

# **STATE REVIEW FRAMEWORK**

## **Colorado**

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

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

**Final Report  
April 28, 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)**

##### **Selecting Metric Values:**

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

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

##### **B. Metric Tables:**

In the relevant metric tables contained throughout this report, the state **N** designates the numerator and the state **D** designates the denominator. For example, for metric 2b, accurate minimum data requirements (MDRs) data in ICIS-AIR, this metric measures the percentage of files reviewed where substantive MDR data are accurately reflected in ICIS-AIR. The state numerator measures the number of files reviewed where file data and ICIS-AIR data are the same for substantive MDRs. And the state denominator measures the number of files reviewed.

##### **C. Review period: Fiscal Year 2020**

##### **D. Key dates:**

- SRF Kick-Off Letter: February 25, 2021 (See Appendix)
- CWA NPDES File Review: May 3 – May 7, 2021
- CAA File Review: June 7 – June 11, 2021
- RCRA File Review: June 29 – August 20, 2021

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

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

- David Piantanida, SRF Coordinator and NPDES File Reviewer: (303) 312-6200, [piantanida.david@epa.gov](mailto:piantanida.david@epa.gov)
- Stephanie Meyers, NPDES Lead: (303) 312-6938, [meyers.stephanie@epa.gov](mailto:meyers.stephanie@epa.gov)
- Michael Boeglin, NPDES File Reviewer, (303) 312-6250, [boeglin.michael@epa.gov](mailto:boeglin.michael@epa.gov)

- Michael Stovern, CAA Lead: (303) 312-6635, [stovern.michael@epa.gov](mailto:stovern.michael@epa.gov)
- Kristin McNeill, RCRA Lead: (303) 312-6278, [mcneill.kristin@epa.gov](mailto:mcneill.kristin@epa.gov)

### **Key State of Colorado Review Contacts**

- Nicole Rowan, CDPHE Water Quality Control Division  
Director, [nicole.rowan@state.co.us](mailto:nicole.rowan@state.co.us)
- Nathan Moore, CDPHE Program Manager, [nathan.moore@state.co.us](mailto:nathan.moore@state.co.us)
- Kelly Morgan, CDPHE Unit Manager, [kelly.morgan@state.co.us](mailto:kelly.morgan@state.co.us)
- Heather Young, CDPHE Section Manager, [heather.young@state.co.us](mailto:heather.young@state.co.us)
- Elizabeth Pilson, CDPHE Compliance Monitoring Unit Supervisor,  
[elizabeth.pilson@state.co.us](mailto:elizabeth.pilson@state.co.us)
- Shannon McMillan, CDPHE Compliance and Enforcement Program Manager,  
[shannon.mcmillan@state.co.us](mailto:shannon.mcmillan@state.co.us)
- Kris Figur, CDPHE Hazardous Waste Compliance Assurance Unit  
Leader, [kris.figur@state.co.us](mailto:kris.figur@state.co.us)
- Kendall Griffin, CDPHE Environmental Protection Specialist, [kendall.griffin@state.co.us](mailto:kendall.griffin@state.co.us)

# Executive Summary

## Introduction

---

The EPA Region 8 enforcement staff conducted a SRF enforcement program oversight review of the Colorado Department of Public Health and Environment (CDPHE) in 2021 based on state activities completed in federal fiscal year (FY) 2020. This file review was done remotely because of the COVID-19 pandemic.

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

## Areas of Strong Performance

---

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

### Clean Water Act (CWA)

- The state's permit limit data entry rate exceeded the national goal of 95%. The state's discharge monitoring report (DMR) data entry rate exceeded the national goal of 95%.
- The state's penalty calculations documented the inclusion of gravity and economic benefit and with two exceptions, the state collected penalties.
- In all files reviewed except one, the state accurately determined compliance. The state met its FY20 commitments for construction stormwater inspections and concentrated animal feeding operation inspections.
- The state's inspection reports are complete and sufficient to determine compliance and are generally completed within the 45-day time frame specified in their Environmental Management System (EMS).
- The state issued enforcement responses that returned, or will return, sources in violation to compliance.

### Clean Air Act (CAA)

- The state completed more than 100% of their major source and Synthetic Minor (SM-80) Full Compliance Evaluation (FCE) Compliance Monitoring Strategy (CMS) commitments which is particularly impressive considering the effects of the global pandemic in FY20.

- During file review, the state’s documentation of the FCE elements in their compliance monitoring reports was very good because of the use of a uniform FCE inspection report format that ensured all required FCE elements were addressed.
- All files reviewed had appropriate HPV determinations in part because of the state’s practice to use an HPV determination worksheet to determine HPV status. The HPV determination worksheet requires that all violations shall be evaluated against the HPV criteria, yielding accurate and consistent determinations.

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

- The state program inspection coverage consistently meets the national goals for treatment, storage, and disposal facilities (TSDFs) and exceeds the national goals for large quantity generators (LQGs).
- The state program is very timely in writing inspection reports and providing compliance determinations to facilities.
- The state program consistently takes appropriate and timely formal and informal enforcement actions to address identified violations.
- The state requires corrective measures in their formal and informal enforcement actions to effectively return facilities to compliance and follows up through required submittals to verify that return to compliance has occurred.

### **Priority Issues to Address**

---

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

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

- ICIS (Integrated Compliance Information System) did not contain complete and accurate required data for all facilities, enforcement actions, and penalties.
- The state did not meet its FY20 commitments for the following inspection types: majors, non-majors, Sanitary Sewer Overflows (SSOs), Municipal Separate Storm Sewer Systems (MS4s), and industrial stormwater.

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

<b>Metric</b>	<b>Round 3 Finding Level (FY15)</b>	<b>Round 4 Finding Level (FY20)</b>
2b Files reviewed where data are accurately reflected in the national data system	Area for Improvement	Area for Improvement
4a5 Number of SSO inspections	Meets or Exceeds	Area for Improvement
4a7 Number of Phase I and II MS4 audits or inspections	*	Area for Improvement
4a8 Number of industrial stormwater inspections	Meets or Exceeds	Area for Improvement
5a1 Inspection coverage of NPDES majors	Meets or Exceeds	Area for Improvement
5b Inspections coverage of NPDES non-majors (individual and general permits)	Meets or Exceeds	Area for Improvement
6a Inspection reports complete and sufficient to determine compliance at the facility	Area for Improvement	Meets or Exceeds
7d1 Major facilities in noncompliance	Area for Improvement	**
8a2 Percentage of major facilities in SNC	Area for Improvement	**
8b Single-event violations accurately identified as SNC or non-SNC	Area for Improvement	**
8c Percentage of SEVs identified as SNC reported timely at major facilities	Area for Improvement	**
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe	Area for Improvement	Area for Attention

\* N/A - State had no data for this metric in FY15.

\*\* N/A - Metric was not in the Round 4 SRF Report.

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

- Multiple source files had minimum data requirements (MDRs) that were incomplete, incorrect, or missing from ICIS-AIR. During the file review only 30.3% of files had all MDRs accurately reported into ICIS-AIR. The most common issues were missing “Air Program” designations and stack tests not being reported into ICIS-AIR.



- The state’s Case Development and Resolution Timelines (CD&RT) for HPV cases were missing the policy requirement to estimate the amount of on-going emissions in excess of the applicable standard.

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

<b>Metric</b>	<b>Round 3 Finding Level (FY15)</b>	<b>Round 4 Finding Level (FY20)</b>
2b Files reviewed where data are accurately reflected in the national data system	Meets or Exceeds	Area for Improvement
14 HPV case development and resolution timeline in place when required that contains required policy elements	Meets or Exceeds	Area for Improvement

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

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

# Clean Water Act Findings

## CWA Element 1 - Data

---

### Finding 1-1

Meets or Exceeds Expectations

---

### Recurring Issue:

No

---

### Summary:

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

---

### Explanation:

For Metric 1b5 on completeness of data entry on major and non-major permit limits, the state's permit limit data entry rate was 100%, exceeding the national goal of 95% and the national average of 95.2%.

For Metric 1b6 on completeness of data entry on major and non-major discharge monitoring reports, the state's DMR data entry rate was 99.6%, exceeding the national goal of 95% and the national average of 92.7%.

---

### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
1b5 Completeness of data entry on major and non-major permit limits. [GOAL]	95%	95.2%	388	388	100%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%	92.7%	21033	21110	99.6%

---

### State Response:

---

## CWA Element 1 - Data

---

### Finding 1-2

Area for Improvement

---

### Recurring Issue:

Recurring from Round 3

---

### Summary:

ICIS did not contain complete and accurate required data for all facilities, enforcement actions, and penalties.

---

### Explanation:

For Metric 2b on files reviewed where data are accurately reflected in the national data system, 10 of 35 files reviewed (28.6%), met the minimum data requirements of the EPA's National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (40 CFR 127, Appendix A).

Instances where the minimum data requirements were not met are outlined below:

1. In two instances, the facility address information was not correctly reflected in ICIS.
2. In two instances, the permit expiration date was not correctly reflected in ICIS.
3. In one instance, the penalty amount was not reflected in ICIS.

In all instances where informal actions or compliance advisories were issued, these actions were not entered into ICIS.

---

### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		10	35	28.6%

---

**State Response:**

It is CDPHE's position that we have met the requirements of the e-reporting rule regarding informal enforcement actions and that the referenced "informal actions and compliance advisories" were not required to be entered into ICIS. CDPHE currently does not consider NPDES program compliance advisories and other similar notifications to be "informal enforcement" for the purpose of the federal e-reporting rule. These compliance advisories are already maintained in publicly available online permit and facility files. CDPHE will develop a definition of informal enforcement and use it in determining what, if any, actions require entry into ICIS in FY22 and also include it within the process for entry into ICIS requested by EPA in Recommendation 1, below. The definition will identify which notifications and actions, if any, will be categorized as informal enforcement and entered into ICIS in the future.

---

**Recommendation:**

Rec #	Due Date	Recommendation
1	11/15/2023	The state must implement a process to enter informal enforcement actions into ICIS and within the timeframes specified in 40 CFR 127. By 11/15/2023, the state will submit to EPA a summary of the state's procedures for ensuring informal enforcement actions are correctly and consistently entered in ICIS. The state will also submit to EPA a list of any informal enforcement actions, that occurred in FY23. The EPA will close this recommendation when at least 71% of informal enforcement actions that occurred in FY23 are entered in ICIS.

---

**CWA Element 2 - Inspections**

---

**Finding 2-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

The state met its FY20 commitments for construction stormwater inspections and concentrated animal feeding operation inspections. The state's inspection reports are complete and sufficient to

determine compliance and are generally completed within the goal time frame specified in their EMS.

---

**Explanation:**

For Metric 4a9 on the number of Phase I and Phase II construction stormwater inspections, the state committed to 576 construction stormwater inspections and completed 569 in FY20 (98.8%), only falling short of their commitment by 7 inspections. The national goal is 100%.

For Metric 4a10 on the number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs), the state committed to 17 concentrated animal feeding operation inspections and completed 18 in FY20 (105.9%). The national goal is 100%.

For Metric 6a on inspection reports complete and sufficient to determine compliance at the facility, 13 of 14 inspection reports reviewed (92.9%) were complete and sufficient to determine compliance at facilities. The national goal is 100%.

For Metric 6b on timeliness of inspection report completion, 13 of 14 inspection reports reviewed (92.9%) were completed within the 45-day time frame specified in the state's Environmental Management System (EMS). The national goal is 100%.

No commitments are required for Metrics 4a1, 4a2, and 4a11 since these program areas are not delegated to the State of Colorado. For Metric 4a4, there are no combined sewer systems in the state.

---

**Relevant metrics:**

---

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL]	100% of commitments		0		0
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL]	100% of commitments		0		0
4a4 Number of CSO inspections. [GOAL]	100% of commitments		0		0
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments		569	576	98.8%
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100% of commitments		18	17	105.9%
4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL]	100% of commitments		0		0
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%		13	14	92.9%
6b Timeliness of inspection report completion [GOAL]	100%		13	14	92.9%

**State Response:**

---

## **CWA Element 2 - Inspections**

---

### **Finding 2-2**

Area for Improvement

---

### **Recurring Issue:**

No

---

### **Summary:**

The state did not meet its FY20 commitments for the following inspection types: majors, non-majors, Sanitary Sewer Overflows (SSOs), Municipal Separate Storm Sewer Systems (MS4s), and industrial stormwater.

---

**Explanation:**

For Metric 4a5 on number of SSO inspections, the state inspected 65 SSOs while committing to inspect 114 SSOs (57%). The national goal is 100% of the state's CMS commitment.

For Metric 4a7 on number of Phase I and II MS4 audits or inspections, the state didn't conduct any inspections (0%). The state committed to three MS4 inspections. The national goal is 100% of the state's CMS commitment.

For Metric 4a8 on number of industrial stormwater inspections, the state completed 23 of the 59 industrial stormwater inspections it had committed to (39%). The national goal is 100% of the state's CMS commitment.

For Metric 5a1 on inspection coverage of NPDES majors, the state committed to inspect 41 major NPDES facilities, but 29 inspections were completed (70.7%). The national goal is 100% of the state's CMS commitment and the national average is 45.4%.

For Metric 5b on inspections coverage of NPDES non-majors (individual and general permits), the state committed to inspect 621 non-major NPDES facilities, but 500 were completed (80.5%). The national goal is 100% of the state's CMS commitment.

Note that the COVID-19 pandemic occurred throughout the majority of FY20, impacting the completion of inspections and field activities. Water Quality Control Division inspections were halted in March 2020 due to the COVID-19 pandemic and inspections resumed at a restricted pace with safety precautions in May 2020. The state also experienced resource constraints as staff turnover and hiring delays occurred during the pandemic.

---

**Relevant metrics:**

---

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a5 Number of SSO inspections. [GOAL]	100% of commitments		65	114	57%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments		0	3	0%
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments		23	59	39%
5a1 Inspection coverage of NPDES majors. [GOAL]	100%	45.4%	29	41	70.7%
5b Inspections coverage of NPDES non-majors (individual and general permits) [GOAL]	100%		500	621	80.5%

**State Response:**

**Recommendation:**

Rec #	Due Date	Recommendation
1	09/30/2024	While the EPA recognizes the challenges and limitations the COVID-19 pandemic has brought on in regard to meeting inspection commitments and retaining staff, it is also important to note that inspection commitments for several program areas have not been met by the state for FYs 2015 thru 2020. The EPA also recognizes the challenges in allocating resources to meet inspection commitments. The EPA recommends developing a plan to prioritize meeting inspection commitments. By 9/30/2024, the state will submit to the EPA a plan to ensure inspection commitments are met in future years. The EPA and the state will also work together to discuss federal support each fiscal year to assist in meeting inspection commitments.
2	12/31/2025	The EPA will review FY2025 inspection coverage and close this recommendation when the state reaches a commitment goal of at least 80% for each of the program areas (SSOs, MS4s, industrial SW, NPDES majors and non-majors).



## CWA Element 3 - Violations

---

### **Finding 3-1**

Meets or Exceeds Expectations

---

### **Recurring Issue:**

No

---

### **Summary:**

In all files reviewed except one, the state accurately determined compliance.

---

### **Explanation:**

For Metric 7e on accuracy of compliance determinations, the state returned accurate compliance determinations in 13 of 14 (92.9%) relevant files reviewed. Documents reviewed for compliance determinations included inspection reports, cover letters, and other correspondence associated with compliance monitoring. The national goal is 100%.

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

---

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7e Accuracy of compliance determinations [GOAL]	100%		13	14	92.9%
7j1 Number of major and non-major facilities with single-event violations reported in the review year.			77		77
7k1 Major and non-major facilities in noncompliance.		17.9%	2248	10506	21.4%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.		7.4%	741	10461	7.1%

---

**State Response:**

---

**CWA Element 4 - Enforcement**

---

**Finding 4-1**

Area for Attention

---

**Recurring Issue:**

No

---

**Summary:**

The state did not address all violations in accordance with their EMS.

---

**Explanation:**

For Metric 10b on enforcement responses reviewed that address violations in an appropriate manner, the state addressed violations in accordance with their EMS in 58 out of 72 (80.6%) files reviewed. The national goal is 100%.

The 14 files lacking an enforcement response to address violations in an appropriate manner are outlined below, with some files fitting into more than one of these categories:

1. In 8 instances, enforcement responses were not taken in a timely manner in accordance with the EMS.
2. In 4 instances, escalation to formal enforcement did not occur in accordance with the EMS.
3. In 2 instances, enforcement was not taken to address violations.

For Metric 10b, note that the COVID-19 pandemic affected the timeliness for issuance of enforcement actions, and lack of staffing resources prevented CDPHE from escalating to formal enforcement in some instances.

---

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		58	72	80.6%

---

**State Response:**

---

**CWA Element 4 - Enforcement**

---

**Finding 4-2**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

The state issued enforcement responses that returned, or will return, sources in violation to compliance.

---

**Explanation:**

For Metric 9a on percentage of enforcement responses that returned, or will return, a source in violation to compliance, the state issued enforcement responses in 52 out of 61 (85.2%) of the files reviewed. In the nine instances where this was not the case, the enforcement response did not return the facility to compliance. The national goal is 100%.

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

---

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		52	61	85.2%
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations		17.2%	7	10	70%

---

**State Response:**

---

**CWA Element 5 - Penalties**

---

**Finding 5-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

The state's penalty calculations documented the inclusion of gravity and economic benefit and with two exceptions, the state collected penalties.

---

**Explanation:**

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

For Metric 12b on penalties collected, in 7 of 9 (77.8%) files reviewed, penalties were collected. The national goal is 100%. One facility had failed to pay its two penalties, resulting in the facility becoming delinquent. The state has filed a complaint in District Court to collect the penalties.

---

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%		10	10	100%
12b Penalties collected [GOAL]	100%		7	9	77.8%

---

**State Response:**

---

**CWA Element 5 - Penalties**

---

**Finding 5-2**

Area for Attention

---

**Recurring Issue:**

No

---

**Summary:**

With two exceptions, the state documented rationale for any differences between initial penalty calculations and final penalties assessed.

---

**Explanation:**

For Metric 12a on documentation of rationale for difference between initial penalty calculation and final penalty, 5 of 7 (71.4%) files reviewed documented rationale for differences between initial penalty calculations and final penalties assessed. The national goal is 100%. In two

instances, there was a reduction in the final penalty, but the state did not document the rationale for the changes in penalty amounts.

Without documentation of rationale for differences between initial penalty calculations and final penalties, or documentation of adjustments to penalties formalized in settlement documents, it is not possible to verify if penalty reductions are applied in an equitable and consistent manner.

---

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		5	7	71.4%

---

**State Response:**

---

# Clean Air Act Findings

## CAA Element 1 - Data

---

### **Finding 1-1**

Meets or Exceeds Expectations

---

### **Recurring Issue:**

No

---

### **Summary:**

The state's reporting of compliance monitoring MDRs, stack test dates and results, and enforcement MDRs was completed in a timely manner.

---

### **Explanation:**

For Metric 3b1 on the timely reported compliance monitoring MDRs, the state reported at a rate of 87.6% or 648 out of 740. No deficiencies were identified. The national goal is 100% and the national average is 74.3%.

For Metric 3b2 on timely reported stack test dates and results, the state reported at a rate of 91.1% or 377 out of 414. No deficiencies were identified. The national goal is 100% and the national average is 59.4%.

For Metric 3b3 on the timely reported enforcement MDRs, the state reported at a rate of 97.5% or 233 out of 239. No deficiencies were identified. The national goal is 100% and the national average is 76.3%.

---

### **Relevant metrics:**

---

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	74.3%	648	740	87.6%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	59.4%	377	414	91.1%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	76.3%	233	239	97.5%

**State Response:**

---

**CAA Element 1 - Data**

---

**Finding 1-2**

Area for Attention

---

**Recurring Issue:**

No

---

**Summary:**

The state's reporting of HPV determinations was not completed in a timely manner for one of four HPV determinations conducted in FY20.

---

**Explanation:**

For Metric 3a2 on the timely reported HPV determinations, the state reported at a rate of 75%. The national goal is 100% and the national average is 40.6%.

One of four HPV determinations were completed in 92 days exceeding the 60-day timeliness threshold. Drafting and finalizing the inspection report required an extended period due to the significant amount of applicable regulatory requirements, multiple records requests and multiple areas of non-compliance identified but not limited to the HPV. It can take a significant amount of time to complete and finalize a thorough and accurate FCE at large facilities with extensive regulatory requirements. Considering this was a one-off occurrence and there were a large number of regulatory requirements it was important for the state to take extra time to complete a thorough and accurate FCE that ensures appropriate compliance and HPV determinations. No systemic deficiencies were identified.



---

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
3a2 Timely reporting of HPV determinations [GOAL]	100%	40.6%	3	4	75%

---

**State Response:**

Colorado was late on one HPV determination for an inspection of a complex source which took a significant amount of time in order to thoroughly and accurately document the full compliance evaluation. Colorado strives to be timely on all HPV determinations and did exceed the national average for this metric.

---

**CAA Element 1 - Data**

---

**Finding 1-3**

Area for Improvement

---

**Recurring Issue:**

Recurring from Round 3

---

**Summary:**

Multiple source files had MDRs were incomplete, incorrect, or missing from ICIS-AIR.

---

**Explanation:**

For Metric 2b on files reviewed where data are accurately reflected in the national data system, 30.3% or 10 out of 33 files reviewed had all MDRs accurately reported into ICIS-AIR. For the files with missing MDRs, the most common issue was missing “Air Program” designations in ICIS-AIR with 15 of 23 files missing MDRs having this issue. The national goal is 100%.

Missing “Air Program” designations includes missing specific subparts (e.g., New Source Performance Standards JJJJ) as well as major part applicability (e.g., New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) or Maximum Available Control Technology (MACT)). This issue is significantly widespread,

effecting almost half of all files reviewed. The second most common deficiency with MDR reporting was missing stack tests from source files or stack tests not being reported into ICIS-AIR. This issue occurred with 8 of the 23 files with missing MDRs.

Other less common issues with MDR reporting includes reporting wrong dates of compliance monitoring activities and a single missing informal action (i.e., compliance advisory) from the detailed facility report (DFR). These issues were very limited and only appeared to be one-off instances.

---

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		10	33	30.3%

---

**State Response:**

Colorado developed and ran a script in November 2021 to address all missing “Air Program” designations in Colorado’s CACTIS database; this corrected 1755 Air Program designations. The updated data was subsequently uploaded to ICIS-Air. Moving forward, Colorado will run this script on a regular basis, but at least once per EPA fiscal year, to flag any future deficiencies in the Air Program designations and correct them. All stack testing file discrepancies that were noted during the file review have been corrected and resolved.

---

**Recommendation:**

---

Rec #	Due Date	Recommendation
1	12/31/2022	The state must develop a protocol for entering compliance monitoring report information into ICIS that includes a confirmation of the source’s regulatory applicability in the “Air Program” reporting field. This protocol should be developed and implemented by the state data entry steward(s) by 12/31/22. During the first quarter of FY2023, EPA Region 8 will randomly select five facilities with CMRs that have been conducted in either 3rd or 4th quarter of FY 2022 to confirm the correct “Air Programs” have been entered into ICIS-AIR. A verification of correct “Air Programs” for greater than or equal to 71% of facilities reviewed will constitute a recommendation close out. This review by EPA Region 8 will continue annually until the close out threshold has been achieved.

## CAA Element 2 - Inspections

---

### Finding 2-1

Meets or Exceeds Expectations

---

### Recurring Issue:

No

---

### Summary:

The state met its inspection commitments for major, SM-80 and minor sources as well as their Full Compliance Evaluation (FCE) element documentation and compliance monitoring reports documentation. In addition, the State met its expectation to review Title V annual compliance certifications review.

---

### Explanation:

For Metric 5a on FCE coverage of sources with a CMS source category of Title V major and mega-site, the state completed 177 major source FCEs not only meeting but greatly exceeding their CMS commitment of 137 FCEs (129.2%). The national goal is 100% and the national average is 85.7%. In addition, for this metric, 122 FCEs were completed on-site and 68 FCEs were completed off-site.

For Metric 5b on FCE coverage: SM-80s, the state completed 154 SM-80 FCEs exceeding their CMS commitment of 146 FCEs (105.5%). The national goal is 100% and the national average is 93.6%. For this metric, 108 FCEs were completed on-site and 49 FCEs were completed off-site. The off-site FCEs were conducted during Q3 and Q4 of FY20 and were caused by the COVID pandemic. As discussed during a quarterly meeting between the State and EPA, off-site FCEs can

be conducted if they met the requirements of the “Clean Air Act Stationary Source Compliance Monitoring Strategy” memo.

For Metric 5e on reviews of Title V annual compliance certifications (ACC) completed, the state completed 94.1% (127 of 135) Title V annual compliance certification reviews. However, of the 8 missing ACC reviews, three were expected for facilities without a permit issued yet and two were for sources that have been permanently closed. Considering these corrections, the State’s true performance is 97.6% which meets expectations. The national goal is 100% and the national average is 82.8%.

For Metric 6a on the documentation of FCE elements, the states’ documentation of the FCE elements was very good (100%) or 22 out of 22 inspection reports. It appeared the state utilized a uniform FCE inspection report format that ensured all required FCE elements were addressed. The national goal is 100%.

For Metric 6b on compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility, the state files reviewed had sufficient documentation to determine compliance of the facility (92.3%) or 24 out of 26 inspection reports. The national goal is 100%.

Specifically, 20 of 23 reviewed inspection reports included all required information. Uniformity of the reports made determination of compliance easy to follow and exceeded expectations. Two inspection reports were missing a compliance assistance statement, however, the reports were sufficient to make accurate compliance 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 %</b>
5a FCE coverage: majors and mega-sites [GOAL]	100%	85.7%	177	137	129.2%
5b FCE coverage: SM-80s [GOAL]	100%	93.6%	154	146	105.5%
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%	55.3%	0		0
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	82.8%	127	135	94.1%
6a Documentation of FCE elements [GOAL]	100%		22	22	100%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		24	26	92.3%

---

**State Response:**

---

**CAA Element 3 - Violations**

---

**Finding 3-1**Meets or Exceeds Expectations

---

**Recurring Issue:**No

---

**Summary:**

Compliance determinations and HPV determinations were accurately evaluated. HPV identification was not timely reported into ICIS-AIR, but identification of serious violations, HPVs, were made correctly.

---

**Explanation:**

For Metric 7a on accurate compliance determinations, all the files reviewed (100%) had accurate compliance determinations, and the compliance determinations were accurately reported in the Detailed Facility Report (DFR). The national goal is 100%.

For Metric 8c on accuracy of HPV determinations, all files reviewed had appropriate HPV determinations (100%). In addition, the state utilizes an HPV determination worksheet to determine HPV status. The state noted that it is their practice that any violation shall be evaluated against the HPV criteria using the state's HPV determination worksheet. The national goal is 100%.

For Metric 13 on the timeliness of HPV identification, the EPA reviewed four HPVs identified by the state and all four of the HPV violations (100%) met the criteria for serious violations. Two of the four HPVs were identified as untimely because their Day Zero occurred more than 90 days after the inspection date. However, the state provided additional context stating Day Zero was based on the date sufficient follow-up information was provided to the state to determine an HPV violation. As such, the EPA has determined that the HPV determinations for all four files were made in a timely fashion according to the current HPV Day Zero guidance. Given the additional context provided by the State, effective performance regarding metric 13 meets expectations. The national goal is 100% and the national average is 83.8%.

---

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		33	33	100%
8c Accuracy of HPV determinations [GOAL]	100%		23	23	100%
13 Timeliness of HPV Identification [GOAL]	100%	83.8%	4	4	100%

---

**State Response:**

---

---

**CAA Element 4 - Enforcement**

---

**Finding 4-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

The state met its expectations with timely and appropriate enforcement to return the sources to compliance.

---

**Explanation:**

For Metric 9a regarding enforcement responses that require corrective action, the state reported 25 out of 25 files or 100% of the files reviewed with formal enforcement included corrective action that returned the facility to compliance in a specified time frame. The national goal is 100%.

The state has two main types of settlements: Early Settlement Agreements (ESAs) and Compliance Orders on Consent (COC). To resolve a violation through ESAs, the source must demonstrate compliance prior to signing the agreement. COCs have a compliance schedule associated with them that returns the source to compliance within a certain time frame explicitly identified in the COC.

For Metric 10a regarding timeliness of addressing HPVs, 2 of 5 files with HPV violations were settled within the 180 days of Day Zero. Three were settled after 180 days but had a Case Development and Resolution Timeline (CD&RT) in place and were discussed during quarterly HPV meetings.

For Metric 10b regarding HPV cases that have been addressed/removed consistent with the HPV policy, five of five of the HPV violations (100%) reviewed were settled using a COC formal action. The national average is 100%.

---

**Relevant metrics:**

---

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
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%		25	25	100%
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		5	5	100%
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		5	5	100%

**State Response:**

---

**CAA Element 4 - Enforcement**

---

**Finding 4-2**

Area for Improvement

---

**Recurring Issue:**

No

---

**Summary:**

The state's Case Development and Resolution Timelines (CD&RT) were missing one of the five required fields.

---

**Explanation:**

For Metric 14 on HPV case development and resolution timeline in place when required that contains required policy elements, three HPV cases took longer than 180 days to be addressed and were required to have a Case Development and Resolution Timelines (CD&RTs) in place. All three cases had CD&RTs in place that were discussed verbally during each quarterly meeting between the State and EPA officials. However, during SRF review it was identified that all three CD&RTs were missing the policy requirement to estimate the number of on-going emissions in excess of the applicable standard.



The state has been proactive in resolving this issue and EPA has received what it needs to close this recommendation once the report is finalized.

---

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		0	3	0%

---

**State Response:**

Colorado provided updates to all existing CD&RTs to include the estimates of excess emissions at the November 2021 quarterly HPV meeting and will continue to provide this information for all future CD&RTs at quarterly HPV meetings with EPA.

---

**Recommendation:**

Rec #	Due Date	Recommendation
1	11/30/2021	The state provided updates to all existing CD&RTs to include estimates of excess emissions associated with the non-compliance at the quarterly HPV meeting in November 2021 with EPA. EPA has confirmed that 100% of the existing CD&RTs have all five required policy elements documented. The state has been proactive with resolving this recommendation and it will be closed once the SRF report is finalized.

---

**CAA Element 5 - Penalties**

---

**Finding 5-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

The state has met the expectations regarding documentation of gravity and economic benefit as appropriate in penalty calculations, collection of penalties and documentation of penalty calculation differences.

---

**Explanation:**

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

One of the five penalty calculations reviewed was for an HPV case that required an economic benefit analysis to be completed which was documented and discussed during the penalty calculation review. Four of the five penalty calculations reviewed were for non-HPV cases where economic benefit is calculated on an 'as applicable' basis. The state determined that all four non-HPV case violations did not provide the source economic benefit and as such, economic benefit was not applicable to these four penalty calculations. EPA has reviewed the enforcement actions associated with the penalty calculations and agree that economic benefit was not applicable to these four cases. The first case involved a custom paint facility that did not comply with a construction permit requirement limiting the VOC content of air-dried coatings. The second case involved an oil polishing facility that did not comply with a requirement for no visible emissions from its enclosed flares and failure to document daily visible emission checks. The third case involved a mid-stream gas plant exceeding a control device's monthly VOC emission limit for two months and submitted a self-certification 69 days late. The final case involved a mid-stream gas plant facility failing to meet the dehydration unit control device emission limits and control efficiency during a performance test. None of these violations provided the sources with any significant economic benefit based on delayed or avoided costs.

For Metric 12a on the documentation of rationale for differences between initial and final penalty, none of the five penalty calculations or (100%) had differences between the initial penalty calculations and the final penalty assessed. The national goal is 100%.

For Metric 12b on documenting penalties collected, documentation of penalty payment was provided for all 18 files reviewed or (100%). The national goal is 100%.

---

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%		5	5	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		5	5	100%
12b Penalties collected [GOAL]	100%		18	18	100%

---

**State Response:**

---

# Resource Conservation and Recovery Act Findings

## RCRA Element 1 - Data

---

### Finding 1-1

Meets or Exceeds Expectations

---

### Recurring Issue:

No

---

### Summary:

Data entry requirements for compliance and enforcement activities generally appear to be accurate and complete in the RCRAInfo database (RCRAInfo).

---

### Explanation:

For Metric 2b on accurate entry of mandatory data, for 24 of the 25 files reviewed, the state entered data accurately into RCRAInfo (96%). The national goal is 100%. There was one facility for which inspection and enforcement data were not entered accurately. That particular facility is very complex and is inspected every two weeks by multiple inspectors who are coordinating multiple formal and informal enforcement actions. Three minor issues, including two duplicate entries and one missed entry, were noted out of nearly 40 compliance and enforcement activities at that facility during the review period. They have since been corrected.

---

### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Accurate entry of mandatory data [GOAL]	100%		24	25	96%

---

### State Response:

---

## RCRA Element 2 - Inspections

---

### Finding 2-1

Meets or Exceeds Expectations

---

### Recurring Issue:

No

---

### Summary:

The state does an excellent job with inspection coverage of large quantity generators (LQGs) and Treatment, Storage, and Disposal Facilities (TSDFs), meeting or exceeding the national goals for all inspection coverage areas. The areas of report quality and timeliness met the requirements of national inspection and enforcement policies. Inspection reports are sufficient to determine compliance and consistently completed within appropriate timeframes.

---

### Explanation:

For Metric 5a on two-year inspection coverage of operating TSDFs, all seven facilities, or 100%, were inspected within the prescribed two-year timeframe. The national average is 83.5%.

For Metric 5b1 on annual inspection coverage of LQGs using the RCRAinfo universe, inspections (30 out of 123 LQGs) were conducted by the state at 24.4% of the active RCRAinfo LQG universe. The national goal is 20% and the national average is 6.8%. LQGs generate 1,000 kilograms (2,200 lbs.) of hazardous waste or more than one kilogram (2.2 lbs.) of acutely hazardous waste per calendar month.

For Metric 6a on inspection reports that are complete and sufficient to determine compliance, 26 out of 28 files reviewed were complete (92.9%). The national goal is 100%. Two inspection reports did not contain sufficient narrative discussion that (a) explains the overall nature of a facility's activities; (b) discusses manufacturing and waste management operations at the facility; (c) describes the generation and handling of wastes; and (d) describes apparent violations and discusses the documentary evidence supporting a determination that a facility has a violation, as required to determine report completeness. Regarding the minimum report recommendations, inspectors are encouraged to include supporting documentation or photos of suspected violations.

For Metric 6b on the timeliness of inspection report completion, 28 out of 28 files reviewed were completed within the 150-day policy prescribed by the Hazardous Waste Civil Enforcement Response Policy (2003) (100%). The national goal is 100%.

---

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	83.5%	7	7	100%
5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL]	20%	6.8%	30	123	24.4%
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		26	28	92.9%
6b Timeliness of inspection report completion [GOAL]	100%		28	28	100%

---

**State Response:**

---

**RCRA Element 3 - Violations**

---

**Finding 3-1**Meets or Exceeds Expectations

---

**Recurring Issue:**No

---

**Summary:**

The state makes accurate compliance determinations based on violations described in inspection reports and enters them into the national database. The Significant Non-Complier (SNC) determinations performed during this review period were both timely and appropriate.

---

**Explanation:**

For Metric 2a on long-standing secondary violators, there were ten long-standing violators identified in the FY20 data. A long-standing violator represents the number of secondary violators (SVs) with violations open for more than 240 days that have not returned to compliance or have not been designated as being a significant noncomplier (SNC).

The state provided an updated status for the ten violators:

1. Six cases resulted from a data translation error between one data system and another and had been closed out in RCRAInfo.
2. Two cases required internal close-out paperwork, which has now been submitted.
3. One case will be addressed with a unilateral corrective action order.
4. One case is for a facility that is closed but requires significant travel to verify the closure. Once the closure is verified, the status will be updated.

These actions will result in the removal of all ten cases from the long-standing secondary violator list.

For Metric 7a on accurate compliance determinations, 28 of the 28 compliance determinations were determined to be accurate (100%). The national goal is 100%. Metric 7a is based on the evidence in the inspection reports corresponding to the determination of violations. The state accurately identifies violations. All the inspection reports reviewed led to accurate compliance determinations.

For Metric 7b on violations found during compliance evaluation inspections (CEI) and focused compliance inspections (FCI), the state found violations in 56 of 173 inspections (32.4%). The national average is 35%.

For Metric 8a on SNC identification rate at sites with CEI and FCI compliance evaluations, the state identified SNCs in 9 of 323 inspections (2.8%). The national average is 1.4%.

For Metric 8b on the timeliness of SNC determinations, the state identified 11 of 12 SNCs in a timely manner (91.7%). The national goal is 100% and the national average is 82.7%. The December 2003 *Hazardous Waste Civil Enforcement Response Policy* states that a SNC determination should be made and reported by Day 150. The one facility that took over 150 days to be determined a SNC was an EPA inspection that was referred to the state enforcement follow-up. The added factor of coordination between the EPA and the state caused a delay in the SNC determination.

For Metric 8c on appropriate SNC determinations, 17 of the 17 SNC determinations were determined to be accurate (100%). The national goal is 100%.

Metrics 7b and 8a are review indicator metrics, which are not used to develop findings. Review indicator metrics use national averages to indicate when agencies diverge from national norms and

are used to identify areas for further analysis during the file review. When an indicator diverges significantly from the national average, the EPA should pull a sufficient sample of files to evaluate the issue during the file review. No concerns were identified with these two-indicator metrics.

---

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
2a Long-standing secondary violators			10		10
7a Accurate compliance determinations [GOAL]	100%		28	28	100%
7b Violations found during CEI and FCI inspections		35%	56	173	32.4%
8a SNC identification rate at sites with CEI and FCI		1.4%	9	323	2.8%
8b Timeliness of SNC determinations [GOAL]	100%	82.7%	11	12	91.7%
8c Appropriate SNC determinations [GOAL]	100%		17	17	100%

---

**State Response:**

---

**RCRA Element 4 - Enforcement**

---

**Finding 4-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

The state takes timely and appropriate enforcement actions to address identified violations. The state requires corrective measures in their formal and informal actions to return facilities to compliance. All the formal and informal enforcement actions resulted in the facilities returning to compliance.



---

**Explanation:**

Ten informal enforcement actions, seven formal enforcement actions, and seven penalties were reviewed.

For Metric 9a on enforcement that returns sites to compliance, 17 of the 17 formal and informal enforcement actions resulted in a return to compliance (100%). The national goal is 100%.

For Metric 10a on the number of SNC evaluations with timely enforcement, 13 out of 14 SNCs were addressed with timely enforcement (92.9%). The national goal is 80% and the national average is 80.9%. According to the CDPHE Hazardous Materials and Waste Management Division Civil and Administrative Enforcement Response Policy (2018), “the standard response time guideline for finalizing Compliance Orders on Consent will be no later than 360 days after the evaluation date.” The one facility for which enforcement took over 360 days was issued a final Compliance Order on Consent, and was therefore considered to be addressed, in 364 days.

For Metric 10b on appropriate enforcement taken to address violations, 17 of the 17 enforcement actions were determined to be appropriate (100%). The national goal is 100%.

---

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
9a Enforcement that returns sites to compliance [GOAL]	100%		17	17	100%
10a Timely enforcement taken to address SNC [GOAL]	80%	80.9%	13	14	92.9%
10b Appropriate enforcement taken to address violations [GOAL]	100%		17	17	100%

---

**State Response:**

---

## RCRA Element 5 - Penalties

---

### Finding 5-1

Meets or Exceeds Expectations

---

### Recurring Issue:

No

---

### Summary:

The files reviewed for the formal enforcement actions included penalties per the CDPHE Hazardous Waste Civil and Administrative Enforcement Penalty Policy (2018). The files contained documentation of the penalty calculations, which included information about the gravity and economic benefit components. The files also contained documentation of the difference between the initial and final penalties, along with documentation that the penalties had been collected.

---

### Explanation:

For Metric 11a on gravity and economic benefit, Metric 12a on the documentation of rationale for difference between initial penalty calculation and final penalty, and Metric 12b on penalty collection, 7 out of 7 enforcement files reviewed met these metrics (100%). The national goals for these metrics are 100%.

---

### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Gravity and economic benefit [GOAL]	100%		7	7	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		7	7	100%
12b Penalty collection [GOAL]	100%		7	7	100%

---

### State Response:



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

1595 Wynkoop Street  
Denver, CO 80202-1129  
Phone 800-227-8917  
[www.epa.gov/region8](http://www.epa.gov/region8)

February 25, 2021

Ref: 8ENF-IO

Trisha Oeth, Acting Interim Policy Advisor  
Environmental Programs  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
[trisha.oeth@state.co.us](mailto:trisha.oeth@state.co.us)

Re: 2021 State Review Framework Review of Fiscal Year 2020

Dear Ms. Oeth:

The U.S. Environmental Protection Agency, Region 8 will be conducting a State Review Framework (SRF) review of the Colorado Department of Public Health and Environment (CDPHE) this year.

The review will focus on inspection and enforcement activities from fiscal year 2020. Specifically, EPA will look at the:

- Resource Conservation and Recovery Act (RCRA) Subtitle C;
- Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES); and
- Clean Air Act (CAA) Stationary Source enforcement programs.

The goal of an SRF review is to ensure consistent enforcement of federal statutes, equal protection of public health, and a level playing field for all businesses. SRF reviews take place every five years.

EPA's review will include:

- Discussions between Region 8 and CDPHE program managers and staff;
- Examination of data in EPA and CDPHE data systems; and,
- Review of selected CDPHE inspection and enforcement files and policies.

Traditionally, an important part of the review process is visiting face-to-face with state officials and reviewing documents on site, however, the COVID-19 pandemic may shift the planned on site review to a remote electronic file review. EPA will continue to monitor health guidelines and explore the possibility of doing the file review on-site, if feasible and safe.

Following the file review, EPA will summarize findings and recommendations in a draft report. Your management and staff will be provided an opportunity to review and comment on this draft by late summer or early fall. EPA expects to complete the CDPHE review, including the final report, by the spring of 2022. If any areas for improvement are identified in the SRF, we will work with you to address them. As Region 8 and CDPHE are partners in carrying out the review, we intend to assist you in meeting both federal standards and goals agreed to in CDPHE's Performance Partnership Agreement.

A cross-program team of EPA managers and senior staff are assigned to implement the CDPHE SRF review. David Piantanida, SRF Coordinator in Region 8, is your primary contact and will coordinate overall logistics for EPA. I am Region 8's senior manager with overall responsibility for the review.

Please identify a primary contact person for EPA to work with and provide his/her name to Mr. Piantanida. The Region 8 program leads on the 2021 SRF review team are:

Kristin McNeill	RCRA	(303) 312-6278	mcneill.kristin@epa.gov
Stephanie Meyers	NPDES	(303) 312-6938	meyers.stephanie@epa.gov
Mike Stovern	CAA	(303) 312-6635	stovern.michael@epa.gov

These program leads will be contacting CDPHE enforcement managers and staff to schedule a call to discuss SRF Round 4 changes, expectations, lessons learned from previous reviews, procedures, and scheduling for the review. EPA will also send its analysis of the SRF data metrics and list of selected facility files prior to the review.

General SRF review planning, scheduling, and logistics steps can be found in the enclosure. Other documents used to evaluate the state's programs can be found on EPA's ECHO website at <https://echo.epa.gov/>. Links to past SRF reports and recommendations can be found at EPA's State Review Framework web page at <https://www.epa.gov/compliance/state-review-framework-compliance-and-enforcement-performance>.

If you have questions or need additional information about the upcoming SRF review, please contact me at (303) 312-6925, or have your staff contact David Piantanida at (303) 312-6200 or at [piantanida.david@epa.gov](mailto:piantanida.david@epa.gov). We look forward to working with you on the 2021 SRF review and furthering our critical EPA-state partnership.

Sincerely,

**SUZANNE  
BOHAN**

Suzanne J. Bohan, Director  
Enforcement and Compliance Assurance Division

Digitally signed by SUZANNE  
BOHAN  
Date: 2021.02.25 16:02:57  
-07'00'

Enclosure: CDPHE SRF Review Planning & Logistics

## **CDPHE SRF Review Planning & Logistics**

As EPA begins this review process, CDPHE can expect the following:

- EPA will contact CDPHE enforcement managers and staff to schedule a conference call for the three program areas to review SRF Round 4 changes, discuss expectations, procedures, and scheduling for the review.
- EPA may ask for preliminary information such as descriptions of agency and program structures, agency enforcement policies, staffing numbers and other organizational information.
- EPA will send CDPHE a list of data metrics and conduct a data metric analysis.
- EPA will send CDPHE a list of requested files for review at least two weeks in advance of the review.
- EPA will set up calls (one for each Program area) with CDPHE to verify that files in EPA's requested file list will be available; where the files will be located; and to confirm review dates, arrival times (if on-site), and logistics.
- EPA will conduct entrance and exit meetings (on-site or remotely) for CDPHE managers and staff.
- EPA will draft a report of its review findings, share the preliminary draft during the summer/early fall and a more final draft report with CDPHE in late fall/early winter, and request comments.
- Once the report is final, EPA will add the report, and any recommendations in the report, to the SRF Tracker.
- EPA will initiate periodic follow-up discussions with CDPHE (quarterly calls) to monitor progress on report recommendations.