



Permitting for Environmental Results (PER)

NPDES Profile: Texas and Indian Country

PROGRAM RESPONSIBILITY

State of Texas: NPDES authority for base program, general permitting, federal facilities, pretreatment, and biosolids

EPA Region 6: NPDES authority for oil and natural gas facilities

EPA Region 6: NPDES authority for all facilities in Indian Country

Program Integrity Profile

This profile characterizes key components of the National Pollutant Discharge Elimination System (NPDES) program, including program administration and implementation, environmental outcomes, enforcement, and compliance. EPA considers profiles to be an initial screen of NPDES permitting, water quality, enforcement, and compliance programs based on self-evaluations by the States and a review of national data. EPA will use the profiles to identify program strengths and opportunities for enhancements. For more information, please contact Curtis Seaton, Texas Commission on Environmental Quality, (512) 239-4565; contact Kilty Baskin, EPA Region 6 (Permits), (214) 665-7500; or Alan Vaughn, EPA Region 6 (Enforcement), (214) 665-7487.

Section I. Program Administration

1. Resources and Overall Program Management

The State of Texas:

The Texas Commission on Environmental Quality (TCEQ) was authorized to administer the Texas Pollutant Discharge Elimination System (TPDES) permitting program on September 14, 1998. In accordance with the Memorandum of Agreement (MOA) between EPA and TCEQ, TCEQ has the authority to regulate discharges from industrial facilities, with the exception of those covered by standard industrial classifications (SICs) 1311, 1321, 1382, 1389, 4922, 4925, which are regulated by the Railroad Commission of Texas (RRCT); publicly and privately owned treatment works and concentrated animal feeding operations (CAFOs); and stormwater discharges associated with industrial activity and from municipal separate storm sewer systems (MS4). In addition, TCEQ has the primary responsibility of implementing the pretreatment and sewage sludge programs.

Toward the end of fiscal year (FY) 2003, the Water Quality Division at TCEQ underwent a reorganization. Within the Wastewater Permitting Section there are four teams: the land application team, the industrial permits team, the municipal permits team, and the stormwater and pretreatment team. The Wastewater Permitting Section includes fifty employees. The Water Quality Assessment Section includes two teams: the water quality assessment team and the water quality standards team and has a total of twenty-eight employees. In addition, there is a Customer and Information Assistance team consisting of thirteen employees, and two assistants (technical and executive) and a budget analyst that report directly to the Division Director (see organizational charts at the end of the profile).

The TCEQ Enforcement Division was reorganized in 2004. This reorganization resulted in an increase in the number of teams and work leader positions for the teams. The number of full-time equivalents (FTEs) for TPDES activities in the Enforcement Division has remained the same since TCEQ assumed the NPDES program. There are at least 22 enforcement FTEs for TPDES activities. These FTEs include staff who monitor self-reporting and make referrals for self-reporting violations and staff who process formal enforcement cases for TPDES facilities. With the recent reorganization of the Enforcement Division, TCEQ will be able to direct more efforts towards monitoring of minor facilities while maintaining the required compliance monitoring program for major facilities.

The Field Operations Division (FOD) consists of 111 staff members which includes the operations at 16 regional and two special project offices across the State. There are 11.8 FTEs for legal staff who work on TPDES enforcement.

At the time of initial program authorization, the permitting universe (individual permits) was approximately 3526. As of February 9, 2005, the total universe for individual permits was 2,968 (616 major facilities and 2,352 minor facilities)¹. Of these, 1,644 are industrial facilities and 1,220 are publicly owned treatment works (POTWs)². The percentages of current major facilities and minor facilities (individual and general permits coverage) were 84.6% and 90.7% respectively.

Current NPDES resources: In accordance with section III.B.1 of the MOA between EPA and TCEQ, EPA shall provide funding to TCEQ to support its efforts in the administration of the TPDES permitting program. In addition, TCEQ is to manage and administer the TPDES program with or without federal funding. Through the Clean Water Act (CWA) section 106 Performance Partnership Grants/Agreements (PPG/PPA), EPA provides funding each year to TCEQ to carry out NPDES program activities (see table below).

¹ The National Data Sources column of the Management Report, measures #1 and #2 show 574 major facilities and 2,431 minor facilities covered by individual permits, respectively. These values are based on data as of June 30, 2004.

² The National Data Sources column of the Management Report, measures #6 and #7, show 1,621 industrial facilities and 1,146 POTWs, respectively. These values are based on Permit Compliance System (PCS) data, using the EPST field to determine permitting authority. The values above used the Region's NPDES Information Tracking Application to determine permitting authority. EPA will work with TCEQ to update the EPST field.

Table 1: Distribution of PPA/PPG Grant Funding

	FY 2003	FY 2004
Surface Water	\$3,759,999	\$4,386,744 (includes \$233,941 of FY 2003 funds)
Ground Water	\$1,193,400	\$719,068
In Kind (for NPDES permit drafting)	\$285,559	\$333,000
Categorical CWA 106 Grant	\$3,615,001 (includes \$228,000 of in-kind)	\$3,332,529

In addition, for FY 2005, \$205,903 is allocated for the drafting of major and minor TPDES permits. For FY 1999, after program assumption, the amount of CWA funds awarded to TCEQ was \$4,341,770. TCEQ utilizes monies from State budget to carry out TPDES permitting activities. For FY 2004, approximately \$4,333,077 of State monies were used for TPDES permitting activities (i.e. water quality and permit administrative reviews).

Staffing Levels/Turnover: Since authorization, TCEQ has maintained an adequate staffing level of permit writers to effectively administer the TPDES permitting program. During the previous two years, the wastewater permitting section was fully staffed. Of the fifty employees in the wastewater permitting section, there are approximately thirty-five permit writers (twenty industrial and municipal; five stormwater; four sludge; and six CAFO). Approximately 33% have 10 years or more NPDES permitting experience and only 14% have less than one year. With the exception of FY 2003, where approximately 3-4 employees left the agency, the turnover rate of staff has been low. At the time of program assumption, TCEQ was funded for 21.5 permit writers.

The number of FTEs in the Enforcement Division for the TPDES enforcement program, including compliance monitoring of self-reported data, has remained the same since TCEQ assumed the NPDES program (at least 22 FTEs).

Staff Training: EPA Region 6 continues to commend TCEQ's staff and management in the administration of the TPDES permitting program. Since assumption of the TPDES permitting program, TCEQ staff has demonstrated technical competence and professionalism in addressing permitting issues and implementing State and federal requirements in permitting activities. This is largely due to TCEQ's commitment to training and development of its staff. TCEQ implements an employee training program that prepares its staff to address new technologies and regulatory development, and to increase technical and professional competence of employees. Mentors provide new staff with an initial orientation to TCEQ programs. Staff is provided the opportunity to participate in a variety of training related to water quality including: continuing education related to water quality permitting (for example, NPDES Permit Writers' Training Course and the Water Quality Standards Academy); State and federal rules, policies and guidelines; water quality modeling; and field work. In addition, EPA provides notices of upcoming training, and updates to promulgated federal guidelines. EPA also provides technical assistance and guidance for permit development including: Fact sheet/permit language regarding permitting decision-making processes; permitting of dischargers on impaired water bodies; and implementation of total maximum daily loads (TMDLs). Staff is also given the opportunity to attend workshops regarding

pretreatment and stormwater permitting programs that are conducted annually. In addition, EPA hosts annual meetings with Managers from TCEQ (and other Region 6 States) to discuss programmatic goals, initiatives and challenges. Permitting activities both nationally and locally are discussed.

For the NPDES enforcement program, TCEQ continues to send new staff to participate in Permit Compliance System (PCS) training. Mentors provide initial orientation to new employees to introduce them to the guides available, which include the enforcement initiation criteria and statement of work (SOP) for TPDES enforcement. New staff are progressively introduced to more detailed and complex projects under mentor until their skills to work independently have been developed. All new employees are required to fulfill core curriculum requirements (equal employment opportunities for new employees, Introduction to Programs of TCEQ, Valuing Diversity and other human resource related topics).

The FOD has a Professional Development Plan (PDP) for field investigators to provide a comprehensive plan for training and professional development. The curriculum includes requirements for on-the-job training, reading/videos, field work, technical courses, annual programmatic training and continuing education requirements. TCEQ inspectors also participate in the annual inspector training hosted by EPA, and one inspector training sponsored in 2002 was stormwater inspection training only.

Staff also participate in continuing education courses, attend conferences and seminars, and view training videos relating to technical matters as part of on-going professional development.

EPA Region 6:

EPA Region 6 has federal NPDES permitting and enforcement authority for oil and natural gas process, storage and transportation facilities, and for discharges from Indian country facilities. The RRCT has State jurisdiction for oil & natural gas process, storage and transportation facilities. However, NPDES permitting and enforcement actions are closely coordinated with both TCEQ and the RRCT which provides CWA section 401 certifications with State water quality standards for those discharges regulated by the RRCT. The two primary divisions within EPA Region 6 responsible for the Region 6 portions of the NPDES program in Texas are the Water Quality Protection Division (WQPD) and the Compliance Assurance and Enforcement Division (CAED).

Staffing Levels: The FY 2004 number of EPA Region 6 FTEs associated with administration of the NPDES program for oil & natural gas process, storage and transportation facilities, Indian country and general stormwater permits within the State of Texas include:

- 1.5 FTEs for the NPDES Permits Branch
- 0.2 FTEs for the Customer Service Branch
- 2.75 FTEs for the Water Enforcement Branch.

Administration of the program includes permitting, compliance, enforcement, technical assistance, fish kill and compliance investigations, data entry, monitoring and legal costs. The Permits Section, with nine permit writers in FY 2004 to cover NPDES permitting issues, has experienced a loss of about 30% of the personnel resources in the last four years. In general, the loss in staff resources was due to a shift of resources to other priority programs. Resources for permitting oil & natural gas process, storage and

transportation facilities, Indian country and general stormwater permits within the State of Texas may shift from one program to another, depending on priorities related to backlog reduction strategies, threat to human health, potential environmental impacts, and stakeholder interest. The following is a listing of the level of experience in writing permits for these writers:

- 40% of the FY 2004 permit writers have more than 10 years experience
- 40% have between 5 to 10 years experience
- The remaining 20% have more than 2 years experience.

Within the universe of permit writers are program specialists in stormwater, CAFOs, endangered species, environmental justice, oil and gas, mining, biosolids, TMDLs and other related programs. In addition the Region has a pretreatment program expert and a WET expert.

Staff Training: Region 6 is committed to the development of its staff's technical expertise and knowledge as it pertains to the NPDES permitting program. In the initial stage of their career in the NPDES permitting program, staff generally take courses such as the NPDES Permit Writers' Training Course, the Water Quality Standards Academy, Clean Water Act 101, Regulation Development in EPA, and Whole Effluent Toxicity. In addition staff have participated in more detailed technical training, at local universities and/or locations offsite. Such training included, but not limited to, modeling (Cormix Modeling), TMDL processes and development, and "Design of Water Treatment Plants". As funds are available, staff attend technical conferences and national meetings for technical development and exchange of information. EPA employees Region 6 staff are also involved, at the national level, through national workgroups, in all aspects of program development. This involvement adds to the expertise of both the permit writers and the coordinating Agencies.

Permitting Universe: All major facilities (industrial and POTWs) have been authorized to TCEQ. There are 39 minor facilities in Texas covered by EPA's general permit (TXG330000) for oil and gas extraction point sources (based on an internal Regional database) and 28 (including one in Indian country) covered by individual permits.^{3,4} Therefore, the overall universe of facilities in Texas where EPA retains authority is 67.⁵

Regional Prioritization: Region 6 has recently completed a draft Strategic Plan for FY 2004 - FY 2008. It sets out environmental priorities, the strategies which will be used to achieve specific goals, and a

³ The National Data Sources column of the Management Report, measure #3, shows 0 facilities covered by EPA-issued general permits in Texas. The ePIFT data that served as the source for the National Data Sources column for this measure included only aggregated data for Region 6, rather than data broken down by State.

⁴ The National Data Sources column of the Management Report, measure #2 shows 22 facilities with individual permits issued by EPA. This is based on a list of EPA-issued permits updated by Region 6 in June 2004. Six new applications have since been received.

⁵ The National Data Sources column of the Management Report, measures #6 and #7, show a total of 125 facilities with individual permits. The 67 total facilities is based on the Region's NPDES Information Tracking Application database, which includes a local field showing the appropriate permitting authority. EPA will work with TCEQ to update the corresponding field in PCS that was used to determine permitting authority for the National Data Sources column. 1 permits issued by EPA (51 industrial and 74 POTWs).

plan for monitoring performance and ensuring results. To date, EPA Region 6's practice has been to issue permits based upon expiration date. However, other concerns such as potential environmental impacts and State/public/permittee interest are items considered when allocating resources towards permit issuance.

Additionally, EPA Region 6 will be evaluating permit prioritization as related to recent EPA initiatives on priority permits. In order to track program progress and accomplishment and to address permit issuance, EPA Region 6 utilizes PCS and other data tracking mechanisms such as the NPDES Information Tracking Application (NITA - see Data Management Section for further information on this system).

2. State Program Assistance

EPA Region 6:

Since a preliminary inquiry in the early 1990's, the RRCT has not expressed interest in assuming NPDES program authority for oil and natural gas process, storage and transportation facilities. However, RRCT still retains CWA section 401 certification authority over permits, which cover oil and gas, that the Region develops.

3. EPA Activities in Indian Country

Status: Region 6 is the permitting authority for Indian country in Texas. Region 6 has issued one individual discharge permit to a Tribe in the State. Region 6 has issued two general stormwater permits for discharges from Indian country facilities. To date, no Tribes in Texas requested assistance to assume the CWA section 402 or 404 permitting programs.

Coordination: Region 6 has an assigned Tribal Coordinator in the NPDES Permits Branch, who works to coordinate cross media issues with other Water Division and Regional Tribal representatives on issues, meeting schedules and appointments, outreach, and other requested assistance from the Tribes. Tribal representatives are encouraged to contact the Region with any issues, concerns, or questions pertaining to the NPDES program.

4. Legal Authorities

EPA is conducting a comprehensive review of the State's legal authorities. This review has not yet been completed. As a result, EPA is reserving this section of the profile; when the legal reviews are complete, EPA will update profiles to include the results of the reviews.

5. Public Participation

An evaluation of the State's legal authorities regarding public participation will be included in the legal authority review. As noted above, the legal authority review section of this profile is reserved pending completion of the legal authority review.

The State of Texas:

TCEQ's public participation policy and procedures are cited in the State statutes at Texas Water Code Chapters 5 and 26 and in the Texas Regulations at 30 Texas Administrative Code (TAC) Chapters 39,

50, 55, 305, 281, 205, and 321. As part of the permitting issuance process, the public and interest groups and other federal and State agencies have the opportunity to comment on specific permitting decisions and actions.

Public Involvement/Contribution: TCEQ has developed several organizational units to help citizens participate more effectively in the permitting process. The Office of Public Assistance (OPA) assists citizens in obtaining information about how the permit process works and how they can participate. Likewise, the Office of Public Interest Counsel (OPIC) represents the interests of the public at large. In addition, the Environmental Equity program serves as a link for communications between the community, industries, and the government. Information regarding these organizational units can also be found at TCEQ's Web site (<http://www.tceq.state.tx>).

Public Notices: Public comment during the permitting process is solicited in at least one public notice, typically two, and during public meetings/hearings. Notices for submittal of comments on TPDES permit applications and draft permits are published in local newspapers and mailed to federal and State agencies (i.e., EPA, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, National Marine Fisheries Service), affected persons, and interested parties on the mailing list. The public notice includes: the name and location of the facility, nature of business, authorized discharges, receiving waterbody and segment number, date of submittal of application, location and address of site for viewing of application, and location to submit public comments and request for public meeting (i.e. Office of the Chief Clerk). Public comments are considered during the permit processing and in reaching a final decision. A response to comments is prepared in response to all timely, relevant and material, or significant comments raised by the commenter. The response to comments, decision and instructions for requesting a hearing or reconsideration are then mailed to all commenters and any other persons who requested to be on the mailing list.

TCEQ provides an opportunity for written public comment on listed proposed enforcement agreed orders in accordance with Texas Water Code (TWC), section 7.075, which states that the Commission may not approve these agreed orders unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders, and the opportunity to comment must be published in the Texas Register no later than the 30th day before the date on which the public comment period closes. Section 7.075 also requires that the Commission promptly consider any written comments received, and that the Commission may withhold approval of an agreed order if a comment discloses facts or considerations that indicate the proposed agreed orders is inappropriate, improper, inadequate, or inconsistent with the requirements of TWC, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act. Additional notice is not required if changes to an agreed order are made in response to written comments.

A copy of each proposed agreed order is available for public inspection at both the Commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office. Written comments about an agreed order should be sent to the designated enforcement coordinator for each agreed order at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. (30 days from date of Texas Register). Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239- 2550. The commission enforcement coordinators are available to discuss the agreed order and/or the comment procedure at the listed phone numbers; however, TWC section 7.075 provides that comments on the agreed orders should be submitted to the commission in writing.

Public Meetings: Prior to final permit issuance interested citizens have the opportunity to comment on the permit and request a public meeting or hearing. These meetings provide the opportunity for comments and questions.

TCEQ's Web site: TCEQ's Web site is accessible to the public for viewing and obtaining information regarding the TPDES program and permitting activities (<http://www.tceq.state.tx.us/>). Information available includes, but is not limited to, status of TPDES permit applications and permits; TPDES permits that were issued; proposed and final general permits (stormwater and non-stormwater); calendar and schedules of public meetings and hearings; notice of intent (NOI) application forms; rules, regulations, and policies; and information on other water programs. Compliance histories and reports for facilities are also accessible through TCEQ's Web site at <http://www.tceq.state.tx.us/nav/cec>. Some individual NPDES permits and fact sheets issued by the State may also be accessed via EPA's Web site. Instructions for accessing these documents are available at <http://www.epa.gov/npdes/permitdocuments>.

The public has access to the permitting and compliance information that TCEQ maintains. Anyone wanting to view or obtain copies of agency records can visit the central file room located at TCEQ offices. Information maintained in agency databases is also available by contacting TCEQ Data Clearinghouse at (512) 239-DATA. Through the public information request procedures, a person may request to view or receive copies of records by submitting an email or written notice. TCEQ may require a fee for providing data or copies of records if the volume requested is large.

Public Outreach: TCEQ hosts an annual three day TCEQ Trade Fair and Conference. The Fair includes presentations about permitting, compliance monitoring, and enforcement. Similarly, the Water Quality Division of TCEQ hosts quarterly advisory group meetings. Presentations are provided to the group as well as feedback and exchange of information. The workgroup consists of industry representatives; municipalities, consultants, attorneys, governmental agencies, environmental groups, and other interested parties. In the past two years, the Water Quality Division has given over seventy presentations to inform the public and industry of the TPDES program. For stormwater, TCEQ presented at seminars or provided training over 150 times.

The Small Business and Local Government Entities of TCEQ sponsors workshops in best management practices (BMPs) and sponsored stormwater workshops in San Antonio and Austin in 2004.

Definition of a "Person": A person is defined as an individual, association, partnership, corporation, municipality, State or federal agency, or an agent or employee thereof. An affected person is a person who has a personal justifiable interest related to a legal right, duty, privilege, power, or economic interest affected by an administrative hearing on an application. The criteria for determining whether a person is affected are found at State regulations 30 TAC section 55.203.

State law and TCEQ's implementing regulations provide extensive procedures for public participation in the permitting process (See TWC sections 5.501 - 5.557). Notices of permitting actions are mailed to a number of local, State, and federal agencies / health authorities in accordance with both federal and State regulations and to owners of property adjacent to, and for some permits downstream of, the permitted site. TWC section 5.554 provides that TCEQ may hold a public meeting in response to substantial public interest. In addition, the Commission will refer a case for a contested case hearing on issues meeting the statutory criteria if requested by an affected person. An affected person is one who has a personal justifiable interest related to a legal right, duty, privilege, power, or economic interest

affected by the application. Other criteria for affected person status are specified in TCEQ regulations (30 TAC section 55.201). Any person may file a request for reconsideration of the executive director's decision (30 TAC section 55.201).

As specified in the Texas Government Code, it is the policy of the State that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. (Tx. Gov. Code section 552.001). Texas Government Code Chapter 552. Subchapter C, public information provisions, specifies the information excepted from required disclosure. Otherwise, the provisions of Chapter 552 are to be liberally construed in favor of granting a request for information.

EPA Region 6:

For permit issuance for natural gas process, storage and transportation facilities, Indian country and Region 6 general stormwater permits within the State of Texas, EPA Region 6 follows the public participation procedures outlined in 40 CFR section 124, Subpart A. The NPDES permit public notice procedures include the following:

- Direct mailing of public notice packages to permittees, interested stakeholders, and Tribes on a public notice mailing list maintained by WQPD. Any interested party may request the addition of their name to the mailing list and it will remain on that list until the party requests their name be removed. Additionally, WQPD adds attendants to EPA sponsored meetings on permits in Texas to the mailing list.
- Publishing public notices in local newspapers for major permit actions.
- A permit is proposed for a 30-day comment period with a fact sheet or statement of basis.
- Responses to comments are prepared as part of the final permit decision and mailed to those who submitted comments.
- The final permit decision may be additionally public noticed if the final permit includes substantial changes from the originally proposed permit.

EPA Region 6 also fulfills requests to meet with the affected public and has often met with local, State, Tribal and federal agencies to address issues associated with pending permit actions.

Some public notices, fact sheets and permits are made generally available electronically via the EPA's Web site at <http://www.epa.gov/npdes/permitdocuments>. Supplemental copies are also provided to interested parties as requested. Permit actions are coordinated with local, RRCT, Tribal and federal agencies such as facility operators, municipalities, Tribes, Texas Department of Cultural Affairs Historic Preservation Division, U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service as appropriate for the permit action.

Public Meetings/Hearings: Based on the degree of public interest and complexity of the issues in the draft permit, a public hearing may be conducted at the request of interested parties and/or at the discretion of EPA. The request must be submitted in writing and provide the nature of issues to be raised. The hearings are publicly noticed in local newspapers thirty days prior to the date of the hearing. A presiding officer is

appointed to conduct the hearing and the public comment is extended to the close of the public hearing. Prior to the formal public hearing, EPA Region 6 conducts an informal public meeting to allow interest groups to inquire of any conditions established in the draft permit. Verbal communications and exchange of information between EPA staff and the interested parties occur. Written transcripts and tapes of the hearing are available to the public. Comments received from interested parties, local, State and government entities are addressed during the final permitting decision making process.

Outreach activities are performed where appropriate to educate the general public and/or affected regulated sector on permitting, compliance and enforcement issues. EPA Region 6 holds educational workshops and various guidance documents, compliance guides, and educational materials are provided to the public and regulated communities and are often available through the Regional Web page.

6. Permit Issuance Management Strategy

The State of Texas:

Current Permits: For FY 2001 - FY 2002, TCEQ maintained a permit issuance rate (% universe issued) of 20% or more for individual TPDES permits (major and minor facilities). In addition, for calendar year 2003, the permit issuance rate was 22% for major permits and 25% for minor permits.

PCS data dated February 9, 2005, show the percentage of major facilities current as 84.6% and for minor facilities covered by individual or general permits, 90.7% are current⁶. These percentages represent the success in TCEQ's effective administration of the TPDES permitting program. In addition, EPA anticipates that the backlog of all permits will be reduced.

Table 2: Percentage of Facilities Covered by Current Permits in Texas
(State-issued permits)

	2000	Nat'l Avg.	2001	Nat'l Avg.	2002	Nat'l Avg.	2003	Nat'l Avg.
Major Facilities	64%	74%	79%	76%	84%	83%	79%	84%
Minor Facilities Covered by Individual Permits	76%	69%	81%	73%	89%	79%	90%	81%
Minor Facilities Covered by Individual or Non-Stormwater General Permits	N/A	N/A	N/A	N/A	91%	85%	92%	86%

Source: PCS, 12/31/00; 12/31/01; 12/31/02; 12/31/03. (The values in the National Data Sources column of the Management Report, measures #19 and #20, are PCS data as of 6/30/04.)

To enhance and improve the permit issuance process and reduce the number of backlog permits, TCEQ developed and implemented several mechanisms and strategies. TCEQ's Permit Time-Frame Reduction

⁶ The National Data Sources column of the Management Report, measures #19 and #20, show 76.3% of major and 90.3% of minor facilities, respectively, covered by current permits, based on data as of June 30, 2004.

initiative is a mechanism utilized to expedite the time frame for processing uncontested permit applications. The July 9, 2004 Management Report shows 51 pending permit applications. Initial priority is placed on permit applications for new permits and major amendments while renewals are the second priority two is placed on renewals. In addition, TCEQ issued and is developing general permits for various activities (i.e., petroleum bulk storage terminals; sand and gravel washing operation; hydrostatic test discharges; and aquaculture operations) to reduce the number of individual permit applications reviewed. For FY 2003 and FY 2004, TCEQ utilized grants for contract assistance in the drafting of 50 minor industrial permits. Contracts with universities and colleges are also utilized to hire college students and summer interns to assist with permit processing and to allow TCEQ staff to focus on major permit application reviews (to achieve the 10% backlog goal). By continual implementation of the mechanisms mentioned above and maintaining the annual permit issuance rate of greater than 20%, it is anticipated that the backlog of all permits will be reduced.

Environmental Significance of Permits/Categories of Permits: TCEQ issues permits on a basin cycle in accordance with State law. To the greatest extent practicable and in accordance with regulatory requirements, permits located on a water quality segment expire on the same date. This approach allows TCEQ to consider watershed issues (i.e., TMDL implementation) and as deemed necessary, will utilize resources to focus on certain watersheds or areas in the State that are of concern for permits prioritization. As mentioned previously, through its Permit Issuance Time-Frame Reduction initiative, TCEQ currently places a higher emphasis on “Priority One” permits (applications for new and major amendments). “Priority Two” permits are those applications for renewals. TPDES permits that authorize discharge to impaired segments impacted by point sources discharges are also designated as higher priority permits.

Expired Permits: Based on NPDES Management Report dated July 9, 2004, there are no major TPDES permits that have been expired for more than ten years. For those permits with expiration dates of greater than two years the count is 48 for major facilities and 41 for minor facilities. In accordance with a memorandum sent out by James A. Hanlon, Director of Office of Wastewater Management, EPA Headquarters, dated March 5, 2004, the Regional office and TCEQ developed a plan and process to issue permits that have expired and are considered to be “environmentally significant”. The initial step of the process was to determine and develop a list of priority permits (from the universe of those that have expiration dates of greater than two years) that are considered to be “environmentally significant”. TCEQ submitted its plan for the issuance of the 89 identified priority permits to the Regional office on July 19, 2004, of which 89 permits were identified. Of those 89, 31 have been issued. The plan is currently being revised and finalized by the Regional office and the Office of Water at EPA Headquarters.

EPA Region 6:

Permits in the State: Region 6 is responsible for issuance of the following permits in the State of Texas:

- Alabama Coushatta Tribe of Texas (TX0052809)
- Industrial stormwater multi-sector general permits for Indian country facilities in Texas (TXR050001)
- Construction stormwater general permits for Indian country facilities in Texas (TXR150001)

- Individual oil and natural gas process, storage and transportation facilities in Texas (27 individual permits)
- Industrial stormwater multi-sector general permit for facilities under the RRCT jurisdiction (TXR05000F).
- Construction stormwater general permit for facilities under RRCT jurisdiction (TXR15000F).

To streamline the NPDES permitting and RRCT certification processes through better resource management, EPA Region 6 has developed and implemented the following strategies and approaches:

- Region 6's "Post Third Round Permitting Policy", "Post Third Round Permitting Strategy" and "Post Third Round Permitting Guidance" to address toxicity in permits
- Permit tools such as several standardized fact sheets and statement of basis rationale languages for permitting to impaired waters and permitting post-TMDL
- "General information to be used in development of rationale for gas plant permits, SIC codes 1311, 1321, 1381, 1382, 1389, 4922, and 4925" used in fact sheets and statements of basis.

Permit backlog reduction/quality: Based on PCS database dated February 9, 2005, Region 6 is responsible for issuing 27 natural gas processing, storage, or transportation facility discharges, 1 individual Indian country permit, and general stormwater permits for oil and natural gas discharges under RRCT jurisdiction, and all NPDES permits for facilities in Indian country within the State of Texas. Of the universe of 28 individual permits, 23 are current (as of April 2005).⁷ In 2002 and 2003, Region 6 issued a total of 16 natural gas processing, storage or transportation and Indian country permits within the State of Texas.

To help maintain permit quality while reducing permit backlogs for natural gas processing, storage or transportation facilities, Indian country facilities, and Region 6 general stormwater permits within the State of Texas, EPA Region 6 has successfully implemented a peer review system within the Permits Section. These efforts have been integral in permit backlog reduction and development of quality permits.

⁷ The National Data Sources column of the Management Report, measure #20, shows 95.5% of minor facilities covered by EPA-issued permits as covered by current permits. This is based on a universe of 22 individual permits, and does not include minor facilities covered by general permits. See also section I.1 and measures #2 and #3.

Table 3: Percentage of Facilities Covered by Current Permits in Texas
(EPA-issued permits)

	2000	Nat'l Avg.	2001	Nat'l Avg.	2002	Nat'l Avg.	2003	Nat'l Avg.
Major Facilities	N/A	74%	N/A	76%	N/A	83%	N/A	84%
Minor Facilities Covered by Individual Permits	N/A	69%	N/A	73%	12.5%	79%	61.8%	81%
Minor Facilities Covered by Individual or Non-Stormwater General Permits	N/A	N/A	N/A	N/A	12.5%	85%	61.8%	86%

Source: PCS, 12/31/00; 12/31/01; 12/31/02; 12/31/03. (The values in the National Data Sources column of the Management Report, measures #19 and #20, are PCS data as of 6/30/04.)

Permit Coordination: Region 6 coordinates all appropriate permitting activities with TCEQ, RRCT, Tribes, local agencies, other State agencies and federal agencies.

Endangered Species Act (ESA): Region 6 has consulted both formally and informally with the National Marine Fisheries Service for permit actions which impact listed threatened and endangered species in the Gulf of Mexico. Region 6 routinely consults under ESA section 7(a)(2) with both the Fish and Wildlife Service and National Marine Fisheries Service for all NPDES discharge permits authored by EPA in the Region. The Permits Section has assigned one staff member to coordinate the majority of ESA consultations and permitting activities in an effort to streamline and standardize the process. This methodology was established prior to finalization of the ESA MOA, and has been effective for resolving concerns associated with consultation. Region 6 and the services have utilized the elevation procedure spelled out in the MOA infrequently and have typically resolved differences by ongoing communications via email, telephone or in person.

National Historic Preservation Act (NHPA): The NHPA requirements mimic the experiences the Permits Section has had with ESA but NHPA consultations are significantly fewer than the ESA consultations. State Historic Preservation Offices (SHPOs) typically transmit permit concerns for EPA-authored permits during public notice periods. Telephone conferences, e-mails, and letters have been able to resolve concerns between EPA and the SHPOs.

RRCT Coordination: The RRCT has CWA section 401 certification authority over natural gas process, storage and transportation facilities in the State. Permits are coordinated with the RRCT during development to coincide with RRCT State-issued permits, and to help RRCT update its approach to more closely reflect Region 6 permitting strategies and guidance.

State Coordination: Permits authored by Region 6 are developed using TCEQ data, spreadsheets, water quality standards, and implementation procedures for those standards. Therefore, all permitting actions are closely coordinated with TCEQ permitting personnel. State surface water quality standards can be viewed at: <http://www.tnrc.state.tx.us/permitting/waterperm/wqstand/index.html#standards>.

7. Data Management

The State of Texas:

TCEQ uses PCS as a management tool for the TPDES permitting and enforcement programs. Permit data, facility information, reporting limits, discharge monitoring report (DMR) data and a subset of inspections and enforcement actions are entered into PCS according to the TCEQ/EPA MOA. Significant noncompliance for major facilities, certain minor facilities, and approved pretreatment programs are monitored through PCS.

TCEQ also has State databases that they use as primary management tools. These State databases are the Texas Regulatory Activities and Compliance System (TRAC) for TPDES permit information, the Waste and Wastewater Consolidation database for applicant information for the construction and industrial stormwater general permits, and the Consolidated Compliance and Enforcement Data System for inspections, enforcement actions, and resolution of violations.

The State databases are not interactive with PCS. Currently, TCEQ manually enters data into PCS. TCEQ is, however, looking at developing the capability to upload data from the State system into PCS, including more inspections and enforcement actions. TCEQ anticipates using ICIS-NPDES (modernized PCS) in the future and expanding the amount of data supplied to the federal system by using uploads rather than manual entry. TCEQ staff participated extensively in the workgroups for design of the ICIS-NPDES system.

The Enforcement Division staff uses the State database to track respondent's performance under issued enforcement orders, specifically, their responses to the ordering provisions/technical requirements. PCS is used for major and minor facilities with significant non-compliance violations, and approved pretreatment programs.

TCEQ enters the mandatory major facilities, mandatory minor facilities, approved pretreatment and 92-500 investigations into PCS. Sanitary sewer overflow (SSO) data is not maintained in a comprehensive database. Compliance information, i.e., inspections and enforcement actions regarding SSOs, CAFOs, pretreatment and biosolids are maintained in the State's Comprehensive Compliance and Enforcement Data System (CCEDS) database.

The TPDES pretreatment program is tracked in the U.S. EPA's national PCS database. The Water Enforcement National Database (WENDB) elements from the pretreatment program audits and agreed upon data elements from the annual reports are tracked in PCS. The tasks that are part of the Performance Partnership Grant (PPG) with EPA Region 6 are the number of audits and substantial modifications to pretreatment programs (and developing new pretreatment programs) during any one fiscal year. The number of audits is tracked in PCS, however, the substantial modifications and newly developing pretreatment programs (and all other activities) are tracked in staff level Quattro Pro databases, as PCS does not contain the data entry information necessary to track these activities.

For biosolids, TCEQ developed a tracking system for the land application of Class B sewage sludge, per House Bill 2546, passed by the Texas Legislature. The legislation requires that a permit holder report deliveries and applications of sludge using the tracking system and that the commission post this information on its Web site. The commission developed a spreadsheet that allows permittees to submit the following information electronically: date of delivery of Class B sludge to the site, the date of the

application, and the source, quality, and quantity of the sludge applied. This information will be entered into the tracking system and posted on the commission Web site on a quarterly basis.

TCEQ enters WENDB data elements in a timely manner. Latitude and longitude of each outfall are reported in the permit application submitted by the permittee. However, this information is currently not entered into PCS. TCEQ is establishing a procedure to enter the information into PCS, and has been working with EPA headquarters under the PCS clean-up project to input existing data into PCS. As of November 2004, 21.5% of pipes at individual facilities had latitude and longitude data in PCS⁸. The latitude and longitude of each outfall is verified county by county and made available on TCEQ's Web site at: www.tnrcc.state.tx.us/gis/sites.html.

Inspections and formal enforcement actions for all NPDES permittees are entered into a State database; a subset of these actions (those for major facilities and 92-500 minor facilities with significant noncompliance (SNC) violations) are also entered into PCS. DMR data reported by NPDES facilities in Texas are stored in PCS, except for DMRs for stormwater general permits which are not entered into an electronic database. As indicated in the previous section, TCEQ anticipates entering inspections and enforcement actions for all TPDES facilities when an upload capability is developed.

To ensure that data entered into PCS is complete and accurate, all PCS data go through a quality assurance review. Data is initially entered on code sheets for peer and/or management review. After approval, data is entered into PCS. After PCS updates, limit summaries are generated and reviewed for accuracy. Discrepancies are resolved, peer reviewed, and updated into PCS. Initial data entry is performed by new staff on code sheets until they become proficient in coding. Once proficient, staff code directly from the permit. Under both scenarios, limit summaries are generated from PCS and reviewed for accuracy.

TCEQ established quality control procedures which were incorporated into their Quality Assurance/Quality Control Guidance manual (April 1999). They are very responsive to data quality issues raised by the public on the Enforcement Compliance History On-Line (ECHO) database.

A computer application designed to provide better access to comprehensive information about the regulated community is underway at TCEQ. The Central Registry contains information about the customers and entities TCEQ must regulate under law. This new program serves as a central point of contact for information about TCEQ permits, registrations, or licenses.

The Waste and Wastewater Consolidation project is also underway in the Office of Permitting, Registration, and Remediation at TCEQ. This project is to develop an integrated database that: upgrades databases currently maintained, facilitates the streamlining and standardization of State and federal legislative directives, eliminates duplicate data tracking, interfaces with existing databases, and supports States' goals and strategies which protect human health and the environment.

EPA Region 6:

Primary Data System: EPA Region 6 WQPD and the CAED enter and maintain all PCS information to manage the NPDES program for those portions of the NPDES program not assumed by TCEQ.

⁸ The National Data Sources column of the Management Report, measure #14, shows 4.1% of pipes at facilities covered by individual permits with lat/long data in PCS, based on data as of June 28, 2004.

Data Elements: EPA enters WENDB data elements for NPDES permits in Texas where EPA has permitting authority. At the request of the State agency, EPA may enter PCS data for TPDES permits. EPA Region 6 enters WENDB data elements in compliance with the PCS Policy Statement requirements for the permit and compliance and enforcement programs. Region 6 enters the latitude and longitude data for each outfall into PCS from the pipe level latitude and longitude data provided on the permit applications. Since NPDES permit applications do not require latitude and longitude to be reported at the facility level, EPA Region 6 WQPD has always entered the pipe level latitude and longitude data for the first outfall in lieu of facility level latitude and longitude.

EPA Region 6 WQPD relies primarily on PCS and NITA, an in-house permit tracking database, which interfaces with PCS data (see further discussion on NITA under Ancillary and Support Data Systems below) to maintain an inventory of regulated sources. Priority permits and priority segments have historically been tracked and maintained utilizing in-house spreadsheets. WQPD has initiated an effort to enter water body information including the list of impaired water bodies prepared under CWA section 303(d) and TMDL status into NITA in an attempt to better track and evaluate priority segments.

Ancillary or Support Data Systems: In order to track program progress and accomplishment and to address permit issuance, EPA Region 6 utilizes PCS and other data tracking mechanisms such as NITA, which interfaces with PCS data. NITA is a database that utilizes PCS data along with additional program data entered at the local level not recorded in PCS. This tool allows Region 6 NPDES permit writers and management to readily and easily generate standard and custom reports related to program measures such as permit backlog, issuance rates, and general permit authorizations.

By using NITA database, the user is empowered to quickly develop and furnish program reports with information to evaluate program accomplishments and progress allowing for more informed program decisions.

QA/QC: As individuals utilize the data maintained on regulated sources in NITA, and inaccuracies are identified, corrective action is taken as appropriate to update the information in PCS. EPA, TCEQ, and the RRCT closely coordinate and strive to maintain a complete and accurate list of permitted facilities including information on priority areas identified within the State.

Section II. Program Implementation

1. Permit Quality

The State of Texas:

Internal Permit Review: TPDES draft permits undergo internal review by mentors (for new employees), senior staff peer review, and team leader review in the wastewater permitting section for permit quality and to ensure compliance and consistency with State and federal regulations. In addition, staff of other water programs (i.e. water quality assessment and water quality standards teams) also review TPDES draft permits, specifically for those that propose to authorize new or increased loadings of pollutants, to ensure consistency with the State's antidegradation policy as cited in the Texas Water Quality Standards. To coordinate agency actions and decisions on draft permits and applications, TCEQ's Executive Review Committee (ERC), that includes permitting staff, management, inspectors, representatives from the Water Quality Assessment Section, the Wastewater Permitting Section, and the Legal Division, meet to discuss the draft (major, minor, new, major amendments, and pretreatment program modifications) TPDES permits.

Permit shell documents are used to ensure consistency of standardized permit terms and provisions. They are updated routinely to ensure that accurate information is included in the documents. TCEQ, in cooperation with EPA, developed a number of checklists/worksheets which permit writers complete for draft permits. To establish and incorporate water quality-based limits as appropriate, TCEQ permit writers use their implementation guidance document, Procedures to Implement the Texas Surface Water Quality Standards, that outlines procedures and mechanisms to determine reasonable potential for instream impacts and the establishment of water quality-based effluent limitations (WQBELs). In addition, TCEQ uses a program, TEXTOX (a program that converts instream water quality standards to permit limits) to calculate WQBELs. The utilization of this program allows for consistency during permit development. To implement appropriate technology-based limits, the staff uses information (i.e., production rates, discharge flow, and effluent characteristic) that is required to be submitted with the permit application, and development documents of categorical effluent guidelines. As mentioned earlier, draft permits undergo internal review by team leaders, senior staff, and management to ensure accuracy of permit limits and conditions.

EPA Permit Reviews: For all permits for which EPA has not waived review, TCEQ transmits to EPA copies of draft permits; permit applications, fact sheet or statement of basis, and supplemental information for EPA's review (section VIII.A. of the MOA between EPA/TCEQ). EPA reviews the draft permits (i.e., fact sheets, permits, and supplemental information) to ensure consistency with NPDES requirements and the CWA, and provides comments and/or suggestions within a given time frame (section IV.C.3 of the MOA). During calendar year 2003, EPA reviewed a total of approximately 196 TPDES draft permits. Any concerns raised by EPA were resolved or addressed through informal or formal coordination with EPA and TCEQ staff (i.e., meetings, conference calls). Some of the concerns included: fact sheet and permit language to address discharges into impaired water bodies and implementation of TMDLs and consistency with the requirements of water quality management plans. EPA appreciates TCEQ's efforts in the development of high quality draft TPDES permits and its handling of difficult and challenging permitting matters in the State of Texas.

Since authorization, Region 6 States have gained substantial experience and expertise in administration of the national program. Because of the progress made by the States in Region 6 and due to shifting priorities, EPA Region 6 developed "The Region 6 NPDES Permits State Oversight Streamlining Procedure" to improve and streamline EPA oversight of State NPDES programs. The streamlining procedure provides differential oversight based upon the health of a State's program. EPA conducts real time reviews on a select sample of permits drafted by each State prior to permit issuance. However, EPA continues to conduct real time review of all permits that fall under critical categories. Region 6 implemented this procedure in October 2003. Region 6 currently conducts reduced oversight for the State of Texas, because of the healthy state of its program.

EPA Program Reviews: As part of its oversight role and responsibilities, EPA conducts periodic program reviews of the TPDES permitting program. As part of these audits, EPA reviews TPDES permits and related materials (i.e. administrative, technical, and toxicity). EPA is mandated to ensure that required conditions in accordance with the CWA are established in all TPDES permits, including those that EPA does not routinely review (i.e., based on MOA, some TPDES minor facilities). In the latest program review, conducted in April 2003, EPA found that permits and files were well organized and all of the pertinent documents (final and draft permits; public notices; permit applications; statement of basis, etc.) were included in the files and/or were readily accessible. The statement of basis documents were well written and the permits included conditions that were consistent with the requirements of federal regulations.

In addition, EPA conducts mid-year and end-of-year program reviews of the TPDES enforcement activities. The actual review normally lasts about three days. However, there is a considerable amount of pre-review activity conducted in the Region 6 office and intense post-review activity to complete the program review document in a timely manner.

The first step in planning a program review is establishing a mutually agreeable time for EPA staff to come to the TCEQ offices. The selection of facilities for file reviews is made by EPA and transmitted to TCEQ at least 14 or more days in advance of the review. State Coordinators at EPA select some facilities for cause and other facilities on a random basis. TCEQ is also provided an opportunity to choose additional facilities for EPA file reviews.

The pre-review consists of EPA staff analysis of PCS data for all selected facilities. This information is used to develop general issues to be addressed and specific questions that need to be discussed. During a review, TCEQ files are evaluated for the same selected facilities and EPA staff meets with individuals and/or groups from TCEQ to gather information on topics of interest or concern. TCEQ is provided an opportunity to comment on the program review report before EPA finalizes the document.

In developing the 'permit quality' section of the program profile, State permits were not independently evaluated or compared to a national 'standard'. Rather, the discussion is based primarily on an assessment of the quality assurance/quality control procedures established by Texas and routine permit quality reviews performed by EPA Region 6.

Whole Effluent Toxicity Program: The State implements the whole effluent toxicity (WET) program to meet the requirements established by EPA Region 6 and the State of Texas. The State has established a narrative criterion for the protection of aquatic life. When it is necessary to require limits on WET, a numeric interpretation of the criterion is applied in the permit. The numeric interpretation is a permit

limit that requires no significant lethal effects at the critical low flow effluent dilution established in the permit (i.e., lethality - a no observed effect concentration of >85% effluent). Major NPDES permits issued by TCEQ require life of the permit WET monitoring, including requirements to perform a toxicity reduction evaluation (TRE) where significant lethal effects are demonstrated (as compared to a control group) in two out of three tests performed over a 90 day period. Failure to perform either the WET monitoring or a required TRE is a violation of the permit. Where significant sub-lethal toxic effects (e.g., significantly impaired growth or reproduction) are demonstrated over a period of time, TCEQ may require a TRE. Based on the TRE study results, a WET limit may be required for lethal effects. To date, TCEQ, following EPA Region 6 standard practices, has not required WET limits for sub-lethal effects.

WET Compliance: To ensure that water quality standards for the protection of aquatic life are met, the State has designated a staff person to track violations and initiate enforcement on WET-related violations. Two other staff are responsible for permit conditions development and results tracking for the entire State of Texas which includes tracking WET test results for facilities, TRE studies, reviewing all new and renewed permit applications to ensure the proper WET language is included in the permit. These staff also address issues such as frequency of testing, use of proper species, and other requirements that may apply. These individuals work together closely to ensure that all WET limits, compliance schedules, concurrent testing requirements and permittee concerns are addressed.

Sub-lethals: All permits for major dischargers contain “life-of-the-permit” monitoring requirements for WET, including monitoring for both lethal and sub-lethal effects upon two species (a vertebrate and an invertebrate). If no lethal or sub-lethal effects are demonstrated at or below the critical low flow dilution in any of the first 4 quarterly tests, the permittee may apply for a reduction in frequency to once per six months for the more sensitive species and once per year for the less sensitive species. This frequency applies until the permit expiration date or until a test fails for the lethality endpoint. If a test failure for lethality occurs, two retests are required during the next two months, and the facility must return to quarterly testing for the life of the permit for the affected test species. If sub-lethal effects are demonstrated during the first four quarterly tests, the facility must continue testing until they pass both the survival and sub-lethal test endpoints for 4 consecutive quarters.

While Region 6 and its States do not have a schedule to begin requiring TREs and WET limits for sub-lethal effects, all permits now include a notice that the permitting authority may require a sub-lethal TRE if sub-lethal effects are demonstrated at a magnitude and frequency which indicate that a successful TRE can be performed.

WET Reasonable Potential: WET limits for lethal effects are required on the basis of multiple test failures at or below the critical low flow dilution. A failure for lethality in a scheduled test and either of the two required retests triggers a 28 month TRE study, which is then followed by a compliance schedule, usually of 36 months duration. If the TRE successfully identifies and confirms a particular toxicant, the permit may be modified to continue WET monitoring and incorporate a chemical specific limit. If the toxicant is not clearly identified, confirmed and an appropriate control found during the TRE, a WET limit is normally incorporated into the permit.

In cooperation with Region 6, TCEQ has presented WET training to staff on several occasions. TCEQ recently used WET data to demonstrate the need for more stringent NPDES permit limits on ammonia

to preclude ambient toxicity in waters of the State, resulting in a significant improvement in the protection afforded to aquatic life on a statewide basis.

EPA Region 6:

Permit Quality Innovations: EPA Region 6 has utilized a number of methods to improve permitting efficiency and quality. Examples include tools such as permit and fact sheet checklists, as well as spreadsheets to calculate water quality-based limitations and to ensure uniformity of permits and consistency with State Water Quality Standards. Permit and fact sheet templates have been developed to prepare standard permitting language. These templates address various permitting requirements related to areas such as toxicity testing, pretreatment, overflow reporting, pollution prevention, water quality screening, TMDL implementation and CWA section 303(d) listed receiving streams.

The Region has developed a base technology rationale for natural gas plants to establish technology limits to natural gas process, transportation, or storage facilities in the State of Texas, which further establishes consistent permitting approaches to these type facilities. EPA Region 6 has also developed a flow chart for water quality-based permit limitations. The flow chart is a widely used decision making tool which is helpful in developing permitting requirements. The templates and associated standardized format also facilitates peer, management, and RRCT review of permits.

State coordination: The RRCT has adopted the TCEQ water quality standards as part of their CWA section 401 certification. Therefore, Region 6 coordinates with TCEQ to obtain critical conditions of the receiving water to develop WQBELs through use of their data spreadsheets. Additionally, Region 6 consults with TCEQ's water quality and toxicity personnel to assure that the implementation of the standards are in accordance with State law.

Peer review system: The peer review system, whereby all permits drafted by Region 6 are reviewed by a peer at the staff level, prior to State and management review, has proven highly effective at reducing errors and increasing permit consistency. Use of this system has resulted in permits that have received limited comments from the RRCT during State 401 Certification or from the permitted community or stakeholders during the public notice process, as most issues and omissions of information have been resolved during permit development. The permit backlog has been reduced from 100 % for individual permits in 2001 to a backlog of less than 22 % in 2003.

The NPDES Permits Branch will explore the option of making their permitting tools more easily available to the public on the Region 6 Web page.

WET Program: Since the RRCT has not assumed the NPDES program for natural gas process, storage, and transportation facilities, EPA Region 6 writes NPDES permits, which implement the State's whole effluent toxicity (WET) program. Region 6 has developed and maintains permit language for seventeen basic permitting scenarios. These language shells are used by Region 6 permit writers to accommodate State-specific requirements, and to ensure that permits contain appropriate language and conditions, and requirements that are enforceable.

To date, EPA Region 6 and its States have not required a predictive reasonable potential assessment for WET during permit development, nor have they required WET limits for sub-lethal effects such as significant impairments to growth or reproductive ability. In 1990-91, the Region was concerned that toxicant identification procedures were not adequately refined to result in successfully completing

sub-lethal TREs on a consistent basis. Over time, significant advances in toxicant identification have improved success in this area. Region 6 has recently concurred on EPA draft national guidance documents which will establish a predictive reasonable potential approach and WET limits for sub-lethal effects. EPA Region 6 is currently developing a draft strategy to phase in implementation of these significant permitting changes. The final strategy will be developed in coordination between TCEQ and EPA.

EPA Region 6 does not require WET testing or limits for minor discharges. The Region will work with its State counterparts to identify and prioritize minor facilities which have potential toxicity; and develop phased requirements and schedules for addressing toxicity in these facilities, as appropriate.

2. Pretreatment

The State of Texas:

TCEQ received authorization to administer the NPDES pretreatment program on September 14, 1998. There are 71 approved pretreatment programs, covering 159 individual treatment plants.⁹ Some of the approved pretreatment programs have more than one treatment plant covered under an individual program. At this time there are five additional pretreatment programs to be developed.

Identification of Significant Industrial Users and Categorical Industrial Users: Based on the Management Report dated July 9, 2004, there are 1349 significant industrial users (SIUs) discharging into POTWs with approved pretreatment programs of which 681 are categorical industrial users (CIUs). As of November 2004, 14 SIUs discharging to POTWs with pretreatment programs did not have control mechanisms.¹⁰ For those SIUs discharging to POTWs where approved pretreatment programs are not required, TCEQ (as the Control Authority) has begun a vigorous program to identify the CIU segment of the SIU universe. Some POTWs without an approved program do issue a control mechanism to SIUs discharging to their collection system, but TCEQ does not track these permits. Once an IU is identified as a CIU, the CIU is required to submit to the State semi-annual reports, demonstrating continued compliance. Currently 31 CIUs submit reports to TCEQ.

Pretreatment Program Approvals: TCEQ has approved two new pretreatment programs in the last five years, but currently has five new programs at various stages of development. TCEQ assesses the potential need for a POTW to begin the development of a pretreatment program when the State is in the process of reissuing the NPDES permit for the POTW. If the State establishes a potential need for a program, then the permit contains requirements for the POTW to conduct an industrial user survey and to submit that for review.

From the last enforcement audit performed on the State in July 2003, TCEQ is refining enforcement in addition to using the newly developed enforcement matrix. The State has issued 2 formal pretreatment enforcement actions and was in the process of initiating 5 more actions. This falls in line with the enforcement strategy that the pretreatment team review of the annual pretreatment reports submitted by

⁹ The National Data Sources column of the Management Report, measure #8, shows 70 pretreatment programs, based on data as of June 12, 2004. One additional program was approved on November 27, 2004.

¹⁰ The National Data Sources column of the Management Report, measure #24, shows 98.4% of SIUs with control mechanisms, or 21 SIUs without control mechanisms, based on data as of June 12, 2004.

the cities, and if the pretreatment team identifies any SNC violation or violation review action criteria (VRAC) exceedances, they refer the violating facility to the Enforcement Section II, within thirty days, to initiate formal enforcement action.

Pretreatment Program Audits: Of the 71 currently approved pretreatment programs in Texas, approximately 15, or 20% of the pretreatment cities are audited per year. During the auditing process, the State visits industrial users and provides technical guidance as needed. This method assures that 100% of the approved pretreatment programs are audited and some subset of SIUs in approved programs are inspected over a five year period. The audit reports identify any deficiencies, recommendations to improve the program, or required modifications to the pretreatment program to bring it into compliance with the pretreatment regulations (40 CFR section 403).

Audits Completion/Review of annual reports: The audit reports are typically written within 60-90 days after the field work is complete, but in no case later than the end of the quarter following the audit. With very few exceptions this has been accomplished.

TCEQ sends the audit reports and findings to the City with a deadline of sixty (60) days to address deficiencies with proposed corrective actions. Historically, most of the findings are administrative in nature and are resolved within sixty days. For those deficiencies that are not administrative in nature, the City must submit within no less than every ninety days a progress report in the form of a compliance schedule denoting the actions taken to correct the deficiency. To date, there have been no deficiencies that have taken longer than ninety (90) days to resolve.

TCEQ typically reviews POTW annual reports within the quarter in which they are submitted. When deficiencies are identified, TCEQ contacts the POTW to have minor corrections made immediately, or in the case of more significant problems, gives the POTW thirty days in which to submit corrections.

TCEQ also conducts pretreatment Comprehensive Compliance Investigations (CCIs) for 22 POTWs annually, selected from programs not scheduled for a TCEQ audit or EPA PCI during the fiscal year. Inspections of the associated industrial users are conducted on an as-needed basis.

Identifying SIUs: Every five years (coinciding with permit cycle), all major municipalities (and some minor facilities with suspected SIUs) are required to submit SIU questionnaires. TCEQ pretreatment personnel reviews these questionnaires for possible follow-up with more comprehensive IU information; TCEQ initiated a comprehensive survey on October 17, 2003, mailing to 1,927 potential CIUs using the "Texas Manufacturers Directory". TCEQ continually reviews (as time allows) the "Texas Manufacturers Directory" and other registries, sorting by SIC codes and cross referencing to the effluent guidelines in Title 40, Chapter I, Subchapter N. TCEQ maintains communication with the public at large via phone and e-mail regarding potential SIUs. TCEQ Pretreatment Compliance Inspectors and other environmental investigators of the Field Operations Division located in regional offices conduct routine inspections of POTWs without approved pretreatment programs, including inspections of industrial facilities that are potential SIUs.

TCEQ is developing an interface that can be used to automatically upload WENDB data elements for IUs gathered during Pretreatment Compliance Inspections (SIUs, CIUs, NOIN, NOCM, PSNC, and MSNC)¹¹ from TCEQ's Comprehensive Compliance and Enforcement Database.

Ensuring Compliance: Pretreatment personnel receive, track and review reports (required by all CIUs under 40 CFR section 403.12) submitted from 29 of these type of SIUs. TCEQ monitors those already identified, but has really not yet clearly identified the universe of these users and it will be some time before the entire program is in place to monitor them.

EPA commends TCEQ's efforts to identify the CIU segment of the SIU universe. These efforts could be enhanced by developing permitting and tracking mechanisms for (including the CIUs) discharging to POTWs without approved pretreatment programs.

EPA Region 6:

Currently, there are no POTWs under EPA jurisdiction in Texas; EPA maintains an oversight role of TCEQ's pretreatment permitting activities.

3. Concentrated Animal Feeding Operations

The State of Texas:

EPA Region 6 issued a State-wide NPDES general permit covering Texas CAFOs in 1993 based on those Federal CAFO regulations and guidelines. The 1993 general permit addressed some of the "nine minimum controls" contained in the new 2003 CAFO regulations and the pollution prevention plan required by that permit contained many of the nutrient management plan elements listed in the new CAFO regulations. After obtaining NPDES authorization, TCEQ issued a permit-by-rule, in July, 1999. That permit continued the federal CAFO regulation requirements that were in the 1993 CAFO general permit issued by EPA.

TCEQ modified their regulations to incorporate EPA's new CAFO regulations and effluent guidelines in June 2004.¹² Texas has technical standards that conform to the revised CAFO regulations. Texas estimates that there are approximately 1,100 CAFOs that will require coverage under the new federal regulations.¹³ Of these, 559 are covered under the CAFO general permit.¹⁴ TCEQ recently issued their new CAFO general permit that replaced previous registrations (permit by rule) that expired in July

¹¹ NOIN = SIUs not inspected or sampled
 NOCM = SIUs without control mechanisms
 PSNC = SIUs in SNC with pretreatment standards or reporting
 MSNC = SIUs in SNC with self-monitoring

¹² The National Data Sources column of the Management Report, measure #15, shows CAFO legal authority expected in July 2004. This is based on an estimate made in March 2004. The revisions were completed earlier than expected.

¹³ The National Data Sources column of the Management Report, measure #11, shows an estimated 1,150 CAFOs that will require coverage under the new regulations, based on an estimate made in March 2004. The 1,100 is a revised estimate as of April 2004.

¹⁴ The National Data Sources column of the Management Report, measure #26, shows 30% of CAFOs covered by NPDES permits, based on information as of March 2004. The 559 (51% of 1,100 total) mentioned above is based on information as of April 2005.

2004. TCEQ has incorporated the requirements of the new CAFO regulations into this general permit, including the nine minimum controls. The permit requires use of National Resource Conservation Service (NRCS) Practice Standards to be used in development of nutrient management plans (NMPs) and require NMPs to be developed by certified planners. The general permit will require NMP's for existing CAFOs to be implemented by December 31, 2006. TCEQ will cover dairy CAFOs located in the North Bosque watershed with individual permits. Individual permits for TPDES dairy facilities will also incorporate requirements contained in the new CAFO regulations. Additionally, these permits will include more stringent requirements from the new State regulations to address water quality concerns in the North Bosque watershed.

Over the past five years, TCEQ has been working with NRCS to develop the nutrient utilization plan (NUP) guidelines and standards. Nutrient management is addressed in existing CAFO authorizations by restricting application of manure and wastewater at agronomic rates. Annual soil sampling is required in authorizations to determine the annual agronomic rate and to assess nutrient accumulation in soils. Should soil samples exceed 200 ppm phosphorus, facilities must develop and follow an NUP. Phosphorus is the most restrictive nutrient in CAFO operations, however additional nutrient sampling for nitrogen and potassium is required. The current NUPs are required to be developed by certified planners.

To measure and evaluate NMPs, TCEQ will review nutrient concentrations in the soils provided in the annual soil reports. This review should verify if there is a build up of nutrients in the soils, thus showing if the NMPs are effective.

Compliance assistance for CAFOs is accomplished by speaking at workshops on request including DOPA outreach and hosting the upcoming CAFO Roundtable. TCEQ handles violations at CAFOs in accordance with the TCEQ Enforcement Initiation Criteria. TCEQ staff inspects 100% of the TPDES CAFOs in the Dairy Outreach Program Areas on an annual basis. Other TPDES CAFOs are inspected on average once every three years.

As with the issued CAFO general permit, TCEQ will perform outreach as necessary to inform those entities required to obtain coverage under the general permit by December 2006.

EPA Region 6:

To date, there are no CAFO facilities in Indian country.

4. Stormwater

The State of Texas:

In 2000, TCEQ assumed complete authority over stormwater permitting, except oil and gas discharges under the jurisdiction of the TRRC and Indian country. Upon authorization of the TPDES permitting program, there was a universe of 22 Phase I MS4s permits that were current and issued by the EPA. Based on the NPDES Management Report dated July 9, 2004, there are 19 Phase I MS4 permits that have now expired. These permittees have applied for renewal, and TCEQ is in the process of renewing these permits and anticipates issuance in FY2005.

Industrial/Phase I and Phase II Construction General Permits: All construction stormwater permitting has been transitioned from EPA to TCEQ. TCEQ issued the multi-sector industrial activity general permit August 2001, and the Phase I/Phase II construction general permit on March 5, 2003.

Phase II small MS4 permits: TCEQ proposed a draft permit for Phase II small MS4 dischargers. The permit has undergone EPA's approved review and public notice process. However, final issuance is delayed pending EPA's interpretation of the impact of a recent 9th Circuit decision regarding Phase II MS4 general permit requirements. TCEQ has held numerous outreach and assistance seminars for the Phase II community including mail outs and statewide workshops.

Phase I MS4 permits: Based on the NPDES Management Report dated July 9, 2004, there were approximately 19 Phase I MS4 that have been expired for six months or more. Due to the recent turnover on the stormwater team and the need to devote resources to address technical and legal issues of MS4 permit applications, TCEQ's completion of drafting MS4 permits has been delayed. Recently, TCEQ hired two additional staff members to assist in the drafting of these permits. EPA continues to encourage TCEQ in the reissuance of these permits.

EPA has retained enforcement authority of the 22 Phase I MS4 permits from the original program assumption due to on-going enforcement actions on a major facility related to the MS4 permit. EPA and TCEQ will partner in FY2005 on auditing/inspecting/enforcement on these Phase I MS4 cities for compliance with the permits.

Tracking System for NOIs: TCEQ maintains a database for tracking NOIs. Information that is tracked, includes but not limited to: facility owner information (i.e., name address contact person,); facility operator information; facility site information (i.e., facility name, address, latitude and longitude); SIC code; and receiving water information.

EPA Region 6:

All Indian country stormwater general permits (construction and industrial) are issued by the Region. Most construction and industrial stormwater discharges are being addressed with general permits. Construction and industrial activity general permits under EPA jurisdiction in Texas are current. Where a backlog of stormwater permits exists, the Region will work with the States and Tribes to develop expeditious schedules for permit issuance.

All NOI data is tracked through the EPA's NOI Center. EPA publishes the database regularly on the EPA Region 6 Enforcement Web page. On September 30, 2003, the application process for coverage under the construction general permit became available to applicants electronically through the eNOI system. NOIs for the construction general permit are searchable online through the eNOI system.

5. Combined Sewer Overflows/Sanitary Sewer Overflows

The State of Texas:

Combined sewer overflows (CSO) Policy and long-term control plan (LTCPs): There are no CSOs in the State of Texas.

Sanitary Sewer Overflows: Sanitary sewer overflows (SSOs) from facilities are reported to TCEQ regional offices and the Enforcement Division. This requirement is specified in TPDES permit under the

noncompliance notification provision. That provision states that the permittee shall report any noncompliance which may endanger human health or safety, or the environment within 24 hours, of becoming aware of the noncompliance and provide a written report within 5 working days. These SSO reports are maintained in the central record file for the facility at the agency. In addition, TCEQ rules require the owner of a facility, through its responsible individual, to notify appropriate local government officials and the local media whenever significant spills occur from the facility. Types of spills to be reported include, but are not limited to, those that will effect a public or private source of drinking water; and/or a spill of 100,000 gallons or more; and a spill of 50,000 or more that meets certain conditions. This notice must be issued immediately, but no later than 24 hours after becoming aware of the spill. TCEQ also coordinates with EPA in addressing SSOs. FOD does not maintain a comprehensive system for tracking SSOs that would show trends for SSO reporting.

EPA Region 6:

Combined Sewer Overflows: There are no combined sewer overflows in Texas for permits under EPA Region 6 authority.

Sanitary Sewer Overflows Reporting: One minor Indian country permit requires the reporting of SSOs on DMR submittals. The reports must include the following for each event:

- date
- time
- duration
- location
- estimated volume
- cause of the overflow
- observed environmental impacts from the overflow
- actions taken to address the overflow
- ultimate discharge location if not contained (e.g., storm sewer system, ditch, tributary).

Overflows which endanger health or the environment shall be verbally reported to EPA and the State within 24 hours from the time the permittee becomes aware of the circumstance. A written report of overflows which endanger health or the environment, shall be provided within 5 days of the time the permittee becomes aware of the circumstance. Additional notification requirements are included in Texas permits issued by Region 6, when appropriate, such as notices to Tribal agencies for NPDES permits impacting Indian country waters and notices to the U.S. Fish and Wildlife Service for NPDES permits with Endangered Species Act (ESA) issues.

6. Biosolids

The State of Texas:

Sewage Sludge Disposal: As outlined in section VII of the MOA, section 405 of the CWA, and EPA regulations under 40 CFR Part 503 for biosolids use and disposal, TCEQ is responsible for drafting sewage sludge permits and registrations. Requirements are included in TPDES permits and are consistent with State and federal regulations (30 TAC Chapter 312 and 40 CFR section 503). Compliance with sewage sludge permit requirements are evaluated by TCEQ regional offices during inspections. Compliance with reporting requirements as outlined in TPDES permits are also tracked through PCS.

Beneficial Use and Land application: TCEQ issues State permits for land application and beneficial use of sewage sludge. The registration process is administered under State authority and is not required under the TPDES permitting program. Based on PCS database, for the reporting periods August 1, 2002 through July 31, 2003, approximately 14.3% of biosolids were land-applied or distributed for reuse.

EPA Region 6:

The regulations promulgated in 40 CFR Part 503 for the biosolids programs are self-implementing, and have been included by the Region in permit conditions for the one individual Indian country municipal permit in the State.

The Region provides assistance to States and individuals with questions regarding interpretation of 40 CFR Part 503. Compliance and Enforcement Division receives the annual reports required from Class I sludge facilities in February of each year, investigates compliance concerns, and performs inspections. Most regulation interpretation and compliance concerns are discussed jointly between Permits Section and Water Compliance and Enforcement.

Section III. NPDES Compliance Monitoring and Enforcement Response

In a separate initiative, EPA's Office of Enforcement and Compliance Assurance (OECA), EPA Regions, and the Environmental Council of the States have developed a tool for assessing State performance in enforcement and compliance assurance to ensure that States meet agreed-upon minimum performance levels and provide a consistent level of environmental and public health protection nationwide. OECA will use the State profiles to focus these efforts and identify areas needing further discussion and evaluation.

1. Enforcement Program

The State of Texas:

TCEQ is responsible for investigating and resolving violations of environmental laws and regulations for the TPDES, pretreatment and sewage sludge programs.

Identifying Violations: Violations are identified primarily by:

- Routine compliance inspections conducted by the regional offices
- Complaint investigations conducted by the regional offices
- Pretreatment audits conducted by the central office
- Record reviews of files or database information conducted by the regional offices or the central office (including reviews of self-reported data).

Enforcement Initiation Criteria: Violations are handled in accordance with TCEQ enforcement initiation criteria (EIC). The EIC is consistent with federal guidelines for enforcement in the NPDES program. The EIC provides direction on whether a violation should be addressed through issuance of a notice of violation with a compliance schedule or through referral for formal enforcement. It also indicates when enforcement should be escalated for repeat or continuing violations that have previously been addressed by a notice of violation (NOV). Any deviation from the procedures outlined in the EIC requires management approval.

Notice of Violation: Most violations are handled by TCEQ through issuance of a notice of violation. If a notice of violation is issued it will require the facility to correct the violation within a specified period of time and provide appropriate documentation that the violation has been resolved. If the facility fails to respond as required, additional enforcement action will be pursued in accordance with the EIC.

Formal Enforcement: If a violation is referred for formal enforcement, the action will be processed by the TCEQ Enforcement Division. The Enforcement Division develops cases in accordance with Texas statutes, Title 30 of the Texas Administrative Code, federal NPDES requirements, and the CWA. Formal enforcement action by TCEQ results in issuance of an Administrative Order, Court Order or Compliance Agreement.

Enforcement standard operating procedures with defined time lines are used by TCEQ to process a formal enforcement case. Most cases are handled through the Agreed Administrative Order process. For these actions, the Enforcement Division drafts a proposed order that typically includes a penalty. The proposed penalty is developed using the TCEQ Penalty Policy. The proposed order will also include technical requirements if the facility has not returned to compliance at the time the order is drafted. The draft order with proposed penalty is provided to the respondent for consideration. Upon agreement, the action is set on the Commission agenda for approval by the Commissioners. If agreement is not reached on the proposed order, the case is referred to the TCEQ Litigation Division for further action. That action may be additional settlement negotiations, with the possibility of a higher penalty, or filing of the case for an administrative hearing. TCEQ can also refer cases to the Attorney General's Office for civil or criminal prosecution.

The table below indicates that the number of major facilities in Texas in significant noncompliance (SNC) declined significantly from FY 2001 to FY 2003. SNC violations include reporting violations, permit compliance schedule violations, and effluent violations. The data show that the majority of SNC violations returned to compliance without issuance of a formal enforcement action. Most of these were SNC reporting violations that were resolved through issuance of a notice of violation letter. For SNC effluent violations, TCEQ always undertakes formal enforcement, even if the facility has returned to compliance.

Table 4: Major Facilities in SNC

FY	Total Majors	Majors in SNC	SNC Majors Returned to Compliance	SNC Majors with Formal Enforcement Action Taken
2001	558	299 (54%)	245 (82%)	32 (11%)
2002	548	184 (34%)	148 (81%)	22 (15%)
2003	542	111 (20%)	87 (74%) ¹⁵	23 (19%)

Compliance History Ratings: In accordance with 30 Texas Administrative Code, Chapter 60, TCEQ rates the compliance history of owners or operators in most environmental programs, including the TPDES program. The compliance history of a customer - overall or at a particular site - is based on both positive and negative factors related to the customer's environmental performance at a site over the past 5 years. These factors include whether at the site the customer has:

- Conducted a self-audit under the Texas Environmental, Health, and Safety Audit Privilege Act
- Participated in voluntary environmental management systems
- Participated in voluntary on-site compliance assessment audits
- Participated in voluntary pollution reduction programs

¹⁵ The National Data Sources column of the Management Report, measure #36, shows 72% SNC returned to compliance without formal enforcement action, based on PCS data as of June 12, 2004. The 74% is based on a data pulled on July 1, 2004.

- Received an enforcement order, court judgment, consent decree, or criminal conviction for environmental violations under the jurisdiction of the TCEQ or the EPA
- Received an enforcement order, court order, or criminal conviction related to environmental violations in another State
- Received a NOV from the TCEQ
- Received one or more inspections from the TCEQ and, if so, the results of those inspections.

From these factors, TCEQ develops a numerical rating with 0.0 being the best and the score rising with poorer compliance. The rating is converted to a performance classification of high, average or poor based on the numerical score. If there is no information on which to base a rating (because the facility is new or there has been no agency action for the facility over the previous five years), a classification of average by default is assigned.

Table 5: Performance Classifications

<i>Ratings</i>	<i>Performance Classification</i>	<i>Customer's History at the Site</i>
Below 0.10	High Performer	Complies extremely well
0.10 - 45.00	Average Performer	Generally complies
45.01 or more	Poor Performer	Fails to comply with a significant portion of relevant regulations

Compliance history reports are developed, showing the information used to determine the ratings and classifications. A database of these compliance history reports is available on the TCEQ Web site. Classifications are updated each September to reflect the five previous years.

The compliance history classifications are used by TCEQ in making decisions regarding permit actions, enforcement, the use of announced inspections, and participation in innovative programs. For example, poor performers are allowed to continue operating under their current permit, but:

- They might not be able to renew existing permits at the affected sites.
- They might not be able to obtain new permits.
- They will be subject to stricter permit conditions in the future.
- The affected sites will be subject to higher enforcement penalties.
- The affected sites are not eligible for announced investigations.
- Neither the customer nor the affected site will be eligible to participate in innovative TCEQ programs, such as the Regulatory Flexibility Program described in TCEQ publication RG-335.

TCEQ tracks compliance with provisions in Administrative Orders, Court Orders and Compliance Agreements through the State CCEDS database. Administrative Orders issued for major facilities and 92-500 minor facilities are also recorded in PCS.

To create efficiency, the Enforcement Division has allocated dedicated positions solely for the purpose of monitoring compliance with technical requirements in formal enforcement actions. Compliance monitoring is conducted in accordance with the procedures and time lines outlined in the TCEQ Enforcement SOP. The SOP also includes instructions for tracking monitoring activities in the State CCEDS database.

When a respondent sends a report in response to a technical requirement in a formal enforcement action, the Enforcement Division sends an acknowledgment letter to the respondent, unless the report is something which can be reviewed and responded to within 30 days. A respondent can request an extension of time to a compliance due date if the request is submitted prior to the deadline imposed in the formal enforcement action. If a respondent is delinquent in responding to a technical requirement, the course of action to be taken is determined on a case-by-case basis. Typically, a telephone call is made as a first step to request an overdue response. If the respondent does not respond to the verbal request in a timely and satisfactory manner, a written NOV is then mailed to the respondent. If a timely and satisfactory response to the letter is not received, then a new formal enforcement action will be initiated for noncompliance. The new action will either be issuance of another order compelling compliance with the original enforcement action or referral to the Attorney General to compel compliance. Depending on the circumstances, immediate referral for a new formal enforcement action may be made for noncompliance without first doing a phone call and NOV. Such a decision requires management approval.

Supplemental environmental projects (SEP) are monitored by the Litigation Division until completion. The Litigation Division has an SEP Coordinator who is responsible for ensuring compliance with the terms of the SEP. The Litigation Division maintains files on each SEP to track compliance and enters monitoring data on the SEP into the State CCEDS database.

Penalty payments are monitored by the Financial Administration Division. The Division uploads tracking data on penalty payments from its internal tracking system into the State CCEDS database. If the respondent fails to pay a penalty as required, the Financial Administration Division pursues collection in accordance with established procedures in the division's Revenue Collection Manual. If collection attempts are unsuccessful, the Financial Administration Division will refer the matter back to the Enforcement Division for additional enforcement action. The additional action will either be another order for noncompliance with the first order or referral to the AG for collection.

The Enforcement Report to the Commission for August 2003 shows 119 enforcement orders were issued for agricultural and water quality facilities in FY2003, with the following total amounts for penalties and SEPs:

Table 6: Total Penalties and SEPs for FY2003

Assessed	Deferred	Total Penalty Due	SEP Cost
\$1,035,198	\$ 104,259	\$ 490,915	\$ 440,024

The average penalty/SEP for these 119 formal actions is \$8700.

EPA Region 6:

Region 6 is the enforcement authority for the oil and natural gas process, storage and transportation facilities in the State of Texas. At the State level, these facilities are regulated by the RRCT. The Region is also responsible for entering the inspections and enforcement information data into ICIS. The RRCT has not assumed the NPDES program, but they have assumed the UIC program for oil and gas activities under the SDWA. EPA has just begun the dialogue with the RRCT on its program implementation, in the last 3-6 months. EPA has conducted some on site inspections, responded to citizens' complaints and provided limited compliance and assistance. More will come in the future as EPA builds a working relationship with the RRCT. Those portions of the NPDES program which have not been assumed by the RRCT are:

- (1) Construction related stormwater problems when more than 5 acres are disturbed to build an access road and drill pad for oil or gas production, and
- (2) Brine spills (produced waters) from onshore production activities. The normal onshore disposal method of brine is through permitted injection under the UIC program. There are 50,000-60,000 injection wells in Texas. Each of them and their collection lines have the opportunity to spill. If the brine spill makes it to waters of the of the United States, then inspection and enforcement is needed.

2. Record Keeping and Reporting

The State of Texas:

One factor in inconsistencies between annual compliance and inspection data is that TCEQ's fiscal year and inspection year is September 1–August 31st, while EPA's fiscal year is October 1–September 30th, and inspection year is July 1–June 30th.

A monthly enforcement report is prepared by the Enforcement Division for the TCEQ Commissioners. The report includes information about key performance indicators for agency enforcement activities based on the State fiscal year (September 1 through August 31). The monthly enforcement reports are posted on the TCEQ Web site and can be accessed at http://www.tceq.state.tx.us/enforcement/enforce/enf_reports.html The reports show:

- The number of orders issued and penalties assessed from the beginning of the State fiscal year through the reporting month;
- A list of all of the orders and their corresponding penalties;
- The number of notices of violations issued from by the regional offices and central office;
- A summary of the total number of pending enforcement actions or cases being developed;
- The number of cases being tracked for compliance;
- Information on the number of pending administrative orders;

- Information on the number of backlogged cases;
- The number of pending cases at the State Office of Administrative Hearings;
- The number of pending and finalized cases at the Attorney General's Office; and
- The number of new cases referred for enforcement.

Hard copy records about the performance of a regulated entity and any agency action are maintained in the agency's Central Records files. These files contain written material relating to the compliance status of TPDES permittees, including enforcement actions, agency inspection reports, compliance schedule reports from the permittee, and other reports that a permittee may be required to submit under the terms and conditions of its permit. There has been a backlog of filing in TCEQ Central Records. TCEQ is currently working on remedying this problem.

Electronic data for compliance monitoring and enforcement activities are maintained in the State CCEDS database, and self-reported data for TPDES facilities are maintained in the PCS database. TCEQ also maintains compliance monitoring and formal enforcement action data for major facilities, 92-500 minor facilities and approved pretreatment programs in PCS. Procedures are in place to ensure the timeliness and accuracy of the data in CCEDS and PCS. Retrieval of data from the CCEDS database is being improved by developing more standard reports and training additional staff to design retrievals.

During periodic program reviews, EPA audits the records maintained by TCEQ to assess accuracy and completeness. As part of the program reviews, EPA also checks what is in the PCS database against the source documents at TCEQ to evaluate how accurately the PCS database is being maintained. In addition, EPA checks the TCEQ's Web site to see how up-to-date the information is being kept.

3. Inspections

The State of Texas:

TCEQ uses risk-based inspection targeting strategies. Factors that are taken into account include: watershed impairment, severe and/or chronic effluent noncompliance, prior compliance history and time since the last scheduled compliance inspections. EPA coordinates with TCEQ to ensure coverage, and also monitors/tracks the facilities TCEQ has picked for the upcoming inspection year. Prior to FY 2005 inspection year, CCEDS database did not allow TCEQ to distinguish between major and minor facilities.

File reviews are conducted for each comprehensive compliance inspection. With 50% of major facilities inspected every year, file reviews for those facilities would be automatic. The inspector might also perform a file review on an as needed basis which would trigger a need for an inspection that was not planned. TCEQ inspects approximately 50% of major facilities during the State fiscal year.¹⁶ TCEQ also conducts a certain number of mandatory investigations annually for minor facilities that discharge to impaired segments that are impacted by point source discharges and have been determined to be

¹⁶ The National Data Sources column of the Management Report, measure #32, shows 37% of major facilities inspected. This is based on the federal inspection year, July 1, 2002 to June 30, 2003, while the State fiscal year runs September 1 through August 31.

significantly noncompliant for effluent violations. TCEQ also uses the EPA SNC definition for effluent violations to select minor facilities for inspections. (See section I.7 Data Management for additional information)

In addition to file reviews for on-site inspections, other record reviews are conducted to evaluate compliance for regulated entities. These records reviews include evaluations of self-reported data that are done to identify non-reporting violations and significant effluent violations. The FY 2003 Annual Report showed a total of 4776 record review investigations conducted by TCEQ staff for agricultural and water quality facilities.

TCEQ uses both EPA SNC criteria and more stringent TCEQ impaired segment referral criteria to screen self-reported effluent violations for formal enforcement action. The screening is done through database pulls and record reviews. Impaired segments which are impacted by point source discharges are selected from the CWA section 303(d) list.

Stormwater Enforcement: TCEQ has proposed to inspect 900-950 stormwater facilities in FY2005 in 16 regions.

TCEQ does participate in some of the new EPA initiatives if the initiatives fall in line with their strategies. This is verified when EPA reviews the TCEQ inspection list for the upcoming inspection year.

In applying the criterion for time since the last Comprehensive Compliance Inspection (CCI), wastewater treatment plants which have not been investigated by TCEQ within the last 2 fiscal years and are not scheduled for a mandatory CCI in the upcoming fiscal year will be evaluated as candidates for a discretionary CCI. Factors taken into account when selecting 22 pretreatment programs per year for CCIs include findings from the last TCEQ pretreatment program audit; time since the last EPA permit compliance inspection (PCI), TCEQ pretreatment program CCI, or audit; and any known or suspected compliance problems at the wastewater treatment plant that may be related to pretreatment. Inspections of industrial users are conducted on an as-needed basis.

During FY 2005, the priority watershed for TPDES CAFO investigations in Texas will continue to be the Bosque watershed (Segments 1226 and 1255) located in the area of the State designated as the Central Texas Dairy Outreach Program Area (DOPA). Two counties with the Leon watershed are also part of the DOPA, Nos. 1221 and 1222. TCEQ is proposing that of those CAFOs that were in existence after September 1, 2000, one-third will be investigated in FY 2004, and that one-third of any remaining facilities be investigated in following years of FY 2005 and FY 2006, unless the total increase in a region is more than 50%.

TCEQ will conduct a designated number of discretionary CCIs for animal feeding operations where there is the highest concentration of animal feeding operations. This will be based on the size of the facility, known or suspected compliance problems and time since last CCI.

TCEQ issued its Phase II construction general permit on March 5, 2003. TCEQ plans to conduct a minimum of 50 stormwater construction investigations per stormwater investigator which can be any combination of comprehensive compliance investigations, and reconnaissance investigations at industrial sites (permitted, un-permitted, and those who have submitted a no exposure certification) and

construction sites (permitted and un-permitted), and possibly some reconnaissance investigations at Phase II MS4s.

4. Compliance Assistance

The State of Texas:

TCEQ offers and co-sponsors a variety of workshops and seminars attended by thousands throughout the State to educate the regulated community on how to comply with various program requirements, including but not limited to water quality seminars, water quality sessions at TCEQ's annual Environmental Trade Fair, stormwater, non-point source run-off, source water protection, CAFOs, pollution prevention planning, and environmental management systems. TCEQ also conducted 12 outreach seminars on the multi-sector general permit in 2001, and 8 multi-sector general permit seminars again in 2004. On a daily basis, TCEQ investigators continue to make presentations to educate entities on the general permit and stormwater program requirements.

The State distributes evaluation forms at the end of workshops and seminars to get feedback from the attendees. TCEQ uses this information to improve or add to the outcomes.

Section IV. Related Water Programs and Environmental Outcomes

1. Monitoring

The State of Texas:

TCEQ's Monitoring Program: The Surface Water Quality Monitoring (SWQM) Program is carried out by TCEQ SWQM Team, in coordination with the Clean Rivers Program (CRP), which consists of various planning agencies, including river authorities. The program encompasses a large fixed station network of sites statewide; special studies and intensive surveys to address specific data quality objectives; receiving water assessments to determine appropriate aquatic life uses; and use attainability analyses to ensure uses, standards and criteria are appropriately set. In 2000 a total of 1429 sites were monitored; 431 by TCEQ, 920 by CRP, and 78 by the U.S. Geological Survey. Parametric coverage includes field measurements, pathogen indicators, flow, and general water chemistry (nutrients, dissolved minerals). The resource intensive toxics monitoring in water, sediment and fish tissue; toxicity testing of ambient water and sediment; and biological assessment are additional coverages that are included at about only 100 sites. Annual meetings are hosted by the CRP planning agency within each of the major river basins, and a coordinated basin-wide schedule is compiled. The basin monitoring plans are then aggregated to produce a statewide SWQM schedule.

TCEQ's Monitoring Strategy: The State has a monitoring strategy. However, the State recently developed and submitted to EPA a draft comprehensive statewide monitoring strategy that addresses the ten elements found in EPA's 2003 guidance ("Elements of a State Monitoring and Assessment Program"). EPA has not completed its review of this strategy to determine whether it is consistent with EPA's 2003 guidance. The State has been very active in periodically updating and revising its Continuing Planning Process (CPP)(latest revision, August 1999), which includes the monitoring component.

The State's monitoring network utilizes a "targeted" design, including strategically located sites (e.g., upstream downstream of point sources), key locations on reservoirs (notably, near dams), and streams (e.g., below tributaries). Site selection for the most part has been based on a variety of factors, including stakeholder considerations. Initially, the State has resisted initiating a statistical monitoring design but has taken active steps toward this long-term goal. These include efforts by TCEQ, which developed a statistical design for Galveston Bay, and are participating in the National Wadeable Streams Assessment (NWSA), which involves sampling randomly selected stream stations in order to assess biological integrity of level II ecoregions throughout the U.S. Texas Parks and Wildlife has also been engaged in applying statistical designs, most notably a large study of water quality, habitat and biological condition in three east Texas ecoregions; and a coastal monitoring program (which they are expanding in conjunction with the National Estuary Programs), funded by EPA.

Rotating Basin Plan/Instream Data: The State's monitoring program is not established on a rotating basin cycle, monitoring of waters statewide is ongoing. However, in the past, assessment of the resulting water quality data has been on a basin cycle. The data collected under SWQM, including fixed station and intensive survey data, generally satisfy the State's needs with regard to permitting, wasteload allocations, assessment, and TMDLs. The State does not conduct, nor does it require permittees to

conduct, water quality or biological assessment monitoring of receiving waters to ensure the effectiveness of discharge permits. Future emphasis will include developing the monitoring strategy and refining the assessment procedures and implementation procedures. The State first developed the assessment procedures in 1999, and refines the methodology based on technical refinements made in-house as well as EPA and stakeholder input. EPA is interested in the State integrating a statistical design (though not replacing the existing network) in its monitoring program, as well as expanding the use of biological assessments, although manpower and resources to implement such major changes are limiting factors.

The State has developed a monitoring plan, and is presently developing a comprehensive monitoring plan that addresses the most recent guidance. Development and implementation of the guidance over a ten year period is expected to result in increasing stream miles assessed. However, the limiting factors (primarily budgetary) are not expected to change to any significant degree.

EPA Region 6:

Monitoring efforts:

- EPA coordinates with the States on Regional and national studies, including Regional Environmental Monitoring and Assessment Program (REMAP) studies, funded through the Office of Research and development. REMAP projects utilize a probabilistic design to answer specific research questions.
- A major national effort, funded by the Office of Water during FY 2004 -FY 2005, consists of the National Wadeable Stream Assessment (NWSA) studies designed to assess biological and habitat quality on a level II ecoregion scale.
- Some localized special monitoring is carried out by Region 6 through contractor support to address specific TMDL development needs or water quality assessment questions. However, EPA relies primarily on ambient statewide monitoring programs to furnish data for ambient water assessment, TMDLs, WLAs, and permitting needs.
- A major emphasis for FY 2004 - FY 2005 is for States to develop monitoring strategies utilizing EPA guidance, "Elements of a State Water Monitoring and Assessment Program" (March 2003). This process will address 10 critical program areas and will identify problems and possible solutions relevant to the next 10 years. It should ultimately result in improvements in strengthening of monitoring programs to address multiple data quality objectives, including permits-related water monitoring.
- Finally, EPA allocates grant funds for high priority water quality related projects, to address gaps in data and information which can not be addressed through routine funding mechanisms. These include monitoring harmful algal blooms, biological criteria and nutrient criteria development and ecoregion delineation. Annual requests for proposals are issued which identify the priorities and agency needs. Priorities change from year to year as a function of ongoing or emerging needs. TCEQ has been very receptive to partnering with other State and federal agencies, universities and consultants. The State is encouraged to apply for CWA section 104(b)(3) Cooperative Agreements to obtain funding for priority watershed management needs.

2. Environmental Outcomes

The State of Texas:

Surface Water Quality: The State has done an excellent job in preparing and updating its CWA section 305(b) water quality inventory, reporting therein the results of the surface water monitoring program assessment. In 2002, the State monitored less than 11% of its streams and rivers, although this takes into account total stream miles, including intermittent streams, which may be dry most of the year. Also, the monitoring of streams and rivers has increased slightly over previous years. EPA's goal is: number of watersheds where water quality standards are met in at least 80% of the assessed water segments and number of watersheds where assessed segments maintain water quality and at least 20% of assessed water segments show improvement above 2002 conditions. Lake acres and estuary square miles monitored are approaching 80%. EPA's goal is for all States to be monitoring at least 80% of lake and reservoir acres and estuary square miles. Statistical sampling designs are well suited to addressing data gaps for streams and rivers, although the State has not initiated such a design due to manpower and resource constraints.

In general the State of Texas has good monitoring coverage of lakes/reservoirs and estuaries, with percent of total assessed acres and square miles approaching 80%. The Management Report shows the percent of lakes acres assessed for recreation as 20.4% and 33.6% assessed for aquatic life.¹⁷ The percent of stream/river miles assessed, however, is relatively low (5.0% for recreation and 6.1% for aquatic life). The reasons for this low percentage are limitations in funding and personnel, and the extensive size of the State (and large number of total stream miles: there are a total of 184,797 stream/river miles in Texas). The low percent is also due to many intermittent and ephemeral streams. The amount of stream monitoring is maximized through the CRP, which involves cooperation with basin river authorities.

The percent of assessed river/stream miles impaired for swimming in 2000 was 17.0% and the percent of assessed lake acres impaired for swimming in 2000 was 0.3%. The percent of assessed stream miles, percent of lake acres and percent of estuaries fully supporting all designated uses, as reported in the CWA section 305(b) report are: approximately 80%, 70% and 79%, respectively. The Region has set a goal of 80% attainment, by the year 2008, for all three categories in its strategic plan. For stream/ivers and estuaries, there has been a trend of increasing attainment with water quality standards over the last eight years. For lakes, the percent of lake acres attaining standards is higher than the value reported two years earlier (2000), however, over the last eight years, has shown decreasing attainment. As more information on fish tissue contamination has become available, more lakes have been designated as impaired because a fish consumption advisory has been issued warning about the risks of eating fish. Nutrient loading, primarily through non-point sources may be influencing dissolved oxygen levels. Presently the State is developing nutrient criteria for lakes and reservoirs. Adoption of numeric nutrient criteria is expected to result in improved lake water quality. Additional State and EPA efforts through the non-point source and TMDL programs are also expected to improve attainment.

¹⁷ The Management Report percentages are lower than the overall percent assessed because they deal with assessment for particular uses, while the 80% number includes waters assessed for any one or more uses.

EPA Region 6:Monitoring efforts:

- The Region has begun to utilize key CWA section 305(b) indicators of assessment of stream miles, lake acres and estuary square miles reported by the States in the FY 2003- FY 2008 Regional Strategic Plan. In addition, other key indicators, including stream miles, lake acres and estuary square miles impaired are contained in the plan. The Region is utilizing these data for reporting purposes as environmental and programmatic indicators. Such indicators give an impression as to the long-term effectiveness of monitoring and water quality management programs.
- Future enhancements would be to integrate a randomized design to provide unbiased estimates of impairment for a given class of waters (e.g., wadeable streams in a particular ecoregion). However, this would have to become a priority for the State, and additional funds would likely be necessary to sustain this type of monitoring design. Initial activities in the form of the National Wadeable Stream Assessment (NWSA) are being used to demonstrate this approach.
- Enhancements will also include refinements in biological indices of integrity to better interpret biological condition, and systematic assessments of the biotic community for different classes of waters. This is a long-term, ongoing effort which could be bolstered through additional funding.

3. Water Quality Standards

The State of Texas:

The Texas surface water quality standards contain designated uses for many water body segments and presumed uses for unclassified water bodies. The Texas water quality standards also include numeric and narrative criteria to protect uses of water. In some cases, the presumed (or designated) use or a particular criterion may not be appropriate. For unclassified water bodies, TCEQ has developed use attainability analysis (UAA) procedures to assess the attainable aquatic life use. When appropriate, TCEQ requests EPA's approval of a variance to water quality standards. During the variance period (up to three years), TCEQ staff or the facility (municipal or industrial discharger) conducts a UAA or develops site-specific criteria. EPA reviews technical workplans for these types of studies when requested. Water quality standards and Permits staff of both TCEQ and EPA coordinate on variances. The Texas water quality standards also allow compliance schedules to meet new limitations in permits for existing facilities.

Standards for nutrients, E. coli, and Enterococci: In its last triennial revision, Texas adopted bacteria criteria based on EPA's recommended indicators of E. coli and Enterococci. EPA has approved the State's criteria for E. coli and Enterococci. The State has developed a draft nutrient criteria plan which describes steps that will be taken to develop numeric nutrient criteria. EPA requested that all States develop nutrient criteria plans and adopt criteria (or make substantial progress) by the end of 2004. A revised plan was submitted to EPA December 28, 2004. As of April 2005, this plan is under review by EPA. Nutrient criteria plans prepared by the States are ultimately agreed upon by EPA. EPA will evaluate the State's progress to determine if EPA action is warranted. Present indications are that the State intends to develop and adopt such criteria, with the initial emphasis being on lakes and reservoirs.

Permit Development: The Implementation Procedures to the Texas surface water quality standards identify procedures for calculation of WQBELs as well as the reasonable potential determinations in the

protection of aquatic life criteria. Factors that are considered in the calculations are effluent and receiving stream flows, effluent pollutant concentration, and numeric criteria. The more stringent of the calculated WQBEL or applicable technology-based effluent limits (TBEL) are established in the draft permits. In addition, comparisons are made between the WQBEL, TBEL, and any limitation in the existing/previous permit to determine the most restrictive of the three limitations.

In the development of permit limitations and the screening of application data for reasonable potential, background concentration of the pollutant is used if the information is available. If reliable data is not available, then the background concentration is considered to be zero.

Antidegradation Policy: To ensure consistency with the State's antidegradation policy, each permitting action that proposes an increase in pollutants undergoes an antidegradation review to ensure that the increase in loadings does not impair existing water quality uses and that numerical and narrative criteria necessary to protect the existing uses will be maintained. Permitting actions (new permits, permit amendments) also undergo review to ensure that the permit activity will not cause degradation of waters that exceed fishable/swimmable quality.

EPA Region 6:

Integration of the Water Quality Standards Program with the NPDES program: In its oversight role, the Region is charged with ensuring that States and authorized Tribes have adopted beneficial uses and appropriate criteria for those uses consistent with the goals described in section 101(a)(2) of the CWA and the water quality standards regulation.

Implementing water quality standards: Narrative standards that lack clear implementation or numeric standards that have associated implementation that have vague or inconsistent wording in the standard provision can be difficult to implement.

The standards regulation (see 40 CFR Part 131.6(b)) require States/Tribes to submit the methods and analyses conducted to support standards revisions. This could be interpreted to mean implementation. With the exception of antidegradation policy implementation (see 40 CFR Part 131.12(a)), there is no specific requirement for State/Tribes to incorporate implementation into their standards. However, federal regulations at 40 CFR Part 130.5(b) specify the content of State Continuing Planning Process documents, which at 40 CFR Part 131.5(b)(6), require the inclusion of the process for establishing and assuring adequate implementation of new or revised water quality standards, including schedules of compliance, under CWA section 303(c).

Coordination of triennial reviews and NPDES permits: Regional Standards Program staff request comments from the NPDES program staff when a State or Tribe initiates a review or provides an initial public draft of new/revised standards. The Standards Program notifies the NPDES program when new/revised standards have been approved and are effective under the CWA for permitting purposes.

4. Total Maximum Daily Loads

The State of Texas:

According to the 1998 CWA section 303(d) list, 259 waterbodies were impaired; needing either a TMDL, additional monitoring, or a water quality standards change. Beginning with the list, TCEQ committed to completing all TMDLs within ten years based on the initial listing date. It should be noted

that TCEQ's TMDL development process involves extensive public participation as required by Legislation, which can increase the amount of time needed to complete TMDLs. Currently, TCEQ has twenty-four projects addressing 133 segment/parameter issues and two projects conducting research in areas that will enable TCEQ to address bacteria and dissolved oxygen exceedances more effectively. Elevated bacteria counts and low dissolved oxygen comprise the majority of the impairments. By the end of FY 2003, 42 TMDLs were expected to be completed. As of August 2004 (close of FY 2004), TCEQ completed 59 TMDLs (of which twenty-two were completed in FY 2003) and delisted another 161 segment/parameters. The number of waterbodies with active investigations at the end of FY 2003 was 247. Based on the National TMDL Tracking System, the number of TMDLs completed and approved through FY 2003 that include at least one point source wasteload allocation is 23.

Integration of the TMDL Program with the NPDES Program is accomplished by three sections at TCEQ: (1) Water Quality Planning Section, (2) Wastewater Permitting Section, and (3) Water Quality Assessment Section. During the TMDL development phase, TCEQ assembles a watershed stakeholder group from each section. There is no one formal procedure that TCEQ follows while developing a TMDL since the level of detail of each TMDL varies. However, TMDL staff meet with staff from both permitting and Water Quality Assessment Section to discuss various aspects of TMDLs during development. TCEQ also develops and adopts an implementation plan for TMDLs, and this document must include enough information to support development of permit limits, if appropriate. To date only two permitted dischargers have had to incorporate TMDL conditions in their permits; the City of Stephenville, and the City of Clifton.

EPA Region 6:

Status: Region 6 is not developing TMDLs for the State of Texas. Instead, the Region is providing technical assistance as requested by the State on TMDLs prepared by the State. State developed TMDLs can be viewed at TCEQ's Web site at <http://www.tceq.state.tx.us/water/quality/tmdl/index.html>

The required list of TMDLs for each forthcoming biennium is submitted with each CWA section 303(d) list submittal. The submittals of TMDLs are compared to this list to assess progress. TMDLs are submitted as updates to the Water Quality Management Plan, which provides WQBELs.

Review process: Region 6 has developed an internal TMDL review process, prior to the public comment period, for NPDES implementation of TMDL conditions. Because there were no permitting actions required, to date, no Region 6 generated discharge permits for the State of Texas have implemented approved TMDL conditions. The TMDL implementation strategy for discharge permits is built into the "Water Quality Assessment NPDES Permit Issuance Actions" flowchart that can be used during the assessment of pending permit applications and the development of discharge permits.

5. Safe Drinking Water Act

The State of Texas:

During permit development process, the wastewater permitting section coordinates with water quality assessment in developing water quality based limits. Drinking water and public health issues are taken into consideration during the actual calculations of water-quality based limits and screening and during the development of standards.

EPA Region 6:

Integration of the Safe Drinking Water Act (SDWA) programs: SDWA requires that States submit the location (latitude and longitude) of all surface water intakes and wells used by public water systems to the Safe Drinking Water Information System. The Office of Ground Water and Drinking Water (OGWDW) has formed a national Baseline Water Quality Standards Workgroup to work toward providing locational data for the public water supply surface water intakes and wells that are under the direct influence of surface water to the Water Quality Standards staff for use in establishing water quality standards, determining appropriate designated uses and for designation of stream segments. The EPA Region 6 Source Water Protection Branch has been asked to work closely with the appropriate State agencies during the validation process for the latitude and longitude of the surface water intakes and wells.

The Region 6 Source Water Protection Branch is also reviewing State water quality standards setting procedures to ensure designated uses include appropriate language for drinking water supply and to encourage States to consider public water supplies that use ground water wells that are under the direct influence of surface water during the water quality standards setting process.

Section V. Other Program Highlights

The State of Texas:

TCEQ has developed a mechanism to allow electronic submittal of NOIs and notices of termination (NOTs) for the TPDES construction general permit and the multi-sector general permit, and specific to the multi-sector general permit, electronic submittal of the no exposure certification. This process has expedited permit coverage for facilities.

TCEQ has been involved in an overall review which involved public comments of TCEQ enforcement process for over a year and has been having working sessions with the Commission for several months to determine final changes to be made.

TCEQ is developing a program to upload data from CCEDS to the federal database when the State goes on-line with the modernized ICIS-NPDES database in 2007.

TCEQ is developing eDMR capability to allow permittees to electronically report their self-monitoring data.

EPA Region 6:

Agency goals: Region 6 is committed to development and issuance of high quality permits to all active natural gas process, storage and transportation facilities, Indian country and Region 6 general stormwater permits within the State of Texas. Most of the supporting tools developed and used are Regional innovative approaches to help improve the efficiency and quality of these discharge permits. These innovations have been instrumental in achievement of the goals of the Agency and Region.

Watershed permitting and Effluent Trading: Region 6 is investigating opportunities for watershed permitting and effluent trading in Region 6 authored NPDES permits.

Permit Application Software System: Permit Application Software System (PASS) is available at the Region. It has been utilized by a limited number of permittees for the generation of permit applications.



TCEQ

OFFICE OF PERMITTING, REMEDICATION & REGISTRATION

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Fiscal Year 2005

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NPDES Management Report, Spring 2005

Texas

			Profile Section	GPRA Goal	Nat. Avg.	National Data Sources		Additional Data	
						State Activities	EPA Activities	State Activities	EPA Activities
NPDES Progress									
Universe	1	# major facilities (6,690 total)	I.1		n/a	574	0	616	
	2	# minor facilities covered by individual permits (42,057 total)	I.1		n/a	2,431	22	2,352	28
	3	# minor facilities covered by non-storm water general permits (39,183 total)	I.1		n/a	571	0		39
	4	# priority permits (TBD)	I.6			--	--		
	5	# pipes at facilities covered by individual permits (142,761 total)	I.7		n/a	16,369	--		
	6	# industrial facilities covered by individual permits (32,505 total)	I.1		n/a	1,621	51	1,644	28
	7	# POTWs covered by individual permits (15,197 total)	I.1		n/a	1,146	74	1,220	0
	8	# pretreatment programs (1,482 total)	II.2		n/a	70	--	71	
	9	# Significant Industrial Users (SIUs) discharging to pretreatment programs (22,158 total)	II.2		n/a	1,349	--		
	10	# Combined Sewer Overflow (CSO) permittees (831 total)	II.5		n/a	0	--		
	11	# CAFOs (current and est. future) (17,672 total)	II.3		n/a	1,150	--	1,100	
	12	# biosolids facilities (TBD '05)	II.6			--	--		
NPDES Program Administration	13	State or Region assessment of State NPDES program (none (N)/assessment (A)/profile (P))	I.1	50 states 2004	n/a	A, P	P		
	14	% pipes at facilities covered by individual permits w/ lat/long in PCS	I.7		46.3%	4.1%	--	21.5%	
	15	State CAFO legal authority expected (mo/yr)	II.3	2005	n/a	7/04	n/a	6/04	
	16	# Withdrawal petitions/legal challenges (22 total)	I.4		n/a	0	n/a		
	17	DMR data entry rate	I.7		95%	95%	--		
	18	# permit applications pending (1,011 total)	I.6		n/a	51	--		
NPDES Program Implementation	19	% major facilities covered by current permits	I.6	90%	83.7%	76.3%	n/a	84.6%	
	20	% minor facilities covered by current individual or non-storm water general permits	I.6	90% 12/04	87.0%	90.3%	95.5%	90.7%	92.5%
	21	# major facilities w/permits expired >10 yrs. (56 total)	I.6		n/a	0	0		
	22	% priority permits issued as scheduled (TBD '05)	I.6	95% 2005		--	--		
	23	% pretreatment programs inspected/audited during 5 yr. inspection period	II.2		85.3%	100.0%	--		
	24	% SIUs w/control mechanisms	II.2		99.2%	98.4%	--	99.0%	
	25	% of CSO permittees with long-term control plans developed or required	II.5	75% 2008	82.2%	n/a	--		
	26	% CAFOs covered by NPDES permits	II.3		35%	30%	--	51%	
	27	% biosolids facilities that have satisfied part 503 requirements (TBD '05)	II.6			--	--		
	28	# Phase I storm water permits issued but not current (76 total)	II.4		n/a	19	0		
	29	# Phase I storm water permits not yet issued (5 total)	II.4		n/a	0	0		
	30	Phase II storm water small MS4 permits current (Y/N/D (draft)) (35 States)	II.4	100% states 2008	n/a	D	n/a		
	31	Phase II storm water construction permit current (Y/N/D (draft)) (49 States)	II.4	100% states 2008	n/a	Y	Y		
NPDES Compliance Monitoring and Enforcement Response	32	% major facilities inspected	III.3		71%	37%	9%		
	33	(inspections at minors) / (total inspections at majors and minors)	III.3		76%	33%	76%		
	34	% major facilities in significant non-compliance (SNC)	III.1		20%	20%	--		
	35	% SNCs addressed by formal enforcement action (FEA)	III.1		14%	19%	--		
	36	% SNCs returned to compliance w/o FEA	III.1		70%	72%	--	74%	
	37	# FEAs at major facilities (666 total)	III.1		n/a	11	13		
	38	# FEAs at minor facilities (1,660 total)	III.1		n/a	7	156		

Explanation of Column Headers:

Profile Section: For each measure, this column lists the section of the profile where the program area (including any additional data for the measure) is discussed.

National Data Sources: The information in these two columns is drawn from two types of sources:

(1) EPA-managed databases of record for the national water program, such as PCS, the National Assessment Database, and the National TMDL Tracking System. NPDES authorities are responsible for populating PCS with required data elements and for assuring the quality of the data. EPA is working to phase in full use of NAD and NNTS as national databases.

(2) Other tracking information maintained by EPA Headquarters for program areas such as CAFOs, CSOs, and storm water.

The [definitions document](#) accompanying this Management Report provides a detailed definition of each data element in the National Data Sources columns.

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State Activities: Information in these columns reflects activities conducted by the State program. (Shaded cells in these columns indicate that the work may not be entirely the State's responsibility, but a breakdown of the data into EPA and State responsibilities is unavailable.)

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NPDES Management Report, Spring 2005

Texas

		Profile Section	GPRA Goal	Nat. Avg.	National Data Sources		Additional Data	
					State Activities	EPA Activities	State Activities	EPA Activities
Water Quality Progress								
Universe	39	River/stream miles (3,419,857 total)	IV.2		n/a	184,797	n/a	
	40	Lake acres (27,775,301 total)	IV.2		n/a	1,994,600	n/a	
	41	Total # TMDLs in docket at end of FY 2003 (52,795 total)	IV.4		n/a	247	--	
	42	# TMDLs committed to in FY 2003 management agreement (2,435 total)	IV.4		n/a	42	--	
	43	# Watersheds (2,341 total)	IV.2		n/a	--	--	
Water Quality Administration	44	On-time Water Quality Standards (WQS) triennial review completed (42 States)	IV.3		n/a	Y	n/a	
	45	# WQS submissions that have not been fully acted on after 90 days (32 total)	IV.3	<25% submissions	n/a	n/a	1	
Water Quality Implementation	46	State is implementing a comprehensive monitoring strategy (Y/N) (TBD)	IV.1	all states 2005	--	--	--	
	47	% river/stream miles assessed for recreation	IV.2		13.8%	5.0%	n/a	
	48	% river/stream miles assessed for aquatic life	IV.2		22.0%	6.1%	n/a	
	49	% lake acres assessed for recreation	IV.2		49.4%	20.4%	n/a	
	50	% lake acres assessed for aquatic life	IV.2		48.5%	33.6%	n/a	
	51	# outstanding WQS disapprovals (23 total)	IV.3		n/a	1	n/a	
	52	WQS for E. coli or enterococci for coastal recreational waters (12 States)	IV.3	35 states 2008	n/a	Y	n/a	
	53	WQS for nutrients or Nutrient Criteria Plan in place (13 States)	IV.3	25 states 2008	n/a	N	n/a	
	54	Cumulative # TMDLs completed through FY 2003 (10,807 total)	IV.4		n/a	53	--	
	55	# TMDLs completed in FY 2003 (2,929 total)	IV.4		n/a	22	0	
Environmental Outcomes	56	# TMDLs completed through FY 2003 that include at least one point source WLA (5,036 total)	IV.4		n/a	23	--	
	57	% Assessed river/stream miles impaired for swimming in 2000	IV.2		--	17.0%	n/a	
	58	% Assessed lake acres impaired for swimming in 2000	IV.2		--	0.3%	n/a	
	59	# Watersheds in which at least 20% of the water segments have been assessed and, of those assessed, 80% or more are meeting WQS (440 total)	IV.2	600 2008	n/a	--	--	

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