

**Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998**

November 1999

Prepared by
Environmental Protection Agency
Region 10
Office of Waste & Chemicals Management

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

Table of Contents

Purpose of the Review	3
Scope and Methodology	3
Summary of Significant Findings	
Idaho Hazardous Waste Program Strengths	4
Idaho Hazardous Waste Program Performance Recommendations	6
Narrative Report of Program Evaluation Areas	
Program Performance and Effectiveness	9
Complete, Accurate, and Current Knowledge of the Regulated Community	14
Appropriate Targeting Inspection, and Monitoring Strategy	15
Balanced Use of Tools	18
Timely and Appropriate Response to Significant Violations	18
Accurate Record Keeping and Reporting	22
Clear and Enforceable Requirements	23
Sound Program Management	23
Appendix A: Program Review Scope, Criteria and Process	
Appendix B: RCRIS data Program Review Spread Sheet	
Appendix C: Idaho DEQ <u>Enforcement Procedures Manual</u>	
Appendix D: Facility File Summaries	
Appendix E: RCRIS Compliance Monitoring and Enforcement Activity Reports	
Appendix F: Idaho Division of Environmental Quality Response to Draft Program Review	

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

Purpose of the Review

The Environmental Protection Agency (EPA) Region 10 established a goal of assessing the current status of all state enforcement and compliance programs for delegated programs in the Region. The purposes of this Idaho Hazardous Waste Program Review were aligned with the Region 10 goal, including:

- to establish a program performance baseline from which to negotiate compliance and enforcement commitments for the FY 2000 Performance Partnership Agreement (PPA)
- to assess the Idaho Program's success in addressing environmental compliance problems by looking at some of the inspection and enforcement files from the past three years
- to identify program strengths and to make recommendations for improvements in state performance where needed
- to assure a reasonable level of consistency among authorized state hazardous waste programs in Region 10 by looking at Idaho, Oregon and Washington in the same year.

Scope and Methodology

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

This review was conducted by the Office of Waste and Chemicals Management (OWCM), using a work group that also reviewed the hazardous waste programs in Oregon and Washington. (Alaska does not have a state hazardous waste program so no review was needed there.) The OWCM director also asked state program directors to volunteer participants and, as a result, a state inspector from Idaho participated in both the Idaho and Oregon reviews. The review work group conducted a preliminary data review and then traveled to the Boise office of the Idaho Department of Health and Welfare, Division of Environmental Quality (DEQ) for file reviews and meetings with hazardous waste program staff on November 9-10, 1998. The work group discussed their preliminary impressions of the program review at an exit briefing with DEQ managers and staff.

The scope of this review was established by OWCM and DEQ in October 1998, following the process described in the Principles and is included as Appendix A. The scope of this review is similar to the previous Idaho hazardous waste program review conducted in September 1996. The facilities in this review included:

- all facilities with inspection data in the Resource Conservation and Recovery Information System (RCRIS) during the review period were used to calculate compliance and enforcement program performance measures;

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

- 47 facilities of the 91 reported in RCRIS through October 1998 as visited by the DEQ were used for file reviews, which constituted 21% of the 229 different facilities on the state list of facilities visited during the review period;
- six facilities that received an enforcement response in 1996 for inspections in 1995 were also used for file reviews under the timely and appropriate enforcement criteria.

Data pulled from RCRIS into an enforcement summary spreadsheet for the hazardous waste handlers inspected are included as Appendix B. The RCRIS Compliance Monitoring and Enforcement Tracking Report printed on August 23, 1999 is included as Appendix E. DEQ indicated in their response to the draft review that they added data to RCRIS in June 1999. The August 23 report includes 64 more facilities than the 91 we originally used to select files for review and we have updated this final report to reflect these.

Summary of Significant Findings

Idaho Hazardous Waste Program Strengths

A. Evaluation Area: Program Performance and Effectiveness

Relevant Requirements and Guidance: EPA Office of Enforcement and Compliance Assurance (OECA) Annual Planning Guidance and Core Accountability Measures, as incorporated into the 1996 and 1997 Hazardous Waste Program Grants and the 1998 PPAs.

Findings: DEQ reported nine Significant Non-Compliers (SNCs or previously violation priority = 9) in RCRIS, one of which was referred to EPA. We calculated the overall rate of significant non-compliance by dividing those into the number of facilities inspected entered in RCRIS. The new SNC rates in Idaho were 10% in 1996 (5 of 50), 10% in 1997 (3 of 32, counting one referred to EPA for enforcement and on repeat violator), and 7% in 1998 (2 of 27).

Conclusions: We found that DEQ had adopted and implemented the EPA Enforcement Response Policy sufficiently during this period to be able to measure rates of significant noncompliance in accordance with the national accountability measures. We concluded that DEQ focused its limited enforcement resources on the most serious violators through SNC identification.

B. Evaluation Area: Complete, Accurate and Current Knowledge of the Regulated Community

Relevant Requirements and Guidance: A comprehensive compliance program should include enforcement of the self-implementing provisions of 40 CFR Section 262, requirements applicable to generators of hazardous waste.

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

Findings: DEQ worked during this period to establish their complaint intake process and system to handle tips and public referrals, often about non-notifiers. DEQ provided a copy of their new internal guidance that describes how regional office staff and hazardous waste program staff will collaborate on complaint cases.

Conclusions: We concluded that DEQ places a high priority on responding to complaints and tips and has found several non-notifiers that way. We reviewed twenty four facility files that originated with complaints and found the inspections and enforcement responses were appropriately investigated and resolved.

C. Evaluation Area: Timely and Appropriate Response to Significant Violations

Relevant Requirements and Guidance: RCRA compliance inspector training and reporting guidance.

Findings: DEQ has an experienced and knowledgeable compliance inspection staff and good reporting formats, such as checklists. We found the inspections usually were thoroughly documented, included photographs, and indicated that inspector training guidelines were followed to cover the relevant RCRA requirements. Violations were well documented for appropriate response actions.

Conclusions: Although there were a few relatively minor problems (see page 18), the DEQ inspectors are knowledgeable of RCRA requirements and have been thoroughly documenting inspections, even where no violations were found.

D. Evaluation Area: Clear and Enforceable Requirements

Relevant Requirements and Guidance: Assessment of applicable permitting or compliance order requirements for enforceability and the extent to which they are applied in inspections.

Findings: DEQ invested extensively in permit development, oversight, and enforcement at the US Department of Energy's Idaho National Engineering and Environmental Laboratory (INEEL). We found very thorough inspection results and calculation of significant penalties to create a deterrent to mismanaging hazardous or mixed hazardous and nuclear waste.

Conclusions: DEQ imposed clear and enforceable requirements at INEEL and conducted extensive compliance inspections that resulted in significant enforcement consequences for the violations found.

Idaho Hazardous Waste Program Performance Recommendations

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

A. Evaluation Area: Program Performance and Effectiveness

Relevant Requirements and Guidance: OECA Annual Planning Guidance and Core Accountability Measures, as incorporated into the 1996 and 1997 Hazardous Waste Program Grants and the 1998 and 1999 PPAs.

Findings: We found a decline of 46% (RCRIS) to 53% (state tracking report) in the number of facilities inspected from 1996 to 1998, while the staffing level remained about the same. Discussions with DEQ indicated that they continued to struggle with a large workload and a relatively small staff and that much of their work was not reflected by activity counts, for example, spending more time providing support for criminal enforcement efforts. DEQ also pointed out that the EPA funding for the program declined during the period under review.

Recommendations: We recommend that DEQ develop a strategy to arrest the downward trend in site visits and re-establish their compliance presence in the regulated community.

B. Program Evaluation Area: Appropriate Targeting, Inspection, and Monitoring Strategy

Relevant Requirements and Guidance: Standard set by RCRA Section 3007(e) for TSD facility inspections no less often than every two years, with flexibility from OECA annual guidance, as incorporated in the 1996 and 1997 Hazardous Waste Program Grants and the 1998 and 1999 PPAs.

Findings: We found that DEQ had cut down on RCRA regulated generator (large and small quantity generator) inspections during the past three years and that their first time inspections were mostly at conditionally exempt or non-regulated facilities. The EPA annual enforcement planning guidance had set goals to inspect 8% to 11 % of LQGs (increasing to 20% in 2000) and DEQ averaged only 4% annually in the past two years.

Recommendations: We recommend that DEQ work to increase annual coverage of the regulated universe and address the backlog of regulated facilities never inspected either with compliance inspections or with changes to the facilities' generator status in the database if they no are no longer LQGs or SQGs.

C. Evaluation Area: Balanced Use of Tools

Relevant Requirements and Guidance: OECA annual operating guidance and Policy Framework for State/EPA Enforcement Agreements. Program should have a dynamic compliance strategy that balances the relevant tools used to achieve compliance.

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

Findings: The DEQ compliance assurance strategy emphasized the continuum from technical assistance to enforcement, such that there was more of a sliding scale approach rather than a balanced approach. The sliding scale approach allowed DEQ to tailor their response to the facility anywhere along the continuum, rather than balancing some set of technical assistance work with some set of compliance enforcement work. We could not identify what level of resources were directed toward either assistance or enforcement. DEQ reported that they were discussing their strategy with Washington and Oregon programs that had been more effective in using staff dedicated to technical assistance work.

Recommendations: DEQ should develop a focused strategy for technical assistance, indicate the resources devoted to the effort, and collect some data with which to measure the environmental or compliance outcomes of their assistance efforts.

D. Evaluation Area: Timely and Appropriate Response to Significant Violations

Relevant Requirements and Guidance: EPA Enforcement Response Policy, Policy Framework for State/EPA Enforcement Agreements, and annual work plans or PPAs created criteria for addressing significant violations.

Findings: Eight of the sixteen facilities with formal enforcement actions had not met the timeliness guidelines in the Enforcement Response Policy. The Policy recognizes that some cases are more complicated and take longer than 300 days to resolve, so it includes a 20% exceedance allowance for backlogged cases. We found that DEQ's formal enforcement process had generated a 50% exceedance rate and we conclude that the delays were more likely caused by systemic problems than by case specific circumstances.

Recommendations: We recommend that DEQ examine their formal enforcement process and identify ways to decrease the time needed to return violators to full physical compliance or bring them into compliance with a state order. This includes making timely determinations that facilities have returned to physical compliance, even when the administrative instrument has not been completed.

E. Evaluation Area: Timely and Appropriate Response to Significant Violations

Relevant Requirements and Guidance: EPA Enforcement Response Policy, Policy Framework for State/EPA Enforcement Agreements, and annual work plans or PPAs created criteria for addressing significant violations.

Findings: We found three violators that appear to meet the SNC criteria but were not designated SNCs. We did not find that DEQ evaluated these facilities with the SNC criteria at the before decisions were made to pursue formal enforcement responses.

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

Recommendations: DEQ should evaluate these violators for SNC status and enter appropriate designations in RCRIS for historical tracking and trend analysis purposes. OECA has established 1996 as the baseline year for reporting SNC measures of national program performance.

F. Evaluation Area: Sound Program Management

Relevant Requirements and Guidance: Policy Framework for State/EPA Enforcement Agreements, EPA annual operating guidance, Performance Partnership Agreements, and Authorization Memorandum of Agreement created numerous guidelines for program management, such as effective organization, planning and reporting.

Findings: The Idaho DEQ Enforcement Procedures Manual includes a process for developing a press release for each notice of violation. We found that some press releases were prepared by the Compliance Assurance Bureau and forwarded to the DEQ Public Affairs Office but we did not find copies of any press releases that had been issued. The hazardous waste staff reported that they had not seen any press releases go out about their activities in recent years, other than items related to the U.S. Department of Energy facility's violations.

Recommendations: We recommend that DEQ make use of press releases to publicize their enforcement accomplishments in order to create a wider deterrent impact in the regulated community.

Narrative Report of Program Evaluation Areas

Program Performance and Effectiveness

The review sought to establish baseline statistics for the national compliance and enforcement accountability measures. The enforcement program measures for outputs, outcomes and environmental conditions were evaluated using RCRIS data along with the hazardous waste compliance activity tracking report provided by DEQ (Figure 1). We found that the latter was used to supplement RCRIS tracking and contained additional activities, such as facilities where no EPA hazardous waste identification number was required and RCRIS data entry was not necessary. However, some of the facilities tracked only by the state program did have RCRIS

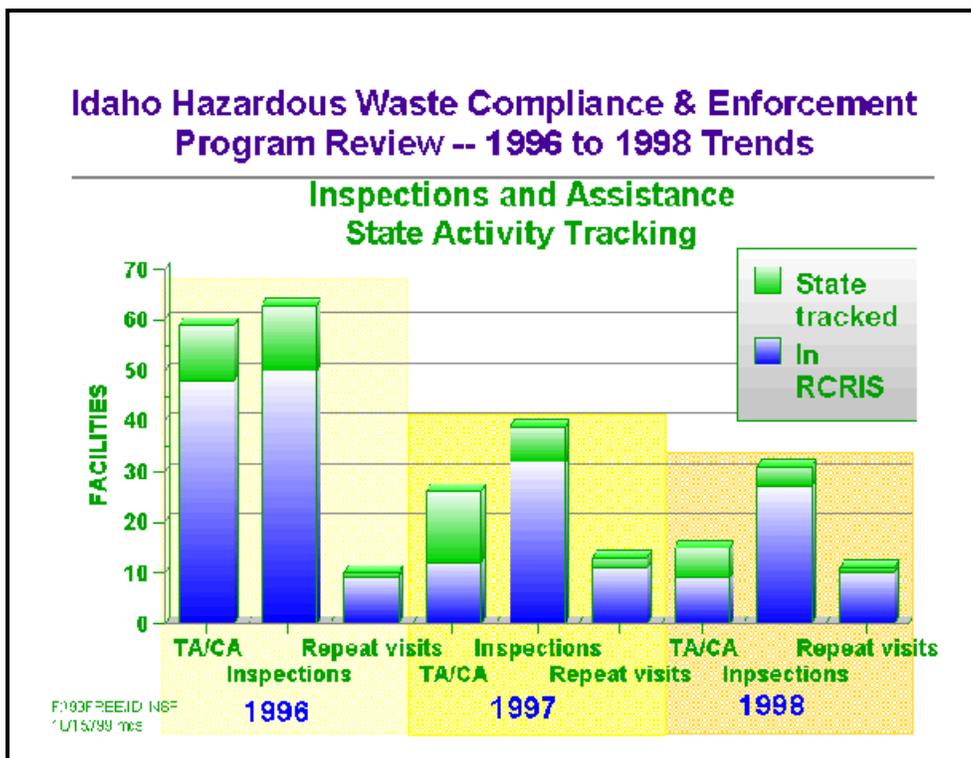


Figure 1

identification numbers and we recommended that those be entered into the database in order to more accurately portray the level of activity in the state program. In response, DEQ added 72 inspections to RCRIS which are reflected in Figure 1. We counted the data for state-only identification numbers as compliance assistance (labeled TA/CA) because DEQ indicated these were not RCRA regulated facilities.

There was a downward trend in technical assistance and compliance assistance site visits (TA/CA) and inspections during the review period, whether using the RCRIS data or the state activity tracking list. We found a decline of 43% (RCRIS) or 53% (state) in the number of facilities inspected from 1996 to 1998. DEQ reported that staffing was steady at approximately

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

six FTE for the RCRA compliance work. Discussions with DEQ indicated that they continued to struggle with a large workload and a relatively small staff and that much of their work was not reflected by activity counts, for example, spending more time providing support for criminal enforcement efforts. We recommend that DEQ develop a strategy to arrest the downward trend and re-establish their compliance presence.

We evaluated the following enforcement output measures using the RCRIS data reported by DEQ, through August 23, 1999. The number of formal enforcement actions plus informal actions with penalties that were started (FE Start) as a result of each year's inspections decreased from nine in 1996 to four

in 1997 and increased to six in 1998 (Figure 2). We found two penalty actions that were taken through Notices of Violation and concluded by Consent Agreements that were not entered as formal enforcement actions in RCRIS. We counted these along with the other RCRIS-coded formal enforcement actions. We understand that the number of formal enforcement actions started and closed will lag the inspection dates by several months and

DEQ issued four additional formal enforcement actions following our initial review. We agree with DEQ's response to the draft report that, "chronological variations in enforcement actions will occur" and we did not make any recommendations based simply on the number of formal enforcement actions we found. The evaluation of closed formal enforcement actions is presented later in this report, as part of the "timely and appropriate response to significant violations" area.

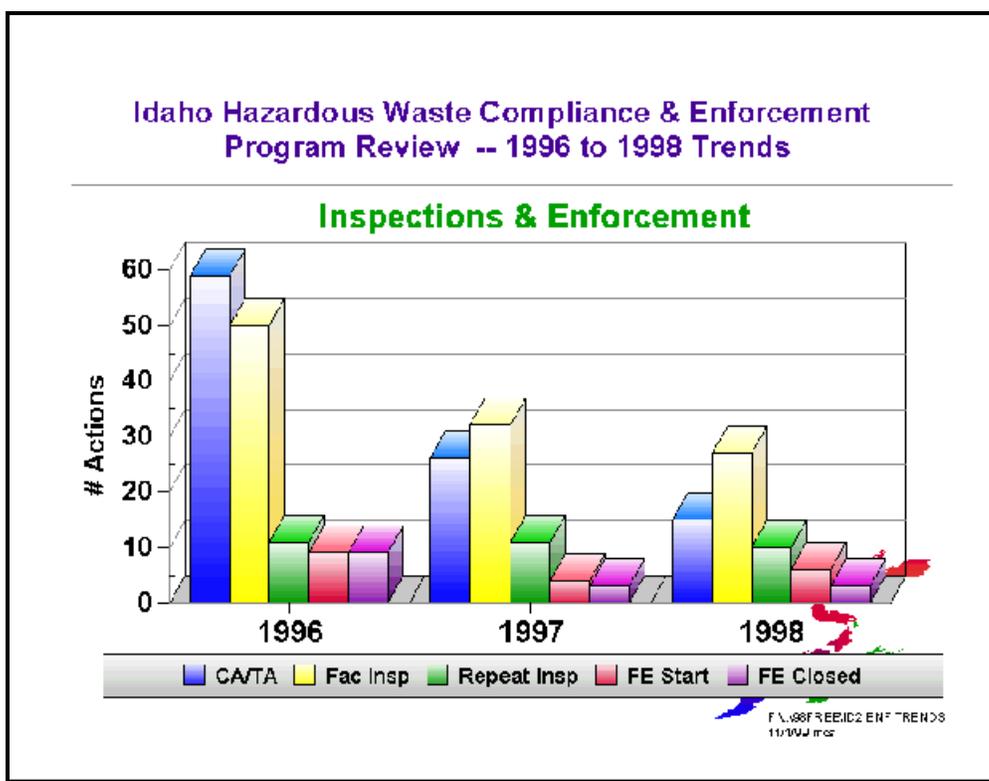


Figure 2

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

We also calculated the baseline statistics for the output measure for the average number of days for violators to return to compliance or enter enforceable agreements. DEQ reported nine SNCs in RCRIS for the review period, referred one violator to EPA that was designated a SNC, and had one repeat SNC in 1996 and 1997. We calculated the average measures using the nine SNCs, as well as using all formal enforcement cases and informal actions where the state issued notices of noncompliance. We included these additional measures in order to show the compliance program results more broadly than the SNC focus on a few cases and to be able to compare with other states where

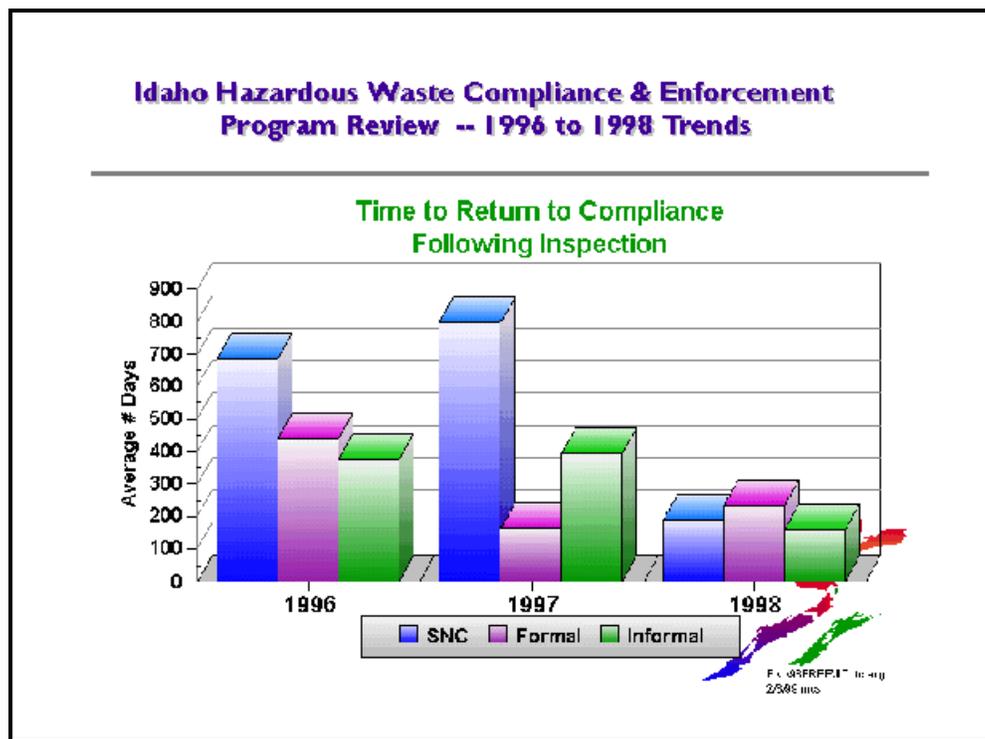


Figure 3

SNC designations were not used. The average number of days for violators to return to compliance for the last three years are presented in Figure 3. The averages for facilities returning to compliance following an informal action (written notice of violation) are not significantly less than those for formal enforcement orders, which was different from the other states we reviewed. DEQ reported that their hazardous waste enforcement program, as authorized, requires them to track their initial formal enforcement response as equivalent to an informal federal action as defined in RCRIS, thus the time it takes to get compliance either way is about the same.

We evaluated the SNC return to compliance time using the EPA Enforcement Response Policy guideline which is 300 days to enter a final order with full compliance or a schedule to achieve compliance. DEQ averages significantly exceeded this guideline. We again note that while the 1996 and 1997 statistics are mostly complete, the FY 1998 average is calculated only to the date August 23, 1999, and will continue to increase until the outstanding violations return to compliance. We recommend that DEQ focus on the 1998 SNCs with the goal of meeting the 300 day guideline for getting a final order and full physical compliance, or compliance with an

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

enforceable schedule. Since we conducted the review, OECA established the national performance measure for duration in months, rather than an average. The SNC duration in Idaho is presented in Table 1, below.

OECA National Performance Measures Strategy - Idaho SNC Duration			
Number & percent of SNCs resolved in...	1996	1997	1998
6 months or less			
6 months to one year	1, 20%		
one to two years	3, 60%		
more than two years	1, 20%	1, 50%	
unresolved for less than three years		1, 50%	2, 100%

Table 1

Additional national accountability measures for rates of significant non-compliance and recurrent violations were established as outcome measures related to the deterrent effect of compliance programs. DEQ reported nine Significant Non-Compliers (SNCs, or previously, violation priority = 9) in RCRIS, one of which was referred to EPA. We calculated the rate of significant non-compliance discovered during the year by dividing the number of SNCs into the number of facilities inspected. The new SNC rates in Idaho were 10% in 1996 (5 of 50), 10% in 1997 (3 of 32, counting one referred to EPA for enforcement and one repeat violator), and 7% in 1998 (2 of 27). The recidivism rate for 1996 was 20%, with one of the five SNC facilities becoming a SNC again within two years.

We found that DEQ had adopted and implemented the EPA Enforcement Response Policy sufficiently during this period to be able to measure rates of significant noncompliance in accordance with the national accountability measures.

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

In measuring the enforcement program more broadly than the SNC measures, we found that DEQ inspectors reported violations at less than 40% of the facilities inspected (Figure 4). This violation rate was significantly lower than we found in the other states we reviewed. The lower rate may have been an indication that overall compliance with RCRA by Idaho hazardous waste handlers was very good and that the program had created an effective deterrent or provided effective compliance assistance. On the other hand, the violation rate during this period may have indicated that DEQ had not effectively targeted their compliance inspections toward likely violators. Discussions with DEQ indicated that their strategy had been focused on complaint response and that inspectors had found that many complaints they responded to were not subject to hazardous waste jurisdiction so that some of their time was spent on issues that would not lead to finding violations and starting enforcement actions. We evaluated this issue further under the “Appropriate Targeting Inspection, and Monitoring Strategy” area, below.

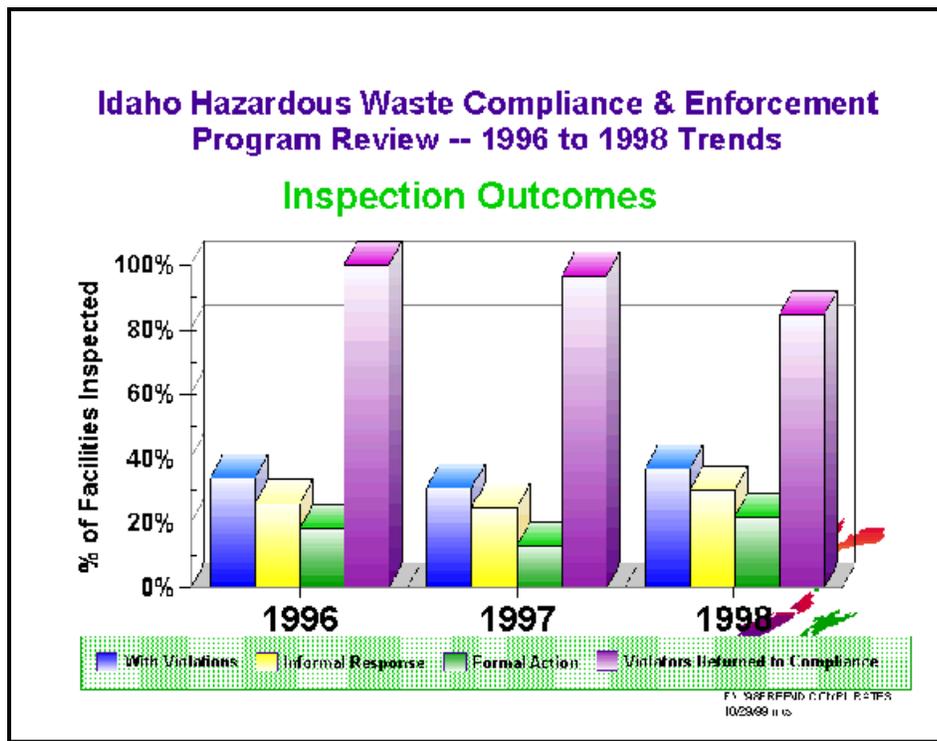


Figure 4

The other national outcome measures are based on optional state reporting of environmental benefits achieved and impacts from compliance assistance programs. DEQ provided some reports of their technical assistance outreach efforts during the review period. DEQ reported the number of facilities visited to provide technical assistance had been declining, as shown in Figure 1 (above). DEQ reported that they had difficulty getting facilities to volunteer for a visit and that they had asked Oregon and Washington for guidance on building the volume of visits over the coming years. DEQ had not developed strategies and systems for measuring the effectiveness of technical assistance projects using checklists, facility self-assessment forms, and follow-up visits to a percentage of project participants. We recommend that DEQ pursue their efforts to build their technical assistance program on the success of their neighbors and to establish

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

goals and measurements for future efforts.

We did not find that DEQ was routinely collecting or reporting environmental benefits attributed to their compliance and enforcement efforts. However, DEQ did use the Supplemental Environmental Projects (SEP) guidance in two enforcement penalty cases covered by the review. The anticipated environmental benefits of these projects were described in the enforcement files. We note below that DEQ was not publicizing its enforcement actions (save for INEEL) which would be one way of using and reporting the environmental benefits of their actions, in addition to the economic penalties imposed.

Program Evaluation Area - Complete, Accurate, and Current Knowledge of the Regulated Community

We reviewed RCRIS data for the current regulatory status of treatment, storage, or disposal (TSD) facilities as well as the recent compliance files of seven of the ten Idaho TSD facilities. We found that DEQ reported expensively on the progress at permitted facilities. Data indicate that DEQ has been actively monitoring permits and overseeing facility activities for closing hazardous waste units. Compliance inspection files we looked at indicated that TSD facilities (except INEEL) had mostly minor problems, if any, complying with permit or interim status conditions. DEQ also maintained up to date generator information, using RCRIS and their annual report requirement for waste generating and handling to track hazardous waste handlers in the state.

The review team inquired about DEQ's efforts to identify non-notifiers. The evaluation guidance says that such efforts need to be part of a comprehensive compliance program to find violations, since notification is a self-implementing requirement of hazardous waste handlers. DEQ reported that their primary strategy for finding hazardous waste handlers that had not reported to DEQ was to focus on complaints from the public to the DEQ about suspected mismanagement of hazardous waste. DEQ also established a technical assistance and outreach program that offers enforcement-free site visits to the regulated community. DEQ reported that this program was not generating the number of requests that they had wanted and they are in the process of adjusting their strategy. We recommend that DEQ consider developing a strategic approach to finding likely non-notifiers that would supplement the more random complaint information from the public on which they have mainly relied.

DEQ worked during this period to establish their complaint intake process and system to handle tips and public referrals, often about non-notifiers. DEQ provided a copy of their new internal guidance that describes how regional office staff and hazardous waste program staff will coordinate in responding to complaint cases. Regional staff are to initially investigate the complaints and refer them to the compliance sections if they find a RCRA issue. We reviewed 24 files that originated with complaints and found the inspections and enforcement responses were appropriately investigated and resolved. While the complaint response process was thorough, it

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

also had a drawback which was that many complaint investigations did not need a RCRA compliance response and left less time for inspectors to cover the regulated universe. We recommend that DEQ provide basic and intermediate RCRA training for regional office staff so that they can better screen and refer complaints to the RCRA compliance inspectors to more appropriately utilize the inspection resources.

Program Evaluation Area - Appropriate Targeting Inspection, and Monitoring Strategy

One review objective was to identify trends in percentages of large and small quantity generators inspected during the review period (Figure 5). We recognize that any facility's generator status

could change from month to month, which makes it impossible to calculate the percentages for universe coverage exactly. We used data as of October 1998 to calculate a snapshot of the universe for that month. The number of facilities in the "uninspected" category was calculated from RCRIS large or small quantity generators on that date that had no RCRIS inspection data. The data indicated that there

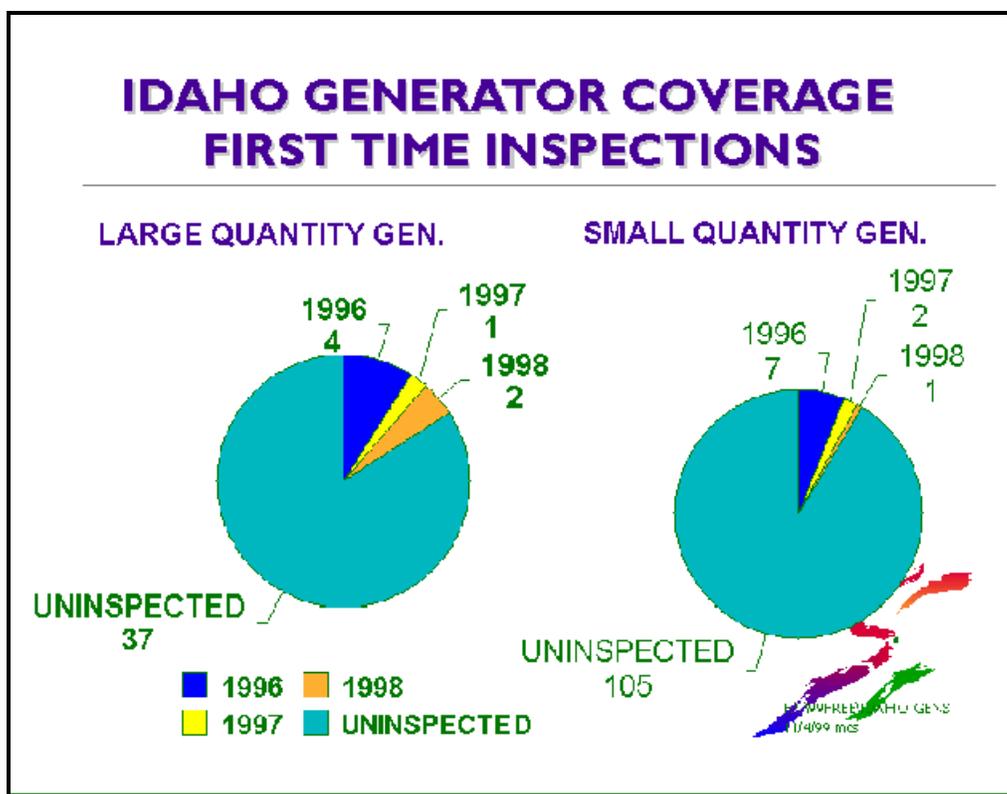


Figure 5

were still a large number of regulated facilities that could be inspected, in addition to the complaint priorities that DEQ has pursued. DEQ reported that they had used the EPA reports for facilities never inspected in their annual inspection planning efforts and demonstrated their current knowledge of the facilities as to whether they were appropriate inspection candidates, for example, by excluding one-time generators of leaking underground storage tank waste. We found that DEQ had good reasons not to select most of the LQG facilities that had never been inspected

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

for their annual inspection priorities. Generally, we found that DEQ had cut down on LQG and SQG inspections during the past three years and that their first time inspections were mostly at conditionally exempt or non-regulated facilities. EPA annual enforcement planning guidance had set goals to inspect 8% to 11 % of LQGs (increasing to 20% in 2000) and DEQ averaged only 4% annually in 1997 - 98. We recommend that DEQ work to increase annual coverage of the regulated universe and address the backlog of regulated facilities never inspected either with compliance inspections or with changes to the facilities' generator status in the database if they no are no longer LQGs or SQGs.

The review also covered implementation of the statutory TSD facility inspection requirements, taking into account the flexibility provided in the RCRA Implementation Plans and PPAs applicable to this period (Figure 6).

The standard set by RCRA section 3007(e) is that TSD facilities be inspected no less often than every two years, and national program guidance has allowed for flexibility to forego facilities where good compliance history was established so that resources can go toward conducting inspections in other priority areas. Green entries in Figure 6 indicated an EPA compliance activity, such as a CERCLA off-site waste eligibility determination.

IDAHO TSDs SUBJECT TO CEI					
	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998
BOISE LOC.	9/8/94	7/12/95		9/16/97	
DART IND.	8/23/94	8/29/95 8/9/95			
ESII - A	7/21/94				
ESII - B	5/20/94	8/9/95 3/29/95		9/27/97 8/27/97 6/2/97 10/15/96	9/1/98
PACIFICOR	6/8/94	1/1/94			
PTT		6/23/95	6/19/96		
S - K {OLD}	7/15/94 2/15/94			3/6/97 1/14/96	
S - K {BOISE}	3/3/94	3/24/95		1/29/97	
USAF MT	8/25/94 7/14/94	6/8/95	4/30/96		12/17/97
USDOE	8/10/94 7/14/94 6/9/94	9/14/95	1/29/96 1/12/96	8/25/97 11/22/96	7/14/98 6/8/98 4/16/98

T:\BESTPRACTICE\10TSDS
12/20/99.mxd

Figure 6

DEQ's overall coverage of the TSD facilities subject to biennial compliance inspections was based upon DEQ's knowledge of the facility conditions and negotiated through the annual EPA and state agreements. While RCRIS data showed ten TSD facilities subject to the inspection requirement, DEQ covered some of the facilities less often during this period. National inspection

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

flexibility was provided for this purpose so that inspection resources could be directed to other priorities, such as generators. Given the overall decline in the DEQ generator inspection activity, we did not find that cutting back on mandatory TSD inspections had been accompanied by a corresponding increase in other inspection activity. We recommend that the next EPA and state agreement address this discrepancy.

The review also included an assessment of the DEQ priority setting guidelines for inspections and compliance assistance visits. DEQ provided a copy of the DEQ Enforcement Procedures Manual, December 1997, which included hazardous waste compliance program policies (see Appendix C). Included with the Manual was the DEQ Compliance Assurance Technical Assistance Program description developed during the review period. DEQ reported that they had not generated as much interest in the regulated community for technical assistance as they had wanted and that they continue to work to improve their strategy. The EPA and state partnership plans for 1996 to 1998 described the DEQ strategy of shifting their compliance focus from the TSDs and LQGs that they had inspected multiple times over the years to the smaller generators and subjects of complaints. We recommend that DEQ develop a measurement approach for the implementation of the strategy to better describe the results of shifting the focus and provide information for future planning efforts.

Finally in this evaluation area, we reviewed the appropriateness of DEQ strategy related to the compliance measures for program effectiveness. DEQ continued to focus resources on the TSD facility that remained a major SNC during this period, even while the overall strategy was to cut back on TSD facilities. That approach was consistent with EPA guidance to concentrate on returning SNCs to compliance and re-inspecting to identify recidivism. On the other hand, where compliance rates were relatively high (such as conditionally exempt generators) DEQ's strategy didn't appear to be shifting to find more likely violators and was not consistent with EPA's program effectiveness goals.

The return to compliance trends are covered in previous sections of this report. We found that DEQ had not developed a particular strategy based on monitoring the return to compliance times or rates. EPA's Hazardous Waste Enforcement Response Policy, revised in 1996, set guidelines for formal enforcement response times. We found that the average time for Idaho non-compliers to return to compliance was significantly longer than the guidelines. For 1996, there were only six facilities out of the seventeen with violations that were reported back in compliance in less than the 300 day guideline and the average was 400 days. It wasn't clear that DEQ had implemented a monitoring strategy to evaluate facilities that remained out of compliance for extended periods to expedite their return to compliance. We recommend that DEQ and EPA establish a process for regular review of outstanding violations and look for ways to shorten the time to return to compliance.

Program Evaluation Area - Balanced Use of Tools

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

The review included measurement of the balance of resource and activity levels for different aspects of the compliance program, to evaluate the variety of tools used to improve compliance. As noted above, DEQ reported that staffing was steady at approximately 6 FTE for compliance inspectors, who also handled administrative enforcement and technical assistance activities. DEQ reported that they are working out a balance between the technical assistance and compliance inspection approaches and that the use of the same staff for both made it important to spell out a policy for distinguishing DEQ's role in each area. The state's compliance assurance strategy emphasized the continuum from technical assistance to enforcement, such that there was more of a sliding scale approach rather than a balanced approach. The sliding scale approach allowed DEQ to tailor their response to the facility anywhere along the continuum, rather than balancing some set of technical assistance work with some set of compliance enforcement work. We could not identify what level of resources were directed toward either assistance or enforcement. We did not find that DEQ was satisfied with the approach they had taken and they reported that they are discussing their strategy with Washington and Oregon programs that have been more successful by using staff dedicated to technical assistance work. As noted above, we recommend that DEQ develop a focused strategy for technical assistance, indicate the resources devoted to the effort, and collect some data with which to measure their accomplishments.

Idaho also had an environmental audit self-disclosure law that provided a tool for facilities to come forward with information about their environmental compliance with some state enforcement immunity. EPA found that the statute was not consistent with national audit immunity policy but the statute expired in December 1997, so efforts to modify the provisions were not undertaken. We found no instances where this statute had been invoked in any of the files we reviewed. DEQ reported that it had not made it a priority to encourage use of this tool as part of their compliance assurance program.

Program Evaluation Area - Timely and Appropriate Response to Significant Violations

The review included examining 47 facility files out of the 91 facility inspections conducted between October 1, 1995 and September 30, 1998 (from data in RCRIS in October 1998). We also reviewed six facilities where enforcement actions carried over from prior year inspections into the review period, for a total of 53 facilities. Facility file issues of concern are summarized in Appendix D and the RCRIS data used in the review are in Appendix E.

The review evaluated the citing of, and response to, violations based on relevant guidance and policy, including EPA's Hazardous Waste Enforcement Response Policy (1996 update). We found the overall structure of the DEQ hazardous waste enforcement program appeared to be consistent with the federal response policy. As noted above, DEQ implemented the SNC designation, consistent with EPA's definition, as written into the DEQ Enforcement Procedures Manual. We found that DEQ made some SNC designations during the review period and reported SNC facilities in the national database, which was not the case in all states we reviewed. Some of

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

the designations were communicated to the program review team after we completed our field work and before we drafted our report. Designations were made in RCRIS after we provided a draft report to DEQ for comment. We recommend that DEQ take steps to ensure that future SNC designations are entered timely into the database for all determinations.

Inspection Results - No Violations Found

23 of the facilities reviewed had inspections or technical assistance visits where no violations were cited. We found the inspections usually were thoroughly documented, included photographs, and indicated that inspector training guidelines were followed to cover the relevant RCRA requirements. We found that DEQ had an experienced and knowledgeable compliance inspection staff and good reporting formats, such as including checklists. Some technical assistance visits were documented less thoroughly and tracked as “Other” inspection types in RCRIS, as appropriate. DEQ also reported some “Compliance Evaluation Inspections (CEI)” at facilities to which they did not assign EPA regulated facility identification numbers. We had to count these with the compliance assistance visits because they will not show up in national enforcement reports of the regulated universe of facilities.

We found only some minor problems in this group and the state included some additional information about these items in their response to the draft report (Appendix F).

- Two of the 23 facility files where the inspection report corresponding to the RCRIS data was not in the files given to us
- one of the 23 inspection reports was not completed promptly; almost a year had elapsed between the inspection date and the date the report was completed that described the inspection and showed no violations
- one facility had been issued a warning letter ten months following the inspection with no corresponding data in RCRIS for informal enforcement
- one facility where a drum label violation was found and noted in the inspection report as being corrected during the inspection, however, no follow-up letter was sent or violation data entered in RCRIS.

We concluded that there were few, relatively minor problems, and that overall the DEQ inspectors were knowledgeable of RCRA requirements and were thoroughly documenting inspections.

Violations Found and Informal Enforcement Response Taken

12 of the 47 facilities reviewed had inspections during the review period where violations were found and only an informal enforcement response had thus far been reported. However, two of these facilities had signed consent agreements that had not been entered into RCRIS, so they are more appropriately covered with the other formal enforcement cases below and we counted only 10 of 47 in this section. Four additional files reviewed were of informal enforcement actions continued from inspections earlier in 1995. Thus, a total of 14 informal enforcement responses are described in this section.

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

We found the following timeliness problems (see Appendix D), which DEQ also addressed in their response (see Appendix F).

- Four of the 14 violators with an informal response did not meet the timely and appropriate guidelines of EPA's Enforcement Response Policy.
 - < Facility #40 was inspected in July 1996 and the notice of violation wasn't sent until February 1998
 - < Facility #50 was inspected in August 1996 but did not have the inspection report and notice of violation completed until September 1997, by which time the owner had sold the business
 - < Facility #64 had been inspected in April 1997 (which we did not find in RCRIS), inspected again in July 1997, issued a notice of violation in October of 1997, and not reported back in compliance until December 1998
 - < Facility #95-6 had been inspected in July 1995, a follow-up inspection in March 1996 was in the file but not found in RCRIS, a warning letter was sent in July 1996 and the facility was reported back in compliance in December 1996.

We concluded that these four facilities did not meet the timeliness guidelines for responding to violations within 90 days, nor for escalating informal actions to formal actions where violators require extended time to achieve full physical compliance. Four of 14 constitutes a significant percentage of responses not handled timely and we recommend that DEQ examine the source of these delays and develop a strategy for speeding the escalation of informal to formal enforcement for extended non-compliers.

Violations with Formal Enforcement Response

14 of the 47 facilities reviewed had formal enforcement actions reported for inspections conducted during the review period and two more were carried over from 1995 inspections, for a total of 16 formal enforcement actions covered in this section. As noted above, two of these facilities had been issued consent orders that did not appear in RCRIS, so they continued to count only as informal actions in EPA enforcement accomplishments reports. We found that eight of the 16 facilities had not met the timeliness guidelines in the Enforcement Response Policy. The Policy recognizes that some cases are more complicated and take longer than 300 days to resolve and included a 20% exceedance allowance for backlogged cases. We found that DEQ's formal enforcement process had generated a 50% exceedance rate and concluded that the delays were more likely caused by systemic problems than by the specific circumstances of each case. We recommend that DEQ examine their formal enforcement process, along with the informal process recommendation above, and identify ways to decrease the time needed to return violators to full physical compliance or enter a formal agreement with a schedule to return to compliance.

We found the following issues with some of the formal enforcement actions we reviewed (see Appendix D) which DEQ has also provided more information about (see Appendix F).

- Six of the 16 were designated Significant Non-Compliers (SNCs), in accordance with the

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

Enforcement Response Policy

- at least three other violators appeared to have met the SNC criteria but had not been designated SNCs even though they had the following problems
 - < Facility #32 was a wood treatment facility that had released hazardous waste to the environment and contaminated the site with pentachlorophenol. It appeared that this violator "...caused a substantial likelihood of exposure to hazardous waste..." and met the SNC criterion. The violator signed a consent agreement in May 1997 and was reported in compliance with that agreement in RCRIS, no penalty was assessed, and no follow-up inspection was reported.
 - < Facility #26 was found to be illegally disposing of hazardous waste and burning used pesticide containers, which probably met the SNC criteria. A consent agreement was signed in February 1998, \$3,000 of the \$13,900 penalty was paid, but the facility was not reported back in compliance in RCRIS.
 - < Facility #95-1 was a mining facility inspected in July 1995 and found to be managing hazardous waste in open, unmarked containers, when it was managed at all. Otherwise, these lab wastes from the ore testing process were left lying around the facility, which probably caused exposure to hazardous waste. A consent order was signed in June 1996, \$3,500 of the \$34,797 penalty was paid, and no follow-up inspection was reported.

We concluded that DEQ had not evaluated these three facilities with the SNC criteria at the time decisions were made to pursue formal enforcement responses. We recommend that DEQ evaluate these violator for SNC status and enter appropriate designations in RCRIS for historical tracking and trend analysis purposes because EPA's Office of Enforcement and Compliance Assurance has established 1996 as the baseline year for reporting SNC measures of national program performance.

Inspection Outcomes - Facility Requirements

We also reviewed facility files with treatment, storage, or disposal violations for the appropriate imposition of other measures, such as corrective action or permit requirements. We found that consent agreements required facilities with releases to the environment to cleanup the contamination or undergo post-closure permitting requirements. The consent order at Facility 33 appeared to allow for storage of hazardous waste on plastic ground covers during the cleanup activities which is not consistent with RCRA storage requirements. We did not find that DEQ had imposed permit requirements on any of the illegal storage or disposal violators during the review period. We recommend that DEQ monitor compliance with the consent agreements and orders and invoke the permit conditions when required.

Finally, we reviewed the appropriateness of penalty assessments in these cases. We found that DEQ had utilized appropriate state regulations and a maximum calculation of \$10,000 per day of violation to assess penalties. We did not find that DEQ included recovery of the economic

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

benefit of noncompliance in file documentation of penalty calculations. The penalties for the 16 actions consisted of:

- three of the formal enforcement actions we reviewed had no penalty
- three had an assessed penalty that was dropped completely in settlement
- six had penalties that were substantially reduced in settlement
- two had assessed penalties paid in full
- two were referred to criminal enforcement.

Other than the penalties assessed for INEEL, we did not find adequate penalties were collected based on the documentation we reviewed. We recommend that DEQ calculate and assess penalties to the full extent of their regulatory authority and document reasons for mitigation, if applicable.

Program Evaluation Area - Accurate Record Keeping and Reporting

We reviewed 53 facility files and compared the information with data entered into RCRIS, the national database. We found eight files that contained important information that was not reflected in RCRIS and four files that did not have the information that RCRIS data indicated should be there. The specific missing pieces are identified in Appendix D and the RCRIS data reports used for the review are included in Appendix E. We recommend that DEQ investigate and correct the data discrepancies identified in the review.

As noted above, we found the inspection and enforcement files to be complete and generally well organized. Inspection reports were detailed and DEQ's peer review process appears to support good quality reports. We found adequate records of the penalty calculations, however, documentation of penalty mitigation decisions was inadequate to support the large decreases in penalties we found during this period.

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

Program Evaluation Area - Clear and Enforceable Requirements

We reviewed thirty facilities which had received notices of violation or a formal enforcement response in the form of a DEQ civil penalty notice or compliance order. We found that the notices clearly cited violations and specified the actions facilities needed to take in order to return to compliance. We found one order that created a contingent management approach for a hazardous waste, agreeing not to regulate it as a hazardous waste, in order to continue a recycling arrangement that the facility had established that could not have continued with a hazardous waste. It appeared that the conditional management approach would have been difficult to enforce and would have been more appropriate as a delisting decision. The arrangement ended when the facility discontinued operations and did not require a recommendation from this review.

We reviewed seven of the ten TSD facilities listed in Figure 6 (above). We found consistent application of the permit requirements by the inspectors. Notably, DEQ had invested extensively in permit development, oversight, and enforcement at the INEEL. We found very thorough inspection results and calculation of significant penalties to create a deterrent to mismanaging hazardous or mixed hazardous and nuclear waste. DEQ had imposed clear and enforceable requirements at INEEL and conducted extensive compliance inspections that resulted in significant enforcement consequences for violations. There appears to be close coordination between the permit writers and the inspectors to prepare for these and other TSD inspections. DEQ staff reported that they benefitted from the organizational structure that kept the hazardous waste program in one office. We found it to be important with such a small program staff for them to closely coordinate and readily exchange information and expertise, in order to consistently apply clear and enforceable requirements in permits and orders.

Program Evaluation Area - Sound Program Management

DEQ provided supporting documentation for their program management and policy framework which we have included as Appendix C, the Enforcement Procedures Manual. The DEQ hazardous waste program was located in the Air and Hazardous Waste Division and consisted of the Hazardous Waste Permitting Bureau and the hazardous waste section of the Compliance Assurance Bureau. The hazardous waste enforcement cases were developed by the hazardous waste section, and Notices of Violation with penalty assessments were issued by the Compliance Assurance Bureau manager, after approval by the Assistant Administrator and Administrator of DEQ. DEQ received legal services from the Idaho Office of the Attorney General and violators who did not agree to consent orders with DEQ were referred to the Attorney General for initiation of civil complaints. We found that the enforcement process was clearly defined in the Enforcement Procedures Manual but that the procedures did not establish time line expectations. We concluded that the number procedural steps, multiple levels of review, and violation justification requirements all contributed to the extended enforcement response time described in the timely and appropriate section of the review (above).

Idaho Hazardous Waste Program Review
Compliance & Enforcement Evaluation Report for
Federal Fiscal Years 1996 to 1998

The Enforcement Procedures Manual included a process for developing a press release for each NOV. We found that some press releases had been prepared by the Compliance Assurance Bureau and forwarded to the DEQ Public Affairs Office but we did not find copies of any press releases that had been issued. DEQ staff reported that they had not seen any press releases go out about their activities in recent years, other than items related to the U.S. Department of Energy violations. We recommend that DEQ make use of press releases to publicize their enforcement accomplishments in order to create a wider deterrent impact in the regulated community.

DEQ described their major training events in the end of year reports to EPA for the annual Performance Partnership Agreement cooperative agreement or work plan grant. DEQ reported that the main impediment to further training was travel restrictions on out-of-state travel and they appreciated when EPA was able to fund training courses in Idaho. DEQ did not provide individual staff training records as part of this review but reported that most inspectors had multiple years of experience in the program and had been adequately trained. We discussed training needs with staff as part of the review and found that most had several years experience in the hazardous waste program and had received all the basic training. We heard that staff were interested in opportunities to develop additional expertise in areas such as civil and criminal interviewing techniques and to keep up with new rule developments and technological advances.

DEQ provided an example of the information tracking system that they used for inspection and enforcement program management. We found extensive data in RCRIS for permit planning and tracking, compared to the sometimes incomplete compliance and enforcement data. We did not find that DEQ relied on an enforcement information system for program management. We recommend that DEQ use RCRIS to track and evaluate the national enforcement and compliance output and outcome measures that were incorporated into annual State - EPA cooperative agreements and PPA plans.

F:\WORK\99LIBRAR\IDAHO FINAL RPT.WPD
11/10/99 mcs