



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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JUN 05 2017

Ref: 8ENF-PJ

Martha E. Rudolph, Director  
Environmental Programs  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

Re: Final State Review Framework (SRF) Evaluation Results for Fiscal Year 2015

Dear Ms. Rudolph:

Enclosed you will find the final SRF report summarizing the evaluation of Colorado's Clean Air Act Stationary Source, Resource Conservation and Recovery Act Subtitle C, and National Pollutant Discharge Elimination System enforcement programs for federal Fiscal Year 2015. This Environmental Protection Agency Region 8 report incorporates comments received from both the Colorado Department of Public Health and Environment and the EPA's Office of Compliance. We look forward to working with your office in utilizing the results of this evaluation to advance our shared objective of protecting public health and the environment in Colorado.

Please do not hesitate to contact me at (303) 312-6352, or have your staff contact David Piantanida at (303) 312-6200 ([piantanida.david@epa.gov](mailto:piantanida.david@epa.gov)) with any questions about this Report or the SRF review process. Program-specific questions may be directed to the EPA program contacts identified in the report. We look forward to working with you and furthering our critical EPA-State partnership.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Opekar".

Kimberly S. Opekar  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure:

cc: Via email

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David Piantanida, SRF Coordinator, Enforcement, Compliance and Environmental Justice, Region 8

# **STATE REVIEW FRAMEWORK**

## **Colorado**

**Clean Water Act, Clean Air Act, and  
Resource Conservation and Recovery Act  
Implementation in Federal Fiscal Year 2015**

**U.S. Environmental Protection Agency  
Region 8, Denver**

**Final Report  
May 23, 2017**

# Executive Summary

## Introduction

The EPA Region 8 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Colorado Department of Public Health and the Environment.

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

## Areas of Strong Performance

### CWA

- The state's penalty calculations consider and include, as appropriate, both gravity and economic benefit components. The state files contain documentation of penalty payment.

### CAA

- The state met and exceeded the inspection commitments for both Major and SM80 sources according to their Compliance Monitoring Schedule (CMS) plan.
- The state exceeded the expectations for both compliance determinations and HPV determinations by implementing HPV determination worksheets that confirm that appropriate determinations have been assessed.
- The state took timely and appropriate enforcement to ensure sources return to compliance.

### RCRA

- The state meets the national goal of 100% entry of data that is complete and accurate based on file reviews.
- The state takes timely and appropriate action to address violations identified during inspections.
- The state's penalty calculations consider and include, as appropriate, both gravity and economic benefit components. The state files contain documentation of penalty payment and supplemental environmental project (SEP) implementation, as appropriate.

## Priority Issues to Address

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

### CWA

- ICIS did not contain complete and accurate data for all facilities. The EPA recommends that the state revise its procedures to address entry into ICIS of all new informal enforcement actions (e.g., compliance advisory letters) issued to majors and non-majors as well as SEVs at majors and non-majors in accordance with the state's EMS.

## **CAA**

- There were no priority areas to address in the CAA Stationary Sources (Title V) Program.

## **RCRA**

- There were no priority areas to address in the RCRA Subtitle C Program.

## **Most Significant CWA-NPDES Program Issues<sup>1</sup>**

- Inspection reports did not clearly and consistently document findings and describe the full scope of inspection. The EPA recommends that the state revise its templates or issue supplemental guidance to ensure that inspection reports capture these important details.
- Unauthorized discharges at major facilities were not identified as SNC in the inspection report compliance determination or as significant single event violations in ICIS. The EPA recommends that the state revise its inspection templates to ensure the scope of inspection activities are clearly documented in a checklist or a supporting narrative that is part of the report.
- Informal enforcement actions did not consistently require or receive a response from the facility in order to achieve a documented return to compliance. The EPA recommends that the state implement procedures to ensure that compliance advisory letters require time-bound corrective action responses and to ensure that a resolution to noncompliance is consistently documented in the files and/or ICIS data.
- The state did not consistently use formal enforcement actions in a timely manner and to appropriately address SNC violations. The EPA recommends that the state follow its own internal guidance and the EPA's policy to address unresolved SNC violations within prescribed time frames.

## **Most Significant CAA Stationary Source Program Issues**

- There were no findings that fell into the 'Area for State Improvement' category and therefore, there are no significant CAA issues that require state improvement.

## **Most Significant RCRA Subtitle C Program Issues**

- There were no findings that fell into the 'Area for State Improvement' category and therefore, there are no significant RCRA issues that require state improvement.

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<sup>1</sup> 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 the 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

The 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

The EPA builds consultation into the SRF to ensure that the 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. The 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 five 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 2017.

## II. SRF Review Process

**Review period:** FY 2015

**Key dates:**

- SRF Kick-Off Letter: February 17, 2016 (See Appendix A)
- CWA NPDES File Review: April 25-29, 2016
- CAA File Review: May 31- June 2, 2016
- RCRA File Review: April 24-29, 2016

**State and EPA key contacts for review:**

**Key EPA Review Contacts**

- \*Kaye Mathews SRF Coordinator: (303) 312-6889, [mathews.kaye@epa.gov](mailto:mathews.kaye@epa.gov)
- Randy Lamdin RCRA Lead: 303-312-6350, [lamdin.randy@epa.gov](mailto:lamdin.randy@epa.gov)
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- Adam Eisele CAA File Reviewer: (303) 312-6838, [eisele.adam@epa.gov](mailto:eisele.adam@epa.gov)

\*David Piantanida is the new SRF coordinator, (303) 312-6200, [piantanida.david@epa.gov](mailto:piantanida.david@epa.gov)

**Key State of Colorado Review Contacts**

- Patrick Pfaltzgraff (CWA): 303-692-3509; [patrick.j.pfaltzgraff@state.co.us](mailto:patrick.j.pfaltzgraff@state.co.us)
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### III. SRF Findings

Findings represent the EPA’s conclusions regarding state performance and are based on findings made during the data and/or file reviews. They 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 where 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. The 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 the agency is required to address. Recommendations should address root causes. These recommendations must have well-defined timelines and milestones for completion, and the EPA will monitor them for completion between SRF reviews in the SRF Tracker.

Whenever a metric indicates a major performance issue, the 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

## Clean Water Act Findings

CWA Element 1 — Data						
<b>Finding 1-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	The state’s DMR entry rate for major facilities exceeds the national goal.					
<b>Explanation</b>	Based on an analysis of data in the Integrated Compliance Information System (ICIS) at the time of the review, 123 of 124 major facilities had all expected discharge monitoring reports (DMRs) present in the database for FY 2015. The state’s performance for this metric is above the national goal and national average.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	1b2 DMR entry rate for major facilities	>=95%	96.7%	5152	5158	99.9%
<b>State response</b>	No comments.					
<b>Recommendation</b>	None required.					

## CWA Element 1 — Data

<b>Finding 1-2</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	The State’s permit limit rate for major facilities is above the national goal when accounting for major permits that lack numeric limits.					
<b>Explanation</b>	Based on an analysis of ICIS data at the time of the review, seven of the state’s 124 major facilities did not have any permit limits coded into ICIS. Four of these majors were Municipal Separate Storm Sewer System (MS4) permittees that do not have numeric effluent limits, leaving three permittees with numeric limits that were not entered into ICIS. The state’s performance for this metric is above the national goal after adjusting the value for metric 1b1 to account for the four MS4 permits. Permit limits for majors are required to be entered per the EPA’s 2007 memorandum “ICIS Addendum to the Appendix of the 1985 Permit Compliance System Policy Statement.”					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	1b1 Permit limit rate for major facilities	>=95%	90.9%	117	124	94.4%
<b>State response</b>	No comments. However, Colorado believes that all numeric limits are correctly entered into ICIS.					
<b>Recommendation</b>	None required.					

**CWA Element 1 — Data**

<b>Finding 1-3</b>	<b>Area for State Improvement</b>																							
<b>Summary</b>	ICIS did not contain complete and accurate data for all facilities.																							
<b>Explanation</b>	<p>Thirteen of the files reviewed did not have complete and/or accurate data reported to ICIS for one or more of the MDRs listed in the EPA’s 2007 memorandum “ICIS Addendum to the Appendix of the 1985 Permit Compliance System Policy Statement.”</p> <p>Missing data included a single event violation (SEV) for a stormwater violation identified during a major facility process water inspection, presumably with code BN19B-1, and compliance advisory (CA) letters for six major facilities issued by the Field Services Section and Clean Water Enforcement Unit. CA letters seeking corrective actions are considered informal enforcement and, along with SEVs, are part of the MDRs for majors. In accordance with the Performance Partnership Agreement (PPA) with the EPA, the state enters CA letters into ICIS when they address significant noncompliance identified during stormwater inspections; however, entry into ICIS of CA letters issued to major wastewater facilities is not currently part of the state’s business process.</p> <p>Inaccurate or incomplete data included address information for four facilities and incorrect permit status for two facilities.</p>																							
<b>Relevant metrics</b>	<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>2b Files reviewed where data are accurately reflected in the national data system</td> <td>100%</td> <td>n/a</td> <td>24</td> <td>37</td> <td>64.9%</td> </tr> <tr> <td>7a1 Number of major facilities with single event violations</td> <td>n/a</td> <td>n/a</td> <td>-</td> <td>-</td> <td>16</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2b Files reviewed where data are accurately reflected in the national data system	100%	n/a	24	37	64.9%	7a1 Number of major facilities with single event violations	n/a	n/a	-	-	16
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7a1 Number of major facilities with single event violations	n/a	n/a	-	-	16																			
<b>State response</b>	Colorado will work on refining existing business process to address informal enforcement actions for majors. However, due to existing resource limitations, Colorado will work with Region VIII staff to develop an action plan to address the necessary business process changes by September 30, 2017, with full implementation of the updated business process changes and associated ICIS entries by September 30, 2018.																							
<b>Recommendation</b>	1. The state should revise its procedures by September 30, 2017, to address entry into ICIS of all new informal enforcement actions																							

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(e.g. compliance advisory letters) issued to majors and non-majors as well as SEVs at majors and non-majors in accordance with definitions for actionable violations in the state's Enforcement Management System; however, SEVs discovered during construction stormwater inspections that will not lead to formal enforcement action are not considered part of the minimum set of required NPDES data. Entry of SEVs should conform to the 2008 Single Event Violation Data Entry Guide for ICIS-NPDES and NPDES Electronic Reporting Rule requirements.

2. The state should provide the EPA with a summary of the above procedural changes by September 30, 2017, and implement the changes during FY 2018.
  3. At the conclusion of FY 2018, the EPA will check ICIS for informal enforcement records and review a sample of at least three inspection reports to verify that SEV records are being entered. The EPA will close this recommendation after verifying that these records are being entered.
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## CWA Element 2 — Inspections

<b>Finding 2-1</b>	<b>Meets or Exceeds Expectations</b>																																																																												
<b>Summary</b>	The state satisfied nearly all of its inspection commitments for FY 2015.																																																																												
<b>Explanation</b>	<p>The State’s Clean Water Program Facility Inspection Plan (Inspection Plan) for FY 2015 contained inspection commitments covering all categories of NPDES-regulated facilities except pretreatment (metrics 4a1 and 4a2, for which the state is not authorized) and combined sewer overflows (CSOs – metric 4a4, of which the state has no facilities). The state satisfied all inspection commitments with the exception of individually permitted non-majors (metric 5b1).</p> <p>The national goal listed for each of the relevant metrics is 100% of the state’s Inspection Plan commitment.</p>																																																																												
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<b>Recommendation</b>	None required.																																																																												

## CWA Element 2 — Inspections

<b>Finding 2-2</b>	<b>Area for State Attention</b>					
<b>Summary</b>	Inspection reports were not consistently completed and signed within the goal timeframe.					
<b>Explanation</b>	The state completed, signed, and transmitted 22 of 25 inspection reports to facilities within the state’s goal time frame of 45 days. The three inspection reports that did not meet the goal were distributed across the Clean Water Compliance Unit, Field Services Section, and Environmental Agriculture Program. Thirty days was the average amount of time for inspection report completion across the 24 reports reviewed.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	6b Inspection reports completed within prescribed timeframe	100%	n/a	22	25	88%
<b>State response</b>	No comments.					
<b>Recommendation</b>	None required.					

## CWA Element 2 — Inspections

<b>Finding 2-3</b>	<b>Area for State Improvement</b>												
<b>Summary</b>	Inspection reports did not clearly and consistently document findings and describe the full scope of inspection.												
<b>Explanation</b>	<p>Nine of the 25 inspection reports reviewed lacked one or more critical pieces of information. In three of those reports, potential regulatory deficiencies were not clearly identified. The distinction between “marginal” and “satisfactory,” as undefined terms, was unclear for the purpose of making a compliance determination in one report. Information about an unpermitted discharge known at the time of inspection was not identified in one report.</p> <p>The other four of seven reports lacked important information to support the findings of the inspection. Examples included the following:</p> <ul style="list-style-type: none"> <li>• A lack of photographs or other documentary support for violations observed in one process water inspection;</li> <li>• No checklist or narrative information beyond the Water Compliance Inspection Report data entry form to document all the items evaluated during the inspection. This report relied only on use of one word (e.g. “Satisfactory”) in the Areas Evaluated section of the standard checklist without any support to show what was reviewed in the areas of pretreatment and sludge/biosolids, for example; and</li> <li>• The scope of field site review (e.g. areas inspected, such as all industrial areas, receiving waters, etc.) was not clear for two reduced-scope industrial stormwater inspections.</li> </ul> <p>The national expectation to describe the scope of field activities and items evaluated during the inspection is included in the EPA’s NPDES Compliance Inspection Manual (2004). Missing documentation of areas inspected is a repeat finding from the FY 2010 SRF review.</p>												
<b>Relevant metrics</b>	<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</td> <td>100%</td> <td>n/a</td> <td>17</td> <td>25</td> <td>68%</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	100%	n/a	17	25	68%
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	100%	n/a	17	25	68%								
<b>State response</b>	Colorado currently includes photographs when they are instrumental in demonstrating violations or non-compliance. No changes are planned to current processes. The EPA has not identified any failure of the division to												



	<p>meet delegation and PPA commitments, so no further reporting to the EPA is needed.</p> <p>The Clean Water Program Facility Inspection Plan – State Inspection year 2017 (the Colorado Inspection Plan) already identifies that inspection reports will not include “documentation of items evaluated for which a compliance finding was not generated.” No changes are planned for this current process. Colorado is not required to implement the EPA’s NPDES Compliance Inspection Manual (2004) outside of where it has committed to do so through the Colorado Inspection Plan. The EPA has not identified any failure of the division to meet delegation and PPA commitments, so no further reporting to the EPA is needed for these inspections.</p> <p>For reduced-scope industrial stormwater inspections, a field site review is required of all field conditions and controls. The cover letter defines the scope and only identifies that a reduced scope is for associated paperwork. Colorado has already made revisions to the inspection letter for reduced scope industrial stormwater inspections to further clarify. The EPA finding is not correct, and therefore no changes are needed to current processes.</p>
<p><b>Recommendation</b></p>	<ol style="list-style-type: none"> <li>1) The state should revise its inspection templates by September 30, 2017, to ensure that the scope of inspection activities is clearly documented either in a checklist or supporting narrative that is part of the report or via a reference in the report to the internal SOP used by the inspector to evaluate particular permit components.</li> <li>2) The state should send the EPA a status report by September 30, 2017, verifying that the above modifications were completed and implemented by the same date.</li> <li>3) The EPA may request a random sample of inspection reports to review if necessary. Once the EPA is satisfied that implementation of the improvements has addressed this finding, the EPA will close this recommendation.</li> </ol>

## CWA Element 3 — Violations

<b>Finding 3-1</b>	<b>Area for State Improvement</b>					
<b>Summary</b>	Unauthorized discharges at major facilities were not identified as significant non-compliance in inspection report compliance determinations or as significant single event violations in ICIS.					
<b>Explanation</b>	<p>File review found that the state consistently made compliance determinations stemming from inspections; however, the compliance determinations documented in the inspection report and/or cover letter for three of the 25 inspection reports reviewed did not flag unauthorized discharges and stormwater violations as significant non-compliance (SNC) to highlight their importance for correction. These SNC violations occurred at major facilities and consisted of discharges of pH and other constituents under a non-major expired permit in one case, discharge without a stormwater permit in a process water inspection (which was corrected post-inspection), and a stormwater SEV with code BN19B found during a process water inspection. None of these SNC violations were reported in ICIS as SEVs. Note for metric 7e that for two of these three files, the compliance determination was affected by this missing information.</p> <p>As a related matter, the state provided a list of sanitary sewer overflows (SSOs) that had occurred in 2011-2014. Some of the SSOs occurred from publicly owned treatment works with major NPDES permits. The list lacked SSOs in 2015, however. When asked if SSOs in 2015 were available and tracked in ICIS, the state responded that they were not all in ICIS. The threshold used by the state to enter this data into ICIS is SSOs with a volume greater than or equal to 50,000 gallons or more than four per year, which are criteria the state applies to all permittees with wastewater collection systems regardless of major/non-major status.</p> <p>SSOs and other SEVs at major permittees are minimum data requirements per the EPA’s 2007 memorandum “ICIS Addendum to the Appendix of the 1985 Permit Compliance System Policy Statement” and the EPA’s 2006 memorandum “Final Single Event Violation Data Entry Guide for the Permit Compliance System.”</p>					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	7e Inspection reports reviewed that led to an accurate compliance determination	100%	n/a	23	25	92%
	7a1 Number of major facilities with single event violations	n/a	n/a	-	-	16

7d1 Major facilities in noncompliance	n/a	74.2%	78	124	62.9%
8a2 Percentage of major facilities in SNC	n/a	19.2%	19	128	14.8%
8b Single-event violations accurately identified as SNC or non-SNC	100%	n/a	7	10	70%
8c Percentage of SEVs identified as SNC reported timely at major facilities	100%	n/a	6	9	66.7%
7f1 Non-major facilities in Category 1 noncompliance					87
7g1 Non-major facilities in Category 2 noncompliance					214

**State response** Colorado will work on refining existing business process to address SNC identified during inspection process and SEVs for majors and non-majors. However, due to existing resource limitations, Colorado will work with Region VIII staff to develop an action plan to address the necessary business process changes by September 30, 2017 with full implementation of the updated business process changes and associated ICIS entries by September 30, 2018.

**Recommendation**

- 1) The state should revise its procedures by September 30, 2017, to ensure that all actionable SEVs at majors and non-majors, in accordance with the state’s Enforcement Management System, are identified in inspection reports, regardless of whether they are discovered during the inspection or during a records review to support the inspection. These SEVs should also be entered into ICIS-NPDES in accordance with the 2008 Single Event Violation Data Entry Guide for ICIS-NPDES and NPDES Electronic Reporting Rule requirements. Note, however, that SEVs discovered during construction stormwater inspections that will not lead to formal enforcement action are not considered part of the minimum set of required NPDES data.
- 2) The state should provide the EPA with a summary of the above procedural changes by September 30, 2017, and implement the changes during FY 2018.
- 3) At the conclusion of FY 2018, the EPA will review a sample of at least three inspection reports to verify that SEVs are being identified as SNC when appropriate and entered into ICIS-NPDES as such. The EPA will close this recommendation after verifying that these records are being entered.

## CWA Element 4 — Enforcement

<b>Finding 4-1</b>	<b>Area for State Improvement</b>					
<b>Summary</b>	Informal enforcement actions did not consistently require or receive a response from the facility in order to achieve a documented return to compliance.					
<b>Explanation</b>	<p>In 27 of the files reviewed, the state used one or more CA letters as informal enforcement to identify corrective actions the facility needed to take to address non-compliance. Four CA letters, including one issued by the Field Services Section and three by the Clean Water Compliance Unit, did not ask for identified corrective actions to be taken, and/or a response to be submitted, within a specified time frame. Those CA letters did not result in a documented return to compliance, as the file contained no such evidence. In such circumstances when the state determines that a CA letter is necessary to identify corrective actions, those CA letters should contain language seeking follow-up by the facility. The EPA’s 1989 “The Enforcement Management System, National Pollutant Discharge Elimination System (Clean Water Act)” specifies enforcement standards for returning facilities to compliance, including the definition of violation letter (to which the CA letter is equivalent, chapter 2). Even though violation letters are not legally enforceable, they put violators on notice that a return to compliance is expected.</p> <p>Seven additional CA letters issued by the Clean Water Enforcement Unit, Clean Water Compliance Unit, Field Services Section, and Environmental Agriculture Program did not result in a return to compliance as judged by ICIS data and information in the file. In two of these instances, the state further escalated the matter to formal enforcement, whereas in the other five, no further action was demonstrated in the files to ensure a return to compliance.</p> <p>The state’s formal enforcement actions consistently required corrective actions to achieve a return to compliance within a specified time frame.</p>					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	9a Percentage of enforcement responses that return or will return source in violation to compliance	100%	n/a	28	39	71.8%
<b>State response</b>	Some compliance advisories and inspection reports do establish a deadline for corrective actions due to a variety of reasons. In some cases, return to compliance may be immediately; in other instances, Colorado does not					

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	<p>include a process to confirm a return to compliance through the active investigations. Tracking return to compliance for all identified violations, which would include isolated or minor noncompliance identified during inspection, can be very resource intensive with very little environmental outcome.</p> <p>Colorado believes that our informal enforcement actions are consistently applied and that our existing business processes do produce a documented return to compliance in most cases. However, in other cases a return to compliance can be beyond Colorado’s control (e.g. small communities needed funding to improve or upgrade facilities, failure of an entity to respond to a compliance advisory), in which case Colorado follows the protocol laid out in the 2016 EMS and escalates the matter appropriately.</p> <p>No changes are planned to current processes. The EPA has not identified any failure of the division to meet delegation and PPA commitments, so no further reporting to the EPA is needed.</p>
<b>Recommendation</b>	<ol style="list-style-type: none"><li>1) By September 30, 2017, the state should provide supplemental guidance and/or procedures to the four organizational units that issue CA letters regarding the necessity for CA letters to seek time-bound corrective actions. The state should implement this guidance beginning in FY 2018 and forward a copy of the language to the EPA.</li><li>2) The state should send the EPA a status report by September 30, 2017, verifying that the guidance and/or procedures from #1 above were completed and are in the process of being implemented. The EPA may request a random sample of files containing CA letters to review if necessary. Once the EPA is satisfied that implementation of the improvements has addressed this finding, the EPA will close this recommendation.</li></ol>

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## CWA Element 4 — Enforcement

<b>Finding 4-2</b>	<b>Area for State Improvement</b>																							
<b>Summary</b>	The state did not consistently use formal enforcement actions in a timely manner and to appropriately address SNC violations.																							
<b>Explanation</b>	<p>The state responded to SNC violations at two major permittees without an appropriate use of formal enforcement action. In both examples, effluent violations constituting SNC continued unabated more than 90 days beyond the violations first appearing on the Quarterly Noncompliance Report (QNCR) without a formal enforcement response from the state, although in the latter case the state ultimately took formal action that was not timely. This formal action and a CA letter issued to each facility constitute three of the six enforcement responses tabulated in metric 10b. The underlying policy guidance is EPA’s 2008 memo, Guidance on Timely and Appropriate Response to Significant Noncompliance Violations. The state’s internal Enforcement Management System (EMS) reflects these same time frames for SNC violations.</p> <p>Three other files documented the state’s use of formal and informal enforcement in a manner that was not timely with respect to the state’s internal EMS.</p> <p>Six major permittees had SNC violations in ICIS in FY 2015 that were not addressed by enforcement action in a timely manner. Metric 10a1 supports the file review analysis expressed in this finding.</p>																							
<b>Relevant metrics</b>	<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>10b Enforcement responses reviewed that address violations in an appropriate manner</td> <td>100%</td> <td>n/a</td> <td>33</td> <td>39</td> <td>84.6%</td> </tr> <tr> <td>10a1 Major facilities with timely action as appropriate</td> <td>&gt;=98%</td> <td>11.8%</td> <td>0</td> <td>6</td> <td>0%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	10b Enforcement responses reviewed that address violations in an appropriate manner	100%	n/a	33	39	84.6%	10a1 Major facilities with timely action as appropriate	>=98%	11.8%	0	6	0%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
10b Enforcement responses reviewed that address violations in an appropriate manner	100%	n/a	33	39	84.6%																			
10a1 Major facilities with timely action as appropriate	>=98%	11.8%	0	6	0%																			
<b>State response</b>	<p>It should be noted that beginning December 1, 1986, Colorado expanded the EPA's SNC definition to include minor dischargers as well. In Colorado during FY15, there were approximately 350 instances of reported SNC violations that persisted for two or more consecutive quarters. Resource limitations prohibited Colorado from taking actions in the prescribed timeframe for all of these violations. Colorado therefore prioritizes the expenditure of enforcement resources on the most egregious violators – whether they are majors or minors. Inevitably, these tend to be facilities with SNC violations that have persisted for longer than two</p>																							

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	<p>consecutive quarterly review periods. Due to existing resource limitations, Colorado believes that providing a report to the EPA outlining Colorado's responses to FY 2017 SNC violations at majors is unduly burdensome. Colorado believes the QNCR annotations we routinely provide to the EPA should suffice, and we will work with Region VIII staff to develop criteria outlining the type of information that the QNCR annotations are expected to include.</p>
<b>Recommendation</b>	<ol style="list-style-type: none"><li>1) The state and the EPA should expand the conversation surrounding the QNCR (or its successor report developed by the EPA) regarding majors in SNC. Beginning with the QNCR for the second quarter of FY 2017, the EPA will provide the state a preliminary QNCR in early May 2017, prior to the last Reportable Non-Compliance run and QNCR due date the same month. In accordance with prior procedures, the state should summarize the violation status of those facilities in writing. Then, during the quarterly oversight meeting that follows, the EPA and the state should discuss all facilities in SNC during the prior quarter. The state should express its plans for addressing SNC and its progress in addressing SNC with enforcement as appropriate to ensure that violations at facilities are resolved by 90 days after their first appearance on the QNCR (or its successor report developed by the EPA).</li><li>2) During the quarterly discussions identified in #1 above, the state should identify any challenges or impediments to resolving SNC at majors within the timeframe for timely and appropriate action. This conversation should also consider whether any assistance from the EPA is needed to promote timely resolution of SNC.</li><li>3) Between the dates of quarterly discussions of the QNCR, the state should notify the EPA of any instances in which the complexity of cases flagged on the QNCR might warrant additional time to resolve, beyond that discussed during quarterly meetings, and whether other enforcement mechanisms should be considered if negotiations become protracted.</li><li>4) The EPA will monitor metric 10a1 while #1-3 above are being implemented. Once the EPA is satisfied that ongoing communication via #1-3 has addressed this finding, this recommendation will be closed.</li></ol>

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## CWA Element 5 — Penalties

<b>Finding 5-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	State penalty actions accounted for gravity, economic benefit, the difference between initial and final penalty assessment, and penalty collection.					
<b>Explanation</b>	Six penalty actions were reviewed. Three of them were expedited settlements for stormwater violations, for which determination of gravity and economic benefit is not relevant. For all three traditional penalty actions, the state documented its determination of gravity and economic benefit as well as any difference between the initial and final assessed amounts. Five of the six penalty actions had a payment due date prior to the date of review, and all five were accompanied by evidence in the file that the penalty had been collected.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	11a Penalty calculations reviewed that consider and include gravity and economic benefit	100%	n/a	3	3	100%
	12a Documentation of the difference between initial and final penalty and rationale	100%	n/a	3	3	100%
	12b Penalties collected	100%	n/a	5	5	100%
<b>State response</b>	No comments.					
<b>Recommendation</b>	None required.					



## Clean Air Act Findings

CAA Element 1 — Data																														
<b>Finding 1-1</b>	<b>Meets or Exceeds Expectations</b>																													
<b>Summary</b>	The state's reporting of HPV determinations, compliance monitoring MDRs, stack test dates and results and enforcement MDRs was completed in a timely manner taking into account the transition from AFS to ICIS-Air and the resulting implementation/data reporting issues.																													
<b>Explanation</b>	<p>In regards to metric 3b1, the state's performance is more than 10% above the national average. The reporting performance would have been even better, however, due to the AFS to ICIS conversion, it resulted in nearly 170 entries not being accounted for. If we consider the entries affected by the transition as “counted,” the state would have a metric above 90%.</p> <p>In regards to metric 3b3, the state falls well short of the national goal and is more than 30% behind the national average. However, this metric does not accurately represent the state's performance because most of the not-counted entries were caused by the AFS to ICIS-AIR transition. If we consider those entries affected by the transition as “counted,” the state's metric would be about 90%.</p>																													
<b>Relevant metrics</b>	<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>3a2 Timely reporting of HPV determinations</td> <td>100%</td> <td>99.6%</td> <td>3</td> <td>3</td> <td>100%</td> </tr> <tr> <td>3b1 Timely reporting of compliance monitoring MDRs</td> <td>100%</td> <td>59%</td> <td>535</td> <td>705</td> <td>75.9%</td> </tr> <tr> <td>3b3 Timely reporting of enforcement MDRs</td> <td>100%</td> <td>47%</td> <td>34</td> <td>155</td> <td>21.9%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	3a2 Timely reporting of HPV determinations	100%	99.6%	3	3	100%	3b1 Timely reporting of compliance monitoring MDRs	100%	59%	535	705	75.9%	3b3 Timely reporting of enforcement MDRs	100%	47%	34	155	21.9%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																									
3a2 Timely reporting of HPV determinations	100%	99.6%	3	3	100%																									
3b1 Timely reporting of compliance monitoring MDRs	100%	59%	535	705	75.9%																									
3b3 Timely reporting of enforcement MDRs	100%	47%	34	155	21.9%																									
<b>State response</b>																														
<b>Recommendation</b>	N/A																													

## CAA Element 1 — Data

<b>Finding 1-2</b>	<b>Area for State Attention</b>
<b>Summary</b>	The MDRs were incomplete, incorrect or missing from ICIS-AIR.
<b>Explanation</b>	<p>There were several inconsistencies between the data entered to ICIS-AIR and the source files. Inconsistencies between the ECHO Detailed Facility Report (DFR) and the source file include: facility addresses, company names, facility names, HPV dates, formal action dates, penalty amounts listed with a formal action, and duplicate entries. None of these specific inconsistencies are systemic issues but rather appear to be isolated issues.</p> <p>Following a review of the state response and an internal review of potential database issues, it was determined that 8 of the 14 file inconsistencies identified in the file review process were caused by ECHO's Facility Registry System (FRS) "parent record" algorithm. The FRS issue is outside the control of the state's data stewards. A review of ICIS-Air records showed that the state appropriately reported the information for 8 of the 14 file inconsistencies. As such, the metric 2b has been updated to reflect these corrections.</p> <p>Additional database issues were identified in the differentiation of major, SM80 and non-SM80 sources. The state's database includes an Air Program of Title V on all SM/SM80 sources. This results in ICIS-Air calculating the wrong size of the source universe for major and SM80s.</p> <p>In regards to metric 3b2, the state falls about 14% below the national average. However, this does not accurately represent the state's performance because most of the not-counted entries were caused by the AFS to ICIS-AIR conversion. If we consider the entries affected by the transition as "counted," the state would have a metric well above 80%.</p> <p>In regards to metric 13, two of the three HPVs that were identified in FY15 were not reported in a timely manner into ICIS-AIR. The state is required to report HPVs to ICIS within 90 days after the date of the discovery action (Day Zero).</p> <p>According to the Detailed Facility Report (DFR), the two cases that did not report the HPV to ICIS-AIR within the 90-days after the Day Zero requirement were approximately 40-70 days late from the 90-day limit. The HPVs were determined to be late due to the metric calculation process for determining Day Zero. The state and the EPA have been in</p>

discussions to clarify that Day Zero, for cases of a failed stack test, occurs 90 days after the state reviews the stack test report, not on the date of the stack test. The late HPVs used the stack test date as Day Zero, not 90 days after the date the state reviewed the report.

Following a review of the state response, it has been determined that the guidance for determining Day Zero for failed stack tests was not clarified at the time Day Zero dates were entered into ICIS for both files with late HPV determinations. As such, the EPA has determined that the HPV determinations for all three files were made in a timely fashion according to the current HPV Day Zero guidance. Additionally, since the state has received clarification on Day Zero, the state has corrected the reported Day Zero dates in ICIS for the two files that had late HPV determinations. Given the additional context provided by the state the metric 13 was updated to be consistent with state performance.

**Relevant metrics**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
2b Accurate MDR data in ICIS-Air	100%		26	32	81.3%
3b2 Timely reporting of stack test dates and results	100%	59.7%	405	789	51.3%
13 Timeliness of HPV Determinations	100%	86.3%	3	3	100%

**State response**

For eight of the 14 file inconsistencies flagged, the inconsistencies appear to be caused by a database issue that is outside of the State’s control. All of the data provided by the State (in the State files and in ICIS-Air) is accurate for these eight files. The EPA ECHO Detailed Facility Report is pulling data that is showing inaccurate/outdated information and is not showing what the State entered into ICIS-Air. Therefore, the State % listed above is inaccurate; the State N should be 26 and the State D is 32, therefore the State % should be 81.3%.

For the other six file inconsistencies flagged, these appear to be isolated data entry errors. All errors have now been corrected in ICIS-Air and the State is committed to improving our quality assurance.

Regarding the incorrect source universe for major and SM80s, the State will be implementing the following to address this issue:

1. When a new Title V air program is created for a source, the State will only send this air program to ICIS-Air if the source is a Title V source. For SM80’s with a Title V air program, the air program will not be sent to ICIS-Air.

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	<p>2. The State will be updating ICIS-Air to delete the existing Title V air program for SM80's that have already been uploaded to ICIS-Air.</p> <p>These programming/database changes will be implemented and the source universe will be corrected in ICIS-Air by June 1, 2017.</p>
<b>Recommendation</b>	N/A

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## CAA Element 2 — Inspections

<b>Finding 2-1</b>	<b>Meets or Exceeds Expectations</b>
<b>Summary</b>	The state met its inspection commitments for major, SM-80 and minor sources (metrics 5a, 5b, 5c) as well as their Full Compliance Evaluation (FCE) element documentation and compliance monitoring reports documentation, (metrics 6a and 6b).
<b>Explanation</b>	<p>According to the state’s FY15 CMS plan, they had scheduled 210 major FCEs and 55 SM-80 FCEs. The state completed 208 of the 210 major FCE commitments from the CMS, which is consistent with metric 5a. However, there was a discrepancy between metric 5b and their CMS plan. They committed to 55 SM-80 FCEs in the CMS plan and they completed 78 (41% above the commitment).</p> <p>In regards to metric 5e, the Data Metric Analysis (DMAs) shows a Title V universe of 579 sources. This is inaccurate because the way the universe of Title V sources is determined from the state's database includes Title V, SM80 and SM sources. The correct universe for FY15 was 174 issued and active Title V permits. According to the state, they reviewed 173 of the Title V Annual Compliance Certifications (ACCs), although the metric only shows that 142 were reviewed. This discrepancy between 142 showing in the DMA and the 173 ACCs that were reviewed by the state appears to be due to multiple ACCs being submitted for the same AIRS ID and only being counted once. With these considerations, the state has an effective 5e metric value of about 99% (173/174).</p> <p>The state’s issue with differentiating sources into major, SM80 and non-SM80 is a result of including an Air Program of Title V on all SM/SM80 sources. This issue is addressed under finding 1-2 as an area for improvement and has an associated recommendation.</p> <p>During file review, the states’ documentation of the FCE elements (Metric 6a) was very good. It appeared the state had a uniform FCE inspection report format that ensured all required FCE elements were addressed.</p> <p>The files reviewed had sufficient documentation to determine compliance of the facility, satisfying metric 6b. All of the required information was included in the inspection reports. Uniformity of the reports made determination of compliance easy to follow and exceeded expectations.</p>

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	5a FCE coverage: majors and mega-sites	100%	63.2%	208	215	96.7%
5b FCE coverage: SM-80s	100%	79.5%	78	149	52.3%	
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan.	100%	42.6%	0	0	N/A	
5e Review of Title V annual compliance certifications	100%	39.1%	142	579	24.5%	
6a Documentation of FCE elements	100%		25	26	96.2%	
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility	100%		28	28	100%	
<b>State response</b>						
<b>Recommendation</b>	N/A					

### CAA Element 3 — Violations

<b>Finding 3-1</b>	<b>Meets or Exceeds Expectations</b>																								
<b>Summary</b>	Compliance determinations and HPV determinations were accurately evaluated. HPV identification was not timely reported into ICIS-AIR, but identification of serious violations, HPVs, were made correctly.																								
<b>Explanation</b>	<p>All of the files reviewed, except one, had accurate compliance determinations, and the compliance determinations were accurately reported in the Detailed Facility Report (DFR), satisfying metric 7a. The one file that did not meet this metric had two FRVs that were not listed in the DFR, and the applicable air program pollutant was not changed to “in violation.” The FRVs that were not entered into ICIS were data entry errors.</p> <p>All files reviewed had appropriate HPV determinations, satisfying metric 8c. In several source files an HPV determination worksheet was used to determine HPV status. The state noted that it is their practice that any violation shall be evaluated against the HPV criteria using the state's HPV determination worksheet, and these worksheets are to be removed from files after settlement.</p> <p>The EPA reviewed three high-priority violations identified by the state in FY 2015 during the on-site file review. All three of the HPV violations met the criteria for serious violations. Data entry issues regarding the appropriate Day Zero dates for the discovered HPVs are addressed under Element 1.</p>																								
<b>Relevant metrics</b>	<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>7a Accuracy of compliance determinations</td> <td>100%</td> <td></td> <td>31</td> <td>32</td> <td>96.9%</td> </tr> <tr> <td>8c Accuracy of HPV determinations</td> <td>100%</td> <td></td> <td>24</td> <td>24</td> <td>100%</td> </tr> <tr> <td>13 Timeliness of HPV determinations</td> <td>100%</td> <td>86.3%</td> <td>3</td> <td>3</td> <td>100%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	7a Accuracy of compliance determinations	100%		31	32	96.9%	8c Accuracy of HPV determinations	100%		24	24	100%	13 Timeliness of HPV determinations	100%	86.3%	3	3	100%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																				
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8c Accuracy of HPV determinations	100%		24	24	100%																				
13 Timeliness of HPV determinations	100%	86.3%	3	3	100%																				
<b>State response</b>	As mentioned in the “Explanation” section above, the state originally interpreted Day Zero to be 90 days after the date of the stack test. However, the state and the EPA had discussions to clarify that Day Zero for cases of a failed stack test occurs 90 days after the date the State reviews the test results, not 90 days after the date of the stack test. For the two cases flagged as not being reported to ICIS-Air within 90 days after Day Zero, the stack test date was originally identified as Day Zero, not the date the state reviewed the stack test results report. Therefore, Day Zero was corrected and changed in ICIS-Air after the original Day																								

Zero was reported. In both cases, a Compliance Advisory was issued to the source prior to Day Zero, and therefore, the State % of 33.3% listed above is not accurate; it should be 100%. Now that Colorado has clear guidance from the EPA on Day Zero for stack tests, there will be no errors in setting Day Zero in the future. Further details for both cases are provided below.

Grand River Gathering – Hunter Mesa CS (CO0000000804502222) -

Stack Test Date = 4/14/15

Stack Test Report Received = 6/11/15

Stack Test Report Reviewed = 6/22/15

Compliance Advisory Issued = 8/11/15

Day Zero= 9/20/15 (90 days from date report reviewed). Day Zero has been corrected in ICIS-Air.

Kerr McGee Ft Lupton/Platte Valley/Lancaster (CO0000000812300057)

Stack Test Date = 9/30/14

Stack Test Report Received = 11/12/14

Stack Test Report Reviewed = 11/24/14

Compliance Advisory Issued = 12/19/14

Day Zero = 2/22/15 (90 days from date report reviewed). Day Zero has been corrected in ICIS-Air.

In both cases, a Compliance Advisory was issued to the source prior to Day Zero, and therefore, the State was timely in identifying the cases as HPV. This finding should not be classified as an “Area for State Attention” as Colorado met the national goal of 100%.

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**Recommendation**

N/A

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**CAA Element 4 — Enforcement**

<b>Finding 4-1</b>	<b>Meets or Exceeds Expectations</b>																	
<b>Summary</b>	The state met its expectations with timely and appropriate enforcement to return the sources to compliance.																	
<b>Explanation</b>	<p>In regards to enforcement responses that require corrective action (metric 9a), The state has two main types of settlements: Early Settlement Agreements (ESA) and Compliance Orders on Consent (COC). In order to resolve a violation through ESA, the source must demonstrate compliance prior to signing the agreement. On the other hand, COCs have a compliance schedule associated with them that returns the source to compliance within a certain time frame stated in the COC. Only one file, out of a total of 23 files, did not have any formal enforcement (ESA or COC) response documented in the source file.</p> <p>In regards to timeliness of addressing HPVs (metric 10a), 3 of the 7 files with HPV violations were settled within the 180 days of Day Zero. 3 more were settled after 180 days but had a Case Development and Resolution Timeline (CD&amp;RT) in place and were discussed at quarterly HPV meetings. One file was selected from FY14 so the file selection had at least 5 files with new HPV cases. For this file, the HPV case began and settled before the 2014 HPV guidance update. This case met the 1998 HPV policy and was settled within 270 days.</p> <p>In regards to HPV cases that have been addressed/removed consistent with the HPV policy (metric 10b). All of the HPV violations were settled using a COC formal action in FY15 or settled using a formal action in FY16.</p> <p>In regards to HPV CD&amp;RT (metric 14). All three HPV cases that were not concluded within 180 days had a CD&amp;RT in place that was discussed verbally during each quarterly meeting until settlement.</p>																	
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th data-bbox="483 1541 1003 1612">Metric ID Number and Description</th> <th data-bbox="1003 1541 1073 1612">Natl Goal</th> <th data-bbox="1073 1541 1175 1612">Natl Avg</th> <th data-bbox="1175 1541 1245 1612">State N</th> <th data-bbox="1245 1541 1315 1612">State D</th> <th data-bbox="1315 1541 1417 1612">State % or #</th> </tr> </thead> <tbody> <tr> <td data-bbox="483 1623 1003 1793">9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule.</td> <td data-bbox="1003 1623 1073 1793">100%</td> <td data-bbox="1073 1623 1175 1793"></td> <td data-bbox="1175 1623 1245 1793">22</td> <td data-bbox="1245 1623 1315 1793">23</td> <td data-bbox="1315 1623 1417 1793">95.7%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule.	100%		22	23	95.7%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule.	100%		22	23	95.7%													

	10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place.	100%	7	7	100%
	10b Percent of HPVs that have been have been addressed or removed consistent with the HPV Policy.	100%	7	7	100%
	14 HPV Case Development and Resolution Timeline in Place When Required that Contains Required Policy Elements	100%	3	3	100%
<b>State response</b>					
<b>Recommendation</b>	N/A				

## CAA Element 5 — Penalties

<b>Finding 5-1</b>	<b>Meets or Exceeds Expectations</b>																							
<b>Summary</b>	The state has met the expectations regarding collection of penalties and documentation of penalty calculation differences.																							
<b>Explanation</b>	<p>In regards to documentation of rationale for differences between initial and final penalty (metric 12a), none of the 5 penalty calculations had differences between the initial penalty calculations and the final penalty assessed.</p> <p>In regards to documenting penalties collected (metric 12b), documentation of penalty payment was provided for 15 of the 16 files. The only non-payment case involved extenuating circumstances including company bankruptcy, no appreciable assets, and inability to contact owner. As such, the state took appropriate actions to attempt to collect penalties.</p>																							
<b>Relevant metrics</b>	<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>12a Documentation of rationale for difference between initial penalty calculation and final penalty</td> <td>100%</td> <td></td> <td>0</td> <td>0</td> <td>N/A</td> </tr> <tr> <td>12b Penalties collected</td> <td>100%</td> <td></td> <td>15</td> <td>16</td> <td>93.8%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	12a Documentation of rationale for difference between initial penalty calculation and final penalty	100%		0	0	N/A	12b Penalties collected	100%		15	16	93.8%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
12a Documentation of rationale for difference between initial penalty calculation and final penalty	100%		0	0	N/A																			
12b Penalties collected	100%		15	16	93.8%																			
<b>State response</b>																								
<b>Recommendation</b>	N/A																							

## CAA Element 5 — Penalties

<b>Finding 5-2</b>	<b>Meets or Exceeds Expectations</b>												
<b>Summary</b>	The state met its commitment for documenting penalty calculations.												
<b>Explanation</b>	<p>The state has a long-standing policy of removing penalty calculations from file after settlement. Penalty calculations are available for review prior to settlement. For FY15 the EPA reviewed 5 penalty calculations. Two of the penalty calculations occurred for one facility, but the penalties were merged into one case and settled jointly. During the file review the EPA selected a total of 16 facility files that had settlements including penalties. Given that the EPA only requested to review 5 penalty calculations for 4 facility files, the remaining 12 settlement penalty calculations could not be assessed due to Colorado's long standing policy.</p> <p>This issue was first identified in the state's round 2 SRF. An agreement was made that penalty calculations of currently active cases would be reviewed at the request of the EPA. The state met their commitment in regards to this agreement for FY15.</p> <p>Given the agreement between the state and the EPA following the round 2 SRF, Metric 11a has been adjusted to show that 5 of 5 penalty calculations reviewed appropriately documented the gravity and economic benefit components of the penalty.</p>												
<b>Relevant metrics</b>	<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>11a Penalty calculations reviewed that document gravity and economic benefit</td> <td>100%</td> <td></td> <td>5</td> <td>5</td> <td>100%</td> </tr> </tbody> </table>	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%		5	5	100%
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%		5	5	100%								
<b>State response</b>	<p>As mentioned in the “Explanation” section above, this issue was first identified in the state’s round 2 SRF. An agreement was made between the EPA and Colorado that 5 penalty calculations of currently active cases would be reviewed during quarterly HPV meetings for each fiscal year. The State % of 25% listed above is inaccurate; for FY 15 The EPA requested to review 5 penalty calculations. All 5 of the requested penalty calculations were reviewed, and the penalties were found to be appropriately calculated and documented. Therefore, the State % should be 100%. Colorado is following the procedure that was agreed upon at round 2 SRF and met the commitment for FY15 (100% of the penalty calculations that were requested to be reviewed by the EPA were</p>												

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	provided and reviewed); therefore, this should not be classified as an “Area for State Attention.”
<b>Recommendation</b>	N/A

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## Resource Conservation and Recovery Act Findings

RCRA Element 1 — Data						
<b>Finding 1-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	All of the data elements required to be entered into RCRAInfo had been entered in a timely and accurate manner for the 30 facility files reviewed by the USEPA Region 8.					
<b>Explanation</b>	<p>The USEPA Region 8 reviewed all 30 facility files at the state office. The mandatory data was complete and accurate.</p> <p>For the 22 facilities in violation for more than 240 days, the state should re-evaluate the data and enter return-to-compliance (RTC), if appropriate.</p>					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	2a Long-standing secondary violators					22
	2b Complete and accurate entry of mandatory data	100%		30	30	100%
<b>State response</b>						
<b>Recommendation</b>	N/A					

## RCRA Element 2 — Inspections

<b>Finding 2-1</b>	<b>Meets or Exceeds Expectations</b>																							
<b>Summary</b>	<p>The state meets or exceeds the national goals for all inspection coverage areas with the exception of the five-year inspection coverage for Large Quantity Generators (LQGs). This can typically be attributed to the Biennial Reporting System (BRS), which may include episodic LQGs, one-time LQGs and/or LQGs which have closed/deactivated their LQG status. When RCRARep data for 2015 in the RCRAInfo data base is used, the state is shown to have inspected 100% of their LQG universe. The one LQG not inspected by the state was closed/had deactivated their LQG status.</p>																							
<b>Explanation</b>	<p>The state does an excellent job of conducting biennial inspections of their operating Treatment, Storage, Disposal Facility (TSDF) universe. As Metric 5a indicates, all 7, or 100%, were inspected within the prescribed timeframe.</p> <p>The state also does an excellent job of conducting LQG inspections annually. As Metric 5b indicates, they have exceeded the national goal of 20% by 17.6%, almost doubling the national goal and more than doubling the national average of 18.3% (at 37.6%).</p> <p>Metric 5c indicates the state’s five-year inspection coverage of their LQG universe was 99.1%, which exceeds the national average by 46.6%, but falls just short (.9%) of achieving the national goal of 100.0% (however, see Summary comment above).</p> <p>The state does an outstanding job of inspecting their Small Quantity Generator (SQG) universe. Metric 5c indicates the state's five-year inspection coverage of their active SQG universe was 62%, which exceeds the national average of 10.2% more than six-fold.</p> <p>As Metric 6a indicates, the state does an outstanding job of having complete/comprehensive inspection reports to facilitate compliance, having achieved the national goal of 100%. The RCRA inspection reports cover appropriate process descriptions, information on facility’s hazardous waste determinations, etc.</p>																							
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th data-bbox="479 1686 1008 1759">Metric ID Number and Description</th> <th data-bbox="1013 1686 1105 1759">Natl Goal</th> <th data-bbox="1110 1686 1182 1759">Natl Avg</th> <th data-bbox="1187 1686 1258 1759">State N</th> <th data-bbox="1263 1686 1334 1759">State D</th> <th data-bbox="1339 1686 1421 1759">State % or #</th> </tr> </thead> <tbody> <tr> <td data-bbox="479 1766 1008 1833">5a Two-year inspection coverage of operating TSDFs</td> <td data-bbox="1013 1766 1105 1833">100%</td> <td data-bbox="1110 1766 1182 1833">90.6%</td> <td data-bbox="1187 1766 1258 1833">7</td> <td data-bbox="1263 1766 1334 1833">7</td> <td data-bbox="1339 1766 1421 1833">100%</td> </tr> <tr> <td data-bbox="479 1839 1008 1877">5b Annual inspection coverage of LQGs</td> <td data-bbox="1013 1839 1105 1877">20%</td> <td data-bbox="1110 1839 1182 1877">18.3%</td> <td data-bbox="1187 1839 1258 1877">41</td> <td data-bbox="1263 1839 1334 1877">109</td> <td data-bbox="1339 1839 1421 1877">37.6%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5a Two-year inspection coverage of operating TSDFs	100%	90.6%	7	7	100%	5b Annual inspection coverage of LQGs	20%	18.3%	41	109	37.6%	Natl Goal	Natl Avg	State N	State D	State % or #
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
5a Two-year inspection coverage of operating TSDFs	100%	90.6%	7	7	100%																			
5b Annual inspection coverage of LQGs	20%	18.3%	41	109	37.6%																			
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5b Annual inspection coverage of LQGs	20%	18.3%	41	109	37.6%																			

	5c Five-year inspection coverage of LQGs	100%	52.5%	108	109	99.1%
	5d Five-year inspection coverage of active SQGs		10.2%	274	442	62%
	5e1 Five-year inspection coverage of active conditionally exempt SQGs					385
	5e2 Five-year inspection coverage of active transporters					16
	5e3 Five-year inspection coverage of active non-notifiers					27
	5e4 Five-year inspection coverage of active sites not covered by metrics 2c through 2f3					520
	6a Inspection reports complete and sufficient to determine compliance	100%		60	60	100%
<b>State response</b>						
<b>Recommendation</b>	N/A					



## RCRA Element 2 — Inspections

<b>Finding 2-2</b>	<b>Area for State Attention</b>																	
<b>Summary</b>	<p>In regard to the state’s 6.7% shortfall in Metric 6b, the USEPA Region 8 is recommending a 90-day deadline for the completion of <b>just</b> corrective action/permitted related inspection reports (e.g., CAC/GMEs/OAMs) as opposed to the current 45-day deadline for <b>all</b> inspection reports, as reflected in the CO/EPA PPA. Such a proposed revision to the next CO/EPA PPA should not be problematic, as in the absence of any state-imposed inspection report deadline, Metric 6b of the RCRA File Review Checklist stipulates using 150 days from the inspection date to complete an inspection report.</p>																	
<b>Explanation</b>	<p>In regard to Metric 6b, while achieving a 93.3% for timeliness of inspection report completion, the state fell short of the national goal of 100.0%. This can mostly be attributed to the state’s corrective action/permitting inspectors having to write complex/comprehensive inspection reports, following CAC/GME/OAM inspections.</p>																	
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6b Timeliness of inspection report completion	100%		56	60	93.3%													
<b>State response</b>	<p>Colorado agrees with recommendation and has updated and amended its Hazardous Waste Civil and Administrative Enforcement Response Policy accordingly.</p>																	
<b>Recommendation</b>	N/A																	

## RCRA Element 3 — Violations

<b>Finding 3-1</b>	<b>Meets or Exceeds Expectations</b>																																															
<b>Summary</b>	The state accurately identifies violations in their inspection reports and enters them into the national database. The five Significant Non-Compliers (SNCs) identified during this review period were both timely and appropriate.																																															
<b>Explanation</b>	<p>The state accurately identifies violations. Although the percentage of violations found during inspections is 10.3% below the national average, typically such can be attributed to the state's proactive effort to keep their regulated community informed (during inspections and at episodic regulated community training, the state routinely passes out their “Guide to Generator Requirements of the Colorado Hazardous Waste Regulations [Eighth Edition/June 2015]” and has maintained a long-standing SQG Self-Certification Program, of which they routinely inspect approximately 55 SQGs annually or 12.4% of their active SQG universe annually; see Metric 5d).</p> <p>The five SNCs identified during this review period received appropriate formal enforcement actions. The USEPA Region 8 reviewed the SNC compliance rate as part of the file review. Based upon the number of inspections completed that had a determination of no violations found (73.8%), the USEPA Region 8 concluded that the SNC identification rate was appropriate although only slightly above half of the national average.</p>																																															
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<b>State response</b>																																																
<b>Recommendation</b>	N/A																																															

## RCRA Element 4 — Enforcement

<b>Finding 4-1</b>	<b>Meets or Exceeds Expectations</b>																													
<b>Summary</b>	The state requires corrective measures be taken in their formal and informal enforcement actions to return facilities to compliance and follows up through required documentary submissions, on-site facility inspections, or both. The state takes timely and appropriate enforcement action to address identified violations.																													
<b>Explanation</b>	Ten formal enforcement actions, 8 penalties, and 10 informal enforcement actions were reviewed. The enforcement actions returned violators to compliance. Penalties were collected and compliance measures were achieved pursuant to those formal enforcement actions. All enforcement actions were timely and appropriate for the violations identified.																													
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<b>State response</b>																														
<b>Recommendation</b>	N/A																													

## RCRA Element 5 — Penalties

<b>Finding 5-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	The state collected 8 penalties during this federal fiscal year 2015 review period. The state includes both gravity/multi-day and economic benefit components in their penalty calculations and utilizes several formal enforcement policies to justify adjustment of the initial penalty to the settled amount. The state maintains documentation in its files that shows the final penalty having been collected and SEP projects, as appropriate, being completed.					
<b>Explanation</b>	Eight penalty actions were reviewed by USEPA Region 8. For all of these penalty actions, the state included both gravity and economic benefit components in their penalty calculations. Documentation of penalty calculations, settlement, and compliance measures taken were maintained in the state files. The state is able to document, and provide upon request, information regarding changes in penalties calculated that occurred during the settlement process.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	11a Penalty calculations include gravity and economic benefit	100%		8	8	100%
	12a Documentation on difference between initial and final penalty	100%		7	7	100%
	12b Penalties collected	100%		8	8	100%
<b>State response</b>						
<b>Recommendation</b>	N/A					

# Appendix



## **Appendix A – SRF Kick-Off Letter**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1585 Wynkoop Street  
Denver, CO 80202-1126  
Phone 800-277-6917  
www.epa.gov/region08

FEB 17 2016

Re: BENF-PJ

Martha E. Rudolph, Director  
Environmental Programs  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

Dear Ms. Rudolph:

The U.S. Environmental Protection Agency (EPA) Region 8 will be conducting a State Review Framework (SRF) of the Colorado Department of Health and Environment (CDPHE) Resource Conservation and Recovery Act (RCRA) Subtitle C, Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) and Clean Air Act (CAA) Stationary Source enforcement programs in 2016. We will review inspection and enforcement activity from Federal Fiscal Year 2015.

An integral part of the review process is the visit to your state agency office. Through this visit, the EPA can have face-to-face discussions with respective compliance and enforcement staff and review their program files to better understand each program. State visits for these reviews will include:

- discussions between Region 8 and CDPHE program managers and staff;
- examination of data in EPA and CDPHE data systems; and,
- review of selected CDPHE inspection and enforcement files and policies.

Following our program visits to your office, the EPA will summarize findings and recommendations in a draft report. Your management and staff will have an opportunity to review and comment on this draft. The EPA expects to complete the CDPHE review, including the final report, by December 31, 2016. If the SRF identifies areas for improvement, we will work with you to address them in the most constructive manner possible. Region 8 and CDPHE are partners in carrying out the review and we intend to assist you in meeting both federal standards and goals agreed to in CDPHE's Performance Partnership Workplan Agreement.

Region 8 has assembled a cross-program team to implement the CDPHE review. Kaye Mathews, SRF Coordinator at (303) 312-6889, will be your primary contact at Region 8 and will coordinate overall logistics for the EPA. We request that you also identify a primary contact person for the EPA to work with and provide that name to Ms. Mathews. The Region 8 program leads on the 2016 SRF review team are:

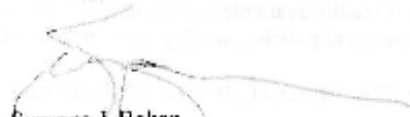
Randy Landin	RCRA	(303) 312-6350	landin.randy@epa.gov
Michael Boeclin	NPDES	(303) 312-6250	boeclin.michael@epa.gov



These program leads will be contacting CDPHE compliance and enforcement managers and staff to discuss expectations, procedures and scheduling for the review. The EPA will also send its analysis of the SRF data metrics and list of selected facility files prior to the on-site visits. Information available at the EPA's Enforcement and Compliance History Online (ECHO) website is used to conduct the evaluation. Please see the attachment for additional SRF review planning and logistics steps. Past SRF reports and recommendations are available at the EPA's State Review Framework for Compliance and Enforcement Performance web page.

Please do not hesitate to contact me at (303) 312-6925 or have your staff contact Kaye Mathews at (303) 312-6889 with any questions about this review process. We look forward to working with you on the 2016 SRF review.

Sincerely,



Suzanne J. Bohan  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

Enclosure

cc: Dr. Larry Wolk, Executive Director, CDPHE  
Shaun L. McGrath, Regional Administrator  
Debra H. Thomas, Deputy Regional Administrator

All via email and with enclosure

## Enclosure

### CO SRF Review Planning & Logistics

As the EPA begins this review process, CDPHE can expect the following:

- The EPA will contact CDPHE enforcement managers and staff to schedule a meeting or conference call to discuss expectations, procedures, and scheduling for the review if this has not already occurred.
- The EPA will provide CDPHE with a list of reviewers and may ask for preliminary information that is readily available such as descriptions of agency and program structures, agency enforcement policies, staffing numbers and other organizational information.
- The EPA will send CDPHE a list of data metrics and conduct a data metric analysis.
- The EPA will send CDPHE a list of requested files for review at least two weeks in advance of onsite file reviews.
- The EPA will set up a call with CDPHE to verify that files in the EPA's requested file list will be available; where the files will be located; and to confirm review dates, arrival times, and logistics.
- The EPA will conduct an entrance conference upon arrival for the review at the CDPHE offices and an exit meeting prior to departure for CDPHE managers and staff.
- The EPA will draft a report of its review findings, share the draft report with CDPHE, and request comments.
- Once the report is final, the EPA will add the report and any recommendations in the report to the SRF Tracker.
- Once the report is final, the EPA will consult with the state and add agreed-upon action items in the report to the Action Item database.
- The EPA will initiate periodic follow-up discussions with CDPHE to monitor progress on report recommendations.





