



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF ENFORCEMENT AND
COMPLIANCE ASSURANCE

March 1, 2023

Karen Melvin, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 3
1600 John F Kennedy Blvd
Philadelphia, PA 19103

Karen,

The Office of Enforcement and Compliance Assurance, Headquarters (OECAHQ), thanks you and your staff for supporting the State Review Framework (SRF), Clean Water Act evaluation of the Washington, District of Columbia's NPDES compliance and enforcement program. OECA HQ appreciates the cooperation, professionalism, and assistance provided by Region 3.

Please find enclosed the final report for federal fiscal year 2021. The report recognizes Region 3's effective compliance and enforcement activities in many of the elements and identifies areas of attention to focus on strengthening performance in specific areas.

Please pass along our thanks and appreciation to everyone involved for their cooperation in the development of this report. If you have questions or concerns regarding the enclosed report, please contact me at 202-564-3688 or mckeever.michele@epa.gov.

Regards,

A handwritten signature in black ink that reads "Michele McKeever".

Michele McKeever, Acting Director
Planning, Measures and Oversight Division
Office of Enforcement and Compliance Assurance

Enclosure: DC SRF CWA Report 2022

STATE REVIEW FRAMEWORK

District of Columbia

Clean Water Act Implementation in Federal Fiscal Year 2021

U.S. Environmental Protection Agency Region 3

**Final Report
February 27, 2023**

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 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)

Clean Air Act (CAA)

Resource Conservation and Recovery Act (RCRA)

Executive Summary

Areas of Strong Performance

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

Clean Water Act (CWA)

- Inspection coverage of National Pollution Discharge Elimination System (NPDES) Majors;
- Inspection coverage of NPDES non-majors with individual permits
- Inspection coverage of NPDES non-majors with general permits;
- Inspection report completion sufficiently to determine compliance at the facility; and
- Accuracy of compliance determination

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)

Enforcement responses reviewed did not consistently (76.5%) address violations in an appropriate manner.

Finding Summary:

Metric	Round 3 Finding Level	Round 4 Finding Level
10b - Appropriate enforcement taken to address violations [GOAL]	Area for Improvement	Area for Attention
12a - Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	Area for Improvement	Meets or Exceeds

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The region accurately maintains the database, (ICIS-NPDES) for major and non-major facilities, including permit limits and discharge monitoring reports.

Explanation:

OECA reviewed FY 2020 and FY 2021 for DMA and file selections:

1b5 metric goal measures the completeness of data entry on major and non-major permit limits. The region has been able to enter 100% of the fiscal year permit limits in fiscal year 2020 and zeros for fiscal year 2021.

1b6 metric goal measures the completeness of data entry on major and non-major discharge monitoring reports (DMRs), which the region was able to enter at 100% of discharge monitoring reports for fiscal year 2020 and zeros for fiscal year 2021.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
1b5 Completeness of data entry on major and non-major permit limits. [GOAL]	95%		10	10	100%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%		292	292	100%

State Response:

CWA Element 1 - Data

Finding 1-2

Area for Attention

Recurring Issue:

No

Summary:

The review team found inconsistency between the data reflected in the national data system and the files reviewed. The required data was adequately documented in the data system in 78% of the files reviewed.

Explanation:

Metric 2b compares the files reviewed and how accurately they are reflected in the national data system. The review team evaluated 18 files of which four (4) were not reflected in the national data system and/or the files. Based on a crosswalk of files selected and ICIS-NPDES, the following Single Event Violations (SEVs) were not correctly reported to the national database:

- SEV found in files and not recorded in database as indicated in 7j1
- Effluent violations not in database and found in the files and inspections
- Inspection report not found in the database and found in the file
- Discharge Monitoring Report (DMR) found in the database and not in the files
- Sanitary Sewer Overflow (SSO) violations not in the database and found documentation in the files

Note: during the Round 3 review, the region had a higher performance finding level than this present round. We suggest the region assess the root cause and address specific issue(s) to bring the performance level up.

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%		14	18	77.8%

State Response:

The region is developing a process for entering and tracking SEVs in the national database, ICIS.

CWA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Region 3 has met all its FY2021 CMS commitments for the metrics listed below. Inspection reports were of high quality. The observations and deficiencies identified during the inspection were well documented.

Explanation:

Metrics 4a1 through 4a11 measures the region's commitment for inspection coverage activities for each type of permit identified for the fiscal year. Metric 4a1 through 4a7 didn't have inspection coverage commitments for this fiscal year; and 4a10 and 4a11 are not applicable for the District of Columbia because these types of permits don't exist (universe is zero).

The non-major with general permit metric (5b2) and the metric 6a measures the inspection reports complete and sufficient to determine compliance at the facility were successfully meet at 100%.

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%		0	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	0
4a4 Number of CSO inspections. [GOAL]	100% of commitments%		0	0	0
4a5 Number of SSO inspections. [GOAL]	100% of commitments%		0	0	0
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments%		0	0	0
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL]	100%		6	6	100%
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%		7	7	100%

State Response:

CWA Element 2 - Inspections

Finding 2-2

Area for Attention

Recurring Issue:

No

Summary:

Inspection reports were not completed in a timely manner for this review year. The DMA, file selection, and CWA inspection coverage table provided different results during this review. The review team had several meetings with the regional staff to attempt to understand why the three

tools weren't matching and identify what was missing. Timely data entry was identified as the issue regarding the discrepancies.

Explanation:

Metrics 4a1 through 4a11 measures the regions commitment for inspection coverage activities for each type of permit identified for the fiscal year. The following metrics measure:

- 4a8 - number of industrial stormwater inspections, which was (6) for the fiscal year 2021 and only (3) were completed;
- 4a9 - the Phase I and Phase II construction stormwater inspections were only (3) inspections completed out of the CMS commitment of (12);
- 5a1 - inspection coverage of NPDES majors, which (2) out of (3) were completed; and
- 5b1 - inspection coverage of NPDES non-major with individual permits, which (3) out (4) were completed

The Region didn't meet inspection coverage as identified in their CMS commitments because COVID-19 restricted on-site activities and caused a backlog of on-site inspections. The region focused on off-site (OfCM) annual report reviews while on-site inspection activities were restricted partially during the review year (FY21) and entirely during the prior year (FY20). The finding level will be "needs attention" since the restricted field inspection activities was beyond the region's control.

The metric 6b measures timeliness of the inspection reports for the fiscal years were (5) out of (7), which results in a 71.4%. The two inspections not meeting the timeliness requirement were 90 and 79-days to being finalized after the inspections.

Suggestion to the region: CMS commitments should be monitored, tracked, and addressed as soon as possible.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments%		3	6	50%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments%		3	12	25%
5a1 Inspection coverage of NPDES majors. [GOAL]	100%		2	3	%
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100%		3	4	%
6b Timeliness of inspection report completion [GOAL]	100%		5	7	71.4%

State Response:

For metric 6b, going forward, DOEE-led inspections that are identified within the CMS will be classified as “State – Using Federal Credentials” inspections within ICIS instead of “U.S. EPA” inspections as they had been. This change means that, in the future, metric 6b will more accurately reflect the region’s activities and will no longer be impacted by inspection report timeliness or time frames within DOEE.

CWA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The Region’s compliance determinations were accurate and well documented.

Explanation:

Three review indicators: 7j1, 7k1, and 8a3 are review indicators that have national averages but no goal metrics. Although they are listed below, there is no finding level associated with them.

The metric 7e accuracy of compliance determination is a file review goal that the region met with (7) out of (7) files reviewed by the team.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
7e Accuracy of compliance determinations [GOAL]	100%		7	7	100%
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.		8.7%	23	416	5.5%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.		4.3%	13	415	3.1%

State Response:

CWA Element 4 - Enforcement

Finding 4-1

Area for Attention

Recurring Issue:

No

Summary:

OECA found that 80% of enforcement responses return, or will return, a source in violation to compliance.

Explanation:

Eight (8) of ten (10) files reviewed contained enforcement responses that returned or will return sources in violation to compliance (metric 9a).

One (1) of four (4) files reviewed contained formal enforcement actions that were taken in a timely manner in response to SNC violations at major facilities (Metric 10a1). The major facilities in two (2) of the four (4) files reviewed are under long-term consent decrees and didn't have any RTC scheduled deliverable during this review year. This metric is a data review indicator so will not have a finding level.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		8	10	80%
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations			3	4	75%

State Response:

CWA Element 4 - Enforcement

Finding 4-2

Area for Attention

Recurring Issue:

No

Summary:

Enforcement responses reviewed did not consistently (76.5%) address violations in an appropriate manner.

Explanation:

10b metric evaluates whether the enforcement responses address violations in an appropriate manner. The files reviewed found 13 files contained appropriate enforcement responses and four (4) did not meet the goal. Three (3) NPDES enforcement response were not addressed in a timely manner and one (1) enforcement response was not appropriate and lacked timely escalation since it took a year before a CAFO was issued.

During this review year, several federal facilities were selected of which (2) had enforcement during the review year where federal facility compliance agreements (FFCA) were negotiated and signed.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		13	17	76.5%

State Response:

Some of the recommendations have been or are in the process of being implemented. In 2022, the ECAD Division Director, introduced an A3 project focused on identifying delays in actions in the enforcement pipeline. The workgroup includes all divisional media program representation, Branch Chiefs, the Deputy Director's Office, and the Office of Regional Counsel.

Additionally, the region developed a Deliverable Monitoring and Tracking Tool (DMAT), which was implemented in 2020 and included a "Phase 2 DMAT Entry SOP", dated 10/29/2020. The SOP has been updated several times, most recently on 9/14/2021. Required training was provided for enforcement staff for using the DMAT system on 11/10/2021 and 11/16/2021.

The DMAT continues to be used by staff in tracking enforcement action deliverables/milestones. The region believes that DMAT will address issues regarding tracking and monitoring compliance with existing enforcement actions.

Recommendation:

CWA Element 5 - Penalties

Finding 5-1

Area for Attention

Recurring Issue:

No

Summary:

Penalty calculation documentation (metric 11a) and penalty collection (metric 12b) were adequately documented in three (3) of the four (4) reviewed.

Explanation:

Metric 11a measures the penalty calculations documented include gravity and economic benefit. The three (3) of the four (4) files reviewed by the team to assess this metric had the appropriate documentation.

Metric 12b measures if penalties were collected. Three (3) of the four (4) files reviewed contained penalty collection documentation.

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%		3	4	75%
12b Penalties collected [GOAL]	100%		3	4	75%

State Response:

CWA Element 5 - Penalties

Finding 5-2

Meets or Exceeds Expectations

Recurring Issue:

Summary:

The rationale for the difference between initial penalty calculation and final penalty was documented consistently in the enforcement files.

Explanation:

Metric 12a measures the documentation of the rationale for the difference between initial and final penalty calculation. The review team selected files from fiscal year 2020 and 2021 and only identified (2) files to review for this metric. One (1) of the two (2) files did not have the rationale to document the difference between initial penalty calculation and the final penalty. On December 8, 2022, the Region submitted appropriate documentation.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		2	2	100%

State Response:

STATE REVIEW FRAMEWORK

District of Columbia

**Clean Air Act
Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2021**

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

**Final Report
March 16, 2023**

I. Introduction

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specific actions and a schedule for completion, and their implementation is monitored by the EPA until completion.

III. Review Process Information

Clean Air Act (CAA)

Dates of Remote File Review: July 11-20, 2022

Environmental Protection Agency
Enforcement and Compliance Assurance Division contacts include:
Paul Arnold, Air Inspector
Erin Malone, Air Inspector & State Liaison Lead
Stafford Stewart, Air Inspector
Kristen Hall, CAA Section Chief

Washington, D.C.'s Department of Energy and Environment (DOEE) contacts include:
Hannah Ashenafi, Chief of Compliance and Enforcement
Hannah Brubach, Assistant General Counsel

Resource Conservation and Recovery Act (RCRA)

Dates of Remote File Review: July 25-28, 2022

Environmental Protection Agency
Enforcement and Compliance Assurance Division contacts include:
Rebecca Serfass, RCRA Inspector
Eric (Rick) Greenwood, RCRA Inspector
Andrew Dinsmore, RCRA Section Chief

Land, Chemicals and Redevelopment Division:
Claudia Scott, Program Lead

DC DOEE RCRA contacts include:
Barbara Williams, Hazardous Waste Branch Chief

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 Air Act (CAA)

DOEE met the negotiated frequency for compliance evaluations at Compliance Monitoring Strategy (CMS) sources in fiscal year 2021 (FY21).

DOEE completed timely reviews of greater than 97% of the Title V Annual Compliance Certifications (TVACCs) due in FY21.

DOEE succeeded in accurate and timely HPV determinations and identifications.

Resource Conservation and Recovery Act (RCRA)

DC DOEE consistently made accurate compliance determinations and took appropriate enforcement actions that sufficiently returned facilities to compliance.

Priority Issues to Address

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

Clean Air Act (CAA)

Sixty percent of the inspection reports reviewed lacked substantive information for the required inspection elements and had sections of the template left blank or incomplete.

Only 61% of the files reviewed had an accurate compliance determination that was correctly reported to ICIS-Air.

All penalty calculations reviewed include a gravity component. However, there was no documented economic benefit component included in any of the penalty calculations.

Although this is not an SRF file review metric, we found evidence from our review that a large number of the reviewed facilities were operating without a current permit (i.e., expired Title V (TV) Permit). In addition, some of the TV Permits had expired over 10 years ago. An accurate and up-to-date facility permit is essential for reducing air pollution as well as implementing a robust compliance and enforcement program. DOEE should prioritize addressing the permit backlog to ensure that facilities are complying with the CAA regulations and that the compliance and enforcement program has valid permits to use for inspections and enforcement. This concern has been referred to EPA Region 3's Permits Branch in the Air and Radiation Division for further evaluation (DOEE is scheduled for a Title V Permit Evaluation in 2023).

Resource Conservation and Recovery Act (RCRA)

EPA Region 3 ("R3") found that DC DOEE completed timely inspection reports only 45.8% of the time. On average, DC DOEE's inspection reports were signed by the inspector and branch chief in 103 days, with some reports being signed between 130 and 245 days.

DC DOEE did not consistently document consideration of gravity and economic benefit when calculating penalty. One out of five files reviewed included a penalty analysis memo and penalty calculation spreadsheet while four out of the five files did not.

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

DOEE had timeliness issues regarding the reporting of HPV determinations, compliance monitoring minimum data requirements (MDRs), stack tests and stack test results, and enforcement MDRs into ICIS-Air. Additionally, only 62.5% of the MDR data in the files reviewed was accurately entered into ICIS-Air.

Explanation:

DOEE struggled in all five metrics assessed under the Data element. In the Data Metric Analysis (DMA), DOEE demonstrated untimely reporting of HPV determinations, compliance and enforcement MDRs, and stack test dates and results into ICIS-Air. The file review team found that only 62.5% of the facility files reviewed had accurate MDR data in ICIS-Air.

In the Round 3 report, DOEE had timeliness issues with reporting HPV determinations, stack test dates and results, and compliance and enforcement MDRs. The recommendation had DOEE perform a root cause analysis and to develop protocols to address the untimely reporting of MDRs. Despite performing a root cause analysis and developing a protocol, MDRs continued to be untimely.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		20	32	62.5%
3a2 Timely reporting of HPV determinations [GOAL]	100%	35.6%	3	7	42.9%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	79.2%	19	70	27.1%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	51.1%	23	52	44.2%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	74.2%	4	12	33.3%

DC DOEE Response:

DOEE agrees with EPA's determination and has already begun working on technical solutions to this finding.

Recommendation:

Rec #	Due Date	Recommendation
1	06/30/2023	DOEE obtained a 9-month IT contract (starting 8/29/22) that will provide a full-time IT consultant. The consultant will assess DOEE's air quality compliance database's current status and the Enforcement program's needs and develop a plan of action. DOEE will submit the final plan to document the path forward for database changes. This plan shall address the data entry process for HPV determinations, compliance MDRs, enforcement MDRs, and stack test dates and results.
2	09/30/2023	DOEE will complete the upgrade or replacement of the air quality compliance database.
3	12/31/2023	DOEE shall develop and submit an updated data entry Standard Operating Procedure (SOP) to capture the new procedures for data entry. The revised SOP shall address the data entry process for HPV determinations, compliance MDRs, enforcement MDRs, and stack test dates and results.
4	12/31/2024	After the first full quarter of implementation of the updated data entry procedures, EPA will review DOEE's finding levels for the metrics at issue. The findings will be discussed at the quarterly Timely and Appropriate (T&A) meetings. The metrics will be analyzed quarterly during the T&A calls for one year.

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

DOEE met the negotiated frequency for compliance evaluations at Compliance Monitoring Strategy (CMS) sources in fiscal year 2021 (FY21). Additionally, DOEE completed timely review of greater than 97% of the Title V Annual Compliance Certifications (TVACCs) due in FY21.

Explanation:

DOEE successfully met the commitment of 23 major full compliance evaluations (FCEs) in FY21. In addition, DOEE conducted all FCEs as on-site evaluations and did not elect to use the inspection flexibility option provided by the Susan Bodine memo dated July 22, 2020 and subsequent extension memo dated April 7, 2021.¹ Additionally, DOEE completed timely reviews of greater than 97% of the Title V Annual Compliance Certifications (TVACCs) due in FY21.

DOEE did not have a synthetic minor source program established in FY21 thus metric 5b is not applicable.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
5a FCE coverage: majors and mega-sites [GOAL]	100%	86.2%	23	23	100%
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	81.1%	45	46	97.8%

DC DOEE Response:

CAA Element 2 - Inspections

Finding 2-2

Area for Improvement

Recurring Issue:

No

¹ *Recommended Processes for Adjusting Inspection Commitments Due to the COVID-19 Public Health Emergency* dated July 22, 2020 and April 7, 2021.

Summary:

The majority of the 25 inspection reports reviewed lacked substantive information for the required inspection elements and had sections of the inspection report template left blank or incomplete.

Explanation:

DOEE's inspection reports are captured in a structured electronic template that captures pertinent information in a consistent manner. However, the EPA review team found that 15 of the 25 inspection reports reviewed were routinely missing required FCE elements such as the facility address, facility contact's phone number, and enforcement history at the facility. Additionally, areas that were found to be routinely inadequate or otherwise omitted were:

- types of files reviewed and observations resulting from the file review,
- inspector's assessment of the emission sources that were observed,
- inventory and description of emission units, and
- the assessment of permit conditions and applicable regulatory requirements.

The file reviewers noted that the reports were so general in nature that it was difficult to determine which elements of the facility and records were actually reviewed and inspected.

In addition, the reviewers found other issues with the reports that are not directly captured by the metrics. For instance, most reports were labeled as "draft;" the reports did not include any attachments or photographs, even when they were referenced in the narrative; multi-day inspection information is captured in separate memos and included extraneous information that is not typically included in an inspection report (i.e., enforcement action information and ICIS upload information).

In Round 3, DOEE scored 100% for both metrics 6a and 6b.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6a Documentation of FCE elements [GOAL]	100%		10	25	40%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		3	25	12%

DC DOEE Response:

DOEE requests that EPA provide a list of all missing FCE elements to ensure that they are captured in upgrades to DOEE's air quality compliance database as required fields for inspection reports. DOEE also requests that EPA provide examples of inspection report templates to ensure that DOEE's inspection reports provide sufficient detail going forward.

EPA Response:

Region 3 ECAD held a call with DOEE management on February 2, 2023 to discuss this finding and DOEE's response. Examples of inspection report templates and actual inspection reports were shared with DOEE in an email dated February 2, 2023. Additionally, a document was prepared and shared with DOEE that listed by facility the FCE elements that were missing or incomplete for metrics 6a and 6b.

Recommendation:

Rec #	Due Date	Recommendation
1	07/31/2023	DOEE must revise the inspection report template to ensure all required FCE elements are being captured in the inspection reports. Additional elements that are not appropriate for an FCE shall be removed from the FCE template. The revised template will be submitted to EPA R3 staff for review.
2	12/31/2023	DOEE shall develop/strengthen a review process (DOEE peer review and/or first-line manager review) for review of inspection reports prior to finalization. This process shall ensure inspection reports are finalized with any "draft" indications removed. This process shall be captured in an SOP.
3	01/31/2024	DOEE shall conduct training for enforcement and compliance staff on the revised inspection report template and review process.
4	12/31/2024	EPA to review random Compliance Monitoring Reports (CMRs) on a quarterly basis to ensure all required FCE elements are being included. The quarterly reviews are to occur ahead of the T&A meetings and review findings shall be discussed during the quarterly T&As for one year following the training.

CAA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

DOEE succeeded in accurate and timely HPV determinations and identifications.

Explanation:

In the file review records, DOEE presented 16 federally reportable violations (FRVs). The file review team found that 14 of the 16 FRVs had accurate HPV determinations. The two inaccurate determinations were for two facilities that either had violations that rose to the level of an HPV but were only identified as an FRV or for identified HPV- level violations that “fell through the cracks.” However, DOEE had accurate HPV determinations for the other 14 files.

In the DMA, DOEE identified all seven FY21 HPVs timely (within 90 days of day zero) receiving a finding of 100% for metric 13.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
8c Accuracy of HPV determinations [GOAL]	100%		14	16	87.5%
13 Timeliness of HPV Identification [GOAL]	100%	81.4%	7	7	100%

DC DOEE Response:

CAA Element 3 - Violations

Finding 3-2
Area for Improvement

Recurring Issue:
No

Summary:

Only 61% of the files reviewed had an accurate compliance determination that was correctly reported to ICIS-Air.

Explanation:

The file review team assessed 34 compliance determinations in terms of accuracy for metric 7a (accurate compliance determinations). Of the 34 compliance determinations, 12 were found to be inaccurate in regard to the finding or in the reporting to ICIS-Air. The major concerns within the 12 were due to a violation(s) noted in the inspection report but without any indication in the facility file or ICIS-Air that noncompliance was identified. A handful of the files reviewed had an insufficient assessment of the facility during the FCE that the file reviewer determined that DOEE did not accurately assess for compliance and could therefore not determine compliance.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
7a Accurate compliance determinations [GOAL]	100%		21	34	61.8%

DC DOEE Response:

DOEE requests that EPA provide a list of the 12 facilities that were found to have inaccurate compliance determinations in ICIS-Air to ensure that DOEE staff is aligned with EPA on these compliance determinations.

EPA Response:

Region 3 ECAD provided the list of 12 facilities to DOEE in an email dated January 12, 2023.

Recommendation:

Rec #	Due Date	Recommendation
1	07/31/2023	DOEE shall develop a process to alert management when areas of concern are identified in an inspection report.
2	12/31/2023	DOEE shall institute a post-inspection follow up process for inspection reports with “areas of concern” identified. The process shall include management review of any identified issues and a determination of next steps. This new process shall be captured in a revised SOP that will be submitted to EPA R3. The new process shall be fully implemented within 30 days of SOP finalization.

CAA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

DOEE addressed all reviewed HPVs timely and appropriately.

Explanation:

Metric 10a assesses the timeliness of addressing HPVs or alternatively having a case development and resolution (CD&RT) in place. To be considered timely in addressing an HPV, there must be an addressing action by Day 180 or a CD&RT must be in place by Day 225. DOEE issued an addressing action for each of the nine HPVs by Day 180.

Metric 10b assesses the appropriateness of the addressing or removal action for an HPV. Seven out of the eight reviewed HPVs were appropriately addressed. The one HPV that was determined to not be addressed appropriately was due to DOEE not providing the addressing action document.

In Round 3, DOEE timely and appropriately addressed 100% of the reviewed HPVs.

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%		9	9	100%
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		7	8	87.5%

DC DOEE Response:

CAA Element 4 - Enforcement

Finding 4-2

Area for Attention

Recurring Issue:

No

Summary:

Most of the formal enforcement responses reviewed included corrective actions that will return the facility to compliance.

Explanation:

The majority of the formal enforcement responses included corrective actions that will return the facility to compliance, or the facility demonstrated compliance prior to the issuance of a compliance schedule. Three of the sixteen reviewed formal enforcement responses were determined to be inadequate in terms of metric 9a. These files did not provide direction or otherwise demonstrate the steps the facility took to come back into compliance.

In Round 3, DOEE achieved 100% for metric 9a.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe or the facility fixed the problem without a compliance schedule [GOAL]	100%		13	16	81.3%

DC DOEE Response:

CAA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

DOEE successfully documented penalties paid and reductions in penalties.

Explanation:

All eight penalties collected had documentation to show that the penalty was paid. Of the files reviewed, four such files had a reduction in penalty from the initial assessed penalty amount. All of those files had adequate documentation to demonstrate the change in penalty amount from initial to final penalty amounts.

In Round 3, metric 12a was not applicable because all penalties were paid at the initial assessed values and metric 12b was at 100%.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		4	4	100%
12b Penalties collected [GOAL]	100%		8	8	100%

DC DOEE Response:

CAA Element 5 - Penalties

Finding 5-2

Area for Improvement

Recurring Issue:

No

Summary:

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

Explanation:

None of the reviewed penalties used a penalty calculation spreadsheet to assess penalty amounts. To achieve a penalty amount, DOEE uses D.C. Municipal Regulations (DCMR) Section 16-3201 Fine Amounts to select penalty amounts based off of the severity of the violation and whether the facility is a repeat offender. This amount appears to be the gravity component as egregiousness is taken into consideration. There is no documented consideration of an economic benefit component of the penalty. Lastly, if the economic benefit portion is mitigated, the reason behind such mitigation must be documented. No such documentation was provided by DOEE.

In Round 3, DOEE achieved a score of 100% for metric 11a.

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%		0	8	0%

DC DOEE Response:

DOEE is limited in our authority to issue administrative penalties based on the Schedule of Fines in 16 DCMR § 3201. DOEE's Schedule of Fines provides classes of infractions that are based on gravity of violations. DOEE's Air Quality Infraction list, found at 16 DCMR § 4001, delineates how specific penalties may be administratively assessed under the Schedule of Fines. Additionally, 20 DCMR § 105.1 allows DOEE to assess penalties per day of violation. DOEE's Enforcement Policy currently requires AQD to consider economic benefit, among other factors included in the CAA Penalty Policy, during settlement procedures after initial assessment of administrative penalties. Going forward, DOEE will document any adjustments to multi-day penalties based on these factors. However, under current regulations DOEE is unable to issue administrative penalties higher than the maximum allowed by the Schedule of Fines. This restriction on administrative penalties allows DOEE to be flexible in our assessment of multi-day penalties, but not single day penalties. Therefore, DOEE will implement the recommendations below with respect to multi-day penalties.

Recommendation:

Rec #	Due Date	Recommendation
1	04/30/2023	DOEE shall submit in writing to EPA what revised procedures will be implemented to document penalty calculations in accordance with the EPA Penalty Policy. Additionally, this document shall have set timeframes for development of new SOP documents and training for staff.
2	12/31/2023	DOEE shall develop and submit to EPA R3 a revised SOP to properly implement the new procedures for penalty assessments. The revised SOP shall address all criteria and specifically the consideration and documentation of economic benefit in all penalty calculations.
3	01/31/2024	DOEE shall hold a training for enforcement and compliance staff on new penalty calculation procedures and documents. DOEE shall provide training verification documents to EPA R3.
4	12/31/2024	EPA to review random penalty calculations on a quarterly basis following implementation of the new penalty calculation procedures. EPA will assess the penalty calculations to ensure that they are capturing an economic benefit component or including a reason for mitigation. The quarterly reviews are to occur ahead of the T&A meetings and review findings shall be discussed during the quarterly T&As for one year following the training.

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Area for Attention

Recurring Issue:

No

Summary:

EPA R3 observed that 79.2% of the time, DC DOEE entered complete and accurate data into RCRAInfo, the national database for the RCRA program.

Explanation:

Five out of 24 files reviewed were found to have inaccurate or missing data elements in RCRAInfo. Discrepancies between the file and RCRAInfo include:

- differences between violations listed in enforcement notices versus violations listed in RCRAInfo,
- incorrect dates of inspection or enforcement action, and
- incorrect enforcement type entered into RCRAInfo (verbal informal versus written informal).

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2b Accurate entry of mandatory data [GOAL]	100%		19	24	79.2%

DC DOEE Response:

RCRA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

DC DOEE successfully met their two-year inspection coverage requirement for operating TSDFs goal and their annual inspection coverage for BR LQGs goal.

Explanation:

DC DOEE utilized Off-Site Compliance Monitoring (OfCM) flexibilities provided during the COVID-19 pandemic to inspect their one TSDF via virtual inspection in addition to a review of records that were brought to DC DOEE by facility personnel.

Additionally, DC DOEE met their annual BR LQG inspection commitment by performing seven on-site CEIs and by utilizing OfCM flexibilities to perform OfCM activities at an additional ten LQGs, totaling 17 out of 78 LQG facilities inspected. The ten OfCM activities composed of virtual inspections, where possible, and non-financial records reviews.

DC DOEE conducted a total of 25 CEIs combined at SQGs and VSQGs in FY21. The Data Metric Analysis shows that 24 SQG and VSQG inspections were conducted. This is because sites can be reclassified under a different generator category subsequent to the inspection and may no longer be an SQG or VSQG in the data system. DC DOEE does not have a set number of commitments for SQG, VSQG, or transporter inspections, therefore there is no denominator for metrics 5d through 5e in the table below.

Finally, the DMA does not pull a denominator for transporters (metric 5e6). The EPA review team was able to determine through RCRAInfo that there are currently 3 transporters in DC, but unable to confirm if those transporters existed in the review year (FY21). Therefore, the denominator and total in the table below are blank with a notation.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%		1	1	100%
5b Annual inspection of LQGs using BR universe [GOAL]	20%		17	78	21.8%
5d One-year count of SQGs with inspections [GOAL]	100% of commitments%		3		3
5e5 One-year count of very small quantity generators (VSQGs) with inspections	100% of commitments%		21		21
5e6 One-year count of transporters with inspections	100% of commitments%		0		*
5e7 One-year count of sites not covered by metrics 5a - 5e6 with inspections	100% of commitments%		2		2

* The DMA does not pull a state total for metric 5e6

DC DOEE Response:

RCRA Element 2 - Inspections

Finding 2-2

Area for Attention

Recurring Issue:

No

Summary:

EPA R3 found that DC DOEE's inspection reports were complete and sufficient to determine compliance 79.2% of the time, or in 19 out of 24 files reviewed.

Explanation:

Generally, EPA R3 observed detailed reports that were successfully used in follow-up enforcement actions. However, in five files, it was found that the inspection report needed additional information such as: including a process description, information on hazardous waste generation and management, confirming generator status, or needing more information/evidence to support violation determinations. EPA R3 suggested to DC DOEE that updating their generator type inspection report templates to include this missing information may help the correction of this Area for State Attention in the future.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		19	24	79.2%

DC DOEE Response:

RCRA Element 2 - Inspections

Finding 2-3

Area for Improvement

Recurring Issue:

No

Summary:

EPA R3 found that DC DOEE completed timely inspection reports only 45.8% of the time. Thirteen out of 24 files had inspection reports that were not signed by the inspector and branch chief within 60 days of Day Zero (date of inspection).

Explanation:

To determine this finding, EPA R3 used a 60-day completion timeline, based on *EPA's 2018 Interim Policy on Inspection Report Timeliness and Standardization*, which recently became final on August 3, 2022, in addition to DC DOEE's policy, specific to the RCRA program, that states draft reports will be sent by the inspector to the branch chief within 30 days, but appeared to have no designated deadline for signature by the branch chief. On average, DC DOEE's inspection reports were completed in 103 days with some being completed between 130 and 245 days after the inspection.

In addition, multimedia reports did not appear to be finalized and were not signed by the inspectors or branch chief, so it was unclear when they were completed. For purposes of this metric review, DC DOEE provided EPA R3 with the date the inspection report was last saved on the inspectors' electronic files. Multimedia reports were found to be completed timely using this information.

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%		11	24	45.8%

DC DOEE Response:

DOEE agrees with these findings and recommendations. Subsequent to the SRF review, DOEE has ensured all inspection reports have been finalized within 60 days of Day Zero. Additionally, the program has drafted language in its internal SOPs to ensure alignment with the 2022 Final Policy on Civil Inspection Report Timeliness.

Recommendation:

Rec #	Due Date	Recommendation
1	06/30/2023	DC DOEE shall complete a root cause analysis to determine what step(s) within their inspection report timeliness process may be causing reports to not be completed timely and determine how those processes can be streamlined so that the 60-day timeliness metric is met. By 06/30/2023 DC DOEE shall send this root cause analysis to EPA R3 for review.
2	09/30/2023	Based on the root cause analysis and any other relevant information, DC DOEE shall revise their inspection report timeliness policy to include a deadline for inspectors to send draft inspection reports to their branch chief as well as include a deadline for branch chiefs to sign the inspection reports. Additionally, DC DOEE shall include within the standard operating procedure a process for the signing of multimedia reports by the inspectors and the branch chief so that the reports are officially finalized, and that the timeliness metric can be accurately determined. DC DOEE shall implement the revised SOP and send it to EPA R3 by 09/30/2023.
3	09/30/2024	For a period of one year following completion of recommendation 2 above, DC DOEE shall submit finalized inspection reports to EPA R3's ECAD RCRA Section and LCRD RCRA Programs Branch on a quarterly basis. EPA R3 shall review the finalized reports for completion timeliness to confirm that there is improvement in the metric 6b percentage.
4	06/01/2024	If DC DOEE does not show improvement in inspection report timeliness by the completion of recommendation 3 above, DC DOEE shall submit a corrective action plan to EPA R3 for review and approval outlining how they plan to further address the metric finding. The plan shall be submitted by DC DOEE by 06/01/2024. After review and approval from EPA R3, it shall be implemented. Recommendation 3 shall be repeated with a due date of one year after implementation of new corrective action plan.

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

DC DOEE consistently made accurate compliance determinations and although DC DOEE did not designate any new SNCs in 2021, the SNC determinations reviewed in 2017 and 2019 were made timely.

Explanation:

DC DOEE made accurate compliance determinations in 23 out of the 24 files reviewed by EPA R3 and all SNC determinations reviewed were made timely, meaning that the determination was made within 150 days of Day Zero (first day of the inspection).

Additionally, DC DOEE made timely SNC determinations in both of the supplemental (2017 and 2019) files reviewed by EPA R3.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2a Long-standing secondary violators			3		3
7a Accurate compliance determinations [GOAL]	100%		23	24	95.8%
7b Violations found during CEI and FCI inspections			7	33	21.2%
8a SNC identification rate at sites with CEI and FCI			0	70	0%
8b Timeliness of SNC determinations [GOAL]	100%		2	2	100%

DC DOEE Response:

RCRA Element 3 - Violations

Finding 3-2

Area for Attention

Recurring Issue:

No

Summary:

DC DOEE made appropriate SNC determinations 79.2% of the time or in 19 out of 24 files reviewed.

Explanation:

According to the data metric analysis, DC DOEE had no SNCs in FY 2021. Therefore, the review team went back to 2017 and 2019 to select SNCs for the file review. However, during the file review the review team found within the FY 2019-2021 files that there were five instances where violations should have been identified as SNCs. EPA R3 found that the extent and nature of the violations, or failure by the facility to return to compliance in a timely manner resulting in escalating enforcement actions, warranted a SNC designation that was not made or not identified by DC DOEE. EPA R3 also noted that in three out of the five instances where DC DOEE did not make an appropriate SNC determination, they issued a formal penalty action, but did not designate the facility as an SNC.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
8c Appropriate SNC determinations [GOAL]	100%		19	24	79.2%

DC DOEE Response:

RCRA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

DC DOEE consistently took enforcement actions that successfully returned the facility to compliance.

Explanation:

EPA R3 observed that in 100% of files reviewed, DC DOEE issued enforcement actions that successfully returned the facility to compliance. Although some of the files reviewed were for facilities that have not yet returned to compliance, DC DOEE has taken an appropriate enforcement action to direct the facility to return to compliance and is in the process of completing appropriate enforcement actions to return the facility to compliance or in cases where the facility hasn't responded or returned to compliance in a timely manner, DC DOEE has issued escalating enforcement actions to those facilities when necessary.

Additionally, EPA R3 found that DC DOEE took timely enforcement actions to address SNC facilities for both of the two SNC files reviewed, meaning they took a formal action within 360 days of Day Zero (first day of the inspection).

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
9a Enforcement that returns sites to compliance [GOAL]	100%		12	12	100%
10a Timely enforcement taken to address SNC [GOAL]	80%		2	2	100%

DC DOEE Response:

RCRA Element 4 - Enforcement

Finding 4-2Area for Attention

Recurring Issue:No

Summary:

EPA R3 found that DC DOEE took an appropriate enforcement action 75% of the time or in nine out of 12 files reviewed.

Explanation:

DOEE took an appropriate enforcement action to address the violations observed 75% of the time or in nine out 12 files reviewed. In three instances, EPA found DOEE did not take an appropriate enforcement action for the violations observed for the following reasons: an NOV was not issued for violations that warranted an NOV (1) and a formal enforcement action and penalty was not issued for violations rising to level of SNC (2).

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10b Appropriate enforcement taken to address violations [GOAL]	100%		9	12	75%

DC DOEE Response:

RCRA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

DC DOEE documented penalty collection for cases with penalty actions 100% of the time.

Explanation:

EPA R3 found that within the five penalty files reviewed, in two instances the penalty had been paid by the facility and DC DOEE documented that penalty payment within the file. The other three penalty files reviewed are either in the appeal process or are still working through the enforcement process and penalty has been calculated but not yet paid by the facility.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12b Penalty collection [GOAL]	100%		2	2	100%

DC DOEE Response:

RCRA Element 5 - Penalties

Finding 5-2

Area for Attention

Recurring Issue:

No

Summary:

EPA R3 found that DC DOEE documented a rationale for differences between initial penalty calculation and final penalty 75% of the time or in three out of the four files reviewed.

Explanation:

In one instance, DC DOEE failed to successfully document the difference in initial and final penalty calculation within the file. DC DOEE explained that some of the initial penalty calculation amount was used for injunctive relief so that the facility could develop and implement a hazardous waste management plan, but failed to document this rationale within the file.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		3	4	75%

DC DOEE Response:

RCRA Element 5 - Penalties

Finding 5-3

Area for Improvement

Recurring Issue:

No

Summary:

EPA R3 found that DC DOEE documented the consideration of gravity and economic benefit when calculating penalty only 20% of the time or in one out of five files reviewed.

Explanation:

DC DOEE documented the gravity and economic benefit consideration in the one file with a penalty analysis memo and a penalty calculation worksheet. In four out of the five files reviewed, there was no documentation of gravity or economic benefit, but rather a table with violations and associated penalty with no documented indication of gravity or economic benefit. Although, DC DOEE stated that violation category (Class I, II, or III), degree of harm, compliance history and correction efforts, and degree of deviation are taken into account, that was not clear by what was documented in the files reviewed.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
11a Gravity and economic benefit [GOAL]	100%		1	5	20%

DC DOEE Response:

DOEE agrees with these findings and recommendations. However, penalty calculations are based on the Schedule of Fines found in 16 DCMR § 3201. The Schedule of Fines provides classes of infractions that incorporate the gravity of violations. Calculating an additional penalty based on gravity will effectively double penalize violators. Any adjustment to this will require a rulemaking change that will require the proposed changes to go through the District of Columbia rulemaking process. DOEE will conduct this analysis using its penalty calculation worksheet for multiday penalties to ensure the economic benefit of noncompliance is included. DOEE will also ensure the developed SOP aligns with EPA's RCRA policy guidance on economic benefit and gravity.

Recommendation:

Rec #	Due Date	Recommendation
1	09/01/2023	<p>DC DOEE shall create a standard operating procedure for including gravity and economic benefit information in files where penalties are calculated and submit this SOP for EPA R3 review by 09/01/2023.</p> <p>DC DOEE's Schedule of Fines and Penalty Calculation Worksheet appear to cover gravity and economic benefit consideration that should be translated into the files for enforcement actions with penalty calculations.</p>
2	12/31/2023	<p>DC DOEE shall implement the SOP and train its staff on the SOP by 12/31/23.</p>
3	12/31/2024	<p>For a period of one year following implementation of the SOP, DC DOEE shall submit documentation of penalty calculations to EPA R3 prior to their midyear and end of year meetings. EPA R3 shall review the calculations to confirm that there is improvement in the metric percentage.</p>
4	06/01/2024	<p>If DC DOEE does not show improvement by the completion of recommendation 3 above, DC DOEE shall submit a corrective action plan to EPA R3 for review and approval outlining how they plan to further address the metric finding. The plan shall be submitted by DC DOEE by 06/01/2024. After review and approval from EPA R3, it shall be implemented. Recommendation 3 shall be repeated with a due date of one year after implementation of new corrective action plan.</p>