



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
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Philadelphia, Pennsylvania 19103-2029**

VIA ELECTRONIC MAIL

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Dear Mr. Paylor and Mr. Baker,

We would like to thank you and your staff for the cooperation you provided to the U.S. Environmental Protection Agency (EPA) to finalize the State Review Framework (SRF) for the Commonwealth of Virginia. The SRF is a program designed so that EPA may conduct oversight of state compliance and enforcement programs to ensure that states are implementing these programs in a nationally consistent and efficient manner.

EPA conducted the Round Four SRF review of the Virginia Department of Environmental Quality (VADEQ) Clean Air Act (CAA) Stationary Source, Resource Conservation and Recovery Act (RCRA), and Clean Water Act National Pollutant Discharge, Elimination System (NPDES) enforcement programs. The review evaluated compliance and enforcement data and files from Fiscal Year 2019.

The enclosed report includes findings from the review and planned actions to facilitate program improvements. Since the last SRF review, VADEQ has succeeded in implementing programmatic improvements in several areas of concern that were identified in the previous SRF report. VADEQ's Air program is to be commended for their documentation of penalty calculations, including justification for reduced penalties where applicable. The EPA Review Team considers this to be a best practice. Additionally, VADEQ's RCRA program consistently makes timely and appropriate significant noncompliance determinations and takes enforcement actions that return violators to compliance. Finally, VADEQ's NPDES Core program consistently enters its minimum data requirements into the national database. VADEQ also implements an approved alternative Risk Based Inspection Strategy and a Compliance Monitoring Strategy (CMS) where VADEQ has met and exceeded its CMS commitments for the FY2019 review period.

RE: *State Review Framework (SRF)*

The non-sewage, NPDES mining program has been implemented by the Virginia Department of Mines, Minerals and Energy (VADMME). The review team found that VADMME successfully uses laptops in the field to document its inspection observations in real time. Findings throughout the report have been separated where grading differed between VADEQ and VADMME so that the appropriate agency can implement corrective action where necessary.

This review also documented continued areas of concern related to the implementation of the NPDES program, specifically minimum data requirements (MDRs) for the CAFO and mining programs. EPA is committed to working closely with VADEQ's NPDES CAFO program and VADMME to assist in successfully uploading MDRs to the national database.

We look forward to continuing to work with you to improve program performance in pursuit of our shared mission to protect public health and the environment. If you have any questions, please feel free to contact me or have your staff call Ms. Karen Melvin, Director of the Enforcement and Compliance Assurance Division at 215-814-3275.

Sincerely,

DIANA
ESHER

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ESHER
Date: 2021.04.23
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Diana Esher
Acting Regional Administrator

cc: Danielle Baltera, EPA (baltera.danielle@epa.gov)

STATE REVIEW FRAMEWORK

Virginia

**Clean Water Act
Clean Air Act
Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2019**

**U.S. Environmental Protection Agency
Region 3**

**Final Report
April 12, 2021**

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)

Dates of File Review: August 17-21, 2020

EPA ECAD contacts include:

Lisa Trakis
Ingrid Hopkins
Mike Greenwald
Amanda Pruzinsky
Kaitlin McLaughlin

VADEQ contacts include:

Betsy Bowles, State Program Coordinator, CAFO
Troy Nipper, VPDES Waste Water Compliance Coordinator
Joanne Lam, Integrated Compliance Information System Coordinator

VADMME: Rodney Baker, Reclamation Program Manager

Clean Air Act (CAA)

Dates of File Review: July 13-23, 2020

EPA ECAD contacts include:

Danielle Baltera
Kurt Elsner
Erin Malone

VADEQ contact: Todd Alonzo - Program Manager, Air Compliance

Resource Conservation and Recovery Act (RCRA)

Dates of File Review: July 20-23, 2020

EPA contacts include:

Rebecca Serfass (ECAD) - Enforcement Lead
Mindy Lemoine (LCRD) - Program Lead
Jeanna Henry (ECAD) - RCRA Section Chief

VADEQ contacts include:

Leslie Romanchik, Hazardous Waste Program Manager
Lisa Ellis, Hazardous Waste Compliance Coordinator

Executive Summary

Areas of Strong Performance

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

Clean Water Act (CWA)

VADEQ Core Program

- VADEQ consistently enters its minimum data requirements (MDRs) into the national database, Integrated Compliance Information System (ICIS).
- VADEQ implements an approved alternative Risk Based Inspection Strategy (RBIS) and a Compliance Monitoring Strategy (CMS). VADEQ has met and exceeded its CMS commitments for the review period, FY2019.
- VADEQ's Water Compliance Auditing Manual outlines the course for the implementation of Points Assessment Criteria that addresses instances of noncompliance for potential enforcement referral. This management ranking tool serves to assign points as there is evidence of a violation.
- The Core Program scored high marks for its approach to its compliance and enforcement activities during the FY2019 SRF review year.

VA Department of Mines, Minerals and Energy (VADMME)

- Inspectors utilize a laptop in the field to document its inspection observations in real time. This process speeds up uploading and finalization of inspection reports into DMME's inhouse database.

Clean Air Act (CAA)

VADEQ did a thorough and comprehensive job in documenting penalty calculations including justification for reduced penalties where applicable. The EPA Review Team considers the penalty calculation worksheets to be a Best Practice. In addition, proof of penalties collected were found in the file for all cases reviewed.

Resource Conservation and Recovery Act (RCRA)

- VADEQ consistently makes timely and appropriate significant noncompliance (SNC) determinations and takes enforcement actions that return violators to compliance.
- VADEQ also consistently calculates an appropriate penalty based on gravity and economic benefit, documents their penalty calculations including rationale for difference between initial penalty calculation and final penalty, and successfully collects penalties.

- VADEQ took an appropriate enforcement action to address the violations 100% of the time and took enforcement actions that returned the violator to compliance 96.6% of the time.

- In 100% of penalty files reviewed by EPA, VADEQ documented gravity and economic benefit calculations, penalty justifications, and payment of penalty.

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)

VADEQ -- CAFO

- Minimum Data Requirements (MDRs) for Concentrated Animal Feeding Operations are not uploaded into the Integrated Compliance Information System (ICIS), EPA’s national compliance and enforcement database.

VA Department of Mines, Minerals and Energy

- DMME’s Surface Mining and Reclamation Permanent Regulatory Program Civil Penalty Assessment Manual does not consider economic benefit in its penalty calculations. Economic Benefit is used as a tool to capture avoided costs as a result of noncompliance. DMME’s Civil Penalty Determination matrix did not include an economic benefit calculation in the four penalty responses reviewed. DMME asserts that to effectively adopt necessary changes to their penalty policy would require VA legislative action.

- NPDES data management deficiencies related to the DMME mining program have continued since Round 2 of the SRF. On February 1, 2016, DMME and EPA Region III established the Virginia NPDES Data Management Strategy (“Strategy”). The Strategy detailed a coordinated approach to improve the data management capacity for the complete set of VA NPDES mining permits to meet the minimum federal NPDES data entry requirements for the Integrated Compliance Information System (“ICIS”) national database. At that time, EPA agreed to work with DMME to identify available technical support mechanisms, as DMME implemented its Strategy to meet current and future federal NPDES data management requirements. Round 4 identified that deficiencies are on-going, and an updated Strategy is needed.

Clean Air Act (CAA)

There are no priority issues to address

Resource Conservation and Recovery Act (RCRA)

There are no priority issues to address

Clean Water Act Findings

CWA Element 1 – (VADEQ) Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

VADEQ consistently enters its minimum data requirements (MDRs) into the national database, Integrated Compliance Information System (ICIS).

Explanation:

VADEQ met or exceeded the national goals for the data metrics for completeness of data entry on major and non-major permit limits and completeness of data entry on major and non-major discharge monitoring reports. VADEQ met the national goal in that for industrial and municipal wastewater files reviewed, all data is accurately reflected in ICIS. Of the 4 files reviewed, 3 of the industrial stormwater files have data that is accurately reflected in ICIS.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
1b5 Completeness of data entry on major and non-major permit limits. [GOAL]	95%	90.6%	840	840	100%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%	93.3%	14712	14766	99.6%
2b (IMWW) Files reviewed where data are accurately reflected in the national data system (Industrial and Municipal WW)	100%		16	16	100%
2b (ISW) Files reviewed where data are accurately reflected in the national data system (Industrial SW)	100%		3	4	75%

State Response:

CWA Element 1 – (VADMME) Data

Finding 1-2

Area for Improvement

Recurring Issue:

Recurring from Rounds 2 and 3

Summary:

VADMME does not enter mining source data into the national database, ICIS.

Explanation:

Of the six mining sources reviewed, none of them had data in the national database. DMME is actively working on its mapping and batching processes and as of March 2021, DMME has successfully uploaded over 200 of their permits to ICIS production, the data includes limit sets, and compliance tracking status will be achieved next.

In 1981, a re-delegation Memorandum of Agreement (MOA) was signed between the Virginia State Water Control Board (SWCB) and the Virginia Department of Mine Land Reclamation within the Department of Conservation and Economic Development (DCED) for the NPDES mining permit program. This MOA seems to transfer NPDES responsibilities to DWED for only non-sewage, NPDES permits for coal mining. This re-delegation of mining permits pre-dated the creation of VADEQ by 12 years. Furthermore, in the October 21, 1983 Federal Register notice, EPA approved transfer of NPDES authorization for regulating all pollutant discharges from coal mining and reclamation facilities from the Virginia Water Control Board (now VADEQ) to the Virginia Department of Conservation and Economic Development, Division of Mined Land Reclamation (now DMME).

The SWCB/DCED MOA states that DCED would provide to SWCB information on permits issued, violations, and enforcement information, along with other information sharing. However, it says nothing about which agency would report that information to EPA, but seeing that the communication channel was from DCED to SWCB, it could be implied that the SWCB would have then been responsible for reporting that information to EPA. This re-delegation MOA strongly suggests that back-stop responsibilities for permitting and enforcement, should DCED fail to carry out its responsibility, appropriately lies with SWCB, now VADEQ.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2b (DIMME) Files reviewed where data are accurately reflected in the national data system	100%		0	6	0%

State Response:

Recommendation:

Rec #	Due Date	Recommendation
1	06/30/2021	DMME will develop a Data Management Strategy that will ensure minimum data requirements are being entered into ICIS production. At periodic enforcement conferences with DMME, EPA will confirm whether appropriate data management is being facilitated by DMME.
2	06/30/2021	DMME will continue to work with Region 3 and EPA HQs towards ensuring that accurate data is being fed into ICIS. DMME will request EPA HQs to run an RNC on DMME's ICIS test data; verify the accuracy of the ICIS test data after the RNC; determine if there were any data errors and work with EPA Region 3 and HQs on a data fix, if needed. No later than 6/30/2021, DMME will upload its NPDES permit data into ICIS production.

CWA Element 1 – (VADEQ) Data

Finding 1-3

Area for Improvement

Recurring Issue:

Recurring from Rounds 2 and 3

Summary:

The CAFO sources reviewed did not have data in the national database, ICIS.

Explanation:

Of the five CAFO files reviewed, none of them had data in the national database. The CAFO program does not have a finite date for mapping and batching of its NPDES permittees due to VADEQ prioritizing certain sectors over the limited CAFO universe (11). EPA HQs has offered to provide data support, including but not limited to, temporary batching assistance to the CAFO program.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2b (CAFO) Files reviewed where data are accurately reflected in the national data system (CAFO)	100%		0	5	0%

State Response:

For the last several years, DEQ has reported the facility specific information on a semi-annual basis to meet the CAFO work plan negotiated with Region 3. The CAFO work plan states that the information be submitted in this manner until the data is provided in ICIS (see CAFO work plan excerpt below). The agreed upon process to report the data thus far has proven to be more than adequate, especially since the previous submitted data has included information related to state permits (non-VPDES) as well. As there are only eleven VPDES permitted CAFOs, this alternative method has been efficient considering the significant workload involved with ensuring the data is uploaded using the appropriate CAFO data schema. Each year DEQ has met the output obligations of the work plan through these submittals. (see attached reports)

Excerpt CAFO Work plan

Outputs:

1) Submit the following facility-specific information semi-annually until data is provided in ICIS.

- a. List of CAFOs that have applied for VPDES permit coverage including the following information:
 - facility name and location (physical address)
 - latitude/longitude coordinates
 - owner operator name and mailing address
 - size of operation, including numbers of each animal type present
 - date permit application received date of administratively complete permit application
 - date of permit issuance
 - VPDES permit number

- b. List CAFO operations inspected via spreadsheet format:
 - NPDES permit number (if applicable)
 - facility name and location
 - date/type of evaluation (i.e., file review, partial or complete inspection, etc.)
 - compliance status (no violation, in violation)
 - provide a violation description, date/type of enforcement action, penalty (if any), how the operation returned to compliance and the date the operation returned to compliance.

- c. List of CAFO enforcement actions via spreadsheet format:
 - facility name and location
 - provide a violation description, date/type of enforcement action, penalty (if any), how the operation returned to compliance and the date the operation returned to compliance. VADEQ may fulfill this requirement as it does for other NPDES enforcement actions by uploading enforcement action data to ICIS and posting the enforcement action on its website.

It is our understanding that the following items are considered the minimum data elements that EPA is expecting to be uploaded to ICIS:

- Facility identifiers: name, street, city, county, state, zip code, type of ownership, latitude, longitude. Permit;
- NPDES ID, universe, operating status, issue date, effective date, expiration date, major/minor status indicator, SIC code;
- Inspections;
- Violations/compliance status resulting from inspections (single event violations (SEVs));
- Violations resulting from discharge monitoring reports;
- Significant non-compliance;
- Informal enforcement actions: notices of violation;
- Formal enforcement actions; and
- Amount of assessed penalties.

Currently, DEQ has issued eleven VPDES CAFO Individual Permits. In response to Recommendation # 1: By July 31, 2021, DEQ will provide EPA Region 3 staff with a plan for completing the process to ensure that the minimum data requirements (listed above) are uploaded to ICIS for the entire VPDES CAFO Individual Permit universe. This plan will outline the detailed steps including data analysis, mapping, and system development tasks. In response to Recommendation # 3: The projected completion timeframes and final implementation timeframes will be defined for each of the steps of the process included in the plan.

Recommendation:

Rec #	Due Date	Recommendation
1	07/30/2021	No later than July 31, 2021, VADEQ needs to develop and submit an SOP that identifies an interim and final process by which the Agency intends to upload its universe (11) of CAFO permittees into ICIS. VADEQ will share its progress on the development of the SOP during quarterly enforcement conferences with Region 3.
2	08/31/2021	Region 3 will review and approve the SOP, no later than August 31, 2021.
3	09/01/2021	VADEQ will commence implementation of the SOP no later than September 1, 2021.
4	04/29/2022	VADEQ will ensure that the minimum data requirements are entered into the ICIS, no later than, April 29, 2022.
5	05/31/2022	No later than May 31, 2022, Region 3 will conduct a Data Metric Analysis of the CAFO universe to ensure that the approved process is effective.

CWA Element 2 – (VADEQ) Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

All of the CAFO and Core Program inspection reports reviewed were identified as sufficient to determine compliance and were completed timely.

Explanation:

100% of the CAFO inspection reports reviewed were identified as sufficient to determine compliance. 100% of the inspection reports reviewed in the Core Program were identified as sufficient to determine compliance. 100% of the inspection reports reviewed in the CAFO and Core Programs were completed timely. VADEQ met or exceeded the National goal in the number of inspections conducted at CAFOs, Phase I and Phase II MS4 audits/inspections, industrial stormwater inspections, and Phase I and Phase II construction stormwater inspections.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100% of commitments		5	5	100%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments		25	29	86.2%
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments		154	219	70.3%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments		671	1263	53.1%
5a1 Inspection coverage of NPDES majors. [GOAL]	100%	52.9%	52	53	98.1%
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100%	25.3%	43	40	107.5%
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL]	100%	6.3%	456	426	107%
6a (IMWW) Inspection reports complete and sufficient to determine compliance at the facility (Industrial and Municipal WW)	100%		4	4	100%
6a (ISW) Inspection reports complete and sufficient to determine compliance at the facility, Industrial SW	100%		3	3	100%
6b (CAFO) Timeliness of inspection report completion (CAFO)	100%		5	5	100%

6b (IMWW) Timeliness of inspection report completion (Industrial and Municipal WW)	100%		4	4	100%
6b (ISW) Timeliness of inspection report completion (Industrial SW)	100%		3	3	100%

State Response:

CWA Element 2 – (VA DMME) Inspections

Finding 2-2

Area for Improvement

Recurring Issue:

No

Summary:

Only 50% of DMME inspection reports reviewed were identified as sufficient to determine compliance.

Explanation:

DMME inspectors utilize a laptop in the field to document their observations in real time. While this practice expedites upload and finalization of inspection reports into DMME’s home database, inspection reports reviewed were comprised of multiple inspections that were conducted on varying dates within a month. This practice proved difficult to discern the violations that were associated with an inspection of a particular facility on a particular date.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6a (DMME) inspection reports complete and sufficient to determine compliance	100%		3	6	50%
6b (DMME) timeliness of inspection report completion	100%		0	6	0%

State Response:

DMME administers both the Surface Mining Control and Reclamation Act (SMCRA) and state NPDES (VPDES) regulatory programs and issues a joint mining/discharge permit for coal mining operations in Virginia. DMME's inspection and enforcement program involves ensuring compliance with both the SMCRA performance standards and NPDES permit requirements. DMME conducts a minimum of 2 partial inspections and one complete inspection during each calendar quarter for active mining operations, and a minimum of one complete inspection during each calendar quarter for inactive mining operations. Not every partial inspection includes the NPDES component of the permit, but every complete inspection does include the NPDES component. Due to the size and scope of many of the mining operations, often all SMCRA and NPDES inspection elements cannot be effectively addressed during a single visit. Coal mining operations are often complex, and surface mining operations can cover several hundred to well over a thousand acres. DMME instructs its inspection staff to conduct additional onsite visits in order to promote compliance, particularly on active sites. Of the six permits randomly selected for review in the SRF, two are major permits (Virginia DMME only has 2 major permits). One of those permits covers over 800 acres, has 24 outfalls, and DMME performed 65 discrete inspection events (inspector onsite) during the evaluation year. The other major permit covers over 1500 acres, has 38 outfalls, and DMME performed 32 discrete inspection events during the evaluation year. In total, DMME performed 3665 inspection events on 291 permitted mining operations during the plan year. DMME inspectors address the findings of each applicable inspection event in the appropriate partial or complete inspection report. To document each individual inspection event in a separate inspection report would be extremely inefficient and would result in much confusion (as noted above, this would have resulted in 3665 different inspection reports for the evaluation year alone). In order to address EPA's concern, DMME instead proposes to specifically address the NPDES component of each inspection report under a separate NPDES heading in the body of the report. DMME will establish a work team composed of water quality and enforcement staff to develop a template that will identify the required inspection items, field observations/findings, areas of concern, and whether the operation was found to be in compliance with the specified permit conditions. The date(s) of the inspection event(s) and the standards evaluated on each date will be noted. DMME believes that this change will most efficiently and effectively address EPA's concerns.

Recommendation:

Rec #	Due Date	Recommendation
1	06/15/2021	<p>DMME will establish a work team composed of water quality and enforcement staff to develop a template that will identify the required inspection items, field observations/findings, areas of concern, and whether the operation was found to be in compliance with the specified permit conditions. The date(s) of the inspection event(s) and the standards evaluated on each date will be noted.</p> <p>VADEQ will provide oversight to ensure that DMME's updated template is being developed, no later than June 15, 2021.</p>
2	07/30/2021	<p>Region 3 will discuss the progression of this recommendation with VADEQ during the July 30, 2021 quarterly enforcement conference, with the intent to provide approval.</p>
3	09/30/2021	<p>DMME should commence implementation of the template immediately, but no later than, September 30, 2021.</p>

CWA Element 3 – (VADEQ) Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

All of the Core and CAFO Program inspection reports reviewed documented the accuracy of compliance determinations

Explanation:

100% of the Core and CAFO program inspection reports reviewed documented accurate compliance determinations

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
7e (CAFO) Accuracy of compliance determinations (CAFO)	100%		5	5	100%
7e (IMWW) Accuracy of compliance determinations (Industrial and Municipal WW)	100%		5	5	100%
7e (ISW) Accuracy of compliance determinations (Industrial SW)	100%		3	3	100%
7j1 Number of major and non-major facilities with single-event violations reported in the review year.					101
7k1 Major and non-major facilities in noncompliance.		18.4%	792	4664	17%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.		9%	262	4664	5.6%

State Response:

CWA Element 3 – (VADMME) Violations

Finding 3-2

Area for Improvement

Recurring Issue:

No

Summary:

Two (2) out of six (6) DMME inspection reports failed to communicate an accurate compliance determination.

Explanation:

Two NPDES inspection reports reviewed for DMME permittees did not identify noncompliance at a particular facility as observed during the field activity, nor did they appear to assess a current

compliance status. It is noted that DMME’s practice is to prepare one report per facility per month. Imbedded within that monthly inspection report are multiple dates of inspections that occurred during that same month, including compliance findings. Deficiencies were noted, but buried in the organization of the report making it difficult to determine overall compliance and to which facility and inspection date deficiencies were associated.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
7e (DIMME) Accuracy of compliance determination	100%		4	6	66.7%

State Response:

See DMME’s response to Finding 2-2. The changes proposed in response to Finding 2-2 will address the concerns identified in Finding 3-2.

Recommendation:

Rec #	Due Date	Recommendation
1	06/15/2021	DMME will establish a work team composed of water quality and enforcement staff to develop a template that will identify the required inspection items, field observations/findings, areas of concern, and whether the operation was found to be in compliance with the specified permit conditions. The date(s) of the inspection event(s) and the standards evaluated on each date will be noted. VADEQ will provide oversight to ensure that DMME’s updated template is being developed, no later than June 15, 2021.
2	07/30/2021	Region 3 will discuss the progression of this recommendation with VADEQ during the July 30, 2021 quarterly enforcement conference, with the intent to provide approval.
3	09/30/2021	DMME should commence implementation of the template immediately, but no later than, September 30, 2021.

CWA Element 4 – (VADMME) Enforcement

Finding 4-1

Area for Improvement

Recurring Issue:

No

Summary:

50% of DMME enforcement responses reviewed did not result in returning sources to compliance.

Explanation:

At the time of the SRF review, EPA found one permittee incurred numerous instances of significant noncompliance during 2018 and 2019. In response, DMME issued numerous enforcement responses including the requirement for injunctive relief and penalties. These actions were unsuccessful in returning the permittee to compliance. Enforcement escalation procedures were not initiated. Another permittee had an original remedial date set for 11/30/18. This date was extended through 3/31/2019 and again through 9/30/19. Evidence of closeout of the NOV or enforcement escalation was not identified in the files.

DMME issued enforcement responses against two permittees that did not appropriately address egregious noncompliance and failed to escalate enforcement action to secure compliance. After reviewing DMME's comments to this finding and discussing the issue with DMME more fully, EPA believes our findings which are accurate may have been negatively influenced by the sample size and methodology. One corporation owned half of the facilities assessed for this measure and that corporation was in financial distress and entered bankruptcy the year of the review. Their financial instability negatively impacted their ability to readily address noncompliance issues. After ownership of the two facilities changed, DMME worked with the new ownership to bring these facilities into compliance.

EPA also evaluated the *Annual Evaluation Report for the Regulatory and Abandoned Mine Land Programs Administered by the Department of Mines, Minerals, and Energy* for 2019 and 2020. These reports were prepared by the Office of Surface Mining Reclamation and Enforcement (OSMRE) of the Department of Interior and found a more robust program than the EPA observed.

EPA recommends that the subject Agency bring up expected shortfalls in its analysis at the time of the review, this will allow EPA to make changes to the files and facilities being reviewed. In future reviews, when evaluating limited data sets, EPA will work to ensure that the review includes multiple companies and owners.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations		14.4%	1	2	50%
9a (DMME) Percentage of enforcement responses that will return to compliance or on the path to compliance	100%		2	4	50%

State Response:

EPA randomly selected for review 6 permits out of the universe of 291 permits regulated by DMME during the evaluation year (October 1, 2018 – September 30, 2019). Of the 6 permits selected for review, half (3) represented the same company. This company was struggling financially and entered bankruptcy during the evaluation year, which significantly affected their financial means to address operational and water treatment issues, and the availability of personnel, materials, and equipment was severely limited. Both permits identified by EPA as having had multiple significant non-compliances or remediation date extensions were held by this company. Both permits were part of a number of assets purchased out of bankruptcy by an investment group that formed a new corporation at approximately the same time as the end of the evaluation year, and additional resources to bring the operations back into compliance began to become available. During the evaluation year, DMME took other regulatory steps to work toward bringing these operations back into compliance. For instance, DMME issued a Revision Order Notice (RON) to one of the permits requiring that they address repeated effluent non-compliance issues including determination of the sources of the problem effluent and proposed corrections to achieve compliance. DMME believes that the multiple Notices of Violation (NOVs) issued to these permits, RON, and direct interaction with the company on both the enforcement and permitting levels were appropriate given the bankruptcy situation at that time. Once the permits were purchased out of bankruptcy and resources became available, water quality improvement measures were implemented. The first permit referenced by EPA came into compliance for most parameters in December of 2019, and compliance with all parameters by mid-February 2020. The second permit made significant improvements to effluent quality by July of 2020.

DMME’s mining enforcement program is oversighted by the Office of Surface Mining Reclamation and Enforcement (OSMRE). Their *Annual Evaluation Report for the Regulatory and Abandoned Mine Land Programs Administered by the Department of Mines, Minerals, and Energy* for evaluation year 2019 (July 1, 2018 to June 30, 2019, the most recent finalized report), addresses the effectiveness of DMME’s program. This report states “The OSMRE found 84 percent of permits it reviewed were violation-free, which is slightly higher but validates DMME’s finding that 70 percent of permits were free from violation following routine state inspections, with the majority of violations are administrative in nature. The OSMRE concludes DMME is conducting an effective inspection and enforcement program.” DMME believes that the subset of permits randomly selected for review by EPA were not reflective of our enforcement/compliance program

as a whole. DMME has a long history of administering an effective enforcement program and has and employs the necessary regulatory tools to ensure compliance.

Recommendation:

Rec #	Due Date	Recommendation
1	06/30/2021	DMME will train 100% of its enforcement personnel on the Agency’s policies and procedures for inspection and enforcement and re-compliance. The refresher training will ensure that all Agency employees are familiar with the most up to date policies and procedures to ensure permit compliance. Documentation of training will be provided to EPA.

CWA Element 4 – (VADEQ) Enforcement

Finding 4-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

16 of the 18 (88.9%) of municipal and industrial wastewater facilities and the industrial stormwater facilities reviewed received follow up enforcement that resulted in facilities returning to compliance.

18 of the 22 (81.8%) of the Core Program facility files reviewed resulted in facilities returning to compliance.

Explanation:

For municipal and industrial wastewater facilities and industrial stormwater facilities, VADEQ appropriately responded to unauthorized discharges of sewage sludge and effluent violations, in addition to navigating issues with ownership at two permittees.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		18	22	81.8%
9a Total IMWW & ISW Enforcement responses that returned, or will return, sources in violation to compliance			16	18	88.9%

State Response:

CWA Element 4 – (VADEQ) Enforcement

Finding 4-3

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

17/18 (94.4%) of Core Program enforcement responses appropriately addressed noncompliance.

Explanation:

With the exception of one permittee, Core Program enforcement responses appropriately addressed non-compliance. There was only one permittee in the files reviewed that received numerous NOVs, permitted effluent violations, late/incomplete Financial Assurance and Disclosure to Purchases documentation. It is indicated that the facility has been referred for enforcement, but there have been delays due to ownership issues.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10b Total IMWW & ISW enforcement responses reviewed that address violations in an appropriate manner	100%		17	18	94.4%

State Response:

CWA Element 4 – (VADEQ) Enforcement

Finding 4-4

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Five (5) FY2019 CAFO inspection reports reviewed identified deficiencies. These deficiencies were addressed in accordance with the compliance response timeline outlined in the VADEQ Enforcement Manual.

Explanation:

The VADEQ Civil Enforcement Manual does not specifically address the CAFO sector, though its tenets are applicable to the permitted CAFO universe. The CAFO program followed specific criteria in VADEQ's Civil Enforcement Manual to address the deficiencies associated with the permittees' failure to implement remediation practices onsite, and in one instance, issuance of a Warning Letter was warranted.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10b (CAFO) Enforcement responses reviewed that address violations in an appropriate manner, CAFO	100%		5	5	100%

State Response:

CWA Element 4 – (VADMME) Enforcement

Finding 4-5Area for Attention

Recurring Issue:No

Summary:One of four DMME enforcement responses did not appropriately address noncompliance.

Explanation:DMME issued an enforcement response at one permittee that did not appropriately address egregious noncompliance with introduction of an escalated enforcement action.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10b(DMME) Enforcement responses reviewed that address violations in an appropriate manner	100%		3	4	75%

State Response:

CWA Element 5 – (VADMME) Penalties

Finding 5-1Area for Improvement

Recurring Issue:No

Summary:

The DMME Civil Penalty Determination matrix did not include an economic benefit calculation in the four penalty responses reviewed.

Explanation:

All four (4) penalty calculations involving mining sector facilities did not include an economic benefit calculation. DMME implements its agencies' enforcement penalty policy under the Code of Virginia, the Virginia Coal Surface Mining and Reclamation, Permanent Regulatory Program, Civil Penalty Assessment Manual. The Civil Penalty Determination matrix includes some gravity factors (assessment criteria) but does not consider economic benefit. Economic benefit is only considered in instances where monitoring is not conducted. However, DMME collects nominal penalties for negligence, particularly for noncompliance/failure to meet monitoring standards as per approved NPDES permit plans.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%		0	4	0%

State Response:

DMME currently considers economic benefit for Notices of Violation for failure to monitor. DMME will incorporate consideration of economic benefit into its penalty and assessment procedures for effluent violations.

Recommendation:

Rec #	Due Date	Recommendation
1	06/30/2021	<p>DMME should develop an acceptable penalty policy that would include economic benefit in its penalty matrices. DMME could adopt VADEQ's penalty policy or develop a policy that meets or is more stringent than VADEQ's. DMME will submit its draft or adopted policy to the Region for review and approval on or before June 30, 2021.</p> <p>Within 30 days of regional approval, DMME will conduct penalty policy training for its staff. Region 3 will follow up with DMME on its progress with implementation of this recommendation during periodic enforcement conferences.</p>

CWA Element 5 – (VADEQ) Penalties

Finding 5-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

For the Core Program, the majority of cases reviewed calculated economic benefit in the civil penalty worksheets in accordance with the Department's Civil Enforcement Manual (Chapter 4, Civil Charges and Civil Penalties).

Explanation:

Seven of the eight (7/8) cases in the Core Program reviewed calculated economic benefit in the civil penalty worksheets in accordance with the Department's Civil Enforcement Manual (Chapter 4, Civil Charges and Civil Penalties). The only facility where economic benefit was not considered revealed that economic benefit was not considered due to an inability to determine the cause of permitted effluent violations. The files did not disclose what inhibited making such a determination. VADEQ's enforcement manual allows inspectors autonomy in best professional judgement (BPJ).

Finally, there were no penalties assessed at permitted CAFO sources during the FY2019 review year.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%		7	8	87.5%

State Response:

CWA Element 5 – (VADEQ) Penalties

Finding 5-3

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Review of the Core Program files included nine (9) penalty files. The review identified one (1) file that did not document a rationale for the difference between the initial and final penalty. Additionally, the Core Program collected 100% of their assessed penalties during the FY2019 SRF review year.

There were no penalties assessed at the permitted CAFO sources reviewed during the FY2019 review year.

Explanation:

One (1) Core Program file did not document the difference between the initial and final penalty. The civil penalty matrix documented the assessed penalty. The accounts receivable documentation and the Detailed Facility Report (DFR) both show the penalty was collected as a lesser value. A justification for the difference between the initial and final penalty was not identified.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		8	9	88.9%
12b Penalties collected (GOAL)	100%		9	9	100%

State Response:

CWA Element 5 – (VADMME) Penalties

Finding 5-4

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The team reviewed four (4) DMME penalty files to identify the rationale for the difference between the initial and final penalty. All contained adequate documentation. Additionally, DMME collected 100% of their assessed penalties during the FY2019 SRF review year.

Explanation:

100% of DMME penalty files reviewed documented the difference between the initial and final penalty. Specifically, the total penalties assessed at each were found to be equitable to the penalties ultimately collected.

All four (4) files contained documentation to support collected penalties.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12a(DMME) Documentation of rationale for difference between initial penalty calculation and final penalty	100%		4	4	100%
12b Penalties collected (GOAL)	100%		4	4	100%

State Response:

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

VADEQ entered the majority of their data into ICIS-Air in a timely manner. In addition, the EPA Review Team found the vast majority of the data reviewed to be accurately entered in ICIS-Air when compared to the files.

Explanation:

VADEQ entered all Minimum Data Requirements timely into ICIS-Air at a rate $>$ or $=$ 97%. Regarding data accuracy, the EPA Review Team found 27 of the 30 files to have complete data accuracy. The 3 facilities that did not get a "yes" for this metric had only one minor discrepancy each when comparing ICIS data and the file. Specifically, the FCE date was entered incorrectly for one facility and the Title V Annual Compliance Certification (TVACC) received date was incorrect for two facilities.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		27	30	90%
3a2 Timely reporting of HPV determinations [GOAL]	100%	42.1%	15	15	100%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	85.7%	636	651	97.7%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	69.4%	115	115	100%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	74.4%	105	107	98.1%

State Response:

CAA Element 2 - Inspections

Finding 2-1

Area for Attention

Recurring Issue:

No

Summary:

With the exception of Compliance History and Compliance Status, the CMRs were found to be complete and well written.

Explanation:

Overall, the Compliance Monitoring Reports (CMRs) were found to be complete and well written. However, there were 5 CMRs where the Compliance History was found to be inadequate. Specifically, the Compliance History did not go back to the prior FCE to refer to previous compliance and enforcement history. The inspection reports instead included ambiguous statements such as "there was no recent enforcement." The term "recent" is vague and does not provide a specific timeframe. Note that 3 of the 5 CMRs reviewed in the Blue Ridge Regional Office had inadequate Compliance History.

Although not directly related to the assessment of the state's performance, in reviewing the CMRs, the review team found the reports seem to provide a definitive finding on compliance rather than just the inspector's observations. Inspectors are only to provide their observations in the inspection reports since one does not know what is happening the moment the inspector leaves the facility. CMRs stating the facility is "in compliance" may undermine future enforcement/litigation if EPA were to assume or join a state enforcement case. EPA recommended additional language be added to the CMR to clarify that the observations were limited to the time of the inspection. On September 23, 2020, VADEQ agreed to add the following clarifying language to their existing statement on the CMR, "The purpose of this inspection report is to document DEQ's observations and, based on such observations, provide at the time of the inspection the compliance status for requirements applicable to the facility."

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		19	24	79.2%

State Response:

In the SRF report, EPA cites language regarding compliance history in Virginia's FCE reports as a finding requiring State Attention. However, we believe EPA should correct the finding to Meets or Exceeds. To support their finding, EPA provided several examples the auditors found ambiguous, including the following:

- The source has not had any recent compliance issues.
- There has not been any enforcement actions issued to the facility since 2008.
- There are no enforcement actions associated with this facility at this time.
- There has not been any enforcement actions issued to the facility since 2003.
- There are no outstanding compliance or enforcement issues.
- No recent enforcement actions.

While each of these are variations on a theme, they all tell the reader that there is no active enforcement activity at the facility. Furthermore, since FCEs incorporate PCEs since the last FCE by reference, all data regarding a source's compliance history remains part of the file of record, and specifically, part of the FCE. We believe a review of Virginia's Comprehensive Environmental Data System (CEDS) would have resolved any concerns EPA may have had over the potential for ambiguity, as a reviewer would easily see the overall compliance history of facilities without having to repeat duplicative information in each successive new FCE report in perpetuity.

During standard SRF audit file reviews, auditors have had the opportunity to not only review related documents, but also CEDS, which points to all the supporting information and documentation that might be needed for a reader to understand the compliance history of a facility. The historical audits have involved Virginia staff in real time to answer all questions and guide the auditors to the information needed. Due to COVID travel restrictions, for the first time, EPA's auditors completed the file review completely remotely. While Virginia provided all relevant documents in our files, we found lacking the iterative discussion we have become used to and expect from the SRF auditing process. We feel this disconnect may have factored into the auditor's concerns about the whole picture, and we recommend future SRF audits return to the more conversational style needed to better understand a program.

We do not believe it was the intent for each FCE report to reproduce the lifetime compliance history of a facility; rather, it should provide current information related to the facility's compliance status. EPA has used our FCE template and format as an example best practice to accomplish the goals of the CMS Policy so we were surprised to receive a negative finding this round on what has been described as so thorough in the past. Specifically, the CMS Policy defines a full compliance evaluation (FCE) as "a comprehensive evaluation to assess compliance of the facility as a whole and resulting in a compliance determination." Our technical staff responsible for making such determinations have found it to be logical and constructive to do so based on the current status of the facility including what has taken place since the last full compliance evaluation. While the language chosen to do so varies across Virginia regions (as we've also seen across EPA regions), Virginia feel the comprehensive information provided by our FCEs meets or exceeds what is needed and intended by the metric.

CAA Element 2 - Inspections

Finding 2-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

VADEQ met the negotiated frequency compliance evaluations for the Major sources and reviewed all Title V Compliance Certifications (TVACCs) scheduled to be reviewed. VADEQ met the majority of the negotiated frequency evaluations for SM-80 sources. VADEQ does not have an alternative CMS plan and does not have any minor sources in their CMS plan. Finally, all files reviewed documented the FCE elements.

Explanation:

VADEQ conducted all required FCEs at major sources and 94.5% of the required FCEs at SM-80 sources. VADEQ reported that they performed an internal data QA/QC check on source classifications. Five of the six SM-80 sources that were not inspected had a classification of non

SM-80. However, they should have been classified as an SM-80 prior to FY 2019. All of these facilities are scheduled to have an FCE performed in FY 2020. The other remaining facility was inadvertently misclassified as an SM-80 source. The source has been subsequently classified as a non SM-80 source and removed from the CMS plan. All TVACCs that were scheduled to be reviewed were completed. Finally, all 24 files with an FCE were determined to include all of the required FCE elements.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
5a FCE coverage: majors and mega-sites [GOAL]	100%	87%	114	114	100%
5b FCE coverage: SM-80s [GOAL]	100%	93%	104	110	94.5%
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	86.1%	228	228	100%
6a Documentation of FCE elements [GOAL]	100%		24	24	100%

State Response:

CAA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

VADEQ did a thorough job in making accurate HPV and FRV determinations.

Explanation:

All HPV and more than 94% of FRV compliance determinations were found to be accurate (file review metrics 7a and 8c) while 93% of HPV determinations were determined to be accurate (data metric 13). VADEQ has been slightly below the national average for indicator metric 7a1 (FRV

'discovery rate' based on evaluations at active CMS sources) for FY 2016 - FY 2019. VADEQ's database system (CEDDS) requires a case file to be created for every NOV issued at a major or SM-80 source (i.e., a CMS Source). EPA reviewed the NOVs issued at CMS sources versus the Case Files created at CMS sources for every year since FY2016 and verified that every NOV issued at a CMS source has indeed been included in an FRV or HPV Case File. Therefore, EPA concluded that VADEQ is adequately creating FRV/HPV case files.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
13 Timeliness of HPV Identification [GOAL]	100%	90.6%	14	15	93.3%
7a Accurate compliance determinations [GOAL]	100%		34	36	94.4%
7a1 FRV 'discovery rate' based on inspections at active CMS sources		7.8%	36	603	6%
8a HPV discovery rate at majors		2.3%	13	240	5.4%
8c Accuracy of HPV determinations [GOAL]	100%		18	18	100%

State Response:

CAA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

VADEQ included corrective actions in formal responses and took timely and appropriate enforcement action consistent with the HPV policy.

Explanation:

All formal enforcement reviewed required the facility to return to compliance if they had not already done so at the time of the execution of the Consent Agreement. In addition, all enforcement responses reviewed by the EPA Review Team were determined to be appropriate. For the 3 HPVs not addressed within 180 days, VADEQ had adequate Case Development and Resolution Timelines in place that contained required policy elements by Day 225.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		7	7	100%
10a1 Rate of Addressing HPVs within 180 days		47.8%	4	7	57.1%
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		4	4	100%
10b1 Rate of managing HPVs without formal enforcement action		7.9%	0	7	0%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		5	5	100%
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule [GOAL]	100%		7	7	100%

State Response:

CAA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

VADEQ did a thorough and comprehensive job in documenting penalty calculations including justification for reduced penalties where applicable. The EPA Review Team considers the penalty calculation worksheets to be a Best Practice. In addition, proof of penalties collected were found in the file for all cases reviewed.

Explanation:

All penalty calculations reviewed contained detailed calculations for gravity and economic benefit. In addition, all of the calculations were well documented in the Enforcement Recommendation Plans. The EPA review team considered the penalty calculations to be a Best Practice. All penalties reviewed had either 1) no penalty reduction between the assessed and final penalties paid or 2) adequate documentation if the final penalty paid was reduced from the original assessed penalty. All files had adequate documentation of penalties collected.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%		7	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 Response:

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

EPA observed that 88.6% of the time, VADEQ entered complete and accurate data into RCRAInfo, the national database for the RCRA program.

Explanation:

Four out of 35 files reviewed were found to have inaccurate or missing data elements in RCRAInfo. Errors in data entry included violations being entered into RCRAInfo, but not cited in the NOV or consent order or vice versa and entry of an incorrect violation citation.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2b Accurate entry of mandatory data [GOAL]	100%		31	35	88.6%

State Response:

RCRA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

VADEQ inspected 100% of the State's private permitted facilities in FY19 and also met their inspection coverage of Large Quantity Generators (LQGs) goal by inspecting a combination of Very Small Quantity Generators (VSQGs), Small Quantity Generators (SQGs), other facilities, and LQGs in accordance with their Alternate Compliance Monitoring Strategy (CMS) Workplan.

Explanation:

Virginia has 9 permitted facilities, 6 of which are federal facilities and 3 of which are private facilities. In VADEQ's approved Alternate CMS Workplan, the State commits to inspecting each of its private permitted facilities over a two-year reporting period. All of the private permitted facilities were inspected by VADEQ over this period, making the actual result for Metric 5a 100%.

Per VADEQ's approved Alternate CMS Workplan, the LQG baseline universe is 390, based on the 2011 Biennial Report (BR) LQG count. Twenty percent of this LQG baseline is 78. In the approved Alternate CMS Workplan, VADEQ committed to inspect all LQGs that are due to meet the 5-year inspection coverage, a total of 57 inspections for FY19. Thirty-seven LQG inspections were completed. The Alternate CMS Workplan provides a formula for substituting inspections of SQGs, VSQGs, and other facilities for LQG inspections. Virginia committed to 220 baseline inspections (220 "units") in the SQG, VSQG, and "other" RCRA Handler Category and committed to at least 42 additional inspections to make up the difference between the original goal of 78 and the commitment of 57 LQG inspections. Based on DMA reports on SQG, VSQG, and transporters, VADEQ achieved 387 units. If the additional inspection units over the 262 commitment were counted according to the same formula, VADEQ would have met the goal for LQG inspections by inspecting the equivalent of 99 LQGs, thus we recommend a finding of Meets or Exceeds Expectations.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	85%	3	3	100%
5b Annual inspection of LQGs using BR universe [GOAL]	20%	15.6%	99	390	25.4%
5d One-year count of SQGs with inspections [GOAL]	100% of commitments		142		142
5e5 One-year count of very small quantity generators (VSQGs) with inspections	100% of commitments		170		170
5e6 One-year count of transporters with inspections	100% of commitments		1		1
5e7 One-year count of sites not covered by metrics 5a - 5e6 with inspections	100% of commitments		74		74
5e8 Combined Alternative CMS includes one-year SQG, VSQG, Transporters, and other inspections (5d, 5e5, 5e6, and 5e7)	100% of Commitments		387	262	147.7%

State Response:

RCRA Element 2 - Inspections

Finding 2-2

Area for Attention

Recurring Issue:

No

Summary:

VADEQ produced inspection reports that were complete and sufficient to determine compliance 82.4% of the time and completed timely inspection reports 73.5% of the time.

Explanation:

Regarding Metric 6a, overall, VADEQ's inspection reports were complete and sufficient and were successfully used in enforcement actions and in bringing facilities back into compliance. In six out of 34 reports, EPA found that the inspection report could have used more narrative surrounding the facility's process description and waste generation / handling. Additionally, more evidence may have been useful in the form of document attachments or photos that show noncompliance.

Regarding Metric 6b, VADEQ considers their inspection reports complete when the report and the associated warning letter or Notice of Violation (NOV) is sent to the facility. This adds time from when the inspection report itself is actually complete to the recorded completion date. If the completion date of just the inspection report was documented by VADEQ, this metric would likely not be an Area for State Attention.

EPA considered inspection reports completed timely for all files where the report was completed within 60 days and accompanied by an "exceedance memo" documenting the reason why it was over VADEQ's own 45-day inspection report completion timeliness standard. In addition, EPA considered three files where the report was completed in 64, 69, and 69 days timely because considering VADEQ's process where drafting, reviewing, and finalizing warning letters or NOV's is included in the inspection report completion time, it is highly likely that these inspection reports were completed within 60 days. For these reasons, EPA is recommending Area for State Attention for these metrics.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		28	34	82.4%
6b Timeliness of inspection report completion [GOAL]	100%		25	34	73.5%

State Response:

The SRF review process concentrates on facilities that have had instances of non-compliance, especially those that have received Notices of Violation (NOVs), which by their very nature take longer to finalize. Inspections that result in NOV's have more complicated inspection issues, that are not always straightforward and likely result in the need to research regulatory interpretations and other issues. Enforcement and compliance coordinate the review and issuance of the inspection report, which is conveyed with the NOV. DEQ's count starts on the day of the inspection, and finishes on the date that the NOV or Warning Letter or other inspection report is sent to the facility.

This differs from EPA’s two-step process wherein an inspection report is prepared and then is followed up with the enforcement response once the violations are determined. DEQ has a requirement to complete inspections in fewer than 45 days per the Performance Partnership Grant. For all HW evaluations conducted by DEQ, 288 out of 342 (84%) were completed in under 45 days. If we use the EPA goal of 60 days, overall for FY19, DEQ conducted 342 HW evaluations with only 34 (or 10%) taking longer than 60 days. This count does not include 116 focused compliance inspections (FCIs) which were performed, and all finalized within 60 days. DEQ intends to revise its requirements to set a goal of 60 days for inspection report completion to address those complicated cases where the 45 day goal may justifiably be exceeded, including inspections that result in enforcement.

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

VADEQ made accurate compliance determinations 88.6% of the time and appropriate SNC determinations 94.3% of the time. Additionally, VADEQ made timely SNC determinations 100% of the time.

Explanation:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2a Long-standing secondary violators			3		3
7a Accurate compliance determinations [GOAL]	100%		31	35	88.6%
7b Violations found during CEI and FCI inspections		34.3%	170	439	38.7%
8a SNC identification rate at sites with CEI and FCI		1.6%	23	840	2.7%
8b Timeliness of SNC determinations [GOAL]	100%	76.5%	23	23	100%
8c Appropriate SNC determinations [GOAL]	100%		33	35	94.3%

State Response:

RCRA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

VADEQ took an appropriate enforcement action to address the violations 100% of the time and took enforcement actions that returned the violator to compliance 96.6% of the time.

Explanation:

On one occasion, EPA found that a facility file did not contain evidence that the facility had successfully implemented their emergency plan and training program.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10b Appropriate enforcement taken to address violations [GOAL]	100%		29	29	100%
9a Enforcement that returns sites to compliance [GOAL]	100%		28	29	96.6%

State Response:

RCRA Element 4 - Enforcement

Finding 4-2

Area for Attention

Recurring Issue:

No

Summary:

Metric 10a of the Data Metric Analysis (DMA) shows that 12 out of 19 SNY evaluations had timely enforcement. This metric is typically measured by comparing Day Zero (date of inspection) to the date the formal enforcement action is final and determining if the action took place within 360 days. Originally, ECHO showed there were 7 SNY evaluations, 21% of which were timely. After recalculating this metric to include additional SNY evaluations observed during the file review, and adjusting the days to enforcement based on VADEQ's unique enforcement timeline, this percentage increased to 63.2%. Additionally, after considering unique VADEQ procedures and timeliness standards, EPA found that 15 out of 19, or 78.9%, of SNY evaluations had timely enforcement.

Explanation:

VADEQ's RCRA Compliance Section and their Enforcement Section are separate entities within the Department. VADEQ Compliance Section is typically responsible for conducting inspections, writing inspection reports, and drafting/sending warning letters and Notices of Violation before the case is officially referred to the Enforcement Section. VADEQ's Enforcement Section considers Day Zero for this metric to be the date the NOV is sent to the facility, which is also the date the case is officially referred to the Enforcement Section. As outlined in VADEQ's enforcement manual, the SNY enforcement timeliness metric is measured by comparing Day Zero (the date the NOV) to the date the final order becomes effective. This differs from EPA's practice of considering the date of the inspection Day Zero. The time between when an inspection is conducted and when the NOV is sent takes approximately 60 days. Additionally, VADEQ is

required by statute to hold a public notice period before a final order is signed by the Department and becomes effective. After the Responsible Party signs the consent order, VADEQ must provide at least 30 days of public notice and comment period on proposed Waste and Water orders. In addition to the 30 days' public notice and comment period, the Register takes about 20 days to process the notice before the notice and comment period begins.

According to VADEQ's enforcement manual, the timeliness standard for SNY enforcement actions is to have an enforcement action completed (final order effective) within 365 days of Day Zero (date of the NOV) and no more than 455 days. Given that EPA's initial finding data calculates this metric based on Day Zero being the date of the inspection and does not consider that VADEQ's enforcement actions will have at least 50 days added on to the enforcement timeliness because of the public notice and comment period, to make an accurate finding for this metric, it is appropriate to subtract 110 days (60 days from inspection to referral, and 50 days for public notice and comment period) from the original findings to accurately determine if VADEQ is timely in their SNY enforcement actions.

By taking these unique VADEQ factors into account, but still using EPA timeliness metric of 360 days, EPA found that VADEQ was timely in their SNY enforcement actions 12 out of 19 times, which is 62.3%. Furthermore, if EPA took these unique factors into account and used VADEQ's 455-day timeliness metric, 15 out of 19, or 78.9%, of SNY enforcement actions were completed timely. Given these percentages and considering that VADEQ consistently takes a high number of formal enforcement cases that result in robust penalties, it is EPA's recommendation that Metric 10a be an Area for State Attention.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10a Timely enforcement taken to address SNC [GOAL]	100%	87.7%	15	19	78.9%

State Response:

DEQ Enforcement also experienced staff shortages during the review time period, including the Central Office Land Protection Enforcement manager, which serves to track timeliness, and provides assistance/consistency review. Additionally, during this FFY2019, the Director of Enforcement role was not filled in a full time capacity, which is critical in program oversight and support. With regards to timeliness, the DEQ Regional Office staff also have several vacancies, leading to a longer processing time of these cases. As stated above, DEQ's Enforcement program routinely and consistently processes a high number of formal enforcement cases, resulting in significant penalties.

RCRA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

In 100% of penalty files reviewed by EPA, VADEQ documented gravity and economic benefit calculations, penalty justifications, and payment of penalty.

Explanation:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
11a Gravity and economic benefit [GOAL]	100%		17	17	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		9	9	100%
12b Penalty collection [GOAL]	100%		17	17	100%

State Response:
