

# **STATE REVIEW FRAMEWORK**

## **Arkansas**

**Clean Water Act and Clean Air Act  
Implementation in Federal Fiscal Year 2019  
and Resource Conservation and Recovery Act  
Implementation in Federal Fiscal Year 2020**

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

**Final Report  
October 25, 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](#).

# 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**

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

EPA Region 6 SRF for Arkansas Division of Environmental Quality/September 2020. EPA CONTACTS:

- Esteban Herrera, 214-665-7213-Analysis & Assessment Chief
- Anthony Loston, 214-665-3109, Arkansas State Enforcement Coordinator
- Nancy Williams, 214-665-7179
- Arkansas State Coordinator
- Darlene Whitten-Hill, 214-665-6636, Environmental Protection Specialist
- Stephanie Myers, 214-665-6496, Stormwater Coordinator

ADEQ CONTACTS:

- Alan York, Associate Director, Office of Water Quality, DEQ
- Richard Healey, Enforcement Branch Manager, Office of Water Quality, DEQ
- Jason Bolenbaugh, Compliance Monitoring Branch Manager, Office of Water Quality, DEQ

#### **Clean Air Act (CAA)**

EPA's file selection was provided to DEQ May 2020. The file review was conducted remotely June-August 2020 by:

- Diana Lundelius (214-665-7468)
- Ben Rosenthal (214-665-8546)
- Lisa Schaub (214-665-8583)

EPA Contacts:

- Steve Thompson, Air Enforcement Branch Chief (214-665-2769)
- Marie Stucky, Section Chief (214-665-7560).

DEQ Contacts:

- Heinz Braun, Compliance Branch Manager (501-682-0756)
- Demetria Kimbrough, Enforcement Branch Manager (501-682-0927)
- Lee Anderson, Enforcement Supervisor (501-683-2225)

## Resource Conservation and Recovery Act (RCRA)

### Key Dates:

- April 27, 2020: kick off letter sent to state
- November 4, 2020: virtual opening conference held with state
- April 7, 2021; virtual closing conference held with state

### Kick off letter sent to state SRF Coordinator

Jarrod Zweifel 501-682-0990 zweifel@adeg.state.ar.us	Associate Director	Office of Land Resources (OLR)	Division of Environmental Quality (DEQ)	Arkansas Department of Energy and Environment (ADEE)
--	-----------------------	---	---	--

### State contacts for review:

Office of Land Resources (OLR), Arkansas Division of Environmental Quality (DEQ), Arkansas Department of Energy and Environment (ADEE)

David Witherow 501-682-0839 witherowd@adeg.state.ar.us	Senior Operations Manager	Office of Land Resources
Penny Wilson 501-682-0868 wilson@adeg.state.ar.us	Manager	Compliance Branch Regulated Waste Operations
Carolyn Pollard 501-682-0850 pollard@adeg.state.ar.us	Hazardous Waste Inspector Supervisor	Compliance Branch Regulated Waste Operations
Bailey Taylor 501-682-0639 bailey.taylor@adeg.state.ar.us	Senior Manager	Policy and Administration
Scott McDonald No Longer with ADEE	Manager	Enforcement branch Policy and Administration

### EPA Region 6 contacts for review:

Waste Enforcement Branch, Enforcement and Compliance Assurance Division (EC AD)

Lou Roberts 214-665-7579 roberts.lou@epa.gov	SRF Reviewer	Toxics Enforcement Section
Dr. Troy Stuckey 214-665-6432 stuckey.troy@epa.gov	Chief	Toxics Enforcement Section
Margaret Osbourne 214-665-6508 osbourne.margaret@epa.gov	Chief	Toxics Enforcement Section

# Executive Summary

## Areas of Strong Performance

---

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

### Clean Water Act (CWA)

- ADEQ continues to do a great job in coding permit limits (100%) and entering DMR data for major and non-major facilities (99.30%) in the ICIS database.
- ADEQ was thorough in documenting observations and findings in inspection reports which resulted in accurate compliance determination.
- The 14 files reviewed for penalties included calculations for both gravity and economic benefits. ADEQ provided documentations of payment for all penalties received.

### Clean Air Act (CAA)

- Compliance and enforcement minimum data requirements are well maintained.
- DEQ shows a strong commitment to completing compliance evaluations and made significant improvements in producing quality reports which document and violations identified.
- DEQ consistently reaches accurate compliance determinations.
- DEQ's penalty procedures are well-documented.

### Resource Conservation and Recovery Act (RCRA)

The new umbrella agency called the Arkansas Department of Energy and Environment (ADEE) established in 2019 absorbed the former Arkansas Department of Environmental Quality (ADEQ) which became a Division. The ADEE Division of Environmental Quality (DEQ) is the state's main regulatory body in the area of environmental protection charged with protecting, enhancing, and restoring the environment for Arkansas.

The Arkansas DEQ hazardous waste program is championed by the Office of Land Resources (OLR) Managers who are very experienced and impart their knowledge and professionalism to their staff effectively and efficiently allowing ADEQ to navigate even the most challenging

issues.

The Arkansas DEQ OLR successfully transitioned, as a result of the COVID-19 pandemic, from conducting hazardous waste on-site inspections to performing thorough off-site compliance monitoring activities. Off-site compliance monitoring activities resulted in citing numerous secondary violations, identified thousands of pounds of hazardous waste not accounted for by the facilities' Hazardous Waste Annual Reports, and identified monitoring/inspection fees that would not have been recovered if an off-site investigation had not been conducted.

The Arkansas DEQ OLR Regulated Waste Operations hazardous waste inspectors continue to document observations and findings which result in enforcement actions taken. Of the nineteen CEIs and FCIs conducted in FY20, all had violations identified and enforcement action taken. The Arkansas DEQ OLR Regulated Waste Operations hazardous waste program continues to appropriately identify facilities that are a Significant Non-Complier (SNC). Of the twenty-five facility files reviewed, twenty-four had violations identified and five were identified as SNC in FY20. These five had the following type of inspection/investigation:

Compliance Evaluation Inspection (CEI) = 1

Focused Compliance Inspection (FCI) = 2

Non-financial Record Review (NRR) = 2

The Arkansas DEQ OLR Managers attend and participate in monthly conference calls and quarterly EPA/DEQ enforcement/compliance management meetings.

## **Priority Issues to Address**

---

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)**

- ADEQ did not meet the Compliance Monitoring Strategy target for metric 4a2 Significant Industrial User Inspections for SIU's discharging to non-authorized POTW's.
- EPA encourages ADEQ to continue to improve timeliness in completion of inspection reports.

METRIC	Round 3 Finding Level (FY2013)	Round 4 Finding Level (FY2019)
2b: Files reviewed where data are accurately reflective in the National Data Base	Area for State Improvement	Meets or Exceeds Expectation
10a1. Major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations.	Area for State Improvement	Meets or Exceeds Expectations
4A2. Number of inspections at EPA or State Significant Industrial Users that are discharging to non-authorized POTWs.	Area for State Attention	Area for State Improvement

### **Clean Air Act (CAA)**

- Prompt reporting of HPVs to ICIS requires improvement.
- DEQ needs to incorporate requirements of the Compliance Determination and Resolution Timeline into its process for addressing HPVs.

Metric	Round 3 Finding Level (FY 2013)	Round 4 Finding Level (FY 2019)
2b Timely and accurate reporting of MDRs	Area for State Improvement	Meets or Exceeds Expectations
3a2 Timely reporting of HPV determinations	Area for State Improvement	Area for Improvement
3b3 Timely reporting of enforcement MDRs	Area for State Improvement	Meets or Exceeds Expectations
5e Review of Title V annual compliance certifications	Area for Attention	Meets or Exceeds Expectations
6a Documentation of FCE elements	Area for State Improvement	Meets or Exceeds Expectations
6b Compliance monitoring reports (CMRs) of facility files reviewed that provide sufficient documentation to determine compliance of the facility	Area for State Improvement 78.4%	Meets or Exceeds Expectations
7a Accurate compliance determinations	Area for Attention	Meets or Exceeds Expectations
10a Timely action taken to address HPVs or case development and resolution timeline in place by 225 days	CD&RT not a requirement for Round 3	Area for State Improvement
10a1 Rate of Addressing HPVs within 180 days (support for 10a)	Area for State Improvement	Area for State Improvement
14 HPV case development and resolution timeline in place when required that contains required policy elements	CD&RT not a requirement for Round 3	Area for State Improvement

### Resource Conservation and Recovery Act (RCRA)

- EPA encourages the Arkansas DEQ to ensure data is entered and is correct in RCRAInfo.
- EPA encourages the Arkansas DEQ to ensure all personnel involved in permitting, compliance monitoring and enforcement are complying with the Enforcement Response Policy timeframes for timely enforcement to expeditiously return violators to compliance.
- EPA encourages the Arkansas DEQ to ensure proper documentation of the rationale for the difference between initial penalty calculation and final penalty.

# Clean Water Act Findings

## CWA Element 1 - Data

### Finding 1-1

Meets or Exceeds Expectations

### Recurring Issue:

No

### Summary:

ADEQ exceeded the National Goals and National Averages in coding permit limits and entering DMR data for major and non-major facilities in the National Database.

### Explanation:

1b5) ADEQ's data entry of permit limits for majors and non-majors exceeded the National Goal (95%) and National Average (93.5% ) with 100%. 1b6) ADEQ's data entry rate of DMR's for majors and non-majors exceeded the National Goal (95%) and National Average (92.3%) with 98.93%. Of the 15,138 Discharge Monitoring Reports required, facilities submitted 14,976. The remaining 162 of the missing DMRs are non-majors. 2b) EPA reviewed a total of 43 files, 10 stormwater and 33 NPDES NPDES major and non-majors facilities. There were major improvements for this metric in comparison to Round 3, which was deficient. SIC codes which are required as part of Minimum Data Requirement entry in the national database for stormwater, informal enforcement actions and inspection reports are now accurately reflected in the database.

### 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%	793	793	100%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%	92.3%	14976	15138	98.9%
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		43	43	100%

**State Response:**

DEQ does not have any comments regarding Finding 1-1.

---

**CWA Element 2 - Inspections**

---

**Finding 2-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

EPA reviewed 35 inspection reports and determined that they were complete and sufficient to make adequate compliance determinations. ADEQ inspectors continue to work diligently to fulfill all requirements outline in the EPA/ADEQ MOA and CMS despite significant turnover within the Inspection Branch.

---

**Explanation:**

Consistent with the Compliance Monitoring Strategy (CMS) for the National NPDES Program and the Memorandum of Agreement between the Environmental Protection Agency and ADEQ. ADEQ conducts field activities to determine the status of compliance with permit requirements that include both sampling and non-sampling inspections. Compliance Evaluation Inspections (CEI's) are conducted once every two years for majors and once every five years for non-majors. Pretreatment Compliance Inspections (PCI's) are conducted twice every five years and an audit is conducted once every five years. Compliance Sampling Inspections (CSI's) for major facilities are conducted every two years and non-majors once every five years. 4a1. ADEQ exceeded the CMS commitment (20%) by conducting 6 of the 8 planned Pretreatment Compliance Inspections at a rate of 75%. 4a4. No Combined Sewage Systems exists in Arkansas which is why performance is listed as n/a (0) in the performance chart below. 4a5. ADEQ conducted 52 of the 73 planned SSO Inspections (71%), exceeding the CMS commitment of 5%. 4a7. ADEQ conducted 11 of the 12 planned Phase I & II MS4 audits or inspections at a rate of 91.7%. 4a8. ADEQ exceeded the CMS commitment (10%) by conducting 237 of the planned 210 Industrial Stormwater Inspections at a rate of 112.9%. 4a9. ADEQ exceeded the CMS commitment (10%) by conducting 159 of the planned 115 Phase I & II Stormwater Construction Inspections at a rate of 138.3%. 4a11. ADEQ conducted 28 Sewage Sludge/Biomonitoring inspections which are conducted once every five years. 5a1. ADEQ met the Major inspection coverage of 100%. ADEQ conducted 48 major inspections in 2019 and 68 major inspections in 2020 to meet the inspection coverage goal of 100% as required under ADEQ's CMS. EPA reviewed 9 major inspection reports. 5b1. ADEQ conducted 149 of the 123 planned Non-Major Inspections 121%, exceeding the National Goal of 100%, and EPA reviewed 26 non-major inspections. 5b2. ADEQ conducted 329 of the planned 212 Non-Majors with General Permits exceeding the National Goal of 100% at a rate of 155.2%. 6a. EPA reviewed 35 inspection reports that were completed and sufficient to determine compliance at the facilities.

**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		6	8	75%
4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL]	100% of commitments		28	0	28
4a4 Number of CSO inspections. [GOAL]	100% of commitments		0	0	0
4a5 Number of SSO inspections. [GOAL]	100% of commitments		52	73	71.2%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments		11	12	91.7%
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments		237	210	112.9%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments		159	115	138.3%
5a1 Inspection coverage of NPDES majors. [GOAL]	100%	52.8%	48	57	84.2%
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100%	22.6%	149	123	121.1%
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL]	100%	5.6%	329	212	155.2%
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%		35	35	100%

**State Response:**

Compliance Sampling Inspections (CSI) for major facilities are not conducted every two years and non-majors are not conducted once every five years. Office of Water Quality (OWQ) inspectors attempt to conduct at least one scheduled CSI per year each. CSIs are conducted at major and minor municipal and major and minor industrial/non-municipal facilities. Other non-scheduled CSIs are conducted when necessary that may impact the environment or human health. OWQ inspectors typically intend to conduct Sanitary Sewer Overflow (SSO)/Collection System inspections in conjunction with Compliance Evaluation Inspections (CEI) or Reconnaissance inspections of applicable NPDES Individual Discharge Permits but this is not always possible. Inspectors continue to plan SSO inspections this way, which allows us to exceed the minimum requirements of the CMS. Sewage Sludge/Biosolids inspections are conducted and during fiscal year 2019 exceeded the CMS minimum requirements for evaluating each major POTW once every five years. These inspections are conducted as part of CEIs and/or State No-Discharge Permit inspections for land application and therefore were not credited as part of a Sewage Sludge/Biosolids inspection on the annual report. During fiscal year 2019, twenty-eight (28) Sewage Sludge/Biosolids inspections were conducted. Future reports will reflect this change.

---

**CWA Element 2 - Inspections**

---

**Finding 2-2**

Area for Attention

---

**Recurring Issue:**

No

---

**Summary:**

EPA reviewed 35 Majors and Non-Major inspection reports to determine timeliness of completion. According to the NPDES EMS, timely inspections are those completed within 45 days of the date of inspection for sampling and 30 days for non-sampling inspections.

---

**Explanation:**

6b. Of the 35 inspection reports, 29 were completed within the timeframe for completion. There were 6 inspection reports outside of the timeframe with completion days recorded as 34, 41, 41, 37, 47 and 64 which resulted to a rate of 82.9%.

---

**Relevant metrics:**

---

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6b Timeliness of inspection report completion [GOAL]	100%		29	35	82.9%

**State Response:**

Under normal circumstances, Standard Operating Procedures (SOP) for OWQ inspectors are to complete all inspection reports in a timely manner so all reports may be reviewed by an inspector supervisor and processed within 30 calendar days. However, there are multiple factors that may attribute to reports being finalized beyond the 30 days deadline. OWQ inspectors must balance the priorities of conducting enough inspections to maintain compliance with EPA’s CMS, conducting complaint investigations, collecting monthly water samples, drafting reports, attending meetings, participating in DEQ and EPA development projects, and more. In fiscal year 2019, the Compliance Branch had eight (8) inspectors resign their positions, which required remaining staff members to assume those duties in order to complete annual inspection goals and requirements of the CMS. While a national goal of 100% compliance with this task is commendable, it likely is one that cannot be achieved during any review period. Inspectors will continue to strive to meet the goals of the CMS and DEQ’s SOPs.

**CWA Element 2 - Inspections**

**Finding 2-3**

Area for Improvement

**Recurring Issue:**

Recurring from Round 3

**Summary:**

ADEQ did not meet the Compliance Monitoring Strategy target for metric 4a2 Significant Industrial User Inspections for SIU's discharging to non-authorized POTW's.

**Explanation:**

4a2. As in FY 2016 review, ADEQ did not meet the goal (40%) to conduct Significant Industrial Inspections for SIU's discharging to non-authorized POTW's. ADEQ's response to this metric in FY 2016 will be to reevaluate the goal of achieving compliance during FY 2017. Each report that ADEQ have submitted from FY 2017- FY 2019 has kept the status of "TBD".

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
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

**State Response:**

The OWQ Permits Branch Pretreatment Coordinator has maintained a list of 22 Categorical SIUs that discharge to a non-authorized POTW. This list has been provided to the Compliance Branch for review. The OWQ will continue to discuss a plan to move forward that adequately addresses the commitment to inspect and sample these facilities in the future. Regarding the recommendations below, DEQ does not object to developing a plan to inspect these SIUs, but DEQ requests clarification on when the plan shall be submitted to EPA for review.

**Recommendation:**

Rec #	Due Date	Recommendation
1	10/01/2021	EPA recommends that ADEQ develops a strategic plan to achieve the requirement that all Inspections for Significant Industrial Users discharging to non -authorized POTW's be evaluated annually. The plan for FY 2022 shall be submitted to EPA no later than 09/30/2021. The Region will review to ensure that coverage improves and the plan is implemented annually.
2	10/01/2023	EPA will monitor to ensure that at least 71% of the annual commitment to inspect SIU's is reflective in the FY2023 NPDES Plan and End of Year report. EPA will close this recommendation prior to October 2023.

**CWA Element 3 - Violations**

**Finding 3-1**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

Thirty-five (35) inspection reports were reviewed for accuracy of compliance determination. There was documentation to support the accuracy of determination, which provided the ability to identify violations cited in the inspection reports.

**Explanation:**

7e. EPA reviewed 35 inspection reports (15 stormwater) for accuracy of compliance determination and all 35 reports accurately identifies and address violations at 100%. 7j1. Number of Major and Non-Major facilities with Single Event Violations reported in the review year is 41. EPA reviewed 16 of the 41 reported major and non-major Single Event Violations. The violations were addressed and linked to enforcement actions (draft Order) until the Final Order becomes effective. 7k1. Major and Non-Major facilities in Non-compliance is at a rate of 20% 8a3. EPA reviewed 6 Major facilities in SNC and 8 Category 1 non-compliance facilities during the reporting year. The percentage of major facilities in SNC and non-major facilities Category 1 non-compliance during the reporting year is 9.1%.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7e Accuracy of compliance determinations [GOAL]	100%		35	35	100%
7j1 Number of major and non-major facilities with single-event violations reported in the review year.			41		41
7k1 Major and non-major facilities in noncompliance.		18.4%	1006	5019	20%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.		8.1%	455	5008	9.1%

**State Response:**

DEQ does not have any comments.

**CWA Element 4 - Enforcement**

**Finding 4-1**

Meets or Exceeds Expectations

**Recurring Issue:**

No

---

**Summary:**

EPA evaluated enforcement actions for timeliness and appropriateness for returning facilities to compliance.

---

**Explanation:**

9a. Based on the file review ADEQ enforcement responses are returning facilities to compliance at a high rate of 94.1%. A total of 34 enforcement responses were reviewed and 32 responses will return facilities in violation to compliance. 10a1. EPA's review indicated the percentage (42.9%) of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations should be taken by the time the same SNC violation appears on the second official QNCR. Three of 7 major facilities with SNC effluent violations received formal enforcement actions in 2019. The facilities with/or without formal enforcement actions (not timely) have violations relating to missing discharge reports, compliance schedules and effluent violations. 10b. Enforcement actions reviewed that will address violations in an appropriate manner are at a high rate of (91.2%), with 32 out of the 34 files reviewed. Enforcement responses include Warning Letters, Consent Administrative Orders with Penalties, and Notice of Violations.

---

**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>
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations		14.4%	3	7	42.9%
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		31	34	91.2%
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		32	34	94.1%

---

**State Response:**

DEQ does not have any comments.

---

**CWA Element 5 - Penalties**

---

**Finding 5-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

**Summary:**

ADEQ met the National Goal of 100% of penalty calculations that are documented and include gravity and economic benefit.

**Explanation:**

11a. Fourteen (14) files with penalties were reviewed. 100% of penalty calculations reviewed included gravity and economic benefit. 12a. Eleven (11) penalty files documented a difference between the initial penalty calculations and the final penalty and all (100%) contained a rationale for the difference. 12b. All of the 14 files reviewed for penalties showed that all penalties were collected at 100%.

**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%		14	14	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		11	11	100%
12b Penalties collected [GOAL]	100%		14	14	100%

**State Response:**

DEQ does not have any comments.

# Clean Air Act Findings

## CAA Element 1 - Data

### Finding 1-1

Meets or Exceeds Expectations

### Recurring Issue:

No

### Summary:

Compliance and enforcement minimum data requirements are well maintained.

### Explanation:

Arkansas DEQ meets or exceeds expectations for timely reporting of both compliance monitoring and enforcement MDRs as well as stack tests and their results, with each metric surpassing 90% timely. In the case of enforcement MDRs (3b3), the metric shows marked improvement since the Round 3 file review, as does the metric for accuracy of reviewed data in the federal data system, ICIS (2b). EPA's review found 87.5% accuracy for the latter metric, which was an Area for Improvement in the previous file review. EPA commends the DEQ for these gains. The apparent inaccuracies in the data reviewed included discrepancies in the applicable subparts indicated in ICIS versus the respective permit in two instances, as well as activities not recorded in ICIS such as a stack test and an FRV, and an errant testing date. In one case, a penalty was replaced with a Supplemental Environmental Project, and this change was not reflected in ICIS.

### 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%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	85.2%	677	682	99.3%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	65.1%	528	582	90.7%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	71.8%	83	89	93.3%

### State Response:

DEQ has and will continue to strive for excellence in accurate and timely entry of data.

---

**CAA Element 1 - Data**

---

**Finding 1-2**Area for Improvement

---

**Recurring Issue:**Recurring from Round 3

---

**Summary:**Prompt reporting of HPVs to ICIS requires improvement.

---

**Explanation:**

Timely reporting of HPVs (metric 3a2) continues to lag behind other reporting metrics, with only 13.3% (2/15) of these violations being reported to ICIS within the recommended 60 days.

---

**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%	44.9%	2	15	13.3%

---

**State Response:**

The entry of HPV data into ICIS has been moved to an earlier step in our documentation processing steps (ePORTAL). DEQ/Office of Air Quality believes that this will improve this Metric. We will continue to evaluate this change to ensure our proposed solution is accomplishing this goal. We will monitor and confer with EPA on its findings 1-2 and associated recommendations. DEQ will provide to EPA by 5/31/2021 a printout of the work steps that a compliance inspection goes through and the enforcement process prior to and after HPV determination is made. DEQ will indicate what improvements have been made to the steps in the process to improve the timely reporting of HPV determinations.

---

**Recommendation:**

<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1	05/31/2021	DEQ should provide to EPA a summary of steps that can be made more efficient to achieve goal of 60 days for reporting HPVs to ICIS.
2	10/29/2021	EPA will run a report in ECHO to confirm DEQ's reaching the goal of at least 70% timely reporting of HPV determinations.

---

**CAA Element 2 - Inspections**

---

**Finding 2-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

DEQ shows a strong commitment to completing compliance evaluations and made significant improvements in producing quality reports which document and violations identified.

---

**Explanation:**

DEQ continues to excel at completing their commitment of full compliance evaluations for both Title V major and 80% synthetic minor facilities (metrics 5a and 5b); no minor facilities were included in their CMS plan. Additionally, the agency successfully reviewed more than 90% of the Title V annual compliance certifications, an area for attention in the previous SRF. Similarly, metrics 6a and 6b show marked improvements from their previous status as areas for improvement. The clear and logical organization of the inspection reports appear to facilitate covering all aspects of the facility's permit and documenting issues that constitute violations.

---

**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%	88.1%	123	123	100%
5b FCE coverage: SM-80s [GOAL]	100%	93.7%	344	344	100%
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%	70.1%	0	0	0
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	82.5%	185	204	90.7%
6a Documentation of FCE elements [GOAL]	100%		27	30	90%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		28	30	93.3%

---

**State Response:**

DEQ has and will continue to strive for excellence in completing compliance evaluations and producing quality reports that document compliance and non-compliance.

---

**CAA Element 3 - Violations**

---

**Finding 3-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

DEQ consistently reaches accurate compliance determinations.

---

**Explanation:**

EPA's file review found a high degree of accuracy in determining facility compliance (metric 7a) and in further discerning when violations should be classified as HPVs (metric 8c). In one instance, the EPA reviewer found that the inspection did not document verification that the facility was in compliance with both of the compliance orders issued for the facility since the previous

compliance inspection. Both FRVs and HPVs were identified at a rate slightly over 4% of the facilities inspected.

---

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		32	33	97%
7a1 FRV ‘discovery rate’ based on inspections at active CMS sources		7.8%	34	795	4.3%
8a HPV discovery rate at majors		2.5%	9	215	4.2%
8c Accuracy of HPV determinations [GOAL]	100%		15	15	100%

---

**State Response:**

DEQ has and will continue to strive for excellence in determining facility compliance (metric 7a) and in further discerning when violations should be classified as HPVs (metric 8c).

---

**CAA Element 3 - Violations**

---

**Finding 3-2**

Area for Attention

---

**Recurring Issue:**

No

---

**Summary:**

---

**Explanation:**

The HPV Policy sets a goal of determining within 90 days of the compliance monitoring activity or other discovery action whether a violation is high priority. In the majority of instances (11/15), the State did report in ICIS that the HPV determination was made within the 90-day timeframe. 73.3% timeliness falls below the National Average and constitutes an area for attention.

---

**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%	89.5%	11	15	73.3%

---

**State Response:**

The entry of HPV data into ICIS has been moved to an earlier step in our documentation processing steps (ePORTAL). DEQ/Office of Air Quality believes this will improve this Metric. We will continue to evaluate the impact of this change to ensure that our proposed solution is accomplishing the goal.

---

**CAA Element 4 - Enforcement**

---

**Finding 4-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

---

**Explanation:**

Metrics 9a and 10b evaluate the efficacy of the State's compliance and enforcement programs with achieving facilities' return to compliance. In one case, the EPA reviewer found that a piece of equipment identified as being out of compliance continued to be operated by the facility for a substantial period of time without the facility's demonstrating that it was returned to compliance. The facility eventually replaced the piece of equipment with no increase in penalty in the interim. From the review, the resolution of HPVs with formal enforcement actions rather than notices of violation (Metric 10b1) was the norm.

---

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		8	9	88.9%
10b1 Rate of managing HPVs without formal enforcement action		7%	0	13	0%
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%		11	12	91.7%

---

**State Response:**

---

**CAA Element 4 - Enforcement**

---

**Finding 4-2**Area for Improvement

---

**Recurring Issue:**Recurring from Round 3

---

**Summary:**

DEQ needs to incorporate requirements of the Compliance Determination and Resolution Timeline into its process for addressing HPVs.

---

**Explanation:**

Between SRF Rounds 3 and 4, the timeliness goal for addressing HPVs was reduced from 270 to an aggressive 180 days from Day Zero. While Arkansas' timeliness rate fell slightly to 61.5%, it remains above the National Average of 59.6%. Furthermore, there were 10 cases addressed in 187 days or less (76.9% overall), with the remaining cases involving substantial delays due to extensive negotiations with the companies. Note that metric 10a1 includes all HPVs reported to ICIS during the fiscal year while 10a only includes those case covered by the SRF file review. The CD&RT requirements that came about with the 2014 HPV Policy were not included in the SRF Metrics in Round 3. Region 6 did not call specific attention to this change and discovered that the State had not incorporated all the CD&RT elements into their HPV documentation process.

---

**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%		4	10	40%
10a1 Rate of Addressing HPVs within 180 days		59.6%	8	13	61.5%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		0	6	0%

---

**State Response:**

Based on this SRF review and recent conversations with EPA, DEQ understands that a written Case Development and Resolution Timeline (CD&RT) is needed for cases that will take more than 180 days to address. DEQ has already implemented the tracking of CD&RTs in our enforcement tracking database: ACTION. Previously, enforcement conducted a lean event to streamline review and routing processes. However, the Arkansas state government transformation, which was mandated by law in July 2020, placed DEQ under the Department of Energy and the Environment. Since that time, enforcement case routing and review has been slowed down. DEQ anticipates recent and future changes to the upper management routing and a review process, which includes the addition of a position dedicated to shepherding cases towards completion, will have a positive impact on routing times during that part of the process.

---

**Recommendation:**

<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1	05/31/2021	DEQ should analyze typical time elapsed for each step of the process for addressing HPVs and provide goals for creating efficiencies to EPA.
2	10/29/2021	EPA will review metric 10a1 in the data metric analysis for DEQ's improvement to 71% or more.
3	05/31/2021	DEQ should incorporate additional fields into their Action software to satisfy the requirements of the HPV Policy for setting time goals for achieving steps in addressing HPVs.

## CAA Element 5 - Penalties

---

### Finding 5-1

Meets or Exceeds Expectations

---

### Recurring Issue:

No

---

### Summary:

DEQ's penalty procedures are well-documented.

---

### Explanation:

EPA appreciates DEQ's attention to detail in documenting penalty calculations and any instances where penalty negotiations occur, in addition to maintaining records of penalty payments.

---

### 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%		12	12	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		7	7	100%
12b Penalties collected [GOAL]	100%		8	8	100%

---

### State Response:

---

# Resource Conservation and Recovery Act Findings

## RCRA Element 1 - Data

---

### **Finding 1-1**

Area for Attention

---

### **Recurring Issue:**

No

---

### **Summary:**

The Arkansas DEQ (ADEQ) Office of Land Resources (OLR) Regulated Waste Operations Hazardous Waste and RST Compliance Branch has a staff member that inputs data into RCRAInfo, the RCRA national database of record. The ADEQ has a written process for inspection and enforcement data to be routed to the RCRAInfo data entry person. As a result of the Arkansas DEQ reorganization, the RCRA inspection and enforcement programs were separated into a Compliance Branch and an Enforcement Branch. Multiple staff in at least four (4) OLR Branches of the ADEQ are required to submit data for entry into RCRAInfo. These being the Compliance Branch, Enforcement Branch, Groundwater Branch, and Permits Branch. The RCRAInfo Inspection Form is used to track RCRA inspections, complaints, sampling, and emergency responses. The Inspector updates the form as necessary when the secondary violations are determined/approved, a schedule for compliance is determined, and when actual compliance is achieved for informal enforcement. If formal enforcement is warranted, the Inspector completes the data entry form after the inspection/investigation and when the violations are determined/approved. RCRAInfo Enforcement Code 120 is an informal enforcement action for secondary violations. RCRAInfo Enforcement Code 140 is an informal enforcement action for significant violations. The OLR Regulated Waste Operations Hazardous Waste and RST Compliance Branch conducts RCRA hazardous waste inspections/investigations and issues informal enforcement actions. The OLR Permits Branch may also make determinations regarding permit violations and issue an informal enforcement action. The RCRAInfo Enforcement Data Entry Form is used to track a variety of actions including a determination of Significant Non-Compliance (SNC) status, proposing a Consent Administrative Order (RCRAInfo Enforcement Code 149), issuing a Notice of Violation (RCRAInfo Enforcement Code 210), executing a Consent Administrative Order (RCRAInfo Enforcement Code 310), processing payments, and Supplemental Environmental Projects (SEPs). The OLR Enforcement Branch uses the Enforcement Data Entry Form which is sent to the RCRAInfo Data Entry person. EPA encourages ADEQ to hold a training for all personnel whose job duties require submitting information for input to RCRAInfo. Training should encompass the Hazardous Waste Civil Enforcement Response Policy as well as the Compliance Monitoring Strategy for RCRA Subtitle C Program. An understanding of the timeframes for completion of activities will emphasize importance of timely and accurate data entry into RCRAInfo. In addition, a discussion involving EPA's Enforcement and Compliance History Online (ECHO) database should be included.

---

**Explanation:**

Metric 2b measures the data accuracy and completeness in RCRAInfo with information in the facility files. EPA Region 6 requested to review files for twenty-five facilities. A combined total of thirty inspections/investigations were reviewed as one facility had two inspections/investigations and two facilities each had three inspections/investigations. The RCRA Round 4 Plain Language Guide states that the goal for RCRA Metric 2b is for agencies to accurately enter 100% of minimum data requirements (MDRs) into RCRAInfo. It says that to analyze performance under this metric, compare the percentage of MDR actions accurately entered to the goal of 100%. Of the twenty-five facility files reviewed to determine completeness of the MDRs, six of the facility files did not have complete MDR actions resulting in 76% accurately represented in the national RCRAInfo and ECHO databases which is a finding of Area for State Attention. Of the thirty facility actions reviewed, seven actions had one or more of the following missing or inaccurate data: enforcement action date, enforcement action type, return to compliance date, SNY, and SNN resulting in 76% accurately represented in the national RCRAInfo and ECHO databases which is a finding of Area for State Attention.

---

**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%		19	25	76%

---

**State Response:**

DEQ has corrected any discrepancies found in RCRAInfo. Additionally, training was provided on April 21, 2021 to the Enforcement and Compliance staff on the Enforcement Response Policy and the required timeframes along with the RCRAInfo codes.

---

**RCRA Element 2 - Inspections**

---

**Finding 2-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

COVID-19 pandemic in FY20 effected ADEQ's on-site inspection of its Treatment, Storage, and Disposal Facility (TSDF) universe. Previously, for the two-year period of review (FY18 - FY19), ADEQ conducted CEIs at all ten of its TSDFs for 100%. For this two-year period of review (FY19

– FY20), ADEQ conducted CEIs at eight of its ten TSDFs for 80%. However, ADEQ did conduct off-site compliance monitoring activities at the other two facilities which were in accordance with EPA’s COVID-19 pandemic guidance.

**Explanation:**

Metric 5a measures the percentage of the operating (TSDFs) that had a compliance evaluation inspection (CEI) during the two-year period of review. ADEQ conducted CEIs at eight of its ten TSDFs for 80% in the two-year period of review (FY19 - FY20). These eight CEIs were conducted in FY19. In FY20, one facility had a Groundwater Monitoring Evaluation (GME) 1/31/2020 with no violations; a Non-Financial Record Review (NRR) 5/7/2020 and 10/18/2019 both with violations identified; and a Significant Non-Compliance (SNC) determined date 11/13/2019, and the other facility had a Financial Record Review (FRR) and a NRR on 2/10/2020 both with violations identified and SNC determined date 2/10/2020. Although Metric 5a is 80% and less than the general SRF guidance for a “meets or exceeds expectation” finding level, the ADEQ’s pursuit of additional off-site compliance monitoring activities is consistent with the expectations and flexibilities extended during the COVID-19 public health emergency (see Memorandum: Inspection Expectations for EPA Partner Agencies During COVID-19 Public Health Emergency Letter (7/22/2020)).

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	83.5%	8	10	80%

**State Response:**

The COVID-19 Pandemic presented new challenges for the Compliance Monitoring Program. Due to national and state guidelines, DEQ was limited on the type of inspections that could be conducted. During a portion of FFY2020, DEQ utilized data mining resources to target potential non-compliant facilities. These data mining resources included e-Manifest, Annual Reports, RCRAInfo data, and any other records obtained by DEQ. Data mining performed by DEQ was used to provide oversight of the generator’s “cradle to grave” responsibility by reviewing all aspects of the generation, transportation, treatment, storage, and disposal of all hazardous waste, as documented by the aforementioned data mining resources. In addition, this information was thoroughly reviewed and analyzed to determine the accuracy and validity of the following during the review: hazardous waste generator activities, notification and generator status, proper waste identification, and treatment or disposal activities.

---

## RCRA Element 2 - Inspections

---

### Finding 2-2

Meets or Exceeds Expectations

---

### Recurring Issue:

No

---

### Summary:

COVID-19 pandemic in FY20 effected ADEQ's on-site inspections. Pursuant to EPA's July 22, 2020-memorandum (MEMO) providing guidance for flexibility during the COVID-19 pandemic, ADEQ did utilize data mining resources to target potential non-compliant facilities referring to this activity as "Desk Audits" and entered these in the RCRA national database as Non-Compliance Record Reviews (NRRs) with a focus area of OCM (off-site compliance monitoring). EPA's MEMO states that EPA will count off-site compliance monitoring activities towards a partner agency's inspection commitments under OECA's compliance monitoring strategy (CMS) and towards grant commitments. EPA's MEMO states that OECA recommends partner agencies discuss with the Regional Enforcement and Compliance Assurance Division (ECAD) whether off-site compliance monitoring activities could be substituted for inspections in order to maintain the integrity of programs and to deter noncompliance during the COVID-19 public health emergency. Transition from on-site inspections included participating in EPA data mining virtual training and developing the following: Desk Audit Checklist; off-site monitoring Records Request; and an off-site monitoring Report Template. The facility is sent a Desk Audit Report. ADEQ states that a review of the time and resources used to prepare for, conduct these off-site compliance monitoring activities (Desk Audits), and write the reports shows it took approximately the same amount of effort as a CEI. R6 ECAD advised ADEQ that credit would be given during their FY20 end-of-year evaluation for their off-site compliance monitoring activities referred to by ADEQ as "Desk Audits." ADEQ's Desk Audits are considered inspections toward the State FY20 RCRA CMS compliance monitoring goals. ADEQ had an EPA Region 6 approved alternative to the RCRA CMS requirement to inspect 20% of the LQG universe for FY20. RCRA CMS Alternative 3 – Straight Trade-Off Approach provided for a minimum of nineteen CEIs at LQGs (10% of LQG universe [192]) and nineteen CEIs at SQGs/VSQGs (10%) for a total of 38 CEIs. ADEQ LQG universe number determined based on information in RCRAInfo as of March 28, 2019.

---

### Explanation:

Metric 5b1 measures the percentage of the active large quantity generators (LQGs) identified in RCRAInfo that had a compliance evaluation inspection (CEI) during the period of review. Metric 5d and 5e5 measures the one-year count of Small Quantity Generators (SQGs) and Very Small Quantity Generators (VSQGs) respectively with an inspection in the review period. During FY20, ADEQ conducted ten CEIs and five off-site compliance monitoring activities (Desk Audits) at LQGs, and two CEIs and twenty-four Desk Audits at SQGs/VSQGs for a total of twelve CEIs and twenty-nine Desk Audits. Forty-one CEIs and Desk Audits of LQGs/SQGs/VSQGs exceed the RCRA CMS Approved Alternative Strategy of 38 CEIs (20% of

LQG universe). Although Metric 5b1 is 79% and less than the general SRF guidance for a “meets or exceeds expectations” finding level, Metric 5d and Metric 5e5 are greater than 100%. The finding level of “meets or exceeds expectations” and ADEQ’s pursuit of additional off-site compliance monitoring activities is consistent with the expectations and flexibilities extended during the COVID-19 public health emergency (see Memorandum: Inspection Expectations for EPA Partner Agencies During COVID-19 Public Health Emergency Letter (7/22/2020)).

---

**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>
5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL]	100% of commitments%		15	19	78.9%
5d One-year count of SQGs with inspections [GOAL]	100% of commitments%		11	11	100%
5e5 One-year count of very small quantity generators (VSQGs) with inspections	100% of commitments%		15	8	187.5%

---

**State Response:**

The COVID-19 Pandemic presented new challenges for the Compliance Monitoring Program. Due to national and state guidelines, DEQ was limited on the type of inspections that could be conducted. During a portion of FFY2020, DEQ utilized data mining resources to target potential non-compliant facilities. These data mining resources included e-Manifest, Annual Reports, RCRAInfo data, and any other records obtained by DEQ. Data mining performed by DEQ was used to provide oversight of the generator’s “cradle to grave” responsibility by reviewing all aspects of the generation, transportation, treatment, storage, and disposal of all hazardous waste, as documented by the aforementioned data mining resources. In addition, this information was thoroughly reviewed and analyzed to determine the accuracy and validity of the following during the review: hazardous waste generator activities, notification and generator status, proper waste identification, and treatment or disposal activities. These are tools that will continue to be used as part of the Compliance Monitoring Program.

---

**RCRA Element 2 - Inspections**

---

**Finding 2-3**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

EPA R6 requested to review files for twenty-five facilities. A total of twenty-one inspection/investigation reports were reviewed. These were well written, detailed, and contained sufficient documentation to make an accurate compliance determination. Photographs were included as well as other documentation needed to support violations. RCRA Checklists are used as a tool for organizing, conducting, and recording the results of the inspection/investigation. The Arkansas Division of Environmental Quality (ADEQ) Office of Land Resources (OLR) does use Checklists for both on-site inspections/investigations and for off-site compliance monitoring activities (i.e., data mining) referred to as Desk Audits. The ADEQ OLR has a Standard Operating Procedure (SOP) for on-site and off-site compliance monitoring activities. The ADEQ OLR inspectors do a thorough pre-inspection file review documented with a Pre-inspection Worksheet. Compliance Evaluation Inspections (CEIs) are the typical type of inspection which focuses on identifying the most significant violations, however, all violations observed are addressed. Inspection objective focuses on finding circumstances which may cause serious harm to human health or the environment because of the mismanagement of hazardous waste. The ADEQ OLR on-site inspections consist of a physical walk-through and an administrative review. Photographs are to be taken in both compliance and non-compliance situations. Photographs of all waste management areas (including satellite accumulation areas) are to be taken during the facility's inspection/investigation. Data mining is defined as the process of finding anomalies, patterns, and correlations within large data sets to predict outcomes. Data mining is performed using all available data stored within RCRAInfo to accomplish the following: (1) target potential facilities to inspect in order to meet DEQ's annual Compliance Monitoring Strategy (CMS) requirements; (2) enhance pre-inspection activities, in order to maximize the use of on-site inspection times at facilities; and (3) as a stand-alone inspection tool to conduct thorough investigation of non-financial records. The timeliness standard for completing reports used for this review was 150 days from Day Zero. Reports by type of inspection/investigation:

- 12 Compliance Evaluation Inspections (CEI) (2 based on tip/complaint)
- 5 Focused Compliance Inspections (FCI) (4 based on complaints)
- 1 Operation and Maintenance Inspection (OAM)
- 3 Non-financial Record Review – Desk Audit (NRR -- OCM)

The ADEQ OLR Compliance Branch actively investigates every tip and complaint received. All inspection/investigation reports with no violations identified or with secondary violations identified are approved by the Inspector Supervisor and the Compliance Branch Manager. All TSDf reports are routed for review and concurrence by the Regulated Waste Operations Senior Manager. All inspection/investigation reports with significant violations identified are approved by the Inspector Supervisor, Compliance Branch Manager, and the Regulated Waste Operations Senior Manager. The completed date of the report was determined by the date the Compliance Branch Manager or the Regulated Waste Operations Senior Manager approved the routing sheet to send letter and copy of report to facility. For the twenty-one inspection reports reviewed, the minimum days to complete was 29; the maximum days was 208; and the average days was 86.

---

**Explanation:**

Metric 6a measures the percentage of on-site inspection reports reviewed that are complete and provide sufficient documentation to determine compliance. All twenty-one inspection/

investigation reports reviewed were complete and provided sufficient documentation to determine compliance.

Metric 6b measures the percentage of inspection reports reviewed that are completed in a timely manner per the national standard. Two of the twenty-one inspection/investigation reports reviewed exceed the 150 days. Both facilities had a CEI and were identified at the time of the inspection as a Large Quantity Generator (LQG). One facility did include sampling (5 soil samples plus one duplicate plus pH measurements taken from standing water) which took some time to evaluate. An additional delay was the inspector moved to a different position within ADEQ. This inspection report was routed for management review/concurrence 178 days from the date of inspection. The other facility inspection report was routed for management review/concurrence 100 days from the date of inspection. The COVID-19 Pandemic required several adjustments to day-to-day operations including the transition to telework. Management reviews of the inspection report had to be done electronically. Additionally, information technology (IT) constraints during the initial stages of the pandemic contributed to the delay in completing the report in a timely manner.

---

**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%		21	21	100%
6b Timeliness of inspection report completion [GOAL]	100%		19	21	90.5%

---

**State Response:**

The COVID-19 Pandemic presented new challenges for the Compliance Monitoring Program. Due to national and state guidelines, DEQ was limited on the type of inspections that could be conducted. During a portion of FFY2020, DEQ utilized data mining resources to target potential non-compliant facilities. Additionally, the OLR Compliance Monitoring Program was short-staffed during this time which accounted for part of the delay in report writing.

---

**RCRA Element 3 - Violations**

---

**Finding 3-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

ADEQ continues to target facilities that have compliance issues. This is attributed to ADEQ investigating every tip and complaint as well as targeting facilities that may never have been inspected. ADEQ inspectors conduct thorough inspections/investigations and write reports which accurately identifies and documents both secondary and significant violations.

EPA R6 requested to review files for twenty-five facilities. Twenty-one inspections/investigations resulted in the preparation of a report. There were eight investigations (Non-financial Record Reviews) that did not prompt the writing of an inspection report as the documents submitted by the facility identified violations for which an enforcement action was taken (i.e., self-disclosure and permitted facility incident reports).

The twenty-five facilities identified in this review comprise the following universes:

TSDF/LQG = 6

TSDF/SQG = 1

LQG = 7

SQG = 3

VSQG = 2

Transporter = 1

Other = 5

ADEQ made an accurate compliance determination in all thirty inspections/investigations reviewed. Twenty-eight of the thirty inspections/investigations reviewed identified violations for which an enforcement action was taken. Each inspection/investigation is a separate action for which ADEQ appropriately determined the SNC status.

---

**Explanation:**

Metric 2a measures the number of sites with violations open for more than 240 days that have not been returned to compliance or re-designated as being a significant noncomplier (SNC). ADEQ has no Long-Standing Secondary Violators that have not been addressed. One of the three facilities was issued a Final Order in 1991 that has groundwater remediation/monitoring. The other two facilities have an approved Hazardous Waste Enforcement Response Policy (ERP) Alternate Strategy. The ERP provides for an exceedance of the standard response time in complex cases involving unique factors which may preclude meeting the standard response time or designating as being a SNC.

Metric 7a measures the percentage of inspection reports reviewed that led to accurate compliance determinations.

Metric 7b measures the percentage of sites with a CEI or FCI inspection during the year reviewed in which one or more violations was found. Of the nineteen CEIs and FCIs conducted in FY20, all had violations identified (100%).

Metric 8a measures the percentage of sites with a CEI or FCI during the year-reviewed that received a significant noncomplier (SNC) designation during the year of review.

Metric 8c measures the percentage of files reviewed in which significant noncompliance (SNC) status was appropriately determined during the year reviewed.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2a Long-standing secondary violators			3		3
7a Accurate compliance determinations [GOAL]	100%		30	30	100%
7b Violations found during CEI and FCI inspections		35%	19	19	100%
8a SNC identification rate at sites with CEI and FCI		1.4%	3	100	3%
8c Appropriate SNC determinations [GOAL]	100%		28	28	100%

**State Response:**

OLR has no information to add to this area.

**RCRA Element 3 - Violations**

**Finding 3-2**

Area for Attention

**Recurring Issue:**

No

**Summary:**

The ADEQ OLR Compliance Branch Manager has provided training to staff on the Enforcement Response Policy timeframes for making SNC determinations and timely enforcement to expeditiously return violators to compliance.

**Explanation:**

Metrics 8b measures the percentage of significant noncomplier (SNC) determinations made within 150 days of the first day of the inspection (Day Zero). In FY20, ADEQ made 5 of the 6 determinations within 150 days of Day Zero. One case exceeded the 150-day ERP requirement because of sampling conducted at the site which took some time to evaluate. Additionally, the original inspector for this case moved to a different position within the ADEQ which also contributed to the delay in completing the report. CEI was conducted 12/12/2019 and the inspection report was routed for management concurrence/review 6/6/2020 (178 days after Day Zero). SNC determined date was 7/7/2020 (208 days after Day Zero).

---

**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>
8b Timeliness of SNC determinations [GOAL]	100%	82.7%	5	6	83.3%

---

**State Response:**

Training was provided on April 21, 2021 to the Enforcement and Compliance staff on the Enforcement Response Policy and the required timeframes along with the RCRAInfo codes. This will be a continuing training for new personnel as well as a refresher for the existing staff.

---

**RCRA Element 4 - Enforcement**

---

**Finding 4-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

EPA R6 requested to review files for twenty-five facilities. Twenty-one inspections/investigations resulted in the preparation of a report. There were eight investigations (Non-financial Record Reviews) that did not prompt the writing of an inspection report as the documents submitted by the facility identified violations for which an enforcement action was taken (i.e., self-disclosure and permitted facility incident reports). Twenty-eight of the inspections/investigations reviewed involved an enforcement response that was appropriate for the violation. In FY20, a formal enforcement action was issued to six facilities designated as SNC. The ADEQ requires corrective measures in their informal and formal enforcement actions to return facilities to compliance. Written notification of the corrective actions taken to be submitted within thirty calendar days. Written notification includes photographs and/or a copy of documentation such as training records, inspection records, and manifests. No further action closure letters are sent. Staff recommendation of closure letters are reviewed by one or more ADEQ Managers.

---

**Explanation:**

Metric 9a measures the percentage of enforcement responses that have returned or will return sites in SNC or SV to compliance. A total of twenty-eight of the thirty inspection/investigation files reviewed included informal or formal enforcement actions. All twenty-eight (100%) of the enforcement responses returned the facilities to compliance or are on a compliance schedule to return the facilities back into compliance with the hazardous waste requirements.

Metric 10a measures the percentage of SNC violations addressed with a formal action or referral during the year reviewed and within 360 days of Day Zero. The data metric analysis (DMA) indicated that 33.3% of the FY20 cases (2 of 6) met the Hazardous Waste Enforcement Response Policy (ERP) timeline of 360 days. However, as provided in the ERP, ADEQ did submit and receive approval of an Alternate Strategy for four facilities. The ERP provides for an exceedance of the standard response time in complex cases involving unique factors which may preclude meeting the standard response time. Therefore, ADEQ meets or exceeds expectations for this metric.

Metric 10b measures the percentage of files with enforcement responses that are appropriate to the violations. The ADEQ Office of Land Resources takes appropriate enforcement to return a facility to compliance. The ADEQ requires corrective measures in their informal and formal enforcement actions to return facilities to compliance. Facility is to send written notification of the corrective actions taken to be submitted within thirty calendar days. Facility written notification to include photographs and/or a copy of documentation such as training records, inspection records, and manifests. Of the twenty-eight enforcement actions issued, thirteen were informal for secondary violations; nine were formal for significant violations that includes a penalty; and six involved the issuance of both an informal for secondary violations and a formal for significant violations.

---

**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%	80.9%	6	6	100%
10b Appropriate enforcement taken to address violations [GOAL]	100%		28	28	100%
9a Enforcement that returns sites to compliance [GOAL]	100%		28	28	100%

---

**State Response:**

OLR has no information to add to this area

---

**RCRA Element 5 - Penalties**

---

**Finding 5-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

Thirteen facility files reviewed that included fifteen penalty enforcement actions. ADEQ issues a RCRAInfo Code 149 (Written Informal Enforcement Action) Proposed Consent Administrative Order (CAO) that includes a penalty. ADEQ considered this Proposed CAO to be a Formal Enforcement action. ADEQ negotiates proposed penalties to expedite the settlement process. Negotiated settlement is memorialized in a RCRAInfo Code 310, Formal Enforcement Action, CAO. The fifteen action files reviewed were:

Code 149 = 6 (4 facilities)

Code 310 = 8 (2 did not assess a penalty)

Code 510 = 1 (Initial Civil Judicial Action for Compliance and/or Monetary Penalty) (aka: Default Court Order)

The ADEQ Office of Land Resources civil penalty calculation worksheet includes an Economic Benefit/Pecuniary Gain Factor. The amount obtained is to be determined and recorded or a determination reached that the gain was de minimis. In the event the economic benefit/pecuniary gain can be documented to be greater than the total penalty amount calculated for the violation and supported by sufficient evidence, the amount of economic gain will be assessed as an alternative per Ark. Code Ann. Section 8-4-103(e).

There was documentation verifying that ADEQ had collected penalties assessed in 85.7% (6 of 7) of the final enforcement actions reviewed. Files documented collection of final penalties to include either copy of check or electronic fund transfer document.

---

**Explanation:**

Metric 11a measures the percentage of penalty calculations reviewed that document, where appropriate, gravity and economic benefit.

Metric 12b measures the percentage of enforcement files reviewed that document the collection of a penalty. Penalty for RCRAInfo Code 510, Default Court Order, has not been paid.

---

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Gravity and economic benefit [GOAL]	100%		15	15	100%
12b Penalty collection [GOAL]	100%		6	7	85.7%

---

**State Response:**

OLR has no information to add to this area

---

## RCRA Element 5 - Penalties

---

### Finding 5-2

Area for Attention

---

### Recurring Issue:

No

---

### Summary:

ADEQ properly documented the difference between the initial and final penalty assessed in 83.3% (5 of 6) of the penalty calculations reviewed. Rationale is to provide reasoning or explanation for a difference in the penalty calculated and the final penalty agreed to in a Consent Administrative Order (CAO) which is known as a Final 3008(a) Compliance Order in RCRAInfo with an enforcement code 310. The ADEQ has an Expedited Settlement Policy that allows for a 50% reduction in proposed penalty except for TSDFs. This Policy improves program efficiency and effectiveness by reducing the time needed to negotiate and settle certain types of administrative enforcement actions.

---

### Explanation:

Metric 12a measures the percentage of penalties reviewed that document the rationale for the final value assessed when it is lower than the initial calculated value. All but one documentation of rationale for difference between initial penalty calculation and final penalty included Audit Policy and Expedited Settlement Policy. The documentation provided for one facility is in the form of a statement, "The Director of DEQ may reduce the penalty as part of the negotiations at his/her discretion." This is not a reasoning or explanation for the difference and is not proper documentation.

---

### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		5	6	83.3%

---

### State Response:

The penalty may be reduced as part of the negotiation process, but the reasoning will be clearly documented in the facility file. These reasons may include good faith effort on the part of the facility to return to compliance where funds can be used for those activities instead on the full penalty amount, efforts to settle a case instead of pursuing litigation, etc.

---