



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

OFFICE OF ENFORCEMENT AND
COMPLIANCE ASSURANCE

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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:
