

# **STATE REVIEW FRAMEWORK**

**Washington Department of Ecology**

**Spokane Regional Clean Air Agency**

**Yakima Regional Clean Air Agency**

**Resource Conservation and Recovery Act**

**Clean Water Act**

**Clean Air Act**

**Implementation in Federal Fiscal Year 2019**

**U.S. Environmental Protection Agency**

**Region 10**

**Final Report**  
**August 09, 2022**

# I. Introduction

## A. Overview of the State Review Framework

The State Review Framework (SRF) is a key mechanism for EPA oversight, providing a nationally consistent process for reviewing the performance of state 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 programs. The goals of the review that were agreed upon at its formation remain relevant and unchanged today:

1. Ensure authorized or delegated, and EPA-run programs meet federal policy and baseline performance standards
2. Promote fair and consistent enforcement necessary to protect human health and the environment
3. Promote equitable treatment and level interstate playing field for business
4. Provide transparency with publicly available data and reports

## B. The Review Process

The review is conducted on a rolling five-year cycle such that all programs are reviewed approximately once every five years. The EPA evaluates programs on a one-year period of performance, typically the one-year prior to review, using a standard set of metrics to make findings on performance in five areas (elements) around which the report is organized: data, inspections, violations, enforcement, and penalties. Wherever program performance is found to deviate significantly from federal policy or standards, the EPA will issue recommendations for corrective action which are monitored by EPA until completed and program performance improves.

The SRF is currently in its 4th Round (FY2018-2022) of reviews, preceded by Round 3 (FY2012-2017), Round 2 (2008-2011), and Round 1 (FY2004-2007). Additional information and final reports can be found at the EPA website under [State Review Framework](#).

# II. Navigating the Report

The final report contains the results and relevant information from the review including EPA and program contact information, metric values, performance findings and explanations, program responses, and EPA recommendations for corrective action where any significant deficiencies in performance were found.

## A. Metrics

There are two general types of metrics used to assess program performance. The first are **data metrics**, which reflect verified inspection and enforcement data from the national data systems of each media, or statute. The second, and generally more significant, are **file metrics**, which are derived from the review of individual facility files in order to determine if the program is performing their compliance and enforcement responsibilities adequately.

Other information considered by EPA to make performance findings in addition to the metrics includes results from previous SRF reviews, data metrics from the years in-between reviews, multi-year metric trends.

## B. Performance Findings

The EPA makes findings on performance in five program areas (elements):

- **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**

Kickoff letter sent: March 17, 2021

Data Metric Analysis and file selections sent to ECY: April 16, 2021

File reviews completed: October 30, 2021

Draft report sent to ECY, SRCAA, and YRCAA: March 10, 2022

Comments from ECY, SRCAA, and YRCAA received by EPA: June 17, 2022

Report Finalized: August 9, 2022

ECY and EPA key contacts:

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# Executive Summary

The review of all three media programs at Ecology revealed that each had some elements that met or exceeded expectations. Overall, however, this review resulted in more findings of “Area for Improvement” than the last review. Most notably, all three media programs were found to need improvement in the Enforcement element. There appears to be an agencywide preference for compliance assistance over compliance monitoring and formal enforcement that negatively impacts these results. EPA looks forward to working with Ecology to find balance between the state’s preferred approach and the national program standards in these areas.

The review discovered mostly positive results for the two local air agencies included this year, with Spokane Regional Air Agency meeting or exceeding expectations in all areas and Yakima Clean Air Agency needing improvement in just two areas.

The sections below summarize findings for each program:

## Areas of Strong Performance

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

### Resource Conservation and Recovery Act (RCRA)

Timeliness of inspection report/number of days to complete inspection report  
Violations found during CEI and FCI compliance evaluations

### Clean Water Act (CWA)

Compliance determinations are accurate.

### Clean Air Act (CAA)

#### Spokane Regional Clean Air Agency (SRCAA)

Full Compliance Evaluation (FCE) elements are well documented.  
Compliance determinations are accurate and Federally Reportable Violations and High Priority Violations are accurately determined in a timely manner.  
Penalty calculations document the gravity and economic benefit of the violation. Differences between the initial penalty and the final penalty are documented. File clearly documents the penalties collected.

## **Yakima Regional Clean Air Agency (YRCAA)**

Accurate and timely Minimum Data Requirements data in ICIS-AIR.

### **Priority Issues to Address**

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

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

Inspection reports are not consistently complete and sufficient to determine compliance. SNC identification rate at sites with CEI and FCI compliance evaluations is lower than the national average.

Lack of appropriate SNC determinations.

Appropriate enforcement is not taken to address violations.

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

State data system is not flowing NPDES information correctly to ICIS. This means that violation information (e.g. SEVs, DMRs, SNC, etc.) does not appear correctly in ICIS and cannot be assessed for accuracy.

Lack of appropriate enforcement response taken to address violations.

Lack of Economic benefit in penalty actions taken in fiscal year 2019.

#### **Clean Air Act (CAA) –**

Data entered in ICIS-Air does not meet accurate Minimum Data Requirements.

FCE's do not document the FCE elements reviewed as part of the FCE. This was primarily found in files from the Central Office

Ecology's compliance determinations were not accurate based on the CMR and other information in the source file. This was primarily found in files from the Industrial Office. Formal enforcement responses do not include corrective action. Enforcement actions are reversed without explanation.

FCE's do not demonstrate that all FCE elements were reviewed as part of the FCE.

#### **SRCAA –**

No issues discovered.

#### **YRCAA -**

FCE documentation does not include a review of all the reports required to demonstrate compliance. Control device and process-operating conditions are not consistently assessed. Compliance determinations are not accurate based on the information in the file.

## **Ecology General Comments**

The Department of Ecology conducts the vast majority of environmental compliance monitoring and enforcement in Washington, with a small number of facilities inspected by EPA every year. Ecology and EPA share a commitment to a strong and effective compliance and enforcement program. Ecology knows from experience that the most effective and efficient way to achieve compliance is to help businesses come into compliance voluntarily. That is why our compliance assistance efforts emphasize technical assistance, outreach, consultation, and informal enforcement. Of course, if these tools are ineffective at a particular facility, we pursue formal enforcement to ensure that compliance is achieved. We use every tool in our toolbox to achieve the best results for Washington's communities and environment.

EPA's report does not look at every tool in the box, but rather, is primarily focused on formal enforcement efforts. As a result, EPA's assessment doesn't fully capture the breadth and effectiveness of Washington's compliance activities. For example, the report fails to recognize a majority of our efforts to inform and assist business as well as our efforts to reduce the types and amounts of toxic material found in industry and the everyday life of the public. We would also note that federal funding of Ecology's programs has not increased concurrently with our agency's responsibilities. We work hard to achieve the best environmental outcomes with the funding and resources available to us, but we do need to prioritize our efforts based on those resources and funding realities.

While acknowledging that the EPA report does not comprehensively assess the full range of our compliance activities, we do find that the report provides a valuable perspective on our agency's performance. We strive to continuously improve our compliance and enforcement programs and appreciate EPA's recommendations for how we might accomplish that.

Throughout the remainder of the report, we include our comments on specific aspects of the assessment as well as the associated recommendations. We also identify improvements to our processes that have occurred since 2019, which was the subject year for the assessment. We believe these improvements go a long way towards addressing some of EPA's findings, and we look forward to continuing to work with EPA as we implement these and other measures in response to the findings.

# Resource Conservation and Recovery Act Findings

## RCRA Element 1 - Data

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### Finding 1-1

Area for Attention

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### Recurring Issue:

No

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### Summary:

Complete and accurate entry of mandatory data

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### Explanation:

Although most inspection and enforcement work is accurately captured in RCRAInfo, the reviewer documented at least one data error in about one-third (29.7%) of the files. The reviewer didn't notice any trend to explain the data errors.

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### 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	37	70.3%

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### State Response:

Ecology appreciates the importance of compliance-related data for program development and implementation.

Although EPA has no recommendation for this finding, Ecology will address it with additional staff training. Ecology will conduct additional training for data entry staff, including data review for quality assurance. Ecology will also conduct training for all inspectors, focusing on reviewing and verifying data matches inspection reports and findings.

Some issues EPA identified result from differing enforcement processes at Ecology and the resultant data entry. Ecology will discuss this topic with EPA outside of the SRF process.

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## RCRA Element 2 - Inspections



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**Finding 2-1**Area for Improvement

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**Recurring Issue:**Recurring from Round 3

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**Summary:**Metric 6a: Inspection reports complete and sufficient to determine compliance.

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**Explanation:**

Ecology's inspection reports are four-part documents that include a transmittal letter, a compliance certificate, compliance assistance/technical assistance addressing violations and other issues found during the inspection, and an inspection report narrative that typically includes photos. The reviewer found that in 38.8% of the files reviewed, violations that were documented were not adequately supported with evidence. Although most reports were complete and clear in what steps a facility must follow to return to compliance (compliance assistance), the report narratives were often lacking in detail and sometimes read as field notes and statements without indication of how an inspector determined something was a violation (how they knew what they knew).

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**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%		23	37	62.2%

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**State Response:**

Ecology's HWTR Program hired a statewide training coordinator in May 2019. New inspectors receive training on writing inspector reports during the first six months of employment, which includes an emphasis on gathering evidence, documenting observations, and report writing. Ecology acknowledges the narrative may read as field notes since it's intended to be an inspection summary section. While we don't often draw conclusions in the inspection narrative, we should capture the "who, what, when, where, why, and how" of the inspection findings to support determinations of violations. Revisions to the inspection report template made after 2019 are designed to focus the inspectors on this process.

Ecology will continue to improve "Chapter 7 – Documenting Your Inspection" in the HWTR Inspector Guidance Manual to clarify requirements for report writing and include clear examples. We will continue to include report writing as part of new employee training. It will also be available as a refresher at HWTR compliance program all-staff events, which typically occur biennially. It will include examples of adequate and insufficient documentation, and mock facility negotiations refuting report findings.

Ecology report writing has changed since the review period. Ecology will coordinate with EPA to provide reports from random (EPA-selected) inspections for review. If judged acceptable by EPA, no further action will be needed to address this finding.

Inspectors will also be encouraged to attend Western States Project training on the subject.

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**Recommendation:**

Rec #	Due Date	Recommendation
1	12/31/2022	Ecology will provide all inspectors training regarding how to adequately write inspection observations that support the violations found. The training will include mock facility negotiations refuting report findings.

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**RCRA Element 2 - Inspections**

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**Finding 2-2**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

Inspection coverage of LQGs and TSDs

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**Explanation:**

Ecology's inspection coverage of operating treatment, storage, and disposal (TSDs) is in line with the national average at 90% but does not meet the goal of 100%. At 18.8% the state didn't quite meet the goal of inspecting 20% of the large quantity generator (LQG) universe but doubled the 9.3% the national average of LQG inspections during the review year.

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**Relevant metrics:**

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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%	9	10	90%
5b Annual inspection of LQGs using BR universe [GOAL]	20%	14.7%	93	511	18.2%
5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL]	20%	9.3%	104	553	18.8%

**State Response:**

Ecology appreciates EPA's acknowledgement of meeting this element.

**RCRA Element 2 - Inspections**

**Finding 2-3**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

Timeliness of inspection report/number of days to complete inspection report

**Explanation:**

The State completed almost 90% of its inspection within the 150-day goal set by EPA.

**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%		33	37	89.2%

**State Response:**

Ecology appreciates EPA's acknowledgement of meeting this element.

Washington will continue to focus on completing inspections within EPA’s 150-day goal, while still pursuing our internal goal to complete inspection reports within 30 days.

This is an internal aspirational goal and is not intended as SRF evaluation criteria. EPA’s RCRA Metrics plain language guide indicates that this is allowed. From pages 3 and 4:

**Use of State Guidance and Regional-State Agreements as Basis for Findings in SRF Reviews.**

The State Review Framework evaluates enforcement program performance against established OECA national program guidance. State program guidance or regional-state agreements are applicable to the SRF review process under the following circumstances.

1. It is acceptable to use the state’s own guidance to evaluate state program performance if: 1) the region can demonstrate that the state’s standard(s) is (are) equivalent to or more stringent than OECA guidance, and; 2) and the state agrees to being evaluated against that standard(s).

Also on page 11:

If an Agency has its own inspection report timeline defined in a policy, grant workplan, or PPA/PPG, EPA should compare the inspection report time average to the Agency’s defined timeline in the SRF report findings. The comparison can highlight where the Agency has exceeded national performance standards for timely inspection reports and generally won’t penalize the agency for missing its more stringent time period. For example, if a state agency has a policy of 90 days for report completion, reviewers should generally not penalize the agency for exceeding 90 days if it completes the report in under 150 days.

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**RCRA Element 3 - Violations**

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**Finding 3-1**

Area for Improvement

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**Recurring Issue:**

Recurring from Round 3

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**Summary:**

Accurate compliance determinations

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**Explanation:**

Assuming statements in the reports accurately reflected observations even if not adequately documented, most of the compliance determinations made were accurate within the individual reports. However, in seven reports, the reviewer noted that when there were discoveries of spills,

or releases of waste to the environment (ground or surface water) the inspectors consistently cited WAC 173-303-145. WAC 173-303-145 addresses the failure to clean up a spill or release even if the release is routine. When evidence such as this is found, the appropriate additional violation was not cited: disposal of dangerous waste without a permit or interim status. Therefore, the instances where the facilities were cited for not cleaning up a spill or release, an additional violation of disposal without a permit or interim status should also have been made resulting in a SNC determination, which will be further addressed in Finding 3-4. In all cases that WAC 173-303-145 was cited, the inspector also required the facility to document that they cleaned up the spill or release to return to compliance but, in no instance was the facility told what constituted “clean,” nor where they required to provide confirmatory samples. Failure to cite violations of illegal disposal, continues to allow the facility to circumvent RCRA by not requiring the facility to comply with the closure standards that all RCRA handlers (even generators) must comply with, for land-based units. In those rare instances that there are also solid waste management units (SWMUs) at the facility, the failure to cite the facility for illegal disposal allows the facility to also circumvent cleaning up other areas of the facility under corrective action (through a Permit Lite that incorporates a MTCA Order). Further, it appeared that formal enforcement was only sought for this violation in those instances that the facility did not or could not clean up the spill or release. There were also two facilities that the reviewer noted should have been cited for illegal storage for accumulating waste longer than the conditions of their generator status would allow. Although the injunctive relief for illegal storage is not as onerous as for illegal disposal such a violation should be evidence to indicate the violations at a facility are significant enough to warrant a SNC determination and formal enforcement.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
7a Accurate compliance determinations [GOAL]	100%		23	37	62.2%

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**State Response:**

Although the SRF reviews all compliance activity, EPA funds only 7% of Ecology’s RCRA program. With that funding, Ecology is expected each year to inspect 20% of the LQG universe, 100% of the operating governmental TSD universe, and 50% of the operating non-governmental universe annually, totaling about 110 inspections per year. This funding level has remained essentially unchanged, and does not account for new workload expectations in RCRA corrective action and permitting, inflation, or other economic changes.

Ecology will review its dangerous waste enforcement program and make improvements to address SRF findings. Ecology works to balance enforcement with meeting our PPA workplan commitments and maintaining a trained staff. Ecology believes our resources are best used to increase generator contact. Ecology will examine whether this is creating sustained compliance. As EPA Region 10 was unable to detail how to assess sustained compliance, we look forward to working together in developing a useful methodology. In the meantime, Ecology will continue to

streamline and improve our inspection process to meet EPA's Compliance Monitoring Strategy goals.

Prior to receiving the draft SRF report, Ecology formed a team to address RCRA enforcement. The HWTR Compliance Enforcement Improvement Team goals are to assess current practices and processes, identify perceived problems, identify opportunities for efficiency or clarity improvements, and recommend changes to provide a clearer, more consistent compliance and enforcement process that supports Ecology's and HWTR's overarching goals. The team will make recommendations to Ecology management. Recommendations from the SRF findings will be considered when making these recommendations to Ecology management.

- Ecology will participate in EPA's planned SNC training in June 2022 and is reviewing inspection reports for sites that EPA states should have been determined to be Significant Non-Compliers. Ecology will review how SNC determinations are made, determine what changes are needed, and communicate those changes to staff through training. SNC determination standards will be documented in the HWTR Inspector Guidance Manual.
- Ecology will evaluate the use and consistency of Immediate Action Letters. Ecology will review and update the conditions for using Immediate Action Letters. Ecology's next compliance all-staff training will include this topic.
- Ecology implements the dangerous waste regulations as allowed by our authorized program. Ecology's authorized program differs from EPA's in several ways. Relating to this report's findings, Ecology requires sites to respond to and mitigate releases to the environment immediately, and failing that, to meet the requirements of the state Model Toxics Control Act, [Chapter 70A.305](#) RCW, implemented as Chapter 173-340 Washington Administrative Code.

EPA's focus on Ecology's use of WAC 173-303-145 requires additional discussion. EPA expects that a violation of WAC 173-303-145 should also result in a citation of illegal disposal. However, in our experience, determining illegal disposal and subjecting a site to permit conditions is a very case-specific decision. Generators do have a responsibility to remediate incidental releases of hazardous waste, and failure to do so results in Ecology citing WAC 173-303-145. However, this does not necessarily mean that the site is disposing waste illegally, or should be subject to permit conditions. Repeated or unremediated releases should be cited as illegal disposal under WAC 173-303-141, and be made subject to permit conditions if not resolved.

- EPA's primary tool is to subject sites to RCRA Corrective Action and closure as permitted units/facilities. However, [EPA RCRA Online 14650](#) states:
  - "Note, in the response to Question 2, we contemplated a situation where the Agency could determine that a spill not promptly cleaned up could be addressed as a land disposal unit. In practice, this approach is very rarely used and is solely at the discretion of the implementing agency. A determination that the spill area is a land disposal unit is not necessary to require cleanup of the spill."
- Ecology has regulatory tools that EPA does not when addressing spills and releases to the environment.

- Ecology is able, per our authorization, to address such situations using both the Dangerous Waste Regulations and Washington’s Model Toxics Control Act.

Ecology will review our legislative standing regarding penalty issuance and report our findings. At this time, Ecology believes EPA’s concerns with legislative restrictions on penalty issuance are addressed in the 2017 Memorandum of Agreement between EPA and Ecology, Section VIII.B, paragraph one.

Ecology’s biannual customer survey will run in September/October 2022, and result in a report in December 2022. This occurrence of the survey will include questions regarding the regulated community’s perception of Ecology enforcement, allowing Ecology the opportunity to identify new and ongoing areas of improvement.

Ecology will update EPA on these topics at quarterly manager meetings with the intent to provide a final report by December 31, 2023.

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**Recommendation:**

Rec #	Due Date	Recommendation
1	12/31/2023	The State will initiate a Program Manager led review that evaluates the effectiveness of the HWTR enforcement program as currently implemented and will use the evaluation as the basis for initiating changes that will address the findings of this SRF review. A summary of the review and changes to be made will be provided to EPA. At a minimum the review will: • Evaluate whether there is sustained compliance obtained by at least 80% of the facilities inspected when there are two or more inspections in a six-year period. • Evaluate consistency in enforcement response specifically for elements that would indicate the potential that a facility is a SNC. • Evaluate the use and consistency of Immediate Action Letters. • Clearly define when the legislature allows penalties to be issued to a facility and evaluate if the HWTR program is issuing Penalty Orders in such cases (versus when penalties are not allowed). • Evaluate regulated communities’ perception of the likelihood of an enforcement action stemming from an Ecology inspection (deterrence effect of the HWTR compliance program).

**RCRA Element 3 - Violations**

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**Finding 3-2**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

Violations found during CEI and FCI compliance evaluations

**Explanation:**

In 2019, Ecology discovered violations at 86% of the facilities it inspected; a 45% higher rate than the national average of 38.9%. This metric indicates that in general the Ecology inspectors conduct thorough inspections and are willing to cite all violations they recognize.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
7b Violations found during CEI and FCI inspections		34.3%	225	271	83%
8b Timeliness of SNC determinations [GOAL]	100%	84.2%	4	4	100%

**State Response:**

Ecology appreciates EPA's acknowledgement of meeting this element.

**RCRA Element 3 - Violations****Finding 3-3**

Area for Improvement

**Recurring Issue:**

Recurring from Round 3

**Summary:**

SNC identification rate at sites with CEI and FCI compliance evaluations

**Explanation:**

Although Ecology finds more facilities are in violation than the national average, they fall short of the national average for identifying facilities that are in significant non-compliance (SNC) with



the regulations. The national average in 2019 was 1.6% of inspections. Ecology found that only .95% of facilities they inspected to be SNCs; that is half the national average even though they found 45% more violations. Of the 93 inspections conducted at LQGs in 2019 only five facilities were found to be significant non-compliers.

**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		1.6%	5	527	.95%

**State Response:**

Please see Ecology’s response for Finding 3-1.

**Recommendation:**

Rec #	Due Date	Recommendation
1	12/31/2023	The State will initiate a Program Manager led review that evaluates the effectiveness of the HWTR enforcement program as currently implemented and will use the evaluation as the basis for initiating changes that will address the findings of this SRF review. A summary of the review and changes to be made will be provided to EPA. At a minimum the review will: <ul style="list-style-type: none"> <li>• Evaluate whether there is sustained compliance obtained by at least 80% of the facilities inspected when there are two or more inspections in a six-year period.</li> <li>• Evaluate consistency in enforcement response specifically for elements that would indicate the potential that a facility is a SNC.</li> <li>• Evaluate the use and consistency of Immediate Action Letters.</li> <li>• Clearly define when the legislature allows penalties to be issued to a facility and evaluate if the HWTR program is issuing Penalty Orders in such cases (versus when penalties are not allowed).</li> <li>• Evaluate regulated communities’ perception of the likelihood of an enforcement action stemming from an Ecology inspection (deterrence effect of the HWTR compliance program).</li> </ul>

**RCRA Element 3 - Violations**

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**Finding 3-4**

Area for Improvement

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**Recurring Issue:**

Recurring from Round 3

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**Summary:**

Appropriate SNC determinations.

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**Explanation:**

This is a recurring finding. Metric 8a indicates that the State makes less than ½ of the national average of SNC determinations even though their rate of finding violations is over two times the national average. Metric 8c measures whether the state makes appropriate SNC determinations. Although Ecology's legislative mandates and internal policies emphasize working with facilities using compliance/technical assistance to return them to compliance, and do not allow penalties the first time a violation is found, these mandates and policies also confirm that a facility who's violations fall into any of the federal categories for a SNC (i.e. a facility that has caused actual exposure, or a substantial likelihood of exposure to human health or the environment, or is a chronic or recalcitrant violator, or has violations which deviate substantially from the conditions of a permit, order, agreement, or statutory/regulatory requirement) are significant non-compliers and enforcement is appropriate. However, the policies also state that Ecology managers must take into account the resources that will be needed for formal enforcement, especially if a penalty is to be sought. There is an assumption that enforcement is resource intensive and is a last resort if the facility can be returned to compliance in a less formal manner. The decision process that the state follows has the manager first decide if there will be formal enforcement and then decide if the facility is a SNC. If a manager decides not to pursue a penalty, that decision should be documented in the file. Only one file included a management decision not to pursue a penalty for failure to comply with an Administrative Order. The reason given was to expend resources to help the facility return to compliance rather than on issuing a penalty. There was no documentation that the facility was unable to pay a penalty. In this review, EPA found additional instances where the violations documented by the state should have led to a determination of SNC:

- Seven files (see Metric 7a) that documented some sort of spill or release had occurred. Three of these facilities had repeat violations from a previous inspection showing they were also chronic or recalcitrant violators.
- Four files indicated the facilities were chronic or recalcitrant violators and deviated substantially from the regulations.
- Three files indicated the facilities had substantially deviated from the regulations.

Ecology's legislative mandate to provide compliance assistance and not penalize facilities upon finding a violation for the first time along with its program philosophy of seeking voluntary compliance appears to have resulted in Ecology failing to designate facilities as SNCs until they otherwise deem enforcement is the applicable option. EPA believes that the three categories that drive a SNC determination must be evaluated independently. If a facility is determined to be a SNC then formal enforcement is the appropriate response. (see Finding 4-2).

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**Relevant metrics:**

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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
8c Appropriate SNC determinations [GOAL]	100%		24	37	64.9%

**State Response:**

Please see Ecology's response for Finding 3-1.

**Recommendation:**

Rec #	Due Date	Recommendation
1	12/31/2023	The State will initiate a Program Manager led review that evaluates the effectiveness of the HWTR enforcement program as currently implemented and will use the evaluation as the basis for initiating changes that will address the findings of this SRF review. A summary of the review and changes to be made will be provided to EPA. At a minimum the review will: <ul style="list-style-type: none"> <li>• Evaluate whether there is sustained compliance obtained by at least 80% of the facilities inspected when there are two or more inspections in a six-year period.</li> <li>• Evaluate consistency in enforcement response specifically for elements that would indicate the potential that a facility is a SNC.</li> <li>• Evaluate the use and consistency of Immediate Action Letters.</li> <li>• Clearly define when the legislature allows penalties to be issued to a facility and evaluate if the HWTR program is issuing Penalty Orders in such cases (versus when penalties are not allowed).</li> <li>• Evaluate regulated communities' perception of the likelihood of an enforcement action stemming from an Ecology inspection (deterrence effect of the HWTR compliance program).</li> </ul>

**RCRA Element 4 - Enforcement**

**Finding 4-1**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

Enforcement that returns the violators to compliance.

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**Explanation:**

Of the 38 files reviewed, seven (approximately 18%) were addressed with some sort of formal enforcement (including expedited orders). The remainder were addressed with informal enforcement. The review shows that 80% of the enforcement actions initiated by the state return the facility to compliance. However, 21% of the files reviewed documented repeat violations and as mentioned in the discussion to Finding 3-4, four of the facilities that were found to be recalcitrant also substantially deviated from the regulations and three had releases or spills to the environment. Given the evidence that repeat violations are occurring coupled with substantial deviation from the regulations and/or releases to the environment, it is not clear that the State is achieving sustained compliance with their enforcement actions.

---

**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%		28	34	82.4%

---

**State Response:**

Ecology appreciates EPA's acknowledgement of meeting this element.

Although Ecology meets this element, the explanation includes concerns that Ecology is addressing. Please see Ecology's response for Finding 3-1.

---

**RCRA Element 4 - Enforcement**

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**Finding 4-2**

Area for Improvement

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**Recurring Issue:**

No

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**Summary:**

Appropriate enforcement taken to address violations.

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**Explanation:**

Ecology considered the recalcitrant nature of the violations in four of the six formal actions that were reviewed. Five of the six formal enforcement actions addressed a release or illegal disposal of dangerous waste. These enforcement actions were appropriate, and all received an associated

penalty though three were penalty-only orders. When enforcement was issued that addressed a release, spill or illegal disposal, the common thread appeared to be whether or not the release, spill, or illegal disposal could be addressed. The reviewer saw no enforcement actions taken when the facility had the potential to clean up the dangerous waste in the environment. It seemed the State preference was to allow such clean-up to be addressed voluntarily, with some level of compliance assistance provided by the inspector. As noted in Finding 3-4, the reviewer saw seven files that documented a release to the environment that should have been addressed with formal enforcement. Additionally, the reviewer found seven other files (four with repeat violations/recalcitrant nature and three where the majority of the regulations to which the facility was subject were violated) that also appeared to rise to the level of a significant non-complier that should have had violations addressed with formal enforcement. Although the State has the ability to issue administrative orders with penalties, it generally issues separate administrative and penalty orders so that not all violations that are addressed with an administrative order are also addressed with penalties. The State’s Compliance Assurance Policy, in section 5 states, “when informal enforcement methods have failed, or the violation has impacted (or likely impacted) human health or the environment, penalties will be considered.” The policy further states that “[p]ursuing penalty actions requires extensive investment of state resources to develop, issue, and complete the action. Unit supervisors or section managers will evaluate available resources and make the decision on whether or not to pursue a penalty. When a decision is made to not issue a penalty because of lack of resources, it will be documented in the facility’s enforcement file and the program manager will be informed by the supervisor making the decision. The staff will work to achieve compliance through informal or other formal means, as appropriate.” One file reviewed included a Recommendation for Enforcement (RFE) in which the inspector recommended a penalty for failure to comply with an Order. The management note stated a decision not to seek a penalty for failure to comply with the Order and instead continue to reach out to the facility to get the required documents to satisfy the Order. It appears that the State’s reluctance to issue penalties where there is no release to the environment may be sending a message that there is no consequence for failing to comply with the dangerous waste-handling regulations.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
10b Appropriate enforcement taken to address violations [GOAL]	100%		19	39	48.7%

---

**State Response:**

Please see Ecology’s response for Finding 3-1.

---

**Recommendation:**

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Rec #	Due Date	Recommendation
1	12/31/2023	<p>The State will initiate a Program Manager led review that evaluates the effectiveness of the HWTR enforcement program as currently implemented and will use the evaluation as the basis for initiating changes that will address the findings of this SRF review. A summary of the review and changes to be made will be provided to EPA. At a minimum the review will:</p> <ul style="list-style-type: none"> <li>• Evaluate whether there is sustained compliance obtained by at least 80% of the facilities inspected when there are two or more inspections in a six-year period.</li> <li>• Evaluate consistency in enforcement response specifically for elements that would indicate the potential that a facility is a SNC.</li> <li>• Evaluate the use and consistency of Immediate Action Letters.</li> <li>• Clearly define when the legislature allows penalties to be issued to a facility and evaluate if the HWTR program is issuing Penalty Orders in such cases (versus when penalties are not allowed).</li> <li>• Evaluate regulated communities' perception of the likelihood of an enforcement action stemming from an Ecology inspection (deterrence effect of the HWTR compliance program).</li> </ul>

## RCRA Element 5 - Penalties

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### Finding 5-1

Meets or Exceeds Expectations

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### Recurring Issue:

No

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### Summary:

Gravity and economic benefit

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### Explanation:

In all penalty files reviewed, the State considered economic benefit. However, in one case they determined that the "Agency expert said EB should be significant but didn't know how to calculate it," so EB was not included in the penalty calculation. In this case there are multiple ways to calculate at least some economic benefit and some amount should have been quantified.

---

### Relevant metrics:

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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
11a Gravity and economic benefit [GOAL]	100%		5	6	83.3%

**State Response:**

Ecology appreciates EPA's acknowledgement of meeting this element.

Given EPA's stated concern, Ecology will review and update its process for determining economic benefit if necessary.

**RCRA Element 5 - Penalties**

**Finding 5-2**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

Documentation between initial and final penalty calculation

**Explanation:**

In most cases Ecology's initial and final penalty amount were the same. When they were not it was documented in 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	3	100%
12b Penalty collection [GOAL]	100%		5	5	100%

**State Response:**

Ecology appreciates EPA's acknowledgement of meeting this element.

# Clean Water Act Findings

## CWA Element 1 - Data

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### Finding 1-1

Area for Improvement

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### Recurring Issue:

No

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### Summary:

State data system is not flowing NPDES information correctly to ICIS. This means that Violation information (e.g. SEVs, DMRs, SNC, etc.) does not appear correctly in ICIS and cannot be assessed for accuracy.

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### Explanation:

Ecology's PARIS database updates and the need for quality control expertise in database communications between PARIS and ICIS has impacted the data flow between the two databases. Currently PARIS data is not flowing data accurately to ICIS causing Washington to have a high SNC rate. The data currently not flowing to ICIS accurately includes basic permit data, annual reports, compliance schedule submissions, informal/formal enforcement submissions, Single Event Violation (SEV) submissions and Discharge Monitoring Reports (DMRs).

---

### 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%	93.5%	1	6	16.7%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%	92.3%	23	36	63.9%
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		0	25	0%

---

### State Response:

Ecology is working with EPA and contractors to repair and resume dataflow from our PARIS system into EPA's database, ICIS, which flows into ECHO. As of January 2022, we resumed flowing information over and this repaired many data problems within EPA's ICIS database. We



have completed Phase 1 of this project and have begun Phase 2. This second phase of the project focuses on resolving the issues related to historic DMR submissions for which ICIS prevents us from flowing information over. There is remaining work currently being done to ensure that the data in ICIS/ECHO is complete and accurate. Ecology expects to complete this work by mid-2022 but the timing is dependent in part on how quickly EPA can process Ecology's requests for changes within ICIS. Once Phase 2 is completed (expected June 2022), Ecology will review information in the ICIS system on a routine, ongoing basis to resolve errors (caused by flow, translation and/or data entry) and maintain quality data flow between PARIS and ICIS.

Ecology's PARIS IT Business Lead and Ecology's PARIS Technical Lead attend EPA's national trainings on ICIS and ECHO as well as Region 10 meetings on these subjects, and such participation will continue. In addition, now that Ecology's PARIS system is flowing information into ICIS, Ecology's water quality enforcement work group members will obtain ECHO access and training so that they can evaluate ECHO's information regarding permittee compliance, help identify data quality issues, and utilize ECHO tools.

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**Recommendation:**

Rec #	Due Date	Recommendation
1	09/30/2022	Ecology is working with EPA to address the data flow issues in a two-phase process. Phase 1 will focus on updating and re-establishing the data flow using the latest version of the plugin. This will provide a solid foundation for analysis and resolution of DMR submission issues by December 31, 2021. Phase 2 will specifically target resolving the issues related to historic DMR submissions and reducing the SNC rate, by Q2 FY22. Ecology needs to train staff to have the expertise in both ICIS and PARIS to address quality control, data transfer issues and keep up to date with ICIS business rules.

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**CWA Element 2 - Inspections**

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**Finding 2-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

Inspection coverage of NPDES Majors, non-majors with individual permits and non-majors with general permits.

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**Explanation:**

The state met or exceeded the inspection targets in its compliance monitoring strategy.

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**Relevant metrics:**

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL]	100% of commitments		8	8	100%
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100% of commitments		20	0	>100%
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL]	100% of commitments		37	47	78.7%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments		0	0	>100%
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments		341	314	108.6%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments		903	684	132%
5a1 Inspection coverage of NPDES majors. [GOAL]	100%	52.9%	33	51	60%
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100%	25.3%	63	115	54.78%
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL]	100%	6.3%	856	998	85.77%

**State Response:**

No response necessary for “Meets or Exceeds Expectations” findings.

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## CWA Element 2 - Inspections

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### Finding 2-2

Area for Improvement

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### Recurring Issue:

Recurring from Round 3

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### Summary:

Timely completion of inspection reports

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### Explanation:

Inspection reports must be completed in 30 days for an inspection without sampling, and 45 days for inspections with sampling. The state met the deadline in 7 out of the 15 inspections. This is an improvement from Round 3, where the state met the deadline in 4 out of 19 inspections. ECY inspected one facility four times (11/6/2018, 11/9/2018, 11/20/2018 & 9/30/2019). It should have produced four reports reflective of each visit. Instead, it produced an 11/9/2018 Corrections Form. ECY did not produce an inspection report when it inspected another facility. Instead, ECY generated and sent a Corrections Required report to the facility, using notes and photos from the inspection.

---

### 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%		7	15	46.7%

---

### State Response:

*In lieu of the EPA-recommended action and associated due date, Ecology is conducting a thorough process that is described below.*

Ecology's Water Quality Program formed a new work group in 2021 for inspectors. The purpose of this work group is to improve the continuity of inspection practice statewide by developing and/or updating inspection protocols, inspection guidance documents, and inspection report forms. The WQ Inspectors Workgroup is updating the Ecology WQ Inspectors Manual, which will be consistent with and include references to current EPA guidance for inspectors, including but not limited to standard procedures for inspection report completion, use of inspection forms (including clarifying the role of a Corrections Required form), and relevant distinctions between different types of inspections (or compliance monitoring activities) as described in EPA's 2014 CWA Compliance Monitoring Strategy. Ecology will draft its update to the WQ Inspectors

Manual by the end of calendar year 2023. The WQ Inspectors Work Group is permanent and will continue its statewide coordination, training, and standardization work in perpetuity.

---

**Recommendation:**

Rec #	Due Date	Recommendation
1	09/30/2022	The state shall update its plan to routinely remind inspectors to complete inspection reports within 30 days for compliance inspections without sampling, and 45 days for compliance inspections with sampling. Create either: 1) a strategy to address report completion and timeliness with implementation timelines; or 2) an SOP with inspection report deadlines. Submit the strategy or SOP to EPA for comment within 90 days of the date of this report.

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**CWA Element 2 - Inspections**

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**Finding 2-3**

Area for Attention

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**Recurring Issue:**

No

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**Summary:**

Inspection Reports for 14 of the files were complete and sufficient to determine compliance at the facility with areas to improve report supporting evidence. Inspection reports associated with 2 of the files reviewed were lacking many of the recommended components necessary to assess compliance, including details and supporting evidence related to site conditions, evaluation of potential discharges and receiving waters, and if records were reviewed or available. Inspections associated with 2 of the files demonstrated that Inspection Reports were not composed altogether, but instead the information was used to generate Corrections Required reports.

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**Explanation:**

Inspection Reports must be composed when inspections are conducted. Inspection Report components are identified in the NPDES inspection manual available on OECA's Inspector Wiki.

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**Relevant metrics:**

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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%		14	18	77.8%

**State Response:**

Ecology’s Water Quality Program formed a new work group in 2021 for inspectors. The purpose of this work group is to improve the continuity of inspection practice statewide by developing and/or updating inspection protocols, inspection guidance documents and inspection report forms. The WQ Inspectors Workgroup is updating the Ecology WQ Inspectors Manual, which will be consistent with and include references to current EPA guidance for inspectors, including but not limited to standard procedures for inspection report completion, use of inspection forms (including clarifying the role of a Corrections Required form), and relevant distinctions between different types of inspections (or compliance monitoring activities) as described in EPA’s 2014 CWA Compliance Monitoring Strategy. Ecology will draft its update to the WQ Inspectors Manual by the end of calendar year 2023. The WQ Inspectors Work Group is permanent and will continue its statewide coordination, training, and standardization work in perpetuity.

**CWA Element 3 - Violations**

**Finding 3-1**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

Accurate compliance determinations.

**Explanation:**

The inspection reports reviewed allowed an accurate compliance determination to be made, and the state made the appropriate determination in the majority of inspections. One file showed that inspections identified suggested recommendations to fix chronic issues with proper operation of treatment systems and sample collection, but did not identify the issues as possible violations and instead said that no enforcement was necessary.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
7e Accuracy of compliance determinations [GOAL]	100%		14	15	93.3%

**State Response:**

No response necessary for “Meets or Exceeds Expectations” findings.

**CWA Element 3 - Violations**

**Finding 3-2**

Area for Improvement

**Recurring Issue:**

Recurring from Round 3

**Summary:**

Number of facilities in noncompliance.

**Explanation:**

This metric does not have any goals associated with it. However, there are national averages to compare to Washington. The metric pull for Washington shows many facilities in Washington that are in noncompliance. The number of non-compliance facilities is likely linked to data issues that are addressed in Finding 1-1.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
7k1 Major and non-major facilities in noncompliance.		18.4%	4358	5377	81%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.		8.1%	3295	4969	66.3%

**State Response:**

Refer to the State Response for CWA Finding 1-1 for details regarding the process and timeline for resolving data flow issues that are referenced in EPA’s recommendation.

Based on discussions with EPA, EPA’s interest in Element 3 Finding 3-2 is associated with the “significant noncompliance” (or SNC) status of Washington state’s NPDES permittees. SNC is calculated by EPA’s ECHO system. Prior to Phase 1 of our data flow repair project, Washington’s SNC rate was at about 81%. Completion of Phase 1 dropped our SNC rate to approximately 24%. As Phase 2 of our data flow repair project continues, the SNC rate calculated by ECHO is likely to fluctuate until the corrective work is completed. Ecology anticipates that at the completion of Phase 2 our SNC rate will be at 10% or less. Additional SNC rate corrections may occur as water quality enforcement specialists use ECHO and learn of site-specific or topic-specific data translation errors.

We are currently routinely reviewing data flow and data quality causes for SNC, and identifying data transfer and data translation corrections, including manually resolving violations when appropriate. Following completion of the Phase 2 data flow corrections, Ecology will continue to review the SNC status in ECHO, determine causes for SNC, and identify any potential new data management improvements and/or permit-specific compliance assurance efforts if not already underway. In addition, having an accurate data flow will enable inspectors and enforcement specialists to use ECHO tools to assist with prioritization, such as for targeting inspections.

Ecology currently routinely assesses Permittee compliance status based on submittals and DMRs in the Washington State PARIS database, and uses compliance assurance tools, including enforcement, as necessary to bring a facility into compliance. EPA staff attend water quality Enforcement Work Group meetings where permit-specific compliance problems are discussed and plans for resolving violations are shared. Using this forum, we will discuss permit-specific SNC status with EPA after data flow issues are resolved and we will identify appropriate permittee-specific plans to address SNC at that time.

---

**Recommendation:**

Rec #	Due Date	Recommendation
1	12/31/2022	Once the data flow issues discussed in Finding 1-1 are resolved, the State should conduct a review to determine the total number of facilities <u>(i.e., all permittees including those covered under general permits)</u> in noncompliance and provide EPA with a plan to address them.

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**CWA Element 4 - Enforcement**



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**Finding 4-1**

Area for Improvement

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**Recurring Issue:**

No

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**Summary:**

Review of the enforcement actions during Fiscal Year 2019

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**Explanation:**

ECY's Water Quality Compliance Assurance Manual ("the Manual") (2011) describes the enforcement options available to Water Quality compliance staff. The Manual specifies when ECY can use informal enforcement (e.g. Warning Letters, Corrective Action Required Forms) and formal enforcement (Notices of Violation (NOVs), Administrative Orders, and Penalty actions).

The Manual describes general criteria for when different informal and formal enforcement should be issued, but the Manual does not provide a clear path for how to escalate enforcement responses (such as a range of possible responses for different scenarios) and clarify the expectations for when this escalation should occur to address violation severity/frequency.

EPA's 1989 NPDES Enforcement Management System (EMS) provides for an escalating enforcement response, including an enforcement response guide. EPA reviewed Fiscal Year 2019 penalty actions and informal enforcement actions. According to the file review, the state failed to appropriately address noncompliance in 8 of the 24 files. Of the enforcement actions taken by ECY 10 of 24 did not return the facility to compliance. Some detailed examples from the enforcement file reviews follow.

- Based on the results of the May 7, 2019, inspection at a facility (several missed pH/TSS/aluminum samples, poor drain maintenance, broken curb & stormwater pond w/ floating material) that also had recent noncompliance resolved through informal enforcement, ECY should have considered issuing a formal enforcement action as part of escalating enforcement. Instead, ECY requested follow-up information regarding the violations.
- At a municipal facility, ECY issued administrative orders in 2009 and again in 2011. In 2019, ECY issued informal enforcement letters instead of additional or elevated formal enforcement, even though the facility continued to violate limits.
- A reclamation facility reviewed has been out of compliance for at least 2 years prior to the FY19 review period since Q4 of 2016, it has regularly exceeded its ammonia limits, according to DMR violations in PARIS. ECY sent 11 'Warning letters' in FY19. Although the violations were chronic in nature, ECY did not elevate its enforcement response.

- Review of another file revealed that a construction site discharged without a permit. Discharging without a permit requires an administrative order or penalty order per EPA's EMS. The ECY Manual also identifies a penalty as an appropriate tool to address this type of violation.

- Finally, a file review involving a follow-up inspection at a facility on 5/10/2019 demonstrated that the majority of violations observed during the initial 4/11/2019 inspection were not addressed. Ecology had issued two follow up Corrections Required notices on 4/12/2019 and 4/16/2019 with

compliance deadlines based on the 4/11/2019 inspection, all of the violations addressed in the corrections required notice should have been completed by the 5/10/2019 inspection.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations		14.4%	4	50	8%
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		16	24	66.7%
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		14	24	58.3%

**State Response:**

*In lieu of the EPA-recommended actions and associated due date, Ecology is conducting a thorough process that is described below.*

Ecology has an agency-level Compliance Assurance Manual (Ecology CAM) that describes the philosophy and approach to compliance assistance and enforcement at the department. This Ecology CAM was updated in 2021 and now includes a description of the role of environmental justice and civil rights in our compliance assurance activities. The water quality-specific CAM (WQ CAM) dates from 2011 and will be updated by the end of calendar year 2023. This effort will include guidance and scenario examples for enforcement response escalation, as well as other necessary updates (such as clarification of the role of the Corrections Required form) and references to relevant EPA guidance for NPDES enforcement.

The Ecology Water Quality Program already has an enforcement coordination body in place whose purpose is to develop and improve enforcement tools/procedures for consistent use by enforcement specialists statewide. This body is the water quality Enforcement Work Group, which has been in existence since the late 1990s and focuses on efficient and thoughtful enforcement of state water quality laws and regulations, including NPDES as well as State Waste Discharge permits. It consists of representatives from each of the four regions and relevant groups from our headquarters office. Each representative has a responsibility of ensuring the consistent application of relevant policies and procedures in their organizational group, and the work group conducts statewide enforcement training for all relevant staff every other year. The water quality Enforcement Work Group is therefore already designated as the statewide

enforcement coordination body and no single additional coordinator position is necessary. This structure is consistent with Ecology's organizational structure.

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**Recommendation:**

<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1	12/31/2022	Revise ECY's Water Quality Compliance Assurance Manual to clarify appropriate enforcement responses based on circumstances and noncompliance type and for how and when to escalate enforcement responses (such as providing a range of possible responses for different scenarios) and designate an Enforcement Coordinator to ensure consistency across the state. EPA's 1989 NPDES Enforcement Management System (EMS) is a good example. Provide a draft of proposed changes for EPA review within 180 days from the date of the final SRF report or by the end of calendar year 2022, whichever comes later.

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**CWA Element 5 - Penalties**

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**Finding 5-1**

Area for Improvement

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**Recurring Issue:**

No

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**Summary:**

Lack of Economic benefit in penalty actions.

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**Explanation:**

States should routinely calculate and recoup economic benefit consistent with national policies or other methods producing results consistent with national policy. The calculation and recovery of the economic benefit that the violator obtained because of its avoided and/or delayed compliance costs is a fundamental principle of all penalty calculations. 10 out of 10 penalty calculations (3 Field Notice of Penalties and 7 Notice of Penalties) did not document nor include economic benefit. ECY shared that Field Notice of Penalties can be a maximum of \$3,000. Field Notice of Penalties do not include an economic benefit, as economic benefit would likely cause the field ticket to exceed the \$3,000 maximum. For Notice of Penalties, ECY shared that if economic benefit can be easily determined, then ECY will include it in its penalty calculation matrix. According to ECY, it does not use EPA's Economic Benefit models as it has been difficult to use and defend.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%		0	10	0%

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**State Response:**

Based on discussions between Ecology and EPA, it appears that EPA does not understand how Ecology uses its water quality penalty matrix, particularly in completing the decision flow process where the investigator must identify whether the criteria were not, possibly, probably, or definitely met. This judgement is based on the facts and evidence of the case. Evidence is critical to the defensibility of our enforcement actions. All penalties and orders are appealable by the receiving party or a third party with standing. The more evidence we have, the larger the penalty may be. Thus, if we definitely know there was an economic benefit to noncompliance, this means we have evidence and can quantify the benefit. If economic benefit was possible or probable, this is also factored into the calculated penalty. The only penalties where economic benefit is not included in the calculation is when it is clear that no one obtained an economic benefit and when a Field Notice of Penalty is issued. A Field Notice of Penalty is an enforcement tool available only for four of our general permits and only when “there is no question that a violation occurred, the violator was warned and had the opportunity to correct, and [Ecology has] evidence to support the conclusion that a violation occurred.” Of the 10 penalties that EPA reviewed, three were issued as Field Notice of Penalty and are thus mismatched to Metric 11a.

EPA’s review documentation for the remaining seven penalties that EPA reviewed suggests the reviewer(s) did not understand the penalty matrix and its gravity criteria, or did not review the Request for Enforcement document that is part of the official record for each formal Notice of Penalty.

Ecology appreciates EPA’s offer to provide BEN model training, particularly if use of the BEN model may expand our ability to obtain evidence that a violator definitely obtained an economic benefit. BEN model training for the enforcement specialists is appropriate and we will follow up to schedule such a training before the end of calendar year 2022.

---

**Recommendation:**

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Rec #	Due Date	Recommendation
1	12/31/2022	Provide training for all appropriate staff on the use of the BEN model and on the requirement to consider economic benefit in all penalty calculations. EPA can help with BEN training if necessary. Provide training agenda and roster of attendees within 180 days of this report.

## CWA Element 5 - Penalties

### Finding 5-2

Meets or Exceeds Expectations

### Recurring Issue:

No

### Summary:

Penalties collected in Fiscal Year 2019

### Explanation:

The state documented collection of 9 out of the 10 penalties issued.

### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12b Penalties collected [GOAL]	100%		9	10	90%

### State Response:

No response necessary for “Meets or Exceeds Expectations” findings.

## CWA Element 5 - Penalties

### Finding 5-3

Area for Improvement

### Recurring Issue:

No

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**Summary:**

Properly documenting any differences between initial and final penalty calculation

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**Explanation:**

All files with penalty actions should include both an initial and final penalty calculation and the rationale for any differences between the two. The files reviewed did not include documentation to identify whether there were differences in initial and final penalty calculations or documentation of the rationale for any differences.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		0	0	0

---

**State Response:**

It appears that EPA did not properly evaluate CWA Metric 12a consistent with the SRF guidelines and review checklist. The SRF checklist for 12a states “Complete **if** the penalty has a final value assessed that is lower than the initial value calculated,” (emphasis added). If there was no change between an initial and final penalty in the records assessed, Metric 12a is not applicable. Furthermore, EPA’s CWA backup documentation suggests Metric 12a is simply Not Applicable for this review.

Ecology does not negotiate water quality penalties outside a formal settlement process. All Notices of Penalty are appealable to the Pollution Control Hearings Board (PCHB). If a violator appeals a penalty, Ecology may enter into settlement negotiations that result in a change to the penalty amount and/or a penalty payment plan. One approach to settlement that we have used is to reduce the penalty to be paid by some amount, holding the remaining portion of the penalty in abeyance provided the violator meets certain requirements or does not violate again over a specified time frame. None of the penalty files that EPA requested to review were subject to an appeal and settlement resulting in a different penalty amount. EPA’s recommendation is therefore not applicable.

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**Recommendation:**

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<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1	09/30/2022	If available, provide for EPA review the initial and final penalty calculations for all files reviewed along with documentation of the rationale for any differences. If not available, provide staff training on the need to properly document penalty decisions.

# Clean Air Act Findings

## CAA Element 1 - Data

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### Finding 1-1

Area for Improvement

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### Recurring Issue:

Recurring from Round 3

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### Summary:

Dates for FCEs are incorrectly recorded in ICIS-Air and do not meet accurate Minimum Data Requirements (MDR).

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### Explanation:

The gap between the reported date of FCE vs what the file shows is a recurring issue with ECY files reviewed. The discrepancies between the file and the reported date range from a few days up to eight months. There are additional issues with classification of the inspection as an FCE or a PCE and on-site vs off-site. The ECY practice to rely on facility identifiers being in the permit and not in the FCE report is not acceptable. The FCE should be a summary of everything you need to know to assess compliance, including facility identifiers. The permit Statement of Basis lists multiple facility contacts such as managers and company executives so we don't know which person was met on site, interviewed, escorted the inspector, provided records etc. during the on-site portion of the FCE. The "date of the FCE" is not easy to understand in the FCE report and makes comparison to the ECHO database problematic. For one example, the onsite visit to the facility was on 8/31/18, the FCE report cover memo was written on 10/18/18 but the ECHO database shows the "On Site FCE" was 9/26/18. The FCE report goes on to say the compliance status was determined on 9/26/18 - which corresponds to the date of the most recent report submitted by the facility reviewed by the inspector. Of the 15 files reviewed, 1 of 9 files from the Industrial Office were accurate and 0 of 6 files from the Central Office were accurate.

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### 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%		1	15	6.7%

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### State Response:

The SRF Report Introduction states the State Review Framework (SRF) evaluates programs on a one-year period of performance. Note that in the interest of a larger data set, Ecology agreed to allow review of an expanded data set, including implementation in Federal Fiscal Years 2018



through 2020. Specifically, this expanded the FCE data set from 8 to 15 data points. (From 1 to 6 for CRO and 2 to 9 for Industrial Section.) This process deviation from the one year period of review should have been noted in the report.

As EPA has stated, Ecology specifies that the date of the FCE compliance status corresponds to the most recent date of a document used in making the compliance status determination. However, EPA has not accepted this format of FCE dating, as they claim that the FCE date, entered into ICIS, was accurate on 0 of 6 files for CRO and 1 of 9 files for Industrial Section. Upon Ecology verification, the FCE date, as specified, was entered accurate on 6 of 6 files CRO and 9 of 9 files for Industrial Section.

Upon review of requested examples of good FCEs, provided by an EPA reviewer on 3/24/22, we noticed that the content of the documents provided consist predominately of on-site inspections, leading us to conclude that EPA is focused on the on-site inspection rather than what we interpret and compile as a much more inclusive FCE, wherein the on-site inspection is only one of many referenced elements.

The revised report states that “there are additional issues with classification of an inspection as an FCE or PCE...” This appears to be related to a finding under 2b for Port Townsend Paper Corporation (PTPC) in the spreadsheet provided. The finding states that the “FCE reviewed for this evaluation was performed on 5/30/19. It is listed as a PCE in the ECHO database.” As communicated to EPA via email on April 12, 2022, an FCE was not performed for PTPC in FY19, so it was correctly identified as a PCE. We did not provide an FCE for PTPC since they are done in even FYs for our pulp and paper facilities (i.e. one was performed in FY18 and one was performed in FY20). Note that Ecology considers an FCE to be “on-site” if it includes at least one on-site inspection. However, we classify on-site inspections to be PCEs, and view them simply as a component of the FCE. The date of the on-site inspection is not the same as the date of the FCE, and as a result, we do not believe that a corrective action is triggered. Ecology follows the “Clean Air Act Stationary Source Compliance Monitoring Strategy,” issued in October 2016. As drafted, the recommended corrective action implies that Ecology’s FCEs do not meet the definition of an FCE. As we’ve discussed, during meetings regarding the draft reports, Ecology believes that our FCEs are a “comprehensive evaluation to assess compliance of the facility as a whole and resulting in a compliance determination.” However, we appear to differ in approach from EPA. While our FCEs clearly reference documents/actions reviewed and state the compliance determination, we do not routinely write standalone all-inclusive FCE reports.

Based on discussions with EPA, Ecology would be supportive of developing, with input from EPA, an FCE template document that more clearly references documents/actions reviewed and states the compliance determination so that EPA can better track the totality of Ecology’s compliance work. In practice, Ecology may choose to follow similar steps, but doesn’t feel that prior review and comment from EPA, quarterly in-house audits with reports, and quarterly EPA reviews are warranted. Additionally, three months to put together a template would be challenging given Ecology’s current resources and competing regulatory obligations. While Ecology understands the value of periodic internal reviews of our compliance monitoring activities, documenting and providing those reviews to EPA will be time intensive for both

agencies with little overall value. As stated in the recommendation, Ecology will include management review of major compliance review activities in their templates. Ecology would appreciate EPA providing a clear format of the FCE that we can readily follow, and that we feel would be the most effective way to address this concern.

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**Recommendation:**

Rec #	Due Date	Recommendation
1	3/31/2024	Ecology will create an FCE reporting template based on the definition of an FCE in the CAA CMS that clearly lays out what elements need to be included to complete an FCE and how to correctly report an FCE into ICIS-Air. The template should include a step for management review and approval. Ecology will submit this template to EPA for review by 9/30/2022 and will incorporate comments in a final draft before training staff on how to use it. Ecology will train all staff who do compliance monitoring activities and managers who supervise those staff on the above document. (12/31/2022) Starting with Q2 of FY23 (January 2023-March 2023), Ecology will conduct an in-house audit of at least 2 compliance monitoring activities from each office. This internal audit should evaluate performance against the underlying policies, templates, and the sops in place to implement them. Ecology should include a document describing what was reviewed and the findings, noting where policies were followed and where they weren't. This review will be sent to EPA within 45 days of the end of each quarter. This review will occur for at least 4 quarters but will be extended by EPA on an office-by-office basis if EPA feels the issue is not adequately addressed.

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**CAA Element 1 - Data**

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**Finding 1-2**

Area for Improvement

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**Recurring Issue:**

Recurring from Round 3

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**Summary:**

Reportable Violations and enforcement actions are not accurately reported in ICIS.

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**Explanation:**

In many of the files reviewed there are reported deviations from ACCs, semi-annual reports, and deviation reports but the FCE does not provide a description of the issues. In many cases the deviations are at least federally reportable but FRVs are not entered into ICIS-Air. If the violations are identified in the file there is little or no discussion of how the violations were addressed or resolved. In addition to FRVs missing in ECHO and ICIS-AIR, there are missing High Priority Violations (HPVs) as well. Below are some notes from our review illustrating these issues: Central Office: Facility reported deviations in 2018 & 2019 ACC reports but FCE does not provide a description of the issues. For one facility the file notes regular opacity violations and they are all listed as resolved, no compliance action is included in the file and there is no explanation of how the violations were resolved. FRV not reported into ICIS-AIR related to exceeding emission limits for CO and NOx on 2/4-5/2018, during Variable Load Testing (VLP) for GE 7FA Gas Turbine Advance Control Program. The FCE report states the FRV was resolved but does not say how and when that occurred. Industrial Office: A MDR is missing: the FCE report described multiple Part 63 rule permit deviation reports, but the details are missing. These events may be FRVs which were not reported into ICIS-Air. Two FRV's are listed in ECHO which are not documented in the source file: 8/19/19 (CAA TVP violation) and 12/19/19 (CAA TVP, SIP violation with SO2 pollutant). In addition, the FCE dated 9/28/18 identified one FRV which did not appear in ECHO: 11/13/18 (hogged fuel scrubber malfunction). The 9/28/18 FCE also identified a likely HPV which did not appear in ECHO: July 2018 (facility failed to begin a series of four monthly PM tests after exceeding a trigger in June 2018 quarterly test). The on-site PCE inspection on August 21, 2019 (report dated November 26, 2019) identified an FRV regarding failure to keep maintenance records for RICE engines (a federal air rule and AOP requirement). This FRV is not listed in ECHO. Annual Compliance Certification reviews are listed in ECHO but are not reflected in the source file (unable to verify they were performed).

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
3a2 Timely reporting of HPV determinations [GOAL]	100%	40.6%	1	3	33.3%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	74.3%	18	38	47.4%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	76.3%	22	22	100%

**State Response:**

While CRO and the Industrial Section have different ways of documenting our reviews of permit deviations and our enforcement, we do feel our documentation achieves the goals described in the FCE, even if it takes a different form. As noted below, there are many instances where

violations are very short in duration and the facilities take appropriate corrective action without being required by Ecology. Each office handles these cases a little differently, but we do not believe that a violation is necessarily an indicator of continuous non-compliance at a facility and that not every violation requires formal enforcement action/required corrective actions. Ecology works to ensure compliance, with enforcement action being proportional to the nature and duration of the violation. Ecology also notes that we provided additional information to EPA regarding some of the findings in the report via email on April 12, 2022. This information was not used to correct the statements in the explanation above and we still feel that they are not accurate. We feel that it is important to provide this information as part of our response. Please see CRO and Industrial Section-specific information below.

As stated in Finding 1-1, we appear to differ in approach from EPA. The reviewed FCEs do state whether deviations are HPVs or FRVs. For further description and outcome, we rely on the listed documents and activities reviewed, as opposed to writing an all-inclusive standalone report. In most cases, deviations are short in nature, have already been corrected, and have been certified to have happened by the responsible official. Requiring a checklist for each such deviation would be resource intensive without any environmental gain.

Ecology agrees with the finding that FRVs are not entered into ICIS and that timeliness of reporting does not always meet the 60-day MDR. Ecology disagrees with the recommended corrective action.

Additionally, three months to put together an SOP and two compliance monitoring audit activities from each office each quarter would be challenging given current Ecology resources and competing regulatory obligations.

An alternative approach would be to place emphasis on timely ICIS data entry, including FRVs, which we believe would yield a better result.

CRO's Additional Information: Upon viewing the FCE and the referenced documents, one would find that the "regular opacity violations" "all listed as resolved" (SDS Lumber) are all related to operation of the hog fuel boiler, were short in duration, and generally claimed to be unavoidable due to start-up. Note that under the valid Title V permit (No. 13AQ-C181 First Revision), our state regulations at the time, and the SIP-approved version of our regulations at the time, start-up emissions were recognized as unavoidable and excused and not subject to penalty per WAC 173-400-107. Note that this finding comes from the expanded data set outside of FFY19.

Additionally, viewing of the FCE and referenced documents would show that the exceedance of emission limits during Variable Load Testing (Goldendale Generating Station) was discussed and modeled prior to the anticipated incident, which was short in duration and necessary to implement new software.

We acknowledge that we have not typically entered Federally Reportable Violations (FRV) which do not rise to the level of being a High Priority Violation, into EPA's ICIS database. Nor do we typically take enforcement action on such FRVs, as we do not anticipate taking such

actions to penalty given the nature of these violations, and the facility has already gone on record certifying to the violation. Ecology works to ensure compliance, with enforcement action being proportional to the nature and duration of the violation. Additionally, we acknowledge that we often exceed the 60-day Minimum Data Requirement ICIS reporting goal due to competing regulatory activities. Ecology will take future steps of prioritizing data management to ensure entries occur in a timely manner.

Industrial Section Additional Information: In general, as discussed during a phone call between EPA and Ecology staff on April 11, 2022, Ecology's Industrial Section uses our compliance monitoring spreadsheets (CMS) to track and document our ongoing review of violations, deviations, etc. Due to the large number of stack tests, compliance monitoring, etc. for our sources, it is not feasible for us to only rely on our PCEs/FCEs to document and track all of our compliance monitoring reviews. We do those reviews on a continual basis and use our CMS to keep track of all those reviews. As noted by CRO above, our sources have some short-term limits with associated CEMS/COMS. Our facilities will have occasional exceedances for one or a couple averaging periods. The facilities often apply quick corrective actions and the violation has been resolved by the time we receive the monthly report. Ecology does not need to require corrective actions in those cases because it has already been completed.

However, Ecology's Industrial Section will still use NOV's to acknowledge the limit exceedance and make the company aware that they may be subject to a penalty. We will then follow up with a penalty or a letter stating that no further enforcement action is necessary based on the information that was provided by the facility. We use the CMS spreadsheets to document our follow-up enforcement actions. We reference the CMS spreadsheet in our FCE memo as part of our review and we print off portions of the spreadsheet to attach to the FCE memo.

Additionally, the Industrial Section continues to note the following errors in the audit spreadsheet related to the findings above (this same information was provided to EPA via email on 4/12/2022, with the exception of the ICIS-Air case file numbers that have been added):

- Under 2b for Cosmo Specialty Fibers:
  - It is stated that there are two FRVs that were not included in the source file. The first one cited is for 8/19/19. This appears to be associated with NOV 18068, which was provided in the source file. This is associated with Case File WA000A77744 in ICIS-Air. 8/19/2019 is listed as the determination date because it was reported in monthly report for July, which was received on 8/19/2019. The second was for 12/19/2019, which occurred in FY20 and so we did not provide the NOV (NOV 18167) for that one. This is associated with Case File WA000A79866 in ICIS-Air. We sent the NOV to EPA in the email on 4/12/2022. It is also noted that both FRVs are documents in the CMS spreadsheets in the "violations-exceedances" tab for the respective FY.
  - It is stated that the FY18 FCE memo identified an FRV that wasn't identified in ECHO. The FRV is noted as having a date of 11/13/18, which is noted to be outside of FY18. The memo mistakenly noted the date as being in 2018, but the actual noncompliance date was 11/13/2017 (which would be part of FY18). The FRV was entered into ICIS under case file WA000A70057. This case file includes the NOV and penalty associated with this and other violations.

- It is also noted that EPA would consider the fact that Cosmo was unable to start monthly testing in July 2018 after exceeding the trigger for monthly testing in June 2018 to be an HPV. It is noted that the results of the stack test that triggered monthly testing was 28% below the limit. While Ecology concurs that we should evaluate whether we think a missed sampling event would “substantially interfere with enforcement of a requirement or a determination of a source’s compliance” to determine if it would be an HPV, we do not agree that it would automatically be considered an HPV. There are logistical factors that can make it impossible for a facility to stack test the following month.

The spreadsheet also includes the following statement for PTPC under 2b: “Annual Compliance Certification reviews are listed in ECHO, but are not reflected in the source file (unable to verify they were performed).” Our normal procedure is to include a stamp on the paper document that the engineer signs and dates to document their review. Since we were teleworking for all of 2020 due to COVID, this normal documentation did not occur. The review is tracked under the “submittals” tab in our CMS spreadsheets for each facility. Our database manager also tracked our ACC reviews through our monthly check-in spreadsheets and our SharePoint site. Additionally, documentation of the review of the ACC was documented in the FCE memo for 2020 dated 9/30/2022.

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**Recommendation:**

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Rec #	Due Date	Recommendation
2	3/31/2024	<p>Ecology will create a checklist(s) and corresponding SOP for compliance monitoring activities that would identify deviations identified, and explanation of what deviations are federal enforceable and whether they are HPVs or FRVs. Additionally, the checklist must include whether the deviation is a repeat deviation, if the facility has returned to compliance and what steps the company has taken to return to compliance and/or prevent the deviation from recurring. Ecology must develop a corresponding SOP which would require this checklist be used when any deviation is found regardless of whether the staff or manager are recommending informal or formal enforcement. Lastly the SOP should explain how these checklists will be used in drafting an FCE report. Ecology will submit these checklists/SOPs to EPA for review by 9/30/2022 and will incorporate comments in a final draft before training staff on how to use it. Ecology will train all staff who do compliance monitoring activities and managers who supervise those staff on the above document (12/31/22). EPA can help with FRV/HPV training and ICIS-Air data entry training if necessary. Starting with Q2 of FY23 (January 2023-March 23), Ecology will conduct an in-house audit of at least 2 compliance monitoring activities from each office. This internal audit should evaluate performance against the underlying policies, the checklists, and the sops in place to implement them. Ecology should include a document describing what was reviewed and the findings, noting where policies were followed and where they weren't. This review will be sent to EPA within 45 days of the end of each quarter. This review will occur for at least 4 quarters, but will be extended by EPA on an office-by-office basis if EPA feels the issue is not adequately addressed.</p>

**CAA Element 1 - Data**

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**Finding 1-3**

Area for Improvement

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**Recurring Issue:**

No

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**Summary:**

Stack test results are not correctly reported in ICIS.

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**Explanation:**

Some of the files with stack test records in ECHO are entered with incorrect or conflicting dates. Additionally, there are stack tests which report “pass” and “fail” results on the same date, or the tests are not entered into ICIS-AIR at all. The files also lack documentation to show that the tests were actually reviewed. Some comments from the review are included below: Central Office: Pass and Pending listed on the same date in ICIS. Industrial Office: ECHO shows 18 Stack Tests in 2019, all of which “passed.” But the tests were not discussed in the PCE which occurred in 2019, and not in the FCEs in the year before and year after. Overall, no documentation was found in the source file to show the tests were evaluated. An initial performance test for a 260 HP diesel fire pump, subject to subpart ZZZZ was on 2/19/19, but the test and the results are not listed in ECHO. The pump was permitted as an Emergency Engine but exceeded its emergency-use limit and was reclassified as non-emergency, which then triggered a testing requirement.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
3b2 Timely reporting of stack test dates and results [GOAL]	100%	59.4%	150	262	57.3%

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**State Response:**

Ecology does not find it inconsistent that a source test for multiple pollutants would both pass and fail. We note that the specifics related to this finding in the Explanation were deleted in the revised report, but the statement was not removed from the first part of the Explanation. It is unclear to Ecology if this remains a finding.

Historically, to make sure that source test entry does not get held up waiting for a complete Ecology review of the results, we have typically entered the claimed result and then noted it to be pending until a complete review has been completed. Competing workloads have often prevented us from reviewing test results as thoroughly as would be optimal. This finding was previously made in the July 2019 Office of Inspector General’s (OIG) audit report of Washington state stack test reports. The OIG made recommendations and planned agency corrective actions to EPA Region 10. In response, EPA produced a Source Test observation and report review checklist in February 2021.

Ecology agrees with the finding that stack test reports may not always have been clearly entered into ICIS. However, Ecology disagrees with the recommended corrective action. Greater clarity around EPA expectations for stack test documentation would help us to meet these measures. In response to the OIG Audit, EPA made recent efforts to provide guidance on this topic. Ecology should be afforded the opportunity to utilize this guidance moving forward prior to additional corrective actions being warranted.

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**Recommendation:**



Rec #	Due Date	Recommendation
1	12/31/2022	Ecology should train all compliance staff and their managers to ensure they are aware of the requirements of the HPV and FRV policy. EPA is willing to help conduct this training if it would be helpful.
2	3/31/2024	Ecology will create a SOP for Stack test reviews. This SOP must include a description of what a staff person must do when reviewing the stack test. It must include the information that must be reviewed, including a minimal amount of unacceptable background data for the test. It must include how these results should be rolled into an FCE. It must include information on data entry including what dates to enter into the data system and how to handle multiple pollutants and units. Ecology will submit this SOP to EPA for review by 9/30/2022 and will incorporate comments in a final draft before training staff on how to use it. Ecology will train all staff who do compliance monitoring activities and managers who supervise those staff on the above document. (12/31/2022) Starting with Q2 of FY23 (January 2023-March 2023), Ecology will conduct an in-house audit of at least 2 compliance monitoring activities from each office. This internal audit should evaluate performance against the underlying policies, the checklists, and the sops in place to implement them. Ecology should include a document describing what was reviewed and the findings, noting where policies were followed and where they weren't. This review will be sent to EPA within 45 days of the end of each quarter. This review will occur for at least 4 quarters, but will be extended by EPA on an office-by-office basis if EPA feels the issue is not adequately addressed.

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## CAA Element 2 - Inspections

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### Finding 2-1

Area for Improvement

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### Recurring Issue:

No

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### Summary:

The FCE does not demonstrate that all FCE elements were reviewed as part of the FCE.

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**Explanation:**

Central Office Metric 6a: 5/6 Industrial Office Metric 6a: 2/6 The FCE elements were not consistently documented in the files we reviewed. Some of the files were lacking most of the elements but the majority were lacking in some areas and not others. The elements are outlined below with comments from our review. Review of all required reports and records: Review of Annual Compliance Certifications is not reflected in the source file. Facility deviation reports were described in the FCE report re: Part 63, subparts A, S and MM, but details not given (Q: what happened and for how long?). The FCE report is limited to a review of emission inventory data only and was off site. ICIS Air states the FCE was on site, which is not correct. Assessment of control device and process-operating conditions as appropriate: Review didn't explicitly cover the control device and process operating conditions. There is no discussion of the onsite activity. Visible emission observation as needed: The report documents that visible emissions were noted by inspectors at the north end of the Wet Scrubbers for Pot Line A, but a Method 9 observation was not performed. If a Method 9 visible emission observation was made by the facility, it was not attached to the FCE or otherwise discussed. Review of facility records and operating logs: The inspection site was indefinitely shut down. The inspector wrote an inspection report and listed areas of the plant that were inspected to confirm they were shut down at the time of the inspection. However, the report did not show that the inspector examined facility records on site such as operator logs or control room records to review what activity, if any, took place in the prior year. Stack test when there is no other means for determining compliance with emission limits or the agency under review deems it appropriate: The inspection report provided for the 2019 review year corresponds to a PCE on 06/05/19. The report dated 10/2/19 lacks a discussion of reports submitted by the facility and the many stack tests conducted by the facility. Eight stack tests were conducted since the prior FCE (between 4/5/17 – 9/19/18) but were not mentioned in the FCE report dated 9/19/2018.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	82.8%	11	25	44%
6a Documentation of FCE elements [GOAL]	100%		7	12	58.33%

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**State Response:**

Ecology follows the "Clean Air Act Stationary Source Compliance Monitoring Strategy," issued in October 2016. We include the specified Full Compliance Evaluation (FCE) elements, including:

1. A review of all required reports or other documents.

2. An assessment of control device and process operating conditions as appropriate, including an on-site visit when necessary (aka, an on-site inspection).
3. A visible emission observation as needed.
4. A review of facility records and operating logs.
5. An assessment of process parameters.
6. An assessment of control equipment performance parameters.
7. A stack test, when necessary or appropriate.

CRO's FCE format lists all applicable permits and federal regulations, enforcement actions, documents/submittals reviewed, and a summary of all potential compliance issues identified by either the permittee or Ecology. The potential compliance issues are listed in a table identifying the applicable requirement, what the potential compliance issue is, which documents include information regarding the issue, whether the issue meets the definition of either a Federally Reportable Violations (FRV, per "Guidance on Federally-Reportable Violations for Clean Air Act Stationary Sources: September 2014," issued by EPA 9/23/14), and/or a High Priority Violation (HPV, per "Timely and Appropriate Enforcement Response to High Priority Violations – Revised 2014," issued by EPA 8/25/14), and the outstanding FRV and/or HPV status.

The Industrial Section has taken a slightly different approach due to the size of our facilities. We have not always included all of the previously corrected compliance issues, previously issued enforcement actions that we have taken, or listed all of the applicable federal regulations. We have included certain pages of our CMS spreadsheets that show compliance/non-compliance with permit limits. We can certainly add more specific discussion around the other components moving forward.

Ecology views the FCE as a review of many documents, which is reflective of our more comprehensive approach of ensuring compliance. And, while CRO summarizes all potential compliance issues and their resolution, in the FCE, we also clearly state which document(s) contain information regarding the issue. Ecology uses the FCE as our statement of compliance status on the date of determination, including our index of documents/actions considered and our summary of potential compliance issues and status. The FCE is a "to file" summary, not a standalone report. And, while all of our records are publicly accessible, the FCE is not written to the general public.

Ecology disagrees with this finding. Please see responses to recommendations for Findings 1-2 and 1-3.

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**Recommendation:**

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Rec #	Due Date	Recommendation
1	09/30/2022	Recommendations related to this element are included under Finding 1-1 and Finding 1-3.

## CAA Element 2 - Inspections

### Finding 2-2

Area for Improvement

#### Recurring Issue:

No

#### Summary:

Compliance monitoring reports (CMRs) or facility files reviewed lack sufficient documentation to determine compliance of the facility.

#### Explanation:

Central Office Metric 6b: 1/6 Industrial Office Metric 6b: 4/5 Many of the FCEs provided to EPA are more of a general summary than a detailed FCE and do not give details on the facility location, contact person, records content or processes evaluated at the facility. As mentioned in Finding 2-1, missing information from reports, records, stack tests, and onsite observations make it difficult to fully assess compliance at the facility. Some of the inspection reports had a good use of photographs and thorough process descriptions were used. However, previous enforcement actions were not consistently discussed in the reports. For example, an on-site inspection was on 5/30/19. In the one-year period leading up to the FCE, ECY issued two NOVs which were not discussed (issued 2/6/19, 5/2/19).

#### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		5	11	45.5%

#### State Response:

See responses to previous CAA findings.

In addition to FCE format as stated in our response to finding 2-1, note that much facility detail and contact information is included in the Title V permit, listed in the FCE, and the Statement of Basis for the Title V permit.

We believe the necessity to review these files remotely due to the pandemic has made it difficult for reviewers to determine the adequacy of the record, and limited the interaction between agencies. We understand that Ecology and EPA would have preferred to meet in person and allow for greater opportunity to coordinate and discuss documents as to better provide EPA a greater understanding of the relationship between documents.

Note that Finding 3-1 states that “We felt the compliance determination was accurate based on the information available...”

Ecology disagrees with this finding. Please see response to recommendation for Finding 1-1.

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**Recommendation:**

Rec #	Due Date	Recommendation
1	3/31/2024	This is the same recommendation as Finding 1-1. Ecology will create an FCE reporting template based on the definition of an FCE in the CAA CMS that clearly lays out what elements need to be included to complete an FCE and how to correctly report an FCE into ICIS-Air. The template should include a step for management review and approval. Ecology will submit this template to EPA for review by 9/30/2022 and will incorporate comments in a final draft before training staff on how to use it. Ecology will train all staff who do compliance monitoring activities and managers who supervise those staff on the above document. 12/31/2022)Starting with Q2 of FY23 (January 2023-March2023), Ecology will conduct an in-house audit of at least 2 compliance monitoring activities from each office. This internal audit should evaluate performance against the underlying policies, templates, and the sops in place to implement them. Ecology should include a document describing what was reviewed and the findings, noting where policies were followed and where they weren't. This review will be sent to EPA within 45 days of the end of each quarter. This review will occur for at least 4 quarters but will be extended by EPA on an office-by-office basis if EPA feels the issue is not adequately addressed.

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## CAA Element 2 - Inspections

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### Finding 2-3

Meets or Exceeds Expectations

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### Recurring Issue:

No

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### Summary:

Full Compliance Evaluation (FCE) coverage of majors and mega-sites, SM-80s and minor sources.

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### Explanation:

The state met or exceeded FCE targets for all source types with the exception of 2 minor sources.

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### 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%	14	15	93.3%
5b FCE coverage: SM-80s [GOAL]	100%	93.6%	9	9	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%	0	2	0%

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### State Response:

See responses to previous CAA findings.

EPA's file review spreadsheet states that Greater Wenatchee Regional Landfill is lacking sufficient information for making a compliance determination. See response to Finding 2-1. Additionally, EPA's file review spreadsheet states that for Central Washington University, "The FCE report described two prior on-site visits ECY relied on to make a determination, which were not listed in ICIS-Air." Note that following our FCE format, the on-site inspections were correctly cited in the FCE. Per Information Collection Requests (ICR) and ICIS guides and training, we consider an on-site inspection to be a partial compliance evaluation (PCE). Per the ICR, ICIS entry of a PCE is only required when it is the discovery action for an HPV or is included in a CMS alternative plan. Note that the referenced PCEs are neither, and thus are inappropriately expected to be entered into ICIS.

---

## CAA Element 3 - Violations

---

### Finding 3-1

Area for Improvement

---

### Recurring Issue:

No

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### Summary:

Compliance determinations were not accurate based on the CMR and other information in the source file.

---

### Explanation:

Some of the FCEs reviewed did not have enough information to determine compliance, this was particularly true for the FCEs we reviewed from the Central Office. We felt the compliance determination was accurate based on the information available but that there was not enough information available to feel confident in the determination. In reviewing files from the Industrial Office, we identified FRVs in the inspection reports and other records yet the determination on file reports facility was in compliance. Violations were identified in multiple files, but the Agency issued a “no further action” memo to the file “based on information provided” however the memo does not document what that information was. (Note: In one case this was identified as a State-only enforceable standard.) Additionally, violations were identified in PSD permits which may have been HPVs but were classified as FRVs instead. Our comments on the Industrial Office files include: Deviations are listed in the file and documented in the review, but they are not addressed in the FCE. The FCE report identified two violations (failed stack tests for particulate matter on 2/27/19 and 3/1/19) but the report concluded the facility was “in compliance.” The report did not discuss whether the facility performed follow up testing and demonstrated compliance. In addition, the agency issued a NOV on 10/17/19 regrading a TRS CEM downtime of 10.2%, as documented in the August 2019 Monthly Air Monitoring Report submitted by the facility. The file does not show this issue was resolved. On 3/26/2020, the Agency issued a “no further action” memo to the file “based on information provided” but does not document what that information was. (Note: this was identified as a State-only enforceable standard.) The November 2019 inspection report identified an FRV, regarding failure to keep RICE engine maintenance records but the conclusion was, “in compliance.” The FCE report dated 9/29/20 identified two FRVs on 11/16/19 and 11/18/19 which occurred in the review year, plus one more the following year on 5/2/20. However, the report concluded the facility was in compliance. The dates of these FRVs do not show up in ECHO. In 2020 there are deficiencies found in the high-level calibration check for the O2 CEMS on PB7, it is unclear what the follow up was if anything, there was also plastic found in the PRR which cannot be burned in PB7, but no compliance determination documented in the file. Inspector noted that it is difficult to verify if annual inspections are done as required for ZZZZ. Multiple deficiencies are included in the file but no compliance action was taken. No FRV or actions are recorded in the file. Central Office Metric 7a: 3/6 Industrial Office Metric 7a: 4/7

---

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
7a Accurate compliance determinations [GOAL]	100%		7	13	53.8%

---

**State Response:**

Please see response to Finding 2-1. The review seems to focus on our FCEs and PCEs as our only CMR. We use other tools to track and review compliance at our facilities. Additionally, our compliance determination status for our FCEs is based on the date specified in our review. It would be inaccurate to say that a facility is out of compliance based on previous violations that the facility promptly and adequately corrected. As mentioned above in our Response to Finding 1-2, our facilities have short-term limits and some have COMS/CEMS associated with them. It is reasonable to expect occasional excursions above those short-term limits. And our facilities would never have been considered to be in compliance if we used those insignificant violations to determine the compliance status.

Ecology's Industrial Section has a policy that we issue a NOV for any limit violation, whether it was ongoing or already corrected. The majority of our NOVs fall in to the second category and are also often short in duration (one 6-minute average over the opacity limit, etc.). For the violations that are occasional, short in duration, and/or the facility has already taken any appropriate actions, we will issue a no further enforcement action letter to acknowledge that we have reviewed all of the provided information and have closed out the review. While we continue to monitor to make sure that it is not a recurring issue, we consider the facility to generally be in compliance. As stated earlier, Ecology works to ensure compliance, with enforcement action being proportional to the nature and duration of the violation.

Ecology disagrees with this finding. Please see response to Recommendation for Finding 1-2.

---

**Recommendation:**

---



Rec #	Due Date	Recommendation
1	3/31/2024	<p>This is the same recommendation as found in Finding 1-2. Ecology will create a checklist(s) and corresponding SOP for compliance monitoring activities that would identify deviations identified, and explanation of what deviations are federal enforceable and whether they are HPVs or FRVs. Additionally, the checklist must include whether the deviation is a repeat deviation, if the facility has returned to compliance and what steps the company has taken to return to compliance and/or prevent the deviation from recurring. Ecology must develop a corresponding SOP which would require this checklist be used when any deviation is found regardless of whether the staff or manager are recommending informal or formal enforcement. Lastly the SOP should explain how these checklists will be used in drafting an FCE report. Ecology will submit these checklists/SOPs to EPA for review by 9/30/2022 and will incorporate comments in a final draft before training staff on how to use it. Ecology will train all staff who do compliance monitoring activities and managers who supervise those staff on the above document (12/31/22). EPA can help with FRV/HPV training and ICIS-Air data entry training if necessary. Starting with Q2 of FY23 (January 2023-March 2023), Ecology will conduct an in-house audit of at least 2 compliance monitoring activities from each office. This internal audit should evaluate performance against the underlying policies, the checklists, and the sops in place to implement them. Ecology should include a document describing what was reviewed and the findings, noting where policies were followed and where they weren't. This review will be sent to EPA within 45 days of the end of each quarter. This review will occur for at least 4 quarters, but will be extended by EPA on an office-by-office basis if EPA feels the issue is not adequately addressed.</p>

### CAA Element 3 - Violations

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#### Finding 3-2

Area for Attention

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#### Recurring Issue:

Recurring from Round 3

---

#### Summary:

HPVs are accurately determined. However, not all FRVs were accurately determined.

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**Explanation:**

The two HPV that were identified through our file review were completed in a timely manner, but violations were listed as FRV and not HPV because they were not considered federally enforceable. However, the violations were violations of the PSD permit and the AOP which makes them federally enforceable. These files were from the Industrial Office, the Central Office did not have any HPVs to review.

---

**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%	2	2	100%
8c Accuracy of HPV determinations [GOAL]	100%		4	5	80%

---

**State Response:**

Note that this finding is listed as an “area for attention.” Combined with our disagreement with finding 3-1, it appears that this element should be listed as an “area for attention” as opposed to an “area for improvement” in the Executive Summary.

---

**Recommendation:****CAA Element 4 - Enforcement**

---

**Finding 4-1**

Area for Improvement

---

**Recurring Issue:**

No

---

**Summary:**

Formal enforcement responses do not include corrective action. Enforcement actions are reversed without explanation.

---

**Explanation:**

In our review of the files from the Industrial Office we noticed that none of the issued NOV's required any follow-up from the facility. There were no requirements to comply. Follow-up letters were sent for at least two NOV's that said there was no violation.

---

**Relevant metrics:**

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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%		3	4	75%

**State Response:**

Ecology’s Industrial Section has a policy that we issue a NOV for any limit violation, whether it is/was ongoing or already corrected. The majority of our NOVs fall in to the second category and are also often short in duration (one 6-minute average over the opacity limit, etc.). Our NOV boilerplate does not allow us to include corrective actions. We would either penalize or issue a compliance order (or both) if the violation is ongoing or we feel that additional actions are required. For the violations that are occasional, short in duration, and/or the facility has already taken any appropriate actions, we will issue a no further enforcement action letter to acknowledge that we have reviewed all of the provided information and have closed out the review. We do not, however, “reverse” our violation determination with these letters. Ecology works to ensure compliance, with enforcement action being proportional to the nature and duration of the violation.

Ecology disagrees with this finding. As such, we disagree with the recommended corrective actions.

Additionally, this is also the only “Enforcement” finding that is an “area of improvement” and we feel that the overall finding for this element should have been “area for attention,” in the Executive Summary.

---

**Recommendation:**

---

Rec #	Due Date	Recommendation
1	12/31/2023	<p>Ecology has a Compliance Assurance Manual (July 2021) which lays out procedures for documenting violations, having an internal review process by management, communicating the violations to the facility, issuing enforcement actions, and resolving them in a timely way including the use of penalties where appropriate. These processes are not reflected in the enforcement cases reviewed for the SRF. By 9/30/2022, Ecology should explain to EPA what steps they are taking to ensure CAM is being followed. EPA will use this information to set up a meeting to discuss any concerns based on this information and the SRF in the Fall. After this meeting, EPA will set timeframes for Ecology to develop any additional required guidance/SOPs to fill any gaps present to ensure the compliance monitoring and enforcement programs are sufficient. Because the SRF found formal enforcement responses which are not consistent with the CAM, Ecology needs to answer the following questions. a. How are compliance determinations documented internally? b. Who reviews compliance determinations for a determination of whether a violation exists? c. Who is responsible for determining what enforcement response (formal, informal, none) to each identified violation? d. What guiding principles are used by Ecology to make this decision – provide the guidance if there is one? e. Who determines what is necessary to come into compliance and how is that memorialized? f. Who tracks return to compliance and how is it documented in the file? g. How is a proper penalty determined and how is any penalty mitigation decided upon and documented? h. Does Ecology consider deterrence and economic benefit of noncompliance in assessing penalties? i. Are HPV and FRV designations taken into account in determining what is a timely and appropriate response? j. How is receipt of penalty tracked and included in the file?</p>

#### CAA Element 4 - Enforcement

---

#### Finding 4-2

Area for Attention

---

#### Recurring Issue:

No

---

#### Summary:

Case resolution is not timely.

---

**Explanation:**

The case file did not include a case development and resolution timeline (CD&RT). The Day 0 was 8/19/19 and the case resolution was on 5/19/20, approximately 270 days.

**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%		1	2	50%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		1	2	50%

**State Response:**

In the Explanation, the specific case that is cited as being inadequate specifically states that the case file did not include a case development and resolution timeline. While we acknowledge that EPA's HPV policy states that HPVs should be resolved within 180 days, this is not always realistic for us. As explained with the email provided to EPA on April 12, 2022, this specific case was discussed with EPA during the March 5, 2020, EPA HPV quarterly call. Our understanding was that EPA was documenting those conversations and we were not aware that additional documentation was required by Ecology for cases discussed during that call. Ecology would appreciate being able to discuss this matter with EPA in order to gain additional clarity.

**CAA Element 4 - Enforcement****Finding 4-3**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

In two cases HPVs are appropriately enforced and addressed in a timely manner.

**Explanation:**

In two cases ECY took formal enforcement actions to address violations. The case is still on the HPV list until violations are resolved. However only one case had a case development and resolution timeline in place.

---

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		2	2	100%

---

**State Response:**

Finding 4-3 is stated to be “meets or exceeds expectations” and no response is necessary.

---

**CAA Element 5 - Penalties**

---

**Finding 5-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

In both cases, penalty calculations reviewed that document gravity and economic benefit.

---

**Explanation:**

Both files included Ecology’s gravity criteria scoring worksheet

---

**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%		2	2	100%

---

**State Response:**

Finding 5-1 is stated to be “meets or exceeds expectations” and no response is necessary.

---

**Recommendation:**

---

**CAA Element 5 - Penalties**

---

**Finding 5-2**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

Files provide documentation of rationale for difference between initial penalty calculation and final penalty.

---

**Explanation:**

As noted in metric 11a, an internal memo was included in the file which documented the final penalty number. That included a rational for reducing the penalty. Files show ECY management recommended waiving the penalty and instead having company spend the funds on injunctive relief (pollution control efforts).

---

**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:**

Finding 5-2 is stated to be “meets or exceeds expectations” and no response is necessary.

---

**CAA Element 5 - Penalties**

---

**Finding 5-3**Meets or Exceeds Expectations

---

**Recurring Issue:**No

---

**Summary:**Both files reviewed included documentation that the penalties were collected

---

**Explanation:**Both files confirm that the penalty was collected.

---

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
12b Penalties collected [GOAL]	100%		2	2	100%

---

**State Response:**Finding 5-3 is stated to be “meets or exceeds expectations” and no response is necessary.

---



# Clean Air Act Findings - SRCAA

## CAA Element 1 - Data

---

### Finding 1-1

Meets or Exceeds Expectations

---

### Recurring Issue:

No

---

### Summary:

Minimum data Requirements (MDRs) are accurately and timely entered in ICIS-AIR.

---

### Explanation:

Data in ICIS-Air consistently reflects the data in the files for both full and partial compliance evaluation.

---

### 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%		9	9	100%
3a2 Timely reporting of HPV determinations [GOAL]	100%	42.1%	1	1	100%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	96.8%	30	31	96.8%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	69.4%	7	10	70%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	74.4%	18	21	85.7%

---

### State Response:

---

## CAA Element 2 - Inspections

---

### Finding 2-1

Meets or Exceeds Expectations

---

### Recurring Issue:

No

---

### Summary:

Full Compliance Evaluation (FCE) elements are well documented.

---

### Explanation:

The inspection checklist used for the FCEs includes all the necessary compliance conditions as well as reports and other documentation needed to evaluate compliance. The inspection reports clearly indicate what was reviewed and provides documentation of the compliance evaluation.

---

### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6a Documentation of FCE elements [GOAL]	100%		8	9	88.9%

---

### State Response:

---

## CAA Element 2 - Inspections

---

### Finding 2-2

Meets or Exceeds Expectations

---

### Recurring Issue:

No

---

### Summary:

Compliance monitoring reports (CMRs) and facility files provide sufficient documentation to determine compliance of the facility.

---

### Explanation:

---

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		8	9	88.9%

---

**State Response:**

---

**CAA Element 2 - Inspections**

---

**Finding 2-3**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

Full Compliance Evaluation (FCE) coverage

---

**Explanation:**

The agency met or exceeded inspection coverage goals for all facility types during the review period.

---

**Relevant metrics:**

---

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
5a FCE coverage: majors and mega-sites [GOAL]	100%	87%	7	7	100%
5b FCE coverage: SM-80s [GOAL]	100%	93%	11	11	100%
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	86.1%	8	8	100%

**State Response:**

---

### **CAA Element 3 - Violations**

---

**Finding 3-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

Compliance determinations are accurate and Federally Reportable Violations and High Priority Violations are accurately determined in a timely manner.

---

**Explanation:**

---

**Relevant metrics:**

---

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
13 Timeliness of HPV Identification [GOAL]	100%	90.6%	1	1	100%
7a Accurate compliance determinations [GOAL]	100%		9	9	100%
8c Accuracy of HPV determinations [GOAL]	100%		1	1	100%

**State Response:**

---

**CAA Element 4 - Enforcement**

---

**Finding 4-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

Formal enforcement responses 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.

---

**Explanation:**

The was only one facility with an enforcement action. SRCAA issued a notice of corrective action which outlined the compliance issues, the required corrective actions, and the specified due dates. The file included follow-up from SRCAA and documentation to demonstrate how the facility complied with the corrective actions.

---

**Relevant metrics:**

---

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		1	1	100%
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		1	1	100%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		1	1	100%
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule [GOAL]	100%		1	1	100%

**State Response:**

---

**CAA Element 5 - Penalties**

---

**Finding 5-1**

Meets or Exceeds Expectations

---

**Recurring Issue:**

No

---

**Summary:**

Penalty calculations document the gravity and economic benefit of the violation. Differences between the initial penalty and the final penalty are documented. File clearly documents the penalties collected.

---

**Explanation:**

There was only one file in the review that included a penalty. The file contained sufficient documentation and included clear justification for the penalty calculation. Penalty calculations addressed the economic benefit and the gravity of the violation.

---

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%		1	1	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		1	1	100%
12b Penalties collected [GOAL]	100%		1	1	100%

---

**State Response:**

---

# Clean Air Act Findings - YRCAA

## CAA Element 1 - Data

---

### Finding 1-1

Meets or Exceeds Expectations

---

### Recurring Issue:

No

---

### Summary:

Accurate and timely Minimum Data Requirements data in ICIS-AIR.

---

### Explanation:

In some of the FCE files the specific subpart applicable to the facility is not included. The report will say, 40 CFR Part 60, but no subpart is listed.

---

### 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%		4	4	100%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	85.7%	4	4	100%

---

### State Response:

---

## CAA Element 2 - Inspections

---

### Finding 2-1

Area for Improvement

---

### Recurring Issue:

No



---

**Summary:**

The FCE documentation does not include a review of all the reports required to demonstrate compliance. Control device and process-operating conditions are not consistently assessed.

---

**Explanation:**

For two of the four files reviewed, the inspection report does not identify which federal rules the facility is subject to other than Part 60 (NSPS). The files don't include the annual compliance certifications or other records that may be useful for determining compliance. Inspection reports describe the facility in detail but don't list all the regulations and there is no discussion of how pollution control at the facility was evaluated. The report does not evaluate the federal rule compliance required by the NSPS. The inspection report didn't lay out each rule that the facility is subject to and the inspection report didn't address how each facility is specifically meeting the regulations.

---

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	86.1%	0	4	0%
6a Documentation of FCE elements [GOAL]	100%		2	4	50%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		2	4	50%

---

**State Response:**

The YRCAA will fix the finding as recommended by your staff, which has been done for the next inspection report. We will include the full citation of the 40 CFR, in specific the Subpart in the inspection report. In addition, we believe there was misunderstanding for the Full Compliance Evaluation (FCE) aspect. The YRCAA go through the submittal for the Partial Compliance Evaluation (PCE) and reevaluate it with the FCE with annual certification submitted by the sources. Please see attached example for the FCE and certification for one of the sources. During the transmittal of the files to EPA, our office thought or understood that was the first request of the files.

---

**Recommendation:**

---

Rec #	Due Date	Recommendation
1	12/31/2022	Provide training to staff on what is required to be included in an FCE. For each major source, include a checklist of requirements to review for each FCE. Provide the checklist to EPA for review and comment by 9/30/2022. Include the checklist, the applicable rules, including subparts to your inspection reports and a review of annual and semi-annual reports.

## CAA Element 2 - Inspections

---

### Finding 2-2

Meets or Exceeds Expectations

---

### Recurring Issue:

No

---

### Summary:

FCE coverage

---

### Explanation:

The agency completed Full Compliance Evaluation's on all four facilities in its region.

---

### 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%	87%	4	4	100%

---

### State Response:

---

## CAA Element 3 - Violations

**Finding 3-1**

Area for Improvement

**Recurring Issue:**

No

**Summary:**

Compliance determinations are not accurate based on the information in the file.

**Explanation:**

There is not enough information in the FCE to know if the compliance determination was accurate. The deviation reports for one facility suggest there are compliance issues but there is nothing in the evaluation about any enforcement action or reportable violations. Deviations are reported monthly and indicate that the facility deviates as a matter of course. While the deviations may not rise to the level of an HPV the regularity and continued nature suggest that the company cannot comply with their AOP. No enforcement was taken and no corrective actions have been suggested based on the record reviewed.

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
7a Accurate compliance determinations [GOAL]	100%		1	4	25%

**State Response:**

We understand that the recurrent deviation from one of the facilities is a recurring issue. YRCAA have been in contact and direct discussion with the facility in that regards. Two of the facility's control equipment are old, in particular, the Catalytic Oxidizers. The Facility installed new control equipment a Regenerative Thermal Oxidizer (RTO) to replace the two aging Catalytic Oxidizers. This new RTO installation, and currently, in operation will resolve the recurrent issue a lot. In addition, this facility has flexographic printing presses, which has Permanent Total Enclosure (PTE) as part of the Maximum Available Control Technology (MACT) for this industry. Part of the issue with the PTE when the doors are open for a longer period of the time, especially when exchanging the printing cylinders or taking products out, it will trigger warning, as the airflow will be less than the setup in the permit. The YRCAA has been in discussion with the facility and we will come into conclusion soon, we believe the New RTO will resolve the majority of the recurrent deviation. YRCAA welcomes any suggestion solution from EPA and anyone for a better solution including the design aspect. Please see attached email from the facility in relation to the RTO. The YRCAA will continue to strive in resolving this issue in the very near future as the RTO came on line. I do hope this explanation, comments and the attachments, to address the finding and the recommendation in the final EPA report for our agency's part will be considered.

**Recommendation:**

<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1	09/30/2022	Draft an SOP and train staff on what to do with recurrent deviations or uncorrected deviations. Include the process for deciding what is an appropriate addressing action and what documentation should be included in each file. Share this SOP with EPA for comment by 4/1/2022 and incorporate EPA's comments into final version.

---