



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
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MAY 01 2014

REPLY TO THE ATTENTION OF:

Dan Wyant
Director
Michigan Department of Environmental Quality
525 West Allegan Street
P.O. Box 30473
Lansing, MI 48909-7973

Dear Mr. Wyant:

The U.S. Environmental Protection Agency would like to thank you and your staff for participating in our enforcement program review of the Clean Air Act Stationary Source program, Clean Water Act National Pollutant Discharge Elimination System program, and Resource Conservation and Recovery Act Subtitle C hazardous waste program. We appreciate your staff's cooperation and assistance during this review.

Please find enclosed the final enforcement review report, which contains an executive summary, as well as detailed findings and recommendations concerning Michigan Department of Environmental Quality's (MDEQ) enforcement programs. We used an analysis of MDEQ data and reviews of MDEQ's case files, in addition to feedback from MDEQ on the draft report, to develop the final report. As you can see, both agencies have committed to follow-up actions in many areas.

If you have any questions, please contact me at 312-886-3000 or Alan Walts, Director, Office of Enforcement and Compliance Assistance, at 312-353-8894 or walts.alan@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Mathur", written over a horizontal line.

Bharat Mathur
Deputy Regional Administrator

Enclosure

STATE REVIEW FRAMEWORK

Michigan

Clean Water Act, Clean Air Act, and Resource Conservation and Recovery Act Implementation in Federal Fiscal Year 2012

**U.S. Environmental Protection Agency
Region 5, Chicago**

**Final Report
May 2, 2014**

Executive Summary

Introduction

EPA Region 5 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Michigan Department of Environmental Quality (MDEQ).

EPA bases SRF findings on data and file review metrics, and conversations with program management and staff. EPA will track recommended actions from the review in the SRF Tracker and publish reports and recommendations on EPA's Enforcement and Compliance History Online (ECHO) web site.

As part of the reviews conducted in FY12 in Michigan, Region 5 reviewed the State's program authorization documents and the State's Memorandum of Agreement (MOA) using the final approved Guidance for National Pollutant Discharge Elimination System (NPDES) MOAs between States and EPA. EPA will follow up with the state on the results of the review at a later date.

Areas of Strong Performance

- CWA- MDEQ Meets or Exceeds Expectations in regards to penalty calculation, documentation, and collection.
- CAA – MDEQ's files were very well organized and assembled in boxes. Compliance monitoring activities and enforcement activities (cases) were organized and placed in boxes by color-coded file folders. Most compliance monitoring reviews (CMRs) reviewed were well written, thorough, accurate and had a good format.
- RCRA - MDEQ's penalty calculations were appropriately documented in all of the files reviewed that included a final assessed penalty. The files indicated that MDEQ considered and included, where appropriate, gravity and economic benefit; documented the difference between the initial and final assessed penalty, and rationale for that difference; and documented the collection of penalties.

Priority Issues to Address

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

- CWA- The Region found that MDEQ is not identifying or entering Single Event Violations (SEVs), and is not accurately identifying them as Significant Non-Compliance (SNC) or Non-SNC. In addition to data entry actions identified under Element 1, MDEQ must review national SEV guidance and develop a plan that addresses identification and resolution of compliance schedules, permit schedules, and documentation and SNC escalation of SEVs in ICIS-NPDES.
- CAA - MDEQ's High Priority Violations (HPV) discovery rate is 2.3%, which is lower than the national average of 4.3%. MDEQ is identifying violations; however, MDEQ is not reporting nor adding the violations as HPVs per the HPV criterion(s). MDEQ will

train staff in making accurate violation and HPV determinations and will discuss options for improving ability to meet timeliness goals and the appropriate resolution of HPVs.

Most Significant CWA-NPDES Program Issues¹

- MDEQ is not identifying or entering SEVs, and is not accurately identifying them as SNC or non-SNC. Single Event Violations are used to capture any permit violations that are not automatically detected by ICIS. Such violations are often found during compliance monitoring activities, but may also arise in other ways, such as failure to submit a timely permit application. While MDEQ is addressing SNC and returning facilities to compliance, those actions are, on occasion, not completed in a timely manner. The Region recommends that MDEQ develop a plan to address these issues and a formal policy statement, in order to accommodate any resource issues and meet national policy requirements.
- MDEQ's inspection and enforcement data were not being properly reported to ICIS-NPDES. Additionally, there were instances where information provided to ICIS-NPDES was not substantiated by documentation in the file. The Region recommends that MDEQ review current data entry procedures to reconcile these issues as well as provide new or updated written procedures and training to staff to resolve data entry and file management problems.
- A portion of MDEQ's inspection reports reviewed were incomplete. In some instances, inspection reports did not provide sufficient information to determine compliance. It was also noted that MDEQ staff frequently review facility-specific DMR data prior to conducting inspections. However, the review team established that the findings of the MDEQ staff review were not being included in the inspection reports or the enforcement actions stemming from inspections. The Region recommends that MDEQ develop a plan that includes guidelines, procedures, and oversight for the completion of the inspection reports.

Most Significant CAA Stationary Source Program Issues

- MDEQ is identifying violations; however, MDEQ is not reporting nor adding the violations as HPVs per the HPV criterion(s).
- Compliance status in AFS is not being accurately reflected or changed in AFS once a compliance determination has been made by MDEQ.
- MDEQ is not accurately reporting Title V annual compliance certification reviews to AFS, amongst other MDRs, due to internal database programming.

¹ EPA's "National Strategy for Improving Oversight of State Enforcement Performance" identifies the following as significant recurrent issues: "Widespread and persistent data inaccuracy and incompleteness, which make it hard to identify when serious problems exist or to track state actions; routine failure of states to identify and report significant noncompliance; routine failure of states to take timely or appropriate enforcement actions to return violating facilities to compliance, potentially allowing pollution to continue unabated; failure of states to take appropriate penalty actions, which results in ineffective deterrence for noncompliance and an unlevel playing field for companies that do comply; use of enforcement orders to circumvent standards or to extend permits without appropriate notice and comment; and failure to inspect and enforce in some regulated sectors."

Most Significant RCRA Subtitle C Program Issues

- MDEQ is not completely and accurately translating all inspection and enforcement data from the Waste Data System (WDS) into RCRAInfo. According to ECHO/RCRAInfo, thirty percent of the files inaccurately or incompletely reflected data such as violation status; number or type of inspections for the 2012 review period; and total penalty amounts. Also, MDEQ utilized inaccurate formal enforcement action series coding/entry for some informal enforcement actions. This same finding was made during MDEQ's Round 2 SRF. Progress will be monitored through annual file audits and quarterly conference calls by Region 5 and steps will be taken as necessary to review implementation of recommended actions.
- MDEQ appropriately and timely determined SNC, and has taken appropriate enforcement in all of the files reviewed for the 2012 review period. However, 258 sites according to ECHO/RCRAInfo were in violation for greater than 240 days without being evaluated for re-designation as SNC or returned to compliance (RTC). These long-standing secondary violators' status is still displayed in ECHO/RCRAInfo likely due to RTC dates not being timely entered by MDEQ into WDS or inaccurate translation from WDS into RCRAInfo. Although this data reflects untimely designation and reporting/entry of SNCs into WDS and subsequently translated into RCRAInfo, the data metric aims to evaluate data accuracy, upon which the emphasis should be placed for this finding. Progress will be monitored through annual file audits and quarterly conference calls by Region 5 and steps will be taken as necessary to review implementation of recommended actions.

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I. Background on the State Review Framework

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

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

Reviews cover:

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

EPA conducts SRF reviews in three phases:

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

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

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

Each state's programs are reviewed once every four years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2013 and will continue through FY 2016.

II. SRF Review Process

Review period: FY 2012

Key dates:

- Kickoff letter sent to state: March 26, 2013
- Kickoff meeting conducted: April 15, 2013
- Data metric analysis and file selection list sent to state: April 12, 2013
- On-site file review conducted: June 2013
- Draft report sent to state: February 21, 2014
- Report finalized: May 2, 2014

State and EPA key contacts for review:

- SRF - Stephanie Cheaney/R5 (312-886-3509), Peter Ostlund/MDEQ (517-373-1982)
- CAA - Rochelle Marceillars/R5 (312-353-4370), Debra Flowers/R5 (312-353-4410), Jeff Gahris/R5 (312-886-6794), Sarah Marshall/R5 (312-886-6797), Janis Denman/MDEQ (231-876-4415 or 989-705-3408)
- CWA - Ken Gunter/R5 (312-353-9076), Rhiannon Dee/R5 (312-886-4882), James Coleman/R5 (312-886-0148), Peter Ostlund/MDEQ (517-373-1982), Mike Masterson/MDEQ (517-335-1065), Barry Selden/MDEQ (517-373-6437), Christine Veldkamp/MDEQ (616-356-0263)
- RCRA - Bryan Gangswich/R5 (312-886-0989), John Craig/MDEQ (517-373-7923), Rich Conforti/MDEQ (517-241-2108), Lonnie Lee/MDEQ (517-373-4736)

III. SRF Findings

Findings represent EPA’s conclusions regarding state performance, and may be based on:

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

There are three categories of findings:

Meets or Exceeds Expectations: Describes a situation where no performance deficiency is identified or where a state has performed beyond expectations.

Area for State Attention: An activity, process, or policy that one or more SRF metrics show as a minor problem. The state should correct the issue without additional EPA oversight. EPA may make recommendations to improve performance, but it will not monitor these recommendations for completion until the next SRF review.

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

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

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

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

Clean Water Act Findings

Element 1 — Data

Finding Area for State Improvement

Summary Twenty-eight of 40 reviewed files (70.0%) accurately reflected data reported to the national data systems. Zero of 3 facilities (0.0%) with enforcement actions during the review year addressed SNC violations at major facilities in a timely manner.

Explanation Data in 12 of the 40 files reviewed were inaccurately reflected in the ECHO. Examples of inaccuracies noted are: 1) five files missing an inspection report; 2) a Recon inspection not reported to ECHO; 3) two files with inspection not reported to ECHO; 4) one file missing Consent Judgment; 5) one file missing penalty information; 6) a Recon inspection reported as a Compliance Evaluation Inspection (CEI); 7) two files with “compliance communication” informal actions not reported to ECHO; 8) one file does not reflect facility name change; 9) one file with a violation not reported to ECHO; and 10) one file with an inaccurate enforcement action number, Administrative Compliance Order (ACO).

The file review shows that SNCs are being addressed appropriately; however, the data metric 10A1 indicates that addressing actions are not being accomplished or reported to ICIS-NPDES in a timely manner.

A similar finding was noted in MDEQ’s Round 2 SRF report and remains an issue.

Metrics listed below only refer to the accuracy and completeness of data in EPA systems and files for purposes of this Element.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
1b1 Permit limit rate for major facilities	>95%	98.3%	174	178	97.8%
1b2 DMR entry rate for major facilities	>95%	97.9%	4684	4738	98.9%
2b Files reviewed where data are accurately reflected in the national data system	100%	N/A	28	40	70.0%
5a Inspection coverage of NPDES majors	100% CMS	57.6%	106	178	59.6%
5b1 Inspection coverage of NPDES non-majors with individual permits	100% CMS	25.6%	455	1613	28.2%
5b2 Inspection coverage of NPDES non-majors	100%	5.9%	1	10	10.0%

with general permits	CMS				
7a Number of major facilities with single event violations	N/A	N/A	0		
7d1 Major facilities in noncompliance	N/A	60.3%	81	178	45.5%
7f1 Non-major facilities in Category 1 noncompliance	N/A	N/A	833		
7g1 Non-major facilities in Category 2 noncompliance	N/A	N/A	323		
8a2 Percentage of major facilities in SNC	N/A	20.6%	14	182	7.7%
10a Major facilities with timely action as appropriate	98%	3.6%	0	3	0.0%

State Response

We agree with the USEPA's findings for Element 1. Not all inspection data and enforcement data was being reported to the USEPA's database, the Integrated Compliance Information System (ICIS), and some of the data were incomplete. Steps to address this are discussed below.

Recommendation

- By 60 days of the final report, MDEQ should review current data entry procedures to reconcile issues found in this review as well as provide new or updated written procedures and training to staff to resolve data entry and file management problems.
- Progress will be monitored by Region 5 through ECHO quarterly data pulls and steps will be taken as necessary within 180 days to review implementation of recommended actions.
- By 90 days of the final report, MDEQ must review national guidance and develop a plan for identifying, addressing, and reporting SNC violations in ICIS-NPDES in a timely manner.
- By 120 days of the final report, developed procedures to ensure timeliness from the plan must be written into MDEQ policy.
- Progress will be monitored by Region 5 and steps will be taken as necessary to review implementation of recommended actions.

Element 2 — Inspections

Finding Area for State Improvement

Summary MDEQ met five of 6 inspection commitments (83.3%) per the negotiated state-specific Compliance Monitoring Strategy (CMS) Plan. Twenty-four of 32 reviewed inspection reports (75.0%) provided sufficient documentation to determine compliance. Seventeen of 26 reviewed inspection reports (65.4%) were timely.

Explanation The MDEQ CMS commitment not met was for major CSO inspections, which is one inspection in five years. Instead, MDEQ was heavily involved in Long Term Control Plan (LTCP) monitoring and issued construction permits for all CSO corrective action. Therefore, oversight was enhanced in other areas other than inspections. MDEQ is on track to meet its 100% Concentrated Animal Feeding Operation (CAFO) inspection commitment by the end of FY13, as per the October 2007 CWA NPDES CMS Core Program and Wet Weather Sources Memorandum. MDEQ performs (high level) inspections on 20% of its CAFOs per year, generally a CAFO facility inspection every 5 years. A cumulative review of FY09-FY12 CAFO data indicates that the MDEQ will accomplish its goal within the prescribed timeframe.

Eight of the 32 inspection reports reviewed were incomplete or did not provide sufficient information to determine compliance. Examples of inspection report discrepancies include: 1) six files missing inspection report/checklists, though inspections were reported to ECHO; and 2) two files had inspections equivalent to a Recon inspection, not a CEI as reported.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
4a1 Pretreatment compliance inspections and audits	100% CMS	N/A	14	14	100%
4a2 Significant Industrial User inspections for SIUs discharging to non-authorized POTWs	100% CMS	N/A	11	0	11
4a4 Major CSO inspections	100% CMS	N/A	2	7	28.6%
4a5 SSO inspections	100% CMS	N/A	1	0	1
4a7 Phase I & II MS4 audits or inspections	100% CMS	N/A	48	45	106.7%
4a8 Industrial stormwater inspections	100% CMS	N/A	505	330	153.0%

4a9 Phase I and II stormwater construction inspections	100% CMS	N/A	243	90	270.0%
4a10 Medium and large NPDES CAFO inspections	100% CMS	N/A	32	37	86.5%
5a Inspection coverage of NPDES majors	100% CMS	57.6%	106	178	59.6%
5b1 Inspection coverage of NPDES non-majors with individual permits	100% CMS	25.6%	455	1613	28.2%
5b2 Inspection coverage of NPDES non-majors with general permits	100% CMS	5.9%	1	10	10.0%
6a Inspection reports reviewed that provide sufficient documentation to determine compliance	100%	N/A	24	32	75.0%
6b Inspection reports completed within prescribed timeframe	100%	N/A	17	26	65.4%

State Response

We agree with the USEPA's findings for Element 2. Some of the inspection records did not fully document the findings of the inspection (8 of 32 inspection files reviewed). Steps to address this are discussed below.

Recommendation

- By 60 days of the final report, MDEQ will develop a plan that includes guidelines, procedures, oversight for the completion of inspection reports, and identify a mandatory location for official inspection file.
- By 90 days of the final report, solutions to identified issues that are included in the plan must be written into MDEQ policy.
- Progress will be monitored by Region 5 through reviewing revised policy and steps will be taken as necessary within 180 days to review implementation of recommended actions.

Element 3 — Violations

Finding Area for State Improvement

Summary It appears that SEVs are not being reported to ICIS-NPDES as required. Twenty-five of 32 reviewed inspection reports (78.1%) led to an accurate compliance determination. MDEQ's SNC rate is 7.7%, which is better than national average. Two of 22 reviewed SEVs (9.1%) were accurately identified as SNC or non-SNC. Zero of four SEVs (0.0%) identified as SNC were reported timely.

Explanation MDEQ's SNC rate is less than the national average, which is a positive indicator. However, during the file review, the Region observed that one SEV was appropriately identified as SNC and zero of the SEVs were identified as SNC in a timely manner. This may artificially lower MDEQ's SNC rate.

A similar finding was noted in MDEQ's Round 2 SRF report and remains an issue.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
7a1 Number of major facilities with single event violations	N/A	N/A	0		
7d1 Major facilities in noncompliance	N/A	60.3%	81	178	45.5%
7e Inspection reports reviewed that led to an accurate compliance determination	100%	N/A	25	32	78.1%
7f1 Non-major facilities in Category 1 noncompliance	N/A	N/A	833		
7g1 Non-major facilities in Category 2 noncompliance	N/A	N/A	323		
8a2 Percentage of major facilities in SNC	N/A	20.6%	14	182	7.7%
8b Single-event violations accurately identified as SNC or non-SNC	100%	N/A	2	22	9.1%
8c Percentage of SEVs identified as SNC reported timely at major facilities	100%	N/A	0	4	0.0%

State Response We agree with the USEPA's findings for Element 3. We have not reported single event violations (SEV) to ICIS. Steps to address this are discussed below.

Recommendation

- By 90 days of the final report, in addition to data entry actions identified under Element 1, MDEQ must review all national SEV guidances and develop a plan that addresses identification and

resolution of compliance schedules, permit schedules, and documentation and SNC escalation of SEVs in ICIS-NPDES.

- By 120 days of the final report, solutions to identified issues that are included in the plan must be written into MDEQ policy.
 - Progress will be monitored by Region 5 and steps will be taken as necessary within 180 days to review implementation of recommended actions.
-

Element 4 — Enforcement

Finding Area for State Attention

Summary Twenty-one of 23 reviewed enforcement responses (91.3%) returned, or will return, a source in violation to compliance. Zero of 3 facilities (0.0%) with enforcement actions during the review year addressed SNC violations at major facilities in a timely manner. Ten of 11 reviewed enforcement responses (90.9%) addressed SNC that are appropriate to the violations.

Explanation Two of 23 reviewed enforcement responses did not, or will not return, a source in violation to compliance. Examples of discrepancies include: 1) violations continue despite issuance of several violation notices; and 2) temperature violations continue to be recorded.

With respect to data metric 10A1, a detailed review was performed on the three MDEQ facilities subjected to this metric. The review found that all three facilities returned to compliance without formal enforcement and MDEQ provided adequate justification why either informal enforcement or compliance assistance was appropriate. However, this was not reported to ICIS-NPDES in a timely manner.

This finding is only an Area for State Attention because the Region believes that MDEQ can improve performance in this area by following the data entry Recommendations for Element 1.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
9a Percentage of enforcement responses that return or will return source in violation to compliance	100%	N/A	21	23	91.3%
10a1 Major facilities with timely action as appropriate	98%	3.6%	0	3	0.0%
10b Enforcement responses reviewed that address violations in an appropriate manner	100%	N/A	10	11	90.9%

State Response

We may not agree with the USEPA's findings for Element 4 (as noted *above*, the USEPA has not clearly identified which facility records indicate problems, making it difficult to respond to their findings). The USEPA found problems with 2 of 23 files reviewed. It appears that the USEPA is referencing the Americana Mobile Home Park and St. Mary's Cement facility files. If these are the correct facilities, then the conclusory statements in the table need refining to accurately reflect the ongoing activity and enforcement actions designed to resolve the respective violations. Americana Mobile Home Park is in active litigation with

assistance from the Michigan Department of Attorney General. The MDEQ has resolved the violations at the St. Mary's Cement facility as an amended permit with modified conditions and the facility owners have agreed to construct modifications to their facility that are designed to prevent the noted violations in the future.

Recommendation No action needed.

Element 5 — Penalties

Finding	Meets or Exceeds Expectations																												
Summary	Nine of 9 reviewed penalty calculations (100%) considered and included, where appropriate, gravity and economic benefit. Eleven of 11 reviewed penalties (100%) documented the rationale for the final value assessed compared to the initial value assessed. Ten of 11 reviewed penalty files (90.9%) documented collection of penalty.																												
Explanation	One reviewed penalty failed to document collection.																												
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>11a Penalty calculations reviewed that consider and include gravity and economic benefit</td> <td>100%</td> <td>N/A</td> <td>9</td> <td>9</td> <td>100%</td> </tr> <tr> <td>12a Documentation of the difference between initial and final penalty and rationale</td> <td>100%</td> <td>N/A</td> <td>11</td> <td>11</td> <td>100%</td> </tr> <tr> <td>12b Penalties collected</td> <td>100%</td> <td>N/A</td> <td>10</td> <td>11</td> <td>90.9%</td> </tr> </tbody> </table>					Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	11a Penalty calculations reviewed that consider and include gravity and economic benefit	100%	N/A	9	9	100%	12a Documentation of the difference between initial and final penalty and rationale	100%	N/A	11	11	100%	12b Penalties collected	100%	N/A	10	11	90.9%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																								
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12a Documentation of the difference between initial and final penalty and rationale	100%	N/A	11	11	100%																								
12b Penalties collected	100%	N/A	10	11	90.9%																								
State Response	We agree with the USEPA's findings on Element 5. The USEPA identified no problems.																												
Recommendation	No action needed.																												

Additional MDEQ Clean Water Act NPDES Program Comments:

Although our corrective actions are not due until after the report findings are finalized, we have started to address some of the deficiencies identified by the USEPA.

- The problem with moving data to ICIS will not be fully rectified until our new database (MiWaters) comes online. That is scheduled to happen in June 2015. At that time, all data flows to ICIS should be in place and all data elements to support the *movement* of data should be in place. Until that time, the MDEQ will work to *move* data to ICIS with the existing system. This should move inspection and enforcement data, but not SEVs or penalties. Penalties will be manually entered; SEVs will not be transferred.
- We have recently shared a new inspection complete checklist document for staff to use in data entry. Our district supervisors have been asked to develop internal procedures to insure the inspection records are reviewed for completeness and quality.
- We are reviewing our inspection templates to make sure they provide clear instructions to our staff.

We are currently working with the USEPA's Region 5 staff on three Webinars for our staff. The first Webinar dealt with proper documentation of inspections results; the second will deal with documenting violations and our obligation under the CWA for timely follow up. The third will focus on the proper enforcement tools to resolve noncompliance.

Clean Air Act Findings

Element 1 — Data

Finding Area for State Improvement

Summary Ten of 31 reviewed files (32.3%) accurately reflected MDR data reported to AFS.

Explanation Data in 21 of the 31 files reviewed were inaccurately reflected in ECHO. Examples of inaccuracies noted are: 1) thirteen files with stack test and/or Title V ACC not or incorrectly reported to AFS; 2) one file missing FCE reported to AFS; 3) incorrect violation type reported to AFS; 4) duplicate PCE reported on same date; 5) NO_x violation not reported as an HPV; 6) three files with incorrect inspection dates; 7) two files with incorrect facility addresses; 8) two files with NOV_s not reported to AFS; and 9) two files with incorrect NOV and AO dates.

A similar finding was noted in MDEQ's Round 2 SRF report and remains an issue.

Metrics listed below only refer to the accuracy and completeness of data in EPA systems and files for purposes of this Element.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
2b Accurate MDR data in AFS	100%	N/A	10	31	32.3%
3a2 Untimely entry of HPV determinations	N/A	N/A	8		
3b1 Timely reporting of compliance monitoring MDRs	100%	80%	684	754	90.7%
3b2 Timely reporting of stack test dates and results	100%	73.1%	100	102	98.0%
3b3 Timely reporting of enforcement MDRs	100%	73.7%	101	125	80.8%
5a FCE coverage: majors and mega-sites	100%	90.4%	168	233	72.1%
5b FCE coverage: SM-80s	100%	93.4%	216	268	80.6%
5e Review of Title V annual compliance certifications	100%	81.8%	263	398	66.1%
7b1 Violations reported per informal actions	100%	59.7%	70	86	81.4%
7b3 Violations reported per HPV identified	100%	53.4%	8	9	88.9%
8a HPV discovery rate at majors	N/A	4.3%	9	383	2.3%
10a Timely action taken to address HPV _s	N/A	70.5%	3	5	60.0%

State Response

Many of the "deficiencies" in the SRF are directly connected to ongoing data upload issues. Many of the data issues have already been brought to the attention of the USEPA, Region 5, during monthly enforcement and data calls. It is noted that Michigan submits its compliance and enforcement information through a batch electronic data transfer using the Universal Interface rather than manual entry directly into the Air Facility System (AFS). The following items describe some of the known data issues encountered:

- a. Uploading of information from MACES to the AFS database that took place **after** FY 2012 likely will not show up on the frozen FY 2012 data set. Several comments concerning data have already been "corrected" with uploads that have been completed since FY 2012.
- b. Some AFS data may contain duplicates or incorrect data, which can be the result of user data entry errors into MACES or the result of data initially reported from MACES to AFS that is later revised or deleted in MACES and not corrected in AFS. These changes are identified during the monthly calls with the USEPA and are manually updated on a case-by-case basis.
- c. Compliance status by quarter in USEPA's Enforcement and Compliance History Online- The Michigan Department of Environmental Quality (MDEQ) does not have the electronic capability to change or revise the compliance status from "in violation" to "in compliance" for actions already reported to AFS. To do this would require manual data correction in AFS on a continuous basis with resources that the MDEQ's Air Quality Division (AQD) does not have.
- d. Stack test information - Based on existing stored procedures for compiling MACES data, stack test data will not get reported unless the AQD's Technical Programs Unit conducts a review of the test. The MDEQ has an existing work request with the Michigan Department of Technology, Management and Budget to update and revise these stored procedures.
- e. Title V certification reviews - Based on existing stored procedures for compiling MACES data, the Title V certification review data will not get reported if the review is not conducted in the same month that the report was received. The MDEQ has an existing work request with the Michigan Department of Technology, Management and Budget to update and revise these stored procedures.

It should be noted that Michigan has made great strides over the last few years in both cleaning up our data in AFS and improving the upload of information to the USEPA. Many of the remaining data issues are beyond our control. We will continue to work with the Michigan Department of Technology, Management and Budget to address the remaining issues.

The AQD is hopeful that many of the data reporting issues identified will be resolved as a result of data cleanup and electronic data reporting actions taken by the AQD during the modernization of AFS to ICIS-Air.

Recommendation

- By 60 days of the final report, EPA will pull ECHO data and discuss with MDEQ during monthly conference calls their data entry.
 - If issues are not resolved through monthly conference calls, MDEQ will propose a plan to address them, including specific actions to address data gaps identified above and milestones for implementation.
 - Progress will be monitored by Region 5 through monthly conference calls and steps will be taken as necessary within 180 days to review implementation of recommended actions.
-

Element 2 — Inspections

Finding Area for State Improvement

Summary 173 of 116 (149.1%) planned Title V Major FCEs were completed. 227 of 160 (141.9%) planned SM-80 FCEs were completed. According to AFS for MDEQ, 72.1% of CMS majors and mega-sites received an FCE, 80.6% of CMS SM-80s received an FCE, and MDEQ has reviewed Title V annual compliance certificates (ACC) for 66.1% of the active Title V universe. Seven of 24 reviewed FCEs (29.2%) met all criteria in the CMR checklist. Nineteen of the 24 files reviewed (79.2%) provided sufficient documentation to determine source compliance.

Explanation Based on EPA findings under CAA Metrics 4a1 and 4a2, the Region believes that meeting inspection commitments under the state’s compliance monitoring strategy plan is a more accurate characterization of state performance than those reported under CAA Metrics 5a and 5b. CAA Metrics 4a1 and 4a2 examines the specific universe of facilities that the state committed to inspect, rather than the more general set of all facilities included under CAA 5a and 5b inspection coverage metrics.

Seventeen of the 24 CMRs reviewed were partially incomplete. Examples of CMR discrepancies include: 1) two files with confusing activity dates; 2) PCE and FCE reported with same date; 3) no facility process information; 4) applicable requirement not identified; 5) two files did not indicate whether findings or recommendations had been conveyed to facility; 6) two files with no compliance assistance documented; and 7) two files with several NOVs and AOs in file but CMR mentioned no previous enforcement.

A similar finding was noted in MDEQ’s Round 2 SRF report and remains an issue.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
3b1 Timely reporting of compliance monitoring MDRs	100%	80%	684	754	90.7%
4a1 Title V Major FCEs	N/A	N/A	173	116	149.1%
4a2 SM-80 FCEs	N/A	N/A	227	160	141.9%
5a FCE coverage: majors and mega-sites	100%	90.4%	168	233	72.1%
5b FCE coverage: SM-80s	100%	93.4%	216	268	80.6%
5e Review of Title V annual compliance certifications	100%	81.6%	263	398	66.1%
6a Documentation of FCE elements	100%	N/A	7	24	29.2%

6b Compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance	100%	N/A	19	24	79.2%
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State Response

The Michigan Air Compliance and Enforcement System (MACES) database does not identify activities as PCEs. Various documents created within MACES "qualify" as PCEs. These can include the following:

- Compliance activities (ranging from various types of inspections, observing stack tests, and review of various plans and records).
- Documentation/review of various types of recurring reporting that is received from the source (Renewable Operating Permit, New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, Emission Exceedance Reporting, etc.).
- Review of yearly emission reporting and other activities.

Once an inspector has determined that all PCEs have been completed for a source, they generate the FCE Report. This report compiles a listing of all activities that have been completed during the 12 months preceding the FCE. The inspector then reviews all of the PCEs listed on the FCE Report and determines the overall compliance status of the facility for the FCE, based on the various activities that have been conducted during the previous 12-month time period.

The USEPA's Compliance Monitoring Strategy (CMS) Policy dated September 2010, lists FCEs and PCEs as two separate categories of compliance monitoring. The policy states: "*A PCE may be conducted solely for the purpose of evaluating a specific aspect of a facility, or combined over the course of a Federal fiscal year (or up to three Federal fiscal years at mega-sites) to satisfy the requirements of an FCE.*"

Michigan believes that our documentation of PCEs and FCEs meets the requirements of the USEPA's CMS Policy. We will be directing staff to make sure that the date of the last PCE conducted is also the date entered on the FCE Report. We feel that this will address the USEPA's concern on this issue.

Recommendation

- By 30 days of the final report, EPA and MDEQ will meet to discuss and analyze MDEQ's FCE/CMR template to ensure that it contains the required elements of FCEs and CMRs.

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- If it is found that the template and/or procedure to use the template need to be updated, MDEQ will complete the update and provide inspection staff guidance on FCE and CMR completeness by 90 days of the final report.
 - Progress will be monitored by Region 5 through monthly conference calls and steps will be taken as necessary to review implementation of recommended actions.
-

Element 3 — Violations

Finding Area for State Improvement

Summary Nine of 29 reviewed CMRs or source files led to accurate compliance determinations and were accurately reported in AFS. MDEQ’s HPV discovery rate is 2.3%, which is lower than the national average of 4.3%. Eleven of 16 reviewed violations (68.8%) were accurately determined to be HPVs.

Explanation Twenty of 29 reviewed CMRs containing information and documentation used by MDEQ to determine compliance were inaccurately reported in AFS. The “Three Year Compliance Status by Quarter” section of the ECHO Detailed Facility Report (DFR) did not match information found in 20 files reviewed.

Four of the 16 violations reviewed were not accurately determined to be HPVs for the following reasons: 1) two files had questionable parameter limits used; and 2) two other violations should have been identified as HPVs.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
3a2 Untimely entry of HPV determinations	N/A	N/A	8		
3b2 Timely reporting of stack test dates and results	100%	73.1%	100	102	98.0%
7a Accuracy of compliance determinations	100%	N/A	9	29	31.0%
7b1 Violations reported per informal actions	100%	59.7%	70	86	81.4%
7b3 Violations reported per HPV identified	100%	53.4%	8	9	88.9%
8a HPV discovery rate at majors	N/A	4.3%	9	383	2.3%
8c Verify the accuracy of HPV determinations	100%	N/A	12	16	75.0%

State Response See Additional Comments below.

- Recommendation**
- Solutions to issues regarding data entry will be resolved under Element 1 of this report.
 - If issues are not resolved through monthly conference calls, MDEQ will propose a plan to address them, including specific actions to address data gaps identified above and milestones for implementation.
 - By 60 days of the final report, MDEQ will train staff in making accurate violation and HPV determinations.
 - Progress will be monitored by Region 5 through monthly

conference calls and steps will be taken as necessary within 180 days to review implementation of recommended actions.

Element 4 — Enforcement

Finding Area for State Improvement

Summary Three of 4 reviewed formal enforcement responses (75.0%) included required corrective actions that will return the source to compliance in a specified time frame. Two of 3 reviewed HPV addressing actions (66.7%) met the timeliness standard in the HPV Policy. Three of 4 reviewed HPVs (75.0%) demonstrated the violation was appropriately addressed.

Explanation One reviewed formal enforcement response did not include documentation to show that the formal enforcement action included required corrective actions that returned or will return the facility to compliance.

One HPV addressing action was not addressed within 270 days of the Day Zero date. One of the reviewed HPVs did not demonstrate the violation was appropriately addressed.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
3b3 Timely reporting of enforcement MDRs	100%	73.7%	101	125	80.8%
9a formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe	100%	N/A	3	4	75.0%
10a Timely action taken to address HPVs	100%	N/A	2	3	66.7%
10b Appropriate enforcement responses for HPVs	100%	N/A	3	4	75.0%

State Response See Additional Comments below.

Recommendation

- Solutions to issues regarding data entry will be resolved under Element 1 of this report.
- If issues are not resolved through monthly conference calls, MDEQ will propose a plan to address them, including specific actions to address data gaps identified above and milestones for implementation.
- By 60 days of the final report, EPA and MDEQ will discuss options for improving ability to meet timeliness goals and the appropriate resolution of HPVs. Solutions determined during these discussions will be implemented by a date agreed upon by both parties.
- Progress will be monitored by Region 5 through monthly calls and steps will be taken as necessary within 180 days to review implementation of recommended actions.

Element 5 — Penalties

Finding Area for State Attention

Summary Two of 3 penalty calculations (66.7%) reviewed that consider and include, where appropriate, gravity and economic benefit. Two of 3 reviewed penalties (66.7%) documented the rationale for the final value assessed compared to the initial value assessed. Three of 3 reviewed penalty files (100%) documented collection of penalty.

Explanation One of the penalty calculations reviewed did not document both economic benefit and gravity consideration. The same penalty did not document the rationale for the final value assessed compared to the initial value assessed. All of the files reviewed showed documentation that the penalty had been collected.

This finding is only an Area for State Attention because the Region believes that MDEQ can improve performance in this area on its own without a recommendation.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
11a Penalty calculations include gravity and economic benefit	100%	N/A	2	3	66.7%
12a Documentation on difference between initial and final penalty	100%	N/A	2	3	66.7%
12b Penalties collected	100%	N/A	3	3	100%

State Response See Additional Comments below.

Recommendation No action needed.

Additional MDEQ Clean Air Act Program Comments:

Several file reviews include comments from USEPA, Region 5, on inspections, stack tests, or other items that were **not** conducted during fiscal year (FY) 2012 -the year under review. Comments on items from FY 2011 or FY 2013 should not be taken into account as part of the FY 2012 SRF. One source reviewed (Montgomery Aggregate) is a minor source and, therefore, is not part of our CMS universe. The review of this source should be removed from the SRF.

Resource Conservation and Recovery Act Findings

Element 1 — Data

Finding Area for State Improvement

Summary Twenty of 30 files (66.7%) contained data that was accurately reflected in RCRAInfo. Two of 4 reviewed SNC designations (50.0%) were addressed in a timely manner, according to ECHO. 258 sites in RCRAInfo were in violation for greater than 240 days without being evaluated for re-designation as SNCs.

Explanation Ten of the 30 files reviewed were inaccurately reflected in ECHO. The inaccuracies noted were: 1) four files still showing “in violation status” after order signed date in ECHO; 2) three files show inaccurate 200-series coding/entry (formal enforcement action); 3) two files were missing complete separate penalty amounts for the entities penalized in separate orders related to the cases; and 4) three files had Focused Compliance Inspections (FCI) not entered into ECHO/RCRAInfo.

MDEQ has appropriate enforcement responses; however, enforcement taken to address or report SNC is not timely.

A similar finding was noted in MDEQ’s Round 2 SRF report and remains an issue.

Metrics listed below only refer to the accuracy and completeness of data in EPA systems and files for purposes of this Element.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
2b Complete and accurate entry of mandatory data	N/A	N/A	20	30	66.7%
1c1 Number of sites with violations determined during the review year	N/A	N/A	230		
2a Long-standing secondary violators	N/A	N/A	258		
5a Two-year inspection coverage for operating TSDFs	100%	88.9%	17	17	100%
5b Annual inspection coverage for LQGs	20%	21.7%	114	446	25.6%
5c Five-year inspection coverage for LQGs	100%	64.2%	360	446	80.7%
5d One-year inspection coverage for active SQGs	N/A	10.9%	1072	2391	44.8%
5e1 Number of inspections at conditionally exempt SQGs	N/A	N/A	873		

5e2 Number of inspections at transporters	N/A	N/A	61		
5e3 Number of inspections at non-notifiers	N/A	N/A	0		
5e4 Number of inspections at facilities not covered by metrics 2c through 2f3	N/A	N/A	615		
7b Violations found during inspections	N/A	35.9%	232	600	38.7%
8a SNC identification rate	N/A	1.7%	2	600	.3%
8b Timeliness of SNC determinations	100%	78.7%	2	2	100%
10a Timely enforcement taken to address SNC	80%	83.2%	2	4	50%

State Response

The USEPA finds that this is an Area for State Improvement. The Michigan Department of Environmental Quality (MDEQ) does not dispute that there is a need for improvement in data entry and tracking. However, the MDEQ will posit that the summary of Element 1 - Data appears somewhat contradictory. When comparing the MDEQ's compliance and enforcement accomplishments on relevant metrics compared to national goals and averages, the MDEQ, in the majority of cases, meets or exceeds the national averages.

As for data being inaccurately reflected in the USEPA's Enforcement and Compliance History Online, while some of the instances may have resulted from inaccurate entry, it appears to the MDEQ that the MDEQ's Waste Data System data is being accurately translated to RCRAinfo. The MDEQ will also note that, on occasion, we have witnessed instances where there may be glitches in RCRAinfo that result in the appearance of improper translation or inaccurate entry of data. For example, in a specific instance it was brought to the MDEQ's attention that information pertaining to a facility was not correct. The MDEQ's data specialist went into RCRAinfo to correct the data entry. During the process, the data being entered disappeared. MDEQ staff reentered the data only to have the previously entered data reappear, thus duplicating the data. Staff had to contact the USEPA to remove the duplicate data.

Regarding the issue of inaccurate 200-series coding entries, the MDEQ's historical implementation differs from the USEPA's. The MDEQ had been coding this way for years and while the MDEQ still disagrees with the USEPA's interpretation, for the sake of consistency, the MDEQ has agreed to change the coding to be consistent with the USEPA's interpretation. The crux of the MDEQ's argument is that a 100-series coding for an Enforcement Notice does not accurately reflect the gravity/significance of that action to the regulated entity and to the public. With the exception of "fast-track" administrative orders, Enforcement Notices, draft Consent Orders, proposed penalty calculations, and the facts of each of the cases are reviewed by the Michigan Department of Attorney General (MDAG) for, among other things, the litigation risk if the offered settlement is not

entered by the respondent. When issued, the Enforcement Notice is an indicator of the initiation of a formal enforcement action by the MDEQ. In accordance with MDEQ policy, failure by the respondent to resolve the violations at this stage would result in the matter being referred to the MDAG for litigation. To code this action in the 100-series, the same series as Compliance Communications or a first Violation Notice, does not seem right.

Overall, it appears that the USEPA finds that the MDEQ administers an effective RCRA/Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, Compliance and Enforcement Program. The MDEQ believes that this is due in large part to a focus on sufficient inspections in all categories of facilities and taking enforcement action when appropriate and/or when warranted. The need for sufficient compliance inspections and a focus on data entry has to be balanced, in light of limited staffing resources. The MDEQ will work to improve any apparent data entry deficiencies, but asks that it be recognized that it is not in the interest of environmental and public health protection to sacrifice program effectiveness for fully accurate data entry.

The MDEQ acknowledges the recommendation for Element 1 - Data will move forward as recommended. The MDEQ will provide new or updated written procedures and train staff only if necessary to address/resolve data entry problems.

Recommendation

- By 60 days of the final report, MDEQ should review current data entry procedures to reconcile issues found in this review as well as provide new or updated written procedures and training to staff to resolve data entry problems.
- Progress will be monitored by Region 5 through annual mid-year file audits and steps will be taken as necessary within 180 days to review implementation of recommended actions.

Element 2 — Inspections

Finding Meets or Exceeds Expectations

Summary MDEQ met the national inspection goals for TSDFs (2 years) and LQGs (1 year and five year). Twenty-seven of 30 reviewed inspection reports (90.0%) were considered complete, and provided sufficient documentation to determine compliance at the facility. Twenty-eight of 30 inspections reports (93.3%) were completed in a timely manner.

Explanation MDEQ conducted 17 of 17 inspections (100%) at Treatment, Storage, and Disposal Facilities (TSDFs) with operating permits. MDEQ is consistently above 20% inspection coverage each year for Large Quantity Generators (LQGs). The five year average is affected by the changing universe, therefore EPA considers this metric met. The LQG universe of total facilities in Michigan decreased by approximately 23% in the past five years. In FY08, MDEQ had 579 LQGs reporting to the RCRA Biennial Report on hazardous waste generating facilities. In FY12, MDEQ had 446 LQGs reporting. Based on MDEQ's consistent inspection coverage of at least 20% and factoring in the change in the LQG universe, MDEQ is deemed to have achieved the national goal to inspect 100% of LQGs every 5 years.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
5a Two-year inspection coverage of operating TSDFs	100%	88.9%	17	17	100%
5b Annual inspection coverage of LQGs	20%	21.7%	114	446	25.6%
5c Five-year inspection coverage of LQGs	100%	64.2%	360	446	80.7%
5d Five-year inspection coverage of active SQGs	N/A	10.9%	1072	2391	44.8%
5e1 Five-year inspection coverage of active conditionally exempt SQGs	N/A	N/A	873		
5e2 Five-year inspection coverage of active transporters	N/A	N/A	61		
5e3 Five-year inspection coverage of active non-notifiers	N/A	N/A	0		
5e4 Five-year inspection coverage of active sites not covered by metrics 2c through 2f3	N/A	N/A	615		
6a Inspection reports complete and sufficient to determine compliance	100%	N/A	27	30	90.0%
6b Timeliness of inspection report completion	100%	N/A	28	30	93.3%

State Response

The USEPA finds that this area Meets or Exceeds Expectations. The MDEQ appreciates the recognition of this accomplishment and has no comments regarding this element.

Recommendation

No action needed.

Element 3 — Violations

Finding Area for State Improvement

Summary 258 sites in RCRAInfo were in violation for greater than 240 days without being evaluated for re-designation as SNCs. Twenty-six of 30 reviewed inspection files (86.7%) led to accurate compliance determinations. MDEQ's violation identification rate is 38.7% according to ECHO. MDEQ's SNC identification rate is 0.3%, which is lower than national average of 1.7%. Six of 6 reviewed files (100%) demonstrated significant noncompliance (SNC) status was appropriately determined. According to ECHO, MDEQ is 100% for timeliness of SNC determinations.

Explanation Four of the 30 inspection reports reviewed led to inaccurate compliance determinations. The inaccuracies noted were: 1) three files had violations noted in the LQG checklist, yet were not mentioned in the informal action citation; and 2) inspection report and checklist were not available to support the "In Compliance Letter".

A similar finding was noted in MDEQ's Round 2 SRF report and remains an issue.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
2a Long-standing secondary violators	N/A	N/A	258		
7a Accurate compliance determinations	100%	N/A	26	30	86.7%
7b Violations found during inspections	N/A	35.9%	232	600	38.7%
8a SNC identification rate	N/A	1.7%	2	600	0.3%
8b Timeliness of SNC determinations	100%	78.7%	2	2	100%
8c Appropriate SNC determinations	100%	N/A	6	6	100%

State Response

The USEPA finds that this is an Area for State Improvement. The MDEQ believes that this element would be more appropriately determined to be an "Area for State Attention." Although the MDEQ's violation identification rate exceeds the national average and is close to 90 percent or 100 percent of national goals, the USEPA's finding was "Area for State Improvement." The MDEQ agrees from the standpoint that with any program or area of a program, if everything is not 100 percent, there is room for improvement. As such, the MDEQ will work to improve in this area. In the summary, the USEPA indicates that there is one area, Significant Noncompliance (SNC) identification rate, where the MDEQ is below the national average. In all other areas, the MDEQ either exceeds the national average or meets the national goal. That being the case, it appears that the need for any improvement is fairly small. Further, the explanation focuses on the

review of four files; three of which, it appears, were violations noted in the Large Quantity Generator checklist but were not mentioned in the informal citation. In the fourth file, an inspection report and checklist were not available to support the file "In Compliance Letter." However, the fourth file was a liquid industrial waste hauler that did not transport hazardous waste (i.e., not regulated under Part 111/RCRA), so the file should not have been reviewed by the USEPA for this metric. While it would appear that there may be a deficiency in file documentation, it is not clear how it was concluded by the USEPA that the appearance of a documentation deficiency (between one document to the other) led to inaccurate compliance determinations by the inspector.

Recommendation

- Progress will be monitored by Region 5 through annual mid-year file audits and steps will be taken as necessary within 180 days to review implementation of recommended actions.
-

Element 4 — Enforcement

Finding Area for State Attention

Summary Six of 6 reviewed enforcement responses (100%) returned or will return a site in SNC to compliance. Two of 4 reviewed SNC designations (50.0%) were addressed in a timely manner, according to ECHO. Seventeen of 18 reviewed files (94.4%) demonstrated enforcement responses appropriate to the violations.

Explanation MDEQ has appropriate enforcement responses; however, enforcement taken to address or report SNC is not timely.

This finding is only an Area for State Attention because the Region believes that MDEQ can improve performance in this area by following the data entry Recommendations for Element 1.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
9a Enforcement that returns violators to compliance	100%	N/A	6	6	100%
10a Timely enforcement taken to address SNC	80%	83.2%	2	4	50.0%
10b Appropriate enforcement taken to address violations	100%	N/A	17	18	94.4%

State Response

The USEPA finds that this is an Area for State Attention. Although the national goal of 80 percent for timely enforcement to address an SNC was not met, 100 percent of the enforcement actions taken returned the sites with an SNC status to compliance, and those actions were found by the USEPA to be appropriate. In addition, the USEPA's findings that Element 2- Inspections and Element 5 - Penalties Meet or Exceed Expectations further supports an overall finding of an effective and appropriate Compliance and Enforcement Program. The MDEQ has found that a return to compliance is often reached by the respondent well before entry of the administrative order (i.e., prior to or during settlement negotiations). In these cases, the administrative order is entered to assess a penalty because of the significance of the violations (i.e., SNC status). The MDEQ intends to put additional emphasis on issues of timeliness within the confines of available resources.

Recommendation No action needed.

Element 5 — Penalties

Finding Meets or Exceeds Expectations

Summary Five of 5 reviewed penalty calculations (100%) considered and included, where appropriate, gravity and economic benefit. Five of 5 reviewed penalties (100%) documented the difference between the initial and final assessed penalty, and the rationale for that difference. Five of 5 reviewed files (100%) documented collection of penalty.

Explanation MDEQ considers and includes gravity and economic benefit into its penalty calculations. MDEQ documents the difference between initial and final assessed penalty, the rationale for that difference, and collection of penalty.

Relevant metrics	Metric ID Number and Description	Natl	Natl	State	State	State
		Goal	Avg	N	D	% or #
	11a Penalty calculations include gravity and economic benefit	100%	N/A	5	5	100%
	12a Documentation on difference between initial and final penalty	100%	N/A	5	5	100%
	12b Penalties collected	100%	N/A	5	5	100%

State Response The USEPA finds that this area Meets or Exceeds Expectations. The MDEQ appreciates the recognition of this accomplishment and has no comments regarding this element.

Recommendation No action needed.