

US EPA ARCHIVE DOCUMENT

(PD) 11/7/84
Base Program

CAPABILITY ASSESSMENT
LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY (DEQ)

A. INTRODUCTION

This Capability Assessment has been developed as required by the guidance from Lee M. Thomas, Assistant Administrator for Solid Waste and Emergency Response, dated June 26, 1984. The purpose of the guidance is to ensure national consistency in the implementation of RCRA programs in all the States. Performance in accordance with the full set of the Interim National Criteria for a Quality RCRA Program in Authorized States issued May 25, 1984, is the ultimate goal for states with Final Authorization. The Capability Assessment is designed for both the State and the Environmental Protection Agency (EPA) to evaluate the present status of the State's hazardous waste management program against the national criteria for a quality State program. Based on the Capability Assessment, the State and EPA have jointly developed a Letter of Intent which serves as the multi-year strategy to address specific areas to meet the national quality criteria.

Information contained in the Capability Assessment is drawn from the FY 83 End-of-Year RCRA Review, and the FY 84 Midyear and End-of-Year RCRA Reviews. Other information is drawn from material available in EPA files, reports and visits with the State through January 2, 1985.

The checklist accompanying this Narrative has been completed to assist in summarizing the assessment of the State's capability. A point-by-point discussion of the elements on the checklist follows.

B. CHECKLIST ELEMENTS

Compliance and Enforcement

1. Element: State has a multi-year compliance monitoring and enforcement strategy or commits to developing one.

Discussion: The State was not required to have a multiyear compliance monitoring and enforcement strategy in FY 84. The State submitted a draft strategy to Region VI on November 1, 1984. EPA reviewed the strategy for compliance with guidelines and requirements of a quality program and provided comments to Louisiana on the draft strategy on November 30, 1984. The State submitted their final strategy on December 31, 1984. The submittal and approval of the strategy was reflected as a grant commitment in the FY 85 RCRA Workplan.

The State will review EPA's Enforcement Response Policy once it is finalized, and if needed, will make changes to the strategy to provide an adequate enforcement program in the State of Louisiana as required for Authorization.

Assessment: Satisfactory

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2. Element: State has met grant commitments for inspection of major handlers; inspection of non-major handlers; evaluation and verification of closure/post-closure plans and withdrawal requests; and record reviews.

Discussion: For inspections, DEQ committed to completing 95 major and 309 non-major facility RCRA inspections in FY 83, and completed 92 major (or 97%) and 362 non-major (or 117%) inspections. For FY 84, DEQ committed to completing 98 major and 239 non-major facility RCRA inspections, and completed 97 major (or 99%), and 299 non-major (or 125%) inspections. Concerning the one major facility inspection which was not performed during FY 84, DEQ had performed a General Inspection of the facility instead of a RCRA Inspection to determine if a certification out of the system as a hazardous waste generator was appropriate. As a result of the inspection, certification out of the system was found to be in error since the facility was still a treatment/storage/disposal facility. A follow-up RCRA inspection has been scheduled for January 1985.

For the first quarter of FY 85, DEQ committed to performing 26 major and 15 non-major facility RCRA inspections, and had completed all of them by December 20, 1984.

Even though DEQ had nearly completed all their FY 84 major facility RCRA inspections, they were behind schedule in August and had to hurry to meet their commitment. This prompted DEQ to develop and implement a tracking system to track grant commitments.

State management will review commitments versus actual accomplishments monthly, and make plans to resolve or compensate for any problems as they occur, instead of waiting until the discrepancy between actual and targeted accomplishments is difficult to manage. During the first quarter of FY 85, EPA reviewed DEQ's grant accomplishments weekly and discussed shortfalls with them. If quarterly commitments are missed, EPA may withhold funds, reprogram dollars into the National Contract, or EPA may take the lead on the missed commitments. However, if missed outputs are unavoidable and cannot be made up, EPA will consider renegotiating the grant commitments in January 1985. State management should plan at the beginning of the year how grant commitments will be addressed, and how resources should be distributed over the course of the year to meet their goals.

During the FY 84 midyear review, EPA noted that DEQ was behind schedule in meeting their record review commitments. DEQ then requested contractual assistance from EPA for assistance in meeting their FY 84 grant commitments for evaluation and verification of closure/post-closure plans and groundwater monitoring record reviews. None was needed for the financial assurance record reviews. EPA responded by reprogramming \$189,400 of DEQ's FY 84 grant and Phase II Interim Authorization bonus money into the EPA National Contract. By the end of FY 84, the contractor had performed 52 (or 81%) of the committed 64 groundwater monitoring record reviews, and 28 (or 31%) of the committed 89 closure/post-closure plan reviews. By the end of FY 84, DEQ personnel had completed 9

groundwater monitoring record reviews, 59 closure/post-closure plan reviews, and 84 (or 99 %) of the committed 85 financial assurance record reviews. The remaining six record reviews were completed by DEO personnel by the end of the FY 85 first quarter.

One problem which hindered DEO's progress toward meeting their FY 84 grant commitments was a complete realignment of staff in the fourth quarter which broke program continuity. The transition is now complete and the staff is gaining confidence and experience in performing the new job tasks.

The "Summary of Grant Activities" chart summarizes FY 83, FY 84, and the first quarter of FY 85 (through December 31, 1984) DEO grant commitments and achievements.

Assessment: Satisfactory

3. Element: Inspections and record reviews are comprehensive and properly documented.

Discussion: Fourteen of 21 inspection reports reviewed by EPA at the FY 84 midyear review had inadequate documentation, such as questions left blank and contradictory information. The State addressed the problem by providing training on the proper completion of these checklists at monthly Enforcement staff meetings. As a result, inspection reports had improved by the end-of-year review so that only four of 22 reports contained documentation problems.

Closure/post-closure and financial assurance record review checklists were found to be satisfactorily completed at the FY 84 end-of-year review. Checklists for the DEO portion of the FY 84 groundwater monitoring record reviews were not completed until the first quarter of FY 85.

Groundwater split sampling had not been a part of routine groundwater monitoring facility inspections during FY 84. This was not a grant commitment but is an integral part of quality groundwater monitoring program. EPA had concerns with the procedures the State used in conducting sampling inspections at groundwater monitoring facilities. To address these concerns, EPA provided the State with groundwater sampling guidance documents as a part of the FY 85 grant, EPA's Groundwater Sampling Overview Checklist (sent on October 22, 1984), and has provided training on groundwater sampling procedures during the EPA Compliance Evaluation and Inspection course held in Oklahoma City, December 1984 and by EPA staff visits to the State during the first quarter of FY 85.

EPA had difficulty during FY 84 determining the status of several groundwater monitoring facilities in Louisiana. Some facilities were allowed to remain in the detection phase longer than would have been allowed under the federal program. Since the beginning of FY 85, DEO has discontinued this practice and has determined the proper classification of all existing groundwater monitoring facilities. All facilities have been placed into either the detection or assessment phase or DEO has taken enforcement actions through Administrative Orders to properly classify them.

Assessment: Needs Improvement

The State will place special emphasis on the quality of inspection report completion. If, during the FY 85 midyear review, EPA finds that the problems still exist, EPA will provide additional training through oversight inspections.

During FY 85, one third of the groundwater monitoring facilities will receive in-depth groundwater evaluations, part of a 3-year plan to investigate all groundwater monitoring facilities. EPA offered contractor assistance to perform 20 to 30 additional comprehensive groundwater reviews. To date, DEQ has requested assistance on 11 facilities. At the FY 85 midyear review, DEQ and EPA will discuss the possibility of accelerating the program through alternate sources of funding.

EPA will continue to closely monitor the State's implementation of the groundwater monitoring program. The State and EPA will maintain close communication to assure the proper implementation of the program. If during the mid-year review, EPA finds that the State's program is not being administered in accordance with the State's regulations and EPA standards EPA will increase the level of oversight, investigate means for improving the administration, including training and technical assistance, and will consider alternatives to the State's implementation, including reprogramming grant funds into the LOE contract, or withholding grant funds for direct implementation by EPA.

4. Element: State properly classifies violations?

Discussion: EPA found only one case at the FY 84 end-of-year review where a Letter of Warning had inappropriately been used to address a Class I violation.

The State will review EPA's Enforcement Response Policy now that it is finalized, and if needed, will make changes to the strategy to provide an adequate enforcement program in the State of Louisiana.

Assessment: Satisfactory

5. Element: Enforcement Process

Discussion: In FY 84, DEQ had responded to almost every instance of non-compliance. Enforcement actions were well documented: Letters of Warning and Notices of Violation were well written, contained the proper regulatory cites, and clearly outlined needed follow-up actions. However, during FY 84 the State did not use second level enforcement actions or penalties.

Based on 30 file reviews at midyear where 12 facilities had Class I violations, Louisiana had a violation rate of 40%, (number of facilities with Class I violations compared to number of inspections), and a compliance rate of 33% (number of facilities with Class I

violations returned to compliance within 180 days). At the end-of-year review, 21 files were reviewed and 15 facilities were found to have Class I violations. The violation rate had increased to 71% and the compliance rate had dropped to 17%. During the first quarter of FY 85, a review of four files showed the violation rate had dropped to 57% and the compliance rate had increased to 66%.

Overall, first level enforcement action during FY 84 for Class I violations were taken within an average of 48 days. Average time out of compliance was 151 days. During the first quarter of FY 85, the time to initiate enforcement action for Class I violations dropped to 46 days, while the average time out of compliance was 157 days.

DEQ greatly improved their enforcement efforts during the first quarter of FY 85 by eliminating the Letter of Warning and utilizing either a Notice of Violation or Administrative Order as initial enforcement actions. As of January 2, 1985, the State has issued 39 Administrative Orders, 37 of which include penalties, and 11 Notices of Violation for Class I violations found during the record reviews of FY 84.

DEQ conducts follow-up inspections on all facilities with violations. However, some FY 83 follow-up inspections were not conducted until FY 84. This conditioned improved in FY 84 with a few (2 of 21 files reviewed) follow-up inspections not being performed in a timely manner.

Assessment: Needs Improvement

Resolution: DEQ has begun using second level enforcement actions and penalties in FY 85. During FY 85, EPA will compare the FY 84 violation rate of 71% to the FY 85 quarterly violation rate to determine if progress is being made to decrease the violation rate.

The Enforcement Memorandum of Understanding (MOU), effective October 1, 1984, specifies timeframes and types of action that are appropriate for certain classes of violations.

EPA and the State will work together to insure the provisions of the MOU are implemented. During FY 85, EPA will perform monthly reviews of DEQ's files to track enforcement activity. If the MOU is not being properly implemented, EPA will take actions as outlined in the MOU.

DEQ's Enforcement group is developing an internal tracking system to track follow-up inspections and insure they are being performed in a timely manner. EPA is reviewing DEQ's files monthly during FY 85 to monitor their progress and provide technical guidance.

Permitting

1. Element: Permit Strategy in accordance with Agency guidance.

Discussion: DEQ submitted a draft multiyear permitting strategy to EPA on November 1, 1984. EPA reviewed the strategy for compliance with the guidelines and requirements of a quality program, and provided comments to the State on November 30, 1984. The strategy was quite extensive with most directives being addressed. However, there were some minor comments related to DEQ's permitting resources and the criteria used for prioritizing permit processing. In response to these two comments, DEQ has stated they intend to use EPA's National Contract as well as hire additional staff and review their prioritization criteria. The State will submit a final strategy by January 31, 1985. The submittal and approval of the strategy were reflected as grant commitments in the FY 85 RCRA workplan.

Assessment: Satisfactory

2. Element: Permit Processing

Discussion: DEQ received authority to implement the RCRA permitting program on January 24, 1984. To keep permitting activities consistent, DEQ agreed to call-in those facilities which EPA had previously called in. DEQ has been very cooperative in effecting the permit transition, especially when considering that this increased FY 84 call-ins above the 43 commitment in the grant.

At the end-of-year review 57 call-ins compared to the 43 required call-ins had been achieved. Twelve in comparison to the required 11 final determinations had been concluded (one by EPA). Although eight are for land disposal facilities rather than storage facilities as committed, this is in line with national priorities and is acceptable to EPA. DEQ is in the process of completing the technical review of 8 closure plans; the remaining step before a final determination is made is to publish notice of the closure plans.

Since DEQ received Phase II Interim Authorization at the end of January, and then began its call-ins, permit applications were not received until September 1984. There were two applications received in September, and completeness reviews were completed in the appropriate time frame resulting in Notices of Deficiency being issued to both applicants. Therefore, the State does not have a track record yet on the actual issuance of permits; handling late or incomplete Part Bs; or adequacy of permit conditions.

DEQ thoroughly reviews closure plans. After technical review, DEQ issues a public notice. DEQ has inspectors on-site during a closure to assure that the closure plan is followed. Upon completion of closure including certification, DEQ terminates interim status. However, due to the lateness of the closures in FY 84, DEQ was unable to terminate these facilities' interim status but intends doing so in FY 85.

Assessment: Satisfactory

Management/Reporting1. Element: ManagementDiscussion:

A. Allocation of Resources

DEO followed the FY 84 grant guidance when planning the FY 84 grant for distributing resources as follows:

	<u>National Guidance</u>	<u>LA Actual</u>
Authorization (remainder)	10-20%	20%
Enforcement	30-40%	40%
Permitting	50-60%	52%
Administration	10-20%	8%

Actual resource utilization for FY 84 was:

<u>Activities</u>	<u>Workyears- End-of-Year Commitment</u>	<u>Workyears Utilized</u>	<u>Percent</u>
Program			
Development	7.06	6.50	92%
Enforcement	11.30	20.44	181%
Permitting	14.65	10.50	72%
Administration	2.23	.56	25%
TOTAL:	<u>35.24</u>	<u>38.00</u>	<u>108%</u>

Resources devoted to permitting were lower than projected because DEO did not receive Phase II Interim Authorization until four months into the FY, and therefore had no applications to process until the fourth quarter.

B. Staff and Training

During FY 84, EPA noted that DEO's RCRA program needed more personnel skilled in groundwater technology. Additional personnel could not be hired because of a State Civil Service hiring freeze. Two key positions were filled through transfers from other DEO divisions during the first quarter of FY 85. An environmental engineer was hired in November to handle groundwater violation enforcement actions, and in December the Hazardous Waste Division's Assistant Administrator vacancy was filled by a person with a strong background in groundwater monitoring. Both of these people will help to strengthen DEO's groundwater monitoring program.

EPA will offer technical assistance and training as requested to improve DEO's RCRA program.

C. Data System

DEQ is one of the few states on line with HWDMS. Initially, DEQ used another division's computer equipment, but by September 1984 they had received and installed their own equipment. They have worked very closely with EPA data processing staff and are developing a fine program. Reporting quality is good for the Compliance Monitoring and Enforcement Logs and Permit Status Sheets. The Major Facility Status Sheets showed that DEQ did not understand how to complete the forms. DEQ requested training on this from EPA.

Assessment: Satisfactory

2. Element: Reporting

Discussion: DEQ is very prompt in informing EPA of program changes. DEQ has also been cooperative regarding program changes. Reports have been on time for the most part, with the major exceptions being the FY 83 Final Financial Status Report was late (an interim report was submitted by the deadline of December 31, 1983, but the final was not submitted until July 1984), and the inventory of accountable property purchased in FY 84 (due on October 31, 1984 and submitted December 26, 1984). It was noted by EPA during the FY 84 end-of-year review that some improvement was needed in the completion of the Major Facility Status Sheets, but have been satisfactory since EPA provided training in December 1984.

Assessment: Satisfactory

SUMMARY OF GRANT ACTIVITIES
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

ACTIVITY	FISCAL YEAR 1983			FISCAL YEAR 1984			FISCAL YEAR 1985					
	T A R N G U E A T L	A C T U A L	P E R C E N T	T A R N G U E A T L	A C T U A L	P E R C E N T	TARGET A N N U A L	1ST QTR.	A C T U A L	1ST QTR.	P E R C E N T	O F A N N U A L
<u>Inspections:</u>												
Major	95	92	97	98	97	99	95	26	26			27%
Non-major	309	362	117	239	299	125	52	15	15			29%
<u>Record Reviews:*</u>												
Closure/Post-Closure	---	---	---	89	89	100	--	---	---			---
Financial Assurance	---	---	---	85	85	100	--	---	---			---
Groundwater Monitoring	---	---	---	64	64	100	--	---	---			---
<u>Permitting:</u>												
Part B call-ins	---	---	---	43	57	133	21	14	15			71%
Part B applications received	---	---	---	--	2	---	--	--	20			---
Late/incomplete Part B	---	---	---	--	1	---	--	--	9			---
<u>Completeness Determinations:</u>												
Land Disposal Incinerator	---	---	---	--	--	---	20	0	0			---
	---	---	---	--	--	---	1	0	0			---
<u>Public Notices:</u>												
Land Disposal Incinerator	---	---	---	--	--	---	8	0	2			25%
	---	---	---	--	--	---	1	0	0			---
<u>Final Determinations:**</u>												
Land Disposal Incinerator	---	---	---	0	8		5	0	1			20%
Storage	---	---	---	2	2	- 109	---	--	---			---
	---	---	---	9	2		---	--	---			---

*Unfinished FY 84 Record Reviews were completed by end of the 1st quarter of FY 85.

**The State concentrated on final determinations for land disposal facilities on rather than the originally committed storage facilities per the National Permit Strategy.

PERMITS

I. Permit Strategy

- o Permit strategy in accordance with Agency guidance including:
 - time frames for requesting permits (land disposal and incineration-FY85; storage - FY 87),
 - time frames for final determinations (land disposal-FY 83-88, incinerators-FY 82-88, storage and treatment-FY 82-89),
 - addresses priorities for processing individual facilities.

Satisfactory	Needs Improvement
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X	
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X	
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X	
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II. Permit Processing

- o Requests made in accordance with strategy or grant commitments.
- o Applications processed in timely manner in accordance with strategy or grant commitments.
- o State responds properly to late or deficient Part B's.
- Closure/post-closure plans reviewed and final determinations made in accordance with regulatory requirements.
- o Permits processed in accordance with EPA-approved State administrative procedures.
- o Permit conditions are consistent with EPA-approved State requirements.
- o Permit conditions are enforceable and properly documented.

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X	
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