



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Mr. Keith E. Kawaoka
Deputy Director
Hawaii Department of Health
Environmental Health Administration
PO Box 3378
Honolulu, HI 96813

Re: State Review Framework

Dear Mr. Kawaoka:

Enclosed are copies of the final reports presenting the results of the review EPA Region 9 conducted in 2019 of the Hawaii Department of Health's (HDOH) compliance and enforcement programs. EPA is conducting similar reviews in every state, implementing Round 4 of the State Review Framework (SRF 4) jointly developed by EPA and the Environmental Council of the States.

For purposes of this review, EPA evaluated HDOH's compliance and enforcement activity within the Clean Air Act stationary source program, the Clean Water Act NPDES program, and the Resource Conservation and Recovery Act hazardous waste program. The SRF review evaluated HDOH's inspection, enforcement, and related data management activity for federal fiscal year 2018. A preliminary draft SRF 4 report was provided to you for comment in January 2020. We have revised the draft report and its recommendations to include your comments. We will now post this final document on EPA's public SRF website and will check in with HDOH periodically regarding progress toward meeting the recommendations included in the reports. These and other SRF reports can be accessed through the following public link:

<http://www.epa.gov/compliance/state-review-framework-compliance-and-enforcement-performance> .

We wish to thank you and your staff and managers who accommodated and assisted us in conducting this review. We look forward to working with you in the months ahead to implement the recommendations.

Sincerely,

AMY MILLER-
BOWEN

Digitally signed by
AMY MILLER-BOWEN
Date: 2020.06.15
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Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 9

Enclosure

STATE REVIEW FRAMEWORK

Hawaii

Clean Air Act Implementation in Federal Fiscal Year 2018

U.S. Environmental Protection Agency Region 9

**Final Report
June 10, 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 is 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)

Review Year: FY 2018. File Review dates: June 25-28, 2019. Hawaii Department of Health (HDOH) Key Contact: Jill Stensrud, Manager of the Compliance and Enforcement Section; Lisa Young, Manager of the Monitoring and Analysis Section. EPA Reviewers: Janice Chan and Nathan Dancher.

Executive Summary

Introduction

Clean Air Act (CAA)

EPA conducted an SRF review of HDOH, whose jurisdiction covers the entire state of Hawaii. The file review covers FY 2018, though EPA reviewed several files back to FY 2015 in order to sufficiently make proper findings since the last SRF in 2015. EPA based its SRF findings on data/file review metrics and conversations with program management/staff at HDOH. EPA will track recommended actions from the review in the SRF Tracker and publish its report on the EPA Enforcement and Compliance History Online (ECHO) website.

Areas of Strong Performance

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

Clean Air Act

- HDOH evaluates Air Compliance Monitoring Strategy (CMS) sources on a more frequent basis than the minimum evaluation frequencies recommended in the CMS Policy.
- Since correcting its CMS source universe between major and minor sources from the last SRF for fiscal year 2014, HDOH now has an accurate CMS source universe.

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

- **Data Reporting/Timeliness:** HDOH reporting of data into Integrated Compliance Information System-Air (ICIS-Air) is lacking. HDOH inconsistently entered in ICIS-Air: Full Compliance Evaluations (FCEs), Stack Test Reviews, Title V Certification Reviews, Notices of Violations (NOVs), and formal violations (NOVOs) and Federally Reportable Violations (FRVs).
- **Timeliness of Appropriate Enforcement Actions:** HDOH did not timely address HPVs with the appropriate enforcement action.
- **Identification of HPVs:** HDOH inaccurately identified non-HPVs as HPVs, and misreported violations as such into ICIS-Air. The last SRF for HDOH for FY 2014 found that HDOH had reported every violation from a major source as an HPV or FRV. These HPVs and FRVs have not been corrected in ICIS-Air. Additionally, HDOH had overcounted the number of covered major sources. This resulted in overcounting and overreporting the number of HPVs and FRVs. This has not been corrected in ICIS-Air.

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Area for Improvement

Summary:

The file review indicated that there was nearly no information reported into ICIS-Air.

Explanation:

Metric 2b evaluates the completeness and accuracy of reported Minimum Data Requirements (MDRs) in ICIS-Air. The national goal is to accurately report 100% of data in ICIS-Air. We reviewed 25 files for data accuracy. We found that only two files (8%) in the reviewed files were accurately reported. Inaccuracies included missing activity data (e.g. FCEs, stack tests, and Title V Annual Compliance Certifications (ACCs)) and in some cases, incorrect facility names.

While information and activity data such as FCEs, stack tests, Title V ACCs were completed, they were not reported. HDOH has stated that they have begun to address this ongoing issue by utilizing a new records system called Clean Air Branch System (CAB System), developed by its contractors Windsor Solutions, Inc., that automatically transfers information into ICIS-Air. The new system allows staff to enter data and upload documents into it. This information directly populates into ICIS-Air, as CAB System is programmed to pull information needed for ICIS-Air in batches on a weekly basis.

Incorrect and missing data in ICIS-Air potentially hinders targeting efforts, and results in inaccurate and incomplete information being released to the public. For this reason, HDOH will transfer past data that has been collected in CAB System, into ICIS-Air.

Metric 3a2 measures whether HPV determinations are entered into ICIS-Air in a timely manner (within 60 days) in accordance with the FY 2018 ICIS-Air requirements. The data indicates that there were no HPVs reported in FY 2018. During interviews, HDOH staff and management explained that there were no HPVs found in FY 2018. In order to gather enough information for this metric, 11 files from FY 2015-2017 were also reviewed.

Metric 3b1 measures the timeliness for reporting compliance-related MDRs (FCEs and Reviews of Title V Annual ACCs). The data indicates that there were no compliance monitoring actions done. During interviews, HDOH staff and management explained that this information had not been entered into ICIS-Air before the data was frozen for this review. HDOH staff explained that they would like to work closely with an ICIS-Air Coordinator to address this going forward.

Metric 3b2 evaluates whether stack test dates and results are reported within 120 days of the stack test. The national goal for reporting results of stack tests is to report 100% of all stack tests within 120 days. The data indicates that there were no stack tests done. During interviews, HDOH staff and management explained that this information had not been entered into ICIS-Air before the

data was frozen for this review. However, during the file review, EPA found that HDOH had documented their review of stack test results in their new system (referred to below). Out of 21 files involving stack tests and reviews, four were reported into ICIS-Air, and 17 were not reported.

Metric 3b3 measures timeliness for reporting enforcement-related MDRs within 60 days of the action. HDOH did not report any enforcement actions into ICIS-Air. During interviews, HDOH staff and management explained that this information had not been entered into ICIS-Air before the data was frozen for this review.

HDOH identified the reason for not entering data into ICIS-Air as lack of resources, emergency responses (volcano eruption in The Big Island), and lack of coordination with EPA's ICIS-Air Coordinator. Since the ICIS-Air data has become frozen, HDOH has implemented CAB System that electronically enters data into its own database, and directly feeds data into ICIS-Air. This system can help with timely reporting data into ICIS-Air by streamlining the review process.

State Response:

Metric 2b – Accurate MDR data in ICIS-AIR

Metric 3b1 – Timely reporting of compliance monitoring

MDRs Metric 3b2 – Timely reporting of stack tests and results

- HDOH began weekly batch uploads via CAB System to ICIS-Air on October 30, 2018 to report MDRs FCEs, ACCs and stack tests.
- HDOH is currently inputting ICIS-Air data from 2014 to present into CAB System.

Metric 3a2 – Timely reporting of HPV determinations into ICIS-AIR

- HDOH respectfully requests clarification on the result of this metric. Specifically, how many of the 11 files from FY 2015 – 2017 were entered into ICIS-Air in a timely manner. We would also respectfully request the revision of Metric 3a2 in the Relevant metrics table to reflect the above revision

Metric 3b3 – Timely reporting of enforcement MDRs

- Attachment I and II are the spreadsheets that were provided to EPA in advance of the FY 2018 SRF, sans the typographical corrections in red, and yellow highlighted columns on the right side of the spreadsheets. According to the spreadsheets, twenty-six (26) enforcement actions were reported to ICIS-AIR, fifteen (15) of which were reported within sixty (60) days. The HDOH respectfully recommends revision of this section as well as the Relevant metrics table to reflect the additional information provided.
- HDOH began weekly batch uploads via CAB System to ICIS-Air on October 30, 2018.

Recommendation 1: HDOH staff responsible for HPV and FRV reporting will complete the Inspector WIKI training by June 30, 2020. However, HDOH requests that EPA revise the due date for the HPV and FRV training to provide for flexibility to account for any

delays such as travel restrictions due to COVID-19. HDOH recommends the following language to be consistent with Elements 3 and 4: “HDOH to take HPV and FRV training provided by Region 9 within 90 days of issuance of the final report or by an alternative date as agreed upon by HDOH and EPA.”

Recommendation 3: In addition to monthly meetings, HDOH feels a hands-on training session on ICIS-Air reporting with the Region 9 ICIS-Air contact would be very beneficial to meeting EPA’s goal of 100% data completeness and accuracy.

Recommendation 5: Attachments III, IV, and V are standard operating procedures (SOPs) that HDOH has developed for the reporting of MDR into ICIS-Air. HDOH began weekly batch uploads via CAB System to ICIS-Air on October 30, 2018 and is currently inputting ICIS-Air data from 2014 to present.

Recommendation 6: Attachment VI is a SOP that HDOH has developed for the reporting of stack test data into ICIS-Air. HDOH’s SOP on how stack test reports are reviewed and processed is currently under review. Upon completion of the review, the SOP will be submitted to EPA by June 30, 2020 for their review and approval.

Recommendation:

Rec #	Due Date	Recommendation
1	6/30/2020	HDOH staff to complete Inspector WIKI training (go to http://inspector.epa.gov and click on the “self-register” line above the user name field) by June 30, 2020
2	9/30/2020	EPA to offer HPV and FRV training to HDOH by September 30, 2020.
3	6/30/2020	HDOH will begin to have quarterly meetings with Region 9 to discuss HPV and FRV requirements, data entry progress and challenges, and ongoing HDOH questions and issues.
4	9/30/2020	EPA Region 9 ICIS-Air Coordinator to offer a training on ICIS-Air reporting to HDOH by September 30, 2020.
5	3/1/2021	<p>HDOH will develop a Standard Operating Procedure (SOP) on how to report the MDR data into ICIS-Air for EPA approval.</p> <ol style="list-style-type: none">1. HDOH will submit the SOP to EPA by June 30, 2020.2. The SOP will be reviewed by EPA and approved by July 31, 2020.3. HDOH will implement the approved SOP by September 30, 2020. All previous data from 2014 to present will be entered into ICIS-Air, and all future data will comply with the SOP.4. HDOH will perform an annual evaluation to determine efficiency and accuracy MDR data being entered into ICIS-Air through CY 2021 by March 1, 2021.5. In CY 2020, EPA will monitor the progress
6	3/31/2021	<ol style="list-style-type: none">1) HDOH will submit a plan to EPA for review and approval addressing: their receipt of stack testing reports, evaluation for accuracy and completeness, and entry into ICIS-Air by June 30, 2020.2) EPA will review and approve the plan by July 31, 2020.3) HDOH will implement the plan by September 30, 2020.4) On March 31, 2021, EPA will randomly select ten stack test reports to review and determine accuracy of HDOH’s compliance determination. If the review of these reports demonstrates HDOH is accurately assessing and reporting, this recommendation will be deemed completed by EPA.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b - Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		2	25	8%
3a2 – Timely reporting of HPV determinations [GOAL]	100%		0	0	0%
3b1 – Timely reporting of compliance monitoring MDRs [GOAL]	100%		0	0	0%
3b2 – Timely reporting of stack test dates and results [GOAL]	100%		0	0	0%
3b3 – Timely reporting of enforcement MDRs [GOAL]	100%		0	0	0%

CAA Element 2 - Inspections**Finding 2-1**

Area for Improvement

Summary:

While not reported, HDOH has conducted FCEs of the CMS source universe. Since the FCEs were not reported, this is an area for improvement.

Explanation:

This element evaluates whether the negotiated frequency for compliance evaluations is being met for each source. HDOH met the national goal for the relevant metrics. HDOH met the negotiated frequency for conducting FCEs of Title V Major Sources and Synthetic Minors 80% (SM80s). HDOH performs an FCE once every two years for major sources and every five years for SM80s. After the Round 3 review, HDOH made an effort to correct the CMS universe to properly identify SM80s. The CMS universe is now accurate.

EPA believes that the correction of Finding 1-1 will address Finding 2-1.

Note: 1) The 0% achievement rate noted in the table below does not reflect HDOH's actual FCE coverage. No FCEs were reported before the data was frozen for this review. A similar issue was found in the SRF for fiscal year 2014.

2) EPA requested HDOH to add accurate numbers to the Relevant Metrics Table to reflect state coverage when providing comments to the report.

State Response:

Metric 5a – FCE coverage: majors and mega-sites

Metric 5b – FCE coverage: SM-80s

Metric 5c – FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan

State Response:

As requested, please see the below revised Relevant Metrics Table:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a FCE coverage: majors and mega-sites [GOAL]	100%	88.1%	33	44	75.0%
5b FCE coverage: SM-80s [GOAL]	100%	93.7%	16	18	88.9%
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%	70.1%	N/A	N/A	N/A

Metric 5a and 5b were revised to incorporate the sources identified in the HDOH 2016 CMS plan. The CMS plan corrected the source universe.

Metric 5c was revised to reflect the current HDOH 2016 CMS plan which does not include minors and synthetic minors (non-SM 80s).

Recommendation 1: HDOH is currently inputting ICIS-Air data from 2014 to present into CAB System to be completed by June 30, 2020. In addition, HDOH began weekly batch uploads via CAB System to ICIS-Air on October 30, 2018.

Rec #	Due Date	Recommendation
1	3/31/2021	<ol style="list-style-type: none"> 1. HDOH will enter FCEs from 2014 to present into ICIS-Air by June 30, 2020; and 2. At the end of 2020, EPA will randomly select FCE reports for review and evaluation for accuracy and compliance determination. If these FCE reports demonstrate completeness and timeliness, EPA will close this recommendation.

Recommendation:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a FCE coverage: majors and mega-sites [GOAL]	100%	88.1	0	141	0%
5b FCE coverage: SM-80s [GOAL]	100%	93.7%	0	3	0%
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%	70.1	0	2	0%

CAA Element 2 - Inspections

Finding 2-2

Area for Improvement

Summary:

HDOH completed the required reviews for each Title V ACC. However, HDOH did not enter the Title V ACCs into ICIS-Air, resulting in a 0% achievement rate in metrics.

Explanation:

This element evaluates whether the delegated agency has completed the required review for Title V ACC. Based on the files reviewed, HDOH completed the required reviews for each of the Title V ACC as part of annual FCEs for all facilities. However, HDOH did not report these into ICIS-Air. EPA believes that correction of Finding 1-1 will assist in addressing Finding 2-2.

State Response:**Metric 5e – Reviews of Title V annual compliance certifications completed**State Response:

Metric 5e is solely evaluating the review of Title V ACC and not the reporting to ICIS-Air, therefore, HDOH respectfully requests the removal of the sentence in the Summary, “However, HDOH did not report any Title V ACCs into ICIS-Air, resulting in a 0% achievement rate in metrics.” HDOH also respectfully requests the removal of the sentence in the Explanation, “However, HDOH did not report these into ICIS-Air.” Finally, HDOH respectfully requests the below revision of the Relevant Metrics Table to reflect the above.

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	82.5%	33	44	75.0%

Metric 5e was also revised to incorporate the sources identified in the HDOH 2016 CMS plan. The CMS plan corrected the source universe.

Recommendation 1: HDOH is currently inputting ICIS-Air data from 2014 to present into CAB System to be completed by June 30, 2020.

Recommendation:

Rec #	Due Date	Recommendation
1	3/31/2021	<ul style="list-style-type: none"> HDOH will enter all data into ICIS-Air from 2014 to present by June 30, 2020. At the end of CY 2020, EPA will monitor and review ACC reporting to determine timeliness and completeness of the data. EPA will close this recommendation if HDOH meeting this requirement by March 31, 2021.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	82.5%	0	45	0%

CAA Element 2 - Inspections

Finding 2-3

Area for Attention

Summary:

HDOH compliance monitoring reports (CMRs) need to be improved. HDOH did not consistently cover relevant information, such as assessing process parameters and control equipment parameters, in the reviewed reports.

Explanation:

Six CMRs did not document all required FCE elements and three CMRs were incomplete and lacked enough detail to determine whether HDOH reviewed a facility's compliance accurately and comprehensively.

As in Round 3 findings, the HDOH's CMRs continue to be inconsistent and lack sufficient information to determine if the FCE was appropriately completed, as well as missing the important component of the photographs.

HDOH mentioned they were having staffing issues to conduct inspections and that during the review year, HDOH staff assisted with emergency operations due to a volcano eruption. We would recommend having a management or peer review stage (if not already enacted) and add this as an agenda item as part of quarterly calls with Region 9 to help resolve the issues stated above.

State Response:

Metric 6a – Documentation of FCE elements

Metric 6b – Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility

State Response:

- CMRs have been revised to include required FCE elements and are currently in use. Inspectors have received training to use the most recent revised report. The required FCE elements are also entered into CAB System which are uploaded to ICIS-Air on a weekly basis.
- HDOH staff have most recently completed the following EPA, Air Pollution Training Institute (APTI) classes:
 - a. NACT 334 Permitting Practices and Principles, February 25 – 27, 2020;
 - b. APTI 452 Principles & Practices of Air Pollution, September 10 – 12, 2019; and
 - c. Basic/Advanced Inspector Training, July 31, 2018 thru August 2, 2018.
- HDOH currently implements peer as well as management reviews of CMRs. CAB System will incorporate these reviews in the CMR process.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6a Documentation of FCE elements [GOAL]	100%	%	19	25	76%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%	%	22	25	88%

CAA Element 3 - Violations

Finding 3-1

Area for Attention

Summary:

HDOH misreported compliance determinations for FY 2015-2018 as FRVs/HPVs or did not report violations into ICIS-Air.

Explanation:

Metric 7a is designed to evaluate the overall accuracy of compliance determinations.

In 21 out of 25 files reviewed covering FY 2015-2018, HDOH provided an appropriate level of detail in inspection reports for an FCE. None of the inspection reports noted violations based on the FCE itself. The inspection reports for four files were incomplete and lacked enough information to determine if noncompliance was found.

Metric 8c focuses on the accurate identification of violations that are determined to be HPVs.

In 11 files that had reported HPVs or FRVs in ICIS-Air in FY 2015-2018, HDOH accurately made such determinations based on the facility's self-reporting and FCE inspection reports. HDOH addressed most of the FRVs informally in order to timely address identified issues. Enforcement actions had been found to take over one year, due to lack of resources to address them.

Note: EPA believes the recommendations under Findings 1-1 and 2-1 will assist in improving HDOH performance for metrics 7a and 8c. Although HDOH has a needs attention finding for the element, please be aware that HDOH is still required to accurately determine compliance and HPV determinations.

State Response:**Metric 7a – Accurate compliance determinations****Metric 8c – Accuracy of HPV determinations**State Response:

- HDOH requests that EPA revise the due date specified in the Note to provide for flexibility to account for any delays such as travel restrictions due to COVID-19. HDOH recommends the following language: "HDOH to take FRV and HPV training provided by Region 9 within 90 days of issuance of the final report or by an alternative date as agreed upon by HDOH and EPA (Recommendation in Element 4);."
- In addition to this training, HDOH feels a hands-on training session on ICIS-Air reporting with the Region 9 ICIS-Air contact would be very beneficial to meeting EPA's goal of 100% for accuracy of compliance and HPV determinations.
- CAB System was designed to determine whether violations are FRV and HPV based on information inputted.
- Attachment VII is a copy of HDOH's internal guidelines on permit inspections, complaint investigations, enforcement actions and scanning of documents. This internal guideline will be updated to incorporate current processes and EPA's recommendations.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%	%	21	25	84%
8c Accuracy of HPV determinations [GOAL]	100%	%	11	11	100%

CAA Element 4 - Enforcement

Finding 4-1Area for Improvement

Summary:

EPA review found that most of HDOH's enforcement actions of HPVs or FRVs did not address and resolve the issues in a timely manner.

Explanation:

Out of all the files reviewed, EPA found eight case files containing NOVOs and NOVs (NOVOs considered formal enforcement actions with penalties and NOVs considered informal enforcement actions with no penalty) for various source categories. Due to a backlog and limited resources at HDOH, HDOH could not take action timely on all violations assessed. The backlog attributed a delay in case development, which caused HDOH to address some FRVs with non-penalty NOVs rather than NOVOs. Although the state chose to address some violations with NOVs with no penalty, the facilities were returned to compliance by the time of EPA's file review.

Metric 9a is designed to evaluate whether the agency takes formal enforcement actions that return facilities to compliance. In seven out of eight files reviewed (87.5%) HDOH issued a NOVO that had an order to return the facility to compliance. In the one file, HDOH issued an NOV, which precluded an order to return to compliance.

Metric 10a is designed to evaluate the extent to which the agency takes timely action to address HPVs. EPA reviewed files from FY 2014 through FY 2018 in order to understand how HDOH addressed HPVs. Out of four files reviewed, none of them demonstrated that HDOH timely addressed or had a case development/resolution in place for HPVs, as HDOH issued NOVOs for the HPVs exceeding 180 days from finding the violation. HDOH explained that lack of resources led to untimely enforcement action for HPVs.

Metric 10b is designed to evaluate the extent to which the agency takes appropriate enforcement responses for HPVs. Out of three files reviewed, HDOH improperly identified all three as HPVs.

Metric 14 is designed to evaluate the timeliness of case development and resolution involving HPVs according to the HPV Policy. The Policy measures HPVs that are not addressed, or otherwise have had a case completion within 180 days from the time of violation. According to the policy, the case development and resolution timeline is 180 days. Two out of three files reviewed met that requirement.

State Response:

Recommendation 1: HDOH requests that EPA revise the Due Date from March 31, 2020 to “within 90 days of issuance of the final report or by an alternative date as agreed upon by HDOH and EPA” consistent with the Note under finding 3-1. HDOH looks forward to FRV and HPV training with EPA, Region 9’s, ICIS-Air coordinator. In addition to this training, HDOH feels a hands-on training session on ICIS-Air reporting with the Region 9 ICIS-Air contact would be very beneficial to meeting EPA’s goal of 100% for timeliness of addressing HPVs, addressing or removing HPVs consistent with the HPV Policy, formal enforcement responses that include required corrective actions and HPV case development and resolution timeline.

Recommendation 2: Attachment VII is a copy of HDOH’s internal guidelines on permit inspections, complaint investigations, enforcement actions and scanning of documents. This internal guideline will be updated to incorporate current processes and EPA’s recommendations. Attachment V is a CAB System SOP for inputting data enforcement actions.

Recommendation 3: Upon EPA’s approval of the SOP’s, HDOH will conduct appropriate training with staff.

Recommendations:

Rec #	Due Date	Recommendation
1	9/30/2020	Region 9 or EPA will coordinate with HDOH on scheduling an FRV and HPV training for the HDOH staff by September 30, 2020.
2	1/30/2021	<p>HDOH to develop an SOP on how to take enforcement actions when violations are found.</p> <ol style="list-style-type: none">1. HDOH will submit the SOP for EPA's review and approval by June 30, 2020.2. EPA will review and approve the SOP by July 31, 2020.3. HDOH will train staff on approved SOP by September 30, 2020.4. HDOH will update CAB with with all previous data from 2014 to present into ICIS-Air by December 1, 2020.5. EPA will verify the HPV correction by reviewing the ICIS-Air data to see if the number of HPVs has been corrected by January 30, 2021.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%	%	0	4	0%
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%	%	0	3	0%
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%	%	7	8	87.5%
14 HPV Case Development and Resolution Timeline (CD&RT) contains required policy elements	100%	%	2	3	66.7%

CAA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Summary:

HDOH's files included penalty calculations which documented gravity and economic benefit.

Explanation:

The File Review indicated that no cases in FY 2018 had been closed with a penalty. The review looked back to FY 2015-2018 to gather enough data to review this metric.

Metric 11a is designed to discuss the penalty calculations and whether gravity and economic benefit is documented in the case file. Each of the reviewed files included a detailed penalty calculation with an explanation of the economic benefit, gravity and a reason (if any) for a difference between the penalty calculated and amount settled for.

Metric 12a is designed to evaluate the extent to which the agency documents the rationale for the difference between the initial and final penalty. To improve timeliness and accuracy of what is entered into ICIS-AIR, HDOH has begun utilizing their new system to allow the inspector and/or case developer to upload the associated documents when closing the case.

Metric 12b is designed to evaluate whether there is documentation that the final penalty was collected. Out of five files reviewed, they each had the original copy of the certified mail slip which indicated the date of receipt of penalty payments from respondents.

State Response:

- HDOH appreciates EPA's review and findings that our effort to ensure complete and detailed documentation of penalties have been successful.
- HDOH penalties are calculated using templates related to the type of violation. This ensures that penalties are being consistently calculated and documented in the case file. These penalty calculation templates are updated as necessary to reflect changes such as inflation and economic benefit.

Relevant metrics:

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

STATE REVIEW FRAMEWORK

Hawaii

Clean Water Act Implementation in Federal Fiscal Year 2018

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

**FINAL Report
June 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 is 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)

CWA Key Dates: On-site file review conducted June 17-20, 2019;

CWA EPA Key Contacts: John Tinger, Connor Adams, Eric Magnan (Manager);

CWA State Key Contact: Matt Kurano (Manager)

Clean Air Act (CAA)

Resource Conservation and Recovery Act (RCRA)

Executive Summary

Introduction

Clean Water Act (CWA)

EPA Region 9 CWA enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Hawaii Department of Health (DOH) in 2019.

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

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)

- DOH exceeded the national goal for entry of permit limit and discharge monitoring report (DMR) data for major and non-major facilities into EPA's national data base, Integrated Compliance Information System (ICIS).
- Ninety-six percent of the reviewed inspection reports were found complete enough to determine compliance at the facility and ninety-six percent of reports were deemed to have made accurate compliance determinations.

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)

- Due to database issues, EPA is unable to obtain an accurate count of active NPDES facilities in each category of permits from ICIS.

Clean Water Act Findings

CWA Element 1 – Data

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

Finding 1-1

Meets or Exceeds Expectations

Summary:

Hawaii exceeded the national goal for entry of permit limit and discharge monitoring report (DMR) data for major and non-major facilities into EPA’s national data base, Integrated Compliance Information System (ICIS).

Explanation:

Metrics 1b5 and 1b6 measure the state’s rate of entering permit limits and DMR data into ICIS. DOH entered 97.7% of permit limits into ICIS for major and non-major facilities, exceeding EPA’s national goal of 95%. DOH entered 99.1% of DMR data into ICIS, exceeding EPA’s national goal of 95%. DOH should periodically validate data to ensure the regulated universe and DOH’s activities are accurately reflected in ICIS.

Additionally, EPA commends DOH for providing transparency by making all compliance documents and all permit documents available for public review through their database web portal.

At the time of review, several major facilities were not directly entering data into NetDMR, instead providing paper copies to DOH for data entry. DOH should ensure all major permittees are entering DMR data directly into ICIS and should provide EPA with a status report when full compliance is achieved.

DOH should continue to ensure all permit effluent limitations are written in a format that is codable for electronic submittal of Discharge Monitoring Reports. DOH has made significant progress in the codability of permits based on the findings of the SRF Round 3 report. EPA encourages the DOH database team to continue to review draft permits to ensure codability.

State Response: Meeting the national data management goals requires substantial investment by the State. HDOH continually supports development of data systems that meets the needs of the State while simultaneously reduces the amount of effort required to meet national goals. It should be noted that the volume of data requested by the EPA is continuously growing. EPA regional staff and management have provided much needed technical support to the HDOH and should share credit for HDOH success in this metric. However, the State has had to increase the amount of resources to meet national goals for environmental data management without adequate financial support by the EPA.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
1b5 Completeness of data entry on major and non-major permit limits. [GOAL]	>=95%	90.6%	43	44	97.7%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	>=95%	93.3%	2751	2776	99.1%

CWA Element 1 – Data**Metric 2b: Completeness and accuracy of inspections and enforcement action data in EPA’s national database.**

Finding 1-2**Area for Improvement**

Summary:

DOH entered inspection and enforcement data accurately into ICIS in 65.5% of the files reviewed, below the national goal for 100% accurate entry.

EPA is unable to obtain an accurate count of active NPDES facilities in each permit category from ICIS due to DOH’s unique methodology.

Explanation:

Under metric 2b, EPA compared inspection reports and enforcement actions found in selected files to determine if the inspections, inspection findings, and enforcement actions were accurately entered in ICIS. The analysis was limited to data elements mandated in EPA’s ICIS data management policies. States are not required to enter inspections or enforcement actions for certain classes of facilities.

EPA reviewed 29 files for data accuracy. EPA found 19 of the 29 files reviewed (65.5%) had all required information (facility location, inspection, violation, and enforcement action information) accurately entered in ICIS. Five facilities had missing or mismatched facility information (addresses unknown or not matching permit, or longitude/latitude missing); one facility had a discrepancy in ownership and name; one facility was missing an SEV based on an inspection observation, and one facility had SEVs entered without an end date and therefore

were still showing as active SEVs even though they were several years old and should have been closed out.

For effluent limitations, two facilities appeared to have inconsistencies in effluent violations. In the files, the permittees had provided exceedance reports to DOH in accordance with the permit notification requirements. However, ICIS did not identify the effluent violation. For one facility, the cause is that the major permittee is not directly entering DMRs into ICIS. For the second facility, EPA believes it may be due to the complexity of the effluent limitations and permit coding of the effluent limitations. EPA Region 9 assisted DOH in coding this permit, in which EPA found the permit limitations extraordinarily difficult to code.

DOH is to be commended for improving rates of Single Event Violation (SEV) entry. In order to comply with ICIS requirements, DOH has developed their own Guidance Document for SEV data entry into ICIS. Additionally, DOH is entering SEVs for construction stormwater and industrial stormwater sites into ICIS, which exceeds EPA's expectation for data entry requirements.

A significant and recurring issue is that EPA is unable to obtain an accurate count of active NPDES facilities in each category from ICIS. This is a recurring issue for many years, complicated by DOH's permitting structure and the inability of DOH to complete an update to DOH's internal data system, Water Pollution Control, or "WPC". The issue relates to the number counts of non-major "traditional" (e.g., non-stormwater) permits. In ICIS, a database query will provide a count of several hundred individual non-major facilities. For example, for EPA's initial Data Metrics Analysis for Element 5b1 of the SRF counted a universe of 363 NPDES non-majors with individual permits. However, many of these permits are, in fact, construction or industrial stormwater permits. DOH has an actual count of 27 "traditional" NPDES non-majors with individual permits.

As an explanation for the high count of individual non-major facilities, EPA understands there are several scenarios in which DOH issues permits where an ICIS "Permit Type" label is "Individual Permit" in the database.

For "Traditional" permits such as:

1. Major and non-major sewage treatment plants and industrial wastewater facilities.

For "Non-Traditional" permits such as:

1. DOH issues a "Notice of General Permit Coverage" (NGPC) to a facility that files a Notice of Intent for Coverage under a Construction or Industrial General Permit. The NGPC may include effluent limits. If an NGPC contains effluent limits, it may appear similar to an individual permit in ICIS.
2. DOH issues individual permits for new permittees who apply for an expired General Permit, namely for Industrial and Construction Stormwater facilities.
3. DOH issues individual permits for stormwater facilities that discharge to Class AA waters. According to the General Permits, stormwater discharges into high quality waters are not eligible for coverage under the General Permit.

4. DOH sometimes issues a hybrid permit to effectively provide coverage under two or more separate general permits. For example, DOH may issue a single permit that covers both dewatering and construction activities that would otherwise be covered by two NGPCs. These hybrid permits may be represented as individual permits in ICIS.

Therefore, for DOH, the permit universe may be categorized by “Traditional” majors/non-majors and “Non-Traditional” non-majors (which include the NGPCs and expired Stormwater General permits). This is a large part of the data issues we have previously identified. As a component of the Phase I e-Rule, the Region, OECA and DOH agreed to remove the “non-traditional” NGPC permits from the counts of individual majors and non-majors: we accomplished this by having DOH utilize the UDF5 field in ICIS to state the type of permit. The UDF5 field now incorporates “Individual Minor (traditional)”; “Const SW NGPC (Phase I)”, “Const SW NGPC (Phase II)”, “Industrial Stormwater NGPC”, and “Phase II MS4s”. However, the Region has identified numerous data quality issues amongst various fields in ICIS that need to be corrected.

Working in coordination with DOH, the Region has produced a spreadsheet listing all permits in ICIS along with the errors that require database corrections. The Region has identified missing Component Type elements, mismatched errors in Component Type, missing UDF5 field elements, and permits listed as expired that should be listed as administratively continued due to missing permit application date. HDOH will need to update its WPC database and EPA will verify that all database elements have been corrected through ICIS queries.

State Response: The explanation provided in the SRF report included an analysis from which EPA concluded that HDOH only met data completeness for inspection and enforcement data in 65.5% of the files reviewed. However, specifics regarding which facilities and what corresponding data elements were identified as missing, were not included in the report. Without specific findings, HDOH is unable to respond (in either support or defense) to the conclusion. With regard to EPA’s expanded explanation of the disharmony between data in the State data system and Federal data System, HDOH concurs and appreciates EPA’s understanding. HDOH has received the data reconciliation spreadsheet referenced in the Recommendation section of the report and completed the data reconciliation in cooperation with EPA. HDOH will work to align NPDES permit language such that the Hawaii NPDES permit universe and permit requirements can be more accurately reflected in EPA’s ICIS database.

Recommendation:

Rec #	Due Date	Recommendation
1	07/30/2020	DOH should correct all data elements in WPC/ICIS to ensure accurate counts of permitted facilities. DOH should utilize the spreadsheet provided by the Region to identify errors and correct Permit Type, Permit Status, Component Type, and UDF5 fields. DOH should provide a database query result to EPA to ensure the counts accurately reflect the permit universe.
2	8/15/2020	EPA will review the database query provided by DOH to ensure the counts accurately reflect the permit universe.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	>=100%	%	19	29	65.5%

CWA Element 2 – Inspections

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

Finding 2-1

Meets or Exceeds Expectations

Summary:

DOH met or exceeded its inspection commitments in its Clean Water Act Section 106 grant workplan for 4 inspection categories: individual major facilities; individual traditional minor facilities, non-majors with general permits, and concentrated animal feeding operations (CAFOs).

Three categories are not applicable due to no known facilities: combined sewer systems, SIUs discharging to non-authorized POTWs, and sludge/biosolids inspections (DOH not authorized).

Explanation:

Metrics 4a, 5a, and 5b measure the number of inspections completed by the state in the Fiscal Year 2018 compared to the commitments in DOH's Clean Water Act Section 106 grant workplan. EPA Region 9 established workplan inspection commitments for DOH consistent with the inspection frequency goals established in EPA's 2014 Compliance Monitoring Strategy (CMS).

For Metric 5a1, DOH inspected 8 individual major facilities. DOH has met the CMS-based workplan commitments to conduct inspections of 8 individual major facilities.

For Metric 5b1, DOH inspected 5 individual traditional minor facilities. DOH has met the CMS-based workplan commitments to conduct inspections of 5 individual minor facilities.

For Metric 5b2, DOH conducted 33 inspections of 700 NPDES non-majors with general permits, or about 3.3% of the universe. DOH did not fail to meet the CMS-based workplan commitments because the workplan did not establish a minimum number of inspections.

For metric 4a2, DOH has not identified any SIU discharging to a non-authorized POTW. Therefore, DOH did not fail to meet the CMS-based workplan commitment of zero.

For metric 4a4, there are no CSOs within Hawaii. Therefore, DOH did not fail to meet the CMS-based workplan commitment of zero.

For metric 4a10, there are no permitted concentrated animal feeding operation (CAFO) in Hawaii. DOH did conduct 2 inspections at non-permitted CAFOs. Therefore, DOH did not fail to meet the CMS-based workplan commitment of zero.

For metric 4a11, DOH does not have authorization for the biosolids program. Therefore, DOH did not fail to meet the CMS-based workplan commitment of zero.

State Response: The HDOH appreciates the EPA's continued support and partnership with respect to coordinating and recognizing inspection priorities.

Recommendations: None

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL: 0 for FY18]	>=100% of commitments	%	2	NA	NA
4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL: 0. DOH not authorized]	>=100% of commitments	%	NA	NA	NA
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL: 0: none known]	>=100% of commitments	%	NA	NA	NA
4a5 Number of CSO inspections. [GOAL: 0: none known]	>=100% of commitments	%	NA	NA	NA
5a1 Inspection coverage of NPDES majors.	>=100% of commitments	%	8	8	100%

[GOAL: 47% (8 for FY18)]					
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL: 19% (5 for FY18)]	>=100% of commitments	%	5	5	100%
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL: 0]	>=100% of commitments	%	33	NA	NA

Finding 2-2

Area for Improvement

Summary:

While DOH met its inspection commitments in its Clean Water Act Section 106 grant workplan for 2 inspection categories: industrial stormwater inspections and construction stormwater inspections, those commitments failed to meet EPA's CMS inspection targets.

DOH did not fail to meet its inspection commitments in 3 additional categories because there were no CMS commitments specific to the year evaluated. DOH should commit to conducting inspections in the next workplan to ensure CMS commitments are met for the following categories of permits: pretreatment compliance inspections and audits; sanitary sewer systems, and Phase I and II MS4s.

Explanation:

Metrics 4a, 5a, and 5b measure the number of inspections completed by the state in the Fiscal Year 2018 compared to the commitments in DOH's Clean Water Act Section 106 grant

workplan. EPA Region 9 established workplan inspection commitments for DOH consistent with the inspection frequency goals established in EPA's 2014 Compliance Monitoring Strategy (CMS).

For metric 4a1, DOH conducted 0 pretreatment compliance inspections and 0 oversight inspections of industrial users. There is one approved local pretreatment program in the universe. Although DOH did not fail to meet the CMS-based workplan commitments for FY18 of zero, DOH must commit to conducting one audit and at least 2 oversight inspections within 5 years.

For metric 4a5, DOH did not inspect any sanitary sewer systems. There are 10 sanitary sewer systems in Hawaii with NPDES permits. Although DOH did not fail to meet the CMS-based workplan commitments for FY18 of zero, DOH must commit to conducting inspections 5% of sanitary sewers each year, or one system every two years. DOH must add the commitments to the workplan.

For metric 4a7, DOH did not conduct any audits or inspections of the 26 MS4s. ICIS does show DOH conducted 1 inspection at a MS4. However, EPA concluded the inspection should not count towards metric 4a7 because the inspection was conducted at a waste transfer facility that is owned by the MS4 and does not have an individual NPDES permit. The inspection was an inspection of the individual industrial stormwater facility, not an audit/inspection of the MS4, and EPA concluded this was a database entry error. Although DOH did not fail to meet the CMS-based workplan commitments for FY18 of zero, DOH must commit to conducting an on-site audit, MS4 inspection, or off-site desk audit of each MS4 permittee at least once within a five-year timeframe and an on-site audit or inspection at least once every seven years for each permittee. DOH must add the commitments to the workplan.

For metric 4a8, DOH conducted 15 of 182 industrial stormwater inspections, or about 8.2% of the universe. DOH met the workplan commitment of 15 inspections. However, DOH did not meet the CMS target to inspect 18 industrial stormwater facilities (10% of the universe).

For metric 4a9, DOH conducted 20 of 944 construction stormwater inspections, or approximately 2% of the universe. DOH met the workplan commitments of 20 inspections. However, DOH did not meet the CMS target to inspect 94 construction stormwater facilities (10% of universe).

State Response: Annually, HDOH and EPA agrees on 106 work grant inspection targets in September of the year preceding the applicable grant. In September 2017, HDOH and EPA agreed on an inspection schedule that included conducting 20 construction storm water inspections and 15 industrial storm water inspections. During Fiscal Year 2018, HDOH completed 15 industrial storm water inspections and exceeded the number of construction inspection commitments by completing 25 construction storm water inspections.

With regard to 106 grant commitments being less than the *goals* set forth in the EPA 2014 Compliance Monitoring Strategy (CMS), HDOH recognizes that the Hawaii 106 grant

commitments fall below the national goals for construction storm water inspections. However, it is increasingly difficult to achieve EPA CMS goals with the available resources for inspection and enforcement. Since the 2014 CMS was issued, there has been no significant increase in federal funding by the EPA. 106 grant funds have remained flat, or have, in some cases, decreased. The State has added funding annually in order to maintain the current level of effort. For the State to conduct 80 more construction storm water inspections as recommended in the report is unrealistic and unsupported by water quality based evidence.

Further, while the HDOH recognizes the importance of pretreatment and MS4 oversight, committing to conducting Pretreatment Compliance Audits and MS4 Compliance audits may not be attainable given the current level of resources available and a lack of National Compliance Initiatives for those sectors.

Recommendations

Rec #	Due Date	Recommendation
1	9/1/2020	<p>DOH should commit to conducting inspections consistent with the CMS, or an approved alternative CMS strategy. The workplan for FY2021 should reflect these commitments.</p> <p>Inspection commitments should include:</p> <ul style="list-style-type: none">• at least one pretreatment audit and at least 2 oversight inspections of industrial users within 5 years.• at least one sanitary sewer system inspection every 2 years.• at least 10% of universe of industrial stormwater facilities each year.• at least 10% of the universe of construction stormwater facilities each year.• at least one on-site audit, MS4 inspection, or off-site desk audit of each MS4 permittee within a five- year timeframe and an on-site audit or inspection at least once every seven years for each permittee.
2	10/1/2020	<p>EPA will review DOH workplan inspection commitments for pretreatment audit and oversight inspections of industrial users, sanitary sewer systems, industrial stormwater inspections and construction stormwater inspections.</p>

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL: 0 for FY18]	>=100% of commitments	%	NA	NA	NA
4a5 Number of SSO inspections. [GOAL: 0:]	>=100% of commitments	%	NA	NA	NA
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	>=100% of commitments	%	0	26	NA
4a8 Number of industrial stormwater inspections. [Work Plan Commitment=15 / CMS GOAL: 10% of 184=18 for FY18]	>=100% of commitments	%	15	15	100%
4a9 Number of Phase I and Phase II construction stormwater inspections. [Work Plan Commitment= 20 / CMS GOAL: 10% of 944= 94 inspections for FY18]	>=100% of commitments%	%	20	20	100%

CWA Element 2 – Inspections**Metric 6a: Quality of inspection reports.**

Finding 2-3

Meets or Exceeds Expectations

Summary:

Ninety-six percent of the reviewed inspection reports were found complete enough to determine compliance at the facility. EPA has identified several potential areas to improve the quality of inspection reports.

Explanation:

Metric 6a assesses the quality of inspection reports to evaluate whether the inspection reports provide enough documentation to accurately determine the compliance status of inspected facilities.

EPA reviewed 29 files to determine compliance with the 2017 NPDES Compliance Inspection Manual (Chapter 2G Inspection Procedures) as described in the SRF Round 4 CWA File Review Facility Checklist and CWA Metrics Plain Language Guide. Of the 29 facility files reviewed for the SRF, inspections had been conducted for 24 of the facilities and EPA therefore reviewed 24 inspection reports.

Inspection reports were generally high quality with sufficient narrative, documentary support and evidence of findings. One inspection report was deemed insufficient because the report did not document findings in a manner that would connect observations with the permit requirements.

Several potential areas for improvements were noted:

- The “Findings” in inspection reports were often a mixture of facts, observations, and deficiencies. It was not always clear if the statements were written to identify a potential violation, or to merely observe a fact about the facility. EPA recommends inspection reports more clearly state “potential permit violations” “deficiencies” or “areas of concern” so that permittees are notified of deficiencies and/or potential permit violations. It would also be helpful for the inspection report to reference the specific permit language for any potential violation.
- No inspection reports contained checklists. It was not always clear from the inspection report that all areas of potential compliance were evaluated during the inspection, as reports often state problems without providing a narrative of compliant areas. A facility checklist, especially for construction and industrial stormwater sites, may be appropriate to efficiently document all areas of the facility compliance investigation that were reviewed during the comprehensive inspection.

State Response: The HDOH appreciates EPA’s analysis. HDOH will continue to develop inspection reports that are actionable and effective at communicating compliance status.

Recommendation: None

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL: 100%]	>=100%	%	23	24	95.8%

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

Finding 2-4

Area for Improvement

Summary:

Fifteen of the 24 (62.5%) inspection reports reviewed by EPA were dated or completed within 60 days.

Explanation:

Metric 6b measures the state's timeliness in completing and issuing inspection reports.

EPA reviewed 24 inspection reports and found 15 (62.5%) were completed within a 60 day timeframe. Eight of the 9 reports exceeding 60 days were completed within 75 days, (with most of those delayed reports spanning the New Year holidays), while the longest was completed in 137 days. EPA notes the 137 days was in part due to delays resulting from EPA regional review of the draft report.

EPA commends DOH for their SOP to improve inspection report timeliness. DOH internally tracks each inspection report, the date it was drafted, the date comments were addressed, the date the report was sent to the permittee, and also tracks the need for follow-up response or enforcement actions related to the report.

State Response: As noted in the report, while only 62.5% of reports were finished within 60 calendar days, 96% were completed within 75 days. The report noted as taking 137 days was largely due to failed coordination efforts between the HDOH and EPA staff. HDOH concurs that a lack of timeliness is an area that requires attention. HDOH has developed general guidelines for the timeframes associated with developing reports. The general guidelines will be provided to EPA as a courtesy response to this finding when completed.

Recommendation:

Rec #	Due Date	Recommendation
1	8/30/2020	DOH should ensure that inspection reports are completed in a timely manner. DOH should updated its SOP and/or template to reflect required timelines.
2	9/15/2020	DOH should provide the SOP and/or template to EPA.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6b Timeliness of inspection report completion [GOAL: 60% within 60 days]	>=100%	%	15	24	62.5%

CWA Element 3 – Violations**Metric 7e: Accuracy of compliance determinations**

Finding 3-1

Meets or Exceeds Expectations

Summary:

Nine-six percent of the inspection reports reviewed provide enough information to evaluate the accuracy of the compliance determinations.

Explanation:

Metric 7e measures the percent of inspection reports reviewed that led to an accurate compliance determination.

EPA reviewed 24 inspection reports and found that 23 of the reports (95.8%) led to accurate compliance determinations.

For the one facility determined to be inaccurate, the inspection report did not mention the fact that the facility was in significant noncompliance and did not identify follow-up actions to address the noncompliance.

Metric 7j1 measures the number of major and non-major facilities with single-event violations reported in the review year. Although several database errors were found with SEV data entry, EPA commends DOH for accurately identifying SEVs in inspection reports.

Metric 7k1 measures the number of major and non-major facilities in noncompliance. The universe is currently 36.4% in noncompliance. DOH is working to improve noncompliance rate, of which a number are due to DMR non-submittals from minor facilities, non-reporting, and non-reporting database errors. As indicated in Finding 1-1, DOH is working to clean up the database so that all electronic submittals are accurate. In order to obtain an accurate count for the SRF, EPA utilized the QNCR for the time period reviewed.

Metric 8a3 measures the percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year. The universe is currently 15.9% in significant noncompliance, with 3 major facilities in SNC. DOH and EPA are working to address two of the major SNC facilities through existing enforcement orders. As indicated in Finding 1-1, DOH is working to clean up the database so that all electronic submittals are accurate. In order to obtain an accurate count for the SRF, EPA utilized the Coordinator's Quarterly Noncompliant Report "QNCR" for the time period reviewed.

State Response: HDOH will continue to work on accurately documenting violations and prioritizing facilities in Significant Non-Compliance.

Recommendation: None

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7e Accuracy of compliance determinations [GOAL]	>=100%	%	23	24	95.8%
7j1 Number of major and non-major facilities with single-event violations reported in the review year	NA	NA	-	83	-
7k1 Major and non-major facilities in noncompliance.	%	18.7%	16	44	36.4%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.	%	%	7	44	15.9%

CWA Element 4 – Enforcement

Metric 9a: Enforcement actions promoting return to compliance

Finding 4-1

Area for Improvement

Summary:

63.6% percent of the reviewed enforcement actions resulted in a verifiable return to compliance.

Explanation:

Background Information: The information below highlights the number and type of NPDES enforcement actions taken by DOH during the review year and is not subject to a rating under EPA's SRF protocols.

During FY18, DOH issued 11 enforcement actions in response to NPDES violations. Ten of those 11 enforcement actions were field citations.

Metric 9a measures the percentage of enforcement responses that returned, or will return, a source in violation to compliance. During the file review, five of the enforcement actions did not have sufficient evidence in the record to document compliance. For one facility, the record contained a narrative response from the facility claiming that actions were taken, to which DOH sent a follow-up request for actual documentation that the actions were taken. However, no additional demonstration was in the record that the facility had documented its return to

compliance. For another facility, the facility provided a response and photo documentation of the corrective actions; however, the documentation appeared incomplete, and several photos appeared to show incorrect installation of BMPs that were inadequate to address the violations. Additionally, two of the field citations did not have documentation in the record that proved return to compliance. EPA notes that several enforcement actions were relatively recent, and therefore full documentation may not have been available at the time of review.

For deficiencies that were documented in inspection reports that may not warrant enforcement action, it was not always clear that DOH was requiring corrections. For example, one letter to a facility (where several somewhat minor deficiencies were found) did not request a response from the facility, and stated “the inspection report is being sent to you to provide you with information and feedback that will assist in your efforts to comply with your NPDES Permit”, and further stated “DOH is not pursuing an enforcement action at this time”. Generally, it is not advisable to curtail enforcement options prior to a facility achieving compliance. Additionally, it was not clear that the inspection report and documentation required the facility to address the minor deficiencies that were found. EPA provides a recommendation in Finding 2-2 to provide greater clarity to the discharger on deficiencies found and requirements for compliance.

State Response: EPA cites review of 11 enforcement actions, 10 of which were field citations. EPA notes that on 5 of the 11, there did not appear adequate evidence that the facility returned to compliance. HDOH believes that the responses from 5 enforcement actions that EPA judged were insufficient to determine a return to compliance were associated with field citations. HDOH uses field citations to address the lowest rung of non-compliance that requires correction. As such, the level of information necessary for HDOH to judge as adequate for the closure of the field citation is equally as low.

It is HDOH’s practice to close a field citation upon affirmative response by a violator that the alleged violation occurred and the violation was corrected. Given the level of effort necessary to confirm a facility has returned to compliance, HDOH prefers to utilize follow-up inspections (when resources allow) which can lend itself to HDOH’s escalating penalty system for facilities that have received field citations. This approach is believed to be more effective than spending a disproportionate amount of a time on enforcement response and oversight for low level violations.

HDOH disagrees with EPA’s implication that a formal response to deficiencies that don’t warrant an enforcement action, should be required. HDOH makes a determination on whether enforcement actions are warranted based on the information that is available at the time. Where HDOH does not judge that an enforcement action is needed, the HDOH does not invoke enforcement authority to obligate a formal response. HDOH communicates when it is not taking an enforcement action for the sake of transparency and credibility. HDOH also clearly communicates that it is not precluded from taking a future enforcement action using the same findings should one be warranted.

HDOH respectfully disagrees with EPA’s determination that this is an “Area for Improvement”. HDOH will develop a guidance and “SOP” better defining expectations regarding judging

responses; however, HDOH stands by its judgement on determining when (low level) enforcement actions may be closed and how to best communicate with NPDES permitted facilities in Hawaii.

Recommendation: EPA agrees that the document review was primarily focused on field citations, which are typically issued to address minor violations. EPA agrees with HDOH's response that HDOH makes a determination on whether enforcement actions are warranted based on the information that is available at the time. EPA is not necessarily stating a formal response is required to address minor violations and field citations. However, EPA believes HDOH should make an assessment on the return to compliance, and HDOH should document this assessment (e.g., that no further action is warranted) in the case file.

Rec #	Due Date	Recommendation
1	1/30/2020	DOH should ensure that all enforcement actions have documentation of return to compliance. DOH should develop and implement an SOP and/or template to request permittees to adequately document return to compliance through submittal of photos or other documentation, and, if documentation is insufficient, DOH should follow-up with a field inspection
2	3/1/2020	DOH should provide the SOP and/or template to EPA.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	>=100%	%	7	11	63.6%

CWA Element 4 – Enforcement

Metric 10b: Appropriate enforcement actions

Finding 4-2

Area for Attention

Summary:

Enforcement actions taken at major and non-major facilities have been appropriate.

Explanation:

Review Indicator metric 10a1 measures the percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations. DOH FY18 data indicated 3 major facilities in SNC and zero formal enforcement actions taken.

Of the three enforcement actions, one facility was in SNC due to a schedule event violation of an EPA enforcement action. For this facility, the SNC was due to a data quality issue, where the facility met the compliance schedules but the Region delayed updating ICIS until compliance could be confirmed. The SNC was resolved by the facility achieving full compliance and the Region updating ICIS entry. The SNC was resolved by the time of this review.

The second facility in SNC was already under a formal enforcement order. The SNC was due to non-submittal of a DMR. The SNC was resolved with a DMR submittal by the time of this review.

The third facility in SNC is an industrial facility with effluent violations for one pollutant. This facility is not under a formal enforcement order.

EPA policy dictates that SNC level violations must be addressed with a formal enforcement action (administrative compliance order or judicial action) issued within 5 ½ months of the end of the quarter when the SNC level violations initially occurred. Therefore, 2 of the 3 SNC facilities have met EPA policy because they are already under existing formal enforcement and SNC violations were corrected within the timeframe. The remaining facility in SNC has extenuating circumstances discussed with DOH regarding the effluent limits that DOH is addressing through informal compliance actions. EPA believes, in this limited instance, DOH enforcement response to this SNC facility to be appropriate; however, EPA concluded for the purposes of SRF that the action was not timely.

Metric 10b measures the percentage of enforcement actions reviewed during the onsite file review that were taken in an appropriate and timely manner. Metric 10b assesses DOH's enforcement response to any type of violation (SNC or lower level violations) at any type of facility (major, minor or general permit discharger). EPA expectations for enforcement response are provided in EPA's EMS Enforcement Response Guide. For metric 10b, 24 of the 29 files reviewed had an enforcement response. EPA therefore reviewed the 24 files that included documentation that one or more enforcement responses had occurred at the facility. EPA found that 20 of the 24 enforcement responses reviewed (83.3%) addressed violations in an appropriate manner. None of the enforcement responses were judicial actions.

The files included a mix of major, non-major and general permitted facilities. EPA found 20 instances where DOH's enforcement response was timely and appropriate for the nature of the

violation. EPA commends DOH for timeliness of penalty actions. Eleven penalties were issued and closed out within 4 months of issuing a field citation.

EPA considered 4 enforcement responses potentially not appropriate. One traditional minor had 4 quarters of category 1 noncompliance and ongoing RNC violations, but no formal enforcement was done. One industrial stormwater facility was issued a field citation based on an inspection but return to compliance was not documented or verified and EPA believes a more formal enforcement order may have been more appropriate. One traditional minor WWTP facility was found to be discharging wastewater without a permit but no actions were found to have been taken to address the violations. One stormwater construction site inspection appeared to merit follow-up due to violations found, but no additional documentation of enforcement was found in files. EPA notes that due to the timeline of inspections, DOH may have initiated follow-up enforcement actions at these facilities since the time of the review.

Generally, EPA found formal and informal enforcement actions taken at major and non-major facilities to be timely and appropriate. DOH should consider increased use of formal enforcement actions to address noncompliance.

State Response: HDOH appreciates EPA's detailed review of HDOH's exercise of enforcement discretion. HDOH is in general agreement and recognizes there may be occasional differences of opinion about when formal action is warranted, particularly when resource limitations are considered.

Recommendation: None

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations	%	15.4%	2	3	66.7%
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	>=100%	%	20	24	83.3%

CWA Element 5 – Penalties

Metrics 11a, 12a, and 12b: Penalty calculation and collection

Finding 5-1
Meets or Exceeds Expectations

Summary:

DOH took 11 penalty actions in the review year. Ten of those eleven penalties were “Field Citations”.

Explanation:

Metric 11a assesses the state’s method for calculating penalties and whether it properly documents the economic benefit and gravity components in its penalty calculations.

EPA evaluated the formal penalty action issued for one facility and found the penalty to have properly assessed and documented both economic benefit and gravity.

For the 10 field citation penalties, EPA evaluated the assessment and documentation of penalties in accordance with EPA’s revised guidance on the use of Expediated Settlement Agreements. EPA found DOH correctly assessed field citation penalties for easily correctible violations that did not cause significant health or environmental harm. EPA found the field citations were generally issued for stormwater-related violations, especially for violations where no actual harm had been documented to occur such as failure to implement BMPs or paperwork violations.

Metric 12a assesses whether the state documents the rationale for changing penalty amounts when the final value is less than the initial calculated value. EPA found no change in penalty amounts from the calculated value to the assessed value and therefore no documentation of such actions.

Metric 12b assesses whether the state documents collection of penalty payments. EPA found copies of received checks in DOH’s files for all of the penalties. There was one penalty without a record in the file because the penalty had been recently issued and the payment had not yet been processed. DOH later provided EPA with a copy of the received check.

State Response: HDOH appreciates EPA’s review of HDOH’s penalty assessments and collections. HDOH would like to note that State deviation from EPA’s penalty policies are not actionable by EPA.

Recommendation: None

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL: 100%]	>=100%	%	11	11	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL: 100%]	>=100%	%	0	0	NA
12b Penalties collected [GOAL: 100%]	>=100%	%	11	11	100%

STATE REVIEW FRAMEWORK

Hawaii

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

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

**Final Report
June 10, 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

Clean Water Act (CWA)

Clean Air Act (CAA)

Resource Conservation and Recovery Act (RCRA)

Review Year: FY 2018 File Review Date: 6/12-13/2018 Hawaii Department of Health (HDOH)
Contacts: Thomas Brand and Noa Klein EPA File Reviewers: Rick Sakow and John Schofield.

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)

30 of 33 files (91%) contained data that was accurately reflected in the RCRAInfo database.

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)

Improvement is needed for timeliness for completing inspection reports. HDOH inspection coverage for Treatment, Storage and Disposal Facilities (TSDFs) meets the two-year coverage requirement. However, inspections of Large Quantity Generator (LQG) coverage were below the national average.

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

30 of 33 files (91%) contained data that was accurately reflected in the RCRAInfo database.

Explanation:

EPA inspectors reviewed 33 files during the State Revolving Framework (SRF) evaluation. The Hawaii Department of Health (HDOH) conducted two inspections of the same facility during the SRF review period, and both inspections were added as individual entries on the Resource Conservation and Recovery Act (RCRA) File Review Spreadsheet. Three of the 33 files contained data that were inconsistent with RCRAInfo data. The following inaccuracies were noted: 1) HDOH marked a facility in RCRAInfo as Significant Non Compliance-Yes (SNY) on 06/08/2018 and had no return to compliance date entered in RCRAInfo. However, facility responded on 9/24/2018 showing that it had resolved the potential violations, but the facility was never changed to Significant Non-Compliance No (SNN). 2) A discrepancy was noted for the date of a Notice and Finding Of Violation Order (NOVO) issued and the date that was entered into RCRAInfo. 3) HDOH re-inspected a facility and the report was marked as a Focused Compliance Inspection (FCI), however, in RCRAInfo, it was marked as a Compliance Evaluation Inspection (CEI). HDOH has improved its rate of data accuracy since the previous SRF review. The Round 3 SRF found data errors in 16 of the 30 files reviewed during that review period. The majority of the data (90.9%) entered into RCRAInfo accurately reflected compliance activities, including inspection dates, inspection types and Significant Non-Compliance (SNC) status.

Relevant metrics:

2b Accurate entry of mandatory data [GOAL]	100%		30	33	90.9%

State Response:

Hawaii Department of Health (HDOH) appreciates the recognition of the data quality improvements made since our SRF Round 3 review. Per correspondence between HDOH's

RCRAInfo data steward and U.S. Environmental Protection Agency, Region 9's (EPA) SRF reviewer, there was only one data error (Accuracy rate of 32/33 or 97%). 1) SNN for the first facility (evaluation date September 26, 2018) was entered June 7, 2019, so this was an issue of timeliness, not correctness. 2) The Notice and Finding of Violation and Order (NOVO) date was correctly entered as the date the NOVO was signed by the Deputy Director ("effective date"), which did not match the date at the top of the cover letter. 3) This was indeed a focused inspection and was entered as a CEI in RCRAInfo rather than an FCI. The data error occurred because there was no appropriate focus area available to record the inspection, and the code FCI must be paired with a focus area. HDOH has updated the lookup tables with a state only focus area code "CMP" for "complaint inspection" that can be used to record these inspections as focused compliance inspections (FCIs). In addition, HDOH plans to create a new data entry standard operating procedure (SOP) for Compliance Monitoring and Enforcement data entry for RCRAInfo v6.

RCRA Element 2 - Inspections

Finding 2-1

Area for Improvement

Recurring Issue:

No

Summary:

HDOH inspection coverage for Treatment, Storage and Disposal Facilities (TSDFs) meets the two-year coverage requirement. However, inspections of Large Quantity Generator (LQG) coverage were below the national average.

Explanation:

At the time of EPA's SRF review, there were two operating TSDFs in Hawaii. During FY2018, (the timeframe of this SRF review) EPA R9 and HDOH had an arrangement where each Agency would alternate the annual inspections of these two permitted facilities. EPA R9 agreed that HDOH could count an EPA-led inspection toward their inspection commitment under their grant. A third facility was issued an individual permit in January 2019, but this date is outside the scope of EPA's SRF review for FY2018. According to FY2018 frozen RCRAinfo data, there are 97 active LQGs located in Hawaii. HDOH inspected 9 of the 97 LQGs, or 9.3%, which is below the national average of 9.9% for inspections of the LQG universe. The 5-year LQG coverage by HDOH is 60.8%, which is below the national goal of 100%.

Relevant metrics:

5c Five-year inspection coverage of LQGs [GOAL]	100%		59	97	60.8%
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	85%	2	2	100%
5b1 Annual inspection coverage of LQGs using RCRAInfo universe [GOAL]	20%	9.9%	9	97	9.3%

State Response:

HDOH's FY2018 End of Year report to EPA (submitted at the beginning of November 2018), stated, "Sixteen sites that were LQGs during FY18 were inspected; however, the current generator status recorded in RCRAInfo for four of these facilities is now SQG." In EPA's FY2018 End of Year grant evaluation of HDOH, 16 LQG inspections were counted. Due to the small size of the LQG universe in Hawaii, sites that are LQGs on a temporary or episodic basis due to planned events (e.g., construction/demolition, closure, tank cleaning) or unplanned events (e.g., building fire) or are retail pharmacies or retail stores with pharmacies that are episodic LQGs due to generation of p-listed pharmaceutical waste make up a significant percentage of the LQG universe. In the current grant workplan (FY2020-2021), HDOH notes: "The State received 108 Biennial Reports (BRs) for 2017, indicating these sites were LQGs at some point during the calendar year, but only 76 of these reporters (70%) were LQGs at the time of report completion. Based on an analysis of the LQG handler records and biennial report (BR) data, HDOH estimates the State's universe of "true" LQGs consists of approximately 40 to 75 sites. HDOH intends to keep limited compliance monitoring & enforcement (CM&E) resources focused on inspection of federally-owned TSDFs every year, all TSDFs every two years, and these true LQGs every five years." Therefore, HDOH believes that the cited percentage of the LQG universe covered (9.3%), based on counting only 9 LQGs as being inspected in FY2018 in a universe of 97 LQGs, does not accurately reflect coverage of the LQG universe at the time the sites were inspected, nor does it accurately reflect coverage of Hawaii's "true LQG" universe. As HDOH has discussed in recent grant workplans, attempting to focus resources on 100% coverage of the "true LQG" universe every 5 years means that a percentage value (60.8%) evaluating coverage of the current (ever changing) RCRAInfo LQG universe is not the most useful of metrics.

Recommendation:

1	03/31/2021	EPA R9 has reviewed HI's response to our findings and is satisfied with their response. We will continue to have monthly RCRA grant calls with HDOH. During these calls we will discuss the universe of "true LQGs", our expectations for annual and 5-year inspection coverage, and we will review progress toward meeting LQG inspections. If by March 31, 2021 HDOH is meeting agreed-to expectations for LQG inspection coverage, we will deem this recommendation completed.

RCRA Element 2 - Inspections

Finding 2-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The inspection reports provide sufficient documentation to determine compliance.

Explanation:

All of the completed inspection reports reviewed were written in a standardized format that included the sufficient process descriptions and observations to support compliance determinations. The inspection reports often listed waste codes when describing waste containers, which is helpful in supporting follow-up compliance actions. Some abbreviations, such as "SAA" [satellite accumulation area] and "ASD" [accumulation start date] were not introduced or spelled out in the inspection reports.

Relevant metrics:

6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		30	33	90.9%

State Response:

HDOH has met expectations under this element of review. The inspection reports generated were of good quality and generally adequate to determine compliance. There were a few findings of failure to identify an acronym in the reports. We understand that this is something that can make a report more difficult to comprehend and it is something that we will work harder to prevent.

RCRA Element 2 - Inspections

Finding 2-3

Area for Improvement

Recurring Issue:

No

Summary:

Improvement is needed for timeliness for completing inspection reports.

Explanation:

At the time of the Round 4 SRF Review Period, HDOH had no written policy or procedure for inspection report timeliness. On June 20, 2018, EPA's Office of Enforcement and Compliance Assurance (OECA) issued an Interim Policy on Inspection Report Timeliness and Standardization. This OECA Memo states that inspection reports should be completed within 60 calendar days of an inspection and be provided to the facility upon finalization. Therefore, EPA used 60 days as a benchmark to evaluate inspection report completion timeliness for the purposes of this review. The majority of the HDOH inspection reports took longer than 60 days to write, with an average of 190 days. Of the 33 files reviewed, only 7 of the files were completed within 60 days.

Relevant metrics:

6b Timeliness of inspection report completion [GOAL]	100%		7	33	21.2%

State Response:

This finding has determined that HDOH has fallen behind in timeliness of inspection reports. As found in the review, only 7 of 33 or 21.2% of HDOH reports were completed within 60 days of the inspection. With an average of 190 days to complete the inspection report, HDOH has a lot of improvement to make to be in the desired range of 60 days. HDOH will review its Enforcement Response Policy and develop reasonable timelines for inspection follow-up and completion based

on EPA's Interim Policy on Inspection Report Timeliness and Standardization, dated June 29, 2018. The policy has a firm goal of 60 days to finalize the inspection report from the completion of an inspection. On May 13, HDOH committed to implement the 60-day inspection report goal effective October 1, 2020. The response from HDOH is below: The report timeline will be 60-days to completion effective October 1, 2020. The beginning of the FY 2021.

Recommendation:

Rec #	Due Date	Recommendation
1	10/01/2020	In an email to EPA dated 5/13/2020, HDOH committed to develop and implement a policy to meet the 60-day inspection report timeline goal. This policy will be effective on October 1, 2020. EPA will review this policy to ensure consistency and accuracy. EPA will address the timeliness of inspection reports during the monthly grant calls with HDOH.
2	07/01/2021	EPA will follow-up during monthly grant calls with HDOH to ensure that the new policy is being implemented. EPA will review HI inspection report data for timeliness. After three consecutive quarters of timely inspection reports i.e. approximately July 1, 2021) EPA will close this recommendation.

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

HDOH had made accurate compliance determinations and SNC (significant noncomplier) determinations in the reports that were reviewed during the Round 4 review period.

Explanation:

File review metric 7a assesses whether accurate compliance determinations were made based on the inspections conducted. HDOH field inspection reports contains narrative sections and the reports include photographs that document areas of compliance and non-compliance. Of the 33 completed files reviewed, 97% of inspection case files contained accurate compliance

determinations. The following issues were identified in three separate files: (1) One inspection report did not include photographs and was not well written to be able to ascertain what violations were observed at the facility, (2) One inspection report identified a storage time limit violation, but did not identify the number of days the storage limit was exceeded, and (3) Not all acronyms used in the report were defined. Of the enforcement files selected for review, only two cases involving potential formal enforcement actions were found during the Round 4 SRF Review Period. Data metric 2a measures long-standing secondary violators with violations open for more than 240 days that have not returned to compliance or have not been designated as being SNC. The 2017 frozen data for Hawaii shows four long-standing secondary violators. None of the files that EPA reviewed included long-standing secondary violators. Metrics 8b and 8c are review indicators which evaluate appropriate SNC determinations conducted during the year. Eighteen of the files reviewed had violations listed. Of the 18 files, one file identified an exceedance of the storage time limit, but the report did not identify this as a SNC violation. HDOH's SNC determinations were found to be 94.4% accurate. The national average for SNC rate is 1.6%. HDOH's SNC rate is 4.8%, according to the RCRAinfo frozen data for FY18, which is above the national average.

Relevant metrics:

2a Long-standing secondary violators	0%		0	0	0
7b Violations found during CEI and FCI inspections		34.3%	8	23	34.8%
8a SNC identification rate at sites with CEI and FCI		1.6%	3	62	4.8%
8b Timeliness of SNC determinations [GOAL]	100%	76.5%	3	3	100%
7a Accurate compliance determinations [GOAL]	100%		32	33	97%
8c Appropriate SNC determinations [GOAL]	100%		17	18	94.4%

State Response:

HDOH appreciates EPA's analysis. This finding was that HDOH met expectations by making accurate compliance and SNC determinations in the reports that were reviewed. HDOH has improved in this element since the last EPA review. The HDOH inspection reports made accurate determinations in 97% of the case files. HDOH will continue strong efforts to conduct quality inspections, generate quality documentation and input data. HDOH is always striving to improve

the quality of the reports produced and the metrics seem to show that we have been quite successful in this.

RCRA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

HDOH effectively manages noncompliant facilities with appropriate enforcement responses.

Explanation:

EPA review found that HDOH enforcement actions returned the facilities to compliance in an appropriate manner. HDOH files contained well documented return to compliance information. Metric 10b assesses the appropriateness of enforcement actions for Secondary Violations and Significant Non-Compliance determinations. All 17 files with violations included appropriate enforcement to address the violations.

Relevant metrics:

9a Enforcement that returns sites to compliance [GOAL]	100%		17	17	100%

State Response:

HDOH appreciates EPA's review and the finding that our continued efforts to clearly document enforcements are successful.

RCRA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

HDOH penalties include gravity-based, multiday and economic benefit components in their penalty calculation procedures.

Explanation:

HDOH implements a penalty policy that is consistent with EPA's RCRA Civil Penalty Policy. The documentation within the files included penalty calculations (including gravity and economic benefit). During the file review, EPA determined that the penalty amounts were appropriate. EPA reviewed 2 case files during the Round 4 SRF reporting period that included penalties. The penalty calculation process includes a worksheet and justification memorandum that applied each of the penalty components to each violation listed. For that reason, EPA added an additional FY2017 penalty action to include in this review. The files included documentation supporting that the penalty is being collected (i.e., copy of the check or electronic transfer report) and included detailed penalty calculations and justification memorandums to explain the difference between initial and final penalties. During the Round 3 SRF, EPA recommended that HDOH demonstrate that it is capturing, when appropriate, economic benefit of non-compliance. The files reviewed during Round 4 SRF did include such analysis and consideration.

Relevant metrics:

11a Gravity and economic benefit [GOAL]	100%		3	3	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		3	3	100%
12b Penalty collection [GOAL]	100%		3	3	100%

State Response:

HDOH appreciates EPA's review and the finding that our continued efforts to clearly document enforcements are successful. The 2015 state review by EPA has resulted in changes which provided more documentation for this area of our files.
