

STATE REVIEW FRAMEWORK

Kansas

**Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2018**

**U.S. Environmental Protection Agency
Region 7**

**Final Report
March 6, 2020**

I. Introduction

A. Overview of the State Review Framework

The State Review Framework (SRF) is a key mechanism for EPA oversight, providing a nationally consistent process for reviewing the performance of state delegated compliance and enforcement programs under three core federal statutes: Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act. Through SRF, EPA periodically reviews such programs using a standardized set of metrics to evaluate their performance against performance standards laid out in federal statute, EPA regulations, policy, and guidance. When states do not achieve standards, the EPA will work with them to improve performance.

Established in 2004, the review was developed jointly by EPA and Environmental Council of the States (ECOS) in response to calls both inside and outside the agency for improved, more consistent oversight of state delegated programs. The goals of the review that were agreed upon at its formation remain relevant and unchanged today:

1. Ensure delegated and EPA-run programs meet federal policy and baseline performance standards
2. Promote fair and consistent enforcement necessary to protect human health and the environment
3. Promote equitable treatment and level interstate playing field for business
4. Provide transparency with publicly available data and reports

B. The Review Process

The review is conducted on a rolling five-year cycle such that all programs are reviewed approximately once every five years. The EPA evaluates programs on a one-year period of performance, typically the one-year prior to review, using a standard set of metrics to make findings on performance in five areas (elements) around which the report is organized: data, inspections, violations, enforcement, and penalties. Wherever program performance is found to deviate significantly from federal policy or standards, the EPA will issue recommendations for corrective action which are monitored by EPA until completed and program performance improves.

The SRF is currently in its 4th Round (FY2018-2022) of reviews, preceded by Round 3 (FY2012-2017), Round 2 (2008-2011), and Round 1 (FY2004-2007). Additional information and final reports can be found at the EPA website under [State Review Framework](#).

II. Navigating the Report

The final report contains the results and relevant information from the review including EPA and program contact information, metric values, performance findings and explanations, program responses, and EPA recommendations for corrective action where any significant deficiencies in performance were found.

A. Metrics

There are two general types of metrics used to assess program performance. The first are **data metrics**, which reflect verified inspection and enforcement data from the national data systems of each media, or statute. The second, and generally more significant, are **file metrics**, which are derived from the review of individual facility files in order to determine if the program is performing their compliance and enforcement responsibilities adequately.

Other information considered by EPA to make performance findings in addition to the metrics includes results from previous SRF reviews, data metrics from the years in-between reviews, multi-year metric trends.

B. Performance Findings

The EPA makes findings on performance in five program areas:

- **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, accuracy of compliance determinations, and determination of significant noncompliance (SNC) or high priority violators (HPV)
- **Enforcement** - timeliness and appropriateness of enforcement, returning facilities to compliance
- **Penalties** - calculation including gravity and economic benefit components, assessment, and collection

Though performance generally varies across a spectrum, for the purposes of conducting a standardized review, SRF categorizes performance into three findings levels:

Meets or Exceeds: No issues are found. Base standards of performance are met or exceeded.

Area for Attention: Minor issues are found. One or more metrics indicates performance issues related to quality, process, or policy. The implementing agency is considered able to correct the issue without additional EPA oversight.

Area for Improvement: Significant issues are found. One or more metrics indicates routine and/or widespread performance issues related to quality, process, or policy. A recommendation for corrective action is issued which contains specific actions and schedule for completion. The EPA monitors implementation until completion.

C. Recommendations for Corrective Action

Whenever the EPA makes a finding on performance of *Area for Improvement*, the EPA will include a recommendation for corrective action, or recommendation, in the report. The purpose of recommendations are to address significant performance issues and bring program performance back in line with federal policy and standards. All recommendations should include

specific actions and a schedule for completion, and their implementation is monitored by the EPA until completion.

III. Review Process Information

Resource Conservation and Recovery Act (RCRA)

Key dates:

- SRF Kickoff letter mailed to KDHE: May 16, 2019
- File selection list sent to KDHE: May 10, 2019
- Data Metric Analysis sent to KDHE: May 10, 2019
- Entrance interview conducted: June 11, 2019
- File review conducted: June 11-14, 2019
- Exit interview conducted: June 14, 2019
- Draft report sent to KDHE: December 10, 2019
- Final report issued: March 6, 2020

State and EPA key contacts for review:

- Julie Coleman, KDHE, BWM, Director
- Brian Burbeck, KDHE, BWM, Compliance, Assistance & Enforcement Unit Chief
- Ken Powell, KDHE, BWM, Compliance & Enforcement, Waste Reduction & Assistance Section Chief
- Nicole Moran, USEPA Region 7, Acting RCRA Section Chief (July to November 2019)
- Edwin G. Buckner PE, USEPA Region 7, RCRA Compliance Officer and Acting RCRA Section Chief (November 2019 to March 2020)
- Kevin Snowden, USEPA Region 7, RCRA Compliance Officer
- Michael J. Martin, USEPA Region 7, RCRA Compliance Officer
- Kevin Barthol, USEPA Region 7, SRF Coordinator

Executive Summary

Areas of Strong Performance

The following are aspects of the program that, according to the review, are being implemented at a high level:

Resource Conservation and Recovery Act (RCRA)

- Most Minimum Data Requirements (MDRs) are accurately entered into the national data systems, except violations, which are not consistently linked in RCRAInfo to Significant Non-Compliers Yes flags (SNY) evaluations.
- Inspections are thorough and identify all violations. KDHE met the inspection numbers expected for TSDFs.
- All compliance and SNC determinations appear to be accurate.
- All enforcement actions were taken to conclusion and resulted in facilities return to compliance.
- KDHE properly uses its penalty guidance and obtains penalties appropriate to that guidance.

Priority Issues to Address

The following are aspects of the program that, according to the review, are not meeting federal standards and should be prioritized for management attention:

Resource Conservation and Recovery Act (RCRA)

- KDHE fell short of the expected inspection numbers for LQGs. KDHE did not meet the state 30-day timetable for completing inspection reports.
- Although SNC determinations appear to be accurate, the official determination takes longer than 150 days.
- KDHE penalty guidance does not specifically address economic benefit of noncompliance and thus penalty calculations do not account for EBN.

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Summary:

Most Minimum Data Requirements (MDRs) are accurately entered into the national data systems, except violations, which are not consistently linked in RCRAInfo to Significant Non-Compliers Yes flags (SNY) evaluations.

Explanation:

KDHE is accurately entering data such as facility information, inspections, violations, informal and formal enforcement actions, and penalties, two enforcement actions were not recorded. Although violations are identified in the database, in most cases the violations were not linked to the SNY evaluation.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Accurate entry of mandatory data [GOAL]	100%		32	34	94.1%

State Response: None

RCRA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

Inspections are thorough and identify all violations. KDHE met the inspection numbers expected for TSDFs.

Explanation:

Inspectors are well trained and make use of modern electronic inspection equipment. Reports are clear and convey sufficient information to make accurate enforcement decisions. KDHE inspected all eight of the TSDFs during the two-year cycle.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	85%	8	8	100%
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		34	34	100%

State Response: None

RCRA Element 2 - Inspections

Finding 2-2

Area for Improvement

Summary:

KDHE fell short of the expected inspection numbers for LQGs. KDHE did not meet the state 30-day timetable for completing inspection reports.

Explanation:

There is a high turnover rate among KDHE inspectors. KDHE consistently inspects fewer LQGs than expected. The five-year coverage percentage could vary based upon the baseline number of LQGs in the state over five years and does not address redundant inspections. The 54.5% timeliness rate is based upon the state's 30-day timetable. The state will be receiving a multi-purpose grant. It will be used to investigate and implement lean management methods to address this and other issues.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5b Annual inspection of LQGs using BR universe [GOAL]	20%	15.6%	30	227	13.2%
5c Five-year inspection coverage of LQGs [GOAL]	100%		179	207	86.5%
6b Timeliness of inspection report completion [GOAL]	100%		18	33	54.5%

State Response: *KDHE fell short of the expected inspection numbers for LQGs.*

We accept the recommendations made for this area of improvement and will work to meet the national goal of inspecting 20% of LQGs annually as follows.

There are about 1,416 hazardous waste generators in Kansas (not including Conditionally Exempt Small Quantity Generators). Of these 229, or 16%, are Large Quantity Generators (LQGs). In order to meet the national goal of inspecting 20% of LQGs annually, Kansas will need to inspect 46 per year. We have already planned to meet this goal in FFY 2020 by scheduling 53 LQGs for inspection and will strive to complete at least 46 of these.

As part of the multi-purpose grant, during 2020 BWM and BEFS also will conduct a Quality Improvement process mapping event for the inspection process in an effort to identify ways to make the inspection process more efficient while maintaining the integrity of inspections.

Despite our best efforts and intentions, there will be challenges to meeting this goal. There are 12 inspector positions in the six KDHE district offices. These inspectors are responsible for conducting all hazardous and solid waste inspections and complaint investigations, as well as assisting with disaster and emergency response as needed. Currently, two of the inspector positions are vacant and only seven of the existing inspectors are certified to perform hazardous waste inspections. Certified inspectors also are responsible for training new inspectors.

There also are three certified hazardous waste inspectors in central office of the Bureau of Waste Management who have been assigned five LQG inspections during FFY 2020. However, these inspectors are enforcement officers who are responsible for reviewing all district inspection reports for enforcement and developing enforcement orders. Therefore, to meet the recommendations for other areas of improvement identified in EPA's report their inspections may not be completed.

We expect this trend of vacancies to continue based on the turnover we have been experiencing and anticipated retirements in the next several years. When an inspector position is filled, it typically takes a new inspector from 1.5 to 2 years to complete the training and demonstrate competence to become certified to conduct hazardous waste inspections. Meeting EPA's national goal for LQG inspections may continue to be a challenge for Kansas despite our best efforts.

KDHE did not meet the 30-day timetable for completing inspection reports.

We will review this expectation with inspectors and improve tracking in an effort to ensure the 30-day goal is met most of the time. As part of the multipurpose grant we will be performing process mapping on the inspection process to determine any areas that can be improved to assure the timeliness of report completion. Because the 30-day timetable for completing inspection reports is an internal BWM goal (there is no statutory mandate requiring the 30-day timeframe) this will include re-evaluation of the 30-day goal.

As acknowledged in EPA's draft SRF report, there are legitimate factors that contribute to inspection reports occasionally exceeding the 30-day internal goal, for example: (1) delayed facility responses to inspector requests for information needed to complete reports, and (2) on-going and extended inspector vacancies which create greater demands on inspection staff can cause delays in report submittals.

Recommendation:

Rec #	Due Date	Recommendation
1	03/01/2021	<p>The state will be receiving a multi-purpose grant to investigate and implement lean management methods. EPA recommends KDHE to include this inspection coverage of LQGs and timeliness of inspection reports in its efforts. Report to EPA on monthly calls and a written report semi-annually on the progress/efforts. This recommendation will be deemed complete when:</p> <ol style="list-style-type: none">1. KDHE LQG inspections increase to meet the approximate 20% annual target of the BR universe. At the end of FY20, EPA will review KDHE inspection data in order to determine progress. If the FY20 data does not meet this threshold, EPA will review subsequent years data until met.2. If 85% or more of a selection of KDHE inspection reports meet the 30-day timetable. At the end of FY20, EPA will review a selection of inspection reports to determine progress. If the FY20 data does not meet this threshold, EPA will review subsequent year reports until met.

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Summary:

All compliance and SNC determinations appear to be accurate.

Explanation:

All compliance and SNC determinations are reasonable and accurate. The inspection reports provided ample details to assess the seriousness of cited violations. Five of the reviewed files had no cited violations. Fifteen of the 29 files with violations were accurately determined to be SNCs with the remaining 14 accurately determined to be only secondary violations.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		34	34	100%
8c Appropriate SNC determinations [GOAL]	100%		29	29	100%

State Response: None

RCRA Element 3 - Violations

Finding 3-2

Area for Improvement

Summary:

Although SNC determinations appear to be accurate, the official determination takes longer than 150 days.

Explanation:

All SNC determinations are reasonable and accurate, although the final decision by management is sometimes delayed. On average, it took 269 days to make a SNC determination, with the longest being 567 days and the shortest 148 days. Eight out of 15 SNC determinations were made within 270 days.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
8b Timeliness of SNC determinations [GOAL]	100%	76.5%	8	15	53.3%

State Response: Staff shortages have sometimes delayed meeting this deadline. We are working to hire new staff and improve training. As part of the multipurpose grant we will be performing process mapping on the enforcement process to determine any areas that can be improved to assure the timeliness of enforcement determinations.

The initial process mapping event has been scheduled for February 20, after which several follow up meetings and discussions will be needed before a revised enforcement process is adopted. Once adopted the new process can be implemented and we will be able to evaluate its effectiveness.

Recommendation:

Rec #	Due Date	Recommendation
1	03/01/2021	The state will be receiving a multi-purpose grant to investigate and implement lean management methods. EPA recommends KDHE to include this timeliness of SNC determinations in its efforts. Report to EPA on monthly calls and a written report semi-annually on the progress/efforts. EPA will deem this recommendation closed when the state achieves 85% or greater on this metric measured annually in the frozen data.

RCRA Element 4 - Enforcement

Finding 4-1

Area for Attention

Summary:

Certain enforcement actions exceed the expected timelines for conclusion.

Explanation:

Some actions were taken against particularly argumentative respondents. Two respondents appealed the state determinations and took their cases to hearing, thus dragging out the process. Two cases are not that many, but when only four actions occurred during the review period, it

appears to be a large percentage of cases. The state resolves cases swiftly when respondents do not appeal.

EPA Response to State Comments: To evaluate the KDHE’s timeliness metric during the program review, the EPA used metric 10a to analyze the percentage of year-reviewed and previous-year significant noncomplier (SNC) designations addressed with a formal enforcement action or referral during the year reviewed and within 360 days of Day Zero as the criteria.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timely enforcement taken to address SNC [GOAL]	100%	87.7%	2	4	50%

State Response: EPA's report does not identify what the expected timeline is for conclusion of enforcement actions; therefore, we don't know what metric we are expected to achieve. We strive to complete enforcement actions in a timely measure. The enforcement process mapping event that is scheduled for February 20 will help us to identify changes in the process to make it more efficient and effective. Also, as noted in EPA's report, when facilities appeal an order the timeline for completion is often delayed beyond our control by the administrative process. Even during the appeal process we keep working to settle the case to shorten the time as much as possible.

RCRA Element 4 - Enforcement

Finding 4-2

Meets or Exceeds Expectations

Summary:

All enforcement actions were taken to conclusion and resulted in facilities return to compliance.

Explanation:

KDHE had 15 facilities in significant noncompliance and 14 facilities in secondary violation and concluded them all. Each enforcement response action was appropriate and returned the violating facility to compliance.

Relevant metrics:

10b Appropriate enforcement taken to address violations [GOAL]	100%		29	29	100%
9a Enforcement that returns sites to compliance [GOAL]	100%		29	29	100%

State Response: None

RCRA Element 5 - Penalties

Finding 5-1

Area for Improvement

Summary:

KDHE penalty guidance does not specifically address economic benefit of noncompliance and thus penalty calculations do not account for EBN.

Explanation:

KDHE's penalty policy is clear and concise, but it does not specifically address the economic benefit of non-compliance (EBN) for individual violations. EBN is unique for each violation observed during an inspection, but the policy presents a generic, uncalculated, extra amount expected to cover EBN in every case.

EPA Response to State comments: EPA accepts KDHE's revised due date of August 31, 2020. The report language due date has been amended from June 30, 2020 to the revised date of August 31, 2020 for this finding.

Relevant metrics:

11a Gravity and economic benefit [GOAL]	100%		0	15	0%

State Response: We accept EPA's recommendations and will work to meet the requirements in the following manner.

We have determined that it has been several years since the penalty matrix was implemented and it should now be reassessed. As part of that reassessment we will be investigating the possibility of including a new line for EBN.

However, we feel that the proposed deadline of June 30, 2020 for submitting a draft, revised penalty guidance is insufficient and would like this deadline to be extended until August 31, 2020.

Recommendation:

Rec #	Due Date	Recommendation
1	08/31/2020	EPA recommends KDHE review its penalty policy and draft requirements to address EBN. EPA also recommends that KDHE incorporate these requirements into their current penalty calculation worksheet. The draft and updated worksheet should be submitted to EPA by August 31, 2020 for review. The EPA has resources to assist the state in this endeavor. At the end of FY20, EPA will review a selection of penalty calculations, and if EPA determines that the policy is appropriately being applied and EBN is being accounted for this recommendation will be closed.

RCRA Element 5 - Penalties

Finding 5-2

Meets or Exceeds Expectations

Summary:

KDHE properly uses its penalty guidance and obtains penalties appropriate to that guidance.

Explanation:

KDHE's penalty policy is clear and concise. It yields penalties appropriate to the violations considering the state's statutory maximum. KDHE files contained documentation of penalties collected.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		5	5	100%
12b Penalty collection [GOAL]	100%		14	14	100%

State Response: None

Appendix

Office of Legal Services
Curtis State Office Building
1000 SW Jackson St., Suite 560
Topeka, KS 66612-1368



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Lee A. Norman, M.D., Secretary

Laura Kelly, Governor

January 27, 2020

Mr. David Cozad, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, KS 66219

RECEIVED
JAN 31 2020
ECAD/CHEMICAL

Dear Mr. Cozad:

On December 16, 2019, the KDHE Bureau of Waste Management received EPA's draft report for the State Review Framework of the Kansas RCRA Enforcement Program. We appreciate EPA's comments and guidance as we seek to continuously improve our program. Attached is our response to the draft report addressing the findings that specify "Areas for Improvement."

Please let me know if you have any questions about our response. Thank you for conducting this review efficiently and professionally.

Sincerely,

A handwritten signature in blue ink that reads "Julie Coleman".

Julie Coleman, Director
Bureau of Waste Management

e: Leo Henning, DOE
Ken Powell, BWM
Brian Burbeck, BWM
Erich Glave, BEFS
File

This response addresses findings from EPA's draft report that were assigned a rating of "Area for Improvement".

RCRA Element 2 - Inspections

Finding 2.2: KDHE fell short of the expected inspection numbers for LQGs.

We accept the recommendations made for this area of improvement and will work to meet the national goal of inspecting 20% of LQGs annually as follows.

There are about 1,416 hazardous waste generators in Kansas (not including Conditionally Exempt Small Quantity Generators). Of these 229, or 16%, are Large Quantity Generators (LQGs). In order to meet the national goal of inspecting 20% of LQGs annually, Kansas will need to inspect 46 per year. We have already planned to meet this goal in FFY 2020 by scheduling 53 LQGs for inspection and will strive to complete at least 46 of these.

As part of the multi-purpose grant, during 2020 BWM and BEFS also will conduct a Quality Improvement process mapping event for the inspection process in an effort to identify ways to make the inspection process more efficient while maintaining the integrity of inspections.

Despite our best efforts and intentions, there will be challenges to meeting this goal. There are 12 inspector positions in the six KDHE district offices. These inspectors are responsible for conducting all hazardous and solid waste inspections and complaint investigations, as well as assisting with disaster and emergency response as needed. Currently, two of the inspector positions are vacant and only seven of the existing inspectors are certified to perform hazardous waste inspections. Certified inspectors also are responsible for training new inspectors.

There also are three certified hazardous waste inspectors in central office of the Bureau of Waste Management who have been assigned five LQG inspections during FFY 2020. However, these inspectors are enforcement officers who are responsible for reviewing all district inspection reports for enforcement and developing enforcement orders. Therefore, to meet the recommendations for other areas of improvement identified in EPA's report their inspections may not be completed.

We expect this trend of vacancies to continue based on the turnover we have been experiencing and anticipated retirements in the next several years. When an inspector position is filled, it typically takes a new inspector from 1.5 to 2 years to complete the training and demonstrate competence to become certified to conduct hazardous waste inspections. Meeting EPA's national goal for LQG inspections may continue to be a challenge for Kansas despite our best efforts.

Finding 2.2: KDHE did not meet the 30-day timetable for completing inspection reports.

We will review this expectation with inspectors and improve tracking in an effort to ensure the 30-day goal is met most of the time. As part of the multipurpose grant we will be performing process mapping on the inspection process to determine any areas that can be improved to assure the timeliness of report completion. Because the 30-day timetable for completing inspection reports is an internal BWM goal (there is no statutory mandate requiring the 30-day timeframe) this will include re-evaluation of the 30-day goal.

As acknowledged in EPA's draft SRF report, there are legitimate factors that contribute to inspection reports occasionally exceeding the 30-day internal goal, for example: (1) delayed facility responses to inspector requests for information needed to complete reports, and (2) on-going and extended inspector vacancies which create greater demands on inspection staff can cause delays in report submittals.

RCRA Element 3 - Violations

Finding 3.2: Although SNC determinations appear to be accurate, the official determination takes longer than 150 days.

Staff shortages have sometimes delayed meeting this deadline. We are working to hire new staff and improve training. As part of the multipurpose grant we will be performing process mapping on the enforcement process to determine any areas that can be improved to assure the timeliness of enforcement determinations.

The initial process mapping event has been scheduled for February 20, after which several follow up meetings and discussions will be needed before a revised enforcement process is adopted. Once adopted the new process can be implemented and we will be able to evaluate its effectiveness.

RCRA Element 4 - Enforcement

Finding 4-1: Certain enforcement actions exceed the expected timelines for conclusion.

EPA's report does not identify what the expected timeline is for conclusion of enforcement actions; therefore, we don't know what metric we are expected to achieve. We strive to complete enforcement actions in a timely measure. The enforcement process mapping event that is scheduled for February 20 will help us to identify changes in the process to make it more efficient and effective. Also, as noted in EPA's report, when facilities appeal an order the timeline for completion is often delayed beyond our control by the administrative process. Even during the appeal process we keep working to settle the case to shorten the time as much as possible.

RCRA Element 5 - Penalties

Finding 5.1: KDHE penalty guidance does not specifically address economic benefit of noncompliance and this penalty calculations do not account for EBN [economic benefit of noncompliance].

We accept EPA's recommendations and will work to meet the requirements in the following manner.

We have determined that it has been several years since the penalty matrix was implemented and it should now be reassessed. As part of that reassessment we will be investigating the possibility of including a new line for EBN.

However, we feel that the proposed deadline of June 30, 2020 for submitting a draft, revised penalty guidance is insufficient and would like this deadline to be extended until August 31, 2020.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

11201 Renner Boulevard
Lenexa, Kansas 66219

SERVICE VIA ELECTRONIC MAIL
RECEIPT CONFIRMATION REQUESTED

Rick Brunetti, Director
Bureau of Air
Kansas Department of Health and Environment
1000 S.W. Jackson Street
Topeka, Kansas 66612
Rick.Brunetti@ks.gov

Dear Mr. Brunetti:

Enclosed is the draft report for the U.S. Environmental Protection Agency's review of the Kansas Department of Health and Environment Clean Air Act enforcement program for Federal Fiscal Year 2019. The document presents the findings and recommendations from the program review conducted by the EPA on July - August 2020. The findings in the report reflect what was discussed during the program review exit conference, as well as additional findings made after performing further analysis. With this transmittal, the EPA is requesting your response to the findings and recommendations contained in the report.

The EPA identified parts of KDHE's enforcement program needing improvement, which you will find in the report. The report describes the types of improvements the EPA envisions as being appropriate to resolve each finding. In your response please comment on the recommended actions and propose milestones for completing them. Upon reviewing your response, we will work in partnership to establish agreeable language for a final report. With exceptions for any actions that may require a long-term commitment of resources, we request that all actions be planned for completion by the end of FFY 2022.

The EPA anticipates finalizing the report within the next 90 days. Please submit your response to the recommendations along with any comments or clarifications of the findings within the next 45 days. If you have any questions or would like additional information, please contact Lisa Hanlon at (913) 551-7599.

Sincerely,

**DAVID
COZAD**

Digitally signed by DAVID
COZAD
Date: 2020.11.13
10:16:16 -06'00'

David Cozad
Director
Enforcement and Compliance Assurance Division

Enclosures

cc: Connie.Ellis@ks.gov



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STATE REVIEW FRAMEWORK

Kansas

Clean Air Act Implementation in Federal Fiscal Year 2019

**U.S. Environmental Protection Agency
Region 7**

**Draft Report
October 27, 2020**

Executive Summary

Areas of Strong Performance

The following are aspects of the program that, according to the review, are being implemented at a high level:

Clean Air Act

- Finding 1-1: KDHE has demonstrated a solid arc of improvement in database accuracy over time. 88.9% of files reviewed had complete and accurate data entered into the database.
- Finding 2-1: KDHE demonstrates proficiency in inspection coverage, document review, and comprehensive report documentation.
- Finding 3-1: The state demonstrates excellence in their accuracy of compliance and HPV determinations. Timeliness of HPV identification is likewise exemplary.
- Finding 4-1: The state implements an excellent enforcement program with respect to HPV case development, as well as formal responses to return facilities to compliance.
- Finding 5-2: KDHE is successful with penalty collection.
- Supplementary Findings
 - The electronic File System is excellent, fast and transparent. Very well organized and complete.
 - Inspection Reports are of very high quality, thorough, and well organized.
 - The high technical skill of inspectors/enforcement staff evident in all documentation contained in the files.
 - The EPA/KDHE cross agency communication is excellent.

Priority Issues to Address

The following are aspects of the program that, according to the review, are not meeting federal standards and should be prioritized for management attention:

Clean Air Act (CAA)

- **Finding 1-2:** Timely reporting of HPV determinations, compliance monitoring Minimum Data Requirements; stack test dates and results; and enforcement MDRs are all below the national goal. The EPA is concerned with data flow and timeliness.
- **Finding 4-2:** KDHE did not consistently document addressed or removed HPVs in the national data system.

- **Finding 5-1:** KDHE's penalty calculations documentation for consideration of gravity and economic benefit as well as documentation of rationale for difference between initial penalty calculation and final penalty is below national goals.

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B. Performance Findings

The EPA makes findings on performance in five program areas:

- **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, accuracy of compliance determinations, and determination of significant noncompliance or high priority violators
- **Enforcement** - timeliness and appropriateness of enforcement, returning facilities to compliance
- **Penalties** - calculation including gravity and economic benefit components, assessment, and collection

Though performance generally varies across a spectrum, for the purposes of conducting a standardized review, SRF categorizes performance into three findings levels:

Meets or Exceeds: No issues are found. Base standards of performance are met or exceeded.

Area for Attention: Minor issues are found. One or more metrics indicates performance issues related to quality, process, or policy. The implementing agency is considered able to correct the issue without the additional EPA oversight.

Area for Improvement: Significant issues are found. One or more metrics indicates routine and/or widespread performance issues related to quality, process, or policy. A recommendation for corrective action is issued which contains specific actions and schedule for completion. The EPA monitors implementation until completion.

C. Recommendations for Corrective Action

Whenever the EPA makes a finding on performance of *Area for Improvement*, the EPA will include a recommendation for corrective action, or recommendation, in the report. The purpose of recommendations are to address significant performance issues and bring program performance back in line with federal policy and standards. All recommendations should include specific actions and a schedule for completion, and their implementation is monitored by the EPA until completion.

III. Review Process Information

Clean Air Act

Key dates:

- SRF Kickoff letter transmitted to KDHE: May 4, 2020
- File selection list sent to KDHE: May 21, 2020
- Data Metric Analysis sent to KDHE: May 21, 2020
- Entrance interview conducted: May 26, 2020
- File review conducted: July – August 2020
- Exit interview conducted: September 8, 2020
- Draft report sent to KDHE [Date]
- Final report issued: [Insert Date]

State and the EPA key contacts for review:

- Connie Ellis, KDHE Bureau of Air; Air Compliance, Enforcement, Asbestos and KS Residential Lead Hazard Program Chief
- Allyson Prue, KDHE Bureau of Air; Air Compliance and Enforcement Unit Chief

- Lisa Hanlon, USEPA Region 7, Enforcement and Compliance Assurance Acting Air Branch Chief and SRF CAA Reviewer
- Lisa Gotto, USEPA Region 7, Lead SRF CAA Reviewer
- Sean Bergin, USEPA Region 7, SRF CAA Reviewer
- Joe Terriquez, USEPA Region 7, SRF CAA Reviewer
- Kevin Barthol, USEPA Region 7, SRF Regional Coordinator

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

KDHE has demonstrated a solid arc of improvement in database accuracy over time. 88.9% of files reviewed had complete and accurate data entered into the database.

Explanation:

Database accuracy was evaluated by comparing the KDHE electronic files with the Enforcement Compliance History Online detailed facility reports (metric 2b). 88.9% of files reviewed had complete and accurate data entered into the national database. The file review revealed relatively minor discrepancies between the ECHO database and the files. The common discrepancies between the two systems included inaccurate event dates, naming discrepancies, and typographical errors.

The EPA notes KDHE has demonstrated a solid arc of improvement in database accuracy over time, as demonstrated by the previous SRF's recommendation for this metric as an area for state attention, to the SRF Round 4 Finding, 'Meets or Exceeds Expectations'.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		32	36	88.9%

State Response:

CAA Element 1 - Data

Finding 1-2

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

Timely reporting of HPV determinations, compliance monitoring Minimum Data Requirements; stack test dates and results; and enforcement MDRs are all below the national goal. The EPA is concerned with data flow and timeliness.

Explanation:

The SRF review revealed a widespread issue with timeliness in reporting relevant enforcement actions and milestones. KDHE's timely reporting of HPV determinations, compliance monitoring Minimum Data Requirements; stack test dates and results; and enforcement MDRs are all below the national goals and national averages.

In terms of the timeliness of reporting compliance monitoring MDRs (metric 3b1), KDHE's Round 4 performance (60.4%) in this metric is below the national goal and this represents a decrease from the Round 3 achievement in this area (77.3%).

The timely reporting stack test dates and results (metric 3b2) is 58.8% likewise below the national goal. KDHE has improved substantially from the Round 3 performance (2.8%) but has decreased from the previous 2 years Annual Data Metric Analysis numbers in the mid-90's percent.

With respect to metric 3b3, KDHE achievement of 43.9% is well below the national goal and demonstrates a decline in achievement from Round 3 (91.1%).

Regarding these metrics related to timely data entry, the EPA is aware that KDHE transitioned to a new data system the Kansas Environmental Information Management System and there was some time needed to achieve this and train users. However, the EPA is generally concerned with data flow and timeliness issue.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
3a2 Timely reporting of High Priority Violation determinations [GOAL]	100%	44.9%	1	6	16.7%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	85.2%	564	934	60.4%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	65.1%	97	165	58.8%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	71.8%	36	82	43.9%

State Response:

Recommendation:

Rec No.	Due Date	Recommendation
1	05/01/2021	<p>The EPA recommends KDHE evaluate current data entry procedures with the goal of significantly improving timeliness in recording MDRs. To achieve this goal, the EPA recommends KDHE:</p> <ul style="list-style-type: none"> • Implement data entry review and tracking procedures specific to the relevant metrics (3a1, 3b1, 3b2, 3b3). • Review the revised HPV policy to ensure familiarity with the 2014 policy revisions and reporting HPVs into Integrated Compliance Information System-Air. <p>Provide Region 7 with a draft of the process improvement (in the form of an SOP) for review within 60 days of completion of the SRF Final Report that addresses the timeliness for reporting of HPV determinations; compliance MDRs; stack test dates and results; and enforcement MDRs.</p> <p>The EPA will use the data frozen during the regular ADMA process to assess progress on this recommendation.</p> <p>This recommendation will be deemed completed upon: Implementation of an EPA approved SOP; and achievement of 85% or greater in ADMA metrics 3a2, 3b1, 3b2, and 3b3.</p> <p>The EPA will review KDHE FY20 frozen data in order to determine progress in timely entry of MDRs. If the FY20 data does not meet this threshold, the EPA will review subsequent years data until met.</p>

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

KDHE demonstrates proficiency in inspection coverage, document review, and comprehensive report documentation.

Explanation:

KDHE's Full Compliance Evaluation coverage for CAA major facilities and mega-sites (metric 5a - 97.6%) and coverage of minors (metric 5c – 93.4%) are each nearing the national goal.

KDHE’s FCE coverage for CAA synthetic minor facilities (metric 5b - 91.6%). The EPA will continue to coordinate our inspections with the state.

Kansas Title V facilities are inspected annually. In accordance with the approved Compliance Monitoring Strategy Plan, the larger Title V facilities receive multiple Partial Compliance Evaluations in one year, which combine to meet the annual FCE requirement. KDHE inspectors accompany the EPA inspectors on inspections in Kansas whenever possible. District Office inspectors are also called upon to execute complaint investigations when necessary. The KDHE air program inspectors perform over eight hundred assigned facility inspections each year. The KDHE field inspectors also perform up to one hundred and fifty additional inspections/investigations, beyond the assigned inspections. This substantial workload is accomplished with a high degree of communication and coordination with the six KDHE District Offices and local government offices on a frequent basis to ensure inspection targets are met.

KDHE’s documentation of FCE elements in inspection reports (88.5%) is excellent. Inspection reports are thorough, succinct and of very high quality. Compliance issues are described clearly in the narrative portion. The reports are clear about the steps necessary for return to compliance. The reports contain strong, detailed narratives to connect the data and provide transparency to the regulated community and public.

File reviewers noted KDHE staff demonstrate proficiency in documenting FCE elements. Review of Title V annual compliance certifications (metric 5e – 90.8%) is nearing the national goal. KDHE’s review of Compliance Monitoring Report and files that provide enough documentation to determine compliance is also near the national goal (metric 6b - 92.3%.)

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
5a FCE coverage: majors and mega-sites [GOAL]	100%	88.1%	242	248	97.6%
5b FCE coverage: SM-80s [GOAL]	100%	93.7%	370	404	91.6%
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%	70.1%	57	61	93.4%
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	82.5%	248	273	90.8%
6a Documentation of FCE elements [GOAL]	100%		23	26	88.5%
6b Compliance monitoring reports or facility files reviewed that provide enough documentation to determine compliance of the facility [GOAL]	100%		24	26	92.3%

State Response:

CAA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state demonstrates excellence in their accuracy of compliance and High Priority Violation determinations. Timeliness of HPV identification is likewise exemplary.

Explanation:

The EPA and the state convene conference calls on a frequent and regular basis to discuss facility specific issues and coordinate program implementation issues including compliance determinations, HPV facility identification and timeliness.

All thirty-six of the files reviewed were determined to have accurate compliance determinations. Twenty-three of the twenty-seven files reviewed appear to have accurate HPV determinations, indicating that among the violations reviewed, KDHE is proficient in accurately identifying violations, as well as interpreting and applying the Federally Reportable Violation and HPV policy.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
13 Timeliness of HPV Identification [GOAL]	100%	89.5%	6	6	100%
7a Accurate compliance determinations [GOAL]	100%		36	36	100%
7a1 FRV 'discovery rate' based on inspections at active CMS sources		7.8%	61	999	6.1%
8a HPV discovery rate at majors		2.5%	3	266	1.1%
8c Accuracy of HPV determinations [GOAL]	100%		23	27	85.2%

State Response:

CAA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state implements an excellent enforcement program with respect to HPV case development, as well as formal responses to return facilities to compliance. All formal enforcement responses reviewed included language requiring the facility return to compliance.

Explanation:

With respect to the state's formal enforcement responses (metric 9a), KDHE's achievement of this component is excellent; as demonstrated in the files (95.2%), database, and in our frequent discussions with the state. KDHE's formal enforcement responses routinely include the required corrective actions that will return the facility to compliance.

Regarding the state's performance addressing and/or removing HPVs consistent with the HPV policy (metric 10a – 100%) and HPV Case developments/resolution (metric 14 – 100%), performance in the area is unimpeachable. The EPA's file review analysis metric results are consistent with the periodic HPV discussions with management and staff; each indicating the state routinely and expertly applies the HPV policy.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		12	12	100%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		1	1	100%
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 [GOAL]	100%		20	21	95.2%

State Response:

CAA Element 4 - Enforcement

Finding 4-2

Area for Improvement

Recurring Issue:

No

Summary:

KDHE did not consistently document addressed or removed HPVs in the national data system.

Explanation:

In its file review, the EPA found 2 of 3 HPVs that had been addressed or removed consistent with the HPV policy. The third facility had the HPV action concluded (a terminated Consent Agreement Final Order) but the action not successfully entered the national data system. This appears to be a data entry lag. The EPA will add this topic for the monthly enforcement coordination meetings for continued oversight and discussion.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		2	3	66.7%

State Response:

Recommendation:

Rec #	Due Date	Recommendation
1	12/31/2021	<p>The EPA recommends better oversight of concluded HPVs with the data management program.</p> <p>At the end of FY21, the EPA will review a selection of concluded HPVs for complete data entry into the national system. If the sampling of files and data indicates achievement of 85% or greater of the relevant metric (10b), the EPA will close this recommendation. If the FY21 pull does not achieve this threshold, the EPA will review data from subsequent years until the threshold is met.</p>

CAA Element 5 - Penalties

Finding 5-1

Area for Improvement

Recurring Issue:

No

Summary:

KDHE's penalty calculations documentation for consideration of gravity and economic benefit as well as documentation of rationale for difference between initial penalty calculation and final penalty is below national goals.

Explanation:

The 2015 Round 3 SRF review indicated that 92.9% of the enforcement actions taken by KDHE in the public files included a penalty calculation work sheet with a specific statement on consideration of economic benefit (metric 11a). In the Round 4 review, KDHE demonstrated a 63.3% achievement rate in this metric, a decline in performance in this area.

An important element of the State’s implementation of the compliance and enforcements elements of the CAA program in Kansas is maintenance of documentation for public access in order for the public to determine facility compliance. In the eleven 2019 files reviewed, seven of the files included the penalty calculation worksheets (including documentation of the consideration of economic benefit (metric 11a). Of the four files reviewed, three contained documentation of the rationale for the difference between initial penalty calculation and final penalty (metric 12a).

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%		7	11	63.6%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		3	4	75%

State Response:

Recommendation:

Rec #	Due Date	Recommendation
1	05/01/2021	<p>The EPA recommends KDHE revise the standard penalty calculation worksheet and develop a documentation format/area, to include a specific section to:</p> <ul style="list-style-type: none"> • Document gravity and economic benefit; and • Document penalty reduction justification. <p>The EPA also recommends KDHE develop and include in its enforcement manual an SOP for including the revised penalty worksheet and documentation in the facility files.</p> <p>Submit a revised penalty worksheet and SOP for the EPA review within 90 days of receiving the final report.</p> <p>At the end of FY21, the EPA will review a selection of penalty calculations. If the sampling of files indicates achievement of 85% or greater of the relevant metrics (11a and 12a) and implementation of the SOP, documentation in the facility files, the EPA will close this recommendation. If the FY21 pull does not achieve this threshold, the EPA will review data from subsequent years until the threshold is met.</p>

CAA Element 5 - Penalties

Finding 5-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

KDHE is successful with penalty collection.

Explanation:

With respect to penalty collection, for the 2019 files reviewed, the EPA found ten of the eleven facility files included a copy of the check for documentation of penalty collection (metric 12b), achieving 90.9% in this program area.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12b Penalties collected [GOAL]	100%		10	11	90.9%

State Response:

Appendix

STATE REVIEW FRAMEWORK

Kansas

Clean Air Act Implementation in Federal Fiscal Year 2019

U.S. Environmental Protection Agency Region 7

**Draft-Final Report
February 17, 2021**

Executive Summary

Areas of Strong Performance

The following are aspects of the program that, according to the review, are being implemented at a high level:

Clean Air Act (CAA)

- Finding 1-1: KDHE has demonstrated a solid arc of improvement in database accuracy over time. 88.9% of files reviewed had complete and accurate data entered into the database.
- Finding 2-1: KDHE demonstrates proficiency in inspection coverage, document review, and comprehensive report documentation.
- Finding 3-1: The state demonstrates excellence in their accuracy of compliance and HPV determinations. Timeliness of HPV identification is likewise exemplary.
- Finding 4-1: The state implements an excellent enforcement program with respect to HPV case development, as well as formal responses to return facilities to compliance.
- Finding 5-2: KDHE is successful with penalty collection.
- Supplementary Findings
 - The electronic File System is excellent, fast and transparent. Very well organized and complete.
 - Inspection Reports are of very high quality, thorough, and well organized.
 - The high technical skill of inspectors/enforcement staff evident in all documentation contained in the files.
 - The EPA/KDHE cross agency communication is excellent.

Priority Issues to Address

The following are aspects of the program that, according to the review, are not meeting federal standards and should be prioritized for management attention:

Clean Air Act (CAA)

- **Finding 1-2:** Timely reporting of HPV determinations, compliance monitoring Minimum Data Requirements (MDRs); stack test dates and results; and enforcement MDRs are all below the national goal. EPA is concerned with data flow and timeliness.

- **Finding 4-2:** KDHE did not consistently document addressed or removed HPVs in the national data system.
- **Finding 5-1:** KDHE's penalty calculations documentation for consideration of gravity and economic benefit as well as documentation of rationale for difference between initial penalty calculation and final penalty is below national goals.

I. Introduction

A. Overview of the State Review Framework

The State Review Framework (SRF) is a key mechanism for EPA oversight, providing a nationally consistent process for reviewing the performance of state delegated compliance and enforcement programs under three core federal statutes: Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act. Through SRF, EPA periodically reviews such programs using a standardized set of metrics to evaluate their performance against performance standards laid out in federal statute, EPA regulations, policy, and guidance. When states do not achieve standards, the EPA will work with them to improve performance.

Established in 2004, the review was developed jointly by EPA and Environmental Council of the States (ECOS) in response to calls both inside and outside the agency for improved, more consistent oversight of state delegated programs. The goals of the review that were agreed upon at its formation remain relevant and unchanged today:

1. Ensure delegated and EPA-run programs meet federal policy and baseline performance standards
2. Promote fair and consistent enforcement necessary to protect human health and the environment
3. Promote equitable treatment and level interstate playing field for business
4. Provide transparency with publicly available data and reports

B. The Review Process

The review is conducted on a rolling five-year cycle such that all programs are reviewed approximately once every five years. The EPA evaluates programs on a one-year period of performance, typically the one-year prior to review, using a standard set of metrics to make findings on performance in five areas (elements) around which the report is organized: data, inspections, violations, enforcement, and penalties. Wherever program performance is found to deviate significantly from federal policy or standards, the EPA will issue recommendations for corrective action which are monitored by EPA until completed and program performance improves.

The SRF is currently in its 4th Round (FY2018-2022) of reviews, preceded by Round 3 (FY2012-2017), Round 2 (2008-2011), and Round 1 (FY2004-2007). Additional information and final reports can be found at the EPA website under [State Review Framework](#).

II. Navigating the Report

The final report contains the results and relevant information from the review including EPA and program contact information, metric values, performance findings and explanations, program responses, and EPA recommendations for corrective action where any significant deficiencies in performance were found.

A. Metrics

There are two general types of metrics used to assess program performance. The first are **data metrics**, which reflect verified inspection and enforcement data from the national data systems of each media, or statute. The second, and generally more significant, are **file metrics**, which are derived from the review of individual facility files in order to determine if the program is performing their compliance and enforcement responsibilities adequately.

Other information considered by EPA to make performance findings in addition to the metrics includes results from previous SRF reviews, data metrics from the years in-between reviews, multi-year metric trends.

B. Performance Findings

The EPA makes findings on performance in five program areas:

- **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, accuracy of compliance determinations, and determination of significant noncompliance (SNC) or high priority violators (HPV)
- **Enforcement** - timeliness and appropriateness of enforcement, returning facilities to compliance
- **Penalties** - calculation including gravity and economic benefit components, assessment, and collection

Though performance generally varies across a spectrum, for the purposes of conducting a standardized review, SRF categorizes performance into three findings levels:

Meets or Exceeds: No issues are found. Base standards of performance are met or exceeded.

Area for Attention: Minor issues are found. One or more metrics indicates performance issues related to quality, process, or policy. The implementing agency is considered able to correct the issue without additional EPA oversight.

Area for Improvement: Significant issues are found. One or more metrics indicates routine and/or widespread performance issues related to quality, process, or policy. A recommendation for corrective action is issued which contains specific actions and schedule for completion. The EPA monitors implementation until completion.

C. Recommendations for Corrective Action

Whenever the EPA makes a finding on performance of *Area for Improvement*, the EPA will include a recommendation for corrective action, or recommendation, in the report. The purpose of recommendations are to address significant performance issues and bring program performance back in line with federal policy and standards. All recommendations should include

specific actions and a schedule for completion, and their implementation is monitored by the EPA until completion.

III. Review Process Information

Clean Air Act (CAA)

Key dates:

- SRF Kickoff letter transmitted to KDHE: May 4, 2020
- File selection list sent to KDHE: May 21, 2020
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- Allyson Prue, KDHE Bureau of Air; Air Compliance and Enforcement Unit Chief

- Lisa Hanlon, USEPA Region 7, Enforcement and Compliance Assurance (ECAD) Acting Air Branch Chief and SRF CAA Reviewer
- Lisa Gotto, USEPA Region 7, Lead SRF CAA Reviewer
- Sean Bergin, USEPA Region 7, SRF CAA Reviewer
- Joe Terriquez, USEPA Region 7, SRF CAA Reviewer
- Kevin Barthol, USEPA Region 7, SRF Regional Coordinator

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

KDHE has demonstrated a solid arc of improvement in database accuracy over time. 88.9% of files reviewed had complete and accurate data entered into the database.

Explanation:

Database accuracy was evaluated by comparing the KDHE electronic files with the Enforcement Compliance History Online (ECHO) detailed facility reports (metric 2b). 88.9% of files reviewed had complete and accurate data entered into the national database. The file review revealed relatively minor discrepancies between the ECHO database and the files. The common discrepancies between the two systems included inaccurate event dates, naming discrepancies, and typographical errors.

EPA notes KDHE has demonstrated a solid arc of improvement in database accuracy over time, as demonstrated by the previous SRF's recommendation for this metric as an area for state attention, to the SRF Round 4 Finding, 'Meets or Exceeds Expectations'.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		32	36	88.9%

State Response:

CAA Element 1 - Data

Finding 1-2

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

Timely reporting of HPV determinations, compliance monitoring Minimum Data Requirements (MDRs); stack test dates and results; and enforcement MDRs are all below the national goal. EPA is concerned with data flow and timeliness.

Explanation:

The SRF review revealed a widespread issue with timeliness in reporting relevant enforcement actions and milestones. KDHE's timely reporting of HPV determinations, compliance monitoring Minimum Data Requirements (MDRs); stack test dates and results; and enforcement MDRs are all below the national goals and national averages.

In terms of the timeliness of reporting compliance monitoring MDRs (metric 3b1), KDHE's Round 4 performance (60.4%) in this metric is below the national goal and this represents a decrease from the Round 3 achievement in this area (77.3%).

The timely reporting stack test dates and results (metric 3b2) is 58.8% likewise below the national goal. KDHE has improved substantially from the Round 3 performance (2.8%) but has decreased from the previous 2 years Annual Data Metric Analysis numbers in the mid-90's percent.

With respect to metric 3b3, KDHE achievement of 43.9% is well below the national goal and demonstrates a decline in achievement from Round 3 (91.1%).

Regarding these metrics related to timely data entry, EPA is aware that KDHE transitioned to a new data system (KEIMS) and there was some time needed to achieve this and train users. However, EPA is generally concerned with data flow and timeliness issue.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
3a2 Timely reporting of HPV determinations [GOAL]	100%	44.9%	1	6	16.7%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	85.2%	564	934	60.4%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	65.1%	97	165	58.8%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	71.8%	36	82	43.9%

State Response:

As stated in the draft review, KDHE has recently transitioned to a new data system, the Kansas Environmental Information Management System ("KEIMS"). While user training and error contributed to timely reporting to ICIS, KDHE also encountered data flow errors between KEIMS and ICIS. As some of these errors allowed partial information to flow to ICIS, KDHE was unaware that certain MDR information was not flowing to ICIS, including certain HPV determinations. This error was discovered during the annual ECHO SRF review. KDHE worked with the software developers to correct these issues and have found no further problems with data flow between KEIMS and ICIS.

KDHE will implement EPA's recommendations for improvement. KDHE will submit a revised SOP within 60 days of receiving the SRF Final Report.

Recommendation:

Rec #	Due Date	Recommendation
1	10/01/2021	<p>EPA recommends KDHE evaluate current data entry procedures with the goal of significantly improving timeliness in recording MDRs. To achieve this goal, EPA recommends KDHE:</p> <ul style="list-style-type: none"> • Implement data entry review and tracking procedures specific to the relevant metrics (3a1, 3b1, 3b2, 3b3). • Review the revised HPV policy to ensure familiarity with the 2014 policy revisions and reporting HPVs into ICIS-Air. <p>Provide Region 7 with a draft of the process improvement (in the form of an SOP) for review within 60 days of completion of the SRF Final Report that addresses the timeliness for reporting of HPV determinations; compliance MDRs; stack test dates and results; and enforcement MDRs.</p> <p>EPA will use the data frozen during the regular ADMA process to assess progress on this recommendation.</p> <p>This recommendation will be deemed completed upon: Implementation of an EPA approved SOP; and achievement of 85% or greater in ADMA metrics 3a2, 3b1, 3b2, and 3b3.</p> <p>EPA will review KDHE FY20 frozen data in order to determine progress in timely entry of MDRs. If the FY20 data does not meet this threshold, EPA will review subsequent years data until met.</p>

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

KDHE demonstrates proficiency in inspection coverage, document review, and comprehensive report documentation.

Explanation:

KDHE's FCE coverage for CAA major facilities and mega-sites (metric 5a - 97.6%) and coverage of minors (metric 5c - 93.4%) are each nearing the national goal. KDHE's FCE coverage for CAA synthetic minor facilities (metric 5b - 91.6%). EPA will continue to coordinate our inspections with the state.

Kansas Title V facilities are inspected annually. In accordance with the approved Compliance Monitoring Strategy Plan, the larger Title V facilities receive multiple Partial Compliance Evaluations (PCEs) in one year, which combine to meet the annual FCE requirement. KDHE inspectors accompany the EPA inspectors on inspections in Kansas whenever possible. District Office inspectors are also called upon to execute complaint investigations when necessary. The KDHE air program inspectors perform over eight hundred assigned facility inspections each year. The KDHE field inspectors also perform up to one hundred and fifty additional inspections/investigations, beyond the assigned inspections. This substantial workload is accomplished with a high degree of communication and coordination with the six KDHE District Offices and local government offices on a frequent basis to ensure inspection targets are met.

KDHE’s documentation of FCE elements in inspection reports (88.5%) is excellent. Inspection reports are thorough, succinct and of very high quality. Compliance issues are described clearly in the narrative portion. The reports are clear about the steps necessary for return to compliance. The reports contain strong, detailed narratives to connect the data and provide transparency to the regulated community and public.

File reviewers noted KDHE staff demonstrate proficiency in documenting FCE elements. Review of Title V annual compliance certifications (metric 5e – 90.8%) is nearing the national goal. KDHE’s review of Compliance Monitoring Reports (CMRs) and files that provide sufficient documentation to determine compliance is also near the national goal (metric 6b - 92.3%).

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
5a FCE coverage: majors and mega-sites [GOAL]	100%	88.1%	242	248	97.6%
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5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%	70.1%	57	61	93.4%
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	82.5%	248	273	90.8%
6a Documentation of FCE elements [GOAL]	100%		23	26	88.5%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		24	26	92.3%

State Response:

CAA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state demonstrates excellence in their accuracy of compliance and HPV determinations. Timeliness of HPV identification is likewise exemplary.

Explanation:

EPA and the state convene conference calls on a frequent and regular basis to discuss facility specific issues and coordinate program implementation issues including compliance determinations, HPV facility identification and timeliness.

All (thirty-six) of the files reviewed were determined to have accurate compliance determinations. Twenty-three of the twenty-seven files reviewed appear to have accurate HPV determinations, indicating that among the violations reviewed, KDHE is proficient in accurately identifying violations, as well as interpreting and applying the FRV and HPV policy.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
13 Timeliness of HPV Identification [GOAL]	100%	89.5%	6	6	100%
7a Accurate compliance determinations [GOAL]	100%		36	36	100%
7a1 FRV 'discovery rate' based on inspections at active CMS sources		7.8%	61	999	6.1%
8a HPV discovery rate at majors		2.5%	3	266	1.1%
8c Accuracy of HPV determinations [GOAL]	100%		23	27	85.2%

State Response:

CAA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state implements an excellent enforcement program with respect to HPV case development, as well as formal responses to return facilities to compliance. All formal enforcement responses reviewed included language requiring the facility return to compliance.

Explanation:

With respect to the state's formal enforcement responses (metric 9a), KDHE's achievement of this component is excellent; as demonstrated in the files (95.2%), database, and in our frequent discussions with the state. KDHE's formal enforcement responses routinely include the required corrective actions that will return the facility to compliance.

Regarding the state's performance addressing and/or removing HPVs consistent with the HPV policy (metric 10a – 100%) and HPV Case developments/resolution (metric 14 – 100%), performance in the area is unimpeachable. EPA's file review analysis metric results are consistent with the periodic HPV discussions with management and staff; each indicating the state routinely and expertly applies the HPV policy.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		12	12	100%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		1	1	100%
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 [GOAL]	100%		20	21	95.2%

State Response:

CAA Element 4 - Enforcement

Finding 4-2

Area for Improvement

Recurring Issue:

No

Summary:

KDHE did not consistently document addressed or removed HPVs in the national data system.

Explanation:

In its file review, EPA found 2 of 3 HPVs that had been addressed or removed consistent with the HPV policy. The third facility had the HPV action concluded (a terminated CAFO) but the action not successfully entered into the national data system. This appears to be a data entry lag. EPA will add this topic for the monthly enforcement coordination meetings for continued oversight and discussion.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		2	3	66.7%

State Response:

KDHE believes this to have been user oversight. KDHE will implement the EPA's recommendation for improvement. KDHE will revise its SOP to include steps to timely address and remove HPVs in the national data system.

Recommendation:

Rec #	Due Date	Recommendation
1	3/31/2022	EPA recommends better oversight of concluded HPVs with the data management program. At the end of FY21, EPA will review a selection of concluded HPVs for complete data entry into the national system. If the sampling of files and data indicates achievement of 85% or greater of the relevant metric (10b), EPA will close this recommendation. If the FY21 pull does not achieve this threshold, EPA will review data from subsequent years until the threshold is met.

CAA Element 5 - Penalties

Finding 5-1

Area for Improvement

Recurring Issue:

No

Summary:

KDHE's penalty calculations documentation for consideration of gravity and economic benefit as well as documentation of rationale for difference between initial penalty calculation and final penalty is below national goals.

Explanation:

The 2015 Round 3 SRF review indicated that 92.9% of the enforcement actions taken by KDHE in the public files included a penalty calculation work sheet with a specific statement on

consideration of economic benefit (metric 11a). In the Round 4 review, KDHE demonstrated a 63.3% achievement rate in this metric, a decline in performance in this area.

An important element of the State's implementation of the compliance and enforcements elements of the CAA program in Kansas is maintenance of documentation for public access in order for the public to determine facility compliance. In the eleven 2019 files reviewed, seven of the files included the penalty calculation worksheets (including documentation of the consideration of economic benefit (metric 11a). Of the four files reviewed, three contained documentation of the rationale for the difference between initial penalty calculation and final penalty (metric 12a).

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%		7	11	63.6%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		3	4	75%

State Response:

Until recently, KDHE did not have a training manual/SOP for developing formal enforcement cases. KDHE believes this lead to the inconsistency with penalty calculation documentation, as noted by EPA. KDHE has recently developed SOPs for writing formal and informal enforcement actions, which includes templates and appropriate documentation to include in the concurrence folder (which is uploaded into the facility file). KDHE expects more consistency with formal and informal enforcement actions in the future.

KDHE will implement EPA's recommendations for improvement. KDHE will submit to EPA a revised penalty worksheet and SOP for review within 90 days of receiving the SRF Final Report.

Recommendation:

Rec #	Due Date	Recommendation
1	05/01/2022	<p>EPA recommends KDHE revise the standard penalty calculation worksheet and develop a documentation format/area, to include a specific section to:</p> <ul style="list-style-type: none"> • Document gravity and economic benefit (EBN); and • Document penalty reduction justification. <p>EPA also recommends KDHE develop and include in its enforcement manual an SOP for including the revised penalty worksheet and documentation in the facility files.</p> <p>Submit a revised penalty worksheet and SOP for EPA review within 90 days of receiving the final report.</p> <p>At the end of FY21, EPA will review a selection of penalty calculations. If the sampling of files indicates achievement of 85% or greater of the relevant metrics (11a and 12a) and implementation of the SOP, documentation in the facility files, EPA will close this recommendation. If the FY21 pull does not achieve this threshold, EPA will review data from subsequent years until the threshold is met.</p>

CAA Element 5 - Penalties

Finding 5-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

KDHE is successful with penalty collection.

Explanation:

With respect to penalty collection, for the 2019 files reviewed, EPA found ten of the eleven facility files included a copy of the check for documentation of penalty collection (metric 12b), achieving 90.9% in this program area.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12b Penalties collected [GOAL]	100%		10	11	90.9%

State Response:

Appendix

Kansas Department of Health and Environment Response Letter

Division of Environment
Curtis State Office Building
1000 SW Jackson St., Suite 400
Topeka, KS 66612-1367



Phone: 785-296-1535
Fax: 785-559-4264
www.kdheks.gov

Lee A. Norman, M.D., Secretary

Laura Kelly, Governor

December 28, 2020

David Cozad, Director
Enforcement and Compliance Assurance Division
US EPA
11201 Renner Boulevard
Lenexa, KS 66219

Re: KDHE BOA Response to Kansas SRF 2019 Draft Report

Dear Mr. Cozad:

On November 16, 2020, the Kansas Department of Health and Environment ("KDHE") received via email the draft report for the U.S. Environmental Protection Agency's ("EPA") review of the KDHE Clean Air Act enforcement program for Federal Fiscal Year 2019. The letter provided KDHE with 45 days to respond to the draft report. Please find KDHE's responses below.

Finding 1-2: Timely Reporting of High Priority Violations ("HPV") Determinations, compliance monitoring Minimum Data Requirements ("MDR"), stack test dates and results; and enforcement MDRs are all below the national goal.

KDHE Response: As stated in the draft review, KDHE has recently transitioned to a new data system, the Kansas Environmental Information Management System ("KEIMS"). While user training and error contributed to timely reporting to ICIS, KDHE also encountered data flow errors between KEIMS and ICIS. As some of these errors allowed partial information to flow to ICIS, KDHE was unaware that certain MDR information was not flowing to ICIS, including certain HPV determinations. This error was discovered during the annual ECHO SRF review. KDHE worked with the software developers to correct these issues and have found no further problems with data flow between KEIMS and ICIS.

KDHE will implement EPA's recommendations for improvement. KDHE will submit a revised SOP within 60 days of receiving the SRF Final Report

Finding 4-2: KDHE did not consistently document addressed or removed HPVs in the national data system.

KDHE Response: KDHE believes this to have been user oversight. KDHE will implement the EPA's recommendation for improvement. KDHE will revise its SOP to include steps to timely address and remove HPVs in the national data system.

Bureau of Air
Curtis State Office Building, Suite 310
Topeka, KS 66612-1366

Phone 785-296-1551
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Mr. David Cozad
December 21, 2020
Page 2

Finding 5-1: KDHE's penalty calculations documentation for consideration of gravity and economic benefit as well as documentation of rationale for difference between initial penalty calculation and final penalty is below national goals.

KDHE Response: Until recently, KDHE did not have a training manual/SOP for developing formal enforcement cases. KDHE believes this led to the inconsistency with penalty calculation documentation, as noted by EPA. KDHE has recently developed SOPs for writing formal and informal enforcement actions, which includes templates and appropriate documentation to include in the concurrence folder (which is uploaded into the facility file). KDHE expects more consistency with formal and informal enforcement actions in the future.

KDHE will implement EPA's recommendations for improvement. KDHE will submit to EPA a revised penalty worksheet and SOP for review within 90 days of receiving the SRF Final Report.

Sincerely,



Rick Brunetti, Director
Bureau of Air
Kansas Department of Health and Environment

STATE REVIEW FRAMEWORK

Kansas

Clean Water Act Implementation in Federal Fiscal Year 2021

**U.S. Environmental Protection Agency
Region 7**

**Final Report
September 11, 2023**

I. Introduction

A. Overview of the State Review Framework

The State Review Framework (SRF) is a key mechanism for EPA oversight, providing a nationally consistent process for reviewing the performance of state delegated compliance and enforcement programs under three core federal statutes: Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act. Through SRF, EPA periodically reviews such programs using a standardized set of metrics to evaluate their performance against performance standards laid out in federal statute, EPA regulations, policy, and guidance. When states do not achieve standards, the EPA will work with them to improve performance.

Established in 2004, the review was developed jointly by EPA and Environmental Council of the States (ECOS) in response to calls both inside and outside the agency for improved, more consistent oversight of state delegated programs. The goals of the review that were agreed upon at its formation remain relevant and unchanged today:

1. Ensure delegated and EPA-run programs meet federal policy and baseline performance standards
2. Promote fair and consistent enforcement necessary to protect human health and the environment
3. Promote equitable treatment and level interstate playing field for business
4. Provide transparency with publicly available data and reports

B. The Review Process

The review is conducted on a rolling five-year cycle such that all programs are reviewed approximately once every five years. The EPA evaluates programs on a one-year period of performance, typically the one-year prior to review, using a standard set of metrics to make findings on performance in five areas (elements) around which the report is organized: data, inspections, violations, enforcement, and penalties. Wherever program performance is found to deviate significantly from federal policy or standards, the EPA will issue recommendations for corrective action which are monitored by EPA until completed and program performance improves.

The SRF is currently in its 4th Round (FY2018-2022) of reviews, preceded by Round 3 (FY2012-2017), Round 2 (2008-2011), and Round 1 (FY2004-2007). Additional information and final reports can be found at the EPA website under [State Review Framework](#).

II. Navigating the Report

The final report contains the results and relevant information from the review including EPA and program contact information, metric values, performance findings and explanations, program responses, and EPA recommendations for corrective action where any significant deficiencies in performance were found.

A. Metrics

There are two general types of metrics used to assess program performance. The first are **data metrics**, which reflect verified inspection and enforcement data from the national data systems of each media, or statute. The second, and generally more significant, are **file metrics**, which are derived from the review of individual facility files in order to determine if the program is performing their compliance and enforcement responsibilities adequately.

Other information considered by EPA to make performance findings in addition to the metrics includes results from previous SRF reviews, data metrics from the years in-between reviews, multi-year metric trends.

B. Performance Findings

The EPA makes findings on performance in five program areas:

- **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, accuracy of compliance determinations, and determination of significant noncompliance (SNC) or high priority violators (HPV)
- **Enforcement** - timeliness and appropriateness of enforcement, returning facilities to compliance
- **Penalties** - calculation including gravity and economic benefit components, assessment, and collection

Though performance generally varies across a spectrum, for the purposes of conducting a standardized review, SRF categorizes performance into three findings levels:

Meets or Exceeds: No issues are found. Base standards of performance are met or exceeded.

Area for Attention: Minor issues are found. One or more metrics indicates performance issues related to quality, process, or policy. The implementing agency is considered able to correct the issue without additional EPA oversight.

Area for Improvement: Significant issues are found. One or more metrics indicates routine and/or widespread performance issues related to quality, process, or policy. A recommendation for corrective action is issued which contains specific actions and schedule for completion. The EPA monitors implementation until completion.

C. Recommendations for Corrective Action

Whenever the EPA makes a finding on performance of *Area for Improvement*, the EPA will include a recommendation for corrective action, or recommendation, in the report. The purpose of recommendations are to address significant performance issues and bring program performance back in line with federal policy and standards. All recommendations should include

specific actions and a schedule for completion, and their implementation is monitored by the EPA until completion.

III. Review Process Information

Clean Water Act (CWA)

Key dates:

- SRF Kickoff letter mailed to the Kansas Department of Health and Environment: May 17, 2022
- File selection list sent to KDHE: August 9, 2022
- Data Metric Analysis sent to KDHE: March 24, 2023
- Entrance interview conducted: August 25, 2022
- File review conducted: August 30 – October 12, 2022
- Exit interview conducted: October 12, 2022 (Email to KDHE)
- Draft report sent to KDHE: May 2, 2023
- Final report issued: September 11, 2023

State and EPA key contacts for review:

KDHE:

- Tom Stiles, BOW Director
- Shelly Shores-Miller, BOW NPDES Permits
- Steve Caspers –Pretreatment

EPA Region 7:

- Jodi Bruno, ECAD Branch Chief
- Angela Acord, Kansas State Coordinator
- Lantz Tipton, Pretreatment and NPDES
- Stephen Pollard, CAFO
- Cynthia Sans, Stormwater
- Erin Kleffner, NPDES
- Seth Draper, Biosolids and NPDES
- Kevin Barthol, SRF Coordinator

Executive Summary

Areas of Strong Performance

The following are aspects of the program that, according to the review, are being implemented at a high level:

Clean Water Act (CWA)

- Inspection reports are complete and have sufficient information to determine compliance, nearly all reports reviewed met this goal.
- KDHE is doing a great job making accurate compliance determinations based on the files that were reviewed. This is a great improvement from the Round 3 SRF, in which this category was an area of improvement.
- 5 out of the 5 penalties reviewed had penalty calculations that documented and included both gravity and economic benefit. This is significant improvement from the last SRF cycle.

Priority Issues to Address

The following are aspects of the program that, according to the review, are not meeting federal standards and should be prioritized for management attention:

Clean Water Act (CWA)

- Files reviewed had data inaccurately reflected in the ICIS-NPDES. Examples include KDHE not entering all inspections conducted, not entering all informal enforcement actions issued, not entering SEVs or SNC, missing minimum data requirements (MDRs) for facilities such as SIC codes not being identified, and NPDES permit numbers missing (only listing KS permit number).
- KDHE does not meet the CMS planned goals for Phase I, and II MS4's, industrial stormwater, and construction stormwater programs.
- Of the 5 penalties reviewed there were only 2 instances in which a penalty was collected.

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

KDHE exceeds national goals for both permit limit data entry and DMR data entry.

Explanation:

KDHE exceeds the national goal for entry of permit limit data for major and non-major facilities. KDHE also meets the national goals for data entry of Discharge monitoring report (DMRs) for major and non-major facilities.

Note: Frozen data in the Data Metric Analysis (DMA) did not consistently align with the data used in the Compliance Monitoring Strategy (CMS). In the 2021 Data Metric Analysis (DMA), Element 1b5 has a universe of 732 facilities with permit limit data for major and non-major facilities. The universe of majors and non-majors in the CMS is 852. KDHE should ensure that CMS is updated to reflect accurate information on current universe.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
1b5 Completeness of data entry on major and non-major permit limits. [GOAL]	95%	96.8%	732	732	100%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%	95.2%	10769	10793	99.8%

State Response:

CWA Element 1 - Data

Finding 1-2

Area for Improvement

Recurring Issue:

No

Summary:

Files reviewed did not have data accurately reflected in the national data system ICIS-NPDES.

Explanation:

Of the thirty files reviewed only 8 had all the data accurately reflected in the national data system ICIS-NPDES.

The goal of this metric (2b) is for 100% of data elements to be entered into ICIS-NPDES. These data elements include inspections dates, inspection types, single event violations, significant noncompliance (SNC) status and enforcement responses. Kansas' data had 26.7% accuracy based on the files reviewed. Data accuracy rates at 70% or below is suggested to be an area for state improvement.

Examples of data missing or entered incorrectly into ICIS-NPDES include facility address' entered incorrectly, no state pretreatment data, no data entered on informal actions such as Letters of Warning or Directives, not entering all stormwater formal actions, no violation data entered, SEVs and SNC not being entered, and missing NPDES permit numbers.

The Data Metric Analysis conducted for the federal fiscal year 2021, indicates KDHE reported zero (0) for the "Number of major and non-major facilities with single-event violations" (Metric ID # 7j1).

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		8	30	26.7%

State Response:

EPA evaluated calendar year 2021 data. KDHE implemented a new Kansas Environmental Information Management System (KEIMS) a Windsor software product, September 1, 2021. Some of the areas identified are being addressed by KEIMS and identified by ECHOs dashboards. Regarding the requirement of pretreatment data be entered into ICIS NPDES, KDHE doesn't have primacy of the pretreatment program and per the MOA with EPA, KDHE is not required to submit the pretreatment data. Please see the attached MOA page 10. Section B.4. Regarding informal enforcement data entry. KDHE requests clarification that informal enforcement is an ICIS NPDES required data element.

EPA Response:

The explanation was updated to correct a typo in last paragraph "The Data Metric Analysis conducted for the calendar year 2021 to federal fiscal year. SRF protocol is to use the frozen data from the prior federal fiscal year of the SRF review year.

See NPDES Electronic Reporting E-rule for minimum data requirements. Section 123.45 (C) "The date(s) and type of formal enforcement and written informal enforcement action(s) taken by the Director to respond to violation(s), including any penalties assessed."

The pretreatment MOA also states, "KDHE will provide data elements to EPA in a written form that are gathered by KDHE during PCIs". During the SRF Review, there were multiple inspections that were not recorded in ICIS.

Recommendation:

Rec #	Due Date	Recommendation
1	04/30/2024	<p>1.) KDHE will modify work practices to begin using the data capture form identified in number 5.) below, as well as entering all required data elements according to the E- reporting Rule.</p> <p>2) KDHE will immediately begin entering the required data into ICIS or KDHE's batching system, and correct data errors in existing data in accordance with the SOP developed under item 1-3.</p> <p>3) EPA will monitor performance via quarterly conference calls.</p> <p>4.) EPA will request data files for 10 facilities in the 2nd quarter of FFY24 to verify data accuracy between files and reported data in ICIS. EPA will close this recommendation after approving KDHE's SOP and observing three consecutive quarters of performance that meets national goals of at least 85% with a goal of 100%.</p> <p>5.) For future pretreatment data entry, in accordance with the MOA, KDHE should complete the attached ICIS-NPDES data capture sheet and submit it to the EPA at the time the final copy of the inspection report is transmitted to the EPA Region 7. EPA staff will then record the inspection information into the database of record (ICIS-NPDES).</p>

CWA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

KDHE exceeded and/or meets CMS plan goals for pretreatment compliance inspections, significant industrial user inspections, CSO inspections, and CAFO inspections. KDHE also exceeded Data Metric Analysis (DMA) goals for metrics 5a1 and 5b1.

KDHE files reviewed demonstrate that inspection reports are complete and sufficient to determine compliance at the facility.

Explanation:

The DMA goal (5a1) for Inspection coverage of NPDES majors is to conduct 100% of inspection goals set forth in the CMS Plan. KDHE exceeded their CMS goal of 19 inspections by conducting 36 inspections at NPDES major facilities. *The DMA frozen data for 2021 indicates the entire

universe for each inspection metric and not the CMS commitments. * However, there is a small discrepancy between the DMA metric 5a1 value in the DMA frozen data for 2021 which reported 37 inspections and the value reported by KDHE in the end of year CMS report under Metric 1.A. as 36 inspections.

The DMA goal (5b1) for Inspection coverage of NPDES non-majors with individual permits is to conduct 100% of the inspection goals set forth in the CMS Plan. KDHE exceeded their CMS goal of 217 inspections by conducting 553 inspections at NPDES non-major facilities. These facilities include POTWs, Industrial facilities, SIU, pretreatment facilities, and CAFO facilities. *The DMA frozen data for 2021 indicates the entire universe for each inspection metric and not the CMS commitments.

The majority of the files that were reviewed have complete inspection reports and EPA reviewers were able to determine compliance status based on the information provided in the inspection report, or attachments to the inspection report.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL]	100% of commitments%		3	3	100%
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL]	100% of commitments%		16	12	133.3%
4a4 Number of CSO inspections. [GOAL]	100% of commitments%		1	1	100%
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100% of commitments%		371	85	436.5%
5a1 Inspection coverage of NPDES majors. [GOAL]	100%	47.7%	36	19	189.5%
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100%	23.3%	553	217	254.8%
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%		23	27	85.2%

State Response:

CWA Element 2 - Inspections

Finding 2-2

Area for Attention

Recurring Issue:

No

Summary:

KDHE demonstrates that most of their inspection reports are completed timely.

Explanation:

A timely inspection report is completed within 45 days of the date of the inspection for an inspection that involves taking samples, and 30 days from the date of the inspection for an inspection without sampling.

The SRF category to meet or exceed the national goal is to demonstrate that 85% or more of the inspection reports are completed within the timeframes described above. KDHE completed 77.8% of their inspections reports within the required timeframes. This measure does not require additional EPA attention or SRF tracking, however, KDHE should be mindful of inspection timeliness and try to meet the goal of 100%.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6b Timeliness of inspection report completion [GOAL]	100%		21	27	77.8%

State Response:

CWA Element 2 - Inspections

Finding 2-3

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

KDHE did not meet the Data metric analysis goals for 5b2, or CMS goals for Phase I and II MS4 audits, industrial stormwater and construction stormwater inspections.

Explanation:

The DMA goal (5b2) for Inspection coverage of NPDES non-majors with general permits is to conduct 100% of the inspection goals set forth in the CMS Plan. KDHE did not reach their CMS goal of 82 inspections, but rather inspected 28 NPDES non-major facilities with general permits. These facilities include industrial stormwater facilities, construction stormwater, and ready-mix facilities. *The DMA frozen data for 2021 indicates the entire universe for each inspection metric and not the CMS commitments.

National goals for metrics 4a7, 4a8 and 4a9 are to meet 100% of the state commitments in the CMS plan.

The CMS goal for metric 4a7 Phase I and II MS4 is to conduct 11 MS4 inspections, however only 6 were conducted, which is 55% percent of the CMS goal.

The CMS goal for the 4a8 industrial stormwater metric is to conduct 57 inspections, however only 27 were conducted, which is 47% of the CMS goal.

The CMS goal for 4a9 construction stormwater is to conduct 25 inspections, however only 1 was conducted, which is 4% of the CMS goal.

The CMS goal for 4a11 sludge/biosolids inspections is to conduct at least one inspection or off-site desk audit every five years. KDHE disinvested from the Biosolids program as early as 2014 due to National disinvestment.

The metric goal for 4a5 Sanitary Sewer Overflow inspections are not tracked in the CMS plan. The KDHE CMS plan states, “Kansas, as a routine, inspects each municipality for incident reporting, backup power, condition of lift stations and condition of collection system. Prior to the inspection, assessment of that facility's record for bypasses is made and, if excessive, becomes a point of emphasis during the inspection. No quota number is given because it is unknown how many SSOs will be uncovered during inspections, but if SSOs ARE an issue, the pre-assessment and inspection itself will unveil that situation and will initiate corrective actions.” However, KDHE is not tracking or reporting SSO inspections conducted at the end of the year.

According to the FY18 CMS plan “SSS inspections are conducted in conjunction with NPDES permitted treatment facility inspections every 2, 2.5, or 5 years depending on type and size of the facility.” Although this finding was noted in the Round 3 SRF, a recommendation was not made specifically to address SSO inspections not being tracked.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
4a5 Number of SSO inspections. [GOAL]	100% of commitments%		0	0	0
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments%		6	11	54.5%
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments%		27	57	47.4%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments%		1	25	4%
4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL]	100% of commitments%		0	0	0
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL]	100%	5.2%	28	82	34.1%

State Response:

The EPA inspection evaluation period was October 1, 2020 through September 30, 2021. Due to COVID-19, KDHE inspectors were considered non-essential during a portion of this time. In addition, KDHE inspectors were not allowed to inspect facilities where employees had recently tested positive for COVID-19 or were in quarantine. By 2022, KDHE's wastewater inspection schedules have returned to normal. KDHE will draft an alternative plan addressing our most current inspection practices targeting area of the CMS that needs adjusted goals.

Recommendation:

Rec #	Due Date	Recommendation
1	01/31/2024	EPA recommends KDHE use the flexibility built into the NPDES CMS Guidance dated July 21, 2014, to improve overall state CMS coverage, and ensure all metrics are accounted for. The CMS Alternative Plan guidance is an excellent tool to help KDHE offset inspections goals with off-site desk audit and other tools to help KDHE meet CMS goals. The alternative plan can also be used for KDHE to explain state specific reasons for why there is focus in one area over another and how those adjusted goals meet the needs of KDHE and environmental protection. KDHE should draft an alternative CMS plan for the Calendar year 2024 report and submit to EPA for review by November 1, 2023. The plan will also need to be submitted to HQ for review and approval by December 1, 2023. Once HQ approves the alternative CMS plan, this recommendation will be considered complete.

CWA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

7e. Of the files EPA reviewed it appears KDHE is accurately and consistently making compliance determinations in their reports which are consistent with EPA compliance determinations based on the types of violations observed.

7j1. According to the Data Metric Analysis conducted for the calendar year 2021, KDHE reported zero (0) “Number of major and non-major facilities with single-event violations”.

7k1. KDHE has 4.20% noncompliance rate for major and non-major facilities in is 2021.

8a3. KDHE has 1.20% of majors in SNC and non-majors in Category I noncompliance in 2021.

Explanation:

7e. This metric seeks to assess whether the inspection reports reviewed contain sufficient documentation leading to an accurate compliance determination. Of the 27 inspections reports

reviewed, 26 of them contained enough information to determine compliance. KDHE exceeds expectations for the SRF metric.

7j1. This metric assesses whether single-event violations (SEVs) are determined by means other than automated discharge to limits comparisons, and if they are reported and tracked in ICIS-NPDES. According to the DMA KDHE has not reported any SEV in 2021. “SEVs are minimum data requirements for both major and non-major facilities as of December 21, 2016, under the NPDES E-rule, excluding SEVs without formal enforcement at stormwater construction sites.” (CWA Plain Language Guide, SRF Round 4) EPA recommends KDHE develop a plan to assess, track single-event violations, and report the SEVS in ICIS-NPDES.

7k1. The 2021 Data Metric Analysis for KDHE, 4.20% of the universe of major and non-major facilities (7041) were in noncompliance. This is lower than the national average of 16.7%. The data also indicates that 6742 facilities within this universe were not counted.

8a3. The 2021 Data Metric Analysis for KDHE shows 84 out of 7,041 were either a.) active major facilities in significant non-compliance SNC, or b.) a non-major facility in Category I noncompliance during the reporting year, which is a rate of 4.2% SNC. This is below the national average of 6.3%.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
7e Accuracy of compliance determinations [GOAL]	100%		26	27	96.3%
7j1 Number of major and non-major facilities with single-event violations reported in the review year.			0	0	0
7k1 Major and non-major facilities in noncompliance.		16.7%	299	7041	4.2%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.		6.3%	84	7041	1.2%

State Response:

CWA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Enforcement responses are appropriate to address the violations.

Explanation:

Of the files EPA reviewed, the enforcement responses taken by KDHE satisfactorily addressed the violations identified in the files. EPA reviewed 13 total files with enforcement actions, and 12 of the 13 enforcement responses reviewed appeared appropriate for the types and magnitude of the violations identified.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		12	13	92.3%

State Response:

CWA Element 4 - Enforcement

Finding 4-2

Area for Attention

Recurring Issue:

No

Summary:

76.9% of the enforcement responses taken returned the source in violation to compliance. Also, very few enforcement actions taken by KDHE in 2021, and no enforcement actions were reported by KDHE in the 2021 Data Metric Analysis.

Explanation:

This metric looks at the enforcement responses that have returned to compliance from the given file selection. 13 enforcement actions were reviewed and of those 10 returned to compliance. An example for this metric is an unresponsive facility, and continued noncompliance. There is no additional information in the files to show a return to compliance.

Data Metric Analysis 10a1 looks at the percentage of major NPDES facilities with formal enforcement actions taken in a timely manner in response to SNC violations. KDHE reports that no major NPDES facilities with formal enforcement actions taken in a timely manner in response to SNC violations. According to KDHE, COVID-19 impacted their staffing and not all data was reported in ICIS NPDES.

Note: In order to get a valid sample size to determine the adequacy of the KDHE enforcement program, the EPA pulled enforcement actions files from 2015 through 2021.

EPA highly suggests KDHE provide staff training on SNC classification and timely enforcement actions as set forth in *The Enforcement Management System, National Pollutant Discharge Elimination System (Clean Water Act), 1989*; and “*Clarifications of NPDES EMS Guidance on Timely and Appropriate Response to Significant Noncompliance Violations*” from Mark Pollins Water Enforcement Division and Betsy Smidinger, Acting Director, Enforcement Targeting and Data Division, May 29, 2008.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		10	13	76.9%
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations		18.4%	0	0	0

State Response:

CWA Element 5 - Penalties

Finding 5-1Meets or Exceeds Expectations

Recurring Issue:No

Summary:

Significant improvement in penalty calculations made by KDHE since last SRF review Round 3.

Explanation:

Of the 5 files EPA reviewed all 5 penalties were calculated and document the use of gravity and economic benefit. This is a significant improvement from the previous review year. KDHE exceeds expectations for the metric.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%		5	5	100%

State Response:

CWA Element 5 - Penalties

Finding 5-2Area for Attention

Recurring Issue:No

Summary:

Most of the penalties reviewed showed the documentation of the rationale for initial penalty and final penalty.

Explanation:

Of the 5 penalties reviewed by EPA 4 of the 5 had appropriate documentations of the rationale for the difference between the initial penalty calculation and the final penalty.

For the one case there was no explanation of reductive actions or the penalty calculation sheet for one consolidated document.

Overall, this is an improvement from the last review year.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		4	5	80%

State Response:

CWA Element 5 - Penalties

Finding 5-3

Area for Improvement

Recurring Issue:

No

Summary:

Low number of penalties collected by KDHE of those assessed.

Explanation:

Of the 5 penalty actions reviewed two of those penalties had documentation showing that the penalty had been collected. In the other three files reviewed penalty was either not collected after being assessed, or there was not documentation available to determine if the penalty had been collected.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12b Penalties collected [GOAL]	100%		2	5	40%

State Response:

KDHE currently disagrees that additional documentation is needed. In one case the permittee had deceased, and KDHE closed the case. In two of the five files reviewed the penalties were held in abeyance awaiting the facilities to achieve compliance before penalty was readdressed or waived.

Recommendation:

Rec #	Due Date	Recommendation
1	06/03/2024	KDHE should ensure that penalty actions are implemented and enforced, and all penalty changes are documented and retained in the file. KDHE should update the WEG to include procedures for how an abeyance is calculated to waive some or all of a penalty and when the use of an abeyance is appropriate. Use of abeyances should also be recorded and documented in the case file. There should be appropriate documentation showing a penalty was collected, or why a penalty was not collected. This guidance should be implemented and tracked to ensure penalty actions are completed and closed. EPA will select and review a random 5 files containing FY 2023 penalty actions to ensure that the updated Water Enforcement Guidance has been implemented and the penalties collected documentation is reflected in the files. If the review indicates that KDHE has demonstrated improvements in the metric of 85% or greater, the recommendation will be closed.