementing and enforcing national standards under the Resource Conservation and Recovery Act (RCRA.)

The national standards for enforcement response to violations are detailed in several EPA policies that we applied to this review. The Hazardous Waste Civil Enforcement Response Policy (the ERP) directs the states and EPA to evaluate violations detected to determine if they meet the criteria for significant noncomplier (SNC) designation and to respond to violations in a timely and appropriate manner. A SNC response should be formal enforcement to compel full physical compliance and to impose monetary penalties. Under the ERP, penalties should recover the economic benefit of noncompliance (i.e., the delayed and avoided costs of compliance) plus some appreciable amount reflecting the gravity of the violations.

Some of the gravity portion of a penalty may be mitigated through a commitment by the violator to implement one or more supplemental environmental projects (SEPs). The states are not required to follow EPA's SEP policy, although many agencies have similar policies which include standards similar to those outlined in EPA's policy and help ensure SEPs are appropriate. EPA believes that all SEPs should adhere to a few key principles designed to ensure the violator does not benefit economically, thereby undermining the deterrent effect of the gravity component of the penalty. A key principle is that the value of the project be based on consideration of tax benefits and the time value of money and that the value be consistently determined and documented. Since most capital projects and on-going operational costs are eligible for tax deductions, it is important to accurately quantify the after-tax value of a project to the violator. Additionally, since many projects will not be completed for a period of time, the time value of money may significantly reduce the "net present value" of the project (i.e. the cost of the project to the violator in "today's dollars.") Calculations of delayed costs that incorporate these two principles determine the "after-tax net present value" of the SEP to the violator. Another key principle of SEPs is that only a percentage of the after tax net present value of the SEP should be applied as mitigation against the gravity penalty amount. EPA policy is that the mitigation percentage should not exceed 80% except in limited, specified circumstances. That is, for each dollar of project value, a violator should receive not more than an eighty cent reduction in the total gravity component of the penalty. The full extent of the mitigation should be clearly documented in the case files and monitored for future compliance with the conditions.

In addition to the gravity component, the ERP directs EPA and states to estimate and

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recover the economic benefit accrued by the violators, using readily available information about the violations and economic circumstances. EPA has developed several computer models that can assist states in estimating economic benefit, and determining the value (accounting for tax and time-value implications) of the regulatory costs avoided by violators.

This program review covers inspection activities for three years, federal fiscal years 2000, 2001 and 2002, in an effort to identify programmatic or regional compliance and enforcement trends. In addition to the program outputs, the report also focuses on the outcomes of those actions in all four states by reporting the results of compliance monitoring and enforcement work that were completed after September, 2002. Therefor, follow-on enforcement actions and return to compliance dates were included through December 2004. The scope and methodology of the review is detailed at the end of this report and in Appendix A. This report provides a consolidated view of EPA Region 10 and the state hazardous waste compliance programs using national standards for the purpose of providing common information to the agencies that will support co-implementation of these recommendations by EPA and state management in the years to come.

## EPA Region 10 Program in Alaska and Authorized States

EPA implements the hazardous waste program directly in Alaska where the state has no program. Idaho, Oregon and Washington have programs authorized by EPA and those states primarily implement the compliance and enforcement work in their states. This review evaluated EPA's Alaska program implementation along with the other states' authorized programs. In addition, EPA has an enforcement role in the authorized states which was also included in this section of the review. The review team visited the Seattle office of EPA Region 10 in February 2004 to review selected EPA compliance and enforcement files.

### Strengths

- Good coverage of the regulated universe using staff in Alaska and other Region 10 offices
- Thorough inspections of complex facilities, especially military bases
- Timely and complete data entered in the RCRAInfo system.

### Needs Improvement

- Issue timely Notices of Violations and make significant noncomplier determinations
- Escalate violators that don't timely return to compliance to SNC
- Complete formal enforcement actions timely for SNCs.

### Program Performance and Effectiveness

EPA on-site compliance inspection activity in Alaska dropped 35%, from 51 in 2000 to 33 in 2002 (see Figure A-1.) Other activity types, including compliance assistance visits, record reviews and self-disclosure evaluations, increased from 5 to 42 in the same period. In the three authorized states, EPA inspections declined 8%, from 63 to 58 and other types increased from 25 to 27.

EPA found violations and started enforcement actions with Notices of Violations at 50% of the Alaska hazardous waste handlers inspected in 2000, 54% in 2001 and 79% in 2002.

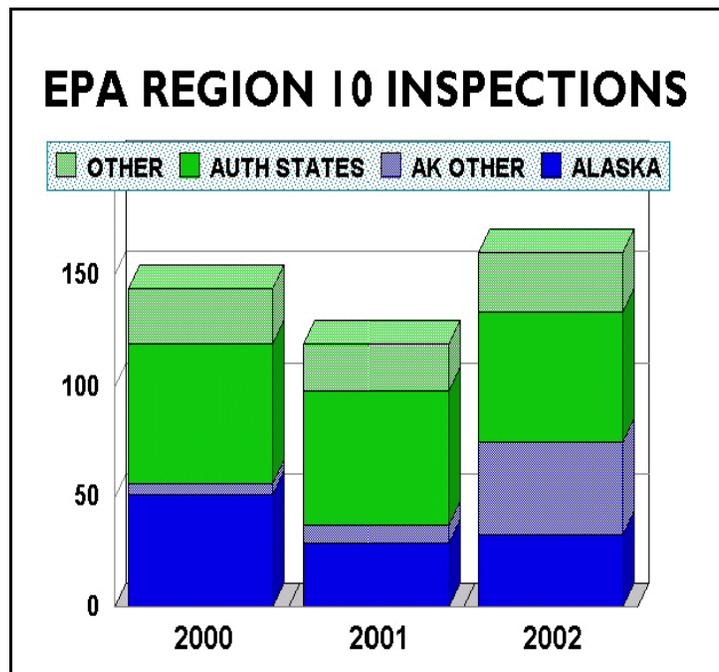


Figure A-1

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Two of those violators were not reported back in compliance as of November 2004, one from 2000 and the other from 2002 (see Figure A-2, NOT RTC.) In the other states, EPA sent Notices of Violations to 30% of handlers inspected in 2000 and 11% in both 2001 and 2002. Two of those violators from 2000 were not reported back in compliance as of November 2004 when we last checked the RCRAInfo system data for this report.

A measure of program effectiveness is the time it takes violators to fix their problems and return to compliance following inspections. The average time to return to compliance for Alaska violators was 224 days in 2000, then dropped to 124 days in 2001 and 148 days in 2002. For EPA inspections in the three other states, the average return to compliance times in response to informal enforcement notices from EPA varied greatly, with 150 days for 2000 inspections, down to 86 days for 2001, and up to 309 days for 2002. These averages exclude violators that were resolved through formal enforcement actions and orders, which averaged 994, 794 (one case) and 242 days, respectively, in the three years reviewed.

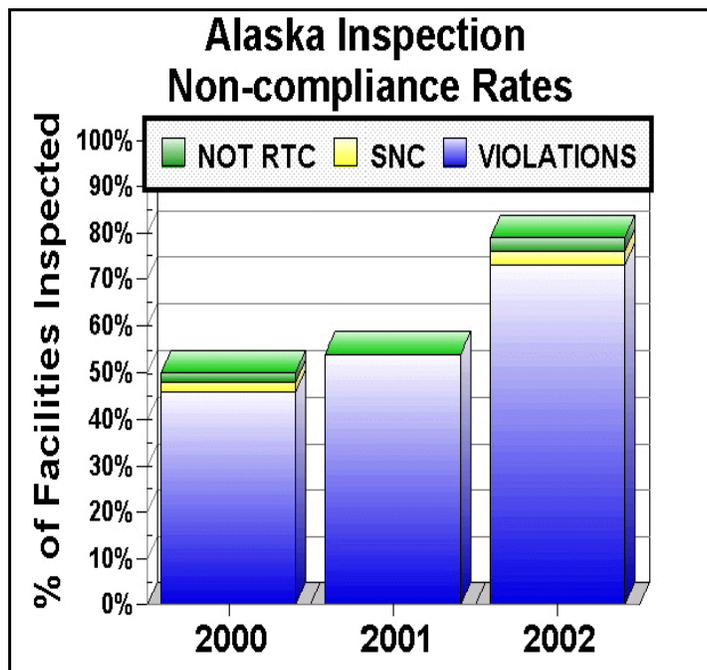


Figure A-2

Another national enforcement performance measure is the number of significant noncompliance (SNC) determinations as a percentage of inspections. One SNC was identified in Alaska in 2000 and another in 2002. The three years of SNC rates were 2%, 0 and 3% (see Figure A-2.) In the authorized states, EPA identified one (2%) in 2000, three (5%) in 2001 and three (5%) in 2002. EPA's Office of Enforcement and Compliance Assurance has calculated the national average SNC identification rate as 3% in the 2004 State Review Pilot RCRA Framework Metric report. The overall three year average for the Region 10 SNC identification rate was 3.1%. While the benchmark provides a good reference point, it is still important to designate all SNC violators using the criteria in the RCRA Enforcement Response Policy, described later under the heading, "Timely and Appropriate Response to Significant Violations." Finally on this topic, there were no cases of recidivism found in Alaska, that is, SNC handlers who were again found to be in significant noncompliance at the next inspection after they returned to compliance.

Program performance and effectiveness were also assessed through the review of a

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sample of EPA compliance and enforcement files. Several descriptions of the environmental benefits achieved through compliance monitoring and enforcement efforts were found, including:

- ▶ a wood treater installed an emergency storm water control system to prevent releases of contaminated water to a nearby stream;
- ▶ a mill site removed 9.5 million pounds of contaminated soil in an illegal waste pile from tribal lands and disposed of it properly at a permitted TSD;
- ▶ a steel fabricator removed thirty-five drums of contaminated sand blast grit from tribal lands and disposed of it properly at a permitted TSD.

However, the review team noted that many other files did not include documentation of how violations had been resolved and the benefit achieved through the return to compliance. In particular, three files for inspections in authorized states noted that the inspection follow-up for violations had been referred to the state agencies but no further information was in the files about the case resolution. **We recommend that EPA follow-up with the states to document compliance outcomes in the EPA files after violations are referred to states for enforcement actions.**

Complete, Accurate and Current Knowledge of the Regulated Community

This evaluation area was not a substantial element of this program review. However, we did make the following observations:

- ◆ We found that the EPA Alaska program made good use of contacts with the US Air Force to track remote Long Range Radar sites that generated conditionally exempt quantities of hazardous waste.
- ◆ The RCRAInfo Alaska data for Treatment Storage and Disposal (TSD) facilities and for Large Quantity Generators (LQG) was regularly updated as notification revisions were received from facilities.
- ◆ EPA used handler data appropriately to plan EPA inspection work in accordance with the national enforcement program manager's

## Alaska TSD Inspections

	2000	2001	2002
BP Exploration Prudhoe	Facility Self Disclosure 4/27/00	Other 9/17/01	Non-Financial Record Review 11/26/01
North Star Borough Landfill		Non-Financial Record Review 5/4/01	Non-Financial Record Review 8/27/02
US&F Bremendorf	Compliance Evaluation 8/1/00	Compliance Evaluation 4/25/01	Non-Financial Record Review 3/8/02 Compliance Evaluation 7/23/02
USArmy Ft Richardson	Compliance Evaluation 7/31/00	Compliance Evaluation 4/23/01	Compliance Evaluations 5/20-24/02
USArmy Ft Wainwright	Compliance Evaluation 6/20/00	Compliance Evaluation 6/18/01	Non-Financial Record Review 2/27/02 Compliance Evaluation 7/17/02
USDOT CG ISC Kodiak	Corrective Action Oversight 10/6/99, 8/23/00 Compliance Evaluation 8/22/00		Operations & Maintenance 10/02/01 Compliance Evaluation 8/22/02

Figure A-3

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guidance.

◆ Some files indicated that inspections were in response to complaints, particularly for handlers on tribal lands, indicating that EPA included complaint response in setting inspection priorities.

Appropriate Targeting, Inspection and Monitoring Strategy

EPA completed TSD facility compliance evaluation inspections at federal facilities annually and nonfederal facilities no less often than every two years, as required by the Solid Waste Disposal Act Section 3007 (42 USC 6927.) The 2001 inspection at the US Coast Guard facility on Kodiak Island was two days after the end of the fiscal year but that was not a significant deviation from the requirement (see Figure A-3.)

EPA elected to meet the inspection requirement through record review evaluations at the remote BP Exploration and North Star Borough facilities in order to have staff and travel funds available to conduct other priority inspections in Alaska. All of the TSD facilities are also LQG handlers but the inspections are only counted in the TSD measure for program evaluation purposes.

EPA targeted 20% of the large quantity generators in Alaska for inspection each year in accordance with the Region 10 Memorandum of Agreement work plan with the Office of Enforcement and Compliance Assurance. EPA inspected 7 of 34 (21%) LQG in 2000. The historical LQG report pulled through RCRARep showed that there were 63 LQG in 2000, of which 5 were TSD facilities, 12 were new notifiers, one dropped before the end of the year and 11 were both new and dropped during the year. In 2001 EPA inspected 12 of 44 (27%) LQG (net of 13 new and 3 dropped). In 2002 EPA inspected 14 of 23 (61%) LQG (net of 27 new, 33 dropped and 4 that were both new and dropped.) These statistics illustrate the importance of maintaining current knowledge of the regulated community for effective targeting, as generator status is subject to frequent changes.

The historical LQG universe in Alaska has experienced significant turnover in the past five years. Only 10 of the 36 (28%) LQG handlers in the system in October 2000 were still on the list for fiscal year 2005. Nine of those ten were inspected at least once within the past five years as directed by the national program guidance. The one handler that was not covered was last inspected in 1999 and was also a high priority corrective action site overseen by an EPA project manager so a compliance inspection was seen as a low priority.

In the authorized states, EPA conducted 60 inspections at LQG (some of which were also TSD) facilities and 63 at other handlers during the review period. EPA and the states negotiated inspection targets annually in the Performance Partnership Agreement work plans and EPA's priority was clearly the LQG universe. The review team noted that some inspection files included referral of enforcement follow-up to the state programs without tracking the outcome of

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those cases. **A complete EPA monitoring strategy should include results of state referrals as another measure of EPA targeting effectiveness, in addition to the EPA enforcement actions.**

Balanced Use of Tools

EPA activities shifted substantially for Alaska inspections and other evaluations from 2000 to 2002, as illustrated earlier in Figure A-1. The allocation was relatively unchanged in the authorized states. With the resources available for hazardous waste compliance work, any change in work load for self disclosures, record reviews, and enforcement cases impacted the staff available to conduct on-site compliance evaluation inspections. Alaska has thousands of miles of area to cover, so Region 10 inspectors experienced work load constraints imposed by limited travel appropriations. Given these limitations, EPA did well to maintain the required RCRA core program activity level in Alaska, work on oversight and referrals in authorized states, and still have some resources available for limited compliance assistance. EPA allocated most compliance assistance work to tribal owned or operated hazardous waste and used oil handlers in Indian Country, as appropriate under the Agency's tribal compliance policy.

Timely and Appropriate Response to Significant Violations

The review team found some files where it was difficult to evaluate what had been covered in the inspection and whether violations had been appropriately determined. Six handlers had compliance inspection data but the files were lacking documentation of the inspections, such as a completed checklist or a narrative description of the facility operations that had been evaluated. Six other handlers with corrective action oversight or record review data codes lacked documentation in the files of what information had been evaluated and how the compliance determinations had been made. Three inspections included information that handlers had not made adequate waste determinations and indicated some follow-up was necessary to determine compliance but lacked additional information in the files that subsequent action was taken to confirm compliance. Inspection reports for treatment, storage and disposal facilities did not make it

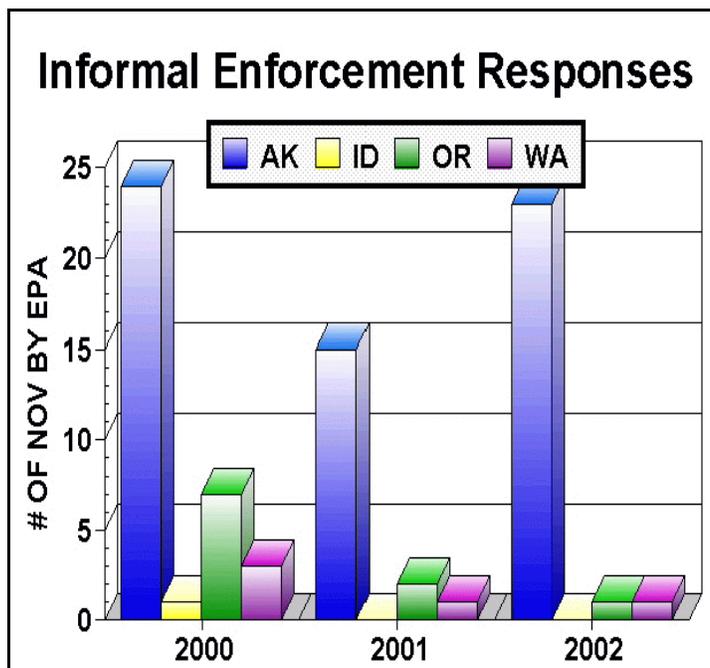


Figure A-4

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clear that compliance with permit or interim status requirements was specifically evaluated.

EPA issued 62 Notices of Violations (NOV) in Alaska and 16 in the other states for inspections conducted in fiscal years 2000, 2001 and 2002 (see Figure A-4.) EPA improved the timeliness of their informal enforcement NOV's following inspections during this period but was still slower than the ERP guideline (see Appendix B.) In Alaska cases, 46% of the NOV's in 2000 took longer than 90 days to complete, 33% in 2001 and 26% in 2002. The NOV's were generally well-written and the violations clearly identified with corresponding corrections that were needed to return to compliance. The NOV's required the violator to respond within a specific time frame and included an express reservation of enforcement rights. Two violators in Alaska and two in Washington had not returned to compliance by November 2004 when data for this report was last checked. EPA continued to actively monitor the violators' progress toward compliance, including re-inspections. The review team found that the cases were complicated and the facility operators were not fully cooperating with EPA to do the work needed to comply. All four were past the ERP time line to get a final enforcement order in place.

There were seven other violators in Alaska that failed to return to compliance within the time allowed in the ERP. EPA did not appropriately designate these violators for significant noncompliance or issue formal enforcement orders in accordance with the ERP in these cases. Three violators in the other states also exceeded the ERP time line without EPA escalating their cases to formal enforcement. We reviewed four of these ten files and found documentation of extended discussions of the violations with the facilities' representatives. EPA did not move these cases to formal enforcement during discussions because additional information was being presented to EPA to refute the violations. **We recommend that EPA make the appropriate SNC designations for violators that do not return to compliance within the time allowed and escalate cases to formal enforcement to deter extended periods of noncompliance.**

EPA completed ten formal enforcement actions in the three authorized states for violations determined in fiscal years 2000, 2001 and 2002, five of which included penalties. One additional facility in Alaska that was inspected and reviewed in this time frame reached a Compliance Agreement and Final Order with penalty (for \$9,350) in August 2003 for violations determined in September 1997 and that isn't counted for this review because it originated before the review period. Three of the five penalty actions resulted from violations of existing orders that triggered stipulated penalties that were specified in the orders, rather than newly calculated from new violations. All but one of the new formal enforcement actions took longer than the ERP time line allowed to complete. The average time for EPA to complete an order was 832 days.

The ERP states that the timeliness should be adhered to by the regions and states to the greatest extent possible. However, there are recognized circumstances which may dictate an exceedance and a ceiling of 20% per year was established for consideration of cases involving

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unique factors. In cases where response times will be exceeded due to case specific circumstances, the implementing agency must prepare a brief justification for the delay and develop an alternative schedule for case resolution. We reviewed four of the six cases that exceeded the formal enforcement time line and did not find any such justifications or schedules.

The review team found EPA's lack of formal enforcement in Alaska during the program review period appeared to be a significant deviation from the Agency's Enforcement Response Policy. There was little or no formal enforcement undertaken in Alaska for the three years of inspections reviewed. There were two SNC designated violators and twelve other violators that failed to return to compliance promptly for which the ERP indicated formal enforcement actions were warranted. **We recommend that EPA make consistent use of the ERP criteria for initiating formal enforcement actions in Alaska.**

EPA did complete formal enforcement with penalty actions in the other three authorized states. The average final penalty settlement in those cases was \$134,222 (see Figure A-5). It was clear that the penalty actions were not evenly distributed over time and that one large penalty assessment of \$773, 811 at a TSD facility in Seattle, had a large impact on EPA's overall formal enforcement record. That penalty was eventually reduced through negotiations to \$115,480. Three enforcement cases collected stipulated penalties for violations of existing orders. Follow-up enforcement of existing orders provided a significant deterrent to non-performance of the work required by prior EPA enforcement actions. Those stipulated penalty actions amounted to \$285,000 of the total final penalties for the review period.

Several files reviewed showed that EPA responded to treatment, storage and disposal violations. The violations cited included operating without a permit and requirements to close regulated units. The Alaska Railroad files included extensive corrective action investigations which we did not review. Two wood treater facility enforcement actions in Washington included closure requirements and indicated follow-up would be coordinated with the EPA and state cleanup programs to investigate site contamination.

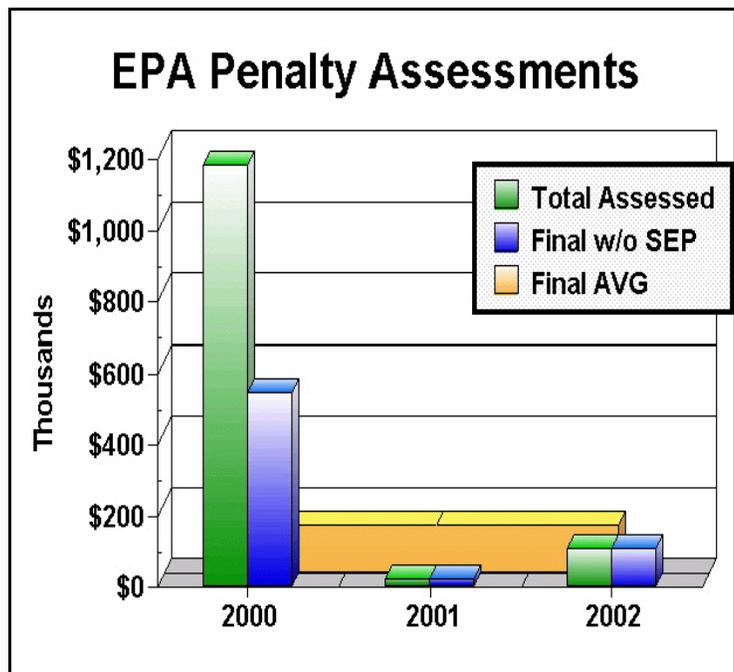


Figure A-5

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Accurate Record Keeping and Reporting

The review team requested files from the RCRA Records Center in Region 10 for the EPA compliance documents at the handlers selected from the RCRAInfo data for review. Sixty-five percent of the 20 Alaska files reviewed were complete in that all the inspection and compliance documents to support the case were included. Forty-seven percent of the 17 other state files were also complete. In the files found not to be complete, most often missing were the corrective action oversight and record review files recorded in RCRAInfo. Those files may be stored elsewhere than the compliance and enforcement section but the review team tried to correlate file documents with the compliance activities reported in RCRAInfo. **We recommend that EPA include a copy of compliance reports for corrective action oversight and other evaluations in the RCRA compliance files.**

Files that included Notices of Violations were mostly complete. The NOV's were all developed from a common template and were consistently clear about the violations found and the measures needed to return to compliance. The file documentation most often missing was confirmation from the violators of the actions they took to correct violations and EPA's response that specific compliance requirements had been met.

The review team examined two penalty case files. In the university case, EPA consolidated violations from inspections at the university from September 1997, June 2000, and a February 2002 closure certification review and initially assessed a penalty of \$104,456 in August 2002. Adequate calculation forms and penalty guidance analyses were included in the file. Settlement meeting and conference call notes were in the files describing information provided to EPA that led to a reduced penalty of \$9,350. The justifications cited were "unique factors" associated with the problems of litigation. Region 10 pointed out in their response to initial review team findings that there may also be additional enforcement documents in the Office of Regional Counsel Docket that we did not review which might have provided additional information about the settlement considerations and receipt of the penalty payment.

The other penalty reviewed was for a TSD facility in Seattle in fiscal year 2000. EPA demanded stipulated penalties for violations of the facility's corrective action order. The enforcement file included adequate documentation of the response to the enforcement action but there was little information about the calculation of the demand letter, nor a copy of the letter itself. The facility did dispute some aspects of the EPA demand but paid the full stipulated penalty of \$159,500 in January 2000. While the other penalty information may reside elsewhere in corrective action or docket files, **we recommend that copies be placed in the facility's enforcement file to maintain a complete record in the proper location.**

Clear and Enforceable Requirements

In addition to the penalty cases above, there were two other formal enforcement files reviewed, both Washington state wood treater facilities. In the first case, a complaint and

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compliance order was issued three years after violations were determined and included clear requirements for compliance with hazardous waste management regulations. However, the respondent requested a hearing to contest the complaint and that hearing was scheduled for February 2005. The second case started in November 1999 and the Notice of Violation was issued in April 2000 for multiple violations including disposal of hazardous waste without a permit. The NOV was contested by the respondent and their industry association. They claimed that EPA was not consistently interpreting some of the wood treater regulations. Even though an enforceable final order had not been issued, the facility took some actions in response to the NOV in order to comply with some of the hazardous waste management regulations. The review team found both these cases had complex issues and that EPA had clearly applied the appropriate interim status and permit requirements in drafting orders but enforceable orders or permits were not timely issued.

The review team also found that EPA needed to be more clear about making compliance determinations. In some cases EPA indicated or suggested that facilities were in compliance during an exit briefing or in follow-up correspondence. EPA rarely if ever is in a position to determine that a facility is in full compliance with all applicable regulations through the course of a normal inspection and enforcement process.

#### Sound Program Management

This evaluation area was not thoroughly covered in this review. The review team did not interview key participants in the EPA compliance and enforcement program, however, some team members are part of that program. EPA's Alaska and other state program work was carried out by the RCRA Compliance Unit of the Office of Waste and Chemicals Management and enforcement cases were brought to the Office of Regional Counsel for prosecution. Regional Counsel could then refer cases to the US Department of Justice but none of the files reviewed included a US DOJ referral. The Compliance Unit issued Notices of Violations and the Regional Counsel developed formal enforcement actions. However, the review team did not evaluate the allocation of responsibilities for EPA's enforcement program nor assess the interactions between the two Offices.

## Idaho Department of Environmental Quality

The review team visited the Boise Office of IDEQ in December 2003 for file reviews and discussions with state officials. Our preliminary findings were shared with the state in February 2004 and IDEQ provided additional information and comments that have been considered in preparing the final report.

### Strengths

- Thorough coverage of all segments of the regulated universe
- Effectively used informal enforcement actions to get prompt return to compliance
- Appropriately identified most of the SNCs found during the review period
- Provided additional compliance assistance to small businesses.

### Needs Improvement

- Continue to improve the timeliness with which enforcement cases are referred for formal action and the time in which violators return to compliance
- Consistently calculate and assess multiple day penalties where appropriate and recover economic benefit in penalties unless they are too small or document the inability to pay
- Better selection and documentation of SEPs using applicable guidance
- Include injunctive relief in formal enforcement orders that require full physical compliance.

### Program Performance and Effectiveness

Idaho inspection activity was steady throughout the review period. We found that the activity drop identified as a concern in the 1999 Program Review had been reversed and an adequate level of coverage reestablished. The surge in other activity in 2002 was the result of 58 nonfinancial record reviews conducted to validate annual generator report submissions to improve the quality of the 2001 Biennial Report (see Figure I-1.) IDEQ enters Compliance Evaluation Inspection (CEI) data in RCRAInfo for handlers to whom they have assigned state-only identification numbers. Those handlers are not counted in national data reports and are

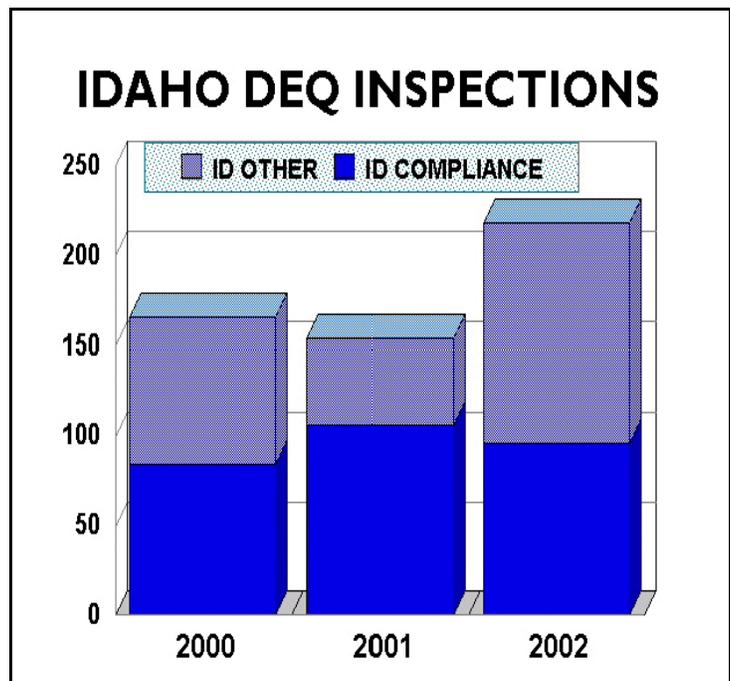


Figure I-1

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included here in the ID OTHER segment, along with Compliance Assistance Visit (CAV), Record Review (FRR, NRR) and Other (OTH) data types. The activity counts in Figure I-1 include multiple inspections at some facilities.

IDEQ found violations and started enforcement proceedings at 41% of the handlers inspected in 2000, 53% in 2001 and 23% in 2002. No particular reason was found for the large drop in the violation rate in 2002 and we did not find that to be a trend of concern (see Figure I-2.) Seven violators were not reported back in compliance as of November 2004, three each from 2000 and 2002, and one from 2001 (see NOT RTC in Figure I-2.) Six of those seven violators were reported working under an order to achieve compliance and the other one was in violation of an order and had been referred to the Attorney General's office.

A measure of program effectiveness is the time it takes violators to return to compliance following inspection. The average time for informal enforcement actions to get compliance in Idaho for 2000 was 80 days, 131 days in 2001, and 109 days in 2002. Formal enforcement cases took longer, including those seven still not returned to compliance as of November 2004, and averaged 527 days for cases in 2000, 545 days in 2001 and 458 days in 2002. We found in the file reviews that some violators were not returned to compliance in IDEQ's database until the property has been cleaned up under other authorities. That tended to lengthen the average time needed to achieve compliance as compared with the time it took to put formal enforcement orders in place.

A key national enforcement performance measure is the number of significant noncompliers (SNC) determinations as a percentage of handlers inspected. IDEQ identified nine SNCs out of the handlers inspected during the three year review period; 5% of 2000 inspections, 4% of 2001 and 4% of 2002 (see Figure I-2.) The review team found a few additional cases among the 34 files reviewed that appeared to meet the SNC designation criteria for which IDEQ did not make a SNC designation. These potential SNCs were pursued as formal enforcement cases even though not designated. EPA's Office of Enforcement and Compliance Assurance has calculated the national average SNC identification

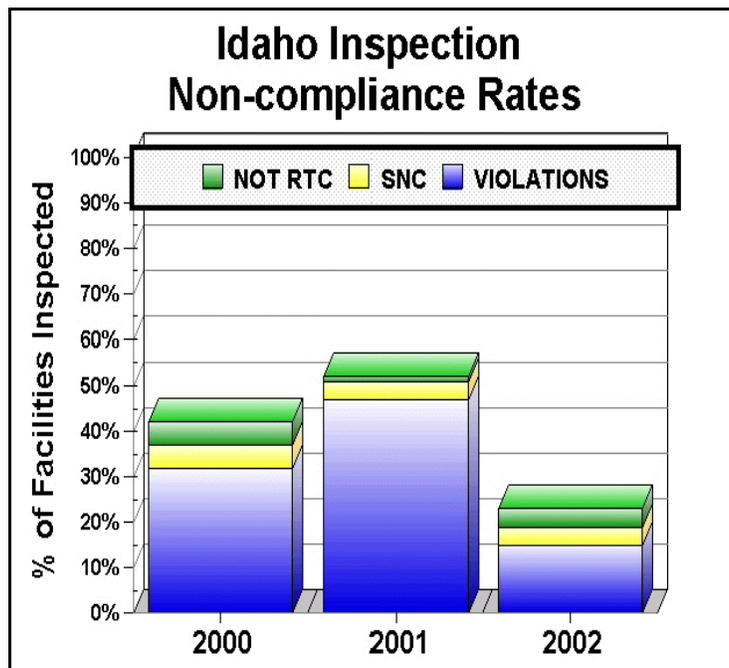


Figure I-2

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rate as 3% in the 2004 State Review Pilot RCRA Framework Metric report. **We recommend that IDEQ can make better use of the significant noncomplier data protocol by using the SNN code to indicate that violators no longer meet the SNC criteria. IDEQ indicated in their response that they intend to utilize the revised data protocol as recommended.**

We found two SNC violators who may be recidivist, although they have not yet been designated SNC for the second time. A TSD facility in Pocatello was designated SNN in July 1999, then found in violation again in June 2001. A formal order was issued in July 2002, without a SNY designation. The review team did not look at the facility files but the formal enforcement follow-up is a key indicator of recidivism. The other repeat violator, a wooden pole treater, was designated SNN in November 2000. IDEQ found violations in August 2002 and referred the case to the Attorney General's office in September 2002, without a SNY designation. The review team did not examine the facility files, however, we recommend that Idaho take another look at whether the violations merit SNY designation. **We recommend that both enforcement cases take the apparent recidivism into consideration as an aggravating factor.**

Program performance was also evaluated through the review of a sample of compliance and enforcement files. Some examples we found of the beneficial outcomes achieved through IDEQ compliance monitoring and enforcement included:

- ▶ A small laundry operator was stopped from dumping perchloroethylene outside their business. After the operator went bankrupt trying to tackle the cleanup, IDEQ worked with the property owner to identify and remove contaminated soil.
- ▶ A large university implemented a Supplemental Environmental Project as part of settling a penalty case in 2002. The university established a program to reach out to high schools to identify hazardous wastes in science labs and handle the cleanup and disposal of outdated chemicals. This SEP will help protect thousands of school children in Idaho from hazards in their every day environment.
- ▶ A settlement with a wood products company helped minimize waste through construction of a process waste water treatment system. The generator also changed practices to eliminate still bottoms sent to a solid waste landfill as a result of working with IDEQ.

We did not find good examples of the environmental outcomes achieved through compliance assistance visits. Most compliance assistance visit files included minimal documentation of the conditions at the facility and any follow-up actions taken to improve those conditions. We found that other states have benefitted from documenting compliance assistance success stories that can help other generators and show state legislatures the effectiveness of assistance programs. **We recommend that IDEQ include more information about compliance assistance outcomes in their files and publications.**

Complete, Accurate and Current Knowledge of the Regulated Community

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This evaluation area was not a substantial element of this program review. However, we did make the following observations:

- ▶ Idaho made effective use of the RCRAInfo database for assigning “state only” handler identification numbers. IDEQ uses “STATE” as part of the number for nonregulated and conditionally exempt generators that they work with on compliance assistance, complaint response, and other compliance monitoring activities. Using the “STATE” number allows EPA and IDEQ to track the work load and status of handlers that are not otherwise required to have a number. “STATE” handler activities are not uploaded to national enforcement reporting systems.
- ▶ IDEQ operated a very active complaint intake and response program. Staff in regional offices around the state responded quickly to complaints and referred violators to the more experienced hazardous waste inspectors when necessary. Nine of the 34 handler files reviewed included information that they were complaints, five of which resulted in enforcement actions.

Appropriate Targeting, Inspection and Monitoring Strategy

IDEQ completed TSD inspections at federal facilities annually and non-federal facilities no less often than every two years, as required by the Solid Waste Disposal Act Section 3007 (see Figure I-3.) IDEQ elected to inspect the three operating TSDFs multiple times each year because they are large, complex facilities.

Idaho exceeded the 20% large quantity generator inspection target in all three years reviewed: 26% in 2000, 33% in 2001 and 56% in 2002. There were fifteen LQGs from 1999 that were still LQGs five years later when this review was completed. All fifteen were inspected during the five year interval, satisfying the LQG coverage national guidance for the RCRA enforcement program.

Balanced Use of Tools

IDEQ implemented a balanced program using compliance monitoring

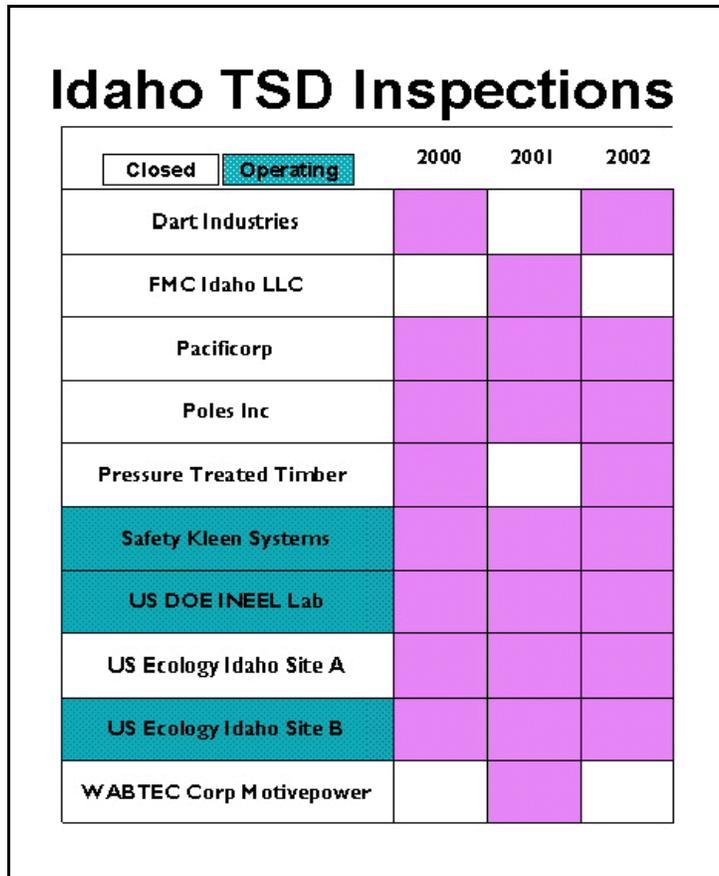


Figure I-3

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and compliance assistance activities, as illustrated in Figure I-1 above. However, we did not find that the hazardous waste program had developed a comprehensive compliance assistance program with objectives and performance measures, as had been recommended in the 1999 program review. We did find improvement in the use of the “CAV” data element for assistance visits but there were still instances of data showing “CEI” inspections while the file information indicated that an assistance visit had been conducted instead. In addition, **we recommend that “CAV” be used to code visits to nonregulated “STATE” identification number handlers where compliance enforcement is not one of the expected outcomes of the site visit.** As noted above, some outcomes of compliance assistance work should be documented in the files to illustrate the effectiveness of IDEQ efforts to promote compliance.

The review team found that IDEQ was using Supplemental Environmental Projects (SEPs) as an enforcement program tool. SEPs allow for part of the gravity component of a penalty to be offset by implementation of an environmentally beneficial project with some nexus to the violations and that doesn't benefit the violator. We found IDEQ appeared to be too flexible in their acceptance of SEPs by the violators, for example, they allowed dollar for dollar mitigation of some gravity penalties and they allowed some SEPs that directly benefitted the violators. We found a formal enforcement action that left the door open for an SEP to be developed following the settlement so that its true value was not defined when the penalty mitigation was determined. IDEQ's response to the instances we found in the files was that they allowed for SEPs which take into account the specific circumstances of each case and that primarily benefit public health or the environment. IDEQ maintained that there may always be different interpretations between the agencies of the balance between public and private benefit of an SEP but in all cases, it was better to negotiate an SEP than to allow the penalties to be dismissed altogether. We don't agree that negotiating an SEP is such an “either/or” proposition. **We recommend that IDEQ improve the file documentation of the SEP and net present project cost in the settlement, document that an SEP tradeoff is greater than one-for-one and document SEP implementation follow-up and expenditure tracking in the enforcement files.**

#### Timely and Appropriate Response to Significant Violations

The review found that IDEQ made substantial improvement in the timeliness of their notices of violations and enforcement referrals to the Attorney General's office compared with the time frames of the national Enforcement Response Policy. Data showed that for 2000, ten of the eighteen informal enforcement letters were sent an average of 95 days later than the ERP guideline. That was cut to just seven of thirty-three letters for 2001 that were an average of only 25 days late. Only one of the six informal enforcement letters for 2002 took longer than 90 days.

IDEQ used a combination of inspection reports and inspection checklists to adequately document noncompliance. Significant violations were appropriately referred to the Attorney General's office for formal enforcement. Data indicated ten of the nineteen referrals in 2000

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took longer than the 210 days allowed in the ERP, which was reduced to six of eighteen in 2001 and none of the thirteen referrals in 2002 took more than 210 days.

The ERP states that the response times articulated in the ERP should be adhered to by the regions and states to the greatest extent possible. However, there are recognized circumstances which may dictate an exceedance and a ceiling of 20% per year was established for consideration of cases involving unique factors. In cases where response times will be exceeded due to case specific circumstances, the implementing agency must prepare a brief justification for the delay and develop an alternative schedule for case resolution. We did not find any such justifications or schedules in the files reviewed.

The files reviewed showed that the SNCs were generally well identified and that some cases were referred to formal enforcement without making a SNC designation, as pointed out earlier in this report. However, the data indicated a substantial drop in the enforcement response activity for 2002 inspections (see Figure I-4). We did not find any change in the enforcement

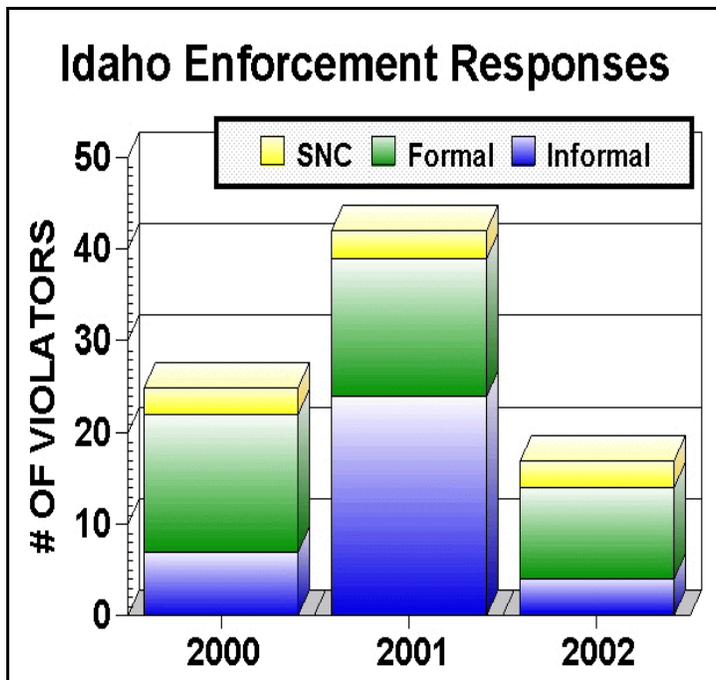


Figure I-4

responses in our file reviews that would help explain the change. We believe the change is most likely due to the unpredictable nature of targeting compliance monitoring activities from one year to the next. However, it is possible that the increased enforcement response IDEQ had in 2001 led to improved compliance so that IDEQ inspectors did not find as many violators the following year.

Idaho issued twelve penalties for violations determined in 2000, fourteen penalties for 2001 and eight penalties for 2002. The average final penalty settlement was \$13,113 (see Figure I-5) for cases originating in the three year review period. IDEQ's response to initial findings stated that they collected more of their penalties than the national average but we found that the penalty collected data element is not one of the RCRAInfo core data elements and is therefore not reliable national data.

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The review team found that IDEQ consistently documented their proposed penalty calculations and although some of the paperwork was not included in the enforcement files it was available to review upon our request. None of the assessments included calculations of the economic benefit realized through noncompliance or compounded penalties for major magnitude, multiple day violations. The review team found that IDEQ had not been following EPA's Civil Penalty Policy as written into the state-EPA enforcement agreement. IDEQ acknowledged this in the preliminary findings and shared a more recently drafted penalty action that did include Civil Penalty Policy criteria. **We recommend that IDEQ include documentation of economic benefit and multiple day calculations in enforcement case development.**

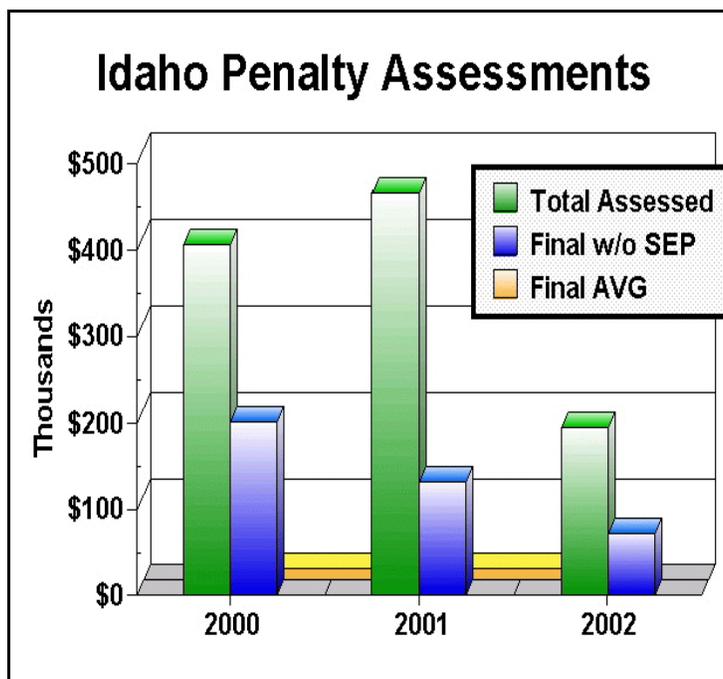


Figure I-5

The review team found some enforcement cases that were settled without requiring appropriate injunctive relief, such as an order to address hazardous waste management units through closure. This issue is described in the Clear and Enforceable Requirements section, below.

Accurate Record Keeping and Reporting

The review team found inspection reports and enforcement actions were generally well documented and supported by adequate evidence including narratives, photographs and sampling results when necessary. IDEQ included a penalty calculation form in the state Enforcement Procedures Manual which was quite thorough and provided a standard template to include in each enforcement case file. The review team found that subsequent penalty figures were not well documented and in some cases reviewers could not determine whether reductions of penalties were appropriate. IDEQ responded that they have subsequently started using a standard Compliance Conference Agreement form, developed by the Attorney General's office and expect the record to be more clear in the future. Case files need to document that reductions were in accordance with civil penalty policy guidelines and that efforts to return to compliance in response to an agency action are not a basis for penalty reduction.

Documentation of the case files was most inconsistent for those violators referred to the

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Attorney General's office for prosecution. We found that there was significant delay in getting documents back from the AG for completion and close out of the IDEQ case files. Idaho responded that they have already agreed to improve communication between the offices on active and completed enforcement referrals.

#### Clear and Enforceable Requirements

The review team evaluated twenty files that included enforcement orders. Half of the orders included clear requirements for correcting violations and verifying compliance. There were ten cases that were less clear about how the hazardous waste regulations were being enforced. The reviewers found these cases problematic in that they mostly involved illegal storage and disposal and mostly owner/operators who claimed to have limited resources. IDEQ attempted to negotiate voluntary cleanup agreements with the violators rather than enforcing RCRA closure requirements. IDEQ's response to our preliminary finding was that in cases of limited resources, they would rather have the funds directed to cleanup actions instead of penalties in an effort to improve the environment. We expect those cases to include documentation of the violators inability to pay penalties, which may justify penalty relief but it won't remove the injunctive relief necessary to comply with applicable requirements in accordance with the ERP. The reviewers found that some of the owner/operators were not capable of, or willing to, perform voluntary actions and that the enforcement of regulated unit closure requirements was necessary for the cleanup to be completed. **We recommend that IDEQ clearly include enforceable hazardous waste requirements in formal enforcement orders.**

#### Sound Program Management

This evaluation area was not thoroughly covered in this review, however, the team did meet with IDEQ officials and Attorney General's office staff in Boise to discuss the state program priorities and enforcement policies. The IDEQ program thoroughly covered the regulated universe through compliance monitoring and compliance assistance. Complaints and tips generated a significant work load that appeared to be well integrated into the program priorities. IDEQ had a good case management and tracking system in place, with the exception of a lack of information in the files following referral of some enforcement cases to the AG's office. IDEQ's response included a proposal to improve communication between the offices with quarterly reports and a reminder to staff to complete file documentation when cases conclude.

IDEQ's information management system was complete and current for activities that were performed during the review period. Data was regularly uploaded to the national RCRAInfo system and the data we found matched the information in the compliance files.

IDEQ addressed the 1999 Review finding that press releases were not routinely used to publicize enforcement actions and provide information to the regulated community that may

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create more deterrence. We found press releases in some of the files that described the consent orders, penalties and work that facilities did to resolve violations. IDEQ's policy was that publicizing the agency orders was preferable to writing a press release based on the earlier notices of violation because the facts were more clearly established and the department did not have to retract accusations later. **We recommend that IDEQ establish a consistent process to issue press releases describing the penalties and environmental improvements for all final enforcement orders.**

## Oregon Department of Environmental Quality

The review team visited the Portland, Salem and Bend Offices of ODEQ in April 2004 for file reviews and discussions with state officials. Our preliminary findings were shared with the state in July 2004 and ODEQ provided additional information and comments that have been considered in preparing the final report.

### Strengths

- ▶ Thorough inspections that identified noncompliance
- ▶ Promptly returned violators to compliance
- ▶ Completed a large number of formal enforcement actions
- ▶ Provided additional compliance assistance for toxic use and waste reduction.

### Needs Improvement

- ▶ Restore inspection coverage following a fifty percent drop in inspections in 2002
- ▶ Appropriately designate SNCs and assess appropriate penalties
- ▶ Consistently determine economic benefit of noncompliance and recover it in penalties unless too small or documented inability to pay
- ▶ Increase penalties for multiple day violations where appropriate
- ▶ Include injunctive relief in formal enforcement orders that require full physical compliance.

### Program Performance and Effectiveness

Oregon inspection activity dropped by half from 2000 to 2002 (see Figure O-1). The state fiscal problems and a decline in receipts from the hazardous waste fees that substantially fund the ODEQ hazardous waste program required that inspector positions be vacated which led to the drop in inspections. ODEQ reported that budget and activity levels have recovered somewhat in 2003 and 2004 but won't return to 2000 levels. ODEQ has been tracking some of their compliance assistance visits in RCRAInfo but the majority were tracked only by their Regional Divisions' Toxic Use and Waste

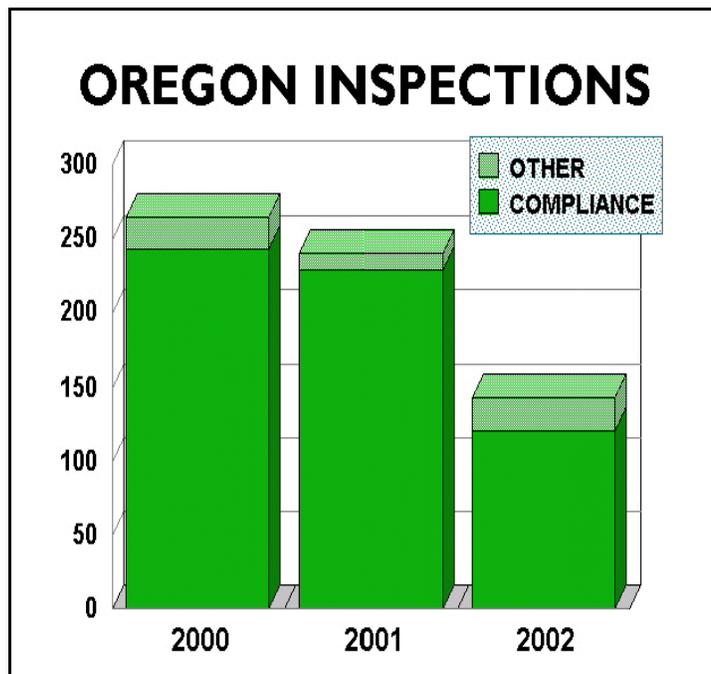


Figure O-1

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Reduction Assistance Programs. **We recommend that ODEQ enter as much of their compliance assistance work as possible into the national database to more accurately portray their program accomplishments.**

ODEQ inspectors found violations and started enforcement proceedings at the majority of handlers inspected: 72% in 2000, 71% in 2001 and 82% in 2002. Most of the violators were brought into compliance through informal enforcement actions. All violations from the review period have been returned to compliance according to data pulled from RCRAInfo in December 2004 (see ALL RTC in Figure O-2.) The high rate of noncompliance found in Oregon raised some concern for the reviewers about whether the hazardous waste enforcement program created an adequate level of deterrence in the regulated community.

A measure of program effectiveness is the time it takes violators to return to compliance following inspections. The average times reported for return to compliance following informal enforcement actions were 126 days in 2000, 84 days in 2001 and 72 days in 2002. The rapid compliance was largely due to the exceptional job done by inspectors to meet the ODEQ's goal to issue Notices of Noncompliance within ten days of inspections. The Notices we reviewed did a good job of reporting the inspection results and identifying problems facilities needed to correct. Formal enforcement cases took longer to achieve compliance, due to increased complexity or magnitude of the problems and averaged 152 days in 2000, 150 days in 2001 and 208 days in 2002. While the data showed ODEQ's program very effective in returning violators to compliance, our file reviews found a lack of supporting documentation (e.g., photos, manifests, etc.) in many cases for the return to compliance determination. **We recommend that ODEQ improve the consistency of return to compliance documentation in the facility files.**

An important national enforcement performance measure is the number of SNC determinations as a percentage of handlers inspected. Oregon identified seven SNCs during the review period, 0% of handlers inspected in 2000, 2.3% in 2001 and 2.9% in 2002 (see Figure O-2.) We found ODEQ had responded to the 1999 program

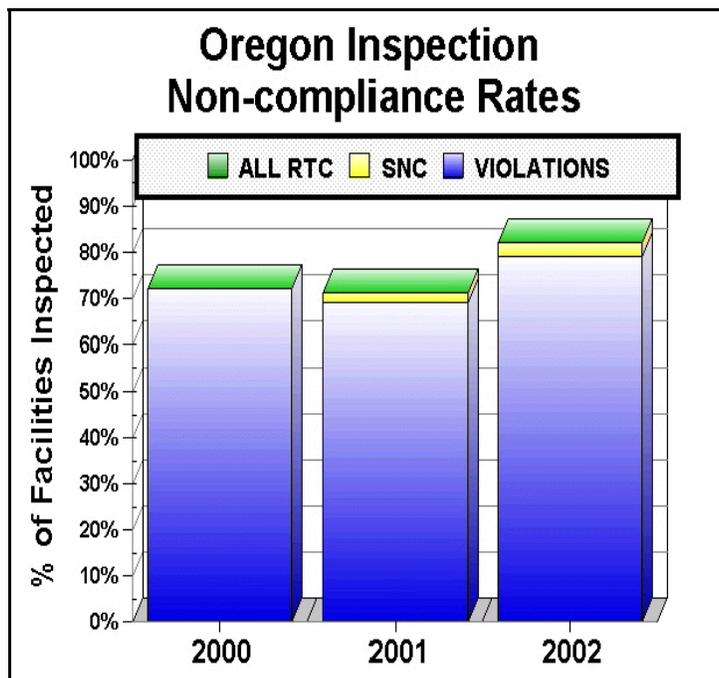


Figure O-2

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review finding that SNC violators were not being identified, however, there is still room for improvement. We found at least three cases in our file review that met the SNC criteria but were not designated. ODEQ also initiated sixty-two formal enforcement actions for violators that were not designated SNC. **We recommend that ODEQ make appropriate SNC designations in accordance with the ERP and in conjunction with referrals for formal enforcement.**

We also reviewed compliance files for examples of environmental outcomes that demonstrated ODEQ program effectiveness. Some examples of beneficial outcomes included:

- ▶ The combined enforcement effort at the generator and sham recycler dealing with a large quantity of fluorescent light tubes ensured that the waste was repossessed by the generator and disposed of safely at a hazardous waste facility.
- ▶ In coordination with the city's waste water authority, ODEQ brought a photo processor into compliance by correcting the plumbing that had been connected to the storm water drain instead of the sewer. Compliance resulted in eliminating hazardous waste discharge to the river and recovery of silver for reuse instead.
- ▶ ODEQ found a chemical warehouse where 40 tons of hydrocyanic acid hazardous waste was being stored without a permit. Enforcement against the bankrupt owner was difficult but the waste was removed from illegal storage and safely managed within 65 days of the inspection.

In addition, ODEQ provided the review team with fact sheets from successful compliance assistance projects. Although the review did not look extensively at the state's Toxic Use and Waste Reduction Assistance Program, the examples did demonstrate that several hazardous waste handlers improved the management of their wastes and reduced the amounts they generated and disposed.

#### Complete, Accurate and Current Knowledge of the Regulated Community

This element was not a substantial part of this review, however, we did find that ODEQ operated a comprehensive complaint intake and response system. Each regional office designated a duty officer to handle incoming calls and refer tips and complaints to the appropriate program for follow-up. Twelve of the forty-nine compliance files we reviewed indicated that they originated from a complaint. In addition, ODEQ noted that they treat lower priority complaints as sources for compliance assistance visits, for example at conditionally exempt generators, where recommendations for improvement can be made without using compliance inspector resources. Some of the assistance visits have also been used to blanket an area and turn up generators who failed to get a hazardous waste generator identification number.

#### Appropriate Targeting, Inspection and Monitoring Strategy

ODEQ completed annual inspections at the one federal facility TSD in Oregon and the three other operating TSD facilities no less often than every two years, as required by the Solid Waste Disposal Act Section 3007 (see Figure O-3.) ODEQ elected to inspect three operating

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TSDs multiple times each year because they are large, complex facilities. ODEQ did not conduct RCRA inspections at closed facilities with ground water monitoring systems because those facilities were being managed by the state cleanup program. **We recommend that those facilities required to have post-closure permits be inspected as required to ensure that systems are operated effectively to prevent releases of, or exposure to, hazardous wastes that remain on site.**

The inspection reports we reviewed for a permitted commercial TSD facility did not contain any systematic evaluation of compliance with permit requirements or an evaluation of applicable closure and post-closure cost estimates and financial assurance requirements. We heard from ODEQ in response to our preliminary findings that additional permit and compliance files are available for review and EPA intends to pursue additional review in performance partnership work plan discussions with ODEQ.

Oregon met the 20% large quantity generator inspection target in 2000, then cut back to 14% in 2001 and 18% in 2002. ODEQ placed a low priority on inspecting one-time and inactive LQGs and used compliance resources to target more small and conditionally exempt generators where they believed there were more compliance problems. In addition, they made an effort to verify and update generator status in the handler database to better portray the actual LQG universe work load which was smaller than the data indicate.

### Oregon TSD Inspections

	Closed	Operating	2000	2001	2002
Cascade Wood Products					
Chemical Waste Mgmt					
Columbia Helicopters					
Evanite Fiber Corp					
J H Baxter					
Lockheed Martin					
Northwest Industries					
Oregon Steel Mills					
Permapost Products					
Safety Kleen Clackamas					
Tektronix Beaverton					
USA Umatilla Chemical					

**Figure O-3**

Balanced Use of Tools

ODEQ implemented a balanced program including compliance assistance, monitoring and enforcement. In addition to the assistance visits reported in RCRAInfo (see figure O-1,)

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ODEQ reported annual Performance Partnership Agreement accomplishment of 607 assistance visits in 2000, 285 in 2001 and 435 in 2002. ODEQ provided the review team with fact sheets and case studies that illustrated some of the success of their assistance programs in reducing waste generation and ensuring safer management of hazardous waste. As noted above, we recommend that ODEQ enter as much of their compliance assistance work as possible into the national database using the compliance assistance visit (CAV) evaluation type.

One of the enforcement files we reviewed included a Supplemental Environmental Project (SEP) that provided a compliance incentive for the violator to institute an Environmental Management System (EMS.) The SEP costs were spread over three years but the ODEQ allowed full credit rather than the net present value of the project and no project runs or calculations were in the files. We did not find documentation of how the settlement met SEP criteria nor justification of the mitigation figure selected. In addition, the review team questioned whether the EMS would primarily benefit the violator rather than the environment because the EMS would help them maintain compliance. ODEQ replied that the SEP includes a commitment to share information with the community and other businesses that would increase the environmental benefit beyond the facility itself. Even though we saw only one case, **we recommend that ODEQ be careful to allow only the net present after tax value of SEPs when negotiating reductions in the gravity component of their penalties and verify the public and environmental benefits of the project in the case files.**

Timely and Appropriate Response to Significant Violations

ODEQ inspectors were outstanding in providing prompt informal enforcement Notices of Noncompliance after completing their inspections. The average time to issue NONs was 22 days in 2000, 26 days in 2001 and 21 days in 2002 with only ten instances that exceeded 90 days out of the 341 NONs issued for the three years reviewed. We found the NONs comprehensive and well written in most cases.

ODEQ's Enforcement Division develops all the enforcement cases referred by the hazardous waste program inspectors in the regional offices. The review team found that the

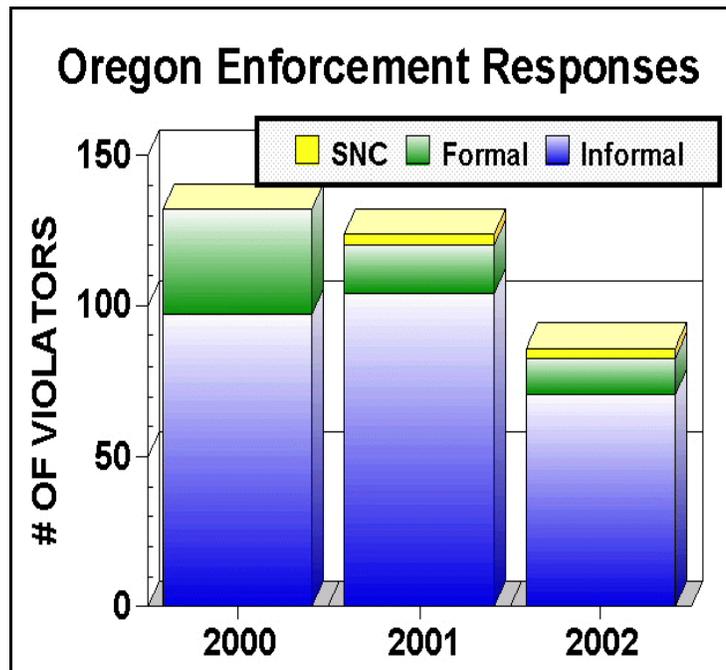


Figure O-4

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referral process through regional managers to the Enforcement Division resulted in consistently well documented enforcement cases. We found some instances of delay and differences of opinion between offices in case development, however, we concluded that, on the whole, the centralized enforcement process worked well.

We found that ODEQ completed a large number of formal enforcement actions, only a few of which were as a result of SNC determinations (see Figure O-4.) The average time needed to complete initial formal enforcement orders was more than the 180 days allowed under EPA's Enforcement Response Policy: 258 days for 2000, 263 days for 2001 and 221 days for 2002. ODEQ's enforcement policy was more ambitious, with a goal of 55 days to develop an initial order, and we found their enforcement timeliness goals were not met. **We recommend that ODEQ align their internal time lines more closely with EPA's revised 2003 Enforcement Response Policy to allow sufficient time to complete formal enforcement orders.**

The ERP allowed for 20% of formal enforcement actions to exceed three hundred days to complete. ODEQ had 30% of cases exceeding the guidelines in both 2000 and 2001 and that dropped to one case (7%) in 2002. In addition, ODEQ and EPA policies require that delays in completing cases be justified with explanations and alternative schedules that we did not find in the enforcement files we reviewed. **We recommend that the Enforcement Division ensure that case files include an explanation of delay when the time lines are exceeded.**

ODEQ created a SNC designation policy in 2001 to address the recommendation of the 1999 program review. We found they implemented the policy resulting in four violators in 2001 and three in 2002 designated SNC. These seven SNCs were addressed with formal orders and penalties that were higher than the state average. Some of the files reviewed included information that we interpreted as meeting the SNC policy criteria but were not designated SNC. Given that ODEQ pursued formal enforcement actions in most of these cases, we found that formal enforcement was the appropriate response even though there was no SNC designation. **We recommend that ODEQ improve the connection between referring violators for enforcement and making SNC designations. Given the limited resources available to complete timely enforcement actions, it seems especially important to focus enforcement on SNC violators.**

ODEQ assessed thirty-four penalties for violations found in 2000, twenty for 2001 and fourteen for 2002. The average final penalty settlement during this review period calculated from RCRAInfo data was \$6,927 (see Figure O-5). This was a 33% increase in the average final penalty of \$5,202 that was found in the 1999 Oregon program review. ODEQ responded positively to the prior recommendation that larger penalties may improve deterrence in the hazardous waste enforcement program. Many of the enforcement files we reviewed included an

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economic benefit section in the penalty calculation work sheets. However, most of the calculations included no money for economic benefit and a justification that not enough information was available to run a calculation through the BEN model or that the amount was estimated to be de minimis (below \$2500) and not calculated. **We recommend that ODEQ continue to include economic benefit considerations in inspectors and enforcement specialists' training and to ensure that calculations are documented for all penalty assessments.**

Another factor in the low penalty assessments was that ODEQ rarely imposed penalties for each day when significant violations existed for multiple days.

Of the twenty-nine penalty files reviewed, three included assessment of multiple day penalties. The rest of the cases used a gravity factor of 20% of the base penalty for repeated and ongoing violations that added a maximum of \$1200 for multiple day violations, which was not consistent with the RCRA Civil Penalty Policy. **We recommend that ODEQ assess the appropriate penalties for each day violations exist in significant multiple day cases to deter extended periods of noncompliance.**

Finally, the review found some enforcement cases that were settled with orders that did not specify the appropriate injunctive relief needed to address illegal storage or disposal without a hazardous waste permit. In response to our preliminary findings, ODEQ pointed out that they have state regulations that govern generator violations and that under their enforcement policy, violators will not be cited for operating without a permit unless there is evidence of a release, the potential for significant environmental harm or waste is accepted from elsewhere as part of a commercial venture. Spills and releases are referred to the state's voluntary cleanup program to protect human health and the environment. Compliance with applicable TSD requirements should be enforced, particularly in cases of mismanagement that result in significant releases. **We recommend that ODEQ include documentation in case files that hazardous waste violations have been corrected and applicable requirements enforced along with the cleanup activities completed.**

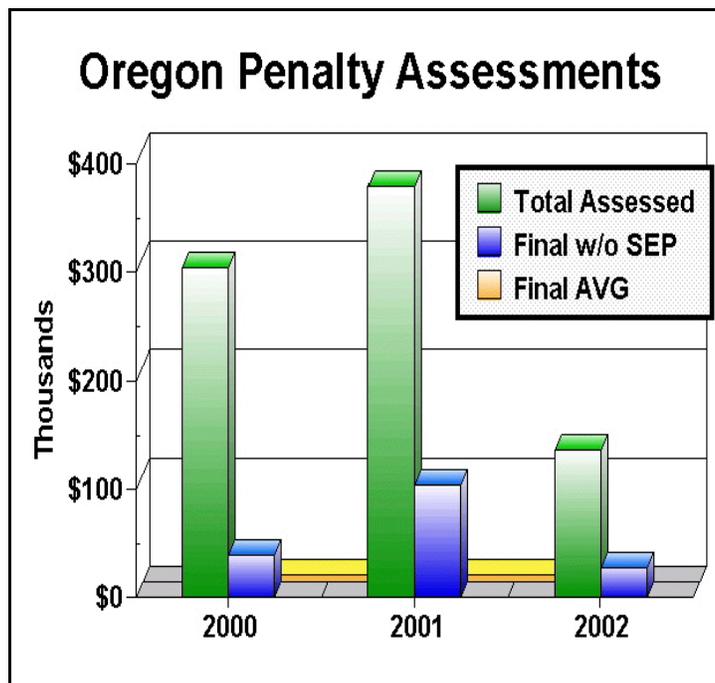


Figure O-5

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Accurate Record Keeping and Reporting

The review found that inspection reports and enforcement actions were well documented and supported by adequate evidence including narrative inspection reports, photographs and sampling results when necessary. Oregon's penalty calculation criteria are specified in state regulations, known as Division 12, and file documentation was clear and consistent. As noted above, ODEQ should improve the consistency with which economic benefit calculations are explained in the files, as well as document the instances where violations occur for multiple days. A few files were missing the justifications of how revisions to the penalties conformed to applicable penalty policy and rules in final agreements resolving contested cases.

We had difficulty reconciling the regional files and enforcement files to determine the final outcome of some enforcement actions. A few files could not be located in the Enforcement Division because files were under other business names than the hazardous waste database and Enforcement did not utilize the hazardous waste identification number for tracking cases. In addition, it was not clear if all penalties had been paid and which Division was responsible for ensuring final penalties and payments were collected and entered in the RCRAInfo system. ODEQ responded that payment and collection information is not kept in the regional files, yet regional staff may be asked to gather additional information about the violator's status and willingness to comply. **We recommend that clear roles and responsibilities be established and followed to improve the consistency of tracking case conclusion data.**

Clear and Enforceable Requirements

The review team evaluated twenty-nine files that included enforcement orders. Most of the orders included clear requirements for correcting violations and verifying compliance. There were ten orders that were less clear about the injunctive relief required to ensure compliance with hazardous waste requirements. These cases mostly involved generators that had exceeded the conditions for which a permit was required: illegal disposal or storage beyond the time allowed. It was not clear that the requirements to close illegal storage and disposal areas were enforceable in the orders issued. For example, if hazardous waste concentrations in soils didn't exceed the state cleanup action levels, then closure of storage or disposal areas was not required by an order. While that may be allowable under state cleanup laws, hazardous waste laws have provisions designed to prevent mismanagement of wastes that result in releases. ODEQ responded to our initial finding by pointing out that EPA and ODEQ had previously agreed that hazardous waste cleanups may be managed under the state's cleanup program. **We recommend that ODEQ be clear about including enforceable hazardous waste requirements in orders, including injunctive relief, as well as pursuing cleanup through other programs.**

Sound Program Management

This evaluation area was not thoroughly covered in this review, however, the review team did meet informally with Enforcement and Regional managers and staff during site visits for the file reviews to discuss program management. We found that the coordination of case

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development between the Enforcement and Region Divisions worked well in most cases. As noted in the timeliness area above, the enforcement cases took longer to complete than the state policy expectation and that created some frustration for the regional staff. We also noted that the Regions' referral of violators who were not designated significant noncompliers for enforcement created a large workload for small penalty actions that may have contributed to enforcement delays. ODEQ responded that they will be re-evaluating enforcement policy time lines, that they revised the Division 12 penalty regulations to increase base penalties in the state enforcement matrix, and that they will have additional training on the implementation of the 2001 state SNC policy and guidelines for referrals.

We found that most of the data in the files had been entered into the RCRA Information system. ODEQ's information management system was mostly current and complete for data relevant to the review period. In addition, ODEQ produced comprehensive enforcement press releases at least every other month that summarized all enforcement actions and published current and cumulative penalty assessments, as well injunctive relief information for some specific cases on the ODEQ web site.

## Washington Department of Ecology

The review team visited the Ecology Offices in Spokane, Yakima, Bellevue and Lacey for file reviews and discussions with state officials in February and March 2004. Our preliminary findings were shared with the state in July 2004 and Ecology provided additional information and comments that have been considered in preparing the final report.

### Strengths

- Increased compliance inspections to improve coverage of the states large universe of small generators
- Used informal enforcement notices to return the majority of violators to compliance
- Thorough coverage of the operating treatment, storage and disposal facilities
- Provided additional compliance assistance to regulated community.

### Needs Improvement

- Apply the RCRA Enforcement Response Policy to identify SNCs timely and pursue appropriate formal actions
- Consistently determine economic benefit of noncompliance and recover it in penalties unless too small or documented inability to pay
- Justify and document penalty reductions
- Better selection and documentation of SEPs using applicable guidance
- Include injunctive relief in formal enforcement orders that require full physical compliance.

### Program Performance and Effectiveness

Washington's reported inspection activity declined 20% during this review period (see Figure W-1.) However, most of the decline resulted from a continuing drop in Ecology's entry of the evaluation type "other" in the national database. There were 599 "other" evaluations in 1997 which were included in the 1999 program review. There are only 105 "other" evaluations in RCRAInfo for 2002 in this review. Ecology provided more information to the review team in response to our preliminary findings about how they use the state program's Event Tracker data system to track activities that are not in the national database. They indicated that 234 more visits, providing compliance assistance to waste handlers, were tracked by the state system during the review period.

On the other hand, Ecology's compliance evaluation and other on-site monitoring inspections increased since the 1999 program review. The average annual activity level in 1996-98 was 259 compliance evaluation inspections and the 2000-2 level was up to 425 inspections. Ecology has had a staffing reduction since the last program review and they said that they have

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focused more on compliance evaluations than on technical assistance as resources declined. Overall, we found the new focus an improvement in Ecology's compliance program from the previous review.

Ecology's inspection effectiveness in finding violations was consistent with previous reviews. Violations were found at 63% of handlers subject to compliance inspections in 2000, 54% in 2001 and 46% in 2002. Ecology makes an extra effort to track violation types to determine "compliance indicator violations" that have greater potential for releasing contaminants than other violation types. We did not evaluate that measure in this review. The decline in violation

rates may be interpreted as an improvement resulting from Ecology's increased compliance monitoring activity in the review period. There were three violators in 2001 and four violators in 2002 that had not returned to compliance (see NOT RTC in Figure W-2) as of the last data update for this review in November 2004.

A measure of program effectiveness is the time it takes violators to return to compliance following inspections. The Washington averages for informal enforcement cases were 167 days for 2000, 156 days for 2001 and 130 days for 2002 and this is a positive performance trend. In the more difficult formal enforcement cases, the averages were 325 days for 2000, 364 days for 2001 and 384 days for 2002. This trend was negative and we believe more resources may be needed from Ecology and the Attorney General's office to address difficult violators sooner and with more attention to the need for timely compliance.

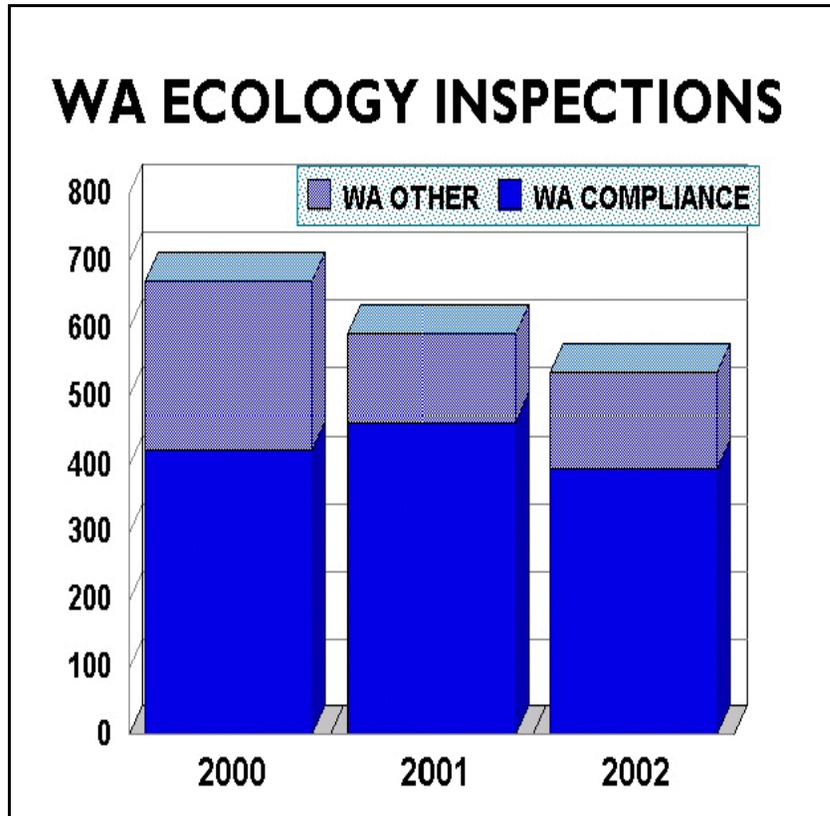


Figure W-1

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An important national enforcement measure is the number of SNC determinations as a percentage of handlers inspected. Ecology identified fifteen SNC violators during the three year review period; 2.1% in 2000, 1.3% in 2001 and 0.9% in 2002 (see Figure W-2.) An additional four Washington violators were referred to EPA and designated SNC for federal enforcement actions. EPA's Office of Enforcement and Compliance Assurance has calculated the national average SNC identification rate as 3% in the 2004 State Review Pilot RCRA Framework Metric report. We reviewed a number of case files for violators that met the SNC criteria but that Ecology did not designate. Ecology completed nineteen formal enforcement actions for violators that were not designated SNCs but could have been. **We recommend that Ecology review its SNC identification process to make designations consistent with the ERP criteria and with their referrals for formal enforcement.**

**We recommend that Ecology review its SNC identification process to make designations consistent with the ERP criteria and with their referrals for formal enforcement.**

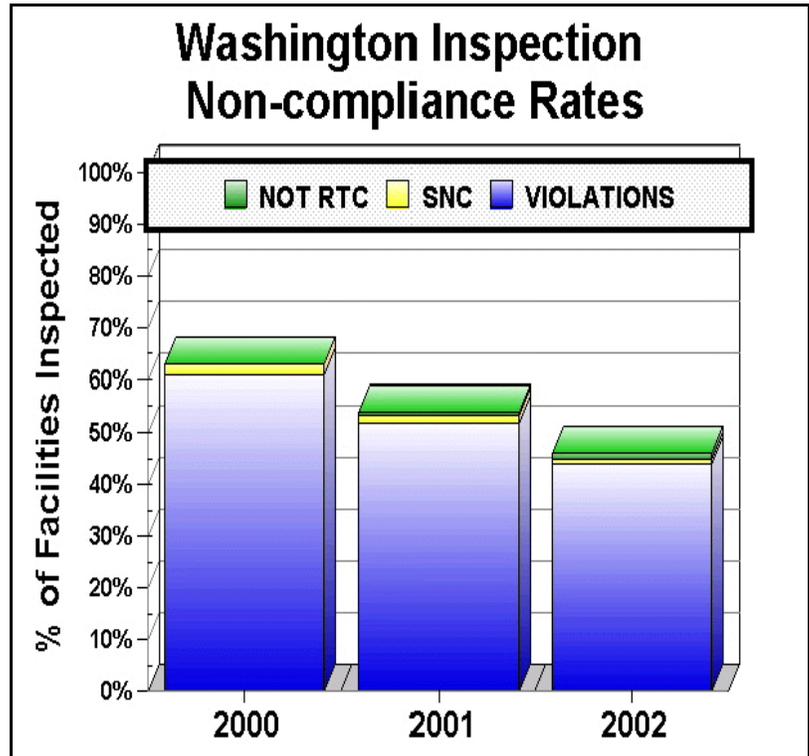


Figure W-2

We found one recidivist facility with repeated SNC status, a large and complex federal facility with multiple areas that have compliance challenges. Ecology had a large staff overseeing hazardous waste and cleanup work at the facility and addressed SNC events with formal enforcement actions and relatively large penalties. One other SNC that probably should have been identified as recidivist was a large TSD facility located in Tacoma. The facility was designated no longer a SNC in October 1999, then inspections in February 2001 documented serious violations in the facility's containment system. No SNC determination was found by this review, even though formal enforcement action with penalty was taken in August 2001.

Program performance was also evaluated through the review of a sample of compliance and enforcement files. The reviewers found examples of beneficial environmental outcomes achieved through Ecology's compliance monitoring and enforcement efforts, including:

- A wood treating facility upgraded its facility in response to an informal enforcement

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- action by building a roof extension to minimize storm water contamination.
- A new owner of a storage and treatment facility worked cooperatively with Ecology to correct violations and upgrade the facility infrastructure. The new owner invested in developing an improved permit, new storm water collection system, and complete paving and coating of the facility.
- A large foundry that recycles scrap metal responded swiftly to Ecology inspections and a compliance order. Ecology and the foundry split samples to settle waste designation differences and the company took action to improve waste management and reduce potential site contamination from metals, tars and solid wastes. The company addressed all violations and resolved its significant noncompliance before its appeal of Ecology's order had reached the hearings board, so the appeal was dismissed.

The review team did not sample files for compliance assistance visits. However, a number of compliance assistance visits were documented in some of the enforcement files selected. The review team questioned whether it was appropriate to expend Ecology resources on compliance assistance at facilities that had previously been found to be violating dangerous waste regulations. Ecology responded that for those violations presenting little or no imminent threat to human health or the environment, their philosophy is one of educating the facility on the regulations and helping them understand specifically what they need to do to resolve violations.

**We recommend that Ecology consider the resource implications of providing compliance assistance to violators compared with the resources needed to create a credible deterrent for future violations.**

Complete, Accurate and Current Knowledge of the Regulated Community

This evaluation area was not a substantial element of this program review. However, we did make the following observations:

- Ecology manages the region's largest universe with 36 TSD, 1058 LQG, 1794 SQG (regulated as Medium Quantity Generators in Washington's dangerous waste program) and 5554 CESQG (regulated as Small Quantity Generators in Washington) facilities during 2000.
- Ecology operates an effective complaint intake and response program. Five of the compliance files reviewed originated with complaints, two resulted in informal enforcement and three with administrative orders.

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Appropriate Targeting, Inspection and Monitoring Strategy

Ecology completed ten of the fourteen operating TSD facility inspections required under the Solid Waste Disposal Act Section 3007 (see Figure W-3.) EPA policy allows some flexibility in targeting facilities in order to commit compliance resources to other priorities. Ecology used that flexibility to skip the annual federal facility inspections at two of the federal facilities in 2001 and use the resources elsewhere. The next year Ecology focused multiple staff resources on a comprehensive inspection of one of those facilities that found significant noncompliance. The federal nuclear reservation was inspected multiple times each year in order to monitor compliance of the complex operations at the variety of operating units within the facility boundary.

As illustrated in Figure W-3, two facilities were dropped from the 2000 semiannual nonfederal TSD inspection schedule. However, both were inspected in 1999 and no violations were found, so EPA agreed to the flexibility in annual targeting. We found that Ecology inspected all TSD facilities in 2002 as they raised the priority on monitoring compliance at operating facilities in response to an internal study on the reliability of the state's dangerous waste management facilities.

<b>WA Ecology TSD Inspections</b>			
<b>OPERATING</b>			
	2000	2001	2002
<b>BAY ZINC CO</b>			
<b>BURLINGTON ENV KENT</b>			
<b>BURLINGTON TACOMA</b>			
<b>CONOCO PHILLIPS</b>			
<b>EMERALD SERVICES</b>			
<b>NOVEON KALAMA</b>			
<b>PACIFIC ECOSOLUTIONS</b>			
<b>THE BOEING CO AUBURN</b>			
<b>UNIVAR USA</b>			
<b>US ARMY HQ I CORPS &amp; FT LEWIS</b>			
<b>US DOE HANFORD</b>			
<b>US DOE BPA ROSS</b>			
<b>US NAVY KEYPORT</b>	EPA		
<b>US NAVY PSNS &amp; IMF</b>			

**Figure W-3**

Ecology did not meet the 20% LQG target in this review period. However, EPA and Ecology recognized that the problem was not only that too few inspections were being done but also that the LQG universe included many facilities that were no longer actively generating large quantities of dangerous waste. Ecology focused on updating the LQG data in 2003 and 2004 and the LQG universe declined from 1058 in 2000 to 782 at the end of 2004. Ecology inspected 90, 92 and 94 LQGs in the three years reviewed. The calculated percentages for the historical universes were 8.5%, 8.7% and 8.8%, respectively. Assuming that the current universe size of 782 was more likely the historical figure, then Ecology actually inspected over 11% of the LQG universe each year of the review period. Given the expected future use of the 20% national

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benchmark and Ecology's own study that found limited duration of compliance between inspections, **we recommend that EPA and Ecology discuss increasing the number of LQGs inspected in Performance Partnership work plans.**

#### Balanced Use of Tools

Ecology implemented a program that included a large compliance assistance component, as illustrated in Figure W-1, above, balanced with an increasing compliance monitoring component. As noted above, we found a large decline in the tracking of other types of facility evaluations from the last program review. The data indicated that Ecology shifted the balance of activity from assistance visits to more compliance evaluations.

This review did not set out to evaluate Ecology's use of technical assistance efforts to improve compliance in the regulated community. In their response to our preliminary findings, Ecology noted that they have carefully tracked performance measures over the years to show that compliance assistance efforts have been quite effective in protecting human health and Washington's environment. EPA is increasingly emphasizing the importance of measuring the effectiveness of all compliance programs and **we recommend that Ecology continue to develop and publish their compliance assistance measures of success for environmental outcomes.**

We reviewed several files that included another enforcement tool, Supplemental Environmental Projects (SEPs), in enforcement settlements. We found that Ecology used SEPs in settlements to off-set most of the penalties assessed without adequately documenting how the projects met innovative settlement criteria or how the penalty mitigation value was determined, i.e., the after tax net present value was not calculated. We found instances in which the SEPs had not been fully characterized and specified in the order and the violators were able to develop them after the settlement was completed. Two of the SEPs proposed systems and training that would help the violators achieve future compliance, which they were already required to achieve without a penalty reduction incentive. SEP principles do not allow for projects that mainly benefit the violator, such as implementing their own training program or environmental management system. **We recommend that Ecology require full SEP documentation with specific implementation commitments before incorporating an SEP in a settlement.**

#### Timely and Appropriate Response to Significant Violations

Ecology was usually timely in responding to violations with informal and formal enforcement actions. However, we did find a negative trend in the increase in the number of informal enforcement notices of violations that took longer than the ERP time line, from 8 of 202 in 2000 (4%) to 16 of 149 in 2002 (11%). Ecology completed 27 of the 30 (90%) formal enforcement actions issued for the review period within the ERP time line. The 10% that took longer was well within the 20% ERP exception allowance and the one file of the three that we reviewed did include justification documents that explained the delays in issuing an order.

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Ecology made extensive use of informal enforcement actions to return violators to compliance (see Figure W-4.) The vast majority of enforcement actions consisted of informal notices of violations cited along with required actions on a compliance certificate that the violator had to complete and return to Ecology. However, there were three violators designated SNCs that were addressed with informal enforcement actions when a formal action should have been developed. One of the three went into receivership before Ecology developed an order. The other two cases should have been more appropriately resolved with formal enforcement and penalties.

Ecology completed thirty formal enforcement orders (at twenty-eight facilities) and nineteen went to violators that were not designated significant noncompliers even if they met the criteria. We found that many of the enforcement files included histories of multiple inspections with repeated violations that were addressed with informal enforcement before an appropriate formal enforcement action was started. **We recommend that Ecology institute a more consistent SNC designation step in their enforcement process to ensure that timely and appropriate formal enforcement actions are initiated.**

Ecology issued seven penalties for enforcement actions started in 2000, seven for 2001 and three for 2002. The average final penalty settlement calculated from RCRAInfo data was \$46,185 for the review period. However, our file reviews found some Ecology penalties were reduced by Supplemental Environmental Projects in settlements and the reductions had not been made in RCRAInfo. The average final penalty settlement without three SEPs was \$16,018 (see Figure W-5.) A major hazardous waste company, with facilities in Kent and Tacoma, negotiated a combined settlement that included an SEP to institute an Environmental Management System to improve its facilities' operations. File information indicated that the combined \$180,000 final penalty was settled for \$20,000 plus the SEP. A similar situation

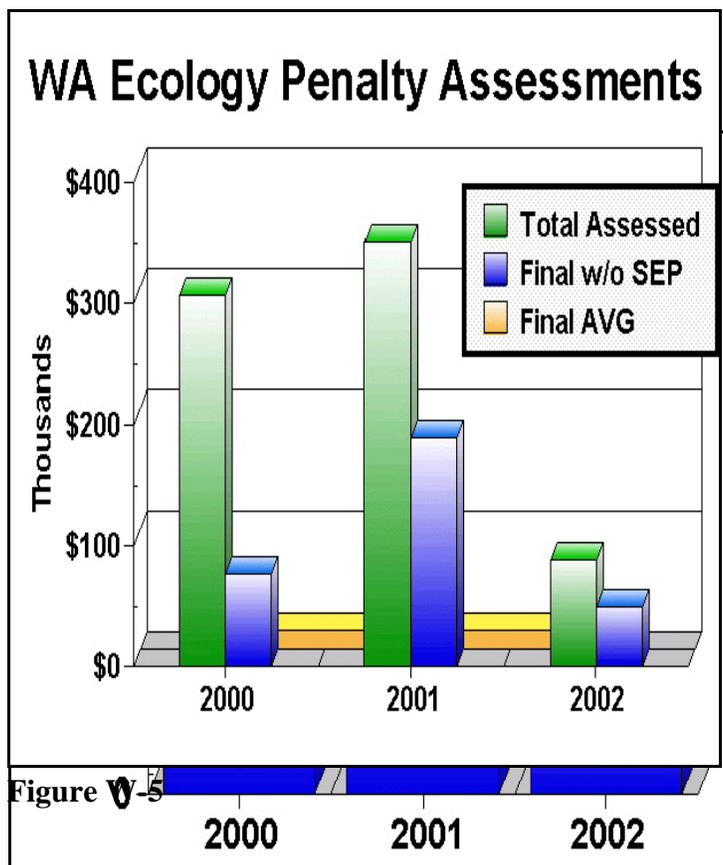


Figure W-4

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occurred with another large TSD facility, the final settlement paperwork indicated that the owner settled for a \$25,000 payment and performance of an SEP worth \$175,000 with the selection of the final project to be determined later. Finally, a state-owned LQG facility settlement also included an SEP valued over \$40,000 that was not allocated to an SEP for tracking separately in RCRAInfo. While we support the use of SEPs, as noted above in the Tools section, **we recommend that Ecology maintain a proper tracking system that accurately details final penalty amounts and SEP financial information separately.**

Only two of the formal enforcement files reviewed included documentation of significant economic benefit gained from the violations cited. Ecology's response indicated that the resulting amounts greatly exceeded their statutory authority as well as being outside the range of typical historical penalties. Unfortunately, this historical argument only perpetuates the problem of penalties that aren't appropriately assessed. We reviewed some cases that included significant violations that continued for an extended period but did not have multiple day penalties, including one that calculated an additional daily penalty at the rate of one day per month for the twenty-four months that the violations existed. In response to our initial findings, Ecology did agree that they can work to incorporate reasonable consideration of economic benefit, as well as calculating multiple day penalties where provable, to gradually increase penalty assessments that help to increase deterrence of repeat violations and possibly deter others in the regulated community who hear about them. **We recommend that Ecology create penalties in accordance with the ERP and Civil Penalty Policy to address significant noncompliers.**

Finally, the review team found some enforcement cases that were settled without injunctive relief in formal orders, such as an order to address hazardous waste management units through closure. Ecology has used informal enforcement and voluntary cleanup program tools to address environmental threats from illegal disposal, illegal storage, and illegal treatment of hazardous waste. **We recommend that Ecology include documentation that hazardous waste violations have been corrected and compliance with RCRA closure requirements enforced where applicable.**

#### Adequate Record Keeping and Reporting

The review team found inspection and enforcement files in various conditions of organization, some were disorganized and hard to review in the short time we had scheduled. Penalty justification documents were often missing or the records incomplete such that we could not verify how penalty figures and revised penalty amounts were calculated. For example, one case included a \$198,000 penalty, of which \$46,000 was suspended provided that the violator complied with the settlement agreement. The justification for such a suspension was not found in the file. Ecology's initial response indicated that the dangerous waste program does not necessarily control the state records management. We understand that resources may not be readily available to improve the files, yet some improvements are certainly necessary.

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We found Ecology's change in data management for classifying compliance evaluation types to greatly reduce the use of the "Other" code to be a great improvement in understanding inspection activities. **We recommend that Ecology make the maximum use of the "compliance assistance visit" type to better reflect their commitment to helping Washington businesses comply with dangerous waste regulations.**

#### Clear and Enforceable Requirements

The files selected for this review included many of the problematic enforcement cases in 2000, 2001 and 2002. Ecology's response to the initial findings pointed out that the review should not make general conclusions about the overall effectiveness of Washington's dangerous waste compliance program based on our selective case review. As illustrated in Figure W-4, Ecology uses informal enforcement responses to get compliance from the vast majority of violators found each year. However, in order to adequately evaluate Ecology's enforcement effectiveness at the significant noncompliers and other violators that were subject to formal enforcement, we elected to review twenty-one out of the twenty-eight facilities that were resolved with formal enforcement orders in this review period.

We reviewed forty informal enforcement files out of the 539 actions that were in the RCRAInfo database with inspections between October 1, 1999 and September 30, 2002. We found that the inspection reports were generally well done and violations clearly documented with photographs, records and statements from the facility. The Notices of Violations were usually clear about the problems found and requirements for how to return to compliance were often provided to the violators. A few notices provided schedules for return to compliance which could be problematic if additional problems occur during the scheduled period and the facility contended that they were afforded relief by the schedule. Ecology developed a revised template in response to our preliminary findings that fixed this potential problem.

We raised other concerns in our preliminary findings about twelve of the forty informal enforcement files reviewed. The main concerns were that facilities with repeat violations from prior inspections that would qualify them as SNCs were not designated and penalized in order to create a deterrent to further violations; that violators who did not timely return to compliance were not then subject to formal enforcement; and that generators who operated treatment, storage or disposal units without permits were not subject to formal orders to cease operations.

The review team evaluated twenty-one files that included formal enforcement orders. We found that most orders included clear and enforceable requirements. There were seven cases that were less clear about how the dangerous waste regulations were being enforced. The reviewers found these cases problematic in that they mostly involved illegal storage and disposal and mostly owner/operators with severely limited resources. Ecology referred these problems to the state's MTCA cleanup program rather than enforcing RCRA closure requirements. Ecology's response to our preliminary finding was that in cases of limited resources, they would

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rather have the funds directed to cleanup actions rather than penalties in an effort to improve the environment. Relieving violators from penalties is appropriate when supported by documentation of the violators' inability to pay. However, compliance with applicable requirements should be required in accordance with the ERP. Continued operation should not be allowed except in compliance with applicable requirements and closure requirements should be enforced. **We recommend that Ecology be clear about including enforceable hazardous waste requirements in orders, including closure where applicable.**

Finally, we were concerned with Ecology's use of Supplemental Environmental Projects (SEPs) in orders that allowed violators to get penalty reductions in exchange for undefined projects of questionable environmental value that weren't clearly enforceable. One case involved credit for implementing an Environmental Management System at facilities that arguably should have been part of the injunctive relief. Another case involved credit for a training program which the violator would have already been expected to have in place. **We recommend that Ecology require SEPs to be clearly defined and appropriately valued during the formal enforcement negotiations.**

#### Sound Program Management

This evaluation area was not thoroughly covered in this review, however, the team did meet with some staff during regional office file reviews and get some input on program strategy. In addition, Ecology's response to our preliminary findings was clear about the state program philosophy on enforcement. With that information we made the following observations.

Ecology's regional offices operated with significant autonomy to plan and conduct compliance assistance and compliance monitoring work. Formal enforcement referrals were usually referred to the state Attorney General's office but Ecology has gone forward on occasion without formal AG support. Since AG resources for environmental cases were very limited, Ecology was very selective about which cases were referred for formal enforcement. Not all formal enforcement orders included penalties for violators and in a few cases, the AG decided not to assess penalties unless a previous nonpenalty action had been issued. In addition, we found that Ecology did not consistently issue press releases to publicize penalties and environmental improvements resulting from enforcement actions.

We found that Ecology addressed the 1999 program review finding that more documentation of return to compliance was needed for most files. Since 2000, Ecology required facilities to respond to the notice of violation by completing a compliance certificate documenting that violations were corrected. **We recommend that Ecology obtain as much supporting information (photos, manifests, etc.) as needed from violators to support the claims made on the compliance certificates and prioritize follow-up inspections based on the availability of supporting information.**

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Finally, we found that Ecology data in RCRAInfo was substantially complete and current for activities that were performed during the review period. Data was regularly uploaded to the national RCRAInfo system and the data we found matched the information in the compliance files.

## Scope and Methodology

The Region 10 Hazardous Waste Program Review methodology is consistent with the “Compliance Assurance Program Evaluation Principles,” established by Region 10 and the four states in July 1998. The review was also based upon the “EPA Region 10 RCRA Compliance Program Evaluation Guide,” dated June 1994.

This review was completed by the Region 10 Office of Compliance and Enforcement. The review started in the Office of Waste and Chemicals Management (prior to being reorganized into the Office of Air, Waste and Toxics.) The Office Director asked state hazardous waste program directors to select state volunteers to participate in a regional review team in order to bring state expertise and perspectives into the review process. The review team thus included two representatives from the Washington Department of Ecology and one each from the Idaho and Oregon Departments of Environmental Quality. EPA reviewers came from the Office of Regional Council, RCRA Compliance Unit, and Resources Management and State Programs Unit staff located in Seattle, Lacey, and Portland.<sup>1</sup>

The review team conducted a preliminary RCRAInfo data review from which we selected inspection and enforcement case files to review. The team traveled to eight state and EPA offices intermittently from November 2003 through April 2004 for file reviews and to meet with staff to discuss the evaluation areas. The review team provided its preliminary results from the file and data analyses to the state and EPA program managers in order to get corrections, additional information, and initial reactions before drafting this report. The draft of this report was then sent to the state and EPA program managers in draft form in February 2005 for final review and comments, which are included in Appendix C of the final report.

RCRAInfo data was last pulled in December 2004 to access information entered through November 2004 about enforcement outcomes and violators’ return to compliance status that was still active from the violations found during the 2000 to 2002 review period.

The file review focus was on documentation of the inspection process and on the use of enforcement response and penalty policies. Of the ten program evaluation areas in the Region 10 Principles the review concentrated most on:

- Timely and appropriate response to significant violations, including proper identification of violations;
- Accurate record keeping and reporting, including tracking significant noncompliance;
- Clear and enforceable requirements in orders and enforcing permits.

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<sup>1</sup> Review Team Members: Jack Boller, Andy Boyd, Emily Celto-Vache, Jeff Hunt, Natalie McLeod, Rai Peterson, Mike Slater, Cheryl Williams, Bob Wilson

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The detailed Scope, Criteria, Process & Facility Selection document is included in Appendix A. The hazardous waste facilities in the review included:

- all facilities with inspection data between October 1, 1999 and September 30, 2002, and entered into the Resource Conservation and Recovery Act Information System (RCRAInfo) before November 7, 2003 (used to calculate compliance and enforcement program performance measures;)
- a nonstatistical sample of inspection and enforcement files for approximately 45 facilities per state and the EPA program;
- facility files selected on the basis of;
- location, to get samples from all field offices;
- facility type, to get samples from TSDf and generator universes;
- inspection outcome, to get samples with and without violations and enforcement responses;
- formal enforcement actions, to get samples of civil penalty policy implementation.

