

STATE REVIEW FRAMEWORK

California

Resource Conservation and Recovery Act Implementation in Federal Fiscal Year 2011

**U.S. Environmental Protection Agency
Region 9, San Francisco**

**Final Report
September 16, 2015**

Executive Summary

Introduction

EPA Region 9 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the CA Department of Toxic Substances Control (DTSC) Clovis and Cypress regional offices in Fiscal Year 2012, reviewing data and actions from Fiscal Year 2011. During and following this review, EPA Region 9's enforcement program underwent a structural reorganization in which staff and managers associated with the Region's State Review Frameworks retired and/or were reassigned to new positions. As a result, the SRF for the FY2012 RCRA program was not conducted in full accordance with SRF guidelines (notably, the recommended number of files were not reviewed). This report presents findings based on the information collected, but EPA believes the value of these findings for developing robust conclusions about the overall performance of the offices reviewed is limited, and they provide inadequate basis for assessing statewide program performance. EPA will conduct the next SRF review of California RCRA programs in 2017.

EPA bases SRF findings on data and file review metrics, and conversations with program management and staff.

Areas of Strong Performance

- Overall, the CA RCRA inspection reports reviewed were of good quality, with adequate supporting documentation, and completed in a timely manner.
- The files reviewed included accurate compliance determinations and appropriate SNC determinations.

Most Significant RCRA Program Issues Identified¹

- California completed one year core inspection coverage of LQGs, but did not meet two-year TSDf inspection core coverage for the two year period reviewed, nor did CA meet the 5-year inspection coverage for LQGs.

¹ EPA's "National Strategy for Improving Oversight of State Enforcement Performance" identifies the following as significant recurrent issues: "Widespread and persistent data inaccuracy and incompleteness, which make it hard to identify when serious problems exist or to track state actions; routine failure of states to identify and report significant noncompliance; routine failure of states to take timely or appropriate enforcement actions to return violating facilities to compliance, potentially allowing pollution to continue unabated; failure of states to take appropriate penalty actions, which results in ineffective deterrence for noncompliance and an unlevel playing field for companies that do comply; use of enforcement orders to circumvent standards or to extend permits without appropriate notice and comment; and failure to inspect and enforce in some regulated sectors."

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I. Background on the State Review Framework

The State Review Framework (SRF) is designed to ensure that EPA conducts nationally consistent oversight. It reviews the following local, state, and EPA compliance and enforcement programs:

- Clean Water Act National Pollutant Discharge Elimination System
- Clean Air Act Stationary Sources (Title V)
- Resource Conservation and Recovery Act Subtitle C

Reviews cover:

- **Data** — completeness, accuracy, and timeliness of data entry into national data systems
- **Inspections** — meeting inspection and coverage commitments, inspection report quality, and report timeliness
- **Violations** — identification of violations, determination of significant noncompliance (SNC) for the CWA and RCRA programs and high priority violators (HPV) for the CAA program, and accuracy of compliance determinations
- **Enforcement** — timeliness and appropriateness, returning facilities to compliance
- **Penalties** — calculation including gravity and economic benefit components, assessment, and collection

EPA conducts SRF reviews in three phases:

- Analyzing information from the national data systems in the form of data metrics
- Reviewing facility files and compiling file metrics
- Development of findings and recommendations

EPA builds consultation into the SRF to ensure that EPA and the state understand the causes of issues and agree, to the degree possible, on actions needed to address them. SRF reports capture the agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state programs.

Each state's programs are reviewed once every four years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2013 and will continue through FY 2016.

II. SRF Review Process

Review period: FY 2011
Draft Report to CA: June, 2015
Final Report: September, 2015

State and EPA key contacts for review:

Jim Polek, US EPA Region 9, (415) 972-3185
John Schofield, US EPA Region 9, (415) 972-3386

III. SRF Findings

Findings represent EPA's conclusions regarding state performance and are based on findings made during the data and/or file reviews and may also be informed by:

- Annual data metric reviews conducted since the state's last SRF review
- Follow-up conversations with state agency personnel
- Review of previous SRF reports, Memoranda of Agreement, or other data sources
- Additional information collected to determine an issue's severity and root causes

There are three categories of findings:

Meets or Exceeds Expectations: The SRF was established to define a base level or floor for enforcement program performance. This rating describes a situation where the base level is met and no performance deficiency is identified, or a state performs above national program expectations.

Area for State Attention: An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, the state should correct the issue without additional EPA oversight. EPA may make recommendations to improve performance, but it will not monitor these recommendations for completion between SRF reviews. These areas are not highlighted as significant in an executive summary.

Area for State Improvement: An activity, process, or policy that one or more SRF metrics show as a significant problem that the agency is required to address. Recommendations should address root causes. These recommendations must have well-defined timelines and milestones for completion, and EPA will monitor them for completion between SRF reviews in the SRF Tracker.

Whenever a metric indicates a major performance issue, EPA will write up a finding of Area for State Improvement, regardless of other metric values pertaining to a particular element.

The relevant SRF metrics are listed within each finding. The following information is provided for each metric:

- **Metric ID Number and Description:** The metric's SRF identification number and a description of what the metric measures.
- **Natl Goal:** The national goal, if applicable, of the metric, or the CMS commitment that the state has made.
- **Natl Avg:** The national average across all states, territories, and the District of Columbia.
- **State N:** For metrics expressed as percentages, the numerator.
- **State D:** The denominator.
- **State % or #:** The percentage, or if the metric is expressed as a whole number, the count.

Resource Conservation and Recovery Act Findings

Element 1 — Data						
Finding 1-1	Area for State Attention DTSC Clovis and Cypress Offices					
Summary	EPA’s review of inspection and enforcement files from the DTSC Clovis and Cypress offices found that most of the minimum data requirements are being entered completely and accurately into the national data system.					
Explanation	The Clovis and Cypress DTSC offices are entering data into the national data system. However there were inaccuracies found during the file review including items such as conflicting dates, CEIs entered more than once, or violations and enforcement actions missing or not entered correctly.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2b Complete and accurate entry of mandatory data	100%	N/A	15	17	88%
State Response	<p>DTSC identified its work plan based on a State Fiscal year from July 1, 2010 – June 30, 2011. U.S. EPA’s State Review Framework reviewed the data based on a Federal Fiscal Year from October 1, 2010 – September 30, 2011. The Fiscal Year differences may contribute to the discrepancy in inspection frequency, duplicate inspections within the same reporting time frame, etc.</p> <p>DTSC began using the EnviroStor database to track DTSC’s inspection, compliance, and enforcement data in State Fiscal Year 2010/2011. After the initial transfer of data records into RCRAInfo, a quality assurance review was completed in October 2010. The initial review found that there was a duplication of data. At the time, EnviroStor data was not overwriting the data in RCRAInfo, which created duplicate entries any time data was corrected in EnviroStor and uploaded again to RCRAInfo. Since then, the transfer of data into RCRAInfo now overwrites the existing data and queries have been created in RCRAInfo and EnviroStor to ensure accuracy of the data being transferred. Comparison of the</p>					

	<p>transferred data is completed monthly by the Data Systems Unit, and by staff in the Enforcement and Emergency Response Division (EERD). During State Fiscal Year 2015/2016, DTSC will continue to work with Region 9 in developing the remaining query and report to Quality Assurance/Quality Control (QAQC) all data that is being transferred. In April 2013, a guidance document for data entry was provided to the EnviroStor Data Managers for distribution to staff. During State Fiscal Year 2015/2016, EERD staff will begin developing a QAQC guidance document that will assist the EnviroStor Data Managers in locating data entry errors.</p>
Recommendation	No further action is necessary

Element 2 — Inspections

Finding 2-1	Area for State Attention
Summary	<p>EPA obtained from DTSC TSDf and LQG inspection coverage for the areas covered by the DTSC Clovis and Cypress offices. Most LQG inspections are performed by Certified Unified Program Agencies (CUPAs), such as environmental health departments located within the DTSC Clovis and Cypress office areas. All TSDf inspections are performed by the DTSC.</p> <p>California completed one year core inspection coverage of LQGs. The State did not meet two year TSDf inspection core coverage for the two-year period reviewed. California also did not meet the 5-year inspection coverage for LQGs.</p>
Explanation	<p>Element 2 is supported by data Metrics 5a, 5b, and 5c. The OECA National Program Managers (NPM) Guidance provides for core program inspections coverage for TSDs and LQGs. California did not meet the 2-year TSD inspection requirement (Metric 5a) and exceeded the annual requirement for LQG inspections (Metric 5b). The OECA NPM Guidance also provides that 100% of RCRA LQGs must receive a Compliance Evaluation Inspection (CEI) every 5 years. While DTSC is commended for exceeding the national average (62.9% coverage), SRF Data Metrics 5c shows that 97.1% (119 out of 123) of the LQG universe received a CEI between FY2006-FY2011.</p>

	An accurate LQG universe is difficult to maintain due to the dynamics of changing generator status and new or closing facilities. The LQG universe should be updated periodically (recommend at least annually) for any facility changes, and the workplan can be adjusted to ensure that the core program requirements are being met for 1-year and 5-year inspection requirements.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	5a Two-year inspection coverage of operating TSDFs	100%	89.4%	54	59	92%
	5b Annual inspection coverage of LQGs	20%	22.6%	70	123	57%
	5c Five-year inspection coverage of LQGs	100%	62.9%	119	123	97.1%
State Response	DTSC continues to work with the Certified Unified Program Agencies (CUPAs) on identifying RCRA LQGs and submitting timely and accurate inspection data into CERS. During the CUPA evaluations DTSC reviews LQG entries in CERS and follows up with the CUPAs on LQG inspection frequencies to ensure the five-year inspection coverage.					
Recommendation	No further action necessary					

Element 2 — Inspections

Finding 2-2	Meets or Exceeds Expectations
Summary	Overall, the California RCRA inspection reports were good quality, with adequate supporting documentation and completed in a timely manner.
Explanation	<p>Seventeen inspection reports were reviewed under Metric 6a.</p> <p>A majority of California inspection reports reviewed were prepared in accordance with the requirements specified in “DTSC Policy for Conducting Inspections, DTSC-OP-0005” dated January 30, 2009 (Metric 6a). Written CEI reports include the facility name, inspection date, facility/process description, areas inspected, files reviewed, summary of violations etc. Photographs are included in the reports to document observations/violations described in the reports. Only one CEI report documented a violation in a photograph but did not document the violation in the text of the report. Due to fact this report was the only</p>

exception to the 17 reports reviewed, this does not represent an area of concern.

File review Metric 6b measures the timely completion of inspection reports. Currently, there is no national EPA standard for the number of days within which a RCRA report must be completed from the date of inspection. A general guideline of 45 days was initially used for the purposes of this review, and a majority of California’s inspection reports were completed within this timeframe. However, as referenced in State comments below, the CA Health and Safety Code establishes that inspection reports should be completed within 65 days of the date of inspections. According to the SRF RCRA Plain Language Guide, “the reviewed agency should have its own timeliness guidelines stated in policy... EPA should use this standard to determine whether the agency is completing reports in a timely manner.” Using the DTSC 65-day standard, 88.2% of the reviewed inspections were timely.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	6a Inspection reports complete and sufficient to determine compliance	100%	N/A	16	16	94.1%
6b Timeliness of inspection report completion	100%	N/A	15	17	88.2%	

State Response DTSC inspection reports are prepared in accordance with the requirements specified in “DTSC Policy for Conducting Inspections, DTSC-OP-0005” dated January 30, 2009. The policy in regards to the preparation of the inspection report refers to the Health and Safety Code, Section 25185(c)(2)(A), which states that a copy of the inspection report will be provided to the person inspected within five days of completing the inspection report, and in no case more than **65** days from the date of the inspection. DTSC uses a 65-day timeframe, whereas US EPA used a 45-day general guideline (obtained from the US EPA Compliance Monitoring Strategy) for the purpose of the review and metric 6b, “Timeliness of inspection report completion.” According to the data available in EnviroStor, there were 15 out of 17 inspection reports which were completed within the [DTSC] 65-day timeframe, giving a State percentage of 88%.

Recommendation EPA accepts the State’s response. No further action is necessary.

Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations																																				
Summary	The files reviewed from the DTSC Clovis and Cypress offices included accurate compliance determinations and appropriate SNC determinations.																																				
Explanation	<p>File Metric 7a assesses whether accurate compliance determinations were made based on inspection reports. Of the 17 inspection reports reviewed, 100% had accurate compliance determinations.</p> <p>In File Review Metric 7b, the files were reviewed to assess if the violations were determined within 150 days and entered into RCRAInfo. There were 5 inspections where SV were found and all were issued informal enforcement actions.</p> <p>Note: Metric 8a is an informational metric not used for purposes of determining state performance. It therefore has been omitted from this report.</p>																																				
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>2a Long-standing secondary violators</td> <td>N/A</td> <td>N/A</td> <td>N/A</td> <td>N/A</td> <td>N/A</td> </tr> <tr> <td>7a Accurate compliance determinations</td> <td>100%</td> <td>N/A</td> <td>17</td> <td>17</td> <td>100%</td> </tr> <tr> <td>7b Violations found during inspections</td> <td>N/A</td> <td>32.5%</td> <td>8</td> <td>17</td> <td>47%</td> </tr> <tr> <td>8b Timeliness of SNC determinations</td> <td>100%</td> <td>81.7%</td> <td>6</td> <td>6</td> <td>100%</td> </tr> <tr> <td>8c Appropriate SNC determinations</td> <td>100%</td> <td>N/A</td> <td>8</td> <td>8</td> <td>100%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2a Long-standing secondary violators	N/A	N/A	N/A	N/A	N/A	7a Accurate compliance determinations	100%	N/A	17	17	100%	7b Violations found during inspections	N/A	32.5%	8	17	47%	8b Timeliness of SNC determinations	100%	81.7%	6	6	100%	8c Appropriate SNC determinations	100%	N/A	8	8	100%
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8c Appropriate SNC determinations	100%	N/A	8	8	100%																																
State Response	We are unable to respond to metric 8a, “SNC identification rate.” [Note: this metric is deleted from the above chart, as it is informational only.]																																				
Recommendation	No further action is necessary.																																				

Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations						
Summary	DTSC effectively manages its noncompliant facilities with appropriate enforcement responses. However, return to compliance for SNC violation is below national average.						
Explanation	<p>The DTSC files reviewed with enforcement actions had documentation to demonstrate that the violators had returned to compliance or were on schedule to return to compliance.</p> <p>Metric 10a measures the timeliness of returning to compliance for violations where SNC is identified. Metric 10a measures the timely completion of enforcement actions where SNC is identified. Currently, there is no national EPA standard for the number of days within which a RCRA SNC enforcement action must be completed from the date the violation(s) is identified. A general guideline of 340 days was used for the initial purposes of conducting this review. As noted in State comments below; 7 out of 10 actions reviewed were considered timely under that criterion. However, DTSC policy allows 360 days; using this criterion, 100% of the actions are considered timely.</p> <p>DTSC Enforcement Response Policy, DTSC-OP-0006, dated January 30, 2009 describes how the agency will address Secondary Violations, Class I violations and SNC violation. The policy does not provide a suggested timeframe to complete enforcement action where SNC violations are identified. We encourage DTSC to amend the Environmental Response Policy to include a suggested timeframe for completing enforcement actions where SNC violations are identified.</p>						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	9a Enforcement that returns violators to compliance		100%	N/A	7	7	100%
	10a Timely enforcement taken to address SNC (360 days)		80%	81.8%	10	10	100%
	10b Appropriate enforcement taken to address violations		100%	N/A	8	8	100 %
State Response	DTSC will update the current Enforcement Response Policy, DTSC-OP-006, dated January 30, 2009, and add a suggested timeframe to complete an enforcement action where SNC violations are identified. The data [shown in the draft report] of 1 out of 8 (13%) for metric 10a “Timely						

enforcement action taken to address SNC,” is incorrect. A pull was made from ECHO of the FY2011 Frozen RCRA Data for CA Metric 10a and those numbers are incorrect. The correct numbers are 7 out of 10 (70%) using the US EPA Compliance Monitoring Strategy for actions taken less than 340 days; however 10 out of 10 (or 100%) for actions taken less than 360 days using DTSC Policy. In addition, there is an error for the percentage calculation for metric 10b, “Appropriate enforcement taken to address violations”, which states 8 out of 8 as an incorrect 85.7%. This percentage is 100.

Recommendation No action necessary. EPA agrees with the state’s comment.

Element 5 — Penalties

Finding 5-1 **Meets or Exceeds Expectations**

Summary California includes gravity-based penalty, multiday and economic benefit calculations in their penalty calculation procedures.

Explanation The few penalties reviewed from the 2 DTSC offices included organized penalty worksheets that included the following criteria: gravity (potential for harm and extent of deviation), multi-day calculations, adjustments for ability to pay, history of noncompliance and economic benefit. Files also included the difference between the initial and final penalty and documentation of collection.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	11a Penalty calculations include gravity and economic benefit	100%	N/A	3	3	100%
12a Documentation on difference between initial and final penalty	100%	N/A	3	3	100%	
12b Penalties collected	100%	N/A	3	3	100%	

State Response No comment.

Recommendation No further action is necessary.

Appendix



Matthew Rodriguez
Secretary for
Environmental Protection



Department of Toxic Substances Control

Barbara A. Lee, Director
1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806



Edmund G. Brown Jr.
Governor

August 7, 2015

Kathleen H. Johnson, Director
Enforcement Division
United States Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105

STATE REVIEW FRAMEWORK FEDERAL FISCAL YEAR 2011

Dear Ms. Johnson:

The Department of Toxic Substances Control (DTSC) has received your letter addressed to Director Barbara Lee. Director Lee has asked me to respond for DTSC after reviewing the draft report of United States Environmental Protection Agency's (U.S. EPA) State Review Framework for the Federal Fiscal Year 2011, dated May 11, 2015. DTSC appreciates the opportunity to review and comment on the draft report before it becomes final.

As you acknowledge in your cover letter, the draft report was not conducted in full accordance with the State Review Framework guidelines. DTSC still values U.S. EPA's findings and will continue to improve our performance with data, inspections, compliance, and enforcement. Since Federal Fiscal Year 2011, the Enforcement and Emergency Response Division has made improvements and will continue to progress and work together with U.S. EPA and the Certified Unified Program Agency's in meeting our state goals. Enclosed are DTSC's responses to the Five Elements of the State Review Framework provided by my staff.

Kathleen H. Johnson
August 7, 2015
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If you have any questions about the enclosed information, please do not hesitate to contact Mr. Keith Kihara our Division Chief of the Enforcement and Emergency Response Division at (916) 322-8521 or via Keith.Kihara@dtsc.ca.gov.

Sincerely,



Elise Rothschild, R.E.H.S., Deputy Director
Hazardous Waste Management Program

Enclosure

cc: Ms. Barbara A. Lee
Director
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806

Mr. Keith Kihara
Division Chief
Enforcement and Emergency Response Division
Hazardous Waste Management Program
P.O. Box 806
Sacramento, California 95812-0806

Department of Toxic Substances Control
Response to State Review Framework
Federal Fiscal Year 2011

Element 1 - Data

Element 1; Finding 1-1:

DTSC identified its work plan based on a State Fiscal year from July 1, 2010 – June 30, 2011. U.S. EPA's State Review Framework reviewed the data based on a Federal Fiscal Year from October 1, 2010 – September 30, 2011. The Fiscal Year differences may contribute to the discrepancy in inspection frequency, duplicate inspections within the same reporting time frame, etc.

DTSC began using the EnviroStor database to track DTSC's inspection, compliance, and enforcement data in State Fiscal Year 2010/2011. After the initial transfer of data records into RCRAInfo, a quality assurance review was completed in October 2010. The initial review found that there was a duplication of data. At the time, EnviroStor data was not overwriting the data in RCRAInfo, which created duplicate entries any time data was corrected in EnviroStor and uploaded again to RCRAInfo. Since then, the transfer of data into RCRAInfo now overwrites the existing data and queries have been created in RCRAInfo and EnviroStor to ensure accuracy of the data being transferred. Comparison of the transferred data is completed monthly by the Data Systems Unit and by staff in the Enforcement and Emergency Response Division (EERD). During State Fiscal Year 2015/2016, DTSC will continue to work with Region 9 in developing the remaining query and report to Quality Assurance/Quality Control (QAQC) all data that is being transferred. In April 2013, a guidance document for data entry was provided to the EnviroStor Data Managers for distribution to staff. During State Fiscal Year 2015/2016, EERD staff will begin developing a QAQC guidance document that will assist the EnviroStor Data Managers in locating data entry errors.

Element 2 – Inspections

Element 2; Finding 2-1, 5c:

DTSC continues to work with the Certified Unified Program Agencies (CUPAs) on identifying RCRA LQGs and submitting timely and accurate inspection data into CERS. During the CUPA evaluations, DTSC reviews LQG entries in CERS and follows up with the CUPAs on LQG inspection frequencies to ensure the five-year inspection coverage.

Element 2; Finding 2-2:

DTSC inspection reports are prepared in accordance with the requirements specified in "DTSC Policy for Conducting Inspections, DTSC-OP-0005" dated January 30, 2009. The policy in regards to the preparation of the inspection report, refers to the Health and Safety Code, section 25185 (c)(2)(A) which states that a copy of the inspection report will be provided to the person inspected within five days of completing the inspection report, and in no case more than 65 days from the date of the inspection. DTSC uses a 65 day timeframe whereas US EPA used a 45 day general guideline (obtained from the US EPA Compliance Monitoring Strategy) for the purpose of the review and metric 6a

Department of Toxic Substances Control
Response to State Review Framework
Federal Fiscal Year 2011

"Timeliness of inspection report completion." US EPA also noted that the DTSC inspection policy states that inspection reports should be completed within 40 days of the inspection, which is not an accurate statement. In addition, a reference to Metric 6c is made in the Explanation section of Finding 2-2 and there is no Metric 6c found in the State Review Framework Guidance. According to the data available in EnviroStor, there were 15 out of 17 inspection reports which were completed within the 65 day timeframe giving a State percentage of 88% and not the finding of 52.9%.

Element 3 - Violations

Element 3; Finding 3-1:

We are unable to respond to metric 8a "SNC identification rate." There are 88 reviews with 6 identified as SNC and a percentage of 7%. We would like U.S. EPA to identify the 88 facilities in order to be better able to interpret and respond this metric. A pull was made from ECHO of the FY 2011 Frozen RCRA Data for CA and DTSC is unable to identify the 88 facilities. For Metric 8a, a total of 7 facilities are identified as SNC and a total of 392 are identified as the Universe for FY 2011. (Frozen Data 8a attached)

Element 4 -Enforcement

Element 4; Finding 4-1:

DTSC will update the current Enforcement Response Policy, DTSC-OP-006, dated January 30, 2009, and add a suggested timeframe to complete an enforcement action where SNC violations are identified. The data of 1 out of 8 (13%) for metric 10a "Timely enforcement taken to address SNC," is incorrect. A pull was made from ECHO of the FY 2011 Frozen RCRA Data for CA Metric 10a and those numbers are incorrect. The correct numbers are 7 out of 10 or (70%) using the US EPA Compliance Monitoring Strategy for actions taken less than 340 days; however, 10 out of 10 or (100%) for actions taken less than 360 days using DTSC Policy. In addition, there is an error for the percentage calculation for metric 10b "Appropriate enforcement taken to address violations" which states 8 out of 8 as an incorrect 85.7%. This percentage is 100%. (Frozen Data 10a attached)

Element 4 -Penalties

Element 5; Finding 5-1:

No comment.

STATE REVIEW FRAMEWORK

California

Clean Water Act Implementation in Federal Fiscal Year 2011

**U.S. Environmental Protection Agency
Region 9, San Francisco**

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Introduction

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EPA bases SRF findings on data and file review metrics, and conversations with program management and staff. EPA will track recommended actions from the review in the SRF Tracker and publish reports and recommendations on EPA's ECHO web site.

Areas of Strong Performance

- *Inspection coverage at major, minor, and pretreatment facilities exceeds commitments in the state specific CMS plan*
- *Identification of significant noncompliance is accurate in files reviewed*
- *Significant non-compliance at major facilities is below the national average*
- *Entry of major facility permit and effluent limits exceeds expectations*

Priority Issues to Address

The following are the top-priority issues affecting the state program's performance:

- *Timely and appropriate CWA enforcement*

Most Significant CWA-NPDES Program Issues²

- *Accuracy of data reported on inspections, violations, and enforcement actions is not completely reported as required for major facilities*
- *Inspection report timeliness is unclear with many inspection reports lacking documentation of the date the document was finalized*
- *Timely and appropriate enforcement is low at major facilities as reported to EPA and in actions reviewed on-site*
- *Single event violations are not consistently reported*

² EPA's "National Strategy for Improving Oversight of State Enforcement Performance" identifies the following as significant recurrent issues: "Widespread and persistent data inaccuracy and incompleteness, which make it hard to identify when serious problems exist or to track state actions; routine failure of states to identify and report significant noncompliance; routine failure of states to take timely or appropriate enforcement actions to return violating facilities to compliance, potentially allowing pollution to continue unabated; failure of states to take appropriate penalty actions, which results in ineffective deterrence for noncompliance and an unlevel playing field for companies that do comply; use of enforcement orders to circumvent standards or to extend permits without appropriate notice and comment; and failure to inspect and enforce in some regulated sectors."

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- Development of findings and recommendations

EPA builds consultation into the SRF to ensure that EPA and the state understand the causes of issues and agree, to the degree possible, on actions needed to address them. SRF reports capture the agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state programs.

Each state's programs are reviewed once every four years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2013 and will continue through FY 2016.

II. SRF Review Process

Review period: *FY 2011*

Key dates: **Field Review 2012**
 Draft Report June 2015
 Final Report September 2015

State and EPA key contacts for review: *Ken Greenberg, Eric Magnan*

III. SRF Findings

Findings represent EPA’s conclusions regarding state performance and are based on findings made during the data and/or file reviews and may also be informed by:

- Annual data metric reviews conducted since the state’s last SRF review
- Follow-up conversations with state agency personnel
- Review of previous SRF reports, Memoranda of Agreement, or other data sources
- Additional information collected to determine an issue’s severity and root causes

There are three categories of findings:

Meets or Exceeds Expectations: The SRF was established to define a base level or floor for enforcement program performance. This rating describes a situation where the base level is met and no performance deficiency is identified, or a state performs above national program expectations.

Area for State Attention: An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, the state should correct the issue without additional EPA oversight. EPA may make recommendations to improve performance, but it will not monitor these recommendations for completion between SRF reviews. These areas are not highlighted as significant in an executive summary.

Area for State Improvement: An activity, process, or policy that one or more SRF metrics show as a significant problem that the agency is required to address. Recommendations should address root causes. These recommendations must have well-defined timelines and milestones for completion, and EPA will monitor them for completion between SRF reviews in the SRF Tracker.

Whenever a metric indicates a major performance issue, EPA will write up a finding of Area for State Improvement, regardless of other metric values pertaining to a particular element.

The relevant SRF metrics are listed within each finding. The following information is provided for each metric:

- **Metric ID Number and Description:** The metric’s SRF identification number and a description of what the metric measures.
- **Natl Goal:** The national goal, if applicable, of the metric, or the Compliance Monitoring Strategy (CMS) commitment that the state has made.
- **Natl Avg:** The national average across all states, territories, and the District of Columbia.
- **State N:** For metrics expressed as percentages, the numerator.
- **State D:** The denominator.
- **State % or #:** The percentage, or if the metric is expressed as a whole number, the count.

Clean Water Act Findings

Element 1 — Data

Metric 1b: Completeness of permit limit and discharge data in EPA’s ICIS database.

Finding 1-1	Meets or Exceeds Expectations					
Summary	The state meets or exceeds EPA’s expectations for coding major facility permit limits and entering Discharge Monitoring Report (DMR) data in EPA’s Integrated Compliance Information System (ICIS), EPA’s national database.					
Explanation	<p>Metrics 1b1 and 1b2 measure the state’s rate of entering permit limits and DMR data into ICIS.</p> <p>Overall, California entered 90.5% of permit limits for major facilities state-wide as indicated in the values presented for metric 1b1 shown below. The San Francisco Regional Water Quality Control Board has a 97.9% permit limit entry rate, and the San Diego Water Board has an 87.5% permit limit entry rate. California’s overall limits entry rate of 90.5% is within the acceptable range of EPA’s national goal of 95%.</p> <p>California enters 99.3% of DMR data into ICIS, exceeding both EPA’s national goal and the national average DMR data entry rates. The San Francisco Regional Board has a 99.9% DMR entry rate, and the San Diego Regional Board has a 96.8% DMR entry rate.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State/ Board N	State/ Board D	State/ Board % or #
	1b1 Permit limit rate for major facilities in California (state-wide)	≥95%	98.6%	229	253	90.5%
	1b1 Permit limit rate for major facilities in Regional Water Board 2 (San Francisco Bay)	≥95%		47	48	97.9%
	1b1 Permit limit rate for major facilities in Regional Water Board 9 (San Diego)	≥95%		21	24	87.5%
	1b2 DMR entry rate for major facilities in California (state-wide)	≥95%	96.5%	12,754	12,850	99.3%
	1b2 DMR entry rate for major facilities in Regional Water Board 2 (San Francisco)	≥95%		3,117	3,118	99.9%

	1b2 DMR entry rate for major facilities in Regional Water Board 9 (San Diego)	≥95%	1,501	1,551	96.8%
State Response	None				
Recommendation	None required.				

Element 1— Data

Metric 2b: Completeness and accuracy of inspections and enforcement action data in EPA’s ICIS database.

Finding 1-2	Area for State Improvement						
Summary	Sixty-three percent of files reviewed had complete information reported to EPA’s ICIS database. Data accuracy in files reviewed is well below the national goal of 100%.						
Explanation	<p>Under Metric 2b, EPA reviewers compared inspection reports and enforcement actions found in selected files at the San Francisco and San Diego Regional Boards to determine if the inspections, inspection findings and enforcement actions were accurately entered into ICIS. The analysis was limited to data elements mandated in EPA’s ICIS data management policies. States are not required to enter inspections or enforcement actions for certain classes of facilities.</p> <p>EPA found 27 of the 43 files reviewed (62.8%) in RB2 and RB9 have all the required information (facility location, inspection, violation, and enforcement action information) accurately entered into ICIS.</p> <p>Seventeen of 26 files reviewed (65.4%) at the San Francisco Regional Board have all required data entered from the file reviewed.</p> <p>Ten of 17 files reviewed (58.8%) at the San Diego Regional Board have all facility location, inspection, violation, and enforcement action information in ICIS. Unreported violations and enforcement actions are the most frequently cited data accuracy issues for the San Diego Regional Board.</p> <p>Missing inspection reports is a significant data problem. Facilities without inspection reports were measured under metric 6b for timeliness of inspection report completion. There were 4 facilities of the 26 facilities reviewed in the San Francisco Regional Board that had at least one inspection entered into ICIS and no corresponding inspection report in the file. The San Diego Regional Board did not have any missing inspection reports. More detail about the missing inspection reports is included in Finding 2-3.</p>						
Relevant metrics	<table border="1"><thead><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State/ Board N</th><th>State/ Board D</th><th>State/ Board % or #</th></tr></thead></table>	Metric ID Number and Description	Natl Goal	Natl Avg	State/ Board N	State/ Board D	State/ Board % or #
Metric ID Number and Description	Natl Goal	Natl Avg	State/ Board N	State/ Board D	State/ Board % or #		

	2b Files reviewed where data are accurately reflected in the national data system in Regional Water Board 2 (San Francisco Bay)	100%	17	26	65.4%
	2b Files reviewed where data are accurately reflected in the national data system in Regional Water Board 9 (San Diego)	100%	10	17	58.8%
State Response	<p>Unreported violations and enforcement actions are the most frequently cited data accuracy issues. The process of entering the Water Boards' inspection and enforcement action data into U.S. EPA's Integrated Compliance Information System (ICIS) currently involves many steps. Once an action is taken, such as completing an inspection or issuing an enforcement action, Water Board staff must enter a complete record into the Water Boards' California Integrated Water Quality System (CIWQS). Twice a year, Water Board staff generates reports from CIWQS for U.S. EPA's contractor to enter into ICIS. The Water Boards look forward to implementing a new data entry process, in compliance with the new eReporting Rule, which sends data (including inspection and enforcement action records) to ICIS and eliminates duplicative manual data entry into ICIS. Water Board staff will continue to work cooperatively with U.S. EPA staff to identify opportunities to improve data quality in the current process and to ensure good quality data are being correctly entered into both databases.</p>				
Recommendation	<ul style="list-style-type: none"> Starting in October 2015, California should ensure all relevant information, including facility location, inspection, violation, and enforcement action information is entered into ICIS in accordance with EPA's data entry requirements. EPA will include this as a standing agenda topic during regular meetings with the state to track progress and ensure data is being entered. 				

Element 2 — Inspections

Metrics 4a, 5a, and 5b: Inspection coverage compared to State workplan commitments.

Finding 2-1	Meets or Exceeds Expectations
Summary	The state met and exceeded inspection commitments in its Clean Water Act section 106 grant workplan.
Explanation	<p>Metrics 4a, 5a, and 5b measure the number of inspections completed by the state in the State Fiscal Year 2011 compared to the commitments in California’s Clean Water Act section 106 grant workplan. EPA Region 9 established workplan inspection commitments for California consistent with the inspection frequency goals established in EPA’s 2007 Compliance Monitoring Strategy.</p> <p>Metric 5a1 measures the inspection coverage of NPDES majors, metric 5b1 measures inspection coverage of NPDES non-majors with individual permits (also called minors), and metric 5b2 measures inspection coverage of NPDES non-majors with general permits. California inspected 137 major facilities and 85 minor facilities during the state fiscal year, meeting the CMS-based workplan commitment to inspect 121 major facilities and 73 minor facilities. California inspected 163 major facilities and 85 minor facilities in the federal fiscal year 2011. The San Francisco Regional Board inspected 33 major facilities and 6 minor facilities and the San Diego Regional Board inspected 11 major facilities and 3 minor facilities.</p> <p>No non-major general permit inspections were reported under metric 5b2. Inspections at non-major general permit facilities are not required to be reported and the state may have additional inspection coverage to report based on information in its data system on inspections at non-major general permit facilities.</p> <p>Metric 4a1 measures pretreatment compliance inspections and audits. California completed 5 pretreatment audit inspections, falling short of its workplan commitment of 20 pretreatment audit inspections. California relies on an EPA-managed in-kind-services contract to complete its pretreatment inspections and audits. The 2011 audit shortfall is acceptable because California and EPA agreed to shift the contractor to complete additional pretreatment compliance inspections and pretreatment program reviews. California has been using EPA’s in-kind-services contractor since 2011 to increase pretreatment audit inspections to the frequency established in EPA’s 2007 CMS guidance.</p>

California met its CMS-based workplan commitments for other inspections. The state completed 43 pretreatment compliance inspections; 3,532 industrial and construction stormwater inspections; 16 municipal stormwater program inspections; 10 sanitary sewer system inspections; and 342 concentrated animal feeding operation inspections. The contractor completed 12 pretreatment compliance inspections in RB2 and 2 pretreatment audit inspections in RB9.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	4a1 Pretreatment compliance inspections and audits (state-wide)	100% state specific CMS Plan commitment		48 (5 audits; 43 PCIs)	60 (20 audits; 40 PCIs)	80%
	5a1 Inspection coverage of NPDES majors (state-wide)	100% state specific CMS Plan commitment	54.4%	137	121	113.2%
	5b1 Inspection coverage of NPDES non-majors with individual permits (state-wide)	100% state specific CMS Plan commitment	23.7%	85	73	116.4%
State Response	None					
Recommendation	None required.					

Element 2 — Inspections
Metric 6a: Quality of inspection reports.

Finding 2-2	Meets or Exceeds Expectations																							
Summary	California’s inspection reports are complete and sufficient to determine compliance.																							
Explanation	<p>Metric 6a assesses the quality of inspection reports, in particular, whether the inspection reports provide sufficient documentation to determine the compliance status of inspected facilities. Twenty-nine out of 30 inspection reports reviewed at the San Francisco and San Diego Regional Boards were complete and sufficient to determine compliance in accordance with the 2004 NPDES Compliance Inspection Manual guidelines. The San Francisco Regional Board had 18 of 19 (95%) and the San Diego Regional Board had 11 of 11 (100%) inspection reports that were complete and sufficient to determine compliance.</p> <p>EPA found many inspection reports were not signed by the inspector or the author of the inspection report. EPA’s recommendations for improving this are listed in the recommendations section of Finding 2-3.</p>																							
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>6a Inspection reports complete and sufficient to determine compliance at the facility. (San Francisco)</td> <td>100%</td> <td></td> <td>18</td> <td>19</td> <td>95%</td> </tr> <tr> <td>6a Inspection reports complete and sufficient to determine compliance at the facility. (San Diego)</td> <td>100%</td> <td></td> <td>11</td> <td>11</td> <td>100%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	6a Inspection reports complete and sufficient to determine compliance at the facility. (San Francisco)	100%		18	19	95%	6a Inspection reports complete and sufficient to determine compliance at the facility. (San Diego)	100%		11	11	100%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
6a Inspection reports complete and sufficient to determine compliance at the facility. (San Francisco)	100%		18	19	95%																			
6a Inspection reports complete and sufficient to determine compliance at the facility. (San Diego)	100%		11	11	100%																			
State Response	None																							
Recommendation	None required.																							

Element 2 — Inspections**Metric 6b: Timeliness of inspection reports.**

Finding 2-3	Area for State Improvement
Summary	<p>The majority of inspection reports EPA reviewed (26 of 36) were not dated or were not completed within EPA’s recommended timeline for completing an inspection report. There were inspections reported in EPA’s ICIS database with no corresponding inspection report in the file.</p>
Explanation	<p>Metric 6b measures the state’s timeliness on completing inspection reports within the EPA recommended deadlines of 30 days for compliance evaluation inspection reports and 45 days for sampling inspection reports. Inspection reports lacking completion dates, inspection reports bearing dates beyond the recommended timeliness deadlines, and facility files that have at least one inspection entered into ICIS with no corresponding inspection report in the file were all considered as not meeting EPA’s recommended timeliness on completing inspection reports.</p> <p>EPA reviewed 25 inspection reports in the San Francisco Regional Board files and 11 inspection reports in the San Diego Regional Board files to make this determination. EPA found that many inspection reports were not dated, which made it difficult to assess the timeliness of these reports. In the absence of any documentation of report completion date, such as a cover letter transmitting a report to the discharger, EPA reviewers assumed that undated reports were not timely.</p> <p>Ten of 36 inspection reports reviewed (28%) have documentation that provides information on the length of time it took to complete the inspection report that meets EPA’s recommended deadlines. Twenty-six of 36 facility files reviewed either lacked inspection report completion dates, had inspection reports that bore dates beyond the recommended timeliness deadlines, or had at least one inspection entered into ICIS with no corresponding inspection report in the file.</p> <p>Nine of the 25 inspection reports (36%) reviewed for the San Francisco Regional Board and 1 in 11 inspection reports reviewed for the San Diego Regional Board (9.1%) were completed on time.</p> <p>EPA reviewers examined selected Regional Board files searching for reports related to each FY11 inspection listed in the State’s CIWQS database or EPA’s ICIS database. The San Diego Regional Board did not have any missing inspection reports. EPA reviewers could not locate inspection reports for the following inspections conducted by the San</p>

Francisco Regional Board:

1. West County Agency Outfall (CA0038539), 3 dates
2. Cordina Los Trancos Landfill (CA0029947), 11/18/2010
3. Bay Ship and Yacht (CA0030121), 2/4/2011
4. Mountain View SD WWTP (CA0037770), 11/2/2010

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
6b Inspection reports completed within prescribed timeframe (San Francisco)	100%		9	25	36.0%
6b Inspection reports completed within prescribed timeframe (San Diego)	100%		1	11	9.1%

State Response

Water Board staff concurs with U.S. EPA’s recommendations and will add a report completion date on the inspection form to keep track of the inspection turnaround times. The National Pollutant Discharge Elimination System (NPDES) Wastewater Roundtable has established business rules for completion of compliance inspection reports and when these reports need to be sent to the facilities. The established business rules are consistent with U.S. EPA’s recommendations of a 30-day turnaround time for non-sampling inspections and a 45-day turnaround time for sampling inspections. However, it was not clear to program staff that data entry into CIWQS within these turnaround times is a requirement for completion of reports. Thus, the State Water Board staff will present an item to the NPDES Wastewater Roundtable to clarify that the turnaround times do include input into CIWQS.

Water Board staff uses a standard inspection form when conducting facility inspections. Currently, the form does not contain a block for signature and date. Thus, to remedy this issue, State Water Board staff will add an inspector signature and date block to the form. In addition, State Water Board staff will add to the form a table that contains a summary of the monitoring data and commentary on facility compliance with effluent limitations.

Recommendation	<p>California should develop a standard operating procedure for writing inspection reports by December 2015 that includes:</p> <ul style="list-style-type: none"> • A standard inspection report format • A requirement for all inspection reports to be signed and dated by the inspector and the author of the inspection report when the report is completed • Deadlines for completing inspection reports (30 days for compliance evaluation inspection reports and 45 days for sampling inspection reports) • A method for tracking the timeliness of report • A summary of self-monitoring report effluent data and a commentary on facility compliance with effluent limits
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Element 3 — Violations

Metrics 7a1, 8b and 8c: Tracking of single event violations.

Finding 3-1	Area for State Improvement
Summary	California is not entering single event violations (SEVs) into EPA’s ICIS database as required for major facilities.
Explanation	<p>Metric 7a1 measures whether SEVs are determined by means other than the automatic method in ICIS. SEVs reviewed in inspection and enforcement files at major facilities are not reported consistently in ICIS as required under EPA’s data management policy. Five SEVs noted in files for major facilities reviewed at the San Diego Regional Board were not reported in ICIS. SEVs are required to be entered for major facilities and minor facilities that are pretreatment control authorities as indicated in the December 28, 2007 EPA memorandum, <i>ICIS Addendum to the Appendix of the 1985 Permit Compliance System Statement</i> (p.9).</p> <p>Although California is not entering SEVs in EPA’s ICIS database, California is currently entering SEVs into the main permitted discharger portion and the SSO portion of their California Integrated Water Quality System Project (CIWQS) state database.</p> <p>Metric 8b measures the percentage of SEVs accurately identified as SNC or non-SNC by the state. California generally does not record SEVs in ICIS and does not flag SEVs as SNC. EPA has established an automated and discretionary criteria for flagging discharger violations as SNC. California relies on the automated DMR-based criteria to flag effluent</p>

	limits and reporting violations as SNC, but does not normally make discretionary labeling of SEV violations as SNC.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	7a1 Number of major facilities with single event violations (state-wide)					
	8b Single-event violations accurately identified as SNC or non-SNC (San Francisco)	100%		0	0	
	8b Single-event violations accurately identified as SNC or non-SNC (San Diego)	100%		6	6	100%
	8c Percentage of SEVs identified as SNC reported timely at major facilities (San Francisco)	100%				
	8c Percentage of SEVs identified as SNC reported timely at major facilities (San Diego)	100%				
State Response	Water Board staff concurs with U.S. EPA’s recommendation. As described in the draft report, SEVs must be entered into CIWQS. The Water Boards can include these records in the data flow that will be required by the new eReporting Rule. Water Board staff will meet with U.S. EPA staff within one year to discuss electronic options for the transfer of SEV data from CIWQS to ICIS.					
Recommendation	<ul style="list-style-type: none"> The Region will meet with California within one year to discuss options for the transfer of SEV data from CIWQS to ICIS. 					

Element 3 — Violations

Metric 7e: Accuracy of compliance determinations

Finding 3-2	Meets or Exceeds Expectations
Summary	Inspection reports generally provide sufficient information to ascertain compliance determinations on violations found during inspections.
Explanation	Metric 7e measures the percentage of inspection reports reviewed that led to an accurate compliance determination. The number of inspection reports that led to accurate compliance determinations (93.3%) is within the acceptable range of the national goal of 100%.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	7e Inspection reports reviewed that led to an accurate compliance determination (San Francisco)	100%		18	19	95%
7e Inspection reports reviewed that led to an accurate compliance determination (San Diego)	100%		10	11	91%	
State Response	None					
Recommendation	None required.					

Element 3 — Violations
Metrics 7d1 and 8a2: Major facilities in significant non-compliance

Finding 3-3	Meets or Exceeds Expectations
Summary	The rate of SNC at major facilities is lower than the national average.
Explanation	<p>Metric 7d1 measures the percent of major facilities in non-compliance reported in ICIS. State-wide noncompliance at major facilities in California is 59.7% according to information available in data metric 7d1. Noncompliance at major facilities in the San Francisco Regional Board is slightly higher than the state-wide rate with 29 of 48 major facilities (60.4%) in noncompliance. Noncompliance at major facilities in the San Diego Regional Board is slightly under the state-wide rate with 12 of 24 facilities (50%) in noncompliance. Considering that major facilities in California have stringent effluent limits, a high frequency of effluent monitoring, many effluent limit parameters, and that only a single effluent violation places a major facility in noncompliance, California’s rates of noncompliance, which appear high, are better than the national average noncompliance rate of 71.2%.</p> <p>Metric 8a2 measures the percentage of major facilities in significant noncompliance. Fifty-five of the 268 major facilities in California are in SNC. The rate of SNC in California (20.5%) is slightly under the national average of 22.3%. Seven of 56 major facilities in the San Francisco Regional Board (12.5%) are in SNC. The SNC rate in the San Diego Regional Board is comparable to the state-wide SNC rate with 5 of 24 major facilities (20.8%) in SNC.</p>

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	7d1 Major facilities in noncompliance (state-wide)		71.2%	151	253	59.7%
	7d1 Major facilities in noncompliance (San Francisco)			29	48	60.4%
	7d1 Major facilities in noncompliance (San Diego)			12	24	50%
	8a2 Percentage of major facilities in SNC (state-wide)		22.3%	55	268	20.5%
	8a2 Percentage of major facilities in SNC (San Francisco)			7	56	12.5%
	8a2 Percentage of major facilities in SNC (San Diego)			5	24	20.8%
State Response	None					
Recommendation	None required.					

Element 4 — Enforcement
Metric 9a: Enforcement actions promoting return to compliance

Finding 4-1	Meets or Exceeds Expectations
Summary	Enforcement actions reviewed generally promote return to compliance.
Explanation	Metric 9a measures the percent of enforcement responses that return or will return the source to compliance. Five of 6 enforcement actions reviewed promote return to compliance. Three of four enforcement actions reviewed for the San Francisco Regional Board promote return to compliance, while two of two San Diego Regional Board enforcement actions reviewed promote return to compliance. The finding level is identified as Meets or Exceeds Expectations because only one enforcement action did not promote return to compliance.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	9a Percentage of enforcement responses that return or will return source in violation to compliance (San Francisco)	100%		3	4	75.0%
	9a Percentage of enforcement responses that return or will return source in violation to compliance (San Diego)	100%		2	2	100%
State Response	None					
Recommendation	None required.					

Element 4 — Enforcement

Metrics 10a1 and 10b: Timely and appropriate enforcement actions

Finding 4-2	Area for State Improvement
Summary	Enforcement actions taken at major and non-major facilities are not timely or appropriate. This is a recurring issue from previous reviews of California's NPDES program.
Explanation	<p>For this finding, EPA used two metrics (metrics 10a1 and 10b) to evaluate whether California is addressing violations with appropriate enforcement actions and whether California's enforcement responses were taken in a timely manner.</p> <p>Metric 10a1 was used to assess California response to SNC level violations at major facilities. EPA policy is that no more than 2% of the total majors in the state should be in SNC for 2 quarters or more without an appropriate enforcement action. It appears that California may have had up to 4% of their majors in SNC for two quarters or more without appropriate enforcement.</p>

The following enforcement mechanisms are considered appropriate enforcement: Cease and Desist Orders, Time Schedule Orders, and Cleanup and Abatement Orders. EPA policy dictates that an enforcement action is considered timely if it is issued within 5 ½ months at the end of the quarter when the SNC level violations initially occurred.

State-wide, 5 of 22 enforcement actions³ (22.7%) were timely and appropriate responses to SNC violations at major facilities. No timely and appropriate enforcement actions were reported in the San Francisco or San Diego Water Boards. They have 5 untimely actions reported in FY 2011.

The state took enforcement action in almost all of the actions reviewed. Some of these actions, such as administrative civil liability actions, mandatory minimum penalties, and staff enforcement letters, were not considered appropriate enforcement for this metric.

Four of the 22 facilities in SNC for a late DMR submittal, submitted their SMRs to the state on time and EPA understands that the state would not take an enforcement action in these cases. There was also one facility, the California Men's Colony WWTF, in which EPA Region 9 has taken the lead by issuing an administrative order.

Metric 10b was used to assess California's enforcement response to any type of violation (SNC or lower level violations) at any type of facility (major, minor or general permit discharger). EPA's evaluation of metric 10b was based on review of 28 files selected in the San Francisco and San Diego Regional Boards. EPA expectations for enforcement response are provided in its Enforcement Management System which includes the strict expectations cited above for enforcement response to major facility SNC violations as well as the somewhat more subjective guidelines for responses to non-SNC violations.

Enforcement responses in files reviewed also show that timely action is not always taken at major and non-major facilities in response to violations. Of the 28 files reviewed, 10 actions had timely responses to SNC violations. Four of 16 actions taken (25%) in the San Francisco Regional Board and 6 of 12 actions taken (50%) in the San Diego Regional Board were timely.

³The SRF data metrics analysis for metric 10a1 shows that 4 of 18 enforcement actions were timely and appropriate, but the results for this metric were revised slightly after comparing these results to data metrics analysis results of metric 8a1 - Facilities in SNC for 2 or more quarters.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	10a1 Major facilities with timely action as appropriate (state-wide)	≥98%	15.4%	5	22	22.7%
10a1 Major facilities with timely action as appropriate (San Francisco)	≥98%	15.4%	0	1	0%	
10a1 Major facilities with timely action as appropriate (San Diego)	≥98%	15.4%	0	4	0%	
10b Enforcement responses reviewed that address violations in a timely manner (San Francisco)	100%		4	16	25.0%	
10b Enforcement responses reviewed that address violations in a timely manner (San Diego)	100%		6	12	50.0%	

State Response	
	<p>Water Board staff disagrees with U.S. EPA’s target that all major facilities that have significant noncompliance (SNC) violations for the same violation for two or more quarters must have formal compliance orders. Compliance orders, particularly Cease and Desist Orders and Time Schedule Orders, must have due process, public notice and Water Board approval before becoming effective. Thus, they involve significant staff time and effort. It is not reasonable for the Water Boards to issue these compliance orders in a two and a half-month period after the second SNC to meet U.S. EPA’s definition of timely. Typically, these orders take three to six months to be approved by the Water Boards.</p> <p>The State Water Board adopted its Enforcement Policy in 2010. The Enforcement Policy describes actions that the Water Boards can take for permit violations including informal enforcement actions, compliance orders, and administrative civil liability actions (monetary penalties). Please note that there are means available to the Water Boards other than strict enforcement to address permit violations. Based on Water Board staff experience, providing assistance to dischargers to come back into compliance can also be effective in many cases. The Water Boards will continue to use the Enforcement Policy to identify the appropriate actions to address violations.</p> <p>As stated in the explanation for this finding, the state took enforcement actions in 18 of the 22 cases reviewed by U.S. EPA. The Water Boards will work with U.S. EPA to identify those facilities that have not had enforcement actions for SNC violations and will take the necessary actions to ensure that these facilities return to compliance.</p>

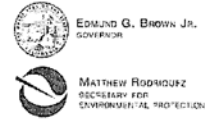
Recommendation	<ul style="list-style-type: none"> Starting in October 2015, EPA will send a letter to the state and regional boards each quarter that lists the SNC facilities and reminds them of their obligation to take timely and appropriate enforcement. EPA will be prepared to take enforcement if the state is not able to take enforcement or requests assistance.
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Element 5 — Penalties
Metrics 11a, 12, and 12b: Penalty calculation and collection

Finding 5-1	Meets or Exceeds Expectations
Summary	Consideration of economic benefit and gravity is well documented in files reviewed.
Explanation	<p>Metric 11a assesses the states method for calculating penalties and whether it properly documents the economic benefit and gravity components in its penalty calculations. Documentation of economic benefit and gravity consideration in penalty calculation is consistent among the Regional Water Quality Control Boards examined in this review as shown in the table below for metric 11a. Eight of 8 penalties calculations reviewed document both economic benefit and gravity. The San Francisco water board has 5 of 5 penalties (100%) with adequate documentation to provide supporting evidence on the calculation methodology for both economic benefit and gravity. Three of 3 penalties reviewed (100%) for the San Diego water board have penalty calculations that document both economic benefit and gravity.</p> <p>Metric 12a assesses whether the state documents the rationale for changing penalty amounts when the final value is less than the initial calculated value. Penalty calculations consistently document changes between initial and final penalties as shown in the table below for metric 12a. All penalty calculations reviewed for the San Francisco Regional Board have documentation of the rationale for a change between the initial and the final penalty. No changes to initial penalties are reported for the San Diego Regional Board.</p> <p>Metric 12b assesses whether the state documents collection of penalty payments. The state has collected 8 of the 8 penalties assessed in FY 2011 as shown in the table below for metric 12b. Five of 5 San Francisco water board penalties have been collected. All 3 penalties reviewed for the San Diego water board were collected.</p>

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	11a Penalty calculations reviewed that consider and include gravity and economic benefit (San Francisco)	100%		5	5	100%
	11a Penalty calculations reviewed that consider and include gravity and economic benefit (San Diego)	100%		3	3	100%
	12a Documentation of the difference between initial and final penalty and rationale (San Francisco)	100%		5	5	100%
	12a Documentation of the difference between initial and final penalty and rationale (San Diego)	100%		0	0	
	12b Penalties collected (San Francisco)	100%		5	5	100%
	12b Penalties collected (San Diego)	100%		3	3	100%
	State Response	None				
Recommendation	None required.					

Appendix



State Water Resources Control Board

AUG 19 2015

Ms. Kathleen Johnson
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Dear Ms. Johnson:

U.S. ENVIRONMENTAL PROTECTION AGENCY DRAFT REPORT ON REVIEW OF ENFORCEMENT PROGRAMS OF REGIONAL WATER QUALITY CONTROL BOARDS

Thank you for providing the State Water Resources Control Board (State Water Board) the opportunity to comment on the June 10, 2015 draft report on the results of the U.S. Environmental Protection Agency's (U.S. EPA) 2012 State Review Framework for the National Pollutant Discharge Elimination System Program. The State Water Board's response contained in this letter is provided on behalf of the State Water Board and the San Francisco Bay and San Diego Regional Water Quality Control Boards (collectively, Water Boards).

The draft report provides findings and recommendations for five major enforcement program elements: data, inspections, violations, enforcement actions, and penalties. Our detailed response is provided in the enclosure to this letter.

Water Board staff is looking forward to discussing our response to the draft report findings and recommendations with your staff at our next regularly-scheduled U.S. EPA - Water Board coordination meeting.

Sincerely,



Thomas Howard
Executive Director

Enclosure

cc: see next page

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

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 RECYCLED PAPER

Ms. Kathleen Johnson

- 2 -

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Enclosure
State Water Resources Control Board Response to
U.S. Environmental Protection Agency Draft Report on Review of
Regional Water Quality Control Boards Enforcement Programs

This enclosure includes a detailed response to the June 10, 2015 draft report on the results of United States Environmental Protection Agency's (U.S. EPA's) 2012 State Review Framework of the State Water Resources Control Board's (State Water Board) enforcement program with additional review of the San Francisco Bay and San Diego Regional Water Quality Control Boards' (collectively, Water Boards) enforcement programs. The responses provided below discuss how the Water Boards' enforcement programs: (1) meet or exceed expectations in findings 1-1, 2-1, 2-2, 3-2, 3-3, 4-1, and 5-1; and (2) need improvement to address findings 1-2, 2-3, 3-1, and 4-2.

U.S. EPA Finding 1-2: *Sixty-three percent of files reviewed did not have complete information reported to U.S. EPA. Data accuracy in files reviewed is well below the 100 percent national goal.*

Response: Unreported violations and enforcement actions are the most frequently cited data accuracy issues. The process of entering the Water Boards' inspection and enforcement action data into U.S. EPA's Integrated Compliance Information System (ICIS) currently involves many steps. Once an action is taken, such as completing an inspection or issuing an enforcement action, Water Board staff must enter a complete record into the Water Boards' California Integrated Water Quality System (CIWQS). Twice a year, Water Board staff generates reports from CIWQS for U.S. EPA's contractor to enter into ICIS. The Water Boards look forward to implementing a new data entry process, in compliance with the new eReporting Rule, which sends data (including inspection and enforcement action records) to ICIS and eliminates duplicative manual data entry into ICIS. Water Board staff will continue to work cooperatively with U.S. EPA staff to identify opportunities to improve data quality in the current process and to ensure good quality data are being correctly entered into both databases.

U.S. EPA Finding 2-3: *Timeliness of inspection reports. The majority of inspection reports were not dated or completed within U.S. EPA's recommended timelines. There were inspections reported into U.S. EPA's ICIS database with no corresponding inspection report in the file. Also, many inspection reports were not signed by the inspector.*

Response: Water Board staff concurs with U.S. EPA's recommendations and will add a report completion date on the inspection form to keep track of the inspection turnaround times. The National Pollutant Discharge Elimination System (NPDES) Wastewater Roundtable has established business rules for completion of compliance inspection reports and when these reports need to be sent to the facilities. The established business rules are consistent with U.S. EPA's recommendations of a 30-day turnaround

Enclosure
State Water Resources Control Board Response to
U.S. Environmental Protection Agency Draft Report on Review of
Regional Water Quality Control Boards Enforcement Programs

time for non-sampling inspections and a 45-day turnaround time for sampling inspections. However, it was not clear to program staff that data entry into CIWQS within these turnaround times is a requirement for completion of reports. Thus, State Water Board staff will present an item to the NPDES Wastewater Roundtable to clarify that the turnaround times do include input into CIWQS.

Water Board staff uses a standard inspection form when conducting facility inspections. Currently, the form does not contain a block for signature and date. Thus, to remedy this issue, State Water Board staff will add an inspector signature and date block to the form. In addition, State Water Board staff will add to the form a table that contains a summary of the monitoring data and commentary on facility compliance with effluent limitations.

U.S. EPA Finding 3-1: *California is not entering single event violations (SEVs) in U.S. EPA's ICIS database as required for major facilities.*

Response: Water Board staff concurs with U.S. EPA's recommendation. As described in the draft report, SEVs must be entered into CIWQS. The Water Boards can include these records in the data flow that will be required by the new eReporting Rule. Water Board staff will meet with U.S. EPA staff within one year to discuss electronic options for the transfer of SEV data from CIWQS to ICIS.

U.S. EPA Finding 4-2: *Enforcement actions taken at major and non-major facilities are not timely or appropriate. This is a recurring issue from previous reviews of California's NPDES program.*

Response: Water Board staff disagrees with U.S. EPA's target that all major facilities that have significant noncompliance (SNC) violations for the same violation for two or more quarters must have formal compliance orders. Compliance orders, particularly Cease and Desist Orders and Time Schedule Orders, must have due process, public notice and Water Board approval before becoming effective. Thus, they involve significant staff time and effort. It is not reasonable for the Water Boards to issue these compliance orders in a two and a half-month period after the second SNC to meet U.S. EPA's definition of timely. Typically, these orders take three to six months to be approved by the Water Boards.

The State Water Board adopted its Enforcement Policy in 2010. The Enforcement Policy describes actions that the Water Boards can take for permit violations including

Enclosure
State Water Resources Control Board Response to
U.S. Environmental Protection Agency Draft Report on Review of
Regional Water Quality Control Boards Enforcement Programs

informal enforcement actions, compliance orders, and administrative civil liability actions (monetary penalties). Please note that there are means available to the Water Boards other than strict enforcement to address permit violations. Based on Water Board staff experience, providing assistance to dischargers to come back into compliance can also be effective in many cases. The Water Boards will continue to use the Enforcement Policy to identify the appropriate actions to address violations.

As stated in the explanation for this finding, the state took enforcement actions in 18 of the 22 cases reviewed by U.S EPA. The Water Boards will work with U.S EPA to identify those facilities that have not had enforcement actions for SNC violations and will take the necessary actions to ensure that these facilities return to compliance.

STATE REVIEW FRAMEWORK

South Coast Air Quality Management District

**Clean Air Act
Implementation in Federal Fiscal Year 2011**

**U.S. Environmental Protection Agency
Region 9**

**Final Report
September 16, 2015**

Executive Summary

Introduction

The U.S. Environmental Protection Agency (EPA) Region 9 Air & TRI Enforcement Office conducted a State Review Framework (SRF) enforcement program oversight review of the South Coast Air Quality Management District.

EPA bases SRF findings on data and file review metrics, and conversations with program management and staff. EPA will track recommended actions from the review in the SRF Tracker and publish reports and recommendations on the EPA ECHO web site.

Areas of Strong Performance

Aspects of the compliance monitoring and enforcement program for which South Coast is implementing at a high level include the following:

- **The AIRS/CMS Status Report:** South Coast has developed this report to ensure the accuracy of a reported Full Compliance Evaluation (FCE). In preparing and completing this report, South Coast has instituted an additional step in its data reporting process to improve/maintain accurate FCE reporting.
- **On-Line Complaint Reporting System:** In addition to the telephone hotline, South Coast has completed an on-line system for citizens to immediately contact the agency regarding potential hazards. To a large degree, South Coast is a complaint driven organization and has inspectors on 24 hour call, contacts complainants individually, and provides for citizens to sign up and receive notifications regarding instances such as unexpected flaring (Flare Notification System).
- **Blue Sky Inspections:** To improve compliance, South Coast regularly conducts a compliance monitoring “blitz” of larger facilities known as Blue Sky Inspections. Such inspections involve a team of inspectors (6-10) with each having a designated function and responsibility for a particular issue/area/equipment. These inspections last for 3-4 days. Initially carried out at refineries on an annual basis, these comprehensive inspections are being expanded to other sectors such as landfills.
- **Inspector Training:** South Coast has institutionalized a formal program to ensure inspectors have the required training to stay current on program implementation, including new rules/regulations and innovative compliance approaches. The formal training program includes month-long classroom training and mentoring for new inspectors; refresher courses, as needed, for experienced inspectors; compliance guidelines; and a tracking system to ensure all inspectors are up-to-date with necessary training.

Most Significant CAA Stationary Source Program Issues¹

- Untimely Entry of MDRs

FY'11 reported data indicates SCAQMD does not timely report compliance monitoring activities, HPV determinations, stack test actions, and enforcement actions. EPA requests activities be reported to AFS within 60 days of completion, except for stack test date and results for which an agency has 120 days to report. SCAQMD did not report any HPVs within 60 days of the date of the HPV determination (or Day Zero Date Achieved). SCAQMD is also not meeting timeliness goals with regard to compliance monitoring activities, stack tests and enforcement actions. For the latter two, the agency is well below the national average.

¹ EPA's "National Strategy for Improving Oversight of State Enforcement Performance" identifies the following as significant recurrent issues: "Widespread and persistent data inaccuracy and incompleteness, which make it hard to identify when serious problems exist or to track state actions; routine failure of states to identify and report significant noncompliance; routine failure of states to take timely or appropriate enforcement actions to return violating facilities to compliance, potentially allowing pollution to continue unabated; failure of states to take appropriate penalty actions, which results in ineffective deterrence for noncompliance and an unlevel playing field for companies that do comply; use of enforcement orders to circumvent standards or to extend permits without appropriate notice and comment; and failure to inspect and enforce in some regulated sectors."

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I. Background on the State Review Framework

The State Review Framework (SRF) is designed to ensure that EPA conducts nationally consistent oversight. It reviews the following local, state, and EPA compliance and enforcement programs:

- Clean Water Act National Pollutant Discharge Elimination System
- Clean Air Act Stationary Sources (Title V)
- Resource Conservation and Recovery Act Subtitle C

Reviews cover:

- **Data** — completeness, accuracy, and timeliness of data entry into national data systems
- **Inspections/Evaluations** — meeting inspection/evaluation and coverage commitments, inspection (compliance monitoring) report quality, and report timeliness
- **Violations** — identification of violations, determination of significant noncompliance (SNC) for the CWA and RCRA programs and high priority violators (HPV) for the CAA program, and accuracy of compliance determinations
- **Enforcement** — timeliness and appropriateness, returning facilities to compliance
- **Penalties** — calculation including gravity and economic benefit components, assessment, and collection

EPA conducts SRF reviews in three phases:

- Analyzing information from the national data systems in the form of data metrics
- Reviewing facility files and compiling file metrics
- Development of findings and recommendations

EPA builds consultation into the SRF to ensure that EPA and the state/local understand the causes of issues and agree, to the degree possible, on actions needed to address them. SRF reports capture the agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state/local programs.

Each state/local programs are reviewed once every four years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2013 and will continue through FY 2016.

II. SRF Review Process

Review period: FY 2011

Key dates:

- Kickoff letter sent to South Coast Air Quality Management District: August 27, 2012
- Kickoff meeting conducted: September 18, 2012
- On-site CAA file review: September 18 – September 20, 2012
- Draft report sent to South Coast: May, 2015
- Report finalized: September, 2015

State and EPA key contacts for review:

South Coast Air Quality Management District

- Mohsen Nazemi, Deputy Executive Officer
- Ken Mangelsdorf, AFS plant and compliance data
- Laura Cantu, AFS enforcement data

EPA Region 9

- Matt Salazar, Chief, Air and TRI Section

At Time of Review:

- Doug McDaniel, Chief, Air Compliance/Enforcement (at time of review)
- Joe Westersund, Inspector/Case Developer, Air Office
- John Borton, Air Data Coordinator

III. SRF Findings

Findings represent EPA’s conclusions regarding state/local performance and are based on findings made during the data and/or file reviews and may also be informed by:

- Annual data metric reviews conducted since the previous state/local SRF review
- Follow-up conversations with state/local agency personnel
- Review of previous SRF reports, Memoranda of Agreement, or other data sources
- Additional information collected to determine an issue’s severity and root causes

There are three categories of findings:

Meets or Exceeds Expectations: The SRF was established to define a base level or floor for enforcement program performance. This rating describes a situation where the base level is met and no performance deficiency is identified, or a state/local performs above national program expectations.

Area for State/Local Attention: An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, the state/local should correct the issue without additional EPA oversight. EPA may make recommendations to improve performance, but it will not monitor these recommendations for completion between SRF reviews. These areas are not highlighted as significant in an executive summary.

Area for State/Local Improvement: An activity, process, or policy that one or more SRF metrics show as a significant problem that the agency is required to address. Recommendations should address root causes. These recommendations must have well-defined timelines and milestones for completion, and EPA will monitor them for completion between SRF reviews in the SRF Tracker.

Whenever a metric indicates a major performance issue, EPA will write up a finding of Area for State/Local Improvement, regardless of other metric values pertaining to a particular element.

The relevant SRF metrics are listed within each finding. The following information is provided for each metric:

- **Metric ID Number and Description:** The metric’s SRF identification number and a description of what the metric measures.
- **Natl Goal:** The national goal, if applicable, of the metric, or the CMS commitment that the state/local has made.
- **Natl Avg:** The national average across all states, territories, and the District of Columbia.
- **State N:** For metrics expressed as percentages, the numerator.
- **State D:** The denominator.
- **State % or #:** The percentage, or if the metric is expressed as a whole number, the count.

Clean Air Act Findings

Element 1 — Data							
Finding 1-1	Area For State/Local Attention						
Summary	The File Review indicated that information reported into AFS was not always consistent with the information found in the files reviewed.						
Explanation	<p>File Review Metric 2b evaluates the completeness and accuracy of reported MDRs in AFS. As a result of the large universe of major sources within its jurisdiction, South Coast reports a substantial amount of information to AFS and is commended for doing so. Twenty-two reviewed files contained information consistent with the data reported to AFS. However, the File Review also uncovered discrepancies between what is reported to AFS and what is indicated in certain evaluation files. The discrepancies varied ranging from “minor” inconsistencies found in many files regarding facility addresses and evaluation dates to more significant data inaccuracies such as violations not accurately identified and reported into AFS as HPVs, NOVs issued and stack tests conducted not being reported into AFS, and reporting of PCEs as FCEs.</p> <p>Given the current processes South Coast has in place for collecting and thereafter submitting data to AFS, the amount of substantial discrepancies found in comparison to the overall amount of information reported does not signify a significant problem that is required to be formally addressed or necessitates additional EPA oversight.</p>						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	2b- Accurate MDR Data in AFS		100%		22	41	53%
State Response	None						
Recommendation	None. EPA commends South Coast for the reporting a large amount of data into AFS and for the vast majority being accurate.						

Element 1 — Data	
Finding 1-2	Area for State/Local Improvement
Summary	The relevant data metrics indicate that South Coast is not consistently entering MDRs for compliance and enforcement activities into AFS within the appropriate time frame.
Explanation	<p>Timeliness is measured using the date the activity is achieved and the date it is reported to AFS. All HPV determinations are to be reported to AFS within 60 days. Metric 3a2 measures whether HPV determinations are entered into AFS in a timely manner (within 60 days) in accordance with the AFS Information Collection Request (AFS ICR) in place during FY 2011. The metric indicates that no HPV determination was reported timely. The average number of days used was 153 days. The data also indicates that SCAQMD is only reporting HPVs four times a year.</p> <p>Metric 3b1 measures the timeliness for reporting compliance-related MDRs (FCEs and Reviews of Title V Annual Compliance Certifications). Out of 802 individual actions, 623 were reported within 60 days (77.7%). This is approximately the national average but still below the goal of 100%. On average, SCAQMD reported compliance monitoring actions within 40 days.</p> <p>Metric 3b2 evaluates whether stack test dates and results are reported within 120 days of the stack test. Out of 713 stack tests, only 163 were reported within 120 days (22.9%). On average, SCAQMD reported stack tests and their results in 208 days. South Coast does not report the stack test itself until the results of the test are known. As a consequence of reviewing and determining the results well beyond 120 days of when the stack test occurred, both the date and results of the test are reported late.</p> <p>Metric 3b3 measures timeliness for reporting enforcement-related MDRs within 60 days of the action. The actions reported by SCAQMD were Notices of Violations and Administrative Orders. All but one of the enforcement actions were reported late. The average number of days to report an enforcement action was 165 days. On average, Notices of Violations were reported in 240 days while Administrative Orders were reported in 128 days.</p>

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	3a2- Untimely Entry of HPVs	0			24	
3b1 – Timely Reporting of Compliance Monitoring MDRs	100%	78.6%	623	802	77.7%	
3b2 – Timely Reporting of Stack Test Dates and Results	100%	75.5%	163	713	22.9%	
3b3 – Timely Reporting of Enforcement MDRs	100%	76.1%	1	39	2.6%	

State Response	
	<p>Since the SRF Review in 2012, SCAQMD has made several significant changes to our data gathering and reporting process. In general, inspectors now report each Partial Compliance Evaluation (PCE) within a week from the date the activity takes place. SCAQMD has also initiated a process where a weekly report of all NOV's issued to major sources is extracted from our database and is reported to ICIS-AIR on a weekly basis following the procedure outlined in Section VII—Reporting HPVs into ICIS AIR, of the Revised 2014 Procedure for Timely and Appropriate Enforcement Response to High Priority Violation. [Note: SCAQMD attaches to their comment letter a flow chart that SCAQMD has developed to demonstrate the procedure they are now following to enter NOV's into ICIS-AIR in a timely manner.] We will also implement a process where the Supervising Inspector or Enforcement Manager will make the determination whether the NOV is a Federally Reportable Violation (FRV), or a more serious High Priority Violation (HPV) according to EPA guidelines. Previously, SCAQMD has reported all violations as HPVs. SCAQMD investigated this timeliness issue and discovered that even though all NOV's issued to TV sources were entered in the AFS-AIRS database, they were entered under the inspection action code RV, in the RDE 16 Comment field, and not into the Date field, and thus the data entered were not extracted for the data analysis for the relevant metric. As indicated earlier, this is now entered appropriately in the Date field, and within about a week of the issuance of the NOV's.</p> <p>The SCAQMD will also utilize a similar approach to timely reporting of stack test data, however, the Title V sources do not send the test reports consistently to the requested Post Office Box that the SCAQMD has identified, and instead frequently they are sent to different Divisions within the agency. SCAQMD is</p>

	working on a process to track and enter source test data for TV sources into ICIS-AIR in a timely manner.
Recommendation	EPA commends South Coast for being at the national average for timely reporting of compliance monitoring MDRs, no small feat given the number of sources. We recommended SCAQMD analyze the process for reporting of compliance monitoring MDRs, making improvements to increase the percentage by 10/31/15, and apply similar processes to reporting stack test dates and results and enforcement MDRs by 12/30/15. SCAQMD is now doing so. EPA’s Region 9 Air & TRI enforcement office will monitor through oversight calls & data reviews. If by 3/30/16 reviews show that procedures are adequate to meet the national goal, the recommendation will be considered completed.

Element 1 — Data

Finding 1-3	Area for State/Local Attention
Summary	The relevant metrics indicate that South Coast is not updating compliance status when an alleged violation is identified.
Explanation	<p>Metrics 7b1, 7b2 and 7b3 use indicators of an alleged violation to measure the rate at which violations are accurately reported into AFS. Violations are reported by changing the compliance status of the relevant air program pollutant in AFS. Metrics 7b1 and 7b3 are “goal” indicators with a goal of 100% of violations reported.</p> <p>Metric 7b1 indicates that for <u>all</u> 12 NOV’s issued, South Coast did not change the compliance status to either “in violation” or “meeting schedule.”</p> <p>Similarly, for HPV’s, Metric 7b3 indicates that for all 21 HPV’s identified at major sources in FY2011, South Coast did not change the compliance status to either “in violation” or “meeting schedule.”</p> <p>This review was conducted in 2012, and these noted issues were indeed problems at that time. However, as a result of changes to the HPV/FRV policy of 2014, the AFS-to-ISIS-Air transition in 2015, and the revised SRF Air Metrics which will be effective in FY 2016, these issues will</p>

	no longer be noted as problems in FY2016 SRFs. Therefore, we will require no further action at this time.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	7b1 – Violations Reported Per Informal Actions	100%	62.2%	0	12	0%
	7b3 – Violations Reported Per HPV Identified	100%	69.6%	0	21	0%
State Response	Upon further discussions with EPA Region 9 staff, it was determined that the requirements set forth in this section are no longer requirements in [federal FY2016]; therefore EPA has required no further action by SCAQMD in that area.					
Recommendation	EPA agrees with the State comment. No further action required.					

Element 2 — Inspections/Evaluations

Finding 2-1	Meets Expectations					
Summary	South Coast met the negotiated frequency for compliance evaluations of CMS sources.					
Explanation	This Element evaluates whether the negotiated frequency for compliance evaluations is being met for each source. South Coast met the national goal for the relevant metrics. Please note: since South Coast does not have a synthetic minor rule, the agency does not have an SM80 universe.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	5a – FCE Coverage Majors	100%				100%
	5b – FCE Coverage SM80s	N/A				N/A
	5c – FCE Coverage CMS non-SM80s	N/A				N/A
	5d – FCE Coverage CMS Minors	N/A				N/A

State Response	
Recommendation	None. EPA commends South Coast for a perfect score and being a model agency for full compliance evaluations at major facilities, an impressive accomplishment given the large number of sources.

Element 2 — Inspections/Evaluations

Finding 2-2	Area for State/Local Attention
--------------------	---------------------------------------

Summary	South Coast did not fully complete the required review for each Title V Annual Compliance Certification (ACC).
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Explanation	This Element evaluates whether the delegated agency has completed the required review for Title V Annual Compliance Certifications. While South Coast has exceeded the national average; the goal for annual review of Title V certifications is 100%. The data indicates that 98 certifications were not timely reviewed in FY 2011. A possible explanation for the untimely reviews is that the review of an ACC is not immediately performed upon submittal but is delayed until the inspector is conducting the on-site evaluation. Such a review process may allow for violations to go unnoticed for a lengthy period of time. To avoid such a result, South Coast is advised to review all ACCs upon submittal. Since this situation does not constitute a significant pattern of deficiencies nor a significant problem impacting overall program implementation, this is designated as an Area for Local Attention.
--------------------	--

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	5e – Review of TV ACCs	100%	72.5%			78.9%

State Response	
-----------------------	--

Recommendation	None. EPA commends South Coast for being above the national average for reviewing Title V Annual Compliance Certifications, especially given the large number of sources. However, we suggest instituting by 7/31/15 a policy to review ACCs as they arrive.
-----------------------	--

Element 2 — Inspections/Evaluations

Finding 2-3	Meets Expectations																							
Summary	Overall, the South Coast compliance monitoring reports (CMRs) provided sufficient documentation to determine compliance and included all elements as discussed in the Clean Air Act Stationary Source Compliance Monitoring Strategy (CMS policy).																							
Explanation	<p>The files reviewed with a Full Compliance Evaluation (FCE) each contained the CMR elements as discussed in the CMS policy. While the CMRs, in general, provided sufficient documentation, the brevity and limited discussion in certain CMRs made it somewhat difficult to readily have a complete understanding of the inspector’s activities and to confirm that all the activities necessary to complete an FCE were done.</p> <p>To assist South Coast inspectors to both efficiently write CMRs and to improve the quality and completeness of CMRs, the inspectors should review the example CMRs that EPA has provided at the link below: http://www.epa-otis.gov/srf/srf_compliance_monitoring_reports.html</p> <p>The CMS policy provides state/local agencies flexibility in the formatting of their CMRs. Inspectors should be efficient in writing reports in order to maximize time available for field presence. However, the reports should be sufficiently complete in order to fully document non-compliance and assist future inspectors in understanding the details and outcome of previous evaluations.</p> <p>One basic element of the CMRs is the inspector’s observations. However, South Coast inspectors are often documenting that the facility is “in compliance.” Such a statement may have an unintended consequence on future enforcement. Instead of indicating a facility is in compliance, it would be sufficient and appropriate to state that no violations or deficiencies were observed at the time of the evaluation.</p>																							
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>6a – Documentation of FCE Elements</td> <td>100%</td> <td></td> <td></td> <td></td> <td>100%</td> </tr> <tr> <td>6b – CMRs/Sufficient Documentation to Determine Compliance</td> <td>100%</td> <td></td> <td></td> <td></td> <td>100%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	6a – Documentation of FCE Elements	100%				100%	6b – CMRs/Sufficient Documentation to Determine Compliance	100%				100%
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6a – Documentation of FCE Elements	100%				100%																			
6b – CMRs/Sufficient Documentation to Determine Compliance	100%				100%																			
State Response																								
Recommendation	None required. EPA commends South Coast for a perfect score and being a model agency for documentation of full compliance evaluation elements																							

and CMRs/Sufficient Documentation to Determine Compliance, no small feat given the number of sources.

Element 3 — Violations

Finding 3-1 Area for State/Local Attention

Summary In general, compliance determinations are accurately made and promptly reported into AFS based on the CMRs reviewed and other compliance monitoring information. However, the File Review also indicated potential concern regarding accurate HPV identification.

Explanation Metric 7a is designed to evaluate the overall accuracy of compliance determinations and Metric 8c focuses on the accurate identification of violations that are determined to be HPVs. In large part and for the majority of files reviewed, South Coast made an accurate compliance determination and accurately reported the determination in AFS. However, the review of files also uncovered potential instances where an HPV was not accurately identified and/or reported for limited circumstances such as for stack test failure, failure to conduct a stack test, failure to submit a Title V application, expiration of a Title V permit or where AFS was showing a facility in compliance during the period the facility was identified as HPV.

The use of the Notice to Comply (NOC) to address non-compliance should be reviewed to ensure its proper use. A review of one facility file indicated that a notice of violation may have been the appropriate response to a substantive recordkeeping violation rather than an NOC.

South Coast should be reporting HPVs and Federally Reportable Violations (FRVs) consistent with current EPA Guidance. The reporting of both FRVs and HPVs enhances the ability to determine if all HPVs are being accurately identified.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	Metric 7a – Accurate Compliance Determinations	100%				
Metric 8c – Accuracy of HPV Determinations	100%					

State Response	
Recommendation	None. EPA commends South Coast for making accurate compliance determinations and accurately reporting the determinations in AFS.

Element 3 — Violations

Finding 3-2	Meets Expectations												
Summary	South Coast exceeds the national average for HPV discovery rate.												
Explanation	For active major sources, South Coast is identifying HPVs at a slightly higher percentage than the national average which is significant since the agency is responsible for compliance monitoring and enforcement in one of the nation’s most extreme non-attainment areas.												
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>Metric 8a – HPV Discovery Rate at Majors</td> <td></td> <td>3.9%</td> <td>21</td> <td>488</td> <td>4.5%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	Metric 8a – HPV Discovery Rate at Majors		3.9%	21	488	4.5%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #								
Metric 8a – HPV Discovery Rate at Majors		3.9%	21	488	4.5%								
State Response													
Recommendation	None required. EPA commends South Coast for exceeding the national average for HPV discovery rate.												

Element 4 — Enforcement

Finding 4-1	Meets Expectations
Summary	Enforcement actions include required corrective action that will return facilities to compliance in a specified timeframe.
Explanation	Enforcement actions files reviewed returned the source to compliance. The HPVs reviewed had an appropriate enforcement response.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	9a – Formal Enforcement Returns Facilities to Compliance	100%				100%
	10b – Appropriate Enforcement Responses for HPVs	100%				100%
State Response						
Recommendation	None required. EPA commends South Coast for a perfect score.					

Element 4 — Enforcement

Finding 4-2	Meets Expectations					
Summary	The South Coast HPVs are being addressed in a timely manner.					
Explanation	Metric 10a is designed to evaluate the extent to which the agency takes timely action to address HPVs. Twenty-five of the 26 HPVs reviewed were addressed within 270 days and therefore met the timeliness standard. However, in three cases the HPV determination occurs after the addressing action resulting in a negative value for the number of days used to address. Regardless, even when these instances are excluded from the metric, SCAQMD only required, on average, 62 days to address an HPV. Such a result far exceeds the national average. The one HPV that required more than 270 days was addressed in 280 days.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	10a – Timely Action Taken to Address HPVs		63.7%	25	26	96.2%
State Response						
Recommendation	None required. EPA commends South Coast for a score well above the national average.					

Element 5 — Penalties

Finding	Meets Expectations					
Summary	South Coast considers and documents gravity and economic benefit consistent with national guidance. Final penalty payments are documented in the files and the rationale for any differences between the initial and final penalty are also documented.					
Explanation	The File Review indicated that South Coast has sufficient procedures in place to appropriately document both gravity and economic benefit in penalty calculations. Also, penalty payments are being sufficiently documented along with any difference between initial and final penalty.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	11a – Penalty Calculations Reviewed that Document Gravity and Economic Benefit	100%				100%
	12a – Documentation of Rationale for Difference Between Initial and Final Penalty	100%				100%
	12b – Penalties Collected	100%				100%
State Response						
Recommendation	None required. EPA commends South Coast for a perfect score.					

Appendix



**South Coast
Air Quality Management District**
21865 Copley Drive, Diamond Bar, CA 91765-4182
(909) 396-2000 - www.aqmd.gov

*Office of the Executive Officer
Barry R. Wallerstein, D. Env.
909.396.2100, fax 909.396.3340*

August 20, 2015

Ms. Kathleen H. Johnson
Director
Enforcement Division
U.S. EPA Region 9
75 Hawthorne Avenue
San Francisco, CA 94105

Re: SCAQMD Response and Comments on EPA Region 9's State Review
Framework (SRF) Draft Report

Dear Ms. Johnson:

Thank you for your letter dated May 11, 2015 and the enclosed draft report prepared by EPA Region 9 on the results of the State Review Framework (SRF) that was conducted in 2012 of South Coast Air Quality Management District (SCAQMD) enforcement program for Title V sources. In your letter, EPA Region 9 requested SCAQMD's comments on the draft report before it becomes final.

We appreciate the opportunity you provided to comment on this draft report and also the extension of time that you provided to respond. We also appreciate the time you and your staff have taken to discuss this draft report during conference calls and the subsequent face to face meeting on July 2, 2015 at Region 9 office, which resulted in a subsequent revision to the draft report provided on July 8, 2015 via email by Matt Salazar, Enforcement Division Manager, of your staff.

The SRF review and the draft report overall acknowledges that SCAQMD Compliance and Enforcement showed strong performances in a number of areas. As part of this review, EPA Region 9 evaluated and provided findings in 11 areas under 5 different elements. The 5 elements include: Data; Inspection/Evaluation; Violations; Enforcement; and Penalties.

Of the 11 areas evaluated, EPA Region 9 initially identified needs for improvements in two areas under "Data" element. However, upon further discussions with EPA Region 9 staff, it was determined that one of the two areas of improvement is no longer a requirement in 2015, therefore EPA has required no further action by SCAQMD in that area and there is only one area that EPA has specified improvements are needed. SCAQMD's response for the one area that improvement is needed is provided below.

Area Identified for Improvement

Element 1 – Data / Finding 1-2

EPA Findings: The relevant data metrics indicate that South Coast is not consistently entering MDRs for compliance and enforcement activities into AFS within the appropriate time frame.

EPA Recommendation: EPA commends South Coast for being at the national average for timely reporting of compliance monitoring MDRs, no small feat given the number of sources. We recommend SCAQMD analyze the process for reporting of compliance monitoring MDRs, make improvements to increase the percentage by 9/30/15, and apply similar processes to reporting stack test dates and results and enforcement MDRs by 12/30/15. EPA's Region 9 Air & TRI enforcement office will monitor through oversight calls & data reviews. If by 3/30/16 reviews show that procedures are adequate to meet the national goal, the recommendation will be considered complete.

SCAQMD Response: Since the SRF Review in 2012, SCAQMD has made several significant changes to our data gathering and reporting process. In general, Inspectors now report each Partial Compliance Evaluation (PCE) within a week from the date the activity takes place. SCAQMD has also initiated a process where a weekly report of all NOV's issued to major sources is extracted from our database and is reported to ICIS-AIR on a weekly basis following the procedure outlined in Section VII –Reporting HPVs into ICIS AIR of the Revised 2014 Procedure for Timely and Appropriate Enforcement Response to High Priority Violation. Attached to this letter, please find a flow chart that SCAQMD has developed to demonstrate the procedure that we are now following to enter NOV's into ICIS-AIR in a timely manner. We will also implement a process where the Supervising Inspector or Enforcement Manager will make the determination whether the NOV is a Federally Reportable Violation (FRV), or a more serious, High Priority Violation (HPV) according to EPA guidelines. Previously, SCAQMD has reported all violations as HPVs. SCAQMD investigated this timeliness issue and discovered that even though all NOV's issued to TV sources were entered in the AFS-AIRS database, they were entered under the inspection action code RV, in the RDE 16 in the Comment field, and not into the Date field, and thus the data entered were not extracted for the data analysis for the relevant metric. As indicated earlier, this is now entered appropriately in the Date field and within about a week of the issuance of the NOV's.

Ms. Kathleen Johnson

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August 20, 2015

The SCAQMD will also utilize a similar approach to timely reporting of stack test data, however, the Title V sources do not send the test reports consistently to the requested Post Office Box that the SCAQMD has identified and instead frequently they are sent to different Divisions within the agency. SCAQMD is working on a process to track and enter source test data for TV sources into ICIS-AIR in a timely manner.

If you have any questions please contact Mohsen Nazemi, Deputy Executive Officer, Engineering & Compliance at mnzaemil@aqmd.gov or at 909-396-2662.

Sincerely,



Barry R. Wallerstein, D.Env.
Executive Officer

BRW/MN

Attachment

South Coast Air Quality Management District FRV & HPV Data Collection and Data Entry

