

STATE REVIEW FRAMEWORK

Texas

Clean Water Act, Clean Air Act, and Resource Conservation and Recovery Act Implementation in Federal Fiscal Year 2015

**U.S. Environmental Protection Agency
Region 6, Dallas**

**Final Report
December 4, 2017**

Executive Summary

Introduction

EPA Region 6 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Texas Commission on Environmental Quality (TCEQ).

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.

Clean Water Act (CWA)

Areas of Strong Performance

- **Inspection coverage meets expectations for major facilities as well as CAFO and stormwater construction**
- **Inspection report quality is complete and sufficient to determine compliance in most inspection reports reviewed**
- **Documentation of penalty collections is well documented in files**
- **TCEQ has greatly improved entering single event violations into ICIS**

Priority Issues to Address

- **Clean Water Act Permit limits rates and permit compliance schedules entry into ICIS**
- **Clean Water Act timely and appropriate formal enforcement actions**

Most Significant CWA-NPDES Program Issues¹

- **A number of the files reviewed contained facility and permit compliance schedule information missing in ICIS.**
- **Single event violations are in ICIS; however due to migration from state data base, CCEDS to national data base, ICIS it is difficult to determine the event**
- **Single events are not accurately identified**

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."

Clean Air Act (CAA)

TCEQ met the CAA compliance and enforcement program expectations in several areas including:

1. Full compliance evaluation (FCE) coverage at Title V majors and mega-sites;
2. Documentation of FCE elements in compliance monitoring reports per the Compliance Monitoring Strategy (CMS);
3. Issuance of formal actions which returned to compliance;
4. All files with penalty calculations were well documented and had adequate documentation to indicate that penalties considered and included gravity and economic benefit. If economic benefit was considered to be de minimis, facts were documented; and
5. The collection of penalty amount was well documented.

Priority Issues to Address

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

Most Significant CAA Stationary Source Program Issues

1. Data completeness and accuracy of minimum reporting requirements are areas which need improvement:
 - The review identified concerns with the accuracy of applicable Subparts;
 - The total number of Title V major sources reported is incorrect;
 - The total number of Annual Compliance Certification reviews is incorrect;
 - The FCE/PCE dates contained in ICIS-Air were the dates an investigation report was approved, which TCEQ considers the end date of an investigation; and
 - Electronic data flor (EDT) projects need to be completed in order to report data accurately and timely to ICIS-Air
2. TCEQ did not meet the timeliness of the HPV policy in three of 13 cases reviewed.

Resource Conservation and Recovery Act (RCRA)

Areas of Strong Performance

- Next Generation principles and tools implemented
 - Electronic Reporting (Agency Central Registry)
 - STEERS (State of TX Environmental Electronic Reporting System) (External)
Document receiving system for collecting numerous reports required under the state's EPA-authorized programs
 - CCEDS (Consolidated Compliance and Enforcement Data System) (Internal)
Database that is also a repository for documents (inspections/investigation reports and checklists are generated and stored)
 - Transparency (Commission approved Agreed Orders) posted on website
 - Penalty Calculation Sheets
 - Economic Benefit Worksheets
 - Innovative Enforcement
 - Supplemental Environmental Projects (SEPs)
 - Third party oversight in verification of compliance
- Exit Interview Form (Identifies Inspector's Findings)
 - Inspector completes at time of the inspection
 - Regulated Entity Representative signs and is provided a copy
 - Proven to be efficient in facilities returning to compliance more quickly
- TCEQ Management
 - Promotes training for staff individual development
 - Provides resources for staff to attend training
 - Provides staff with Guidance Documents
 - Inspection/Investigation Checklists
 - Inspection/Investigation Standards Operating Procedures
 - Enforcement Initiation Criteria
 - Enforcement Standard Operating Procedures
 - Commitment to meet or exceed all inspection and enforcement commitments in accordance with EPA's RCRA Compliance Monitoring Strategy (CMS); EPA's National Program Manager (NPM) Guidance, EPA's RCRA Enforcement Response Policy, and the TCEQ Performance Partnership Grant Workplan.
 - Encourages on-going communications with EPA Region 6's compliance and enforcement staff to ensure that all national priorities are addressed
 - Encourages partnership with EPA Region 6 in protection of human health and environment
 - Provides resources to get data accurately and completely reflected in RCRAInfo, the EPA RCRA national database for tracking inspections and enforcement

Priority Issues to Address

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

- Data challenges
 - Ensuring complete, accurate and timely data entry into RCRAInfo
 - 1) Inspection & Enforcement Data in the RCRA National Database (RCRAInfo) is not complete
 - (a) TCEQ does inspections of facilities that do not have an EPA Identification Number which RCRAInfo requires
 - (b) TCEQ does not enter its' Financial Record Review (FRR) inspections
 - 2) Need for consistent terminology regarding inspection (evaluation) types
Inspection Evaluation Type table for input into RCRAInfo
 - 3) Multiple inspections conducted at one facility on same day (i.e., CEI and FCIs)
 - (a) CEI is an overall review of the site's performance
 - (b) CEI definition includes all applicable RCRA regulations and permits
 - 4) Data entry into RCRAInfo should be entered within two weeks, but on a monthly basis at a minimum
Investigation data entered into CCEDS no later than 60 calendar days from the last day of the on-site investigation

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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: FY 2015

Key dates:

- Kickoff letter/Meeting: March 24, 2016
- Data Metric Analysis and File Selection sent to TCEQ:
 - CWA: June 13, 2016
 - CAA: June 13, 2016
 - RCRA: July 11, 2016
- On-site File Review conducted:
 - CWA: July 18-22, 2016
 - CAA: July 25-29, 2016
 - RCRA: August 8-12, 2016
- Draft Report sent to TCEQ: September 19, 2017
- Report Finalized: December 4, 2017

State and EPA key contacts for review:

Clean Water Act

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Clean Air Act

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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.

Clean Water Act Findings

CWA Element 1 — Data																							
Finding 1-1	Meets or Exceeds Expectations																						
Summary	Permit DMR data for major facilities are consistently entered into Integrated Compliance Information System (ICIS). Permit Limit data entry for major facilities has fallen below the national goal.																						
Explanation	<p>Data entry for permit discharge monitoring reports (DMRs) is excellent. Texas entered 99.3% of DMR for major facilities (metric 1b2). Texas data entry of permit limits needs attention. Texas entered 92.1% for major facilities (metric 1b1). The national goal for each of these is $\geq 95\%$.</p> <p>TCEQ should immediately begin to enter data correctly into the national data system. This includes but is not limited to inspection type, permit information, enforcement actions, etc.</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>1b1 Permit limit rate for major facilities</td> <td>$\geq 95\%$</td> <td>90.90%</td> <td>656</td> <td>712</td> <td>92.1%</td> </tr> <tr> <td>1b2 DMR entry rate for major facilities</td> <td>$\geq 95\%$</td> <td>96.7%</td> <td>24654</td> <td>24837</td> <td>99.3%</td> </tr> </tbody> </table>					Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	1b1 Permit limit rate for major facilities	$\geq 95\%$	90.90%	656	712	92.1%	1b2 DMR entry rate for major facilities	$\geq 95\%$	96.7%	24654	24837	99.3%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																		
1b1 Permit limit rate for major facilities	$\geq 95\%$	90.90%	656	712	92.1%																		
1b2 DMR entry rate for major facilities	$\geq 95\%$	96.7%	24654	24837	99.3%																		
State response	TCEQ will continue to pursue timely and accurate entry of data.																						
Recommendation																							

CWA Element 1 — Data

Finding 1-2	Area for State Improvement																							
Summary	Single event violations and other non-compliance events are not consistently entered in the ICIS database, and it is difficult to determine the activity associated with the event.																							
Explanation	<p>Information for 12 of 24 files reviewed (50%) is accurately reflected in the ICIS database.</p> <p>One of the twenty four reviewed files contain information documenting single event violations at major facility that is not in ICIS; reporting single event violations are required to be reported as indicated in the 2008 Single Event Violation Data Entry Guide. Nineteen (four minor facilities and fifteen major facilities) of the twenty-four reviewed files have single event violations coded into ICIS, however, due to the uploading process from CCEDS into ICIS it is difficult to determine the activities that are associated with the violations. SVIO's in ICIS state the following: "Permit violations specified in comment". The comment box states the following: "Please see the TCEQ for details of the violations covered by this summary." Additionally, Compliance Schedule violations from an Order, and Permit schedule violations are uploaded from CCEDS to ICIS, it is difficult to determine the activities associated with the violation.</p> <p>Four of the twenty-four reviewed files (three majors and one minor) have NOV's in the file but are not in ICIS.</p> <p>Eight of the twenty-four reviewed files (six majors and two minors) have a schedule in their permit, including two TRE's, which was not entered into ICIS.</p> <p>Two of the twenty-four reviewed files had an Unsatisfactory rating noted in the inspection, but no SNC determination was made.</p>																							
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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%		12	24	50%																			
8c Percentage of SEVs identified as SNC reported timely at major facilities	100%		15	17	88.2%																			

State response

TCEQ respectfully disagrees with the overall rating for this finding and requests clarification as to specifically how the 50% calculation in Metric ID 2.b was derived. Based on our understanding of how this metric was evaluated, the TCEQ concludes that this metric was incorrectly calculated due to EPA's misinterpretation of information, resulting in an over-estimation of files with errors, as described below:

1. The statement "Nine of the twenty-four reviewed files (six majors and three minors) have a schedule in their permit, including a TRE, which was not entered into ICIS" is inaccurate. After discussions with EPA, it was agreed that at least two of the schedules were cited in error. Furthermore, four of schedules were State-specific requirements, which TCEQ understands are not required data elements under the EPA/TCEQ Memorandum of Agreement. Therefore, TCEQ requests that the statement be revised to indicate that only three of the twenty-four reviewed files contained errors.
2. The statement "Some facility location and permit compliance information is missing or inaccurate in the ICIS." is also inaccurate. Upon examination of the examples given to justify this comment, TCEQ has determined this assumption is incorrect and that EPA had incorrectly interpreted the data. Specifically, the ICIS generated report used for verification reflected information which led to confusion between the Owner/Permittee name and the Facility/Location name. EPA concurs with the TCEQ on this point. TCEQ has verified that the information provided was correctly entered into ICIS. Furthermore, it should be noted that if a facility has a pending renewal and there are changes to facility or owner name associated with that renewal, the new information overrides what is on the existing permit, thus ICIS may not reflect the information on the issued permit at the time of the SRF review.

The TCEQ requests that the above-mentioned errors be removed from the calculation and any percentages that were used based on these statements be adjusted. Based on the above justifications, the TCEQ requests that the status for Finding 1-2 be changed to "Area of State Attention".

The TCEQ also requests that for future reviews of the state's performance, that EPA bring the specific deficiencies to the attention of TCEQ prior to the release of draft SRF Findings. This could minimize errors in data interpretation and provide an opportunity for EPA-State collaboration.

Additionally, single event violations are sent to ICIS, however, there is not a mechanism in TCEQ's database of record, CCEDS, which will allow for each specific violation type to be coded with the EPA code and noted as such in ICIS. Therefore, the permit violation code is used with the note to see TCEQ for the specific violation type.

The TCEQ is currently undergoing a project entitled Critical Technology Upgrade (CTU). The goal of CTU is to redevelop all of TCEQ's legacy applications to a modern web-based technology over multiple biennia. In order to align with the Texas Department of Information Resources State Strategic Plan for legacy modernization, the CTU is the TCEQ's highest information technology investment. As a result, resources are being dedicated to furthering the progress of CTU rather than enhancing legacy systems that will eventually be replaced.

Recommendation

Any permit issued with a schedule shall be entered into ICIS in a timely manner. All permit schedules should be keyed into ICIS within thirty (30) days of permit issuance. Facilities who trigger a TRE, shall enter all compliance schedule activities associated with the TRC into ICIS within thirty (30) days of the trigger date. TCEQ shall begin implementing this recommendation by September 30, 2018. EPA will review on a quarterly basis beginning the quarter ending December 31, 2018.

CWA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations
Summary	Inspection coverage at major facilities meets the commitments for FY2015. Inspection reports are complete and sufficient to determine compliance at the facility.
Explanation	<p>For metric 5a1, the actual total number of Majors on October 1, 2014, for inspection purposes, should be 656. The percentage of inspections performed would change from 44.90% to 48.78%. In accordance with the CMS, "100% coverage every 2 years", the TCEQ has committed to cover the remaining 51.22% of the Majors for FY16.</p> <p><i>Inspection report quality</i> Eighteen of 18 reviewed inspection reports are complete and provide sufficient information to determine compliance.</p> <p><i>Timeframe for completing an inspection report</i> Inspection report timeliness is quite good, however, One of the 18 reviewed inspection reports exceeded the prescribed timeframe for completing the report.</p> <p>The Memorandum of Agreement - Chapter 6. Enforcement Program Description. Regional Office Inspections (H). Completion time Frame for Compliance Inspection Reports states reports for scheduled compliance inspections and follow-up inspections will be completed and submitted to the Central Office within sixty (60) days of the date of the inspection. The signature date on the report will considered the submittal date. The required time frame for submittal for these reports may be modified as necessary to meet program needs.</p> <p>The National Pollutant Discharge Elimination System Enforcement Management System (NPDES EMS) calls for completion of inspection reports within 30 days for non-sampling inspection and 45 days for sampling inspections in Chapter 5, Section A. For SRF purposes, the TCEQ was evaluated on the timeframe in the MOA.</p> <p>Pretreatment Inspections were conducted and met the National Clean Water Act National Pollutant Discharge Elimination System Compliance Monitoring Strategy for the Core Program and Wet Weather Sources (NPDES CMS Policy) policy coverage goals for pretreatment facilities.</p>

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	5a1 Inspection coverage of NPDES majors	100% of the state CMS	55.30%	320	656	48.78%
	5b1 Inspection coverage of NPDES non-majors with individual permits	100% of the state CMS	26.60%	619	2293	27%
	5b2 Inspection coverage of NPDES non-majors with general permits	100% of the state CMS	6.80%	164	2275	7.20%
	4a1 Pretreatment compliance inspections and audits	100% of the state CMS		21	21	100%
	4a2 Significant Industrial User inspections for SIUs discharging to non-authorized POTWs	100% of the state CMS		29	34	85.2%
	4a5 SSO inspections	100% of the state CMS		26	N/A	
	6a Inspection reports complete and sufficient to determine compliance at the facility	100%		18	18	100%
	6b Inspection reports completed within prescribed timeframe	100%		17	18	94.4%
State response	TCEQ appreciates the recognition of achievement in this area.					
Recommendation	None					

CWA Element 2 — Inspections (CAFO and Stormwater)

Finding 2-2	Meets or Exceeds Expectations				
Summary	<p>TCEQ inspected 100% of the CAFOs in the Dairy Outreach Program Area (DOPA), which consists of the Bosque River Watershed and the Lake Fork Watershed.</p> <p>Stormwater Inspections were consistent and well written. The format is easy to follow.</p>				
Explanation	<p>TCEQ met its commitment to inspect 100% of all CAFOs in the DOPA (Bosque River Watershed and the Lake Fork Watershed). The total number of FY 2015 permitted CAFOs in the DOPA is 158. TCEQ conducted 217 inspections in the DOPA. The total number of permitted CAFOs in the State is 561. Over 60% of the permitted CAFOs (348) were inspected in 2015. TCEQ’s goal is to inspect each permitted CAFO at least once in 5 years. Therefore, TCEQ met the inspection commitments specified in the state/EPA agreements.</p> <p>All the inspection reports reviewed were complete and well written and contained sufficient documentation needed to make a compliance determination. All the inspection reports were completed on time, within the allowed 60-day timeframe.</p>				
Relevant metrics					
4a7 Phase I & II MS4 audits or inspections	100% of the state CMS	150	584	25.68%	
4a8 Industrial stormwater inspections	100% of the state CMS	140	13,111	1.1%	
4a9 Phase I and II stormwater construction inspections	100% of the state CMS	93	17,847	.52%	
4a10 Medium and large NPDES CAFO inspections	100% of the state CMS	474	175	270.9%	
CAFO					
6a Inspection reports complete and sufficient to determine compliance at the facility	100%	11	11	100%	
6b Inspection reports completed within prescribed timeframe	100%	11	11	100%	
STORMWATER					

	6a Inspection reports complete and sufficient to determine compliance at the facility	100%	20	20	100%
	6b Inspection reports completed within prescribed timeframe	100%	20	20	100%
State response	TCEQ appreciates the recognition of achievement in this area.				
Recommendation	None				

CWA Element 3 — Violations

Finding 3-1	Area for State Attention					
Summary	The percentage of majors in non-compliance is slightly higher than the national average. A majority of the reviewed files accurately identified single event violations as SNC or non-SNC.					
Explanation	<p>Compliance determinations are clearly documented in all inspections and enforcement files. Nineteen of the 19 inspection and enforcement files reviewed (100%) under metric 7e contain clear documentation for compliance determination. Compliance determinations are important to determine whether enforcement follow-up is necessary.</p> <p>A large portion of the universe of major facilities in Texas (79.5%) are in non-compliance as shown below in the data for Metric 7d1, which is slightly above the nation average of 74.2%. The number of major facilities in significant non-compliance in Texas is 19.4%, which is the basically same as the national average of 19.2%.</p> <p>Eighteen of 21 reviewed files have single event violations accurately identified as SNC or non-SNC.</p> <p>269 single event violations are reported at major facilities under SRF metric 7a1. The state has developed and implemented a program to upload the information from the state database to the national database.</p> <p>TCEQ shall consistently review single events during inspections to accurately determine SNC or non-SNC.</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					269
	7d1 Major facilities in noncompliance		74.2%	566	712	79.5%
	7e Inspection reports reviewed that led to an accurate compliance determination			19	19	100%
	7f1 Non-major facilities in Category 1 noncompliance					818
	7g1 Non-major facilities in Category 2 noncompliance					848
	8a2 Percentage of major facilities in SNC		19.2%	140	722	19.4%
	8b Single-event violations accurately identified as SNC or non-SNC	100%		18	21	85.7%

	8c Percentage of SEVs identified as SNC reported timely at major facilities	100%	15	17	88.2%
State response	The TCEQ will continue to ensure violations are identified correctly.				
Recommendation					

CWA Element 3 — Violations (CAFO and Stormwater)

Finding 3-2	Meets or Exceeds Expectations					
Summary	Of the 12 CAFO inspection reports reviewed, only one included serious violations. All Stormwater facilities with enforcement actions were adequately addressed, easy to follow and timely.					
Explanation	The violations found at this particular CAFO facility were carefully documented and included (1) unauthorized discharges to waters of the US, (2) failure to ensure adequate capacity in the facility’s waste water storage structure and, (3) failure to conduct a 5-year integrity evaluation of the waste water storage structure. TCEQ issued the facility a notice of violation (NOV) letter that included a compliance schedule					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	CAFO					
	7e Inspection reports reviewed that led to an accurate compliance determination			11	11	100%
	STORMWATER					
	7e Inspection reports reviewed that led to an accurate compliance determination			20	20	100%
State response	TCEQ appreciates the recognition of achievement in this area.					
Recommendation						

CWA Element 4 — Enforcement

Finding 4-1	Area for State Improvement
Summary	<p>The percentage of Major facilities with timely action is above the national average. A majority of the files reviewed have appropriate enforcement actions. Additionally, there are a number of facilities with informal enforcement actions (phone calls/e-mails) in ICIS, and these actions resulted in timely receipt of missing data.</p>
Explanation	<p>The TCEQ process to issue a formal enforcement action (Agreed Order) is a slow process. The action has to be agreed upon by the TCEQ and the entity, then goes to the TCEQ commissioners for ultimate approval and issuance. This process makes it very difficult to meet timeliness.</p> <p>The Major facilities with timely action has increased from 3.8% timely actions in FY12 to 16.7% timely actions in FY14 and now is 32.4% timely actions in FY15. Timeliness has continued to improve and is well above the National Average.</p> <p>Nineteen of the 22 files reviewed demonstrate appropriate enforcement action taken in FY2015. Three of 22 files require additional enforcement review for appropriate action. Appropriate response to violations is determined by the range of recommended enforcement responses for specific types of violation discovered as noted in the NPDES Enforcement Management System's Enforcement Response Guide.</p> <p>Thirty-three Pretreatment Compliance Inspections and Audits were conducted. Fifty-one violations were identified. There were no enforcement actions taken by the TCEQ.</p> <p>Twenty-nine Significant Industrial Users were inspected. Fourteen violations were identified. The TCEQ was in the process of issuing two enforcement actions.</p> <p>TCEQ inspected the CAFO facility on 8/10/2015 and observed numerous violations, including:</p> <ol style="list-style-type: none">1. Failure to prevent unauthorized discharges of process wastewater into an adjacent waters of the U.S.2. Failure to notify the state about the unauthorized discharge3. Failure to ensure adequate capacity in the wastewater retention structure4. Failure to maintain an irrigation system for removal of wastewater from the retention structure

5. Failure to maintain a pond marker in the wastewater retention structure
6. Failure to properly dispose of dead animal carcasses
7. Failure to conduct a 5-year evaluation of the wastewater retention structure

TCEQ issued a notice of violation letter to the facility on 8/25/2015, requiring compliance by 9/25/2015. However, on 12/18/2015, TCEQ issued a “no compliance” letter to the facility. TCEQ’s letter stated that “due to the seriousness of the alleged violations, a formal enforcement action has been initiated.” TCEQ conducted a follow-up inspection of the facility on 1/27/2016 and issued a “notice of enforcement” on 2/1/2016 indicating that a formal enforcement action had been initiated. However, at the time of the SRF review on 7/19/2016, TCEQ had not yet finalized issuance of the formal administrative penalty order.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
10a1 Major facilities with timely action as appropriate	≥98%	11.8%	12	37	32.4%
10b Enforcement responses reviewed that address violations in an appropriate manner	100%		19	22	86.4%
STORMWATER					
10b Enforcement responses reviewed that address violations in an appropriate manner	100%		17	17	100%

State response

TCEQ respectfully disagrees with the overall rating for this finding. The TCEQ finds the statement “Three of 22 files require additional enforcement review for appropriate action.” to be inaccurate. Upon examination of the examples given to justify this comment, TCEQ has determined did respond appropriately to all enforcement actions. Specifically, EPA deemed that certain violations were not linked in ICIS to existing orders. The TCEQ determined that these violations did not flag as RNC and therefore, did not appear on the QNCR. Linking violations that do not appear on the QNCR is not TCEQ practice based on our initial and long-term understanding of the agreements with EPA. Upon further research, the third file cited was never captured within the QNCR review periods and therefore, never flagged for SNC on the selective QNCR. Thus, the TCEQ requests that this statement be removed and the calculation for Metric ID 10b be revised to 100%.

Additionally, the primary reason that Texas does not consistently issue timely enforcement actions under EPA’s SNC guidance is because TCEQ is bound by the requirements outlined in state laws, regulations, and policies to provide due process. When a violation is identified that appears

to warrant formal enforcement, an Enforcement Action Referral (EAR) is prepared, which is screened by the Enforcement Division. Typically a proposed Agreed Order, which contains administrative penalties and technical requirements, is then drafted and sent to the violator for consideration. If accepted and signed, the order is required under Texas Water Code Section 7.075, to be published in the *Texas Register* for 30 days to allow for public comment. After closure of the public comment period, the matter is then scheduled for consideration at the Commission Agenda. If approved by the Commission, the order is issued with an effective date. The process from the time the EAR is prepared to the Commission Agenda generally takes a minimum of 180 days; however, if agreement is not reached on the proposed order, the case is referred to the TCEQ Litigation Division for further action. There may be additional settlement negotiations, with the possibility of a higher penalty, and/or the case might be filed for administrative hearing. TCEQ can also refer cases to the Attorney General’s Office for civil or criminal prosecution.

TCEQ recommends that EPA revise the SNC Policy to increase the number of days for timely action to 360 days and/or to revise the definitions for “SNC identification” and “timely action” to provide flexibility to states that are bound by their individual enforcement statutes and regulations. TCEQ believes that the SNC start date should begin on the approval date of the inspection that addresses the violations.

Recommendation

Beginning September 30, 2018, use the range of recommended enforcement responses for specific types of violations as noted in the NPDES Enforcement Management System’s Enforcement Response Guide.

The Region will continue to monitor the TCEQ’s performance quarterly, beginning the quarter ending December 31, 2018.

CWA Element 4 — Enforcement

Finding 4-2	Meets or Exceeds Expectations						
Summary	TCEQ had 100% of enforcement responses that return or will return source in violations to compliance and 100% of the enforcement responses addressed all the violation in an appropriate manner.						
Explanation	<p>9a. Percentage of enforcement responses that return or will return source in violation to compliance: 100% (18 of 18)</p> <p>The enforcement responses included warning letters, phone calls/e-mails, state Agreed Orders with Penalty, and the enforcement response indicated that the violations were addressed in an appropriate manner.</p>						
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%		18	18	100%
State response	TCEQ appreciates the recognition of achievement in this area.						
Recommendation	None						

CWA Element 4 — Enforcement (CAFO and Stormwater)

Finding 4-3	Meets or Exceeds Expectations					
Summary	Numerous violations were found at one of the 12 CAFO facilities reviewed. However, the enforcement action addressing these violations had not been issued at the time of the facility review. All seventeen Stormwater facilities with enforcement actions were adequately addressed, easy to follow and timely					
Explanation	The enforcement responses included warning letters, phone calls/e-mails, state Agreed Orders with Penalty, and the enforcement response indicated that the violations were addressed in an appropriate manner.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	STORMWATER					
	9a Percentage of enforcement responses that return or will return source in violation to compliance	100%		17	17	100%
State response	TCEQ will continue to implement the TCEQs enforcement program for CAFOS and stormwater in accordance with state laws, regulations, and the Commission Penalty Policy.					
Recommendation	None					

CWA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations						
Summary	The state is calculating and documenting penalty calculations and the penalty calculation worksheets are in the file or available online.						
Explanation	Thirteen of the 13 (100%) files reviewed with penalty calculations had adequate documentation of initial and/or final penalty calculation/rationale. Eight of the 13 (61.5%) files reviewed documented penalties were collected. The 5 files which did not collect a penalty, documented the facility performed a Supplemental Environmental Project (SEP), or the penalty was deferred, or a combination of a SEP and deferral. The SEP and/or deferral offset the penalty completely.						
Relevant metrics	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%		13	13	100%	
	12a Documentation of the difference between initial and final penalty and rationale	100%		13	13	100%	
	12b Penalties collected	100%		13	13	100%	
	STORMWATER						
	11a Penalty calculations reviewed that consider and include gravity and economic benefit	100%		5	5	100%	
	12a Documentation of the difference between initial and final penalty and rationale	100%		5	5	100%	
	12b Penalties collected	100%		5	5	100%	
	State response	TCEQ will continue to follow state laws, regulations, and policies to ensure final penalty amounts and collection of penalty are documented in the files.					
	Recommendation	None					

Clean Air Act Findings

CAA Element 1 — Data	
Finding 1-1	Area for State Improvement
Summary	<p>EPA Region 6 evaluated TCEQ’s timeliness and accuracy in reporting. EPA identified areas needing improvement in Metrics 2b, 3a2, 3b1, 3b2, and 3b3. TCEQ enters compliance and enforcement data directly into a State database, Comprehensive Compliance and Enforcement Data System (CCEDS), and uploaded this data into the Air Facility System (AFS) national data base using a batch process. Since the AFS shutdown in October 2014, TCEQ has worked toward creation of custom software to transfer data from CCEDS to Integrated Compliance Information System-Air (ICIS-Air) via electronic data transfer (EDT). TCEQ has successfully uploaded on-site FCEs and enforcement actions, but is not uploading all Title V Annual Compliance Certifications (ACCs), HPVs and linking for case files. There is also an issue with the total number of Title V source universe. The current Title V universe reported in ICIS-Air appears larger than the actual number of active Title V sites in Texas. During the development of the EDT, TCEQ submitted data for all current and historic Title V sites, regardless of permit status (void/expired/effective). This was done in an effort to ensure that all core data was present to accurately reflect current and historical enforcement and investigation data. Permit status is not yet reported to ICIS-Air. Funding constraints are discussed in the Explanation below.</p>
Explanation	<p>The review identified concerns with the accuracy in ICIS-Air of applicable CAA Subparts for 38 of 39 facilities reviewed, according to the information found in the facility permit and/or the compliance monitoring report. The Subpart information for some facilities includes Subparts which are in the permit shield. However, the Subparts are not specified as "Active" or "Inactive" in ICIS-Air.</p> <p>TCEQ’s Office of Compliance and Enforcement (OCE) staff enter compliance and enforcement data into CCEDS. TCEQ’s Office of Air (OA) is responsible for entering permit data into the state Title V database. CCEDS does not contain applicable Subpart information; however, this information is contained in the Title V database. TCEQ has identified two data flow projects:</p> <ol style="list-style-type: none"> 1 Correct and complete reporting of all FCEs and ACCs; correct identification of Title V permit status; and identification of HPVs

in ICIS-Air with the creation of Enforcement Case Files and linking investigations to Enforcement Case Files;

- 2 Identification of Federally Reportable Violations (FRVs) and refinement of Subpart data.

TCEQ is aware of the inaccurate Subpart information in ICIS-Air, and is currently coordinating with their OA and exploring funding in order to submit accurate Subpart information to ICIS-Air.

TCEQ has obtained funding for the first data flow project listed above, and will endeavor to complete the project by August 31, 2017. TCEQ planned to request *National Environmental Information Exchange Network* (NEIEN) grant funds to finance the second data flow project. Unfortunately, TCEQ currently has four NEIEN grants and four is the maximum number of NEIEN grants an agency can hold. Because the NEIEN Grant was not an option, TCEQ will submit a request for FY2018 state funding consideration to identify and report FRVs by August 31, 2019.

TCEQ made correct HPV determinations for concerns identified in all files reviewed. Case File information has not been entered in ICIS-Air, which was a data issue. However, all the Formal Enforcement Actions in FY2015 are HPVs, as TCEQ currently only identifies and reports information for HPVs. TCEQ has a data flow project in process to identify HPVs and link actions in Case Files.

TCEQ currently does not report FRVs. A second data flow project will enable TCEQ to classify identified violations as FRVs and upload the data to ICIS-Air. The stack test reporting appears to have been resolved by the work on data flows which TCEQ has already undertaken.

Completion of the Node software and the two projects described in paragraph one will enable TCEQ's data to flow from CCEDS to ICIS-Air, as well as incorporate applicable data from the Title V database, on a regular basis.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
2b Accurate MDR data in AFS	100%		1	43	2.3%
3a2 Timely reporting of HPV determinations	100%	99.8%	0	0	0%
3b1 Timely reporting of compliance monitoring MDRs	100%	59%	468	1874	25%
3b2 Timely reporting of stack test dates and results	100%	59.7%	296	691	42.8%

3b3 Timely reporting of enforcement MDRs	100%	47%	7	68	10.3%
13 Timeliness of HPV determinations	100%	86.3%	0	0	

State response

ACCs, HPVs, and case file linking are now included in TCEQ’s data flow after completion of the ICIS Air 1.1 ticket in early September 2017.

Manual removal of facilities that are no longer Title V from CMS plans in ICIS Air will be necessary to correct the issue of overinflated Title V universe. Currently, the Title V universe within ICIS Air contains around 2,256 active sites. However, based on TCEQ’s own data, there are currently 1,151 active Title V sites. Removal of the sites that are no longer applicable to Title V from the active universe would bring the percentage of ACCs reviewed to an accurate percentage. During ICIS Air 1.1 testing, bulk removal of sites from CMS plans through TCEQ’s data flow was attempted but was unsuccessful.

Recommendation

TCEQ should ensure that all data for each facility are correct in ICIS-Air and that MDRs are entered accurately and timely. EPA Region 6 and HQ will continue to monitor TCEQ's progress toward uploading 100% of the MDRs via EDT from the State's CCEDS data system into the national database, ICIS-Air.

We recommend that TCEQ utilize data from its OA Title V database to populate correct Subpart data for all facilities. We also recommend that non-applicable Subparts, such as those in the permit shield, not be identified in ICIS-Air.

TCEQ shall continue preparations to enter all MDRs for compliance and enforcement activities into the national database (ICIS-Air).

Work on the first data flow project has been completed. TCEQ will continue to update EPA Region 6 through the ongoing monthly conference calls, and the Region will verify progress toward satisfying the MDRs through running reports in ICIS-Air.

Within 180 days of the final SRF report, TCEQ should provide to EPA milestones for completion of the second data flow project to report FRVs in order to meet the projected goal of August 31, 2019.

CAA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations																																				
Summary	EPA Region 6 reviewed TCEQ’s inspection FCE coverage of Title V major facilities, as well as their Compliance Monitoring Reports, and no deficiencies were identified. However, an area of concern was found in one Full Compliance Evaluation report. TCEQ should ensure that inspectors make observations of and record visible emissions and provide an assessment of performance parameters.																																				
Explanation	<p>5a – TCEQ met the CMS commitment for Title V major facilities. Information provided by TCEQ regarding the four facilities not inspected indicated that each of the instances involved old AFS numbers for which the data needs to be merged with the newer AFS number. One of these appears to have resulted from a data entry error’s creating a similar number, differing in one digit from the original number.</p> <p>5b and 5c – TCEQ does not report minors or synthetic minors. The errant facility in 5c is an air curtain incinerator (ACI), a portable area source which is required to obtain a Title V permit.</p> <p>6a – All but one of the files reviewed documented all of the FCE elements. The FCE report for Power Pipe & Plastics Market Street Plant did not include a record of visible emissions observations or an assessment of performance parameters.</p> <p>6b – The files reviewed contained sufficient documentation to support the compliance determinations.</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 FCE coverage: majors and mega-sites</td> <td>100%</td> <td>86.5%</td> <td>420</td> <td>424</td> <td>99.1%</td> </tr> <tr> <td>5b FCE coverage: SM-80s</td> <td>100%</td> <td>90.6%</td> <td>0</td> <td>0</td> <td>NA</td> </tr> <tr> <td>5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan.</td> <td>100%</td> <td>76.90%</td> <td>1</td> <td>1</td> <td>100%</td> </tr> <tr> <td>6a Documentation of FCE elements</td> <td>100%</td> <td></td> <td>31</td> <td>34</td> <td>91.2%</td> </tr> <tr> <td>6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility</td> <td>100%</td> <td></td> <td>43</td> <td>43</td> <td>100%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5a FCE coverage: majors and mega-sites	100%	86.5%	420	424	99.1%	5b FCE coverage: SM-80s	100%	90.6%	0	0	NA	5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan.	100%	76.90%	1	1	100%	6a Documentation of FCE elements	100%		31	34	91.2%	6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility	100%		43	43	100%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																																
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6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility	100%		43	43	100%																																

State response	TCEQ will continue to ensure that investigators have appropriate training to make observations of and record visible emissions and to provide an assessment of performance parameters.
Recommendation	None

CAA Element 2 — Inspections

Finding 2-2	Area for State Improvement												
Summary	<p>Data metric 5e indicates that TCEQ reviewed 52.2% of Title V ACCs. However, a current report from ICIS-Air indicates that 1,439 of the received ACCs were reviewed in FY2015, equating to 63% coverage. TCEQ reported 1,444 (64%) reviewed in a report provided to Region 6 dated October 1, 2015.</p> <p>TCEQ has several internal codes for review of ACCs and FCEs. ACCs that are reviewed off site are coded as off-site FCEs for compressor stations, not as ACC reviews. TCEQ staff reported that when multiple ACCs are reviewed, the review(s) only flow up as a single event instead of multiple, hence the lower number of reviews. TCEQ is continuing its efforts to enhance and improve the data flow.</p> <p>Another issue identified by TCEQ is the Title V universe in ICIS-Air being larger than the actual number of active Title V sites in Texas; therefore the number of ACCs appears low compared to the universe. The explanation for the inflated Title V universe is discussed in Finding 1-1. In addition, Title V minor permits in ECHO are being counted in the universe, but ACCs for these are not required.</p>												
Explanation	5e The data metrics indicate that the State did not review 100% of ACCs received in FY2015 – 802 ACCs were not reviewed timely, a review rate below the National Average of 90.6%. However, not all ACCs that were reviewed by TCEQ were reported as such to ICIS-Air. Review of a facility’s ACC is a requirement for a complete FCE.												
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>5e Review of Title V annual compliance certifications</td> <td>100%</td> <td>64.6%</td> <td>1188</td> <td>2276</td> <td>52.2%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5e Review of Title V annual compliance certifications	100%	64.6%	1188	2276	52.2%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #								
5e Review of Title V annual compliance certifications	100%	64.6%	1188	2276	52.2%								
State response	Manual removal of facilities that are no longer Title V from CMS plans in ICIS Air will be necessary to correct the issue of overinflated Title V universe. Currently, the Title V universe within ICIS Air contains around 2,256 active sites. However, based on TCEQ’s own data, there are currently 1,151 active Title V sites. Removal of the sites that are no longer applicable to Title V from the active universe would bring the percentage of ACCs reviewed to an accurate percentage. During ICIS Air 1.1 testing, bulk removal of sites from CMS plans through TCEQ’s data flow was attempted but was unsuccessful.												

Recommendation

TCEQ should ensure that ACCs for the entire Title V universe are reviewed annually and the ACC reviews are entered into the national database (ICIS-Air) correctly and timely. Currently, the EDT does not have the ability to update the status of the permit or CMS plan. The current data flow project for ICIS Air will correct this issue.

- Within 90 days of the final SRF report, TCEQ should provide to EPA a written plan with milestones to increase the percentage of Title V ACCs reviewed and reported. The written plan will also include milestones to insure that the Title V universe is correctly reported.
- EPA Region 6 will review and discuss the number of Title V ACCs reviewed and reported during monthly teleconferences with TCEQ staff to verify that ACCs are correctly reported by December 31, 2017.

CAA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations																								
Summary	TCEQ exhibited a high accuracy rate for compliance determinations.																								
Explanation	<p>Of the 43 files reviewed, only one revealed an error, which was in the reporting in ICIS. The correct conclusion that the facility had failed the stack test was recorded in the file, while ICIS, and therefore ECHO, shows a passing stack test. Thirteen of the files reviewed contained HPV determination, all of which were appropriate. TCEQ should strive to ensure that compliance determinations are accurately recorded in ICIS. An additional cross check to ensure the compliance determinations have been accurately recorded in the database may prove useful.</p> <p>HPV determinations were not being currently reported to ICIS by TCEQ at the time of the on-site SRF review. The numerator and denominator should be 13 and 13 (100%). HPV determinations were being made correctly and timely by the TCEQ in accordance with the HPV Policy.</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>7a Accuracy of compliance determinations</td> <td>100%</td> <td></td> <td>43</td> <td>43</td> <td>100%</td> </tr> <tr> <td>8c Accuracy of HPV determinations</td> <td>100%</td> <td></td> <td>13</td> <td>13</td> <td>100%</td> </tr> <tr> <td>13 Timeliness of HPV determinations</td> <td>100%</td> <td>86.3%</td> <td>0</td> <td>0</td> <td></td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	7a Accuracy of compliance determinations	100%		43	43	100%	8c Accuracy of HPV determinations	100%		13	13	100%	13 Timeliness of HPV determinations	100%	86.3%	0	0	
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State response	TCEQ appreciates recognition of achievement in this area.																								
Recommendation	None																								

CAA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations					
Summary	No concerns were identified for Metrics 9a, 10b or 14.					
Explanation	All cases reviewed included corrective action and were addressed consistent with the HPV Policy.					
Relevant metrics	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 time frame or the facility fixed the problem without a compliance schedule.	100%		13	13	100%
	10b Percent of HPVs that have been have been addressed or removed consistent with the HPV Policy.	100%		13	13	100%
	14 HPV Case Development and Resolution Timeline in Place When Required that Contains Required Policy Elements	100%		2	2	100%
State response	TCEQ will continue to require corrective actions that will return the facility to compliance in a specified time frame, if the facility has not demonstrated that the alleged violation was not resolved.					
Recommendation	None					

CAA Element 4 — Enforcement

Finding 4-2	Area for State Improvement																	
Summary	Concerns were identified with TCEQ’s timeliness of addressing HPVs or having a case development and resolution timeline in place.																	
Explanation	<p>Under the HPV Policy, a timely action must occur within 180 days of day zero or a Case Development and Resolution Timeline (CDRT) is needed (by day 225 if not addressed). An appropriate action must either address or resolve the violation (i.e., be on a legally-enforceable and expeditious administrative or judicial order, or the subject of a referral to the attorney general for further action). All state enforcement actions addressing HPVs should also assess civil penalties where applicable.</p> <p>TCEQ enforcement responses are guided by its Enforcement Initiation Criteria and Enforcement Standard Operating Procedure (SOP). The response is either the issuance of a Notice of Violation by the Regional office for minor violations or the initiation of a formal enforcement process for more serious violations (i.e., HPVs), with a Notice of Enforcement. TCEQ’s Enforcement SOP process sets milestone dates which are documented in CCEDS. EPA Region 6 and TCEQ endeavor to have the initial case-specific consultation within 270 days of Day Zero and discuss any unaddressed HPVs on a quarterly basis until the violation(s) is (are) addressed.</p> <p>All HPV violations require formal enforcement action. The enforcement cases reviewed during the SRF were addressed by Agreed Orders (AOs), legally enforceable documents issued by the Commission.</p> <p>Of the 13 enforcement files reviewed, 10 were addressed timely and had an AO issued by the Commission or had a signed AO, penalty payment, and projected Agenda date within 270 days (76.9%). All 13 enforcement cases were addressed by an Agreed Order.</p>																	
Relevant metrics	<table border="1"> <thead> <tr> <th data-bbox="475 1640 992 1724">Metric ID Number and Description</th> <th data-bbox="1000 1640 1068 1724">Natl Goal</th> <th data-bbox="1076 1640 1167 1724">Natl Avg</th> <th data-bbox="1175 1640 1243 1724">State N</th> <th data-bbox="1252 1640 1320 1724">State D</th> <th data-bbox="1328 1640 1422 1724">State % or #</th> </tr> </thead> <tbody> <tr> <td data-bbox="475 1734 992 1839">10a Timeliness of addressing HPVs or alternately having a case development and return to compliance plan</td> <td data-bbox="1000 1734 1068 1839">100%</td> <td data-bbox="1076 1734 1167 1839"></td> <td data-bbox="1175 1734 1243 1839">10</td> <td data-bbox="1252 1734 1320 1839">13</td> <td data-bbox="1328 1734 1422 1839">76.9%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	10a Timeliness of addressing HPVs or alternately having a case development and return to compliance plan	100%		10	13	76.9%					
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
10a Timeliness of addressing HPVs or alternately having a case development and return to compliance plan	100%		10	13	76.9%													

<p>State response</p>	<p>The primary reason that Texas does not consistently issue timely enforcement actions under EPA’s SNC guidance is because TCEQ is bound by the requirements outlined in state laws, regulations, and policies to provide due process. When a violation is identified that appears to warrant formal enforcement, an Enforcement Action Referral (EAR) is prepared, which is screened by the Enforcement Division. Typically a proposed Agreed Order, which contains administrative penalties and technical requirements, is then drafted and sent to the violator for consideration. If accepted and signed, the order is required under Texas Water Code Section 7.075, to be published in the <i>Texas Register</i> for 30 days to allow for public comment. After closure of the public comment period, the matter is then scheduled for consideration at the Commission Agenda. If approved by the Commission, the order is issued with an effective date. The process from the time the EAR is prepared to the Commission Agenda generally takes a minimum of 180 days; however, if agreement is not reached on the proposed order, the case is referred to the TCEQ Litigation Division for further action. There may be additional settlement negotiations, with the possibility of a higher penalty, and/or the case might be filed for administrative hearing. TCEQ can also refer cases to the Attorney General’s Office for civil or criminal prosecution.</p> <p>TCEQ recommends that EPA revise the definition of the meaning of “timely action” to provide flexibility to states that are bound by their individual enforcement statutes and regulations.</p>
<p>Recommendation</p>	<p>TCEQ will advise EPA on a quarterly basis if an HPV will not be settled on or before 180 days from Day Zero. At that time, TCEQ shall develop a CDRT and will document the case milestones in its CCEDS database. Region 6 will request five CDRTs to review to ensure that CDRTs are developed and contain the elements recommended by the HPV Policy. Within 180 days of the final report, Region 6 will randomly select and request five CDRTs to review to verify that the recommendation for Element 4 has been implemented</p>

CAA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations					
Summary	No concerns were identified with Metrics 11a, 12a or 12b.					
Explanation	TCEQ’s penalty calculations contained a gravity component and documented that economic benefit was considered and included as applicable. Texas’ AOs contain penalty amounts that have been negotiated and agreed to by the Respondent, based on the penalties calculated. Penalty payment documentation was provided for all cases reviewed.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	11a Penalty calculations reviewed that document gravity and economic benefit	100%		13	13	100%
	12a Documentation of rationale for difference between initial penalty calculation and final penalty	100%		0	0	0%
	12b Penalties collected	100%		13	13	100%
State response	TCEQ will continue to follow state laws, regulations, and policies to ensure final penalty amounts and collection of penalty are documented in the files.					
Recommendation	None					

Resource Conservation and Recovery Act Findings

This Framework Review was conducted at the central office in Austin. No Regional Offices were visited. TCEQ compiled files as needed based upon the files selected for review, and provided them to the EPA RCRA review staff.

State Fiscal Year (SFY) is September 1 through August 31.

The scope of the review covered the Federal Fiscal Year (FFY) 2015 period to include compliance and enforcement records with dates before and/or after the FFY 2015 period, if those records were related to state compliance and/or enforcement activities in FFY 2015. For example, if a compliance monitoring file/action in FFY 2015 had an enforcement action associated with it, both activities were reviewed regardless of when the enforcement action occurred. Similarly, if a facility was selected for an enforcement action dated FFY 2015, EPA reviewed not only the enforcement records but also any associated compliance monitoring files/actions that supported the decision to take enforcement, regardless of the date of the compliance monitoring event(s).

TCEQ has three full-time Commissioners, who are appointed by the governor, to establish overall agency direction and policy, and to make final determinations on contested permitting and enforcement matters.

Investigation is defined as the evaluation of a regulated entity against a standard, and includes all (initial and follow-up) compliance inspections, file reviews, site assessments and agent evaluations.

An inspection or investigation is considered by TCEQ to be complete when the investigation has been conducted, a report has been written, management has approved, and management's approval date has been reflected in its' Consolidated Compliance and Enforcement Data System (CCEDS).

TCEQ has a written process for inspection data to be entered into its internal database (CCEDS) which is uploaded via a data translator into the RCRA National Database (RCRAInfo). Data entry into CCEDS is done by staff in Regional Offices as well as in the central office in Austin.

RCRA Element 1 — Data

Finding 1-1	Area for State Improvement
Summary	<p>The majority of FY15 inspection data in RCRAInfo are complete and accurate, however, there are areas that need attention and improvement.</p> <p>Specifically, during the SRF file review, information in the facility files was checked for accuracy with the information in the national RCRA database, (RCRAInfo). The data was found to be accurate in 37 of the 48 files (77.1%).</p> <p>State can address attention areas through: Training; QA/QC; and changes to Data Translation and CCEDS.</p> <p>These Data Challenges are data quality issues and not inspection quality issues. Improvement will be monitored through EPA/State monthly enforcement conference calls and end-of-year performance evaluations.</p>
Explanation	<p>Requested to review files for 48 facilities (TSDFs = 24; LQGs = 10; SQGs = 3; CESQGs = 6; Transporter = 1; Other = 4).</p> <p>A total of 89 inspections/evaluations reviewed (CEI = 43; FCI = 38; GME = 1; CDI = 2; CSE = 2; NRR = 3).</p> <p>Inspection/Evaluation types: CEI = Compliance Evaluation Inspection FCI = Focused Compliance Inspection GME = Groundwater Monitoring Evaluation CDI = Case Development Inspection CSE = Compliance Schedule Evaluation NRR = Non-financial Record Review</p> <p>Of the 89 inspections/evaluations identified in RCRAInfo, the State prepared 70 inspection reports (i.e., multiple inspections identified for a facility on a single date typically resulted in one inspection report being prepared that included Checklists as attachments).</p> <p>Four facilities comprising six inspections were not on-site inspections; they were document/file reviews (4 FCIs, 1 CEI, and 1 CDI). One facility has 3 FCIs entered into RCRAInfo for which these were review of analytical results; one facility shows a FCI and the inspection report states that it is a data maintenance file review; one facility has a CEI entered into RCRAInfo and the inspection report states that it is a compliance investigation file review; and one facility shows a CDI and</p>

the inspection report states that the investigation type is a compliance investigation file review with the checklist identified as File Review.

FCI and CDI are defined as “an on-site inspection” in Appendix D of the Compliance Monitoring Strategy for the RCRA Subtitle C Program. These definitions are taken from RCRAInfo, *Nationally Defined Values for Evaluation Type*. A review of the inspection reports for the aforementioned six inspections identified that these were not on-site inspections.

Four facilities comprising nine inspections (4 CEIs, 3 FCIs, 2 CSEs) had no violations identified in RCRAInfo, but the inspection reports identified violations and enforcement actions taken with the facilities identified as SNC.

One facility with a generator status of LQG/TSD/Transporter has a CEI entered into RCRAInfo, but should be a FCI as the inspection report identifies this as a Transporter investigation.

One facility has both a FCI (focus area – Complaint) and a CEI entered into RCRAInfo for same day. The FCI has violations identified. The violations should be identified with the CEI as the inspection report states that the Complaint allegations were not substantiated.

One facility has entered into RCRAInfo a CEI and three FCIs done on the same day (FCI focus area as Subpart CC; FCI focus area as BIF; and focus area as Subpart BB). RCRAInfo shows violations for the FCI Subpart CC, but the violations are for the FCI BIF (i.e., permit violations).

State does inspections at facilities (i.e., CESQGs) which are not required to have an EPA Identification Number (EPA ID Number). RCRAInfo requires an EPA ID Number. State provides a listing of the CESQGs that do not have an EPA ID Number to EPA Region 6 as part of its’ performance reviews under the RCRA Performance Partnership Grant (PPG).

However, as a result of these CESQG inspections not being entered into RCRAInfo, the RCRA National Database, does not have a true accounting of the State’s inspection and enforcement activities. This could skew calculations used in the State Review Framework data and the State’s total activities conducted during the Fiscal Year.

This was not identified in the previous SRF review as an issue, but something the State should think about as it relates to a true accounting of its’ activities recorded in the National Data Systems.

It is identified as an issue in this SRF review as the State has an approved Alternative Plan (Flexibility Plan) for RCRA LQG compliance monitoring, and Appendix J of the Compliance Monitoring Strategy for the RCRA Subtitle C Program provides for the tracking of inspections done in lieu of an LQG.

EPA contends that these CESQG inspections should be entered into RCRAInfo and the commitment utility link be used in tracking the State's approved LQG Alternative Plan inspections (i.e., SQGs and CESQGs).

As a result of the entry into CCEDS based on workplan activity types and the upload into RCRAInfo, multiple inspections are identified on the same day for a single facility. State enters and tracks inspection data in CCEDS in this manner for reporting on performance measures and commitments that are required by the Texas Legislative Budget Board.

See example above where facility had a CEI and three FCIs for same day. The CEI should include all the FCIs with only the CEI identified in RCRAInfo.

TCEQ reported in last SRF review that a change had been made in translation where FCIs that are conducted as a component of and in conjunction with a CEI will not upload to RCRAInfo (i.e., only the CEI will be reflected in RCRAInfo).

EPA realized in doing the State's FY16 End-of-Year Performance Evaluation, that there were no Financial Record Reviews (FRRs) identified in RCRAInfo. Ensuring that TSDFs maintain adequate financial responsibility is an important aspect of the RCRA compliance monitoring program. Typically, financial assurance reviews are not a field inspection activity nor conducted by field inspectors. However, it is EPA's expectation that a FRR be conducted for those operating TSDFs that have a CEI conducted, and this activity be tracked in RCRAInfo (Compliance Monitoring Strategy for the RCRA Subtitle C Program).

State does conduct financial assurance reviews, however, these have not been entered into CCEDS. As per the State's FY16 End-of-Year Performance Evaluation, a plan is to be submitted by 8/31/2017.

Of the 48 facility files reviewed consisting of 70 inspection reports, the vast majority of the inspection reports met or exceeded quality and timeliness review criteria (95.7% and 97.1% respectively). However, 11 of the 48 facility files did not have complete and/or accurate data in RCRAInfo.

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	100%		37	48
State response	<p>The SRF Report states that "Data Challenges are data quality issues and not inspection quality issues" but lists that only 37 of the 48 inspection files were found to be accurate. These statements seem to be contradictory. Without a criteria by which an inspection is deemed accurate, and the only corrective active being conference calls and End-of-Year evaluations (which already are currently done), this comment does not seem to reflect that the files are not complete but the already known RCACME and RCRAInfo Database Issues at the time. TCEQ is currently flowing data into RCRAInfo and evaluating issues identified in monthly error reports to resolve data quality issues.</p>					
Recommendation	<p>EPA recommends that TCEQ develop and submit by June 30, 2018, a plan to address the data deficiencies. Submit the plan to EPA Region 6, Attention: Lou Roberts (6EN-H3). The plan should address the following:</p> <ol style="list-style-type: none"> 1) The correct entry of inspection type which can be addressed through training and quality review of inspection reports and RCRAInfo data; 2) The correct entry of violations which can be addressed through training and quality review of inspection reports and RCRAInfo data; 3) The elimination of multiple inspections per a facility on a single day which can be addressed through training, quality review of RCRAInfo data, and a data translation change; 4) The entry of all universe inspections including those CESQGs that are credited in lieu of LQG inspections as per the State's approved Alternative LQG Plan which can be addressed by State assigning these CESQGs a RCRA Identification Number; and 5) The entry of FRRs which can be addressed through a change in CCEDS. <p>Once the action plan is submitted and agreed upon by State and EPA Region, this recommendation will be considered complete.</p>					

RCRA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations																	
Summary	<p>Element 2 measures three types of required inspection coverage that are outlined in the EPA RCRA Compliance Monitoring Strategy: (1) 100% coverage of operating Treatment Storage Disposal (TSD) facilities over a two-year period – Metric 5a; (2) 20% coverage of Large Quantity Generators (LQGs) every year - Metric 5b; and (3) 100% coverage of LQGs every five years – Metric 5c.</p> <p>TCEQ exceeded the National Average for TSDf inspection coverage, but coverage was less than the National Goal of 100% every two years. SRF Data Metric Analysis identifies five operating TSDfS were not inspected in a two-year period.</p> <p>Monitoring to ensure the National Goal of 100% inspection coverage every two years of State’s operating TSDfS will be done through the State’s end-of-year performance evaluation, and in review of State’s annually proposed TSDf inspection list.</p>																	
Explanation	<p>Five operating TSDfS not inspected in a two-year period:</p> <ul style="list-style-type: none"> One facility closed in 2006 and has a corrective action permit; One closure/post closure facility; One facility applied for permit 6/23/2015 with proposed construction and not yet managing hazardous waste; One federal facility for which State was under the impression that EPA was to conduct an inspection at all federal facilities; and One facility had a CEI 6//24/2013 and a CEI 12/9/2015 -- 2 years and 5 months between CEIs <p>As identified in TCEQ’s SFY16 End-of-Year Performance Evaluation, these CEIs should have a Financial Record Review (FRR) entered into the RCRA national database (RCRAInfo) in order to provide a complete and accurate picture of program accomplishments.</p>																	
Relevant metrics	<table border="1"> <thead> <tr> <th data-bbox="477 1570 1008 1644">Metric ID Number and Description</th> <th data-bbox="1008 1570 1089 1644">Natl Goal</th> <th data-bbox="1089 1570 1182 1644">Natl Avg</th> <th data-bbox="1182 1570 1263 1644">State N</th> <th data-bbox="1263 1570 1344 1644">State D</th> <th data-bbox="1344 1570 1421 1644">State % or #</th> </tr> </thead> <tbody> <tr> <td data-bbox="477 1644 1008 1724">5a Two-year inspection coverage of operating TSDfS</td> <td data-bbox="1008 1644 1089 1724">100%</td> <td data-bbox="1089 1644 1182 1724">90.60%</td> <td data-bbox="1182 1644 1263 1724">79</td> <td data-bbox="1263 1644 1344 1724">84</td> <td data-bbox="1344 1644 1421 1724">94%</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%	90.60%	79	84	94%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
5a Two-year inspection coverage of operating TSDfS	100%	90.60%	79	84	94%													
State response	TCEQ appreciates recognition of achievement in this area and will continue to improve data entry efforts.																	

Recommendation

RCRA Element 2 — Inspections

Finding 2-2	Meets or Exceeds Expectations
Summary	<p>5b. TCEQ met the National Goal and exceeded the National Average for annual LQG inspection coverage – 20%</p> <p>SRF data:</p> <ul style="list-style-type: none">FY15 – 20.3%FY14 – 16.6%FY13 – 17.0%FY12 – 18.1%FY11 – 18.6% <p>Regional SFY data based only on LQG inspections:</p> <ul style="list-style-type: none">FY15 – 18%FY14 – 16%FY13 – 15%FY12 – 15%FY11 – 13% <p>5c. TCEQ has an approved Alternative Compliance Monitoring Strategy</p>
Explanation	<p>Alternative Monitoring Strategy since SFY12. TCEQ conducts CEIs at 10% of LQG Universe annually, and conducts CEIs at SQGs and/or CESQGs at the following substitution ratio for an equivalent of 10% of LQG Universe, annually:</p> <ul style="list-style-type: none">3 CEIs at SQGs = 2 LQG CEIs2 CEIs at CESQGs = 1 LQG CEI <p><u>SFY15 -- 9/1/2014 – 8/31/2015 LQG Universe 1006 (20% = 201)</u></p> <p><u>Completed:</u></p> <ul style="list-style-type: none"><u>LQGs = 270 CEIs (>100% of annual goal)</u>LQGs = 188* + 50 SQGs + 32 CESQGsSQGs = 76 (3 for 2)Includes 5 by EPACESQGs = 64 (2 for 1)Includes 1 by EPA <p>*Note: includes 4 TSDF/LQG & 2 LQG by EPA</p> <p>The FY15 LQG universe was established at 1006 facilities. The LQG coverage provided by TCEQ with performance of CEIs at LQGs and mixed type facilities was 22.37% of the universe (18.69% and 3.68%, respectively). The coverage was supplemented with CEIs performed at SQGs and CESQGs. The additional coverage equated to 8.15% of</p>

universe based on the tradeoff equivalencies established in the approved alternative plan.

TCEQ was not required to submit an end-of-year alternative approach analysis given that they exceeded the 20% goal for LQG Universe coverage.

SFY14 -- 9/1/2013 – 8/31/2014 LQG Universe 1006 (20% = 201)

Completed:

LQGs = 256 (Exceeded annual goal)
 [LQGs = 161 + 47 SQGs + 48 CESQGs = 256]
 (SQGs = 71 (3 for 2 = 47 LQGs)
 (CESQGs = 95 (2 for 1 = 48 LQGs)

End-of-year alternative approach analysis received

SFY13 – 9/1/2012 – 8/31/2013 LQG Universe 1006 (20% = 201)

Completed:

LQGs = 302 (Exceeded annual goal)
 [LQGs = 157 + 55 SQGs + 90 CESQGs = 302]
 (SQGs = 83 (3 for 2 = 55 LQGs)
 (CESQGs = 181 (2 for 1 = 90 LQGs)

End-of-year alternative approach analysis not received

SFY12 – 9/1/2011 – 8/31/2012 LQG Universe 896 (20% = 179)

Completed:

LQGs = 300 (Exceeded annual goal)
 [LQGs = 148 + 66 SQGs + 86 CESQGs = 300]
 (SQGs = 100 (3 for 2 = 66 LQGs)
 (CESQGs = 173 (2 for 1 = 86 LQGs)

End-of-year alternative approach analysis not received

SFY11 – 9/1/2010 – 8/31/2011 LQG Universe 878 (20% = 176)

Completed:

LQGs = 115* (13%)
 SQGs = 108
 CESQGs = 157

*Note: includes 4 by EPA

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	5b Annual inspection coverage of LQGs		20%	18.30%	202	993
5c Five-year inspection coverage of LQGs		100%	52.50%	603	993	60.70%

	5d Five-year inspection coverage of active SQGs	10.20%	351	2913	12%
	5e1 Five-year inspection coverage of active conditionally exempt SQGs				424
	5e2 Five-year inspection coverage of active transporters				205
	5e3 Five-year inspection coverage of active non-notifiers				1
	5e4 Five-year inspection coverage of active sites not covered by metrics 2c through 2f3				423
State response	TCEQ appreciates recognition of achievement in this area and appreciates Region 6's flexibility in approving the Alternative Compliance Monitoring Strategy.				
Recommendation					

RCRA Element 2 — Inspections

Finding 2-3	Meets or Exceeds Expectations																							
Summary	<p>The majority of the inspection reports reviewed were complete and provided excellent documentation (e.g., photos, descriptive narrative of onsite observations) to determine compliance. Inspection reports and Checklists are generated by CCEDS which provides for consistency in report formats (i.e., Headings: Introduction, Background, General Facility and Process Information, Surrounding Land Use, Summary of On-Site Investigation, Summary of Exit Interview Conference, Additional Information, Conclusion; and Others depending on the type of facility such as a permitted facility).</p> <p>6a. TCEQ has three inspection reports out of 70 that were not deemed to be complete and sufficient to determine compliance</p> <p>6b. TCEQ had two inspection reports out of 70 that were not completed within the <u>150-day standard for inspection report timeliness</u>.</p> <p>Of the 70 inspection reports reviewed, the minimum amount of time was seven days and the maximum time was 291 days, and the average number of days was 49.</p>																							
Explanation	<p>Inspection reports not deemed to be complete and sufficient to determine compliance involved analytical results not being a part of the inspection report (i.e., sample results not received when inspection report prepared or not included as part of the inspection report), and when answers to questions on Checklist were not explained in Checklist or in inspection report narrative.</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</td> <td>100%</td> <td></td> <td>67</td> <td>70</td> <td>95.7%</td> </tr> <tr> <td>6b Timeliness of inspection report completion</td> <td>100%</td> <td></td> <td>68</td> <td>70</td> <td>97.1%</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	100%		67	70	95.7%	6b Timeliness of inspection report completion	100%		68	70	97.1%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
6a Inspection reports complete and sufficient to determine compliance	100%		67	70	95.7%																			
6b Timeliness of inspection report completion	100%		68	70	97.1%																			
State response	TCEQ appreciates recognition of achievement in this area.																							
Recommendation																								

RCRA Element 3 — Violations

Finding 3-1	Area for State Attention												
Summary	RCRAInfo identifies 131 Long-standing secondary violators. Those Secondary Violators (SV) which have not returned to compliance by Day 240 should be designated as a Significant Non-Complier												
Explanation	<p>Previous SRF review of FY11 data had 1,474 Long standing secondary violators reflected as not having returned to compliance. TCEQ indicated that some of these were due to a translation issue, a small number were under long-term compliance, and the majority were violations that were predetermined prior to 1998 and pre-date the current state database, and thus had never been updated with data that would show the facility is now in compliance.</p> <p>State is researching each SV in CCEDS and is following up as appropriate. As data in CCEDS is updated it will be uploaded to RCRAInfo with the monthly dataflow.</p> <p>As per the State’s FY16 End-of-Year Performance Evaluation, a plan is to be submitted by 8/31/2017.</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>131</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2a Long-standing secondary violators					131
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #								
2a Long-standing secondary violators					131								
State response	TCEQ is making SNC Determination a topic at the annual Face-to-Face Manager’s meeting for discussion/re-emphasis on ERP Criteria and for ensuring that staff receive the proper training on this topic for the future.												
Recommendation													

RCRA Element 3 — Violations

Finding 3-2	Meets or Exceeds Expectations												
Summary	<p>A review of the inspection reports in this SRF reveals the TCEQ inspectors are well trained and know the RCRA hazardous waste regulations, and do accurately identify violations in inspection reports.</p> <p>A compliance determination is either there is an area of concern identified in the inspection report or not. The inspector reports what is found during an administrative review (pre-inspection, on-site, post-inspection) along with observations made during the on-site visit.</p> <p>Of the seventy (70) determinations reviewed in this SRF, five (5) were determined not to have had an accurate compliance determination made.</p>												
Explanation	<p>One facility having eight inspections resulting in six inspection reports of which five inspection reports identified No Violations; however, three of the inspection reports stated that the review of analytical results was still being researched and/or evaluated by the TCEQ Remediation Section; one inspection report stated that the analytical results were pending (i.e., had not been received); and one inspection report did not include sample results stating, “A subsequent report discussing the analytical findings will be generated at a later date.”</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>7a Accurate compliance determinations</td> <td>100%</td> <td></td> <td>65</td> <td>70</td> <td>92.9%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	7a Accurate compliance determinations	100%		65	70	92.9%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #								
7a Accurate compliance determinations	100%		65	70	92.9%								
State response	TCEQ appreciates recognition of achievement in this area.												
Recommendation													

RCRA Element 3 — Violations

Finding 3-3	Meets or Exceeds Expectations					
Summary	TCEQ's violation rate is higher than the national average.					
Explanation	TCEQ continues to target facilities that have compliance issues. TCEQ inspectors conduct thorough inspections/evaluations and write comprehensive inspection reports which document the violations.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	7b Violations found during inspections		36.50%	295	499	59.10%
State response	TCEQ appreciates recognition of achievement in this area.					
Recommendation						

RCRA Element 3 — Violations

Finding 3-4	Area for State Improvement
Summary	<p>Metric 8a - SNC Identification rate (1.60%) is below the National Average (2.20%). State's FY15 rate is down from its' FY14 rate of 2.40%.</p> <p>Metric 8b - Timeliness of SNC determinations (81.80%) exceeded National Average (79%), but is less than the National Goal (100%). State's FY15 rate is down from its' FY14 rate of 100%.</p> <p>Metric 8c - Appropriate SNC determinations (77.8%) is below the National Goal (100%). This SRF review determined that 21 of 27 facilities having been issued an enforcement action had an appropriate SNC determination.</p> <p>Guidelines for making the SNC determination is set forth in the current EPA Hazardous Waste Civil Enforcement Response Policy (ERP). The ERP states, "An SNC is a site that has caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; is a chronic or recalcitrant violator; or deviates substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements. In evaluating whether there has been actual or likely exposure to hazardous waste or hazardous waste constituents, implementers should consider both environmental and human health concerns."</p> <p>TCEQ has options to address this area including training for staff on the ERP guidelines for making a SNC determination, and/or with case-by-case analysis/discussion with EPA.</p> <p>Monitoring will be done by EPA during monthly enforcement conference calls and end-of-year performance evaluations. For the States' FY17 & FY18, EPA will select up to ten (10) inspections reports that identified violations to review for appropriate SNC determinations. EPA will request scanned copies including checklists along with associated compliance determinations, and enforcement actions.</p> <p>It is noted that the State's non-identification as a SNC of the six facilities identified during this review did not affect how the State addressed the violations. The six facilities identified by EPA during this review for which EPA would have designated as SNC did have a formal enforcement action taken by the State.</p>
Explanation	<p>Five of the twenty-seven facilities issued enforcement actions were designated as SNC. Two of the informal enforcement actions were for facilities designated as SNC and should have had a formal enforcement action (see Element 10b in Finding 4-2).</p> <p>Based on the violations cited in formal enforcement actions, EPA would have designated another 6 facilities as SNC. Penalty calculation worksheets</p>

	identified 3 facilities having been cited for a violation that involved a release (actual exposure) and 3 facilities having been cited for a violation where there was a substantial likelihood for exposure (potential release – major harm).																								
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>8a SNC identification rate</td> <td></td> <td>2.20%</td> <td>8</td> <td>499</td> <td>1.60%</td> </tr> <tr> <td>8b Timeliness of SNC determinations</td> <td>100%</td> <td>79%</td> <td>9</td> <td>11</td> <td>81.80%</td> </tr> <tr> <td>8c Appropriate SNC determinations</td> <td>100%</td> <td></td> <td>21</td> <td>27</td> <td>77.8%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	8a SNC identification rate		2.20%	8	499	1.60%	8b Timeliness of SNC determinations	100%	79%	9	11	81.80%	8c Appropriate SNC determinations	100%		21	27	77.8%
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State response	The TCEQ is cooperating with any monitoring conducted by EPA during monthly enforcement conference calls and will provide any request for States' FY17 & FY18 inspection reports that EPA selects to review for appropriate SNC determinations.																								
Recommendation	<p>TCEQ will provide scanned copies or arrange for EPA to review for appropriate SNC determination up to ten (10) inspection reports with associated checklists, compliance determinations, and enforcement actions.</p> <p>State will submit or make available information for those facilities requested by EPA for its' FY17 by 11/30/2017.</p> <p>State will submit or make available information for those facilities requested by EPA for its' FY18 by 11/30/2018.</p> <p>If by end of States' FY18 end-of-year grant performance evaluation (12/31/2018) appropriate improvement is observed, this recommendation will be considered complete.</p>																								

RCRA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations
Summary	TCEQ (83.30%) exceeded both the National Goal (80%) and the National Average (81.4%) for the timeliness of enforcement actions addressing significant noncompliance.
Explanation	<p>FY15 data for metric 10a which measures the timeliness of formal enforcement to address a SNC shows that 5 of the 6 (83.30%) SNC designations (from a previous year) were addressed in this SRF review period (FY15) with a formal enforcement action within 360 days as identified in the EPA Hazardous Waste Civil Enforcement Response Policy (ERP).</p> <p>The length of time it takes TCEQ to process enforcement cases is bound by the processes outlined in state laws, regulations, and policies. TCEQ enforcement responses are guided by its Enforcement Initiation Criteria (EIC, Revision No. 14, Effective 12/1/2012). The response is either the issuance of a Notice of Violation by the Regional office for minor violations or the initiation of a formal enforcement process for more serious violations. When a violation is identified that appears to warrant enforcement, an Enforcement Action Referral (EAR) is prepared, which is screened by the Enforcement Division. Typically, a proposed Agreed Order, which contains administrative penalties and technical requirements, is then drafted and sent to the violator for consideration. If accepted and signed, the order is published in the <i>Texas Register</i> for public notice providing for a 30-day comment period, and then scheduled for consideration at the Commission Agenda. If approved by the Commission, the order is issued with an effective date. The process from the time the EAR is prepared to the Commission Agenda generally takes a minimum of 180 days; however, if agreement is not reached on the proposed order, the case is referred to the TCEQ Litigation Division for further action. There may be additional settlement negotiations, with the possibility of a higher penalty, and/or the case might be filed for administrative hearing. TCEQ can also refer cases to the Attorney General's Office for civil or criminal prosecution.</p> <p>The EPA Hazardous Waste Civil Enforcement Response Policy (ERP) contains provisions for Alternative Schedules for issuing formal enforcement actions to address SNCs. The ERP identifies a ceiling of 20% per year for exceedances to the established</p>

	timeframes, with discussions between the state and EPA about complexity and alternate timeframes for issuance of enforcement. TCEQ did not request an Alternative Schedule.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	10a Timely enforcement taken to address SNC	80%	81.40%	5	6	83.30%
State response	TCEQ will continue to follow state laws, regulations, and policies to ensure the timeliness of enforcement actions addressing significant noncompliance.					
Recommendation						

RCRA Element 4 — Enforcement

Finding 4-2	Meets or Exceeds Expectations
Summary	<p>TCEQ met the SRF expectations for the criteria for timely and appropriate enforcement actions that return violators to compliance.</p> <p>TCEQ’s written enforcement actions reviewed require the facility to come into compliance immediately or within thirty (30) days, however two facilities with an enforcement action addressing significant noncompliance did not have in RCRAInfo a final compliance date because of specific case circumstances.</p> <p>The EPA Hazardous Waste Civil Enforcement Response Policy (ERP) response times maybe exceeded for a number of specific issues including, but not limited to, when cases involve violations of two or more media, facility files bankruptcy, site abandonment, novel legal issues or defenses, and facility is determined to have their day in court.</p> <p>The EPA Hazardous Waste Civil ERP contains provisions for Alternative Schedules for issuing formal enforcement actions to address SNCs. TCEQ did not request an Alternative Schedule.</p>
Explanation	<p>9a Enforcement that returns violators to compliance.</p> <p>Thirty-four of 36 enforcement actions returned the facilities to compliance with the RCRA requirements (94.4%).</p> <p>Two facilities did not include final compliance dates:</p> <p>One facility involves RCRA and Clean Air Act violations going back to 2011. Designated as SNC 8/9/2012 and 6/11/2014. Remanded for Hearing 10/4/2011 and 7/1/2015. Facility filed Bankruptcy 7/6/2016.</p> <p>Another facility involves ongoing RCRA violations going back to 2009. Designated as SNC 7/7/2009, 9/7/2011, 6/27/2012, and 5/1/2015. Referral to Attorney General 9/30/2009 and 5/16/2013. Court Docket Number D-1-GN-15-003756</p> <p>10b Appropriate enforcement taken to address violations</p> <p>Thirty-two of 36 enforcement actions taken were appropriate to address the violations (88.9%)</p> <p>Includes the two facilities that did not include a final compliance date plus two more facilities that were designated as SNC for which a written informal enforcement action was taken.</p>

	EPA's Hazardous Waste Civil Enforcement Response Policy December 2003 states on page 9, "A SNC should be addressed through formal enforcement."					
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%		34	36	94.4%
	10b Appropriate enforcement taken to address violations	100%		32	36	88.9%
State response	TCEQ appreciates recognition of achievement in this area.					
Recommendation						

RCRA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations					
Summary	<p>TCEQ penalty calculation worksheets include both economic benefit and gravity components.</p> <p>TCEQ documents all considerations that resulted in the final penalty and Supplemental Environmental Project (SEP), such as ability to pay issues, payment schedules, and adjustments for such items as willingness to comply or history of non-compliance.</p> <p>TCEQ documents the collection of penalties to include date and check number including those on a payment schedule.</p> <p>Penalty calculation worksheets are posted on website with Final 3008(a) Compliance Order.</p>					
Explanation						
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%		6	6	100%
	12a Documentation on difference between initial and final penalty	100%		6	6	100%
	12b Penalties collected	100%		6	6	100%
State response	TCEQ will continue to assess penalties in accordance with state laws, regulations, and the Commission Penalty Policy to ensure economic benefit is considered.					
Recommendation						