

# **STATE REVIEW FRAMEWORK**

## **Montana**

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

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

**Final Report  
December 07, 2021**

# I. Introduction

## A. Overview of the State Review Framework

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

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

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

## B. The Review Process

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

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

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# II. Navigating the Report

The final report contains the results and relevant information from the review including EPA and program contact information, metric values, performance findings and explanations, program

responses, and EPA recommendations for corrective action where any significant deficiencies in performance were found.

## A. Metrics

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

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

## B. Performance Findings

The EPA makes findings on performance in five program areas:

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

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

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

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

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

## C. Recommendations for Corrective Action

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

### **III. Review Process Information**

#### **A. Selecting Metric Values**

The information below offers suggested metric value ranges for help in deciding on a finding level. These value ranges are simply a guide in selecting an appropriate finding level. Other factors may be considered in choosing an appropriate level, such as the universe size of the metric or whether the issue has recurred across several SRF rounds.

- Meets or Exceeds Value Range: 85% - 100%
- Area for Attention Value Range: 71% - 84%
- Area for Improvement Value Range: 70% and below

#### **B. Review period: FY 2019 C.**

#### **C. Key dates:**

- SRF Kick-Off Letter: February 14, 2020 (See Appendix)
- CWA NPDES File Review: July 6 - July 15, 2020
- CAA File Review: August 27 - September 15, 2020
- RCRA File Review: July 20 - August 14, 2020

#### **D. State and EPA key contacts for review:**

##### **Key EPA Review Contacts**

- David Piantanida, SRF Coordinator and NPDES File Reviewer: (303) 312-6200, [piantanida.david@epa.gov](mailto:piantanida.david@epa.gov)
- Akash Johnson, NPDES Lead: (303) 312-6067, [johnson.akash@epa.gov](mailto:johnson.akash@epa.gov)
- Bob Gallagher, CAA Lead: (406) 457-5020, [gallagher.bob@epa.gov](mailto:gallagher.bob@epa.gov)
- Linda Jacobson, RCRA Lead: (303) 312-6503, [jacobson.linda@epa.gov](mailto:jacobson.linda@epa.gov)

##### **Key State of Montana Review Contacts:**

- Darryl Barton, NPDES Compliance Manager, [darryl.barton@mt.gov](mailto:darryl.barton@mt.gov)
- Ryan Weiss (no longer with MDEQ), NPDES Compliance Manager
- Gina Self, NPDES Data Coordinator: [gself@mt.gov](mailto:gself@mt.gov)

- Chad Anderson, Enforcement Manager: [chada@mt.gov](mailto:chada@mt.gov)
- Dave Klemp (Retired from MDEQ), Air Bureau Chief
- Bo Wilkins, Air Bureau Chief: [bo.wilkins@mt.gov](mailto:bo.wilkins@mt.gov)
- Julie Merkel, Air Permitting Manager: [jmerkel@mt.gov](mailto:jmerkel@mt.gov)
- Denise Brunett, RCRA Manager: [denise.brunett@mt.gov](mailto:denise.brunett@mt.gov)

The EPA Region 8 enforcement staff conducted a SRF enforcement program oversight review of the Montana Department of Environmental Quality (MDEQ) in 2020 based on state activities completed in federal fiscal year 2019.

This file review was done remotely because of the Covid-19 pandemic. The EPA bases SRF findings on data and file review metrics, and conversations with state program management and staff. The EPA will track recommended actions from the review in the SRF Tracker and publish reports and recommendations on the EPA's Enforcement and Compliance State Review Framework website - [State Review Framework](#).

# Executive Summary

## Areas of Strong Performance

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

### Clean Water Act (CWA)

- The state's permit limit data and discharge monitoring report (DMR) entry rates exceeded the national goal and average.
- The state met or exceeded its FY2019 inspection commitments with one exception. Inspection reports were generally issued within the inspection report timeliness goals outlined in the state's FY2019 inspection plan.
- In all inspection reports and other records reviewed, the state accurately determined compliance.
- The state consistently addressed violations in accordance with their enforcement manual and issued enforcement responses that returned, or will return, sources in violation to compliance.
- Penalty calculations generally documented the inclusion of gravity and economic benefit. The state also collected all assessed penalties.

### Clean Air Act (CAA)

- The state excels in properly capturing all the elements of a full compliance evaluation (FCE). File reviews showed proper documentation of FCE elements; Compliance Monitoring Reports (CMRs) or facility files reviewed provided sufficient documentation to determine compliance of the facility; and 100% of Title V annual compliance certification reviews were conducted.
- The state had a 100% compliance rate for the formal enforcement responses that included required corrective action that returned facilities to compliance in a specified time frame.
- Review of the files selected showed that the state is meeting timeliness for addressing HPVs, removing HPVs, and case development regarding HPVs.

- The state consistently documents gravity and economic benefit components of its penalties as well as the rationale for differences in the initial penalty calculation and the final penalty. Penalties are consistently collected.

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

- The state met the national goal of 100% for complete and accurate data entry for compliance and enforcement activities.
- The state's inspection coverage of large quantity generators (LQGs) and Treatment, Storage, and Disposal Facilities (TSDFs) met or exceeded the national goals for all inspection coverage areas.
- The state inspection reports were of high quality and thorough, allowing timely and appropriate violation determination.
- The state takes timely and appropriate enforcement action to address identified violations. The state requires corrective measures in their informal actions to return facilities to compliance and follows up through required submittals or onsite inspection to verify return to compliance has occurred.

### **Priority Issues to Address**

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The following are aspects of the program that, according to the review, are not meeting federal standards and should be prioritized for management attention:

#### **Clean Water Act (CWA)**

- The Integrated Compliance Information System (ICIS) database did not contain complete and accurate required data for all facilities, inspections, violations, enforcement actions, and penalties.
- The state did not consistently and sufficiently document the rationale for differences between initial penalty calculations and final penalties assessed.

The table below outlines the MT CWA Areas for Improvement found during the current and previous reviews.

Metric	Round 3 Finding Level (FY14)	Round 4 Finding Level (FY19)
2b Files reviewed where data are accurately reflected in the national data system	Area for Attention	Area for Improvement
10b Enforcement responses reviewed that address violations in an appropriate manner.	Area for Improvement	Meets or Exceeds Expectations
11a Penalty calculations reviewed that document gravity and economic benefit	Area for Improvement	Meets or Exceeds Expectations
12a Documentation on difference between initial and final penalty	Meets or Exceeds Expectations	Area for Improvement

#### Clean Air Act (CAA)

- The state’s timely reporting of the compliance monitoring minimum data requirements (MDRs) were well below the national goal. Also, enforcement actions with assessed penalties were not entered into ICIS-Air in FY2019.
- The EPA is requesting additional information from the state to fully evaluate inspection coverage given the potential for under reporting of inspection data.
- The state’s ICIS-Air reporting of major and mega-site FCE inspections was 27%.
- The state’s ICIS-Air reporting of Synthetic Minor with potential to emit greater than 80 tons per year (SM-80) source FCE inspections was 0%.

The table below outlines the MT CAA Areas for Improvement found during the current and previous reviews.

Metric	Round 3 Finding Level (FY14)	Round 4 Finding Level (FY19)
2b Files reviewed where data are accurately reflected in the national data system	Area for Improvement	Area for Attention
3a2 Timely Reporting of HPV determinations	Area for Improvement	Meets or Exceeds Expectations
3b1 Timely Reporting of Compliance monitoring (MDRs)	Area for Attention	Area for Improvement



<b>Metric</b>	<b>Round 3 Finding Level (FY14)</b>	<b>Round 4 Finding Level (FY19)</b>
5a FCE coverage: majors and mega-sites	Area for Improvement	Area for Improvement
5b FCE coverage SM-80s	Area for Improvement	Area for Improvement
5e Reviews of Title V Annual Compliance certifications completed	Area for Improvement	Meets or Exceeds Expectations

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

There are no priority RCRA issues which require state improvement or attention.

# Clean Water Act Findings

## CWA Element 1 - Data

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### Finding 1-1

Meets or Exceeds Expectations

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### Recurring Issue:

No

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### Summary:

The state's permit limit data entry rate exceeded the national goal and average. The state's discharge monitoring report (DMR) entry rate also exceeded the national goal and average.

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### Explanation:

For Metric 1b5, completeness of data entry for major and non-major permit limits, the state's permit limit data entry rate was 100%, exceeding the national goal of 95%.

For Metric 1b6, completeness of data entry for major and non-major discharge monitoring reports, the state's DMR data entry rate was 99.9%, exceeding the national goal of 95%.

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### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
1b5 Completeness of data entry on major and non-major permit limits. [GOAL]	95%	93.5%	141	141	100%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%	92.3%	10044	10058	99.9%

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### State Response:

DEQ appreciates and agrees with your review and comments.

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## CWA Element 1 - Data

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### Finding 1-2

Area for Improvement

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**Recurring Issue:**

No

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**Summary:**

The Integrated Compliance Information System (ICIS) database did not contain complete and accurate required data for all facilities, inspections, violations, enforcement actions, and penalties.

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**Explanation:**

For Metric 2b, files reviewed where data are accurately reflected in ICIS, 21 of 35 (60%) records reviewed met the minimum data requirements of the EPA's National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (40 CFR 127, Appendix A). The national goal is 100%.

Some files contained multiple records. Examples of this included files where, within a given review year, multiple informal enforcement actions were issued to the same facility or multiple penalty payments were collected pursuant to the same enforcement action.

The data accuracy issues fell into five categories: 1) Facility information data; 2) Violation data; 3) Enforcement data; 4) Compliance data; and 5) Permitting data, as indicated below.

- In one file, the facility type indicator field was not correctly populated in ICIS.
- In two files, violations letters were not correctly entered in ICIS and violation letters reflected in ICIS were not in the file.
- In one file, there was no NPDES ID associated with an unpermitted discharge event.
- In one file, DMR limits and compliance schedule reports were not terminated in ICIS when the permit expired, so the facility was erroneously reflected in noncompliance.
- In three files, non-compliance had been addressed by the facility but was still reflected in ICIS.
- In one file, a single event violation (SEV) had been resolved but was not closed-out in ICIS, so the facility was erroneously reflected in non-compliance.
- In five files, penalties collected were not correctly entered in ICIS.
- In two files, formal enforcement actions were not correctly entered in ICIS.

During discussions with the state, a possible root cause of these data entry deficiencies was identified as a lack of clear procedures for the communication of enforcement and compliance information to the data management team. EPA will provide guidance on minimum data entry requirements.

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**Relevant metrics:**

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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%		21	35	60%

**State Response:**

DEQ appreciates and agrees with your review, comments, and suggestions for improvement for MPDES information tracking. We will keep EPA informed as we make progress on the recommendations below.

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**Recommendation:**

Rec #	Due Date	Recommendation
1	09/30/2022	By September 30, 2022, the state will submit to the EPA and begin implementing procedures for ensuring all required data is correctly entered in ICIS, including but not limited to: violation letters, NPDES IDs for unpermitted discharges, appropriate termination of DMR limits and compliance schedule reports, SEVs, penalties, and formal enforcement actions. The EPA will close this recommendation when complete data entry procedures have been submitted by the state.
2	11/15/2023	By November 15, 2023, the state will submit to the EPA a summary FY23 violation letters, unpermitted discharges, expired permits, SEVs, penalties, and formal enforcement actions. The EPA will close this recommendation when 71% of these FY2023 activities are entered in ICIS, addressing metric (2b).

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**CWA Element 2 - Inspections**

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**Finding 2-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

With one exception, MDEQ met or exceeded its FY19 inspection commitments. All inspection reports reviewed were complete and sufficient to determine compliance. Inspection reports were

generally issued within the inspection report timeliness goals outlined in the state's FY19 inspection plan.

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**Explanation:**

For Metric 6a, inspection reports complete and sufficient to determine compliance at the facility, 21 of 21 (100%) inspection reports reviewed were complete and sufficient to determine compliance. The national goal is 100%.

The state committed to completing the following inspections in FY2019: 16 majors, 31 non-majors, 7 sanitary sewer overflows/sanitary sewer systems (SSO/SSS), 6 Phase II Municipal Separate Storm Sewer Systems (MS4s), 23 industrial stormwater facilities, 45 construction stormwater sites, and 19 CAFOs.

The state completed the following inspections in FY2019: 16 majors, 37 non-majors, 7 SSOs/SSSs, 5 Phase II MS4s, 23 industrial stormwater facilities, 48 construction stormwater sites, and 21 CAFOs.

The state met or exceeded its FY2019 inspection commitments for all but one program area, Phase II MS4s, where one inspection was not completed. The state removed this inspection from the inspection plan partway through FY2019 due to two temporary staff vacancies.

While the state did not meet its own CMS goal (6 Phase II MS4s), they exceeded EPA's CMS goal (2 Phase II MS4s), so EPA is not concerned. The state is in the process of filling staff vacancies, so this inspection shortage is not expected to recur.

For Metric 6b, timeliness of inspection report completion, 18 of 21 (85.7%) inspection reports reviewed were completed within the state's goal timeframes. The national goal is 100%.

In the FY2019 inspection plan, the state outlines goal timeframes for inspection report issuance as follows:

1. Sampling inspection: 40 days from inspection
2. Non-sampling inspection: 30 days from inspection
3. MS4 inspection: 60 days from inspection

It is noted that the state's goal timeframes for inspection report issuance were at least as stringent as the inspection report timeliness goal outlined in the EPA's Office of Enforcement and Compliance Assurance inspection policy.

In the table below, Metric 4a1 and Metric 4a2 have not been populated because the state does not have authorization to implement the pretreatment program. Metric 4a4 has not been populated because the state does not have any combined sewer systems. Metric 4a11 has not been populated because the state does not have authorization to implement the biosolids program.

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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>
4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL]	100% of commitments%		0	0	0
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100% of commitments%		21	19	110.5%
4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL]	100% of commitments%		0	0	0
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL]	100% of commitments%		0	0	0
4a4 Number of CSO inspections. [GOAL]	100% of commitments%		0	0	0
4a5 Number of SSO inspections. [GOAL]	100% of commitments%		7	7	100%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments%		5	6	83.3%
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments%		23	23	100%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments%		48	45	106.7%
5a1 Inspection coverage of NPDES majors. [GOAL]	100%		16	16	100%
5b Inspections coverage of NPDES non-majors (individual and general permits) [GOAL]	100%		37	31	119.4%

<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 at the facility. [GOAL]	100%		21	21	100%
6b Timeliness of inspection report completion [GOAL]	100%		18	21	85.7%

**State Response:**

DEQ appreciates and agrees with your review and comments.

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**CWA Element 3 - Violations**

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**Finding 3-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

In all records reviewed, the state accurately determined compliance.

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**Explanation:**

For Metric 7e, accuracy of compliance determinations, the state returned accurate compliance determinations in 21 of 21 (100%) of inspection reports reviewed. The national goal is 100%.

Metrics 7j1, 7k1, and 8a3 are review indicator metrics, which are not used to develop findings. Review indicator metrics use national averages to indicate when agencies diverge from national norms and are used to identify areas for further analysis during the file review. When an indicator diverges significantly from the national average, the EPA should pull a sufficient sample of files to evaluate the issue during the file review. No concerns were identified with these three indicator metrics.

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**Relevant metrics:**

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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7e Accuracy of compliance determinations [GOAL]	100%		21	21	100%
7j1 Number of major and non-major facilities with single-event violations reported in the review year.			99	0	0
7k1 Major and non-major facilities in noncompliance.		18.4%	564	2745	20.5%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.		8.1%	202	2725	7.4%

**State Response:**

DEQ appreciates and agrees with your review and comments.

**CWA Element 4 - Enforcement**

**Finding 4-1**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

The state consistently addressed violations in accordance with their enforcement manual and issued enforcement responses that returned, or will return, sources in violation to compliance. The EPA has several comments on the enforcement manual which are discussed in the Explanation section below.

**Explanation:**

For Metric 9a, percentage of enforcement responses that returned, or will return, a source in violation to compliance, in 50 of 51 records reviewed (98.0%), the state issued informal or formal enforcement responses that returned, or will return, sources in violation to compliance. The national goal is 100%.

Metric 10a1 is a review indicator metric which is not used to develop findings. Review indicator metrics use national averages to indicate when agencies diverge from national norms and are used to identify areas for further analysis during the file review. When an indicator diverges significantly from the national average, the EPA should pull a sufficient sample of files to evaluate the issue during the file review. No concerns were identified with this indicator metric. Metric 10a1 identified three major facilities in SNC. Of these three facilities, two were under formal



enforcement actions that had been initiated prior to the review year and one was non-operational and late in submitting "no-discharge" monitoring reports, so no (zero) enforcement actions were initiated during the review year.

For Metric 10b, enforcement responses reviewed that address violations in an appropriate manner, in 49 of 51 (96.1%) records reviewed, the state addressed violations in accordance with their enforcement manual. The national goal is 100%.

The EPA identified several opportunities for the state to improve their enforcement manual, listed below. These suggestions are not SRF recommendations and no response from the state is requested.

1. At the time of the review, the state's enforcement manual was in draft form, undergoing revisions. The state's Enforcement Program is currently working with all 15 state regulatory programs to update the enforcement manual. The EPA supports the state finalizing the enforcement manual.

2. Section III of the draft enforcement manual stated, "Each Regulatory Section is encouraged to develop an Enforcement Response Guide (ERG)." The state's Enforcement Program is working with the Water Quality Division to develop a program specific ERG. The EPA supports the state finalizing an ERG specific to the Water Quality Division.

3. The Enforcement Program will review enforcement requests from the Water Quality Division based on general factors included in the enforcement manual and program-specific factors included in the Water Quality Division ERG. The EPA supports the state developing clear, written guidance describing the specific factors considered when evaluating enforcement requests from the Water Quality Division.

4. Table 3 in Section V of the draft enforcement manual states violation letters will be sent within 45 days of violation discovery; enforcement requests will be prepared within 85 days of violation discovery; enforcement requests will be reviewed within 10 days of preparation; and formal enforcement responses will be completed within 115 days of approved enforcement requests. The EPA supports the state establishing clear timeframes for developing formal enforcement actions.

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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		14.4%	0	3	0%
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		49	51	96.1%
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		50	51	98%

**State Response:**

DEQ appreciates and agrees with your review and comments.

**CWA Element 5 - Penalties**

**Finding 5-1**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

The state's penalty calculations generally documented the inclusion of gravity and economic benefit. In all cases, assessed penalties were collected.

**Explanation:**

For Metric 11a, penalty calculations reviewed that document and include gravity and economic benefit, 9 of 10 (90%) records reviewed included documentation of economic benefit and gravity considerations. The national goal is 100%.

For Metric 12b, penalties collected, 9 of 9 (100%) records reviewed included documentation of penalty collection. The national goal is 100%.

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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>
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%		9	10	90%
12b Penalties collected [GOAL]	100%		9	9	100%

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**State Response:**

DEQ appreciates and agrees with your review and comments.

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**CWA Element 5 - Penalties**

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**Finding 5-2**

Area for Improvement

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**Recurring Issue:**

No

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**Summary:**

The state did not consistently and sufficiently document the rationale for differences between initial penalty calculations and final penalties assessed.

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**Explanation:**

For Metric 12a, documentation of rationale for difference between initial penalty calculation and final penalty, 5 of 8 (62.5%) records reviewed included documentation of rationale for differences between initial penalty calculations and final penalties. The national goal is 100%.

Insufficient documentation between initial and final penalties included:

1. In one file, the final penalty was less than 50% of the calculated penalty and final penalty offer made to the respondent prior to settlement. No justification for the penalty reduction was included in the file, except the final order stated MDEQ had exercised "enforcement discretion" and the final penalty amount had been reduced "in the interest of settlement and to avoid litigation." The language included in the final order is not considered sufficient rationale or documentation for a penalty reduction.

2. In one file, the initial offer and final penalty was 90% less than the calculated penalty. No justification for the reduced penalty amount was included in the file, except the final order stated MDEQ had exercised "enforcement discretion" and the final penalty amount had been reduced "in

the interest of settlement." The language included in the final order is not considered sufficient rationale or documentation for a penalty reduction.

3. In one file, over a period exceeding 3 years, the respondent was overdue on a penalty payment balance, remained out of compliance with an administrative order on consent (AOC), and accrued substantial stipulated penalties. However, the state suspended the total penalty amount owed to 10% of the combined overdue penalty payment balance and accrued stipulated penalties. Eventually, a small portion of the accrued stipulated penalties was re-assessed due to continued noncompliance with the AOC. However, of the total overdue penalty payment balance and stipulated penalties accrued over a period exceeding 3 years, only 20% of the total penalty amount owed was collected by the state. No justification for the reduced penalty payment balance or stipulated penalties was included in the file.

Without documentation of rationale for differences between initial penalty calculations and final penalties, or documentation of adjustments to penalties formalized in settlement documents, it is not possible to verify if penalty reductions are applied in an equitable and consistent manner. For example, in some files, the final penalty matched the penalty calculation and final offer to the respondent, but in other files, the final penalty, and sometimes even the initial offer, were greatly reduced from the calculated penalty.

5. Additionally, in one file, the state reduced an overdue penalty payment amount without amending the original settlement document and suspended the majority of stipulated penalties accrued despite significant recalcitrance exhibited by the respondent. No documentation was available to explain the discrepancies between these penalty actions. It is noted the state includes penalty adjustment factors in initial penalty calculations (documented in worksheets), increasing penalties for factors including recalcitrance and reducing penalties for factors including cooperation. However, the unexplained penalty adjustments described above occurred after adjustment factors had already been applied during initial penalty calculations.

Equitable rationale and clear documentation supporting reductions to calculated penalties and settlement offers are of particular significance to the integrity of the state's program because MDEQ's penalty calculations and settlement offers are public record. MDEQ does not have penalty policies for administrative or judicial cases. In its updated enforcement manual, the state will include information on the factors considered when negotiating administrative and judicial penalties, such as litigation risk. As stated previously, the EPA supports the state finalizing the enforcement manual.

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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>
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		5	8	62.5%

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**State Response:**

DEQ appreciates and agrees with your review, comments, and suggestions for improvement for penalty decision documentation. We will keep EPA informed as we make progress on the recommendations below.

**MDEQ Enforcement Program Comments:** Rec 4: MT DEQ penalty calculation worksheet is based directly on the ARM 17.4.300 series. The Penalty Calculation Rule describes the factors that DEQ will use in calculating an initial penalty, which includes adjustment factors that can increase or decrease the penalty.

MT DEQ will create an appropriate settlement document to capture the consistent factors we consider in negotiating settlement penalties. Penalty negotiations often include confidential information that MT DEQ honors under Rule 408. MT DEQ has a draft settlement document it is preparing for legal review and will finalize the document by March 31, 2022.

Rec 5: MT DEQ is currently rewriting its Enforcement Manual, including assisting all 15 regulatory programs to create or update their enforcement escalation guidance, and creating internal Enforcement TED talks related to the Manual. MT DEQ will have all the Enforcement Manual documents and TED talks created by June 30, 2022.

Rec 6: MT DEQ will send initial and redeveloped penalty calculations, settlement documents, and documentation of penalty payments to EPA beginning March 31, 2022.

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**Recommendation:**

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Rec #	Due Date	Recommendation
1	12/31/2022	<p>By March 31, 2022, the state will develop and submit to the EPA revisions to its existing penalty calculation worksheet including the following:</p> <ul style="list-style-type: none"> <li>• A list of available penalty mitigation factors respondents must qualify for in order to be eligible for reductions to a calculated penalty.</li> <li>• Space on the penalty calculation worksheet for the state to identify when and why respondents qualify for specific penalty mitigation factors.</li> </ul> <p>The EPA will close this recommendation when the state has revised its penalty calculation worksheet to ensure availability, eligibility, and rationale for application of penalty mitigation factors is clearly documented.</p>
2	06/30/2022	<p>By June 30, 2022, the state will develop and submit to the EPA revisions to its enforcement manual including a listing of the factors the state considers during administrative and judicial settlement negotiations. The EPA will close this recommendation when the state has revised its enforcement manual to include a listing of the factors the state considers during administrative and judicial settlement negotiations.</p>
3	09/30/2024	<p>Beginning with the implementation of Recommendations 1 and 2 (targeted for July 1, 2022), for at least the next five penalties assessed by state, the state will submit initial and final penalty calculations, final settlement documents, and documentation of penalty payments. The EPA will close this recommendation when at least 71% of penalties assessed after implementation of Recommendations 1 and 2 document rationale for why penalty reductions have or have not been applied in accordance with the state's enforcement manual and penalty calculation worksheet-addressing metric (12a).</p>

# Clean Air Act Findings

## CAA Element 1 - Data

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### Finding 1-1

Area for Improvement

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### Recurring Issue:

Recurring from Round 3

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### Summary:

The state's timely reporting of the compliance monitoring minimum data requirements (MDRs) were well below the national goal.

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### Explanation:

For Metric 3b1 on timely reporting of compliance monitoring MDRs, 40 out of 71 required compliance monitoring activities were timely reported, resulting in a 56.3% completion rate. This rate is less than the national goal of 100%, and less than the national average of 85.7%. The low percentage for Metric 3b1 is associated with the low percentages for FCEs at major, mega-site, and SM-80 facilities. An explanation is given in Finding 2-1.

---

### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	85.7%	40	71	56.3%

---

### State Response:

Metric 3b1 Data within ECHO is not reflective of DEQ compliance efforts regarding “timely reporting of compliance monitoring”. Due to discrepancies between DEQ and EPA regarding major, mega-site, and SM-80 universe the percentage for metric 3b1 appears low. Please see the State Response given in Finding 2-1.

In response to Recommendation 1 below, FY2021 data in ECHO is reporting 94.7% completion rate with metric 3b1, well above the 71% target set by EPA. DEQ requests that EPA close Recommendation 1.

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### Recommendation:

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Rec #	Due Date	Recommendation
1	12/31/2021	By December 31, 2021, the state will provide EPA a list of Title V FCEs on a quarterly basis (MDRs from metric 3b1) that were reported and completed in FY2021. EPA will close this recommendation when the data metric analysis results demonstrate that the state reported and completed at least 71% of Title V FCEs that were scheduled during the fiscal year-addressing metric (3b1). If necessary, the state will pull data for FY2022.

## CAA Element 1 - Data

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### Finding 1-2

Area for Attention

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### Recurring Issue:

No

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### Summary:

Enforcement actions with assessed penalties were not entered into ICIS-Air in FY2019. During the 45-day comment period, the EPA asked the state to explain why they didn't report this information in ICIS-Air. The state response is contained below in the state comment section. Also, timely reporting of stack tests is below the national goal, as is accurate reporting of MDR data in ICIS-Air.

---

### Explanation:

For Metric 2b on accurate MDR data in ICIS-Air, 21 out of 27 or 77.8% of files reviewed showed all MDRs were reported accurately in ICIS-Air. The national goal is 100%.

It was noted by the state that it was possible that there were penalties collected in FY2019 that didn't appear in ICIS-Air and/or ECHO. The state has subsequently submitted information showing that penalties were assessed in FY2019 at two major facilities. It was necessary for EPA to review penalties collected from previous years (FY2018, FY2017, and FY2016) in order to get a sample of facilities where assessed penalties were collected. There were issues identified regarding the completeness of data entered into ICIS-Air, including inaccurately entered facility names.

For Metric 3b2 on timely reporting of stack tests and stack test results, 198 out of 271 actions were timely performed, resulting in a 73.1% completion rate. This rate is less than the national goal of 100%, but greater than the national average of 69.4%. The stack tests are observed, and testing reports reviewed to determine if the tests are conducted and reported according to the required regulations, methods, and protocols. The state has indicated that they have the staff to observe stack tests and review stack test reports to confirm completeness and accuracy, and the untimely reporting of stack test dates and results is an opportunity for improvement.



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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>
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		21	27	77.8%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	69.4%	198	271	73.1%

---

**State Response:****Metric 2b:**

An internal communication error resulted in penalty data not being uploaded to ECHO. Montana DEQ has undertaken an internal process review and made significant steps to refine and clarify the process to ensure the timely and accurate entry of penalty data.

**Metric 3b2:** The state has exceeded the national average by nearly four percent while staff conduct compliance activities for a large number of diverse and geographically distant sources. With current staffing levels the state has done an outstanding job of reviewing and observing stack testing while only being deficient in the timely reporting of these tests. The state will continue to work diligently towards achieving the goal of one hundred percent compliance.

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**CAA Element 1 - Data**

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**Finding 1-3**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

The state generally met the timely reporting of enforcement MDRs.

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**Explanation:**

EPA didn't evaluate Metric 3a2 because there were no HPVs identified in FY2019.

For Metric 3b3 on timely reporting of enforcement MDRs, 12 out of 14 actions were timely reported, resulting in an 85.7% completion rate. This rate is less than the national goal of 100%, but greater than the national average of 74.4%.

---

**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>
3a2 Timely reporting of HPV determinations [GOAL]	100%	42.1%	0	0	0
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	74.4%	12	14	85.7%

**State Response:**

Montana DEQ agrees the program meets or exceeds expectations.

**CAA Element 2 - Inspections**

**Finding 2-1**

Area for Improvement

**Recurring Issue:**

Recurring from Round 3

**Summary:**

During the 45-day comment period, the EPA requested unreported inspection results from the state to determine whether the state met its inspection commitments; the state responded below in the state comment section. ICIS-Air reporting of major, mega-site, and SM-80 source full compliance evaluation (FCE) inspections is significantly below the national goal. While the state is conducting inspections (FCEs) at Title V and SM-80 facilities, the FCEs are not showing up in the annual FCEs in ICIS-Air because the state failed to submit a FY2019 CMS Plan to EPA and this has led to low FCE percentages.

**Explanation:**

For Metric 5a on FCE coverage for majors and mega-sites: Based on what was reported in ICIS-Air, 10 out of 37 inspections were performed, resulting in a 27% completion rate. This rate is significantly less than the national goal of 100% and less than the national average of 87%. A major source is defined as a stationary source or group of stationary sources that emit or have the potential to emit 10 tons per year or more of a hazardous air pollutant or 25 tons per year of a combination of hazardous air pollutants.

For Metric 5b on FCE coverage for SM-80s: Based on what was found in ICIS-Air, 0 out of 21 inspections were performed resulting in a 0% completion rate. This rate is significantly less than the national goal of 100% and the national average of 93%. According to the state CMS, the state is required to inspect 4 (not 21) FCE's at SM-80s per year. A synthetic minor (SM)-80 are minor

sources that have taken an enforceable limit to remain minor sources, called synthetic minor sources, that emit or have the potential to emit (PTE) at or above 80% of the Title V major source threshold.

For Metric 5c on FCE coverage for minor and synthetic minor (non-SM-80s) sources: EPA didn't evaluate this metric because the state doesn't include minor and non-SM-80 sources in its CMS. The state historically has not tracked (SM-80) status, making consistent tracking and reporting of FCE data for minor sources in ICIS-Air challenging. A minor source is defined as a source that emits less than 100 tons per year of any criteria pollutant (PM, PM-10, PM 2.5, CO, NOX, SO2, and VOC) but less than 10 tons per year of one toxic pollutant or 25 tons per year of a combination of toxics pollutants.

Montana is on the "traditional" CMS plan. The CMS universe was incorrect, and Montana didn't submit a CMS for FY2019. This is a reporting issue and the state is evaluating Majors at least every two years and SM-80s at least every 5 years. The state and EPA have discussed these metrics and believe that the state total percentages are lower than expected because the state didn't submit a CMS plan in FY2019 and therefore, the universe of facilities (37) scheduled for FCEs was larger than expected. Also, there were FCEs for majors and SM-80 facilities that were conducted at facilities that may not have been in the universe of facilities for FY2019.

---

**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>
5a FCE coverage: majors and mega-sites [GOAL]	100%	87%	10	37	27%
5b FCE coverage: SM-80s [GOAL]	100%	93%	0	21	0%
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%	71.7%	0	0	0

---

**State Response:**

Changes in internal processes, communication errors, staffing levels, and a reprioritization of resources combined to create these completion deficiencies. Montana DEQ has taken steps to address these deficiencies. Montana DEQ has no further inspections to report for FY2019.

Montana DEQ has worked diligently to ensure a CMS plan for each FFY moving forward.

Regarding recommendation 1 and 2, data for FY2021 shows a 100% compliance rate for metric 5a and a 33.3% compliance rate for metric 5b. The low completion rate for metric 5b is due the fact the EPA inspection universe includes facilities that Montana DEQ has deprioritized due to limited inspection resources and impacts from COVID-19. Facilities that we have deprioritized are facilities that are no longer in operation and compressor stations. Montana DEQ resources provide much more value being utilized in other areas.

---

**Recommendation:**

Rec #	Due Date	Recommendation
1	12/31/2021	By December 31, 2021, and quarterly throughout FY2022, the state will provide the number of FCE inspections at major, mega-site, and SM-80 sources (metrics 5a and 5b).
2	12/31/2022	EPA will close this recommendation when the data metric analysis results demonstrate that the state conducted at least 71% of FCEs scheduled at major, mega-site, and SM-80 facilities during FY22 - addressing metrics (5a) and (5b).

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**CAA Element 2 - Inspections**

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**Finding 2-2**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

The state excels in properly capturing all the elements of a full compliance evaluation (FCE).

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**Explanation:**

For Metric 5e on reviews of Title V annual compliance certifications completed, 57 out of 57 reviews were performed, resulting in an 100% completion rate. The national goal is 100% and the national average is 86.1%.

For Metric 6a on documentation of FCE elements, 15 out of 15 files reviewed showed proper documentation of FCE elements, resulting in a rate of 100%. The national goal is 100%.

For Metric 6b on (Compliance Monitoring Reports (CMRs) or facility files reviewed provided sufficient documentation to determine compliance of the facility), 16 out of 16 or 100% of files reviewed provided sufficient documentation to determine compliance of the facility. The national goal is 100%.

---

**Relevant metrics:**

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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	86.1%	57	57	100%
6a Documentation of FCE elements [GOAL]	100%		15	15	100%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		16	16	100%

**State Response:**

Montana DEQ agrees the program meets or exceeds expectations.

**CAA Element 3 - Violations**

**Finding 3-1**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

The state completes accurate compliance determination based on the file review and enters that determination accurately into ICIS-Air. The state has a low Federally Reportable Violation (FRV) discovery rate based on evaluations at active CMS sources, and has achieved a high level of accurate compliance determinations. The state identifies violations as HPV and violations are identified accurately and EPA didn't evaluate the timeliness of HPV determinations because there were no HPV violations reported.

**Explanation:**

For Metric 7a on accurate compliance determinations, 27 of 27 files reviewed showed accurate compliance determinations were made at major facilities, resulting in a rate of 100%. The national goal is 100%.

For Metric 7a1 on FRV 'discovery rate' based on evaluations at active CMS sources, 6 out of 120 state evaluations led to the discovery of an FRV, resulting in a rate of 5%. The national average is 7.8%.

For Metric 8a on discovery rate of HPVs at majors, 0 out of 59 evaluations led to the discovery of an HPV, resulting in a 0% rate. The national average is 2.3%.

For Metric 8c on accurate HPV determinations, 19 out of 19 files reviewed showed accurate HPV determinations were made, resulting in a rate of 100%. The national goal is 100%.

For Metric 13, EPA did not evaluate this metric on the timeliness of HPV identification as there were no HPV violations reported in FY2019.

**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>
13 Timeliness of HPV Identification [GOAL]	100%	90.6%	0	0	0
7a Accurate compliance determinations [GOAL]	100%		27	27	100%
7a1 FRV 'discovery rate' based on inspections at active CMS sources		7.8%	6	120	5%
8a HPV discovery rate at majors		2.3%	0	59	0%
8c Accuracy of HPV determinations [GOAL]	100%		19	19	100%

**State Response:**

Montana DEQ agrees the program meets or exceeds expectations.

**CAA Element 4 - Enforcement**

**Finding 4-1**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

The state had a 100% compliance rate for the formal enforcement responses that included required corrective action that returned facilities to compliance in a specified time frame. Review of the files selected showed that the state is meeting timeliness for addressing HPVs, removing HPVs, and case development regarding HPVs.

**Explanation:**

For Metric 9a on formal enforcement responses that included required corrective action that will return the facility to compliance in a specified time frame, 15 out of 15 or 100% of files reviewed included the required corrective action. The national goal is 100%.

For Metric 10a1 on rate of addressing HPVs within 180 days, 0 out of 1 HPVs were addressed in 180 days, resulting in a 0% rate. The national average is 47.8%. The one HPV was finally

addressed at the 449-day mark. In this instance, the state provided EPA with information on this facility that was necessary to evaluate metric 10b. The facility did not apply for a Title V renewal in time. The facility returned to compliance after receiving a Notice of Violation (NOV). Also, the number of HPVs vary in different metrics throughout this report as numerous fiscal years were observed during this SRF review to include at least five enforcement actions with penalties at facilities in Montana. EPA looked at nine files across multiple fiscal years under metric 10b. Five of these files were formal enforcement and four were classified as informal enforcement. EPA found that 100% of files reviewed had appropriate responses and Montana is following the HPV Policy.

For Metric 10b1 on rate of managing HPVs with an NOV or NOW or no action, 1 out of 1 were managed without formal enforcement, resulting in a 100% rate. The national average is 7.9%.

For evaluating Metric 10a on timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place, Metric 10b on appropriate enforcement responses for HPVs, and Metric 14 on HPV Case Development and Resolution Timeline (CD&RT) contains required policy elements, compliance rates of 100%, respectively, were determined. The national goal for these three metrics is 100%.

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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>
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		9	9	100%
10a1 Rate of Addressing HPVs within 180 days		47.8%	0	1	0%
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		9	9	100%
10b1 Rate of managing HPVs without formal enforcement action		7.9%	1	1	100%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		7	7	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%		15	15	100%

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**State Response:**

Montana DEQ agrees the program meets or exceeds expectations.

**Metric 10a1:** The facility in question is small with limited resources emitting less than 25 tons per year of any regulated pollutant and only qualifying as a permitted facility due to 40 CFR 63, Subpart T – NESHAPS: Halogenated Solvent Cleaning requirements. Due to staffing changes at both the facility and within Montana DEQ this renewal was overlooked. However, upon discovery the company worked closely with Montana DEQ and the situation was resolved quickly. Montana DEQ has conducted a procedural review to ensure this does not occur in the future.

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**CAA Element 5 - Penalties**

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**Finding 5-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

The state documents the rationale for differences in the initial penalty calculation and the final penalty 100% of the time. The state showed penalty calculations documenting gravity and economic benefit in 100% of cases reviewed. The state showed documented penalty collections in 100% of cases reviewed.

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**Explanation:**

For Metric 11a on penalty calculations reviewed that document gravity and economic benefit, 5 out of 5 (100%) of files reviewed showed calculations documenting gravity and economic benefit penalties were assessed. The national goal is 100%.

For Metric 12a on documentation of rationale for difference between initial penalty calculation and final penalty, 5 out of 5 or 100% of files reviewed documented the rational for differences between initial and final penalty calculations.

For Metric 12b on penalties collected, the state documented collection of penalties in 100% of the instances. The national goal is 100%.

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**Relevant metrics:**

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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%		5	5	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		5	5	100%
12b Penalties collected [GOAL]	100%		5	5	100%

**State Response:**

Montana DEQ agrees the program meets or exceeds expectations.

# Resource Conservation and Recovery Act Findings

## RCRA Element 1 - Data

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### Finding 1-1

Meets or Exceeds Expectations

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### Recurring Issue:

No

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### Summary:

The state met the national goal of 100% for complete and accurate data entry for compliance and enforcement activities.

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### Explanation:

For Metric 2b on accurate entry of mandatory data, all relevant information (29 of 29 files reviewed) was entered accurately into RCRAInfo, resulting in a rate of 100%. The national goal is 100%.

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### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Accurate entry of mandatory data [GOAL]	100%		29	29	100%

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### State Response:

No comment from the State.

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## RCRA Element 2 - Inspections

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### Finding 2-1

Meets or Exceeds Expectations

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### Recurring Issue:

No

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### Summary:

The state's inspection coverage of large quantity generators (LQGs) and Treatment, Storage, and Disposal Facilities (TSDFs) met or exceeded the national goals for all inspection coverage areas.

The areas of inspection report quality and timeliness met the requirements of national inspection and enforcement policies. Inspection reports were sufficient to determine compliance and consistently completed within appropriate timeframes.

---

**Explanation:**

For Metric 5a on two-year inspection coverage of operating TSDFs, all three operating TSDFs in the state (100%) were inspected within a two-year time frame, meeting the national goal of 100% and exceeding the national average of 89.9%.

For Metric 5b1 on annual inspection coverage, the state inspected 18 of 65 (27.7%) of the LQG universe in FY2019. The national goal is 20%. LQGs generate 1,000 kilograms (2,200 lbs.) of hazardous waste or more than one kilogram (2.2 lbs.) of acutely hazardous waste per calendar month.

For Metric 6a on inspection report completion and sufficient to determine compliance, 20 out of 20 files (100%) reviewed were complete. The national goal is 100%.

For Metric 6b on timeliness of inspection report completion, 20 out of 20 files (100%) reviewed were timely. The national goal is 100%.

Complete, sufficient, and timely inspection reports allow for appropriate violation determinations, which resulted in the issuance of 19 informal enforcement actions in FY2019. The inspection reports properly documented hazardous waste management activities and compliance evaluation inspections conducted at facilities with a wide range of waste streams and waste management processes and procedures. In each case, the inspection reports appropriately documented waste determinations, points of waste generation and hazardous waste management activities. Inspection reports for complicated waste management facilities were very detailed and thorough.

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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>
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	89.9%	3	3	100%
5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL]	20%	9.3%	18	65	27.7%
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		20	20	100%
6b Timeliness of inspection report completion [GOAL]	100%		20	20	100%

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**State Response:**

No comment from the State.

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### **RCRA Element 3 - Violations**

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#### **Finding 3-1**

Meets or Exceeds Expectations

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#### **Recurring Issue:**

No

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#### **Summary:**

The state makes accurate, timely, and appropriate compliance determinations. Additionally, the state identifies violations in their inspection reports and enters these in RCRAInfo.

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#### **Explanation:**

For Metric 2a on long-standing secondary violators, there were no long-standing violators identified in the FY2019 data. A long-standing violator represents the number of secondary violators (SVs) with violations open for more than 240 days that have not returned to compliance or have not been designated as being a significant noncomplier (SNC).

For Metric 7a on accurate compliance determinations, 21 of 21 compliance determinations were determined to be accurate, resulting in a rate of 100%. For Metric 8c on appropriate SNC determinations, there were no SNCs in FY2018 or FY2019 so a FY2017 SNC file was reviewed and one of one SNC determination was determined to be accurate, resulting in a rate of 100%. The national goal for both metrics is 100%. All inspection reports reviewed during the file review led to accurate compliance determinations. None of the files reviewed contained information on untimely or inaccurately identified significant noncompliance violations.

For Metric 7b on violations found during compliance evaluation inspections (CEI) and focused compliance inspections (FCI), the state found violations in 16 of 50 inspections, resulting in a rate of 32%. The national average is 38.9%.

For Metrics 8a, and 8b there were no SNCs identified in FY2018 or FY2019, so these metrics (the SNC identification rate and the timeliness of SNC determinations) were not evaluated. The 118 in the metric table represents the total number of CEIs and FCIs.

For Metric 8c, there was one SNC identified in FY2017 which was covered in this review and is indicated as being an appropriate SNC determination.

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#### **Relevant metrics:**

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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2a Long-standing secondary violators			0	0	0
7a Accurate compliance determinations [GOAL]	100%		21	21	100%
7b Violations found during CEI and FCI inspections		38.9%	16	50	32%
8a SNC identification rate at sites with CEI and FCI		1.6%	0	118	0%
8b Timeliness of SNC determinations [GOAL]	100%	84.2%	0	0	0
8c Appropriate SNC determinations [GOAL]	100%		1	1	100%

**State Response:**

No comment from the State.

**RCRA Element 4 - Enforcement**

**Finding 4-1**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

The state takes timely and appropriate enforcement action to address identified violations. The state requires corrective measures in their informal actions to return facilities to compliance and follows up through required submittals or onsite inspection to verify return to compliance has occurred. There were no SNCs in FY2018 or FY2019 so a FY2017 SNC file was reviewed.

**Explanation:**

For Metric 9a on enforcement that returns sites to compliance, 21 of the 21 informal enforcement actions resulted in a return to compliance, resulting in a rate of 100%. For Metric 10b on appropriate enforcement taken to address violations, 21 of the 21 enforcement actions were determined to be appropriate, resulting in a rate of 100%. The national goal for each is 100%.

The state took 40 informal enforcement actions against 21 facilities reviewed. Each of the actions specified compliance schedules as required and contained facility return-to-compliance documentation. All enforcement actions reviewed during the file review appeared to be appropriate to address the violations. Formal actions were taken when appropriate that included penalties per the EPA RCRA Enforcement Response Policy dated 2003. Per this policy, SNCs should be addressed through formal enforcement. Minor infractions were dealt with via informal actions as

appropriate, where the facilities waste management practices were monitored to ensure a return to compliance.

The 40 informal enforcement actions included warning and violation letters, return-to-compliance letters, and document review. The return to compliance letters and Document Review of informal actions were noted but not evaluated since the SRF process does not currently have standards for evaluation of these types of informal actions.

There was one SNC identified in FY2017 for which the state issued a violation letter. The facility submitted information in response to the violation letter and revised some of their waste management procedures. The state performed additional inspections to ensure compliance and closed out the violation letter. The state letter, in reference to the violation letter, stated: “MDEQ’s primary concern at the time it issued the violation letter was ensuring that impacts to the environment were minimized and to bring the work into compliance with RCRA.” Based upon the most recent site inspection, the FY2017 violations were resolved.

For Metric 10a, there were no SNCs identified so timely enforcement response to SNC was not evaluated in this SRF review.

---

**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>
10a Timely enforcement taken to address SNC [GOAL]	80%	78.6%	0	0	0
10b Appropriate enforcement taken to address violations [GOAL]	100%		21	21	100%
9a Enforcement that returns sites to compliance [GOAL]	100%		21	21	100%

---

**State Response:**

No comment from the State.

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**RCRA Element 5 - Penalties**

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**Finding 5-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

The state did not collect any penalties in FY2019.

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**Explanation:**

For Metrics 11a, 12a and 12b, based upon inspection findings and violation determinations, no formal actions, including penalty assessments were warranted and therefore, there was no data to evaluate in FY2019 or the three previous fiscal years (FY2016, FY2017, FY2018).

---

**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>
11a Gravity and economic benefit [GOAL]	100%		0	0	0
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		0	0	0
12b Penalty collection [GOAL]	100%		0	0	0

---

**State Response:**

No comment from the State.



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**FEB 14 2020**

Ref: 8ENF-IO

Mr. Shaun McGrath, Director  
Department of Environmental Quality  
P.O. Box 200901  
1520 E. 6<sup>th</sup> Avenue  
Helena, MT 59620-0901

Re: 2020 State Review Framework Review of Fiscal Year 2019

Dear Mr. McGrath:

As an integral part of our U.S. Environmental Protection Agency – State of Montana partnership, Region 8 will be conducting a State Review Framework (SRF) review of the Montana Department of Environment Quality (MT DEQ) this year. Specifically, the EPA will be looking at the Resource Conservation and Recovery Act (RCRA) Subtitle C, Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) and Clean Air Act (CAA) Stationary Source enforcement programs in 2020. We will review inspection and enforcement activity from fiscal year 2019.

An important part of the review process is the visit to your state agency office for the three program areas listed above. Through these visits, which will likely take place between May and July (to be scheduled), the EPA can have face-to-face discussions with enforcement staff and review their respective files to better understand the overall enforcement program.

State visits for these reviews will include:

- discussions between Region 8 and MT DEQ program managers and staff;
- examination of data in EPA and MT DEQ data systems; and,
- review of selected MT DEQ inspection and enforcement files and policies.

Following our visits to your office, the EPA will summarize findings and recommendations in a draft report. Your management and staff will be provided with an opportunity to review and comment on this draft by late summer or early fall. The EPA expects to complete the MT DEQ review, including the final report, by the end of March 2021. If any areas for improvement are identified in the SRF, we will work with you to address them in the most constructive manner possible. Region 8 and MT DEQ are partners in carrying out the review, and we intend to assist you in meeting both federal standards and goals agreed to in MT DEQ's Performance Partnership Agreement.

Region 8 has established a cross-program team of managers and senior staff to implement the MT DEQ review. David Piantanida, SRF Coordinator at (303) 312-6200, will be your primary contact at Region 8 and will coordinate overall logistics for the EPA. I am Region 8's senior manager with overall responsibility for the review. We request that you also identify a primary contact person for the EPA to work with and provide that name to Mr. Piantanida. The Region 8 program leads on the 2020 SRF review team are:



Linda Jacobson	RCRA	(303) 312-6503	jacobson.linda@epa.gov
Ken Champagne	NPDES (Lead)	(406) 457-5025	champagne.kenneth@epa.gov
Bob Gallagher	CAA	(406) 457-5020	gallagher.bob@epa.gov

These program leads will be contacting MT DEQ enforcement managers and staff to schedule a meeting to discuss SRF Round 4 changes, expectations, lessons learned from previous reviews, procedures and scheduling for the review. The EPA will also send its analysis of the SRF data metrics and list of selected facility files prior to the on-site visits. General SRF review planning, scheduling, and logistics steps can be found in the attachment. Other documents used to evaluate the state's programs can be found on the EPA's ECHO website at <https://echo.epa.gov/>. Links to past SRF reports and recommendations can be found at the EPA's State Review Framework web page at <https://www.epa.gov/compliance/state-review-framework-compliance-and-enforcement-performance>.

Please do not hesitate to contact me at (303) 312-6925, or have your staff contact David Piantanida ([piantanida.david@epa.gov](mailto:piantanida.david@epa.gov)) at (303) 312-6200 with any questions about this review process. We look forward to working with you on the 2020 SRF review and furthering our critical EPA-State partnership.

Sincerely,



Suzanne J. Bohan, Director  
Enforcement and Compliance Assurance Division

Enclosure