



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

AUG 14 2019

Honorable Ben Grumbles  
Secretary  
Maryland Department of Environment  
Montgomery Park Business Center  
1800 Washington Blvd.  
Baltimore, Maryland 21230

Dear Secretary Grumbles: <sup>Ben</sup>

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

EPA conducted the Round Four SRF review of the Maryland Department of Environment (MDE) Clean Air Act (CAA) Stationary Source, Resource Conservation and Recovery Act (RCRA); and the Clean Water Act National Pollutant, Discharge, Elimination System (NPDES) enforcement programs. The review evaluated enforcement data and files from Fiscal Year 2017.

The enclosed report includes findings from the review and planned actions to facilitate program improvements. Since the last SRF review in 2012, MDE has succeeded in implementing programmatic improvements in several areas of concern that were identified in the last SRF report. However, this review also documented continued areas of concern related to the implementation of the hazardous waste program pursuant to RCRA.

EPA is committed to work closely with MDE's RCRA program to assist MDE to improve its hazardous waste program by providing on-the-job training for conducting comprehensive inspections, writing inspection reports, and making compliance determinations. In addition, EPA will provide MDE regular feedback on these and other performance improvements as needed.



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

Sincerely,

A handwritten signature in blue ink, appearing to read "Cosmo Servidio", with a long horizontal flourish extending to the right.

Cosmo Servidio  
Regional Administrator

Enclosure

# **STATE REVIEW FRAMEWORK**

## **Maryland**

**Clean Water Act, Clean Air Act, and  
Resource Conservation and Recovery Act  
Implementation in Federal Fiscal Year 2017**

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

**Final Report  
August 1, 2019**

# **I. Introduction**

## **A. Overview of the State Review Framework**

The State Review Framework (SRF) is a key mechanism for EPA oversight, providing a nationally consistent process for reviewing the performance of state delegated compliance and enforcement programs under three core federal statutes: Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act. Through SRF, EPA periodically reviews such programs using a standardized set of metrics to evaluate their performance against performance standards laid out in federal statute, EPA regulations, policy, and guidance. When states do not achieve standards, the EPA will work with them to improve performance.

Established in 2004, the review was developed jointly by EPA and Environmental Council of the States (ECOS) in response to calls both inside and outside the agency for improved, more consistent oversight of state delegated programs. The goals of the review that were agreed upon at its formation remain relevant and unchanged today:

1. Ensure delegated and EPA-run programs meet federal policy and baseline performance standards
2. Promote fair and consistent enforcement necessary to protect human health and the environment
3. Promote equitable treatment and level interstate playing field for business
4. Provide transparency with publicly available data and reports

## **B. The Review Process**

The review is conducted on a rolling five-year cycle such that all programs are reviewed approximately once every five years. The EPA evaluates programs on a one-year period of performance, typically the one-year prior to review, using a standard set of metrics to make findings on performance in five areas (elements) around which the report is organized: data, inspections, violations, enforcement, and penalties. Wherever program performance is found to deviate significantly from federal policy or standards, the EPA will issue recommendations for corrective action which are monitored by EPA until completed and program performance improves.

The SRF is currently in its 4th Round (FY2018-2022) of reviews, preceded by Round 3 (FY2012-2017), Round 2 (2008-2011), and Round 1 (FY2004-2007). Additional information and final reports can be found at the EPA website under [State Review Framework](#).

# **II. Navigating the Report**

The final report contains the results and relevant information from the review including EPA and program contact information, metric values, performance findings and explanations, program responses, and EPA recommendations for corrective action where any significant deficiencies in performance were found.

## A. Metrics

There are two general types of metrics used to assess program performance. The first are **data metrics**, which reflect verified inspection and enforcement data from the national data systems of each media, or statute. The second, and generally more significant, are **file metrics**, which are derived from the review of individual facility files in order to determine if the program is performing their compliance and enforcement responsibilities adequately.

Other information considered by EPA to make performance findings in addition to the metrics includes results from previous SRF reviews, data metrics from the years in-between reviews, multi-year metric trends.

## B. Performance Findings

The EPA makes findings on performance in five program areas:

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

Though performance generally varies across a spectrum, for the purposes of conducting a standardized review, SRF categorizes performance into three findings levels:

**Meets or Exceeds:** No issues are found. Base standards of performance are met or exceeded.

**Area for Attention:** Minor issues are found. One or more metrics indicate performance issues related to quality, process, or policy. The implementing agency is considered able to correct the issue without additional EPA oversight.

**Area for Improvement:** Significant issues are found. One or more metrics indicate routine and/or widespread performance issues related to quality, process, or policy. A recommendation for corrective action is issued which contains specific actions and schedule for completion. The EPA monitors implementation until completion.

## C. Recommendations for Corrective Action

Whenever the EPA makes a finding on performance of *Area for Improvement*, the EPA will include a recommendation for corrective action, or recommendation, in the report. The purpose of recommendations are to address significant performance issues and bring program performance back in line with federal policy and standards. All recommendations should include

specific actions and a schedule for completion, and their implementation is monitored by the EPA until completion.

**III. Review Process Information** – for Maryland Department of the Environment’s (MDE) Clean Water Act – National Pollution Discharge Elimination System (NPDES), Clean Air Act (CAA), Resource Conservation and Recovery Act (RCRA) enforcement programs. **Review Year FY17.**

SRF Kick-off Meeting held on 5/2/18  
CWA-NPDES File Review: 9/27/18 and 10/1-2/18  
Air File Review: 9/27/18  
RCRA File Review: 7/31/18 through 8/2/18

**Contacts:**

Karen Melvin - Director, Enforcement and Compliance Assurance Division (ECAD)  
Betty Barnes - EPA Region 3 SRF Coordinator  
Horacio Tablada, Deputy Secretary, Maryland Department of the Environment (MDE)  
Michael Pedone, Assistant Secretary, MDE  
Andrew Gosden, MDE

**Clean Water Act (CWA)**

Rebecca Crane - NPDES Team Lead (ECAD)  
Sharon Talley- Enforcement Division Chief, Compliance Program, Water and Science Administration (WSA), MDE  
Raymond Bahr - Deputy Program Manager, Sediment, Stormwater, and Dam Safety, WSA  
Gary Kelman - Chief, Animal Feeding Operation Division, Land Management Administration (LMA), MDE  
John Sullivan, III - Program Manager, LMA, MDE  
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**Clean Air Act (CAA)**

Danielle Baltera - SRF Team Air Permits Branch, Air Protection Division  
Kurt Elsner - SRF Team Air, ECAD  
Frank Courtright, Manager, Air Quality Compliance Program, MDE

**Resource Conservation and Recovery Act (RCRA)**

Rachel Mirro, RCRA SRF Team Lead, Land Chemicals and Redevelopment Division  
Jeanna Henry, Chief RCRA Section (ECAD)  
Brian Coblentz, Chief Compliance Division, Solid Waste Program/Land and Materials Administration, MDE  
Edward Dexter, Administrator, Solid Waste Program, MDE

# Executive Summary

## Introduction

Since the last SRF review in 2012, MDE has succeeded in implementing programmatic improvements in several areas of concern that were identified in the last SRF report. This review identifies areas that have improved and describes opportunities for additional process improvement.

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## Areas of Strong Performance

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### CWA

Inspection reports have been determined to contain sufficient documentation leading to an accurate compliance determination. During the last SRF review, this was identified as an area for state attention. To address this issue, MDE developed Facility Inspection Report (FIR) templates that are used across the Water Science Administration (WSA) and Land and Materials Administration (LMA). The FIRs require detailed facility information, a narrative section, as well as check lists of applicable Code of Maryland Regulations statutes subject to the nature of the facility. The reader can easily determine the compliance status of the facility with the applicable regulations.

For FY2017, MDE exceeded the compliance monitoring goals set forth in their NPDES Compliance Monitoring Strategy (CMS). The Round 3 SRF review found MDE did not complete all NPDES compliance monitoring and enforcement commitments; this metric was an area for state improvement.

Penalty calculations should document and include gravity and economic benefit. During the last SRF review this was identified as an area for state improvement. To address this issue, MDE's WSA developed a sophisticated penalty calculator that assists in the development of their penalty calculations which include gravity and economic benefit. Additionally, the files include documented rationale for the difference between initial and final penalty and proof of penalty payment. This penalty calculator resolved the previous concern as an area of state improvement.

### Air

All Compliance Monitoring Reports (CMR) reviewed provided sufficient documentation to determine facility compliance and document the Full Compliance Evaluations (FCE) elements. The Round 3 SRF review found this metric had a finding of area for state improvement because the CMRs did not include compliance history.

## **RCRA**

The SRF Round 4 identified MDE met or exceeded the commitment for two-year inspection coverage of operating TSDFs. The Round 3 SRF review identified the shortcoming of meeting their RCRA compliance monitoring and enforcement commitments as an area for state improvement.

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## **Priority Issues to Address**

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The following areas of the program that, according to the current review, are not meeting federal standards and should be prioritized for management attention. Recommendations for improvement are discussed in the relevant finding.

### **CWA**

Data quality, including complete and accurate data in MDE's state data base, as well as continuing to improve the transfer of compliance activity information from its state database to the national database is an area for state improvement. This issue was also identified as an area for state improvement during the last SRF.

LMA CAFO program needs to improve its process to consistently identify the date of inspection report completion on FIRs. WSA Sediment Stormwater and Dam Safety program needs to set municipal separate storm sewer inspection report completion timeliness goals. During the last SRF review, this issue was also identified as an area for state attention.

### **CAA**

The CAA penalty files did not include documentation for the difference between the initial and final assessed penalty. This issue has been inexplicitly identified as an area for state improvement in all four reviews for the CAA enforcement program, unlike the CWA program which does include this documentation.

### **RCRA**

The SRF Round 4 review continues to identify data completeness and accuracy as an area for state attention. SRF Rounds 2 and 3 identified data completeness and accuracy as an area for state improvement, however, since the SRF evaluation in Round 2 and Round 3, overall data quality has shown significant improvement and requires minimal oversight and performance enhancement. Recurring findings with data metrics in Round 2 and Round 3 indicate support and oversight by EPA is still required, especially as states begin to engage in new and demanding regulatory developments.

Inspection reports were not complete and sufficient to determine accurate compliance determination. The SRF Round 3 review also identified this issue as an area for state improvement during the last review.

All files reviewed for penalty collections contained documentation of collection or measures to collect a delinquent penalty, however, documentation for penalty calculations were missing. Information used to evaluate either economic benefit or the rationale for the difference between initial penalty calculation and final penalty is incomplete. The Round 3 SRF review identified this issue as an area for state improvement. It remains an area for state attention.

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# Clean Water Act Findings

## CWA Element 1 - Data

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### Finding 1-1

Meets or Exceeds Expectations

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#### Summary:

MDE is performing above the national average and exceeding the national goal for data entry rate of permit limit and discharge monitoring report (DMR) for major and non-major facilities.

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#### Explanation:

Metric 1b5 pertains to permit limit data entry rate for major and non-major facilities. The national goal is >95% and the national average is 88.10%. MDE is performing at 99.40%. MDE explained that the three facilities do not have limits sets, no monitoring/reporting requirements, or the limit sets are turned off. Thus, MDE is performing at 100% for entering permit limit data for major and non-major facilities into the national data system, Integrated Compliance Information System (ICIS).

Metric 1b6 pertains to DMR entry rate for majors and non-major facilities. The national goal is >95% and the national average is 90.60%. MDE is performing at 99.20%. EPA Office of Enforcement and Compliance Assistance (OECA) was notified of a data metrics analysis output issue and the ECHO 2.9 version has corrected the "Not counted universe" to 66 facilities. This means there are 66 Major and Non-Major active individually permitted facilities with DMRs not received.

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#### State Response:

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#### Recommendation:

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Rec #	Due Date	Recommendation

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#### Relevant metrics:

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
1b5 Completeness of data entry on major and non-major permit limits. [GOAL]	>=95%%	88.1%	465	468	99.36%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	>=95%%	90.6%	8194	8260	99.2%

## CWA Element 1 - Data

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### **Finding 1-2**

Area for Improvement

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#### **Summary:**

In 60.9% of the files reviewed, data was accurately reflected in the national data system.

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#### **Explanation:**

MDE has the opportunity to improve the transfer of facility and compliance activity information from its state database system to the national data system, ICIS. Metric 2b pertains to files reviewed where data are accurately reflected in the national data system. Fourteen of the 23 facility files had accurate data in the national data system. Detailed facility reports (DFRs) were reviewed for those facilities with data in the national data system. DFRs are available on EPA's Enforcement Compliance History Online website (ECHO) which can be found at [www.echo.gov](http://www.echo.gov). Examples of missing data in the national data system included compliance monitoring activities performed by MDE, reported SSOs not indicated in DFRs, facility address discrepancy in DFR, and effective permit date not indicated on DFR. MDE uses internal tracking system Tools for Environmental Management and Protection Organizations (TEMPO). MDE has been working to have TEMPO interface with the national data system with the resources available to them in order to upload general permit facility information to the national database (i.e., CAFOs, Construction Stormwater, Phase II MS4s). MDE, like other state agencies, have seen their information technology (IT) support centralized for the entire agency. This impacts the time taken to resolve data issues as requests are prioritized agency wide. It should be noted that MDE was evaluated in 2017 and found to be meeting the requirements for Phase 1 implementation of the NPDES electronic reporting rule. In addition, MDE participates in monthly data management calls with the Office of NPDES Permits and Enforcement; as well as participates in Sub-workgroups for the National Compliance Initiative to reduce Significant Non-Compliance.

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#### **State Response:**

MDE continues to work on data transfer between the state system and national system using the NODE. WSA is coordinating with Office of Information Management and Technology staff to meet the deadlines for Phase II of the E-Reporting Rule. Completion of the systems necessary to implement Phase II will address data accuracy in EPA's national system. Additionally, MDE is developing a replacement system for TEMPO that will allow the Department to update the state system more easily in response to changes in the national system. SSDS, WSA Compliance Program and LMA's Animal Feeding Operation Division are coordinating with this ongoing effort to ensure that the required permit and compliance data elements are included in this database and accessible to EPA's national system.

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#### **Recommendation:**

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Rec #	Due Date	Recommendation
1		<p>Within 120 days after the transmittal of this report, MDE LMA CAFO Program should submit to EPA a standard operating procedure that ensures CAFO permit and compliance activity data elements are entered into the state database. Refer to Data Entry Guidance and Technical Papers available at <a href="https://www.epa.gov/compliance/data-entry-guidance-and-technical-papers">https://www.epa.gov/compliance/data-entry-guidance-and-technical-papers</a>. MDE LMA CAFO Program should continue to coordinate with EPA on data management and improve the transfer of data from the state TEMPO system to the national data system.</p>
2		<p>Within 120 days after the transmittal of this report, MDE LMA Mining Program should submit to EPA a standard operating procedure that ensures mining permit and compliance activity data elements are entered into the state database. Refer to Data Entry Guidance and Technical Papers available at <a href="https://www.epa.gov/compliance/data-entry-guidance-and-technical-papers">https://www.epa.gov/compliance/data-entry-guidance-and-technical-papers</a>. MDE LMA Mining Programs should continue to coordinate with EPA on data management and improve the transfer of data from the state TEMPO system to the national data system.</p>
3		<p>Within 120 days after the transmittal of this report, MDE WSA Sediment Stormwater and Dam Safety Program (SSDS) should submit to EPA a standard operating procedure that ensures MS4 permit and compliance activity data elements are entered into the state database. Please refer to Data Entry Guidance and Technical Papers available at: <a href="https://www.epa.gov/compliance/data-entry-guidance-and-technical-papers">https://www.epa.gov/compliance/data-entry-guidance-and-technical-papers</a>. MDE WSA SSDS Program should continue to coordinate with EPA on data management and improve the transfer of data from the state TEMPO system to the national data system.</p>
4		<p>Within 120 days after the transmittal of this report, MDE WSA Compliance Program should submit to EPA a standard operating procedure that ensures Sewer Overflow, Bypass, POTW, LTCP-specific, and industrial stormwater permit and compliance activity data elements are entered into the state database. Please refer to Data Entry Guidance and Technical Papers available at <a href="https://www.epa.gov/compliance/data-entry-guidance-and-technical-papers">https://www.epa.gov/compliance/data-entry-guidance-and-technical-papers</a>. MDE WSA Compliance Program should continue to coordinate with EPA on data management and improve the transfer of data from the state TEMPO system to the national data system.</p>

**Relevant metrics:**

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%	%	14	23	60.87%

## CWA Element 2 - Inspections

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### **Finding 2-1**

Meets or Exceeds Expectations

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#### **Summary:**

For the review year federal fiscal year 2017, MDE exceeded the compliance monitoring goals set forth in their Compliance Monitoring Strategy (CMS). MDE met the goals for inspection coverage of major and non-major NPDES facilities set forth in the CMS. MDE met inspection goals for non-major facilities with general permits in the MS4, industrial stormwater, and construction stormwater weather sectors set forth in the CMS.

MDE provided sufficient documentation in 100% of the inspection reports reviewed to determine compliance. The review team attributes this success to a best practice in its MDE's Facility Inspection Report templates. These templates are a best practice that could be replicated.

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#### **Explanation:**

Annually, MDE WSA and LMA establish goals for compliance monitoring activities for the core NPDES program and for wet weather sources that are in accordance with the July 2014 NPDES CMS. MDE develops and submits to EPA an end of year CMS report. For the review year federal fiscal year 2017, MDE met the compliance monitoring goals set forth in the CMS. During the last SRF, this was identified as an area for state improvement.

Metrics 4a1-4a10 pertain to MDE's CMS goals for federal fiscal year 2017.

EPA's CMS goal for inspections of NPDES core program major facilities is a minimum of at least one comprehensive inspection every two years. According to MDE's CMS for federal fiscal year 2017, it will conduct compliance sampling inspections (CSI), compliance evaluation inspections (CEI), or Performance Audit Inspections (PAI) at least once every two years at conventional major NPDES facilities. EPA's CMS goal for inspections of NPDES core program individually permitted non-major facilities is an inspection at least once in each five-year permit term.

EPA's CMS goal for inspections of NPDES non-majors with general permits varies for a given wet weather sector such as municipal separate storm sewers, industrial stormwater, construction stormwater etc. The goal for MDE is to determine the compliance of each MS4 phase II permittee at least once every 5 years; inspect at least 10% of the general permitted industrial stormwater universe; and inspect at least 10% of the regulated construction sites.

EPA's CMS goal for inspections at state Significant Industrial Users (SIUs) that are discharging to non-authorized POTWs is 100% must be inspected and sampled annually. MDE provided in its "Grant Work Plan FY2017- Water Pollution Control Activities Funded Under MDE's PPG" is four SIUs and all were inspected in fiscal year 2017.

Metric 5a1 pertains to inspection coverage of NPDES core program major facilities. MDE committed to conducting compliance monitoring activities at 40 facilities and completed compliance monitoring activities at 80.

Metric 5b1 pertains to inspection coverage of NPDES non-majors with individual permits. According to MDE's CMS for federal fiscal year 2017, it would conduct comprehensive inspections at NPDES core program non-majors at the expected frequency, with a focus on facilities with reported or suspected compliance problems (complaints, DMR review, etc). MDE committed to conducting compliance monitoring activities at 82 NPDES non-majors with individual permits and completed compliance monitoring activities at 107.

Metric 5b2 pertains to inspection coverage of NPDES non-majors with general permits. According to the data in the national database system, MDE conducted 85 inspections at 93 facilities.

Metric 6a pertains to the percentage of inspection reports reviewed during the file review that provide sufficient documentation to determine compliance. MDE developed Facility Inspection Report templates that are used across the Water Science Administration and Land and Materials Administration. These FIRs can be generated electronically on site immediately after an inspection and delivered same day to the facility. The FIRs contain detailed facility information, a narrative section, as well as check lists of applicable Code of Maryland Regulations statutes depending on the nature of the facility. The reader can easily determine the facility's compliance status with the applicable regulations.

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**State Response:**

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**Relevant metrics:**

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL]	100% of MD CMS%	%	13	10	130%
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100 % of MD CMS%	%	151	112	134.82%
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL]	100% of MD CMS%	%	14	10	140%
4a4 Number of CSO inspections. [GOAL]	100% of MD CMS%	%	2	1	200%
4a5 Number of SSO inspections. [GOAL]	100% of MD CMS%	%	24	9	266.67%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of MD CMS%	%	7	5	140%
4a8 Number of industrial stormwater inspections. [GOAL]	100% of MD CMS%	%	455	94	484.04%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of MD CMS%	%	892	314	284.08%
5a1 Inspection coverage of NPDES majors. [GOAL]	100%	52.8%	80	40	200%
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100%	22.6%	107	82	130.49%
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%	%	37	37	100%

## CWA Element 2 - Inspections

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### **Finding 2-2**

#### Area for Improvement

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#### **Summary:**

Of the 37 inspection reports reviewed, 75.6% were completed within the appropriate timeframes (45 days as required in the EPA's NPDES Enforcement Response Guide). LMA CAFO program did not consistently identify the date of inspection report completion on FIRs. WSA Sediment Stormwater and Dam Safety program does not have a set timeframe for the completion of municipal separate storm sewer inspection reports.

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#### **Explanation:**

Metric 6b pertains to the timeliness of inspection report completion. This metric measures the percentage of inspection reports reviewed during the file review that are timely, completed within 45 days if sampling occurs or within 30 days if no sampling occurs. During the last SRF, this metric was identified as an area for state attention.

The CAFO and Mining program FIRs did not denote when the inspection was completed. LMA CAFO program does not appear to track internally the completion date. LMA Mining program tracks internally the completion date. LMA CAFO and Mining inspectors typically do not identify the inspection report completion date on the FIR.

The six MS4 Audits (three Phase I and three Phase II) averaged 96 days for completion. These audits included multiple days in the field visiting sites and were part of larger review which takes longer to complete. MDE Sediment Stormwater and Dam Safety (SSDS) Program should establish timeliness goals in its SOP.

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#### **State Response:**

In 2015, SSDS adopted SOPs for reviewing the Phase I MS4 permits (see Standard Operating Procedures for Evaluating Compliance with and Enforcement of Maryland's Phase I MS4 Permits, attached). These SOPs include the following language "Within two months of annual report receipt, write a formal letter documenting this review and any major observations (positive or negative) to the jurisdiction." As noted in the report, the current MS4 audits averaged 96 days to accomplish this task. SSDS strives to review these audits in the allotted 60 day timeframe. However, extra time and effort was needed to review the current audits as several represented final reports for Phase I permits (the Phase I "large" jurisdictions) that expired. SSDS believes that the extra time needed for completion was warranted given the importance of assuring compliance with permit requirements.

The Animal Feeding Operation Division has modified their inspection checklist to include two additional fields: "date report finalized" and "date report sent". These fields will be added to TEMPO for tracking purposes.

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**Recommendation:**

<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
2		MDE LMA CAFO program should update the CAFO SOP to include inspection report completion timeliness goals; as well as establish procedures in the SOP for dating the FIR upon completion. Complete update to SOP within 180 days of transmittal of this final report.
3		MDE SSDS should update its SOP with timeliness goals for audit/inspection report completion. Send updated SOP to EPA within 180 days after the transmittal of this final report.
4		MDE LMA Mining program should establish and implement procedures for dating the FIR upon completion. Complete within 180 days after the transmittal of this final report.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL]	100%	5.90%	85	93	91.4%
6b Timeliness of inspection report completion [GOAL]	100%	%	28	37	75.68%

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## CWA Element 3 - Violations

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### **Finding 3-1**

Meets or Exceeds Expectations

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#### **Summary:**

MDE provided sufficient documentation leading to accurate compliance determinations in 100% of the files reviewed.

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#### **Explanation:**

Metric 7e pertains to the percentage of inspection reports reviewed during the file review that contain sufficient documentation leading to an accurate compliance determination. MDE developed Facility Inspection Report (FIR) templates that are used across the Water Science Administration and Land and Materials Administration. These FIRs can be generated electronically on site and delivered to the facility. The FIRs contain detailed facility information, a narrative section, as well as check lists of applicable Code of Maryland Regulations statutes depending on the nature of the facility. All of this information was sufficient documentation which lead to accurate compliance determinations in FIRs. MDE has a best practice in its Facility Inspection Report templates which document compliance determinations. The reader can easily determine the facility's compliance status with the applicable regulations. All 39 inspection reports reviewed provided sufficient documentation to make an accurate compliance determination.

Review indicator metric 7j1 pertains to the number of major and non-major facilities with single-event violations (SEVs) reported in the review year. The annual data for fiscal year 2017 indicated there were zero major and non-major facilities with reported SEVs in the national database system. However, when inspection files were reviewed, inspectors identified single event violations. Their FIRs include inspection checklists that clearly identify inspection items and associated state regulation and status.

Review indicator metric 7k1 pertains to the major and non-major facilities in noncompliance. The annual data for fiscal 2017 indicated 35.7% facilities in noncompliance.

Review indicator metric 8a3 pertains to the percentage of active major facilities in SNC and non-major facilities in Category I noncompliance during the reporting year. The annual data for fiscal year 2017 indicated 25.5% facilities were in noncompliance. It should be noted that the universe for this metric includes general, stormwater and SSO facilities. MDE provided an explanation that 106 of the 1047 facilities are traditional major and non-majors; and SSO facilities should not be included because these facilities do not have an NPDES permit. MDE assigns NPDES identification numbers to SSO facilities to allow for capturing enforcement actions and penalty data for SSO discharges. MDE also provided that the majority of facilities listed in Cat 1 SNC are general permit facilities including swimming pools, marina, stormwater and other general permits and only recently included effluent limits and DMR submittals requirements. According

to MDE, of the 1,047 facilities in Cat 1 SNC, only 106 of these facilities are traditional majors and minors. Also noted by MDE is the fiscal year 2017 NPDES CMS for Maryland 1.B1 includes traditional non-major permittees and does not include general permits in the universe of permittees.

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**State Response:**

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
7e Accuracy of compliance determinations [GOAL]	100%	%	39	39	100%
7j1 Number of major and non-major facilities with single-event violations reported in the review year	%	%			0
7j1 Number of major and non-major facilities with single-event violations reported in the review year.	%	%			0
7k1 Major and non-major facilities in noncompliance.	%	18.5%	1469	4111	35.7%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.	%	7.5%	1047	4099	25.5%

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## CWA Element 4 - Enforcement

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### **Finding 4-1**

Meets or Exceeds Expectations

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#### **Summary:**

MDE enforcement responses returned facilities to compliance in 17 of 18 reviewed files, or 94%. MDE enforcement responses addressed violations in an appropriate manner in 16 of 18 reviewed files, or 89%.

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#### **Explanation:**

Metric 9a pertains to the percentage of enforcement responses reviewed during the file review that returned, or will return, a source in violation to compliance. Actions that promote return to compliance generally include injunctive relief, documentation of return to compliance, and enforceable requirement that compliance be achieved by a date certain. MDE enforcement responses returned facilities to compliance in 17 of 18 reviewed files, or 94%. The remaining file indicated that the facility failed to return to compliance even after a subsequent enforcement and penalty action. Metric 10a1 pertains to percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations. According to the FY17 annual data, MDE had three enforcement actions taken against major NPDES facilities in a timely manner in response to SNC violations. MDE provided explanations for three additional facilities that did not have formal enforcement actions due to their return to compliance in the following quarter. MDE explained that another facility did not have formal enforcement due to the fact that responsible company at the time of the SNC violation was no longer viable.

Metric 10b pertains to the percentage of enforcement actions reviewed during the onsite file review that were taken in an appropriate and timely manner. MDE took timely and appropriate enforcement in 16 of 18 reviewed files, or 89%. The remaining two files indicated that one facility failed to return to compliance even after a subsequent enforcement and penalty action. The other action was deemed appropriate, included injunctive relief and settlement of corrective actions, however it was not taken in a timely manner, over 90 days.

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#### **State Response:**

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#### **Relevant metrics:**

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations	%	15.60%	3	9	33.3%
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%	%	16	18	88.9%
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%	%	17	18	94.44%

## CWA Element 5 - Penalties

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### **Finding 5-1**

Meets or Exceeds Expectations

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#### **Summary:**

MDE penalty calculations documented and included gravity and economic benefit in the eight applicable reviewed files reviewed, or 100%. MDE documented the rationale for difference between initial penalty calculation and final penalty in the applicable three files reviewed, or 100%. MDE provided proof of penalty collected in fourteen penalty files reviewed, or 100%.

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#### **Explanation:**

Metric 11a pertains to the percentage of penalty calculation reviewed during the onsite file review that document and include gravity and economic benefit. MDE did very well to document that gravity and economic benefit were factors in civil penalty calculations. The WSA has a best practice regarding its development and use of a penalty calculator tool that takes gravity and economic benefit as well as other penalty factors. MDE penalty calculations contained gravity and economic benefit in eight reviewed files, or 100%.

Metric 12a pertains to the percentage of files reviewed during the onsite file review that document and include rationale for difference between initial penalty calculations and final penalty. MDE did very well to document initial penalty amounts in the aforementioned calculator tool and within the enforcement actions. MDE also has a best practice of including memos within files explaining the justification when initial penalty differed from that of the final. MDE files documented and included rationale for difference between initial penalty calculation and final penalty in three reviewed files, or 100%.

Metric 12b pertains to the percentage of files reviewed during the file review with proof of penalty payment by the facility. MDE did very well to track internally and provide documentation of penalty payment by the facilities reviewed during the file review. MDE files documented proof of penalty payment in 14 of 14 files reviewed, or 100%.

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#### **State Response:**

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#### **Relevant metrics:**

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	%	%	8	8	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%	%	3	3	100%
12b Penalties collected [GOAL]	100%	%	14	14	100%

# Clean Air Findings

## CAA Element 1 - Data

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### Finding 1-1

Meets or Exceeds Expectations

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### Summary:

MDE entered the vast majority of their data into ICIS in a timely manner.

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### Explanation:

MDE entered all Minimum Data Requirements timely into ICIS-Air at a rate > or = to 95%.

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### State Response:

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### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
3a2 Timely reporting of HPV determinations [GOAL]	100%	40.5%	4	4	100%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	82.3%	247	251	98.41%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	67.1%	91	93	97.85%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	77.6%	19	20	95%

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## CAA Element 1 - Data

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### Finding 1-2

Area for Attention

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#### Summary:

With the exception of HPV Case Files and some of the data related to them, the EPA Review Team found the remainder of the data reviewed to be accurately entered in ICIS-Air.

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#### Explanation:

MDE referrals to the State Attorney General are being entered as Addressing actions, however, sometimes they are not being entered using the correct selection in ICIS-Air (i.e., judicial vs. administrative). Additionally, the date of the Final Order is not being entered in ICIS-Air. However, the penalty is being entered. The EPA ICIS-Air data manager explained this to the MDE Data Manager and showed him the correct way to enter the data in ICIS-Air for HPVs. Data was also not consistently entered using the correct selection in ICIS-Air. This error was a misunderstanding as their data manager was retiring and training a replacement.

---

#### State Response:

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#### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%	%	28	32	87.5%

## CAA Element 2 - Inspections

---

### Finding 2-1

Meets or Exceeds Expectations

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#### Summary:

MDE met the negotiated frequency compliance evaluations for the Major and SM-80 synthetic minor sources and reviewed all Title V Annual Compliance Certifications scheduled to be reviewed. All CMRs reviewed provided sufficient documentation to determine facility compliance and document the FCE elements.

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#### Explanation:

MDE conducted all required FCEs at major and SM-80 synthetic minor sources. All Title V Annual Compliance Certifications that were scheduled to be reviewed were completed. Regarding CMRs, there were two reviewed that did not include enforcement history. In both instances, there was no enforcement history provided since the last FCE. The EPA Review Team considered this oversight to be minor and determined that it did not affect the quality of the CMR or the compliance and enforcement result of the inspection. The EPA Review Team found the majority of the CMRs reviewed to be well-written. MDE does not have an alternative CMS plan and does not have any minor sources included in their CMS plan.

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#### State Response:

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#### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a FCE coverage: majors and mega-sites [GOAL]	100%	88.7%	59	59	100%
5b FCE coverage: SM-80s [GOAL]	100%	93.7%	73	73	100%
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	76.7%	116	116	100%
6a Documentation of FCE elements [GOAL]	100%	%	24	24	100%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%	%	22	24	91.67%

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## CAA Element 3 - Violations

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### Finding 3-1

Area for Attention

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#### Summary:

With the exception of identifying failed stack tests of minor pollutants at major sources as HPVs, all compliance determinations and HPV determinations were accurate in ICIS.

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#### Explanation:

Under the 1999 HPV policy, failed stack tests of minor pollutants at major sources were not identified HPVs. However, with the revised and current 2014 HPV policy, if there is a stack test failure of a pollutant for which the source does not emit in major amount and the enforcement agency expects that failure to represent a violation that has occurred, or may occur for more than 7 days, then it should be identified as an HPV. In one case reviewed by the team, a major source failed a stack test for a minor pollutant and did not re-test within seven days. MDE correctly identified it as Federally Reportable Violation (FRV), but not an HPV. MDE has been made aware of this interpretation and going forward, will identify all stack test failures at major sources, regardless of pollutant classification, as HPVs unless a re-test was completed and passed within seven days. The EPA review team determined this to be a minor oversight as there was only one (1) stack test in the sample that failed for a minor pollutant. The review team did an ICIS-Air pull going back to FY2014 and did not find any other failed stack tests at major sources for minor pollutants.

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#### State Response:

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#### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%	%	37	38	100%
8c Accuracy of HPV determinations [GOAL]	100%	%	19	20	95%

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## CAA Element 3 - Violations

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### Finding 3-2

Meets or Exceeds Expectations

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#### Summary:

MDE does a thorough and comprehensive job in making HPV and FRV determinations and timely identifies HPVs.

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#### Explanation:

Previously, MDE was found to be below the national average for FRV discovery rate based on evaluations at active CMS sources. Therefore, the review team did a supplemental file review to ensure violations are being identified and FRV case files created in ICIS-Air. A total of 16 files with violations were reviewed and the EPA review team concluded that MDE is accurately identifying FRVs. In FY2018, MDE showed significant improvement in FRV identification as MDE's performance in Metric 7a1 more than doubles to 6.2%.

In FY 2017, MDE was above the national average for discovery rate of HPVs at major and identified a total of four HPVs. All four of the HPVs were timely identified (i.e., "Day Zero" was < 90 days after the date of the discovery action).

---

#### State Response:

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#### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a1 FRV discovery rate based on evaluations at active CMS sources [Support]		6.2%	10	329	3%
8a Discovery rate of HPVs at majors [Support]		2.3%	3	120	2.5%
13 Accuracy of HPV determinations [GOAL]	100%	87.7	4	4	100%

---

## CAA Element 4 - Enforcement

### Finding 4-1

Meets or Exceeds Expectations

#### Summary:

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

#### Explanation:

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

#### State Response:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%	%	5	5	100%
10a1 Rate of Addressing HPVs within 180 days	100%	%	4	4	100%
10b Percent of HPVs that have been have been addressed or removed consistent with the HPV Policy [GOAL]	100%	%	5	5	100%
10b1 Rate of managing HPVs without formal enforcement action	0%	%	0	4	0%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%	%	1	1	100%
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule [GOAL]	100%	%	8	8	100%

## CAA Element 5 - Penalties

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### **Finding 5-1**

Area for Improvement

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#### **Summary:**

None of the seven files reviewed documented rationale for reductions in initial penalty calculations.

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#### **Explanation:**

The EPA penalty policy requires documentation of how adjustments were made to the preliminary deterrence amount so that enforcement attorneys, program staff and their managers learn from each other's experience and promote the fairness required by the penalty policy. All seven files reviewed did not include documentation on the difference between the initial and final assessed penalty nor any rationale for that difference. It was clear from the file reviews and interviews with the staff that the rationale between the initial and final assessed penalty was not typically documented in the enforcement files. This was identified as an area for improvement in SRF Rounds 2 and 3 as well. MDE did not agree with the EPA recommendation in Round 2 or 3 as an area for state improvement and does not agree with the Finding in Round 4. They stated that the difference between the initial and the final penalty amount is the result of the negotiation process that takes place between the agency and the violator. There are not discrete elements of the negotiation process one can point to that lend themselves to monetary quantification. They stated that if EPA has examples of documentation methods that are acceptable, whether they are internal to EPA or the Justice Department or a tool used by other states, MDE would be interested in reviewing them.

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#### **State Response:**

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#### **Recommendation:**

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<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1		EPA will provide MDE's Air and Radiation program internal documentation, documentation from other state(s), or from other MDE programs that have had an SRF evaluation, which demonstrate how adjustment(s) are made to the preliminary penalty assessment and documentation of the rationale for reductions to the initial penalty. EPA will provide this documentation within 30 days of issuing this report.
2	09/30/2019	Within 60 days of the issuance of the Final Report, EPA will develop a Proposed Action Plan (PAP). When complete, the PAP will be added to the SRF Management Tracker database. The PAP will highlight timelines and expectations for achievements anticipated to be made by MDE throughout fiscal year 2020 (FY20). Included as part of the PAP expectations, EPA will establish three transitional review periods for penalties and will provide comments to MDE after each review. This recommendation is expected to close once the PAP is added to the SRF Management Tracker, but not later than the end of FY20.
3	12/31/2022	Because similar recommendations have been made for areas of state improvement in past evaluations and no substantial change has been identified, the PAP will be re-established each fiscal year until the next SRF evaluation in 2023. This recommendation is expected to close after a PAP for FY20-22 has been completed, but not later than the end of calendar year 2022.

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
12a Documentation of rationale for difference between initial penalty calculation and final penalty GOAL]	100%	%	0	7	0%

## CAA Element 5 - Penalties

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### Finding 5-2

Meets or Exceeds Expectations

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#### Summary:

MDE did a thorough and comprehensive job in documenting penalty calculations. In addition, proof of penalties collected were found in the file for all cases.

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#### Explanation:

All of the penalty calculations reviewed included the gravity and economic benefit components. Finally, documentation of the penalties collected in FY 2017 was found in the files.

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#### State Response:

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#### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%	%	7	7	100%
12b Penalties collected [GOAL]	100%	%	7	7	100%

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# Resource Conservation and Recovery Act Findings

## RCRA Element 1 - Data

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### Finding 1-1

Area for Attention

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#### Summary:

In 91.2% of files reviewed, all mandatory data were accurately reflected in RCRAInfo, the national database for the RCRA program.

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#### Explanation:

Since the SRF evaluation in Round 2 and Round 3, overall data quality has shown significant improvement and requires minimal oversight and performance enhancement. Three out of 34 files reviewed were found to have inaccurate data entry or did not contain all of the required mandatory data elements in the national data base for RCRA, RCRAInfo. These three files were found to be inaccurate or incomplete based on the following:

- Violations in RCRAInfo were not consistent with violations listed in the associated notice of violation (NOV).
- Violations listed in the inspection report were not documented in RCRAInfo.
- NOV's issued were not documented in RCRAInfo.
- Penalties collected in the case file do not match the penalties documented in RCRAInfo.
- Unresolved violations have been returned to compliance (RTC) in RCRAInfo.

Despite the finding level percentage of 91.2%, an “Area for State Attention” is still the suggested finding after considering the gravity of the data elements found to be missing or incorrectly entered into RCRAInfo. Recurring findings with data metrics in Round 2 and Round 3 indicate support and oversight by EPA is still needed, especially as states begin to engage in new and demanding regulatory developments such as e-Manifest. Additionally, EPA expects states to maintain focus on changes anticipated to occur as the RCRAInfo national database shifts from Version 5.0 to Version 6.0. MDE continues to improve communications between their internal database, TEMPO, and RCRAInfo, through the utilization of a data transfer NODE. Prior to 2013, MDE did not effectively utilize the NODE, which caused centralized issues with data input and verification. Since utilization, MDE has successfully performed several large data cleanups, and as a result, overall data accuracy has significantly improved. Currently, only the RCRAInfo Handler Module data, which contains data basics for each facility such as name, location and operation status, is translated through the NODE. The Compliance, Monitoring and Enforcement Module (CM&E), which contains the compliance evaluation inspection (CEI) data, is input manually, and therefore, is more susceptible to error. To improve CM&E data input, MDE is working to implement a reverse NODE process, tentatively scheduled to occur in or after 2020. In the interim, MDE’s CM&E data team has been working with Maryland's IT Department to cultivate a translation process prior to the reversal. Once the reverse system of input begins, EPA expects many of the data issues uncovered in Round 4, specifically associated with the CM&E Module, will be resolved and MDE will be on track to meet the national goal every year for the complete and accurate entry of mandatory data. MDE staff continue to participate in ongoing

RCRAInfo training opportunities, such as the Region 3 Annual RCRAInfo Training held this past December. Additionally, MDE inspectors will begin to pilot new lap-top technology to aid in the input of inspection tracking data and other specific compliance evaluation information such as violations and significant non-compliers (SNCs).

**State Response:**

MDE has worked hard to improve this figure to over 91% accuracy, and will continue to work to improve the speed and accuracy of our data reporting. MDE has successfully performed several large data cleanups that EPA recognizes has materially improved our data quality, and is working to improve data entry protocols. Also, since the implementation of a revised definition and means of identification of Significant Non-Compliances (SNCs), MDE’s rate of SNC identification has increased.

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
2b Accurate entry of mandatory data [GOAL]	100%	%	31	34	91.18%

## RCRA Element 2 - Inspections

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### **Finding 2-1**

Area for Improvement

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#### **Summary:**

The file review found 44.1% of inspection reports were not complete and sufficient to determine accurate compliance.

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#### **Explanation:**

Metric 6a) 55.9% of reports included all relevant attachments and contained the appropriate information to accurately assess facility compliance as required by their registered generator status. However, fifteen reports, (44.1%), lacked sufficient information to make an accurate compliance determination. These 15 reports were found to be insufficient based on the following:

- Violations not supported by documented observations.
- Photos that do not clearly identify violations.
- Insufficient records review.
- Use of vague language in report narrative.
- Lack of process descriptions and manufacturing operations.

Since 2015, EPA has continuously engaged in oversight and coordination activities with MDE to enhance the quality of inspection reports. Overall, MDE has shown progress and improvement and continues to cooperate with EPA to improve their hazardous waste program. In 2015, MDE assented, to a proposal with EPA Region 3, to improve performance relating to MDE's hazardous waste inspection program as a supplement to the Round 3 SRF response. MDE's Proposed RCRA C Inspection Development Plan identified three distinct areas of improvement for MDE to evaluate, including but not limited to, procedures to improve the quality of inspection reports, specifically, the documentation of observations. From 2015-2019, EPA conducted peer-reviews for several dozen compliance evaluation inspection (CEI) reports to assess elements of the report that are acceptable and those that need improvement. EPA has also provided MDE with an inspection report template to promote consistency in format and content. However, consistent with the results of the peer-reviews, the findings in Round 4, Element 2, Metric 6a, have been identified by EPA as the root cause for other under-performing metrics. The absence of documented observations and descriptive language in the CEI reports, are found to be ineffective at determining whether accurate compliance determinations have been made. EPA conducts formal in-person bi-annual meetings, as well as, semi-formal quarterly and monthly enforcement calls with MDE staff and management to discuss internal and external areas of concern. These scheduled meetings help identify recurring issues among MDE's four primary hazardous waste inspectors and provide a forum to discuss new and existing opportunities for improvement. In-depth, quarterly reviews are being reestablished in FY19, after a brief hiatus in FY18, which allowed MDE's hazardous waste program time to work through changes and recommendations made since 2015.

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#### **State Response:**

MDE will be working to address these findings through increased training, co-inspections with EPA inspectors, EPA review of inspection reports with MDE inspectors, and quarterly performance reviews. MDE requests EPA to provide “on-the-job-training” that would provide specific expertise to improve the quality of inspections.

As recommended, MDE will be performing a Root Cause Analysis to identify factors that are contributing to failures to provide sufficient documentation of compliance issues, and then create a Proposed Action Plan (PAP) to address them. Training aids that are already being developed and implemented in response to these draft findings include revised inspection report templates that emphasize implementation and consistent documentation of observations, updated standard operating procedure (SOP) documents with checklists so inspection staff can perform self-review of their inspection reports before they are submitted, and managerial review of a higher percentage of the inspections performed to insure that complete documentation of site conditions is included.

However, MDE does object to the wording of Recommendation 3 under Finding 2-1, which reads: “Because similar recommendations have been made for areas of state improvement in past evaluations and no substantial change has been identified, the PAP will be re-established each fiscal year...” While we have no objection to the establishment of a PAP, MDE believes that significant improvement has in fact been made since the previous SRF, and that therefore the statement “no substantial change has been identified” is inaccurate.

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**Recommendation:**

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Rec #	Due Date	Recommendation
1	12/31/2019	<p>Within 90 days of the issuance of the Final Report, MDE will submit to EPA:</p> <ul style="list-style-type: none"> <li>• A Root Cause Analysis identifying impediments within the department that may be contributing to under-performing measures, including but not limited to a failure to make a compliance determination</li> <li>• New or revitalized standard operating procedures (SOPs) for inspection report writing and MDE’s internal review processes.</li> <li>• Field Activity Guidelines for conducting compliance evaluation inspections (CEIs) that focus on process-based inspections.</li> <li>• An Inspection Report Template, to be used by all MDE inspectors, that emphasizes implementation and consistent documentation of observations.</li> </ul> <p>This recommendation is expected to close once EPA receives all the documents listed above, but not later than the end of calendar year 2019.</p>
2	3/31/2020	<p>Within 60 days of the completion of the Root Cause Analysis, EPA will develop a Proposed Action Plan (PAP). When complete, the PAP will be added to the SRF Management Tracker database. The PAP will highlight timelines and expectations for achievements anticipated to be made by MDE through the end of calendar year 2020. Included as part of the PAP expectations, EPA will establish three transitional review periods for CEI reports and will provide comments to MDE after each review based on the new or revitalized criteria in recommendation #1. This recommendation is expected to close once the PAP is added to the SRF Management Tracker, but not later than the end of calendar year 202 (December 31, 2020).</p>
3	12/31/2022	<p>Because similar recommendations have been made for areas of state improvement in past evaluations and no substantial change has been identified, the PAP will be re-established each fiscal year until the next SRF evaluation in 2023. This recommendation is expected to close after a PAP for FY20-22 has been completed, but not later than the end of calendar year 2022.</p>
4	03/21/2019	<p>EPA provided training and support to MDE as part of the EPA Region 3 Inspectors’ Workshop, held March 19-21, 2019. This recommendation will close once the report is issued.</p>

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%	%	19	34	55.88%

## RCRA Element 2 - Inspections

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### **Finding 2-2**

Meets or Exceeds Expectations

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#### **Summary:**

MDE met or exceeded the commitment for two-year inspection coverage of operating TSDFs. All inspection reports reviewed were completed timely.

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#### **Explanation:**

5b) In FY18 and years prior, MDE met all their planned accomplishments outlined in the annual RCRA C Grant Workplan for the compliance and enforcement of treatment, storage and disposal facilities, (TSDFs), large quantity generators (LQGs), small quantity generators (SQGs) and very small quantity generators (VSQGs). In FY18, 103 of 459 (22.4%) LQG evaluations were performed, as contribution to their annual evaluation commitments outlined in their Grant Workplan. Of those 103, 75 (16.3%) were unique LQGs, which represent MDE's actual position in relation to the national goal (20%) for the annual inspection coverage of LQGs. Unlike the Federal hazardous waste generator categories, MDE regulations only account for two categories of generators. Consequently, because of MDE's reduced generator categories, their hazardous waste universe is inflated, containing hundreds of bridge and highway sites, pharmacies, and post-closure sites, not typically counted as part of the evaluated universe when considering annual commitments under RCRA. EPA and MDE negotiate annually on the appropriate number of LQG inspections expected to be performed in consideration of inflation and other internal factors such as resources and availability. EPA believes MDE is doing an acceptable amount of work with the resources available to them at this time. For FY19, negotiated commitments resulted in an increased commitment of 80 LQGs.

Metric 6b) Prior to FY19, it was not a part of MDE's policy to include the date an inspection report is submitted by the inspector and signed by a manager. In FY18, MDE submitted to EPA a revised SOP for the submission of CEI reports to management, updating their standards to include dates as a measurement for timely and appropriate submissions.

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#### **State Response:**

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#### **Relevant metrics:**

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	88.1%	11	11	100%
5b Annual inspection of LQGs using BR universe [GOAL]	20%	16.1%	37	469	7.89%
5d One-year count of SQGs with inspections [GOAL]	100% of commitments%	%			18
5e5 One-year count of very small quantity generators (VSQGs) with inspections [GOAL]	100% of commitments%	%			14
5e6 One-year count of transporters with inspections [GOAL]	100% of commitments%	%			4
5e7 One-year count of sites not covered by metrics 5a - 5e6 with inspections [GOAL]	100% of commitments%	%			19
6b Timeliness of inspection report completion [GOAL]	100%	%	34	34	100%

## RCRA Element 3 - Violations

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### Finding 3-1

Area for Attention

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#### Summary:

In 85.3% of files reviewed accurate compliance determinations were made.

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#### Explanation:

Metric 7a) In five instances (14.7%), files were found to exhibit concerns about whether an accurate compliance determination was made during the time of the inspection. These five files exhibited possibly inaccurate compliance determinations and were based on the following:

- A citation for failure to document weekly inspections, per MDE requirements, was not listed.
- Incorrect violations cited for failing to mark satellite accumulation area (SAA) containers as hazardous waste (HW).
- Violations listed in the Site Complaint (SC) were not supported by documented observations. The compliance evaluation inspection (CEI) and associated follow-up inspection (FUI) indicate a different Site Complaint (SC) violation.
- Documentation was not present to verify that waste streams were being properly disposed.
- Discussion on how waste is generated and managed by the Facility was absent.
- Failure to evaluate compliance with remediation activities per an associated Administrative Consent Order (AOC).

Concerns addressed in Finding 2-1, Metric 6a, have had a residual effect on other SRF metrics, including metric 7a. Without sufficient documentation of observations to verify compliance determinations, it can be difficult to justify whether an accurate compliance determination was made. EPA believes that the recommendations provided for Finding 2-1 will help influence associated metric percentages by establishing a new baseline measure for EPA to track development within MDE's Hazardous Waste program.

Metric 7b) Data analysis revealed that MDE's violation rate (20.1%) is below the national average (34.9%). Based on the combination of metrics 7a and 7b, not all compliance determinations may be accurate. \*Please refer to recommendations associated with Finding 2-1

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#### State Response:

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#### Relevant metrics:

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
7a Accurate compliance determinations [GOAL]	100%	%	29	34	85.29%
7b Violations found during CEI and FCI inspections	%	34.9%	27	134	20.15%

## RCRA Element 3 - Violations

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### Finding 3-2

Meets or Exceeds Expectations

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#### Summary:

MDE met or exceeded expectations for the identification, timeliness and appropriateness of SNC determinations.

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#### Explanation:

EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003) states that Agencies should make and report significant non-compliance (SNC) designations within 150 days of the first day of inspection (day zero). In FY17, MDE identified four SNCs. In one of those four instances, the SRF reviewer determined that due to the nature of the violations found at the facility and the probability of the violations recurring, MDE should have identified the facility as a SNC. For that one instance, MDE included information in the case file that detailed its consideration to issue a SNC designation to the Facility, however, MDE concluded that the designation was not warranted. Since the revision of its SNC policy in 2015, MDE has expressed interest in developing a stronger understanding of how to appropriately identify SNCs to maintain consistency in the program and to keep skills distinct and well defined. EPA will continue to provide training to MDE on SNC identification as part of the joint quarterly meetings and other relevant opportunities as requested.

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#### State Response:

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#### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2a Long-standing secondary violators	%	%			2
8a SNC identification rate at sites with CEI and FCI	%	1.5%	4	289	1.38%
8b Timeliness of SNC determinations [GOAL]	100%	84.9%	4	4	100%
8c Appropriate SNC determinations [GOAL]	100%	%	24	25	96%

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## RCRA Element 4 - Enforcement

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### Finding 4-1

Meets or Exceeds Expectations

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#### Summary:

97.7% of the files reviewed, MDE took timely and appropriate enforcement that returned sites to compliance.

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#### Explanation:

In 100% of cases, MDE took appropriate enforcement to address SNCs and other violations. In one (1) instance, the case file did not contain documentation that the facility had returned to compliance.

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#### State Response:

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#### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timely enforcement taken to address SNC [GOAL]	80%	81.1%	2	2	100%
10b Appropriate enforcement taken to address violations [GOAL]	100%	%	20	20	100%
9a Enforcement that returns sites to compliance [GOAL]	100%	%	20	21	95.24%

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## RCRA Element 5 - Penalties

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### Finding 5-1

Meets or Exceeds Expectations

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#### Summary:

100% of files reviewed for penalty collections contained documentation of collection or measures to collect a delinquent penalty.

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#### Explanation:

Eleven of 34 files chosen to review in Round 4 contained information for the evaluation of enforcement actions and penalty collections. Of those 11 enforcement files reviewed, 100% contained documentation of collection or measures to collect a delinquent penalty.

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#### State Response:

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#### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12b Penalty collection [GOAL]	100%	%	11	11	100%

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## RCRA Element 5 - Penalties

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### Finding 5-2

Area for Attention

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#### Summary:

In 72.73% of files reviewed, penalty calculations were missing factors used to evaluate either economic benefit or the rationale for the difference between initial penalty calculation and final penalty.

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#### Explanation:

Metric 11a) Eight of 11 files evaluated under penalty matrices, did not include documentation indicating economic benefit was considered. However, after additional review of the violations found in the associated files, interviews with MDE staff and consideration of policies defined in the Maryland Department of the Environment Enforcement Procedure, it was determined that economic benefit for the deficient eight files had been considered, but, was determined to be de minimis and the delay of the avoided cost was not relevant. Therefore, while MDE did not document their decision not to include economic benefit in the penalty calculations, MDE fully conformed with internal procedures associated with monetary penalties. To make documentation requirements transparent for reviewers, both inside and outside of MDE, EPA recommends that MDE specifically includes documentation in each file stating that economic benefit was determined not appropriate, including in de minimis situations.

12a) After the last SRF evaluation in Round 3, MDE reviewed their penalty procedures and began implementing an improved system of tracking to make penalty documentation more accessible to outside parties, such as EPA, who may request specific information during an audit. Authority to issue a final penalty in MDE is delegated from the Secretary to the Director. Copies of penalty forms and all adjustments made to any penalty being sought, is expected to be scanned, entered into MDE's database and placed into individual facility files.

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#### State Response:

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#### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Gravity and economic benefit [GOAL]	100%	%	3	11	27.27%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%	%	9	11	81.82%

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