



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
FOUR PENN CENTER – 100 JOHN F. KENNEDY BLVD.  
PHILADELPHIA, PENNSYLVANIA 19103**

**VIA ELECTRONIC MAIL**

Mr. Dean DeLuca  
Air Quality Program Manager  
Allegheny County Health Department  
301 39th Street, Building #7  
Pittsburgh, PA 15201  
dean.deluca@alleghenycounty.us

Dear Mr. DeLuca,

We would like to thank you and your staff for the cooperation you provided to the U.S. Environmental Protection Agency (EPA) to finalize the State Review Framework (SRF) for the Allegheny County Health Department (ACHD). The SRF is a program designed so that EPA may conduct oversight of state/local compliance and enforcement programs to ensure that states/local agencies are implementing these programs in a nationally consistent and efficient manner.

EPA conducted the Round Four SRF review of the ACHD Clean Air Act (CAA) Stationary Source enforcement program. The review evaluated compliance and enforcement data and files from Fiscal Year 2020, and prior fiscal years where needed. The enclosed report includes findings from the review and planned actions to facilitate program improvements.

Since the last SRF review, ACHD executed enforcement orders with clear paths to compliance and conducted appropriate enforcement responses for high priority violations (HPVs). All penalties that were reduced from the initial assessed penalties had adequate justifications for those reductions. In addition, all penalties had proof in the file that they were collected. Finally, a Best Practice was identified during the review that may be shared with other states. ACHD entered detailed notes into ICIS-Air case files to explain the violations identified. This allowed the EPA Review Team to have a clear understanding of the enforcement action in both the paper and digital files.

The review also identified aspects of the program that should be prioritized for management attention. ACHD failed to consistently report HPVs and enforcement minimum data requirements (MDRs) into ICIS-Air in a timely manner. Only 40% of the files reviewed had completely accurate MDR data in ICIS-Air. Additionally, ACHD does not consistently address HPVs in a timely manner or have a case development resolution timeline in place when necessary. Finally, only half of the penalty case files reviewed included an economic benefit component or reason for mitigation in the penalty calculations.

EPA looks forward to continuing to work with ACHD to improve program performance in pursuit of our shared mission to protect public human health and the environment. If you have any

RE: *State Review Framework (SRF)*

questions, please feel free to contact me or have your staff contact Ms. Danielle Baltera, Region III SRF Coordinator at 215-814-2342.

Sincerely,

**KAREN  
MELVIN**

Digitally signed by  
KAREN MELVIN  
Date: 2022.04.11  
11:26:40 -04'00'

Karen Melvin, Director  
Enforcement and Compliance Assurance Division

cc:

Shannon Sandberg, ACHD ([shannon.sandberg@alleghenycounty.us](mailto:shannon.sandberg@alleghenycounty.us))

Danielle Baltera, EPA ([baltera.danielle@epa.gov](mailto:baltera.danielle@epa.gov))

# **STATE REVIEW FRAMEWORK**

## **Pennsylvania**

### **Allegheny County Health Department**

#### **Clean Air Act Implementation in Federal Fiscal Year 2020**

#### **U.S. Environmental Protection Agency Region 3**

**Final Report  
March 31, 2022**

# I. Introduction

## A. Overview of the State Review Framework

The State Review Framework (SRF) is a key mechanism for EPA oversight, providing a nationally consistent process for reviewing the performance of state 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 Air Act (CAA)**

Dates of Remote File Review: September 13-16, 2021

Environmental Protection Agency (EPA) contacts include:

Isabella Powers, Air Inspector - Enforcement and Compliance Division

Carly Joseph, Air Inspector - Enforcement and Compliance Division

Kurt Elsner, Senior Environmental Engineer - Enforcement and Compliance Division

Erin Malone, Air Inspector & State Liaison Lead - Enforcement and Compliance Division

Stafford Stewart, Air Inspector - Enforcement and Compliance Division

Allegheny County Health Department (ACHD) contacts include:

Shannon Sandberg, Chief of Compliance and Enforcement

Allason Holt, Air Quality Administrator II

# 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 Air Act (CAA)

- ACHD executed enforcement orders with clear paths to compliance and conducted appropriate enforcement responses for high priority violations (HPVs).
- All penalties that were reduced from the initial assessed penalties had adequate justifications for those reductions. In addition, all penalties had proof in the file that they were collected.
- Best Practice- ACHD entered detailed notes into ICIS-Air case files to explain the violations identified. This allowed the EPA Review Team to have a clear understanding of the enforcement action in both the paper and digital files.

## 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 Air Act (CAA)

- ACHD failed to consistently report HPVs and enforcement minimum data requirements (MDRs) into ICIS-Air in a timely manner.
- Only 40% of the files reviewed had completely accurate MDR data in ICIS-Air.
- ACHD does not consistently address HPVs in a timely manner or have a case development resolution timeline (CD&RT) in place by day 225 of the HPV.
- Only half of the penalty case files reviewed included an economic benefit component or reason for mitigation in the penalty calculations.

# Clean Air Act Findings

## CAA 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:

ACHD entered compliance monitoring MDRs, stack tests, and stack test results timely into ICIS-Air greater than 90% of the time.

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### Explanation:

ACHD demonstrated that a large portion of their data reporting requirements are entered timely into ICIS-Air. Metric 3b1 and Metric 3b2 analyze the timeliness of compliance monitoring MDRs and stack tests and stack test results entered into ICIS-Air. ACHD timely entered the applicable data into ICIS-Air greater than 90% of the time. For metric 3b1, two of the four late entries were two and five days overdue. For metric 3b2, one of the six late entries were just two days overdue while the other five entries were on average 83 days late.

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### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	74.3%	39	43	90.7%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	59.4%	55	61	90.2%

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### ACHD Response:

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## CAA Element 1 - Data

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### Finding 1-2

Area for Attention

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### Recurring Issue:

No

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### Summary:

ACHD failed to consistently report HPV into ICIS-Air in a timely manner.

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### Explanation:

During FY2020, ACHD identified five HPVs. Four out of the five HPVs were reported to ICIS-Air in a timely manner. The only HPV case file not created in a timely manner was for a complicated facility with a lengthy noncompliance history. It took ACHD 181 days to enter this HPV into ICIS-Air. ACHD stated that this delay was due to human error and has since centralized entries for case files. Additionally, ACHD has weekly case file audits, which is an increase in frequency, to prevent HPV reporting delays in the future.

In Round 3, ACHD had a performance of 100% for the timely reporting of HPV determinations (metric 3a2) for FY2016, FY2017, and FY2018. However, in FY2019 ACHD's rating fell to 44% for metric 3a2. For reporting enforcement MDRs in timely manner, ACHD reported four of the 13 enforcement MDRs in an untimely manner. One of the four entries was 10 days overdue, while the other three entries were on average 75 days overdue. ACHD stated that the late entries were due to a transition of management. ACHD has centralized their case files and created protocol requiring the responsible engineer to communicate with responsible staff and case file audits have been increased to weekly reviews to prevent further delays with enforcement MDRs.

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### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
3a2 Timely reporting of HPV determinations [GOAL]	100%	76.3%	4	5	80.0%

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### ACHD Response:

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## CAA Element 1 - Data

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### Finding 1-3

Area for Improvement

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#### Recurring Issue:

Recurring from Rounds 2 and 3

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#### Summary:

During the file review, the EPA Review Team found that only 40% of the files reviewed had completely accurate MDR data in ICIS-Air. Additionally, ACHD failed to consistently report enforcement MDRs into ICIS-Air in a timely manner.

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#### Explanation:

The EPA Review Team found that 40% of the facility files had completely accurate MDR data entered into ICIS-Air. Although this is an improvement from Rounds 2 and 3, it is still a significant issue with ACHD's reporting of compliance and enforcement activities to ICIS-Air. Some of the issues that the EPA Review Team found in Round 4 include:

- Title V Annual Compliance Certification (TVACC) received and reviewed dates in ICIS-Air were not aligned with the dates in the facility file;
- date of full compliance evaluations (FCEs) in ICIS-Air differing from the date on the inspection in the facility file;
- a formal enforcement action was found to be missing entirely from ICIS-Air;
- missing stack test entry in ICIS-Air;
- stack test results showing as "pending" in ICIS-Air (the CMS Policy requires that the date and result of all stack tests are entered into ICIS-Air within 120 days of completion of the test);
- applicable pollutants and pollutant classification for each air program outdated in ICIS-Air; and
- air programs and subparts missing or outdated in ICIS-Air.

Entering accurate MDR data has been a continuing issue for ACHD. In Round 2, the EPA Review Team found data discrepancies between MDR data in AFS and the information in the facility file. In particular, the FCE dates in the file did not match the FCE date in the database in many instances. In Round 3, 37% of the facility files were found to be inaccurate when comparing the file to what was reported in ICIS-Air. The majority of the inaccurate data in Round 3 involved stack tests. To address this inaccurate data entry in SRF Round 3, ACHD conducted a root cause analysis, developed protocols, and ACHD data entry personnel attended an ICIS-Air training. EPA conducted a review of stack tests and enforcement MDRs in 2018-2019 and found that 36 of the 39 files reviewed were determined to be accurate in ICIS-Air.

Although data accuracy in ICIS-Air is an issue for ACHD, it appears that each round detected different data issues. ACHD has made some staffing changes in 2021 including training one staff person to act as the data manager for ICIS-Air data entry. Having one or two staff people to act

as gatekeepers for ICIS-Air data entry is a best practice that EPA Region III typically recommends. Since ACHD has already started to implement this new process we anticipate an improvement in data entry accuracy in the subsequent data metric analyses (DMAs).

For reporting enforcement MDRs in timely manner, ACHD reported four of the 13 enforcement MDRs in an untimely manner. One of the four entries was 10 days overdue, while the other three entries were on average 75 days overdue. ACHD stated that the late entries were due to a transition of management. ACHD has centralized their case files and created protocol requiring the responsible engineer to communicate with responsible staff and case file audits have been increased to weekly reviews to prevent further delays with enforcement MDRs.

In Round 3, ACHD achieved 35% for the timely reporting of enforcement MDRs (metric 3b3) which was identified as an "Area for State Improvement." Since ACHD performed a "root cause analysis" and subsequently developed and implemented an SOP during FY2018, the performance for metric 3b3 was as follows:

FY2018 - 95%;  
 FY2019 - 88%;  
 FY2020 – 69.2%; and  
 FY2021 – 85.7%.

The four "untimely" entries in FY2020 were created on 4/30/2020 and 5/1/2020. The COVID-19 shutdown that occurred in mid-March 2020 halted ICIS-Air data entry until 4/30/2020. Currently, the FY2021 performance for metric 3b3 is at 85.7%. The Needs Improvement for this finding is based on the FY2020 review year, although FY2021 performance to date shows improvement for metric 3b3.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%	-	8	20	40%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	76.3%	9	13	69.2%

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**ACHD Response:**

ACHD agrees with the recommendations.

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**Recommendation:**

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Rec #	Due Date	Recommendation
1	06/30/2022	No later than 60 days from final report issuance, ACHD to provide names of staff to EPA that will be dedicated to ICIS-Air data entry.
2	09/30/2022	EPA to provide ICIS-Air training for selected ACHD staff to be trained in entering data into ICIS-Air.
3	08/01/2023	After the first full quarter of implementation of the new data entry procedures, EPA will review a representative number of files to confirm that appropriate data is being accurately entered into ICIS-Air with a result of 85% for metric 2b. Files will be reviewed at 6 months, 9 months, and 12 months following the ICIS-Air training.

## CAA 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:

ACHD met the negotiated frequency for compliance evaluations of the Compliance Monitoring Strategy (CMS) sources. Additionally, all Compliance Monitoring Reports (CMRs) reviewed provided sufficient documentation to determine facility compliance and document the Full Compliance Evaluations (FCEs) elements.

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### Explanation:

ACHD conducted 100% of the required FCEs at major and SM-80 sources in their CMS plan. In addition, ACHD conducted all FCEs as on-site and did not elect to use the inspection flexibility option provided by the Susan Bodine memo<sup>1</sup>. The initial Data Metric Analysis (DMA), showed four facilities as not having a Title V Annual Compliance Certification (TVACC) review. After further review, the EPA Review Team found that three of the four facilities were not required to submit a TVACC for FY 2020 because they do not have a Title V permit. The fourth entry marked as not having a TVACC review was late due to a staff member being on extended leave. All TVACCs that were scheduled to be reviewed were completed. Finally, all 15 files with an FCE

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<sup>1</sup> AMS conducted virtual inspections in FY2020 per the Susan Bodine memo titled *Recommended Processes for Adjusting Inspection Commitments Due to the COVID-19 Public Health Emergency* dated July 22, 2020.

were determined to include all of the required FCE elements. The EPA Review Team found the CMRs to be thorough and easy-to-follow with comprehensive compliance histories.

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
5a FCE coverage: majors and mega-sites [GOAL]	100%	85.7%	11	11	100%
5b FCE coverage: SM-80s [GOAL]	100%	93.6%	1	1	100%
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%	-	0	0	0
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	82.8%	26	27	96.3%
6a Documentation of FCE elements [GOAL]	100%	-	15	15	100%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%	-	13	15	86.7%

**ACHD Response:**

**CAA Element 3 - Violations**

**Finding 3-1**

Meets or Exceeds Expectations

**Recurring Issue:**

No

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**Summary:**

ACHD did a thorough job in making HPV determinations.

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**Explanation:**

The EPA Review Team reviewed 19 facility files to determine if accurate HPV determinations were made. ACHD made accurate HPV determinations 90% of the time. ACHD had five HPVs identified in FY2020 and all five had an HPV Day Zero within 90 days of the discovery action, achieving 100% for Timeliness of HPV Identification (metric 13). Metrics 7a1 and 8a (defined below) are support metrics to gauge the discovery rate of FRVs and HPVs based on evaluations at active CMS sources. ACHD has been well above the national average for both metrics 7a1 and 8a since Round 3, therefore no supplemental files were needed.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
13 Timeliness of HPV Identification [GOAL]	100%	83.8%	5	5	100%
7a1 FRV 'discovery rate' based on inspections at active CMS sources [SUPPORT]	-	6.8%	6	49	12.2%
8a HPV discovery rate at majors [SUPPORT]	-	2.4%	3	29	10.3%
8c Accuracy of HPV determinations [GOAL]	100%	-	17	19	89.5%

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**ACHD Response:**  
  

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**CAA 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:**

ACHD has struggled with reporting accurate compliance determinations.

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**Explanation:**

The EPA Review Team analyzed 29 CMRs and facility files to determine ACHD's accuracy in making and reporting compliance determinations. The Team found that six of the files did not have accurately reported compliance determinations. Interestingly, these six determinations were for two facilities that have extensive enforcement history. ACHD made accurate compliance determinations for both of these facilities, but they were either reported inaccurately into ICIS-Air or were missing entirely. Accurate compliance determinations (metric 7a) not only requires an analysis of a compliance determination but also asks the reviewer to ensure that the determinations were accurately reported to ICIS-Air.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
7a Accurate compliance determinations [GOAL]	100%	-	23	29	79.3%

**ACHD Response:****CAA Element 4 - Enforcement****Finding 4-1**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

ACHD executed enforcement orders with clear paths to compliance and conducted appropriate enforcement responses for HPVs.

**Explanation:**

ACHD received a perfect score for metric 9a which analyzes the percentage of formal enforcement responses that include corrective actions to return the source to compliance in a specified timeframe or documents how the facility fixed the problem for both HPVs and non-HPVs. The EPA Review Team reviewed 22 facility files and found that all 22 had a clear path to achieving compliance. The reviewers noted that the enforcement orders were well-written and internal ACHD documentation provided clear justifications for decisions made regarding designation of

violations. ACHD also captures this detailed information in the notes section of ICIS-Air to keep the files comprehensive in both paper and digital formats.

Metric 10b examines the removal action or addressing action of the HPV and whether it adheres to the terms of the HPV policy<sup>2</sup>. ACHD had six HPVs that were addressed or removed in FY2020 and the EPA Review Team concluded that all six were addressed with an appropriate addressing action.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%	-	6	6	100%
10b1 Rate of managing HPVs without formal enforcement action [SUPPORT]	-	11.8%	0	4	0%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%	-	0	0	N/A
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule [GOAL]	100%	-	22	22	100%

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**ACHD Response:**

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**CAA Element 4 - Enforcement**

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**Finding 4-2**

Area for Attention

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<sup>2</sup> *Timely and Appropriate Enforcement Response to High Priority Violations- 2014* dated August 25, 2014



**Recurring Issue:**

No

**Summary:**

ACHD does not consistently address HPVs in a timely manner or have a case development resolution timeline (CD&RT) in place by day 225 of the HPV.

**Explanation:**

Metric 10a (Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place) reviews the timeliness of addressing HPVs. The EPA Review Team reviewed seven HPV files to determine if the HPVs were addressed within 180 days of Day Zero or if not addressed within 180 days of Day Zero, had a CD&RT in place within 225 days of Day Zero. The reviewers found that five of the seven files were addressed timely or had a CD&RT in place. The two files that were not addressed timely were for HPVs that went unaddressed for over 225 days from Day Zero without a CD&RT in place. Finally, the support metric 10a1 is used to determine the rate of addressing HPVs within 180 days. ACHD was at 50%, which is above the national average of 44%.

In Round 2, ACHD scored at 33% for metric 10a and it was noted as a minor problem with addressing HPVs within the required timeframe. In Round 3, ACHD did not address any HPVs and there were no unaddressed HPVs that required CD&RTs.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place [GOAL]	100%	-	5	7	71.4%
10a1 Rate of Addressing HPVs within 180 days [SUPPORT]	-	44.2%	2	4	50%

**ACHD Response:**

## CAA 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:

All penalties that were reduced from the initial assessed penalties had adequate justifications for those reductions. In addition, all penalties had proof in the file that they were collected.

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### Explanation:

All penalties reviewed had either 1) no penalty reduction between the assessed and final penalties paid or 2) adequate documentation if the final penalty paid was reduced from the original assessed penalty. Also, for all penalties collected, ACHD included a document for proof of payment such as invoices and/or a check, which made it very easy to determine that the facility paid the penalty. ACHD has facilities with complex enforcement histories that include stipulated penalty actions. ACHD does a great job at organizing the stipulated penalty calculations and presents them in a clear manner in enforcement documentation.

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### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%	-	10	10	100%
12b Penalties collected [GOAL]	100%	-	18	18	100%

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### ACHD Response:

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## CAA 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:**

All penalty calculations reviewed included a gravity component. However, only 50% of the penalty case files reviewed included an economic benefit components or reason for mitigation in the penalty calculations.

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**Explanation:**

ACHD has a very organized penalty calculation template that was used in all enforcement case files reviewed. The template includes a section for consideration of an economic benefit component as well as a notes section for reasons for including or excluding an economic benefit component. Unfortunately, the economic benefit component section was not complete in for 50% of the files reviewed.

ACHD has agreed to complete the economic benefit section on each penalty assessed to either capture the economic benefit amount or reason for mitigation when no economic benefit is deemed appropriate. EPA will review random penalty calculations to ensure economic benefit is being considered and documented.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%	-	9	18	50%

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**ACHD Response:**ACHD agrees with the recommendation.

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**Recommendation:**

Rec #	Due Date	Recommendation
1	04/01/2023	EPA to review random penalty calculations on a quarterly basis to ensure that economic benefit is being considered and documented with 85% accuracy as the goal.

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# **STATE REVIEW FRAMEWORK**

## **Pennsylvania**

**Clean Water Act  
Clean Air Act and  
Resource Conservation and Recovery Act**

**Implementation in Federal Fiscal Year 2022**

**U.S. Environmental Protection Agency  
Region 3**

**Final Report  
March 6, 2024**

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## 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**

This is the first SRF where EPA has evaluated all six regional Pennsylvania Department of Environmental Protection (PADEP) offices for CAA, RCRA-C, and CWA-NPDES Core and Mining compliance and enforcement programs. In previous SRFs, each media selected two to three regional PADEP offices for review. In Round 4, to evaluate the entire state (excluding Philadelphia and Allegheny Counties delegated for CAA), the number of facility files for review was substantially increased. Evaluating these media programs across all of PADEP allowed EPA to identify common areas of success as well as areas for statewide improvement.

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

Dates of remote file review: July 24-28, 2023

#### **Environmental Protection Agency Enforcement and Compliance Assurance Division contacts include:**

Dominic Cotton, NPDES Inspector

Monica Crosby, NPDES Inspector-Lead

Allison Gieda, NPDES Inspector

Pete Gold, NPDES Inspector

Michael Greenwald, NPDES Inspector

Ingrid Hopkins, NPDES Inspector

Shane McAleer, NPDES Inspector-Mining Lead

Kaitlin McLaughlin, NPDES Inspector

Edward Simas, NPDES Inspector

Angela Weisel, NPDES Inspector

#### **Pennsylvania Department of Environmental Protection (PADEP) contacts include:**

Andrew Hall, Environmental Group Manager of the Wastewater Operations Section

Victor Landis, Environmental Program Manager, Data Management Program. The BCW Data Management Program consists of the Data Management Section and Wastewater Operations Sections.

Shelby Rowles, Mineral Resources Program Specialist

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

Dates of remote file review: July 10-14, 2023

### **Environmental Protection Agency Enforcement and Compliance Assurance Division contacts include:**

Danielle Baltera, Program Analyst, SRF Coordinator

Dean Deluca, Air Inspector & Philadelphia AMS State Liaison Officer

Alex Everhart, Air Inspector & WVDEP State Liaison Officer

Carly Joseph, Air Inspector

Erin Malone, Air Inspector & State Liaison Lead

Scott Yanos, Air Inspector & MDE State Liaison Officer

### **Pennsylvania Department of Environmental Protection contacts include:**

Susan Foster, Enforcement Chief

Nancy Herb, Compliance Manager

Jillian Gallagher, Air Operations Chief - Southeast Regional Office

Andy Schweitzer, Air Operations Chief - Northeast Regional Office

Kelley Matty, Air Operations Chief - South Central Office

Steve Schulte, Air Operations Chief - North Central Office

Beth Speicher, Air Operations Chief - Southwest Regional Office

Lori McNabb, Air Operations Chief - Northwest Regional Office



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

Dates of File Review: July 10-14, 2023

**Environmental Protection Agency Enforcement and Compliance Assurance Division contacts include:**

Rebecca Serfass, ECAD, Lead

Claudia Scott, Land and Chemicals Division, Program Lead

Andrew Dinsmore, ECAD's RCRA Section Chief

**Pennsylvania Department of Environmental Protection contacts include:**

Melissa Gross, Compliance and Information Management Chief

Thomas Mellot, Division of Hazardous Waste Management Chief

# 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)**

PADEP met its FY2022 Compliance Monitoring Strategy (CMS) commitments for inspection coverage of NPDES facilities and inspection report timeliness.

Mining inspection reports were complete and sufficient to determine compliance over 90% of the time.

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

PADEP has committed and experienced data management staff and their dedication to data timeliness is apparent.

PADEP met the negotiated frequency for compliance evaluations for major sources, including mega-sites.

98% of the compliance evaluations contained the required full compliance evaluation (FCE) elements per the CMS policy. EPA considers PADEP's template a Best Practice that will be shared with other Region 3 states.

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

PADEP consistently completed and finalized inspection reports timely and consistently took enforcement actions that returned violators to compliance.

PADEP consistently documented penalty collection for cases in which a penalty had been paid.

## 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:

EPA identified common findings across the six regional PADEP offices regarding PADEP's penalty calculation and documentation. Specifically, documentation for gravity and economic benefit for all programs, except CAA, needs improvement. Additionally, a similar finding was made for documenting the rationale for the difference between the initial penalty calculation and the final penalty collected. Since these are recurring findings from Round 3, PADEP Central Office should provide uniform guidance to the regional offices to address the recommendations.

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

Core Program: Inaccurate and missing information in ICIS.

Core Program: The majority of PADEP's NPDES inspection reports were incomplete or insufficient to determine compliance.

Core Program: Penalty calculations were missing both economic benefit and gravity component. Additionally, only one of the eight penalties reviewed included a rationale for the difference between the initial penalty calculation and the final penalty collected.

Mining Program: There are no inspections, SEVs and informal and formal enforcement actions entered into ICIS yet.

Mining Program: Penalty calculations were missing both economic benefit and gravity component. Additionally, PADEP did not always document a rationale for difference between initial penalty calculation and final penalty calculation.

**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
2b(mine) - Files reviewed where data are accurately reflected in the national data system	Area for Improvement	Area for Improvement
4a7 - Number of Phase I and II MS4 audits or inspections. [GOAL]	Meets or Exceeds Expectations	Area for Improvement
6a - Inspection reports complete and sufficient to determine compliance [GOAL]	Area for Improvement	Area for Improvement
10b - Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	Meets or Exceeds Expectations	Area for Improvement
11a - Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	Area for Improvement	Area for Improvement
11a(mine) - Penalty calculations reviewed that document and include gravity and economic benefit	Meets or Exceeds Expectations	Area for Improvement
12a(mine) - Documentation of rationale for difference between initial penalty calculation and final penalty	Area for Improvement	Area for Improvement
12a – Documentation of rationale for difference between initial penalty calculation and final penalty	Area for Improvement	Area for Improvement
12b - Penalties collected [GOAL]	Area for Improvement	Area for Improvement

**Clean Air Act (CAA)**

None

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

PADEP made appropriate SNC determinations 70% of the time, or in 28 out of 40 files reviewed.

PADEP documented a rationale for difference between initial penalty calculation and final penalty 25% of the time or in two out of eight files reviewed.

**Finding Summary:**

<b>Metric</b>	<b>Round 3 Finding Level</b>	<b>Round 4 Finding Level</b>
8c - Appropriate SNC determinations [GOAL]	Meets or Exceeds Expectations	Area for Improvement
12a - Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	Area for Improvement	Area for Improvement

# Clean Water Act Findings

## CWA Element 1 – Data – Core Program

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### Finding 1-1

Area for Improvement

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### Recurring Issue:

No

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### Summary:

Inaccurate and missing information in ICIS.

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### Explanation:

PA Core Program: A majority of the facilities reviewed were missing permit issuance and effective dates in ECHO and ICIS. Of the 60 facilities reviewed,

- one (1) facility had an incorrect county entered;
- three (3) facilities had addresses in ICIS that were not accurate;
- one (1) facility had a different name on ICIS than in the reports provided;
- two (2) facilities had single-event violations (SEVs) that had no end date and were listed as ongoing;
- one (1) facility was missing a SIC code;
- six (6) state park facilities that should have a SIC code of 4952 (sewage systems) had an incorrect SIC code of 8412 (museums and art galleries);
- two (2) facilities were reported as having reconnaissance inspections *with* sampling when they were without sampling;
- one (1) facility that was reported as having reconnaissance inspections *without* sampling when a sample was collected;
- one (1) facility that had an inspection entered twice;
- one (1) facility that had four inspections entered for 8/5/21 and quarter 4/1-6/30/22 had a compliance status of “Resolved” but the facility was in SNC; and
- five (5) facilities were recorded as having official “Base Program- Audit” inspections when these were unofficial inspections for issued NOVs. When asked about this, PADEP stated that admin reports are “created” to allow them to cite violations for DMR violations and create a NOV. This is overstating the facilities inspection count.
- Seven (7) facilities were missing the permit issue and effective date.

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### Relevant metrics:

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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		29	60	48.3%

**State Response:**

Please provide examples where permit issuance and effective dates were missing in ICIS and ECHO to help DEP determine if these concerns are related to data transfer issues or data entry issues. PA DEP will correct the other data inconsistencies identified in the following recommendations. PA DEP does not agree that the “Base Audit-Inspections” used for administrative file reviews that identify violations, are overstating the inspection count, but DEP will explore other methods to code these administrative file reviews to avoid future confusion.

**Recommendation:**

Rec #	Due Date	Recommendation
1	12/31/2024	Upon renewing any permits, PADEP should add the permit issuance and effective date and cross-check for an accurate address and facility name and remove/correct any that are inaccurate.
2	12/31/2024	EPA will review a sample of permit renewals to ensure this is being completed.
3	06/30/2024	PADEP to correct the following inaccurate data: 1. permitted state parks to reflect a SIC code of 4952 (sewage systems) rather than 8412 (museums and art galleries); 2. make adjustments to the inspections that were incorrectly entered as having or not having samples collected; 3. make adjustments to the inspections that were incorrectly entered as having an official “Base-Program Audit;” and 4. close out any SEVs that are incorrectly entered as ongoing and with no end date.

**CWA Element 1 – Data – Core Program**

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**Finding 1-2**Meets or Exceeds Expectations

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**Recurring Issue:**No

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**Summary:**

PADEP has made significant progress towards the entry of permit limit and DMR data.

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**Explanation:**

Regarding metric 1b5, PADEP has been making significant progress towards this goal. PADEP put a process in place to retrieve and send this information and has been following through. During quarterly calls with PADEP, they have provided updates on progress towards this goal.

PADEP percentage for metric 1b6 is more accurate than past years due to the increase in reporting on permit limits and DMRs. This number has increased 4.8% from the 2021 ADMA of 94.3%.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
1b5 Completeness of data entry on major and non-major permit limits. [GOAL]	95%	96.8%	3263	3272	99.7%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%	95.20%	56312	56812	99.1%

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**State Response:**

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**Finding 1-3**

Area for Improvement

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**Recurring Issue:**

Recurring from Round 3

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**Summary:**

PA Mining does not enter all minimum data requirements in ICIS yet.

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**Explanation:**

Since SRF Round 3, PA Mining has made significant progress in entering all permits / facilities into ICIS, as well as eDMR reporting for all facilities that are required to report. However, PA Mining has yet to start entering inspections, SEVs, and informal and formal enforcement actions into ICIS.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		0	33	0%

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**State Response:**

PA DEP Mining has started adding inspections to the data being transmitted to ICIS. We have also started discussions with IT to start the process of transmitting other enforcement data.

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**Recommendation:**

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<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1	04/30/2024	PA Mining to provide EPA with a timeline for entering all inspections, SEVs, and informal and formal enforcement actions into ICIS.
2	12/30/2024	At periodic enforcement conferences, EPA will confirm whether appropriate data management is being facilitated by PA Mining.

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**CWA Element 1 – Data – Mining Program**

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**Finding 1-4**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

Since Round 3, PADEP Mining has made significant progress in entering all permits / facilities into ICIS.

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**Explanation:**

PA Mining has made significant progress in entering all permits / facilities into ICIS, as well as eDMR reporting for all facilities that are required to report.

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**Relevant metrics:**

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
1b5 (mine) completeness of data entry on major and non-major permit limits	≥95%		658	698	94.3%
1b6(mine) completeness of data entry on major and non-major discharge monitoring reports	≥95%		26297	29139	90.2%

**State Response:**

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## **CWA Element 2 – Inspections – Core Program**

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### **Finding 2-1**

Meets or Exceeds Expectations

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### **Recurring Issue:**

No

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### **Summary:**

PADEP met its FY2022 CMS commitments for inspections of CSOs, SSOs, industrial stormwater, construction stormwater, CAFOs, NPDES majors, NPDES non-majors with individual permits, and NPDES non-majors with general permits. PADEP met its FY2022 CMS commitments for inspection report timeliness.

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### **Explanation:**

PADEP exceeded its inspection goals for FY22 for the following metrics:

- 4a4-Number of CSO inspections: Of the 120 active permitted CSO facilities, 71 are major, 19 minor, and 30 general permits. The goal is to visit each major once every three years and each minor once every five years. PADEP performed 36 to meet its goal of 34.
- 4a5-Number of SSO inspections: The minimum inspection coverage goal for SSOs is for regions and states to conduct comprehensive inspections of at least 5% of SSOs each year. PADEP states in their CMS that there is no way to accurately account for the universe of these systems. The inspections are incorporated into a CEI or other inspection type in which case it is not separately reported into PADEP’s database and cannot be reported in the CMS. Therefore, it is recommended that PADEP consider an Alternative CMS to provide clarity. EPA will meet with PADEP to discuss this on a quarterly basis.

- 4a8 Number of industrial stormwater inspections: The universe of facilities consists of 1926 general permits, 355 individual permits, and 893 no exposure certification. The inspection goal is to inspect 10 % of the universe each year. PADEP exceeded this goal at 33.28%.
- 4a9 Number of Phase I and Phase II construction stormwater inspections: The minimum recommended inspection frequency is to inspect at least 10% of regulated construction sites of equal or greater than one acre of disturbed area annually. PADEP's Compliance Monitoring Goal is to inspect 5% of active GPs and 10% of active IPs. PADEP exceeded this goal at 56%.
- 4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs): The universe includes 89 individual permits and 361 general permits. The Inspection goal is to inspect permitted CAFOs once every five years. There were 18 inspections of individual permits and 99 inspections of 98 unique CAFOs with general permits. PADEP exceeded this goal at 26%
- 5a1 Inspection coverage of NPDES majors: The minimum recommended inspection frequency is to conduct at least one comprehensive inspection every two years or every year when there is non-compliance. The universe is 398 major facilities. PADEP conducted inspections at 303 of these facilities, resulting in inspection coverage of 76% of major facilities during FY2022.
- 5b1 inspection coverage of NPDES non-majors with individual permits: The minimum inspection frequency goal is to conduct a CEI inspection at each individual non-major facility at least once every five years. The universe includes 6000 facilities and PADEP conducted inspections at 3044 of these inspections resulting in an inspection coverage of 50.7%.
- 5b2 inspection coverage of NPDES non-majors with general permits: The minimum inspection frequency goal is to conduct a CEI/RTPT/ADMIN inspection at least 5% of general permit non-major facility. The universe includes 13192 facilities and PADEP conducted inspections at 2,557 of these facilities resulting in an inspection coverage of 19.4%.

There are no metric measures for 4a1 and 4a2 measure since EPA implements the authorized NPDES pretreatment program in Pennsylvania. PADEP had 100% inspection report timeliness, with inspection reports complete and provided to the facility within two (2) days (metric 6b).

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**Relevant metrics:**

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
4a4 Number of CSO inspections. [GOAL]	100% of commitments		36	34	105.9%
4a5 Number of SSO inspections. [GOAL]	100% of commitments (5%)	5%	79	*	79
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments (10%)		1055	3174	33.2%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments (10% for individual permits and 5% for general permits)		5000	8923 (7000 individual permits and 1923 general permits)	56%
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100% of commitments (20%)		117	450	26%
5a1 Inspection coverage of NPDES majors. [GOAL]	100% of commitments (50%)		303	398	76.1%
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100% of commitments	23.3%	3044	6000	50.7%
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL]	100% of commitments	5.2%	2557	13192	19.4%
6b Timeliness of inspection report completion [GOAL]	100%		52	52	100%

\*4a5 PADEP stated in their CMS that there is no way to accurately account for the universe of these systems, therefore a result cannot be calculated. See further details in Explanation above.

**State Response:**

PA DEP has prioritized meeting CMS commitments by developing reports and tracking progress monthly. Summary reports are shared with regional field staff and executive staff to ensure accountability.

**CWA Element 2 – Inspections – Core Program**

**Finding 2-2**

Area for Improvement

**Recurring Issue:**

No

**Summary:**

PADEP did not meet its CMS goals for inspection coverage of Phase I and II MS4 programs.

**Explanation:**

PADEP fell short of its CMS goals for inspection coverage of Phase I and II MS4 programs. PADEP does not have delegated authorization for the biosolids program, therefore no commitments are required for metric 4a11. However, PADEP does issue permits for beneficial use of biosolids by land application or generators and processors. PADEP is encouraged to coordinate with Region 7's Biosolids Center of Excellence to ensure that any tips and complaints are escalated for enforcement follow-up and that the required annual biosolids reporting is taking place.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments		90	150	60%
4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL]	100% of commitments		0	0	

**State Response:**

In FY 2022, PA DEP fully satisfied its CMS goals for all CMS commitments, except MS4s. For FY 2023, DEP prioritized meeting MS4 CMS goals in FY 2023 by completing 162 Phase I and Phase II MS4 inspections. PA DEP will continue to strive towards inspecting all Phase I and II MS4 facilities every five years.

As stated above, PA DEP is not delegated authority under the federal biosolids program, therefore no commitments are required. PA DEP’s CMS goals are to inspect biosolids management processes at POTWs at least once every five years, and biosolids use and disposal operations (including surface application) once every five years. PA DEP conducted 23 biosolid POTW inspections and 547 land application inspections in FY 2022. Further discussion is needed to establish an agreed upon goal or if a goal is even needed.

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**Recommendation:**

<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1	03/31/2024	PADEP is urged to either create a strategic plan outlining how they will achieve their inspection coverage goals or reevaluate those goals in light of available resources.
2	09/30/2024	EPA to review PADEP's inspection coverage in the next Annual Data Metric Analysis ("ADMA").

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**CWA Element 2 – Inspections – Core Program**

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**Finding 2-3**

Area for Improvement

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**Recurring Issue:**

Recurring from Round 3

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**Summary:**

The majority of PADEP's inspection reports were incomplete or insufficient to determine compliance.

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**Explanation:**

PADEP's inspection reports severely lacked substance, including the types of files reviewed and the observations resulting from the file review; documentation and a written narrative surrounding the observations; and an explanation of facility operations and layout. The required elements that were routinely absent from the inspection reports were the number of employees, hours, and enforcement history at the facility. Additional issues with most inspection reports include:

- No attachments, including photos from inspections,
- Discrepancies between what is recorded in the checklist and what is documented in the narrative,
- No mention was made of the condition of the plant or activated sludge operations during inspections, several of which were facilities that were experiencing effluent exceedances,
- One CEI is documented as being a "routine inspection," but nothing related to O&M was inspected, and it is not clear why,
- Several inspections that did not look at the facility's discharge monitoring reports (DMRs)
- Multiple "memos" for call-related inspections that allegedly serve as the "inspection reports," and
- Furthermore, some answers to checklist-type questions were vague, using words such as "many" and "numerous" when more details could have been/should be provided.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%		28	53	52.8%

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**State Response:**

PA DEP will review and update standard operating procedures, inspection reports and provide training as needed to address issues mentioned above. PA DEP requests until 9/30/2024 to incorporate all elements into inspection reports and until 6/30/25 to provide training. Additional time is needed to incorporate changes into our electronic inspection reports with limited IT resources.

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**Recommendation:**

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Rec #	Due Date	Recommendation
1	09/30/2024	PADEP is encouraged to use the NPDES Compliance Inspection Manual as a template to incorporate all components in their inspection reports. This will help to ensure that all inspection elements are consistently identified and documented during an inspection, as well as any concerns found that can support compliance determination or enforcement actions, if necessary.
2	06/30/2025	PADEP to provide training to inspectors on the new inspection report template.
3	09/30/2025	EPA to review random inspection reports on a quarterly basis to verify PADEP's inspection report template is resulting in complete and sufficient reports to determine compliance.

## CWA Element 2 – Inspections – Mining Program

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### Finding 2-4

Meets or Exceeds Expectations

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### Recurring Issue:

No

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### Summary:

Mining inspection reports were complete and sufficient to determine compliance over 90% of the time.

For all facilities reviewed, the inspection reports contain the date the inspection was performed, but do not contain the date the inspection report was sent to the facility.

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### Explanation:

Inspection reports were complete and sufficient to determine compliance at the facility in 30 out of 33 files.

All 33 files reviewed had inspection reports that were completed timely. PA Mining indicated that the date the report was sent to the facility is the date of the inspection, unless otherwise indicated. PA Mining explained that typically, inspection reports are sent to the facility the same day as the inspection. Therefore, it can be determined the inspection reports were sent in a timely

manner. Even though PA Mining achieved Meets or Exceeds Expectations for this metric, EPA recommends adding a separate box on inspection reports for “Date Issued.”

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
6a(mine) Inspection reports complete and sufficient to determine compliance at the facility	100%		30	33	90.9%
6b(mine) Timeliness of inspection report completion	100%		33	33	100%

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**State Response:**

The PA Mining Inspection app team has already discussed this issue with IT and are working on adding this box to inspection reports.

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**CWA Element 3 – Violations – Core Program**

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**Finding 3-1**

Area for Attention

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**Recurring Issue:**

No

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**Summary:**

We reviewed fifty-six (56) compliance determinations and forty-three (43) of them had compliance determinations that were found to be accurate.

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**Explanation:**

Fifty-six (56) compliance determinations were reviewed and forty-three (43) of them had compliance determinations that were found to be accurate. This was mostly due to a reference to a concern or violation in the inspection report but no indication in the facility file or ICIS that the noncompliance was accurately reported in ICIS-NDPES. A few of the reviewed files had such a minimal review of the facility that the file reviewer felt that PADEP did not accurately assess and could not determine compliance.

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
7e Accuracy of compliance determinations [GOAL]	100%		43	56	76.8%
7j1 Number of major and non-major facilities with single-event violations reported in the review year.					1810
7k1 Major and non-major facilities in noncompliance.		16.7%	4407	19590	22.5%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.		6.3%	850	19590	4.3%

**State Response:**

In some cases, PA DEP’s electronic inspection reports allow for identifying permit non-compliances without creating a Single Event Violation in ICIS. PA DEP will review and update standard operating procedures, inspection reports and provide training as needed ensure compliance determinations are accurate.

**CWA Element 3 – Violations – Mining Program**

**Finding 3-2**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

PA Mining Program made accurate compliance determinations in 93.9% of cases.

While PA Mining made accurate compliance determinations in the majority of cases, SEVs were not identified in the inspection reports. The majority of facilities reviewed were in ICIS as having late or missing DMRs; however, this is most likely a data entry error.

**Explanation:**

In 31 out of 33 files reviewed, PA Mining Program made accurate compliance determinations. For one facility, the majority of the inspection report noted that some type of erosion, seepage, or sediment transport was occurring at the site for FY 2022. Besides a few actions taken by the site operator, the majority of the erosion issues seemed to be ongoing and were not reported as corrected. The other facility should be in SNC for late DMR submittal.

Only DMR violations were identified in the inspection reports and other enforcement documents; no SEVs were explicitly identified.

Many of the PA Mining facilities are in ICIS as noncompliant for late or missing DMRs, including many of the SNC facilities. PA Mining indicated that the majority of these facilities are submitting their DMRs timely. Therefore, this may be a data entry error, and not actual noncompliance.

EPA recommends that PA Mining to inform EPA which facilities are reporting correctly and still showing up in ICIS as having late or missing DMRs, as well as the expected date of when ICIS will accurately reflect noncompliance.

Additionally, EPA and PA Mining to hold quarterly calls, separate from the QEM calls, to discuss data issues only.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
7e(mine) Accuracy of compliance determinations	100%		31	33	93.9%
5a1 Inspection coverage of NPDES majors	100%	50.3%	0	0	0
5b1 Inspection coverage of NPDES non-majors with individual permits	100% of commitments	24.3%	0	1024	1024
5b2 Inspection coverage of NPDES non-majors with general permits	100% of commitments	5%	0	1023	1023
7j1(mine) Number of major and non-major facilities with single-event violations reported in the review year.			0	0	0
7k1(mine) Major and non-major facilities in non-compliance			583	2048	28.5%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.			302	2048	14.7%

**State Response:**

PA DEP Mining and EPA continue working together to resolve the issue of communication between WMS (PA Mining) and ICIS (EPA). PA DEP Mining continues to work with IT to resolve the batch reporting issues that result in facilities incorrectly being flagged for significant noncompliance.

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**CWA Element 4 – Enforcement – Core Program**

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**Finding 4-1**

Area for Improvement

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**Recurring Issue:**

No

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**Summary:**

Of the files reviewed, only 66% of them were determined to have addressed violations in an appropriate manner.

---

**Explanation:**

Areas of deficiency include:

- a penalty being collected with no compliance action required, despite the facility having ongoing exceedances;
  - a facility experiencing O&M violations despite having submitted a compliance plan that, among other things, addressed O&M;
  - one (1) facility that did not have any enforcement response to address the ongoing SSOs and O&M issues;
  - an NOV was issued that did not require a compliance schedule, and the facility remains in SNC; and
  - finally, there was one (1) facility observed to be in SNC for three (3) consecutive quarters with no enforcement taken.
- 

**Relevant metrics:**

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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations		18.4%	3	25	12%
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		35	53	66%

**State Response:**

PA DEP Central Office will provide guidance and/or training for addressing violations through enforcement in a timely manner. Recommendations will include that enforcement actions for facilities with ongoing violations incorporate a compliance schedule. Additionally, Central Office will continue to review facilities in SNC with regional offices quarterly to ensure appropriate enforcement actions are taken.

**Recommendation:**

Rec #	Due Date	Recommendation
1	09/30/2024	To standardize a process for escalating enforcement, it is advised that PADEP Central Office develop an enforcement management system that is to be used by each regional office and that is consistent with the EPA's 1989 Enforcement Monitoring Strategy and the NPDES regulations (40 CFR 123.26). PADEP to submit to EPA for review before implementing the process.
2	01/30/2025	EPA to review random formal enforcement actions on a quarterly basis to determine if violations were addressed in an appropriate manner with the new enforcement monitoring strategy. 85% accuracy as the goal. If the review results in an 85% accuracy, EPA will close the recommendation and if it does not, the recommendation will be revisited in the following year.

## CWA Element 4 – Enforcement – Core Program

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### Finding 4-2

Area for Attention

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### Recurring Issue: No

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### Summary:

Twenty-six (26) files were reviewed that had either a formal and/or informal enforcement response. The file review found that five (5) of the 26 files did not have enforcement that was found to have returned or will return a source violation to compliance in a timely fashion.

---

### Explanation:

Some of the deficiencies found in five of the files include:

- A corrective action plan that addressed O&M was submitted in accordance with a notice of violation, but the facility continuing to experience O&M violations.
  - A civil penalty issued without any injunctive relief, and the facility continuing to be in violation.
  - A NOV issued without requiring a compliance schedule, and the facility continuing to have effluent violations.
- 

### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		21	26	80.8%

---

### State Response:

PA DEP Central Office will work with regions to ensure enforcement actions return facilities to compliance. There are cases where informal/formal enforcement actions don't resolve violations for a variety of reason including failure to implement corrective action plans. In these instances, further enforcement action may be needed which delays the resolution of violations.

We agree that a civil penalty issued without addressing the violation, is not the appropriate enforcement mechanism. We will emphasize this to regional staff and update SOPs as needed.

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## CWA Element 4 – Enforcement – Mining Program

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### Finding 4-3

Meets or Exceeds Expectations

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### Recurring Issue:

No

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### Summary:

All PA Mining enforcement actions addressed violations in an appropriate manner and returned, or will return, sources in violation to compliance.

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### Explanation:

Seven (7) enforcement actions were reviewed and all addressed violations in an appropriate manner and returned, or will return, sources in violation to compliance. The majority of the violations were for effluent exceedances that were addressed with the issuance of a penalty, and the facilities that were penalized did not have repeat effluent exceedance violations.

PA Mining is not entering formal enforcement actions into ICIS, therefore the result for metric 10a1 is 0%. This is being addressed in Finding 1-2, Recommendation #1. However, in reviewing the files, there were three out of three major NPDES facilities with formal enforcement actions taken in a timely manner in response to SNC violations.

---

### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
9a(mine) Percentage of enforcement responses that returned, or will return, a source in violation to compliance	100%		7	7	100%
10a1(mine) Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations			0	0	0%
10b1 (mine)Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		7	7	100%

---

### State Response:

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## CWA Element 5 – Penalties – Core Program

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### Finding 5-1

Area for Improvement

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### Recurring Issue:

Recurring from Round 3

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### Summary:

Penalty calculations were missing both economic benefit and gravity components. Additionally, only one of the penalties reviewed included a rationale for the difference between the initial penalty calculation and the final penalty collected.

---

### Explanation:

There were eight penalties issued in FY22. Of those eight penalties, four included both an economic benefit and a gravity component. Six penalties settled on a number that was different from the initial calculation. Only one of those six included a rationale for the difference between the initial penalty calculation and the final penalty collected.

---

### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%		4	8	50%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		1	6	16.6%

---

### State Response:

PA DEP utilizes a calculation that includes economic benefit components. With that said, calculation of economic benefit continues to be a challenge in enforcement proceedings, especially those involving smaller penalties. Currently, there is no economic benefit calculation that simplifies the process making it effective for implementation. PA DEP continues to seek assistance on the development of an effective economic benefit tool. PA DEP will work to ensure that justifications are provided when the final penalty differs from the original proposed penalty.

Gravity of incidents is assessed by considering factors such as aquatic life impact, water supply impact, and recreational impact. Gravity of effluent violations are assessed through exceedance factors.

---

**Recommendation:**

Rec #	Due Date	Recommendation
1	07/30/2024	Add a section to existing penalty calculation worksheet that includes both a calculation for economic benefit and gravity component. If it is determined that EBN is de minimis, it should be stated on the worksheet.
2	11/30/2024	PADEP to train staff on revised penalty calculation worksheet, specifically the section on economic benefit and gravity component.
3	09/30/2025	EPA to review random penalty calculations on a quarterly basis to ensure that both economic benefit and gravity components are being considered and documented with 85% accuracy as the goal. If the review results in an 85% accuracy, EPA will close the recommendation and if it does not, the recommendation will be revisited in the following year.

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**CWA Element 5 – Penalties – Core Program**

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**Finding 5-2**

Area for Improvement

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**Recurring Issue: No**

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**Summary:**

Of the eight penalties reviewed, three of them had documentation that the penalty was collected.

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**Explanation:**

Of the eight penalties reviewed, three of them had documentation that the penalty was collected. One reviewer mentioned that the order included a timeline for paying the penalty, but there was no confirmation that any payment was received. One reviewer mentioned that there was no documentation of the penalty being received and that the penalty was not yet processed in the EPA's database. Another reviewer followed up with PADEP via email to confirm that payment was received, to which PADEP then confirmed payment.

EPA Region 3 met with PADEP on the issue, and PADEP communicated that there is no documentation for penalties being collected. PADEP explained that no final penalty order is issued unless the respondent pays the penalty.

---

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12b Penalties collected [GOAL]	100%		3	8	37.5%

---

**State Response:**

PA DEP does not resolve an enforcement action until all penalties are paid. In most cases, PA DEP will not finalize a Consent Assessment of Civil Penalty until the total penalty is collected. Penalty payments are tracked in DEPs eFACTS system. There may be issues on how that penalty payment information is transmitted to ICIS which PA DEP will explore.

---

**Recommendation:**

Rec #	Due Date	Recommendation
1	06/30/2024	PADEP to keep an electronic payment receipt on file or any type of documentation to provide support that a payment was collected.
2	12/31/2024	EPA to review random penalties on a quarterly basis to ensure documentation is being maintained.

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**CWA Element 5 – Penalties – Mining Program**

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**Finding 5-3**

Area for Improvement

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**Recurring Issue:**

Recurring from Round 3

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**Summary:**

For the PA Mining Program, gravity and economic benefit are not specified in the penalty calculation worksheets provided. Additionally, rationale for the difference between initial and final penalty was only included in two of the five files reviewed.

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**Explanation:**

Of the five penalty files reviewed for the PA Mining Program, none of them had a gravity and economic benefit component because the penalty calculation worksheet does not contain section for this. Additionally, only two of the five files contained documentation of rationale for the difference between initial and final penalty.

---

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
11a(mine) Penalty calculations reviewed that document and include gravity and economic benefit	100%		0	5	0%
12a(mine) Documentation of rationale for difference between initial penalty calculation and final penalty	100%		2	5	40%

---

**State Response:**

The PA DEP Mining Program takes both gravity and economic benefit into account in the penalty calculation worksheet. The gravity component is covered by the seriousness and culpability part of the penalty calculation criteria and the economic benefit is covered by the savings to violator and culpability part of the penalty calculation criteria.

---

**Recommendation:**

Rec #	Due Date	Recommendation
1	09/30/2024	PA Mining to add a section to existing penalty calculation worksheet that includes both a calculation for economic benefit and gravity component. If it is determined that EBN is de minimis, it should be stated on the worksheet.

2	12/31/2024	EPA to review random penalty calculations on a quarterly basis to ensure that both economic benefit and gravity components are being considered and documented with 85% accuracy percentage as the goal.
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**CWA Element 5 – Penalties – Mining Program**

**Finding 5-4**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

For PA Mining, all of the files reviewed had documentation to show that the penalty was paid.

**Explanation:**

Five penalty files were reviewed, and all had documentation to show that the penalty was paid.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12b(mine) Penalties collected	100%		5	5	100%

**State Response:**

# Clean Air Act Findings

Air Quality Compliance and Enforcement staff meet with EPA Enforcement Program staff on a quarterly basis and have frequent interactions between these meetings. Due to this communication, the EPA findings in this report are what we expected, and we agree with EPA's analyses with comments outlined below. During this State Review Framework (SRF) review period, EPA evaluated DEP facility file records and the corresponding data in EPA's database, ICIS-Air, for Federal Fiscal Year (FFY) 2022 (10/1/2021 – 9/30/2022). EPA conducted a more expansive review, compared to previous SRF rounds, in that data and records from all six of the DEP regions were included. We appreciate this broad review as it provides a more complete picture of the compliance and enforcement work conducted by the Air Program staff. We also appreciate that this involved a considerable amount of work and the collaborative work effort between EPA staff and Air Quality staff was especially appreciated and productive.

## Executive Summary

We agree with EPA's comments on the CAA.

## CAA 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:

Element 1 assesses whether the required facility data and minimum data requirements (MDRs) are entered into ICIS-Air. PADEP has committed and experienced data management staff and their dedication to data timeliness is apparent in the metric finding levels at greater than 95% for metrics 3a2, 3b1, and 3b3.

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### Explanation:

Scoring 95% or higher in three of the four data timeliness metrics, PADEP exceeded in the timely data entry of high priority violations (HPVs), compliance monitoring activities, and enforcement activities. This is notable achievement considering in FY22, PADEP entered 44 HPVs, 1,114 compliance monitoring activities, and 405 enforcement activities into ICIS-Air.

In the Round 3 SRF report, PADEP also scored at the Meets or Exceeds Expectations level for metrics 3a2, 3b1, and 3b3.

---

### Relevant metrics:

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
3a2 Timely reporting of HPV determinations [GOAL]	100%	43.9%	42	44	95.5%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	78.2%	1086	1114	97.5%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	78.1%	394	405	97.3%

---

**State Response:**

We agree with EPA’s findings and comments. Staff expend a lot of effort correctly reporting HPVs. Staff are diligent in conducting inspection and compliance work and reporting their findings accurately into DEP’s database. Additionally, a lot of resources are spent transferring this data to ICIS.

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**CAA Element 1 - Data**

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**Finding 1-2**

Area for Attention

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**Recurring Issue:**

No

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**Summary:**

“Area for Attention” for two data metrics related to accurate MDR data in ICIS-Air and timely reporting of stack test dates and results.

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**Explanation:**

Generally, a solid performer related to data entry and timeliness, PADEP did fall below the Meets or Exceeds cutoff for two metrics. Metric 2b analyzes the accuracy of the MDR data that has been entered into ICIS-Air when compared to the facility file record during the file review. Metric 3b2 is a data metric that assesses the timely reporting of stack tests and stack tests results. A few issues were identified that led to the Area for Attention finding for these two metrics.

First, the reported full compliance evaluation dates (FCE) that were entered into ICIS-Air were incorrect for six of the 12 facility files that had inaccurate MDR data in ICIS. Other less common issues related to metric 2b include stack test results not being updated, penalty amounts missing with the formal enforcement activity, missing Notice of Violation (NOV), and missing required subparts in ICIS-Air.

Second, Metric 3b2 looks at the percentage of stack tests achieved within the review year that were reported and reviewed within 120 days of the stack test. PADEP is structured with a Source Testing Group that reviews each stack test conducted under PADEP's jurisdiction and develops a review memo to capture their review. This review has led to a bottleneck, slowing down the entry of the stack test results into ICIS-Air. PADEP has been working on reducing the bottleneck over the past few years without undermining the integrity of the stack test reviews. However, these delays can hinder or delay enforcement actions since some review memos can take months to sometimes more than a year to be transmitted to the compliance and enforcement staff.

Additionally, PADEP reported that the Oracle production database and all applications that use it were down from February 24 through March 10, 2022. This outage caused damage to the workflows that took an additional ten workdays to correct, therefore totaling a four-week backlog of processing incoming stack test reports. PADEP reported that 60% of the late stack test reports were affected by this outage, overshadowing the progress that has made regarding metric 3b2.

In the Round 3 SRF, metric 2b was at 39% due to inaccurate reporting of failed stack tests into ICIS-Air. All other data types were accurately reflected in ICIS-Air. Metric 3b2 was over 90% in the Round 3 SRF report.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		58	70	82.9%
3b2 Timely reporting of stack test dates and results [GOAL]	100%		482	604	79.8%

---

**State Response:**

Metric 2b measures the accuracy of data entered into ICIS-Air compared to the facility inspection file. After review we determined that it was unclear to some staff that the last date when onsite for an inspection is the date to be used for the date of the FCE. Additionally, records review and other data analysis and collection often occur after the physical inspection and the inspection is recorded when this review is complete.



Metric 3b2 looks at the percentage of stack tests achieved within the review year that were reported and reviewed within 120 days of the stack test.

As we have commented in meetings, we are experiencing challenges in attracting and hiring qualified candidates for position vacancies and this includes Source Testing positions. Additionally, test reports that are initially rejected as inadequate and resubmitted by the company are received more than 120 days after the test date making the 120-day deadline unobtainable. Regardless of any delay in report review, the regional staff is often able to initiate the enforcement action based on an initial review of the report results thereby minimizing the impact on the enforcement timeline.

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## **CAA 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:**

Element 2 assesses whether required inspections are timely and completed in a manner that allows inspectors to determine compliance.

PADEP met the negotiated frequency for compliance evaluations for major sources, including mega-sites, and SM-80 sources in FY22. Additionally, 89.9% of Title V Annual Compliance Certifications (TVACC) reviews due in FY22 were completed as required. Greater than 98% of the compliance evaluations contained the required full compliance evaluation (FCE) elements per the CMS policy and greater than 90% of the compliance monitoring reports (CMRs) reviewed, provided sufficient documentation to determine compliance at the facility.

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### **Explanation:**

PADEP successfully met 100% of its compliance monitoring strategy (CMS) commitment of 219 on-site FCEs at major sources and 461 on-site FCEs at SM-80 sources in FY22. Nearly 90% of the 414 Title V sources had a review completed and entered into ICIS-Air for their Title V Annual Compliance Certification (TVACC). Per metric 6a, 98% of FCE documentation contained the required elements. PADEP utilizes a comprehensive coversheet for each FCE that includes the required elements per Section V of the CMS policy. EPA Region 3 noted that this checklist was a best practice, and it will be shared with other Region 3 Air Agencies seeking guidance to improve

their CMR templates.

Lastly, under metric 6b, 90% of CMRs had sufficient documentation to determine compliance of the facility. These CMR elements determine whether CMR documentation is sufficient to determine source compliance and are found in Section IX of the CAA CMS Policy.

Compared to the Round 3 SRF report, PADEP had also achieved a level finding of Meets or Exceeds Expectations for metrics 5a, 5b, 5e, 6a, and 6b.

Finally, PADEP does not have any minor and synthetics minor (non-SM80s) sources that are part of a CMS Plan and Alternative CMS Facilities.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
5a FCE coverage: majors and mega-sites [GOAL]	100%	85.7%	219	219	100%
5b FCE coverage: SM-80s [GOAL]	100%	94.1%	461	461	100%
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	82%	372	414	89.9%
6a Documentation of FCE elements [GOAL]	100%		51	52	98.1%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		47	52	90.4%

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**State Response:**

We agree with EPA’s finding and comments. Staff are diligent in conducting inspection and compliance work. Staff have been agile in managing workload despite staffing shortages and turnover.

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**CAA 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:**

Element 3 is for the assessment of violations and whether compliance determinations following inspections are accurate. PADEP succeeded in achieving accurate compliance determinations, accurate HPV determinations, and timely HPV identification.

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**Explanation:**

Metric 7a assesses whether the facility files reviewed led to accurate compliance determinations. The file review found that 106 of the 107 compliance determinations reviewed were found to be accurate. Further, to assess for metric 8c, accuracy of HPV determinations, 74 potential and confirmed high priority violations (HPVs) were reviewed. Of the 74, 65 appeared to be accurately identified by PADEP. Regarding timeliness, of the 44 identified HPVs in FY22, all but 3 HPVs were identified within 90 days of the discovery action.

PADEP's Round 3 SRF report identified metrics 7a, 8c, and 13 at Meets Exceeds Expectations.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
7a Accurate compliance determinations [GOAL]	100%		106	107	99.1%
7a1 FRV 'discovery rate' based on inspections at active CMS sources		8.1%	227	1547	14.7%
8a HPV discovery rate at majors		2.5%	35	436	8%
8c Accuracy of HPV determinations [GOAL]	100%		65	74	87.8%
13 Timeliness of HPV Identification [GOAL]	100%	87.8%	41	44	93.2%

---

**State Response:**

We agree with EPA's findings and comments.

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## CAA 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:

Element 4 assesses whether enforcement responses are issued when necessary, and if those enforcement responses return facilities to compliance. PADEP achieved a finding level Meets or Exceeds Expectations for metrics 9a, 10a, 10b, and 14.

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### Explanation:

Metric 9a is used to determine whether the enforcement action will return the facility to compliance. The file review included the assessment of 41 enforcement actions which found that 39 of the 41 enforcement actions did or will return the facility to compliance.

PADEP succeeds in understanding and complying with the HPV policy. Metrics 10a and 10b address the timeliness of addressing HPVs or having a case development and resolution timelines (CD&RT) in place and whether HPVs have been addressed or removed consistent with the HPV Policy. PADEP achieved 100% for both metrics 10a and 10b.

Although PADEP is well-versed in developing CD&RTs and relaying the information at the quarterly Timely and Appropriate (T&A) calls, some of the CD&RTs reviewed were missing the pollutant at issue, one of the required CD&RT elements. Of the 16 CD&RTs reviewed, 14 had all of the required elements per the 2014 HPV Policy, a finding level of 87.5% for metric 14.

PADEP's Round 3 SRF report identified metrics 9a, 10a, 10b, and 14 at the Meets or Exceeds Expectations finding level.

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame, or the facility fixed the problem without a compliance schedule [GOAL]	100%		39	41	95.1%
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		24	24	100%
10a1 Rate of Addressing HPVs within 180 days		36.1%	8	46	17.4%
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		19	19	100%
10b1 Rate of managing HPVs without formal enforcement action	7.2%		5	46	10.9%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		14	16	87.5%

**State Response:**

We agree with EPA's findings.

To ensure that all Case Management Plans (CMP or CD&RT) address or include all required elements, we now include a prompt for the pollutant at issue along with the prompts for all other required CMP elements. These updates are provided on the quarterly calls with EPA.

**CAA Element 5 - Penalties**

**Finding 5-1**

Meets or Exceeds Expectations

**Recurring Issue:**

No

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**Summary:**

Element 5 assesses whether penalties are justified, documented, and include proof of payment. This is done through the analysis of metrics 11a, 12a, and 12b. PADEP achieved the Meets or Exceeds Expectations level for metrics 11a and 12b.

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**Explanation:**

Metric 11a assesses whether the penalty calculations document a gravity and economic benefit component. Twenty four of the 28 penalties reviewed documented amounts for both gravity and economic benefit, or a reason for mitigation if economic benefit was not included. According to PADEP, a portion of the files did not contain penalty calculation spreadsheets because they had been deleted after case completion and thus could not be reviewed as part of the file review. The four files without penalty calculations were considered incomplete for metric 11a. For metric 12b, all 28 penalties reviewed had documentation to prove that penalties were collected.

PADEP was found to be at the Meets or Exceeds Expectations in the Round 3 SRF report for metrics 11a and 12b.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%		24	28	85.7%
12b Penalties collected [GOAL]	100%		28	28	100%

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**State Response:**

We agree with EPA's findings.

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**CAA Element 5 - Penalties**

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**Finding 5-2**

Area for Attention

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**Recurring Issue:**

No

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**Summary:**

Metric 12a is a portion of Element 5, specifically used to assess whether after penalties are calculated, there is an explanation for any changes in the final penalty number collected. The file review found that 75% of the penalty numbers were not adjusted, however 25% of the penalties were adjusted and did not have a documented rationale.

---

**Explanation:**

Metric 12a analyzes whether there is documentation of rationale for difference between initial penalty calculation and final penalty amount. The file review found that 25% of the reviewed penalties did not have a rationale documenting the difference between the initial penalty number and the final penalty number.

PADEP explained that the initial calculated penalty is the number presented in court, if negotiations were not successful. If settlement is reached at a different penalty amount, PADEP does not have a set procedure to document this change in penalty from the initial calculated value. Since EPA file reviewers did not have any documentation to explain an adjusted penalty amount for seven of the 28 penalties, metric 12a has a finding level of 75%. It should be noted that a vast majority of the 28 penalties did not have an adjusted penalty amount and there were four instances of well documented adjusted penalties.

PADEP was found to be at the Meets or Exceeds Expectations in the Round 3 SRF report for metric 12a.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		21	28	75%

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**State Response:**

Metric 12a measures the documented rationale for the difference between the initial penalty calculation (for Air Quality it is the Assessed penalty amount) and the final penalty amount (for Air Quality it is the Settled amount via a consensual agreement or the Direct Assessment if the parties cannot reach an agreement).

We will ensure that the enforcement closure memos identify the rationale between the assessed and the ultimate settlement number. However, the Bureau of Air Quality considers penalty negotiation and adjustment to be internal deliberative discussions. In light of EPA's comments

related to Metric 12a for the SRF report, we reviewed the question with counsel who advised us that the penalty negotiation information would no longer be protected as internal deliberative upon its release to EPA or any other outside party. In order to protect this information from public release, Air Quality will provide a redacted version of these memos upon request in order to maintain this information as confidential.

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## Resource Conservation and Recovery Act Findings

### RCRA Element 1 - Data

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

Area for Attention

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#### **Recurring Issue:**

No

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#### **Summary:**

EPA observed that in 75.6% of the files reviewed, PADEP entered complete and accurate data into RCRAInfo, EPA's national database for the RCRA program.

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#### **Explanation:**

In ten of the 41 files reviewed, EPA found inaccurate or missing data elements. These instances include:

- incorrect evaluation types (CEI entered instead of FUI);
- incorrect violation citations;
- missing violation entries; and
- missing enforcement actions.

On average, PADEP accurately transcribed information from the file into RCRAInfo, but this is an area for which PADEP should lend more scrutiny to account for potential inconsistencies between file information and data entry as well as confirm data has been accurately translated from PADEP's eFacts database to EPA's RCRAInfo database.



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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2b Accurate entry of mandatory data [GOAL]	100%		31	41	75.6%

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**State Response:**

PA DEP agrees in part with EPA’s findings and recommendations. PA DEP has continued to increase its rate of data accuracy from 72.7% in the previous SRF review to 75.6% this SRF review. PA DEP believes that quarterly inspections conducted at a facility should be considered as a new CEI evaluation as it represents an independent evaluation of the facility. PA DEP disagrees with EPA that these should be identified as an FUI inspection type. These quarterly, on-site inspections include a new evaluation of performance and compliance at the facility for each inspection. Further, the PA DEP Program Description (current and in draft submittal) indicates that a CEI is a routine inspection of hazardous waste facilities to evaluate compliance with the requirements of RCRA. The department generally conducts more than one CEI at active treatment, storage or disposal facilities every year (emphasis added). The current draft Program Description indicates that a CEI is conducted at active treatment, storage or disposal facilities every quarter throughout each year (emphasis added).

A reduction in IT assistance with correcting errors that occur during data translation has been a challenge. Staff continue to work with IT to ensure that the translation process is up to date and working as intended to reduce the number of translation failures. PA DEP also transitioned to a new iPad platform in March 2022 to record inspections. It is possible that inexperience with the new platform may have led to incorrect and missing violation entries. Each site involved in this SRF assessment has been manually updated to meet data management needs.

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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:**

PADEP met their commitments for two-year inspection coverage of TSDFs by inspecting 93.5%

of the private TSDFs and 100% of the federal TSDFs.

PADEP met their annual inspection coverage of LQGs by inspecting 22.1% of the LQG universe.

PADEP also completed and finalized inspection reports timely, within 60 days, in 90.2% of the files reviewed.

**Explanation:**

PADEP’s hazardous waste (HW) grant workplan requires private TSDFs to be inspected every two years and federal TSDFs to be inspected annually. PADEP exceeded these requirements by inspecting 93.5% of the private TSDFs and 100% of the federal TSDFs.

Additionally, PADEP’s HW grant workplan requires inspections to be conducted at 20% of the LQG universe. PADEP’s LQG universe consists of 1158 facilities and PADEP conducted inspections at 256 of them, or 22.1%

PADEP's Hazardous Waste grant workplan does not have any goal requirements or commitments regarding metrics 5d1-number of SQGs inspected, 5e5 one-year count of VSQGs with inspections, 5e6 one-year count of transporters with inspection, or 5e7 one-year count of sites not covered by metrics 5a-5e6 with inspections. PADEP is not required to have goal requirements for these metrics, therefore the “State D” column in the metric table below is left blank.

In 90.2% of the files reviewed (37 out of 41), PADEP completed and finalized inspection reports timely, within the 60-day required timeframe. The four instances where EPA found reports were not completed and finalized within 60 days, they were completed in 61-77 days, with 77 days being the longest time period from inspection-to-inspection report finalization.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%		32	34	94.1%
5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL]	20%		256	1158	22.1%
5d1 Number of SQGs inspected	100% of commitments		217	-	
5e5 One-year count of very small quantity generators (VSQGs) with inspections	100% of commitments		210	-	

5e6 One-year count of transporters with inspections	100% of commitments		18	-	
5e7 One-year count of sites not covered by metrics 5a - 5e6 with inspections	100% of commitments%		118	-	
6b Timeliness of inspection report completion [GOAL]	100%		37	41	90.2%

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**State Response:**

**RCRA Element 2 - Inspections**

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**Finding 2-2**

Area for Attention

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**Recurring Issue:**

No

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**Summary:**

PADEP generated inspection reports that were complete and sufficient to determine compliance in 75.6% of the files reviewed.

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**Explanation:**

On average, EPA observed inspection reports that were complete and sufficient to determine compliance, and all appeared to be used successfully in follow-up enforcement actions. In ten out of 41 instances, EPA found that the inspection report needed additional information, such as a process description, hazardous waste generation and management information, information to confirm generator status, or more information/evidence to support violation determinations. PADEP should consider this metric as an area for state attention on which to improve.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		31	41	75.6%

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**State Response:**

PA DEP agrees in part with EPA's findings and recommendations. PA DEP believes that items such as process descriptions, waste generation and management information, and information to confirm generator status need not be reported with each quarterly inspection conducted at a facility. However, appropriate inspection checklists, photos, copies of training records and copies of manifests are included in inspection reports. An inspector can develop familiarity with a facility upon inspecting the site multiple times. Some information collection can seem redundant based upon experience and repetition. Nevertheless, PA DEP regional and central office staff will evaluate this finding and examine the means by which this information is recorded, how observations are documented and used to determine compliance, and the means by which PA DEP supports violation determinations.

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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:**

PADEP generally made accurate compliance determinations with 34 out of 40 being made accurately at 85%. Additionally, for SNC determinations that were made by PADEP in FY22, those determinations were made timely 100% of the time.

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**Explanation:**

EPA determined PADEP did not make an accurate compliance determination in six out of 41 files reviewed. Those six instances include where EPA noted violations were documented through observation descriptions within the inspection report where a violation determination was not made or that violation was not documented in follow up enforcement action(s).

Additionally, PADEP made two SNC determinations in FY22, both of which were determined timely, within 150 days of the first day of the inspection.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
2a Long-standing secondary violators			10		10
7a Accurate compliance determinations [GOAL]	100%		34	40	85%
7b Violations found during CEI and FCI inspections			228	800	28.5%
8a SNC identification rate at sites with CEI and FCI			2	1329	.2%
8b Timeliness of SNC determinations [GOAL]	100%		2	2	100%

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**State Response:**

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**RCRA Element 3 - Violations**

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**Finding 3-2**

Area for Improvement

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**Recurring Issue:**

Recurring from Round 3

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**Summary:**

PADEP made appropriate SNC determinations 70% of the time, or in 28 out of 40 files reviewed.

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**Explanation:**

In twelve instances, EPA found that when considering the nature and seriousness of the violations (potential for harm / extent of deviation), the number of violations, and whether PADEP issued a formal enforcement action and penalty against a facility, a SNC determination was warranted where one was not made. Additionally, at least one regional office was unaware that making a SNC determination was part of the enforcement process and did not know how to do so.

Although PADEP explained that in instances where facilities are cooperative, PADEP avoids designating them as a SNC, neither PADEP nor EPA's SNC policy lists "cooperation of facility"

as a deciding factor for making SNC determinations.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
8c Appropriate SNC determinations [GOAL]	100%		28	40	70%

**State Response:**

PA DEP agrees in part with EPA’s findings and recommendations. Of the 12 occurrences where EPA felt a SNC determination should have been made, PA DEP took an enforcement action in 7 of the 12 occurrences, and a penalty in 5 of the 12 occurrences. Because enforcement and penalty actions taken in these occurrences would likely be expected for SNC facilities, PA DEP views this as more of a data management issue than an issue with enforcement implementation. PA DEP also works closely with the regulated community in maintaining and achieving compliance through compliance assistance activities. However, PA DEP regional and central office staff will review and evaluate the conclusions and recommendations of the SNC guidance to ensure that appropriate SNC determinations are reached in accordance with the terms of that guidance. (Response is related to Finding 4-2)

**Recommendation:**

Rec #	Due Date	Recommendation
1	06/30/2024	PADEP should review and revise their SNC determination policy to ensure a process is in place for all regional offices to make appropriate SNC determinations. PADEP should submit the SNC determination policy to EPA by 6/30/2024 for review and comment.
2	10/31/2024	PADEP shall implement its revised SNC determination policy by 10/31/2024.
3	04/30/2025	PADEP, with assistance from EPA, shall train inspector/enforcement staff responsible for making and approving SNC determinations throughout all of PADEP regional offices. The training should include a review of PADEP's SNC determination policy, when an appropriate SNC determination is warranted, specific case examples of SNCs, and instructions on how to enter SNC determination information into eFacts and subsequently RCRAInfo.

4	06/30/2026	EPA shall verify during PADEP’s 2025 End of Year meeting and 2026 Mid-Year meeting that PADEP has improved on making appropriate SNC determinations. This shall be done through an agreed upon method by EPA and PADEP, which will include the review of a set of PADEP facility files selected prior to the 2025 End of Year and 2026 Mid-Year meetings. If EPA does not observe improvement in this metric by the 2026 Mid-Year meeting, PADEP shall revisit recommendations 1-3 above prior to its 2026 End of Year meeting.
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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:**

PADEP took enforcement actions that returned violators to compliance 93.3% of the time or in 28 out of thirty files reviewed.

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**Explanation:**

EPA found that in two instances, although the RCRAInfo database indicated violations had been returned to compliance, documentation to demonstrate return to compliance was not found in the file reviewed.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
9a Enforcement that returns sites to compliance [GOAL]	100%		28	30	93.3%
10a Timely enforcement taken to address SNC [GOAL]	80%		1	1	100%

**State Response:**

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**RCRA Element 4 - Enforcement**

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**Finding 4-2**

Area for Attention

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**Recurring Issue:**

No

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**Summary:**

PADEP took an appropriate enforcement action to address the violations 71% of the time or in 22 out of 31 files reviewed.

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**Explanation:**

EPA found that in nine files reviewed, an escalated enforcement action was warranted, (i.e., an NOV) where none was issued or a formal enforcement action and penalty where only an NOV was issued, or no enforcement action was taken. EPA noted that although it determined PADEP did not take an appropriate enforcement action in these nine instances, PADEP consistently brought facilities back into compliance, including in these nine instances.

EPA is finding this metric as an Area for Attention, as opposed to an Area for Improvement, also in part because EPA believes part of the root cause for this finding is PADEP's SNC determination process, allowing for consideration of the cooperation of a facility which is not an acceptable criterion, addressed in Finding 3-2 above. EPA believes that had PADEP made appropriate SNC determinations, the finding for this metric would be higher.

Additionally, in determining this metric as an Area for Attention, EPA considered that PADEP's violation policy states that,

“if the violations were minor and corrected prior to completion of the inspection, a copy of the inspection report left with the facility at the time of the inspection may serve as a (NOV) to the facility. Often, no further enforcement action may be necessary.”



**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
10b Appropriate enforcement taken to address violations [GOAL]	100%		22	31	71%

**State Response:**

PA DEP agrees in part with EPA’s findings and recommendations. PA DEP works closely with the regulated community in maintaining and achieving compliance through compliance assistance activities. PA DEP believes its use of discretion in not issuing enforcement actions may be warranted when violations are administrative errors, or those presenting little to no environmental harm, and when the violations are resolved quickly. PA DEP also believes its use of discretion in not issuing enforcement actions may be warranted when the facility is cooperative, transparent, and remains in constant communication with PA DEP. PA DEP believes this flexibility is provided within the guidance provided by the federal guidance *Hazardous Waste Civil Response Policy (2003)* in that the definition of Significant Non-Compliers includes the phrase “deviate substantially...from regulatory requirements.” PA DEP regional and central office staff will evaluate this finding to ensure appropriate enforcement actions are taken when needed. This finding will also be evaluated utilizing the following documents:

- Procedures for PADEP Field Staff for Identifying Significant Noncompliers (2014)
- Standards And Guidelines For Identifying, Tracking And Resolving Violations (2004) -
- Enforcement Actions (2023)
- Hazardous Waste Civil Response Policy (2003)

**RCRA Element 5 - Penalties**

**Finding 5-1**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

PADEP documented penalty collection 92.3% of the time in files reviewed.

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**Explanation:**

In cases where PADEP issued a penalty, EPA found that in twelve out of thirteen files reviewed, PADEP documented penalty collection. This was done through entry into the eFacts database, copies of paid checks, and/or through their explanation that a Consent Assessment of Civil Penalty (CACP) document would not be signed by PADEP unless the respondent had already paid the penalty. EPA recommends that PADEP revise their enforcement policy to reflect that a CACP is not signed by PADEP unless a penalty is already paid.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
12b Penalty collection [GOAL]	100%		12	13	92.3%

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**State Response:**

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**RCRA Element 5 - Penalties**

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**Finding 5-2**

Area for Attention

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**Recurring Issue:**

No

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**Summary:**

PADEP documented the consideration of gravity and economic benefit when calculating penalty 80% of the time, or in 12 out of 15 files reviewed.

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**Explanation:**

EPA found that in two regional offices penalty calculation documents are not maintained. In order to finalize a formal penalty action, PADEP issues a Consent Assessment of Civil Penalty (CACP) that documents the penalty calculation amount to the facility. The two regional offices that were found to not maintain penalty calculation documents, explained that because a CACP is not appealable, including the penalty calculation amount, once the CACP is filed, penalty calculation

documents are not maintained. EPA recommends that penalty calculation documents be maintained in all PADEP regional offices.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State Total</b>
11a Gravity and economic benefit [GOAL]	100%		12	15	80%

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**State Response:**

PA DEP agrees in part with EPA’s findings and recommendations. PA DEP regional offices do not document the negotiation process during enforcement meetings and do not keep penalty calculations after the case is closed. PA DEP will review and evaluate its policy for retaining documentation of penalty matrices and calculations.

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**RCRA Element 5 - Penalties**

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**Finding 5-3**

Area for Improvement

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**Recurring Issue:**

Recurring from Round 3

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**Summary:**

PADEP documented a rationale for difference between initial penalty calculation and final penalty 25% of the time or in two out of eight files reviewed.

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**Explanation:**

EPA found that it was not a standard practice of PADEP, throughout all of the PADEP regional offices, to document the rationale for the difference between initial penalty calculation and final penalty calculation. In six out of the eight files reviewed where there was a difference between the initial and final penalty calculation, there was no documentation of the rationale. In the two files where EPA observed documentation of the rationale, one of them was documented through an ability to pay analysis and the other was documentation of a re-calculation of the penalty through consideration of gravity of the violations.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		2	8	25%

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**State Response:**

PA DEP agrees in part with EPA’s findings and recommendations. The Bureau of Waste Management (BWM) has considered penalty negotiation and adjustments to be internal, deliberative discussions. PA DEP regional offices do not generally document the negotiation process during the enforcement process. The Department agrees that there has not been consistency amongst the regional offices.

PA DEP will review and evaluate its policies for retaining documentation of penalty matrices and calculations with the differences between an initial calculation and a final penalty. DEP will evaluate the Calculation of Civil Penalties policy along with the BWM’s records retention plan to determine an appropriate course of action. The development of the enforcement closure memo may be appropriately modified to address this finding.

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**Recommendation:**

Rec #	Due Date	Recommendation
1	04/30/2024	Inform EPA of how PADEP proposes to document the rationale for the difference between the initial penalty calculation and the final penalty collected.
2	09/30/2025	EPA will track the use of the revised SOP and PADEP's improvement on documenting the rationale of the difference between initial penalty calculation and final penalty collected during mid-year and end-of-year enforcement meetings through FY 2025. PADEP shall submit documentation for EPA's review at least two weeks prior to each mid-year and end-of-year meeting showing penalty rationales completed over the six months prior to each meeting. If the review results in metric improvement, with 75-85% accuracy, EPA will close the recommendation, but if it does not, the recommendation will be revisited in the following year.