

STATE REVIEW FRAMEWORK

Vermont

Clean Water Act, Clean Air Act, and Resource Conservation and Recovery Act Implementation in Federal Fiscal Year 2016

**U.S. Environmental Protection Agency
Region 1, Boston**

**Final Report
May 24, 2018**

Executive Summary

Introduction

EPA Region 1 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Vermont Department of Environmental Conservation.

EPA's SRF findings are based on data and file review metrics, and conversations with program management and staff. EPA's recommended actions from the review are tracked in the SRF Tracker on EPA's ECHO web site where the final SRF report will also be posted.

Areas of Strong Performance

- VT DEC's CWA and RCRA Inspection reports were sufficient to determine compliance.
- VT DEC did an excellent job at identifying violations from its inspections and made accurate compliance determinations in the RCRA and CWA programs.
- VT DEC's CAA, CWA and RCRA program enforcement actions consistently returned facilities to compliance.

Priority Issues to Address

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

- Economic benefit is not being adequately assessed in CWA and RCRA enforcement cases; this creates an unfair disadvantage for businesses complying with environmental regulations. EPA Region 1 identified this as an issue for the VT DEC RCRA enforcement program during the two previous SRF reviews.
- EPA identified several issues related to the accuracy of the Minimum Data Requirements (MDR) data in ICIS-AIR during the review, particularly related to federally reportable violations (FRV) and source classifications. In addition, EPA identified data quality issues related to traditional NPDES sources that requires review to ensure that EPA's database correctly reflects compliance for these facilities
- The state is not entering Single Event Violations for traditional major NPDES permittees when enforcement actions are taken.
- Inspection Reports in the RCRA Program did not have a completion date, so there was no way to determine if the reports had been completed in a timely manner.

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I. Background on the State Review Framework

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

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

Reviews cover:

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

EPA conducts SRF reviews in three phases:

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

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

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

Each state's programs are reviewed once every 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

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II. SRF Review Process

Review period: FY 2016

Key dates:

Kick-off Meeting: April 21, 2017 via Skype Videoconference

Clean Water Act Review: Electronic inspection files were reviewed over the month of June 2017. Enforcement files were reviewed on-site June 9.

Clean Air Act Review: For the electronic files, the review occurred over a period spanning June 16 – July 7, 2017. The enforcement files were then reviewed on July 12, 2017.

Resource Conservation and Recovery Act Review: August 7-10, 2017

State and EPA key contacts for review:

Clean Water Act

Andrew Spejewski, EPA, 617-918-1014
Jessica Bulova, VT DEC (Wastewater inspections) 802-490-6181
Padraic Monks, VT DEC (Stormwater inspections) 802-490-6169
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Clean Air Act

Steve Rapp, EPA, 617-918-1551
Abdi Mohamoud, EPA, 617-918-1858
John Wakefield, EPA 802-279-5674

Resource Conservation and Recovery Act

Donald MacLeod, EPA, 617-918-1405
Marc Roy, VT DEC, 802-522-0275
John Zaikowski, VT DEC, 802-522-5438

State Review Framework

Kim Greenwood, VT DEC, 802-272-0423
James Chow, EPA, 617-918-1394
Lucy Casella, EPA, 617-918-1759

III. SRF Findings

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

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

There are three categories of findings:

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

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

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

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

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

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

Clean Water Act Findings

CWA Element 1 — Data						
Finding 1-1	Meets or Exceeds Expectations					
Summary	The state has major and minor traditional NPDES permits in EPA’s ICIS database, and is entering DMRs and reporting them to ICIS.					
Explanation						
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	1b1 Permit limit rate for major facilities		91%	27	34	79%
	1b2 DMR entry rate for major facilities		97%	509	512	99%
State response	None.					
Recommendation	None.					

CWA Element 1 — Data

Finding 1-2	Area for State Improvement						
Summary	Data on many permits is entered incorrectly or translated to EPA’s ICIS database incorrectly.						
Explanation	<p>Vermont enters permit and DMR data into an internal state database. After a major effort by VT DEC three years ago, the internal database now uploads the information into EPA’s ICIS database. However, in many cases, the data for individual facilities is set in a way that results in non-compliance appearing in ICIS, even when there are no actual violations (for instance, a seasonal limit may not be indicated correctly in the ICIS database, resulting in ICIS displaying non-reporting violations in the off season).</p> <p>EPA and DEC have, by common agreement, not focused on this issue in 2017 because of the effort required by VT DEC in implementing CROMERR-compliant reporting in the state.</p> <p>Additionally, enforcement actions are not being updated into ICIS (only actions at major individual traditional permittees were required to be entered in FY16).</p>						
Relevant metrics	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				0	1	0
	7d1 Major facilities in noncompliance			73%	32	34	94%
State response	We look forward to working with EPA to thoroughly review all ICIS-reported non-compliance for traditional majors and minors, and correct data errors that have led to incorrect reports of non-compliance.						
Recommendation	By June 1, 2018, EPA and VT DEC should begin an initiative to thoroughly review all ICIS-reported non-compliance for traditional majors and minors and correct data errors leading to incorrect reports of non-compliance.						

CWA Element 1 — Data

Finding 1-3	Area for State Improvement						
Summary	The state is not entering Single Event Violations for traditional major NPDES permittees when enforcement actions are taken.						
Explanation	<p>The only Single Event Violations in ICIS are for reported sewage overflows. The state should begin entering Single Event Violations into ICIS for all violations, as required.</p> <p>Note that because SEVs are not being entered, data elements 8b and 8c are not applicable.</p>						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	7a1 Number of major facilities with single event violations				10	N/A	N/A
	8b Single-event violations accurately identified as SNC or non-SNC		100%			N/A	N/A
	8c Percentage of SEVs identified as SNC reported timely at major facilities		100%			N/A	N/A
State response	The Wastewater Program recognizes that they have not been entering SEVs and is working to ensure these are properly entered into the DEC database to flow to ICIS for all major and minor facilities. Of note, for the dates of this audit there were no SEVs to be reported for the traditional majors that were not otherwise captured as sewage overflows or effluent monitoring violations.						
Recommendation	The state should begin entering Single Event Violations into ICIS for all violations, as required.						

CWA Element 2 — Inspections

Finding 2-1	Area for State Attention																																																																							
Summary	Because of loss of staff and need to train new personnel, Vermont did not meet CMS inspection goals for traditional permittees.																																																																							
Explanation	<p>In FY2016, the state did not meet inspection goals as set out in the Compliance Monitoring Strategy (CMS) for traditional major and minor individual permittees (including CSO and SSO inspections). This was due primarily to significant loss of employees (including the manager) in the unit during the year. The state has since hired a new manager and several new inspectors and EPA expects the state to return to meeting CMS goals as they did in previous years without significant further action.</p> <p>Metric 4a1; Pretreatment Compliance Inspections and Pretreatment Audits, is denoted as N/A because Vermont has not delegated the pretreatment program to any Publicly-Owned Treatment Works (“POTWs”).</p> <p>Stormwater inspections in FY16 focused on construction rather than industrial, and the combined total of industrial and construction inspections well exceeded the CMS goal.</p> <p>Now that staff are trained, Vermont should return to meeting CMS goals with numbers of inspections in each CMS category.</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>5a1 Inspection coverage of NPDES majors</td> <td>100%</td> <td></td> <td>8</td> <td>12</td> <td>67%</td> </tr> <tr> <td>5b1 Inspection coverage of NPDES non-majors with individual permits</td> <td>100%</td> <td></td> <td>11</td> <td>29</td> <td>38%</td> </tr> <tr> <td>5b2 Inspection coverage of NPDES non-majors with general permits</td> <td></td> <td></td> <td>0</td> <td>0</td> <td></td> </tr> <tr> <td>4a1 Pretreatment compliance inspections and audits</td> <td></td> <td></td> <td>N/A</td> <td>N/A</td> <td>N/A</td> </tr> <tr> <td>4a4 Major CSO inspections</td> <td>100%</td> <td></td> <td>2</td> <td>5</td> <td>40%</td> </tr> <tr> <td>4a5 SSO inspections</td> <td>100%</td> <td></td> <td>1</td> <td>7</td> <td>14%</td> </tr> <tr> <td>4a2 Significant Industrial User inspections for SIUs discharging to non-authorized POTWs</td> <td>100%</td> <td></td> <td>23</td> <td>23</td> <td>100%</td> </tr> <tr> <td>4a7 Phase I & II MS4 audits or inspections</td> <td>100%</td> <td></td> <td>1</td> <td>4</td> <td>25%</td> </tr> <tr> <td>4a8 Industrial stormwater inspections</td> <td>100%</td> <td></td> <td>26</td> <td>58</td> <td>45%</td> </tr> <tr> <td>4a9 Phase I and II stormwater construction inspections</td> <td>100%</td> <td></td> <td>115</td> <td>12</td> <td>958%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5a1 Inspection coverage of NPDES majors	100%		8	12	67%	5b1 Inspection coverage of NPDES non-majors with individual permits	100%		11	29	38%	5b2 Inspection coverage of NPDES non-majors with general permits			0	0		4a1 Pretreatment compliance inspections and audits			N/A	N/A	N/A	4a4 Major CSO inspections	100%		2	5	40%	4a5 SSO inspections	100%		1	7	14%	4a2 Significant Industrial User inspections for SIUs discharging to non-authorized POTWs	100%		23	23	100%	4a7 Phase I & II MS4 audits or inspections	100%		1	4	25%	4a8 Industrial stormwater inspections	100%		26	58	45%	4a9 Phase I and II stormwater construction inspections	100%		115	12	958%
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	4a10 Medium and large NPDES CAFO inspections	100%	20	15	133%
State response	None.				
Recommendation	See Explanation Section.				

CWA Element 2 — Inspections

Finding 2-2	Meets or Exceeds Expectations																						
Summary	Inspection reports are completed in a timely manner, and are sufficient to determine compliance.																						
Explanation	<p>Inspection reports for wastewater (traditional NPDES permittees) are completed in a timely manner, and are sufficient to determine compliance.</p> <p>Stormwater inspections are entered in a database which, together with attachments (such as photos or follow-up e-mails), meets the minimum requirement for inspection reports and is sufficient for determining compliance.</p> <p>It was not possible to easily determine when database entries were made relative to the date of the inspection; however, with the relative ease of entering the data, and the observation that all follow-up was done within several days of the inspection, EPA does not believe there is a concern with timeliness of CWA stormwater inspection reports.</p> <p>The difference in the denominator for the two metrics below is the number of stormwater inspection reports in the database.</p>																						
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6a Inspection reports complete and sufficient to determine compliance at the facility	100%		25	25	100%																		
6b Inspection reports completed within prescribed timeframe	100%		12	12	100%																		
State response	None.																						
Recommendation	None.																						

CWA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations					
Summary	Based on inspection reports, compliance determinations were accurate for all 32 inspection reports reviewed.					
Explanation						
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	7e Inspection reports reviewed that led to an accurate compliance determination	100%		32	32	100%
State response	None.					
Recommendation	None.					

CWA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations					
Summary	Enforcement actions (formal and informal) were generally appropriate and adequate to return sources to compliance.					
Explanation	The enforcement actions reviewed were sufficient to return sources to compliance. This metric includes informal enforcement following inspections.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	9a Percentage of enforcement responses that return or will return source in violation to compliance	100%		18	18	100%
	10b Enforcement responses reviewed that address violations in an appropriate manner	100%		18	18	100%
	10a1 Major facilities with timely action as appropriate			1	1	100%
State response	None.					
Recommendation	None.					

CWA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations																							
Summary	Penalty calculations (including any reductions) were documented in the files reviewed, and in almost all cases, proof of penalty collection was present in the files.																							
Explanation	<p>The state documents penalty calculations and also that the penalties were actually collected. The single file with no documented penalty rationale was a case against a small municipality that was closed with no penalty. This could be an appropriate resolution of the case, but there was no documentation of the reason.</p> <p>The single penalty not collected was an unusual case against an individual, with acknowledged difficulties in collecting.</p>																							
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12b Penalties collected	100%		9	10	90%																			
State response	None.																							
Recommendation	None.																							

CWA Element 5 — Penalties

Finding 5-2	Area for State Improvement					
Summary	VT DEC is not assessing economic benefit adequately.					
Explanation	Of ten enforcement cases with assessed penalties, only three documented that economic benefit was considered (an additional case only documented “ <i>TBD</i> ” for economic benefit). Of the three cases that noted consideration of economic benefit, in two cases the economic benefit of delaying compliance was not considered.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	11a Penalty calculations reviewed that consider and include gravity and economic benefit	100%		1	10	10%
State response	<p>In the majority of enforcement cases, given the nature of the CWA violations and the relative small scale of Vermont’s regulated community, economic benefit is either not present, de minimis, or too speculative to make a reasonable approximation. DEC’s comments on this issue are therefore intended to generally address this finding.</p> <p>DEC considers economic benefit whenever it performs a penalty calculation. The SRF review confirms that DEC does in fact do so, as noted in the Explanation Section, but also as noted in the CAA review – See CAA Element 5 – Penalties, page 23, where it found all reviewed cases included economic benefit calculations. Any lack of notation in the penalty calculation forms should not be interpreted as a failure to consider economic benefit, but is rather an indication that economic benefit was either not present, de minimis, or too speculative to make a reasonable approximation. The lack of notation as such would have been in all likelihood an oversight. With respect to consideration of delayed compliance, given the nature of the CWA violations and the relative small scale of Vermont’s regulated community, the cost of delayed compliance is either not present, de minimis, or too speculative to make a reasonable approximation.</p> <p>To address EPA’s recommendation, DEC will ensure that CWA economic benefit calculations are performed, including a review of whether there are benefits from delayed compliance, and document the calculations in the penalty calculation forms when appropriate. It has also modified the form to include a specific section for providing the rationale when no economic benefit is calculated. Appropriate program and legal staff will be provided instructions on this topic.</p>					

Recommendation

VT DEC should update an SOP for economic benefit calculations in enforcement cases, including the benefits of delaying compliance, and share the SOP with EPA for comment.

Effective immediately, VTDEC management should ensure that CWA program staff perform economic benefit calculations, including the benefits of delaying compliance, and document the calculations in penalty calculation forms.

At the end of the fiscal year 2018, VT DEC should provide to EPA a report of all CWA enforcement actions that included penalties, identifying for each action whether economic benefit was calculated and the total dollar value of the calculated benefit.

Clean Air Act Findings

CAA Element 1 — Data						
Finding 1-1	Meets or Exceeds Expectations					
Summary	VT DEC did a very good job reviewing stack test data and reporting compliance monitoring and enforcement data in ICIS in a timely way.					
Explanation	VT DEC performance was above the national average in each of the categories related to timeliness of entering compliance monitoring and enforcement data into ICIS-AIR.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	3b1 Timely reporting of compliance monitoring MDRs	100%	80.9%	62	73	84.9%
	3b2 Timely reporting of stack test dates and results	100%	77.1%	9	9	100%
	3b3 Timely reporting of enforcement MDRs	100%	77.2%	1	1	100%
State response	VT DEC has traditionally not had difficulties meeting the requirements under this metric and will continue to provide this data in a timely way.					
Recommendation	None.					

CAA Element 1 — Data

Finding 1-2	Area for State Improvement																	
Summary	EPA identified several issues relating to the accuracy of the MDR data in ICIS-AIR during the review, particularly related federally-reportable violations (FRV) and source classifications.																	
Explanation	<p>VT DEC should be recognized for its progress in issuing many more Notices of Alleged Violation (NOAV) since the last SRF review and for entering the majority of those actions in ICIS-AIR in a timely manner. However, in some instances, VT did not always identify these actions as federally reportable violations (FRVs) when they met the criteria of the 2014 FRV guidance. Further, they were not entering the FRVs in ICIS-AIR and creating the required corresponding case files. This appears to be the result of a misunderstanding of how FRVs should be reported in ICIS-AIR. For the majority of actions, VT DEC was entering the actions in ICIS but they simply were not creating a case file.</p> <p>Also, during the file review, EPA noted that a number of the facilities listed in ICIS as “SM” have permits limiting HAPs to 10 tons per year (tpy) of a single HAP and 25 tpy of a combination of HAPs and therefore should be coded in ICIS-AIR as “SM80.” To VT’s credit, many of these facilities are part of the state’s internal inspection plan and are being inspected on a regular basis.</p>																	
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2b Accurate MDR data in AFS	100%		16	25	64%													
State Response	<p>Since the last SRF, VT DEC has dramatically increased the issuance of NOAVs as well as improved the quantity and quality of enforcement data reporting. Additionally, since the last SRF the EPA has replaced the previous enforcement database (AFS) with a new system (ICIS-Air), the VT DEC has developed an internal database that reports information directly to ICIS-Air, and the EPA FRV Policy has been updated. In response to the updated 2014 FRV policy, VT DEC has determined that it will report every CAA violation as a FRV (excluding HPVs) in effort to provide both the EPA and public increased information regarding CAA compliance in Vermont. While VT DEC has been diligent in reporting all violations as FRVs, we have mistakenly not opened the case files required by the 2014 FRV policy in ICIS-Air. The VT DEC has now implemented this requirement moving forward and welcomes the</p>																	

opportunity to discuss recent NOAVs and their reporting requirements with EPA on a quarterly basis.

Regarding the classification of sources, VT DEC had been previously utilizing a program developed by the EPA known as the Inspection Targeting System (ITS). This system constituted a negotiated alternative compliance monitoring strategy (CMS) plan and allowed VT DEC to inspect Title V and synthetic minor-80% (SM80) sources at a frequency other than what is traditionally required. At the EPA's suggestion and because Vermont no longer had the ability to support the system from an IT perspective, the VT DEC abandoned the system and subsequently no longer required an alternative CMS, placing all SM80s again on a 5-year inspection cycle.

The SM80 designation is not used by VT DEC-AQCD Permitting Section and as such, they had been inadvertently placing the aforementioned 10/25 HAP limit in air permits (please note that the vast majority of facilities with this limit have actual HAP emissions far below the limit). This was brought to the attention of VT DEC in late 2017 and VT DEC has reclassified all of the facilities where FCEs occurred in 2017 and is beginning to reclassify the remaining facilities. Once the reclassification effort is completed VT DEC will begin inspecting these facilities on the required five-year cycle. Additionally, the VT DEC-AQCD Permitting Section is lowering HAP limits through permit renewals as they are processed to remove facilities from the SM80 designation.

Recommendation

1. In the future, VT DEC will need to create FRV case files in ICIS-AIR when enforcement actions meet the FRV guidance criteria. EPA and the state will review NOAVs and other actions on quarterly calls/meetings for the next four quarters.
2. VT DEC should review its synthetic minor permits and either revise the permits to include lower than 80% SM limits, where applicable, or code them as SM80s in ICIS and add them to the federal compliance monitoring plan (CMS). On a quarterly basis, EPA and VT DEC will meet to discuss this until the changes have been made.

CAA Element 2 — Inspections

Finding 2-1	Area for State Attention																														
Summary	VT DEC did an excellent job of inspecting almost all of the major and SM80 facilities, as well as a number of other minors and synthetic minors. However, several sources coded as synthetic minor (SM) should have been coded as SM80 and should have been formally included in the CMS.																														
Explanation	<p>VT DEC is to be commended for its commitment to a strong inspection program with coverage of its sources well above the national averages for both FCE coverage and review of Title V certifications. VT's inspection plan for 2016 included six minors and 31 SMs in addition to the federally required majors and SM80 sources of its Compliance Monitoring Strategy (CMS).</p> <p>However, during the file review, EPA noted that a number of the facilities listed in ICIS as “SM” have permits limiting HAPs to 10 tons per year (tpy) of a single HAP and 25 tpy of a combination of HAPs and therefore should be coded in ICIS-AIR as “SM80” and formally included in the VT CMS. To VT’s credit, many of these facilities are already part of the state’s inspection plan and are being inspected on a regular basis.</p> <p>See EPA’s recommendation under Section 1-2.</p>																														
Relevant metrics	<table border="1"> <thead> <tr> <th data-bbox="483 1209 992 1283">Metric ID Number and Description</th> <th data-bbox="1003 1209 1068 1283">Natl Goal</th> <th data-bbox="1079 1209 1170 1283">Natl Avg</th> <th data-bbox="1182 1209 1214 1283">State N</th> <th data-bbox="1226 1209 1258 1283">State D</th> <th data-bbox="1269 1209 1409 1283">State % or #</th> </tr> </thead> <tbody> <tr> <td data-bbox="483 1289 992 1331">5a FCE coverage: majors and mega-sites</td> <td data-bbox="1003 1289 1068 1331">100%</td> <td data-bbox="1079 1289 1170 1331">81.5%</td> <td data-bbox="1182 1289 1214 1331">8</td> <td data-bbox="1226 1289 1258 1331">8</td> <td data-bbox="1269 1289 1409 1331">100%</td> </tr> <tr> <td data-bbox="483 1337 992 1379">5b FCE coverage: SM-80s</td> <td data-bbox="1003 1337 1068 1379">100%</td> <td data-bbox="1079 1337 1170 1379">91.3%</td> <td data-bbox="1182 1337 1214 1379">17</td> <td data-bbox="1226 1337 1258 1379">18</td> <td data-bbox="1269 1337 1409 1379">94.4%</td> </tr> <tr> <td data-bbox="483 1386 992 1459">5e Review of Title V annual compliance certifications</td> <td data-bbox="1003 1386 1068 1459">100%</td> <td data-bbox="1079 1386 1170 1459">69.6%</td> <td data-bbox="1182 1386 1214 1459">12</td> <td data-bbox="1226 1386 1258 1459">13</td> <td data-bbox="1269 1386 1409 1459">92.3%</td> </tr> <tr> <td data-bbox="483 1465 992 1539">5c FCE coverage: synthetic minors (non-SM 80s) that are part of CMS plan</td> <td data-bbox="1003 1465 1068 1539">100%</td> <td data-bbox="1079 1465 1170 1539">79.9%</td> <td data-bbox="1182 1465 1214 1539">31</td> <td data-bbox="1226 1465 1258 1539">31</td> <td data-bbox="1269 1465 1409 1539">100%</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%	81.5%	8	8	100%	5b FCE coverage: SM-80s	100%	91.3%	17	18	94.4%	5e Review of Title V annual compliance certifications	100%	69.6%	12	13	92.3%	5c FCE coverage: synthetic minors (non-SM 80s) that are part of CMS plan	100%	79.9%	31	31	100%
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5c FCE coverage: synthetic minors (non-SM 80s) that are part of CMS plan	100%	79.9%	31	31	100%																										
State Response	VT DEC will correct the misclassified sources pursuant to the State Response contained in Finding 1-2 above.																														
Recommendation	See Explanation Section.																														

CAA Element 2 — Inspections

Finding 2-2	Area for State Attention
Summary	<p>In the majority of compliance monitoring reports (CMR), VT DEC did a very good job of documenting the FCE elements. However, the CMRs did not always provide sufficient information to support a determination of compliance.</p>
Explanation	<p>In the vast majority (23 of 25) of compliance monitoring reports, VT DEC did a very good job of documenting the required FCE elements. However, in five of the CMRs, the report did not provide sufficient information to support the compliance determinations made in the reports. The reports are well organized and have been modified since the last SRF. But in several reports, inspectors made references to permit requirements but the reports were unclear whether or not they reviewed the data necessary to make a determination of compliance (e.g., where table entries were left blank). In a few reports, it was not clear if the records the inspector reviewed were part of the pre-inspection vs. inspection activities, e.g., including quarterly, semi-annual, and annual reports, stack test and parameter monitoring reports (as applicable), etc.</p> <p>Additionally, 10 of the 25 inspection reports reviewed were finalized more than three months after the inspection and three took longer than 150 days to complete. In order to ensure that the inspector accurately and fully recollects the details of the inspection, reports should be finalized as soon as possible, typically within 30 days but not more than 90 days. Long delays can interfere with follow-up enforcement actions being taken in a timely manner.</p> <p>This was raised in the previous SRF review and VT DEC has taken concrete steps, including the development of an internal system of tracking of reports, to improve the timeliness of the reports. However, it appears that additional attention may be needed.</p> <p>EPA suggests that VTDEC consider modifying the format of its CMRs to indicate the types of records, including semi-annual and annual reports, stack test and parameter monitoring reports (as applicable), etc., that were reviewed as part of both inspection preparation and field inspection. Further, where there is insufficient information available at the time of inspection to support a finding, the report should reflect such uncertainty. Later, if/when additional information is available, the inspector should make a note in the file.</p>

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	6a Documentation of FCE elements		100%		23	25
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility		100%		20	25	80%
State response	<p>VT DEC has already coordinated with EPA to more accurately describe compliance status within CMRs and has begun implementing a new approach. VT DEC will review the new approach with Region 1 during the initial quarterly discussions required by Finding 1-2.</p> <p>VT DEC continues to improve upon its CMR completion timing including lowering the average time to complete every year since the last SRF, however these averages also include those performed under the state's internal inspection plan (Non-Title V and Non-SM80 sources). VT DEC inspectors follow-up with any instances of non-compliance immediately upon return from the inspection (or after receiving additional post-inspection information from the facility) before the CMR is finalized. If it is perceived that the violation will result in a formal enforcement action, completion of the CMR for evidentiary support is prioritized.</p> <p>While the VT DEC is confident that the delay in CMR completion does not affect VT DEC's ability to follow up with enforcement matters in a timely fashion, VT DEC understands the importance of this requirement to the EPA and will continue to work towards further decreasing CMR completion timing.</p>					
Recommendation	See Explanation Section.					

CAA Element 3 — Violations

Finding 3-1**Area for State Attention**

Summary

Generally, compliance monitoring reports were well organized and provided clear reasons for compliance determinations. However, in a few reports, there was insufficient or conflicting information provided as support of compliance determinations.

Explanation

Generally, VT DEC’s inspection reports are clearly organized and well written. They use a standardized format that includes a table that tracks the facility’s permit terms, the inspector’s observations, and the inspector’s impression of compliance status at that time. Such a format is helpful in focusing the compliance evaluations but also may lead to inspectors feeling pressure to make decisions about all permit conditions during the time of the field inspection. EPA’s position is that CMRs serve as records of observations made as part of the field inspection and pre-inspection review of reports and data. We recognize that some observations make a compliance determination obvious. But the determination of whether the source is complying with every permit term, e.g., related to emission and parameter limits, may require review of records and reports at different times in the year or in a different year. As such, the inspector may not be able to make a determination regarding every permit term at the time of the field inspection.

Further, in a few reports, some determinations of “in compliance” appeared to lack the documentation necessary to support the report’s “in compliance” determination for a few permit terms. For example, there were several confusing statements in the CMRs related to compliance with federal engine and boiler standards, even where such standards have not been delegated to VT. Similarly, in a few CMRs, the boxes regarding the supporting information were blank or described equipment problems, making it unclear how the “in compliance” was determined.

Regarding HPV identification and timeliness, in the file review, EPA found that approximately 10 NOAVs had been issued (some dating back to previous fiscal years since the last SRF) to facilities within VT’s federal CMS that should have been recorded as FRVs. However, review of the actions indicated that VT DEC correctly decided that none of the violations met the HPV criteria.

EPA recommends that the CMR reports not include representations regarding the facility’s compliance with standards for federal programs for which VT has not yet taken delegation of authority, e.g., at minor and synthetic minor sources.

Relevant metrics	Metric ID Number and Description	Natl	Natl	State	State	State
		Goal	Avg	N	D	% or #
	7a Accuracy of compliance determinations	100%		20	25	80%
	8c Verify the accuracy of HPV determinations	100%		12	12	100%
	13 Timeliness of HPV determinations	100%	83.6%	NA	NA	NA

State Response	<p>As mentioned in the State Response to Finding 2-2, VT DEC has adjusted our report content to not determine compliance with programs that have not been delegated to Vermont and will be providing additional documentation in future reports to better explain how a determination was made, including pre-inspection review of historical compliance documents.</p> <p>As mentioned in the State Response to Finding 1-2, due to the several changes on behalf of both the EPA and VT DEC, there was some confusion by VT DEC as to when a violation is considered an FRV. To resolve this issue VT DEC will be identifying all future violations as FRVs (excluding any violations determined to be HPVs). This will provide more accurate and thorough data to the EPA and public regarding CAA compliance in Vermont.</p> <p>Due to Vermont’s limited source universe, VT DEC continues to be unable to find violations that can be determined to be HPVs. However, VT DEC will continue to diligently review violations for HPV Policy applicability.</p>
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Recommendation	See Explanation Section.
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CAA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations																														
Summary	During the file review, EPA reviewed three formal enforcement actions. Each of them included corrective actions to return the facility to compliance.																														
Explanation	VT DEC should be recognized for its progress in issuing many more Notices of Alleged Violation (NOAVs) and three recent administrative penalty actions since the last SRF review. During the period covered by the review, VT DEC did not identify any High Priority Violators (HPVs) and, based on the file review, None. of the NOAVs or formal actions met the criteria of an HPV. However, all three of the formal enforcement actions that VT DEC took recently 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.																														
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10b Percent of HPVs that have been have been addressed or removed consistent with the HPV Policy.	100%				NA																										
14 HPV Case Development and Resolution Timeline In Place When Required that Contains Required Policy Elements	100%				NA																										
State response	As mentioned above, due to Vermont’s limited source universe, VT DEC continues to be unable to find violations that can be determined to be HPVs. However, VT DEC will continue to diligently review violations for HPV Policy applicability.																														
Recommendation	None.																														

CAA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations					
Summary	All enforcement files reviewed addressed gravity, economic benefit, rationale for penalty amount differences and collection of penalties.					
Explanation	Based on the three formal enforcement files reviewed, VT DEC clearly documented initial penalty calculations and rationale for adjustments, and included this information as part of a case summary document located in each file. The files included calculations that clearly documented gravity and economic benefit separately. The files also contained documentation that the penalties were collected.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	11a Penalty calculations reviewed that document gravity and economic benefit	100%		3	3	100%
	12a Documentation of rationale for difference between initial penalty calculation and final penalty	100%		3	3	100%
	12b Penalties collected	100%		3	3	100%
State response	None.					
Recommendation	None.					

Resource Conservation and Recovery Act Findings

RCRA Element 1 — Data	
Finding 1-1	Area for State Attention
Summary	<p>During the time period reviewed, VTDEC did an adequate job maintaining accurate data and reporting in a timely manner into the RCRAInfo database. Most of the files selected for review were accurately represented when compared to the SRF file review metrics and the Data Metric Analysis (DMA) in EPA’s ECHO database.</p> <p>There remains a backlog of unaddressed, long-standing secondary violators [sites with secondary violations open for more than 240 days that have not been returned to compliance (RTC) or re-designated SNC] in RCRAInfo. EPA determined in this review that VTDEC has not implemented the recommendation from the previous SRF review to address long-standing secondary violators.</p>
Explanation	<p>Twenty-one files were reviewed to determine adherence to the minimum data requirements. Most of the selected files were accurately represented in the national RCRAInfo database.</p> <p>One of the twenty-one files reviewed had one violation count listed in a Notice of Alleged Violation (NOAV) that was not entered in RCRAInfo. Three of the twenty-one files reviewed had un-addressed secondary violations [violations open for more than 240 days that have not been returned to compliance (RTC) or re-designated SNC] in RCRAInfo.</p> <p>Metric 2a identifies 44 sites which appear to be long-standing violators with secondary violations that have been open for more than 240 days and were not re-designated as significant non-compliance (SNCs.)</p> <p>Note: In order obtain a representative sampling of files to complete the review, this Vermont SRF review required a search for file selection candidates going back to FY13 (beyond the FY16 frozen data). As such, two files appear to be additional long standing secondary violators.</p> <p>EPA suggests that VTDEC run RCRAInfo reports monthly for all facilities with open violations and determine whether the facilities have returned to compliance. In addition, EPA suggests that VTDEC correct the open violation backlog and update RCRAInfo by March 31, 2018.</p>

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2a Long-standing secondary violators					
2b Complete and accurate entry of mandatory data				17	21	81%

State response	We acknowledge we have not reviewed the open violation backlog in RCRAInfo on a monthly basis as recommended in the previous SRF. While this activity may be of lesser priority, we agree that RCRAInfo data should be complete and accurate, and therefore, by March 31, 2018, will begin running monthly RCRAInfo reports to identify facilities with open violations and determine if these facilities have returned to compliance.
Recommendation	See Explanation Section.

RCRA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations
Summary	VTDEC completed all of its mandatory annual inspection coverage of LQG(s) [20% of all LQG(s)] and all of its mandatory two-year inspection coverage of operating TSDFs*. VTDEC completed 71.7% of its five-year inspection coverage of LQG(s)**. Inspection reports are written with sufficient detail to determine compliance.
Explanation	<p>Metric 5a identifies five operating TSDFs in Vermont requiring inspection coverage over two years.</p> <p>* VTDEC inspected four TSDFs and EPA inspected one TSDF, thereby achieving 100% (combined) two-year inspection coverage.</p> <p>**Metric 5c references the five-year inspection coverage of LQG(s) which includes the national goal (100%) and the national average (54.8%). Although VTDEC's inspection coverage was less than the national goal of 100%, it was greater than the national average.</p> <p>The reduction in LQG five-year coverage was influenced by disruptions caused by Hurricane Irene in August 2011 and a shortfall in staffing into FY2013. Currently, inspection staffing levels have increased.</p>

Twenty-one files were reviewed to determine if VTDEC Inspection Reports or Complaint Investigation Reports were written with sufficient detail to determine compliance.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	5a Two-year inspection coverage of operating TSDFs	100%	90.3%	4	5	80%
5a Two-year inspection coverage of operating TSDFs (combined)	100%	90.3%	5	5	100%	
5b Annual inspection coverage of LQGs	20%	17.1%	9	46	20%	
5c Five-year inspection coverage of LQGs	100%	54.8%	33	46	71.7%	
5d Five-year inspection coverage of active SQGs		9.9%	50	204	24.5%	
5e1 Five-year inspection coverage of active conditionally exempt SQGs					196	
5e2 Five-year inspection coverage of active transporters					9	
5e3 Five-year inspection coverage of active non-notifiers					4	
5e4 Five-year inspection coverage of active sites not covered by metrics 2c through 2f3					47	
6a Inspection reports complete and sufficient to determine compliance			20	21	95.2%	
State response	None.					
Recommendation	None.					

RCRA Element 2 — Inspections

Finding 2-2	Area for State Improvement												
Summary	Inspection Reports did not have a completion date, so there was no way to tell if the reports had been completed in a timely manner.												
Explanation	<p>Twenty-one files were reviewed to determine if VTDEC Inspection Reports or Complaint Investigation Reports were completed in a timely manner.</p> <p>EPA determined in this review that VTDEC has not implemented the previous SRF review recommendation to put a date on the final inspection report.</p> <p>VTDEC provides the start date when the inspection reports are first drafted. VTDEC suggested an alternative method to establish the completion date of inspection reports which included a review of the electronic file of each report to determine the date when the inspection reports were finalized.</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>6b Timeliness of inspection report completion</td> <td>100%</td> <td></td> <td>0</td> <td>21</td> <td>0%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	6b Timeliness of inspection report completion	100%		0	21	0%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #								
6b Timeliness of inspection report completion	100%		0	21	0%								
State response	<p>We acknowledge that past program practice for drafting inspection reports did not include identification of a specific report completion date. Our program goal is to finalize inspection-related documentation and inform facilities in writing of their compliance status (e.g., NOAV for non-compliance, or No Violation letter for compliance) within 45 days of Day Zero (less than 1/3 of the “150-days of Day Zero” standard that EPA identifies for evaluating state inspection report timeliness that is based on EPA’s Hazardous Waste Civil Enforcement Response Policy). As a matter of practice, Vermont does not inform facilities of their compliance status until all supporting documentation for inspections has been completed (e.g., inspection reports). In the past, Vermont simply relied on the date of correspondence sent to a facility following an inspection to document completion of all inspection-related documentation including inspection reports. However, we acknowledge this is a metric EPA has established for the RCRA program. As such, in October 2017 we implemented a file naming convention for inspection reports (and other inspection-related documents). When saving completed inspection</p>												

	<p>documentation, inspectors save the document with the completion date included in the document file name.</p> <p>E.g.,: Irving.Final.Checklist.20171012</p>
Recommendation	<p>EPA recommends that effective immediately, VTDEC inspectors add the completion date to all inspection reports to assure that the reports are completed within VTDEC's 45-day goal.</p>

RCRA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations					
Summary	<p>VTDEC does an excellent job at identifying violations from its inspections and makes accurate compliance determinations from the facts presented in the files. VTDEC also does an excellent job making appropriate SNC determinations.</p> <p>FY16 inspections resulted in no unreported SNCs.</p>					
Explanation	<p>EPA evaluated the inspection reports, checklists, enforcement documents and enforcement actions for violations and potential violations resulting from inspections and compliance determinations. Inspections in FY16 resulted in a SNC identification rate near the national average.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	7a Accurate compliance determinations	100%		21	21	100%
	7b Violations found during inspections		35.9%	50	80	62.5%
	8a SNC identification rate		2.1%	1	80	1.3%
	8c Appropriate SNC determinations	100%		7	7	100%
State response	None.					
Recommendation	None.					

RCRA Element 3 — Violations

Finding 3-2	Area for State Attention																	
Summary	Some SNCs were not identified within 150 days of Day Zero.																	
Explanation	<p>Data metric 8b shows that some of the SNC dates were not within 150 days of day zero. Although one SNC was just over 150 days from day zero, three SNC determinations were significantly over 150 days from day zero. The finding can be justified due to the small sample size.</p> <p>EPA suggests that for those cases anticipating a penalty action, SNCs should be entered into RCRAInfo within the 150-day time limit to ensure the timeliness of SNC determinations.</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>8b Timeliness of SNC determinations</td> <td>100%</td> <td>84.2%</td> <td>3</td> <td>7</td> <td>42.8%</td> </tr> </tbody> </table>					Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	8b Timeliness of SNC determinations	100%	84.2%	3	7	42.8%	
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
8b Timeliness of SNC determinations	100%	84.2%	3	7	42.8%													
State response	<p>All three of the cases cited as significantly exceeding the 150 days of Day Zero standard were cases subject to the previous SRF. These cases were all settled in FY 2012 and 2013. While the one SNC determination identified as just exceeded the 150-day limit was entered into RCRAInfo just after the 150-day limit, the enforcement action was taken within the 150 days. Moving forward, the Vermont Program will endeavor to make SNC determinations within the 150 days of Day Zero-time limit.</p>																	
Recommendation	See Explanation Section.																	

RCRA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations																													
Summary	Most VTDEC formal and informal enforcement actions were issued within 360 days of Day Zero. Two inspections completed in FY16 have undetermined violations reported in RCRAInfo.																													
Explanation	<p>Twenty-one files were reviewed where formal and informal enforcement actions had been taken. Most case files had sufficient enforcement documentation. Although the information was available in the file, there was no summary document that encompasses a variety of information such as the violator status classification, inspector recommendations, inspector signatures, recommended enforcement responses, or written justification language explaining the potential harm to human health or the environment when justifying the appropriate enforcement response.</p> <p>EPA determined in this review that VTDEC has abandoned the use of their Enforcement Decision Document. The use of the Enforcement Decision Document was recommended in the previous SRF in order to summarize in one place, a document for enforcement decisions.</p>																													
Relevant metrics	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Metric ID Number and Description</th> <th style="text-align: center;">Natl Goal</th> <th style="text-align: center;">Natl Avg</th> <th style="text-align: center;">State N</th> <th style="text-align: center;">State D</th> <th style="text-align: center;">State % or #</th> </tr> </thead> <tbody> <tr> <td>9a Enforcement that returns violators to compliance</td> <td style="text-align: center;">100%</td> <td></td> <td style="text-align: center;">21</td> <td style="text-align: center;">21</td> <td style="text-align: center;">100%</td> </tr> <tr> <td>10a Timely enforcement taken to address SNC</td> <td style="text-align: center;">80%</td> <td></td> <td style="text-align: center;">2</td> <td style="text-align: center;">2</td> <td style="text-align: center;">100%</td> </tr> <tr> <td>10b Appropriate enforcement taken to address violations</td> <td style="text-align: center;">100%</td> <td></td> <td style="text-align: center;">21</td> <td style="text-align: center;">21</td> <td style="text-align: center;">100%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	9a Enforcement that returns violators to compliance	100%		21	21	100%	10a Timely enforcement taken to address SNC	80%		2	2	100%	10b Appropriate enforcement taken to address violations	100%		21	21	100%
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10a Timely enforcement taken to address SNC	80%		2	2	100%																									
10b Appropriate enforcement taken to address violations	100%		21	21	100%																									
State response	DEC contends that the inspection checklist, trip report, and NOAVs contain sufficient enforcement documentation.																													
Recommendation	None.																													

RCRA Element 5 — Penalties

Finding 5-1	Area for State Improvement					
Summary	VTDEC did not consider and document economic benefit in the enforcement cases reviewed.					
Explanation	<p>EPA determined in this review that VTDEC has not implemented the two previous SRF recommendations to consider and document economic benefit in all cases.</p> <p>Seven files were reviewed where penalty actions had been taken. EPA’s review of these files found that the files included no economic benefit calculations or partially calculated economic benefit calculations.</p>					
Relevant metrics						
	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	11a Penalty calculations include gravity and economic benefit			0	7	0%
State response	<p>In the majority of enforcement cases, given the nature of the RCRA violations and the relative scale of Vermont’s regulated community, economic benefit is either not present, de minimis, or too speculative to make a reasonable approximation. The RCRA SRF review does not appear to take any of those factors into account, and it does not identify the cases in which it makes findings regarding economic benefit, and its finding that files included “partially calculated economic benefit calculations” lacks clarity. DEC’s comments on this issue are therefore intended to generally address this finding.</p> <p>DEC considers economic benefit whenever it performs a penalty calculation. The SRF review confirms that DEC does in fact do so, as noted in the Explanation Section, but also as noted in the CAA review – See CAA Element 5 – Penalties, page 23, where it found all reviewed cases included economic benefit calculations. Any lack of notation in the penalty calculation forms should not be interpreted as a failure to consider economic benefit, but is rather an indication that economic benefit was either not present, de minimis, or too speculative to make a reasonable approximation. The lack of notation as such would have been in all likelihood an oversight. With respect to consideration of the use of the BEN model, given the nature of the RCRA violations and the relative small scale of Vermont’s regulated community, economic benefit is either not present, de minimis, or too speculative to make a</p>					

	<p>reasonable approximation. The use of the BEN model thus is not necessarily appropriate in every case. In other words, Vermont does not always have the appropriate types of violations or the scale of regulated activity which would dictate the use of the BEN model.</p> <p>To address EPA’s recommendation, DEC will ensure that RCRA economic benefit calculations are performed and documented in the penalty calculation forms when appropriate. It has also modified the form to include a specific section for providing the rationale when no economic benefit is calculated. Appropriate program and legal staff will be provided instructions on this topic.</p>
<p>Recommendation</p>	<p>Effective immediately, VTDEC management should ensure that economic benefit penalty calculations are performed by RCRA program staff, and then documented in VT’s penalty calculation forms.</p> <p>In addition, VT DEC RCRA staff should consult with EPA RCRA staff when utilizing EPA’s “Estimating Costs for the Economic Benefits of RCRA Noncompliance”, and, EPA’s “BEN” model for assessment of economic benefit in enforcement cases.</p> <p>EPA will coordinate and review VT DEC’s progress in calculating economic benefit on all new enforcement cases, twice-per-year (May and October), until sustained performance has been achieved.</p>

RCRA Element 5 — Penalties

Finding 5-2	Area for State Improvement																	
Summary	VTDEC did not always provide documentation of the rationale between the initial penalty calculation and final penalty.																	
Explanation	Seven files were reviewed where penalty actions had been taken. Three files had little or no justification to describe the final penalty that was reduced below the calculated penalty amount. One case file involved a reduction in the penalty amount with no documentation to support the final penalty amount.																	
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>12a Documentation on difference between initial and final penalty</td> <td>100%</td> <td></td> <td>4</td> <td>7</td> <td>57.1%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	12a Documentation on difference between initial and final penalty	100%		4	7	57.1%
	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #												
12a Documentation on difference between initial and final penalty	100%		4	7	57.1%													
State response	<p>The three files with no justification to describe why or how the final penalty was reduced appear to be from the time period covered in the previous SRF. DEC’s comments on this issue are therefore intended to generally address this finding across programs. The SRF review confirms that DEC does include penalty rationales, as noted in the Summary and Explanation Sections of the CWA review – see CWA Element 5-Penalties, Finding 5-1, and the CAA review – see CAA Element 5-Penalties, Finding 5-1. The lack of the rationale as such would have been in all likelihood an oversight. In response to previous SRFs, DEC implemented a practice that requires prosecuting attorneys include a settlement form summarizing penalty negotiations in each case file. The form identifies the reasons why the initial penalty was reduced to the agreed upon final amount. To address EPA’s recommendation, DEC will ensure that the settlement forms contain documentation of the rationale between the initial penalty calculation and final penalty.</p>																	
Recommendation	<p>EPA recommends that effective immediately, VT provide a more detailed explanation for the final penalty amounts and identify where the specific reductions were made for each violation and why. Vermont may use EPA’s ABEL software or another equivalent alternative to determine whether financial hardship exists.</p> <p>EPA will annually review the penalty calculations until sustained performance has been achieved.</p>																	

EPA will conduct additional file reviews in 2018 to assure that VTDEC is providing documentation of the rationale between the initial penalty calculation and final penalty.

RCRA Element 5 — Penalties

Finding 5-3	Meets or Exceeds Expectations					
Summary	VTDEC files provided clear documentation on the penalties collected and documentation on the status of an uncollected penalty.					
Explanation	Seven files were reviewed where penalty actions had been taken. EPA’s review of these files found that most files included documentation on penalties collected. One file had recent documentation on its uncollected penalty.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	12b Penalties collected	100%		7	7	100%
State response	None.					
Recommendation	None.					