

# **STATE REVIEW FRAMEWORK**

## **West Virginia**

**Clean Water Act  
Clean Air Act  
Resource Conservation and Recovery Act**

**Implementation in Federal Fiscal Year 2020  
and in Federal Fiscal Year 2019 for CWA NPDES Program**

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

**Final Report  
January 31, 2022**

# 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) Core Program Review Year FY 2019**

Dates of File Review: July 19-23, 2021

EPA ECAD contacts include:

Allison Gieda  
Mike Greenwald  
Kaitlin McLaughlin  
Amanda Pruzinsky

WVDEP contacts:

Jeremy W. Bandy, Chief Inspector, Division of Water and Waste Management  
Brad Wright, Assistant Chief Inspector Division of Water and Waste Management

#### **Clean Water Act – (CWA) Mining Program Review Year FY 2020**

Dates of File Review: July 19-23, 2021

EPA ECAD contacts include:

Chad Harsh  
Ingrid Hopkins  
Monica Crosby

WVDEP contact:

John T. Vernon, Deputy Director for Mining and Reclamation

#### **Clean Air Act (CAA) Review Year FY 2020**

Dates of File Review: July 12-15, 2021

EPA ECAD contacts include:

Kurt Elsner  
Erin Malone  
Isabella Powers  
Carly Joseph

WVDEP contacts:

Jessie Adkins, Assistant Director, Division of Air Quality, Compliance and Enforcement Section  
James Robertson Supervisor, Division of Air Quality, Compliance and Enforcement Section

## **Resource Conservation and Recovery Act (RCRA) Review Year FY 2020**

Dates of File Review: July 19-22, 2021.

EPA ECAD contacts include:

Eric Greenwood (ECAD), Enforcement Lead

Andrew Dinsmore, RCRA Section Chief

Rachel Mirro (LCRD), Program Lead

WVDEP Division of Water and Waste Management contacts:

Joseph Sizemore, Assistant Chief Inspector, Environmental Enforcement and Hazardous Waste

# Executive Summary

## Areas of Strong Performance

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

### Clean Water Act (CWA) Core Program

- WVDEP consistently produces inspection reports that contain sufficient documentation to determine compliance at facilities.
- WVDEP consistently documented penalty calculations for FY 2019 that included gravity and economic benefit, the difference between the initial penalty calculation and amount collected, and the collection of penalties.

### Clean Water Act (CWA) Mining

- The WVDEP Mining Program consistently issues enforcement responses that address violations in an appropriate manner to return the facilities to compliance.

### Clean Air Act (CAA)

- The EPA Review Team found WVDEP's enforcement program to be strong. WVDEP included corrective actions in all formal responses and took timely and appropriate enforcement action consistent with the HPV policy.

### Resource Conservation and Recovery Act (RCRA)

- WVDEP consistently completed inspection reports in a timely manner. The average report completion time for the 37 files reviewed, using a 60-day standard, was 22.6 days.
- WVDEP successfully collects penalties and is consistent in its documentation of penalty calculations including when necessary, a rationale for differences between initial and final penalties.
- WVDEP took appropriate enforcement action to address violations observed in 93.8% of files reviewed and administered enforcement actions that sufficiently returned the site to compliance 96.6% of the time.

## **Priority Issues to Address**

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

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

- Data management deficiencies were consistently noted throughout the file review process (metric2b). The review team found that the WVDEP Core Program does not currently enter informal enforcement actions into the national database and permit issuance dates are not consistently accurate in the national database.
- WVDEP did not consistently complete inspection reports within the applicable timeframe.

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

- Data management deficiencies were consistently noted throughout the file review process (metric2b) for the WVDEP Mining Program. The review team found that the Mining Program does not currently enter informal and formal enforcement actions or SEVs into the national database.

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

- WVDEP penalty matrix does not include a section for an economic benefit component. All penalty calculations reviewed included a gravity component. However, there was no economic benefit component included in the penalty matrix. WVDEP reported that they considered economic benefit and determined it to be zero for all of the files that EPA reviewed. However, there were no calculations or documentation to support that economic benefit was being calculated or why it was determined to be zero.

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

There are no priority issues to address.

# Clean Water Act Findings

## CWA Element 1 – Data (Core Program FY 2019)

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### **Finding 1-1**

Area for Improvement

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### **Recurring Issue:**

Recurring from Round 3

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### **Summary:**

Data management deficiencies were consistently noted throughout the file review process (metric2b). The review team found that in FY2019 the WVDEP Core Program does not currently enter informal enforcement actions into the national database and permit issuance dates are not consistently accurate in the national database.

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### **Explanation:**

The CWA-NPDES e-Reporting Rule (“eRule”), effective on December 21, 2015, required electronic submission by NPDES permittees of all NPDES data required by the CWA, federal regulations, policy, guidance, and EPA-State agreements. The eRule also requires states and other regulatory authorities to share data electronically with EPA. The data to be shared by these regulatory authorities include permit, compliance monitoring/inspection, violation determinations and enforcement action data. Minimum data requirements (MDRs) related to facility identifiers, comprehensive inspections, formal enforcement actions, single event violations, and the majority of NPDES permit data are being entered into the National Database accurately.

WVDEP’s Core Program does not currently enter informal enforcement actions into the national database. SRF Round 3 noted that WV municipal and industrial wastewater programs did not enter or upload informal enforcement actions into the national database. Additionally, permit issuance dates are not consistently accurate in the national database. Lastly, single event violations (SEVs) and Orders are not consistently being closed out in the national database which may be causing facilities to be in violation from the time of the SEV start date and Order due date. WVDEP’s Core Program has not been able to enter informal enforcement actions into the national database with its existing batch upload process utilizing its Environmental Resources Information System (ERIS).

However, WVDEP is currently working on the implementation of a new inspection and enforcement management software program that will address the data entry issues. WVDEP anticipates June 2022 as the final delivery date of its new software. Additionally, WVDEP will work with its permits staff regarding permit issuance dates in the national database.



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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		9	25	36%

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**State Response:**

WVDEP's ERIS system is not capable of feeding informal actions to ICIS. The upcoming inspection software, scheduled to be delivered in June 2022, will have the ability to upload informal actions and other required data elements.

The new Compliance Assurance Manager position within WVDEP-EE that will be filled in early 2022 will be tasked with, among other things, improving the consistency of closeout for compliance tasks in orders and SEVS. WVDEP was one of the top 6 states nationally for SEV uploads at the time of this review and as a result has a significant volume of SEVs to monitor for return to compliance.

WVDEP agrees that WVDEP and EPA have been working extensively to improve overall data quality. As described below in Finding 1-2, WVDEP exceeds the national average for data completeness. WVDEP has consistently fed more data earlier than other states.

WVDEP's EE staff will work with DWWM permitting regarding permit issuance dates in ICIS. That data feed is not processed in relation to any inspection or enforcement activity and may be more appropriately addressed in a Permit Quality Review.

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**Recommendation:**

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Rec #	Due Date	Recommendation
1	06/30/2022	WVDEP will roll out its new inspection and enforcement management software that will ensure minimum data requirements are being entered into ICIS production.
2	01/31/2023	After the first full quarter of implementation of the new inspection and enforcement management software, EPA will review a representative number of files and informal enforcement actions to confirm that appropriate data is being entered into ICIS.

**CWA Element 1 – Data (Core Program FY 2019)**

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**Finding 1-2**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

In FY 2019, WVDEP’s Core Program met or exceeded the national goals of 95% for the data metrics for completeness of data entry on major and non-major permit limits and completeness of data entry on major and non-major discharge monitoring reports.

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**Explanation:**

Permit limit data entry rate for major and non-major facilities for the Core program in FY 2019 was calculated to be 99.4% which is greater than the national goal of 95% (metric 1b5). DMR data entry rate for major and non-major facilities for the Core program in FY 2019 was calculated to be 97.77% which is greater than the national goal of 95% (metric 1b6).

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**Relevant metrics:**

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
1b5 Completeness of data entry on major and non-major permit limits. [GOAL]	95%	93.5%	465	468	99.4%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%	92.3%	14174	14498	97.8%

**State Response:**

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**CWA Element 1 – Data (Mining Program FY 2020)**

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**Finding 1-3**

Area for Improvement

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**Recurring Issue:**

Recurring from Round 3

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**Summary:**

In FY2020 data management deficiencies were consistently noted throughout the file review process (metric2b) for the WVDEP Mining Program. The review team found that the Mining Program does not currently enter informal and formal enforcement actions or SEVs into the national database.

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**Explanation:**

The CWA-NPDES e-Reporting Rule (“eRule”), effective on December 21, 2015, required electronic submission by NPDES permittees of all NPDES data required by the CWA, federal regulations, policy, guidance, and EPA-State agreements. The eRule also requires states and other regulatory authorities to share data electronically with EPA. The data to be shared by these regulatory authorities include permit, compliance monitoring/inspection, violation determinations and enforcement action data. Minimum data requirements (MDRs) related to facility identifiers, comprehensive inspections, formal enforcement actions, single event violations, and the majority of NPDES permit data are being entered into the National Database accurately.

WVDEP’s Mining Program does not currently enter informal and formal enforcement actions or SEVs into the national database. SRF Round 3 noted that WVDEP’s NPDES Mining Program did not enter or upload NPDES inspection or enforcement data into the national data system). WVDEP’s Mining Program has not been able to enter formal and informal enforcement actions or SEVs into the national database with its existing batch upload process utilizing its Environmental

Resources Information System (ERIS). However, WVDEP Mining Program is currently working on the implementation of a new enforcement module that will address the data entry and upload issues. WVDEP anticipates that the enforcement module will be operational by the end of December 2021 and they will be able to begin entering and uploading data.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
2b (Mining) file reviewed where data are accurately reflected in national data system, ICS	100%		5	20	25%

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**State Response:**

Mining has historically entered data into ICIS for Major Facilities including inspection and enforcement data. Due to the number of Nonmajor Facilities regulated by Mining, requiring enforcement data, this functionality has been delayed in development. Mining has concentrated on instituting other required electronic data submissions under federal rule and addressing Goal 1- Compliance Data Completeness and Accuracy per the National Compliance Initiative Implementation Strategy (NCI). This function is planned to be in operational test by the end of December 2021. The recent hiring of personnel will aid in submitting this data electronically for both Major and Nonmajor facilities.

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**Recommendation:**

<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1	03/31/2022	WVDEP Mining Program will have their enforcement module operational, which will ensure minimum data requirements are being entered into ICIS production.
2	06/30/2023	During the second quarter of FY 2023, EPA will review a representative number of files for informal and formal enforcement actions and SEVs to confirm that appropriate data is being entered into ICIS.

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**CWA Element 1 – Data (Mining Program FY 2020)**

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**Finding 1-4**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

In FY 2020, WVDEP's Mining Program met or exceeded the national goals of 95% for the data metrics for completeness of data entry on major and non-major permit limits.

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**Explanation:**

Permit limit data entry rate for major and non-major facilities for the Mining Program in FY 2020 was calculated to be 95.60% which is greater than the national goal of 95% (metric 1b5)

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
1b5 Completeness of data entry on major and non-major permit limits. [GOAL]	95%		1319	1380	95.6%

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**State Response:**

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**CWA Element 1 – Data (Mining Program FY 2020)**

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**Finding 1-5**

Area for Attention

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**Recurring Issue:**

No

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**Summary:**

In FY 2020 WVDEP's Mining Program did not consistently enter DMR data for major and non-major facilities.

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**Explanation:**

DMR data entry rate for major and non-major facilities for the Mining Program in FY 2020 was calculated to be 81.69% which is less than the national goal of 95% (metric 1b6). This is likely due to data flow issues from ERIS to ICIS. WVDEP and EPA are currently working to improve data flow.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%		158505	194024	81.7%

**State Response:**

Mining has recently partnered with EPA and EPA contractor ERG to help identify data flow issues and instances of false SNC tagging due to data interpretation. Mining continues to make changes to the state ERIS data system when identified to correct data flow issues. Mining and the Core Program have partnered in an EPA grant to improve both speed and data correctness in downloaded electronic data from facility permit responsible parties. This is scheduled to begin for Mining in 2022.

**CWA Element 2 – Inspections (Core Program FY 2019)****Finding 2-1**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

In FY 2019, the WVDEP Core Program consistently produced inspection reports that contained sufficient documentation to determine compliance at facilities.

**Explanation:**

95.5% of the FY 2019 inspection reports reviewed in the Core Program were identified as sufficient to determine compliance.

**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%		21	22	95.5%

**State Response:**

**CWA Element 2 – Inspections (Core Program FY 2019)**

**Finding 2-2**

Area for Improvement

**Recurring Issue:**

No

**Summary:**

In FY 2019, the WVDEP Core Program did not consistently complete inspection reports within the applicable timeframe.

**Explanation:**

To determine this finding, the review team used a 60-day completion timeline, based on EPA’s 2018 Interim Policy on Inspection Report Timeliness and Standardization. Using EPA’s Policy to evaluate timeliness, 63.6% of inspection reports were completed within the applicable timeframe and the average number of days for WVDEP to complete inspection reports is 66. During the file review process, WVDEP stated that it flagged the timely completion of inspection reports as a concern in FY 2019 and is working on improvements to this metric internally. WVDEP has noted improvements in the timely completion of inspection reports since 2019 and requested that EPA share its 2018 Interim Policy on Inspection Report Timeliness and Standardization for their reference and possible implementation.

WVDEP completed recommendation #1 ahead of schedule on 12/7/21 and submitted the SOP to EPA for review and approval. Currently, EPA is reviewing the SOP. These recommendations will be closed out once the final report is issued.

**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%		14	22	63.6%

**State Response:**

The timeframe for submission of inspection reports is outlined in the performance standards established yearly for WVDEP inspection staff. As increased focus has been placed on quality, consistency, and completeness of inspection reports, the timeliness has suffered in recent years. Following this review WVDEP created a more descriptive internal guidance on report timeliness to be incorporated into performance expectations beginning in 2022.

**Recommendation:**

Rec #	Due Date	Recommendation
1	06/30/2022	The WVDEP Core program should develop an SOP for issuing inspection reports within an appropriate timeframe. This SOP should detail a process with timelines for drafting the report, manager review, final signature, and transmittal to the facility. WVDEP shall submit the SOP to EPA for approval.
2	07/31/2022	EPA will review the SOP and will provide comments to WVDEP (if necessary) or provide approval. Upon EPA approval, WVDEP shall implement the SOP immediately.
3	01/31/2023	After the first full quarter of implementation of the new SOP, EPA will review a representative number of completed inspection files to confirm that inspection reports are issued within the timeframe established in the approved SOP.

**CWA Element 2 – Inspections (Core Program FY 2019)**

**Finding 2-3**

Meets or Exceeds Expectations

**Recurring Issue:**

No



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**Summary:**

WVDEP's Core Program met or exceeded the National Goal and its FY 2019 Compliance Monitoring Strategy ("CMS") commitments for inspection coverage of NPDES facilities (metrics 4a4, 4a5, 4a7, 4a8, 4a9, 4a10, 4a11, 5a1, 5b1 and 5b2).

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**Explanation:**

WVDEP's Core Program met or exceeded the National Goal and its FY2019 CMS commitments for inspection coverage of:

1. NPDES majors;
2. NPDES non-majors with individual permits;
3. NPDES non-majors with general permits;
4. CSO inspections;
5. SSO inspections;
6. Phase I and II MS4 audits or inspections;
7. Industrial stormwater inspections;
8. Phase I and II construction stormwater inspections;
9. Comprehensive large and medium NPDES-permitted CAFOs; and
10. Sludge/biosolids inspections at each major POTW.

There were no commitments to perform CAFO inspections in the FY2019 CMS. Additional details on CMS commitments and accomplishments can be found in Metric spreadsheet 4a.

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**Relevant metrics:**

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100% of commitments%		1	0	1
4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL]	100% of commitments%		9	9	100%
4a4 Number of CSO inspections. [GOAL]	100% of commitments%		13	12	108.3%
4a5 Number of SSO inspections. [GOAL]	100% of commitments%		14	12	116.7%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments%		11	11	100%
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments%		143	132	108.3%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments%		182	157	115.9%
5a1 Inspection coverage of NPDES majors. [GOAL]	100%		45	47	95.7%
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100%		76	73	104.1%
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL]	100%		234	198	118.2%

**State Response:**

## CWA Element 2 – Inspections (Mining Program FY 2020)

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### Finding 2-4

Meets or Exceeds Expectations

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### Recurring Issue:

No

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### Summary:

In FY 2020, the WVDEP Mining Program consistently produced inspection reports that contained sufficient documentation to determine compliance at facilities and were completed timely.

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### Explanation:

100% of the FY 2020 inspection reports reviewed in the Mining Program were identified as sufficient to determine compliance and 100% were completed timely.

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### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6a (Mining) inspection reports complete and sufficient to determine compliance	100%		20	20	100%
6b Timeliness of inspection report completion [GOAL]	100%		20	20	100%

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### State Response:

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## CWA Element 2 – Inspections (Mining Program FY 2020)

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### Finding 2-5

Meets or Exceeds Expectations

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### Recurring Issue:

No

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**Summary:**

In FY 2020 WVDEP's Mining Program exceeded the National Compliance Monitoring Strategy ("CMS") goal for inspection coverage of NPDES facilities.

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**Explanation:**

In FY2020, WVDEP's Mining Program far exceeded the national goal for inspection coverage of non-majors. While the WVDEP Mining Program inspects all NPDES facilities on a regular basis, historically there have been no specific CMS commitments. WVDEP and EPA intend to negotiate inspection commitments during the FY 2023 CMS negotiation cycle.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
5b1 Inspection coverage of NPDES non-majors with individual permits [GOAL]	100%		1276	310	411.6%

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**State Response:**

Mining will work with EPA to develop a CMS that meets both EPA/CMS and Mining's requirements.

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**CWA Element 3 – Violations (Core Program FY 2019)**

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**Finding 3-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

In FY 2019, the WVDEP Core Program consistently produced inspection reports with sufficient documentation leading to an accurate compliance determination (metric 7e).

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**Explanation:**

The file review determined that WVDEP's Core Program made an accurate compliance determination in 90.9% of inspection reports reviewed for FY2019.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
7e Accuracy of compliance determinations [GOAL]	100%		20	22	90.9%
7j1 Number of major and non-major facilities with single-event violations reported in the review year.					329
7k1 Major and non-major facilities in noncompliance.		18.4%	5659	9774	57.9%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.		8.1%	4852	9633	50.4%

**State Response:**

**CWA Element 3 – Violations (Mining Program FY 2019)**

**Finding 3-2**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

In FY 2020 the WVDEP Mining Program consistently produced inspection reports with sufficient documentation leading to an accurate compliance determination (metric 7e).

**Explanation:**

The file review determined that WVDEP’s Mining Program made an accurate compliance determination in 100% of inspection reports reviewed for FY20.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
7e Accuracy of compliance determinations [GOAL]	100%		18	18	100%
7k1 Major and non-major facilities in noncompliance.			1194	1553	76.9%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.			859	1549	55.5%

**State Response:**

Mining is currently working with EPA, as stated, to meet the NCI. Both increased NCI Goal 1- Compliance Data Completeness and Accuracy, and the uploading of formal and informal enforcement actions should decrease the data error SNC rate and also resolve violations in ICIS/ECHO.

**CWA Element 4 – Enforcement (Core Program FY 2019)**

**Finding 4-1**

Area for Attention

**Recurring Issue:**

No

**Summary:**

In FY2019, the WVDEP Core program did not always issue enforcement responses that addressed violations in an appropriate manner to return the facilities to compliance.

**Explanation:**

The file review determined that 78.6% of enforcement responses returned or will return facilities in violation to compliance for FY19. In total, there were six enforcement responses that did not or would not return the facilities to compliance. During the file review process, it was noted that WVDEP consistently issues informal enforcement in the form of Notices of Violation (NOVs) to facilities in an effort to achieve compliance. Of the six enforcement responses that did not return the facility to compliance, five were issued NOVs that did not result in the facility fixing the violations identified or developing a schedule to achieve compliance. Additionally, one facility had continuous pretreatment outlet violations that were identified during an inspection, but were not addressed in an enforcement action. At the time of the file review, the WVDEP Core Program was in the process of hiring an additional staff member with duties that will include, among other

items, tracking facility return to compliance and enforcing SNC. WVDEP anticipates that these issues will be largely addressed once the new staff member is brought onboard.

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**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%		22	28	78.6%

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**State Response:**

Notices of Violation (NOVs) issued by WVDEP are prohibited from directing action on the part of the recipient. The West Virginia Environmental Quality Board has stipulated that NOVs may outline the violation observed and corrective actions if they were discussed, but directives can only be given in orders or other formal actions. A compliance schedule cannot be required in response to an NOV. As a result of this trait of NOVs and WVDEP’s policy of using escalating enforcement, a facility will receive NOVs that will be followed with a formal action if they do not return to compliance based on the NOV. This may be a factor in this finding. As noted in EPA’s explanation, WVDEP anticipates the new Compliance Assurance Manager will help improve enforcement quality overall and will improve performance in this metric.

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**CWA Element 4 – Enforcement (Core Program FY 2019)**

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**Finding 4-2**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

In FY2019, the WVDEP Core Program initiated enforcement responses that addressed violations in an appropriate manner.

---

**Explanation:**

89.7% of enforcement responses addressed violations in an appropriate manner as measured under metric 10b.

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations		14.4%	1	18	5.6%
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		26	29	89.7%

---

**State Response:**

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**CWA Element 4 – Enforcement (Mining Program FY 2020)**

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**Finding 4-3**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

In FY2020, the WVDEP Mining Program consistently issued enforcement responses that addressed violations in an appropriate manner to return the facilities to compliance.

---

**Explanation:**

The file review determined that as measured under metric 9a, 91.7% of enforcement responses returned or will return facilities in violation to compliance and that 88.9% of enforcement responses addressed violations in an appropriate manner as measured under metric 10b.

---

**Relevant metrics:**

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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10b (Mining) enforcement responses reviewed that address violations in an appropriate manner	100%		8	9	88.9%
9a (Mining) percentage of enforcement responses that will return to compliance or on the path to compliance	100%		11	12	91.7%

**State Response:**

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**CWA Element 5 – Penalties (Core Program FY 2019)**

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**Finding 5-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

WVDEP’s Core Program consistently documents penalty calculations for FY2019 that include gravity and economic benefit (metric 11a). WVDEP’s Core Program consistently documents the difference between the initial penalty calculation and amount collected for FY19 (metric 12a). WVDEP’s Core Program consistently document the collection of penalties for FY19 (metric 12b).

---

**Explanation:**

The SRF file review of WVDEP’s Core Program identified that 100% of enforcement files contained documentation of penalty calculations that included gravity and economic benefit as measured under metric 11a. WVDEP’s penalty matrices/spreadsheets were very detailed and helpful in understanding how WVDEP calculated the gravity and economic benefit component of the penalty. Additionally, 100% of enforcement files contained adequate documentation where final penalties were reduced from the initial assessed penalty as measured under metric 12a. Finally, 100% of enforcement files reviewed contained documentation of the penalty collection or in the case of one facility, included documentation that WVDEP has taken appropriate follow-up actions as measured under metric 12b.

---

**Relevant metrics:**

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%		7	7	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		4	4	100%
12b Penalties collected [GOAL]	100%		7	7	100%

**State Response:**

---

**CWA Element 5 – Penalties (Mining Program FY 2020)**

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**Finding 5-2**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

WVDEP’s Mining Program consistently documents penalty calculations that include gravity and economic benefit (metric 11a) for FY2020. WVDEP’s Mining Program consistently documents the difference between the initial penalty calculation and amount collected for FY2020 (metric 12a). WVDEP’s Mining Program consistently document the collection of penalties for FY2020 (metric 12b).

---

**Explanation:**

The SRF file review of WVDEP’s Mining Program identified that 80% of enforcement files contained documentation of penalty calculations that included gravity and economic benefit as measured under metric 11a. One file did not contain an economic benefit calculation, which has been addressed. WVDEP’s penalty matrices/spreadsheets were very detailed and helpful in understanding how the Mining Program calculated the gravity and economic benefit component of the penalty. Additionally, 100% of enforcement files contained adequate documentation where final penalties were reduced from the initial assessed penalty as measured under metric 12a. Finally, 100% of enforcement files reviewed contained documentation of the penalty collection as measured under metric 12b.

---

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
11a (Mining) penalty calculations that document and include gravity and economic benefit	100%		4	5	80%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		5	5	100%
12b Penalties collected [GOAL]	100%		5	5	100%

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**State Response:**

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# Clean Air Act Findings

## CAA Element 1 - Data

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### Finding 1-1

Meets or Exceeds Expectations

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### Recurring Issue:

No

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### Summary:

WVDEP entered the majority of their HPV Determination and Compliance Monitoring Data into ICIS-Air in a timely manner.

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### Explanation:

WVDEP entered the only HPV determination and the Compliance Monitoring Minimum Data Requirements (MDRs) timely into ICIS-Air at a rate  $\geq 90\%$ . Most of the untimely Compliance Monitoring MDRs were entered after the start of COVID-19 (i.e., March 2020). In addition, WVDEP entered timely Compliance Monitoring MDRs at a rate of  $> 92\%$  in FY 2018 and FY 2019.

---

### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
3a2 Timely reporting of HPV determinations [GOAL]	100%	40.6%	1	1	100%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	74.3%	318	353	90.1%

---

### State Response:

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## CAA Element 1 - Data

---

### Finding 1-2

Area for Attention

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**Recurring Issue:**

No

**Summary:**

WVDEP enters approximately 75-80% of their stack test and enforcement Minimum Data Requirement (MDR) data into ICIS in a timely manner. In addition, the EPA Review team found approximately 77% of the files reviewed to have complete accurate data when comparing ICIS vs. the files.

**Explanation:**

Metric 3b2 (Timely reporting of stack test dates and results): For FY 2020, > 50% of the "untimely" entries were for stack tests that took place prior to the beginning of COVID-19 (i.e., March 2020). WV reported that they have recently hired additional staff to help with ICIS Data Entry. The performance of this metric for FY 2021 (as of 7/18/21) is at 93.1%. Finally, note that since the last SRF, the performance results for this metric has steadily improved. Namely: FY 2017 - 30%; FY 2018 - 73%; FY 2019 - 80%.

Metric 3b3 (Timely reporting of enforcement MDRs): This metric was identified as "Area for State Attention" during the Round 3 SRF with a performance of 81%. The last two FYs (i.e., FY 2018 and FY 2019), the performance for this metric is as follows: FY 2018 - 96%; FY 2019 - 100%. WV reported that they have recently hired additional staff to help with ICIS Data Entry. Finally, the performance of this metric for FY 2021 (as of 7/18/21) is at 100%.

Metric 2b (Files reviewed where data are accurately reflected in the national data system): Most files reviewed contained accurate MDR data in ICIS. The EPA Review Team found that no file contained more than one piece of inaccurate data.

**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%		20	26	76.9%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	59.4%	123	152	80.9%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	76.3%	12	16	75%

**State Response:**

---

## CAA Element 2 - Inspections

---

### Finding 2-1

Meets or Exceeds Expectations

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### Recurring Issue:

No

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### Summary:

WVDEP met the negotiated frequency compliance evaluations for major, SM-80 and minor sources in their CMS plan and reviewed all Title V Compliance Certifications (TVACCs) scheduled to be reviewed. Finally, 100% of the files reviewed documented the FCE elements .

---

### Explanation:

WVDEP conducted 100% of the required FCEs at major, SM-80 and minor sources in their CMS plan. The initial Data Metric Analysis (DMA), showed 18 facilities as not having a TVACC review. After further review, the review team found that none of the 18 facilities were required to submit a TVACC for FY 2020 primarily because either a Title V permit has not been issued for the facility or a new Title V permit was issued in FY 2020 and a TVACC was not yet due. All TVACCs that were scheduled to be reviewed were completed. Finally, all 14 files with an FCE were determined to include all of the required FCE elements.

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### Relevant metrics:

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
5a FCE coverage: majors and mega-sites [GOAL]	100%	85.7%	104	104	100%
5b FCE coverage: SM-80s [GOAL]	100%	93.6%	24	24	100%
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%	55.3%	2	2	100%
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%		158	158	100%
6a Documentation of FCE elements [GOAL]	100%		14	14	100%

**State Response:**

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**CAA Element 2 - Inspections**

---

**Finding 2-2**

Area for Improvement

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**Recurring Issue:**

No

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**Summary:**

With the exception of Compliance History and Compliance Status, the CMRs were found to be complete and well written.

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**Explanation:**

The majority of the CMRs reviewed were very clear and organized. The inspector provided details on the records that were reviewed, which consistently included comprehensive lists of emission units and applicable regulations. However, the review team found that most of the CMRs reviewed lacked complete enforcement history (since the last FCE). In addition, some files lacked complete contact information.

Although not directly related to the assessment of the state's performance, in reviewing the CMRs, the review team also found the reports seem to provide a definitive finding on compliance rather than just the inspector's observations. Inspectors are only to provide their observations in the inspection reports since one does not know what is happening the moment the inspector leaves the

facility. CMRs stating the facility is “in compliance’ may undermine future enforcement/litigation if EPA were to assume or join a state enforcement case. EPA recommended additional language be added to the CMR to clarify that the observations were limited to the time of the inspection.

On 07/21/21, WVDEP agreed to add the following clarifying language to their existing statement on the CMR, "The purpose of this inspection report is to document WVDEP’s observations and, based on such observations, provide at the time of the inspection the compliance status for requirements applicable to the facility."

---

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		4	14	28.6%

---

**State Response:** The DAQ will add compliance history and complete contact information to inspection reports. DAQ does not feel it is necessary for EPA to approve this template.

The DAQ also reaffirms their commitment of 07/21/2021 to preclude making a definitive compliance determination in the inspection report and to add the clarifying statement (or similar language) referred to above.

---

**Recommendation:**

Rec #	Due Date	Recommendation
1	04/30/2022	Add the following sections to existing CMR template: Enforcement History (since the last FCE) and General and Facility Information.
2	06/30/2023	EPA to review random Compliance Monitoring Reports (CMRs) on a quarterly basis to ensure that Compliance History and General and Facility information and language is being included stating that the observations were limited to the time of the on-site inspection in the CMRs.

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## CAA Element 3 - Violations

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### **Finding 3-1**

Meets or Exceeds Expectations

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### **Recurring Issue:**

No

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### **Summary:**

WVDEP did a thorough job in making accurate HPV and FRV determinations.

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### **Explanation:**

All compliance determinations were found to be accurately reported to ICIS and > 94% of HPV/FRV compliance determinations were found to be accurate (file review metrics 7a and 8c and data metric 13 respectively).

WVDEP has been consistently below the national average for data indicator metric 7a1 (FRV 'discovery rate' based on evaluations at active CMS sources) since the last SRF (FY 2016). EPA reviewed the NOV's issued at CMS sources versus the Case Files created at CMS sources for every year since FY2016 and verified that every NOV issued at a CMS source has been included in an FRV or HPV Case File. In addition, during the file review, the EPA Review Team did not find any violations that were not identified/reported by the inspectors. Thus, the EPA Review Team concluded that WVDEP is identifying violations and creating the FRV and HPV Case Files in ICIS.

With the exception of FY 2018, WVDEP has been consistently well below the national average for data indicator metric 8a (discovery rate of HPVs at major sources) since the last SRF (FY 2016). Supplemental files were chosen to ensure HPVs are being identified. As mentioned above, > 94% of HPV/FRV compliance determinations were found to be accurate. The only HPV/FRV compliance determination found to be inaccurate was discussed with WVDEP during the file review closeout meeting. Therefore, EPA concluded that WVDEP is adequately creating FRV/HPV case files.

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### **Relevant metrics:**

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
13 Timeliness of HPV Identification [GOAL]	100%	83.8%	1	1	100%
7a Accurate compliance determinations [GOAL]	100%		26	26	100%
7a1 FRV ‘discovery rate’ based on inspections at active CMS sources		6.8%	10	240	4.2%
8a HPV discovery rate at majors		2.4%	1	183	.5%
8c Accuracy of HPV determinations [GOAL]	100%		16	17	94.1%

**State Response:**

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**CAA Element 4 - Enforcement**

---

**Finding 4-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

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**Summary:**

The EPA Review Team found WVDEP's enforcement program to be strong. WVDEP included corrective actions in all formal responses and took timely and appropriate enforcement action consistent with the HPV policy.

---

**Explanation:**

All formal enforcement responses reviewed required the facility to return to compliance if they had not already done so at the time of the execution of the Consent Agreement. In addition, all enforcement responses reviewed by the EPA Review Team were determined to be appropriate. For the 2 HPVs not addressed within 180 days, they were addressed prior to Day 270 which is the deadline to conduct the initial case consultation. Specifically, both of the HPVs were addressed by Day 188 and Day 243. For both HPVs there was a delay in issuing the addressing actions (i.e., Consent Orders) to incorporate more recent non-HPV violations into single Consent Orders. Finally, the HPV addressed on Day 243 did have a Case Development & Resolution timeline in place by Day 225. Thus, the performance of metric 10a was not impacted.

---

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		6	6	100%
10a1 Rate of Addressing HPVs within 180 days	100%	44.2%	0	2	0%
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		5	5	100%
10b1 Rate of managing HPVs without formal enforcement action	0%	11.8%	0	2	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%		9	9	100%

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**State Response:**

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**CAA Element 5 - Penalties**

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**Finding 5-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

All penalties that were reduced from the initial assessed penalties had adequate justifications for those reductions. In addition, all penalties had proof in the file that they were collected.

---

**Explanation:**

All penalties reviewed had either 1) no penalty reduction between the assessed and final penalties paid or 2) adequate documentation if the final penalty paid was reduced from the original assessed penalty. Also, for all penalties collected, WV included a document for proof of payment such as invoices and/or a check, which made it very easy to determine that the facility paid the 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%		7	7	100%
12b Penalties collected [GOAL]	100%		9	9	100%

---

**State Response:**

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**CAA Element 5 - Penalties**

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**Finding 5-2**

Area for Improvement

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**Recurring Issue:**

No

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**Summary:**

All penalty calculations reviewed included a gravity component. However, there was no economic components included in the penalty calculations.

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**Explanation:**

The penalty matrices/spreadsheets were very detailed and helpful in understanding how WVDEP calculated the gravity component of the penalty. Regarding economic benefit, the penalty matrix does include a section for an economic benefit component. WVDEP reported that they considered economic benefit and determined it to be zero for all of the files that EPA reviewed. However, there are no calculations or documentation that there are being calculated or why they are determined to be zero.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%		0	9	0%

---

**State Response:** Based on previous conversations with EPA Region 3 Compliance Manager, the DAQ believes that economic benefit is not required to be determined. If the DAQ elects not to determine economic benefit or there was no economic benefit, a line item will be included in the penalty matrix stating, “economic benefit not determined” or “no economic benefit gained”.

---

**Recommendation:**

<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1	06/30/2022	Add section to existing penalty matrix that includes a calculation for economic benefit followed by an assessment if EBN is de minis with an explanation to this conclusion.
2	06/30/2023	EPA to review random penalty calculations on a quarterly basis to ensure that Economic Benefit is being considered and documented with 85% accuracy percentage as the goal.

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# Resource Conservation and Recovery Act Findings

## RCRA Element 1 - Data

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### Finding 1-1

Area for Attention

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### Recurring Issue:

No

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### Summary:

In 83.8% of files reviewed, all mandatory data were accurately entered into RCRAInfo, the National database for the RCRA Program.

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### Explanation:

Metric 2b) Six of the 37 files reviewed were found to have inaccurate data entry or did not contain all of the required mandatory data elements in RCRAInfo. These six instances were found to be inaccurate or incomplete for the following reasons:

- errors in dates of action, including the issue date for a Termination of Order Letter and dates documented for violations Returned to Compliance;
- incorrect translation of violation citations into RCRAInfo;
- omission of penalties assessed in formal actions; and
- violations entered into RCRAInfo were not captured in the corresponding enforcement action (NOV or Consent Order).

Generally, WVDEP accurately transcribed information from the file into RCRAInfo. However, WVDEP should lend more scrutiny to ensuring that quality checks are being performed on a regular basis and data entered into RCRAInfo is consistent with information contained in inspection reports and enforcement actions.

---

### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2b Accurate entry of mandatory data [GOAL]	100%		31	37	83.8%

---

### State Response:

Corrections have been made to data errors identified in the review. Controls have been put in place that will help ensure the correct “enforcement date” will be associated with formal and informal enforcement actions. RCRAInfo forms utilized by staff have been amended to help ensure that enforcement actions are accurately documented.

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## RCRA Element 2 - Inspections

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### Finding 2-1

Area for Attention

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### Recurring Issue:

No

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### Summary:

81% of files reviewed contained complete and sufficient information to determine compliance.

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### Explanation:

Metric 6a) 81% of files reviewed contained detailed inspection reports that accurately identified violations and successfully supported a compliance determination. In seven instances, reviewers found that reports lacked sufficient information, such as a detailed process description or information on quantity and types of hazardous wastes generated, to support violation determinations observed at the time of the inspection. The seven inspection reports with insufficient information were identified under the following generator status:

- Small Quantity Generators (SQGs)-2;
- Large Quantity Generators (LQGs)-2;
- Treatment, Storage, and Disposal Facilities (TSDFs)-3.

As noted in the state's response, WVDEP did not agree with the assessment of one of the large quantity generator facility case files as insufficient. In light of the successful formal action brought by the state as a result of the initial compliance evaluation inspection, the classification of the facility case file in question has been amended to reflect that it is sufficient. EPA agrees with the WVDEP response and the initial finding of eight inspection reports with insufficient information has been changed to seven inspection reports with insufficient information, for a total of 30 satisfactory reports, or 81% sufficiency.

---

### Relevant metrics:

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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		30	37	81.1%

**State Response:**

The CEI associated with one large quantity generator facility was considered to lack sufficient information to support violation determinations. WVDEP disagrees with this finding. The 3-19-2020 CEI report includes 60 photos, and the report clearly documents non-compliance at the facility to include releases to the environment as well as numerous containers of improperly managed waste. This report resulted in a formal enforcement order which included a HW penalty of over \$78,000 dollars. The outcome shows the inspection work was successful.

**RCRA Element 2 - Inspections**

**Finding 2-2**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

WVDEP exceeded the annual inspection coverage for large quantity generators. Additionally, 94.6% of the files reviewed had inspection reports that were completed timely.

**Explanation:**

Metric 6b) Because WVDEP’s Hazardous Waste Program does not have its own standard for inspection timeliness, the findings for this metric were calculated using EPA’s, 2018 Interim Policy on Inspection Report Timeliness and Standardization, which provides a 60-day window for inspection report completion. On average, the time between the first day of the inspection (Day Zero) and completion of the inspection report was 22.6 days.

Metric 5a) 12 of 12 (100%) TSDFs were inspected by WVDEP during the review period. The denominator in Metric 5a has been amended, from 14 to 12, to accurately reflect the State’s contribution towards the 100% inspection coverage goal for operating TSDFs. The remaining two TSDFs were inspected by EPA in 2019. Additional information on the scope of inspection coverage for TSDFs and other RCRA generators, can be found in the September 2015 Compliance Monitoring Strategy for the RCRA Subtitle C Program.



Metric 5b) Despite complications created by the ongoing public health emergency, WVDEP was able to adapt its inspection procedures to exceed its annual inspection goals by 15%.

Metric 5e) Metrics 5e5, 5e6, and 5e7 are not identified as Goal metrics. Goal metrics, according to the SRF Round 4, RCRA Metrics Plain Language Guide, evaluate performance against a specific numeric goal and stand alone as sufficient basis for development of a finding. Instead, 5e metrics are informational only and numerical commitments are not required unless the agency being evaluated is operating under an alternative compliance monitoring strategy (CMS). Since WVDEP did not operate using an alternative CMS during the review year, the State’s commitment to inspect very small quantity generators (VSQGs), transporters, or “other” generators (e.g., Used Oil Facility or Universal Waste Handler), is not applicable (N/A).

Furthermore, EPA has not established minimum requirements for these generator categories and inspections are not tracked via Annual Commitment System (ACS). However, because these generator categories are regulated under the Subtitle C Program and represent ongoing compliance monitoring activities to achieve and maintain compliance with all RCRA requirements, files containing these designations were selected for review.

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%		12	12	100%
5b Annual inspection of LQGs using BR universe [GOAL]	20%	11.5%	49	147	33.3%
5e5 One-year count of very small quantity generators (VSQGs) with inspections	100% of commitments%				222
5e6 One-year count of transporters with inspections	100% of commitments%				5
5e7 One-year count of sites not covered by metrics 5a - 5e6 with inspections	100% of commitments%				105
6b Timeliness of inspection report completion [GOAL]	100%		35	37	94.6%

**State Response:**

Related to metric 5a, it has been explained that the numerator and denominator are automatically generated in this report from data in ECHO. The narrative explains that the two operating TSDFs which were not inspected by WVDEP were inspected by EPA as part of our cooperative partnership. The goal of 100% was achieved. WVDEP believes the state total should accurately represent this accomplishment numerically in the “State Total” cell with a “100%”.

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**RCRA Element 3 - Violations**

---

**Finding 3-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

In 90.9% of files reviewed, significant noncompliance (SNC) status was appropriately determined. In 100% of those instances, determinations were made timely and within 150 days of Day Zero.

---

**Explanation:**

Metric 7a) In three instances files were found to exhibit concerns about whether an accurate compliance determination was made during the time of the inspection. These three files exhibited possible inaccurate compliance determinations based on the following:

- violations cited as “Areas of Concern”;
  - documentation by Facility substantiating compliance; and
  - failure to cite violations for Failure to Maintain and Operate a Facility (40 CFR §265.31) during an FCI.
- 

**Relevant metrics:**

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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2a Long-standing secondary violators			4		4
7a Accurate compliance determinations [GOAL]	100%		34	37	91.9%
7b Violations found during CEI and FCI inspections		34.3%	117	425	27.5%
8a SNC identification rate at sites with CEI and FCI	1.4%		10	821	1.2%
8b Timeliness of SNC determinations [GOAL]	100%	34.3%	10	10	100%
8c Appropriate SNC determinations [GOAL]	100%		30	33	90.9%

**State Response:**

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**RCRA Element 4 - Enforcement**

---

**Finding 4-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

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**Summary:**

In all ten instances reviewed, WVDEP took timely enforcement to address SNCs. Appropriate enforcement was also taken to address secondary violators in 30 of 32 files reviewed (93.8%).

---

**Explanation:**

Metric 9a) In one instance, WVDEP did not pursue enforcement action against the original owner of a facility for violations cited during an inspection. In this one instance, the Facility's violations were not returned to compliance until a new owner assumed the position, following the departure of the original owner for which WVDEP appropriately issued a fine.

---

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
10a Timely enforcement taken to address SNC [GOAL]	80%	80.9%	10	10	100%
10b Appropriate enforcement taken to address violations [GOAL]	100%		30	32	93.8%
9a Enforcement that returns sites to compliance [GOAL]	100%		28	29	96.6%

---

**State Response:**

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**RCRA Element 5 - Penalties**

---

**Finding 5-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

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**Summary:**

In all nine files reviewed, WVDEP documented rationale for difference between initial penalty calculation and final penalty.

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**Explanation:**

Metric 12b) In one instance, WVDEP issued a single penalty action against an owner/operator responsible for violations alleged at two separate facilities (hospitals) observed during two separate inspections and resulting in two separate enforcement actions. Following notification by WVDEP of noncompliance observed, the owner/operator fled the State abandoning its responsibility to settle its financial obligations and return the violations to compliance. To account for the overlap in ownership, WVDEP effectively coordinated with the new state-owned organizations and owner/operators, to return the outstanding violations to compliance. In consideration of WVDEP's decision, we are applying a "Meets or Exceeds" finding to an adjusted metric percent of 91.7% (11 of 12) . This adjustment accounts for the consolidation of two files pulled independently during the file selection process for their incorporation of penalties assessed during the Round 4 review period.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
11a Gravity and economic benefit [GOAL]	100%		12	13	92.3%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		9	9	100%
12b Penalty collection [GOAL]	100%		11	12	91.7%

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**State Response:**

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