

# **STATE REVIEW FRAMEWORK**

## **Indiana**

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

**U.S. Environmental Protection Agency  
Region 5**

**Final Report  
January 23, 2024**

# I. Introduction

## A. Overview of the State Review Framework

The State Review Framework (SRF) is a key mechanism for EPA oversight, providing a nationally consistent process for reviewing the performance of state delegated compliance and enforcement programs under three core federal statutes: Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act. Through SRF, EPA periodically reviews such programs using a standardized set of metrics to evaluate their performance against performance standards laid out in federal statute, EPA regulations, policy, and guidance. When states do not achieve standards, the EPA will work with them to improve performance.

Established in 2004, the review was developed jointly by EPA and Environmental Council of the States (ECOS) in response to calls both inside and outside the agency for improved, more consistent oversight of state delegated programs. The goals of the review that were agreed upon at its formation remain relevant and unchanged today:

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

## B. The Review Process

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

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

# II. Navigating the Report

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

## A. Metrics

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

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

## B. Performance Findings

The EPA makes findings on performance in five program areas:

- **Data** - completeness, accuracy, and timeliness of data entry into national data systems
- **Inspections** - meeting inspection and coverage commitments, inspection report quality, and report timeliness
- **Violations** - identification of violations, accuracy of compliance determinations, and determination of significant noncompliance (SNC) or high priority violators (HPV)
- **Enforcement** - timeliness and appropriateness of enforcement, returning facilities to compliance
- **Penalties** - calculation including gravity and economic benefit components, assessment, and collection

Though performance generally varies across a spectrum, for the purposes of conducting a standardized review, SRF categorizes performance into three findings levels:

**Meets or Exceeds:** No issues are found. Base standards of performance are met or exceeded.

**Area for Attention:** Minor issues are found. One or more metrics indicates performance issues related to quality, process, or policy. The implementing agency is considered able to correct the issue without additional EPA oversight.

**Area for Improvement:** Significant issues are found. One or more metrics indicates routine and/or widespread performance issues related to quality, process, or policy. A recommendation for corrective action is issued which contains specific actions and schedule for completion. The EPA monitors implementation until completion.

## C. Recommendations for Corrective Action

Whenever the EPA makes a finding on performance of *Area for Improvement*, the EPA will include a recommendation for corrective action, or recommendation, in the report. The purpose of recommendations are to address significant performance issues and bring program performance back in line with federal policy and standards. All recommendations should include

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

### **III. Review Process Information**

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

The State Review Framework (SRF) file review was conducted in cooperation with the Indiana Department of Environmental Management (IDEM) between August 15 and September 15, 2022, using Indiana's Virtual File Review cabinet and select files provided by IDEM. The Round 4 Indiana SRF was conducted for the review period of FY2021.

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#### **Clean Air Act (CAA)**

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

The State Review Framework (SRF) file review was conducted virtually using files downloaded from the Indiana Department of Environmental Management's (IDEM) Virtual File Cabinet, and in the case of certain records, made temporarily available to the reviewer through a web-based file sharing system. The files were reviewed between August 23 and September 16, 2022.

FY 2021 was the period under review.

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# Executive Summary

## 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:

### Clean Water Act (CWA)

The quality of Indiana's inspection reports is excellent. IDEM maintains excellent permit limit and DMR data entry rates of 98.9% and 99.4% respectively. The timeliness of Indiana's inspection reports is outstanding. Indiana completed over 91% of CMS commitments during the period of review. Indiana's performance in accurately determining facility compliance is excellent. Indiana does a good job selecting enforcement responses intended to return facilities to compliance. Indiana's penalty calculations include consideration of economic benefit and gravity.

Overall, in FY21, 91.7% or (11/12 NPDES source categories) of the state CMS commitments were met during the period of review, despite COVID-19 limitations.

IDEM should be highly commended for maintaining a permit limit data entry rate for major and non-major of 98.8% which is higher than the national goal of 95%. In addition, the discharge monitoring report (DMR) data entry rate for major and non-major facilities was 99.4%, which is higher than the national goal of 95%.

### Resource Conservation and Recovery Act (RCRA)

The following are aspects of the program that, according to the review, are being implemented at a high level: IDEM continues to meet national inspection goals at Large Quantity Generators (LQGs) and Treatment, Storage and Disposal Facilities (TSDFs). Inspection reports are complete, timely, and sufficient to determine compliance. Compliance determinations are accurate. IDEM significantly exceeds the national average for finding violations during inspections and identifying Significant Non-Compliers (SNC). The data metric analysis (DMA) revealed 100% of SNC determinations and subsequent enforcement response were timely.

## 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:

**Clean Water Act (CWA)**

Indiana should improve data accuracy in ICIS-NPDES, EPA’s national data system of record. Indiana can improve its enforcement response with facilities that are under orders and continue to have violations.

Data are not accurately reflected in ICIS NPDES, EPA's system of record.

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

RCRAInfo data was complete and accurate for only 44% of the files reviewed. In 30% of files reviewed, IDEM did not document its consideration of the economic benefit of noncompliance (or the reasons for not including it) in calculating civil penalties.

**Finding Summary:**

Metric	Round 3 Finding Level	Round 4 Finding Level
2b - Accurate entry of mandatory data [GOAL]	Meets or Exceeds Expectations	Area for Improvement
11a - Gravity and economic benefit [GOAL]	Meets or Exceeds Expectations	Area for Improvement
2b - Files reviewed where data are accurately reflected in the national data system [GOAL]	Area for Improvement	Area for Improvement
10b - Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	Area for Attention	Area for Improvement
11a - Penalty calculations reviewed that document gravity and economic benefit [GOAL]	Area for Improvement	Meets or Exceeds Expectations

# Clean Water Act Findings

## CWA Element 1 - Data

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**Finding 1-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

IDEM should be highly commended for maintaining a permit limit data entry rate for major and non-major of 98.8% which is higher than the national goal of 95%. In addition, the discharge monitoring report (DMR) data entry rate for major and non-major facilities was 99.4%, which is higher than the national goal of 95%.

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**Explanation:**

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
1b5 Completeness of data entry on major and non-major permit limits. [GOAL]	95%		1489	1507	98.8%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%	95.2%	31124	31301	99.4%

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**State Response:**

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## CWA Element 1 - Data

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**Finding 1-2**

Area for Improvement

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**Recurring Issue:**



Recurring from Rounds 2 and 3

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**Summary:**

Data are not accurately reflected in ICIS NPDES, EPA's system of record.

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**Explanation:**

Data are accurately reflected in 23 of 36 files. Examples of concerns:

- Inspections and NOV's from the review year were missing from ICIS, or were coded in multiple times for the same inspection.
- Three mining permit files have permits "by rule" rather than individual permits.
- One facility has a permit type change (from general to individual) and violations and resulting enforcement actions did not follow the permit change. The compliance tracking for the general permit was turned off in ICIS. Compliance tracking is turned off in a total of three files reviewed.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		24	36	66.7%

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**State Response:**

IDEM has already implemented several improvements to the tracking of final milestone items, resolution of violations in ICIS, and has made improvements to ICIS data for coal mining permits. IDEM requests that EPA provides the associated ICIS reports that will be used to conduct the evaluations contained in the EPA Recommendations. IDEM intends to track the status and progress on these identified items on a periodic basis, therefore, use of EPA's associated ICIS reports will be necessary.

Regarding Recommendation #3, IDEM is in the process of developing an administratively issued general permit for industrial storm water sites. Currently, IDEM has a permit by rule process for industrial storm water sites. Due to the complexity of developing the administratively issued general permit to replace the permit by rule process, IDEM may require additional time to attain the criteria of Recommendation #3. Once issued, the industrial storm water general permit will

require permittees to use the NetDMR system for submission of compliance information. However, the use of NetDMR will be a new requirement for this subset of sites. A transitional period, including outreach and training by IDEM, will be necessary. Due to these issues, a 12-month implementation timeframe is not feasible. IDEM requests additional time as it implements the new general permit and conducts necessary outreach and training with industrial storm water general permit holders on the use of the NetDMR system.

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**Recommendation:**

Rec #	Due Date	Recommendation
1	04/30/2024	IDEM will consistently track enforcement order milestones in ICIS. Region 5 will work with IDEM to track progress through ICIS enforcement action reports. Action item will be met when 80% of milestone data is tracked in ICIS.
2	04/30/2024	IDEM will track resolution of violations in ICIS. Region 5 will work with IDEM to track progress through ICIS reports. Action item will be met when 80% of relevant data is tracked in ICIS.
3	01/31/2025	Within 12 months of finalizing the SRF report, EPA will run a report of all industrial storm water permits (current universe: 1379) to determine whether compliance tracking information is flowing to ICIS. Action item will be met when 80% of relevant data is tracked in ICIS. When permit types change, the violations should carry over if they are not resolved.
4	01/31/2025	Within 12 months of finalizing the SRF report, EPA will run a report of all mining permits (current universe: 37) to determine whether compliance tracking information is flowing to ICIS. Action item will be met when 80% of relevant data is tracked in ICIS. The need for extensions will be evaluated at that time.
5	01/31/2025	Within 12 months of finalizing the report, EPA and IDEM will assess IDEM's progress with issuing the industrial storm water general permit and conducting the necessary outreach and training for permit holders using the NetDMR system. The need for extensions will be evaluated at that time.

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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:**

Indiana's inspection reports are complete and sufficient to determine facility compliance.

In addition, all 27 reports EPA reviewed were timely.

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**Explanation:**

In 26 of 27 files, Indiana's inspection reports are complete and provide information sufficient to determine compliance. IDEM inspection reports were completed on average within 6 days.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%		26	27	96.3%
6b Timeliness of inspection report completion [GOAL]	100%		27	27	100%

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**State Response:**

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**CWA 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:**

Overall, in FY21, 91.7% or (11/12 NPDES source categories) of the state CMS commitments were met during the period of review, despite COVID-19 limitations.

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**Explanation:**

IDEM's two-year CMS is incorporated into the State's EnPPA, which includes state-specific inspection commitments consistent with national CMS guidance. Typically, IDEM submits an alternative plan with adequate detail and justifications in the CSO, SSS, MS4, Construction and Industrial Stormwater categories. Region 5 understands the COVID-19 pandemic affected inspection coverage and recognize all the planning and work IDEM completed to keep the program moving forward. In FY 2021, Construction Storm water inspections were down slightly; 275 of 300 inspections were completed. MS4 commitments were reduced (and agreed upon by Region 5) so that state resources could be focused on issuing the MS4 and Construction Storm Water general permits. Please note that percentages for Metrics 5a1, 5b, 5b1 and 5b2 are based on annual compliance monitoring CMS commitments, not the universe of NPDES permits. Since IDEM has not been delegated the Federal sludge/biosolids program, EPA Region 5 did not evaluate metric 4a11 (Number of sludge/biosolids inspections at each major POTW).

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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 %</b>
4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL]	100% of commitments%		10	9	111.1%
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL]	100% of commitments%		130	95	136.8%
4a4 Number of CSO inspections. [GOAL]	100% of commitments%		16	8	200%
4a5 Number of SSO inspections. [GOAL]	100% of commitments%		46	29	158.6%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments%		172	290	59.3%
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments%		113	102	110.8%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitment%		275	300	91.7%
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100% of commitments%		198	173	114.5%
5a1 Inspection coverage of NPDES majors. [GOAL]	100% of Commitment%		118	95	124.2%
5b Inspections coverage of NPDES non-majors (individual and general permits) [GOAL]	100 of commitment%		675	538	125.5%
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100% of Commitment%		587	487	120.5%
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL]	100% of Commitment%		88	51	172.5%

**State Response:**

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### **CWA Element 3 - Violations**

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#### **Finding 3-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

Indiana makes accurate compliance determinations.

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**Explanation:**

In 25 of 27 or 96.2% of the files reviewed, accurate compliance determinations were made.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7e Accuracy of compliance determinations [GOAL]	100%		25	27	92.6%
7j1 Number of major and non-major facilities with single-event violations reported in the review year.					259
7k1 Major and non-major facilities in noncompliance.		16.7%	796	13335	6%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.			204	13330	1.5%

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**State Response:**

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**CWA Element 4 - Enforcement**

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**Finding 4-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

IDEM uses enforcement action responses that return facilities to compliance.

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**Explanation:**

In 15 of 17 files reviewed, IDEM issued enforcement actions that returned or will return facilities to compliance.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		15	17	88.2%

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**State Response:**

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**CWA 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:**

IDEM's enforcement responses don't address violations in an appropriate manner.

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**Explanation:**

In 8 of 16 files reviewed, IDEM enforcement responses don't address violations in an appropriate manner.

In some files, IDEM's formal enforcement actions didn't return facilities to compliance in an appropriate manner. In these cases, the facilities continued to have violations, and IDEM didn't consistently escalate enforcement.

In some cases, it took IDEM a long time to finalize a formal order from the time the state originally identified violations. These cases didn't follow the federal guidance for timely enforcement, or the guidance in Indiana's 2016 CEMS.

Compliance milestones were not consistently tracked in ICIS to ensure a facility was taking steps to return to compliance.

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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 %</b>
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations		18.4%	1	16	6.3%
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		8	16	50%

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**State Response:**

IDEM has implemented improvements to track final order milestone dates in ICIS. IDEM intends to make improvements to the Compliance Enforcement Management System to improve guidance on escalation of enforcement actions per Indiana Code and Indiana Administrative Code.

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**Recommendation:**

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Rec #	Due Date	Recommendation
1	04/30/2024	IDEM will track resolution of enforcement order milestones in ICIS. Region 5 will work with IDEM to track progress through ICIS reports. Action item will be met when 80% of relevant data is tracked in ICIS. (Note: this is also a data action item.)
2	10/31/2024	Within 9 months of finalizing the SRF report, IDEM will update its Compliance Enforcement Management System to include specific guidance to address non-compliance at facilities under formal enforcement. This should include a process for escalating enforcement when chronic non-compliance occurs at facilities under an order. IDEM will share the updated language with Region 5 for the Region's review.

## CWA 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:

IDEM Penalty calculations were sufficient and included gravity and economic benefit.

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### Explanation:

In 8 of 9 files reviewed, penalty calculations included gravity and economic benefit.

In 6 of 6 files reviewed, penalties were collected.

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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 %</b>
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%		8	9	88.9%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		6	6	100%
12b Penalties collected [GOAL]	100%		6	6	100%

**State Response:**

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# Resource Conservation and Recovery Act Findings

## RCRA 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:**

In 11 of 25 files reviewed (44%), data was accurately reflected in RCRAInfo. Some files reviewed contained data that was inaccurately reflected in RCRAInfo. Data inaccuracies included: incorrect dates for enforcement letters, inaccurate inspection type entry, inaccurate violator status, missing enforcement actions, missing violations, an inaccurate facility name, and a missing penalty.

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### **Explanation:**

The file reviewer found the following data discrepancies:

- In two cases, the inspection date noted in the report did not match the date recorded in RCRAInfo.
- There were three inspection reports that described the inspection as a Focused Compliance Inspection (FCI) though they were noted as Compliance Evaluation Inspections (CEI) in RCRAInfo.
- There was one instance where an inspection noted in RCRAInfo did not occur.
- There was one case in which the date of the Violation Letter did not match the date given in RCRAInfo (off by a few days).
- There were two instances where a Violation Letter or Notice of Violation issued were not recorded in RCRAInfo.
- There were five cases where a violation cited in the enforcement response letter or order was not entered into RCRAInfo.
- There was one case where a Violation Letter cited the labeling requirements for used oil transporters, though RCRAInfo records them as uses oil generator requirements. It should be noted the requirements are the same.
- There was one instance where an assessed penalty was not entered into RCRAInfo.
- There was once case where an Adopted Agreed Order was not entered into RCRAInfo.
- In one case, IDEM determined the facility to be a Significant Non-Complier (SNC) on March 17, 2021, and subsequently issued a Violation Letter (VL-2021-27750-H) on April 19, 2021. On November 3, 2021, IDEM issued a Notice of Compliance Letter, noting the violations had been corrected. However, as of August 30, 2022, RCRAInfo still noted the facility as a SNC, and the violations were still open.
- In one instance, the current facility name was not accurate in RCRAInfo.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Accurate entry of mandatory data [GOAL]	100%		11	25	44%

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**State Response:**

IDEM acknowledges some data entry errors. IDEM staff has worked to ensure that the data is corrected. IDEM will work to ensure data is accurate in our systems by conducting audits on a portion of the data entered on a monthly basis. In addition, IDEM staff plans to develop a procedure/training tool for entering data into METS.

The facility with the incorrect name in RCRAInfo is due to the facility not updating their information in MyRCRAid.

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**Recommendation:**

Rec #	Due Date	Recommendation
2	07/01/2024	IDEM should develop a procedure to ensure inspection, enforcement, and violation data is accurate and complete in RCRAInfo.

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**RCRA 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:**

Indiana met inspection goals at Large Quantity Generators (LQGs) and operating Treatment Storage and Disposal Facilities (TSDFs). 100% (31/31) of the inspection reports reviewed contained sufficient information to make a compliance determination. 96.8% (30/31) of inspection reports were completed in a timely manner.

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**Explanation:**

The reviewer found that all inspection reports (31) contained sufficient information to determine compliance (several files contained more than one relevant inspection report). Indiana Code 13-14-5-3 requires written inspection reports to be provided within 45 days. All but one was completed within 45 days. On average, IDEM completed its report within 11 days of an inspection (range: 2 to 49 days).

According to the data, in FY 21, IDEM inspected 24% (105 of 438) of the active LQG universe, and 15 out of 16 of the operating TSDFs. The one TSDF not inspected by the State was on EPA’s inspection list that fiscal year.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	82.9%	15	16	93.8%
5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL]	20%	7.7%	105	438	24%
5d One-year count of SQGs with inspections [GOAL]	100% of commitments%		52		52
5e5 One-year count of very small quantity generators (VSQGs) with inspections	100% of commitments%		57		57
5e6 One-year count of transporters with inspections	100% of commitments%		8		8
5e7 One-year count of sites not covered by metrics 5a - 5e6 with inspections	100% of commitments%		38		38
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		31	31	100%
6b Timeliness of inspection report completion [GOAL]	100%		30	31	96.8%

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**State Response:**

No comment.

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**RCRA Element 3 - Violations**

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**Finding 3-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

31 out of 31 (100%) compliance evaluations resulted in an accurate compliance determination. All SNC determinations (20/20) were made in a timely manner. IDEM’s SNC identification rate is more than twice the national average.

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**Explanation:**

The EPA reviewer found that based on the file review, Indiana prepared complete inspection reports that led to accurate compliance determinations in every case. The data metrics indicate IDEM made all SNC determinations within 150 days of the inspection.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2a Long-standing secondary violators			56		56
7a Accurate compliance determinations [GOAL]	100%		31	31	100%
7b Violations found during CEI and FCI inspections		32.4%	131	257	51%
8a SNC identification rate at sites with CEI and FCI		1.5%	18	476	3.8%
8b Timeliness of SNC determinations [GOAL]	100%	91.7%	20	20	100%

**State Response:**

No comment.

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**RCRA Element 3 - Violations**

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**Finding 3-2**

Area for Attention

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**Recurring Issue:**

No

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**Summary:**

Seventeen (17) files contained compliance evaluations that resulted in the detection of violations. The EPA reviewer found that IDEM made an appropriate SNC determination in 14 of these cases (82.4%).

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**Explanation:**

Indiana made appropriate SNC determinations in the majority of cases. The reviewer found that IDEM did not make an appropriate SNC determination in the following cases:

- In one case, a March 5, 2021, Violation Letter cited failure to make a hazardous waste determination on liquid corrosive waste generated from die cleaning. The material is stored in a 2,500-gallon storage tank and sent off-site for use as an ingredient to make a product applied to land. Indiana did not determine this facility to be a SNC. The 2003 Hazardous Waste Civil Enforcement Response Policy states, by way of example, that SNC status is warranted when a violator fails to determine that a waste it generates is a hazardous waste and the waste is mismanaged.
- The 2003 Hazardous Waste Civil Enforcement Response Policy defines a SNC, in part, as those violators that have caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents. IDEM pursued formal enforcement against a facility for failing to respond to ongoing releases of used oil from machinery in violation of 329 IAC 13-4-3(e). Though IDEM pursued formal enforcement, it did not designate the facility as a SNC.

- One on of the facilities reviewed washes containers formerly holding numerous different chemicals. The process generates waste from residual material left in containers, wash water, and shredded plastic. IDEM pursued formal enforcement against this facility for, among other things, failure to make a hazardous waste determination. The inspector found that the facility received thousands of containers per month, from a variety of customers, though obtained limited information to make a hazardous waste determination. Though IDEM pursued formal enforcement, it did not designate the facility as a SNC. As previously noted, the Hazardous Waste Civil Enforcement Response Policy indicates SNC status is generally warranted when a violator fails to determine that a waste it generates is a hazardous waste and the waste is mismanaged. Given the volume of waste not properly characterized, there was a potential for hazardous waste to be mismanaged. This violation also appears to be a substantial deviation from the RCRA regulatory requirements.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
8c Appropriate SNC determinations [GOAL]	100%		14	17	82.4%

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**State Response:**

IDEM staff makes every attempt to make an appropriate SNC determination. To aid in our effort, IDEM staff in HW Compliance and Enforcement will review the Hazardous Waste Civil Enforcement Response Policy.

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**RCRA Element 4 - Enforcement**

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**Finding 4-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**



According to the data, in FY21, 100% of IDEM’s enforcement actions against SNCs were completed in a timely manner (15 of 15). Of the files reviewed where violations were determined, the EPA reviewer found that IDEM took appropriate enforcement 88.2% of the time (15 of 17).

**Explanation:**

IDEM resolved secondary violations through Violation Letters, and significant non-compliance through issuance of an Adopted Agreed Order (AAO). AAOs include civil penalties and compliance schedules. The EPA reviewer found that in the majority of cases, the enforcement response was appropriate.

The EPA reviewer found IDEM did not take appropriate enforcement in the following two circumstances.

- According to RCRAInfo, IDEM identified one facility as a SNC on March 17, 2021, based on the results of a February 2, 2021, inspection. IDEM did not pursue formal enforcement. The Hazardous Waste Civil Enforcement Response Policy requires that significant non-compliance be addressed through formal enforcement.
- As described under Finding 3-2, the EPA reviewer found that one facility should have been designated as a SNC for failure to make a proper waste determination. Therefore, a formal enforcement action was warranted

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timely enforcement taken to address SNC [GOAL]	80%	77.8%	15	15	100%
10b Appropriate enforcement taken to address violations [GOAL]	100%		15	17	88.2%

**State Response:**

See comment to Element 3-2.

**RCRA Element 4 - Enforcement**

**Finding 4-2**

Area for Attention

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**Recurring Issue:**

No

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**Summary:**

The EPA file reviewer found that 14 of the 17 (82.4%) files where violations were determined included an enforcement action that did or would return the facility to compliance.

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**Explanation:**

In the majority of cases, either documentation was present to indicate the facility had achieved compliance or the facility was placed on a compliance schedule.

Documentation of compliance was lacking in the following three cases.

In one case, the facility generates ethyl acetate waste that it recycles onsite. They had previously claimed the material exempt from the definition of solid waste since it was recycled in a closed loop system. IDEM issued the facility a Violation Letter, in response to 10 violations identified from the inspection. The majority of those violations stemmed from the loss of the closed-loop recycling exemption, after it was observed that some spent ethyl acetate was stored in containers and used elsewhere at the facility.

The facility responded to the Violation Letter by stating it will now claim the solid waste exemption at 40 CFR 261.4(a)(23) for hazardous secondary materials generated and legitimately reclaimed under the control of the generator.

However, the response did not include the documentation required under 40 CFR 261.4(a)(23)(ii)(E), (i.e., written description of how the recycling meets all three factors in § 260.43(a) and how the factor in § 260.43(b) was considered). A follow-up inspection did not confirm whether the written description is present.

In another case, an Adopted Agreed Order alleged failure to comply with 40 CFR 262.16(b)(9)(ii), which requires a small quantity generator to post the following information next to the telephone: (1) the name and phone number of the emergency coordinator; (2) location of fire extinguishers and spill control material and, if present, fire alarm; (3) the telephone number of the fire department, unless the facility has a direct alarm.

Compliance with this violation was confirmed through a subsequent inspection. However, the report indicates that only the emergency phone numbers were posted. The facility does not appear to have posted the location of fire extinguishers and spill control equipment.

In another case, a Violation Letter cited failure to make a hazardous waste determination on liquid corrosive waste generated from die cleaning. The material is sent off-site for use as an ingredient to make a product applied to land. The product is called “clinker” and it is added to cement to make concrete.

The inspection report notes that under 40 CFR § 266.20(b), the material would not be regulated when used in a manner constituting disposal if it meets the respective requirements therein, which include: (1) the material has undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means; (2) the products meet the applicable land disposal treatment standard; and (3) the recycler complies with 40 CFR § 268.7(b)(6).

With respect to whether the products meet the applicable land disposal treatment standard, the “recycler” stated *“the caustic is being used as a commodity to add sodium to the process, which is required due to chemical limitations of our raw material. Since the caustic is being used as a commodity then it is not a "solid waste" and therefore not a "hazardous waste", so it wouldn't be subject to the land ban requirements. IDEM has been to the plant many times and is aware of our usage of it.*

It is not clear to the reviewer that this response demonstrates compliance. The caustic material is a spent material used to produce products that are applied to or placed on the land and is therefore a solid waste under 40 § CFR 261.2(c)(1)(i)(B). Therefore 40 CFR § 266.20(b) is applicable, and by extension, the treatment standards in subpart D of part 268. The response does not demonstrate treatment standards are met.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Enforcement that returns sites to compliance [GOAL]	100%		14	17	82.4%

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**State Response:**

IDEM staff makes every effort to document sites being returned to compliance. HW Compliance and Enforcement staff will go over the three cases mentioned during their regular staff meetings to help ensure adequate documentation in the future.

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**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:**

In 10 of 10 formal enforcement files reviewed (100%), Indiana documented the rationale for the difference between the initial penalty calculation and final penalty. In 10 of the 10 files reviewed (100%), Indiana also included documentation of penalty collection.

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**Explanation:**

The EPA reviewer found that based on the files reviewed, Indiana documented its reasons for adjusting initial penalty calculations. In addition, the files included documentation of penalty collection.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		10	10	100%
12b Penalty collection [GOAL]	100%		10	10	100%

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**State Response:**

No comment.

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**RCRA Element 5 - Penalties**

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**Finding 5-2**

Area for Improvement

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**Recurring Issue:**

No

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**Summary:**

In 7 of 10 files reviewed (70%) that included a penalty calculation, documentation of the evaluation of both the gravity and economic benefit components was present. Three files did not include documentation of the rational for forgoing the economic benefit component.

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**Explanation:**

The EPA’s reviewer found that in most instances, Indiana documented its evaluation of both the gravity and economic benefit components of its penalties through worksheets and briefing memos. In three instances, Indiana’s evaluation of the economic benefit was not explained. Indiana should document on all penalty calculation worksheets, or its Briefing Memo’s, the evaluation of the economic benefit component when preparing the penalty calculations for a case. If IDEM deems it negligible it should clearly state that.

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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 %</b>
11a Gravity and economic benefit [GOAL]	100%		7	10	70%

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**State Response:**

IDEM staff make every effort to comply with our civil penalty policy and to address both gravity and economic benefit in penalties assessed during enforcement actions. To aid in making this clearer IDEM staff adjusted our Briefing Memo boiler plate to indicate that it is mandatory to explain the evaluation of economic benefit. That section of the briefing memo has also been marked in red to ensure that it is noticeable (see attached template).

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**Recommendation:**

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<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1	07/01/2024	IDEM should add to their penalty calculation worksheet, or briefing memo, a section to document the evaluation of the economic benefit component. IDEM will submit the revised penalty calculation worksheet or memo to EPA.