

STATE REVIEW FRAMEWORK

Wisconsin

**Clean Water Act, Clean Air Act, and
Resource Conservation and Recovery Act
Implementation in Federal Fiscal Years 2019 and 2020**

U.S. Environmental Protection Agency

Region 5

**Final Report
June 15, 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 (FY2008-2011), 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 is to address significant performance issues and bring program performance back in line with federal policy and standards. All recommendations should include specific

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

III. Review Process Information

Clean Water Act (CWA)

The SRF file review was conducted through a virtual off-site review from May 10 through May 31, 2021. The EPA CWA file review team consisted of:

James Coleman (312)886-0148 coleman.james@epa.gov;
Kenneth Gunter (312)353-9076 gunter.kenneth@epa.gov;
Jennifer Beese (312) 353-2975 beese.jennifer@epa.gov;
SRF Coordinator: Bill Stokes (312) 886-6052, stokes.william@epa.gov

Clean Air Act (CAA)

The SRF file review was conducted in conjunction with the Wisconsin Department of Natural Resources (WDNR) staff on June 14 - 17, 2021. Region 5 EPA Round 4 Wisconsin SRF was conducted for the review period of FY2020. Because there were no formal enforcement actions to review during FY2020, the file selection also included two facilities with formal enforcement actions in FY2019 and three from FY2018. The EPA review team consisted of:

Sarah Marshall, (312) 886-6797, marshall.sarah@epa.gov;
Victoria Nelson, (312) 886-9481, nelson.victoria@epa.gov;
Jack Pelletier (no longer with EPA);
Mark Messersmith, (312) 353-2154, messersmith.mark@epa.gov;
SRF Coordinator: Bill Stokes (312) 886-6052, stokes.william@epa.gov

Resource Conservation and Recovery Act (RCRA)

The Review year for the RCRA portion of SRF Round 4 was Federal Fiscal Year 2019. Initial EPA Review file selection was conducted by Walt Francis, now retired. The Data Metrics Analysis and File Review were conducted by Brenda Whitney, (312) 353-4796, whitney.brenda@epa.gov from May 2021 through August 2021. EPA SRF Coordinator: Bill Stokes (312) 886-6052, stokes.william@epa.gov

Executive Summary

Areas of Strong Performance

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

Clean Water Act (CWA)

Wisconsin completed 100% of its Compliance Monitoring Strategy commitments. Wisconsin completes NPDES inspections in a timely manner.

Clean Air Act (CAA)

All files with FCEs (17 of 17) contained sufficient documentation to ensure accurate and complete evaluation of compliance status. All of the of files reviewed (20 of 20) contained all required CMR elements. Wisconsin has made significant improvements in this area since the previous SRF review and is to be commended for meeting the national goal of documentation of 100% of required FCE and CMR elements.

Compliance was accurately determined in 27 of 28 (96.4%) files reviewed, and HPV status was accurately determined in 16 of 18 (88.9%) files reviewed.

In 9 of 9 (100%) files reviewed, HPVs were addressed timely or had case development and resolution timelines in place. In 7 of 7 (100%) files reviewed, HPVs were addressed or removed consistent with the HPV policy. In 6 of 6 (100%) files reviewed, HPV case development and resolution timelines contained all required policy elements. And in 7 of 7 (100%) files reviewed, formal enforcement responses included required corrective actions to return the facility to compliance.

Resource Conservation and Recovery Act (RCRA)

WDNR exceeded 85% of the National Goals for Annual Inspection Coverage for LQGs and TSDFs, for Inspection Report Completion and Sufficiency, and for Timeliness of Inspection Report Completion.

WDNR exceeded 85% of the National Goals for Enforcement that Returns Violations to Compliance and for Appropriate Enforcement Taken to Address Violations.

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)

Data is not accurately reflected in ICIS. There are multiple data issues to be addressed. Wisconsin's enforcement responses are not consistently returning facilities to compliance. Wisconsin's enforcement actions didn't consistently return facilities to compliance in an appropriate manner.

In 2 of 31 files, data is accurately reflected in ICIS.

Clean Air Act (CAA)

In 12 of 28 files reviewed, Minimum Data Requirements (MDR) were not accurately reflected in the national database. Additionally, data reporting timeliness measured in metrics 3a2, 3b1, and 3b3 fell short of national goals.

The WDNR did not show documentation of the rationale for differences between initial penalty calculations and final penalties assessed in any of the four cases reviewed.

In 16 of 28 files reviewed, Minimum Data Requirements (MDR) were accurately reflected in the national database.

Resource Conservation and Recovery Act (RCRA)

WDNR failed to meet the National Goal for Timeliness of SNC determinations.

WDNR failed to include relevant penalty information for formal enforcement cases in their files.

WDNR does not include penalty calculations in their case files.

WDNR does not document the rationale between proposed and final penalties.

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

According to relevant CWA metrics, Wisconsin's permit limit entry rate meets national goals.

Explanation:

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 nonmajor permit limits. [GOAL] | 95% | | 723 | 726 | 99.6% |

State Response:

No response

CWA Element 1 - Data

Finding 1-2

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

In 2 of 31 files, data is accurately reflected in ICIS. There are multiple data issues to be addressed.

Explanation:

Not all required data is reflected in ICIS. This includes DMR data for multiple quarters of the review period, as well as permit data, parameter data, and permit reports. Land application data found in the files are not reflected in ICIS (Wisconsin is delegated to run the biosolids program; POTWs with biosolids program should have data reflected in ICIS). Whole Effluent Toxicity (WET) results are not reflected in ICIS. Enforcement data including judicial referrals, judicial orders, and citations, are not consistently reflected in ICIS. This data was required to be in ICIS by December 15, 2016, according to the E-Reporting Rule. Wisconsin should evaluate whether laboratory audits should be reflected in ICIS as compliance evaluation inspections. (See discussion at Finding 4-1).

It should be noted that WDNR has made significant efforts in 2021 to correct parameter data. We expect these efforts to result in increased data accuracy in ICIS, particularly with regard to DMR/NR data.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|---|------------------|-----------------|----------------|----------------|--------------------|
| 1b6 Completeness of data entry on major and nonmajor discharge monitoring reports. [GOAL] | 95% | | 15828 | 19029 | 83.2% |
| 2b Files reviewed where data are accurately reflected in the national data system [GOAL] | 100% | | 2 | 31 | 6.5% |

State Response:

Finding 1-2 – Not All Data is Accurately Captured in ICIS-NPDES

All WPDES Programs (i.e., CAFO, Storm Water, and Wastewater) are committed to timely and complete transference of EPA-required state compliance and enforcement data to ICIS-NPDES. Below includes DNR’s response to particular data elements identified under this finding.

Missing Data DMR, Parameters, Limits, Schedules, Reports

The WPDES Program has made significant updates to our data transfer process over the previous several years. These changes have improved the accuracy of data in ICIS-NPDES, including DMR data, parameters, limits, schedules, and reports. Additionally, DNR is in the process of completing additional data enhancement activities.

A draft internal DNR IT project charter has been completed to update the Wastewater Electronic Discharge Monitoring Report Form to include a “no discharge” button and update the Program’s System for Wastewater Applications, Monitoring & Permits (SWAMP) database to interpret the button as an inactive discharge and process accordingly. These changes are anticipated to lower

the instance of inaccurate DMR Non-Receipt and resulting facility SNC stemming from missing DMR data. DNR intends to complete the “no discharge” enhancement to our data transfer process in calendar years 2023 and early 2024.

Land Application

- The Wastewater Program attempted to make the necessary changes to accurately transfer Land Application data to ICIS-NPDES approximately two years ago. However, the subject work was being accomplished within the limitations of an Exchange Network Grant, and importantly, at the time, EPA was not prepared to accept the data from batch upload states. Per conversations with Carey Johnston at EPA Headquarters, EPA does not currently have an ICIS-NPDES schema or mechanism for receiving biosolids data from the nine states authorized for the Federal biosolids program, which includes Wisconsin. EPA has no anticipated deadline for completing these efforts as they did not obtain the anticipated funds for ICIS modernization in the previous EPA budget. At this time, DNR does not plan on developing a framework to transfer land application data to ICIS NPDES until EPA has first developed a schema on their end to receive the data. In the interim, annual Wisconsin summary biosolids data will still be provided to EPA via annual performance partnership agreement/grant reporting.

Whole Effluent Toxicity (WET) Results

- Currently, the Wastewater Program’s Whole Effluent Toxicity (WET) data is not compatible with the ICIS-NPDES schema. While reviewing the particular efforts that would be necessary to send the WET data we currently have, we learned that EPA plans to consolidate WET-associated duplicative parameters and inactivate any parameters that are found to be unnecessary.

- DNR intends to participate in discussions with EPA to discuss WET parameters in ICIS-NPDES. Efforts to begin sending WET data will begin following a final determination from EPA on changes to the WET data elements and transfer process.

Single Event Violation End Dates

- DNR currently follows a Standard Operating Procedure (SOP) for consistently entering Single Event Violations (SEVs) for stepped enforcement actions including citations, Notice of Noncompliance, Notice of Violation, and referrals to the Wisconsin Department of Justice (DOJ). Enforcement actions are entered on the occurred-on date that the violation occurred.

- DNR will amend the SOP and begin having staff enter dates when resolution of a violation has occurred. However, the SWAMP database will need to be modified to allow for entry as well as the development of a crosswalk for data to be transferred from SWAMP to ICIS-NPDES. DNR intends to complete additional updates to our data transfer process in calendar years 2023 and 2024.

Enforcement Data

- DNR has identified Enforcement Events that are not currently reflected in SWAMP as Contact Events. These events include specific options to cover DOJ Settlements, DOJ Orders, and Environmental Enforcement Orders. Changes to SWAMP will require additional efforts to ensure that each option is linked to a specific code in ICIS-NPDES. DNR intends to complete additional updates to our data transfer process in calendar years 2023 and 2024.

Taking into consideration the above content, the WPDES Program agrees with the recommendation to develop a plan for correcting all identified data gaps and submit to EPA for review within 90 days of finalization of the final SRF Report. However, the WPDES Program requests that EPA extend the subsequent 180-day timeframe of full implementation of the plan to minimally, 365 days, but preferably a year and a half after the date of the final SRF report. The rationale being that the entirety of DNR institutes an annual IT planning process to prioritize shared IT contractors time and efforts. Once that annual planning process is completed, which takes several months, then the work takes time to complete. As such, the WPDES Program respectfully requests that EPA consider a year and a half from the final report for step 2 of this recommendation. Accordingly, the third and final step of this recommendation should be revised to 180 days post completion of the second recommended step.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | 09/30/2023 | Within 90 days of the final report, Wisconsin will develop a plan for correcting all identified data gaps and submit to EPA. EPA will provide input on the plan and provide technical assistance to Wisconsin as needed. |
| 2 | 12/31/2024 | Within 540 days of the final report, Wisconsin will ensure all required data elements are flowing successfully from the state's data system to ICIS-NPDES. EPA will pull a report from ICIS-NPDES and review to confirm the State data elements are flowing successfully to ICIS-NPDES. EPA will provide technical assistance to Wisconsin as needed. |
| 3 | 03/31/2025 | Within 630 days of the final report. Wisconsin will implement the plan developed in Recommendation 1. EPA will verify progress with Wisconsin as corrections are made via regular consultations with Wisconsin data staff, and review of the ADMA. EPA will run periodic reports from ICIS-NPDES to assess progress. The action will be considered met when 85% of data flowed is accurately reflected in ICIS. EPA will provide technical assistance to Wisconsin as needed. |

CWA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Wisconsin completed 100% of its Compliance Monitoring Strategy commitments.

Explanation:

According to Wisconsin's 2019 Alternative Compliance Monitoring Strategy, Wisconsin met or exceeded the inspection commitments in 14 out of 14 categories. WDNR SSO process and alternative CMS inspection commitment consist of a new required CMOM evaluation checklist to be used by compliance staff during all Inspections. Compliance Maintenance Annual Reports (CMARs) include a Sanitary Sewer Collection system section which also has Performance Indicator is also evaluation for follow-up actions. EPA evaluates WDNR annual assessment report to supplement the information provided on WNDR CMS EOY report.

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 | | 10 | 10 | 100% |
| 4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL] | 100% of commitments | | 31 | 30 | 103.3% |
| 4a4 Number of CSO inspections. [GOAL] | 100% of commitments | | 2 | 1 | 200% |
| 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 | | 78 | 49 | 159.2% |
| 4a8 Number of industrial stormwater inspections. [GOAL] | 100% of commitments | | 332 | 100 | 332% |
| 4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL] | 100% of commitments | | 901 | 500 | 180.2% |
| 4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL] | 100% of commitments | | 112 | 50 | 224% |
| 4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL] | 100% of commitments | | 210 | 70 | 300% |
| 5a1 Inspection coverage of NPDES majors. [GOAL] | 100% | | 65 | 62 | 104.8% |
| 5b1 Inspections coverage of NPDES nonmajors with individual permits [GOAL] | 100% | | 226 | 124 | 182.3% |

State Response:

No response

CWA Element 2 - Inspections

Finding 2-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Wisconsin completes NPDES inspections in a timely manner.

Explanation:

In 18 of 21 files (85.7%), Wisconsin's inspection reports were timely completed. The review team evaluated reports against a 30-day timeliness standard based on guidance in the National Enforcement Management System. Using Wisconsin's ambitious 14-day timeliness standard, 12 of 21 reports, or 57%, were timely completed. Wisconsin's average for inspection report completion is 21 days, which is well below the 30-day national standard. The 3 reports outside the 30-day window were completed in 40, 55 and 137 days, respectively.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|---|-----------|----------|---------|---------|-------------|
| 6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL] | 100% | | 18 | 21 | 85.7% |

State Response:

No response

CWA Element 2 - Inspections

Finding 2-3

Area for Attention

Recurring Issue:

No

Summary:

In 16 of 21 files, Wisconsin's inspection reports were complete and sufficient to determine compliance.

Explanation:

In 16 of 21 files reviewed (76.2%), Wisconsin's inspection reports are complete and sufficient to determine compliance. In some storm water files, inspection documentation does not include an actual inspection report. In addition, the lab audit reports don't clearly articulate whether the facility is in compliance, and whether the identified deficiencies are considered non-compliance.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|---|------------------|-----------------|----------------|----------------|--------------------|
| 6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL] | 100% | | 16 | 21 | 76.2% |

State Response:

Finding 2-3 - Inspections

Laboratory Audits

Overview, General Process and Determination of Inclusion in Future Compliance Monitoring Strategies (CMS):

- A different program within DNR (Science Services – Laboratory Certification Program) handles laboratory audits for wastewater treatment facilities that have either a certified or registered lab consistent with ch. NR 149, Wis. Adm. Code.
- The Lab Cert Program has a computer program and file share that documents and tracks all audits, deficiencies, final reports, and close out documentation. Wastewater staff are copied on audit schedule letters, final reports, and close out letters. In general, communication regarding deficiencies from the permittee to the lab auditors occurs between those two entities and WPDES Wastewater Program staff are generally not involved in those conversations.
- Lab Audits identify deficiencies in the laboratory and can lead to noncompliance/enforcement follow-up subject to ch. NR 149, Wis. Adm. Code. All enforcement follow-up is led by the Lab Cert Program, but they may bring in Wastewater Program staff as a resource, if necessary.

Enforcement is usually very minimal as labs are given a chance to correct their deficiencies after the initial report from the audit.

- Lab Audits do not evaluate overall WPDES permit compliance for a facility. The audits are evaluating a small portion of the treatment facility and do not address any quality of the effluent or operation. Basically, the audits are evaluating the quality of the data generated.
- Moving forward, the Wastewater Program will no longer count laboratory audits towards CMS compliance inspection numbers as part of Federal Fiscal Year 2023 CMS development and beyond.

Storm Water Program Response: The Storm Water Program is working to develop a statewide policy to evaluate the use of inspection documentation with existing worksheets or other site inspection reports that will be included with photo logs in the permit file.

CWA Element 3 - Violations

Finding 3-1

Area for Attention

Recurring Issue:

No

Summary:

Wisconsin's compliance determinations are generally accurate.

Explanation:

In 20 of 26 files, Wisconsin made accurate compliance determinations.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|--|------------------|-----------------|----------------|----------------|--------------------|
| 7e Accuracy of compliance determinations [GOAL] | 100% | | 20 | 26 | 76.9% |
| 7j1 Number of major and non-major facilities with single-event violations reported in the review year. | | | | | 93 |
| 7k1 Major and non-major facilities in noncompliance. | | 18.4% | 518 | 1263 | 41% |
| 8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year. | | 8.1% | 335 | 1262 | 26.5% |

State Response:

Finding 3-1 – Violations

Laboratory Audits

See the finding 1-2 responses above for info on lab audits. DNR will no longer count laboratory audits towards CMS compliance inspection numbers moving forward.

CWA Element 4 - Enforcement

Finding 4-1

Area for Improvement

Recurring Issue:

No

Summary:

Wisconsin's enforcement responses are not consistently returning facilities to compliance.

Explanation:

Wisconsin’s enforcement responses to facilities in SNC are not consistently timely. Based on our file review, this happens most frequently with responses to spills and SSOs. In one file, a NOV was issued for a 15,000-gallon spill, followed by a second NOV for another spill eight months later; a judicial referral occurred 13 months after the first spill. In one file, multiple SSO events occurred without enforcement response. In one file, a facility was in SNC for 3 consecutive quarters for effluent violations but no enforcement response was documented. The violations appear to be manually overridden. In one file, a Notice of Non-compliance covers 5 separate self-reported spills over a four-month period. An additional spill occurred without any escalated enforcement action. In one file, a bypass occurred at a facility resulting in a discharge to a river; WDNR didn’t issue a Notice of Non-compliance to the facility, which had reported five spills within two years.

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% | | 15 | 21 | 71.4% |
| 10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations | Review Indicator | | 0 | 2 | 0% |
| 10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL] | 100% | | 17 | 23 | 73.9% |

State Response:

No response

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|--|
| 1 | 09/30/2023 | The state has a clear process for enforcement response, as described in the WDNR Environmental Quality Control Enforcement Handbook, but the file review indicates that process is not consistently followed. In addition, all violations should be tracked and reflected in the national data system (described in Finding 1-1). 90 days after the final report WDNR will provide EPA a list of SSOs and spills that warrant an enforcement response (i.e., date of final report plus 90 days). |
| 2 | 12/31/2023 | 180 days after the report, EPA will complete a review of the violations and whether ICIS shows that an enforcement response occurred in 80% of the instances of violation. EPA will share results with WDNR. |

CWA Element 5 - Penalties

Finding 5-1

Area for Improvement

Recurring Issue:

No

Summary:

Note that Findings 5-1 and 5-2 have been combined into one finding (5-1) with a single recommended action item. Wisconsin's penalty calculations didn't consistently include economic benefit and gravity. Wisconsin isn't consistently documenting rationales between proposed and final penalties.

Explanation:

In 3 of 8 files reviewed (37.5%), Wisconsin included gravity and economic benefit documentations in the penalty calculation. Files with storm water violation citations have good penalty documentation. In other files, it wasn't consistently clear how a penalty was determined. Consideration of gravity and economic benefit are important components of the Federal and State penalty policies for the NPDES program and should be clearly documented in the penalty calculations. In 1 of 8 files reviewed (12.5%), Wisconsin documented the rationale between proposed and final penalties. There were no penalty cases during the period of review, so the review team extended the "review year" back to 2016 to include a sufficient number of files with penalties.

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 | 8 | 37.5% |
| 12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL] | 100% | | 1 | 8 | 12.5% |

State Response:

No response

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|--|
| 1 | 12/31/2023 | <p>Within 180 days of the final report, Wisconsin will develop a Standard Operating Procedure to guide appropriate documentation of the following:</p> <ul style="list-style-type: none"> - consideration of gravity and economic benefit - difference between proposed and final penalties - steps to report judicial referrals and conclusions to ICIS (refer also to Finding 1-1) Wisconsin will submit the draft SOP to EPA for review. |

CWA Element 5 - Penalties

Finding 5-2

Area for Attention

Recurring Issue:

No

Summary:

Wisconsin's documentation of penalties collected

Explanation:

In 7 of 9 files reviewed, Wisconsin adequately documented collection of penalties.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|---|------------------|-----------------|----------------|----------------|--------------------|
| 12b Penalties collected [GOAL] | 100% | | 7 | 9 | 77.8% |

State Response:

Findings 5-1 & 5-2 – Penalty Calculation

DNR generally concurs with the explanation provided in findings 5-1 and 5-2 and agrees to generally implement the recommendations as outlined in the draft SRF Report subject to additional conversations with EPA management.

For example, actions may include the following. For cases referred to DOJ, the Program attorney may draft a memo to the file documenting the enforcement case facility information, violations alleged, initial penalty calculated, and the rationale for differences between initial penalty calculations and final penalties assessed.

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

In 16 of 28 files reviewed, Minimum Data Requirements (MDR) were accurately reflected in the national database. Additionally, data reporting timeliness measured in metrics 3a2, 3b1, and 3b3 fell short of national goals.

Explanation:

In 12 of 28 files reviewed, the EPA review team found data inconsistencies between the state files and the data entered into ICIS-Air. The most common error (10 files reviewed) was FRVs (and in some cases HPVs) determined in the state files but missing from the national database. Less common were a few instances of stack tests missing from the national database and incorrect dates of either an FCE or stack test. EPA notes that Wisconsin has acknowledged these errors and had already begun the process of reviewing data recording and transfer practices and instituting corrections prior to the time of the review.

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% | | 16 | 28 | 57.1% |
| 3a2 Timely reporting of HPV determinations [GOAL] | 100% | 40.6% | 4 | 13 | 30.8% |
| 3b1 Timely reporting of compliance monitoring MDRs [GOAL] | 100% | 74.3% | 295 | 525 | 56.2% |
| 3b2 Timely reporting of stack test dates and results [GOAL] | 100% | 59.4% | 163 | 220 | 74.1% |
| 3b3 Timely reporting of enforcement MDRs [GOAL] | 100% | 76.3% | 24 | 56 | 42.9% |

State Response:

No response

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | 12/20/2023 | Wisconsin should continue to troubleshoot data entry practices to identify all data transfer issues and modify standard operating procedures and training practices as necessary, ensuring that all MDRs are timely and accurately entered into the national database. Within 180 days of the date of this report, Wisconsin should provide to EPA a list of data transfer issues identified and corrected, any issues remaining, and any updated standard operating procedures pertaining to this issue. Within 60 days of receipt of this list, EPA will review 5 randomly selected files for complete reporting of MDRs into the national database. EPA will also continue to monitor data entry into ICIS-Air during our bimonthly conference calls with Wisconsin. |

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

All files with FCEs (17 of 17) contained sufficient documentation to ensure accurate and complete evaluation of the source's compliance status. 20 of 20 (100%) files reviewed contained all required CMR elements.

Explanation:

Wisconsin has made commendable strides in training staff and developing procedures and templates to ensure that all FCE and CMR elements are thoroughly and clearly documented. Wisconsin's inspections allow for consistent and accurate compliance determinations and communicate useful and appropriate information to the subject facilities. Wisconsin is to be commended for meeting the national goal of documentation of 100% of required FCE and CMR elements.

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% | 85.7% | 173 | 179 | 96.6% |
| 5b FCE coverage: SM-80s [GOAL] | 100% | 93.6% | 31 | 31 | 100% |
| 5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL] | 100% | 55.3% | 8 | 9 | 88.9% |
| 5e Reviews of Title V annual compliance certifications completed [GOAL] | 100% | 82.8% | 295 | 342 | 86.3% |
| 6a Documentation of FCE elements [GOAL] | 100% | | 17 | 17 | 100% |
| 6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL] | 100% | | 20 | 20 | 100% |

State Response:

In response to metrics 5a and 5c, WDNR received prior approval from EPA to shift six major and 1 SM80 FCEs from FY2020 to FY2021 to smooth out FCE workload equally over alternate years as required by the two- and five-year inspection frequency.

In response to metric 5e, WDNR now has process in place that includes the compliance data team using a report generated by the state data system (WARP) to identify any compliance certifications needing review and request follow up from the assigned facility inspectors. All received compliance certifications for fiscal years 2020 to present have been reviewed by WDNR and are now accurately reflected in ICIS-AIR.

CAA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Compliance was accurately determined in 27 of 28 (96.4%) files reviewed, and HPV status was accurately determined in 16 of 18 (88.9%) files reviewed.

Explanation:

Wisconsin is to be commended for achieving a high rate of accurate compliance and HPV determinations and making good progress toward achieving the national goal of 100% accurate determinations.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|---|------------------|-----------------|----------------|----------------|--------------------|
| 7a Accurate compliance determinations [GOAL] | 100% | | 27 | 28 | 96.4% |
| 7a1 FRV 'discovery rate' based on inspections at active CMS sources | | 6.8% | 37 | 491 | 7.5% |
| 8a HPV discovery rate at majors | | 2.4% | 11 | 380 | 2.9% |
| 8c Accuracy of HPV determinations [GOAL] | 100% | | 16 | 18 | 88.9% |

State Response:

Wisconsin will continue to work with Air Program enforcement staff to achieve accurate compliance and HPV determinations through regular training, clear process documentation, and routine team wide discussion.

CAA Element 3 - Violations

Finding 3-2

Area for Attention

Recurring Issue:

No

Summary:

In 6 of 8 (75%) facilities with HPVs in FY20, HPV determinations were recorded timely.

Explanation:

HPVs were recorded in excess of the required 90 days of the discovery of the underlying violations at 2 of 8 facilities with HPVs in FY20. Wisconsin should examine these cases to determine the circumstances of these cases to determine if changes in guidance or training are warranted.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|--|-----------|----------|---------|---------|-------------|
| 13 Timeliness of HPV Identification [GOAL] | 100% | 83.8% | 6 | 8 | 75% |

State Response:

In response to metric 13, WDNR will address the 90-day requirement per EPA HPV Policy with Wisconsin Air Program enforcement staff to stress the importance of meeting the requirement. The Air Program enforcement standard operating procedure is drafted to meet the 90-day requirement.

CAA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

In 9 of 9 (100%) files reviewed, HPVs were addressed timely or had case development and resolution timelines in place. In 7 of 7 (100%) files reviewed, HPVs were addressed or removed consistent with the HPV policy. In 6 of 6 (100%) files reviewed, HPV case development and resolution timelines contained all required policy elements. And in 7 of 7 (100%) files reviewed,

formal enforcement responses included required corrective actions to return the facility to compliance.

Explanation:

Wisconsin is to be commended for meeting the national goal of conducting timely and appropriate enforcement actions in response to HPVs in 100% of files reviewed.

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 time frame or the facility fixed the problem without a compliance schedule [GOAL] | 100% | | 7 | 7 | 100% |
| 10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place | 100% | | 9 | 9 | 100% |
| 10a1 Rate of Addressing HPVs within 180 days | | 44.2% | 1 | 5 | 20% |
| 10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL] | 100% | | 7 | 7 | 100% |
| 10b1 Rate of managing HPVs without formal enforcement action | | 11.8% | 4 | 5 | 80% |
| 14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL] | 100% | | 6 | 6 | 100% |

State Response:

In response to metric 10a1, WDNR will address the 180-day requirement per EPA HPV Policy with Wisconsin Air Program enforcement staff and Environmental Enforcement staff to stress the importance of meeting the requirement. The Air Program enforcement standard operating procedure is drafted to meet the 180-day requirement.

In response to metric 10b1, WDNR always discusses enforcement action with EPA when HPVs are considered for closeout rather than the expected referral to WDOJ for penalties as per EPA HPV policy.

CAA Element 5 - Penalties

Finding 5-1

Area for Attention

Recurring Issue:

No

Summary:

In 3 of 4 (75%) penalty calculations reviewed documented gravity and economic benefit. The review found evidence that assessed penalties were collected in 3 of 4 cases (75%).

Explanation:

As noted above, Wisconsin did not pursue formal enforcement actions with penalty settlements during part of FY19 and all of FY20. During this time, state law and WDNR policy stated any civil actions prosecuted by the department of justice (WDOJ, the state entity with the authority to execute settlement agreements) resulting in settlement could only occur if the state legislature's joint committee on finance approved. The joint committee on finance did not approve any cases during this time period while the law was being challenged. These challenges have since been resolved, and new policy was adopted in February 2021, allowing WDOJ to begin moving through the cases that were on hold. Going forward, Wisconsin should ensure that all referrals to the WDOJ clearly document gravity and economic benefit calculations.

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

State Response:

In 2020, the Wisconsin Air Program reviewed and updated standard operating procedures for preparation of penalty calculations as required in EPA policy, including an update of the BEN calculation software, and a template calculation spreadsheet and summary memo. In addition, the penalty team has “calibration” meetings to ensure consistency in application of the policy.

Case resolution and final penalties assessed are decided by WDOJ, not WDNR.

CAA Element 5 - Penalties

Finding 5-2

Area for Improvement

Recurring Issue:

No

Summary:

The WDNR did not show documentation of the rationale for differences between initial penalty calculations and final penalties assessed in any of the four cases reviewed.

Explanation:

As noted in Finding 5-1, WI must refer penalty cases to WDOJ. WDOJ does not routinely consult with WDNR regarding penalty calculations and does not provide the rationale for deviations from penalty calculations provided by WDNR. Although WDNR's ability to impact the final settlements reached by the WDOJ is limited, the WDNR should, at a minimum, work with the WDOJ to secure documentation of final agreements and penalty collection to complete the WDNR case files. EPA will continue to discuss pending and recent settlement agreements with Wisconsin during our bimonthly conference calls.

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% | | 0 | 4 | 0% |

State Response:

For cases referred to WDOJ, the Air Program attorney will draft a memo to the file documenting the enforcement case facility information, violations alleged, initial penalty calculated, and the rationale for differences between initial penalty calculations and final penalties assessed. The process and memo template will be added to the current standard operating procedures.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|--|
| 1 | 09/29/2023 | <p>Wisconsin will develop a Standard Operating Procedure to guide appropriate documentation of the following:</p> <ul style="list-style-type: none"> - consideration of gravity and economic benefit in proposed penalty calculations - difference between proposed and final penalties - steps to be taken to report judicial referrals and conclusions to ICIS (as described in recommendation for Finding 1-1). This will be considered complete when EPA reviews and provide comments to Wisconsin. |
| 2 | 12/20/2023 | <p>Wisconsin will submit a report regarding the penalty cases taken since the SRF was finalized. The report will include the documentation in Recommendation 1 for each case, if any, and evidence that the penalty was reported to ICIS.</p> |

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Area for Attention

Recurring Issue:

No

Summary:

The reviewer found inaccurate data entry in RCRAInfo in 6 of 32 actions reviewed.

Explanation:

Of the 32 actions reviewed, 26 were entered accurately in RCRAInfo (81.3%). The review team found the following errors in RCRAInfo data entry: In three cases, collected penalties were not entered; in two cases, the dates for a CEI and NON, respectively, were incorrect; in one case the referral date to the Wisconsin Department of Justice (WDOJ) was reported as an NOV; in one case, a CAA NOV was entered into RCRAInfo; and, in one case, an NOV was not entered.

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% | | 26 | 32 | 81.3% |

State Response:

No response

RCRA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

WDNR exceeded 85% of the National Goals for Annual Inspection Coverage for LQGs and TSDFs, for Inspection Report Completion and Sufficiency, and for Timeliness of Inspection Report Completion.

Explanation:

WDNR exceeded 85% of the National Goal (20%) for and Annual Inspection Coverage For Active LQGs. WDNR alone achieved 18.5% coverage (93% of the National Goal). WDNR and EPA combined achieved 19.9% coverage (99.5% of the National Goal). WDNR achieved 100% of the National Goal (100%) for Two-year Inspection Coverage For Operating TSDFs. For comparison, the National Average was 89.9%. WDNR also exceeded 85% of the National Goals (100%) for Inspection Report Completion and Sufficiency (90.6%) and for Timeliness of Inspection Report Completion (96.9%). Regarding inspection report completion and sufficiency, all files reviewed included narratives, photographs, and attendant supporting documentation. Three of the files reviewed were missing critical information that would inform an accurate compliance determination. Regarding the timeliness of inspection report completion, at the time of the file review, WDNR did not have a formal time-based inspection report completion requirement, thereby defaulting to 150 days. The reviewer identified 11 files for which the inspection report did not include a date of completion. For the purpose of this review, the completion dates for these inspection reports were assumed to be the date of the next follow-up activity (e.g., information request, follow-up inspection, enforcement, etc.). Using this method, the average inspection report completion time was 42 days. A follow-up action exceeded 150 days (161 days) in one file. WDNR should ensure that inspection reports are dated upon completion.

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% | 89.9% | 12 | 12 | 100% |
| 5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL] | 20% | 9.3% | 108 | 584 | 18.5% |
| 6a Inspection reports complete and sufficient to determine compliance [GOAL] | 100% | | 29 | 32 | 90.6% |
| 6b Timeliness of inspection report completion [GOAL] | 100% | | 31 | 32 | 96.9% |

State Response:

No response

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

WDNR exceeded 85% of the National Goal for Accurate Compliance Determinations.

Explanation:

WDNR exceeded 85% of the National Goal (100%) for Accurate Compliance Determinations (96.9%). In one file, the inspector appeared to have gathered enough information during and following the inspection to allege treatment of hazardous waste without a permit but did not identify the potential violation in an enforcement action. In all remaining files, based on the information that the inspector was able to compile, WDNR made accurate compliance determinations. Of 251 inspections conducted in FY19, violations were found at 197 facilities for a 78.5% violation rate. The national average for this indicator is 38.9%.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|--|-----------|----------|---------|---------|-------------|
| 7a Accurate compliance determinations [GOAL] | 100% | | 31 | 32 | 96.9% |
| 7b Violations found during CEI and FCI inspections | | 38.9% | 197 | 251 | 78.5% |

State Response:

No response

RCRA Element 3 - Violations

Finding 3-2

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

WDNR failed to meet the National Goal for Timeliness of SNC determinations.

Explanation:

WDNR failed to meet the National Goal (100%) for Timeliness of SNC Determinations (0%). None of the three SNCs that were entered into RCRAInfo during the SRF timeframe was entered in a timely fashion. WDNR does not have unilateral penalty order authority and so refers all penalty cases to the WDOJ. The referral process is lengthy and uncertain. WDNR, therefore, does not enter SNCs into RCRAInfo until the referral is accepted by the WDOJ. This delay ensures that the facilities are not identified as SNCs in the public record until DOJ confirms acceptance of the referral, which can take several months to years. In so doing, however, WDNR has not needed to remove SNCs from the record and has not returned SNCs to compliance without formal enforcement. Additionally, WDNR reported 2 SNCs as being identified from 398 FCIs or CEIs during FY19 (0.5%). The National average for that year was 1.6%, more than 3 times the rate for WDNR.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|--|-----------|----------|---------|---------|-------------|
| 8a SNC identification rate at sites with CEI and FCI | | | 2 | 398 | .5% |
| 8b Timeliness of SNC determinations [GOAL] | 100% | | 0 | 3 | 0% |

State Response:

No response

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | 06/18/2024 | <p>The proposed actions to address this Area for State Improvement are:</p> <ol style="list-style-type: none"> 1. The WDNR management team will discuss cases where significant violations are found with the EPA State Coordinator on a quarterly basis. Prior to this discussion, WDNR will prepare a summary of each inspection and a list of the potential violations for the Coordinator to review. For each inspection, the review must be conducted before 150 days has elapsed from the day of the inspection. 2. WDNR and EPA will discuss the enforcement path for each case. 3. WDNR will enter SNC determinations into the database of record prior to referrals being accepted by their WDOJ. 4. Should WDOJ end up rejecting the referral from WDNR, WDNR and EPA will discuss the alternative enforcement path. 5. One year after finalization of this SRF Report, EPA will evaluate WDNR's SNC determination progress to determine if it meets SNC determination criteria to close out the recommendation. |

RCRA Element 3 - Violations

Finding 3-3

Area for Attention

Recurring Issue:

No

Summary:

WDNR generally makes appropriate SNC determinations when violations are identified.

Explanation:

Of the 31 files reviewed, 14 facilities had either been designated as SNCs by WDNR (11) or could have been designated as SNCs by WDNR (3). Each of the 11 facilities that WDNR had designated as SNCs were appropriately determined. In three cases, however, WDNR identified violations which could have led to SNC determinations and designations. In one file, the facility deviated extensively (19 violations) from the requirements for a generator and did not come back into compliance within 240 days. In a second file, the inspector recommended that the facility be designated as a SNC, however, a designation was not entered in RCRAInfo. This case appears to be ongoing. In the third file, the facility deviated extensively (32 violations) from the requirements imposed in its hazardous waste license and did not come back into compliance within 240 days. WDNR also had 21 long-standing violators at the time of the data freeze in February of 2020. Several of these cases had already been determined to be SNCs. Several others, however, had not been determined to be SNCs, but were beyond 240 days without being returned to compliance.

According to WDNR, 16 of these open files have been returned to compliance since the data freeze. Four of these files are currently on the enforcement track and may be designated as SNCs in the future. The last case was a criminal referral to the WDOJ in 2020 and will be entered as an SNC in RCRAInfo.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|--|-----------|----------|---------|---------|-------------|
| 2a Long-standing secondary violators | | | | | 21 |
| 8c Appropriate SNC determinations [GOAL] | 100% | | 11 | 14 | 78.6% |

State Response:

No response

RCRA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

WDNR exceeded 85% of the National Goal for Enforcement that Returns Violations to Compliance and for Appropriate Enforcement Taken to Address Violations.

Explanation:

WDNR exceeded 85% of the National Goal (100%) of pursuing Enforcement that Returns Violators to Compliance (96.8%). In 30 of the enforcement files reviewed which included enforcement, WDNR returned violators to compliance or had the violator on a path that would return it to compliance in the future. In one complex file, it was unclear to the reviewer how the facility was going to return to compliance. The case is on-going. WDNR also exceeded 85% of the National Goal (100%) for Appropriate Enforcement Taken to Address Violations (100%). In all files reviewed where violations were identified, proper enforcement based on WDNR's SV and SNC determinations was taken to address those violations.

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% | | 30 | 31 | 96.8% |
| 10b Appropriate enforcement taken to address violations [GOAL] | 100% | | 31 | 31 | 100% |

State Response:

No response

RCRA Element 4 - Enforcement

Finding 4-2

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

WDNR failed to meet the National Goal for Number of Significant Non-Complier - Yes (SNY) Evaluations With Timely Enforcement.

Explanation:

WDNR failed to meet the National Goal (80%) for the Number of SNY Evaluations with Timely Enforcement (0%). WDNR refers all SNCs to the WDOJ because WDNR does not have unilateral penalty order authority. The amount of time that the WDOJ takes to resolve a case is not within WDNR control. WDNR should look for alternatives to referring SNC cases to DOJ for enforcement. The Recommendation for Finding 3-2 is partially repeated here, as it attempts to address this issue as well.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|--|-----------|----------|---------|---------|-------------|
| 10a Timely enforcement taken to address SNC [GOAL] | 80% | 78.6% | 0 | 3 | 0% |

State Response:

No response

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|--|
| 1 | 06/18/2024 | <p>The proposed actions to address this Area for State Improvement are:</p> <ol style="list-style-type: none"> 1. The WDNR management team will discuss cases where significant violations are found with the EPA State Coordinator on a quarterly basis. Prior to this discussion, WDNR will prepare a summary of each inspection and a list of the potential violations for the Coordinator to review. For each inspection, the review must be conducted before 150 days has elapsed from the day of the inspection. 2. WDNR and EPA will discuss SNC determinations and the potential enforcement path for each case. 3. WDNR will enter SNC designations into the database of record immediately upon determination rather than upon acceptance of referral by WDOJ. 4. One year after finalization of this SRF Report, EPA will evaluate WDNR's SNC determination progress to determine if it meets SNC determination criteria to close out the recommendation. |

RCRA Element 5 - Penalties

Finding 5-1

Area for Improvement

Recurring Issue:

No

Summary:

WDNR does not include penalty calculations in their case files. WDNR does not document the rationale between proposed and final penalties.

Explanation:

The WDNR does not have unilateral penalty order authority. At the time of the review, WDNR referred all cases that demanded a penalty to the WDOJ. The WDOJ consults informally with WDNR regarding penalty. WDNR has not kept records of these discussions. Going forward, Wisconsin should ensure that all referrals to the WDOJ clearly document gravity and economic benefit calculations. Although WDNR's ability to impact the final settlements reached by the WDOJ is limited, the WDNR should, at a minimum, work with the WDOJ to secure documentation of final agreements and penalty collection to complete the WDNR case files.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|--|------------------|-----------------|----------------|----------------|--------------------|
| 11a Gravity and economic benefit [GOAL] | 100% | | 0 | 6 | 0% |
| 12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL] | 100% | | 0 | 6 | 0% |

State Response:

No response

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | 09/29/2023 | 90 days after finalization of this SRF Round 4 Report, WDNR will develop a Standard Operating Procedure to guide appropriate documentation of the following: (1) consideration of gravity and economic benefit in proposed penalty calculations (2) difference between proposed and final penalties. This recommendation will be considered addressed when EPA reviews the SOP and provides comments to WDNR. |
| 2 | 12/29/2023 | 180 days after finalization of the SRF Round 4 Report, WDNR will submit a report either identifying the cases referred for penalty or confirming that no referrals were made during this time. The report will include the documentation requested in Recommendation 1 of this finding for each case identified. |

RCRA Element 5 - Penalties

Finding 5-2

Area for Improvement

Recurring Issue:

No

Summary:

WDNR failed to meet the expectation for documentation of Penalty Collection in the file.

Explanation:

WDNR failed to meet the National Goal (100%) for documenting Penalty Collection in the file (66.7%). In 2 of 6 cases where a penalty was assessed through formal enforcement, documentation of penalty collection was not included in the file.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|----------------------------------|-----------|----------|---------|---------|-------------|
| 12b Penalty collection [GOAL] | 100% | | 4 | 6 | 66.7% |

State Response:

No response

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|--|
| 1 | 06/18/2024 | One year after the finalization of the SRF Round 4 Report, WDNR will provide a report that includes penalty collection documentation for all cases in which a penalty was collected in that year. WDNR will also ensure that the penalty collection information is entered into RCRAInfo in a timely manner within the year. |
