

# **STATE REVIEW FRAMEWORK**

## **Michigan**

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

**U.S. Environmental Protection Agency  
Region 5**

**Final Report  
June 30, 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 (FY 2018-2022) of reviews, preceded by Round 3 (FY 2012-2017), Round 2 (FY 2008-2011), and Round 1 (FY 2004-2007). 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 is 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**

Region 5 EPA Round 4 Michigan SRF was conducted for the review period of FY 2019.

#### **SRF Coordinators**

Anthony Ross (no longer with the Agency)  
Rochelle Marceillars (no longer with the Agency)  
William Stokes, (312) 886-6052, [stokes.william@epa.gov](mailto:stokes.william@epa.gov)

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

The SRF file review was conducted in conjunction with the Michigan Department of Environment, Great Lakes and Energy (MEGLE) staff on June 30, July 1, and July 8, 2020.

##### EPA:

Jennifer Beese, (312) 353-2975, [beese.jennifer@epa.gov](mailto:beese.jennifer@epa.gov)  
Kenneth Gunter, (312) 353-9076, [gunter.kenneth@epa.gov](mailto:gunter.kenneth@epa.gov)  
James Coleman, (312) 886-0148, [coleman.james@epa.gov](mailto:coleman.james@epa.gov)

##### MEGLE:

Christine Veldkamp, (616) 401-1556, [veldkampc@michigan.gov](mailto:veldkampc@michigan.gov)  
Sarah Ehinger, (269) 216-1341, [ehingers1@michigan.gov](mailto:ehingers1@michigan.gov)  
Dave Pingel, (517) 243-8854, [pingeld@michigan.gov](mailto:pingeld@michigan.gov)

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

The SRF file review was conducted in conjunction with MEGLE staff on September 15-18, 2020.

##### EPA:

Sarah Marshall, (312) 886-6797, [marshall.sarah@epa.gov](mailto:marshall.sarah@epa.gov)  
Alexandra Letuchy, (312) 886-6035, [letuchy.alexandra@epa.gov](mailto:letuchy.alexandra@epa.gov)  
Veronica Fischer, (312) 353-5685, [fischer.veronica@epa.gov](mailto:fischer.veronica@epa.gov)  
Mark Messersmith, (312) 353-2154, [messersmith.mark@epa.gov](mailto:messersmith.mark@epa.gov)

##### MEGLE:

Chris Ethridge, (517) 582-3063, [ethridgec@michigan.gov](mailto:ethridgec@michigan.gov)  
Jenine Camilleri, (517) 643-2612, [camillerij@michigan.gov](mailto:camillerij@michigan.gov)  
David Morgan, (616) 824-1139, [morgand2@michigan.gov](mailto:morgand2@michigan.gov)

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

The SRF file review was conducted in conjunction with MEGLE staff on September 15-17, 2020.

EPA:

Bryan Gangwisch, (312) 886-0989, [gangwisch.bryan@epa.gov](mailto:gangwisch.bryan@epa.gov)

Robert Smith, (312) 886-7568, [smith.robert@epa.gov](mailto:smith.robert@epa.gov)

MEGLE:

Lonnie Lee, (517) 284-6553, [leel@michigan.gov](mailto:leel@michigan.gov)

Alexandra Clark, (248) 752-2740, [clarka37@michigan.gov](mailto:clarka37@michigan.gov)

Trisha Confer (989) 225-7968, [confert@michigan.gov](mailto:confert@michigan.gov)

# Executive Summary

## Areas of Strong Performance

---

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

### Clean Water Act

- Michigan performance in accurately determining the facility's compliance was outstanding.
- Michigan met or exceeded their inspection targets in several compliance monitoring categories, including National Pollutant Discharge Elimination System (NPDES) minors, Combined Sewerage Overflow (CSO) facilities, Industrial Stormwater facilities, Confined Animal Feeding Operations (CAFOs), and Construction Stormwater sites.
- Michigan timely assesses and collects penalties associated with enforcement actions.

### Clean Air Act

- Inspection reports have improved since the last SRF. MEGLE went through a process to create a template for all inspectors and the improvements are noticeable. All the inspection reports were clear and easy to follow showing what elements are part of each Full Compliance Evaluation (FCE).
- The penalty calculations were all very well detailed including justification for economic benefit using the BEN model and justifications for penalty reduction, where appropriate.
- The Administrative Compliance Orders were all clear and had extensive and effective compliance schedules bringing the facilities back into compliance.

### Resource Conservation and Recovery Act

- The review of the selected files revealed that inspection reports were complete and sufficient to determine compliance.
- Appropriate SNC determinations were made for the reviewed files that identified violations.

- Appropriate enforcement actions were taken to address cited violations that resulted in returning violators back into compliance at a high rate of 96.4% with a national goal of 100%.
- SNC designations were addressed timely by the State with a formal enforcement action or referral within FY 2019.
- The review of the formal enforcement files revealed that sufficient documentation was provided that explained the rationale for the difference between the initial penalty calculation and the final penalty.

## Priority Issues to Address

---

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

### Clean Water Act

- Data was not accurately reflected in Integrated Compliance Information System-NPDES (ICIS-NPDES), EPA’s national database system of record.
- Inspection report timeliness can be improved.
- Michigan can improve the degree to which enforcement actions return facilities to compliance.
- Michigan can improve its enforcement responses at facilities with general permits.
- Documentation of the economic benefit component in penalty calculations needs improvement.
- Documentation on the difference between the proposed and final penalties assessed needs improvement.

Overview of Performance Issues in Comparison to Prior Review:

Metric	Round 3 Finding Level (FY 2012)	Round 4 Finding Level (FY 2019)
2b-CWA Element 1 – Data	Area for Improvement	Area for Improvement
6b-CWA Element 2 – Inspections	Area for Improvement	Area for Attention
7e-Element 3 — Violations	Area for Improvement	Meets or Exceeds Expectations

9a-Element 4 — Enforcement	Area for Attention	Area for Improvement
11a and 12a-CWA Element 5 - Penalties	Meets or Exceeds Expectations	Area for Improvement

### Clean Air Act

N/A

Overview of Performance Issues in Comparison to Prior Review:

Element	Round 3 Finding Level (FY 2012)	Round 4 Finding Level (FY 2019)
Data	Area for Improvement	Area for Attention; Meets or Exceeds Expectations
Inspections	Area for Improvement	Meets or Exceeds Expectations
Violations	Area for Improvement	Meets or Exceeds Expectations
Enforcement	Area for Improvement	Meets or Exceeds Expectations

### Resource Conservation and Recovery Act

- The review of the selected files revealed the untimeliness of the inspection report completions. Michigan’s current state standard for completion of reports/issuance of written compliance results are 10 business days.
- Some files reviewed did not include documentation indicating that the economic benefit component was evaluated by Michigan.
- The data metric analysis revealed that some SNC determinations were not timely made.

Overview of Performance Issues in Comparison to Prior Review:

Metric	Round 3 Finding Level (FY 2012)	Round 4 Finding Level (FY 2019)
2b – Complete and accurate entry of mandatory data	Area for Improvement	Area for Attention
6b – Inspection reports were not completed in a timely manner	Meets or Exceeds Expectations	Area for Improvement
8b – Timeliness of SNC determinations	Meets or Exceeds Expectations	Area for Improvement



10a – Timely enforcement taken to address SNC	Area for Attention	Meets or Exceeds Expectations
11a – Gravity and economic benefit	Meets or Exceeds Expectations	Area for Improvement (economic benefit evaluation and documentation)

# Clean Water Act Findings

## CWA Element 1 - Data

---

### **Finding 1-1**

Area for Improvement

---

### **Recurring Issue:**

Recurring from Round 3

---

### **Summary:**

In 6 of 36 files reviewed (16.7%), data was accurately reflected in ICIS-NPDES. The review found there have been no formal enforcement actions or assessed penalties reported to ICIS-NPDES for the past 5 years. Certain NPDES data elements are not flowing to ICIS-NPDES, which is a requirement of the NPDES E-Reporting Rule. In addition, there were also missing and incorrectly identified data reported in ICIS-NPDES.

---

### **Explanation:**

EPA review team identified that specific data elements required by the E-Reporting Rule were not flowing into ICIS-NPDES as follow:

- In 24 files reviewed, required data elements such as Discharge Monitoring Reports (DMRs), inspections and Violation Notices were entered in MiWaters (Michigan's data system), but were not reported to ICIS-NPDES.
- In 2 files reviewed, Sanitary Sewer Overflow (SSO) violations were entered in MiWaters but were not reported in ICIS-NPDES.
- In 6 files reviewed, data entered in MiWaters and ICIS-NPDES were not consistently identified. For example, one file had a Notice of Violation in ICIS-NPDES that was identified in MiWaters as a Closeout Letter. In other files, the exact same data elements had different dates entered in MiWaters than reported in ICIS-NPDES.
- In 3 files reviewed, Single Event Violations (SEVs) that appeared to be resolved in MiWaters were not reported as resolved in ICIS-NPDES. Aside from effluent violations which are automatically generated in ICIS-NPDES, SEVs that rise to the level of SNC, can't be tracked for timely and appropriate enforcement response if they are not reported.
- Data metrics 7j1, 7k1 and 8a3 show deficiencies in data entry for SEVs, noncompliance, and SNC determinations.

Some files reviewed had deficiencies identified in more than one of the above-mentioned findings. During the review a discussion was held with Michigan staff on data deficiencies. Michigan informed EPA that a recent upgrade had occurred in MiWaters that will begin to address the flow of data elements to ICIS-NPDES required by the E-Reporting Rule. Michigan has worked on improving data flows to ICIS since the review, which has resulted in the flow of enforcement actions from MiWaters to ICIS.

Metrics listed below only refer to the accuracy and completeness of data in EPA systems and files for purposes of this Element.

**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%	93.5%	20	21	95.2%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	>=95%	92.3%	94	155	60.65%
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%	-	6	36	16.7%
7j1 Number of major and non-major facilities with single-event violations reported in the review year.	-	-	0	0	0
7k1 Major and non-major facilities in noncompliance.	-	18.7%	1725	3327	51.8%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.	-	9%	390	3039	12.8%

Please note:

For metric 1b5, the percent of complete data is based on a universe of 21 facilities flowing at the time of the data review. Data flows have significantly improved since the review.

For metric 7j1, at the time of the data review, Michigan wasn't consistently flowing Single Event Violation data from MiWaters to ICIS. Michigan has been working to correct this issue and began flowing SEV data to ICIS in September 2021.

**State Response:**

Michigan has been a national leader in the development of MiWaters, spending significant time and resources to identify problems and enhance the database. Michigan has worked on improving data flows to USEPA's Integrated Compliance Information System (ICIS) since the SRF review, which has improved data flow. Some of the facilities reviewed as part of the SRF were associated with the permitting backlog which has impacted data flow from MiWaters to ICIS. MiWaters went

live in August 2015. Part of the cutover from our legacy system to MiWaters resulted in a disconnection of the permit data flow for existing permits. This break in connection was manually addressed for Major Permits. For Minor Permits, the reconnection will occur at permit reissuance addressing data flow from that point forward. Data flow corrections have also been made to address flow breaks occurring when permits of one type were reissued as a permit of a different type.

The Water Resources Division (WRD) has a five-year plan for reducing the backlog. Each year, we focus on the cycle year permits (e.g., permits expiring in fiscal year [FY] 2021 were priority for FY 2021), and any associated backlogs (e.g., permits expired in 2016, 2011, etc.). On October 1, WRD began our focus on FY 2022 permits and associated backlog. This will progressively work through permits in the backlog incrementally through FY 2024. As permits are reissued in MiWaters, the newly issued permit is connected to ICIS and flow is restored from that point forward. Through implementation of this backlog resolution process, we anticipate resolution of backlog by the end of FY 2024.

Single Event Violation data was not flowing at the time of the SRF review due to a design limitation that presumed that Reportable Non-Compliance detection and resolution codes were only applicable to SNC. This design flaw was remedied as part of Release 32 of MiWaters and started flowing at the end of September 2021. Flow of formal compliance and enforcement (C&E) actions and penalties was corrected in February 2021.

National Pollutant Discharge Elimination System (NPDES) data group flow was established after MiWaters was initiated. The NPDES data groups determined by the USEPA did not mimic existing state utilized permit categories or types and therefore, implementing NPDES groups was not possible using the existing structure. NPDES Data Group flow was partially implemented, but it resulted in grouping some permit types incorrectly. The custom configuration to address this issue is anticipated in Release 33 which expected to be deployed to Production sometime in early 2022.

Michigan commits to continuing to make consistent incremental progress to resolve outstanding data flow issues. The intersection of the dataflow issues and permit backlog means that full resolution of data flow issues will not occur prior to 2024 and corresponding anticipated resolution of the permit backlog impacting dataflow.

---

**Updated Final Recommendation:**

Michigan's plan to reduce its permit backlog is described in the state's comments above and also described in Michigan's FY 2022 §106 Plan. Michigan intends to resolve the backlog by the end of 2024 and will report progress to the Region annually through the §106 Annual Report. The full resolution of data flow issues, including some identified in this review, will not take place before then.

Michigan has made significant progress correcting and flowing data in several areas since the time of the review, as illustrated by several Annual Data Metric Analysis (ADMA) metrics:

- Michigan's permit limit data entry rate (1b5) in 2019 was based on a universe of 21 facilities. To date, the state's universe is 535 and its permit limit entry rate is 98%. To date

70% of facilities in the universe are DMR-ready, compared to 45% during the time of the review.

- Michigan has been flowing formal enforcement and penalty data (1f1, 1g3) for over a year.
- Changes have been made to Single Event Violation flows from MiWaters to ICIS.
- Corrections have been made in MiWaters to ensure that Data Group Codes are accurately reflected in ICIS.

Since July 2021, Michigan and Region 5 have held twice-monthly consultations to track data flow issues. These meetings are a valuable forum for identifying and troubleshooting issues of concern and tracking resolution. These will continue through FY 2022.

The final recommendations consider the work Michigan has already done to correct data issues, as well as the work underway but not yet completed.

Rec #	Due Date	Recommendation
1	8/31/2022	<p>Michigan will ensure adequate progress is being made to successfully flow data from MiWaters to ICIS. To verify progress, <b>EPA will review ADMA reports from FY 2020 and 2021 and select ICIS-NPDES and state reports as appropriate.</b></p> <p>Measures of progress will be as follows:            1b5 - increase in number and universe of major and non-major facilities with permit limit data entry from 2019 baseline            1b6 – increase of DMR entry rate to 95% or greater            1b7,8 – consistent increases in number of DMR filers from 2019 baseline            1g3 – accurate flow of enforcement and penalty actions (70% or greater) from state data system to ICIS            7j1 – establish / maintain flows of Single Event Violations data to ICIS</p>
2	6/30/2023	<p>Michigan will ensure adequate progress is being made to successfully flow data from MiWaters to ICIS. <b>To verify progress, EPA will review ADMA reports from FY 2022, and select ICIS-NPDES and state reports as appropriate.</b></p> <p>Measures of success will be as follows:            1b5 – increases in permit limit data entry count and universe for majors and non-majors            1b6 – maintenance of DMR entry rate at 95% or greater            1b7,8 – consistent increases in number of DMR filers (same as above)            1f1, 1g3 – accurate flow of enforcement and penalty actions (80% or greater) from state data system to ICIS            7j1 – accurate flow of Single Event Violations (80% or greater) from state data system to ICIS</p>

## CWA Element 2 - Inspections

---

### Finding 2-1

Area for Attention

---

### Recurring Issue:

No

---

### Summary:

In 29 of 35 files reviewed (82.9%), inspection reports included documentation sufficient to determine compliance.

---

### Explanation:

EPA reviewers identified the following during the review: In one file reviewed, it included an inspection report with extensive photo documentation, but no narrative. Some of the inspection checklists were only partially completed. Inspectors should be reminded of the importance of thorough documentation in all inspection reports. These reports are the official records documenting inspection activity, as well as the foundation for determining facility compliance.

According to Michigan's 2019 Compliance Monitoring Strategy, Michigan met or exceeded the inspection commitments in 8 of 11 categories. The State far exceeded commitments in the CSO, Industrial Stormwater, CAFOs, and Construction Stormwater categories. Michigan completed 90% of its commitments for majors coverage and 80% of its commitments for minor coverage. In both categories, Michigan conducted high-level reconnaissance inspections to ensure a strong compliance monitoring presence in the field.

---

### 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		32	7	457.1%
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized Publicly Owned Treatment Works (POTWs). [GOAL]	100% of commitments		0	0	0

4a4 Number of CSO inspections. [GOAL]	100% of commitments		16	6	266.7%
4a5 Number of SSO inspections. [GOAL]	100% of commitments		7	0	7
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments		6	0	6
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments		375	296	126.7%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments		169	16	1056.3%
4a10 Number of comprehensive inspections of large and medium CAFOs [GOAL]	100% of commitments		87	56	155.4%
4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL]	100% of commitments		36	28	128.6%
5a1 Inspection coverage of NPDES majors. [GOAL]	100%		73	82	89%
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100%		183	113	161.9%
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%		29	35	82.9%

**State Response:**

Michigan provided a single set of comments on Element 2, and they are listed below in response to Finding 2-2.

**CWA Element 2 - Inspections**

## Finding 2-2

Area for Improvement

---

### Recurring Issue:

Recurring from Round 3

---

### Summary:

In 20 of 34 files reviewed (59%), Michigan inspection reports were timely completed. The files were evaluated in accordance with Michigan inspection report timeliness guidance.

---

### Explanation:

EPA review team calculated an average of 64 days for inspection report completions. Note that inspection report completion timeframes varied from 6 to 187 days. In 7 files reviewed, there were inspection reports that took between 120 and 187 days to complete. CAFO and municipal inspection reports took longer.

In accordance with Michigan guidance, high-level inspections require a written transmittal to the facility even if the facility is in compliance with the areas evaluated. If no concerns were identified, a General Inspection Letter with the inspection findings is submitted to the facility. Compliance Evaluation Inspection (CEI) final reports should be transmitted within 60 days of the site visit. Certification Summary Information (CSI) final results can be transmitted later, but within 30 days of receiving the CSI Report from staff or analytical results from the laboratory or audit results (for Industrial Pretreatment Program (IPP) audits). If concerns or violations are identified, a written response summarizing the findings of the compliance review is sent within 60 days of the site visit. Michigan's template options for these transmittals are the Compliance Communication letter, Violation Notice, Violation Notice-Egregious, and Second Violation Notice.

---

### 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%		20	34	58.8%

---

### State Response:

The WRD conducted inspection checklist training on January 13, 2021, because we identified the need to train new and existing staff on the proper use and completion of the NPDES wastewater inspection checklists. The training covered the purpose of each question and what information was expected to be captured. Staff were reminded that all checklist questions were required to be answered unless the subject matter was not applicable. Explanatory comments in the checklists were encouraged. As a result of this training, we identified the need for some revisions (for clarity) and additions to the questions on the checklists. Those changes have been made.



The WRD has reminded staff that complete inspection checklists are required to assess inspection findings in order to make an informed compliance determination. Each NPDES Program has checklists that assess the areas evaluated along with guidance used to make that compliance determination. This guidance ensures consistency throughout the NPDES Programs.

The WRD recognizes that timeliness is an area that can be improved. The WRD would like to point out that the files selected for review disproportionately reflected the work of one inspector who had recently moved from another district office and was trying to complete the work associated with the previous and new district commitments. The delays caused by this situation skewed the findings. In future reviews, Michigan encourages the USEPA to select records during the next review that better reflect the activities of the entire program area rather than a single inspector. Reminders were, and will continue to be, given to field staff for completing inspections in a timely manner.

The Sampling Only inspections reviewed during the SRF were related predominantly to WRD's PFAS sampling initiatives and conducted by Industrial Pretreatment Program (IPP), Emerging Pollutants Section staff, and AECOM (PFAS contractor). The PFAS data was saved in MiWaters as a Sampling Only inspection when the data was received. No inspection checklists were required for these events. The data was emailed to the permittee upon receipt of the data from AECOM. A copy of that email was uploaded into MiWaters for documentation of the event.

File Review "inspections" are generally used to record activities other than inspections associated with our CMS commitment including:

- The ability to generate a violation in MiWaters if there is no other supporting action like a schedule of compliance or inspection to use (e.g., sanitary sewer overflows [SSOs])
- To record a review of Discharge Monitoring Reports.
- Review annual reports or other permit required reports.
- Checklists are not used with file reviews. No report to the permittee is needed unless the review triggers a C&E action. The WRD has also made a programmatic decision for Recon inspections.
- Recon inspections require a site visit and written inspection documentation (e.g., a checklist or field notes) must be generated and saved in MiWaters.
- If noncompliance was not found during the recon an inspection transmittal was not required unless the permittee requested one. An example would be a meeting held at the facility to discuss a particular issue.
- If noncompliance was found during the recon inspection, a follow up response to the permittee was required, using the standard C&E process.

Collection system SSOs are generated under the Municipality’s CM (contributing municipality) site, not the permittee’s Wastewater Treatment Plant (WWTP) site. Only overflows or bypasses occurring at the WWTP are to be recorded in the WWTP site. If the USEPA looked for SSOs in the WWTP site during their review, it is unlikely they would find the records they needed to complete their evaluation.

---

**Updated Final Recommendation:**

Region 5 commends Michigan for developing and holding training on using the WRD Inspector Checklist. This is likely to improve all aspects of conducting inspections including timeliness.

Rec #	Due Date	Recommendation
1	11/30/2022	By 11/30/2022, Michigan will demonstrate the NPDES inspections in the CAFO and municipal program areas are completed within the timeframe established in the State’s inspection report guidance. Michigan will prepare and submit a report to EPA that documents the number of inspections completed and the timeframes taken to complete each inspection report. EPA will review a random selection of 10 CAFO/municipal inspections to verify timely completion of inspection reports (80% timeliness).

---

**CWA Element 3 - Violations**

---

**Finding 3-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

In 43 of 44 files reviewed (97.7%), Michigan performance in accurately determining facility compliance was outstanding.

---

**Explanation:**

Michigan made accurate compliance determinations. This is a significant improvement from previous SRF findings.

---

**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%	-	43	44	97.7%
7j1 Number of major and non-major facilities with single-event violations reported in the review year.	-	-	0	0	0
7k1 Major and non-major facilities in noncompliance.	-	18.7%	1725	3327	51.8%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.	-	9%	390	3039	12.8%

Please note: Violation-related metrics 7j1, 7k1 and 8a3 must be referenced in this section per national SRF guidance. However, the file review team observed that these metric values are likely the result of data flow errors. Finding 1-1 discusses recommended action items for data flow issues.

**State Response:**

Due to data flow issues identified above, Michigan's SNC rate is exaggerated in ICIS/Enforcement and Compliance History Online (ECHO). There is continuous training to our inspectors on how to determine SNC and the importance of ensuring a return to compliance in a timely manner.

**CWA Element 4 – Enforcement****Finding 4-1**

Area for Improvement

**Recurring Issue:**

No

**Summary:**

In 22 of 29 files reviewed (75.9%), Michigan enforcement actions returned violating facilities back into compliance, however 86% (6 of 7) general permit file enforcement responses reviewed did not return the facility to compliance.

**Explanation:**

EPA review team identified the following:

- In 4 files reviewed, Michigan issued Violation Notices to facilities for permit violations but when the facilities didn't timely comply, Michigan continued to issue Violation Notices for the same types of violations.
- In one file reviewed, Michigan issued a Compliance Communication letter to the facility with multiple documented permit violations.
- In one file reviewed, Michigan issued a Violation Notice to the facility for failing to comply with an Administrative Order. Violations of Orders should warrant an escalated enforcement response from the State, such as collecting a stipulated penalty or a referral for judicial action.
- In one file reviewed, Michigan issued a Violation Notice to the facility for permit violations and the facility failed to timely comply.

EPA review team notes that 13 of 29 files in the review were from facilities with various types of general permits (in Michigan, this is the "MIG" prefix). These include CAFOs, wastewater lagoons, non-contact cooling water, and potable water. Six of seven files identified as deficient in this category are facilities with MIG prefixes. Michigan comprehensive compliance and enforcement policy emphasizes the importance of timely and appropriate enforcement, as well as the need for escalated enforcement in instances of repeating or continuing non-compliance. The policy should be reinforced with all Michigan staff.

**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>
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		22	29	75.9%

**State Response:**

The WRD uses a progressive approach to addressing violations beginning with informal actions whenever possible. Formal enforcement actions are used when there are egregious and/or chronic violations or when a voluntary return to compliance does not occur. In most cases, our preference is to resolve noncompliance informally, if possible, even if that process extends beyond the dates established by the USEPA. Michigan provided C&E training on April 20, 2021, with a follow up question and answer session on April 22, 2021, to ensure staff consistently uses our C&E process.

**Updated Final Recommendation:**

In April 2021, Michigan held a virtual Compliance and Enforcement Process training for all Water Resource Division staff (compliance and permits). The training, which was reviewed by the CWA team, includes a detailed breakdown of the program's Compliance and Enforcement process. This

process includes necessary steps to document actions in MiWaters. The agenda, including a minute-by-minute time stamp, was also provided. This training satisfies Recommendation #1 for Finding 4-1.

Rec #	Due Date	Recommendation
1	9/30/2022	Michigan will provide training to WRD staff that emphasizes the principles of timely and appropriate enforcement and escalated enforcement in instances of repeating or recurring violations. Michigan will provide the date(s) of training, training agenda, attendance records, and any documents distributed or used during training. EPA will evaluate training documentation, attendance records, and quarterly ICIS pulls to assure appropriate state performance. See recommendation from finding 4-2 (below) for additional actions to address this concern. This action item is complete.

---

#### CWA Element 4 - Enforcement

---

##### Finding 4-2

Area for Improvement

---

##### Recurring Issue:

No

---

##### Summary:

In 21 of 29 files (72.4%), Michigan enforcement responses addressed violations in an appropriate manner, however only 45% of general permit enforcement files reviewed were timely and appropriate. Metric 10a1 deficiencies are mirrored in Element 1 Data Findings and similarly addressed with the Element 1 recommendations.

---

##### Explanation:

EPA review team identified the following:

- In 3 files reviewed, Michigan initial enforcement responses occurred long after the violations happened. In these files, the initial enforcement responses ranged between six months and three years after the violations were documented.
- In one file reviewed, the formal action appeared to resolve the violation only partially.
- In two files reviewed, Michigan didn't appear to escalate enforcement after facilities failed to timely respond to notifications of non-compliance.
- In two files reviewed, there was no indication that Michigan enforcement action resulted in returning the facilities back into compliance.

EPA review team notes that 13 of 29 files in the review were from facilities with various types of general permits (in Michigan, this is the "MIG" prefix). These include CAFOs, wastewater lagoons, non-contact cooling water, and potable water. All 8 of the files identified as deficient in this category are facilities with MIG prefixes, suggesting that Michigan may have challenges with timely and appropriate enforcement responses in this particular permit category. In addition, the review team noted the lack of timely enforcement response may be due in part to Michigan General Administrative Compliance Orders (GACO) enforcement procedures for certain categories of permits. These procedures allow for issuance of GACOs to facilities that fail to timely apply for permit coverage. These actions can be initiated by either Michigan's WRD Permits or Compliance staff. A number of these were identified in the review as lacking timely enforcement response.

Data metric 10a1 shows that Michigan did not enter formal enforcement actions in response to SNC into the national data system during the review period.

---

**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%	0	31	0%
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%	-	21	29	72.4%

---

**State Response:**

Michigan provided a single set of comments on Element 4, and they are listed above in response to Finding 4-1.

---

**Updated Final Recommendation:**

The training Michigan provided in April 2021 satisfies Recommendation 1 under this finding. In addition, the review team concluded that the thoroughness of the training provided obviates the need for changes to the enforcement policy.

Rec #	Due Date	Recommendation
1	9/30/2022	Michigan will ensure coordination between WRD Permits and Compliance managers and staff so that Permits staff are aware of the timely and appropriate enforcement guidelines established in MEGLE's Compliance and Enforcement Policy. In addition, Michigan will provide training for relevant Permits managers and staff on timely and appropriate enforcement guidelines established in Michigan Compliance and Enforcement Policy. Michigan will provide the date(s), agenda and any documents provided during the training to EPA. <i>This action item is complete.</i>
2	3/31/2023	EPA will randomly select 5 MIG enforcement actions and review for timely and appropriate enforcement responses and share results with Michigan. EPA will share its findings on files reviewed and work with State to address any remaining deficiencies.

## CWA Element 5 – Penalties

Note that findings for 5-1 and 5-2 are combined and included here.

### Finding 5-1

Area for Improvement

### Recurring Issue:

No

### Summary:

In 2 of 8 files reviewed (25%), the gravity and economic benefit components for each penalty calculation were clearly documented. In 3 of 8 files reviewed (37.5%), the difference between the initial penalty calculation and final assessed penalty was clearly documented.

### Explanation:

The gravity component of each penalty calculation was clearly documented; however, the economic benefit was not. Note the facility files in MiWaters didn't include penalty calculations, so this information was provided to EPA separately by Michigan staff. Consideration of the economic benefit is an important component of the Federal and State penalty policies for the NPDES program and should be clearly documented in the penalty calculations. Please note that this information is not typically located in the facility files or MiWaters but was provided separately to EPA review team by Michigan staff.

**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%	-	2	8	25%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%	-	3	8	37.5%

**State Response:**

The WRD has developed interim guidance for settlement fines. This guidance was last updated in 2008. In many instances information to assess economic benefit may not be readily available, calculations of gravity typically exceed a facilities ability to pay. The WRD strives to return facilities back into compliance in conjunction with a civil fine to deter future noncompliance. The WRD will take steps to revise the current penalty worksheet which documents to a greater degree economic benefit or a statement which explains if an economic benefit calculation is not applicable. Revisions to the penalty worksheet will also include a statement which documents the difference between proposed penalties and the actual penalty negotiated to attain settlement.

**Recommendation:**

Rec #	Due Date	Recommendation
1	11/30/2022	Michigan will revise the NPDES / Part 41 program penalty worksheet to include economic benefit calculations. If economic benefit calculations aren't appropriate or applicable, there should be a place on the worksheet to indicate such. In addition, the worksheet will include a statement documenting the difference and rationale between the proposed and final penalty. Michigan will submit the revised worksheet to EPA, including examples of its use in penalty cases.

**CWA Element 5 - Penalties****Finding 5-2**

Meets or Exceeds Expectations

**Recurring Issue:**

No



---

**Summary:**

Michigan timely collects penalties associated with enforcement actions.

---

**Explanation:**

In 7 of 8 files reviewed (87.5%), Michigan timely collected penalties associated with enforcement actions.

---

**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>
12b Penalties collected [GOAL]	100%	-	7	8	87.5%

---

**State Response:**

Michigan provided a single set of comments on Element 5, and they are located in response to Finding 5-1 above.

---

# Clean Air Act Findings

## CAA Element 1 - Data

---

### Finding 1-1

Area for Attention

---

### Recurring Issue:

No

---

### Summary:

In 27 of 35 files reviewed (77.1%), data was accurately reflected in ICIS-Air. Some files reviewed contained data that was inaccurately reflected in ICIS-Air. Data metric 3a2 indicates that 4 of 5 HPV determinations (80%) were timely reported into ICIS-Air.

---

### Explanation:

In 8 of 35 files reviewed, the EPA review team found data inconsistencies between the state files and the data entered into ICIS-Air. Examples of these anomalies include incorrect inspection dates at two of these facilities, incorrect violation notice dates or violation notices not entered for three facilities, a missing HPV discovery date for one facility, a missing Federally Reportable Violation (FRV) for one facility, missing stack tests or incorrectly dated stack tests for three facilities, and incorrectly identified pollutants for two facilities. Michigan has made improvements in data entry since Round 3, but this remains an issue. Michigan will need to continue to make improvements in data entry and accuracy to achieve the national goal of 100% data entry completeness.

---

### 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%		27	35	77.1%
3a2 Timely reporting of HPV determinations [GOAL]	100%	42.1%	4	5	80%

---

### State Response:

None

---

## CAA Element 1 - Data

---

### Finding 1-2

Meets or Exceeds Expectations

---

#### Recurring Issue:

No

---

#### Summary:

804 of 865 compliance monitoring Minimum Data Requirements (MDRs) (92.9%), 254 of 264 stack test dates (96.2%), and 171 of 181 enforcement MDRs (94.5%) were reported into ICIS-Air in accordance with the 60-day reference standard.

---

#### Explanation:

Michigan is to be commended for progress towards national goals in these data reporting metrics.

---

#### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	85.7%	804	865	92.9%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	69.4%	254	264	96.2%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	74.4%	171	181	94.5%

---

#### State Response:

None

---

## CAA Element 2 - Inspections

---

### Finding 2-1

Meets or Exceeds Expectations

---

#### Recurring Issue:

No

---

**Summary:**

In 19 of 22 files reviewed (86.4%) all FCE elements were thoroughly and accurately documented. In 20 of 21 files reviewed (95.2%) provided sufficient documentation to determine source compliance. Additionally, Michigan conducted 193 FCEs at Title V Major facilities, and 250 FCEs at SM80 facilities, and met practically all of their commitments under the Compliance Monitoring Strategy (CMS) plan.

**Explanation:**

In general, the EPA review team noted that the consistency and thoroughness of the FCE reports was significantly improved from the previous SRF review. The EPA review team noted that additional care could be taken to document all relevant personnel contact information in the inspection reports. The reports could also be more specific in identifying what inspection observations were conveyed to facility personnel at the time of the inspection. These are minor issues in only a few of the reports, but the EPA review team feels that attention to these details could further improve the thoroughness and consistency of the inspection reports. Michigan is to be commended for the significant number of FCE's completed during this time period.

**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 FCE coverage: majors and mega-sites [GOAL]	100%	87%	193	196	98.5%
5b FCE coverage: SM-80s [GOAL]	100%	93%	250	260	96.2%
5c FCE coverage: minor and synthetics minor (non-SM80s) sources that are part of a CMS Plan and Alternative CMS Facilities		71.7%	0	0	N/A
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	86.1%	322	369	87.3%
6a Documentation of FCE elements [GOAL]	100%		19	22	86.4%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		20	21	95.2%

**State Response:**

None

## CAA Element 3 - Violations

---

### Finding 3-1

Meets or Exceeds Expectations

---

### Recurring Issue:

No

---

### Summary:

35 of 35 files reviewed (100%) documented accurate compliance determinations, and 26 of 27 files reviewed (96.3%) documented accurate HPV determinations.

---

### Explanation:

Michigan consistently made accurate compliance determinations. Errors were noted in only one file. In this one case, both violations recorded as FRVs should have been HPVs. The violations were for exceedance of the PM10/PM2.5 limit during stack tests that occurred on 9/13/18 and 12/12/18. These should be considered HPVs under criteria 2, reoccurring violation of a federally enforceable PSD limit lasting at least 7 days. The EPA review team also noted that, although HPVs were determined accurately in all other cases reviewed, there seemed to be a lack of consistency in the determination of HPV Zero Dates. This issue was discussed with Michigan during the review, and the EPA review team suggested that Michigan develop a consistent, written approach to determining HPV Zero Dates and train staff on this approach.

---

### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
13 Timeliness of HPV Identification [GOAL]	100%	90.6%	4	4	100%
7a Accurate compliance determinations [GOAL]	100%		35	35	100%
7a1 FRV 'discovery rate' based on evaluations at active CMS sources		7.8%	107	1349	7.9%
8a Discovery rate of HPVs at majors		2.3%	4	386	1%
8c Accuracy of HPV determinations [GOAL]	100%		26	27	96.3%

---

### State Response:

None

---

## CAA Element 4 - Enforcement

### Finding 4-1

Meets or Exceeds Expectations

### Recurring Issue:

No

### Summary:

In 12 of 12 (100%) of files reviewed documented formal enforcement responses that include appropriate and effective corrective action. In 10 of 10 (100%) relevant files reviewed showed timely case development and resolution of HPVs. 8 of 8 (100%) files reviewed documented appropriate enforcement responses for HPVs. And 5 of 5 (100%) files reviewed contained required policy elements for HPV case development and resolution timeline.

### Explanation:

Michigan's enforcement responses were uniformly effective and timely. Michigan is to be commended for maintaining a vigilant and proactive enforcement presence.

### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		10	10	100%
10a1 Rate of Addressing HPVs within 180 days		47.8%	1	8	12.5%
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		8	8	100%
10b1 Rate of managing HPVs with an NOV or NOW or no action		7.9%	0	8	0%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		5	5	100%

9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame, or the facility fixed the problem without a compliance schedule [GOAL]	100%		12	12	100%
---	------	--	----	----	------

**State Response:**

None

**CAA Element 5 - Penalties**

**Finding 5-1**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

12 of 12 of penalty calculations reviewed (100%) documented gravity and economic benefit. In 9 of 9 files reviewed (100%) the rationale for any difference between initial penalty calculation and final penalty was adequately documented. And in all cases in which penalties were assessed (12 of 12 files reviewed, or 100%) there was evidence that the penalties were collected.

**Explanation:**

Michigan is to be commended for appropriately and effectively assessing penalties.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%		12	12	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		9	9	100%
12b Penalties collected [GOAL]	100%		12	12	100%

**State Response:**

None

# Resource Conservation and Recovery Act Findings

## RCRA Element 1 - Data

---

### **Finding 1-1**

Area for Attention

---

### **Recurring Issue:**

No

---

### **Summary:**

In 27 of 35 files reviewed (77.1%), data was accurately reflected in RCRAInfo. Some files reviewed contained data that was inaccurately reflected in RCRAInfo. The review generally noted inconsistent dates on the programmatic response letters compared to the dates reported in RCRAInfo.

---

### **Explanation:**

The EPA review team found the following data discrepancies:

- In one file reviewed, an inspection date of May 16, 2019, was reported into RCRAInfo; however, the Michigan case file had an inspection date of March 16, 2019, noted in the May 22, 2019, Compliance Communication letter. It appeared there may have been a grammatical error for the inspection date in the letter. In addition, the inspector signed and dated the inspection form with a date of May 13, 2019.
- In one file reviewed, the Compliance Evaluation inspection date in RCRAInfo was April 13, 2019, but the date in the Michigan case file was April 3, 2019. For the same facility, a Non-Financial Review Report (NRR) was conducted on September 30, 2019, and reported to RCRAInfo; however, no record was located in Michigan case files for the NRR.
- In another file reviewed, the Compliance Commitment letter date of March 27, 2019, was reported in RCRAInfo, but the document located in the Michigan case file was dated April 1, 2019. In addition, there was no Return to Compliance (RTC) letter in the Michigan case file; however, RCRAInfo had a date of August 1, 2020, reported.

Michigan noted that inconsistent dates from the programmatic response letters entered into their Waste Data System (WDS) was due to typos caused by the lack of quality assurance conducted; this resulted from the changeover of personnel staff responsible for the oversight of data entered into WDS. Although progress has been made since Round 3, this is still an ongoing data issue.

---



**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 Accurate entry of mandatory data [GOAL]	100%		27	35	77.1%

**State Response:**

The EPA finds that this is an Area for State Attention. EGLE does not dispute that there is a need for increased attention to data entry and tracking.

Overall, it appears that the EPA finds that EGLE administers an effective RCRA/Part 111, Hazardous Waste Management, 1994 PA 451, as amended, Compliance and Enforcement Program (Program) and the administrative rules promulgated pursuant to Part 111. EGLE believes that this is due in large part to a focus on sufficient inspections in all categories of facilities and taking enforcement action when appropriate and/or when warranted. The need for sufficient compliance inspections and a focus on data entry has to be balanced, in light of limited staffing resources. EGLE will work to improve any apparent data entry deficiencies.

EGLE also asks that the EPA recognize the number of new compliance and enforcement staff within the district and hazardous waste sections. EGLE acknowledges the need for initial and on-going training within the RCRA/Part 111 Program and will continue to train staff on proper data entry. EGLE will also implement a quarterly quality assurance/quality control program, whereby supervisors will select a percentage of inspections and verify the accuracy of data entry.

---

**RCRA Element 2 - Inspections**

---

**Finding 2-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

In 28 of 30 files reviewed (93.3%), Michigan is continuing to demonstrate that their inspection reports are complete and provides sufficient information to make accurate compliance determinations.

---

**Explanation:**

The files reviewed were determined to have complete and sufficient information in the inspection reports to determine compliance.

---

**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%	85%	14	14	100%
5b Annual inspection of LQGs using BR universe [GOAL]	20%	15.6%	85	345	24.6%
5d One-year count of SQGs with inspections [GOAL]	100% of commitments	-	145	-	145
5e5 One-year count of very small quantity generators (VSQGs) with inspections	100% of commitments	-	135	-	135
5e6 One-year count of transporters with inspections	100% of commitments	-	17	-	17
5e7 One-year count of sites not covered by metrics 5a - 5e6 with inspections	100% of commitments	-	111	-	111
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%	-	28	30	93.3%

**State Response:**

The EPA finds that this area Meets or Exceeds Expectations. EGLE appreciates the recognition of this accomplishment and has no comments regarding this element.

**RCRA Element 2 - Inspections**

**Finding 2-2**

Area for Improvement

**Recurring Issue:**

No

**Summary:**

In 18 of 30 files reviewed (60%), the inspection reports were determined to be completed in a timely manner as required by Michigan's standard of 10 business days.

**Explanation:**

Twelve inspection reports were determined not to be completed in a timely manner as required by Michigan's standard of 10 business days. The timeframe for completion ranged from 16 to 326 business days. Michigan stated they will be looking to change the required inspection report completion timeframe standard.

**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%		18	30	60%

**State Response:**

The EPA finds that this is an Area for Improvement. EGLE does not dispute that there is a need for improvement in timeliness of data entry.

EGLE also believes that accuracy in identifying violations and preparing a thorough and accurate summary of the inspection observations and violations is imperative and needs to take priority over meeting data entry deadlines, when necessary. In many instances, the complex nature of a facility's processes and the RCRA/Part 111 rules and regulations increases the amount of time necessary for staff to make an accurate compliance determination. EGLE asks that the EPA also recognize the number of new compliance and enforcement staff within the district and hazardous waste sections. EGLE acknowledges the need for initial and on-going training within the RCRA/Part 111 Program.

Overall, it appears that the EPA finds that EGLE administers an effective RCRA/Part 111 Program. EGLE believes that this is due in large part to a focus on sufficient inspections in all categories of facilities and taking enforcement action when appropriate and/or when warranted. The need for accurate inspection reports resulting from sufficient compliance inspections and a focus on inspection report deadlines need to be balanced.

EGLE also recognizes the importance for facilities to receive timely inspection results and the importance to public health and the environment for correction of violations in a timely manner and in accordance with RCRA policies. EGLE acknowledges the recommendation for Finding 2-2, Inspections, and will move forward as recommended. An updated department-wide Compliance and Enforcement Policy is anticipated to be rolled out in January of 2022, followed by the Materials Management Division's updates to program-specific policy(s). The review and development of updated policies will take into consideration the principles in the EPA's Interim Policy on Inspection Report Timeliness.

---

**Recommendation:**

Rec #	Due Date	Recommendation
1	120 days after issuance of final report	Michigan should review current policies/standards involving inspection report completion timeframes to reconcile issues found in the review and provide new/updated procedures, as well as training for staff. Michigan will submit new/updated procedures and date(s) of training to the EPA.
2	09/30/2022	Within the 4th quarter of FY 2022, the results of EPA tracking and monitoring of Michigan's progress through annual mid-year file audits and quarterly enforcement calls will be reviewed and comments provided to Michigan. EPA's review of the FY 2021 Mid-Year File Audit for review of inspection report timeliness indicated that the state is potentially timely in completing inspection reports (75% of all inspection reports reviewed meeting the revised timeframe the state is looking to extend, per the Interim Policy on Inspection Report Timeliness), the recommendation will be potentially considered completed based upon what timeframe the state is looking to utilize per its policy.

---

**RCRA Element 3 - Violations**

---

**Finding 3-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

In 35 of 35 files reviewed (100%), the inspection reports/files led to accurate compliance determinations. In 30 of 30 files reviewed (100%), Michigan cited violations that led to accurate SNC determinations.

---

**Explanation:**

The EPA review team found that based on the file review, Michigan prepared complete inspection reports/files that had sufficient evidence documented that led to accurate compliance determinations and the violations led to accurate SNC determinations.

---

**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>
2a Long-standing secondary violators	-	-	-	-	376
7a Accurate compliance determinations [GOAL]	100%	-	35	35	100%
7b Violations found during CEI and FCI inspections	-	38.9%	279	523	53.3%
8a SNC identification rate at sites with CEI and FCI	-	1.6%	10	942	1.1%
8c Appropriate SNC determinations [GOAL]	100%	-	30	30	100%

**State Response:**

The EPA finds that this area Meets or Exceeds Expectations. EGLE appreciates the recognition of this accomplishment and has no comments regarding this element.

**RCRA Element 3 - Violations**

**Finding 3-2**

Area for Improvement

**Recurring Issue:**

No

**Summary:**

7 of 10 facilities (70%), per the Data Metric Analysis, that had violations that were determined to be SNC, were determined to be SNCs in a timely manner.

**Explanation:**

3 facilities were not determined to be SNCs in a timely manner.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
8b Timeliness of SNC determinations [GOAL]	100%	76.5%	7	10	70%

**State Response:**

The EPA finds that this is an Area for Improvement. EGLE believes that this element would be more appropriately determined to be an “Area for State Attention” as EGLE’s total for this metric was only slightly below the national average.

EGLE agrees from the standpoint that with any program or area of a program, if everything is not 100 percent, there is room for improvement. EGLE acknowledges the recommendation for Finding 3-2, will move forward as recommended, and intends to put additional emphasis on issues of timeliness.

**Recommendation:**

Rec #	Due Date	Recommendation
1	120 days after issuance of final report	Michigan should review current policies/standards involving timely SNC determinations to reconcile issues found in the review and provide new/updated procedures, as well as training for staff. Michigan will submit new/updated procedures and date(s) of training to the EPA.
2	9/30/2022	Within the 4th quarter of FY 2022, the results of the EPA’s tracking and monitoring of Michigan's progress through annual mid-year file audits and quarterly enforcement calls will be reviewed and comments will be provided to Michigan. The EPA’s review of the FY 2021 Mid-Year File Audit for review of SNC determination timeliness indicated that the state is not timely in completing SNC determinations (75% of all SNC determinations reviewed did not meet the 150-day timeframe, per the Enforcement Response Policy); the recommendation is not considered complete.

**RCRA Element 4 - Enforcement****Finding 4-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**No

---

**Summary:**

In 27 of 28 files reviewed (96.4%), Michigan had taken the appropriate enforcement response that returned violators back into compliance. In 4 of 4 files reviewed (100%), Michigan's SNC designations were addressed in a timely manner, with a formal enforcement action or referral. In 28 of 28 files reviewed (100%), Michigan took the appropriate enforcement actions in response to the type of violations cited within the files.

---

**Explanation:**

EPA review team found that based on the files reviewed, Michigan had taken the appropriate enforcement response that returned violators back into compliance. Michigan SNC designations were addressed in a timely manner with a formal enforcement action or referral, and they took the appropriate enforcement actions in response to the type of violations cited within the files.

---

**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%	78.6%	4	4	100%
10b Appropriate enforcement taken to address violations [GOAL]	100%	-	28	28	100%
9a Enforcement that returns sites to compliance [GOAL]	100%	-	27	28	96.4%

---

**State Response:**

The EPA finds that this area Meets or Exceeds Expectations. EGLE appreciates the recognition of this accomplishment and has no comments regarding this element.

---

**RCRA Element 5 - Penalties**

---

**Finding 5-1**Area for Improvement

---

**Recurring Issue:**No

---

**Summary:**

In 2 of 5 files reviewed (40%), a formal enforcement action with penalty did include documentation of the evaluation of the economic benefit component.

**Explanation:**

The EPA’s review team found that documentation in some of the files indicated that the economic benefit component was evaluated by Michigan; however, some files did not include the documentation of the economic benefit component evaluation. Michigan should document on all penalty calculation worksheets, the evaluation of the economic benefit component when preparing the penalty calculations for a case.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
11a Gravity and economic benefit [GOAL]	100%		2	5	40%

**State Response:**

EGLE recognizes the need to consider the potential economic benefit of the violation when conducting penalty calculations and the need to document that evaluation. EGLE will add a column to the template penalty calculation worksheet for a narrative of the economic benefit consideration.

**Recommendation:**

Rec #	Due Date	Recommendation
1	120 days after issuance of final report	Michigan will add to their penalty calculation worksheet, a column to document the evaluation of the economic benefit component. Michigan will submit the revised penalty calculation worksheet to EPA.

**RCRA Element 5 - Penalties****Finding 5-2**

Meets or Exceeds Expectations

**Recurring Issue:**

No



---

**Summary:**

In 5 of 5 files reviewed (100%), Michigan included a formal enforcement action and penalty documentation of rationale for the difference between the initial penalty calculation and final penalty. In 5 of 5 files reviewed (100%), Michigan also included documentation of collection of penalty.

---

**Explanation:**

The EPA review team found that based on the files reviewed, Michigan included in their formal enforcement action and penalty documentation, the difference between the initial penalty calculation and final penalty. In addition, the files included documentation of the collection of penalties.

---

**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>
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		5	5	100%
12b Penalty collection [GOAL]	100%		5	5	100%

---

**State Response:**

The EPA finds that this area Meets or Exceeds Expectations. EGLE appreciates the recognition of this accomplishment and has no comments regarding this element.

---