

STATE REVIEW FRAMEWORK

Puerto Rico

EPA Direct Implementation

**Clean Water Act and
Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2022**

**U.S. Environmental Protection Agency
Region 2**

**Final Report
December 20, 2023**

I. Introduction

A. Overview of the State Review Framework

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

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

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

B. The Review Process

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

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

II. Navigating the Report

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

A. Metrics

There are two general types of metrics used to assess program performance. The first are **data metrics**, which reflect verified inspection and enforcement data from the national data systems of each media, or statute. The second, and generally more significant, are **file metrics**, which are derived from the review of individual facility files 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 CWA SRF review was conducted remotely with EPA Region 2 in May 2023.

File reviewers:

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Clean Air Act (CAA)

Resource Conservation and Recovery Act (RCRA)

The RCRA SRF review was conducted remotely with EPA Region 2 in May 2023.

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Executive Summary

Areas of Strong Performance

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

Clean Water Act (CWA)

Entries of data into the database of record mostly meet the minimum data requirements.

Nineteen out of the 21 inspections reviewed for this report were sufficient to determine compliance and 19 out of 21 met the inspection report timeliness standard.

Compliance determinations were accurate and documented consistently in the inspection reports and database of record.

Enforcement actions reviewed were sufficient in returning sources of violation to compliance.

Penalty payments were well documented and maintained in the system of record.

Resource Conservation and Recovery Act (RCRA)

The Region produces robust and detailed inspection reports with sufficient documentation to determine compliance.

The review noted accurate compliance determinations in ten (10) out of the ten (10) files reviewed.

The enforcement actions reviewed generally returned violators to compliance. The formal enforcement actions reviewed included language and timelines for compliance.

The Region provided gravity and economic benefit calculations for each of the penalties reviewed. Each penalty issued had sufficient documentation for the rationale for difference between the proposed and final penalties. Documentation of collection was provided for all penalties reviewed.

Priority Issues to Address

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

Clean Water Act (CWA)

Region 2 completed two Phase 1 and II MS4 inspections, falling short of their commitment of 16.

The review found some instances where enforcement was not timely and instances where requirement of a long term consent decree were not managed timely according to the order.

Compliance issues were well documented in enforcement responses and most enforcement orders were issued in a timely manner. The review found some instances where enforcement was not timely in addition to instances where requirement of a long term consent decree were not managed timely according to the order.

Resource Conservation and Recovery Act (RCRA)

The region did not meet inspection commitments during the review year.

In nine (9) out of the 13 files reviewed, the review team found appropriate enforcement to address violations.

Finding Summary:

| Metric | Round 3 Finding Level | Round 4 Finding Level |
|--|-------------------------------|-------------------------------|
| 2b - Files reviewed where data are accurately reflected in the national data system [GOAL] | Area for Improvement | Meets or Exceeds Expectations |
| 4a7 - Number of Phase I and II MS4 audits or inspections. [GOAL] | Meets or Exceeds Expectations | Area for Improvement |
| 5a1 - Inspection coverage of NPDES majors. [GOAL] | Area for Attention | Area for Improvement |
| 6a - Inspection reports complete and sufficient to determine compliance [GOAL] | Area for Improvement | Meets or Exceeds Expectations |
| 10b - Appropriate enforcement taken to address violations [GOAL] | Area for Improvement | Area for Improvement |
| 2b - Accurate entry of mandatory data [GOAL] | Area for Improvement | Area for Attention |
| 5a - Two-year inspection coverage of operating TSDFs [GOAL] | Area for Attention | Area for Improvement |
| 5b - Annual inspection coverage for LQGs. | Meets or Exceeds Expectations | Area for Improvement |
| 10b - Appropriate enforcement taken to address violations [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 |
| 12a - Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL] | Area for Improvement | Meets or Exceeds Expectations |

| Metric | Round 3 Finding Level | Round 4 Finding Level |
|---------------------------------|------------------------------|-------------------------------|
| 12b - Penalty collection [GOAL] | Area for Improvement | Meets or Exceeds Expectations |

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Entries of data into the database of record mostly meet the minimum data requirements.

Explanation:

The region generally enters the minimum data requirements correctly into the database of record. An example of a minor issue is single event violations (SEVs) that were resolved but remain open in the data system. Significant noncompliance status, inspections, and enforcement actions were all found to be correctly entered into NPDES ICIS. Violations of long term administrative compliance orders are appropriately linked to the associated orders.

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% | 99.9% | 186 | 186 | 100% |
| 1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL] | 95% | 98.7% | 3468 | 3487 | 99.5% |
| 2b Files reviewed where data are accurately reflected in the national data system [GOAL] | 100% | | 24 | 28 | 85.7% |

Region Response:

CWA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Nineteen out of the 21 inspections reviewed for this report were sufficient to determine compliance and 19 out of 21 met the inspection report timeliness standard.

Explanation:

Inspections largely included extensive documentation and linked current facility status to previous inspection report findings, especially for facilities under long term consent decrees. The inspectors do an excellent job juxtaposing the permit requirements with observations of deficiencies.

The region largely met requirements in the 2022 Final Inspection Report Timeliness Policy that requires regions to finalize inspection reports within a 60 day timeframe. EPA Region 2 had an average completion timeframe of 40 days for inspections in FY2022 with only a few outliers that took longer than the policy timeframe.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|----------------------|-----------------|----------------|----------------|----------------|
| 4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL] | 100% of commitments% | | 0 | 0 | 0 |
| 4a5 Number of SSO inspections. [GOAL] | 100% of commitments% | | 3 | 2 | 150% |
| 4a8 Number of industrial stormwater inspections. [GOAL] | 100% of commitments% | | 4 | 5 | 80% |
| 4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL] | 100% of commitments% | | 6 | 5 | 120% |
| 4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL] | 100% of commitments% | | 0 | 0 | 0 |
| 5a1 Inspection coverage of NPDES majors. [GOAL] | 100% | 2.4% | 35 | 30 | 116.7% |
| 5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL] | 100% | | 31 | 30 | 103.3% |
| 6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL] | 100% | | 19 | 21 | 90.5% |
| 6b Timeliness of inspection report completion [GOAL] | 100% | | 19 | 21 | 90.5% |

Region Response:

CWA Element 2 - Inspections

Finding 2-2

Area for Improvement

Recurring Issue:

No

Summary:

Region 2 completed two Phase 1 and II MS4 inspections, falling short of their commitment of 16.

Explanation:

The region did not meet commitments for the number of Phase I and II MS4 Audits for FY2022. In addition, a discrepancy in reporting was found between the compliance monitoring strategy end of year report and the data system of record for inspection metrics including 5a1 and 4a7.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|----------------------|----------|---------|---------|---------|
| 4a4 Number of CSO inspections. [GOAL] | 100% of commitments% | | 0 | 1 | 0% |
| 4a7 Number of Phase I and II MS4 audits or inspections. [GOAL] | 100% of commitments% | | 2 | 16 | 12.5% |
| 5a1 Inspection coverage of NPDES majors. [GOAL] | 100% | | 35 | 30 | 116.7% |

Region Response:

There are no regional Phase I MS4 entities. Although the Region projected 16 inspections, our limited inspection resources were assigned to other regional / divisional priorities resulting in conducting 2 of the 16 MS4 inspections. The Region will be performing 10 MS4 inspections in FY 2024, will continue to use its internal tracking tool to track MS4 inspections for the 7-year period (2023 to 2029), and will consider using contract support to achieve our CMS

goals. As recommended, the FY 2022 CMS End of Year Report will be updated and resubmitted for accuracy. This is already on-going.

Recommendation:

| Rec # | Due Date | Recommendation |
|--------------|-----------------|--|
| 1 | 03/29/2024 | Within 90 days of the final report, Region 2 will perform a root cause analysis on the discrepancy between the database of record and the end of year report. If it is determined that data gaps are present, Region 2 will develop a plan for correcting all identified data gaps and submit to HQ. A corrected FY2022 CMS End of Year Report will be submitted to HQ for review. |
| 2 | 09/30/2024 | By September 30, 2024, Region 2 will demonstrate that >71% of MS4 inspection commitments for FY2024 are met. Region 2 will send to OECA a report from the data system showing fiscal year inspections completed to date. If 71% or greater are completed, this recommendation will be considered complete. |

CWA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Compliance determinations were accurate and documented consistently in the inspection reports and database of record.

Explanation:

Many inspections included a reviewed facility operations and maintenance relating to permit requirements and ongoing long term compliance actions. Compliance determinations were found

to be accurate, consistent in the inspection reports, and the resulting violations were accurately reflected in the database of record. Inspection reports included comments on each observation with detailed documentation of conversations with facility representatives that resulted in accurate compliance determinations.

The region continued to monitor facilities under administrative compliance orders and long term consent decrees and accurately reflected their compliance determinations in the inspection reports and associated documentation

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|------------------|-----------------|----------------|----------------|----------------|
| 7e Accuracy of compliance determinations [GOAL] | 100% | | 21 | 21 | 100% |
| 7j1 Number of major and non-major facilities with single-event violations reported in the review year. | | | 18 | | 18 |
| 7k1 Major and non-major facilities in noncompliance. | | 9.2% | 415 | 1159 | 35.8% |
| 8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year. | | 4.9% | 158 | 1098 | 14.4% |

Region Response:

CWA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Enforcement actions reviewed were sufficient in returning sources of violation to compliance.

Explanation:

A number of government-owned and municipally-owned facilities in Puerto Rico are under long term consent decrees with milestones that extend past the review year. These facilities have compliance schedules that have resulted, and will result in return to compliance through continuous extensive documentation and enforcement. In the instances where stormwater expedited settlement agreements (ESAs) were issued, facilities returned to compliance quickly and without a compliance schedule.

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% | | 20 | 20 | 100% |
| 10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations | | 4.7% | 0 | 4 | 0% |

Region Response:

CWA Element 4 - Enforcement

Finding 4-2

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

Compliance issues were well documented in enforcement responses and most enforcement orders were issued in a timely manner. The review found some instances where enforcement was not timely in addition to instances where requirement of a long term consent decree were not managed timely according to the order.

Explanation:

Formal enforcement activities, including ESA and significant noncompliance (SNC) were issued appropriately. SNC violations were documented, but not consistently responded to in a timely manner (NPDES Enforcement Management System states that *“the response must be a formal action... or a return to compliance by the permittee generally within one quarter from the date that the SNC violation is first reported on the QNCR”*).

Compliance issues were well documented in enforcement responses and most enforcement orders were issued in a timely manner. The review found that enforcement was not timely for a few individual enforcement actions. For multiple facilities under a particular long term consent decree, the review found that some requirements, including collection of stipulated penalties and oversight of a maintenance program, were not managed timely in accordance with the order. At these facilities, detailed inspection reports indicated that order requirements were consistently unmet and stipulated penalties had not been assessed due to continuous force majeure exception submittals since 2016. Although force majeure exceptions are permitted in the order, the order requires correspondence and agreement between the facility and the primacy agency regarding anticipated duration of the force majeure delay or non-compliance, a schedule for implementation of measures taken to mitigate non-compliance, and documentation of the effects of the non-compliance. There was no evidence of these claims being submitted with any of the force majeure notification letters or requested by EPA. The order further requires documentation and communication between EPA Region 2 and facilities under long term consent decree that note whether the force majeure is applicable during each quarter under review. The region plans to complete a review of all conditions in 2023 and issue stipulated penalties as appropriate. Therefore, until this review is completed, they haven't taken the appropriate action for noncompliance.

For facilities and rural non-profits that may not have the resources to come back into compliance, the region should connect these facilities with compliance assistance opportunities or other small business opportunities that fit the specific situations.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|-----------|----------|---------|---------|---------|
| 10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL] | 100% | | 16 | 27 | 59.3% |

Region Response:

The Region is actively working with non-governmental permittees (non-profit organization) in communities of EJ concern to address SNC using amicable enforcement tools, including compliance orders on consent. Some of these non-profit organizations own/operate facilities in remote locations that provide community treatment to sewage.

On July 12, 2019, EPA’s Office of Enforcement and Compliance Assurance issued a memorandum entitled “Regional Role in Reducing the NPDES Rate of Significant Non-Compliance”. In September 2019, an SNC implementation plan was developed by Region 2’s Caribbean Environmental Protection Division for non-POTWs, and its implementation began in FY 2020. This plan provides the roadmap for addressing permittees in SNC and includes escalated actions to be considered and/or taken.

In Region 2, all inspectors are required to take compliance assistance training as part of their annual refreshers. As recommended below, Region 2 will ensure that all staff are adequately trained in compliance assistance options in FY 2024.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|--|
| 1 | 04/30/2024 | EPA Region 2 will develop a region-wide SOP for responding to and tracking force majeure notification/determinations in enforcement actions. At a minimum, this SOP should include a timeline for when the region is required to respond to notifications, how this response should be structured, how timeline and impact of force majeure are tracked, and whether and how this impacts an EPA enforcement action. The draft of this SOP should be submitted to OECA-OC-PMOD and OECA-OCE-WED for feedback and approval to help ensure national consistency. If national guidance is developed for force majeure notifications and determinations enforcement matters, the national guidance should be followed. |
| 2 | 07/31/2024 | EPA HQ will select five enforcement actions conducted in FY23/FY24 and compare them to the timeliness requirements outlined in the NPDES Enforcement Management System (EMS). |
| 3 | 03/29/2024 | EPA Region 2 will provide EPA HQ with a list of EPA- approved force majeure submittals for the long-term consent decree covering multiple water facilities in Puerto Rico. Once this list is submitted, this recommendation will be considered complete. |
| 4 | 03/29/2024 | Within 120 days of the final report, EPA Region 2 will provide EPA HQ (OECA-OC-PMOD and OECA-OCE-WED) with a list of stipulated penalties assessed for the PRASA's noncompliance with its 2016 Clean Water Act consent decree. OECA-OC-PMOD will review these and determine if they meet the requirements outlined in the consent decree. If 71% of the files meet the requirements, this will be considered complete. |

CWA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Penalty payments were well documented and maintained in the system of record.

Explanation:

The review found that penalty payments were well documented and maintained in the system of record. For the few penalties that have remained outstanding, the region has relayed these to the Department of Treasury for collection.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|------------------|-----------------|----------------|----------------|----------------|
| 11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL] | 100% | | 1 | 1 | 100% |
| 12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL] | 100% | | 0 | 0 | 0 |
| 12b Penalties collected [GOAL] | 100% | | 3 | 3 | 100% |

Region Response:

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Area for Attention

Recurring Issue:

No

Summary:

Minimum data requirements were generally met, and most data were complete and accurate in the database of record.

Explanation:

Compliance Evaluation Inspections (CEIs) results in the database of record matched findings in the files reviewed most of the time. There were a few instances when notice of violations (NOV) and a penalty were issued to facilities on separate occasions, but not reported in the database of record. OECA recommends the region review all enforcement actions taken and ensure they are entered correctly into the database of record.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|-----------|----------|---------|---------|---------|
| 2b Accurate entry of mandatory data [GOAL] | 100% | | 15 | 19 | 78.9% |

Region Response:

RCRA Element 2 - Inspections

Finding 2-1

Area for Improvement

Recurring Issue:

No

Summary:

The region did not meet inspection commitments during the review year.

Explanation:

Zero (0) out of two (2) of operating TSDFs in Puerto Rico were inspected during a two-year period, according to the database of record. The region also fell short of inspection commitments for large quantity generators (LQGs) for the review period with one (1) out of 83 inspected in fiscal year 2022.

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% | 91.6% | 0 | 2 | 0% |
| 5b2 Annual inspection coverage of LQGs using computed generator status universe [GOAL] | 20% | | 1 | 44 | 2.3% |

Region Response:

As a result of the pandemic, EPA Region 2 did not conduct on-site inspections until the third quarter of FY 2022, contributing to our inability to meet all commitments. Fiscal Year 2023 inspections complied with both the two-year inspection coverage of operating TSDFs and the annual inspection coverage for LQGs. Likewise, the FY 2024 inspection targets were made in consideration of the TSDF and LQG required coverage.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | 03/29/2024 | The region should evaluate resources for TSDf and LQG inspections to determine adequacy and make adjustments as necessary to meet inspection commitments. Provide this analysis to OECA, including a timeline for adding or shifting resources if deemed necessary, and upcoming inspection commitments plan. |
| 2 | 11/15/2024 | Provide OECA with a list of all LQG and TSDf inspections completed quarterly in FY2024 (submit list within 30 days of completion of each quarter). This recommendation will be considered complete once the region conducts at least 71% of their fiscal year inspection commitments for LQG and TSDFs. If the region does not reach 71% of their commitments in FY2024, this recommendation will remain open until 71% are complete. |

RCRA Element 2 - Inspections

Finding 2-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The Region produces robust and detailed inspection reports with sufficient documentation to determine compliance.

Explanation:

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 [GOAL] | 100% | | 9 | 9 | 100% |

Region Response:

RCRA Element 2 - Inspections

Finding 2-3

Area for Improvement

Recurring Issue:

No

Summary:

The review found that five (5) out of the nine (9) inspection reports reviewed were timely.

Explanation:

The review found that five (5) out of the nine (9) inspection reports reviewed were timely according to requirements outlined in the EPA Policy on Inspection Report Timeliness and Standardization memo. The average time for inspection report completeness was 73 days which included two outliers of more than 130 days.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|-----------|----------|---------|---------|---------|
| 6b Timeliness of inspection report completion [GOAL] | 100% | | 5 | 9 | 55.6% |

Region Response:

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | 11/30/2023 | Within 60 days of finalization of report, conduct a root cause analysis of the report timeliness concerns and provide a copy to OECA. Share the inspection report timeliness memo with inspector staff. |
| 2 | 07/31/2024 | Region 2 will provide OECA with all mid-year inspection report timeliness data. OECA will review this and provide Region 2 with feedback. This recommendation is a two part recommendation and will be considered complete once Region 2 provides the mid-year inspection data to OECA. |
| 3 | 11/07/2024 | Region 2 will provide OECA with end-of-year report timeliness data. OECA will review this report and if it shows that >71% reports are completed timely, this recommendation will be considered complete. |

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The review noted accurate compliance determinations in ten (10) out of the ten (10) files reviewed.

Explanation:

Detailed explanations of conditions found during site visits were documented and resulted in compliance determinations being supported by robust documentation. Single event violations (SEVs) noted in the inspection findings were in the inspection reports and linked to statute references.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|-----------|----------|---------|---------|---------|
| 7a Accurate compliance determinations [GOAL] | 100% | | 10 | 10 | 100% |
| 7b Violations found during CEI and FCI inspections | | | 1 | 3 | 33.3% |
| 8a SNC identification rate at sites with CEI and FCI | | | 0 | 5 | 0% |

Region Response:

RCRA Element 3 - Violations

Finding 3-2

Area for Attention

Recurring Issue:

No

Summary:

In four (4) out of the five (5) files reviewed, appropriate significant noncompliance (SNC) determinations were made.

Explanation:

In the one file, the facility did not come into compliance within the 240 days outlined in the Hazardous Waste Enforcement Response Policy (ERP) and no NOV or SNC were issued until after the timeframe specified in the ERP, resulting in untimely enforcement.

No finding level was attributed to the data metric measuring timeliness of SNC determinations because there were no SNC determinations in the data system during the review year of FY2022 (note that files reviewed dated back to 2019 due to a small universe of RCRA enforcement findings).

In addition, twenty-one long standing secondary violators (number of sites with violations open for more than 240 days that have not returned to compliance or designated as SNC) were opened according to the data system.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|------------------|-----------------|----------------|----------------|----------------|
| 2a Long-standing secondary violators | | | 21 | | 21 |
| 8b Timeliness of SNC determinations [GOAL] | 100% | | 0 | 0 | 0 |
| 8c Appropriate SNC determinations [GOAL] | 100% | | 4 | 5 | 80% |

Region Response:

RCRA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Explanation:

The enforcement actions reviewed generally returned violators to compliance. The formal enforcement actions reviewed included language and timelines for compliance.

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% | | 11 | 12 | 91.7% |

Region Response:

RCRA Element 4 - Enforcement

Finding 4-2

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

In nine (9) out of the 13 files reviewed, the review team found appropriate enforcement to address violations.

Explanation:

While most of the enforcement actions reviewed were appropriate in the sense of escalation, some did not meet the timeliness standard for enforcement. One enforcement action took more than 600 days to issue after the initial inspection that cited the violations, and a second enforcement order issued to this facility took more than three (3) years. According to the Hazardous Waste ERP, implementing agencies should issue initial enforcement within 240 days of the first day the first inspection was conducted. Similar issues were found with three other facilities, with some noncompliance dating back multiple years.

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% | | 0 | 0 | 0 |
| 10b Appropriate enforcement taken to address violations [GOAL] | 100% | | 8 | 12 | 66.7% |

Region Response:

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | 03/29/2024 | The Region should conduct a review of past enforcement actions and determine the root cause behind delays in issuing and following up on enforcement. Report back to OECA with this assessment. |
| 2 | 04/30/2024 | The region should develop an enforcement timeliness standard operating procedure or checklist that is consistent with the Hazardous Waste ERP. Training on this procedure should be provided to staff. The procedure and training roster should be provided to OECA to close out this recommendation. |
| 3 | 12/31/2024 | OECA will randomly select up to five (5) enforcement actions from the prior year (FY2024) and determine whether the actions were addressed timely according to the Hazardous Waste ERP. This recommendation will be considered complete if >71% of the enforcement actions reviewed were timely according to the ERP. |

RCRA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The Region provided gravity and economic benefit calculations for each of the penalties reviewed. Each penalty issued had sufficient documentation for the rationale for difference between the proposed and final penalties. Documentation of collection was provided for all penalties reviewed.

Explanation:

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|------------------|-----------------|----------------|----------------|----------------|
| 11a Gravity and economic benefit [GOAL] | 100% | | 4 | 4 | 100% |
| 12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL] | 100% | | 4 | 4 | 100% |
| 12b Penalty collection [GOAL] | 100% | | 4 | 4 | 100% |

Region Response:
