



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

Ref: 8ENF-PJ

NOV 26 2014

Nancy Nuttbrock
Deputy Director, State of Wyoming Department of Environmental Quality
Land Quality Division
122 West 25th Street, Herschler 3W
Cheyenne, Wyoming 82002

Re: Final State Review Framework (SRF) Evaluation Results for Fiscal Year 2012

Dear Ms. Nuttbrock:

Enclosed you will find the final SRF report summarizing evaluation of Wyoming's Clean Air Act Stationary Source, Resource Conservation and Recovery Act Subtitle C, and National Pollutant Discharge Elimination System enforcement programs for federal Fiscal Year 2012. This Environmental Protection Agency (EPA) Region 8 report incorporates comments received from both the Wyoming Department of Environmental Quality and EPA's Office of Compliance. We look forward to working with the Wyoming Department of Environment Quality in utilizing the results of this evaluation to advance our shared objective of protection of public health and the environment in Wyoming.

If you have any questions regarding the SRF evaluation or the SRF in general, please contact me or have your staff contact Ms. Kaye Mathews at (303) 312-6889. Program-specific questions may be directed to the EPA program contacts identified in the report.

Sincerely,

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

Enclosure:

cc: Sent via Electronic Mail
Mr. Todd Parfitt, Wyoming Department of Environmental Quality
Mr. Kevin Frederick, Wyoming Department of Environmental Quality
Mr. Bill DiRienzo, Wyoming Department of Environmental Quality
Mr. Steve Dietrich, Wyoming Department of Environmental Quality
Mr. Fred Dilella, Wyoming Department of Environmental Quality
Mr. Luke Esch, Wyoming Department of Environmental Quality
Mr. Robert Breuer, Wyoming Department of Environmental Quality
Mr. Shawn McGrath, Regional Administrator, EPA, R8
Ms. Deb Thomas, Acting Deputy Regional Administrator, EPA, R8

STATE REVIEW FRAMEWORK

Wyoming

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

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

**Final Report
November 4, 2014**

Executive Summary

Introduction

EPA Region 8 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Wyoming Department of Environmental Quality (WDEQ).

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 ECHO web site.

Areas of Strong Performance

CWA

- The state completed 27 of 28 inspection reports (96.4%) within the state's timeframes for its inspection reports. The state also consistently collects and analyzes samples during its inspections, which takes additional time and effort. Of the 28 inspections reviewed during the SRF, the EPA determined that the average time for an inspection report to be completed was 27 days.
- The state's transition from direct PCS data entry to the use of batch uploads from the state's database into ICIS has proven to benefit positively the state's program. Rather than spending significant time re-entering data into ICIS with little benefit, the state's batch-upload process has proven to be much more efficient and streamlined, saving the state's staff significant time and effort.

CAA

- The State of Wyoming Air Compliance Division was found to be executing a robust and effective facility inspection program. The data metric values are above the national average for inspection coverage. The Division's inspection rate is near 100%. Many CAA major source facilities are inspected every year while the Compliance Monitoring Strategy only requires a Full Compliance Evaluation (FCE) of major sources every two years. The state selects facilities using the premise of getting the maximum environmental benefit from the expenditure of its limited resources. The state maintains a strong enforcement presence in the trona mining industrial area and at the five refinery and chemical facilities with multiple inspections.
- Enforcement actions for High Priority Violations (HPVs) were initiated in a timely fashion and appropriate enforcement was used to return the facility to compliance. The state goes to great effort to send EPA all notice of violations, settlement agreements, consent decrees, court termination orders, and closure letters which document the enforcement response, injunctive relief, timeliness, and proof of penalty collected. The HPV discovery rate matched the national average; in addition, all of the HPVs met the deadline for addressing the action yielding a 100% rating.

RCRA

- The state meets the national goal of 100% entry of data which is complete and accurate based on file reviews.
- The state takes timely and appropriate action to address violations identified during inspections.
- The state's penalty calculations consider and include, as appropriate, both a gravity and economic benefit component. The state maintains documentation of any penalty adjustments from the assessed to the collected amount. The state files contain documentation of penalty payment and supplemental environmental project (SEP) implementation as appropriate.

Priority Issues to Address

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

CWA

- Inspection reports lack details to document compliance determination. Seventeen percent of the state's inspection reports reviewed were not complete in accordance with the *SRF Inspection Review Checklist*. The state needs to develop procedures to ensure the reports are complete and support compliance determinations.
- Enforcement penalties do not formally address inability to pay. The state should formally evaluate claims for inability to pay. The state should also develop the penalty in accordance with its penalty policy and then consider the ability to pay once the respondent claims an inability to pay.

CAA

- The state should enter stack test data into AFS-AIRS database. The data elements entered are *Test Date*, *Report Data*, and *Pollutant Tested*. The test data should be entered for all performance tests conducted for purposes of determining and demonstrating compliance with all federally-enforceable permit conditions for major and synthetic minor facilities.
- The state should correct any inaccurate *Address-field* information by providing either a street address or section-township/range or latitude/longitude coordinates. An audit should be performed of all facilities and an AFS facility report should be sent to EPA demonstrating the corrections.
- The state does not document the calculation and assessment of penalty. No penalty calculation worksheet or summary is written. EPA was not able to find any documentation which ensured economic benefit was sought, or find a record showing the initial gravity penalty amount proposed, or a justification for the difference between initial proposed penalty and final penalty.

RCRA

- The two issues which require state attention are long-term secondary violators and five-year inspection coverage of the large quantity generator universe. The state is aware and is working to return long-term secondary violators to compliance. The state and EPA have discussed and agreed that, with removal of one-time or episodic generators from consideration, the state has achieved 100% coverage on a 5-year basis. Additionally, the state has increased its annual LQG inspection rate to approximately 50%.

Most Significant CWA-NPDES Program Issues¹

- The national database is missing required water enforcement national data base (WENDB) data elements. One-hundred percent of the state's data in the national database lacks the required details outlined in WENDB for the Permit Compliance System (PCS) in fiscal year 2012 and the required Requisite ICIS-NPDES Data Element (RIDE) data for Integrated Compliance Information System (ICIS) as of March 2013. The state needs to review its batch upload and manual data entry procedures to ensure all required elements are included in the national database. The state and the EPA are working to reduce and eliminate the batch-upload data errors.
- Inspection reports lack details to document compliance determination. Seventeen percent of the state's inspection reports reviewed were not complete in accordance with the *SRF Inspection Review Checklist*. The state needs to develop procedures to ensure the reports are complete and support compliance determinations.
- Enforcement responses did not address all violations in a timely and appropriate manner. Thirty-two percent of enforcement responses reviewed did not or would not return source in violation to compliance and 37% of facilities with violations were not responded to in an appropriate manner. The state must identify violations, consistently respond to them in accordance with the Enforcement Response Guide (ERG) time frames, and, ensure when informal enforcement does not bring facility back into compliance, formal enforcement is implemented.
- Enforcement penalty documentation is incomplete. The state's documentation regarding the penalties in 3 out of 5 cases reviewed did not document the reasoning of the differences between the initial proposed and final penalty amounts.

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 CAA Stationary Source Program Issues

- Data entry into the national AFS compliance database needs improvement. The accuracy of the information entered into the AFS database was found to be 50% and the timeliness of entry was found to be 59% for the Minimum Data Elements (MDR). The entering of stack test results into the database ceased early in the year yielding a very small number of tests reported, while only ten percent of those were reported on time.
- The state does not document the calculation and assessment of penalty. No penalty calculation worksheet or summary is written. EPA was not able to find any documentation which ensured economic benefit was sought, or find a record showing the initial gravity penalty amount proposed, or a justification for the difference between initial proposed penalty and final penalty.

Most Significant RCRA Subtitle C Program Issues

- There are no significant RCRA issues which require state improvement.

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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 National Pollutant Discharge Elimination System
- Clean Air Act Stationary Sources (Title V)
- Resource Conservation and Recovery Act 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, to the degree possible, 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 five 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 2017.

II. SRF Review Process

Review period: FY2012

Key dates:

CWA File Review (NPDES Integrated PQR and SRF)
CAA File Review
RCRA File Review

August 19-22, 2013
June 18-19, 2013
April 25-26, 2013

Key contacts for review:

**U.S. Environmental Protection Agency Region 8
Office of Enforcement, Compliance and Environmental Justice
1595 Wynkoop St.
Denver, CO 80202**

SRF Coordinator

Kaye Mathews, Policy and Env Justice Unit (303) 312-6889

mathews.kaye@epa.gov

CWA

David Gwisdalla, NPDES Enforcement Unit (303) 312-6193
Natasha Davis, NPDES Enforcement Unit (303) 312-6225

gwisdalla.david@epa.gov
davis.natasha@epa.gov

CAA

Scott Whitmore, Air Enforcement Unit (303) 312-6317

whitmore.scott@epa.gov

RCRA

Linda Jacobson, RCRA Enforcement Unit (303) 312-6503

jacobson.linda@epa.gov

**Wyoming Department of Environmental Quality
122 West 25th St., Herschler Building
Cheyenne, WY 82002**

SRF State Contact

Todd Parfitt, WDEQ Director (307) 777-7937

todd.parfitt@wyo.gov

Nancy Nuttbrock, WDEQ Deputy Director (307) 777 – 7046

nancy.nuttbrock@wyo.gov

CWA

Kevin Frederick, WDEQ/WQD Administrator (307) 777-5985

kevin.frederick@wyo.gov

Bill DiRienzo, WYPDES Prog Manager (307) 777-7081

bill.dirienzo@wyo.gov

CAA

Steve Dietrich, WDEQ/AQD Administrator (307) 777-3746

steve.dietrich@wyo.gov

Fred DiLella, Compl Prog Manager, AQD (307) 777-3774

fred.dilella@wyo.gov

RCRA

Luke Esch, WDEQ/SHWD Administrator (307) 777-7192

luke.esch1@wyo.gov

Robert Breuer, Inspect & Comp Prog Man (307) 473-3454

robert.breuer@wyo.gov

III. SRF Findings

Findings represent EPA’s conclusions regarding state performance and are based on findings made during the data and/or file reviews and may also be informed by:

- 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, 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: The SRF was established to define a base level or floor for enforcement program performance. This rating describes a situation where the base level is met and no performance deficiency is identified, or a state performs above national program expectations.

Area for State Attention: An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, 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 between SRF reviews. These areas are not highlighted as significant in an executive summary.

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. Recommendations should address root causes. These recommendations must have well-defined timelines and milestones for completion, and EPA will monitor them for completion between SRF reviews in the SRF Tracker.

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, or the CMS commitment that the state has made.
- **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.

1-1 Clean Water Act Findings - Data

Element 1 — Data	
Finding 1-1	Area for State Improvement
Summary	The national database is missing required WENDB Data Elements.
Explanation	<p>Seventeen percent of the files reviewed for WENDB Data Elements indicated some concerns. Of the 36 files reviewed for accuracy in the national database, one file (i.e., facility) was not in the database, one file illustrated a facility had violations but the reasons were not clearly identified in the database, two files contained enforcement related data that was not entered into the database, and two files were missing the penalty information shown in the national database. Excluding the facility location information discussed below, Wyoming is entering data in the national database with 83.3% data accuracy (i.e., 30 of 36 files) in accordance with the WENDB data requirements of 2012.</p> <p>In 2012, Wyoming used the Permit Compliance System (PCS) to enter required Water Enforcement National Data Base (WENDB) data. In 2013, the state began using Integrated Compliance Information System (ICIS) for the required Requisite ICIS–NPDES Data Element (RIDE) data. The state transitioned from manually entering PCS data to conducting batch data transfers from the state’s database directly into ICIS. All files reviewed were missing the facility location RIDE data required in ICIS; this includes the facility address, city, and zip code. The data was observed in the state’s database but not in ICIS. It appears to be a data transfer error from the state’s database. The state and the EPA are working to reduce and eliminate the batch-upload data errors.</p> <p>This finding is a recurring area of improvement noted in the SRF Round 2 Report (Finding 1-1). The SRF Round 2 Report Finding 1-1 noted that, “WYDEQ has not accurately coded major source permit parameters, has not complied with WENDB Data Elements for entry of major enforcement actions, and has not entered major Discharge Monitoring Report (DMR) data into PCS in a timely manner.” The Round 2 SRF Report found that the state was entering the data both into its own database and into PCS, with limited trained staff. With the transfer to batch data transfers, the items noted are similar but have different root causes. During SRF Round 2, the findings focused on the lack of understanding and utilization of an outdated and antiquated system (i.e., PCS). The Finding from the Round 3 SRF is focused on ensuring the data is entered into the state’s database and is properly transferred into ICIS from the state’s database.</p>

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2b Files reviewed where data are accurately reflected in the national data system	100%	n/a	30	36	83.3%

State Response

The SRF identified discrepancies between information in the state files and information submitted to the national database. In some circumstances there was information in the files that was not submitted to ICIS and vice-versa. It also identified the lack of required facility address information in ICIS.

We agree that there are issues with data entry to ICIS, and the WQD is committed to achieving an accurate and timely transmission of program data to ICIS. The problem of reconciling file information with ICIS information is perhaps more straightforward than the problem of facility addresses.

The problem with facility addresses is not so simple. We understand that EPA requires a facility address, however, for many permits the expected information (i.e. address, city, zip code) doesn't exist and for those, we do not believe that some fabricated address should be entered. We do realize that there are facilities where that information can be entered and, depending on IT priority and availability of funds, a process to batch extract could be developed at some point in the future.

The recommendation to resolve these issues is for the state to provide within 90 days a schedule and list of corrective actions that will ensure the accurate submittal of all data. Although we disagree with this recommendation, we do commit to continuing to work through these issues with EPA by making them a standard agenda item on quarterly compliance meetings.

Recommendation

Provide a schedule and list of corrective actions to address the following issues within 90 days of the SRF report being finalized to include:

1. Procedures to ensure all the RIDE data is entered into the state's database, or manually entered into ICIS.
2. An evaluation of the causes of enforcement and violation data that was missing.
3. A file review to ensure that the official file contains the accurate information for the facility. If inconsistencies are found between ICIS and the official file, the state should correct those issues.

This SRF Finding will be removed once the corrective actions outlined by the state in its response are implemented.

The state and the EPA will work together to resolve the batch data transfer issues. The matter will be considered resolved when the facility data information is included in ICIS.

1-2 Clean Water Act Findings - Data

Element 1 — Data						
Finding 1-2	Meets or Exceeds Expectations					
Summary	DMR data entry and permit limit rates exceed national goals or averages.					
Explanation	The state exceeded the National Goals for permit limit and discharge monitoring report (DMR) data entry.					
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%	22	22	100%
	1b2 DMR entry rate for major facilities	≥95%	97.9%	641	662	96.8%
State Response	We agree; no further comment.					
Recommendation	N/A					

1-3 Clean Water Act Findings - Data

Element 1 — Data						
Finding 1-3	Area for State Attention					
Summary	There is inaccurate data entry related to major facility non-compliance.					
Explanation	<p>Sixteen Major facilities were reported in noncompliance during 2012 (Metric 7d1, was reported as 16 of 22, or 72.7% in the DMA), including the Sweetwater Uranium Project. According to the state’s records, the Sweetwater Uranium Project was in compliance during fiscal year 2012. Therefore, the data should reflect 15 of 22 facilities were in noncompliance during fiscal year 2012, or 68.2%</p> <p>Seven Major facilities were reported in SNC for 2012 (Metric 8a2, was reported as 7 of 22, or 31.8% in the DMA). According to the state’s records, only two Major facilities, Frontier Oil Refinery and Rock Springs WWTP were in SNC during fiscal year 2012. Therefore, the data should reflect, 2 of 22 facilities were in SNC during fiscal year 2012, or 9.1% versus the numbers reported in the DMA.</p> <p>According to the DMA for Metric 10a1 (was reported as 0 of 2 facilities with timely action for SNC, or 0% in the DMA), neither Gillette WWTF, nor the Dave Johnston Power Plant facilities received timely action for their SNC (i.e., an action was taken by the state prior to the second official Quarterly Non-Compliance Review, or QNCR). The national database however, erroneously illustrated the facilities in SNC. This was related to state data entry errors for both facilities. It is discussed in Finding 4-1 in further detail.</p> <p>The state should ensure enforcement action data, violations, and penalty information is accurately entered into ICIS. Finding 1-1 is expected to address these issues.</p>					
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					3
	7d1 Major facilities in noncompliance		60.3%	16	22	72.7%
	7f1 Non-major facilities in Category 1 noncompliance					325

	7g1 Non-major facilities in Category 2 noncompliance				262
	8a2 Percentage of major facilities in SNC	20.6%	7	22	31.8%
	10a1 Major facilities with timely action as appropriate	3.6%	0	2	0%
State Response	We do not necessarily agree with the specifics of this finding but have no other comment.				
Recommendation	N/A				

2-1 Clean Water Act Findings - Inspections

Element 2 — Inspections																		
Finding 2-1	Area for State Improvement																	
Summary	Inspection reports lack details to document compliance determination.																	
Explanation	<p>Thirteen of 28 inspection reports reviewed did not meet the completeness requirements specified in the SRF checklist for general information, facility information, or documentary support.</p> <p>The state’s inspection reports lacked documentation of the state’s compliance determination. While some reports lacked information about an individual violation, more commonly the reports lacked basic facility information, the scope of the inspection, and the specific violation’s permit citation.</p> <p>The details of the missing information for each file are provided in the Metric 6a Metric Calculation Comments.</p> <p>This finding is similar to a recurring area of improvement noted in the SRF Round 2 Report (Finding 6-1). The Round 2 SRF Finding focused on the use of complete and appropriate checklists and the review of a facility’s operations and maintenance. This issue was resolved and is not related to Finding 2-1 in SRF Round 3 above.</p>																	
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>6a Inspection reports complete and sufficient to determine compliance at the facility</td> <td>100%</td> <td></td> <td>13</td> <td>28</td> <td>46.4%</td> </tr> </tbody> </table>		Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	6a Inspection reports complete and sufficient to determine compliance at the facility	100%		13	28	46.4%				
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
6a Inspection reports complete and sufficient to determine compliance at the facility	100%		13	28	46.4%													
State Response	<p>We disagree with this finding. Inspections are intended to determine compliance with permit conditions and limits. Much of the information EPA believes is missing has little to do with determining compliance or in supporting enforcement actions.</p> <p>Nonetheless, we have agreed in the FY 2015 PPA to evaluate our current inspection forms and practices, and to make changes where they may be appropriate and beneficial to the program. We will proceed with this agreement, in lieu of the EPA recommendation below.</p>																	
Recommendation	Establish or modify standard operating procedures (SOP) for the requirements of the inspection report completeness.																	

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1. Revise the inspection report template so the required information is contained in every report.
 2. Before finalizing the report, have another inspector review the report for completeness. Also include in the SOP the recommendation outlined in Finding 3-1.

Provide an initial schedule for SOP development within 90 days of the report being finalized. The SOP shall address the EPA's completeness requirements in its inspection reports. Report to EPA at the mid-year (April 30) and end-of-year (October 1) the status of SOP was development and when it was or will be implemented. This finding will be removed from SRF tracker after 3-months of successful implementation of the developed SOP.

2-2 Clean Water Act Findings - Inspections

Element 2 — Inspections																								
Finding 2-2	Meets or Exceeds Expectations																							
Summary	Inspection coverage and report timeliness meet expectations.																							
Explanation	<p>The state exceeded the national averages for inspection coverage of its NPDES Majors and minors. With particular note, it achieved a 100% inspection rate for all of its 22 Majors (one additional Major facility permit was included in the Performance Partnership Agreement (PPA) that was also terminated during FY2012).</p> <p>In the FY2012 PPA, the state committed to conduct 610 inspections (with inspection commitment for FY2012 noted in parentheses):</p> <ul style="list-style-type: none"> • Majors: 23 (23) = 100%. • Minors: 428 (412) = 104% • Storm Water General Permits: 158 (160) = 99% • CAFOs: 3 (15) = 20% <p>The state conducted 612 inspections during FY2012. The state conducted 34.7% of its non-stormwater permits/facilities (454 inspections of 1309 permits). It conducted inspections of 10.2% of its stormwater permits (158 inspections of 1551 permits).</p> <p>Wyoming also meets the EPA’s expectations for completing inspection reports within its required timeframes outlined in the state’s enforcement management system, which requires the inspection reports to be completed within 45 days for inspections without sampling and 60 days for those with sampling. Ninety-six percent of the state’s inspection reports reviewed by EPA were completed within the required timeframes. The state’s average time to complete an inspection report in fiscal year 2012 whether or not it included sampling in was 27 days.</p>																							
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>5a1 Inspection coverage of NPDES majors</td> <td>100% of state CMS Plan</td> <td>57.6%</td> <td>22</td> <td>22</td> <td>100%</td> </tr> <tr> <td>5b1 Inspection coverage of NPDES non-majors with individual permits</td> <td>100% of state</td> <td>25.6%</td> <td>335</td> <td>987</td> <td>33.9%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5a1 Inspection coverage of NPDES majors	100% of state CMS Plan	57.6%	22	22	100%	5b1 Inspection coverage of NPDES non-majors with individual permits	100% of state	25.6%	335	987	33.9%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
5a1 Inspection coverage of NPDES majors	100% of state CMS Plan	57.6%	22	22	100%																			
5b1 Inspection coverage of NPDES non-majors with individual permits	100% of state	25.6%	335	987	33.9%																			

		CMS Plan				
	5b2 Inspection coverage of NPDES non-majors with general permits	100% of state CMS Plan	5.9%	121	1776	6.81%
	6b Inspection reports completed within prescribed timeframe	100%	N/A	27	28	96.4%
State Response	We agree, no comment					
Recommendation	N/A					

2-3 Clean Water Act Findings - Inspections

Element 2 — Inspections							
Finding 2-3		Meets or Exceeds Expectations					
Summary		Detail inspection plans to illustrate the state’s compliance with the EPA’s CMS.					
Explanation		<p>The EPA CMS requires inspection of ten percent of the stormwater industrial sites, ten percent of the Phase I construction sites, five percent of the Phase II construction sites, and Phase II and medium/large concentrate animal feeding operations (CAFOs) once every five years. The National goal is that the state conduct 100% of its CMS plan outlined in its FY2012 PPA. The state committed in FY2012 to conduct 160 inspections out of the state’s 1551 stormwater permits, or 10.3%. The state reissued its construction permit in March 2012 and the number of active construction permits was not known precisely at the time of the state’s inspection commitment development in August since the state allowed a grace period to reapply for the new permit. After the fact, it is known that the actual number of stormwater permits during FY2012 was 1368 as shown in the Metric 4a worksheet. The state conducted 157 inspections, or 11.4% of its stormwater universe. While the state did not meet its FY2012 inspection commitment of 15 CAFOs for FY2012, it met (and should continue to meet) the EPA’s CMS requirement to conduct medium/large CAFO inspections once every five years. The state also committed to and conducted one Phase II MS4 inspection in FY2012.</p>					
Relevant metrics		Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
		4a7 Phase I & II MS4 audits or inspections	100% of state CMS Plan		1	1	100%
		4a8 Industrial stormwater inspections	100% of state CMS Plan		87	90	96.7%
		4a9 Phase I and II stormwater construction inspections	100% of state CMS Plan		70	70	100%
		4a10 Medium and large NPDES CAFO inspections	100% of state		3	15	20%

		CMS Plan	
State Response	We agree, no comment		
Recommendation	N/A		

3-1 Clean Water Act Findings - Violations

Element 3 — Violations																														
Finding 3-1		Area for State Improvement																												
Summary		Inaccurate Compliance Determinations																												
Explanation		<p>The state’s inspection reports did not address all incidences of non-compliance accurately. Ten of 27 inspection reports reviewed did not address all the potential noncompliance (See Metric 7e Metric Calculation Comments). The violations not addressed in the reports reviewed include a bypass outfall that was inappropriately discharging, auto samplers not kept at the proper hold temperature, discharge violations, not evaluating all outfalls at two sites, and inaccurate flow measurement.</p> <p>Of the two Majors evaluated with violations (Rawlins Lagoon and Crow Creek Water Reclamation Facility), the inspection of Rawlins Lagoon missed the fact that Outfall 2, which was a bypass outfall, had a discharge. The facility could have had an SEV code of A0011 - Unapproved Bypass, which is SNC. The root cause of the inaccurate identification and the timely reporting of Major facilities were related to the inspection report, which did not accurately identify the violation.</p> <p>This finding is a recurring area of improvement noted in the SRF Round 2 Report (Finding 7-1). The Round 2 SRF Finding, under 7e, illustrated that the EPA determined that 66.6% of the inspection reports led to an accurate compliance determination. SRF Round 2 Finding 7-1 emphasized single event violation data and DMR data review rather than inspection reports failing to address fully the noncompliance identified during the inspection.</p>																												
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State Response		<p>EPA expresses its opinion that the state’s inspections do not address “potential” noncompliance. Our basic understanding of this finding is that EPA believes that our inspection practices are not sufficient and that we are likely failing to identify all violations. We do not agree with that general assessment. It is our experience that EPA often exaggerates the number of</p>																												

	<p>violations reported on EPA-led inspections. For example, on an inspection in March 2013, EPA noted that the permittee failed to do required monthly effluent sampling by actually taking August samples on September 1. An additional September sampling was also conducted later in the month. This error resulted in EPA listing a violation for failing to sample each parameter at each outfall. Violations were also listed for failing to report 2 samples for each parameter at each outfall taken in September. The single violation here is that the permittee took August samples a day late. The exaggerated listing of violations is an unnecessary over-reaction.</p> <p>We have however, agreed in the FY 2015 PPA to evaluate our current forms and practices and to make changes where they may be appropriate and beneficial to the program. We will proceed with this agreement, in lieu of EPA's recommendation below.</p>
<p>Recommendation</p>	<p>Establish or modify standard operating procedures (SOP) for the requirements of the inspection report completeness. Revise the inspection report template so compliance determination information is contained in every report for each type of NPDES related inspection the state conducts. Before finalizing the report, have another inspector review the report for completeness. Report to EPA at the mid-year (April 30) and end-of-year (October 1) the status of SOP was development and when it was or will be implemented. This finding will be removed from SRF tracker after 3-months of successful implementation of the developed SOP.</p>

4-1 Clean Water Act Findings - Enforcement

Element 4 — Enforcement																														
Finding 4-1		Area for State Improvement																												
Summary		Enforcement responses did not address all violations in a timely and appropriate manner.																												
Explanation		<p>Nine of 27 enforcement responses reviewed did not or would not return source in violation to compliance (see the comments for Metric 9a). Three of the facilities with violations did not receive formal enforcement when the state’s ERG required a formal response. Three of the responses by the facility were not adequate and the state did not conduct further follow-up, and for two facilities, the state’s enforcement did not fully address all the violations.</p> <p>According to the data metric analysis (DMA) for Metric 10a1, the Dave Johnston Power Plant and the Gillette Wastewater Treatment Facility (WWTF) were not in compliance and required timely action for SNC. The database erroneously listed both facilities in violation and in SNC; zero facilities required timely action.</p> <p>Ten of 27 facilities with violations were not responded to in an appropriate manner. The state did not respond to multiple violations in accordance with its ERG (see comments for Metric 10b) including; SNC was not addressed within 30 days, DMR non-receipts were not addressed consistently, on-going and one-time violations were not addressed in a timely fashion, and the state’s files do not provide evidence that a violation was addressed.</p>																												
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State Response		We disagree with this finding that the states enforcement responses are generally not sufficient to achieve compliance, violations are not addressed consistently, nor acted on in a timely manner. Some of this finding does not make sense: It found that zero major facilities required an enforcement																												

	<p>response, therefore 0% received a timely response. The percent receiving a timely response should either be N/A or 100%.</p> <p>Since we do not agree with the finding, we also do not agree with EPA's recommendation below.</p>
Recommendation	<p>The state should provide an initial schedule and list of corrective actions to address the following issues within 90 days of the SRF report being finalized:</p> <ol style="list-style-type: none">1. Identify violations and consistently respond to them in accordance with the ERG time frames.2. When informal enforcement does not bring facility back into compliance, formal enforcement shall be implemented.3. Consider amending the ERG to represent accurately the state's enforcement program. <p>This finding will be removed from SRF Tracker after the corrective actions are implemented for one year.</p>

5-1 Clean Water Act Findings - Penalties

Element 5 — Penalties																								
Finding 5-1	Area for State Improvement																							
Summary	Enforcement penalty documentation is incomplete.																							
Explanation	<p>The state took five penalty actions in 2012. In all but one case, the state collected the penalties for the violations.</p> <p>The state’s documentation regarding the penalties in 3 out of 5 cases reviewed did not document the reasoning of the differences between the initial proposed and final penalty amounts.</p> <p>The state’s enforcement management system (EMS) requires economic benefit to be included using formulas developed by EPA, or the state will “negotiate with EPA other reasonable and defensible approaches to estimating this value.” The state considered economic benefit to be zero dollars in 4 out of 5 of the penalties reviewed. The state however, only included an estimate of economic benefit in one out of five penalties, when there was clearly economic benefit in all cases reviewed.</p>																							
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State Response	<p>This finding criticizes the state for not including an estimate of economic benefit in 4 out of 5 penalty calculations where EPA believes there was “clearly economic benefit in all cases”. We disagree. WQD does consider economic benefit to the violator in all of our settlement agreements and assigns a dollar value when appropriate.</p> <p>We disagree with EPA’s recommendation below.</p> <p>In lieu of EPA’s recommendations, WQD will continue its current practice of providing EPA with the requested information on all settlements at the time the action is signed. In addition, WQD will continue to provide EPA a written monthly status report on all enforcement actions that includes an explanation of any penalty revisions.</p>																							

Recommendation	<p>If the recommended penalty excludes an economic benefit component, the state’s penalty worksheet needs to provide a rationale for its exclusion. The final penalty action must also include a rationale for the difference in the initial and final penalty.</p> <p>In FY15, the state shall submit all penalty calculation worksheets to EPA of all final penalty actions issued to ensure both economic benefit and the difference between the initial penalty and final settlement amount are properly documented. These findings will be removed from SRF tracker once the state consistently addresses both findings for one year.</p> <p>The EPA also encourages the state staff to complete training on penalty development, further information is found at: http://www2.epa.gov/enforcement/penalty-and-financial-models</p>

5-2 Clean Water Act Findings - Penalties

Element 5 — Penalties						
Finding 5-2	Area for State Attention					
Summary	Enforcement penalties do not formally address inability to pay.					
Explanation	<p>The state had six potential penalty actions in 2012; EPA reviewed five. In all but one case, the state collected penalties for the violations. In this one case, the state chose not to penalize a municipality due to the state’s concerns over the municipality’s ability to pay. No penalty amount was developed and no evaluation on ability to pay was conducted for this municipal case. The state’s EMS states that variances to the state’s penalty policy, require that the “rationale for any variance from this policy in the initial determination of a penalty must be described and documented.”</p> <p>The state should formally evaluate claims for inability to pay. The state should also develop the penalty in accordance with its penalty policy and then consider the ability to pay once the respondent claims an inability to pay. If the state staff would like formal training on inability to pay, the EPA could provide it upon the state’s request.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	12b Penalties collected	100%		5	6	83.3%
State Response	<p>This Finding criticizes the state for not assessing monetary penalties to municipalities. The enforcement of violations at municipal systems and the decision to assess penalties is not simply based on the town’s ability to pay. Though EPA’s enforcement philosophy is clearly penalty-centric with success measured in dollar amounts, assessing penalties on non-profit, public systems is not likely to be an effective strategy to achieve compliance. Acquiring funding to build and upgrade municipal facilities can be complicated and it is usually in the public interest to conduct a compliance program that works to direct scarce funds toward system improvements rather than penalties.</p>					
Recommendation	N/A					

1-1 Clean Air Act Findings - Data

Element 1 — Data																																																																																				
Finding 1-1	Area for State Improvement																																																																																			
Summary	Data entered into the national AFS Compliance database needs improvement.																																																																																			
Explanation	<p>A comparison of information in the files with data from the AFS database revealed some deficiencies in data entry of the Minimum Data Requirements. Of particular note, stack test results were not entered and also the address-field information was inaccurate. In the past, SRF reviews identified data completeness issues in the areas of HPV pollutant codes, violation codes, inspection results and enforcement action results. The state followed EPA recommendations regarding these issues and corrected them, however new data completeness issues have been identified in the review regarding incomplete stack test data and inaccurate address field information.</p> <p>The state is not entering alleged violations for informal enforcement actions as noted by metric 7b1 below. The state is also not updating the compliance status for HPVs as noted in metric 7b3 below.</p>																																																																																			
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State Response	<p>AQD recognizes the need for accuracy in data entry. In lieu of the EPA recommendations below, AQD will address this Finding by implementing the following:</p> <ul style="list-style-type: none"> • AQD has developed an enforcement calendar, which triggers the Compliance Program Manager’s and Program Principal’s Email calendars. It lists all enforcement letters, required response dates, settlement meetings, and deadlines. AQD has also developed more spreadsheets to track all enforcement actions (i.e., informal and formal). AQD is actively working on its HPV procedure. Scott Whitmore will be visiting the Cheyenne AQD office to explain and clarify further the HPV policy. • AQD has also developed and will be implementing in FY2015 a new database for compliance, permitting, and enforcement. This database will consolidate all permitting, compliance, and enforcement information into an efficient system, which will also have excellent search capabilities. • AQD will be entering all Stack Test reporting into the new database i.e., IMPACT). The ongoing process of entering historical and current data into IMPACT has led to very helpful QA/QC, auditing and thus, ensuring a high degree of accuracy in all the electronic and scanned documents AQD is uploading into the data system.
Recommendation	<p>Regarding violations reported per formal enforcement actions and violations reported per HPV identified, EPA recommends NOV’s be entered as an action item and the compliance status of HPV’s be kept current. EPA will verify improvements by annual review of metrics 7b1 and 7b3.</p> <p>Regarding entry of stack test information, EPA recommends the following guideline for entering the information:</p> <p><i>Enter Stack Test Date, Stack Test Report Date, Test Results, and Pollutant Tested</i> for all performance tests conducted for purposes of determining and demonstrating compliance with all federally-enforceable permit conditions for major and synthetic minor facilities in which a promulgated EPA Reference Method is used excluding tests related to Continuous Emission Monitoring system certification, state-only requirements, acid rain program, visible emission tests, and any voluntary testing performed by facility. This database entry activity should begin immediately and progress will be monitored using the Enforcement and Compliance History Online (ECHO).</p>

Regarding the inaccuracy of the Address-field information, correct this field for all facilities by providing either a street address or section-township/range or latitude/longitude coordinates. Address fields with P.O. Boxes, “unknown,” or distance descriptions (e.g. 10 miles west and 2 miles south) are unacceptable. An audit of all facilities should be performed within the next six months and an AFS facility report should be sent to EPA showing the correction.

2-1 Clean Air Act Findings - Inspections

Element 2 — Inspections	
Finding 2-1	Area for State Attention
Summary	Compliance monitoring reports are generally complete and accurate with two exceptions.
Explanation	<p>CMRs were found to comprehensively document a facility’s compliance status. CMRs demonstrate the state is determining compliance with two notable exceptions. The state should ensure each report lists the applicable permit conditions and emission units; and for synthetic minor sources, the report should explicitly document synthetic minor limits and compliance with such limits.</p> <p>Suggestions to enhance the inspection reports include adding the inspection frequency to the cover page, adding a “Stack Test” section with a format similar to the permit history section, and dividing the permit list into two sections, one for active permits and one for inactive permits.</p> <p>Data metric 5e indicates that not all Title V compliance certifications are being reviewed. Review of annual certifications is a valuable compliance monitoring tool integral to the program.</p> <p>The national CMS calls for states to conduct inspections at major sources once every two years. The state operates under an alternative CMS. WYDEQ has been operating long-term under an alternative CMS plan that was initially approved by Region 8 for FY2010. WYDEQ selects sources for planned evaluations as much as possible in accordance with CMS traditional guidelines. However, adjustments are made to reflect the need to concentrate an enforcement presence in state priority areas while continuing to maintain an overall strong field presence. Thus, WYDEQ places emphasis on the trona ore industry, cement plants, and the petroleum refineries. While the majority of Class A sources are evaluated annually, Class A gas plants are evaluated every two years and Class A compressor stations are evaluated every five years. <u>Status/Outcome</u>: The alternative plan is ongoing. WYDEQ continues to submit a proposed alternative approach that the Region reviews to ensure adequacy.</p> <p>The state committed to 395 inspections for the year and completed 541 total facility inspections. The high number of inspections is due to unscheduled oil and gas production facility inspections.</p>

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	5e Review of Title V annual compliance certifications	100%	82%	119	139	86%
6a Documentation of FCE elements	100%		25	29	86%	
6b Compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance	100%		23	28	82%	
State Response	<p>AQD's new IMPACT database will greatly enhance and make more efficient the division's recordkeeping, record retrieval, and record submissions to Region 8. IMPACT includes the essential attributes listed in EPA findings: report lists with applicable permit conditions and emission units; and explicit labeling and documenting of synthetic minor sources.</p> <p>AQD compliance continues to perform extra inspections. During FY2014 AQD not only performed its scheduled annual inspections, but also 650 additional well site inspections (including FLIR videos), and conducted more than 100 portable analyzer engine emission tests.</p>					
Recommendation	N/A					

3-1 Clean Air Act Findings - Violations

Element 3 — Violations																								
Finding 3-1		Area for State Attention																						
Summary		EPA found the accuracy of compliance determinations from inspections to be 85%, with a national goal of 100%.																						
Explanation		<p>Of the 27 compliance monitoring reports reviewed, four were found to have compliance concerns that warranted an enforcement response in which no response was conducted. An inspection of a minor crude oil refinery found eight compliance concerns, four of which warrant an enforcement response: failure to submit a flare management plan, failure to submit an alternative monitoring plan, improper flaring, and failure to submit a permit for a unit modification. An inspection of a major oil refinery found four compliance concerns which merit an enforcement response: sulfur pit emissions, failure to monitor pumps under LDAR program, failure to include FCCGHT unit in LDAR program, and particulate emission limit exceedance at FCCU. A review of files for two other facilities discovered compliance concerns for a failed stack test and a low downtime for mercury of 88.4%.</p> <p>However, the state’s HPV discovery rate among major facilities matched the national average of four percent.</p>																						
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7a Accuracy of compliance determinations	100%		23	27	85%																			
8a HPV discovery rate at majors		4%	6	142	4%																			
State Response		<p>During FY2014 AQD has been working closely with Region 8 to rectify non-compliance issues at refineries. This team work with Region 8 and the refineries has proved beneficial. The refineries and AQD are continually implementing a more proactive approach to correct long-standing issues and in anticipation of future challenges with more stringent parameter limitations. Compliance has greatly increased its frequency of communication with oil and gas facilities around the state (e.g., several meetings, bi-weekly conference calls, the well site and engine testing programs, and also state-wide training). AQD has also been working closely with oil and gas companies regarding their LDAR programs, self-disclosure, and company-wide self-audits. Companies are voluntarily reporting to and updating AQD on their findings and corrective measures.</p>																						

Recommendation	N/A
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3-2 Clean Air Act Findings - Violations

Element 3 — Violations						
Finding 3-2	Meets or Exceeds Expectations					
Summary	The state meets the expectation for identifying high priority violations.					
Explanation	The state’s accuracy of identifying HPV and reporting them to EPA meets expectations. Only one violation was miss-identified. It was a violation discovered through a permit application analysis, not through inspection or a compliance review. The violation would have met the HPV General Criteria #1 for failure to obtain a PSD permit.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	8c Accuracy of HPV determinations	100%		20	21	95%
State Response	AQD continues to work carefully at properly identifying and reporting HPV’s.					
Recommendation	N/A					

4-1 Clean Air Act Findings - Enforcement

Element 4 — Enforcement																														
Finding 4-1	Meets or Exceeds Expectations																													
Summary	Formal enforcement settlements were determined to have appropriate corrective action and were settled in a timely manner.																													
Explanation	<p>EPA found the enforcement actions reviewed to have effective corrective actions returning the source to compliance within an acceptable amount time.</p> <p>Enforcement actions for HPVs were initiated in a timely fashion and appropriate enforcement was used to return the facility to compliance.</p> <p>The state sends EPA notice of violations, settlement agreements, consent decrees, court termination orders, and closure letters which document the enforcement response, injunctive relief, timeliness, and penalty collected.</p>																													
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>9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe</td> <td>100%</td> <td></td> <td>14</td> <td>14</td> <td>100%</td> </tr> <tr> <td>10a Timely action taken to address HPVs</td> <td></td> <td>70%</td> <td>8^(a)</td> <td>9</td> <td>89% (100%)</td> </tr> <tr> <td>10b Appropriate enforcement responses for HPVs</td> <td></td> <td></td> <td>14</td> <td>14</td> <td>100%</td> </tr> </tbody> </table> <p>^aAFS data entry error for an addressing action date, NOV 4747-10, without error 10b would be 100%</p>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe	100%		14	14	100%	10a Timely action taken to address HPVs		70%	8 ^(a)	9	89% (100%)	10b Appropriate enforcement responses for HPVs			14	14	100%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																									
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe	100%		14	14	100%																									
10a Timely action taken to address HPVs		70%	8 ^(a)	9	89% (100%)																									
10b Appropriate enforcement responses for HPVs			14	14	100%																									
State Response	AQD continues to work at making its compliance/enforcement program more efficient and effective.																													
Recommendation	N/A																													

5-1 Clean Air Act Findings - Penalties

Element 5 — Penalties						
Finding 5-1	Area for State Improvement					
Summary	A review of the state enforcement files confirmed the data metrics 11a and 12a results of 0%. No documentation of penalty calculations were found.					
Explanation	The state does not document the calculation and assessment of penalty. No penalty calculation worksheet or summary is written. EPA was not able to find any documentation which ensured economic benefit was sought, or find a record showing the initial gravity penalty amount proposed, or a justification for the difference between initial proposed penalty and final penalty.					
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%		0	14	0%
	12a Documentation on difference between initial and final penalty	100%		0	14	0%
State Response	<p>The compliance program manager submitted a template calculation worksheet to Region 8 during an August WDEQ/AQD meeting in the Denver office. AQD employs the EPA civil penalty guidance as its foundation for calculating penalties. In each penalty calculation, AQD takes into account economic benefit, looking at such factors as how much an entity saved during their time of non-compliance (e.g., not having a permit with all associated monitoring and testing costs, not performing timely emissions testing).</p> <p>The biggest concern in the 2012 SRF for the AQD compliance/enforcement program is the EPA’s request for WDEQ/AQD penalty calculations. On several occasions in the SRF EPA requests the initial proposed penalty and the final penalty amount at settlement. Essentially EPA requests a worksheet from AQD to explain our initial proposal and the rationale for any penalty reduction.</p> <p>Fulfilling EPA’s request would greatly hinder the state’s ability to negotiate settlement with recipients of letters of violation. Presently</p>					

AQD carefully evaluates each compliance referral before making a determination regarding appropriate enforcement action. In each instance, the AQD Compliance Program Manager and Principal present their findings to the Administrator for a final decision. Once AQD submits the enforcement letter, discussions begin with the entity that received the letter. AQD compliance staff utilize the EPA civil penalty guidance and historical precedent (for facilities with like-violations) to calculate the initial penalty proposal to the alleged violator. With the AQD Administrator's approval the proposed penalty becomes the starting point for determining a final penalty.

AQD then sets up a meeting with the alleged violator. AQD provides the entity opportunity to explain the cause, duration, and impact of the alleged violation. AQD also affords the alleged violator occasion to explain the timeframe for repair, replacement, or operational adjustments to correct the situation. The company also receives the chance to explain proactive measures for preventing future non-compliance. After having obtained additional information during the meeting with the entity, AQD once again evaluates the environmental impact of the event and the company's reactive and proactive corrective measures. This then leads to another evaluation of the proper amount of the civil penalty. If the company performed satisfactory corrective measures and has instituted an effective proactive plan for preventing future non-compliance, AQD adjusts the penalty proposal. AQD applies this approach consistently with each alleged violator. This allows AQD to employ enforcement discretion relative to the degree of impact on the environment, the threat to public health, and the demonstration (or lack of demonstration) of good environmental stewardship on the part of the entity. The confidentiality of these discussions and negotiations is critical to the ability of AQD to employ equitable, consistent enforcement discretion, and also to generate amicable and environmentally beneficial settlement agreements.

Penalty calculations should be protected under the deliberative process privilege. If DEQ shared these calculations with EPA, it would become much more difficult not sharing them with other alleged violators, if they were to request the penalty calculations. Providing the penalty calculations to the EPA, and consequently to other alleged violators, would open the door to more difficult, lengthy, and less-than-irenic future settlement negotiations. Providing the penalty calculations to EPA would also more than likely result in less out-of-court settlement agreements. Disclosing this information to EPA would also minimize the state's ability to ensure compliance with environmental regulations among the regulated community, since it would hinder the enforcement settlement procedures. Disclosing this information to EPA would also

potentially protract the duration of non-compliance events due to the great hindrance it would place upon DEQ to enforce the regulations and bring about quick settlements with (and thus, corrective actions by) the alleged violator. How would limiting the state's ability to enforce promptly and confidentially with equitable discretion best serve the environment or the public?

USEPA Region 8 has repeatedly stated that Wyoming's penalties correspond well with EPA's penalty determinations. Since WDEQ/AQD has historically demonstrated consistency in issuing judicious and agreeable penalties and since AQD settlement agreements have regularly produced beneficial results (viz., prompt and long-term compliance), AQD does not agree with the request to disclose all penalty calculations to the EPA. As stated above, such a disclosure of penalty calculations would render AQD powerless in utilizing enforcement discretion and proposing penalties that justly meet and correct the offense.

AQD is not convinced that EPA is entitled to the information about WDEQ penalty calculations. AQD, therefore, believes it is not required to provide its penalty calculations to EPA.

Recommendation

The state should routinely document penalty calculations, including initial proposed penalty and final assessed penalty. The state should explain any differences between the initial and final penalty amounts. The penalty documentation should routinely include the calculation of economic benefit and a gravity component. If economic benefit is excluded, a rationale should be provided.

EPA recommends the state create a penalty calculation worksheet that records all the basic elements of the penalty for each enforcement action. The written penalty worksheet will help ensure penalty amounts are fair, predictable, and appropriate. The worksheet need not be lengthy but must contain sufficient information for an EPA evaluation. The penalty worksheet may be written in the most convenient format, stored separately, and kept confidential if public accessibility is a concern.

The state should provide EPA with a draft worksheet for review. The state and EPA will work together and come to an agreement on a final worksheet by September 30, 2014. The state should then begin to use the worksheet to document the calculation of penalties beginning in FY2015. EPA will perform a mid-year random file audit in the Cheyenne office to assess the progress of the program. The

documentation of penalties will then be evaluated during each end-of year review.

5-2 Clean Air Act Findings - Penalties

Element 5 — Penalties						
Finding 5-2	Meets or Exceeds Expectations					
Summary	Enforcement settlements under review in this evaluation fully documented the collection of a penalty.					
Explanation	The State Attorney General enters an <i>Order to Terminate and Dismiss Complaint</i> only after all settlement terms are satisfied including penalty collected. The state sends to EPA this order and a copy of the payment check.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	12b Penalties collected	100%		14	14	100%
State Response	AQD continues to work at completing consistent and just settlement agreements.					
Recommendation	N/A					

1-1 Resource Conservation and Recovery Act Findings - Data

Element 1 — Data																																																																																										
Finding 1-1	Meets or Exceeds Expectations																																																																																									
Summary	All of the data elements required to be entered into RCRAInfo had been entered in a timely and accurate fashion for the 31 files reviewed by EPA.																																																																																									
Explanation	<p>The Region reviewed 28 files at the state office, then requested and reviewed three additional files. The mandatory data was complete and accurate.</p> <p>For the 11 sites in violation for more than 240 days, the state should evaluate the data and enter return to compliance (RTC), if appropriate.</p>																																																																																									
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>2a Long-standing secondary violators</td> <td></td> <td></td> <td></td> <td></td> <td>11</td> </tr> <tr> <td>2b Complete and accurate entry of mandatory data</td> <td>100%</td> <td></td> <td>31</td> <td>31</td> <td>100%</td> </tr> <tr> <td>5a Two-year inspection coverage for operating TSDFs</td> <td>100%</td> <td></td> <td>2</td> <td>2</td> <td>100%</td> </tr> <tr> <td>5b Annual inspection coverage for LQGs</td> <td>20%</td> <td>21.7%</td> <td>10</td> <td>20</td> <td>50%</td> </tr> <tr> <td>5c Five-year inspection coverage for LQGs</td> <td>100%</td> <td>64.4%</td> <td>16</td> <td>20</td> <td>80%</td> </tr> <tr> <td>5d One-year inspection coverage for active SQGs</td> <td></td> <td></td> <td>57</td> <td>171</td> <td>33.3%</td> </tr> <tr> <td>5e1 Number of inspections at conditionally exempt SQGs</td> <td></td> <td></td> <td></td> <td></td> <td>202</td> </tr> <tr> <td>5e2 Number of inspections at transporters</td> <td></td> <td></td> <td></td> <td></td> <td>21</td> </tr> <tr> <td>5e3 Number of inspections at non-notifiers</td> <td></td> <td></td> <td></td> <td></td> <td>19</td> </tr> <tr> <td>5e4 Number of inspections at facilities not covered by metrics 2c through 2f3</td> <td></td> <td></td> <td></td> <td></td> <td>13</td> </tr> <tr> <td>7b Violations found during inspections</td> <td>100%</td> <td>35.9%</td> <td>61</td> <td>150</td> <td>40.7%</td> </tr> <tr> <td>8a SNC identification rate</td> <td>½ Natl Avg</td> <td>1.7</td> <td>1</td> <td>150</td> <td>0.7%</td> </tr> <tr> <td>10a Timely enforcement taken to address SNC</td> <td>100%</td> <td></td> <td>3</td> <td>3</td> <td>100%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2a Long-standing secondary violators					11	2b Complete and accurate entry of mandatory data	100%		31	31	100%	5a Two-year inspection coverage for operating TSDFs	100%		2	2	100%	5b Annual inspection coverage for LQGs	20%	21.7%	10	20	50%	5c Five-year inspection coverage for LQGs	100%	64.4%	16	20	80%	5d One-year inspection coverage for active SQGs			57	171	33.3%	5e1 Number of inspections at conditionally exempt SQGs					202	5e2 Number of inspections at transporters					21	5e3 Number of inspections at non-notifiers					19	5e4 Number of inspections at facilities not covered by metrics 2c through 2f3					13	7b Violations found during inspections	100%	35.9%	61	150	40.7%	8a SNC identification rate	½ Natl Avg	1.7	1	150	0.7%	10a Timely enforcement taken to address SNC	100%		3	3	100%
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State Response	State agrees. Approximately 6 sites have been verified as RTC and SHWD will continue working on remainder.																																																																																									

Recommendation	N/A
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2-1 Resource Conservation and Recovery Act Findings - Inspections

Element 2 — Inspections																																																
Finding 2-1		Meets or Exceeds Expectations																																														
Summary		<p>The state meets or exceeds the national goals for all inspection coverage areas with the exception of the five-year inspection coverage for LQGs. Unfortunately, this is based on the biennial report system which may include one-time generators or episodic LQGs. When RCRARep data in the RCRAInfo data base is used, then the state has inspected 100% of their LQG universe.</p>																																														
Explanation		<p>The state does an excellent job of LQG inspections, more than doubling the required 20% annually. The state also met the TSDf requirement by inspecting the two TSDfS in the state.</p> <p>Metric 5c indicates the state had a five-year inspection coverage for LQG inspections of 80%, which exceeds the national average of 64.4% but fails to achieve the national goal of 100% LQG coverage on a five-year basis.</p> <p>The universe for the inspection coverage metrics is based on the Biennial Reporting System (BRS). Episodic generators, one-time generators, and one-time LQGs submitting one-time BRS notifications may not justify inspection targeting for these one-time events.</p> <p>Using RCRARep data for 2012, extracting seven new generators or one-time generators and one corrective action site, the state has 100% coverage of the LQG universe for the last five years.</p>																																														
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>5a Two-year inspection coverage of operating TSDfS</td> <td>100%</td> <td>88.9%</td> <td>2</td> <td>2</td> <td>100%</td> </tr> <tr> <td>5b Annual inspection coverage of LQGs</td> <td>20%</td> <td>21.7%</td> <td>10</td> <td>20</td> <td>50%</td> </tr> <tr> <td>5c Five-year inspection coverage of LQGs</td> <td>100%</td> <td>64.4%</td> <td>16</td> <td>20</td> <td>80%</td> </tr> <tr> <td>5d Five-year inspection coverage of active SQGs</td> <td></td> <td></td> <td>57</td> <td>171</td> <td>33.3%</td> </tr> <tr> <td>5e1 Five-year inspection coverage of active conditionally exempt SQGs</td> <td></td> <td></td> <td></td> <td></td> <td>202</td> </tr> <tr> <td>5e2 Five-year inspection coverage of active transporters</td> <td></td> <td></td> <td></td> <td></td> <td>21</td> </tr> </tbody> </table>					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%	2	2	100%	5b Annual inspection coverage of LQGs	20%	21.7%	10	20	50%	5c Five-year inspection coverage of LQGs	100%	64.4%	16	20	80%	5d Five-year inspection coverage of active SQGs			57	171	33.3%	5e1 Five-year inspection coverage of active conditionally exempt SQGs					202	5e2 Five-year inspection coverage of active transporters					21
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	5e3 Five-year inspection coverage of active non-notifiers				19
	5e4 Five-year inspection coverage of active sites not covered by metrics 2c through 2f3				13
	6a Inspection reports complete and sufficient to determine compliance	100%	30	30	100%
	6b Timeliness of inspection report completion	100%	28	30	93.3%
State Response	State agrees and take initiatives to increase % of inspections for oil & gas related activities in response to higher activity in 2014 -15 period.				
Recommendation	N/A				

3-1 Resource Conservation and Recovery Act Findings - Violations

Element 3 — Violations						
Finding 3-1	Meets or Exceeds Expectations					
Summary	The state accurately identifies violations in their inspection reports and enters these in the national database. The two SNCs identified during this review period were both timely and appropriate.					
Explanation	The state accurately identifies violations. The two SNCs identified during this review period received appropriate enforcement actions. EPA reviewed the SNC compliance rate as part of the file review. Based on the number of inspections completed which had a determination of no violations found, EPA concluded that the SNC identification rate was appropriate though lower than half the national average.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2a Long-standing secondary violators					9
	7a Accurate compliance determinations	100%		31	31	100%
	7b Violations found during inspections		35.9%	61	150	40.7%
	8a SNC identification rate		¹ / ₂ Natl Avg 1.7%	1	150	0.7%
	8b Timeliness of SNC determinations	100%	78.7%	1	1	100%
	8c Appropriate SNC determinations	100%		2	2	100%
	State Response	State agrees and notes the SNC identification rate for low population states like WY will vary more significantly than others. Some recently past years have SNC rates 2x current and this variability is anticipated in the future.				
Recommendation	N/A					

4-1 Resource Conservation and Recovery Act Findings - Enforcement

Element 4 — Enforcement						
Finding 4-1	Meets or Exceeds Expectations					
Summary	The state requires corrective measures in their formal and informal actions to return facilities to compliance and follows up through required submittals or onsite inspections. The state takes timely and appropriate enforcement action to address identified violations.					
Explanation	Two informal enforcement actions, one formal enforcement action, and two penalties were reviewed. The enforcement actions returned violators to compliance. The penalties were collected and compliance measures were taken pursuant to those actions. The enforcement actions were timely and appropriate for the violations identified.					
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%		3	3	100%
	10a Timely enforcement taken to address SNC	80%	83.20%	1	1	100%
	10b Appropriate enforcement taken to address violations	100%		3	3	100%
State Response	State agrees and again notes, as the least populated state, the number of enforcement cases and value of settlements can be much more variable, relative to more industrialized/populated states.					
Recommendation	N/A					

5-1 Resource Conservation and Recovery Act Findings - Penalties

Element 5 — Penalties						
Finding 5-1	Meets or Exceeds Expectations					
Summary	The state collected two penalties during this fiscal year. The state includes both economic benefit and gravity components in their penalty calculations and documents adjustment of the initial penalty to the settled amount. The state maintains documentation in its files that the final penalty has been collected or SEP projects completed.					
Explanation	Two penalty actions were reviewed by EPA. For both of these penalty actions, the state included both economic benefit and gravity components in their penalty calculations and documented any adjustments to the penalty. Documentation of the penalty calculations, adjustments, settlement, and compliance measures taken were maintained in the state files.					
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%		2	2	100%
	12a Documentation on difference between initial and final penalty	100%		2	2	100%
	12b Penalties collected	100%		2	2	100%
State Response	State agrees and again notes, as the least populated state, the number of enforcement cases and value of settlements can be much more variable, relative to more industrialized/populated states.					
Recommendation	N/A					