Approved C. Cook 1/8/2013

Ohio EPA Responses to RCRA Findings:

Element 6 – Quality of Inspection Reports: Proper and Accurate Documentation of Observations and Timely Report Completion

Response: Ohio EPA contends that its inspection reports were completed in a timely manner. The standard used in the SRF report is based upon Ohio's internal goal, but this SRF exercise is a national review in which the standard is 150 days. Ohio EPA's completion of its RCRA inspection reports is significantly timelier than the national standard of 150 days, and, for the records reviewed, was ahead of Ohio's goal of 21 days.

With regard to inspection letters/report completeness, it is clear that Ohio EPA and US EPA have a difference of opinion on how the information in the inspection letters should be organized, specifically whether the information should be in a separate report or contained within the inspection letter itself.

Ohio EPA should, within 90 days of the final report, provide refresher training for staff regarding inspection letter completeness.

Element 8 – Identification of SNC and HPV: Accurate Identification of Significant Noncompliance and High Priority Violations, and Timely Entry into the National Database

Response: Ohio EPA contends that 5 of 9 enforcement files reviewed were met the standard for timeliness under Element 8B.

Ohio EPA should, within 90 days of the final report, evaluate whether there are any process improvements that could be made to decrease the time from the inspection date to SNC determination.

Element 10 – Timely and Appropriate Action: Timely and Appropriate Enforcement Action in Accordance with Policy Relating to Specific Media

Response: Ohio EPA believes it has demonstrated appropriate enforcement responses. However, case-specific circumstances related to working out details of closure plans, balancing complex multi-media issues, and making ability to pay determinations prior to finalizing enforcement have contributed to delays. Ohio EPA has included deadlines in its new Compliance Assurance through Enforcement Program which will become evident in the next SRF report.

Ohio EPA should, within 90 days of the final report, evaluate whether there are other process improvements that could be made to decrease the amount of time taken for final enforcement action.

Ohio EPA Responses to Clean Water Act Findings:

Element 1 – Data Completeness: Completeness of Minimum Data Requirements

Response: Ohio EPA is currently unable to upload some large volume general NPDES permits to the ICIS-NPDES database. A project to correct that shortfall is underway. This upgrade project is expected to be completed in 2016. Ohio EPA is committed to completing the project which will fulfill general permit data entry into ICIS-NPDES.

Element 2 – Data Accuracy: Accuracy of Minimum Data Requirements

Response: None

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

Response: The 85% timely entry statistic resulted from a short term staffing issue and software interface issues with ICIS/PCS. These issues have been addressed and all data is now timely entered.

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

Response: Ohio EPA develops a state specific CMS each year and will continue to do so. Ohio EPA exceeded by a significant percentage the CMS commitments for metrics 4A1, 4A2, 4A3, 4A9, and 4A10 and met the commitment for 4A6 and 4A8. The only metric not met was the 10 of 26 (38.5%) for CSO inspections. That CSO commitment was not met due to short term staff turnover that year. New staff members have been hired and the shortfall addressed.

Ohio EPA does not agree with the finding that it met 4 of 5 planned commitments other than CMS commitments. The one deficient element DMR Entry had a finding that "Ohio EPA, Surface Water, is now a full batch ICIS-NPDES user for all ICIS-NPDES schema released by USEPA. Data is entered in a timely, and accurate, manner."

Element 5 – Inspection Coverage: Completion of planned inspections.

Response: None

Element 6 – Quality of Inspection Reports: Proper and accurate documentation of findings and timely report completion.

Response: Ohio EPA agrees that improvements are needed to further standardize inspection report preparation and inspection protocol.

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

Response: Ohio EPA will add Single Event Violation (SEV) fields to its NPDES Compliance and Inspection Tracking Database. Ohio EPA will train inspectors to use SEV codes, when appropriate, in NOVs. Ohio EPA will modify the XML interface between the tracking database and ICIS-NPDES to incorporate SEVs in monthly reporting.

Compliance schedule violations are a combination of Ohio EPA not entering compliance schedule information into SWIMS, and actual compliance schedule violations. Ohio EPA agrees to implement improvements to assure better handling of compliance schedules.

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

Response: SNC for Ohio EPA major NPDES permits was slightly elevated above the national SNC annual average only temporarily for FY 2011 because 17 facilities were untimely when applying for a variance for their permitted WQBEL for mercury. All variances have since been approved. Subsequently, SNC for the annual average has dropped back below the national average for FY2012 as well as currently to date. Additionally, in each of the years prior to this SRF, Ohio EPA's annual average was below the national average.

Ohio EPA will add Single Event Violation (SEV) fields to its NPDES Compliance and Inspection Tracking Database. Ohio EPA will train inspectors to use SEV codes, when appropriate, in NOVs. Ohio EPA will modify the XML interface between the tracking database and ICIS-NPDES to incorporate SEVs in monthly reporting.

Compliance schedule violations are a combination of Ohio EPA not entering compliance schedule information and actual compliance schedule violations. Ohio EPA agrees to implement improvements to assure better handling of compliance schedules.

.**Element 9 – Enforcement Actions promote a return to compliance: Enforcement actions include required corrective actions that will return facilities to compliance in specified timeframe.**

Response:

Ohio EPA disagrees with the conclusion regarding the six facilities in Metric 9a. Two of the entities, Dover Chemical and Gallia County, have just recently been referred for enforcement. Dover was referred in November of 2012, and is still in negotiation, along with a renewal NPDES permit. Gallia County was also referred last year because they are in contempt of orders issued by the Ohio EPA Director in 2008 to resolve an unsewered community issue. Obtaining the financial means to fund large sewer projects can take several years. The other four entities with an 'N' response are not associated with an enforcement action.

Additional detail regarding these remaining four is as follows:

> **First Energy Ashtabula Plant**: e-DMR is showing this facility has been in compliance for the last two years. No enforcement is contemplated.

Georgetown WWTP: district staff have a compliance enforcement plan (CEP) with this facility which has recently completed the engineering design of three improvement projects per the schedule, expected to be in excess of $11 million dollars. Ohio EPA will continue to use enforcement discretion as long as they remain on schedule with the CEP.

Kenton WWTP: under enforcement discretion, they have recently submitted an NFA analysis regarding an SSO elimination at the WWTP.

Sugar Lane Dairy: no longer have an NPDES permit.

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

Response: Ohio EPA will add Single Event Violation (SEV) fields to its NPDES Compliance and Inspection Tracking Database. Ohio EPA will train inspectors to use SEV codes, when appropriate, in NOVs. Ohio EPA will modify the XML interface between the tracking database and ICIS-NPDES to incorporate SEVs in monthly reporting.

Element 11 – Penalty Calculation Method: Documentation of BEN model or other method to produce results consistent with national policy and guidance.

Response: Ohio EPA has no objection to the Recommendation although the agency disagrees with the Findings. See below for an explanation for each of the two cases where penalty calculations were not documented.

CSX Transportation (8): Economic benefit/gravity was not considered because this case originated as a criminal enforcement matter with the agency's Office of Special Investigation (OSI) and went straight to the Ohio Attorney General and the Court of Common Pleas. The penalty was calculated by the Ohio Attorney General. This enforcement case was placed in Ohio EPA's database for purposes of penalty collection and tracking. Ohio EPA should not be penalized during this review for this case.

West Carrolton Parchment (38): The initial penalty calculated on 9/8/08 did include economic benefit (154,040) and gravity (40%). By the time the negotiations came to a close with signed Director's Final Findings and Orders on 2/22/10, it had already been determined that the initial NPDES permit had the incorrect limits. Therefore, the agency determined that an economic benefit was not derived from West Carrolton and should not be assessed.

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

Response: Ohio EPA agrees that for the four identified penalties, there was no documented rationale in the file for the final penalty value assessed compared to the initial penalty value proposed. At the end of the negotiation process, the initial value proposed will rarely be achieved since numerous factors are evaluated in agreeing on a final settlement number that

typically will be lower than the proposed penalty. These factors include the presentation of legitimate mitigating information from the entity during negotiations, determination of the entity's ability to pay the civil penalty proposed in the Findings and Orders, costs associated with additional staff time (DSW and Office of Legal Services) in preparing a referral to the Ohio Attorney General , consideration of the additional delay in the case being finalized once sent to the Ohio Attorney General, and litigation risks/costs once the Ohio Attorney General proceeds with the case.

Ohio EPA Responses to Clean Air Act Findings

Element 1 – Data Completeness: Completeness of Minimum Data Requirements

Response: Consistency between facility universes between AFS reporting and CMS reporting has been largely resolved through a recent update in STARS2 by Ohio EPA's data steward. This "inconsistency" involved less than 20 out of approximately 1500 facilities. This is routinely monitored by the data steward and updated as facilities change status.

Previous concerns expressed by Region V (such as compliance status, linkage to initiating actions, and Day Zero) have been addressed by the conversion of CETA to STARS2.

Because these issues are already being reviewed and addressed during the monthly conference calls, the Recommendation should be for continued maintenance of the database.

Element 2—Accuracy of Minimum Data Requirements

Response: The issues regarding missing CMS codes were addressed in the response to Element 1.

USEPA inappropriately assumed that Ohio EPA was double counting activities based upon entries into its former compliance and enforcement tracking system (CETA) that the outdated AFS system was not able to separate. Ohio EPA will continue to document that a site visit occurred for emission test witnessing, complaint investigations, PCEs and/or FCEs. The use of the agency's new compliance and enforcement tracking system (STARS2) will alleviate the appearance of duplicate entries in AFS since the site visits are now tracked independent of the other activity coding. The use of STARS2 will also address issues with inaccurate compliance status reporting. USEPA should recognize that inspectors can be on-site to witness emission tests, and because operation records are reviewed and recorded, a PCE can also occur at the same time.

As discussed during the review, the failed stack tests that were not reported for one facility had been part of a USEPA 114 request and there had been some confusion by the district office staff as to whether the results were to be entered by them or not.

Regarding the issue of what constitutes the FCE completion date, Ohio EPA continues to believe its interpretation is correct. Completion of the CMR involves more than simply filling in a form but rather involves a review of all findings from the FCE process and formulating a plan of

action based on the results. Ohio EPA also considers management review and approval of the CMR to be integral to the process. Depending on the scope of the findings and recommendations, management review may also involve review of inspection records or other documentation. Setting the date of FCE completion as the date of report completion also provides a clear, unambiguous date for Ohio EPA staff and results in consistent data reporting. In any event, the important element here is not the date the process was completed, which doesn't matter unless the FCE is part of the annual commitment, but rather that a complete review has taken place and a plan for addressing deficiencies has been developed.

Because of the different views mentioned above, USEPA's evaluation for this metric was skewed. Ohio EPA provided comments in response to the erroneous evaluation; however, USEPA failed to acknowledge these corrective comments which resulted in an incorrect accuracy percentage for this metric.

For the reasons listed below, Ohio EPA does not agree with USEPA's assessment for:

AK Steel, East Ohio Gas, IMCO Recycling, Liberty Castings, Oberlin College, Pexco Packaging, R.O. Apelt, and Columbus Southerly – which were all misinterpreted duplicative entries to AFS;

Poet Biorefining or Titan Tire -- the date the Ohio EPA Director signs an Order is not the date the Order is effective. The effective date is the date the Order is journalized. The July 13, 2011 date for Poet and the January 26, 2011 date for Titan are both correct;

Automated Packaging – the July 13, 2011 FCE was in the file package for USEPA review. The HPV – GC5 comment was inappropriate as USEPA would never take action on that issue;

Carmeuse Lime – the auditor correctly notes that no notices of violation were issued during the review period and, as such, no notices of violation were included in the review file package. However, the referenced Director's Findings and Orders which were included in the file package for USEPA review did cite the notices of violation that were issued by Ohio EPA;

Howden North America -- the reference to "never" was correct. The facility installed unlawfully and therefore it had not been inspected before. The PCE citation was correct as well as all operations were not fully installed and a permit for the operations had not been issued; and

Metalico Youngstown – the Consent Decree was included in the file

package for USEPA review. The Decree identified the notices of violation that were not issued during the review period for this audit. The notices of violation were not requested during or after the audit. The Ohio Attorney General does not use the USEPA's Air Civil Penalty Policy but relies on Ohio case law and the statutory penalty authority provided by the Ohio Revised Code (up to $25,000 per day per violation). The Ohio Attorney General is not obligated to document his proposed or final penalties for the USEPA. Ohio EPA's penalty, calculated in accordance with the Air Civil Penalty Policy, was included in the proposed Director's Findings and Orders issued to the company in early December of 2006 and a discussion of the proposed penalty calculation was included in the referral package to the Ohio Attorney General which was included in the SRF review package. The amended complaint was considered before the final Consent Decree was issued and was not included in the SRF review package.

In order to clearly identify the completion date, Ohio EPA can commit to providing guidance to field staff to enter the date when all information has been obtained in order to complete the evaluation.

Element 3 –Timeliness of Data Entry: Timely entry of Minimum Data Requirements

Response: Ohio EPA believes that, with the exception of stack test MDRs, the timeliness of data reporting is acceptable considering resources available and is, in fact, above the national average. Ohio EPA staff members are periodically reminded of the need for timely data entry. As for reporting stack test results, as has been discussed previously with Region V, Ohio EPA does not report until the test report has been reviewed. Ohio EPA is dependent on timely submittal of the report by a third party, independent contractor. Any delay of the report submittal will result in delay of review by Ohio EPA and therefore result in a delay in reporting to AFS. This was acknowledged by USEPA through a fairly recent change in the entry requirement.

There is also a certain amount of lag time between staff entry and transfer to AFS as Ohio EPA conducts monthly batch uploads, which is the most efficient use of IT staff resources.

The Recommendation should be to continue to review this element during the monthly conference calls and address any deficiencies as needed.

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

Response: Ohio EPA acknowledges that the Appendix N form is not being used by all Ohio EPA offices. During the exit interview for this audit, the USEPA auditors indicated that all of the data elements were included in each office's reviews, but that it was easier for them to find the data elements using the Appendix N form. Although we will encourage the use of Appendix N, this should not be an issue to USEPA as long as the field offices forms contain adequate information.

Ohio EPA believes it has met its commitment to timely report data to USEPA. Ohio EPA, through the monthly conference calls, has worked with Region V to identify and correct deficiencies and to put procedures in place to prevent these deficiencies from re-occurring.

Ohio EPA believes that the "No" responses for File Metric 4B should be changed, resulting in two additional "Yes" responses and 66.7% attainment of the goal.

Element 5—Inspection Coverage: Completion of planned inspections

No Ohio EPA comments.

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

Response: Ohio EPA believes it has met its commitment to timely report data to USEPA. Ohio EPA, through the monthly conference calls, has worked with Region V to identify and correct deficiencies and to put procedures in place to prevent these deficiencies from re-occurring.

Ohio EPA disagrees with USEPA's assertion that all evaluation findings and recommendations must be relayed to the facility during the onsite evaluation. There are occasions where it is not appropriate to relay findings and recommendations from a facility evaluation before leaving the site. At times management will have to be involved in a review of the evaluation findings before the findings and recommendations are relayed to the facility. For Stoneco, Inc. the findings and recommendations were relayed to the facility on September 19, 2011. USEPA auditors did not request a copy of the findings and recommendations although a copy of the letter was provided to USEPA in follow-up to their pre-draft audit comments.

Ohio EPA did not recognize that the permit terms and conditions were not associated with the CMR for two facilities in the file package for USEPA review. Permit terms and conditions are not necessarily part of the facility

enforcement files; however, had the information been requested, copies of the permit terms and conditions would have been provided so the auditors could have confirmed that all applicable requirements were addressed. Typically, the inspector for the facilities has a copy of the permits during FCE; therefore, the reference to "see permits."

USEPA should clarify their statements regarding Explanation 3. There may have been some confusion when evaluating the CMR data. For one of the facilities evaluated, no formal enforcement action was taken against the facility, but the inspector may have inadvertently referred to notices of violation as formal enforcement actions taken in the DFR. USEPA auditors did not request clarification for this issue and should recognize that the issuance of a notice of violation to the facility does not mandate that further formal enforcement action be taken against the facility. There is a reason there are two different categories in the DFR.

USEPA's concerns regarding Explanation 4 are overstated. The evaluation for this facility involved four compressor engines that were not in operation at the time of the FCE. The engines are subject to MACT requirements, but going into great detail in the CMR about the requirements knowing the operational status of the engines would have been a waste of resources. This facility was on Ohio EPA's FFY 2011 CMS commitment list. Ohio EPA has been told that another facility cannot be substituted for one on the commitment list once it is finalized. Ohio EPA discussed this situation previously with USEPA and was told that if a facility is closed or not operating that the inspector was to inspect what was operating, examine records, etc., but otherwise verify that the emissions units are not/have not been operating and that this would constitute a FCE. If this has changed, Ohio EPA would like to discuss how this situation should be handled in the future.

The CAA FILE METRIC 6A should be revised to represent the following FCE documentation percentage: 14/16 = 87.5%.

MAC Manufacturing, Inc.

The review team noted that the facility evaluation form provided in the information reviewed stated no enforcement against this company in the past 10 years. However, the DFR listed notices of violation that were issued on 10/3/08, 5/7/10 and 5/12/11. These notices of violation were generated by Central Office, not the District Office, for late fee emissions reports, an administrative violation. The notices of violation were resolved and no formal action was subsequently taken. This information was available to the inspector.

Steel Structures of Ohio

The CMR reviewed stated enforcement action against the company had been taken within the last 5 years, but did not list the previous enforcement actions in the CMR. This information was on file and available to the inspector, so it was not necessary to list all of the actions on the CMR. If needed for the review, this information could have been provided to the review team if requested.

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

Response: Incorrect compliance status for facilities with on-going violations or enforcement cases has been addressed since FFY 2011 through the conversion from CETA to STARS2. Specifically, STARS2 now currently requires that at least one program is marked as non-compliant before an enforcement action or case can be initiated. This will resolve the issue going forward. STARS2 also prohibits exporting enforcement actions for enforcement cases which do not have at least one program marked as non-compliant, so any existing cases with this issue will be resolved as actions are sent to AFS. USEPA should have recognized the improvement in this report.

The Recommendation should be for continued review of this element during the monthly conference calls and for Ohio EPA to address any deficiencies as needed.

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

Response: Ohio EPA is meeting this requirement. All HPVs were correctly identified under File Metric 8C. There is no recommendation on how to "improve" the HPV discovery rate per major facility. Ohio EPA's inspectors are clearly finding violations at facilities and correctly identifying said violations as HPVs when appropriate.

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

Response: Ohio EPA is meeting this requirement. Ohio EPA disagrees with the reviewer's assessment that Ohio EPA actions taken did not result in a

return to compliance regarding Oberlin College and Columbus Southerly Wastewater Treatment. Formal enforcement action was not required as no emissions violation occurred at Oberlin College and permitting changes resolved the other violations at the facility. Permitting changes also resolved the violations for the Columbus Southerly facility.

Ohio EPA believes that these two "No" responses in File Metric 9A should be changed, resulting in 9 "Yes" responses and 100% attainment of the goal and that no further action should be required.

Oberlin College

There was no formal enforcement action for the alleged violation for failure to comply with the power input of the ESP and the ESP inlet temperature as the COMS data subsequently showed compliance with the permit limit during that period. The other HPV violations identified were identified through compliance testing that was conducted at an operating rate above any historical operational rates. The resolution for this violation was to issue a modified permit which derated the boiler and imposed enforceable restrictions on the facility's operations. Ohio EPA believes this to be an appropriate action to bring the facility into compliance.

Columbus Southerly Wastewater Treatment Plant

While Ohio EPA agrees that the emission unit operated in excess of the permit limit (and had issued a notice of violation as a result), Ohio EPA correctly determined that no formal enforcement action was needed to resolve the violation. As has been discussed during the monthly conference calls, the emissions unit in violation was only operated for testing during this period. One of the issues that occurred during testing was the inability of the unit to run at 90% of its maximum process weight rate. There were also several mechanical issues that resulted in significant repairs to the emissions unit. The City of Columbus was extremely cooperative with Ohio EPA and agreed to derate the sludge incinerator's process weight rate to coincide with the feed rates from the 2012 stack test through an enforceable permit modification.

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

Response: Unfortunately, this metric is also related to the "Priority Issue" raised in the SRF Executive Summary and will always be a point of contention between our Agencies until the matter is fully vetted. Ohio EPA disagrees with USEPA's position that every HPV violation should be addressed through a formal enforcement action. The appropriate enforcement action must be determined on a case-by-case basis. If a revision to a permit emission

limitation is permissible without triggering any other State or federal requirement, and that revision addresses a cited violation of the former emission limitation, then, in our opinion, no further enforcement action is necessary. Ohio EPA has dealt with this situation several times with asphalt plants. The AP-42 emission factors may be used to establish emission limitations in an installation permit; however, since the homogenized AP-42 emission factors for this industry are not specific to a particular region of the country, Ohio EPA will always defer to site-specific emission test data over the AP-42 emission factors when reevaluating whether a revised emission limitation may be appropriate for a given asphalt plant. As such, even if a notice of violation has to be issued to a facility for exceeding an emission limitation, if the emission limitation can be adjusted based upon site-specific emission test data, further enforcement action is not necessary. Specifically, Ohio EPA disagrees with USEPA's assessment of the All-Foils, Inc. case (permit revision resolved the cited violation); the Oberlin College case (permit revision to impose operational restrictions to address NOx RACT issues); the AK Steel case (Director's Findings and Orders have been issued and we are negotiating a settlement with the company – while our action for this case was not timely, USEPA should not double count and penalize Ohio EPA for failing to meet HPV timelines and not taking an appropriate enforcement action against the company); and the Columbus Southerly Wastewater Treatment Plant case (permit revision resolved the cited violation). This issue was discussed during the exit interview, but none of Ohio EPA's comments were considered before USEPA evaluated this metric.

Ohio EPA does not agree with the recommendation associated with Metric 10B. Instead, Ohio EPA should continue to flag HPVs with the G4 code when a permit will be issued to resolve the violation and only close the case when that permit is issued. Ohio EPA does not believe it is necessary to provide a separate narrative explanation for the terms and conditions of a permit modification, or the justification for such a modification when the permit, or draft permit, is available for review.

The CAA FILE METRIC 10B should have been revised to represent the following appropriate enforcement response percentage: 9/9 = 100%

All-Foils, Inc.

Ohio EPA feels that an appropriate response was taken. The violation was for operating without permit required control equipment. However, the facility was not operated as described in its permit application and as such would not have required operation of the control equipment. No excess emissions were documented as a result of the permit violation. A permit change reflecting the actual operations resolved the facility's violations.

AK Steel Corporation

As has been previously discussed in the monthly calls and during the SRF review, an enforcement referral was made on 02/27/12 and proposed Director's Final Findings and Orders were sent to the company on 01/18/13. The proposed orders are currently in settlement negotiations between Ohio EPA and the company.

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

No Ohio EPA comments.

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

No Ohio EPA comments.