



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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November 9, 2020
Ref: 8ENF-IO

SENT VIA EMAIL
DIGITAL READ RECEIPT REQUESTED

Mr. Scott Baird, Executive Director
Utah Department of Environmental Quality
195 North 1950 West
Salt Lake City, Utah 84116
scottbaird@utah.gov

Re: Final State Review Framework (SRF) Evaluation Results for Fiscal Year 2018

Dear Mr. Baird:


Enclosed is Region 8's final report documenting our findings and recommendations from our FY18 Utah State Review Framework (SRF). As you know, the SRF is EPA's formal oversight review of state enforcement programs and is conducted for each state once every five years. The review of Utah's Clean Water Act National Pollutant Discharge Elimination System, Clean Air Act Stationary Source, and the Resource Conservation and Recovery Act Subtitle C enforcement programs was conducted in 2019. This report was subsequently developed in coordination and consultation with UTDEQ's program staff. EPA's Office of Enforcement and Compliance Assurance has reviewed this report and concurs with the findings and recommendations. Our key findings are provided in the Executive Summary.

We look forward to working with your office in utilizing the results of this evaluation to advance our shared objective of protecting public health and the environment in Utah. The Final Report and its recommendations will be posted on EPA's national State Review Framework Website, which can be found at: <http://www2.epa.gov/compliance/state-review-framework-compliance-and-enforcement-performance>.

Please do not hesitate to contact me at (303) 312-6925, or have your staff contact David Piantanida at (303) 312-6200 or piantanida.david@epa.gov with any questions about this Report or the SRF review process. Program-specific questions may be directed to the EPA program contacts identified in the report.

Sincerely,

SUZANNE
BOHAN

 Digitally signed by SUZANNE
BOHAN
Date: 2020.11.09 15:13:08 -07'00'

Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division

Enclosures

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STATE REVIEW FRAMEWORK

Utah Department of Environmental Quality

**Clean Water Act, Clean Air Act, and
Resource Conservation and Recovery Act Implementation**

Federal Fiscal Year 2018

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

Final Report

November 9th, 2020

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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 Water Act, Clean Air Act, and Resource Conservation and Recovery Act. Through SRF, EPA periodically reviews these programs using a standardized set of metrics to evaluate state performance against 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 the 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 in all states 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

This report contains the results and relevant information from the review including EPA and State contact information, metric values, performance findings and explanations, interim 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, and 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 non-compliance (SNC) or high priority violators (HPVs).
- **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 a 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

A. Selecting Metric Values

The information below offers suggested metric value ranges for help in deciding on a finding level. These value ranges are simply a guide in selecting an appropriate finding level. Other factors may be considered in choosing an appropriate level, such as the universe size of the metric or whether the issue has recurred across several SRF rounds.

- Meets or Exceeds Value Range: 85% - 100%
- Area for Attention Value Range: 71% - 84%
- Area for Improvement Value Range: 70% and below

B. Review period: FY 2018

C. Key dates:

- SRF Kick-Off Letter: March 4, 2019 (See Appendix)
- CWA NPDES File Review: April 22 - 24, 2019
- CAA File Review: April 30 - May 2, 2019
- RCRA File Review: June 3 - 7, 2019

D. State and EPA key contacts for review:

Key EPA Review Contacts

- David Piantanida, SRF Coordinator and NPDES File Reviewer: (303) 312-6200, piantanida.david@epa.gov
- Akash Johnson, NPDES Lead: (303) 312- 6067, johnson.akash@epa.gov
- Laurel Dygowski, NPDES File Reviewer: Retired from EPA
- Joseph Wilwerding, CAA Lead: (303) 312-6729, wilwerding.joseph@epa.gov
- Annette Maxwell, RCRA Lead: (303) 312-6068, maxwell.annette@epa.gov
- Reggie Barrino, RCRA File Reviewer: (404) 562-9635, barrino.reginald@epa.gov

Key State of Utah Review Contacts

- Jeanne Riley, NPDES Manager: jriley@utah.gov
- Matt Garn, NPDES Manager: Matt has left DEQ
- Jay Morris, Air Manager: jpmorris@utah.gov
- Harold Burge, Air Manager: hburge@utah.gov
- Rik Ombach, Air Manager: rombach@utah.gov
- Deborah Ng, RCRA Manager: dng@utah.gov
- Carlee Christoffersen, RCRA Manager: cchristoffersen@utah.gov

IV. Executive Summary

Introduction

The EPA Region 8 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Utah Department of Environmental Quality (UT DEQ) in 2019 based on state activities completed in federal fiscal year 2018.

The EPA bases SRF findings on data and file review metrics, and conversations with program management and staff. The EPA will track recommended actions from the review in the SRF Tracker and publish reports and recommendations on the EPA's Enforcement and Compliance State Review Framework website - [State Review Framework](#).

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)

- The state met or exceeded its FY18 commitments for all inspection types, including majors, non-majors, approved pretreatment programs, significant industrial users, municipal separate storm sewer systems (MS4s), industrial stormwater, construction stormwater, concentrated animal feeding operations (CAFOs), and biosolids at major publicly-owned treatment works (POTWs).
- The state's inspection reports are complete and sufficient to determine compliance and are generally completed within the time frame specified in their enforcement management system (EMS).
- The state accurately determined compliance for files reviewed, with only one exception.
- The state addressed violations in accordance with their EMS and issued enforcement responses that returned, or will return, sources in violation to compliance.
- The state's penalty calculations documented the inclusion of gravity and economic benefit and documented the rationale for any differences between initial penalty calculations and final penalties assessed.

Clean Air Act (CAA)

- The state completed almost all full compliance evaluation (FCE) inspections at majors and mega-sites, and completed most of the Title V annual compliance certification (TV ACC) reviews, based on information in ICIS (Integrated Compliance Information System). File reviews showed an 88.9% rate for documentation of FCE elements, and an 88.9% rate for compliance

monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility.

- The state had a 100% compliance rate for the formal enforcement responses that included required corrective action that returned facilities to compliance in a specified time frame.

Resource Conservation and Recovery Act (RCRA)

- The state inspection coverage, report quality, and timeliness met the requirements of national inspection and enforcement policies. The state exceeded national averages for inspection coverage of large quantity generators and treatment, storage, and disposal facilities (TSDFs).
- The state inspection reports are sufficient to determine compliance and are consistently completed within appropriate timeframes.
- The state consistently took appropriate enforcement actions to address identified violations.
- The state documented the collection of all assessed penalties.

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)

- ICIS did not contain complete and accurate required data for all facilities, inspections, violations, enforcement actions, and penalties.

The table below outlines the Utah CWA Areas for Improvement found during the current and previous reviews.

Metric	Round 3 Finding Level (FY13)	Round 4 Finding Level (FY18)
2b Files reviewed where data are accurately reflected in the national data system	Area for Improvement	Area for Improvement
4a9 Number of Phase I and Phase II construction stormwater inspections	Area for Improvement	Meets or Exceeds Expectations
6a Inspection reports complete and sufficient to determine compliance at the facility	Area for Improvement	Meets or Exceeds Expectations

Metric	Round 3 Finding Level (FY13)	Round 4 Finding Level (FY18)
6b Timeliness of inspection report completion	Area for Improvement	Meets or Exceeds Expectations
7e Accuracy of compliance determinations	Area for Improvement	Meets or Exceeds Expectations
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance	Area for Improvement	Meets or Exceeds Expectations
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to significant noncompliance (SNC) violations	Area for Improvement	N/A – no finding level determination required*
10b Enforcement responses reviewed that address violations in an appropriate manner	Area for Improvement	Meets or Exceeds Expectations
11a Penalty calculations reviewed that document and include gravity and economic benefit	Area for Improvement	Meets or Exceeds Expectations

* This is a CWA review indicator in Round 4 and review indicators are not used to develop findings. They are used to identify areas for further analysis during the file review. When an indicator diverges significantly from the average, EPA should ensure that it pulls a sufficient sample size to evaluate the issue during the file review.

Clean Air Act (CAA)

- Timely reporting of stack tests is well below the national goal, as is accurate reporting of MDR data in ICIS.
- ICIS reporting of minor source FCE inspections is significantly below the national goal.
- Review of many of the files selected showed that the state did not designate failed stack tests as high priority violators (HPVs).
- The state did not properly document gravity and economic benefit in their penalty calculations; and did not collect assessed penalties correctly.

The table below outlines the Utah CAA Areas for Improvement found during the current and previous reviews.

Metric	Round 3 Finding Level (FY13)	Round 4 Finding Level (FY18)
2b Files reviewed where data are accurately reflected in the national data system	Area for Attention	Area for Improvement
3b2 Timely reporting of stack test dates and results	N/A- metric did not appear in Report	Area for Improvement
5b FCE coverage: Synthetic Minor (SM)-80s	Area for Attention	Area for Improvement
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of Compliance Monitoring Strategy (CMS) Plan or alternative CMS Plan	N/A – no finding level determination required*	Area for Improvement
5d FCE coverage: minor facilities that are part of CMS Plan	Area for Attention	Area for Improvement 5d was not a data element in Round 4**
6b Compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance	Area for Improvement	Meets or Exceeds Expectations
8a HPV discovery rate at majors	N/A – no finding level determination required***	Area for Improvement
8c Accuracy of HPV determinations	Meets or Exceeds Expectations	Area for Improvement
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	N/A – no finding level determination required***	Area for Improvement
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy	N/A – no finding level determination required****	Area for Improvement
14 HPV case development and resolution timeline in place when required that contains required policy elements	N/A – this metric did not appear in Report	Area for Improvement
11a Penalty calculations reviewed that document gravity and economic benefit	Meets or Exceeds Expectations	Area for Improvement

Metric	Round 3 Finding Level (FY13)	Round 4 Finding Level (FY18)
12b Penalties collected	Meets or Exceeds Expectations	Area for Improvement

* N/A – State did not have commitments in its CMS Plan in Round 3.

** Metric 5d became part of the Metric 5c universe in Round 4.

*** This was a CAA review indicator in Round 3 and review indicators are not used to develop findings. They are used to identify areas for further analysis during the file review. When an indicator diverges significantly from the average, EPA should ensure that it pulls a sufficient sample size to evaluate the issue during the file review.

****Metric was not in the Round 3 SRF Report.

Resource Conservation and Recovery Act (RCRA)

- The state follows the EPA RCRA Civil Penalty Policy, which includes gravity and economic benefit components. Gravity was consistently documented in penalty calculations, but calculations or documentation on the reasons for mitigating economic benefit were not documented.

The table below outlines the Utah RCRA areas for Improvement found during the current and previous reviews.

Metric	Round 3 Finding Level (FY13)	Round 4 Finding Level (FY18)
11a Penalty calculations reviewed that document gravity and economic benefit	Area for State Attention	Area for State Improvement

V. Final SRF Findings

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Summary:

UT DEQ Division of Water Quality's (UDWQ) permit limit data entry rate exceeded the national goal. The state's Discharge Monitoring Report (DMR) data entry rate exceeded the national goal.

Explanation:

For Metric 1b5 on completeness of data entry on major and non-major permit limits, the state's permit limit data entry rate was 100%, exceeding the national goal of 95%.

For Metric 1b6 on completeness of data entry on major and non-major discharge monitoring reports, the state's DMR data entry rate was 98.5%, exceeding the national goal of 95%.

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%	121	121	100%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%	93.3%	3096	3142	98.5%

State Response:

None.

CWA Element 1 - Data

Finding 1-2

Area for Improvement

Summary:

The ICIS database did not contain complete and accurate required data for all facilities, inspections, violations, enforcement actions, and penalties.

Explanation:

For Metric 2b on files reviewed where data are accurately reflected in the national data system, 15 of 32 files reviewed met the minimum data requirements of the EPA's National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (40 CFR 127, Appendix A). Instances where the minimum data requirements were not met are outlined below.

- In two instances, Single Event Violations (SEVs) identified in inspection reports were not reflected in ICIS.
 - In three instances, SEVs that had concluded were not reflected as closed in ICIS.
 - In one instance, the beginning and end dates of SEVs were not correctly reflected in ICIS. The actual dates were identified in inspection reports and other records.
 - In one instance, an inspection of an unpermitted facility was not reflected in ICIS.
 - In three instances, formal enforcement actions were not reflected in ICIS.
 - In four instances, assessed penalty amounts were not reflected in ICIS.
 - In four instances, Standard Industrial Classification (SIC) codes for facilities and incidents (e.g. unauthorized discharges from spills) were not reflected in ICIS.
 - In one instance, a facility status was reflected as "permit terminated" in ICIS but the permit was effective.
 - In one instance, facility information was not reflected in ICIS.
 - In three instances, receipts of annual pretreatment reports were erroneously reflected as inspections in ICIS.
 - In one instance, an unauthorized discharge of pollutants to waters of the state and subsequent enforcement was erroneously linked to the facility's unrelated Utah Pollutant Discharge Elimination System (UPDES) permit. In this instance, a new UPDES ID should have been created for the incident and linked to the facility's Facility Registry Service (FRS) ID in ICIS.
 - In one instance, a SEV for "Permit Violations - Unapproved Operation" was erroneously reflected in ICIS twice. According to the state, there were no known unapproved operations at the facility.
 - In one instance, ICIS erroneously reflected the facility as on tribal land.
-

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%		15	32	46.9%

State Response:

Utah agrees with the findings in section 2b and is actively implementing all of the recommendations outlined by EPA. The deadlines identified by EPA for development of written summaries of procedures are acceptable to Utah and will be completed as part of Utah’s update of the Enforcement Management System in 2021.

Recommendations:

Rec #	Due Date	Recommendation
1	05/16/2019	<p>Provide training to staff on the minimum required data elements for all facilities, permits, violations, and inspections in ICIS. The Utah Division of Water Quality (UDWQ) has been proactive in addressing this recommendation. On May 13-16, 2019, an EPA data steward provided onsite hands-on ICIS-NPDES training to UDWQ staff covering topics such as facility information and FRS, permit data and limit entry, inspection entry, ICIS and Enforcement and Compliance History Online (ECHO) database interactions, the EPA's NPDES Electronic Reporting Rule, NetDMR, SEVs, ICIS reports, and data quality and verification. This recommendation has been completed.</p>
2	05/15/2021	<p>UDWQ implemented a process to record (enter and close-out) SEVs identified through inspections in ICIS within the timeframes specified in 40 CFR 127 (within 40 days of the completed activity). By 5/15/2021, UDWQ will submit to the EPA a summary of the state's procedures for ensuring SEVs are correctly and consistently recorded in ICIS and reports of inspections conducted and SEVs recorded in ICIS between 1/1/2021 and 3/31/2021. The EPA will close this recommendation when at least 71% of SEVs from inspections occurring between 1/1/2021 and 3/31/2021 are entered into ICIS within 40 days of the completed activity.</p>
3	05/15/2021	<p>UDWQ implemented a process to enter inspections of unpermitted facilities into ICIS within the timeframes specified in 40 CFR 127 (within 40 days of the completed activity). By 5/15/2021, UDWQ will submit to the EPA a summary of the state's procedures for ensuring inspections of unpermitted facilities are correctly and consistently entered into ICIS and a list of inspections of unpermitted facilities, including facility names and dates, that occurred between 1/1/2021 and 3/31/2021. The EPA will close this recommendation when at least 71% of inspections of unpermitted facilities that occurred between 1/1/2021 and 3/31/2021 are entered in ICIS.</p>
4	11/15/2021	<p>Between the SRF file review and issuance of this report, UDWQ implemented a process to enter formal enforcement actions into ICIS within the timeframes specified in 40 CFR 127 (within 40 days of the completed activity). By 11/15/2021, UDWQ will submit to the EPA a summary of the state's procedures for ensuring formal enforcement actions are correctly and consistently entered into ICIS and a list of formal enforcement actions, including respondent names and dates, that occurred in FY21. The EPA will close this recommendation when at least 71% of formal enforcement actions that occurred in FY21 are entered in ICIS.</p>

5	11/15/2021	Between the SRF file review and issuance of this report, UDWQ implemented a process to enter penalties assessed into ICIS within the timeframes specified in 40 CFR Part 127 (within 40 days of the completed activity). By 11/15/2021, UDWQ will submit to the EPA a summary of the state’s procedures for ensuring penalties are correctly and consistently entered into ICIS and a list of penalties, including respondent names, assessment and collection dates, and collected amounts, that occurred in FY21. The EPA will close this recommendation when at least 71% of penalties assessed and collected in FY21 are entered in ICIS.
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CWA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

UDWQ met or exceeded its FY18 commitments for all inspection types, including majors, non-majors, approved pretreatment programs, significant industrial users, MS4s, industrial stormwater, construction stormwater, CAFOs, and biosolids at major POTWs. The state's inspection reports are complete and sufficient to determine compliance and are generally completed within the goal time frame specified in their EMS.

Explanation:

The state met or exceeded all metrics for this finding. The state committed to inspecting 21 majors, 62 non-major POTWs and industrial dischargers, 10 pretreatment programs, 1 significant industrial user, 8 sanitary sewer overflows/sanitary sewer systems (SSOs/SSSs), 6 MS4s, 71 industrial stormwater facilities, 178 construction stormwater sites, 13 CAFOs, and 7 biosolids facilities at major POTWs.

The state completed the following inspections: 21 majors, 68 non-major POTWs and industrial dischargers, 9 pretreatment programs (it is noted two inspected pretreatment programs were combined into one program during FY18, so the state satisfied this commitment), 1 significant industrial user, 15 SSOs//SSSs, 6 MS4s, 82 industrial stormwater facilities, 188 construction stormwater sites, 13 CAFOs, and 8 biosolids facilities.

It is noted the number of FY18 inspections included in Metric 5b on inspections coverage of NPDES non-majors (individual and general permits) of this report does not reconcile with the number of FY18 inspections reflected in the Data Metrics Analysis (DMA) available via the EPA's ECHO database. The EPA has identified at least two factors contributing to this discrepancy.

- (1). The automated data query populating the DMA does not reconcile with the format Utah used to categorize and commit to various types on inspection in their FY18 Inspection Plan. For example, Utah's FY18 inspection plan includes inspections of non-major POTWs and industrial

dischargers in one commitment category, paralleling the classification of major facilities. The data query populating the DMA does not recognize the distinction between these two types of facilities and all other non-major facilities.

(2). Several inspections reflected in the data were erroneously entered and did not actually occur. These data entry issues are addressed elsewhere in this report. (Recommendations under Finding 1-2 (Data))

The figures and metrics reflected in this report are believed to be representative of Utah's inspection commitments. For Metric 6a on inspection reports complete and sufficient to determine compliance at the facility, 17 of 20 inspection reports reviewed (85%) were complete and sufficient to determine compliance at facilities. For Metric 6b on timeliness of inspection report completion, 17 of 20 inspection reports reviewed (85%) were completed within the 45-day time frame specified in the state's Environmental Management System (EMS).

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]	100% of commitments%		9	10	90%
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL]	100% of commitments%		1	1	100%
4a4 Number of combined sewer overflow (CSO) inspections. [GOAL]	100% of commitments%		0	0	0
4a5 Number of SSO/SSS inspections. [GOAL]	100% of commitments%		15	8	187.5%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments%		6	6	100%
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments%		82	71	115.5%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments%		188	178	105.6%
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100% of commitments%		13	13	100%
4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL]	100% of commitments%		8	7	114.3%
5a1 Inspection coverage of NPDES majors. [GOAL]	100% of commitments%		21	21	100%
5b Inspections coverage of NPDES non-majors (individual and general permits) [GOAL]	100%		68	62	109.7%

6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%		17	20	85%
6b Timeliness of inspection report completion [GOAL]	100%		17	20	85%

State Response:

None.

CWA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Summary:

In all files reviewed except one, UDWQ accurately determined compliance.

Explanation:

For Metric 7e on accuracy of compliance determinations, the state returned accurate compliance determinations in 20 of 21 (95.2%) relevant files reviewed. Documents reviewed for compliance determinations included inspection reports, cover letters and other correspondence associated with compliance monitoring. No finding level determination is required for Metrics 7j1, 7k1, and 8a3 and the values reported for these metrics in the table below are not accurate. The state and EPA are addressing associated data issues through recommendations elsewhere in this SRF report. (Recommendations under Finding 1-2 (Data))

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7e Accuracy of compliance determinations [GOAL]	100%		20	21	95.2%
7j1 Number of major and non-major facilities with single-event violations reported in the review year.			18		N/A
7k1 Major and non-major facilities in noncompliance.		18.7%	148	2015	7.3%
8a3 Percentage of major facilities in significant noncompliance (SNC) and non-major facilities Category I noncompliance during the reporting year.		9%	55	2000	2.8%

State Response:

None.

CWA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Summary:

UDWQ addressed violations in accordance with their EMS and issued enforcement responses that returned, or will return, sources in violation to compliance.

Explanation:

For Metric 9a on percentage of enforcement responses that returned, or will return, a source in violation to compliance, in 21 out of 21 (100%) files reviewed, the state issued enforcement responses that returned, or will return, sources in violation to compliance.

No finding level determination is required for Metric 10a1 and the values reported for this metric in the table below are not accurate. The state and EPA are addressing associated data issues through recommendations elsewhere in this SRF report. (Recommendations under Finding 1-2 (Data))

For Metric 10b on enforcement responses reviewed that address violations in an appropriate manner, the state addressed violations in accordance with their EMS in 21 out of 24 (87.5%) files reviewed. It is noted, as of November 19, 2019, the state is in the process of updating their EMS to include criteria for using expedited settlement agreements.

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%		21	21	100%
10a Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations		15.4%	0	5	0%
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		21	24	87.5%

State Response:

None.

CWA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Summary:

UDWQ's penalty calculations documented the inclusion of gravity and economic benefit and documented rationale for any differences between initial penalty calculations and final penalties assessed.

Explanation:

For Metric 11a on penalty calculations reviewed that document and include gravity and economic benefit, 9 of 9 (100%) files reviewed included penalty calculations with documentation of gravity and economic benefit considerations.

For Metric 12a on documentation of rationale for difference between initial penalty calculation and final penalty, 8 of 8 (100%) files reviewed documented rationale for differences between initial penalty calculations and final penalties assessed.

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%		9	9	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		8	8	100%

State Response:

None.

CWA Element 5 - Penalties

Finding 5-2

Area for Attention

Summary:

With two exceptions, UDWQ collected penalties.

Explanation:

For Metric12b on penalties collected, in 9 of 11 (81.8%) files reviewed, penalties were collected. In one instance, a settlement agreement specified the state would hold the penalty in abeyance if the facility came into compliance by September 1, 2018. The facility did not comply by the specified date but no penalty was collected. In another instance, the facility did not respond to a notice of violation or settlement offer with a penalty, but did come into compliance. This facility is no longer operating in the state.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12b Penalties collected [GOAL]	100%		9	11	81.8%

State Response:

None.

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Summary:

Generally, the UDAQ had timely reporting of the compliance monitoring minimum data requirements (MDRs).

Since no HPV's were identified, the timely reporting of HPV determinations into ICIS-Air statistics do not apply.

Explanation:

For Metric 3a2 on the timeliness of HPV identification, no HPV's were identified, so statistics do not apply.

For Metric 3b1 on timely reporting of compliance monitoring MDRs, 118 out of 139 actions were timely performed, resulting in an 84.9% completion rate. This rate is less than the national goal of 100%, but similar to the national average of 85%.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
3a2 Timely reporting of HPV determinations [GOAL]	100%	44.9%	0	0	N/A
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	85.2%	118	139	84.9%

State Response:

MDR's are timely reported when possible.

CAA Element 1 - Data

Finding 1-2

Area for Improvement

Summary:

Timely reporting of stack tests is well below the national goal, as is accurate reporting of MDR data in ICIS.

Explanation:

For Metric 2b on accurate MDR data in the Air Facility System (AFS), 2 out of 19 or 10.5% of files reviewed showed all MDRs were reported accurately in ICIS. Completeness of data entered into ICIS seems to be a continuing issue.

The specific issues on data accuracy and completeness found were:

- There is inconsistency on the date UDAQ is using to report the FCE date. The FCE date should be the date the state conducted the on-site inspection if they had all information needed to determine compliance before or during the on-site inspection. If UDAQ needed to obtain additional information after the on-site inspection, the FCE date should be the date UDAQ reviewed the additional information submitted. UDAQ should not be reporting the FCE date as the date the state finalized (and dated) the inspection memo. It appears that UDAQ may be using the inspection report/memo date as the FCE date in order to meet ICIS data entry timeliness requirements. UDAQ should use the correct FCE dates and enter them into ICIS within 60 days of completing the FCE.
- Inspectors often incorrectly refer to the ICIS ID as the Facility Registry Service (FRS) number on their inspection memos.
- UDAQ says they will report warning letters and Notice of Violations (NOVs) in ICIS as informal actions. However, the file review identified not all warning letters are reported. The manager (i.e., data steward) stated that he sometimes neglects to report them.

For Metric 3b2 on timely reporting of stack tests and stack test results, 61 out of 90 actions were timely performed, resulting in a 67.8% completion rate. This rate is less than the national goal of 100%, but greater than the national average of 65%. While data shows improvement since the last SRF, untimely reporting of stack test dates and results still remains an opportunity for improvement. UDAQ indicates that their thorough review of stack test reports takes time and causes them to sometimes miss the timeframe for reporting date/results within 120 days of the test.

EPA response to state comments below: The EPA does not have records of any unanswered data assistance requests. Moving forward, the EPA will ask that email requests for data assistance be sent to both the Air and Toxics Enforcement Branch Chief as well as the Region 8 data steward(s).

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	19	10.5%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	65.1%	61	90	67.8%

State Response:

Confusion about ICIS will continue at the state level until EPA can provide adequate training on specific responsibilities for data entry. No ICIS training has been conducted prior to 2020, and EPA has been unresponsive to questions from the state during the review period. The state enters the same FCE date as instructed by EPA in previous SRF reviews.

ICIS ID is a term EPA has never used or mentioned prior to this review. FRS ID numbers used by the state are assigned by the EPA. The FRS ID numbers have been assigned by EPA and used by states and ICIS for many years. The FRS ID number is in ICIS and even EPA’s own nationwide, ECHO database pulls enforcement and compliance data from ICIS using the FRS number for all environmental issues.

All warning letters will be entered into ICIS moving forward.

For stack testing the state will continue to conduct thorough reviews of stack tests prior to entering data into ICIS. It seems inefficient and inaccurate to enter data into ICIS that has not been reviewed even if the 120 day period is exceeded. The state prefers to enter accurate data that has been thoroughly reviewed. The state will provide the data requested in the recommendation section below.

Recommendations:

Rec #	Due Date	Recommendation
1	12/31/2020	By the end of December 2020, UDAQ will provide EPA all failed stack tests reported to UDAQ for FY20 to be evaluated against the EPA's HPV policy and stack test guidance for accurate HPV determinations. If at least 71% of stack test failures are accurately reported, this recommendation will be considered closed. In addition, by the end of December 2020, UDAQ will provide EPA all compliance advisories issued by UDAQ during FY20 to determine if UDAQ entered their compliance advisories into ICIS as informal actions.
2	11/30/2020	UDAQ to report in ICIS stack test pass/fail information within 120 days of the stack test. EPA will review Data Metric Analysis (DMA) data 3b2 on 11/30/2020 and state performance should be at 71% or higher. The EPA will close this recommendation when the performance is at least 71%.

CAA Element 1 - Data

Finding 1-3

Area for Attention

Summary:

Timely reporting of enforcement MDRs is moderately below the national goal.

Explanation:

For Metric 3b3 on timely reporting of enforcement MDRs, 3 out of 4 actions were timely performed, resulting in a 75% completion rate. This rate is less than the national goal of 100%, but greater than the national average of 72%.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	71.8%	3	4	75%

State Response:

None.

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

Based on information in ICIS, UDAQ completed almost all FCE inspections at majors and mega-sites and completed most of the Title V annual compliance certification (TV ACC) reviews. File reviews generally showed documentation of FCE elements, and CMRs or facility files reviewed generally provided sufficient documentation to determine compliance of the facility.

Explanation:

A major source is defined as a stationary source or group of stationary sources that emit or have the potential to emit 10 tons per year or more of a hazardous air pollutant or 25 tons per year of a combination of hazardous air pollutants.

For Metric 5a on FCE coverage: majors and mega-sites, 71 out of 72 inspections were performed, resulting in a 98.6% completion rate. This rate is less than the national goal of 100%, but more than the national average of 88.1%.

For Metric 5e on reviews of Title V annual compliance certifications completed, 56 out of 65 reviews were performed, resulting in an 86.2% completion rate. This rate is less than the national goal of 100%, but more than the national average of 82.5%, and is a substantial improvement from the Round 3 review level of 62.5%.

For Metric 6a on documentation of FCE elements, 16 out of 18 files reviewed showed proper documentation of FCE elements, resulting in a rate of 88.9%. The national goal is 100%.

For Metric 6b on (compliance monitoring reports (CMRs) or facility files reviewed provided sufficient documentation to determine compliance of the facility), 16 out of 18 or 88.9% of files reviewed provided sufficient documentation to determine compliance of the facility. The national goal is 100%.

EPA observed several strong areas of performance and positive attributes about the UDAQ enforcement program in this area. These positive areas include:

- Attempting to observe at least 20% of stack tests and retaining staff with expertise who can conduct a thorough review of stack test reports. The staff conducts “very intense” review and looks at the raw data and recalculates to confirm;
- Meeting CMS evaluation frequencies, and going beyond by conducting FCEs at Title V major sites annually, SM80s every 1 or 2 years, and true minors (except oil and gas sites) every 3 years.

There are about 1,700 true minors. This frequency has been institutionalized and is continued because it has become “tradition”;

- In regard to the UDAQ’s CMRs (i.e., inspection reports, inspection memos), the state has revised forms to include sections on previous enforcement and compliance assistance. The reports for major sources include each condition of a Title V Permit and seem to provide sufficient information for making a compliance determination. UDAQ has a good TV ACC inspection memo that they use for documenting receipt/review of ACCs;
- UDAQ has developed and maintained an E-DOCs system since 2011. This is an electronic repository for all inspection/enforcement documents as an enhancement to their hard copy files and has worked well for UDAQ.
- EPA had one recommendation in this area: EPA observed that UDAQ FCE inspection reports often include final compliance determinations, stating “in compliance”. EPA requests UDAQ indicate “no compliance issues identified” rather than the broad “in compliance” statement. UDAQ managers expressed a willingness to change this language in their FCE inspection reports.

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%	71	72	98.6%
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	82.5%	56	65	86.2%
6a Documentation of FCE elements [GOAL]	100%		16	18	88.9%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		16	18	88.9%

State Response:

None.

CAA Element 2 - Inspections

Finding 2-2

Area for Improvement

Summary:

ICIS reporting of minor source FCE inspections is significantly below the national goal.

Explanation:

A minor source is defined as a source that emits less than 100 tons per year of any criteria pollutant (PM, PM-10, PM 2.5, CO, NO_x, SO₂, and VOC) but less than 10 tons per year of one toxic pollutant or 25 tons per year of a combination of toxics pollutants. A synthetic minor (SM)-80 are minor sources that have taken an enforceable limit to remain minor sources, called synthetic minor sources, that emit or have the potential to emit (PTE) at or above 80 percent of the Title V major source threshold.

For Metric 5b on FCE coverage: SM-80s, 1 out of 6 inspections were performed, resulting in a 16.7% completion rate. This rate is less than the national goal of 100% and less than the national average of 93.7%.

For Metric 5c on FCE coverage: minor and synthetics minor (non-SM-80s) sources that are part of a CMS Plan and Alternative CMS Facilities, 0 out of 0 inspections were performed and statistics do not apply. UDAQ historically has not tracked SM80 status, making consistent tracking and reporting of FCE data for minor sources in ICIS challenging. UDAQ recently (Fall 2019) re-evaluated the SM-80 status on all synthetic minor sources. UDAQ has committed to entering all required FCE data into ICIS for the minor sources included in their annual CMS going forward.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5b FCE coverage: SM-80s [GOAL]	100%	93.7%	1	6	16.7%
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	0	N/A

State Response:

The state completed all targeted inspections for SM-80's during the review period. The state will continue to refine the data for SM-80's and enter data into ICIS as requested. The state continues to

update and refine sources in the annual CMS. The state will provide the data requested in the recommendation section below.

Recommendation:

Rec #	Due Date	Recommendation
1	03/31/2021	By 03/31/2021, EPA requests that UDAQ complete all minor and synthetic minor inspections included in the CMS and report FCEs into ICIS. EPA will pull and review DMA (SM-80 coverage) in FY19 or FY20 to review inspection coverage results. EPA will review ICIS data and compare to the CMS on 3/31/2021. The EPA will close this recommendation when at least 71% of all minor and synthetic minor inspections and FCEs are reported in ICIS.

CAA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Summary:

Since no HPV's were identified, Metric 13 on timeliness of HPV Identification statistics do not apply.

Explanation:

No HPV's were identified, so timeliness of HPV Identification statistics does not apply.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
13 Timeliness of HPV Identification [GOAL]	100%	89.5%	0	0	N/A

State Response:

None.

CAA Element 3 - Violations

Finding 3-2

Area for Attention

Summary:

UDAQ has a low Federally Reportable Violation (FRV) discovery rate based on evaluations at active CMS sources, and UDAQ achieved a moderate level of accurate compliance determinations.

Explanation:

For Metric 7a on accurate compliance determinations, 14 of 18 files reviewed showed accurate compliance determinations were made, resulting in a rate of 77.8%. This is less than the national goal of 100%. EPA is concerned that UDAQ is not making accurate compliance and FRV determinations, and not reporting discovered FRVs into ICIS. UDAQ managers stated their low FRV discovery rates could mean that Utah industry has higher compliance rates than elsewhere in the country, and not that UDAQ is performing inadequate oversight and enforcement. UDAQ calculations have reportedly shown a 0.5% repeat violator rate (5-year window, same operator, same violation) in the past. In addition, the managers stated that all compliance issues determined to be violations are entered into ICIS.

EPA cites the following two instances as examples of its concern:

- A facility failed to report its TV ACC on time for 2017. UDAQ did not list this as a violation in the FCE, and did not enter the violation into ICIS. UDAQ's interpretation (based reportedly on historical EPA guidance) of the Title V reporting requirement is a report needs to be over 180 days late to be considered a violation. UDAQ provided no evidence of the 180-day policy, and their understanding/interpretation conflicts with the FRV Policy (see page 7 and footnote 10), where a failure to timely report an ACC is a procedural violation that is to be reported as an FRV in ICIS.
- UDAQ issued a warning letter to a facility in January 2019 regarding violation of a permit condition for not conducting a visible emission observations of generator's exhaust. The warning letter first indicated that there was a permit violation but then went on to say that the letter was a warning and only future instances would be considered a violation. Neither the warning letter nor the violation/FRV were entered into ICIS. EPA believes UDAQ may have a general, procedural issue, which is further contributing to the low reported FRV discovery rate. According to UDAQ managers, the goal is to complete the inspection memo/report within 30 days of the inspection. However, often times the inspection memo is only completed when the resulting enforcement is completed (for example, for compliance advisories/ESAs, it seems inspectors will wait for the facility to respond before completing the inspection memo). In this case, if the facility agrees to the advisory/settlement agreement, the inspection report indicates the facility is in compliance and no violation is reported.

This is a concern because it does not promote transparency regarding violations. EPA recommends there be regular coordination with UDAQ over the next year to ensure FRVs are being appropriately identified and entered into ICIS.

For Metric 7a1 on FRV 'discovery rate based on evaluations at active CMS sources, 1 out of 86 UDAQ evaluations led to the discovery of an FRV, resulting in a rate of 1.2%. This is less than the national average of 7.8%.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		14	18	77.8%
7a1 FRV 'discovery rate' based on inspections at active CMS sources		7.8%	1	86	1.2%

State Response:

The state was following past EPA guidance to make compliance determinations for annual certifications. The state will coordinate with EPA to ensure FRV's are appropriately identified and reported.

CAA Element 3 - Violations

Finding 3-3

Area for Improvement

Summary:

4 out of 8 files reviewed showed accurate HPV determinations were made, resulting in a rate of 50.0%.

No HPV's were identified in 2018, resulting in a 0% HPV discovery rate.

Explanation:

For Metric 8a on discovery rate of HPVs at majors, 0 out of 81 evaluations led to the discovery of an HPV, resulting in a 0% rate. This is less than the national average of 2.5%.

For Metric 8c on accurate HPV determinations, 4 out of 8 files reviewed showed accurate HPV determinations were made, resulting in a rate of 50%.

EPA believes UDAQ is making incorrect HPV determinations. The HPV Policy states under multiple criteria that a violation of any emission limitation, emission standard, or operating parameter, which is surrogate for emissions, where such violation continued (or was expected to continue) for at least seven days, constitutes an HPV. According to UDAQ representatives, any failed stack test for particulate matter or where laboratory analysis is required (which takes several days to complete) would typically conclude as an HPV because re-testing cannot occur within 7 days. For this reason, if an operator fails a stack test, the UDAQ does not assume the operator is operating in noncompliance until a passing stack test is performed. If the next stack test shows a passing value, the operator is deemed to have operated out of compliance only on the date of the failing stack test (and therefore not necessarily triggering an HPV). If the next stack test shows a failing value, continuous noncompliance is assumed. This interpretation conflicts with the EPA’s interpretation of governing standards and the HPV policy, and likely contributes to the low comparison of the Utah’s results in these categories as compared to other states. The EPA considers a failed stack test to be an ongoing violation until a subsequent test is performed that demonstrates the unit is operating in compliance with the applicable limitation.

UDAQ stated it recently pursued a civil litigation case against a facility using EPA’s interpretation of the length of violation for a failed stack test (i.e., a source is in violation after a failed stack test until a new passing test is performed or other modifications have been made that would be believed to bring the facility back into compliance), and UDAQ reportedly lost the case in Utah district court. UDAQ points to this case as justification for its interpretation of the HPV policy and length of violation for a failed stack test.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
8a HPV discovery rate at majors		2.5%	0	81	0%
8c Accuracy of HPV determinations [GOAL]	100%		4	8	50%

State Response:

The state follows the HPV policy provided by the EPA. There have always been differences of interpretation between the states and EPA on the HPV policy. These differences have not been resolved and the state believes it is evaluating HPV criteria according to the policy. The state will provide the data requested in the recommendation section below.

Recommendation:

Rec #	Due Date	Recommendation
1	04/01/2021	By the end of December 2020, UDAQ will provide EPA all compliance advisories issued by UDAQ during FY20 to determine if UDAQ entered their compliance advisories into ICIS as informal actions. The EPA will then review these cases and determine whether proper HPV determinations have been made. The EPA will close this recommendation when at least 71% of HPVs are being reported accurately into ICIS-Air.

CAA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Summary:

UDAQ had a 100% compliance rate for the formal enforcement responses that included required corrective action that returned facilities to compliance in a specified time frame.

Since no HPV's were identified, Metric 10a1 and 10b1 statistics do not apply.

Explanation:

For Metric 9a on formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame, 9 out of 9 or 100% of files reviewed included the required corrective action.

For Metric 10a1 on rate of addressing HPVs within 180 days, since no HPV's were identified, Metric 10a1 statistics do not apply.

For Metric 10b1 on rate of managing HPVs with an NOV or NOW or no action, since no HPV's were identified, Metric 10b1 statistics do not apply.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
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%		9	9	100%
10a1 Rate of Addressing HPVs within 180 days		59.6%	0	0	N/A
10b1 Rate of managing HPVs without formal enforcement action		7%	0	0	N/A

State Response:

None.

CAA Element 4 - Enforcement

Finding 4-2

Area for Improvement

Summary:

Review of many of the files selected showed UDAQ failed to designate failed stack tests as HPVs. In addition, UDAQ does not report their compliance advisories into ICIS as informal actions.

Explanation:

For evaluating Metric 10a on timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place, Metric 10b on appropriate enforcement responses for HPVs, and Metric 14 on HPV Case Development and Resolution Timeline (CD&RT) contains required policy elements, compliance rates of 50%, 25%, and 0%, respectively, were determined.

In general, UDAQ identifies very few HPVs, so finding a representative population of files to review is difficult. Review of many of the files selected showed UDAQ failed to designate failed stack tests as HPVs. UDAQ's low numbers in this category stem largely from its interpretation of what constitutes a failed stack test and the resultant non-entry into ICIS of HPVs. However, as a general matter that EPA believes is reflected in the low HPV metrics here and the low FRV/HPV numbers in other sections, it appears UDAQ is pursuing fewer enforcement actions.

In addition, UDAQ does not report their compliance advisories into ICIS as informal actions. UDAQ considers such advisories as a request for additional information and not a notification of a violation. As a result, UDAQ views the inspection as not completed when a compliance advisory is sent. UDAQ

allows the facility 10 days to respond to the advisory and possibly additional days for certain reasons (e.g., advisory was sent to the wrong person; facility states they need additional time to respond). Only after UDAQ determines that the facility will not respond to the advisory will they send an NOV.

UDAQ’s view of compliance advisories is inaccurate and should be reconsidered. If UDAQ did view them as an early warning notice to facilities and reported them as informal actions, there would be increased public transparency regarding violations. These noncomplying facilities should be reported in violation and shown to be brought back to compliance, in expedited fashion, by using compliance advisories. Such use of an early warning notice to violators (the compliance advisory) to help expedite return to compliance could then be viewed as a good practice. Additionally, by not reporting compliance advisories in ICIS, the public only sees the inspection and then the resulting enforcement. Since a large amount of time could transpire between these milestones, the public is left uninformed during that time frame.

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%		2	4	50%
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		1	4	25%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		0	2	0%

State Response:

The state follows the HPV policy when determining what violations qualify as HPV’s. The state believes EPA’s interpretation of a Compliance Advisory is incorrect. Compliance advisories are not an EPA tool and it appears EPA misunderstands the purpose of the state letter. Compliance advisories are not “informal actions”, they are a request for more information before compliance determinations can be made and will not be entered into ICIS as an informal action when they are simply part of our inspection process. The state will clarify in the future that these letters are for gathering information as part of the inspection process. The state will provide the data requested in the recommendation section below.

Recommendation:

Rec #	Due Date	Recommendation
1	12/31/2020	By the end of December 2020, UDAQ will provide EPA all failed stack tests reported to UDAQ for FY20 to be evaluated against the EPA’s HPV policy and stack test guidance for accurate HPV determinations. If at least 71% of stack test failures are accurately reported, this recommendation will be considered closed. In addition, by the end of December 2020, UDAQ will provide EPA all compliance advisories issued by UDAQ during FY20 to determine if UDAQ entered their compliance advisories into ICIS as informal actions.

CAA Element 5 – Penalties

Finding 5-1

Area for Attention

Summary:

Based on EPA review, UDAQ documents the rationale for differences in the initial penalty calculation and the final penalty 75% of the time.

Explanation:

For Metric 12a on documentation of rationale for difference between initial penalty calculation and final penalty, 6 out of 8 or 75% of files reviewed documented the rational for differences between initial and final penalty calculations.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		6	8	75%

State Response:

None.

CAA Element 5 – Penalties

Finding 5-2

Area for Improvement

Summary:

UDAQ showed penalty calculations documenting gravity and economic benefit in 12.5% of cases reviewed. The state showed documented penalty collections in 70% of cases reviewed.

Explanation:

For Metric 11a on penalty calculations reviewed that document gravity and economic benefit, 1 out of 8 (12.5%) of files reviewed showed calculations documenting gravity and economic benefit penalties were assessed. The national goal is 100%.

For Metric 12b on penalties collected, UDAQ documented collection of penalties in 70% of the instances. The national goal is 100%.

The EPA has concerns about UDAQ's penalty assessment. UDAQ has a state penalty policy, but the policy does not appear consistent with the EPA Penalty Policy and seems insufficient to ensure collection of adequate penalties. The state policy has not been updated in 30 years, and penalties have not been adjusted for inflation. The policy limits penalties to \$10,000 per day, per violation. The UDAQ Board reportedly wanted to increase penalty amounts under the policy, but is still held to the amounts approved by the state legislature. While the state penalty policy provides for consideration of gravity and economic benefit, it is not always clear how UDAQ calculates these portions of its penalties. UDAQ uses a penalty worksheet, but the worksheet does not document their rationale behind the chosen penalty. UDAQ staff and management seem to discuss this among themselves without developing a written memo or notes. For cases that go to the Attorney General's office, penalty amounts are set without documentation on how changes may be made to the assessed amount.

The EPA Penalty Policy requires such documentation of how such adjustments are made. The overall result is that UDAQ penalty calculations appear very low. UDAQ managers stated low penalty amounts are initially offered as a benefit under the state's Early Settlement Agreement (ESA) process. UDAQ attempts to get ESAs done in 30 to 60 days. While this time period is commendable, it seems to sacrifice getting penalties sufficient to act as a meaningful deterrent to noncompliance.

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%		1	8	12.5%
12b Penalties collected [GOAL]	100%		7	10	70%

State Response:

The state believes sufficient penalties have been assessed and economic benefit calculated where warranted. The state follows the detailed state penalty policy to assess penalties and sees very few repeat violations which is an indication of adequate penalty assessments to deter noncompliance. The state strives to ensure all violations are corrected during the resolution process. The state will provide the data requested in the recommendation section below.

Recommendation:

Rec #	Due Date	Recommendation
1	11/30/2020	UDAQ should ensure 100% of penalties assessed are collected. In addition, UDAQ should more clearly identify and note how the state penalty policy applies to the specific violations in each case, in order to arrive at the assessed penalty. If Utah determines that the penalty policy needs revisions, it shall do so. By 11/30/2020 EPA will request five penalty calculations and will check to determine if gravity and economic benefit were documented. EPA will review whether the five penalty calculations have been fully collected based on documentations provided by the state. The EPA will close this recommendation when at least 71% of assessed penalties take into account gravity and economic benefit.

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Summary:

Minimum data entry requirements for compliance and enforcement activities appear to be accurate and complete in RCRAInfo database (RCRAInfo).

Explanation:

For Metric 2b on accurate entry of mandatory data, almost all relevant information has been entered accurately into RCRAInfo. There was only one instance of enforcement data not entered accurately. Specifically, an inspection date was incorrectly entered into RCRAInfo. All other data for 23 of the 24 (95.8%) files reviewed were entered accurately.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Accurate entry of mandatory data [GOAL]	100%		23	24	95.8%

State Response:

None.

RCRA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

Inspection coverage, report quality, and timeliness met the requirements of national inspection and enforcement policies. Division of Waste Management and Radiation Control (DWMRC) exceeded national averages for inspection coverage of large quantity generators and Treatment, Storage, and Disposal Facilities (TSDFs). Inspection reports are sufficient to determine compliance and consistently completed within appropriate timeframes.

Explanation:

For Metric 5a on two-year inspection coverage of operating TSDFs, 100% were inspected within a two-year time frame, exceeding the national average of 85%. For Metrics 5b and 5b1 on annual inspection of Large Quantity Generators (LQGs) and annual inspection coverage, the DWMRC inspected 34% and 33% respectively, of the large quantity generator universe in 2018, greatly exceeding the national average of 16% and 10% and the national goal of 20%. LQGs generate 1,000 kilograms (2,200 lbs.) of hazardous waste or more than one kilogram (2.2 lbs.) of acutely hazardous waste per calendar month.

For Metric 6a on inspection report completion and sufficient to determine compliance, 22 out of 23 files reviewed were complete, resulting in a rate of 95.7%. The national goal is 100%. For Metric 6b on timeliness of inspection report completion, 23 out of 23 files reviewed were timely, resulting in a rate of 100%. The national goal is 100%. For both metrics, the reports documented hazardous waste management activities and compliance evaluation inspections conducted at facilities with a wide-range of waste streams and waste management processes and procedures. In each case the report appropriately documented waste determinations, points of waste generation and hazardous waste management activities. Inspection reports for complicated waste management facilities were very detailed and thorough. DWMRC has maintained a high level of inspection coverage at Small Quantity Generators (SQGs), Very Small Quantity Generators (VSQGs), transporters, and Used Oil Handler facilities. SQGs generate more than 100 kilograms (220 lbs.) but less than 1,000 kilograms (2,200 lbs.) of hazardous waste per month and VSQGs generate 100 kilograms (220 lbs.) or less of hazardous waste per month.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	85%	14	14	100%
5b Annual inspection of LQGs using Biennial Report (BR) universe [GOAL]	20%	15.6%	38	112	33.9%
5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL]	20%	9.9%	42	129	32.6%
5e5 One-year count of very small quantity generators (VSQGs) with inspections			10		
5e6 One-year count of transporters with inspections			7		
5e7 One-year count of sites not covered by metrics 5a - 5e6 with inspections			10		
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		22	23	95.7%
6b Timeliness of inspection report completion [GOAL]	100%		23	23	100%

State Response:

None.

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Summary:

DWMRC makes accurate, timely and appropriate compliance determinations.

Explanation:

For Metric 7a on accurate compliance determinations and Metric 8c on appropriate SNC determinations, DWMRC achieved the national goal of 100%. All of the inspection reports reviewed during the file review led to accurate compliance determinations. None of the files reviewed contained information on untimely or inaccurately identified significant noncompliance violations.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2a Long-standing secondary violators			4		
7a Accurate compliance determinations [GOAL]	100%		23	23	100%
7b Violations found during CEI and FCI inspections		34.3%	18	107	16.8%
8a SNC identification rate at sites with CEI and FCI		1.6%	0	187	0%
8b Timeliness of SNC determinations [GOAL]	100%	76.50%	0	0	0%
8c Appropriate SNC determinations [GOAL]	100%		12	12	100%

State Response:

None.

RCRA Element 4 - Enforcement**Finding 4-1**

Meets or Exceeds Expectations

Summary:

DWMRC took appropriate enforcement actions to address identified violations.

Explanation:

For Metric 9a on enforcement that returns sites to compliance and Metric 10b on appropriate enforcement taken to address violations, DWMRC achieved the national goal of 100%.

DWMRC took enforcement actions against 14 facilities reviewed, each classified as secondary violation (SV) facilities and with enforcement actions resulting in bringing the facilities into compliance. Each of the actions specified compliance schedules as required and contained facility return-to-compliance documentation. All of the enforcement actions reviewed during the file review appeared to be appropriate to address the violations. Formal actions were taken when appropriate that included penalties per EPA RCRA Civil Enforcement Response Policy dated 2003. Minor infractions were dealt with via informal actions as appropriate, where the facilities waste management practices were monitored to ensure a return to compliance.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Enforcement that returns sites to compliance [GOAL]	100%		14	14	100%
10a Number of SNC evaluations with timely enforcement	80%	87.7%	0	0	0%
10b Appropriate enforcement taken to address violations [GOAL]	100%		14	14	100%

State Response:

None.

RCRA Element 5 - Penalties

Finding 5-1

Area for Improvement

Summary:

DWMRC follows the EPA RCRA Civil Penalty Policy, which includes gravity and economic benefit components. Gravity was consistently documented in penalty calculations, but calculations or documentation on the reasons for mitigating economic benefit were not documented properly.

Explanation:

For Metric 11a on gravity and economic benefit, two out of six or 33.3% of files reviewed showed that four of the penalties reviewed did not include proper documentation. The EPA RCRA Civil Penalty Policy dated 2003 states that the record supporting a penalty amount should include documentation explaining the penalty calculation, including significant economic benefit of noncompliance. Any decision not to seek an economic benefit penalty and the rationale for such a decision should be documented on a Penalty Computation Worksheet or analogous penalty calculation summary. DWMRC includes consideration of economic benefit per this policy and the UT DEQ Penalty Policy.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Gravity and economic benefit [GOAL]	100%		2	6	33.3%

State Response:

None.

Recommendation:

Rec #	Due Date	Recommendation
1	12/31/2020	DWMRC will more clearly identify and note how the state penalty policy applies, and document economic benefit and gravity, including review of the explanations and calculations of economic benefit or description of the rationale for not seeking economic benefit in penalty calculations. The EPA will close this recommendation when at least 71% of assessed penalties take into account gravity and economic benefit, and meet guidance requirements in the RCRA penalty policy.

RCRA Element 5 - Penalties

Finding 5-2

Meets or Exceeds Expectations

Summary:

DWMRC has documented collection of all assessed penalties.

Explanation:

For Metric 12a on documentation of rationale for difference between initial penalty calculation and final penalty, two out of two files reviewed met this metric; DWMRC met the national goal of 100%. The files clearly demonstrated the rationale between initial and final penalties.

For Metric 12b on penalty collection, six out of six files reviewed were at 100%. The six files reviewed showed that assessed penalties were collected in the final enforcement actions.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		2	2	100%
12b Penalty collection [GOAL]	100%		6	6	100%

State Response:

None.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**1595 Wynkoop Street
Denver, CO 80202-1129
www.epa.gov/region8**

Ref: 8ENF-PJ

Mr. Alan Matheson, Executive Director
Department of Environmental Quality
195 North 1950 West
Salt Lake City, Utah 84116

Re: 2019 State Review Framework Inspection of Fiscal Year 2018

Dear Mr. Matheson:

As an integral part of our U.S. Environmental Protection Agency – State of Utah partnership, Region 8 will be conducting a State Review Framework (SRF) review of the Utah Department of Environment Quality (UT DEQ) this year. Specifically, the EPA will be looking at the Resource Conservation and Recovery Act (RCRA) Subtitle C, Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) and Clean Air Act (CAA) Stationary Source enforcement programs in 2019. We will review inspection and enforcement activity from fiscal year 2018.

An important part of the review process is the visit to your state agency office for the three program areas listed above. Through these visits, which will likely take place between April and June (to be scheduled), the EPA can have face-to-face discussions with enforcement staff and review their respective files to better understand the overall enforcement program.

State visits for these reviews will include:

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

Following our visits to your office, the EPA will summarize findings and recommendations in a draft report. Your management and staff will be provided with an opportunity to review and comment on this draft by late summer or early fall. The EPA expects to complete the UT DEQ review, including the final report, by February 29, 2020. If any areas for improvement are identified in the SRF, we will work with you to address them in the most constructive manner possible. Region 8 and UT DEQ are partners in carrying out the review, and we intend to assist you in meeting both federal standards and goals agreed to in UT DEQ's Performance Partnership Agreement.

Region 8 has established a cross-program team of managers and senior staff to implement the UT DEQ review. David Piantanida, SRF Coordinator at (303) 312-6200, will be your primary contact at Region 8 and will coordinate overall logistics for the EPA. I am Region 8's senior manager with overall responsibility for the review. We request that you also identify a primary contact person for the EPA to

work with and provide that name to Mr. Piantanida. The Region 8 program leads on the 2019 SRF review team are:

Annette Maxwell	RCRA	(303) 312-6068	maxwell.annette@epa.gov
Akash Johnson	NPDES (Lead)	(303) 312-6067	johnson.akash@epa.gov
Laurel Dygowski	NPDES	(303) 312-6144	dygowski.laurel@epa.gov
Joe Wilwerding	CAA	(303) 312-6729	wilwerding.joe@epa.gov

These program leads will be contacting UT DEQ enforcement managers and staff to schedule a meeting to discuss SRF Round 4 changes, expectations, lessons learned from previous reviews, procedures and scheduling for the review. The EPA will also send its analysis of the SRF data metrics and list of selected facility files prior to the on-site visits. General SRF review planning, scheduling, and logistics steps can be found in the attachment. Other documents used to evaluate the state's programs can be found on the EPA's ECHO website at <https://echo.epa.gov/>. Links to past SRF reports and recommendations can be found at the EPA's State Review Framework web page at <https://www.epa.gov/compliance/state-review-framework-compliance-and-enforcement-performance>.

Please do not hesitate to contact me at (303) 312-6925, or have your staff contact David Piantanida (piantanida.david@epa.gov) at (303) 312-6200 with any questions about this review process. We look forward to working with you on the 2019 SRF review and furthering our critical EPA-State partnership.

Sincerely,

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

Enclosure

cc: Via email
Elizabeth Walsh, Headquarters SRF Liaison
Office of Compliance, OECA

Doug Benevento, Regional Administrator
Region 8

Deb Thomas, Deputy Regional Administrator
Region 8

Kim S. Opekar, Deputy Assistant Regional Administrator
Enforcement, Compliance and Environmental Justice – Region 8

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

Attachment

UT DEQ SRF Review Planning & Logistics

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

- The EPA will contact UT DEQ enforcement managers and staff to schedule a conference call for the three program areas to SRF Round 4 changes, discuss expectations, procedures and scheduling for the review if this has not already occurred.
- The EPA may ask for preliminary information that is readily available such as descriptions of agency and program structures, agency enforcement policies, staffing numbers and other organizational information.
- The EPA will send UT DEQ a list of data metrics and conduct a data metric analysis.
- The EPA will send UT DEQ a list of requested files for review at least two weeks in advance of onsite file reviews.
- The EPA will set up calls (one for each Program area) with UT DEQ to verify that files in the EPA's requested file list will be available; where the files will be located; and to confirm review dates, arrival times, and logistics.
- The EPA will conduct an entrance conference for the review upon arrival at the UT DEQ offices and an exit meeting for UT DEQ managers and staff prior to the EPA's departure.
- The EPA will draft a report of its review findings, share the draft with UT DEQ, and request comments.
- Once the report is final, the EPA will add the report, and any recommendations in the report, to the SRF Tracker.
- Once the report is final, the EPA will consult with the state and add agreed-upon recommendation items in the report to the Recommendation section of the SRF Tracker.

The EPA will initiate periodic follow-up discussions with UT DEQ (quarterly calls) to monitor progress on report recommendations.