



**RCRA Metrics Plain Language Guide
State Review Framework Round 5
Begin: FY2024**

**U.S. Environmental Protection Agency
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Table of Contents

User Guidance	3
Process	4
Using Metrics to Determine Findings	5
Using Other Metrics	6
Use of State Guidance and Regional-State Agreements as Basis for Findings in SRF Reviews	6
Element and Metric Definitions.....	7
Element 1 — Data.....	7
Metric 2b — Complete and Accurate entry of mandatory data	8
Element 2 — Inspections.....	9
Metric 5a — Two-year inspection coverage of operating TSDFs	9
Metric 5b — Annual inspection coverage of LQGs and reverse distributor (RD) universes combined.....	10
Metric 5bi (LQG and RD universe from RCRAInfo).....	11
Metric 5d — One-year inspection count at SQGs	12
Metric 5e — One-year inspection count at other sites.....	12
Metric 6a — Inspection reports sufficient to determine compliance	13
Metric 6b — Timeliness of inspection report completion	14
Element 3 — Violations	14
Metric 2a — Long-standing secondary violators.....	15
Metric 7a — Accurate compliance determinations	15
Metric 7b — Violations found during CEI and FCI compliance evaluations	16
Metric 8a — Significant Noncompliance (SNC) identification rate at sites with CEI and FCI compliance evaluations	16
Metric 8b — Timeliness of SNC determinations	17
Metric 8c — Appropriate SNC determinations	18
Element 4 — Enforcement	19
Metric 9a — Enforcement that returns violators to compliance	19
Metric 10a — Timely enforcement taken to address SNC	20
Metric 10b — Appropriate enforcement taken to address violations	20
Element 5 — Penalties.....	21
Metric 11a — Gravity and economic benefit.....	21
Metric 12b — Penalty collection	23
Appendix A: Acronyms	25

User Guidance

The Resource Conservation and Recovery Act (RCRA) Metrics Plain Language Guide describes the elements and metrics U.S. Environmental Protection Agency (EPA) uses during a State Review Framework (SRF) review of RCRA Subtitle C compliance and enforcement programs and provides instructions on how to use the metrics to make appropriate findings and recommendations. SRF reviews are based on information from EPA data systems and file reviews. Reviewers should refer to the RCRA file review checklist and spreadsheet when developing review findings on performance.

Data used in SRF reviews fall into two primary categories — data metrics and file review metrics. These metrics provide the basis for determining agency performance. All goal, review indicator, [2021 RCRA Compliance Monitoring Strategy \(CMS\)](#), and file review metrics are required to appear in all state and EPA regional direct implementation program reports. List all metrics in this plain language guide in SRF reports even when there is no universe as the same set of consistent metrics is required to be listed in all SRF reports. Metrics 5d, 5e5, 5e6, and 5e7 are required only if the state has inspection commitments in a state-specific approved alternative compliance monitoring strategies .

1. Data metrics are derived from frozen, verified data in RCRAInfo. Reviewers download data metrics from the [Enforcement and Compliance History Online \(ECHO\)](#) to get an initial overview of a primacy agency's performance. All data metrics fall into one of the following subcategories:

- **Goal metrics** evaluate performance against a specific numeric goal and are used to develop findings. The ECHO data also provides the national average for these metrics expressed as a percentage. The **EPA evaluates agencies against agreed upon goals, not national averages.** These metrics include averages only to provide a sense of where an agency falls relative to others.
- **Review Indicator metrics** use national averages to indicate where agencies diverge from national norms. Review indicators are not used to develop findings. They are used to identify areas for further analysis during the file review. When an indicator diverges significantly from the average, the EPA should pull a sufficient sample of files to evaluate the issue during the file review (see the *File Selection Protocol* for additional guidance). The EPA and the state or local agency should discuss the issue to determine if a problem exists. Indicators can also provide narrative context for findings from file reviews.
- **Alternative Compliance Monitoring Strategy (CMS) metrics** are only required when an agency has a CMS with one or more alternative inspection commitments. Typically, under an alternative CMS an agency will substitute inspections at larger facilities for some at smaller facilities. When the agency does not have an alternative CMS, the EPA will evaluate the agency against the national inspection coverage goals represented by metrics 5a and 5b.

2. File review metrics are evaluated during the review of facility files (inspection reports, evaluations, enforcement responses and actions, and penalty documentation, etc.). All file review metrics evaluate performance against a national goal. (File metrics will not have national averages.)

Process

The [SRF Documentation Page](#) on ECHO Gov provides a full list of links to SRF guidance and policies.

Year reviewed refers to the federal fiscal year (FY) (i.e. October 1 – September 30) of activities reviewed, not the year in which the review is conducted. The year reviewed should generally be the year preceding the year in which the SRF review is conducted. **Agency** refers to the state, local, or federal agency that has the lead for compliance monitoring and enforcement within the state or other jurisdiction undergoing the SRF review.

A list of acronyms is provided as an attachment to this plain language guide.

RCRA SRF Review Process

Action	Time Period
Preparing for the File Review	<i>November-February</i>
Conducting the Review	<i>March-August</i>
<ul style="list-style-type: none"> • Data Metric Analysis 	<i>60 days before review</i>
<ul style="list-style-type: none"> • CWA Inspection Coverage Table 	<i>60 days before review</i>
<ul style="list-style-type: none"> • File Selection 	<i>30 days before review</i>
<ul style="list-style-type: none"> • On-Site or Remote Review of Files 	
<ul style="list-style-type: none"> • File Review Worksheet 	<i>30 days after review</i>
Drafting And Finalizing Report	<i>September-December</i>
<ul style="list-style-type: none"> • Draft Report 	<i>By September 30</i>
<ul style="list-style-type: none"> • HQ Comment Period 	<i>15 working days</i>
<ul style="list-style-type: none"> • Send Revised Report to HQ 	
<ul style="list-style-type: none"> • State/Region Program Comment Period 	<i>30 calendar days</i>
<ul style="list-style-type: none"> • Final Report 	<i>By December 31</i>
Recommendation Monitoring and Close Out	<i>Ongoing</i>
<ul style="list-style-type: none"> • Track recommendation implementation process 	<i>Ongoing</i>
<ul style="list-style-type: none"> • Work with reviewed program to document progress and develop completion verification statement 	
<ul style="list-style-type: none"> • Completion Verification and Close Out 	

Using Metrics to Determine Findings

Goal metrics always have numeric goals and stand alone as sufficient basis for a finding. For example, the goal for RCRA metric 2b is for agencies to accurately enter 100 percent of minimum data requirements (MDRs) into RCRAInfo. To analyze performance under this metric, compare the percentage of MDR actions accurately entered to the goal of 100 percent.

Based on this analysis, the reviewer would make a finding. All findings will fall under one of these categories:

Meets or Exceeds Expectations: The SRF was established to assess the base level or floor of enforcement program performance. This rating describes a situation where the base level is met and no performance deficiency is identified, or a state performs above base program expectations achieving 85% or greater of the performance goal.

Area for State Attention: An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, the state should correct the issue without additional EPA oversight under SRF; SRF does not impose any constraints or limit in any way routine oversight procedures conducted by regions and states on a regular, recurring basis outside the SRF process. These areas are not highlighted as significant in an executive summary nor is a recommendation developed (although recommendations can be made at the discretion of the reviewing agency). Performance between 71-84% of the national goal of 100% is considered an Area for Attention finding.

Area for State Improvement: The EPA will develop a finding of Area for State Improvement whenever an activity, process, or policy that one or more SRF metrics under a specific element show as a significant problem that the agency is required to address with performance that is 70% or below. A finding for improvement should be developed regardless of other metric values pertaining to that element. Recommended activities to correct the issues should be included in the report. Recommendations must have well-defined timelines and milestones for completion, and, if possible, address root causes. The EPA will monitor recommendations for completion between SRF reviews in the SRF Manager database. The status of recommendations will be publicly available on EPA's SRF web site. And between reviews, EPA actively monitors recommendations in the SRF Manager database.

The Effective Partnerships Between EPA and the States in Civil Enforcement and Compliance Assurance memo is a key reference in identifying recommendations for Areas for Improvement.¹ Where a performance problem cannot be readily addressed, or where there is a significant or recurring performance issues, there are steps the EPA can and should take to actively promote improved state performance.

¹ The purpose of the National Strategy for Improving Oversight of State Enforcement Performance is to supplement the SRF and set forth EPA's policy for responding to and resolving significant state performance issues in a nationally consistent manner. For additional information, visit: [Effective Partnerships Between EPA and the States in Civil Enforcement and Compliance Assurance](#)

Guidance for establishing initial findings in data metric analyses, file review worksheets, and SRF reports appear in the [SRF Reviewer's Guide](#). See the SRF Reviewer's Guide for additional tips on writing SRF reports and developing supporting materials.

Using Other Metrics

When metrics other than Goal metrics indicate potential problems, the EPA should conduct the additional research necessary to determine the nature of the issue. These metrics provide additional information that is useful during file selection, and for gauging program health when compared to other metrics.

For example, RCRA metric 7b is a Review Indicator for violations found during inspections, and State X's rate is 15 percent (the national average is 36 percent in this particular year). The EPA can only determine whether this lower-than-average rate represents a performance issue through a file review of inspection reports and violation determinations.

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 Office of Enforcement and Compliance Assurance (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 primacy agency's own guidance to evaluate state program performance if:
 - a. The region can demonstrate that the primacy agency's standard(s) is(are) equivalent to or more stringent than OECA guidance, and;
 - b. The state agrees to being evaluated against that standard(s).

In these cases, regions should inform OECA/OC in advance of the review that they intend to use state guidance and should include a statement in the SRF report indicating that the state guidance was determined to be equivalent or more stringent than the applicable OECA policy and was used as the basis for the review.

2. For certain metrics, it will be necessary to refer to state policies or guidance, or to EPA-state agreements. For example:
 - a. If the state has an approved alternative CMS, the EPA will use these state-specific commitments as the basis to evaluate compliance monitoring coverage.
 - b. The national guidance may require only that a state establish a standard but not actually provide the standard. In such cases, the reviewer will need to ensure that

the state has developed the required standard, and once it has been reviewed and approved by the region, use that standard to evaluate state performance.

3. Where national guidance has been modified or updated, it is important to review the corresponding state program implementation guidance to assess whether it has become out of date or inaccurate. In such cases, the reviewer should make appropriate recommendations for revision of the state guidance, review the revised version, and approve it, if appropriate.
4. Where state program guidance or regional-state agreements establish practices or standards that are not consistent with or at least equivalent to national program guidance, this may be an allowable flexibility under section A4 of the *Revised Policy Framework for State/EPA Enforcement Agreements* (Barnes, August 1986, as revised). If so, the region should inform OECA/OC prior to the review and note this flexibility in the explanation of the SRF report. If the differences between the state guidance or regional-state agreements and the national guidance is significant, or if it is unclear whether flexibility from OECA policy is appropriate, the region should elevate the issue to OECA for resolution prior to developing findings or a draft report.

Element and Metric Definitions

Element 1 — Data

The EPA uses Element 1 to evaluate data accuracy and completeness. This review is conducted in the following two ways:

- **File review:** The EPA evaluates data accuracy and completeness under metric 2b, which is a file review metric that compares data in the ECHO Detailed Facility Report (DFR)² or RCRAInfo to information in facility files.
- **Evaluating data metrics:** In addition, as the reviewer has discussions with the state and conducts the data metric analysis and file review, he or she may find an SRF data metric to be inaccurate to a significant degree.

To provide an example, data metric 5a shows that State X inspected 5 of its 20 TSDFs. However, the state provides its own data showing that it inspected all 20 TSDFs but failed to enter inspections for 15 of them into RCRAInfo. This failure to enter inspections into RCRAInfo would be an Area for State Improvement under Element 1. Conversely, if the value for metric 5a were

²FAQs of ECHO can be found here: [How frequently are the data updated?](#)

accurate and the state had only inspected 5 of 20 TSDFs, this would be an Area for State Improvement under Element 2 (Inspections) for failure to inspect the required number of TSDFs.

In the case of a data metric being inaccurate, the finding should cite both the reported and, when possible, the actual values.

Refer to [ECHO Data Entry Requirements](#) for minimum data requirements.

Key metrics: 2a, 2b, 5a, 5b/5bi, 7b, 8a, and 10a. Also consider 5d and 5e when including them in the review.

Metric 2b — Complete and Accurate entry of mandatory data

Metric type: File Review, Goal

Goal: 100% of data are complete and accurate

What it measures: Percentage of files reviewed where mandatory data are accurately reflected in the national data system.

Numerator = number of files reviewed that accurately reflect mandatory data

Denominator = number of files reviewed

Guidance: Reviewers should compare data in the ECHO Detailed Facility Report (DFR) or RCRAInfo with information in the facility files to check that the DFR accurately reflects activities such as inspection dates, inspection types, significant noncompliance (SNC) status, and enforcement responses. See the File Review Checklist for complete instructions.

Also, check to see if there is file information that is missing in the DFR or RCRAInfo. If information in the files is missing from or inaccurately entered into the national database, the data for that file is not complete or accurate. This should be noted under Element 1.

Reviewers should also consider their knowledge of the agency's program when conducting this analysis. For example, if the reviewer notices multiple compliance evaluation inspections identified in the DFR or RCRAInfo for a facility within one week's time, it is unlikely that the agency has actually conducted multiple CEIs in this timeframe. It is more likely that the later ones, if they are separate actions, are follow-up inspections.

Applicable EPA policy/guidance: [Hazardous Waste Civil Enforcement Response Policy](#) (2003), [RCRAInfo Data Appendix for the 2003 ERP](#), current *OECA National Program Guidance*; Note: RCRAInfo mandatory data elements are those that are required to be entered by the system to save a record and may be broader than the scope of SRF. General data areas to review are listed on [ECHO Data Entry Requirements](#).

Element 2 — Inspections

Element 2 evaluates:

1. Inspection coverage compared to CMS commitments
2. Inspection report completeness and sufficiency to determine compliance
3. Inspection report timeliness

The EPA is only required to evaluate metrics 5d and 5e when the implementing agency has exercised flexibility under an alternative CMS commitment for its inspection frequencies. When the agency does not exercise this flexibility, the EPA can choose whether to include these metrics.

Key metrics: 5a, 5b/5bi, 6a, and 6b. Also include metrics 5d and 5e, when the state has an alternative CMS for inspection coverage commitments.

Metric 5a — Two-year inspection coverage of operating TSDFs

Metric type: Data, Goal

Goal: 100%

What it measures: Of those operating at the time of the data freeze, the percentage of the treatment, storage, and disposal facility (TSDF) combined EPA and state universe that had a CEI inspection during the two-year period of review.

Numerator = number of TSDFs operating at the time of the data freeze that had a CEI inspection during the two-year period of review

Denominator = number of operating TSDFs at the time of the data freeze

Guidance: According to Section 3007 of RCRA, all non-governmental TSDFs should be inspected every two years.

The EPA should conduct a further review when lead agencies do not meet this goal. In accordance with the [2021 RCRA Compliance Monitoring Strategy \(CMS\)](#), states that are lead agencies are to cover at least 50 percent of non-government TSDFs every year.

The current [2021 RCRA CMS](#) provides some flexibilities regarding inspections at TSDFs. In some cases, conducting an FCI in lieu of a CEI is permitted for facilities with “good track records of performance.” Refer to the [2021 RCRA CMS](#) to determine when this flexibility is permitted and add it to this metric as needed.

Applicable EPA policy/guidance: Current *OECA National Program Guidance*, [Compliance Monitoring Strategy for the Resource Conservation and Recovery Act \(RCRA\) Subtitle C Program \(2021\)](#), *RCRA TSDF Inspection Prioritization Scheme Memo (2018)*.

Metric 5b — Annual inspection coverage of LQGs and reverse distributor (RD) universes combined.

This metric uses either the large quantity generator (LQG) and RD universes combined from the most recent Biennial Report (BR) published before the review year (Metric 5b) or the LQG and RD universes combined from RCRAInfo (Metric 5bi). **Select either Metric 5b or 5b1 depending on the source of the LQG universe:**

Metric type: Data, Goal

Goal: 20% of universe, or 100% of alternative commitment

What it measures: The percentage of the LQG and RD universes combined that had a compliance evaluation inspection (CEI) during the year reviewed as indicated from the BR published before the review year.

Numerator: = number of LQGs and RDs that had a CEI during the year reviewed

Denominator = number of LQGs and RDs

Guidance: Based on the RCRA *Compliance Monitoring Strategy* (CMS), the EPA only counts CEIs under this metric.

In accordance with the CMS, states that are lead agencies are to inspect at least 20 percent of the BR LQG and RD universes combined annually; however, up to 10% of EPA inspections can contribute toward meeting these goals. The Region's contribution should constitute only a small portion of the state's 20 percent obligation (e.g., less than ten percent).³

Whether or not the agency has an alternative CMS plan, when lead agencies do not meet this metric's goal, the EPA should conduct a further review:

- Talk to the state during the file review about why the goal or commitment was not met;
- Make sure that enough LQGs and RDs with inspections are selected for the file review;
- Check the [Management Standards for Hazardous Waste Pharmaceuticals](#) map to see if the agency under review oversees RDs.

³ For example, given a universe of 100 LQGs, the state must annually conduct 20 LQG inspections (usually CEIs). EPA's contribution to the state's coverage requirement should not exceed two (2) inspections (i.e., 10 percent of the required 20 inspections). EPA, however, can do more inspections, but such additional inspections will not count toward the state's coverage requirement.

Applicable EPA policy/guidance: Current *OECA National Program Guidance, [Compliance Monitoring Strategy for the Resource Conservation and Recovery Act \(RCRA\) Subtitle C Program](#)*.

Metric 5b1 (LQG and RD universe from RCRAInfo)

Metric type: Data, Goal

Goal: 20% of universe, or 100% of alternative commitment

What it measures: The percentage of the large quantity generator (LQG) and reverse distributor (RD) universes combined that had a compliance evaluation inspection (CEI) during the year reviewed as indicated from RCRAInfo.

Numerator = number of LQGs and RDs that had a CEI during the year reviewed

Denominator = number of LQGs and RDs

Guidance: Based on the RCRA *Compliance Monitoring Strategy (CMS)*, the EPA only counts CEIs under this metric.

In accordance with the CMS, states that are lead agencies are to inspect at least 20 percent of the LQG and RD universes combined annually; however, up to 10% of EPA inspections can contribute toward meeting these goals. The CMS also states that an appropriate portion of the Region's required LQG and RD inspections may be counted toward the state's 20 percent coverage obligation. The Region's contribution should constitute only a small portion of the state's 20 percent obligation (e.g., less than ten percent).⁴

Whether or not the agency has an alternative CMS plan, when lead agencies do not meet this metric's goal, EPA should conduct a further review:

- Talk to the state during the file review about why the goal or commitment was not met;
- Make sure that enough LQGs and RDs with inspections are selected for the file review;
- Check the [Management Standards for Hazardous Waste Pharmaceuticals](#) map to see if the agency under review oversees RDs.
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Applicable EPA policy/guidance: Current *OECA National Program Guidance, [Compliance Monitoring Strategy for the Resource Conservation and Recovery Act \(RCRA\) Subtitle C Program](#)*.

⁴ For example, given a universe of 100 LQGs, the state annually must conduct 20 LQG inspections (usually CEIs). The EPA's contribution to the state's coverage requirement should not exceed two (2) inspections (i.e., 10 percent of the required 20 inspections). The EPA, however, can do more inspections, but such additional inspections will not count toward the state's coverage requirement (16).

Metric 5d — One-year inspection count at SQGs

Metric type: Data, Goal (only applicable for primacy agencies with an alternative CMS)

What it measures: The number of small quantity generators (SQGs) that had an inspection during the one-year review period.

Guidance: This metric is only required when evaluating agencies with approved alternative CMS plans for inspection coverage, and optional otherwise.

EPA considers RCRA evaluation types CAC, CDI, CEI, CSE, FCI, GME, and OAM (note: these acronyms are defined in Appendix A) as on-site inspections under this metric, unless Regions require that only CEIs may serve as the appropriate substitute activity for LQG inspections.

This metric may provide important information for the review, particularly in cases where SQG inspections are being substituted for large quantity generator (LQG) inspections per the *Guidance for RCRA Core LQG Pilot Projects*. In an alternative CMS, lead agencies may trade off LQG inspections for increased inspection coverage of SQGs. When submitting an alternate CMS plan that proposes the substitution of SQGs for LQGs, Regions can require that only CEIs may serve as the substitution for the LQGs. In these cases, the EPA will hold the agency accountable under SRF for meeting its SQG inspection target.

Applicable EPA policy/guidance: [RCRA Compliance Monitoring Strategy](#) (2021).

Metric 5e — One-year inspection count at other sites

Metric type: Data, goal (only applicable for primacy agencies with an approved alternative CMS)

What it measures: Number of inspections in the year of review for the following universes:

- **5e5:** Very small quantity generators (VSQGs)
- **5e6:** Transporters
- **5e7:** Sites not covered by metrics 5a through 5e6

Guidance: This metric is only required when evaluating agencies with approved alternative CMS plans for inspection coverage, and optional otherwise.

EPA counts RCRA evaluation types CAC, CDI, CEI, CSE, FCI, GME, and OAM as on-site inspections under this metric, unless Regions require that only CEIs may serve as the appropriate substitute activity for LQG inspections.

This metric may provide important information for the review, particularly in cases where agencies are substituting inspections at other sites for LQG inspections. In alternative CMS plans, lead agencies may trade off LQG inspections for increased inspection coverage of other facility types

When submitting an alternate CMS plan that proposes the substitution of VSQs and Transporters for LQGs, Regions can require that only CEIs may serve as the substitution for the LQGs. In these cases, EPA will hold the agency accountable under SRF for meeting its VSQG, transporter, and other facility inspection targets.

Metric 6a — Inspection reports sufficient to determine compliance

Metric type: File Review, Goal

Goal: 100%

What it measures: The percentage of on-site inspection reports reviewed that provide sufficient documentation to determine compliance.

Numerator = number of inspection reports reviewed with sufficient documentation

Denominator = number of inspection reports reviewed

Guidance: The focus should be primarily on compliance evaluation inspections (CEIs) since they are required for treatment, storage, and disposal facilities (TSDFs) and large quantity generators (LQGs). At its discretion, EPA may review a limited number of other types of on-site inspections, such as FCIs or OAMs.

EPA should review inspection reports for sufficient documentation to determine compliance at the facility. In general, a RCRA inspection report should include:

- A narrative describing the facility, its RCRA-regulated activities, and if potential violations are observed, the report should contain sufficient documentation and other elements needed to support these violations, etc.;
- A checklist (if used by the agency);
- Any documentary support, such as photographs, maps, sampling results, etc.

If certain components are routinely missing and impact the compliance determination, EPA should mention these in the SRF report. Reviewer can use the inspection report completeness assessment at the end of the RCRA File Review Checklist as a reference.

Agencies will likely have their own methods for completing inspection reports. EPA should discuss this with the agency and ask for any guidance that the agency provides their inspectors at the beginning of the review to determine if the agency's inspection report documentation (particularly for CEI inspections) is consistent with EPA requirements for a sufficient report.

Applicable EPA policy/guidance: [RCRA Inspection Manual](#) (1998).

Metric 6b — Timeliness of inspection report completion

Metric type: File Review, Goal

Goal: 100%

What it measures: Percentage of inspection reports reviewed that are completed in a timely manner per the national standard described below.

Numerator = number of inspection reports reviewed that were completed in a timely manner

Denominator = number of inspection reports reviewed

Guidance: The *Hazardous Waste Civil Enforcement Response Policy* (2003) states that agencies should make a violation determination within 150 days of first day of inspection (Day Zero). EPA should use this 150-day standard for inspection report timeliness. For EPA direct implementation, reviewers should refer to the [Final Policy on Civil Inspection Report Timeliness](#). Reviewers can also consider the average length of time that it took to complete each report in the File Review Checklist when determining the finding.

If an agency has its own inspection report timeline in a policy or negotiated through a grant workplan or performance agreement, 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.

Applicable EPA policy/guidance: [Hazardous Waste Civil Enforcement Response Policy](#) (2003), current *OECA National Program Guidance*, [Final Policy on Civil Inspection Report Timeliness \(EPA inspections\)](#).

Element 3 — Violations

Under this element, EPA evaluates accuracy of the agency's violation and compliance determinations, and accuracy and timeliness of significant noncompliance determinations.

Reviewers will evaluate metrics 2a, 7b, 8a, and 8b during the data metric analysis. If the reviewer finds violation or SNC rates are lower than the national average, they may want to include additional inspections or violations in the file review to determine accuracy of violations and SNCs.

Metric 7a covers the accuracy of compliance determinations made from inspections, and metric 8c covers the appropriateness of SNC determinations. These metrics along with metric 8b (timeliness of SNC determinations) will generally form the basis for findings under this element.

Key metrics: 2a, 7a, 7b, 8a, 8b, and 8c

Metric 2a — Long-standing secondary violators

Metric type: Review Indicator

What it measures: The number of secondary violators (SVs) with violations open for more than 240 days that have not returned to compliance or not designated as being a significant non-complier.

Guidance: If there is a high number of SVs relative to the total universe of facilities in the state, select additional files with SVs for the file review to determine the nature of the problem. The file review, conversations with agency personnel, and other research can help you gauge:

- **Whether the agency is designating long-standing SVs as SNCs.** The 2003 *Hazardous Waste Civil Enforcement Response Policy* (RCRA ERP) states that agencies should consider re-designating SVs as SNC if the violator does not return to compliance in 240 days. EPA should review the list of violators that do not return to compliance in 240 days to determine whether data entry problems, SNC designation issues, or SVs unaddressed by enforcement exist. EPA should address data entry problems under Element 1, SNC designation issues under Element 3, and unaddressed SVs under Element 4.
- **Whether enforcement is returning SVs to compliance.** If there is a significant percentage of enforcement responses for SVs that do not return sites to compliance, discuss this with the agency and prepare a recommendation under Element 4.
- **The timeliness of enforcement for SVs.** The RCRA ERP states that warning letters or other appropriate notification of violations should be made by Day 150. By Day 240, EPA requires SVs to return to compliance. By Day 360, the implementing agency should make a referral to the Department of Justice or the state Attorney General, or enter into a final order with the violator. If the agency is failing to do this, address under Element 4.

Applicable EPA policy/guidance: [Hazardous Waste Civil Enforcement Response Policy](#) (2003).

Metric 7a — Accurate compliance determinations

Metric type: File Review, Goal

Goal: 100%

What it measures: Percentage of inspection reports reviewed that led to accurate compliance determinations.

Numerator = number of inspection reports reviewed that led to accurate compliance determinations

Denominator = number of inspection reports reviewed

Guidance: EPA reviews inspection reports to determine accuracy of resulting compliance determinations. Inspection reports lead to inaccurate compliance determinations when:

- There are potential violations documented in the report but there is no documentation of a compliance determination.
- Based on evidence in the inspection report, the agency mischaracterized a violation in the compliance determination. For example, the inspection report indicates violations but the compliance determination says the facility is in compliance.

Applicable EPA policy/guidance: [Hazardous Waste Civil Enforcement Response Policy](#) (2003), current *OECA National Program Guidance*.

Metric 7b — Violations found during CEI and FCI compliance evaluations

Metric type: Review Indicator

What it measures: The percentage of sites with a CEI or FCI inspection during the year reviewed in which one or more violations was found.

Numerator = number of sites with a CEI or FCI during the review year in which one or more violations was found

Denominator = number of sites with a CEI or FCI during the review year

Guidance: This metric provides information about the identification of violations for both significant non-compliers and secondary violators.

When the value for this metric is low, further investigation and/or supplemental file review may be necessary. Because this metric is a Review Indicator, EPA should use it to provide additional context for file selection, and it should not be used alone to create a finding in an SRF report.

Applicable EPA policy/guidance: [Hazardous Waste Civil Enforcement Response Policy](#) (2003).

Metric 8a — Significant Noncompliance (SNC) identification rate at sites with CEI and FCI compliance evaluations

Metric type: Review Indicator

What it measures: The percentage of sites with a CEI or FCI inspection during the year reviewed or the preceding year that received a significant non-complier designation during the year of review.

Numerator = number of sites with a CEI or FCI during the year reviewed or preceding year that received an SNC designation during the year reviewed

Denominator = number of sites with a CEI or FCI inspection in the year of review or preceding year

Guidance: When the percentage deviates greatly from the national average, EPA may conduct a supplemental file review. Reviewers would pull a sufficient number of facility files to evaluate whether SNC determinations were appropriate. The metric includes a two-year inspection period to include sites that were inspected in the previous fiscal year but identified as SNC in RCRAInfo in the year of review. The RCRA ERP allows 150 days from the first day of inspection (day zero) to identify a SNC, so some facilities may “straddle” two fiscal years.

Because this metric is a Review Indicator, EPA should use it to guide file selection, and should not use it alone to create a finding in an SRF report.

This file review should encompass previous enforcement actions and cases in the pipeline to determine whether SNC did occur but went unreported, and whether violations reported as non-SNC appear to warrant SNC status according to the *Hazardous Waste Civil Enforcement Response Policy*.

Applicable EPA policy/guidance: [Hazardous Waste Civil Enforcement Response Policy](#) (2003).

Metric 8b — Timeliness of SNC determinations

Metric type: Data, Goal

Goal: 100%

What it measures: The percentage of significant noncompliance (SNC) determinations made within 150 days of the first day of the inspection (Day Zero).

Numerator = number of SNC determinations made within 150 days of Day Zero

Denominator = number of SNC determinations

Guidance: The 2003 RCRA ERP states that agencies should make and report SNC designations by Day 150. On-time SNC designation ensures that agencies address significant problems in a timely manner.

The policy also states that agencies should re-designate SVs as SNC if the violator does not return to compliance in 240 days. EPA should review the list of SNCs that exceed 150 days with the agency to determine if any were originally SVs and reclassified at a later date. EPA may need to conduct a supplemental file review when agencies do not meet the 100 percent goal to determine the scope of the issue.

For secondary violators that are reclassified as significant non-compliers: when entering the SNY (Significant Non-Complier) evaluation in RCRAInfo, the field Reclassified SV is available to the right of the Day Zero field. The Reclassified SV field may be chosen in place of the Day Zero field. In this case, the Notes field must include "Reclassified SV." For translators, include "Reclassified SV" in the Notes field, and set Day Zero to the date of the reclassification.

Applicable EPA policy/guidance: [Hazardous Waste Civil Enforcement Response Policy](#) (2003).

Metric 8c — Appropriate SNC determinations

Metric type: File Review, Goal

Goal: 100%

What it measures: Percentage of files reviewed in which significant noncompliance (SNC) status was appropriately determined during the year reviewed.

Numerator = number of facilities reviewed with violations correctly determined to be SNC or secondary violator

Denominator = number of facilities with violations reviewed

Guidance: Review all selected files in which the agency determined there was a violation. Specifically, look at inspection reports that identify potential violations and whether the facility was subsequently designated SNC. Here is an example for how to conduct such a review:

- The agency determined that 10 of the facilities the EPA selected for file review had violations. The agency determined that five of these facilities were SNC and five were non-SNC.
- When the EPA reviews these 10 facility files, it determines that one of the agency's non-SNC determinations was actually a SNC. The other nine facilities were accurately determined to be either SNC or non-SNC.
- The value for this metric is $9/10 = 90$ percent.

For this metric, it may be necessary to review inspections and other activity from the previous year to determine whether they should have resulted in an SNC determination during the year reviewed.

The RCRA ERP defines SNC as “those violators that have caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; are chronic or recalcitrant violators; or deviate substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements.”

Applicable EPA policy/guidance: [Hazardous Waste Civil Enforcement Response Policy](#) (2003).

Element 4 — Enforcement

Reviewers use Element 4 to determine the agency’s effectiveness in taking timely and appropriate enforcement and using enforcement to return facilities to compliance.

Data verification metrics provide counts for informal and formal actions, and the number of actions with penalties. When comparing these counts to the violation and SNC metrics in Element 3, reviewers get a preliminary sense of the degree to which the primacy agency took appropriate enforcement. This information is helpful when selecting facility files to review. If violation and SNC rates are high, but the number of enforcement actions is low, reviewers may wish to select extra facilities with violations and SNCs to determine why enforcement activity was low. If enforcement numbers are high, reviewers may wish to select extra facilities with enforcement to determine if those actions were appropriate and returned facilities to compliance.

Reviewers should focus on metrics 9a (enforcement that returns sites to compliance), 10a (timeliness of enforcement), and 10b (appropriate enforcement) when writing findings under this element.

Key metrics: 9a, 10a, and 10b. **Additional context:** 2a, 7b, and 8a.

Metric 9a — Enforcement that returns violators to compliance

Metric type: File Review, Goal

Goal: 100%

What it measures: Percentage of enforcement responses that returned or will return sites in significant noncompliance (SNC) or secondary violation to compliance.

Numerator = number of enforcement responses reviewed for SNC and SV that document that the site is in compliance or is on schedule to return to compliance

Denominator = number of enforcement responses against SNC and SV reviewed

Guidance: The RCRA ERP states that an agency should address SNC with formal enforcement action and SV with at least an informal action. The formal action should result in an enforceable agreement or order that seeks injunctive relief to ensure the violator returns to compliance. Documentation of the return to compliance for both SNC and SV should be included in the file.

Review files where the agency took enforcement during the year reviewed in response to SNC or SV to determine if those sites returned to compliance or are on a schedule to return to compliance.

Applicable EPA policy/guidance: [Hazardous Waste Civil Enforcement Response Policy](#) (2003).

Metric 10a — Timely enforcement taken to address SNC

Metric type: Data, Goal

Goal: 80%

What it measures: The percentage of year-reviewed and previous-year significant noncompliance (SNC) violations addressed with a formal enforcement action or referral during the year reviewed and within 360 days of Day Zero.

Numerator = year-reviewed and previous-year SNCs that were addressed by a formal enforcement action in the year reviewed and within 360 days of Day Zero

Denominator = year-reviewed and previous-year SNCs addressed by a formal enforcement action in the year reviewed

Guidance: When a facility is in SNC, agencies should resolve SNC in a timely manner so problems do not linger. For SNCs, the 2003 RCRA ERP allows 360 days from the first day of inspection (Day Zero) for final formal enforcement action or referral to EPA, the agency attorney general, or Department of Justice.

The ERP recognizes that 20 percent of SNCs may exceed this timeline. Therefore, this metric's goal is for 80 percent of SNCs to receive enforcement within 360 days. Supplemental file review is necessary for lead agencies below 80 percent to ascertain whether the data metrics indicate a problem with timely action.

For secondary violators reclassified as significant non-compliers: when entering the SNY (Significant Non-Complier) evaluation in RCRAInfo, the field Reclassified SV is available to the right of the Day Zero field. The Reclassified SV field may be chosen in place of the Day Zero field. In this case, the Notes field must include "Reclassified SV." For translators, include "Reclassified SV" in the Notes field, and set Day Zero to the date of the reclassification.

Applicable EPA policy/guidance: [Hazardous Waste Civil Enforcement Response Policy](#) (2003).

Metric 10b — Appropriate enforcement taken to address violations

Metric type: File Review, Goal

Goal: 100%

What it measures: The percentage of files with enforcement responses appropriate to the violations.

Numerator = number of enforcement responses reviewed appropriate to the violations
Denominator = number of facilities reviewed with significant noncompliance (SNC) or secondary violation (SV). The denominator should include all violations regardless of whether the agency accurately identifies the violation

Guidance: The 2003 RCRA ERP states agencies should address SNC through a formal enforcement action. This should initiate an administrative or civil action that results in an enforceable agreement or order and imposes sanctions. The order should seek injunctive relief that ensures an expedient return to compliance.

For SVs, the ERP states that informal enforcement is the minimally appropriate response. Informal enforcement notifies the violator of its violations. If the violator does not come into compliance within 240 days of Day Zero, then the implementing agency should re-classify the site as an SNC.

Enforcement actions for both SVs and SNCs should mandate compliance.

Applicable EPA policy/guidance: [Hazardous Waste Civil Enforcement Response Policy](#) (2003).

Element 5 — Penalties

Element 5 evaluates penalty documentation using three metrics — 11a for gravity and economic benefit, 12a for difference between proposed and final penalty, and 12b for collection.

Reviewers can gauge the level of penalty activity in the year reviewed through RCRAInfo or ECHO, which provides information on the number of penalties and their dollar values.

Key metrics: 11a, 12a, and 12b.

Metric 11a — Gravity and economic benefit

Metric type: File Review, Goal

Goal: 100%

What it measures: Percentage of penalty calculations reviewed that document, where appropriate, gravity and economic benefit.

Numerator = number of penalties reviewed where the final penalty was appropriately calculated and documented

Denominator = the number of penalties reviewed

Guidance: Lead agencies should document penalties sought, including, whenever appropriate, the calculation of gravity and economic benefit. With regard to this documentation, *Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements* state the following:

EPA asks that a State or local agency make case records available to EPA upon request and during an EPA audit of State performance. All recordkeeping and reporting should meet the requirements of the quality assurance management policy and follow procedures established by each national program consistent with the Agency's Monitoring Policy and Quality Assurance Management System. . .

State and local recordkeeping should include documentation of the penalty sought, including the calculation of economic benefit where appropriate. It is important that accurate and complete documentation of economic benefit calculations be maintained to support defensibility in court, enhance Agency's negotiating posture, and lead to greater consistency.

Applicable EPA policy/guidance: [RCRA Civil Penalty Policy](#) (2003), [Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements](#) (1993), [Revised Policy Framework for State/EPA Enforcement Agreements](#) (1986), [Revised RCRA Expedited Settlement Agreement Pilot Program](#) (2011), [RCRA Expedited Settlement Agreement Pilot](#) (2021), [A Framework for Statute Specific Approaches to Penalty Assessments: Implementing EPA's Policy on Civil Penalties](#)⁵, [EPA policy on civil penalties](#) (1984).

Metric 12a — Documentation of rationale for difference between proposed penalty calculation and final penalty

Metric type: File Review, Goal

Goal: 100%

What it measures: Percentage of penalties reviewed that document the rationale for the final value assessed when it is lower than the proposed calculated value.

Numerator = number of penalties reviewed that document the rationale for the final value assessed compared to the initial calculated value

⁵“Where there are deviations from medium-specific policies in calculating a penalty figure, the case development team must detail the reasons for those changes in the case file. In addition, the rationale behind the deviations must be incorporated in the memorandum accompanying the settlement package to Headquarters or the appropriate Regional official.” [A Framework for Statute Specific Approaches to Penalty Assessments: Implementing EPA's Policy on Civil Penalties](#).

Denominator = number of penalties reviewed where final value assessed is lower than initial calculated value

Guidance: According to the *Revisions to the Policy Framework for State/EPA Enforcement Agreements* (1993), states should document any adjustments to the proposed penalty including a justification for any differences between the proposed and final assessed penalty.

Review penalty files to identify their contents with respect to proposed and final penalties. If only one of the two penalty amounts is found in the file, ask the agency why the proposed and final assessed penalties are not both documented, along with the rationale for any differences.

Applicable EPA policy/guidance: [RCRA Civil Penalty Policy](#) (2003), [Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements](#) (1993), [Revised Policy Framework for State/EPA Enforcement Agreements](#) (1986), *A Framework for Statute Specific Approaches to Penalty Assessments: Implementing EPA's Policy on Civil Penalties⁵*, *EPA policy on civil penalties* (1984).

Metric 12b — Penalty collection

Metric type: File Review, Goal

Goal: 100%

What it measures: Percentage of enforcement files reviewed that document collection of penalty.

Numerator = number of penalties reviewed with documentation of collection or measures to collect a delinquent penalty

Denominator = number of penalties reviewed

Guidance: This metric assesses whether the agency collected the final penalty. Begin by looking in the file for a cancelled check or other correspondence documenting transmittal of the check. If this documentation is not in the file, ask the agency if they can provide proof of collection through the data system of record.

If the agency has not collected the final penalty, there should be documentation either in the file or in the data system of record that the agency has taken appropriate follow-up measures. The finding can take into consideration the reasons for difficulty of collecting penalty, such as bankruptcy, litigation, etc.

Applicable EPA policy/guidance: [RCRA Civil Penalty Policy](#) (2003), [Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements](#) (1993) [Revised Policy Framework for State/EPA Enforcement Agreements](#) (1986), [Revised RCRA](#)

[Expedited Settlement Agreement Pilot Program](#) (2011), [RCRA Expedited Settlement Agreement Pilot](#) (2021).

Appendix A: Acronyms

RCRA Evaluation Types

CAC	Corrective Action Compliance Evaluation
CDI	Case Development Inspection
CEI	Compliance Evaluation Inspection
CSE	Compliance Schedule Evaluation
FCI	Focused Compliance Inspection
GME	Groundwater Monitoring Evaluation
OAM	Operation and Maintenance Inspection
NRR	Non-Financial Records Review

Other acronyms used in document:

ADMA	Annual data metric analysis
CMS	Compliance Monitoring Strategy
ECHO	Enforcement and Compliance History Online
ECHO Gov	Government-only area of ECHO
EPA	U.S. Environmental Protection Agency
ERP	December 2003 Hazardous Waste Civil Enforcement Response Policy
FCI	Focused Compliance Inspection
FY	Federal fiscal year (Oct. 1 - Sept. 30)
LQG	Large quantity generator
MOA	Memorandum of Agreement
MDR	Minimum data requirements
NPM Guidance	FY 2023 National Program Guidance
PPA	Performance Partnership Agreement
PPG	Performance Partnership Grant
RCRA	Resource Conservation and Recovery Act
RCRA ERP	<i>2003 Hazardous Waste Civil Enforcement Response Policy</i>
RCRAInfo	RCRA national data system
RD	Reverse distributor

SRF	State Review Framework
SNC	Significant noncompliance
SQG	Small quantity generator
SV	Secondary violator
TSDf	Treatment, storage, and disposal facility
VSQG	Very small quantity generator