

STATE REVIEW FRAMEWORK

Missouri

Clean Air Act Implementation in Federal Fiscal Year 2018

U.S. Environmental Protection Agency Region 7

**Final Report
September 15, 2020**

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 Air Act (CAA)

Key dates:

- SRF Kickoff letter mailed to MDNR: February 22, 2019
- File selection list sent to MDNR: May 20, 2019
- Data Metric Analysis sent to MDNR: May 20, 2019
- Entrance interview conducted: June 2019
- File review conducted: June 30 – July 1, 2019
- Exit interview conducted: July 1, 2019
- Draft report sent to MDNR: December 19, 2019
- Final report issued: September 15, 2020

State and EPA key contacts for review:

- Darcy Bybee, MDNR Air Pollution Control Program, Director
- Richard Swartz, MDNR Air Pollution Control Program Compliance & Enforcement Unit Chief
- Jeff Field, USEPA Region 7, Air Branch Chief (Retired July 2020)
- Lisa Hanlon, USEPA Region 7, Acting Air Branch (July 2020)
- Lisa Gotto, USEPA Region 7, Air Compliance Officer
- Joe Terriquez, USEPA Region 7, Air Compliance Officer
- Kevin Barthol, USEPA Region 7, SRF Coordinator

Executive Summary

Introduction

Clean Air Act (CAA)

Areas of Strong Performance

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

Clean Air Act (CAA)

- MDNR's review of Title V annual certifications is exemplary.
- MDNR's documentation of FCE elements in inspection reports as well as documentation to determine compliance meets expectations.

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 Air Act (CAA)

- The review exposed inaccuracies and discrepancies in the CAA database as compared to MDNR facility files. The review also revealed missing Minimum Data Requirements (MDRs).
- Timely reporting of HPV determinations, compliance monitoring MDRs; stack test dates and results; and enforcement MDRs are all below the national goal and national averages.
- MDNR's FCE coverage of majors, mega-sites, and SM-80s is below the national goal and national averages.
- Where documentation was present to review, MDNR did not demonstrate proficiency with accurate Federally Reportable Violation (FRV) and High Priority Violation (HPV) compliance determinations.
- MDNR uses separate tracking databases to track FRV and HPV violations despite the fact that they are required elements of the national tracking system.
- MDNR has created a unique category of compliance determination.
- MDNR does not meet the objectives of the HPV policy in terms of enforcement responses, compliance schedules, timeliness, and return to compliance.

- Penalty calculation documentation did not account for economic benefit. Some files did not include documentation of penalty collection.

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Area for Improvement

Summary:

The review exposed inaccuracies and discrepancies in the CAA database as compared to MDNR facility files. The review also revealed missing Minimum Data Requirements (MDRs).

Explanation:

MDNR enters data directly into the EPA national enforcement data system, ICIS-Air. This data is then made publicly available through EPA's ECHO website.

Database accuracy was evaluated by comparing the MDNR compliance and enforcement files with the ECHO detailed facility reports (metric 2b). The review found 24.3% of files contained complete and accurate data. The remaining files revealed discrepancies between the ECHO database and the state files. The review also revealed missing minimum data elements. During the review, EPA found instances of the following:

- Information in ECHO, not in the file;
- Information in the file, not ECHO; and
- Information absent from file and ECHO, contained in separate discrete tracking spreadsheets.

Common file/database inconsistencies include discrepancies for dates of events such as stack tests and compliance certification submission. The files/database were also not consistent between the date the document was sent vs. received.

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% | | 9 | 37 | 24.3% |

State Response: The Air Program acknowledges the importance of accuracy and minimizing discrepancies in our data. The Program had identified these issues and had implemented corrective action, but had not made retroactive changes to our files by the time EPA began its

review. We continue to review our current ICIS-Air data entry procedures and evaluate the accuracy of data entry and our filing procedures. The Program will document modifications to our procedures in revised Standard Operating Procedures (SOPs), and provide those to EPA within 60 days of completion of the SRF Final Report.

We also request that EPA provide detail on the specific files where discrepancies were noted so that we can ensure the official records are complete.

EPA RESPONSE TO STATE COMMENTS: The SRF final report and recommendations are intended to provide corrective actions to address procedural deficiencies identified in the frozen data from the subject review year. While the evaluation is data-focused, the recommendations are process focused, aimed at strengthening state procedures and protocols to ensure future adherence to national expectations of states authorized to implement the CAA program. Retroactive changes to the states files and data are not required as part of the SRF process.

EPA acknowledges MDNR's review of current ICIS-AIR data entry protocols and evaluation of the accuracy of data entry and filing procedures. These activities are aligned with the corrective actions outlined in the draft SRF report and will be evaluated in accordance with the criteria listed in the final report for close-out of each recommendation.

No changes have been made in the final report in response to this comment.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|--|
| 1 | 03/01/2021 | <p>EPA recommends MDNR evaluate current data entry procedures with the goal of significantly improving accuracy in recording MDRs. EPA recommends MDNR:</p> <ul style="list-style-type: none"> • Implement the use of a data entry form, which may be provided electronically to data entry staff upon completion of reportable activities. • Provide Region 7 with a draft document (in the form of a Standard Operating Procedure (SOP)), outlining the specific process improvements designed to address the issues associated with accurate data entry, for EPA review within 60 days of completion of the SRF Final Report. • EPA will use the data frozen during the regular Annual Data Metric Analysis (ADMA) process to assess progress on this recommendation. <p>This recommendation will be deemed completed upon:</p> <ol style="list-style-type: none"> 1. Implementation of a data entry form and EPA approved SOP; and 2. Achievement of 85% or greater accuracy in metric 2b. EPA will randomly pull five facilities in the MDNR FY20 frozen data set in order to review progress of complete and accurate reporting of MDRs. If the FY20 data pull does not achieve this accuracy level, EPA will review data from subsequent years until the threshold is met. |

CAA Element 1 - Data

Finding 1-2

Area for Improvement

Summary:

Timely reporting of HPV determinations, compliance monitoring MDRs; stack test dates and results; and enforcement MDRs are all below the national goal and national averages.

Explanation:

The SRF preliminary data metric analysis revealed MDNR’s timely reporting of HPV determinations (metric 3a2) cannot be evaluated for the 2018 review period due to the lack of HPV facilities for the subject review period. EPA addresses such anomalous cases by reviewing HPVs from previous reporting periods (i.e., EPA reviewed MDNR HPVs from fiscal years 2016 and 2017 to account for this metric). This review is meaningful in a qualitative sense; however, it is

not included as a quantitative metric herein because EPA cannot calculate percentages to be compared nationally (i.e., percentage achievements calculated over the two-year time period cannot be meaningfully compared to percentage achievements for the 2018 review period). In short, EPA cannot comment on the timeliness of something that did not happen the review period.

The SRF review revealed a widespread issue with timeliness in reporting relevant enforcement actions and milestones. In terms of the timeliness of reporting compliance monitoring MDRs (metric 3b1), the analysis of this data metric shows MDNR’s achievement of this metric (45.2%) is well below the national average (85.2%). The timely reporting stack test dates and results (14.9%) is likewise below the national average (65.1%). With respect to metric 3b3, at 0%, MDNR has failed to meet this metric across the board.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|------------------|-----------------|----------------|----------------|----------------|
| 3a2 Timely reporting of HPV determinations [GOAL] | 100% | 44.9% | 0 | 0 | 0 |
| 3b1 Timely reporting of compliance monitoring MDRs [GOAL] | 100% | 85.2% | 220 | 487 | 45.2% |
| 3b2 Timely reporting of stack test dates and results [GOAL] | 100% | 65.1% | 51 | 343 | 14.9% |
| 3b3 Timely reporting of enforcement MDRs [GOAL] | 100% | 71.8% | 0 | 3 | 0% |

State Response: We acknowledge that adequate and timely reporting of our work is an essential function. We have begun immediate corrective actions to ensure that previous data is uploaded to ICIS-Air and future reporting is complete and timely. Specifically:

1. Our procedures now require that staff provide data to the ICIS-Air data steward in a timely fashion, a minimum of twice per month.
2. It is now policy that the data steward and supervisory staff review and compare our records to the Enforcement and Compliance History Online (ECHO) database on a monthly basis, and coordinate with EPA staff to verify that the data uploaded to ICIS-Air is accurate and complete.
3. Staff are all trained in the HPV and FRV policies.

While EPA has acknowledged improvements in the Program’s FFY2019 data, we continue to review our current procedures, train staff, and evaluate our coordination and communication practices to ensure relevant data is timely provided to our staff members that are responsible for

ICIS-Air data entry. We are also evaluating current workloads and considering a realignment of duties to ensure data entry is prioritized.

We will document modifications to our procedures and include them in new SOPs, which we will provide to EPA within 60 days of completion of the SRF Final Report.

EPA RESPONSE TO STATE COMMENTS: Noted. These efforts (proposed and implemented) will be assessed and reviewed following issuance of the final report, which will include recommendations for corrective actions to address the findings.

No changes have been made in the final report in response to this comment.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|--|
| 1 | 03/01/2021 | <p>EPA recommends MDNR evaluate current data entry procedures with the goal of significantly improving timeliness in recording MDRs. To achieve this goal, EPA recommends MDNR:</p> <ul style="list-style-type: none"> • Implement data entry review and tracking procedures specific to the relevant metrics (3a1, 3b1, 3b2, 3b3). • Review the recently revised HPV policy to ensure familiarity with the 2015 policy revisions. • Provide Region 7 with a draft of the process improvement (in the form of an SOP) for review within 60 days of completion of the SRF Final Report that addresses the timeliness for reporting of HPV determinations; compliance MDRs; stack test dates and results; and enforcement MDRs. • EPA will use the data frozen during the regular ADMA process to assess progress on this recommendation. <p>This recommendation will be deemed completed upon:</p> <ol style="list-style-type: none"> 1. Implementation of an EPA approved SOP; and achievement of 85% or greater in metrics 3a1, 3b1, 3b2, and 3b3. EPA will review MDNR FY20 frozen data in order to determine progress in timely entry of MDRs. If the FY20 data does not meet this threshold, EPA will review subsequent years data until met. |

CAA Element 2 - Inspections

Finding 2-1
Area for Improvement

Summary:

MDNR’s FCE coverage of majors, mega-sites, and SM-80s is below the national goal and national averages.

Explanation:

EPA notes MDNR’s FCE coverage of majors, mega-sites, and SM-80s has decreased since the last review and is below the national goal and national averages.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|-----------|----------|---------|---------|---------|
| 5a FCE coverage: majors and mega-sites [GOAL] | 100% | 88.1% | 147 | 186 | 79% |
| 5b FCE coverage: SM-80s [GOAL] | 100% | 93.7% | 89 | 117 | 76.1% |

State Response: Air Program staff reviewed internal databases and compared it to information located in the ECHO database for FFY2018. We found a number of discrepancies specific to major sources, mega-sites, and SM-80s listed within the databases that had gone out of business, or were otherwise not part of this source category. In addition, we found discrepancies with the number of inspections conducted in this source category. As a result of this review and the discrepancies we identified, the Air Program believes this finding is a data integrity issue.

The Air Program respectfully requests that EPA staff re-run the data for the FFY2018 period to verify corrections to the number of active facilities in this class and corrections to the number of facilities inspected in this class. We believe updates to the database will show a marked improvement in this metric. Furthermore, if the data reveals that this issue has been resolved by our agency without additional oversight, we request that EPA consider reclassifying this issue as an “area for attention.”

Importantly, the Air Program has initiated steps to ensure data in ECHO and ICIS-Air is accurately represented going forward. In March 2020, Program staff compared FFY2019 and later data regarding these classes of facilities to data in the ECHO database and made necessary updates. Air Program staff will discuss this area as necessary during coordination calls with EPA Region 7 staff and we will document modifications to our procedures and include these modifications in new SOPs, which we will provide to EPA within 60 days of completion of the SRF Final Report.

The Air Program is also working with EPA Region 7 staff to identify tools the Department's regional office staff can utilize for inspection planning purposes - specifically information relating to the date of last inspection for this class of facilities in the ECHO database. We will develop SOPs specific to inspection planning to include utilization of the tools and data available in ECHO. Due to the time it may take to work with Region 7 staff to identify the specific tools, coordinate the use of these tools with our five regional offices, and to draft SOPs for our five regional offices, the Air Program requests a deadline to submit these specific SOPs to EPA within 120 days of completion of the SRF Final Report.

EPA RESPONSE TO STATE COMMENTS: We appreciate MDNR's considerable efforts to conduct a root cause analysis of the FCE coverage issue in response to this finding in the draft report.

Prior to the formal SRF in July 2019, MDNR had several opportunities to review and correct the 2018 data, including during the data verification period preceding the data freeze, as well as the time period following transmittal of the file selection list. EPA does not re-run data metric analyses post-file review. It is outside the framework protocol to re-review data that has been cleaned up following the authorized review. We will evaluate process improvements made as a result of the SRF analysis in the data in subsequent years to measure progress, per the recommendations in the final report. EPA does not measure or record improvements made during the SRF process to past frozen data, nor amend program findings for data clean-up performed following the file review.

No changes have been made in the final report in response to this comment.

Importantly, the Air Program has initiated steps to ensure data in ECHO and ICIS-Air is accurately represented going forward. In March 2020, Program staff compared FFY2019 and later data regarding these classes of facilities to data in the ECHO database and made necessary updates. Air Program staff will discuss this area as necessary during coordination calls with EPA Region 7 staff and we will document modifications to our procedures and include these modifications in new SOPs, which we will provide to EPA within 60 days of completion of the SRF Final Report.

EPA acknowledges MDNR's initial steps to ensure data entry procedures for data in ECHO and ICIS-AIR provide for accurate public-facing data in the future. These activities are aligned with the corrective actions outlined in the draft SRF report and will be evaluated in accordance with the criteria listed in the final report for close-out of each recommendation. We look forward to reviewing the SOPs and progress MDNR has made following transmittal of the final report.

No changes have been made in the final report in response to this comment.

The Air Program is also working with EPA Region 7 staff to identify tools the Department's regional office staff can utilize for inspection planning purposes - specifically information relating to the date of last inspection for this class of facilities in the ECHO database. We will develop SOPs specific to inspection planning to include utilization of the tools and data available in ECHO. Due to the time it may take to work with Region 7 staff to identify the

specific tools, coordinate the use of these tools with our five regional offices, and to draft SOPs for our five regional offices, the Air Program requests a deadline to submit these specific SOPs to EPA within 120 days of completion of the SRF Final Report.

MDNR’s request to extend the deadline to submit the above referenced SOPs is reasonable. The report has been amended to accommodate the requested timeline.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|--|
| 1 | 03/01/2021 | <p>EPA recommends MDNR evaluate the current EPA CMS policy with the goal of improving FCE coverage. To achieve this goal, EPA recommends MDNR:</p> <ul style="list-style-type: none"> • Develop a written plan in the form of an SOP to address FCE coverage in the state for EPA review within 120 days of completion of the SRF Final Report. • Leverage our partnership through direct communication during EPA/MDNR monthly calls as well as during the CMS Plan planning process to address the FCE (majors, mega-sites, and SM-80s) coverage deficit. • EPA will use the data frozen during the regular ADMA process to assess progress on this recommendation. <p>This recommendation will be deemed completed upon:</p> <ol style="list-style-type: none"> 1. Implementation of an EPA approved SOP; and 2. Achievement of 85% or greater in metrics 5a and 5b. EPA will review MDNR FY20 frozen data in order to review progress of FCE coverage (majors, mega-sites, and SM-80s). If the FY20 data pull does not achieve this threshold, EPA will review data from subsequent years until the threshold is met. |

CAA Element 2 - Inspections

Finding 2-2

Meets or Exceeds Expectations

Summary:

MDNR’s review of Title V annual certifications is exemplary.

Explanation:

MDNR's review of Title V annual certifications is exemplary, at 94.9%, the state is well above the national average and close to the national goal.

Relevant metrics:

| 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% | 82.5% | 240 | 253 | 94.9% |

State Response: The Air Program appreciates EPA's acknowledgement of our success under this element.

EPA RESPONSE TO STATE COMMENTS: No changes have been made in the final report in response to this comment.

CAA Element 2 - Inspections

Finding 2-3

Meets or Exceeds Expectations

Summary:

MDNR's documentation of FCE elements in inspection reports as well as documentation to determine compliance meets expectations.

Explanation:

In Missouri's inspection report documentation of FCE elements, compliance issues are generally described succinctly in the narrative portion. The reports are clear about the steps necessary for a facilities' return to compliance. MDNR's review of Compliance Monitoring Reports and files that provide sufficient documentation to determine compliance meets expectations. EPA did find that the reports were variable in quality among the district offices. The highest quality reports contain strong, detailed narratives to connect the data and provide transparency to the regulated community and public. Some are simple box checks, which proves difficult to evaluate completeness and accuracy.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|------------------|-----------------|----------------|----------------|----------------|
| 6a Documentation of FCE elements [GOAL] | 100% | | 23 | 26 | 88.5% |
| 6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL] | 100% | | 24 | 28 | 85.7% |

State Response: The Air Program appreciates EPA’s acknowledgement of our success under this element.

EPA RESPONSE TO STATE COMMENTS: No changes have been made in the final report in response to this comment.

CAA Element 3 - Violations

Finding 3-1

Area for Improvement

Summary:

Where documentation was present to review, MDNR did not demonstrate proficiency with accurate Federally Reportable Violation (FRV) and High Priority Violation (HPV) compliance determinations.

MDNR uses separate tracking databases to track these violations despite the fact that they are required elements of the national tracking system.

MDNR has created a unique category of compliance determination.

Explanation:

MDNR’s FRV and HPV discovery rate (Metrics 7a1 and 8a) in FY18 was zero, and therefore below national averages. Because no HPVs were identified, EPA cannot evaluate the timeliness of HPV determinations for the review period (Metric 13).

Accuracy of compliance determinations (37.8%), and accuracy of HPV determinations (71.4%) are below national averages. In several cases, the documentation to evaluate the accuracy of compliance determinations was absent from the state files. In files where documentation was present, MDNR frequently made inaccurate FRV and HPV compliance determinations (i.e., MDNR compliance determinations were not consistent with national FRV and HPV policy, facilities with violations that are normally classified as FRV and HPV were not classified as such).

For facilities where file documentation demonstrates FRV and HPV violations were discovered and not classified appropriately, MDNR tracked these violations on a separate internal spreadsheet; these data were not entered and tracked in national databases.

MDNR has created a unique category of compliance determination. Numerous facility files contained compliance determination letters notifying facilities of findings outside national compliance categories. For facilities with violations requiring formal and informal enforcement actions, in lieu of Letters of Warning and Notices of Violation, MDNR routinely notified non-compliant facilities with a letter of “Unsatisfactory Findings.” These letters did not contain follow-up actions to correct deficiencies; nor was a facility response requested. There is no national database category to tabulate and track these “Unsatisfactory Findings” citations. Such findings and letters are not nationally consistent and circumvent the public awareness of CAA violators in their communities. This protocol does not provide for a formal return to compliance.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|-----------|----------|---------|---------|---------|
| 13 Timeliness of HPV Identification [GOAL] | 100% | 89.5% | 0 | 0 | 0 |
| 7a Accurate compliance determinations [GOAL] | 100% | | 14 | 37 | 37.8% |
| 7a1 FRV ‘discovery rate’ based on inspections at active CMS sources | | 7.8% | 0 | 505 | 0% |
| 8a HPV discovery rate at majors | | 2.5% | 0 | 267 | 0% |
| 8c Accuracy of HPV determinations [GOAL] | 100% | | 15 | 21 | 71.4% |

State Response: First, the Department believes that this finding does not reflect any failure by the Air Program to evaluate compliance, document violations, or work with facilities to correct violations during the time period evaluated. In support, we are attaching reports to illustrate the successful efforts by the Air Program to address FRVs through compliance assistance and through referrals and orders during FFY17 and FFY18.

The Air Program nevertheless acknowledges the importance of appropriately classifying violations as FRV and/or HPV, and we have begun immediate corrective actions to ensure the appropriate classification of all violations. Specifically:

1. Our procedures now require that staff identify compliance issues as FRVs and HPVs, if the issues fall into these categories of violation, in inspection reports and correspondence sent to facilities to ensure proper documentation of the violations.
2. Supervisors and managers must review documentation of compliance issues to ensure staff determinations are accurate and follow the FRV and HPV policies.
3. Staff are trained regarding proper compliance evaluation determinations.
4. Staff are trained in the HPV and FRV policies, including the requirement to notify facilities of HPVs within 45 days of discovery.

The Air Program conducted individual training on FRV and HPV policies with all relevant staff members. In addition, the Program is developing training materials to present to all compliance and enforcement staff, including regional office inspectors, during a scheduled training event this coming June.

EPA further expressed concern about the Air Program's use of separate databases to track violations. The databases that the Air Program use are important communication tools between the Air Program, the Department's Regional Offices, and other programs within the Division of Environmental Quality. They allow program and regional staff to view compliance and enforcement data across the programs and across the state. In addition, the Air Program uses these internal databases to generate reports regarding inspection and enforcement activities to share with the public, stakeholders, and the Missouri Air Conservation Commission. EPA's ECHO and ICIS-Air databases do not have the tools we need to fulfill these functions and are not broadly available to Department staff. While having duplicate databases may be seen as inefficient, the important outcome here is that the correct information is entered into EPA's national tracking system. We are committed to ensuring that all relevant information is properly submitted by the Air Program.

Finally, EPA noted that the Department is using a unique category of compliance in the Air Program. While we understand EPA's concern with national consistency, the Department believes that the use of "unsatisfactory finding" letters is consistent with EPA's September 2014 memorandum regarding *Guidance on Federally-Reportable Violations for Clean Air Act Stationary Sources*. In that memorandum, EPA details that formal notice of a FRV or potential FRV to a source may be provided in a variety of ways:

For example, such formal notice **may** be a Notice of Violation (NOV), Notice to Correct (NTC), Notice of Opportunity to Correct (NOC), Notice to Comply (NTC), or Notice of Noncompliance (NON). **Regardless of the name of the formal notice of violation**, if the purpose of the formal notice is to notify a source of an FRV, it is to be reported to ICIS-Air. (Emphasis added).

As the attached policy excerpt shows, the use of an "unsatisfactory finding" letter is to formally notify a source of a compliance issue and the requirement to take necessary action to resolve the compliance issue. Therefore, we believe that issuing a notice of "unsatisfactory finding" and reporting these letters to ICIS-Air achieves the desired outcome of formally notifying a source of a FRV or potential FRV.

EPA RESPONSE TO STATE COMMENTS: The submitted MDNR internal reports are outside the scope of the SRF Round 4 review. These reports do not provide additional relevant evidence for EPA to evaluate MDNR's accuracy of compliance determinations in the CAA program.

The Round 4 SRF evaluation studied 35 facilities that were selected as a representative sample of all aspects of MDNR's CAA compliance and enforcement work for the 2018 fiscal year. In reviewing the supplemental information provided, it appears MDNR has provided a list of finalized agreements with seventeen facilities in various program areas outside of the CAA SRF review areas; programs such as asbestos, which are beyond the scope of this CAA SRF review. For the single applicable facility (Northstar Battery) that could potentially be subject to this review, a) this facility was not among the predetermined SRF facility set; and b) there is no material to give context to the basis and nature of the agreement executed in 2018 to inform an evaluation, including information on the particular violation(s), timelines, procedures, reporting, public access to data, penalties (if any), and resolution. EPA therefore cannot use the supplemental information to inform the final report.

No changes have been made in the final report in response to this comment.

The Air Program nevertheless acknowledges the importance of appropriately classifying violations as FRV and/or HPV, and we have begun immediate corrective actions to ensure the appropriate classification of all violations. Specifically:

- 1. Our procedures now require that staff identify compliance issues as FRVs and HPVs, if the issues fall into these categories of violation, in inspection reports and correspondence sent to facilities to ensure proper documentation of the violations.*
- 2. Supervisors and managers must review documentation of compliance issues to ensure staff determinations are accurate and follow the FRV and HPV policies.*
- 3. Staff are trained regarding proper compliance evaluation determinations.*
- 4. Staff are trained in the HPV and FRV policies, including the requirement to notify facilities of HPVs within 45 days of discovery.*

The Air Program conducted individual training on FRV and HPV policies with all relevant staff members. In addition, the Program is developing training materials to present to all compliance and enforcement staff, including regional office inspectors, during a scheduled training event this coming June.

Noted. EPA acknowledges MDNR's above listed steps to ensure the appropriate classification of all CAA violations. These activities are aligned with the spirit of the corrective actions outlined in the draft SRF report and will be evaluated in accordance with the criteria listed in the final report for close-out of each recommendation. We look forward to reviewing the progress MDNR has made following issuance of the final report.

No changes to the report have been made in response to the information provided.

EPA further expressed concern about the Air Program's use of separate databases to track violations. The databases that the Air Program use are important communication tools between the Air Program, the Department's Regional Offices, and other programs within the Division of Environmental Quality. They allow program and regional staff to view compliance and enforcement data across the programs and across the state. In addition, the Air Program uses these internal databases to generate reports regarding inspection and enforcement activities to share with the public, stakeholders, and the Missouri Air Conservation Commission. EPA's ECHO and ICIS-Air databases do not have the tools we need to fulfill these functions and are not broadly available to Department staff. While having duplicate databases may be seen as inefficient, the important outcome here is that the correct information is entered into EPA's national tracking system. We are committed to ensuring that all relevant information is properly submitted by the Air Program.

Complete and accurate data are vital to our understanding of current air quality conditions in our states, and critical to our effective planning for the future. In an era of access constraints and dwindling resources, data that give an accurate picture of the conditions in our states are crucial in shaping our work, present and future.

EPA does not prevent the use of multiple internal databases to track and present CAA compliance and enforcement information. Through discussions with technical staff and review of the internal and external databases, EPA concluded that data inaccuracies and discrepancy issues identified in the national public facing database, in part, likely stem from the duplication of effort inherent in dual tracking systems.

A key program expectation is that of ensuring the public facing data is accurate and complete. As articulated in EPA's September 2014 Guidance on Federally-Reportable Violations for Clean Air Act Stationary Sources (FRV guidance), a fundamental principle of effective compliance monitoring programs is having a complete and accurate inventory of sources with timely information on potential compliance problems. Reporting violations of the CAA in a national data system is critical at the federal, state, and local levels; and vital to the communities we serve. While our ultimate purview is the national database, EPA views the existence of multiple internal state databases as a potential roadblock to accurate reporting to our public facing systems.

Finally, EPA noted that the Department is using a unique category of compliance in the Air Program. While we understand EPA's concern with national consistency, the Department believes that the use of "unsatisfactory finding" letters is consistent with EPA's September 2014 memorandum regarding Guidance on Federally-Reportable Violations for Clean Air Act Stationary Sources. In that memorandum, EPA details that formal notice of a FRV or potential FRV to a source may be provided in a variety of ways:

*For example, such formal notice **may** be a Notice of Violation (NOV), Notice to Correct (NTC), Notice of Opportunity to Correct (NOC), Notice to Comply (NTC), or Notice of Noncompliance*

*(NON). **Regardless of the name of the formal notice of violation, if the purpose of the formal notice is to notify a source of an FRV, it is to be reported to ICIS-Air. (Emphasis added).** As the attached policy excerpt shows, the use of an “unsatisfactory finding” letter is to formally notify a source of a compliance issue and the requirement to take necessary action to resolve the compliance issue. Therefore, we believe that issuing a notice of “unsatisfactory finding” and reporting these letters to ICIS-Air achieves the desired outcome of formally notifying a source of a FRV or potential FRV.*

The SRF review comparing the national database with the state files during the SRF review demonstrated the state is not following the national guidance and expected procedures for elements of compliance determinations. EPA reiterates the draft report in stating here that the state’s facility files demonstrate MDNR processes for evaluating violations, reporting violations, tracking violations, and ensuring return to compliance fall outside national expectations, guidance and practices.

Regarding the issue of the unique category of violation created by MDNR (i.e., **Unsatisfactory Findings – No Response Required** letters), the state has misinterpreted the FRV guidance, which does not allow for the creation of a unique category of compliance determination. There is no flexibility in the guidance to create a unique type of enforcement category for violations that require facility responses, federal reporting and tracking. No flexibility exists in the national program to take an alternate path with violations in terms of follow-up and return to compliance. It is not the title of the notice at issue, it is the content of the notice and absence of a required facility response that deviates from the national expectations. It is not the name of the notice that is in question, it is the use of a unique type of notice that is not recorded and tracked in the national data base for public awareness that is at issue. The unique notices fail to meet national expectations in the following areas: violation reporting, tracking, and return to compliance; as outlined in the FRV guidance.

As discussed in greater detail below, MDNR’s FRV and HPV discovery rate data in the national data system (Metrics 7a1 and 8a) in FFY18 was zero; no Federally Reportable or High Priority violators were identified to the public in data reports to communities in Missouri. The SRF review of a representative set of files reveal that there were facilities that violated the CAA (per HPV and FRV guidances) in FFY18, violations which require federal reporting, responses, tracking and return to compliance.

The lack of public notice and access to a broader range of information on the violations and air pollution that affect communities is a key issue. The program staff skill in identifying and correcting violation cannot be evaluated when the process and data availability deviate from national expectations. The need and emphasis on this reporting in the national system is emphasized in the national FRV guidance as follows, “Reporting of violations of the CAA in the national air compliance and enforcement data system, ICIS-Air (successor to AFS), is **critical for national program management and oversight as well as for transparency and public access purposes.**”

EPA issued the September 2014 FRV guidance because routine State Review Framework (SRF) evaluations confirmed inconsistent and under-reporting of violations by states. The final SRF

report includes the statement that, for facilities where file documentation demonstrates FRV and HPV violations were discovered and not classified appropriately, MDNR tracked these violations on a separate internal spreadsheet; these data were not entered and tracked in national databases.

As a means of addressing these findings, EPA has added the following amended recommendations in the final SRF report, aimed at strengthening our communication on these issues along with MDNR's program success in this area:

- EPA will provide training on FRV and HPV policies.
- EPA and MDNR will review and discuss all MO CAA violations, FRV and HPV actions on a bi-weekly frequency during state and federal compliance/enforcement calls.
- EPA and MDNR will implement a shared facility *Compliance Determination OneDrive* (or similar electronic sharing mechanism) hub to facilitate transparent shared documentation of all enforcement determinations in the state, as compared to the national policies, for each facility inspected.
 - EPA will provide a fillable form (i.e., *Compliance Determination Form*) for MDNR to document compliance/enforcement decisions for the purpose of streamlining and communicating compliance determinations.
 - *Compliance Determination Forms* will require report out of the following:
 - Violations found in each inspection, with an emphasis on FRV/HPV criteria;
 - A comparison of each violation with a comprehensive list of all potential FRV and HPV violations;
 - Documentation of required follow-up corrective actions, including timeline to completion.
 - All facility *Compliance Determination Documents* will be discussed on bi-weekly calls.
 - Data pulls from the national database will be discussed on monthly calls.

Following one year of implementing the training, Compliance Determination Forms, and joint enforcement calls, EPA will conduct a partial, focused SRF to evaluate progress on metrics 7, 8 and 13.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | 03/01/2021 | <p>EPA Recommends:</p> <ul style="list-style-type: none"> • MDNR discontinue the use of nationally inconsistent “Unsatisfactory Findings” compliance determinations and letters. • As a means to address accuracy and national consistency in compliance determinations, EPA will provide training on FRV and HPV policies. • EPA and MDNR will review and discuss all MO CAA violations, FRV and HPV actions on a bi-weekly frequency during state and federal compliance/enforcement calls. • EPA and MDNR will implement a shared facility <i>Compliance Determination OneDrive</i> (or similar electronic sharing mechanism) hub to facilitate transparent shared documentation of all enforcement determinations in the state, as compared to the national policies, for each facility inspected. <ul style="list-style-type: none"> ○ EPA will provide a fillable form (i.e., <i>Compliance Determination Form</i>) for MDNR to document compliance/enforcement decisions for the purpose of streamlining and communicating compliance determinations. ○ <i>Compliance Determination Forms</i> will require report out of the following: <ul style="list-style-type: none"> ▪ Violations found in each inspection, with an emphasis on FRV/HPV criteria; ▪ A comparison of each violation with a comprehensive list of all potential FRV and HPV violations; ▪ Documentation of required follow-up corrective actions, including timeline to completion. ○ All facility <i>Compliance Determination Documents</i> will be discussed on bi-weekly calls. ○ Data pulls from the national database will be discussed on monthly calls. <p>Following one year of implementing the training, Compliance Determination Forms, and joint enforcement calls, EPA will conduct a partial, focused SRF to evaluate progress on metrics 7, 8 and 13.</p> <p>This recommendation will be deemed completed upon:</p> <ol style="list-style-type: none"> 1. Implementation of EPA/MDNR bi-weekly conference calls; <p>and</p> |

| | | |
|--|--|---|
| | | <p>2. EPA will randomly pull a selection of facilities from the FY20 frozen data set for review. If the sampling indicates that accuracy of compliance determinations and HPV determinations have sufficiently improved (85% or greater) and FRV and HPV data entry are accurate in the national system, EPA will close this recommendation. If the FY20 data pull does not achieve this accuracy level, EPA will review data from subsequent years until the threshold is met.</p> |
|--|--|---|

CAA Element 4 - Enforcement

Finding 4-1

Area for Improvement

Summary:

MDNR does not meet the objectives of the HPV policy in terms of enforcement responses, compliance schedules, timeliness, and return to compliance.

Explanation:

With respect to the state's formal enforcement responses (Metric 9a), MDNRs achievement is 58.3%.

Regarding the state's performance addressing and/or removing HPVs consistent with the HPV policy (Metric 10a), EPA finds through file review and discussions with management and staff, the state does not apply the policy as written.

Regarding metrics 10b and 14, (i.e., case development and resolution timeline in place when required that contains required policy elements), the absence of HPV facilities discovered by MDNR during the 2018 review period was addressed by widening the lens of review of the state program in this area to multiple previous years. This action was taken in order to evaluate the state program's progress in these metrics since the Round 3 report findings were issued. As a means to measure the state's performance and success in these areas, Region 7 recognizes that an average quantitative metric over several years of the state's performance in these areas may be applied to the years outside the review period as a means of reaching broad overarching conclusions for strengthening performance in this area.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|-----------|----------|---------|---------|---------|
| 10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place | 100% | | 1 | 8 | 12.5% |
| 10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL] | 100% | | 1 | 4 | 25% |
| 14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL] | 100% | | 0 | 3 | 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% | | 7 | 12 | 58.3% |

State Response: Without knowing in which files EPA found deficiencies, it is impossible for the state to respond specifically as to the accuracy of this finding. There may be cases in which the violation was resolved through a non-formal process that did not require case development or a resolution timeline. In other cases, those mechanisms may have been developed but, consistent with past practice, were not documented in the paper file. In order to provide a thorough response, it is necessary to know which files EPA reviewed.

Further, the report notes with regard to metrics 10B and 14 that “the low sample population size of HPV facilities reviewed from multiple previous years does not offer a reliable picture of the state’s performance and success.” The report also notes that “the relatively small sample size diminishes the confidence in these results.” Given these limitations, the Department requests that EPA withdraw these findings from the final report or provide a determination of “Inconclusive,” rather than have the record reflect a performance result that is not well-documented.

The Department also requests that the sample size used for metrics 10b and 9a be re-considered in the same light.

The Department nevertheless recognizes the importance of addressing and/or removing HPVs, consistent with EPA’s HPV policy, and ensuring that these efforts are documented. We have begun immediate corrective actions. Specifically:

1. Procedures now require staff to develop a resolution time frame for cases that may take more than 180 days to resolve, and share that with the Compliance and Enforcement Section Chief.
2. Procedures now require the Compliance and Enforcement Section Chief share a resolution time frame with appropriate EPA staff for any cases that may take more than 180 days to resolve.
3. Procedures now require HPVs to be addressed or removed consistent with the HPV policy.
4. Staff are trained regarding formal enforcement responses that include required corrective actions that will return the facility to compliance in a specified time frame.
5. Staff are trained regarding timely HPV case development and resolution.
6. Procedures now require staff to identify compliance issues noted in inspection reports and correspondence to facilities as FRVs and HPVs, if the issues fall into these categories of violation, to ensure proper documentation of the issues.
7. Procedures now require supervisors and managers to review documentation of compliance issues to ensure staff determinations are accurate and follow the FRV and HPV policies.
8. The Air Program is developing training material to present to Compliance and Enforcement staff, including regional office inspectors, during a scheduled training event in June 2020.

Again, the Department believes that this finding does not reflect any failure by the Air Program to evaluate compliance, document violations, or work with facilities to correct violations, regardless of FRV or HPV status, during the time period evaluated. The four attached reports illustrate the successful efforts by the Department during FFY2017 and FFY2018 to address FRVs through compliance assistance and through referrals and orders. The Air Program will document updated processes regarding this issue and include them in SOPs, which we will provide to EPA Region 7 within 60 days of completion of the SRF Final Report. The submittal will also contain a detailed description of the tracking system we use for HPV enforcement cases. Air Program staff will discuss the progress of HPV enforcement cases, including any foreseeable delays in case development and resolution of cases, during coordination calls with EPA Region 7 staff.

EPA RESPONSE TO STATE COMMENTS: EPA transmitted the facility file selection list for review on May 20, 2019. Additionally, EPA forwarded the file selection list prior to the entrance interview in June of 2019. Considerable time, effort, and discussions among EPA and MDNR staff were devoted to selecting the facility files.

There may be cases in which the violation was resolved through a non-formal process that did not require case development or a resolution timeline.

The method of addressing an HPV or FRV violations through a “*non-formal process*” is antithetical to the required formal procedures for addressing these high priority or federally reportable violations. Non-formal processes are outside national guidance, expectations and acceptable practices for states authorized to address and correct stationary source CAA program violations. The HPV classification is, by definition, a formal process, requiring formal case

development, as well as resolution in a timely manner. To resolve HPVs in an informal manner, without documentation, reporting and tracking of the resolution, is a deviation from national program requirements.

In other cases, those mechanisms may have been developed but, consistent with past practice, were not documented in the paper file. In order to provide a thorough response, it is necessary to know which files EPA reviewed.

A key overarching finding for the round 4 SRF review is past practices of not documenting violations, timelines and resolutions in the paper files does not serve to inform EPA and the public of any actions the state has taken in implementing and enforcing the CAA program.

Further, the report notes with regard to metrics 10B and 14 that “the low sample population size of HPV facilities reviewed from multiple previous years does not offer a reliable picture of the state’s performance and success.” The report also notes that “the relatively small sample size diminishes the confidence in these results.” Given these limitations, the Department requests that EPA withdraw these findings from the final report or provide a determination of “Inconclusive,” rather than have the record reflect a performance result that is not well-documented. The Department also requests that the sample size used for metrics 10b and 9a be re-considered in the same light.

As was discussed with MDNR staff prior to the file review, the sample population size for the review period is problematic for a number of reasons. The state Data Metric Analysis performed on the 2018 frozen data prior to the formal SRF file review (transmitted to MDNR via email on May 20, 2019) recorded MDNR’s FRV and HPV discovery rates are 0% and 0%, well below the national averages of 7.8% and 2.5%, respectively. In order to review the aspects of HPV case timeliness, development, and resolution captured by SRF metrics 9a, 10a, 10b, and 14, the SRF process provides for an extended review period to previous years in order to identify facilities and gain a broader understanding of program performance in these metrics for the time period since the Round 3 review of the data. When HPVs are not reported, EPA looks to previous years to provide recommendations for strengthening MDNRs discovery, timeliness and corrective actions for HPV and FRVs.

EPA notes the absence of HPVs and FRVs for the 2018 review period can likely be attributed to one of two factors, a) data and reporting problems; or b) the potential (as discussed above) for inaccurate compliance determinations. Our review of the files did conclude that there are high priority violators in the state, as defined in the HPV policy; and the state is not categorizing and following up on HPVs per national expectations.

EPA is confident in the essence of the conclusions drawn from the data reviewed; however to clarify the findings, the report has been amended as follows, “... the [absence of HPV facilities discovered by MDNR during the 2018 review period was addressed by widening the lens of review of the state program in this area](#) ~~low sample population size of HPV facilities reviewed from to multiple previous years.~~ [This action was taken in order to evaluate the state program’s progress in these metrics since the Round 3 report findings were issued, as a means to measure do not offer a reliable picture \(and percentage\) of the state’s performance and success in these](#)

areas. ~~As with all metrics, sample size must be considered in interpreting the results listed below. When conducting research, quality sampling may be characterized by the number and selection of subjects or observations. Obtaining a sample size that is appropriate in both regards is critical for many reasons. Most importantly, a large sample size is more representative of the population, limiting the influence of outliers or extreme observations. Regarding these two metrics, the relatively small sample size diminishes the confidence in these results. Region 7 also recognizes that an average quantitative metric over several years of the state's performance in these areas may be applied to the years outside the review period as a means of reaching broad overarching conclusions for strengthening performance in this area. dilute the conclusions that can be drawn from the percentages.~~

The Department nevertheless recognizes the importance of addressing and/or removing HPVs, consistent with EPA's HPV policy, and ensuring that these efforts are documented. We have begun immediate corrective actions. Specifically:

1. Procedures now require staff to develop a resolution time frame for cases that may take more than 180 days to resolve, and share that with the Compliance and Enforcement Section Chief.

2. Procedures now require the Compliance and Enforcement Section Chief share a resolution time frame with appropriate EPA staff for any cases that may take more than 180 days to resolve.

3. Procedures now require HPVs to be addressed or removed consistent with the HPV policy.

4. Staff are trained regarding formal enforcement responses that include required corrective actions that will return the facility to compliance in a specified time frame.

5. Staff are trained regarding timely HPV case development and resolution.

6. Procedures now require staff to identify compliance issues noted in inspection reports and correspondence to facilities as FRVs and HPVs, if the issues fall into these categories of violation, to ensure proper documentation of the issues.

7. Procedures now require supervisors and managers to review documentation of compliance issues to ensure staff determinations are accurate and follow the FRV and HPV policies.

8. The Air Program is developing training material to present to Compliance and Enforcement staff, including regional office inspectors, during a scheduled training event in June 2020.

EPA acknowledges MDNR's initial steps to address Data metrics 9a, 10a, 10b, and 14. These activities are aligned with the corrective actions outlined in the draft SRF report and will be evaluated in accordance with the criteria listed in the final report for close-out of each recommendation. We look forward to reviewing the progress MDNR has made following issuance of the final report.

Again, the Department believes that this finding does not reflect any failure by the Air Program to evaluate compliance, document violations, or work with facilities to correct violations, regardless of FRV or HPV status, during the time period evaluated. The four attached reports

illustrate the successful efforts by the Department during FFY2017 and FFY2018 to address FRVs through compliance assistance and through referrals and orders.

See EPA Response in Finding 3.1

No changes have been made in the final report in response to this comment.

The Air Program will document updated processes regarding this issue and include them in SOPs, which we will provide to EPA Region 7 within 60 days of completion of the SRF Final Report. The submittal will also contain a detailed description of the tracking system we use for HPV enforcement cases. Air Program staff will discuss the progress of HPV enforcement cases, including any foreseeable delays in case development and resolution of cases, during coordination calls with EPA Region 7 staff.

Noted.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | 12/01/2020 | <p>EPA understands HPV cases are more complex and require additional time to resolve. EPA recommends MDNR develop an SOP for EPA review that describes, a) the process to identify; and b) system to track HPV and formal enforcement responses. The SOP should address:</p> <ul style="list-style-type: none"> • Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame; • Timely HPV case development and resolution; and • Data entry for HPV and formal enforcement responses. <p>Implementation of an HPV case and formal enforcement response tracking system (with entry to ICIS-AIR) will allow MDNR to identify areas for improvement in HPV cases development and assist in meeting the HPV policy for timely enforcement. The SOP should also include a written plan for information sharing with EPA. This process will be communicated in the form of a written SOP for review and approval by EPA by December 1, 2020. This submittal should include a copy/printout from the tracking system used for HPV enforcement cases.</p> <p>EPA and MDNR will discuss progress of HPV enforcement cases during monthly enforcement coordination meetings; coordinate and communicate the progress and updates to ensure appropriate follow-ups. MDNR should include discussion of any foreseeable delays to Region 7 staff during monthly coordination calls, or as needed.</p> <p>This recommendation will be deemed complete upon:</p> <ol style="list-style-type: none"> 1. Submittal and adequate implementation of the SOP; 2. EPA review of MDNR data and facility files for HPV and formal enforcement responses. During the FY20 annual data metric analysis, EPA will review MDNR frozen data and will randomly pull a selection of facilities from the data set. If the sampling of files indicates achievement of 85% of the relevant metrics (9a,10a,10b,14) and adequate implementation of the SOP, EPA will close this recommendation. If the FY20 pull does not achieve this threshold, EPA will review data from subsequent years until the threshold is met. |

CAA Element 5 - Penalties

Finding 5-1
Area for Improvement

Summary:

Penalty calculation documentation did not account for economic benefit. Some files did not include documentation that penalties were collected.

Explanation:

For the MDNR 2018 files reviewed, one of the files included the penalty calculation worksheets.

In terms of penalty collection, EPA did not consistently find documentation in the file that penalties were collected.

Relevant metrics:

| 11a Penalty calculations reviewed that document gravity and economic benefit [GOAL] | 100% | | 0 | 5 | 0% |
|---|------|--|---|---|-----|
| 12b Penalties collected [GOAL] | 100% | | 3 | 5 | 60% |

State Response: Without knowing in which files EPA found deficiencies, we cannot provide a detailed response. We request additional information on the specific files regarding missing penalty documentation so we can ensure the official records are complete. While some of the files that EPA reviewed apparently did not include documentation that penalties were collected, the Department did in fact collect all penalties assessed, or referred cases to the Attorney General’s Office for collection if the responsible party failed to pay the penalty.

The Air Program will follow HPV guidance and state rule 10 CSR 10-6.230 “Administrative Penalties” in regards to the use of an economic benefit penalty where appropriate. In addition, the Air Program has amended its penalty policy and worksheet which includes both gravity and economic benefit components, and will submit a copy of it within 60 days of completion of the SRF Final Report. The SOPs discussed above will include the requirement to file appropriate documentation indicating payment of the penalty, including a copy of the check with the routing number and account number redacted, or other appropriate documentation.

EPA RESPONSE TO STATE COMMENTS: EPA transmitted the facility file selection list to MDNR on May 20, 2019, including the files reviewed for penalty assessment and collection.

The Air Program will follow HPV guidance and state rule 10 CSR 10-6.230 “Administrative Penalties” in regards to the use of an economic benefit penalty where appropriate. In addition, the Air Program has amended its penalty policy and worksheet which includes both gravity and

economic benefit components, and will submit a copy of it within 60 days of completion of the SRF Final Report. The SOPs discussed above will include the requirement to file appropriate documentation indicating payment of the penalty, including a copy of the check with the routing number and account number redacted, or other appropriate documentation.

Noted. These activities are aligned with the corrective actions outlined in the draft SRF report and will be evaluated in accordance with the criteria listed in the final report for close-out of each recommendation. We look forward to reviewing the progress MDNR has made following issuance of the final report.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | 02/01/2021 | <p>EPA recommends MDNR continue efforts to finalize a penalty policy and develop a standardized penalty calculation worksheet within 90 days of completion of this report, which ensures:</p> <ul style="list-style-type: none"> • Documentation of gravity and economic benefit components; and • Documentation of penalties collected. <p>This recommendation will be deemed complete upon MDNR implementation of a formal penalty policy, as demonstrated by formal documented use in MDNR case resolution negotiations. At the end of FY20, EPA will review a selection of MDNR files with penalties, and if the sampling indicates achievement of 85% of the relevant data metrics during the annual data metric analysis for FY2020, EPA will close this recommendation. If the FY20 data pull does not achieve this accuracy level, EPA will review data from subsequent years until the threshold is met.</p> |

CAA Element 5 - Penalties

Finding 5-2

Area for Attention

Summary:

Documentation of the difference between initial penalty calculation and final penalty was present and followed policy in most but not all files.

Explanation:

MDNR files did contain documentation for 4 of the 5 facilities reviewed for the documentation of rationale for difference between initial penalty calculation and final penalty. EPA suggests MDNR incorporate language regarding this element into its penalty policy for consistency and to meet the national metric goal.

Relevant metrics:

| 12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL] | 100% | | 4 | 5 | 80% |
|--|------|--|---|---|-----|

State Response: The Air Program is revising procedures to document the rationale for differences between the initial penalty calculation and final penalty calculation. We will include this requirement in our penalty policy and worksheet, which we will submit to EPA within 60 days of completion of the SRF Final Report.

EPA RESPONSE TO STATE COMMENTS: Noted. These activities are aligned with the corrective actions outlined in the draft SRF report and will be evaluated in accordance with the criteria listed in the final report for close-out of each recommendation. We look forward to reviewing the progress MDNR has made following issuance of the final report.

MDNR Conclusion: We appreciate EPA’s consideration of our responses. We want to stress again that Air Program staff and the Department’s regional office inspectors effectively evaluated compliance, documented violations, and worked with facilities to correct violations during the time period reviewed, and continue to do so.

We appreciate MDNRs thoughtful responses to the draft SRF report. We place a high value on our continued strong partnership and mutual commitment to open communication as we work together toward resolution of the issues identified during the Round 4 SRF review process. We are confident the path outlined in the final report will strengthen our mutual efforts of protection of human health and the environment.

Appendix 1

Missouri Department of Natural Resources' Response Letter



May 7, 2020

David Cozad, Director
Enforcement and Compliance Division
U.S. EPA Region 7
11201 Renner Boulevard
Lenexa, KS 66219

RE: State Review Framework, FFY2018
Clean Air Act
Draft Report Response

Dear David Cozad:

The Missouri Department of Natural Resources' Air Pollution Control Program (Air Program) received the draft report of the U.S. Environmental Protection Agency's (EPA) review of Missouri's Clean Air Act (CAA) enforcement program for Federal Fiscal Year (FFY) 2018. This letter contains our response to the findings in the draft report. We appreciate EPA's consideration in allowing us the opportunity to respond to the draft report before issuance of the final report.

The draft report notes some areas of strong performance, and it also notes some priority areas for improvement. The areas of strong performance include:

- Our review of Title V annual certification reports, and
- Our documentation of full compliance evaluation elements in inspection reports.

Areas identified for improvement largely include:

- Timeliness and accuracy of data reported to ICIS-Air,
- Classification of violations as Federally Reportable Violations (FRVs) or High Priority Violations (HPVs), and
- Timely resolution of these violations.

General Response:

1. The report's findings regarding areas for improvement during the time period reviewed are largely the result of reporting and file documentation deficiencies; rather than any failure to evaluate compliance, document violations, or work with facilities to correct violations. We acknowledge that adequate and timely documentation and reporting of our compliance work is an essential function of state implementation of the CAA. However, as our detailed responses below will show, the program effectively evaluated compliance, documented violations, and

worked with facilities to correct violations during the time period reviewed, and continues to do so.

2. It is also important to note that our Air Program had already identified and begun to address many of the reporting lapses in the fall of 2018, prior to the beginning of EPA's State Review Framework (SRF) review in June 2019. However, the Program had not made retroactive changes to our files. Therefore our reporting improvements were not reflected in your FFY2018 review. The Program completed the final data check for FFY2019 data prior to the data freeze, and we believe FFY2019 will show significant improvement in the accuracy and completeness of the data. Specifics regarding our corrective actions are detailed below.
3. Finally, we note that the EPA's FFY2018 review caught the Department in the middle of a significant transition that impacted our data entry and data management. The Air Program was adjusting its compliance resolution strategy just prior to the beginning of FFY2018. Many issues that would have previously been referred to the Air Program for enforcement action are now being resolved by our regional offices through a robust compliance assistance program.

Detailed Response to Findings:

Finding 1-1:

Area for Improvement. Data Metric 2b - Files reviewed where data are accurately reflected in the national data system.

Summary:

The review exposed inaccuracies in data in the Integrated Compliance Information System (ICIS) ICIS-Air database as compared to Air Program facility files. The review also revealed missing Minimum Data Requirements (MDRs).

Response:

The Air Program acknowledges the importance of accuracy and minimizing discrepancies in our data. The Program had identified these issues and had implemented corrective action, but had not made retroactive changes to our files by the time EPA began its review. We continue to review our current ICIS-Air data entry procedures and evaluate the accuracy of data entry and our filing procedures. The Program will document modifications to our procedures in revised Standard Operating Procedures (SOPs), and provide those to EPA within 60 days of completion of the SRF Final Report.

We also request that EPA provide detail on the specific files where discrepancies were noted so that we can ensure the official records are complete.

Finding 1-2:

Area for Improvement. Data metrics 3a2 - Timely reporting of HPV determinations, 3b1 - Timely reporting of compliance monitoring MDRs, 3b2 - Timely reporting of stack test dates and results, and 3b3 - Timely reporting of enforcement MDRs.

Summary:

Timely reporting of HPV determinations; compliance monitoring MDRs; stack test dates and results; and enforcement MDRs are all below the national goal and national averages.

Response:

We acknowledge that adequate and timely reporting of our work is an essential function. We have begun immediate corrective actions to ensure that previous data is uploaded to ICIS-Air and future reporting is complete and timely. Specifically:

1. Our procedures now require that staff provide data to the ICIS-Air data steward in a timely fashion, a minimum of twice per month.
2. It is now policy that the data steward and supervisory staff review and compare our records to the Enforcement and Compliance History Online (ECHO) database on a monthly basis, and coordinate with EPA staff to verify that the data uploaded to ICIS-Air is accurate and complete.
3. Staff are all trained in the HPV and FRV policies.

While EPA has acknowledged improvements in the Program's FFY2019 data, we continue to review our current procedures, train staff, and evaluate our coordination and communication practices to ensure relevant data is timely provided to our staff members that are responsible for ICIS-Air data entry. We are also evaluating current workloads and considering a realignment of duties to ensure data entry is prioritized.

We will document modifications to our procedures and include them in new SOPs, which we will provide to EPA within 60 days of completion of the SRF Final Report.

Finding 2-1:

Area for Improvement. Data metrics 5a – Full compliance evaluation (FCE) coverage: majors and mega-sites and 5b - FCE coverage: SM-80s. (Note: SM-80s are synthetic minor sources that emit or have the potential to emit at or above 80% of the Title V major source threshold).

Summary:

Missouri Department of Natural Resources FCE coverage of majors, mega-sites, and SM-80s is below the national goal and national averages.

Response:

Air Program staff reviewed internal databases and compared it to information located in the ECHO database for FFY2018. We found a number of discrepancies specific to major sources, mega-sites, and SM-80s listed within the databases that had gone out of business, or were otherwise not part of this

source category. In addition, we found discrepancies with the number of inspections conducted in this source category. As a result of this review and the discrepancies we identified, the Air Program believes this finding is a data integrity issue.

The Air Program respectfully requests that EPA staff re-run the data for the FFY2018 period to verify corrections to the number of active facilities in this class and corrections to the number of facilities inspected in this class. We believe updates to the database will show a marked improvement in this metric. Furthermore, if the data reveals that this issue has been resolved by our agency without additional oversight, we request that EPA consider reclassifying this issue as an "area for attention."

Importantly, the Air Program has initiated steps to ensure data in ECHO and ICIS-Air is accurately represented going forward. In March 2020, Program staff compared FFY2019 and later data regarding these classes of facilities to data in the ECHO database and made necessary updates. Air Program staff will discuss this area as necessary during coordination calls with EPA Region 7 staff and we will document modifications to our procedures and include these modifications in new SOPs, which we will provide to EPA within 60 days of completion of the SRF Final Report.

The Air Program is also working with EPA Region 7 staff to identify tools the Department's regional office staff can utilize for inspection planning purposes - specifically information relating to the date of last inspection for this class of facilities in the ECHO database. We will develop SOPs specific to inspection planning to include utilization of the tools and data available in ECHO. Due to the time it may take to work with Region 7 staff to identify the specific tools, coordinate the use of these tools with our five regional offices, and to draft SOPs for our five regional offices, the Air Program requests a deadline to submit these specific SOPs to EPA within 120 days of completion of the SRF Final Report.

Finding 2-2:

Meets or Exceeds Expectations. Data metric 5e - Reviews of Title V annual compliance certifications completed.

Summary:

The Air Program's review of Title V annual certifications is exemplary.

Response:

The Air Program appreciates EPA's acknowledgement of our success under this element.

Finding 2-3:

Meets or Exceeds Expectations. Data metrics 6a - Documentation of FCE elements and 6b - Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility.

Summary:

The Department of Natural Resources' documentation of FCE elements in inspection reports as well as documentation to determine compliance meets expectations.

Response:

The Air Program appreciates EPA's acknowledgement of our success under this element.

Finding 3-1:

Area for Improvement. Data metrics 13 - Timeliness of HPV identification, 7a - accurate compliance determinations, 7a1 - FRV 'discovery rate' based upon inspections at compliance monitoring strategy (CMS) sources, 8a - HPV discovery rate at majors, and 8c - accuracy of HPV determinations.

Summary:

Where documentation was present to review, the Air Program did not demonstrate proficiency with accurate FRV and HPV compliance determinations.

The Air Program uses separate tracking databases to track these violations even though they are required elements of the national tracking system.

The Department of Natural Resources created a unique category of compliance determination.

Response:

First, the Department believes that this finding does not reflect any failure by the Air Program to evaluate compliance, document violations, or work with facilities to correct violations during the time period evaluated. In support, we are attaching reports to illustrate the successful efforts by the Air Program to address FRVs through compliance assistance and through referrals and orders during FFY17 and FFY18.

The Air Program nevertheless acknowledges the importance of appropriately classifying violations as FRV and/or HPV, and we have begun immediate corrective actions to ensure the appropriate classification of all violations. Specifically:

1. Our procedures now require that staff identify compliance issues as FRVs and HPVs, if the issues fall into these categories of violation, in inspection reports and correspondence sent to facilities to ensure proper documentation of the violations.
2. Supervisors and managers must review documentation of compliance issues to ensure staff determinations are accurate and follow the FRV and HPV policies.
3. Staff are trained regarding proper compliance evaluation determinations.

4. Staff are trained in the HPV and FRV policies, including the requirement to notify facilities of HPVs within 45 days of discovery.

The Air Program conducted individual training on FRV and HPV policies with all relevant staff members. In addition, the Program is developing training materials to present to all compliance and enforcement staff, including regional office inspectors, during a scheduled training event this coming June.

EPA further expressed concern about the Air Program's use of separate databases to track violations. The databases that the Air Program use are important communication tools between the Air Program, the Department's Regional Offices, and other programs within the Division of Environmental Quality. They allow program and regional staff to view compliance and enforcement data across the programs and across the state. In addition, the Air Program uses these internal databases to generate reports regarding inspection and enforcement activities to share with the public, stakeholders, and the Missouri Air Conservation Commission. EPA's ECHO and ICIS-Air databases do not have the tools we need to fulfill these functions and are not broadly available to Department staff. While having duplicate databases may be seen as inefficient, the important outcome here is that the correct information is entered into EPA's national tracking system. We are committed to ensuring that all relevant information is properly submitted by the Air Program.

Finally, EPA noted that the Department is using a unique category of compliance in the Air Program. While we understand EPA's concern with national consistency, the Department believes that the use of "unsatisfactory finding" letters is consistent with EPA's September 2014 memorandum regarding *Guidance on Federally-Reportable Violations for Clean Air Act Stationary Sources*. In that memorandum, EPA details that formal notice of a FRV or potential FRV to a source may be provided in a variety of ways:

For example, such formal notice may be a Notice of Violation (NOV), Notice to Correct (NTC), Notice of Opportunity to Correct (NOC), Notice to Comply (NTC), or Notice of Noncompliance (NON). **Regardless of the name of the formal notice of violation**, if the purpose of the formal notice is to notify a source of an FRV, it is to be reported to ICIS-Air. (Emphasis added).

As the attached policy excerpt shows, the use of an "unsatisfactory finding" letter is to formally notify a source of a compliance issue and the requirement to take necessary action to resolve the compliance issue. Therefore, we believe that issuing a notice of "unsatisfactory finding" and reporting these letters to ICIS-Air achieves the desired outcome of formally notifying a source of a FRV or potential FRV.

Finding 4-1:

Area for Improvement. Data metrics 10a - Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place, 10b - Percent of HPVs that have been addressed or removed consistent with the HPV Policy, 14 - HPV case development and resolution timeline in place

when required that contains required policy elements, and 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.

Summary:

The Air Program does not meet the objectives of the HPV policy in terms of enforcement responses, compliance schedules, timeliness, and return to compliance.

Response:

Without knowing in which files EPA found deficiencies, it is impossible for the state to respond specifically as to the accuracy of this finding. There may be cases in which the violation was resolved through a non-formal process that did not require case development or a resolution timeline. In other cases, those mechanisms may have been developed but, consistent with past practice, were not documented in the paper file. In order to provide a thorough response, it is necessary to know which files EPA reviewed.

Further, the report notes with regard to metrics 10B and 14 that “the low sample population size of HPV facilities reviewed from multiple previous years does not offer a reliable picture of the state’s performance and success.” The report also notes that “the relatively small sample size diminishes the confidence in these results.” Given these limitations, the Department requests that EPA withdraw these findings from the final report or provide a determination of “Inconclusive,” rather than have the record reflect a performance result that is not well-documented.

The Department also requests that the sample size used for metrics 10b and 9a be re-considered in the same light.

The Department nevertheless recognizes the importance of addressing and/or removing HPVs, consistent with EPA’s HPV policy, and ensuring that these efforts are documented. We have begun immediate corrective actions. Specifically:

1. Procedures now require staff to develop a resolution time frame for cases that may take more than 180 days to resolve, and share that with the Compliance and Enforcement Section Chief.
2. Procedures now require the Compliance and Enforcement Section Chief share a resolution time frame with appropriate EPA staff for any cases that may take more than 180 days to resolve.
3. Procedures now require HPVs to be addressed or removed consistent with the HPV policy.
4. Staff are trained regarding formal enforcement responses that include required corrective actions that will return the facility to compliance in a specified time frame.
5. Staff are trained regarding timely HPV case development and resolution.
6. Procedures now require staff to identify compliance issues noted in inspection reports and correspondence to facilities as FRVs and HPVs, if the issues fall into these categories of violation, to ensure proper documentation of the issues.

7. Procedures now require supervisors and managers to review documentation of compliance issues to ensure staff determinations are accurate and follow the FRV and HPV policies.
8. The Air Program is developing training material to present to Compliance and Enforcement staff, including regional office inspectors, during a scheduled training event in June 2020.

Again, the Department believes that this finding does not reflect any failure by the Air Program to evaluate compliance, document violations, or work with facilities to correct violations, regardless of FRV or HPV status, during the time period evaluated. The four attached reports illustrate the successful efforts by the Department during FFY2017 and FFY2018 to address FRVs through compliance assistance and through referrals and orders.

The Air Program will document updated processes regarding this issue and include them in SOPs, which we will provide to EPA Region 7 within 60 days of completion of the SRF Final Report. The submittal will also contain a detailed description of the tracking system we use for HPV enforcement cases. Air Program staff will discuss the progress of HPV enforcement cases, including any foreseeable delays in case development and resolution of cases, during coordination calls with EPA Region 7 staff.

Finding 5-1:

Area for Improvement. Data metrics 11a - Penalty calculations reviewed that document gravity and economic benefit and 12b - Penalties collected

Summary:

Penalty calculation documentation did not account for economic benefit. Some files did not include documentation that penalties were collected.

Response:

Without knowing in which files EPA found deficiencies, we cannot provide a detailed response. We request additional information on the specific files regarding missing penalty documentation so we can ensure the official records are complete. While some of the files that EPA reviewed apparently did not include documentation that penalties were collected, the Department did in fact collect all penalties assessed, or referred cases to the Attorney General's Office for collection if the responsible party failed to pay the penalty.

The Air Program will follow HPV guidance and state rule 10 CSR 10-6.230 "Administrative Penalties" in regards to the use of an economic benefit penalty where appropriate. In addition, the Air Program has amended its penalty policy and worksheet which includes both gravity and economic benefit components, and will submit a copy of it within 60 days of completion of the SRF Final Report. The SOPs discussed above will include the requirement to file appropriate documentation indicating payment of the penalty, including a copy of the check with the routing number and account number redacted, or other appropriate documentation.

David Cozad
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Finding 5-2:

Area for Attention. Data metric 12a - Documentation of rationale for difference between initial penalty calculation and final penalty.

Summary:

Documentation of the difference between initial penalty calculation and final penalty was present and followed policy in most but not all files.

Response:

The Air Program is revising procedures to document the rationale for differences between the initial penalty calculation and final penalty calculation. We will include this requirement in our penalty policy and worksheet, which we will submit to EPA within 60 days of completion of the SRF Final Report.

Conclusion

We appreciate EPA's consideration of our responses. We want to stress again that Air Program staff and the Department's regional office inspectors effectively evaluated compliance, documented violations, and worked with facilities to correct violations during the time period reviewed, and continue to do so.

We look forward to further discussions regarding the draft report prior to EPA's issuance of the final report. Please contact Mr. Richard Swartz of my staff with any questions or to schedule any meetings. Mr. Swartz can be reached at the Air Pollution Control Program, P.O. Box 176, Jefferson City, MO 65102-0176, by telephone at (573) 751-4817, or by email at richard.swartz@dnr.mo.gov.

Sincerely,

AIR POLLUTION CONTROL PROGRAM



Darcy A. Bybee
Director

DAB/rs

Enclosure

c: Ed Galbraith, Director, Division of Environmental Quality
Kyra Moore, Deputy Director, Division of Environmental Quality
Deanna Boland, Division of Environmental Quality
Amanda Sifford, Division of Administrative Support Program

Missouri Department of Natural Resources
Division of Environmental Quality
Unsatisfactory Finding Compliance Determinations & Letters

Unsatisfactory Findings

These are Group 3 Violations, which consist of noncompliance issues that are less serious and usually will not, on their own, lead to enforcement action. The noncompliance issues are documented with required actions and recommendations, if applicable. A report describing the Unsatisfactory Findings and the required actions will be provided to the entity. A response will be required from the entity. The entity will continue to be in noncompliance until the required actions are addressed. Group 3 Violations will usually be reevaluated during the next inspection or investigation and additional enforcement action will be taken if deemed appropriate at that time.

The list of Group 3 Violations follows:

- Group 2 Violations that are self-reported or corrected during the inspection or within one week thereafter (and before the report is issued).
- Violations being addressed through a prior approved schedule of action(s) provided the entity is in compliance with the approved agreement.
- Minor violations such as:
 - Recordkeeping not current (within 5 days).
 - Recordkeeping unavailable during the inspection but provided upon request within one week.
 - Minimal dust.
 - Open burning of less than 64 cubic feet (2 cubic yards) waste materials with limited human health and off-site environmental impacts.
 - Failure to provide asbestos contractor registration certificate or worker certificate if currently registered/certified.
 - Asbestos issues (signs, timing, etc.) that do not have a direct impact on human health or the environment.

Missouri Department of Natural Resources - Air Pollution Control Program
Letters of Warning and Notices of Violation Issued Between October 1, 2017 and September 30, 2018

| INSPECTION_ID | FACILITY_NAME | CITY | TYPE_DESCRIPTION | DATE |
|-------------------------------------|---------------------------------------|----------------|-------------------------|------------|
| AP: Inspection: Intermediate | | | | |
| ACEINS128926 | OIDV BELL PRESS INC FULTON | FULTON | Inspection Date | 1/23/2018 |
| | | | Report Date | 2/16/2018 |
| | | | Unsatisfactory Findings | 2/16/2018 |
| | | | Return to Compliance | 2/16/2018 |
| ACEINS131946 | HERMANN OAK LEATHER CO | ST. LOUIS | Inspection Date | 2/23/2018 |
| | | | Report Date | 5/2/2018 |
| | | | Letter of Warning | 5/2/2018 |
| | | | Return to Compliance | 5/29/2018 |
| ACEINS134833 | ITW LABELS FORMERLY DIAGRAPH LABELING | ST. CHARLES | Inspection Date | 5/21/2018 |
| | | | Report Date | 7/13/2018 |
| | | | Letter of Warning | 7/13/2018 |
| | | | Return to Compliance | 8/20/2018 |
| AP: Inspection: Part 70 | | | | |
| ACEINS124791 | MONROE CITY POWER PLANT | MONROE CITY | Inspection Date | 10/4/2017 |
| | | | Report Date | 10/11/2017 |
| | | | Unsatisfactory Findings | 10/11/2017 |
| | | | Return to Compliance | 10/11/2017 |
| ACEINS124794 | TEVA PHARMACEUTICALS USA | MEXICO | Inspection Date | 9/13/2017 |
| | | | Report Date | 10/13/2017 |
| | | | Letter of Warning | 10/13/2017 |
| | | | Return to Compliance | 12/11/2017 |
| ACEINS125351 | SHOW ME ETHANOL LLC | CARROLLTON | Inspection Date | 10/19/2017 |
| | | | Report Date | 10/26/2017 |
| | | | Unsatisfactory Findings | 10/26/2017 |
| | | | Return to Compliance | 10/26/2017 |
| ACEINS127032 | CONOCO PHILLIPS PIPELINE COMPANY | JEFFERSON CITY | Inspection Date | 11/27/2017 |
| | | | Report Date | 12/20/2017 |
| | | | Unsatisfactory Findings | 12/20/2017 |
| | | | Return to Compliance | 12/20/2017 |

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Letters of Warning and Notices of Violation Issued Between October 1, 2017 and September 30, 2018**

| INSPECTION_ID | FACILITY_NAME | CITY | TYPE_DESCRIPTION | DATE |
|--|--|-------------|---|---|
| ACEINS129906 | ST JOSEPH SANITARY LANDFILL(2) | ST. JOSEPH | Inspection Date Report Date Unsatisfactory Findings Return to Compliance | 2/26/2018 3/15/2018 3/15/2018 3/15/2018 |
| ACEINS130762 | CONTINENTAL CEMENT COMPANY LLC GREEN AME | HANNIBAL | Inspection Date Report Date Unsatisfactory Findings | 2/15/2018 3/28/2018 3/28/2018 |
| ACEINS131381 | ABLE MANUFACTURING & ASSEMBLY L.L.C. - S | JOPLIN | Inspection Date Report Date Letter of Warning Return to Compliance | 3/7/2018 4/24/2018 4/24/2018 5/24/2018 |
| ACEINS132215 | ALLEN INDUSTRIES LLC (EDWARDS FRP TANK & | SEDALIA | Inspection Date Report Date Unsatisfactory Findings Return to Compliance | 4/10/2018 5/14/2018 5/14/2018 5/14/2018 |
| ACEINS137740 | KCPL HAWTHORNE STATION | KANSAS CITY | Inspection Date Report Date Letter of Warning Return to Compliance | 8/22/2018 9/19/2018 9/19/2018 11/29/2018 |
| AP: Investigation: Intermediate | | | | |
| ACEINS134561 | MWT BULK SERVICES, LLC | KANSAS CITY | Inspection Date Report Date Letter of Warning Return to Compliance | 6/26/2018 7/5/2018 7/5/2018 10/15/2018 |

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**Missouri Department of Natural Resources - Air Pollution Control Program
Letters of Warning and Notices of Violation Issued Between October 1, 2016 and September 30, 2017**

| INSPECTION_ID | FACILITY_NAME | CITY | TYPE_DESCRIPTION | DATE |
|-------------------------------------|--|--------------|-------------------------|-----------|
| AP: Inspection: Intermediate | | | | |
| ACEINS116167 | SAF HOLLAND | WARRENTON | Inspection Date | 1/10/2017 |
| | | | Report Date | 3/3/2017 |
| | | | Letter of Warning | 3/3/2017 |
| | | | Return to Compliance | 4/17/2017 |
| ACEINS116731 | OID BELL PRESS INC FULTON | FULTON | Inspection Date | 2/8/2017 |
| | | | Report Date | 3/10/2017 |
| | | | Letter of Warning | 3/10/2017 |
| | | | Return to Compliance | 4/26/2017 |
| ACEINS119754 | SULLIVAN PRECISION METAL FINISHING | SULLIVAN | Inspection Date | 5/23/2017 |
| | | | Report Date | 6/15/2017 |
| | | | Letter of Warning | 6/15/2017 |
| | | | Return to Compliance | 9/6/2018 |
| ACEINS120072 | BUTLER MUNICIPAL POWER PLANT | BUTLER | Inspection Date | 5/16/2017 |
| | | | Report Date | 6/20/2017 |
| | | | Letter of Warning | 6/20/2017 |
| | | | Return to Compliance | 7/24/2017 |
| ACEINS122003 | UNILEVER BEST FOODS N. AMERICA (LIPTON T | INDEPENDENCE | Inspection Date | 6/26/2017 |
| | | | Return to Compliance | 7/5/2017 |
| | | | Report Date | 8/17/2017 |
| | | | Letter of Warning | 8/17/2017 |
| ACEINS122183 | KCI AIRPORT - KCMO AVIATION DEPT - KCI A | KANSAS CITY | Inspection Date | 6/26/2017 |
| | | | Report Date | 8/22/2017 |
| | | | Letter of Warning | 8/22/2017 |
| | | | Return to Compliance | 9/26/2017 |
| ACEINS122940 | AYERS OIL COMPANY | CANTON | Inspection Date | 7/26/2017 |
| | | | Report Date | 8/29/2017 |
| | | | Unsatisfactory Findings | 8/29/2017 |
| | | | Return to Compliance | 8/29/2017 |
| ACEINS122968 | HUEBERT FIBERBOARD INC BOONVILLE | BOONVILLE | Inspection Date | 8/29/2017 |
| | | | Report Date | 9/7/2017 |

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Missouri Department of Natural Resources - Air Pollution Control Program
Letters of Warning and Notices of Violation Issued Between October 1, 2016 and September 30, 2017

| INSPECTION_ID | FACILITY_NAME | CITY | TYPE_DESCRIPTION | DATE |
|--------------------------------|---|-------------|------------------------------|------------|
| | | | Letter of Warning | 9/7/2017 |
| | | | Return to Compliance | 10/10/2017 |
| ACEINS123138 | KAHOKA ELECTRIC GENERATING PLANT | KAHOKA | Inspection Date | 8/23/2017 |
| | | | Report Date | 9/13/2017 |
| | | | Letter of Warning | 9/13/2017 |
| | | | Return to Compliance | 10/27/2017 |
| AP: Inspection: Part 70 | | | | |
| ACEINS111126 | REMINGTON ARMS COMPANY | LEXINGTON | Inspection Date | 7/28/2016 |
| | | | Report Date | 9/30/2016 |
| | | | Letter of Warning | 9/30/2016 |
| | | | Referral Notice of Violation | 12/7/2016 |
| ACEINS111868 | CENTRAL MISSOURI SANITARY LANDFILL | SEDALIA | Inspection Date | 9/19/2016 |
| | | | Report Date | 10/21/2016 |
| | | | Referral Notice of Violation | 10/21/2016 |
| | | | Enforcement Action Request | 10/21/2016 |
| | | | Notice of Violation | 10/21/2016 |
| ACEINS113827 | BLUESCOPE BUILDINGS NA, INC. - ST. JOSEPH | ST. JOSEPH | Inspection Date | 9/26/2016 |
| | | | Report Date | 12/19/2016 |
| | | | Letter of Warning | 12/19/2016 |
| | | | Return to Compliance | 2/16/2017 |
| ACEINS114923 | FULTON MUNICIPAL UTILITIES | FULTON | Inspection Date | 12/23/2016 |
| | | | Report Date | 1/18/2017 |
| | | | Letter of Warning | 1/18/2017 |
| | | | Return to Compliance | 2/28/2017 |
| ACEINS115406 | MONROE CITY POWER PLANT | MONROE CITY | Inspection Date | 12/21/2016 |
| | | | Report Date | 1/26/2017 |
| | | | Letter of Warning | 1/26/2017 |
| | | | Return to Compliance | 10/11/2017 |
| ACEINS116294 | CONTINENTAL CEMENT COMPANY LLC GREEN AME | HANNIBAL | Inspection Date | 1/12/2017 |
| | | | Report Date | 3/2/2017 |

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| INSPECTION_ID | FACILITY_NAME | CITY | TYPE_DESCRIPTION | DATE |
|---------------|-------------------------|---------------|------------------------------|-----------|
| | | | Letter of Warning | 3/2/2017 |
| | | | Return to Compliance | 3/14/2017 |
| ACEINS118525 | DUDLEY'S TREE AND STUMP | CARTERVILLE | Inspection Date | 4/24/2017 |
| | | | Report Date | 5/11/2017 |
| | | | Referral Notice of Violation | 5/11/2017 |
| ACEINS119840 | EAGLE RIDGE SLF | BOWLING GREEN | Inspection Date | 5/17/2017 |
| | | | Report Date | 6/9/2017 |
| | | | Letter of Warning | 6/9/2017 |
| | | | Return to Compliance | 6/26/2017 |

Information Retrieved at 9:40 am on March 16, 2020



Air Pollution Control Program
Finalized Agreements between October 01, 2017 and September 30, 2018

| Responsible Party | Facility | Negotiation Initiated | Settled | Total Amount | Suspended Amount | Region |
|----------------------------------|--|-----------------------|------------|--------------|------------------|--------|
| Asbestos | | | | | | |
| Advanced Environmental | City of Pilot Grove Demolition Project | 5/18/2017 | 5/15/2018 | 2000 | 1500 | NERO |
| City of Sarcoxie | Old Service Station | 9/19/2017 | 6/6/2018 | 4000 | 4000 | SWRO |
| Dale Wands | Dale Wands Duplex Apartments and a House | 11/13/2017 | 12/26/2017 | 4000 | 0 | SERO |
| Garcia Holdings III, LLC | 3800 Hampton Reovation | 11/1/2017 | 6/26/2018 | 6000 | 4500 | SLRO |
| Construction Permit | | | | | | |
| Mark Barnes | For Your Convenience (Procl Operations) | 11/3/2017 | 7/19/2018 | 4000 | 3000 | SERO |
| Excess Emissions | | | | | | |
| Joe LaBarge | Northstar Battery | 3/1/2017 | 3/16/2018 | 4625 | 0 | SWRO |
| Fugitive Dust | | | | | | |
| John Papa | Ozark Hardwood Pellets | 3/15/2016 | 3/14/2018 | 8850 | 6638 | SWRO |
| Open Burning | | | | | | |
| Brian Matt | Royal Oak Charcoal | 2/1/2017 | 12/26/2017 | 8000 | 8000 | SERO |
| Glenn Craig Thurmon Sr. | Glenn Graig Thurmon Sr | 1/5/2017 | 8/15/2018 | 2000 | 2000 | SERO |
| Randy Ray | Randy Ray | 11/14/2017 | 5/17/2018 | 2000 | 1500 | SWRO |
| Richard Wayne Moore | RM Pallet | 6/1/2017 | 12/26/2017 | 3890 | 2890 | SWRO |
| Rick Metcalf | Woody's Express Topsoil and Trucking | 12/1/2017 | 6/13/2018 | 2000 | 1500 | SWRO |
| Roy Brinkoetter | Big Iron Town | 3/10/2016 | 12/15/2017 | 2000 | 1500 | KCRO |
| Walter Cline | Walter Cline | 10/17/2016 | 12/26/2017 | 2000 | 1500 | NERO |
| Willard Barry | LG Barcus & Sons | 11/29/2017 | 5/15/2018 | 2000 | 1500 | SWRO |
| Reid Vapor Pressure (RVP) | | | | | | |
| Asif Sarfani | Blue Ridge Food Stop | 4/20/2017 | 5/1/2018 | 1000 | 500 | KCRO |
| Stage I Vapor Recovery | | | | | | |
| Mohammad Almuttan (Station) | Phillips 66 ST10652 | 5/2/2017 | 5/24/2018 | | | SLRO |
| Phil Parker - Parker Petroleum | Crown Mart #17 | | 12/1/2017 | 1500 | 1000 | SLRO |



**Air Pollution Control Program
Finalized Agreements between October 01, 2016 and September 30, 2017**

| Responsible Party | Facility | Negotiation Initiated | Settled | Total Amount | Suspended Amount | Region |
|--|--|-----------------------|------------|--------------|------------------|--------|
| Asbestos | | | | | | |
| City of Leadwood | Former Caroline's Auto Parts | | 11/7/2016 | 4000 | 4000 | SERO |
| Donnie Vandevender | City of Trenton | 9/16/2016 | 2/24/2017 | 4000 | 4000 | NERO |
| Lyle Best | Osage R 1 School | 8/9/2016 | 1/12/2017 | 1000 | 3000 | NERO |
| Mike McNearney | MSD demos: former residences at 1017 & 1019 Tillie | 4/26/2016 | 1/3/2017 | 2000 | 1500 | SLRO |
| Construction Permit | | | | | | |
| Jay Muller | Kansas City Wilbert Vault | | 11/17/2016 | 4000 | 2000 | KCRO |
| Jeff Goodwin | Complete Home Concepts | 2/25/2016 | 12/6/2016 | 8000 | 6000 | KCRO |
| John White | ZOLTEK | | 8/15/2017 | 25875 | 0 | SLRO |
| Jon Melham | Northland Coating Solutions | 3/10/2016 | 9/11/2017 | 2000 | 2000 | KCRO |
| Mary Watkins | White Rock Quarries | 6/13/2012 | 11/23/2016 | 0 | 0 | SLRO |
| Rick Meeker | Polymeric U.S., Inc. | 4/1/2016 | 5/5/2017 | 2000 | 1500 | KCRO |
| Emissions Inventory Questionnaire | | | | | | |
| Edward Potter | White Rock Quarries | | 11/23/2016 | 13586 | 12000 | SLRO |
| Inspection/Maintenance - Fraud | | | | | | |
| Mr. Woodrow Jones, Sr. | 360 Brake Service (GVIP #115444) | 11/25/2013 | 2/10/2017 | 50000 | 45000 | SLRO |
| Open Burning | | | | | | |
| Chuck Frank | Doolittle Trailers | 6/8/2016 | 2/16/2017 | 6000 | 4500 | NERO |
| Ryan Werdehausen | Doolittle Trailers | 6/8/2016 | 11/1/2016 | 2000 | 2000 | NERO |
| Steven Shott | Steven Shott | 8/2/2016 | 1/19/2017 | 2000 | 1500 | NERO |
| Zakhariy Izoita | Midwest Trans LLC | 5/25/2016 | 11/7/2016 | 4000 | 3000 | KCRO |
| Part 70 Operating Permit | | | | | | |
| Chad Dykes | TEVA Pharmaceuticals USA | 9/23/2015 | 3/28/2017 | 2000 | 2000 | NERO |
| John Burns | Missouri Center for Waste to Energy | 8/21/2015 | 9/7/2017 | 6000 | 4000 | KCRO |
| Tim Baer | TG Missouri | 3/3/2016 | 11/10/2016 | 2000 | 1500 | SERO |
| Stage I Vapor Recovery | | | | | | |
| Alpha Petroleum | Everyday Conoco ST13520 | | 12/14/2016 | | | KCRO |
| Alpha Petroleum | Everyday Store # 1090 ST3619 | | 12/14/2016 | | | KCRO |
| Javaid B Chaudhri, AJ Partnership | Everyday Conoco | 4/18/2013 | 12/14/2016 | | | KCRO |
| Javaid B. Chaudhri & Arshad Chaudhri | Everyday Store # 1090 ST3619 | 4/18/2013 | 12/14/2016 | | | KCRO |



Air Pollution Control Program

Finalized Agreements between October 01, 2016 and September 30, 2017

| Responsible Party | Facility | Negotiation Initiated | Settled | Total Amount | Suspended Amount | Region |
|--|--|-----------------------|------------|--------------|------------------|--------|
| Javaid B. Chaudhri & Arshad Chaudhri | Sinclair Retail Station #24060 ST12977 | 4/18/2013 | 12/14/2016 | | | KCRO |
| Javaid B. Chaudhri, Premier Petroleum | Service Oil Company #12 | 4/18/2013 | 12/14/2016 | | | KCRO |
| Javaid B. Chaudhri, Premier Petroleum | Inner City Oil | 4/18/2013 | 12/14/2016 | 31000 | 20000 | KCRO |
| Mr. Mike Said | Crown Mart #17 | | 3/1/2017 | 5000 | 3750 | SLRO |
| Petro Holdings - John Anselmo | Crown Mart #18 | | 3/1/2017 | 5000 | 3750 | SLRO |
| Todd Burkhardt - Neumayer Equipment Co | MISSOURI AMERICAN WATER CO | | 1/17/2017 | | | SLRO |

Appendix 2

EPA Response to Missouri Department of Natural Resources' Comments

EPA Region 7 appreciates MDNR's responses to the draft SRF report. We recognize MDNR's clear commitment to process improvements, as demonstrated by the various immediate procedural enhancements, planned and implemented, to address the gravity of the findings. The responses and supplemental information were carefully considered in the context of the review framework. The input proved valuable in completing the report and finalizing the recommendations, which are designed to build a stronger partnership through our mutual work.

As discussed throughout the process, the SRF is a transparent, informed evaluation of the elements comprising MDNR's CAA stationary source compliance and enforcement program. These elements include: Data (completeness, timeliness and quality); Inspections (coverage and quality); Identification of violations and enforcement actions (appropriateness and timeliness); and Penalties (calculation, assessment and collection). In reviewing these program elements EPA strives for a comprehensive understanding of program processes and issues. The report identifies actions to address areas for improvement.

In order to conduct a review of each of program element, EPA limits the review period to a finite period of time (Round 4 – 2018 federal fiscal year (FFY) data). We use these frozen data and corresponding file documents to gain a comprehensive understanding of the state program. Data clean-up, confirmation, and amendments (if applicable) are requested during the data verification period set by EPA in advance of the review. There is no expectation of correction of the data (or files) mid-review. By design, EPA works to understand the program holistically, through the frozen data, as a means of strengthening program procedures in the future.

EPA places a critical emphasis on our role in ensuring adherence to national guidance and expectations for enforcement decisions and transparency in the information available for all communities in Missouri. Final SRF Reports are designed to provide factual information in order to facilitate program improvement. EPA will track recommended actions from the review in the SRF Manager database. Reports and recommendations will be published on EPA's ECHO web site.

Region 7 CAA technical staff would like to commend the efforts of MDNR's technical staff in preparing for and assisting with the review. We appreciate the time expended in hosting our staff, providing data, and helping us to better understand MDNR's program elements. The efforts of your staff demonstrate a commitment to implementing the delegated CAA program in the state, along with a commitment to working to resolve the findings of the SRF final report.

As a means of addressing EPA's responses to MDNR's comments on the SRF draft report, the following typeface style conventions will be used to specify the agency attribution:

EPA Draft SRF Report Finding

MDNR Comment on the draft SRF Report

EPA Response to MDNR comments

GENERAL COMMENTS

MDNR General Comment 1: The report's findings regarding areas for improvement during the time period reviewed are largely the result of reporting and file documentation deficiencies; rather than any failure to evaluate compliance, document violations, or work with facilities to correct violations. We acknowledge that adequate and timely documentation and reporting of our compliance work is an essential function of state implementation of the CAA. However, as our detailed responses below worked with facilities to correct violations during the time period reviewed, and continues to do so.

EPA RESPONSE: EPA appreciates MDNR's acknowledgement of data reporting and tracking deficiencies, along with the clear commitment to improve. Missouri is not unique among Region 7 states in file documentation deficiencies, as well as data systems communication issues. Region 7 is working collaboratively with each state to reconcile data tracking and data systems communication issues. EPA and MDNR have long been collaborative partners in the collective management of the stationary source CAA program. These efforts are demonstrated to the public through complete, timely information; and data that are easily and efficiently shared.

As discussed in greater detail below, the review of the 2018 files, as compared with the data in the national system demonstrate that MDNR's programmatic issues in implementing the program extend beyond data management. Following careful consideration of MDNR's publicly available national data along with a thorough review of MDNR's representative files, EPA found MDNR does not adhere to national guidance and expectations for compliance determinations.

MDNR General Comment 2: It is also important to note that our Air Program had already identified and begun to address many of the reporting lapses in the fall of 2018, prior to the beginning of EPA's State Review Framework (SRF) review in June 2019. However, the Program had not made retroactive changes to our files. Therefore our reporting improvements were not reflected in your FFY2018 review. The Program completed the final data check for FFY2019 data prior to the data freeze, and we believe FFY2019 will show significant improvement in the accuracy and completeness of the data. Specifics regarding our corrective actions are detailed below.

EPA RESPONSE: In response to the draft report, MDNR has provided descriptions for several new procedures that are being implemented prior to the issue of the final report. MDNR's comments on the draft report describe numerous efforts under consideration to address the timely entry of accurate data. EPA acknowledges the time and effort MDNR has dedicated to evaluating the data and reporting deficiencies documented in the draft SRF report, establishing a clear willingness to address these issues prior to issuance of the final report. EPA interprets these actions as a recognition of the gravity of the findings. We look forward to assessing the corrective actions taken on by the Department upon issue of the final report.

MDNR General Comment 3: Finally, we note that the EPA's FFY2018 review caught the Department in the middle of a significant transition that impacted our data entry and data management. The Air Program was adjusting its compliance resolution strategy just prior to the beginning of FFY2018. Many issues that would have previously been referred to the Air Program for enforcement action are now being resolved by our regional offices through a robust compliance assistance program.

EPA RESPONSE: Noted.

SPECIFIC COMMENTS

Finding 1 -1: Area for Improvement. Data Metric 2b - Files reviewed where data are accurately reflected in the national data system.

Summary: The review exposed inaccuracies in data in the Integrated Compliance Information System (ICIS) ICIS-Air database as compared to Air Program facility files. The review also revealed missing Minimum Data Requirements (MDRs).

MDNR Comment: The Air Program acknowledges the importance of accuracy and minimizing discrepancies in our data. The Program had identified these issues and had implemented corrective action, but had not made retroactive changes to our files by the time EPA began its review. We continue to review our current ICIS-Air data entry procedures and evaluate the accuracy of data entry and our filing procedures. The Program will document modifications to our procedures in revised Standard Operating Procedures (SOPs), and provide those to EPA within 60 days of completion of the SRF Final Report. We also request that EPA provide detail on the specific files where discrepancies were noted so that we can ensure the official records are complete.

EPA RESPONSE: The SRF final report and recommendations are intended to provide corrective actions to address procedural deficiencies identified in the frozen data from the subject review year. While the evaluation is data-focused, the recommendations are process focused, aimed at strengthening state procedures and protocols to ensure future adherence to national expectations of states authorized to implement the CAA program. Retroactive changes to the states files and data are not required as part of the SRF process.

EPA acknowledges MDNR's review of current ICIS-AIR data entry protocols and evaluation of the accuracy of data entry and filing procedures. These activities are aligned with the corrective actions outlined in the draft SRF report and will be evaluated in accordance with the criteria listed in the final report for close-out of each recommendation.

No changes have been made in the final report in response to this comment.

Finding 1-2: Area for Improvement. Data metrics 3a2 - Timely reporting of HPV determinations, 3b1 - Timely reporting of compliance monitoring MDRs, 3b2 - Timely reporting of stack test dates and results, and 3b3 - Timely reporting of enforcement MDRs.

Summary: Timely reporting of HPV determinations; compliance monitoring MDRs; stack test dates and results; and enforcement MDRs are all below the national goal and national averages.

MDNR Comment: We acknowledge that adequate and timely reporting of our work is an essential function. We have begun immediate corrective actions to ensure that previous data is uploaded to ICIS-Air and future reporting is complete and timely. Specifically:

- 1. Our procedures now require that staff provide data to the ICIS-Air data steward in a timely fashion, a minimum of twice per month.*
- 2. It is now policy that the data steward and supervisory staff review and compare our records to the Enforcement and Compliance History Online (ECHO) database on a monthly basis, and coordinate with EPA staff to verify that the data uploaded to ICIS-Air is accurate and complete.*
- 3. Staff are all trained in the HPV and FRV policies.*

While EPA has acknowledged improvements in the Program's FFY2019 data, we continue to review our current procedures, train staff, and evaluate our coordination and communication practices to ensure relevant data is timely provided to our staff members that are responsible for ICIS-Air data entry. We are also evaluating current workloads and considering a realignment of duties to ensure data entry is prioritized.

We will document modifications to our procedures and include them in new SOPs, which we will provide to EPA within 60 days of completion of the SRF Final Report.

EPA RESPONSE: Noted. These efforts (proposed and implemented) will be assessed and reviewed following issuance of the final report, which will include recommendations for corrective actions to address the findings.

No changes have been made in the final report in response to this comment.

Finding 2-1: Area for Improvement. Data metrics 5a – Full compliance evaluation (FCE) coverage: majors and mega-sites and 5b - FCE coverage: SM-80s. (Note: SM-80s are synthetic minor sources that emit or have the potential to emit at or above 80% of the Title V major source threshold).

Summary: Missouri Department of Natural Resources FCE coverage of majors, mega-sites, and SM-80s is below the national goal and national averages.

MDNR Comment: Air Program staff reviewed internal databases and compared it to information located in the ECHO database for FFY2018. We found a number of discrepancies specific to major sources, mega-sites, and SM-80s listed within the databases that had gone out of business, or were otherwise not part of this source category. In addition, we found discrepancies with the number of inspections conducted in this source category. As a result of this review and the discrepancies we identified, the Air Program believes this finding is a data integrity issue. The Air Program respectfully requests that EPA staff re-run the data for the FFY2018 period to verify corrections to the number of active facilities in this class and corrections to the number of facilities inspected in this class. We believe updates to the database will show a marked improvement in this metric. Furthermore, if the data reveals that this issue has been resolved by our agency without additional oversight, we request that EPA consider reclassifying this issue as an "area for attention."

EPA RESPONSE: We appreciate MDNR's considerable efforts to conduct a root cause analysis of the FCE coverage issue in response to this finding in the draft report.

Prior to the formal SRF in July 2019, MDNR had several opportunities to review and correct the 2018 data, including during the data verification period preceding the data freeze, as well as the time period following transmittal of the file selection list. EPA does not re-run data metric analyses post-file review. It is outside the framework protocol to re-review data that has been cleaned up following the authorized review. We will evaluate process improvements made as a result of the SRF analysis in the data in subsequent years to measure progress, per the recommendations in the final report. EPA does not measure or record improvements made during the SRF process to past frozen data, nor amend program findings for data clean-up performed following the file review.

No changes have been made in the final report in response to this comment.

Importantly, the Air Program has initiated steps to ensure data in ECHO and ICIS-Air is accurately represented going forward. In March 2020, Program staff compared FFY2019 and later data regarding these classes of facilities to data in the ECHO database and made necessary updates. Air Program staff will discuss this area as necessary during coordination calls with EPA Region 7 staff and we will document modifications to our procedures and include these modifications in new SOPs, which we will provide to EPA within 60 days of completion of the SRF Final Report.

EPA acknowledges MDNR's initial steps to ensure data entry procedures for data in ECHO and ICIS-AIR provide for accurate public-facing data in the future. These activities are aligned with the corrective actions outlined in the draft SRF report and will be evaluated in accordance with the criteria listed in the final report for close-out of each recommendation. We look forward to reviewing the SOPs and progress MDNR has made following transmittal of the final report.

No changes have been made in the final report in response to this comment.

The Air Program is also working with EPA Region 7 staff to identify tools the Department's regional office staff can utilize for inspection planning purposes - specifically information relating to the date of last inspection for this class of facilities in the ECHO database. We will develop SOPs specific to inspection planning to include utilization of the tools and data available in ECHO. Due to the time it may take to work with Region 7 staff to identify the specific tools, coordinate the use of these tools with our five regional offices, and to draft SOPs for our five regional offices, the Air Program requests a deadline to submit these specific SOPs to EPA within 120 days of completion of the SRF Final Report.

MDNR's request to extend the deadline to submit the above referenced SOPs is reasonable. The report has been amended to accommodate the requested timeline.

Finding 2-2: Meets or Exceeds Expectations. Data metric 5e - Reviews of Title V annual compliance certifications completed.

Summary: The Air Program's review of Title V annual certifications is exemplary.

MDNR Comment: The Air Program appreciates EPA's acknowledgement of our success under this element.

EPA RESPONSE: No changes have been made in the final report in response to this comment.

Finding 2-3: Meets or Exceeds Expectations. Data metrics 6a - Documentation of FCE elements and 6b - Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility.

Summary: The Department of Natural Resources' documentation of FCE elements in inspection reports as well as documentation to determine compliance meets expectations.

MDNR Comment: The Air Program appreciates EPA's acknowledgement of our success under this element.

EPA RESPONSE: No changes have been made in the final report in response to this comment.

Finding 3-1: Area for Improvement. Data metrics 13 - Timeliness of HPV identification, 7a - accurate compliance determinations, 7a1 - FRV 'discovery rate' based upon inspections at compliance monitoring strategy (CMS) sources, 8a - HPV discovery rate at majors, and 8c - accuracy of HPV determinations.

Summary: Where documentation was present to review, the Air Program did not demonstrate proficiency with accurate FRV and HPV compliance determinations. The Air Program uses separate tracking databases to track these violations even though they are required elements of the national tracking system. The Department of Natural Resources created a unique category of compliance determination.

MDNR Response: First, the Department believes that this finding does not reflect any failure by the Air Program to evaluate compliance, document violations, or work with facilities to correct violations during the time period evaluated. In support, we are attaching reports to illustrate the successful efforts by the Air Program to address FRVs through compliance assistance and through referrals and orders during FFY17 and FFY18.

EPA RESPONSE: The submitted MDNR internal reports are outside the scope of the SRF Round 4 review. These reports do not provide additional relevant evidence for EPA to evaluate MDNR's accuracy of compliance determinations in the CAA program.

The Round 4 SRF evaluation studied 35 facilities that were selected as a representative sample of all aspects of MDNR's CAA compliance and enforcement work for the 2018 fiscal year. In reviewing the supplemental information provided, it appears MDNR has provided a list of finalized agreements with seventeen facilities in various program areas outside of the CAA SRF review areas; programs such as asbestos, which are beyond the scope of this CAA SRF review. For the single applicable facility (Northstar Battery) that could potentially be subject to this review, a) this facility was not among the predetermined SRF facility set; and b) there is no

material to give context to the basis and nature of the agreement executed in 2018 to inform an evaluation, including information on the particular violation(s), timelines, procedures, reporting, public access to data, penalties (if any), and resolution. EPA therefore cannot use the supplemental information to inform the final report.

No changes have been made in the final report in response to this comment.

The Air Program nevertheless acknowledges the importance of appropriately classifying violations as FRV and/or HPV, and we have begun immediate corrective actions to ensure the appropriate classification of all violations. Specifically:

- 1. Our procedures now require that staff identify compliance issues as FRVs and HPVs, if the issues fall into these categories of violation, in inspection reports and correspondence sent to facilities to ensure proper documentation of the violations.*
- 2. Supervisors and managers must review documentation of compliance issues to ensure staff determinations are accurate and follow the FRV and HPV policies.*
- 3. Staff are trained regarding proper compliance evaluation determinations.*
- 4. Staff are trained in the HPV and FRV policies, including the requirement to notify facilities of HPVs within 45 days of discovery.*

The Air Program conducted individual training on FRV and HPV policies with all relevant staff members. In addition, the Program is developing training materials to present to all compliance and enforcement staff, including regional office inspectors, during a scheduled training event this coming June.

Noted. EPA acknowledges MDNR's above listed steps to ensure the appropriate classification of all CAA violations. These activities are aligned with the spirit of the corrective actions outlined in the draft SRF report and will be evaluated in accordance with the criteria listed in the final report for close-out of each recommendation. We look forward to reviewing the progress MDNR has made following issuance of the final report.

No changes to the report have been made in response to the information provided.

EPA further expressed concern about the Air Program's use of separate databases to track violations. The databases that the Air Program use are important communication tools between the Air Program, the Department's Regional Offices, and other programs within the Division of Environmental Quality. They allow program and regional staff to view compliance and enforcement data across the programs and across the state. In addition, the Air Program uses these internal databases to generate reports regarding inspection and enforcement activities to share with the public, stakeholders, and the Missouri Air Conservation Commission. EPA's ECHO and ICIS-Air databases do not have the tools we need to fulfill these functions and are not broadly available to Department staff. While having duplicate databases may be seen as inefficient, the important outcome here is that the correct information is entered into EPA's

national tracking system. We are committed to ensuring that all relevant information is properly submitted by the Air Program.

Complete and accurate data are vital to our understanding of current air quality conditions in our states, and critical to our effective planning for the future. In an era of access constraints and dwindling resources, data that give an accurate picture of the conditions in our states are crucial in shaping our work, present and future.

EPA does not prevent the use of multiple internal databases to track and present CAA compliance and enforcement information. Through discussions with technical staff and review of the internal and external databases, EPA concluded that data inaccuracies and discrepancy issues identified in the national public facing database, in part, likely stem from the duplication of effort inherent in dual tracking systems.

A key program expectation is that of ensuring the public facing data is accurate and complete. As articulated in EPA's September 2014 Guidance on Federally-Reportable Violations for Clean Air Act Stationary Sources (FRV guidance), a fundamental principle of effective compliance monitoring programs is having a complete and accurate inventory of sources with timely information on potential compliance problems. Reporting violations of the CAA in a national data system is critical at the federal, state, and local levels; and vital to the communities we serve. While our ultimate purview is the national database, EPA views the existence of multiple internal state databases as a potential roadblock to accurate reporting to our public facing systems.

Finally, EPA noted that the Department is using a unique category of compliance in the Air Program. While we understand EPA's concern with national consistency, the Department believes that the use of "unsatisfactory finding" letters is consistent with EPA's September 2014 memorandum regarding Guidance on Federally-Reportable Violations for Clean Air Act Stationary Sources. In that memorandum, EPA details that formal notice of a FRV or potential FRV to a source may be provided in a variety of ways:

*For example, such formal notice **may** be a Notice of Violation (NOV), Notice to Correct (NTC), Notice of Opportunity to Correct (NOC), Notice to Comply (NTC), or Notice of Noncompliance (NON). **Regardless of the name of the formal notice of violation**, if the purpose of the formal notice is to notify a source of an FRV, it is to be reported to ICIS-Air. (Emphasis added). As the attached policy excerpt shows, the use of an "unsatisfactory finding" letter is to formally notify a source of a compliance issue and the requirement to take necessary action to resolve the compliance issue. Therefore, we believe that issuing a notice of "unsatisfactory finding" and reporting these letters to ICIS-Air achieves the desired outcome of formally notifying a source of a FRV or potential FRV.*

The SRF review comparing the national database with the state files during the SRF review demonstrated the state is not following the national guidance and expected procedures for elements of compliance determinations. EPA reiterates the draft report in stating here that the state's facility files demonstrate MDNR processes for evaluating violations, reporting violations, tracking violations, and ensuring return to compliance fall outside national expectations, guidance and practices.

Regarding the issue of the unique category of violation created by MDNR (i.e., **Unsatisfactory Findings – No Response Required** letters), the state has misinterpreted the FRV guidance, which does not allow for the creation of a unique category of compliance determination. There is no flexibility in the guidance to create a unique type of enforcement category for violations that require facility responses, federal reporting and tracking. No flexibility exists in the national program to take an alternate path with violations in terms of follow-up and return to compliance. It is not the title of the notice at issue, it is the content of the notice and absence of a required facility response that deviates from the national expectations. It is not the name of the notice that is in question, it is the use of a unique type of notice that is not recorded and tracked in the national data base for public awareness that is at issue. The unique notices fail to meet national expectations in the following areas: violation reporting, tracking, and return to compliance; as outlined in the FRV guidance.

As discussed in greater detail below, MDNR's FRV and HPV discovery rate data in the national data system (Metrics 7a1 and 8a) in FFY18 was zero; no Federally Reportable or High Priority violators were identified to the public in data reports to communities in Missouri. The SRF review of a representative set of files reveal that there were facilities that violated the CAA (per HPV and FRV guidances) in FFY18, violations which require federal reporting, responses, tracking and return to compliance.

The lack of public notice and access to a broader range of information on the violations and air pollution that affect communities is a key issue. The program staff skill in identifying and correcting violation cannot be evaluated when the process and data availability deviate from national expectations. The need and emphasis on this reporting in the national system is emphasized in the national FRV guidance as follows, *“Reporting of violations of the CAA in the national air compliance and enforcement data system, ICIS-Air (successor to AFS), is **critical for national program management and oversight as well as for transparency and public access purposes.**”*

EPA issued the September 2014 FRV guidance because routine State Review Framework (SRF) evaluations confirmed inconsistent and under-reporting of violations by states. The final SRF report includes the statement that, for facilities where file documentation demonstrates FRV and HPV violations were discovered and not classified appropriately, MDNR tracked these violations on a separate internal spreadsheet; these data were not entered and tracked in national databases.

As a means of addressing these findings, EPA has added the following amended recommendations in the final SRF report, aimed at strengthening our communication on these issues along with MDNR's program success in this area:

- EPA will provide training on FRV and HPV policies.
- EPA and MDNR will review and discuss all MO CAA violations, FRV and HPV actions on a bi-weekly frequency during state and federal compliance/enforcement calls.
- EPA and MDNR will implement a shared facility *Compliance Determination OneDrive* (or similar electronic sharing mechanism) hub to facilitate transparent shared documentation of all enforcement determinations in the state, as compared to the national policies, for each facility inspected.

- EPA will provide a fillable form (i.e., *Compliance Determination Form*) for MDNR to document compliance/enforcement decisions for the purpose of streamlining and communicating compliance determinations.
- *Compliance Determination Forms* will require report out of the following:
 - Violations found in each inspection, with an emphasis on FRV/HPV criteria;
 - A comparison of each violation with a comprehensive list of all potential FRV and HPV violations;
 - Documentation of required follow-up corrective actions, including timeline to completion.
- All facility *Compliance Determination Documents* will be discussed on bi-weekly calls.
- Data pulls from the national database will be discussed on monthly calls.

Following one year of implementing the training, Compliance Determination Forms, and joint enforcement calls, EPA will conduct a partial, focused SRF to evaluate progress on metrics 7, 8 and 13.

Finding 4-1: Area for Improvement. Data metrics 10a - Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place, 10b - Percent of HPVs that have been addressed or removed consistent with the HPV Policy, 14 - HPV case development and resolution timeline in place when required that contains required policy elements, and 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.

***Summary:* The Air Program does not meet the objectives of the HPV policy in terms of enforcement responses, compliance schedules, timeliness, and return to compliance.**

MDNR Comment: Without knowing in which files EPA found deficiencies, it is impossible for the state to respond specifically as to the accuracy of this finding.

EPA RESPONSE: EPA transmitted the facility file selection list for review on May 20, 2019. Additionally, EPA forwarded the file selection list prior to the entrance interview in June of 2019. Considerable time, effort, and discussions among EPA and MDNR staff were devoted to selecting the facility files.

There may be cases in which the violation was resolved through a non-formal process that did not require case development or a resolution timeline.

The method of addressing an HPV or FRV violations through a “non-formal process” is antithetical to the required formal procedures for addressing these high priority or federally reportable violations. Non-formal processes are outside national guidance, expectations and acceptable practices for states authorized to address and correct stationary source CAA program violations. The HPV classification is, by definition, a formal process, requiring formal case development, as well as resolution in a timely manner. To resolve HPVs in an informal manner,

without documentation, reporting and tracking of the resolution, is a deviation from national program requirements.

In other cases, those mechanisms may have been developed but, consistent with past practice, were not documented in the paper file. In order to provide a thorough response, it is necessary to know which files EPA reviewed.

A key overarching finding for the round 4 SRF review is past practices of not documenting violations, timelines and resolutions in the paper files does not serve to inform EPA and the public of any actions the state has taken in implementing and enforcing the CAA program.

Further, the report notes with regard to metrics 10B and 14 that “the low sample population size of HPV facilities reviewed from multiple previous years does not offer a reliable picture of the state’s performance and success.” The report also notes that “the relatively small sample size diminishes the confidence in these results.” Given these limitations, the Department requests that EPA withdraw these findings from the final report or provide a determination of “Inconclusive,” rather than have the record reflect a performance result that is not well-documented. The Department also requests that the sample size used for metrics 10b and 9a be re-considered in the same light.

As was discussed with MDNR staff prior to the file review, the sample population size for the review period is problematic for a number of reasons. The state Data Metric Analysis performed on the 2018 frozen data prior to the formal SRF file review (transmitted to MDNR via email on May 20, 2019) recorded MDNR’s FRV and HPV discovery rates are 0% and 0%, well below the national averages of 7.8% and 2.5%, respectively. In order to review the aspects of HPV case timeliness, development, and resolution captured by SRF metrics 9a, 10a, 10b, and 14, the SRF process provides for an extended review period to previous years in order to identify facilities and gain a broader understanding of program performance in these metrics for the time period since the Round 3 review of the data. When HPVs are not reported, EPA looks to previous years to provide recommendations for strengthening MDNRs discovery, timeliness and corrective actions for HPV and FRVs.

EPA notes the absence of HPVs and FRVs for the 2018 review period can likely be attributed to one of two factors, a) data and reporting problems; or b) the potential (as discussed above) for inaccurate compliance determinations. Our review of the files did conclude that there are high priority violators in the state, as defined in the HPV policy; and the state is not categorizing and following up on HPVs per national expectations.

EPA is confident in the essence of the conclusions drawn from the data reviewed; however to clarify the findings, the report has been amended as follows, “... the [absence of HPV facilities discovered by MDNR during the 2018 review period was addressed by widening the lens of review of the state program in this area low sample population size of HPV facilities reviewed from to multiple previous years. This action was taken in order to evaluate the state program’s progress in these metrics since the Round 3 report findings were issued, as a means to measure do not offer a reliable picture \(and percentage\) of the state’s performance and success in these areas. As with all metrics, sample size must be considered in interpreting the results listed below. When conducting research, quality sampling may be characterized by the number and selection of subjects or observations. Obtaining a sample size that is appropriate in both regards is critical](#)

~~for many reasons. Most importantly, a large sample size is more representative of the population, limiting the influence of outliers or extreme observations. Regarding these two metrics, the relatively small sample size diminishes the confidence in these results. Region 7 also recognizes that an average quantitative metric over several years of the state's performance in these areas may be applied to the years outside the review period as a means of reaching broad overarching conclusions for strengthening performance in this area. dilute the conclusions that can be drawn from the percentages.~~

The Department nevertheless recognizes the importance of addressing and/or removing HPVs, consistent with EPA's HPV policy, and ensuring that these efforts are documented. We have begun immediate corrective actions. Specifically:

1. Procedures now require staff to develop a resolution time frame for cases that may take more than 180 days to resolve, and share that with the Compliance and Enforcement Section Chief.

2. Procedures now require the Compliance and Enforcement Section Chief share a resolution time frame with appropriate EPA staff for any cases that may take more than 180 days to resolve.

3. Procedures now require HPVs to be addressed or removed consistent with the HPV policy.

4. Staff are trained regarding formal enforcement responses that include required corrective actions that will return the facility to compliance in a specified time frame.

5. Staff are trained regarding timely HPV case development and resolution.

6. Procedures now require staff to identify compliance issues noted in inspection reports and correspondence to facilities as FRVs and HPVs, if the issues fall into these categories of violation, to ensure proper documentation of the issues.

7. Procedures now require supervisors and managers to review documentation of compliance issues to ensure staff determinations are accurate and follow the FRV and HPV policies.

8. The Air Program is developing training material to present to Compliance and Enforcement staff, including regional office inspectors, during a scheduled training event in June 2020.

EPA acknowledges MDNR's initial steps to address Data metrics 9a, 10a, 10b, and 14. These activities are aligned with the corrective actions outlined in the draft SRF report and will be evaluated in accordance with the criteria listed in the final report for close-out of each recommendation. We look forward to reviewing the progress MDNR has made following issuance of the final report.

Again, the Department believes that this finding does not reflect any failure by the Air Program to evaluate compliance, document violations, or work with facilities to correct violations, regardless of FRV or HPV status, during the time period evaluated. The four attached reports illustrate the successful efforts by the Department during FFY2017 and FFY2018 to address FRVs through compliance assistance and through referrals and orders.

See EPA Response in Finding 3.1

No changes have been made in the final report in response to this comment.

The Air Program will document updated processes regarding this issue and include them in SOPs, which we will provide to EPA Region 7 within 60 days of completion of the SRF Final Report. The submittal will also contain a detailed description of the tracking system we use for HPV enforcement cases. Air Program staff will discuss the progress of HPV enforcement cases, including any foreseeable delays in case development and resolution of cases, during coordination calls with EPA Region 7 staff.

Noted.

Finding 5-1: Area for Improvement. Data metrics 11a - Penalty calculations reviewed that document gravity and economic benefit and 12b - Penalties collected

Summary: Penalty calculation documentation did not account for economic benefit. Some files did not include documentation that penalties were collected.

MDNR Comment: Without knowing in which files EPA found deficiencies, we cannot provide a detailed response. We request additional information on the specific files regarding missing penalty documentation so we can ensure the official records are complete. While some of the files that EPA reviewed apparently did not include documentation that penalties were collected, the Department did in fact collect all penalties assessed, or referred cases to the Attorney General's Office for collection if the responsible party failed to pay the penalty.

EPA RESPONSE: EPA transmitted the facility file selection list to MDNR on May 20, 2019, including the files reviewed for penalty assessment and collection.

The Air Program will follow HPV guidance and state rule 10 CSR 10-6.230 "Administrative Penalties" in regards to the use of an economic benefit penalty where appropriate. In addition, the Air Program has amended its penalty policy and worksheet which includes both gravity and economic benefit components, and will submit a copy of it within 60 days of completion of the SRF Final Report. The SOPs discussed above will include the requirement to file appropriate documentation indicating payment of the penalty, including a copy of the check with the routing number and account number redacted, or other appropriate documentation.

Noted. These activities are aligned with the corrective actions outlined in the draft SRF report and will be evaluated in accordance with the criteria listed in the final report for close-out of each recommendation. We look forward to reviewing the progress MDNR has made following issuance of the final report.

Finding 5-2: Area for Attention. Data metric 12a - Documentation of rationale for difference between initial penalty calculation and final penalty.

Summary: Documentation of the difference between initial penalty calculation and final penalty was present and followed policy in most but not all files.

MDNR Comment: The Air Program is revising procedures to document the rationale for differences between the initial penalty calculation and final penalty calculation. We will include this requirement in our penalty policy and worksheet, which we will submit to EPA within 60 days of completion of the SRF Final Report.

EPA RESPONSE: Noted. These activities are aligned with the corrective actions outlined in the draft SRF report and will be evaluated in accordance with the criteria listed in the final report for close-out of each recommendation. We look forward to reviewing the progress MDNR has made following issuance of the final report.

MDNR Conclusion: We appreciate EPA's consideration of our responses. We want to stress again that Air Program staff and the Department's regional office inspectors effectively evaluated compliance, documented violations, and worked with facilities to correct violations during the time period reviewed, and continue to do so.

We appreciate MDNRs thoughtful responses to the draft SRF report. We place a high value on our continued strong partnership and mutual commitment to open communication as we work together toward resolution of the issues identified during the Round 4 SRF review process. We are confident the path outlined in the final report will strengthen our mutual efforts of protection of human health and the environment.

STATE REVIEW FRAMEWORK

Missouri

Clean Water Act Implementation in Federal Fiscal Year 2019

**U.S. Environmental Protection Agency
Region 7**

**Final Report
October 12, 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)

Key dates:

- SRF Kickoff letter mailed to MDNR: March 31, 2020
- File selection list sent to MDNR: May 6, 2020
- Data Metric Analysis sent to MDNR: Initial March 31, 2020, revised sent May 6, 2020
- Entrance interview conducted: Due to the pandemic, files were reviewed virtually. No entrance interview was conducted.
- File review conducted: Initial files were reviewed virtually, starting approximately in early June and ending in early August 2020. MDNR provided supplemental files, review of these files concluded in late September 2020.
- Exit interview conducted: Virtual exit interview conducted August 26, 2020.
- Draft report sent to MDNR on January 25, 2021.
- Final report issued: October 12, 2021.

State and EPA key contacts for review:

- Dru Buntin, MDNR, Director
- Ed Galbraith, MDNR, Director, Division of Environmental Quality
- Chris Wieberg, MDNR, Director, Water Protection Program
- Kristi Savage-Clarke, MDNR, Environmental Program Manager
- Joel Reschly, MDNR, Legal Counsel, General Counsel's Office
- Jodi Bruno, EPA, R7 Enforcement and Compliance Assurance Division (ECAD)
- Don Hamera, EPA, R7 Enforcement and Compliance Assurance Division (ECAD)
- Seth Draper, EPA, R7 Enforcement and Compliance Assurance Division (ECAD)
- Cynthia Sans, EPA, R7 Enforcement and Compliance Assurance Division (ECAD)
- Paul Marshall, EPA, R7 Enforcement and Compliance Assurance Division (ECAD), Retired
- Melissa Bagley, EPA, R7 Office of Regional Counsel
- Kevin Barthol, EPA Region 7 SRF Coordinator

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:

- MDNR permit data entry rate for major and non-major facilities is meeting the national goal.
- MDNR met their CMS commitments for all different types of inspections for FY19.
- MDNR inspection reports were complete and sufficient to determine compliance.
- The majority of inspection reports reviewed were determined to have made accurate compliance determinations.
- MDNR consistently documents the penalty payment information.

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:

- Data found in ECHO/ICIS did not reflect the data that was contained in the MDNR files. The review exposed inaccuracies and discrepancies in the ECHO data as compared to the MDNR files review.
- MDNR does not consistently or accurately identify single-event violation(s) as SNC or non-SNC.
- MDNR has not resolved the disposition of inspection field notes, checklists, and other materials gathered to create a finalized inspection report.
- MDNR's formal and informal enforcement actions do not always bring a facility back into compliance.
- Enforcement actions reviewed by EPA did not meet the state enforcement response procedures defined by their Procedures for Assistance, Compliance, and Enforcement (PACE) manual.
- MDNR is not applying the Pretreatment regulations appropriately.
- MDNR did not always complete penalty calculations that document economic benefit.
- EPA reviewers were not able to locate documentation that explained the difference between the initial and final penalty in the files reviewed.

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

MDNR permit data entry rate for major and non-major facilities is meeting the national goal.

Explanation:

Out of 2491 facilities, 2466 had data entered. MDNR data entry on majors and non-major discharge monitoring reports is above the national goal. Out of 36,369 facilities, 34,294 had DMRs entered.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|--|-----------|----------|---------|---------|-------------|
| 1b5 Completeness of data entry on major and non-major permit limits. [GOAL] | 95% | 90.6% | 2466 | 2491 | 99% |
| 1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL] | 95% | 93.3% | 34294 | 36369 | 94.3% |

State Response: None

CWA Element 1 - Data

Finding 1-2

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

Data found in ECHO/ICIS did not reflect the data that was contained in the MDNR files. The review exposed inaccuracies and discrepancies in the ECHO data as compared to the MDNR files review.

Explanation:

EPA compared the file review information with what is shown in ECHO/ICIS and found that some data was missing or inaccurate. EPA’s review revealed that 23 out of 66 files reviewed has some type of data error. Noteworthy findings reveal that 21 facilities, which had LOW/NOVs issued were not in ECHO/ICIS. Also 4 inspections were not entered into ECHO/ICIS.

Regarding pre-treatment inspections, the audit/PCI date of inspection all were properly input into ICIS (as verified through ECHO), however in some cases, independent sampling events occurred at a later date. None of the sampling inspections appeared in ICIS. In addition, if the PCI or audit was transmitted with an LOW or NOV as part of the transmittal package, the informal enforcement action event is not being supplied to ICIS. This information needs to be entered into ICIS.

This is a repeat finding from Round 3 (Finding 1-1). Round 3 findings identified similar instances, batching errors.

Another Round 3 finding still open (Finding 3-1) - Files reviewed showed MDNR does not consistently or accurately identify single-event violations as SNC or non-SNC. This was a goal metric in Round 3 (8b1), but this metric is no longer used in Round 4. Round 4 has 7j1 (Number of major and non-major facilities with single-event violations reported in the review year, (review indicator) and 8a3- Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year (review indicator). Locating this still open finding (Round 3-Finding 1-1) in this area as a data issue.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|--|-----------|----------|---------|---------|-------------|
| 2b Files reviewed where data are accurately reflected in the national data system [GOAL] | 100% | | 23 | 66 | 34.8% |

State Response:

Please reference General Clarification Request Nos. 1 and 3 above. Without a detailed list of what was missing, we cannot determine whether the missing data was a data entry failure or a rejection from the Integrated Compliance Information System (ICIS).

As EPA is aware, Missouri is a batch data submission state and there are still data transfer issues between our Missouri Clean Water Information System (MoCWIS) and EPA’s ICIS/Enforcement and Compliance History Online. We are still experiencing rejection of some data during batching. The Department appreciates EPA providing additional access to

its data contractor, Windsor Solutions. Windsor has run another analysis based on some data identifying specific groups of data rejected by ICIS.

Regarding consistent identification of single-event violations (SEVs) as either significant noncompliance (SNC) or non-SNC, the Department believes that EPA's expectations may not be within the Department's reach. Although MoCWIS is transferring SEVs to ICIS, the Department is still unable to identify which SEVs are SNC in MoCWIS. One complicating factor is that EPA's [Single Event Violation Data Entry Guide for ICIS-NPDES](#) does not identify which of the 168 SEVs should be considered SNC. Another complication is that the Department will need to make significant enhancements to MoCWIS to meet this expectation. Compounding those issues further, it's the Department's understanding that ICIS itself does not have the functionality to identify that an SEV is SNC and could not accept that data from MoCWIS even if we were able to enhance the database.

If EPA continues to require that the Department meet this expectation, we ask that EPA provide the following resources: 1) training on SEVs, particularly regarding which SEVs are SNC and how to identify them in the field; 2) enhancement to ICIS in order to accept SEV SNC records; and 3) ongoing assistance to the Department in overcoming unforeseen barriers that may arise during fulfillment of this obligation. The time commitment necessary to either enhance the Department's MoCWIS database or manually enter SEV data into ICIS would greatly reduce the Department's ability to complete enforcement actions.

Regarding the recommended/required milestones, the Department is hesitant to commit to any schedule for corrective action until we better understand the data discrepancies resulting in EPA's finding for this element.

EPA RESPONSE TO STATE COMMENTS:

EPA provided a list of 2b metrics where data discrepancies/errors were found on July 2, 2021 (email sent to MDNR).

After consulting with EPA Headquarters regarding ICIS's capabilities and SEV codes, EPA proposes to use the Headquarters' guidance on SEVs, SNC. An email describing this approach was sent to MDNR on July 21, 2021. EPA Headquarters confirmed that ICIS can handle SEV codes and SNC. A Follow-up discussion was held on Sept 1, 2021 with MDNR staff to discuss this guidance as a path forward.

In regard to training, EPA headquarters provided SEV training on June 14, 2021. The slides from this training along with Headquarters' instruction on entering SEVs/SNC were sent to MDNR staff on July 21, 2021. EPA Headquarters confirmed that ICIS can handle SEV codes and SNC. EPA Headquarters and Region 7's will continue to provide training and assistance for data issues as needed.

Completion dates have been extended.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | 09/30/2024 | <p>MDNR should ensure that all data associated with their compliance inspections and enforcement actions are accurately and timely entered and reflected in the national database. MDNR will provide the following to EPA.</p> <ol style="list-style-type: none">1) By June 1, 2022, submit to EPA a data workplan to address the missing data entry elements in ICIS/ECHO. This plan should include an SOP for data entry. The data workplan will also address entering SEVs and identifying if they are SNC. This workplan should include interim milestone dates to achieve accurate data by September 30, 2024.2) MDNR should work with EPA’s contractor, Headquarters, and the Region to achieve remediation measures outlined in the FY2020 contractor analysis (ICIS-NPDES Data Flow Support, SNC Remediation Report MDNR Draft version 0.5 9/23/2020, Windsor Solutions). These measures should not only address the SNC facilities in erroneous non-compliance status, but overall MOCWIS/ICIS data variations.3) Report to EPA quarterly (January 15, April 15, July 15, and October 15) on the actions taken to address this finding; and,4) If by September 30, 2024, EPA reviews MDNR data and finds that data entry is complete and accurate (85% or greater), this recommendation will be closed. |

CWA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

MDNR met their CMS commitments for all different types of inspections for FY19.

Explanation:

The EPA compared the reported FY2019 CMS end-of-year numbers from MDNR to annual commitments made at the beginning of the year in its CMS alternative plan. As summarized in the table below, MDNR met its inspection commitments for FY2019.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|---|----------------------|-----------------|----------------|----------------|--------------------|
| 4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL] | 100% of commitments% | | 31 | 28 | 110.7% |
| 4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL] | 100% of commitments% | | 61 | 12 | 508.3% |
| 4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL] | 100% of commitments% | | 30 | 27 | 111.1% |
| 4a4 Number of CSO inspections. [GOAL] | 100% of commitments% | | 1 | 1 | 100% |
| 4a5 Number of SSO inspections. [GOAL] | 100% of commitments% | | 51 | 40 | 127.5% |
| 4a7 Number of Phase I and II MS4 audits or inspections. [GOAL] | 100% of commitments% | | 30 | 30 | 100% |
| 4a8 Number of industrial stormwater inspections. [GOAL] | 100% of commitments% | | 309 | 281 | 110% |
| 4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL] | 100% of commitments% | | 219 | 197 | 111.2% |
| 5a1 Inspection coverage of NPDES majors. [GOAL] | 100% | 52.8% | 64 | 61 | 104.9% |
| 5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL] | 100% | 22.6% | 645 | 567 | 113.8% |
| 5b2 Inspections coverage of NPDES non-majors with general permits [GOAL] | 100% | 5.6% | 528 | 478 | 110% |

State Response: None

CWA Element 2 - Inspections

Finding 2-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

MDNR inspection reports were complete and sufficient to determine compliance.

Explanation:

Regarding metric 6a, MDNR achieved a high percentage level of inspection reports that were complete and sufficient to determine compliance.

EPA notes that some of the CAFO inspection reports did not include photographs of the facility. Photos would have enhanced the overall quality of these reports.

Pre-treatment audits reviewed were well written and comprehensive.

EPA noted some instances where an inspection checklist was not completed. The Procedures for Assistance, Compliance and Enforcement on page 264 (Section 12.1.5) indicates that a checklist must be used. Section 4.4.3 (page 102) indicates that checklist should be used if available. MDNR should clarify the circumstances of when a checklist is used and clarify wording in the PACE manual.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|---|-----------|----------|---------|---------|-------------|
| 6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL] | 100% | | 79 | 82 | 96.3% |

State Response: None

CWA Element 2 - Inspections

Finding 2-3

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

MDNR has not resolved the disposition of inspection field notes, checklists, and other materials gathered to create a finalized inspection report.

Explanation:

This is an open item from Round 3 (Finding 2-3) that MDNR files did not contain any information on how inspection checklist or field notes were retained. Once the inspection report is finalized, the field notes and checklists are destroyed. The current PACE manual in Section 4.1 under Field Activities specifies how these records are managed, “Delete working papers, extra photographs, and other documentation once the relevant information is incorporated into and the final report is completed.” Recent correspondence from MDNR indicates that internal counsel for MDNR is reviewing current record retention practices prescribed in the PACE manual in response to comments from EPA R7. Additional information will be provided once the review is completed. EPA has not heard back from MDNR on this finding. EPA is working with MDNR to address this open item.

The 2019 pre-treatment review resulted in a similar finding- Most Audits/PCI reviewed did not have the attached checklist that was completed as part of the inspection process. From a federal perspective, checklists generated in the course of an audit are considered records and must be preserved. This was discussed in the PCI/Audit portion of the closeout conference review and is still awaiting resolution. EPA considers these documents to be records and they must be preserved.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|--|-----------|----------|---------|---------|-------------|
| 6a Inspection report completeness for documentation record retention (carryover) | 100% | | 0 | 82 | 0% |

State Response:

Please reference General Clarification Request No. 1 and General Comment No. 1 above. As noted in EPA’s report, our PACE Manual contains the current procedure for disposition of field notes. At this time, a legal review of our field note retention policy is not scheduled. If the current policy does not meet federal law, please provide that information. Otherwise, we request EPA withdraw the recommendation on this finding.

EPA’s RESPONSE TO STATE COMMENTS:

EPA continues to recommend that MoDNR conduct a legal review to determine the proper procedure for disposition of field notes, checklists and any other materials to ensure

consistency with state and federal law. EPA has concerns as to whether the disposal of these records is meeting federal and state record keeping/retention requirements as described below. We question if it is appropriate to dispose of inspection notes/checklists that are not otherwise captured in some other format. Please see the following:

EPA notes that a record in the State of Missouri is defined by RSMo [109.210](#), and argues that “field notes” and “checklists” as part of an inspection meets this state definition because these are documents made in the transaction of official business.

(5) "Record", document, book, paper, photograph, map, sound recording or other material, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of official business. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in sections 109.200 to 109.310, and are hereinafter designated as "non record" materials."

It is important to note that often the determination of a record can reflect on the documents purpose, value, and adequacy of that document. In this instance, EPA concludes that field notes/checklists are purposefully made to support legal determinations of compliance with Missouri environmental law (and often federal environmental law) and may later function as evidence to support such conclusions.

Given EPA’s conclusion that field notes and checklists are likely a “record” for purposes of state law, EPA, as part of this review and finding, evaluated the disposition of field notes, checklists to determine if these documents are consistent with EPA regulations. 40 CFR § 123.26 states, “(a) State programs shall have procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of permittees and other regulated persons (and for investigation for possible enforcement of failure to submit these notices and reports)”.

Additionally, the NPDES Compliance Inspection Manual EPA Publication Number 305-K-17-001 Interim Revised Version, January 2017, Chapter 2.E Inspection Procedures-Documentation, includes the following:

Inspector’s Field Notebook- “Notebooks become an important part of the evidence package and can be admissible in court. The field notebook is a government record and subject to record retention schedules”.

Further in the same section under Documents and Digital images- “All documents taken or prepared by the inspector such as completed checklists for the inspection report should be noted and related to specific inspection activities”.

Finally, relevant sections from the Memorandum of Agreement between EPA and MDNR dated December 14th, 2016, include the following:

Section V. Compliance Evaluation and Permit Enforcement, Section B. Compliance Review, “MDNR shall conduct timely and substantive reviews and keep complete records of all material relating to compliance status of entities subject to regulation under the NPDES program, including but not limited to, Compliance Schedule Reports, Discharge monitoring reports, Compliance Inspection Reports, and any other reports that entities may be required to submit under the terms and conditions of an NPDES permit, approved Pretreatment Program, administrative order or judicial enforcement action.”

Section V. Compliance Evaluation and Permit Enforcement, Section D, Enforcement Response, 3. MDNR shall be able to demonstrate that its enforcement response procedures result in: d, “Compilation of complete and accurate records that can be used in future enforcement actions.”

It is EPA’s opinion that field notes, checklists meet the definition of a record in the State of Missouri and EPA regulations and should be preserved. EPA’s opinion is that field notes and checklists that are made or received pursuant to law or in connection with the transaction of official business would be considered records.

Completion dates have been extended.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|--|
| 1 | 09/30/2023 | <p>MDNR should ensure their record retention procedures meets State law and EPA regulations. MDNR will provide the following to EPA:</p> <ol style="list-style-type: none"> 1) By June 1, 2022, submit to EPA a plan to address the disposition of inspection notes, checklists, and other materials used to create an inspection report. Include in this plan a timetable to consult with MDNR attorney/counsel to ensure record disposition/retention meets State record keeping requirements and EPA regulations. 2) Report to EPA quarterly (January 15, April 15, July 15, and October 15) on the actions taken to address this finding; and, 3) Correct/update wording in the PACE manual, submit to EPA for review. Include revisions with a quarterly update. 4) If by September 30, 2023, EPA reviews the disposition of 5 closed inspection reports and associated documentation (records/checklists/fieldnotes etc.) and finds the inspections having proper documentation/records retention at a performance level of 85% or greater metric finding, the region will close this finding. Otherwise, the recommendation will remain open until the next quarter/fiscal year upon which 5 more closed inspection reports will be reviewed. |

CWA Element 2 - Inspections

Finding 2-4

Area for Attention

Recurring Issue:

No

Summary:

Inspection reports do not consistently meet the 30-day deadline.

Explanation:

EPA reviewed 83 inspection reports. MDNR averaged 24 days for all 83 reports, however the percentage of inspection reports issued within 30 days was 75.9 %. The Procedures for Assistance, Compliance, and Enforcement (PACE) manual calls for inspections to be transmitted within 30 days of the inspection. MDNR has made improvements in this area. For the last review (Round 3) the average time to complete a report was 44 days. For this review the average time was 24 days. This is a reoccurring issue from the 2013 SRF review, although at that time the finding was an area for improvement.

EPA suggests supervisors make staff aware of the expected timeframe. Continue to monitor timeliness.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|--|-----------|----------|---------|---------|-------------|
| 6b Timeliness of inspection report completion [GOAL] | 100% | | 63 | 83 | 75.9% |

State Response:

Please reference General Comment No. 1 above. Department staff understand that the goal is for reports to be issued within 30 days of the inspection. The use of the terms “completion” and “transmittal” is less clear. We suggest using the term “issuance” throughout the explanation of the finding.

As additional background, the Department operates within regional boundaries, with each region having its own review, approval, and issuance process for inspection reports. One of the Department’s regions, Central Field Operations, is new and does not yet have a complete team. Lack of supervisors in that region resulted in increased delays in processing of inspection reports. This likely contributed to a number of reports being issued more than 30 days after inspection. However, it is acceptable for inspectors to exceed the 30-day goal in certain situations per Section 4.1 of the PACE Manual: “If staff anticipates the report cannot be written, administratively reviewed, and mailed within 30 days of the completion of the field activity, notice and justification must be provided to supervisory staff.”

EPA RESPONSE TO STATE COMMENTS:

This was found to be an Area of Attention and therefore no additional follow-up is planned by EPA. We encourage MDNR to follow the PACE manual and strive to complete/issue the inspection reports in 30 days or less as prescribed in the PACE manual.

No changes will be made to the current text.

CWA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:No

Summary:

The majority of inspection reports reviewed were determined to have made accurate compliance determinations.

Explanation:

EPA reviewed 85 inspection reports. 79 of these inspection reports were determined to have accurate compliance determinations. MDNR's Procedures for Assistance, Compliance, and Enforcement (PACE) manual format for inspections was followed.

While not goal metrics, EPA notes that Review indicators for MDNR (7k1 and 8a3) exceed the National average as shown in the relevant metric table below.

Relevant metrics:

| 7e Accuracy of compliance determinations [GOAL] | 100% | | 79 | 85 | 92.9% |
|--|------------------|--------|------|-------|--------|
| 7j1 Number of major and non-major facilities with single-event violations reported in the review year. | Review Indicator | | 964 | | 964 |
| 7k1 Major and non-major facilities in noncompliance. | Review Indicator | 18.40% | 4570 | 10553 | 43.30% |
| 8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year. | Review Indicator | 8.10% | 2359 | 10145 | 23.30% |

State Response: None

CWA Element 4 - Enforcement

Finding 4-1

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

Regarding metric 9a, MDNR's informal and formal enforcement actions do not always bring a facility back into compliance (Area for improvement in Round 3). Regarding metric 10b, enforcement actions reviewed by EPA did not meet the state enforcement response procedures defined by their Procedures for Assistance, Compliance, and Enforcement (PACE) manual.

Explanation:

Out of 55 formal/informal enforcement actions reviewed, EPA was able to determine that 40 facilities returned to compliance. There was insufficient information in the file to determine if the remaining 15 had returned to compliance for a 72.7 % compliance rate. For Round 3 this finding was at 73%.

Out of 50 enforcement files reviewed, EPA determined that 30 addressed violations in an appropriate manner according to the Procedures for Assistance, Compliance, and Enforcement (PACE) manual. The remaining 20 files did not use the proper enforcement response as laid out in the PACE manual. For instance, in one case the facility was inspected, and Group 1 violations were noted, but issued an LOW. According to the PACE manual Group 1 violations call for an RNOV to be issued to the facility. Another inspection revealed Group 1 violations but issued an Unsatisfactory letter (which is typically used with Group 3 violations).

The Pre-treatment review noted that responses to LOW or similar documents were all tracked and once the facility had corrected all the deficiencies, a return to compliance letter was issued.

The EPA noted the following trend in MDNR enforcement action numbers from 2015 to 2019. This information was taken from MDNR enforcement website. Reviewing MDNR's formal enforcement actions from 2015 to 2019 reveals the following:

- 2015 - 70 formal enforcement actions
- 2016 - 71 formal enforcement actions
- 2017 - 32 formal enforcement actions
- 2018 - 41 formal enforcement actions
- 2019 -19 formal enforcement actions.

The number of enforcement actions appears to be trending downward for the last five-year period. MDNR should continue to pursue enforcement actions where warranted and follow their Procedures for Assistance, Compliance, and Enforcement (PACE) manual.

EPA requests that MDNR ensure facilities return to compliance and staff put documentation in the file which clearly shows the facility has returned to compliance.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|---|------------------|----------|---------|---------|-------------|
| 9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL] | 100% | | 40 | 55 | 72.7% |
| 10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations | Review Indicator | 14.4% | | | 0% |
| 10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL] | 100% | | 30 | 50 | 60% |

State Response:

Please reference General Clarification Request Nos. 1 and 3 and General Comment No. 1 above.

Regarding the comment on proper enforcement response, the PACE Manual is general guidance that allows staff to deviate from standard procedures in situations that require case-by-case evaluations, as outlined in Section 1 on page 1 of the PACE Manual. As a result, the PACE Manual offers flexibilities to use enforcement discretion on which type of informal enforcement action is appropriate, if any. The Department considers the factors around the case when determining whether or not an official letter is appropriate. Some circumstances warrant deviations from the procedure outlined in the PACE Manual. Note that violations can be referred for formal enforcement action immediately if there is a direct threat to human health or the environment, such as a discharge resulting in a fish kill or a spill involving a toxic substance.

With regard to EPA’s comment on the number of formal enforcement actions, while it is true that the number of formal enforcement actions has decreased between 2015 and 2019, it is also true that the number of active enforcement cases decreased from 571 to 433 cases. This is by design, to a significant degree, because just as **EPA shifted from National Enforcement Initiatives to National Compliance Initiatives**, the Department also adopted a policy of increased emphasis on compliance assistance. Compliance assistance requires much more interaction with the responsible party prior to issuance of informal or formal enforcement actions. If we can correct the violations before they rise to the level of SNC, we also reduce the need for formal enforcement actions. Should the Department’s compliance assistance efforts not result in compliance, the case is escalated through a series of steps, regardless of the severity of the violation(s). This progression starts with an Unsatisfactory Finding Letter or a Letter of Warning (LOW), followed by a Notice of Violation (NOV), then a Referral Notice of Violation, and finally, formal enforcement action. Multiple LOWs or NOVs may be issued prior to escalating to the next level of enforcement action. There is one exception to this rule, in which violations can be referred to enforcement immediately if there is a direct threat to human health or the environment, such as a discharge resulting in a

fish kill.

In addition, enforcement staff have been asked to put extensive effort into EPA's SNC National Compliance Initiative. Effectively addressing SNC requires a balance of enforcement and compliance assistance. The Department feels that increasing compliance assistance activities better aligns with the EPA's 2018 to 2022 Strategic Plan to emphasize compliance assistance efforts. This better conveys the message that increased compliance is the goal and that enforcement actions are not the only tool for achieving compliance.

The Department is committed to taking all appropriate enforcement actions while increasing compliance assistance activities, within the constraints of finite staffing resources. It is a question of the balance that will yield the greatest compliance. The Water Pollution Control Branch's Compliance and Enforcement Section had 432 enforcement cases in FFY19. This resulted in an average of over 58 cases for each case manager. Even supervisors handle a number of cases to distribute the burden.

Another factor is the significant turnover during this time period as the Section Chief, one Unit Chief, and four case managers retired or left the section in late 2018 or 2019.

Additionally, in 2018 and 2019, the Department has increased its emphasis on quality and consistency in enforcement actions. Producing higher-quality enforcement actions and increasing consistency across the different environmental media is providing long-term benefits, but the process of adjustment required significant focus and time.

Regarding the recommendation/requirement, prior to committing to a corrective action schedule, the Department would like to understand how EPA came to its finding for this element. We would like to see the examples where the escalation was deemed inadequate according to EPA. This will help us either provide better explanations for decisions that may appear to deviate from the PACE Manual or make appropriate adjustments.

EPA RESPONSE TO STATE COMMENTS:

EPA understands the need for enforcement discretion. However, the deviations from the PACE manual noted in the files reviewed were substantial. EPA discussed 3 examples related to this finding with MDNR staff on September 1, 2021. Most noteworthy were files where the inspection noted a sheen or some other serious violation and an "Unsatisfactory letter" or "Letter of Warning" was issued to the facility as follow-up. These were clear level one violations, but the follow-up was not commensurate with the violation found. As the PACE manual states in Section 4.5-Noncompliance Process, Violation Groups (Page 1) "Group 1 violations are the most serious and significant impacts or threats to human health and the environment". The manual goes on to states that "These violations must be addressed through the issuance of a Referral Notice of Violation (RNOV) and by immediate referral for program enforcement action".

Timeframes for completion were adjusted in SRF writeup.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | 09/30/2023 | <p>MDNR should ensure that staff are following the PACE manual and pursue appropriate enforcement based upon the severity of the violations found during the inspection. MDNR will provide the following to EPA:</p> <ol style="list-style-type: none">1) Submit a response to EPA that discusses how the PACE manual is being implemented. Provide with the first quarterly response.2) Report to EPA quarterly (January 15, April 15, July 15, and October 15) on the actions taken to address this finding.3) Provide examples/documentation of 5 inspection/enforcement actions (3 informal/2 formal) that were completed in FY22-FY23 that adhere to the PACE manual and also provide documentation that the facility has returned to compliance. Provide a workflow discussion on how the PACE manual was utilized in the examples submitted to EPA.4) If by September 30, 2023, EPA reviews 5 informal/formal actions and finds that proper follow-up in accordance with the PACE manual has been completed and provide documentation that the facility has returned the facility to compliance at a level of 85% or greater metric finding, this finding will be closed. Otherwise, the recommendation will remain open until the next quarter/fiscal year upon which 5 more informal/formal actions will be reviewed. |

CWA Element 4 - Enforcement

Finding 4-2

Area for Improvement

Recurring Issue:

No

Summary:

MDNR is not applying the Pretreatment regulations appropriately.

Explanation:

Of the eight audits/PCIs reviewed, one City was determined to have violations significant enough to be considered in Significant Noncompliance, which was met with a Letter of Warning, a

relatively weak response for violations as serious as SNC. However, the City responded responsibly to the LOW and hired a consultant to correct the deficiencies behind the SNC determination.

Cabool – The inspection report indicated that a contributing industry, Dairy Farmers of America, had been discharging slug loads of high strength wastes. At the time of the inspection, the primary cell was observed to be a milky color and foul smelling, which is clearly a case of interference. The report dwelled on the city trying to solve the problem of disruptive discharges by modifying its Sewer Use Ordinance to give it more enforcement authority. There was no recognition in the report that MDNR is the Control Authority under the Pretreatment program and has the responsibility of enforcing directly against the industry causing the interference.

Dexter East – The inspection noted the inability of the POTW to achieve compliance with ammonia limits and provided an engineering report confirming it. The inspection noted the cause was from discharges from Tyson and referenced that the City was under an abatement order to achieve compliance. The abatement order is likely more than five years old as it no longer shows up in ECHO. No attempt was made during the inspection to compare City performance with requirements of the abatement order milestones. As with Cabool, there was no recognition by the inspector that MDNR, by regulation, is the Control Authority for Tyson and has the regulatory obligation to take direct action against Tyson to eliminate the interference and/or pass through they are causing at Dexter East.

Piedmont – The City of Piedmont has been a perennial problem due to discharges from a fried foods industry. While the City's poor compliance status is exacerbated by poor operation and maintenance of its relatively new plant, failure to adequately control discharges from the industry is a major factor for the city's noncompliance. The inspection report and other documents reviewed indicated that it is MDNR's position that it was primarily the City's responsibility to bring the industry into compliance. However, additional documents supplied for the SRF indicated that MDNR finally approached the industry directly by issuing them an NOV on February 20, 2020.

The NOV to Today's Foods dated February 20, 2020 was the proper response for any facility causing interference and or pass through where MDNR is the Control Authority. It should be used as a model for addressing all instances interference/pass through.

It should be noted that in all the inspections and enforcement actions taken in FFY 2019, it was recognized that the industry contributed significantly to the City's noncompliance, but none of the correspondence between the MDNR field office officially copied the MDNR's Pretreatment Program. It should be a matter of routine that whenever an industrial source is involved in any way in a City's noncompliance, the Pretreatment program be notified immediately.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|--|-----------|----------|---------|---------|-------------|
| 10b Enforcement responses reviewed that address violations in an appropriate manner – Pretreatment Program | 100% | | 5 | 8 | 62.5% |

State Response:

Escalation of noncompliance related to pretreatment follows the same progression outlined in the response to Finding 4-1.

Regarding the recommendation/requirement, the Department has already begun making improvement to enforcement of the pretreatment program. This issue is a topic of quarterly pretreatment coordination meetings, where training and discussion occur between the Pretreatment Coordinator and pretreatment inspectors. Additionally, the Pretreatment Coordinator has updated a guidance document that delineates roles and responsibilities for the various team members across the state that deal with implementation and enforcement of the pretreatment program. To build upon these education and training efforts, we will be generating an informational email to distribute to all regions informing them of the Department’s obligation to evaluate compliance with pretreatment regulations at municipalities that do not have approved pretreatment programs. Though such an email may be an immediate response to this issue, the Department recognizes that it will take time to effect changes necessary to properly enforce the program.

The Department’s Pretreatment Coordinator is also working with our Operating Permits Section to generate more robust permitting requirements related to pretreatment. This will assist inspectors in identifying compliance issues and taking appropriate enforcement actions. See the following excerpt from the Permitting Quality Review (PQR) on pretreatment that will better inform and assist inspectors in addressing pretreatment at applicable facilities:

The Industrial Pretreatment Program (IPP) is committed to coordinating with the NPDES Permit Section. We will address this noted deficiency in the new procedure, *“Industries Discharging to POTWs without Approved Programs: NPDES Application Review and Notification Requirements.”* The new procedure will ensure continued coordination, information sharing, technical knowledge transfer, and application completeness. In addition, we propose to update the application form to make clearer the requirements of the pretreatment program and need for the lists of industrial users. In addition to the essential action item, the above procedure will address the recommendations that the Department 1) develop “a way to confirm statements made by cities that no industrial wastes are discharged to them” and 2) “study how to utilize information reported in Part F of the permit application. All information provided on any industrial users should be shared with the Pretreatment Coordinator as a matter of routine.” First, using the search for industries processes noted in the PQR we have incorporated those processes in the above procedure. Second, the procedure will request that

during completeness review the permit writer coordinate with the IPP coordinator when the application lists industries. When the application lists industries, the IPP coordinator will assist the permit writer in notifying the Publicly Owned Treatment Works (POTW) and/or industry of the requirements under the pretreatment program. Depending on the industry, we should include a special condition [and the factsheet] in the permit that acknowledges the presence of industry and that the Department is the control authority over that discharge under 40 CFR 403. As applied in past POTW permits, the special condition could also address problem [food] industries with additional pretreatment-related requirements that protect the POTW from experiencing pass through and interference.

With increased knowledge and understanding, the Department is confident that this issue is already being addressed; however, we feel it will take time to fully educate all inspection staff and incorporate pretreatment compliance evaluations into the normal course of business. Over the next two years, we will attempt to provide five examples of proper inspection and/or enforcement actions related to pretreatment at municipalities where the Department is control authority. If we need more time, we request the flexibility to obtain extensions to the proposed schedule for corrective actions.

EPA RESPONSE TO STATE COMMENTS:

EPA acknowledges the effort that MDNR is undertaking to address the pre-treatment issues found during the SRF review.

Timeframes for completion were adjusted in the writeup.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | 09/30/2023 | <p>MDNR should ensure appropriate application of the Pretreatment regulations are implemented following a Pretreatment inspection. MDNR will provide the following to EPA:</p> <ol style="list-style-type: none"> 1) Submit a response with the first quarterly report to EPA that discusses the how the Pretreatment regulations are being implemented. Discuss changes that need to occur to ensure that MDNR is using its control authority and pursuing enforcement where appropriate. 2) Report to EPA quarterly (January 15, April 15, July 15, and October 15) on the actions taken to address this finding. 3) Provide examples/documentation of 5 pre-treatment inspection/enforcement actions that were completed in FY22/FY23 that adhere to the PACE manual and/or MDNR's pre-treatment control authority. 4) If by September 30, 2023, EPA reviews 5 pre-treatment inspections/enforcement actions and finds that proper follow-up in accordance with the PACE manual and/or MDNR's pre-treatment control authority has been completed at a level of 85% or greater metric finding, this finding will be closed. Otherwise, the recommendation will remain open until the next quarter/fiscal year upon which 5 more pre-treatment inspections/enforcement actions will be reviewed. |

CWA Element 5 - Penalties

Finding 5-1

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

MDNR did not always complete penalty calculations that document and include economic benefit.

Explanation:

Out of the 8 files EPA reviewed, four had information which included economic benefit.

This is a repeat finding from both FY09 and FY13 SRF (Finding 5-1) reviews. As a result of the FY13 SRF review, MDNR developed a penalty matrix worksheet which included a section for economic benefit.

For the FY19 review, one file showed \$1500 for economic benefit but no explanation of how \$1500 was arrived at. For the same case, an updated penalty matrix had “0” for economic benefit and the explanation that economic benefit was negligible. This facility had 50 acres with few controls so it is unlikely that economic benefit costs would be negligible.

Another file reviewed revealed a memo in the file states that shows a gravity penalty of \$1,257,458 was calculated while economic benefit was \$0. For the same file, the solid waste program calculated economic benefit at \$2,652,595 for improper waste disposal. The economic benefit was not included in the penalty. No reason was given for selecting \$0 economic benefit in the penalty matrix.

In another case economic benefit was not considered in the penalty calculation. Statement from the penalty calculation sheet indicated “No penalty modifiers were applied, and no economic benefit was determined”. No justification was provided to explain why no economic benefit was determined.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|---|------------------|-----------------|----------------|----------------|--------------------|
| 11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL] | 100% | | 4 | 8 | 50% |

State Response:

Please reference General Clarification Request No. 3 above. To date, the Department primarily uses the avoided costs of annual permit fees and the avoided costs of sampling to calculate the economic benefit of noncompliance for:

- A. Operating without a permit, which includes facilities that have never been permitted and facilities that fail to renew their permit. Some facilities that fail to renew a permit will continue to pay annual permit fees and submit Discharge Monitoring Reports (DMRs). In that case, those facilities have not gained any economic benefit by operating without a permit.
- B. Facilities that have failed to submit DMRs or have submitted incomplete DMRs.

To be clear, if a facility has an active or administratively continued permit and has not paid annual permit fees for one or more years, that facility’s failure to pay its annual permit fees is a separate liability and is not considered a penalty or economic benefit, making the statute of limitations 5 years. However, if the facility never had a permit or if the permit is expired and not administratively continued, then we would not have sent an invoice for the permit fees and must instead include the avoided costs of fees in the economic benefit component of the penalty. In that event, because the unpaid permit fees are considered a penalty, our statute of

limitations is only 2 years. To calculate the amount owed, we consult the Department's schedule for permit fees and multiply the appropriate permit fee by the number of years that the facility did not pay fees, for up to 2 years.

Additionally, the Department has a spreadsheet that we use to estimate the cost of sampling and analysis for missing DMRs where samples were neither collected nor analyzed. We update the costs used to determine economic benefit by averaging the amounts charged by laboratories across Missouri. When this spreadsheet is used it is attached to the penalty matrix. If EPA can assist the Department in identifying additional factors that could be considered when calculating the economic benefits of noncompliance, we would be happy to consider incorporating those factors into our procedures. The Department strongly believes in the need to maintain a level playing field for businesses, municipalities, and others, who, as part of doing business, operate potential water pollution sources.

The Department's Water Pollution Control Branch has no control or authority over the Department's Waste Management Program and its calculation of economic benefit costs, nor do we have the authority to develop policies for Department-wide application. If we are correctly guessing which multi-media case is referenced in your example, the Water Pollution Control Branch did not have any identifiable economic benefit, however, the Waste Management Program was able to calculate economic benefit related to the tipping costs that were avoided for solid waste that should have been landfilled. The Department has since referred that matter to the Missouri Attorney General's Office, which then filed a lawsuit against the violator to compel compliance and recover penalties, including economic benefit. That lawsuit is ongoing. If this SRF review had been conducted in person, we think that communication between EPA and the Department would have provided a better explanation for the decisions related to this complex multi-media case.

Regarding the recommendation/requirement, the Department feels we have already made the necessary adjustments to address this element. The Excel spreadsheet we use for our Penalty Matrix includes a tab showing how to calculate the economic benefit as well as a section within the final calculation for entry of the total amount of economic benefit. These changes occurred as a result of the previous SRF review. Likewise, the Department provides reasoning within the associated Summary in the Penalty Matrix that outlines the enforcement case. This narrative addresses both the penalty and any economic benefit that may have been added. After this most recent review, staff received additional training on the use of the Penalty Matrix with special emphasis on economic benefit. The Department would like to submit an alternative set of corrective actions for this finding. We propose providing the templates immediately and then submitting five examples of cases that address this element as soon as possible, without having to provide quarterly progress reports.

EPA RESPONSE TO STATE COMMENTS:

EPA requests MDNR consistently use the penalty format that was put in place after the last SRF review (Round 3). Provide justification/rationale when zero is determined to be the economic benefit. Provide justification/rationale on why any of the three exclusions are selected.

Timeframes for completion were adjusted in the SRF writeup.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|--|
| 1 | 09/30/2023 | <p>As a result of the FY13 SRF review, MDNR developed a penalty matrix worksheet that includes a section for economic benefit. MDNR should ensure all staff evaluate, complete, and document their rationale/justification for the economic benefit portion of the penalty matrix. MDNR will provide the following to EPA:</p> <ol style="list-style-type: none"> 1) Report to EPA quarterly (January 15, April 15, July 15, and October 15) on the actions taken to address this finding. 2) By 4/29/22, provide to EPA a penalty matrix form with a revised economic benefit section, which allows for additional space to provide for an explanation/justification as to how economic benefit was determined or why a certain exclusion box was checked/selected. 3) By September 30, 2023, provide examples/documentation of 5 enforcement actions that were completed in FY22-23 that document economic benefit using the revised form. 4) If by September 30, 2023, EPA reviews 5 submitted enforcement actions which document economic benefit was calculated/justified at a level of 85% or greater metric finding, this finding will be closed. Otherwise, the recommendation will remain open until the next quarter/fiscal year upon which 5 more enforcement actions will be reviewed. |

CWA Element 5 - Penalties

Finding 5-2

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

EPA reviewers were not able to locate documentation that explained the difference between the initial and final penalty in the files reviewed.

Explanation:

Out of 8 files EPA reviewed, five had rationale for difference between initial and final penalty, while three did not have any documentation. This is a repeat finding from the FY13 SRF review. As a result of this review, MDNR developed a penalty memo to explain the rationale/change from the initial penalty to the final penalty.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|--|-----------|----------|---------|---------|-------------|
| 12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL] | 100% | | 5 | 8 | 62.5% |

State Response:

The Department acknowledges the need to improve documentation of changes to penalty amounts that occur through internal and external negotiations.

Regarding the recommendation/requirement, the Department feels that we have already made the necessary adjustments to address this element and agrees to the corrective actions outlined in the Draft Report.

EPA RESPONSE TO STATE COMMENTS:

During the September 1, 2021 conference call between MDNR and EPA, MDNR explained that they are not using the penalty memo anymore, but revised the penalty matrix form (inserted a box) in the penalty memo to provide a narrative to document this change. MDNR will submit 5 penalty matrix form writeups that include this documentation as stated in the timeframes in the Recommendation. Broadened writeup to include references to other documentation that MDNR is now using to document changes.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | 09/30/2023 | <p>MDNR developed a penalty memo in response to the FY13 SRF Review. This memo explains the rationale/difference between the initial and final penalty numbers. MDNR should ensure all staff are aware of this format and utilize it to document the rationale between the initial and final penalty.</p> <p>MDNR should ensure that staff are consistently using the penalty memo that was developed in response to the 2013 SRF review. MDNR will provide the following to EPA:</p> <ol style="list-style-type: none">1) By September 30, 2023, provide examples/documentation of 5 enforcement actions to EPA that were completed in FY22-23 that document the rationale (penalty memo) or utilize other documentation for the change from initial to final penalty.2) If by September 30, 2023, EPA reviews 5 MDNR submitted enforcement actions, which include the penalty memo or other documentation (revised penalty matrix form) explaining/justifying the difference between the initial and final penalty at a level of 85% or greater this finding will be closed. Otherwise, the recommendation will remain open until the next quarter/fiscal year upon which 5 more examples of penalty rationale documentation will be reviewed. |

CWA Element 5 - Penalties

Finding 5-3

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

MDNR consistently documents the penalty payment information.

Explanation:

EPA reviewed 8 files for appropriate documentation that penalties have been collected. 7 of 8 files had this documentation (emails, cancelled checks, memos).

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|---|------------------|-----------------|----------------|----------------|--------------------|
| 12b Penalties collected [GOAL] | 100% | | 7 | 8 | 87.5% |

State Response: None

Appendix 1

Missouri Department of Natural Resources' Response Letter



May 20, 2021

David Cozad, Director
Enforcement and Compliance Assurance Division
Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, KS 66219

RE: Comments on the Missouri Clean Water Act Federal Fiscal Year 2019 State Review Framework Draft Report

Dear David Cozad:

Thank you for providing the Missouri Department of Natural Resources the opportunity to review and comment on the Federal Fiscal Year 2019 (FFY19) State Review Framework (SRF) Draft Report. The Department acknowledges the need to improve implementation of compliance activities and appreciates the opportunity to collaborate on refining our enforcement of the National Pollutant Discharge Elimination System program.

The Department provides our responses, comments, and clarification needs below. The following comments are formatted to follow the structure of the Clean Water Act (CWA) Findings section of the Draft Report in an effort to ease Environmental Protection Agency's (EPA's) review. Only those elements that the Department had comments on are addressed. The Department requests that EPA supply a revised Draft Report for review prior to issuing a final report.

State and EPA key contacts for review:

The Department requests that EPA add the following individuals to the list of key contacts for review found on page 4 of the report.

- Joel Reschly, Department of Natural Resources, Legal Counsel, General Counsel's Office
- Ed Galbraith, Department of Natural Resources, Director, Division of Environmental Quality

Additionally please correct the spelling of Kristi Savage-Clarke's last name and her position title to Environmental Program Manager.



General Clarification Request No. 1

The Department would like to understand the origin of the metrics evaluated in the Draft Report so that we can begin to better align strategy and implementation with federal expectations. In the introduction sections of the report, EPA explains that it uses “a standardized set of metrics to evaluate [delegated states’] performance against performance standards laid out in federal statute, EPA regulations, policy, and guidance.” The Department requests that the report include citations to the specific federal statutes, regulations, policies, and guidance documents that contain or describe these performance standards.

General Clarification Request No. 2

The Department has a general request that will help us understand the areas of attention and improvement better so that we can make appropriate adjustments in the coming years. For Findings 1-1, 1-2, 2-4, 4-1, 4-2, and 5-1, we request that EPA provide a list of the files/facilities you reviewed and indicate whether or not they met performance expectations. For all Findings listed above except for Finding 4-2, we further request that EPA select and provide three specific examples from each of the lists to help provide further context and understanding.

General Comment No. 1

Thank you for the useful observations regarding adherence to the Department’s Procedures for Assistance, Compliance and Enforcement (PACE) Manual. We will address these as appropriate. However, we disagree that these observations should be included as SRF “findings,” as the PACE Manual itself is not a federal law, rule, policy, or guidance. The majority of the procedures in the PACE Manual are internal guidance to assist Department staff in carrying out their duties. For the most part, it does not establish strict standards of performance, but guidance that offers flexibilities allowing staff to respond appropriately in a variety of scenarios. The Department reserves the right to deviate from guidance as conditions warrant. Therefore, the PACE Manual is only relevant to the SRF to the extent EPA is evaluating whether the guidance in the PACE Manual itself is consistent with federal standards, such as retention of field notes.

General Comment No. 2

The EPA has clarified that all the recommendations listed under each element rated as an Area for Improvement are in fact required actions. The Department requests that the language be changed to reflect that these corrective actions are “required” rather than “recommended.” Consistent with our request above, we would ask that if there is federal statute, regulation, and/or policy that requires the element or corrective actions, please note that under each Area of Improvement so that the report is clear as to the difference between required actions and recommendations.

Additionally, the Department would like flexibility to reevaluate efforts to achieve milestones and make appropriate adjustments to goals and/or extensions to timelines in response to unforeseen barriers.

CWA Element 1 – Data

Finding 1-2

Please reference General Clarification Request Nos. 1 and 3 above. Without a detailed list of what was missing, we cannot determine whether the missing data was a data entry failure or a rejection from the Integrated Compliance Information System (ICIS).

As EPA is aware, Missouri is a batch data submission state and there are still data transfer issues between our Missouri Clean Water Information System (MoCWIS) and EPA's ICIS/Enforcement and Compliance History Online. We are still experiencing rejection of some data during batching. The Department appreciates EPA providing additional access to its data contractor, Windsor Solutions. Windsor has run another analysis based on some data identifying specific groups of data rejected by ICIS.

Regarding consistent identification of single-event violations (SEVs) as either significant noncompliance (SNC) or non-SNC, the Department believes that EPA's expectations may not be within the Department's reach. Although MoCWIS is transferring SEVs to ICIS, the Department is still unable to identify which SEVs are SNC in MoCWIS. One complicating factor is that EPA's [Single Event Violation Data Entry Guide for ICIS-NPDES](#) does not identify which of the 168 SEVs should be considered SNC. Another complication is that the Department will need to make significant enhancements to MoCWIS in order to meet this expectation. Compounding those issues further, it's the Department's understanding that ICIS itself does not have the functionality to identify that an SEV is SNC and could not accept that data from MoCWIS even if we were able to enhance the database.

If EPA continues to require that the Department meet this expectation, we ask that EPA provide the following resources: 1) training on SEVs, particularly regarding which SEVs are SNC and how to identify them in the field; 2) enhancement to ICIS in order to accept SEV SNC records; and 3) ongoing assistance to the Department in overcoming unforeseen barriers that may arise during fulfillment of this obligation. The time commitment necessary to either enhance the Department's MoCWIS database or manually enter SEV data into ICIS would greatly reduce the Department's ability to complete enforcement actions.

Regarding the recommended/required milestones, the Department is hesitant to commit to any schedule for corrective action until we better understand the data discrepancies resulting in EPA's finding for this element.

CWA Element 2 – Inspections

Finding 2-3

Please reference General Clarification Request No. 1 and General Comment No. 1 above. As noted in EPA's report, our PACE Manual contains the current procedure for disposition of field notes. At this time, a legal review of our field note retention policy is not scheduled. If the current policy does not meet federal law, please provide that information. Otherwise, we request EPA withdraw the recommendation on this finding.

Finding 2-4

Please reference General Comment No. 1 above. Department staff understand that the goal is for reports to be issued within 30 days of the inspection. The use of the terms "completion" and "transmittal" is less clear. We suggest using the term "issuance" throughout the explanation of the finding.

As additional background, the Department operates within regional boundaries, with each region having its own review, approval, and issuance process for inspection reports. One of the Department's regions, Central Field Operations, is new and does not yet have a complete team. Lack of supervisors in that region resulted in increased delays in processing of inspection reports. This likely contributed to a number of reports being issued more than 30 days after inspection. However, it is acceptable for inspectors to exceed the 30-day goal in certain situations per Section 4.1 of the PACE Manual: "If staff anticipates the report cannot be written, administratively reviewed, and mailed within 30 days of the completion of the field activity, notice and justification must be provided to supervisory staff."

CWA Element 4 – Enforcement

Finding 4-1

Please reference General Clarification Request Nos. 1 and 3 and General Comment No. 1 above.

Regarding the comment on proper enforcement response, the PACE Manual is general guidance that allows staff to deviate from standard procedures in situations that require case-by-case evaluations, as outlined in Section 1 on page 1 of the PACE Manual. As a result, the PACE Manual offers flexibilities to use enforcement discretion on which type of informal enforcement action is appropriate, if any. The Department considers the factors around the case when determining whether or not an official letter is appropriate. Some circumstances warrant deviations from the procedure outlined in the PACE Manual. Note that violations can be referred for formal enforcement action immediately if there is a direct threat to human health or the environment, such as a discharge resulting in a fish kill or a spill involving a toxic substance.

With regard to EPA's comment on the number of formal enforcement actions, while it is true that the number of formal enforcement actions has decreased between 2015 and 2019, it is also

true that the number of active enforcement cases decreased from 571 to 433 cases. This is by design, to a significant degree, because just as EPA shifted from National Enforcement Initiatives to National Compliance Initiatives, the Department also adopted a policy of increased emphasis on compliance assistance. Compliance assistance requires much more interaction with the responsible party prior to issuance of informal or formal enforcement actions. If we can correct the violations before they rise to the level of SNC, we also reduce the need for formal enforcement actions. Should the Department's compliance assistance efforts not result in compliance, the case is escalated through a series of steps, regardless of the severity of the violation(s). This progression starts with an Unsatisfactory Finding Letter or a Letter of Warning (LOW), followed by a Notice of Violation (NOV), then a Referral Notice of Violation, and finally, formal enforcement action. Multiple LOWs or NOVs may be issued prior to escalating to the next level of enforcement action. There is one exception to this rule, in which violations can be referred to enforcement immediately if there is a direct threat to human health or the environment, such as a discharge resulting in a fish kill.

In addition, enforcement staff have been asked to put extensive effort into EPA's SNC National Compliance Initiative. Effectively addressing SNC requires a balance of enforcement and compliance assistance. The Department feels that increasing compliance assistance activities better aligns with the EPA's 2018 to 2022 Strategic Plan to emphasize compliance assistance efforts. This better conveys the message that increased compliance is the goal and that enforcement actions are not the only tool for achieving compliance.

The Department is committed to taking all appropriate enforcement actions while increasing compliance assistance activities, within the constraints of finite staffing resources. It is a question of the balance that will yield the greatest compliance. The Water Pollution Control Branch's Compliance and Enforcement Section had 432 enforcement cases in FFY19. This resulted in an average of over 58 cases for each case manager. Even supervisors handle a number of cases to distribute the burden.

Another factor is the significant turnover during this time period as the Section Chief, one Unit Chief, and four case managers retired or left the section in late 2018 or 2019.

Additionally, in 2018 and 2019, the Department has increased its emphasis on quality and consistency in enforcement actions. Producing higher-quality enforcement actions and increasing consistency across the different environmental media is providing long-term benefits, but the process of adjustment required significant focus and time.

Regarding the recommendation/requirement, prior to committing to a corrective action schedule, the Department would like to understand how EPA came to its finding for this element. We would like to see the examples where the escalation was deemed inadequate according to EPA. This will help us either provide better explanations for decisions that may appear to deviate from the PACE Manual, or make appropriate adjustments.

Finding 4-2

Escalation of noncompliance related to pretreatment follows the same progression outlined in the response to Finding 4-1.

Regarding the recommendation/requirement, the Department has already begun making improvement to enforcement of the pretreatment program. This issue is a topic of quarterly pretreatment coordination meetings, where training and discussion occur between the Pretreatment Coordinator and pretreatment inspectors. Additionally, the Pretreatment Coordinator has updated a guidance document that delineates roles and responsibilities for the various team members across the state that deal with implementation and enforcement of the pretreatment program. To build upon these education and training efforts, we will be generating an informational email to distribute to all regions informing them of the Department's obligation to evaluate compliance with pretreatment regulations at municipalities that do not have approved pretreatment programs. Though such an email may be an immediate response to this issue, the Department recognizes that it will take time to effect changes necessary to properly enforce the program.

The Department's Pretreatment Coordinator is also working with our Operating Permits Section to generate more robust permitting requirements related to pretreatment. This will assist inspectors in identifying compliance issues and taking appropriate enforcement actions. See the following excerpt from the Permitting Quality Review (PQR) on pretreatment that will better inform and assist inspectors in addressing pretreatment at applicable facilities:

The Industrial Pretreatment Program (IPP) is committed to coordinating with the NPDES Permit Section. We will address this noted deficiency in the new procedure, "*Industries Discharging to POTWs without Approved Programs: NPDES Application Review and Notification Requirements.*" The new procedure will ensure continued coordination, information sharing, technical knowledge transfer, and application completeness. In addition, we propose to update the application form to make clearer the requirements of the pretreatment program and need for the lists of industrial users. In addition to the essential action item, the above procedure will address the recommendations that the Department 1) develop "a way to confirm statements made by cities that no industrial wastes are discharged to them" and 2) "study how to utilize information reported in Part F of the permit application. All information provided on any industrial users should be shared with the Pretreatment Coordinator as a matter of routine." First, using the search for industries processes noted in the PQR we have incorporated those processes in the above procedure. Second, the procedure will request that during completeness review the permit writer coordinate with the IPP coordinator when the application lists industries. When the application lists industries, the IPP coordinator will assist the permit writer in notifying the Publicly Owned Treatment Works (POTW) and/or industry of the requirements under the

pretreatment program. Depending on the industry, we should include a special condition [and the factsheet] in the permit that acknowledges the presence of industry and that the Department is the control authority over that discharge under 40 CFR 403. As applied in past POTW permits, the special condition could also address problem [food] industries with additional pretreatment-related requirements that protect the POTW from experiencing pass through and interference.

With increased knowledge and understanding, the Department is confident that this issue is already being addressed; however, we feel it will take time to fully educate all inspection staff and incorporate pretreatment compliance evaluations into the normal course of business. Over the next two years, we will attempt to provide five examples of proper inspection and/or enforcement actions related to pretreatment at municipalities where the Department is control authority. If we need more time, we request the flexibility to obtain extensions to the proposed schedule for corrective actions.

CWA Element 5 – Penalties

Finding 5-1

Please reference General Clarification Request No. 3 above. To date, the Department primarily uses the avoided costs of annual permit fees and the avoided costs of sampling to calculate the economic benefit of noncompliance for:

- A. Operating without a permit, which includes facilities that have never been permitted and facilities that fail to renew their permit. Some facilities that fail to renew a permit will continue to pay annual permit fees and submit Discharge Monitoring Reports (DMRs). In that case, those facilities have not gained any economic benefit by operating without a permit.
- B. Facilities that have failed to submit DMRs or have submitted incomplete DMRs.

To be clear, if a facility has an active or administratively continued permit and has not paid annual permit fees for one or more years, that facility's failure to pay its annual permit fees is a separate liability and is not considered a penalty or economic benefit, making the statute of limitations 5 years. However, if the facility never had a permit or if the permit is expired and not administratively continued, then we would not have sent an invoice for the permit fees and must instead include the avoided costs of fees in the economic benefit component of the penalty. In that event, because the unpaid permit fees are considered a penalty, our statute of limitations is only 2 years. To calculate the amount owed, we consult the Department's schedule for permit fees and multiply the appropriate permit fee by the number of years that the facility did not pay fees, for up to 2 years.

Additionally, the Department has a spreadsheet that we use to estimate the cost of sampling and analysis for missing DMRs where samples were neither collected nor analyzed. We update the costs used to determine economic benefit by averaging the amounts charged by laboratories across Missouri. When this spreadsheet is used it is attached to the penalty matrix. If EPA can assist the Department in identifying additional factors that could be considered when calculating the economic benefits of noncompliance, we would be happy to consider incorporating those factors into our procedures. The Department strongly believes in the need to maintain a level playing field for businesses, municipalities, and others, who, as part of doing business, operate potential water pollution sources.

The Department's Water Pollution Control Branch has no control or authority over the Department's Waste Management Program and its calculation of economic benefit costs, nor do we have the authority to develop policies for Department-wide application. If we are correctly guessing which multi-media case is referenced in your example, the Water Pollution Control Branch did not have any identifiable economic benefit, however, the Waste Management Program was able to calculate economic benefit related to the tipping costs that were avoided for solid waste that should have been landfilled. The Department has since referred that matter to the Missouri Attorney General's Office, which then filed a lawsuit against the violator to compel compliance and recover penalties, including economic benefit. That lawsuit is ongoing. If this SRF review had been conducted in person, we think that communication between EPA and the Department would have provided a better explanation for the decisions related to this complex multi-media case.

Regarding the recommendation/requirement, the Department feels we have already made the necessary adjustments to address this element. The Excel spreadsheet we use for our Penalty Matrix includes a tab showing how to calculate the economic benefit as well as a section within the final calculation for entry of the total amount of economic benefit. These changes occurred as a result of the previous SRF review. Likewise, the Department provides reasoning within the associated Summary in the Penalty Matrix that outlines the enforcement case. This narrative addresses both the penalty and any economic benefit that may have been added. After this most recent review, staff received additional training on the use of the Penalty Matrix with special emphasis on economic benefit. The Department would like to submit an alternative set of corrective actions for this finding. We propose providing the templates immediately and then submitting five examples of cases that address this element as soon as possible, without having to provide quarterly progress reports.

Finding 5-2

The Department acknowledges the need to improve documentation of changes to penalty amounts that occur through internal and external negotiations.

David Cozad
Page 9

Regarding the recommendation/requirement, the Department feels that we have already made the necessary adjustments to address this element and agrees to the corrective actions outlined in the Draft Report.

Appendix

The final page of the Draft Report has an Appendix title but it is unclear as to whether or not there are other findings or supplemental information that we should be reviewing as well.

If you have any questions regarding the response or would like to schedule a video conference to discuss the Draft Report, please contact Kristi Savage-Clarke by phone at 573-522-4506; by email at kristi.savage-clarke@dnr.mo.gov; or by mail at Department of Natural Resources, Water Protection Program, Compliance and Enforcement Section, P.O. Box 176, Jefferson City, MO 65102-0176. Thank you.

Sincerely,

WATER PROTECTION PROGRAM

Chris Wieberg

Chris Wieberg
Director

CW/lcc

Appendix 2

EPA Response to Missouri Department of Natural Resources' Comments

EPA Region 7 appreciates MDNR's responses to the draft SRF report. EPA's responses are provided below. EPA will make the additions/correction to the report as specified below.

Thank you for providing the Missouri Department of Natural Resources the opportunity to review and comment on the Federal Fiscal Year 2019 (FFY19) State Review Framework (SRF) Draft Report. The Department acknowledges the need to improve implementation of compliance activities and appreciates the opportunity to collaborate on refining our enforcement of the National Pollutant Discharge Elimination System program.

The Department provides our responses, comments, and clarification needs below. The following comments are formatted to follow the structure of the Clean Water Act (CWA) Findings section of the Draft Report in an effort to ease Environmental Protection Agency's (EPA's) review. Only those elements that the Department had comments on are addressed. The Department requests that EPA supply a revised Draft Report for review prior to issuing a final report.

State and EPA key contacts for review:

The Department requests that EPA add the following individuals to the list of key contacts for review found on page 4 of the report.

- Joel Reschly, Department of Natural Resources, Legal Counsel, General Counsel's Office
- Ed Galbraith, Department of Natural Resources, Director, Division of Environmental Quality

Additionally, please correct the spelling of Kristi Savage-Clarke's last name and her position title to Environmental Program Manager.

EPA has made these additions and corrections to the report.

EPA Draft SRF Report Finding
MDNR Comment on the draft SRF Report
EPA Response to MDNR comments

GENERAL COMMENTS

General Clarification Request No. 1

The Department would like to understand the origin of the metrics evaluated in the Draft Report so that we can begin to better align strategy and implementation with federal expectations. In the introduction sections of the report, EPA explains that it uses “a standardized set of metrics to evaluate [delegated states’] performance against performance standards laid out in federal statute, EPA regulations, policy, and guidance.” The Department requests that the report include citations to the specific federal statutes, regulations, policies, and guidance documents that contain or describe these performance standards.

EPA Response:

The SRF is an established process that was developed and has been in use since 2004 and was used in previous SRF reviews with Missouri. EPA and ECOS worked in collaboration to develop this framework. For additional information, EPA refers MDNR to the SRF guidance document “Clean Water Act Metrics Plain Language Guide (State Review Framework Round 4)” which was provided in the Kickoff Letter sent to MDNR, dated March 31, 2020. The Clean Water Act Metrics Plain Language Guide describes in detail the SRF process, metrics used and provide links to various applicable policy/guidance.

No change to the report.

General Clarification Request No. 2

The Department has a general request that will help us understand the areas of attention and improvement better so that we can make appropriate adjustments in the coming years. For Findings 1-1, 1-2, 2-4, 4-1, 4-2, and 5-1, we request that EPA provide a list of the files/facilities you reviewed and indicate whether or not they met performance expectations. For all Findings listed above except for Finding 4-2, we further request that EPA select and provide three specific examples from each of the lists to help provide further context and understanding.

EPA Response:

Please refer to email sent 7/2/2021 which includes the File review final Calc Sheet excel file which lists whether certain files met performance expectations. Also attached was a summary file showing the metric 2b data issues found in certain files. Other examples to address your questions will be discussed with MDNR as detailed below:

Finding 1-1 was determined to be Meets or Exceeds. MDNR can pull these data metrics (1b5 and 1b6) from ECHO if they would like additional information.

Finding 1-2 was determined to be an Area for Improvement (Metric 1b2, data accurately reflected in National Data System). See excel spreadsheet for more information which lists issues found with various facilities. The SEV portion of this finding was discussed on September 1, 2021 with MDNR staff and generally follows the recommendation from Headquarters (see email sent to MDNR on 7/21/21). Changes will be made to finding 1-2 in the report to reflect this information.

Finding 2-4 was determined to be an Area for Attention (Metric 6b, Timeliness of inspection report completions). See excel spreadsheet for more information.

Finding 4-1 was determined to be an Area for Improvement (Metric 9a enforcement action bringing a facility back into compliance) and Metric 10b (Enforcement responses reviewed that address violations in an appropriate manner). See excel spreadsheet for more information. A conference call was held on 9/1/2021 with MDNR staff to go over the three examples for both Metric 9a and 10b.

Finding 4-2 was determined to be an Area for Improvement (Metric 10b, pretreatment). Three examples were already provided in the writeup. See excel spreadsheet for more information.

Finding 5-1 was determined to be an area for Improvement (Metric 11a, Penalty calculations that document and include gravity and economic benefit). See excel spreadsheet for more information. A conference call was held on 9/1/2021 with MDNR staff to go over the three examples.

General Comment No. 1

Thank you for the useful observations regarding adherence to the Department's Procedures for Assistance, Compliance and Enforcement (PACE) Manual. We will address these as appropriate. However, we disagree that these observations should be included as SRF "findings," as the PACE Manual itself is not a federal law, rule, policy, or guidance. The majority of the procedures in the PACE Manual are internal guidance to assist Department staff in carrying out their duties. For the most part, it does not establish strict standards of performance, but guidance that offers flexibilities allowing staff to respond appropriately in a variety of scenarios. The Department reserves the right to deviate from guidance as conditions warrant. Therefore, the PACE Manual is only relevant to the SRF to the extent EPA is evaluating whether the guidance in the PACE Manual itself is consistent with federal standards, such as retention of field notes.

EPA Response:

As EPA has done in past SRF reviews with MDNR, we believe it is appropriate to use the inspection/enforcement manual that MDNR has in place at the time of the review. In this case, the MDNR's PACE manual was used as the reference point in evaluating the State's enforcement program as the PACE manual sets forth timeframes for various activities such as inspection transmittals, enforcement escalation etc. The PACE manual was developed to meet the criteria set forth below and forms the basis for a robust enforcement management system. This is standard practice for EPA to review the governing documents when a state is evaluated under the SRF program. The PACE manual was created in response to previous SRF comments (previous state improvement item from Round 3) and to improve MDNR's

enforcement and compliance program. The EPA used this SRF as a follow-up to determine how the PACE manual has impacted MDNR's activities. Delegated state programs must meet certain requirements. Please see the following criteria for additional information:

Please refer to the Enforcement Response Guide beginning on page 55 of The Enforcement Management System, National Pollutant Discharge Elimination System (Clean Water Act), U.S. Environmental Protection Agency, Office Of Water 1989, <https://www.epa.gov/sites/default/files/2020-10/documents/emsnpdes-cwa.pdf>, for details/explanation regarding the appropriate enforcement response for a particular type of violation.

Guidance for SNC at majors: *Please refer to page 85 (Attachment B Enforcement Response Guide) of the above-referenced document of the EMS to determine whether an enforcement action taken to address SNC is appropriate:*

Please see page 86 "All SNC violations must be responded to in a timely and appropriate manner by administering agencies. . . The responses should reflect the nature and severity of the violation, and unless there is supportable justification, the response must be a formal action (as defined in Chapter 11, Principle No. 5, page 23), or a return to compliance by the permittee generally within one quarter from the date that the SNC violation is first reported on the QNCR. Administering agencies are expected to take a formal enforcement action before the violation appears on the second QNCR, generally within 60 days of the first QNCR. If the approved State does not act before the second QNCR, the State should expect U.S. EPA to take a formal enforcement action. In the rare circumstances when formal enforcement action is not taken, the administering agency is expected to have a written record that clearly justifies why the alternative action (informal enforcement action or permit modification) was more appropriate. This record may take the form of a "Violation Summary" included in this document as Attachment C".

Referring to the Memorandum of Agreement (MOU) between EPA and MDNR (Final dated December 14th, 2016), Section III, Paragraph A (MDNR Responsibilities), page 2, "MDNR shall exercise the legal authority through MDNR regulations and the state statutes required by the CWA and, to the maximum extent possible, maintain the resources required to carry out all aspects of the authorized NPDES and Pretreatment Programs".

Section V. Compliance Evaluation and Permit Enforcement, D. Enforcement Response, 1, (Page 8), "MDNR shall be responsible for taking timely and appropriate action in accordance with 40 CFR 123.27 against persons in violation of NPDES program requirements (illegal discharges, effluent limitations, pretreatment requirements, compliance schedules, reporting requirements, and other permit conditions.... Furthermore #2 States that "MDNR will develop and maintain written enforcement procedures that establish at a minimum a) A process for determining the appropriate level of action for specific categories of violation; 3) MDNR shall be able to demonstrate that its enforcement response procedures results in a) Appropriate initial and follow-up enforcement actions that are applied in a timely manner; b) Formal enforcement actions, when appropriate, that require actions to achieve compliance, specify and timetable,

contain consequences for noncompliance that are independently enforceable and that subject the violator to adverse legal consequences for noncompliance”.

EPA’s position is that the PACE manual forms the basis for MDNR’s enforcement program and is relevant to the SRF findings.

No change to the report.

General Comment No. 2

The EPA has clarified that all the recommendations listed under each element rated as an Area for Improvement are in fact required actions. The Department requests that the language be changed to reflect that these corrective actions are “required” rather than “recommended.” Consistent with our request above, we would ask that if there is federal statute, regulation, and/or policy that requires the element or corrective actions, please note that under each Area of Improvement so that the report is clear as to the difference between required actions and recommendations.

Additionally, the Department would like flexibility to reevaluate efforts to achieve milestones and make appropriate adjustments to goals and/or extensions to timelines in response to unforeseen barriers.

EPA Response:

As EPA clarified before with discussions with MDNR staff, any areas which were found to be “Area for Improvement” are required to be addressed. The SRF template used was developed and has been in use for some time in consultation with ECOs. EPA suggests MDNR work through ECOs to potentially change heading language in the template for the next round of reviews. As referenced above, the Clean Water Act Metrics Plain Language Guide contains additional information on the SRF process and links to applicable guidance/policy documents.

No changes to template or text.

CWA Element 1 – Data

Finding 1-2

Please reference General Clarification Request Nos. 1 and 3 above. Without a detailed list of what was missing, we cannot determine whether the missing data was a data entry failure or a rejection from the Integrated Compliance Information System (ICIS).

As EPA is aware, Missouri is a batch data submission state and there are still data transfer issues between our Missouri Clean Water Information System (MoCWIS) and EPA’s ICIS/Enforcement and Compliance History Online. We are still experiencing rejection of some data during batching. The Department appreciates EPA providing additional access to its data contractor, Windsor Solutions. Windsor has run another analysis based on some data

identifying specific groups of data rejected by ICIS.

Regarding consistent identification of single-event violations (SEVs) as either significant noncompliance (SNC) or non-SNC, the Department believes that EPA's expectations may not be within the Department's reach. Although MoCWIS is transferring SEVs to ICIS, the Department is still unable to identify which SEVs are SNC in MoCWIS. One complicating factor is that EPA's [Single Event Violation Data Entry Guide for ICIS-NPDES](#) does not identify which of the 168 SEVs should be considered SNC. Another complication is that the Department will need to make significant enhancements to MoCWIS in order to meet this expectation. Compounding those issues further, it's the Department's understanding that ICIS itself does not have the functionality to identify that an SEV is SNC and could not accept that data from MoCWIS even if we were able to enhance the database.

If EPA continues to require that the Department meet this expectation, we ask that EPA provide the following resources: 1) training on SEVs, particularly regarding which SEVs are SNC and how to identify them in the field; 2) enhancement to ICIS in order to accept SEV SNC records; and 3) ongoing assistance to the Department in overcoming unforeseen barriers that may arise during fulfillment of this obligation. The time commitment necessary to either enhance the Department's MoCWIS database or manually enter SEV data into ICIS would greatly reduce the Department's ability to complete enforcement actions.

Regarding the recommended/required milestones, the Department is hesitant to commit to any schedule for corrective action until we better understand the data discrepancies resulting in EPA's finding for this element.

EPA response;

EPA provided a list of 2b metrics where data discrepancies/errors were found on July 2, 2021 (email sent to MDNR).

After consulting with EPA Headquarters regarding ICIS's capabilities and SEV codes, EPA proposes to use the Headquarter's guidance on SEVs, SNC. Headquarter's guidance was sent to MDNR staff on July 21, 2021 which provides a description for entering SEVs/SNC. A Follow-up discussion was held on Sept 1, 2021 with MDNR staff to discuss this guidance.

In regards to training, EPA headquarters provided SEV training on June 14, 2021. The slides from this training along with Headquarter's instruction on entering SEVs/SNC was sent to MDNR staff on July 21, 2021. EPA Headquarter's confirmed that ICIS can handle SEV codes and SNC. EPA Headquarters and Region 7's will continue to provide training and assistance for data issues as needed.

This SRF finding has been revised to reference EPA Headquarter's solution/explanation as detailed in email sent to MDNR staff on July 21, 2021. Completion dates have been extended.

CWA Element 2 – Inspections

Finding 2-3

Please reference General Clarification Request No. 1 and General Comment No. 1 above. As noted in EPA’s report, our PACE Manual contains the current procedure for disposition of field notes. At this time, a legal review of our field note retention policy is not scheduled. If the current policy does not meet federal law, please provide that information. Otherwise, we request EPA withdraw the recommendation on this finding.

EPA Response:

EPA continues to recommend that MoDNR conduct a legal review to determine the proper procedure for disposition of field notes, checklists, and any other materials to ensure consistency with state and federal law. EPA has concerns as to whether the disposal of these records is meeting federal and state record keeping/retention requirements as described below. We question if it is appropriate to dispose of inspection notes/checklists that are not otherwise captured in some other format. Please see the following:

EPA notes that a record in the State of Missouri is defined by RSMo [109.210](#), and argues that “field notes” and “checklists” as part of an inspection meets this state definition because these are documents made in the transaction of official business.

(5) "Record", document, book, paper, photograph, map, sound recording or other material, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of official business. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in sections 109.200 to 109.310, and are hereinafter designated as "non record" materials."

It is important to note that often the determination of a record can reflect on the documents purpose, value, and adequacy of that document. In this instance, EPA concludes that field notes/checklists are purposefully made to support legal determinations of compliance with Missouri environmental law (and often federal environmental law) and may later function as evidence to support such conclusions.

Given EPA’s conclusion that field notes and checklists are likely a “record” for purposes of state law, EPA, as part of this review and finding, evaluated the disposition of field notes, checklists to determine if these documents are consistent with EPA regulations. 40 CFR § 123.26 states, “(a) State programs shall have procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of permittees and other regulated persons (and for investigation for possible enforcement of failure to submit these notices and reports)”.

Additionally, the NPDES Compliance Inspection Manual EPA Publication Number 305-K-17-001 Interim Revised Version, January 2017, Chapter 2.E Inspection Procedures-Documentation, includes the following:

Inspector's Field Notebook- "Notebooks become an important part of the evidence package and can be admissible in court. The field notebook is a government record and subject to record retention schedules".

Further in the same section under Documents and Digital images- "All documents taken or prepared by the inspector such as completed checklists for the inspection report should be noted and related to specific inspection activities".

Finally, relevant sections from the Memorandum of Agreement between EPA and MDNR dated December 14th, 2016, include the following:

Section V. Compliance Evaluation and Permit Enforcement, Section B. Compliance Review, "MDNR shall conduct timely and substantive reviews and keep complete records of all material relating to compliance status of entities subject to regulation under the NPDES program, including but not limited to, Compliance Schedule Reports, Discharge monitoring reports, Compliance Inspection Reports, and any other reports that entities may be required to submit under the terms and conditions of an NPDES permit, approved Pretreatment Program, administrative order or judicial enforcement action."

Section V. Compliance Evaluation and Permit Enforcement, Section D, Enforcement Response, 3. MDNR shall be able to demonstrate that its enforcement response procedures result in: d, "Compilation of complete and accurate records that can be used in future enforcement actions."

It is EPA's opinion that field notes, checklists meet the definition of a record in the State of Missouri and EPA regulations and should be preserved. EPA's opinion is that field notes and checklists that are made or received pursuant to law or in connection with the transaction of official business would be considered records.

Completion dates have been extended.

Finding 2-4

Please reference General Comment No. 1 above. Department staff understand that the goal is for reports to be issued within 30 days of the inspection. The use of the terms "completion" and "transmittal" is less clear. We suggest using the term "issuance" throughout the explanation of the finding.

As additional background, the Department operates within regional boundaries, with each region having its own review, approval, and issuance process for inspection reports. One of the Department's regions, Central Field Operations, is new and does not yet have a complete team. Lack of supervisors in that region resulted in increased delays in processing of inspection reports. This likely contributed to a number of reports being issued more than 30

days after inspection. However, it is acceptable for inspectors to exceed the 30-day goal in certain situations per Section 4.1 of the PACE Manual: “If staff anticipates the report cannot be written, administratively reviewed, and mailed within 30 days of the completion of the field activity, notice and justification must be provided to supervisory staff.”

EPA Response:

This was found to be an Area of Attention and therefore no additional follow-up is planned by EPA. We encourage MDNR to follow the PACE manual and strive to complete/issue the inspection reports in 30 days or less.

No changes will be made to the current text.

CWA Element 4 – Enforcement

Finding 4-1

Please reference General Clarification Request Nos. 1 and 3 and General Comment No. 1 above.

Regarding the comment on proper enforcement response, the PACE Manual is general guidance that allows staff to deviate from standard procedures in situations that require case-by-case evaluations, as outlined in Section 1 on page 1 of the PACE Manual. As a result, the PACE Manual offers flexibilities to use enforcement discretion on which type of informal enforcement action is appropriate, if any. The Department considers the factors around the case when determining whether or not an official letter is appropriate. Some circumstances warrant deviations from the procedure outlined in the PACE Manual. Note that violations can be referred for formal enforcement action immediately if there is a direct threat to human health or the environment, such as a discharge resulting in a fish kill or a spill involving a toxic substance.

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Additionally, in 2018 and 2019, the Department has increased its emphasis on quality and consistency in enforcement actions. Producing higher-quality enforcement actions and increasing consistency across the different environmental media is providing long-term benefits, but the process of adjustment required significant focus and time.

Regarding the recommendation/requirement, prior to committing to a corrective action schedule, the Department would like to understand how EPA came to its finding for this element. We would like to see the examples where the escalation was deemed inadequate according to EPA. This will help us either provide better explanations for decisions that may appear to deviate from the PACE Manual, or make appropriate adjustments.

EPA understands the need for enforcement discretion. However, the deviations from the PACE manual noted in the files reviewed were substantial. EPA discussed 3 examples related to this finding with MDNR staff on September 1, 2021. Most noteworthy were files where the inspection noted a sheen or some other serious violation and an "Unsatisfactory letter" or "Letter of Warning" was issued to the facility as follow-up. These were clear level one violations, but the follow-up was not commensurate with the violation found. As the PACE manual states in Section 4.5-Noncompliance Process, Violation Groups (Page 1) "Group 1 violations are the most serious and significant impacts or threats to human health and the environment". The manual goes on to states that "These violations must be addressed through the issuance of a Referral Notice of Violation (RNOV) and by immediate referral for program enforcement action".

Timeframes for completion were adjusted in SRF writeup.

Finding 4-2

Escalation of noncompliance related to pretreatment follows the same progression outlined in the response to Finding 4-1.

Regarding the recommendation/requirement, the Department has already begun making improvement to enforcement of the pretreatment program. This issue is a topic of quarterly pretreatment coordination meetings, where training and discussion occur between the Pretreatment Coordinator and pretreatment inspectors. Additionally, the Pretreatment Coordinator has updated a guidance document that delineates roles and responsibilities for the various team members across the state that deal with implementation and enforcement of the pretreatment program. To build upon these education and training efforts, we will be generating an informational email to distribute to all regions informing them of the Department's obligation to evaluate compliance with pretreatment regulations at municipalities that do not have approved pretreatment programs. Though such an email may be an immediate response to this issue, the Department recognizes that it will take time to effect changes necessary to properly enforce the program.

The Department's Pretreatment Coordinator is also working with our Operating Permits Section to generate more robust permitting requirements related to pretreatment. This will assist inspectors in identifying compliance issues and taking appropriate enforcement actions. See the following excerpt from the Permitting Quality Review (PQR) on pretreatment that will better inform and assist inspectors in addressing pretreatment at applicable facilities:

The Industrial Pretreatment Program (IPP) is committed to coordinating with the NPDES Permit Section. We will address this noted deficiency in the new procedure, *"Industries Discharging to POTWs without Approved Programs: NPDES Application Review and Notification Requirements."* The new procedure will ensure continued coordination, information sharing, technical knowledge transfer, and application completeness. In addition, we propose to update the application form to make clearer the requirements of the pretreatment program and need for the lists of industrial users. In addition to the essential action item, the above procedure will address the recommendations that the Department 1) develop "a way to confirm statements made by cities that no industrial wastes are discharged to them" and 2) "study how to utilize information reported in Part F of the permit application. All information provided on any industrial users should be shared with the Pretreatment Coordinator as a matter of routine." First, using the search for industries processes noted in the PQR we have incorporated those processes in the above procedure. Second, the procedure will request that during completeness review the permit writer coordinate with the IPP coordinator when the application lists industries. When the application lists industries, the IPP coordinator will assist the permit writer in notifying the Publicly Owned Treatment Works (POTW) and/or industry of the requirements under the

pretreatment program. Depending on the industry, we should include a special condition [and the factsheet] in the permit that acknowledges the presence of industry and that the Department is the control authority over that discharge under 40 CFR 403. As applied in past POTW permits, the special condition could also address problem [food] industries with additional pretreatment-related requirements that protect the POTW from experiencing pass through and interference.

With increased knowledge and understanding, the Department is confident that this issue is already being addressed; however, we feel it will take time to fully educate all inspection staff and incorporate pretreatment compliance evaluations into the normal course of business. Over the next two years, we will attempt to provide five examples of proper inspection and/or enforcement actions related to pretreatment at municipalities where the Department is control authority. If we need more time, we request the flexibility to obtain extensions to the proposed schedule for corrective actions.

EPA acknowledges the effort that MDNR is undertaking to address the pre-treatment issues found during the SRF review.

Timeframes for completion were adjusted in the writeup.

CWA Element 5 – Penalties

Finding 5-1

Please reference General Clarification Request No. 3 above. To date, the Department primarily uses the avoided costs of annual permit fees and the avoided costs of sampling to calculate the economic benefit of noncompliance for:

- C. Operating without a permit, which includes facilities that have never been permitted and facilities that fail to renew their permit. Some facilities that fail to renew a permit will continue to pay annual permit fees and submit Discharge Monitoring Reports (DMRs). In that case, those facilities have not gained any economic benefit by operating without a permit.
- D. Facilities that have failed to submit DMRs or have submitted incomplete DMRs.

To be clear, if a facility has an active or administratively continued permit and has not paid annual permit fees for one or more years, that facility's failure to pay its annual permit fees is a separate liability and is not considered a penalty or economic benefit, making the statute of limitations 5 years. However, if the facility never had a permit or if the permit is expired and not administratively continued, then we would not have sent an invoice for the permit fees and must instead include the avoided costs of fees in the economic benefit component of the penalty. In that event, because the unpaid permit fees are considered a penalty, our statute of limitations is only 2 years. To calculate the amount owed, we consult the Department's schedule for permit fees and multiply the appropriate permit fee by the number of years that

the facility did not pay fees, for up to 2 years.

Additionally, the Department has a spreadsheet that we use to estimate the cost of sampling and analysis for missing DMRs where samples were neither collected nor analyzed. We update the costs used to determine economic benefit by averaging the amounts charged by laboratories across Missouri. When this spreadsheet is used it is attached to the penalty matrix. If EPA can assist the Department in identifying additional factors that could be considered when calculating the economic benefits of noncompliance, we would be happy to consider incorporating those factors into our procedures. The Department strongly believes in the need to maintain a level playing field for businesses, municipalities, and others, who, as part of doing business, operate potential water pollution sources.

The Department's Water Pollution Control Branch has no control or authority over the Department's Waste Management Program and its calculation of economic benefit costs, nor do we have the authority to develop policies for Department-wide application. If we are correctly guessing which multi-media case is referenced in your example, the Water Pollution Control Branch did not have any identifiable economic benefit, however, the Waste Management Program was able to calculate economic benefit related to the tipping costs that were avoided for solid waste that should have been landfilled. The Department has since referred that matter to the Missouri Attorney General's Office, which then filed a lawsuit against the violator to compel compliance and recover penalties, including economic benefit. That lawsuit is ongoing. If this SRF review had been conducted in person, we think that communication between EPA and the Department would have provided a better explanation for the decisions related to this complex multi-media case.

Regarding the recommendation/requirement, the Department feels we have already made the necessary adjustments to address this element. The Excel spreadsheet we use for our Penalty Matrix includes a tab showing how to calculate the economic benefit as well as a section within the final calculation for entry of the total amount of economic benefit. These changes occurred as a result of the previous SRF review. Likewise, the Department provides reasoning within the associated Summary in the Penalty Matrix that outlines the enforcement case. This narrative addresses both the penalty and any economic benefit that may have been added. After this most recent review, staff received additional training on the use of the Penalty Matrix with special emphasis on economic benefit. The Department would like to submit an alternative set of corrective actions for this finding. We propose providing the templates immediately and then submitting five examples of cases that address this element as soon as possible, without having to provide quarterly progress reports.

EPA Response:

EPA requests MDNR consistently use the penalty format that was put in place after the last SRF review. Provide justification/rationale when zero is determined to be the economic benefit. Provide justification/rationale on why any of the three exclusions are selected.

Timeframes for completion were adjusted in the SRF writeup.

Finding 5-2

The Department acknowledges the need to improve documentation of changes to penalty amounts that occur through internal and external negotiations.

Regarding the recommendation/requirement, the Department feels that we have already made the necessary adjustments to address this element and agrees to the corrective actions outlined in the Draft Report.

EPA Response:

During the September 1, 2021 conference call between MDNR and EPA, MDNR explained that they are not using the penalty memo anymore, but revised the penalty matrix form (inserted a box) in the penalty memo to provide a narrative to document this change. MDNR will submit 5 penalty matrix form writeups that include this documentation as stated in the timeframes in the Recommendation.

Broadened wording to include to include references to other documentation that MDNR is now using to document changes.

Appendix

The final page of the Draft Report has an Appendix title but it is unclear as to whether or not there are other findings or supplemental information that we should be reviewing as well.

EPA response- no other findings are in this section.

If you have any questions regarding the response or would like to schedule a video conference to discuss the Draft Report, please contact Kristi Savage-Clarke by phone at 573-522-4506; by email at kristi.savage-clarke@dnr.mo.gov; or by mail at Department of Natural Resources, Water Protection Program, Compliance and Enforcement Section, P.O. Box 176, Jefferson City, MO 65102-0176. Thank you.