

STATE REVIEW FRAMEWORK

Shelby County, Tennessee

Clean Air Act Implementation in Federal Fiscal Year 2015

**U.S. Environmental Protection Agency
Region 4, Atlanta**

**Final Report
September 28, 2017**

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Executive Summary

Introduction

EPA Region 4 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Shelby County Health Department (SCHD).

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

- SCHD met the negotiated frequency for inspection of sources for most major and SM-80 sources during the review year.
- Compliance monitoring reports and full compliance evaluations included all elements required by EPA's Compliance Monitoring Strategy (CMS) Guidance.
- SCHD documented any differences in initial and final penalty and maintained documentation of penalty payments made.

Priority Issues to Address

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

- SCHD needs to improve the timeliness and accuracy of data reported into the National Data System (ICIS-Air). Data discrepancies were identified in 45% of the files reviewed, and none of the data reported in FY15 was timely.
- SCHD needs to ensure that all Title V Annual Compliance Certifications (ACCs) are completed and recorded in ICIS-Air.
- SCHD needs to strengthen the enforceability of their formal enforcement actions to ensure that sources are returned to compliance within a specified timeframe.
- SCHD needs to document the consideration of economic benefit in their penalty calculations.

Most Significant CAA Stationary Source Program Issues

- The accuracy and timeliness of enforcement and compliance data entered by SCHD in ICIS-Air needs improvement.
- SCHD's use of a notice of violation (NOV) to assess penalties does not appear to be enforceable in court, and may not return sources to compliance.
- SCHD's penalty assessments did not include the consideration of an economic benefit component.

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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 or local program 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 and local programs.

Each state's programs are reviewed once every five years. Local programs are reviewed less frequently, at the discretion of the EPA Regional office. The first round of SRF reviews began in FY 2004, and the second round began in FY 2009. The third round of reviews began in FY 2013 and will continue through 2017.

II. SRF Review Process

Review period: 2015

Key dates: August 16, 2016, letter sent to Local program kicking off the Round 3 review
October 24 – 26, 2016, on-site file review for CAA

Local Program and EPA key contacts for review:

	Shelby County	EPA Region 4
SRF Coordinator	Robert Rogers	Kelly Sisario, OEC
CAA	Bill Smith	Ahmad Dromgoole, OEC
		Mark Fite, OEC
		Chetan Gala, APTMD

III. SRF Findings

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

- Annual data metric reviews conducted since the program’s last SRF review
- Follow-up conversations with 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 or local performs above national program expectations.

Area for State¹ Attention: An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, the state or 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 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 or 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.

¹ Note that EPA uses a national template for producing consistent reports throughout the country. References to “State” performance or responses throughout the template should be interpreted to apply to the Local Program.

Clean Air Act Findings

CAA Element 1 — Data						
Finding 1-1	Area for State Improvement					
Summary	The timeliness and accuracy of minimum data requirement (MDR) data reported by SCHD into ICIS-Air needs improvement. None of the data was entered timely, and discrepancies between the files and ICIS-Air were identified in 45% of the files reviewed.					
Explanation	<p>File Review Metric 2b indicated that only 45% (9 of 20) of the files reviewed reflected accurate entry of all MDRs into ICIS-Air. The remaining 11 files had one or more discrepancies between information in the files and data entered into ICIS-Air. For example, six sources had activities missing from or inaccurate in ICIS-Air, such as full compliance evaluations (FCEs), annual compliance certifications, stack tests, or enforcement actions. In addition, five sources had missing or inaccurate air programs or subparts for Maximum Achievable Control Technology (MACT) or other regulations in ICIS-Air. Another eight files had miscellaneous inaccuracies related to facility data.</p> <p>Data Metrics 3a2, 3b1, and 3b3 indicated that none of the MDRs for compliance and enforcement activities were reported into ICIS-Air within 60 days. Data Metric 3b2 indicated that none of the 35 stack tests were entered into ICIS-Air within 120 days.</p> <p>At the beginning of FY2015, EPA transitioned the national database for CAA compliance and enforcement data from the AFS legacy system to ICIS-Air. During the initial transition period in October 2014, historical data was migrated from AFS to ICIS-Air, and no new data could be entered either directly or through electronic data transfer (EDT). Following the migration, “direct reporting agencies” like SCHD could begin accessing the new data system through the web beginning in late November 2014. An analysis of the county’s timeliness data indicates that all of the data was entered into the new system in January 2016.</p>					
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%		9	20	45%
	3a2 Timely reporting of HPV determinations	100%	99.6%	0	0	NA
	3b1 Timely reporting of compliance monitoring MDRs	100%	64.4%	0	95	0%
	3b2 Timely reporting of stack test MDRs	100%	65.2%	0	35	0%

	3b3 Timely reporting of enforcement MDRs	100%	56.6%	0	2	0%
State response	<p>The SRF review occurred a short time after EPA had transitioned the National Data System from AIRS-AFS to ICIS-Air. Staff handling data input had received no training on the new system and had not been granted access. The access problem was resolved during the review and staff was given preliminary training on the new system to begin inputting data. In addition to the access problem, it appears some data did not properly transfer from the legacy system to ICIS-Air. SCHD has updated and corrected the information needed for ICIS-Air and has implemented a standard operating procedure (SOP) that allows for the tracking, input and confirmation of data into ICIS-Air.</p>					
Recommendation	<p>By December 31, 2017, SCHD should make corrections to existing data to address discrepancies identified by EPA and take steps to ensure that all MDRs are entered accurately and timely into ICIS-Air. If by December 31, 2018, EPA’s annual data metric analysis and other periodic reviews confirm that SCHD’s efforts appear to be adequate to meet the national goal, the recommendation will be considered complete.</p>					

CAA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations					
Summary	FCEs and CMRs addressed all required elements.					
Explanation	<p>Metric 6a indicates that 18 of 20 FCEs reviewed (90%) included the seven elements required by the Clean Air Act Stationary Source Compliance Monitoring Strategy (CMS Guidance).</p> <p>Metric 6b indicates that 18 of 20 (90%) CMRs included all seven elements required by the CMS Guidance.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	6a Documentation of FCE elements	100%		18	20	90%
	6b Compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance	100%		18	20	90%
State response						
Recommendation						

CAA Element 2 — Inspections

Finding 2-2	Area for State Improvement						
Summary	SCHD should ensure that all Title V Annual Compliance Certification (ACC) reviews are completed and entered into ICIS-Air.						
Explanation	Metric 5e initially indicated that none of the 29 Title V ACCs (0%) were reviewed by the local program and recorded in ICIS-Air. However, EPA reviewers found that SCHD had actually conducted ACC reviews for the 9 Title V sources evaluated during the file review. After the file review, EPA evaluated data in ICIS-Air for all 29 sources with an ACC due in the review year (this information was entered after the data was frozen). The analysis confirmed that 4 sources were not required to submit an ACC. Another 17 of the remaining 25 sources had an ACC review recorded in ICIS-Air, while 8 sources did not. This data results in a revised metric for 5e of 68% (17 of 25). ⁽¹⁾ While this reflects some improvement in the conduct and recording of ACC reviews, it still represents an area for improvement.						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	5e Review of Title V annual compliance certifications		100%		17	25	68% ⁽¹⁾
State response	Previously when an ACC was received, inspectors would review it and place it in the file, then acknowledge receipt and review in the annual compliance inspection report. This lead to occasions where an ACC was not picked up for entry into ICIS-Air. ACCs have been added to the SOP and document tracking system. The tracking document identifies the Title V ACC, including date received, date reviewed, compliance status, and any deviations, exceedances or excursions that have occurred during the reporting period. Additionally, as part of quality control, a spreadsheet will be developed that lists all of these documents and is presented to management to verify prior to uploading into ICIS-Air.						
Recommendation	By December 31, 2017, SCHD should take steps to ensure that all ACC reviews for Title V sources are conducted and recorded in ICIS-Air. If by December 31, 2018, EPA’s annual data metric analysis and other periodic reviews confirm that SCHD’s efforts appear to be adequate to meet the national goal, the recommendation will be considered complete.						

CAA Element 2 — Inspections

Finding 2-3	Meets or Exceeds Expectations																													
Summary	SCHD met the negotiated frequency for inspection of sources for most major and SM-80 sources during the review year.																													
Explanation	<p>Metric 5a indicated that 22 of 29 major sources (75.9%) were inspected at least once every 2 years. Of the 7 sources not inspected, two were permanently closed, bringing the local percentage to 81.5% (22 of 27).⁽²⁾</p> <p>Metric 5b indicated that 60 of 71 (84.5%) SM-80 sources were inspected at least once every 5 years, in accordance with EPA’s CMS Guidance. However, a closer review of the 11 sources that were not inspected indicated that 9 of them were permanently closed, and another is under construction. Adjusting for these sources brings SCHD’s metric to 98.4% (60 of 61).⁽³⁾</p> <p>Metric 5c indicated that SCHD did not inspect any non-SM80 synthetic minors since they follow a traditional CMS plan.</p> <p>A review of FY16 frozen data shows that coverage rates under metrics 5a and 5b have improved to 96.3% and 98.8%, respectively, indicating that the local program continues to provide adequate inspection coverage.</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>5a FCE coverage: majors and mega-sites</td> <td>100%</td> <td>63.2%</td> <td>22</td> <td>27</td> <td>81.5%⁽²⁾</td> </tr> <tr> <td>5b FCE coverage: SM-80s</td> <td>100%</td> <td>79.5%</td> <td>60</td> <td>61</td> <td>98.4%⁽³⁾</td> </tr> <tr> <td>5c FCE coverage: synthetic minors (non-SM 80s) that are part of CMS plan</td> <td>100%</td> <td>42.6%</td> <td>0</td> <td>0</td> <td>NA</td> </tr> </tbody> </table>						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%	22	27	81.5% ⁽²⁾	5b FCE coverage: SM-80s	100%	79.5%	60	61	98.4% ⁽³⁾	5c FCE coverage: synthetic minors (non-SM 80s) that are part of CMS plan	100%	42.6%	0	0	NA
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5c FCE coverage: synthetic minors (non-SM 80s) that are part of CMS plan	100%	42.6%	0	0	NA																									
State response																														
Recommendation																														

CAA Element 3 — Violations

Finding 3-1	Area for State Attention																								
Summary	SCHD made accurate compliance determinations in most instances, but some violations were not classified and reported into ICIS-Air.																								
Explanation	<p>Metric 7a indicated that SCHD made accurate compliance determinations in 16 of 20 files reviewed (80%). In one instance, a violation was identified, and an informal action (warning letter) was issued, but the federally reportable violation (FRV) was not recorded in ICIS-Air. In other situations, file reviewers found compliance issues described in an inspection report or other periodic report, but these were not formally classified as a violation, and no enforcement action was taken. Although some FRVs were entered into ICIS-Air, these were entered late. EPA recommends that an improved process for FRV and HPV determination and data entry be developed.</p> <p>Metric 8c confirmed that for all 3 files reviewed with violations identified (100%), SCHD’s determination that these were not HPVs was accurate.</p> <p>Metric 13 indicated that SCHD did not identify any HPVs during the review year.</p>																								
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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																				
7a Accuracy of compliance determinations	100%		16	20	80%																				
8c Accuracy of HPV determinations	100%		3	3	100%																				
13 Timeliness of HPV Identification	100%	82.6%	0	0	NA																				
State response	SCHD updated the Major Source SOP to include two new document tracking forms. The first form includes a decision for enforcement from the Technical Manager and the second form establishes the type of enforcement action including if the action is an FRV or HPV.																								
Recommendation																									

CAA Element 4 — Enforcement

Finding 4-1	Area for State Improvement																														
Summary	Enforcement actions do not always bring sources back into compliance within a specified timeframe.																														
Explanation	<p>Metric 9a indicated that 3 of 4 formal enforcement actions reviewed (75%) brought sources back into compliance through corrective actions in the order, or compliance was achieved prior to issuance of the order. However, one source did not submit the required permit application or pay the penalty, and the county ultimately closed the case. In addition, reviewers observed that SCHD uses a Notice of Violation (NOV) that includes a penalty assessment, which is essentially a combined informal and formal enforcement action. This document does not appear to include legally enforceable compliance obligations and an applicable schedule, which led EPA to develop a recommendation for this finding.</p> <p>Metrics 10a, 10b & 14 do not apply since SCHD did not have any HPVs during the review year.</p>																														
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14 HPV Case Development and Resolution Timeline in Place When Required that Contains Required Policy Elements	100%		0	0	NA																										
State response	<p>SCHD is adopting two model enforcement documents based on those used in the State of Tennessee’s Air Pollution Control program. These documents are: “Technical Manager’s Order and Assessment of Civil Penalty” and “Technical Manager’s Order and Assessment of Civil Penalty and Imposition of Compliance Schedule”.</p> <ul style="list-style-type: none"> The new enforcement letter contains a line stating economic impact was considered in a penalty assessment. 																														

	<ul style="list-style-type: none">• The enforcement letter will also all have a reference to our enforcement authority contained in our local codes and contain a deadline for payment of the assessment and or assessment and compliance schedule if that is the case.• Consent Orders will still be utilized where appropriate.• These changes will be incorporated in the Department’s compliance policy manual.
Recommendation	By December 31, 2017, SCHED should strengthen the enforceability of the NOV currently in use, or consider utilizing another instrument, such as a compliance order, for securing compliance. Revised procedures which formalize these changes should be submitted to EPA for review. If by December 31, 2018, EPA determines that these procedures appear adequate to bring sources back into compliance, the recommendation will be considered complete.

CAA Element 5 — Penalties

Finding 5-1	Area for State Improvement												
Summary	SCHD utilized a matrix for assessing the gravity portion of penalties, but the consideration or assessment of economic benefit was not documented.												
Explanation	Metric 11a indicated that although SCHD considered gravity in all penalty assessments reviewed, none of these (0%) documented whether economic benefit was considered. EPA acknowledges that SCHD has developed a process for assessing economic benefit in their draft <u>Environmental Penalty Policy</u> dated September 1, 2004. However, this process does not appear to be used consistently.												
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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%		0	4	0%								
State response	SCHD does consider economic benefit on each penalty action taken. However, for penalty actions where no economic benefit was identified, this fact has not been stated. The new enforcement letter (referenced in our response to CAA Element 4 above) with a line stating economic impact was considered will be included.												
Recommendation	By December 31, 2017, SCHD should submit revised procedures which ensure that the consideration of economic benefit is documented for all penalty calculations. In addition, sample penalty calculations for actual cases which follow the new procedures should be submitted to EPA for review. If by December 31, 2018, EPA determines that these procedures and their implementation adequately address the necessary penalty documentation, the recommendation will be considered complete.												

CAA Element 5 — Penalties

Finding 5-2	Meets or Exceeds Expectations						
Summary	The collection of penalties and any differences between initial and final penalty assessments was documented in facility files.						
Explanation	<p>Metric 12a indicated that all 4 penalty calculations reviewed (100%) documented any difference between the initial and the final penalty assessed, or there was no difference.</p> <p>Metric 12b indicated that for 4 of 4 penalties (100%), documentation of penalty payments made by source was included in the file. In one instance, the source contested the penalty, and SCHD ultimately rescinded their Notice of Violation and penalty assessment, which was documented in a letter to the source.</p>						
Relevant metrics	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%		4	4	100%
	12b Penalties collected		100%		4	4	100%
State response							
Recommendation							