

STATE REVIEW FRAMEWORK

Virgin Islands

EPA Direct Implementation

**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)

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:

Resource Conservation and Recovery Act (RCRA)

Inspection reports were thorough and contained sufficient documentation to determine compliance.

Inspection reports reviewed led to accurate compliance determinations.

The one penalty issued during the review year was appropriate regarding inclusion of economic benefit and gravity, documentation, and collection.

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:

Resource Conservation and Recovery Act (RCRA)

The review found that not all inspection reports were completed timely.

Two (2) out of the four (4) enforcement actions to address violations were found to be not appropriate, based on the 2003 Hazard Waste Enforcement Response Policy (ERP).

Finding Summary:

Metric	Round 3 Finding Level	Round 4 Finding Level
2b - Accurate entry of mandatory data [GOAL]	Area for Improvement	Area for Attention
6b - Timeliness of inspection report completion [GOAL]	Meets or Exceeds Expectations	Area for Improvement
10b - Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	Area for Attention	Area for Improvement

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 the findings in the files reviewed most of the time. There was an instance where a notice of violations (NOV) was 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%		7	9	77.8%

Region Response:

RCRA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Inspection reports were thorough and contained sufficient documentation to determine compliance.

Explanation:

Inspection reports were thorough and contained sufficient documentation to determine compliance. The region followed up with the facilities for more details as appropriate and documented their interactions. The region exceeded the goal for inspection commitments for large quantity generators (LQGs).

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	0	0
5b Annual inspection of LQGs using BR universe [GOAL]	20%	18%	1	2	50%
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		7	7	100%

Region Response:

RCRA Element 2 - Inspections

Finding 2-2

Area for Improvement

Recurring Issue:

No

Summary:

The review found that four (4) out of the seven (7) inspection reports reviewed were timely.

Explanation:

The review found that four (4) out of the seven (7) 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 102 days which included two outliers of 132 and 346 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%		4	7	57.1%

Region Response:

Recommendation:

Rec #	Due Date	Recommendation
1	03/04/2024	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 and provide Region 2 with feedback. This recommendation is a two-part recommendation with #3 and will be considered complete once Region 2 provides 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% inspection 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:

Seven (7) out of seven (7) inspection reports reviewed led to accurate compliance determinations.

Explanation:

Seven (7) out of seven (7) inspection reports reviewed led to accurate compliance determinations. No facilities were under significant noncompliance (SNC) status during the review year and thus no finding levels were issued for metrics 8b and 8c (timeliness of SNC determinations and appropriateness of SNC determinations, respectively).

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2a Long-standing secondary violators			0		
7a Accurate compliance determinations [GOAL]	100%		7	7	100%
7b Violations found during CEI and FCI inspections		36.8%	0	2	0%
8a SNC identification rate at sites with CEI and FCI		2%	0	2	0%
8b Timeliness of SNC determinations [GOAL]	100%	56.8%	0	0	0

Region Response:

RCRA Element 4 - Enforcement

Finding 4-1Area for Attention

Recurring Issue:No

Summary:

Three (3) out of four (4) enforcement files reviewed returned the sites to compliance.

Explanation:

Three (3) out of four (4) enforcement files reviewed returned the sites to compliance. In the one instance when the site was not returned to compliance, the region has been engaging the site representatives and issued an NOV.

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%		3	4	75%
10a Timely enforcement taken to address SNC [GOAL]	80%	51.1%	0	0	0

Region Response:

RCRA Element 4 - Enforcement

Finding 4-2Area for Improvement

Recurring Issue:

No

Summary:

Two (2) out of the four (4) enforcement actions to address violations were found to be not appropriate, based on the 2003 Hazard Waste Enforcement Response Policy (ERP).

Explanation:

Two enforcement files reviewed that were considered to not have appropriate actions taken according to the ERP. One enforcement action was issued 945 days from Day Zero which exceeds the ERP timeframe and the other was not escalated appropriately according to the ERP.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10b Appropriate enforcement taken to address violations [GOAL]	100%		2	4	50%

Region Response:**Recommendation:**

Rec #	Due Date	Recommendation
1	03/29/2024	The Region should conduct a review of past enforcement actions to determine how actions taken could have better aligned these actions with the Hazardous Waste ERP and why they had diverged (root cause analysis). This analysis should be shared with OECA.
2	04/30/2024	Consistent with the recommendation 4.2.2 for the Puerto Rico RCRA SRF Report, 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	Consistent with the recommendation 4.2.3 for the Puerto Rico RCRA SRF Report, 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. If there are not enough enforcement actions for this to be solely Virgin Islands, this can be conducted jointly with Puerto Rico enforcement actions.

RCRA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The one penalty issued during the review year was appropriate regarding inclusion of economic benefit and gravity, documentation, and collection.

Explanation:

Region 2 provided gravity and economic benefit calculations for the penalty file reviewed. This penalty had sufficient documentation for the rationale for difference between the proposed and final amount and collection was documented.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Gravity and economic benefit [GOAL]	100%		1	1	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		1	1	100%
12b Penalty collection [GOAL]	100%		1	1	100%

Region Response:
