

STATE REVIEW FRAMEWORK

Wyoming

**Clean Water Act, Clean Air Act, and
Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2023**

**U.S. Environmental Protection Agency
Region 8**

**Final Report
May 27, 2026**

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 and EPA regulations. 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) for each statute, around which the report is organized: data, inspections, violations, enforcement, and penalties. Wherever program performance is found to deviate significantly from performance 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 5th Round (FY2024-2028) of reviews, preceded by Round 4 (FY2018-23), 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 and remain.

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 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 includes results from previous SRF reviews, data metrics from the years in-between reviews, and 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 is to address significant performance issues and bring program performance back in line with federal policy and standards. All recommendations should include specific actions and a schedule for completion, and their implementation is monitored by the EPA until completion.

III. Review Process Information

Clean Water Act (CWA)

The offsite SRF file review of the Wyoming CWA NPDES Enforcement Program occurred during the period of May 28 – May 31, 2024. The Key EPA Review Contacts were: Brit Rustad, NPDES Lead, Akash Johnson, NPDES File Reviewer, and Stephanie Passarelli, NPDES File Reviewer. The Key State Contacts were: Kevin Wells, Jim Eisenhauer, Kevin Campbell, and Katherine McCrea.

Clean Air Act (CAA)

EPA R8 staff participating in the 2024 State Review Framework for CAA was Robert (Bob) Gallagher. The Kickoff letter was emailed to WDEQ on March 6, 2024. On June 11-12, 2024, EPA conducted an in-person review of WDEQ CAA files in Cheyenne. Present for WDEQ was Ann Shed.

Resource Conservation and Recovery Act (RCRA)

The offsite SRF file review of the Wyoming RCRA Program occurred during the period of July 15 – 26, 2024. The Key EPA Review Contact was Jackie Vega, RCRA Lead. The State contact was Nicole Twing, WDEQ Solid & Hazardous Waste Inspection and Compliance Program Manager.

Executive Summary

Clean Water Act

Areas of Strong Performance

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

- The state's permit limit data entry rate exceeded the national goal.
- The state's discharge monitoring report (DMR) data entry rate also exceeded the national goal.
- The state met its FY2023 inspection commitments for major facilities and Phase I and II MS4 audits or inspections.
- The state's inspection reports are generally completed within the timeframes specified in their Enforcement Management System (EMS).
- The state issued enforcement responses that returned, or will return, sources in violation to compliance.

Priority Issues to Address

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

- ICIS did not contain complete and accurate required data for facilities, enforcement actions, and penalties in at least 71% of files reviewed.
- The state did not meet its FY2023 commitments for sanitary sewer systems, concentrated animal feeding operations and Phase I and Phase II construction stormwater inspections.
- The state's inspection reports were not complete and sufficient to determine compliance in at least 71% of files reviewed.
- Compliance was not accurately determined in at least 71% of files reviewed.
- The state did not address violations in accordance with their EMS in at least 71% of files reviewed.
- The state did not provide penalty calculations to Region 8 EPA staff for review of element 5.

Finding Summary:

The table below lists only CWA metrics where an Area for Improvement was identified in either Round 4 or Round 5.

| Metric | Round 4 Finding Level | Round 5 Finding Level |
|--|-------------------------------|-------------------------------|
| 2b - 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. | Area for Improvement | Meets or Exceeds Expectations |
| 4a9 - Number of Phase I and Phase II construction stormwater inspections. | Meets or Exceeds Expectations | Area for Improvement |
| 4a10 - Number of comprehensive inspections of large and medium NPDES permitted concentrated animal feeding operations (CAFOs) | Meets or Exceeds Expectations | Area for Improvement |
| 6a - Inspection reports complete and sufficient to assess permit requirements at the facility and document inspector observations. | Meets or Exceeds Expectations | Area for Improvement |
| 7e - Accuracy of compliance determinations in inspection reports | Meets or Exceeds Expectations | Area for Improvement |
| 10b - Enforcement responses reviewed that address violations in a timely and appropriate manner. | Area for Attention | Area for Improvement |
| 11a - Penalty calculations reviewed that document and include gravity and economic benefit | Meets or Exceeds Expectations | Area for Improvement |
| 12a - Documentation of rationale for difference between initial penalty calculation and final penalty | Meets or Exceeds Expectations | Area for Improvement |
| 12b - Penalties collected | Meets or Exceeds Expectations | Area for Improvement |

Clean Air Act

Areas of Strong Performance

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

- The state achieved timely reporting of compliance monitoring MDRs into ICIS Air for 96.1% of files reviewed.
- The state achieved timely reporting of stack tests and stack test results into ICIS Air for 98.3% of reports reviewed.
- The state achieved timely reporting of enforcement MDRs into ICIS Air for 100% of reports reviewed.
- The state has achieved accurate data entry into the national data system for 96% of reports reviewed.

Priority Issues to Address

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

- The state achieved timely reporting for HPVs in 20% (1 out of 5) HPVs entered into ICIS Air.

Finding Summary:

| Metric | Round 4 Finding Level | Round 5 Finding Level |
|---|-----------------------|-------------------------------|
| 2b - Complete and accurate entry of mandatory data. | Area for Improvement | Meets or Exceeds Expectations |
| 3a2 - Timely reporting of HPV determinations [GOAL] | Area for Improvement | Area for Improvement |
| 10b - Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL] | Area for Improvement | Meets or Exceeds Expectations |
| 11a - Gravity and economic benefit [GOAL] | Area for Improvement | Area for Attention |
| 12a - Documentation of rationale for difference between proposed penalty calculation and final penalty. | Area for Improvement | Area for Attention |

Resource Conservation and Recovery Act

Areas of Strong Performance

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

- The state does an excellent job with inspection coverage of large quantity generators (LQGs) and Treatment, Storage, and Disposal Facilities (TSDFs), meeting or exceeding the national goals for all inspection coverage areas.
- The areas of report timeliness met the requirements of national inspection and enforcement policies.
- Inspection reports are consistently completed quickly after the inspection, and all reports were completed within appropriate timeframes.

Priority Issues to Address

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

- Inspection report quality did not consistently meet the requirements of national inspection and enforcement policies. Inspection reports reviewed did not all contain sufficient information to determine compliance.
- For secondary violations, the state usually writes a letter to the facility detailing violations found and a timeframe for returning to compliance. The state had not determined these letters to be informal enforcement actions, which can result in follow-up compliance not being tracked in RCRAInfo.
- The state did not provide penalty calculations to Region 8 EPA staff for review of this element.

Finding Summary:

| Metric | Round 4 Finding Level | Round 5 Finding Level |
|---|-------------------------------|------------------------------|
| 6a - Inspection reports sufficient to determine compliance. | Meets or Exceeds Expectations | Area for Improvement |
| 11a - Gravity and economic benefit [GOAL] | Meets or Exceeds Expectations | Area for Improvement |
| 12a - Documentation of rationale for difference between proposed penalty calculation and final penalty. | Meets or Exceeds Expectations | Area for Improvement |
| 12b - Penalty collection [GOAL] | Meets or Exceeds Expectations | Area for Improvement |

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state's permit limit data entry rate exceeded the national goal. The state's discharge monitoring report (DMR) data entry rate also exceeded the national goal.

Explanation:

For Metric 1b5 on completeness of data entry on major and non-major permit limits, the state's permit limit data entry rate was 100%, exceeding the national goal of 95% and the national average of 99.9%.

For Metric 1b6 on completeness of data entry on major and non-major discharge monitoring reports, the state's DMR data entry rate was 95.5%, exceeding the national goal of 95%.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|-----------|----------|---------|---------|---------|
| 1b5 Permit limit data entry rate for major and non-major facilities | 95% | 99.9% | 259 | 259 | 100% |
| 1b6 Discharge monitoring report (DMR) data entry rate for major and non-major facilities. | 95% | 96.9% | 12674 | 13272 | 95.5% |

State Response:

WDEQ will continue to meet or exceed NPDES data entry goals for DMR limits in permits.

CWA Element 1 - Data

Finding 1-2Area for Improvement

Recurring Issue:Yes

Summary:

ICIS did not contain complete and accurate required data for all facilities, enforcement actions, and penalties.

Explanation:

For Metric 2b on files reviewed where data are accurately reflected in the national data system, 2 of 35 files reviewed (5.7%), met the minimum data requirements of the EPA's National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (40 CFR 127, Appendix A).

Instances where the minimum data requirements were not met are outlined below:

1. In 14 instances, the facility information including name, address, SIC code or lat/long was incorrectly reflected in ICIS.
 2. In 12 instances, inspection report dates were not entered correctly into ICIS or were not entered at all.
 3. In 13 instances, enforcement action dates were not entered correctly into ICIS.
 4. In three instances, enforcement actions were not entered into ICIS.
 5. In 14 instances, single event violations (SEVs) were not entered or closed correctly in ICIS.
 6. In one instance, permit status had not been updated in ICIS.
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Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|------------------|-----------------|----------------|----------------|----------------|
| 2b Files reviewed where data are accurately reflected in the national data system [GOAL] | 100% | | 2 | 35 | 5.7% |

State Response:

These Data Element issues were generally minor date discrepancies, duplications, or data flow issues that have been corrected since 2023 (the performance year reviewed). WDEQ did identify a specific data flow issue following this review. Some informal enforcement actions issued in 2023 did not flow from the State database (WYIMS) into ICIS. This issue has been resolved, and those actions are now flowing correctly into ICIS. Overall, the “Data Element” category is redundant to the other 4 categories, since all categories were evaluated strictly on the basis of data. WDEQ recommends removing this category in future SRF reviews, since EPA conducts these reviews entirely within ICIS and State databases now. Any data issues will show up in the other 4 categories.

WDEQ commits to recommendation #1 below. WDEQ does not commit to all items in recommendations 2 & 3. Violations for effluent exceedances and non-submittal of DMR data are autogenerated in ICIS. WDEQ may initiate informal enforcement actions based on those violations, but those informal enforcement actions are not subject to the e-reporting rule. Inspections and SEV’s are subject to the e-reporting rule, and WDEQ will commit to the actions in recommendations 2 & 3 for those items.

EPA Response:

Thank you for the feedback on this recommendation. Region 8 will bring your data element redundancy comment to the attention of EPA’s Office of Enforcement and Compliance Assurance (OECA) so it can be evaluated as part of any SRF revisions. We encourage WDEQ to also share this concern with Environmental Council of the States (ECOS).

The e-reporting rule requires informal enforcement actions to be reported. Below are the specific requirements to report informal enforcement actions:

- 40 CFR 127.21 states, “States, tribes, and territories that have received authorization from EPA to implement the NPDES program must electronically transfer to EPA all information listed in appendix A to this part.” 40 CFR 127 Appendix A, Table 2 “Enforcement Action Information” requires the “Enforcement Action Type” to be electronically reported into ICIS. Table 2 indicates, “The unique code/description that identifies the type for each formal or informal enforcement action. This code/description identifies, for example, whether the enforcement action is a civil judicial referral, a notice of violation, an administrative penalty order, administrative order, or criminal prosecution.”
 - Also, 40 CFR 123.41(a) states, “Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction. This includes the timely data transfers in compliance with all requirements of 40 CFR parts 3 and 127 (including the required data elements in appendix A to part 127)”
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Recommendation:

| Rec # | Due Date | Recommendation |
|--------------|-----------------|--|
| 1 | 12/31/2026 | The state shall provide training to staff on the minimum required data elements expected for all facilities in ICIS. By December 31, 2026 provide to the EPA the date, participants and a summary of the training provided. |
| 2 | 06/30/2027 | The state must implement a process to ensure that all inspections, SEVs and enforcement actions are entered into ICIS according to 40 CFR 127. By June 30, 2027, the state will submit to EPA a summary of the state's procedures for ensuring inspections, SEVs and all enforcement actions are correctly and consistently entered in ICIS. |
| 3 | 12/31/2027 | By December 31, 2027, the state will provide the EPA a list of all FY2027 inspections, informal enforcement actions, and formal enforcement actions. The EPA will then request and review 5 randomly selected inspection reports with and without violations reported and enforcement actions from the list provided by the state to verify that all required data are entered into ICIS. EPA will close this recommendation when at least 71% of inspection and enforcement data are accurately reported in ICIS. |

CWA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state met its FY2023 inspection commitments for NPDES major facilities and Phase I and II MS4 audits or inspections. The state's inspection reports are generally completed within the timeframe specified in their EMS.

Explanation:

For Metric 4a7 on the number of Phase I and Phase II MS4 audits or inspections, the state committed to two audits or inspections and completed two in FY2023 (100%). The national goal is 100% of the state's inspection commitments.

For Metric 4a8 on the number of industrial stormwater inspections, the state committed to conduct 112 industrial stormwater inspections and completed 102 in FY2023 (91.1%). The national goal is 100% of the state's inspection commitments.

For Metric 5a1 on the number of major NPDES facilities inspected, the state committed to conduct inspections at 25 facilities and completed 25 in FY2023 (100%). The national goal is 100% of the state's inspection commitments.

For Metric 6b on timeliness of inspection report completion, 35 of 38 inspection reports reviewed (92.1%) were completed within the 30-60 days' timeframe specified in the state's Environmental Management System (EMS). The national goal is 100%.

No commitments are required for Metrics 4a1, 4a2, 4a4, and 4a11 since these program areas are not delegated to the state. For Metric 4a4, there are no combined sewer systems in the state.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|--|------------------|-----------------|----------------|----------------|--------------------|
| 4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL] | 100% CMS | | 0 | 0 | 0 |
| 4a2 EPA or state Significant Industrial User inspections for SIUs discharging to nonauthorized POTWs | 100% CMS | | 0 | 0 | 0 |
| 4a4 Number of CSO inspections. [GOAL] | 100% CMS | | 0 | 0 | 0 |
| 4a7 Number of Phase I and II MS4 audits or inspections. [GOAL] | 100% CMS | | 2 | 2 | 100% |
| 4a8 Number of industrial stormwater inspections. [GOAL] | 100% CMS | | 102 | 112 | 91.1% |
| 4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL] | 100% CMS | | 0 | 0 | 0 |
| 5a1 Percentage of NPDES major facilities with individual or general permits inspected | 100% CMS | 51.7% | 25 | 25 | 100% |
| 6b Timeliness of inspection report completion [GOAL] | 100% | | 35 | 38 | 92.1% |

State Response:

WDEQ will continue to meet or exceed NPDES inspection goals for major facilities and MS4 permits. Please note that metric 4a7 (Number of Phase I and II MS4 audits or inspections) in the Finding Summary under “Priority Issues to Address” (above), identifies this as an “area for improvement.” However, EPA correctly noted elsewhere in this report that WDEQ completed 100% of its planned MS4 inspections in 2023. Therefore, this appears to be a typographical error in that section of the report.

EPA Response:

Thank you for pointing out the typo on metric 4a7 "area of improvement" in the table under "priority issues to address". EPA incorporated this correction into the final report.

CWA Element 2 - Inspections

Finding 2-2

Area for Attention

Recurring Issue:

No

Summary:

The state did not meet its FY23 commitments for inspection coverage of NPDES non-majors.

Explanation:

For Metric 5b on inspections coverage of NPDES non-majors (individual and general permits), the state committed to inspect 355 non-major NPDES facilities, but only 297 were completed (83.7%). The national goal is 100% of the state's Compliance Monitoring Strategy (CMS) commitment.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|-----------|----------|---------|---------|---------|
| 5b Inspections coverage of NPDES non-majors (individual and general permits) [GOAL] | 100% CMS | | 297 | 355 | 83.7% |

State Response:

WDEQ will re-evaluate inspection goals in the next planning cycle. 355 non-major inspections are likely not achievable if any vacancies occur during the year within the inspection staff. WDEQ has experienced a vacancy rate of 10-20% among field inspection staff within the WYPDES program for 5 of the last 5 years. Statewide efforts are underway to increase staff retention and reduce vacancy rates.

EPA Response:

Thank you for your feedback on this finding. We appreciate the state's efforts to increase staff retention and reduce vacancy rates.

CWA Element 2 - Inspections

Finding 2-3

Area for Improvement

Recurring Issue:

No

Summary:

The state did not meet its FY2023 commitments for the following inspection types: concentrated animal feeding operation inspections, sanitary sewer systems (SSS) and Phase I and Phase II construction stormwater inspections. Additionally, the state's inspection reports were not consistently complete and sufficient to determine compliance.

Explanation:

For Metric 4a5 on the number of SSS inspections, the state committed to five inspections and completed zero in FY2023 (0%). The national goal is 100% of the state's inspection commitments.

For Metric 4a9 on the number of Phase I and Phase II construction stormwater inspections, the state committed to 56 construction stormwater inspections and completed 34 in FY2023 (60.7%). The national goal is 100% of the state's inspection commitments.

For Metric 4a10 on the number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs), the state committed to 27 concentrated animal feeding operation inspections and completed three in FY2023 (11.1%). The national goal is 100% of the state's inspection commitments.

For Metric 6a on inspection reports complete and sufficient to determine compliance at the facility, 12 of 38 inspection reports reviewed (31.6%) were complete and sufficient to determine compliance at facilities. The national goal is 100%. Elements missing from inspection reports include:

- In 14 files, inspection reports did not include chain of custody, holding times or analysis to support the analytical reports.
- In six files, inspection report narratives do not discuss what areas were or were not reviewed as required by the state's SOP. Additionally, photos were not used consistently to document inspections and in some cases, reports included no photos to support the inspection activity.
- In 10 files, inspection reports do not cite permit violations as required by state's SOP.

- In three files, inspection reports do not specify which records were requested or reviewed as required by state's SOP.
- In two files, the inspection report was unclear which entity collected which samples or what parameters were sampled.
- In three files, not all non-compliance issues/exceedances found during the inspection are described in the corrective action section of the report per the state's SOP.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State Total |
|--|------------------|-----------------|----------------|----------------|--------------------|
| 4a5 Number of SSS inspections. [GOAL] | 100% CMS | | 0 | 5 | 0% |
| 4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL] | 100% of CMS | | 34 | 56 | 60.7% |
| 4a10 Number of comprehensive inspections of large and medium NPDES permitted concentrated animal feeding operations (CAFOs) [GOAL] | 100% CMS | | 3 | 27 | 11.1% |
| 6a Inspection reports complete and sufficient to assess permit requirements at the facility and document inspector observations. | 100% | | 12 | 38 | 31.6% |

State Response:

WDEQ did not commit to 5 Sanitary Sewer System inspections in 2023. WDEQ committed to doing up to 5 joint inspections of POTW's with EPA, if requested. None were requested by EPA. Additionally, WDEQ will be revising CAFO inspection goals in the next planning cycle. Most CAFO facilities in Wyoming are disconnected from Waters of the United States, and are not subject to EPA oversight. The next annual inspection plan will set a goal of 5 CAFO inspections. Construction Stormwater inspection goals will be revised downward also to cover priority areas located near WOTUS. WDEQ commits to recommendations 1 & 2 below.

EPA Response:

We understand there may be some confusion regarding the Sanitary Sewer System (SSS) inspections. During the SRF process, the EPA provided the Metric 4a table to WDEQ. The state added in the metric 4a table that they committed to do 5 SSS inspections in FY23, however there

was no specific number of SSS inspections in the Wyoming FY23 inspection plan. EPA and the state will work on ensuring that future inspection plans have a specific number of SSS inspections committed for the year that align with the requirements of the CMS. The CMS states, “The minimum inspection coverage goal for SSSs is for regions and states to conduct comprehensive inspections of at least 5% of SSSs each year.”

EPA recognizes and appreciates that the state has committed to perform Concentrated Animal Feedlot Operations (CAFO) and Stormwater Construction inspections above the required compliance monitoring plan requirements in past years.

- Regarding future commitments for CAFOs inspections, the CMS states, “EPA recommends that states and regions conduct a comprehensive inspection of NPDES permitted CAFOs at least once every five years to evaluate compliance with the permit, including terms of the nutrient management plan, reporting and recordkeeping.” Wyoming can decrease their CAFO inspection to 20% of the universe. No alternative inspection plan is required if Wyoming is at or above 20% inspection coverage of the universe for CAFO facilities.
 - Regarding future commitments for Stormwater Construction inspections the CMS states, “The minimum recommended inspection frequency for this metric is a joint EPA and state goal to inspect at least 10% of the regulated construction sites annually.” Wyoming can decrease their stormwater construction and industrial inspection to 10% of the universe. No alternative inspection plan is required if Wyoming is at or above 10% inspection coverage of the universe for both stormwater construction and industrial facilities.
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Recommendation:

| Rec # | Due Date | Recommendation |
|--------------|-----------------|--|
| 1 | 06/30/2027 | By June 30, 2027, the EPA will review FY2026 inspection coverage against the state’s approved FY2026 WYPDES inspection plan and close this recommendation if the state reaches 100% of their inspection goals for each of the program areas (Sanitary Sewer Systems, Phase I and Phase II construction stormwater and CAFOs). |
| 2 | 12/31/2027 | Ensure that all reports include required elements designated in the state’s SOPs. Ensure that analytical data is included in inspection reports supporting sampling procedures and results. Ensure that sampling data is clearly documented in reports. By December 31, 2027, the EPA will randomly select five inspections reports from FY2027 to verify they are complete and sufficient to determine compliance at the facility, for all the above-mentioned deficiencies. The EPA will close this recommendation if at least 71% of the inspection reports reviewed include the required inspection report elements in the state’s SOP and clearly document sampling data. |

CWA Element 3 - Violations

Finding 3-1

Area for Improvement

Recurring Issue:

No

Summary:

In all files reviewed, compliance was determined accurately in 22 of 36 (61.1%) files.

Explanation:

For Metric 7e on accuracy of compliance determinations, the state returned accurate compliance determinations in 22 of 36 (61.1%) relevant files reviewed. Documents reviewed for compliance determinations included inspection reports, cover letters, and other correspondence associated with compliance monitoring. The national goal of accuracy of compliance determinations is 100%. Common issues related to accuracy of compliance determinations are:

- In two files, samples taken during the inspection which resulted in numeric effluent limit excursions were not identified as deficiencies in the inspection reports.
- In nine files, DMR noncompliance was not identified as a deficiency or was identified incorrectly in the inspection reports.
- In three files, the narrative and photos indicate deficiencies, but no deficiencies were identified in the inspection reports.

Metrics 7j1, 7k1, 8a3, and 8a4 are review indicator metrics which are not used to develop findings. Review indicator metrics use national averages to indicate when agencies diverge from national norms and are used to identify areas for further analysis during the file review. When an indicator diverges significantly from the national average, the EPA should pull a sufficient sample of files to evaluate the issue during file review. No concerns were identified with these four-indicator metrics.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|------------------|-----------------|----------------|----------------|----------------|
| 7e Accuracy of compliance determinations [GOAL] | 100% | | 22 | 36 | 61.1% |
| 7j1 Number of major and non-major NPDES facilities with new single-event violations reported that began in the review year | | | 72 | | 72 |
| 7k1 Major and non-major facilities in noncompliance. | | 14.3% | 570 | 2006 | 28.4% |
| 8a3 Percentage of active major facilities in SNC and non-major individual permit facilities in Category I noncompliance during the fiscal year | | 4.7% | 239 | 1992 | 12% |
| 8a4 Percentage of active non-major general permit facilities in Category I noncompliance during the reporting year | | 3.6% | 98 | 1439 | 6.8% |

State Response:

These were generally minor details relating to the content of inspection reports. For example, “In nine files, DMR noncompliance was not identified as a deficiency or was identified incorrectly in the inspection reports.” DMR violations are autogenerated in ICIS and nothing in the e-reporting

rule requires them to be re-stated in field inspection reports. EPA additionally notes, “In two files, samples taken during the inspection which resulted in numeric effluent limit excursions were not identified as deficiencies in the inspection reports.” Those effluent concentrations were within 10% of the permitted effluent limit, and did not constitute actionable violations, per Wyoming EMS guidelines. WDEQ does not commit to all items in Recommendation #1 below. DMR violations and non-actionable permit limit excursions (<1.1 x permit limit) will only appear in the corrective action section if the issue is ongoing and needs to be addressed as a corrective action.

WDEQ does commit to the remaining item in recommendation #1 below: By June 30, 2026, provide relevant training to staff as deemed appropriate by the state.

EPA Response:

WDEQ’s inspection SOP states that DMR non-compliance must be noted on inspection reports. SOP R-002 states, “For all non-compliance issues identified as a result of the record inspection, provide the specific citation from the permit of Wyoming Water Quality Rules and Regulations that the operator has violated” and “Within the Corrective Action section of the report, describe what will be required of the permittee to correct the non-compliance issue(s).”

EPA could not find a reference in the WDEQ EMS allowing enforcement discretion for effluent limit exceedances of 10%. The Clean Water Act does not allow for a 10% blanket enforcement waiver for effluent exceedances. Additionally, the two files referenced in the report were for exceedances of 20% and 40% above the permit limit. We do recognize that WDEQ has enforcement discretion, but we recommend that enforcement discretion be applied in limited circumstances for very specific scenarios rather than a blanket allowable exceedance.

EPA found that there were some instances of ongoing violations that were not being addressed consistent with the EMS. In one instance, our file review indicated that an inspection report had a box checked “No” for “is the facility in SNC”. The facility was currently in SNC as well as during previous three quarters of this review period. Part of the inspection included document review. Also, according to WYIMS, a Letter of Violation (LOV) was sent four months prior to this inspection regarding their SNC status for exceedances. This was not discussed in the report nor the fact that the exceedances were still occurring. Also, this major facility had been in SNC for numerous quarters and no enforcement escalation had occurred.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | 06/30/2027 | Ensure that all non-compliance, including numeric effluent limit violations and DMR violations, are identified during inspections, are correctly identified in inspection reports, and are included in the corrective action section of the report as required by the state’s SOP. Provide relevant training to staff as deemed appropriate by the state. By June 30, 2027, EPA will randomly select 5 inspections reports from the first half of FY2027 to verify the accuracy of compliance determinations. The EPA will close this recommendation if at least 71% of the files pulled have accurately determined compliance. |

CWA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state issued enforcement responses that returned, or will return, sources in violation to compliance.

Explanation:

For Metric 9a on percentage of enforcement responses that returned, or will return, a source in violation to compliance, the state issued enforcement responses in 25 out of 28 (89.3%) of the files reviewed. The national goal is 100%.

Metrics 10a1, 10a2, 10a3, and 10a4 are review indicator metrics which are not used to develop findings.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|------------------|-----------------|----------------|----------------|----------------|
| 9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL] | 100% | | 25 | 28 | 89.3% |
| 10a1 Percentage of major individually permitted NPDES facilities with formal enforcement action taken in a timely manner in response to late DMR SNC violations | | 0% | 0 | 0 | 0 |
| 10a2 Percentage of major individually permitted NPDES facilities with formal enforcement action taken in a timely manner in response to missing DMR SNC violations | | 2.9% | 0 | 0 | 0 |
| 10a3 Percentage of major individually permitted NPDES facilities with formal enforcement action taken in a timely manner in response to SNC effluent violations | | 24.6% | 1 | 2 | 50% |
| 10a4 Percentage of major individually permitted NPDES facilities with formal enforcement action taken in a timely manner in response to SNC compliance schedule violations | | 0% | 0 | 0 | 0 |

State Response:

No changes needed in response to finding 4-1. WDEQ will continue to focus on returning facilities in noncompliance to compliance.

CWA Element 4 - Enforcement

Finding 4-2

Area for Improvement

Recurring Issue:

No

Summary:

The state did not address all violations in accordance with their EMS.

Explanation:

For Metric 10b on enforcement responses reviewed that address violations in a timely and appropriate manner, the state addressed violations in accordance with their EMS in 23 out of 33 (69.7%) files reviewed. The national goal is 100%. The files lacking an enforcement response to address violations in an appropriate manner are outlined below, with some files fitting into more than one of these categories:

- In nine instances, enforcement required by the State's EMS was not taken to address violations.
 - In two instances, escalation of enforcement did not occur in accordance with the EMS.
 - In one instance, an enforcement response was not taken in a timely manner in accordance with the EMS.
-

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|-----------|----------|---------|---------|---------|
| 10b Enforcement responses reviewed that address violations in a timely and appropriate manner. | 100% | | 23 | 33 | 69.7% |

State Response:

This is an area that EPA continues to misunderstand, despite receiving detailed explanations from WDEQ, relating to the files and actions under review. For example, in the first item noted above, EPA misunderstands the state's EMS. Wyoming is not "required" to take an enforcement action if a pre-emptive plan is received from the permittee outlining the corrective actions they are undertaking. WDEQ can issue an enforcement action at its discretion if the permittee slips on those corrective actions, or otherwise fails to return to compliance. In addition, escalation of enforcement

(2nd bullet item) can be similarly avoided in certain cases where there are clear corrective actions being undertaken by the permittee.

This process conforms with Wyoming statute § 35-11-701(c), whereby WDEQ “may, by conference, conciliation and persuasion, endeavor promptly to eliminate the source or cause of the violation.”

Only in the case of failure to correct or remedy an alleged violation, would WDEQ necessarily escalate enforcement action. WDEQ commits to recommendation #1 below.

EPA Response:

EPA understands that Wyoming has enforcement discretion when a facility has a plan to return to compliance. EPA recommends inclusion of documentation for the facility’s compliance plans in the facility’s record.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|--|
| 1 | 12/31/2027 | Ensure that enforcement responses are being issued in a timely and appropriate manner in accordance with the state’s EMS, particularly as it relates to DMR noncompliance. Provide relevant training to staff as deemed appropriate by the state. By December 31, 2027, EPA will randomly select 5 files from FY2027 to verify enforcement responses are being addressed in a timely and appropriate manner. The EPA will close this recommendation if at least 71% of the files pulled have appropriate and timely enforcement responses. |

CWA Element 5 - Penalties

Finding 5-1

Area for Improvement

Recurring Issue:

No

Summary:

The state did not provide penalty calculations to the EPA for review of this element.

Explanation:

The state did not provide penalty calculations to the EPA for review of this element. The EPA was unable to determine if and how penalties were being determined by the state. After receiving the State's comments, EPA worked collaboratively with the state to address their concerns regarding this recommendation. The explanation below and recommendation were modified to reflect these conversations. The state is developing a penalty calculation memo template to share future individual penalty calculations with the EPA in accordance with the EPA Barnes memo of 1986 and the EPA Ruckelshaus memo of 1984.

Relevant metrics:

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

State Response:

NPDES penalties are calculated and issued at the discretion of the State. Nothing in the CWA or the State's primacy agreement compels the State to share details of its penalty calculations with EPA. Section 309 only requires that NPDES authorities consider the "nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require." WDEQ considers all of these things when calculating penalties, and therefore complies with Section 309.

WDEQ does not commit to Recommendation #1 or #2 below. See also EPA Draft Report for CAA Element 5 – Penalties: AQD Response to EPA Findings.

EPA Response:

We understand WDEQs interest in keeping penalty calculations confidential. One of EPA's roles is to oversee state delegated programs. 40 CFR 123.41 states, "Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction." The state is developing a penalty calculation memo template to share future individual

penalty calculations with the EPA in accordance with the EPA Barnes memo of 1986 and the EPA Ruckelshaus memo of 1984.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | 12/31/2027 | <p>The state is developing a penalty calculation memo template to document and share their final penalty calculations with the EPA in accordance with the EPA Barnes memo of 1986 and the EPA Ruckelshaus memo of 1984. The penalty calculation memo should include the following information:</p> <p>Note: these questions apply to final penalties calculated and not to draft penalties calculations.</p> <ol style="list-style-type: none"> 1. Did the penalty calculation include and document a gravity component? 2. Did the penalty calculation include and document calculation of economic benefit? 3. If economic benefit was not included in the penalty calculation, document the reasons for mitigating the economic benefit component. 4. Amount of initial penalty calculated: 5. Amount of final penalty assessed: 6. If there were differences between the initial penalty value calculated and the final penalty assessed, document the rationale for the reduction of the penalty amount. 7. Date penalty was collected: 8. Documentation of appropriate follow-up measures, if penalty was not paid. <p>By December 31, 2027, the state will provide to the EPA five penalty calculation memos from FY2027 to verify penalty metrics 11a, 12a and 12b. The EPA will close this recommendation if at least 71% of the penalty calculation memos reviewed have met the goals of penalty metrics 11a 12a and 12b.</p> |

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Area for Improvement

Recurring Issue:

Recurring from Round 4

Summary:

The state achieved timely reporting for HPVs in 20% (1 out of 5) HPVs entered into ICIS Air.

Explanation:

WDEQ enters HPV information into ICIS AIR after an NOV is issued. In some cases, more information and more time may be needed to determine the status of compliance at a facility; therefore, the HPV may be considered untimely depending on how long the process of gathering information takes. The four late HPVs reviewed missed the 60-day deadline and were 84, 86, 122, and 258 days from Day Zero before being entered into ICIS. Region 8 suggests that “day zero” be set based on the date in which sufficient information was submitted that identifies HPVs.

Regarding the State of Wyoming response, this SRF occurred in fiscal year 2023, prior to the June 19, 2024, WAQD letter to EPA and the WAQD's addition of "As resources allow...".

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|-----------|----------|---------|---------|---------|
| 3a2 Timely reporting of HPV determinations [GOAL] | 100% | 53% | 1 | 5 | 20% |

State Response:

Wyoming Air Quality Division (WAQD) enters the HPV Day zero into ICIS as soon as all of the relevant information regarding the violation(s) has been reviewed and a determination can be made. WAQD stated in a June 19, 2024, letter to EPA that this Performance Partnership Agreement (PPA) commitment was reduced to “As resources allow, WAQD will input timely inspection and enforcement activity data involving major emitting sources into EPA’s ICIS-Air data base

including HPVs.” WAQD has and continues to meet its PPA commitment. Therefore, the WAQD disagrees with EPA’s findings and recommendations.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|--|
| 1 | 01/31/2027 | An audit should be performed on all HPVs, between January 1, 2026, and December 31, 2026, and an ICIS Air report should be sent to EPA by January 31, 2027, demonstrating that recent HPVs have achieved timely reporting. |
| 2 | 09/30/2026 | EPA will monitor the metric 3a2 and when it is greater than 71%, the recommendation will be closed. |
| 3 | 01/31/2027 | Also, facilities with HPVs showing in ECHO should be reviewed semiannually to determine if the HPV has been closed and that information will need to be entered into ICIS. Semiannually, the state will submit to EPA a list the HPVs that are showing as current in ICIS/ECHO. EPA will review the list and determine the accuracy. When the list is at least 71% accurate, this recommendation will be closed. |

CAA Element 1 - Data

Finding 1-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state achieved timely reporting of compliance monitoring MDRs into ICIS Air for 96.1% of files reviewed. The state achieved timely reporting of stack tests and stack test results into ICIS Air for 98.3% of reports reviewed. The state has achieved accurate data entry into the national data system for 96% of reports reviewed.

Explanation:

The state is doing well at timely reporting of information into ICIS Air. WDEQ has inspectors that review stack test reports and timely entered that information into ICIS AIR.

The state is doing well at entering correct data into the national database; however, there were still a few entries with zip codes listed with the place holder of “99999”. If more accurate information is available, it should be utilized; however, EPA realizes the rural nature of these facilities.

Regarding the State of Wyoming response, EPA concurs with their recommendation.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|------------------|-----------------|----------------|----------------|----------------|
| 2b Files reviewed where data are accurately reflected in the national data system [GOAL] | 100% | | 24 | 25 | 96% |
| 3b1 Timely reporting of compliance monitoring MDRs [GOAL] | 100% | 85.3% | 174 | 181 | 96.1% |
| 3b2 Timely reporting of stack test dates and results [GOAL] | 100% | 74.7% | 453 | 461 | 98.3% |
| 3b3 Timely reporting of enforcement MDRs [GOAL] | 100% | 82.4% | 7 | 7 | 100% |

State Response:

EPA previously directed the WAQD to use 99999 as the zip code for facilities for which no zip code could be determined, many of which also had no address information. After receiving the preliminary draft Round 4 SRF for FFY 2017, the Division performed an audit and updated the facility location information for the Title V facilities with the section-township-range or latitude/longitude coordinates. As a follow-up to the Round 5 SRF for FFY2023, the Division has again performed an audit on the facility information for the Title V facilities. Using mapping software, WAQD determined and then entered into ICIS, the zip codes for the Title V facilities for which 99999 had been used.

The minor sources that had enforcement entered in EPA’s previous database will not be updated with zip codes since WAQD no longer enters enforcement of minor sources into ICIS. WAQD’s proposed solution to EPA’s new recommendation would be to remove the minor sources with the

99999 zip code from ICIS. Please let WAQD know if EPA concurs with WAQD's recommendation.

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state achieved FCE Coverage of Majors and Mega-sites with results entered into ICIS Air for 98.3% of inspections conducted. The state achieved FCE Coverage of SM-80s with results entered into ICIS Air for 100% of inspections conducted. The state reviewed Title V Annual Compliance Certifications with results entered into ICIS Air for 98.2% of the certifications. The state achieved appropriate documentation of the FCE Elements for 100% of FCEs reviewed. The state had appropriate information, including stack test reports reviewed, for compliance determination for 100% of Compliance Monitoring Reports (CMRs) reviewed.

Explanation:

The state has done well at conducting all FCEs on-site and reviewing Annual Certifications.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|-----------|----------|---------|---------|---------|
| 5a FCE coverage: majors and mega-sites [GOAL] | 100% | 86% | 58 | 59 | 98.3% |
| 5b FCE coverage: SM-80s [GOAL] | 100% | 92.7% | 4 | 4 | 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% | 79.1% | 107 | 109 | 98.2% |
| 6a Documentation of FCE elements [GOAL] | 100% | | 31 | 31 | 100% |
| 6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL] | 100% | | 33 | 33 | 100% |

State Response: WAQD concurs with EPA’s findings.

CAA Element 3 - Violations**Finding 3-1**

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The federally reportable violation (FRV) ‘discovery rate’ based on inspections at active CMS sources was 3.5% and the HPV discovery rate at majors was 4.6%. The state achieved accurate compliance determinations for 100% of CMRs reviewed. The state achieved accurate HPV determinations for 100% of HPVs reviewed.

Explanation:

The state has done well with the accuracy of HPV identifications and determinations as well as compliance determinations for CMRs.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|-----------|----------|---------|---------|---------|
| 7a Accurate compliance determinations [GOAL] | 100% | | 37 | 37 | 100% |
| 7a1 FRV 'discovery rate' based on inspections at active CMS sources | | 9.3% | 5 | 142 | 3.5% |
| 8a HPV discovery rate at majors | | 2.5% | 5 | 108 | 4.6% |
| 8c Accuracy of HPV determinations [GOAL] | 100% | | 12 | 12 | 100% |

State Response: WAQD concurs with EPA's findings.

CAA Element 3 - Violations

Finding 3-2

Area for Attention

Recurring Issue:

No

Summary:

The state achieved Timeliness of HPV Identification with results entered into ICIS Air 80% (4 of 5) of the time.

Explanation:

The state is doing a good job at identifying HPVs and timely entering them into ICIS 80% of the time. However, EPA asked for an explanation from the state for the one instance where the HPV

Identification was not timely entered into ICIS. In this instance, WAQD included additional violations identified following the drafting of an NOV regarding the initial federally reportable violations. During the process of amending the FRV NOV to include HPV violations in ICIS, WAQD was not able to meet EPA’s HPV timeliness policy. EPA agrees it is appropriate to include additional noncompliance, unfortunately, this metric doesn’t take this circumstance into account. One potential solution in the future is to utilize the discovery date of the last identified HPV violation as the start date for the action.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|------------------|-----------------|----------------|----------------|----------------|
| 13 Timeliness of HPV Identification [GOAL] | 100% | 88% | 4 | 5 | 80% |

State Response:

HPV’s are an EPA policy construct. There are no EPA CAA statutes or regulations addressing HPVs. WAQD’s explanation of the one instance where the HPV was not timely entered into ICIS per EPA’s policy is: The initial violations were identified as Federally Reportable Violations (FRV) and an NOV was drafted. At about the same time the NOV was drafted, additional HPV violations were identified. The Division decided to include the additional violations in the original NOV. During the process of amending the FRV NOV to include HPV violations in ICIS, AQD was not able to meet EPA’s HPV timeliness policy.

CAA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state addressed HPVs within 180 days for 100% of HPVs reviewed. The state achieved corrective action to return to compliance in a specified timeframe for 100% of reviewed enforcement actions. The state achieved HPV Case Development and Resolution Timeline with

required policy elements for 100% of reviewed HPVs. The Rate of managing HPVs without formal enforcement action was 0% (0 out of 4).

Explanation:

The state addressed HPVs within 180 days for 100% of HPVs reviewed. The state achieved corrective action to return to compliance in a specified timeframe for 100% of reviewed enforcement actions. The state achieved timeliness of addressing HPVs 100% of reviewed HPVs. The state achieved HPV Case Development and Resolution Timeline with required policy elements for 100% of reviewed HPVs.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|-----------|----------|---------|---------|---------|
| 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% | | 10 | 10 | 100% |
| 10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place | 100% | | 10 | 10 | 100% |
| 10a1 Rate of Addressing HPVs within 180 days | | 35.8% | 4 | 4 | 100% |
| 10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL] | 100% | | 10 | 10 | 100% |
| 10b1 Rate of managing HPVs without formal enforcement action | | 11.1% | 0 | 4 | 0% |
| 14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL] | 100% | | 10 | 10 | 100% |

State Response: WAQD concurs with EPA’s findings.

CAA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state showed penalty collected in 100% (5 of 5) of cases reviewed.

Explanation:

The state is doing a great job of collecting penalties related to CAA enforcement.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|----------------------------------|-----------|----------|---------|---------|---------|
| 12b Penalties collected [GOAL] | 100% | | 5 | 5 | 100% |

State Response: WAQD concurs with EPA's findings.

CAA Element 5 - Penalties

Finding 5-2

Area for Attention

Recurring Issue:

No

Summary:

The state shared publicly available information documenting gravity and economic benefit in 80% (4 of 5) of cases reviewed. The state showed documented rationale for difference between initial and final penalty calculations in 80% (4 of 5) of cases reviewed.

Explanation:

The one case where the state did not show penalty calculations and rationale for the difference between initial penalty and final penalty calculations was an enforcement action that took place prior to a Common Interest Agreement that was signed by WAQD and EPA related to the review of CAA enforcement actions by the state. The Common Interest Agreement is a document that gives the EPA the ability to review the state's publicly available penalty calculations while keeping information regarding the state's enforcement procedures confidential.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|------------------|-----------------|----------------|----------------|----------------|
| 11a Penalty calculations reviewed that document gravity and economic benefit [GOAL] | 100% | | 4 | 5 | 80% |
| 12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL] | 100% | | 4 | 5 | 80% |

State Response:

EPA states in its Report Overview (pg 2) that it evaluated state performance “against performance standards laid out in federal statute, regulations, policy, and guidance.” WAQD appreciates EPA’s oversight role to assure that WAQD’s performance met applicable legal requirements under the Clean Air Act statutes and regulations, ie. the law. However, to the extent that EPA evaluated WAQD’s performance against EPA policy or guidance, WAQD maintains that EPA went beyond the bounds of its oversight role because EPA “policy and guidance” do not bind and are not legally required to be followed or implemented by states.

One area in which it appears that EPA and WAQD differ, is with respect to penalty calculations. Under Wyoming state law, in order to obtain a “penalty” for air quality violations, the attorney general must file a civil action in a court of competent jurisdiction, or the department and alleged violator negotiate a settlement that includes payment of a penalty: “Penalties and injunctive relief under this subsection are to be determined by a court of competent jurisdiction in a civil action, provided that nothing herein shall preclude the department from negotiating stipulated settlements involving the payment of a penalty, implementation of compliance schedules or other settlement conditions in lieu of litigation.” Wyo. Stat. § 35-11-901(a)(ii); see also § 35-11-903(c) and § 35-11-424(c). Under Wyoming law, civil actions and settlements routinely require payments, and may also require corrective actions, supplemental or environmentally beneficial measures, or other provisions. And, In the spirit of cooperative federalism, and EPA’s delegation of primacy to

Wyoming, it is within WAQD's purview to set penalties at appropriate levels as long as they are within the bounds of federal laws.

EPA's Finding 5-2 intimates that the WAQD showed confidential penalty calculations to EPA during this Review. The WAQD did not. During Round 5 of the State Review Framework, the WAQD shared with EPA the representative penalty calculations authorized by Wyo. Stat. § 35-11-901, as well as settlement documents reflecting the negotiated settlement results. (please see the attachments for the four specific facilities; see also AQD's October 16, 2019 Response to EPAR8; DEQ Comments on EPA Draft FY 2021 State Oversight Plan). The Common Interest Agreement covered EPA's Round 4 SRF document review. The WAQD did not provide any confidential documents to EPA for this Round 5 SRF Review. Instead, the WAQD provided the publicly available documents for the requested files that are attached to this response.

The WAQD maintains that it has met the statutory and legal CAA requirements applicable to penalties.

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Data entry requirements for compliance and enforcement activities generally appear to be accurate and complete in the RCRAInfo database (RCRAInfo).

Explanation:

For Metric 2b on accurate entry of mandatory data, for 24 of the 28 files reviewed, the state entered data accurately into RCRAInfo (86%). The national goal is 100%. There were four facilities for which inspection and enforcement data were not entered accurately. The WDEQ RCRA program plans on correcting the data for the four facilities.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|-----------|----------|---------|---------|---------|
| 2b Complete and accurate entry of mandatory data. | 100% | | 24 | 28 | 85.7% |

State Response:

Although WYDEQ agrees with the overall finding of this element, the WYDEQ does not agree with the explanation. The explanation provided does not identify the four facilities that EPA claims were not entered accurately into RCRAInfo. EPA speculates that not including a written narrative may have contributed to the inaccurate entries. WYDEQ understands that a written narrative is a recommendation of EPA and is not a requirement. WYDEQ requests EPA identify the four facilities that were not entered accurately into RCRAInfo. WYDEQ is not able to review the specific inspection reports to either agree or disagree with EPA interpretation that the reports were inadequate and caused the inaccurate entries.

EPA Response:

After receiving the State's comments, EPA worked with WDEQ and provided the information requested. The explanation above was revised to reflect these conversations and agreement between EPA and WDEQ regarding plans on correcting the data errors based on the additional information provided. It was not EPA's intention to imply that the inaccurate entries were caused by inadequate reports.

RCRA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state does an excellent job with inspection coverage of large quantity generators (LQGs) and Treatment, Storage, and Disposal Facilities (TSDFs), meeting or exceeding the national goals for all inspection coverage areas. The areas of report timeliness met the requirements of national inspection and enforcement policies. Inspection reports are consistently completed within appropriate timeframes.

Explanation:

For Metric 5a on two-year inspection coverage of operating TSDFs, two facilities, or 100%, were inspected within the prescribed two-year timeframe. The national average is 88.7%.

For Metric 5b1 on annual inspection coverage of LQGs using the RCRAinfo universe, inspections were conducted by the state at 30.2% of the active RCRAinfo LQG universe (13 out of 43 LQGs). The national goal is 20% and the national average is 9%. LQGs generate 1,000 kilograms (2,200 lbs.) of hazardous waste or more than one kilogram (2.2 lbs.) of acutely hazardous waste per calendar month.

For Metric 6b on the timeliness of inspection report completion, 28 out of 28 files reviewed were completed within the 150-day policy prescribed by the Hazardous Waste Civil Enforcement Response Policy (2003) (100%). The national goal is 100%.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|------------------|-----------------|----------------|----------------|----------------|
| 5a Two-year inspection coverage of operating TSDFs [GOAL] | 100% | 88.7% | 2 | 2 | 100% |
| 5b1 Annual inspection coverage of LQGs and reverse distributor (RD) universes combined using RCRAInfo universe [GOAL] | 20% | 9% | 13 | 43 | 30.2% |
| 6b Timeliness of inspection report completion [GOAL] | 100% | | 28 | 28 | 100% |

State Response:

WYDEQ agrees with the overall finding and the explanation of this element.

RCRA Element 2 - Inspections

Finding 2-2

Area for Improvement

Recurring Issue:

No

Summary:

Inspection report quality did not consistently meet the requirements of national inspection and enforcement policies. Not all inspection reports reviewed contained sufficient information to determine compliance.

Explanation:

For Metric 6a on inspection reports that are complete and sufficient to determine compliance, 18 out of 28 files reviewed were complete and sufficient to determine compliance (64.3%). The national goal is 100%. Ten inspection reports did not contain sufficient narrative discussion per the RCRA Inspection Manual (1998 version), that (a) explains the overall nature of a facility's activities; (b) discusses manufacturing and waste management operations at the facility; (c) describes the generation and handling of wastes; and (d) describes apparent violations and discusses the documentary evidence supporting a determination that a facility has a violation, as

required to determine report completeness. The RCRA Inspection Manual lists narrative information as a key element of an inspection report. Regarding the minimum report recommendations, inspectors are encouraged to include a written narrative for all reports explaining a facility's activities and manufacturing and waste management operations at the facility. Thorough descriptions of violations are needed when potential violations are observed. The RCRA Inspection Manual states, "Inspectors should include, as part of their inspection reports, all documentation that is intended to provide evidence of suspected violations." Checklists are routinely included, and photographs are sometimes included within the checklists. Completeness of the checklists is inconsistent between inspectors.

Some of the reports reviewed were very thorough with written narratives, detailed descriptions of violations, and photographs of the site. These reports can be used as templates, especially for inspections with violations identified.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|------------------|-----------------|----------------|----------------|----------------|
| 6a Inspection reports sufficient to determine compliance. | 100% | | 18 | 28 | 64.3% |

State Response:

WYDEQ strongly disagrees with the overall finding and explanation of this element. WYDEQ inspection reports are sufficient to determine compliance. WYDEQ uses a notice of inspection form and the appropriate checklist for the facility type inspected and inspectors document violations. EPA commented that photographs are sometimes included within the checklists. WYDEQ includes photographs when appropriate and may not at every inspection. Further, photographs are not required or recommended in accordance with the EPA RCRA Inspection Manual and are not a required aspect of an inspection.

EPA states that thorough descriptions of violations observed during an inspection is needed in some of the reports. WYDEQ points out that this is a subjective review comment and is not consistent with the EPA's RCRA Inspection Manual or EPA's comments found in Element 3 - Violations of this report. This manual simply recommends that an inspector record information collected during an inspection in a variety of forms: field notebook, checklist, photographs, maps, and drawings. EPA states "The state makes accurate compliance determinations based on violations described in inspection reports and enters them into the national database." In addition, WYDEQ has maintained the same process, procedures, policies, and templates during the EPA SRF Round 1 through Round 4. Further, WYDEQ staff had minimal employee changeover from EPA SRF Round 1 to Round 4. After reviewing the previous evaluations, WYDEQ noted that the EPA Evaluator has changed in SRF Round 5 that has provided a more subjective review.

For reference, EPA has provided the following comments on WYDEQ inspection reports in previous SRF evaluations:

Round 1: “All of the inspection reports reviewed were of high quality, thereby allowing appropriate compliance determinations. All of the reviewed reports met the basic requirement of completely determining the compliance status for the appropriate areas reviewed under Wyoming hazardous waste regulations. WYDEQ readily identifies all apparent violations during or just after inspections upon completion of inspection reports.”

Round 2: “The state inspection reports properly document observations and include accurate descriptions of observations.”

Round 3: EPA did not provide any evaluation comments.

Round 4: Inspection reports are timely and thorough allowing appropriate violation determination.

Considering WYDEQ’s previous evaluations and consistent program management and the clear shift in EPA’s interpretation and application of policy, WYDEQ strongly disagrees with EPA’s recommendations 1 and 2 below. WYDEQ does not commit to recommendations 1 and 2. WYDEQ recommends a collaborative approach to address EPA’s new interpretation of long-standing policies and procedures.

EPA Response:

After receiving the State’s comments, EPA worked collaboratively with WDEQ to address their concerns regarding these recommendations. Additional information has been provided supporting the area of improvement determination for inspection reports. The explanations above and recommendation were modified to allow more flexibility for improving inspection reports and due dates were extended.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | Completed | The state should implement a mechanism to ensure inspection reports include minimum requirements for all RCRA inspectors to follow by 3/02/26. The mechanism needs to ensure that reports include a narrative discussion that: a) explains the overall nature of a facility’s activities; b) discusses manufacturing and waste management operations at the facility; c) describes the generation and handling of wastes; and d) describes apparent violations and discusses the documentary evidence supporting a determination that a facility has a violation. |
| 2 | 10/01/2027 | Following implementation of the inspection report mechanism, EPA will review 10 randomly selected inspection reports during FY26 to ensure minimum requirements are being met. |

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state makes accurate compliance determinations based on violations described in inspection reports and enters them into the national database. The significant noncompliance (SNC) determinations performed during this review period were both timely and appropriate.

Explanation:

For Metric 7a on accurate compliance determinations, 27 of the 28 compliance determinations were determined to be accurate (96.4%). The national goal is 100%. Metric 7a is based on the evidence in the inspection reports corresponding to the determination of violations. The state accurately identifies violations from the information included in the reports. However, in one of the reports, a container accumulation labeling violation appeared to be found, which was not

included in the letter back to the facility. The violation was not marked on the checklist correctly, and there was no indication of the labeling violation being corrected. For inspections when violations were found, the proper SNC determinations appear to have been made from the information in the reports.

For Metric 7b on violations found during compliance evaluation inspections (CEI) and focused compliance inspections (FCI), the state found violations in 39 of 253 inspections (15.4%). The national average is 40.7%.

For Metric 8a on SNC identification rate at sites with CEI and FCI compliance evaluations, the state identified SNCs in 0 of 393 inspections (0%). The national average is 1.9%.

Metrics 7b and 8a are review indicator metrics, which are not used to develop findings. Review indicator metrics use national averages to indicate when agencies diverge from national norms and are used to identify areas for further analysis during the file review. When an indicator diverges significantly from the national average, the EPA should pull a sufficient sample of files to evaluate the issue during the file review.

Two files were reviewed from 2020, and a SNC was identified. An enforcement action (Notice of Violation) was taken by Wyoming 56 days after the SNC was identified.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|------------------|-----------------|----------------|----------------|----------------|
| 2a Long-standing secondary violators | | | 5 | | 5 |
| 7a Accurate compliance determinations [GOAL] | 100% | | 27 | 28 | 96.4% |
| 7b Violations found during CEI and FCI inspections | | 40.7% | 39 | 253 | 15.4% |
| 8a SNC identification rate at sites with CEI and FCI | | 1.9% | 0 | 393 | 0% |
| 8b Timeliness of SNC determinations [GOAL] | 100% | 90% | 0 | 0 | 0 |
| 8c Appropriate SNC determinations [GOAL] | 100% | | 10 | 10 | 100% |

State Response:

WYDEQ agrees with the overall finding of this element. EPA states that one of the reports did not correctly identify a violation to the facility. WYDEQ requests EPA identify the violation and facility that was not notified of a violation so that WYDEQ can either agree or disagree with EPA interpretation of the inspection reports.

EPA Response:

After receiving the State's comments, EPA worked with WDEQ and provided the information requested. The explanation above was revised to reflect the additional information about the compliance determination.

RCRA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state requires corrective measures in their formal and informal actions to return facilities to compliance. For most secondary violations, letters are sent to the facility detailing violations with timeframes for compliance. This usually results in the facility returning to compliance.

Explanation:

For Metric 9a on enforcement that returns to compliance, 8 of the 9 formal and informal enforcement actions resulted in a return to compliance (88.9%). For 1 of the facilities, a 30-day compliance letter had been sent to the facility, but a return to compliance date was not shown in RCRAInfo. The national goal is 100%.

For Metric 10a on the number of SNC evaluations with timely enforcement, no SNCs were identified during the period reviewed.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|-----------|----------|---------|---------|---------|
| 9a Enforcement that returns violators to compliance. | 100% | | 8 | 9 | 88.9% |
| 10a Timely enforcement taken to address SNC [GOAL] | 80% | 89.1% | 0 | 0 | |

State Response:

WYDEQ agrees with the overall finding of this element. EPA states that one of the reports did not correctly identify a violation to the facility. WYDEQ requests EPA identify the violation and facility that was not notified of a violation so that WYDEQ can either agree or disagree with EPA interpretation of the inspection reports.

EPA Response:

After receiving the State's comments, EPA worked with WDEQ and provided the information requested.

RCRA Element 4 - Enforcement

Finding 4-2

Area for Attention

Recurring Issue:

No

Summary:

For secondary violations, the state usually writes a letter to the facility detailing violations found and a timeframe for returning to compliance. The state had not determined these letters to be informal enforcement actions, which can result in follow-up compliance not being tracked in RCRAInfo.

Explanation:

For Metric 10b on appropriate enforcement taken to address violations, 7 of the 9 enforcement actions were determined to be appropriate (77.8%). The national goal is 100%.

For secondary violators, the 2003 Hazardous Waste Civil Enforcement Response Policy (ERP) states that informal enforcement is the minimally appropriate response. Some of the inspection reports stated that the facility corrected violations during the inspection. These were not considered to need an informal enforcement response. For many of the inspections with secondary violations, a letter was sent to the facility describing the violations found and actions needed within a specific time frame. For most of the violations, a return to compliance date is entered. However, the state had not determined these letters to be informal enforcement actions. Managing these letters as informal enforcement actions and entering them into RCRAInfo with the compliance dates would meet the requirements of the ERP and ensure that these violations are tracked and returned to compliance.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|--|------------------|-----------------|----------------|----------------|----------------|
| 10b Appropriate enforcement taken to address violations [GOAL] | 100% | | 7 | 9 | 77.8% |

State Response:

WYDEQ disagrees with the overall finding and explanation of this element. WYDEQ provides a compliance assistance approach with facilities to ensure regulations and standards are met. If a facility is found to be in noncompliance, WYDEQ works with facilities to reach compliance. However, if compliance is not met, WYDEQ escalates enforcement actions. WYDEQ uses a letter of violation and may also issue a warning letter. Formal enforcement actions can be taken but are not always taken. This compliance and enforcement process conforms with Wyoming Statute § 35-11-701(c), whereby WYDEQ “may, by conference, conciliation and persuasion, endeavor promptly to eliminate the source or cause of the violation.” Only in the case of failure to correct or remedy an alleged violation, would WYDEQ necessarily escalate enforcement actions. WYDEQ tracks inspections and facility compliance as described in the 2016 Memorandum of Agreement Between the WYDEQ and EPA Region 8 Office for the Administration of the RCRA Hazardous Waste Program and in the approved 2023 Hazardous Waste Program Authorization.

EPA states that follow-up compliance is not tracked. This statement is inaccurate. Each Inspection and Compliance Program inspector is responsible for tracking of the status of the violations they have issued as described in the approved 2023 Hazardous Waste Program Authorization.

EPA Response:

After receiving the State’s comments, EPA worked collaboratively with WDEQ to address their concerns. The explanation above was modified based on WDEQ’s response. This is an area for attention suggesting that secondary violations be entered into RCRAInfo, and that warning letters be identified as informal actions. This issue does not mean that formal enforcement needs to be taken for secondary violations, especially when facilities return to compliance.

RCRA Element 5 - Penalties

Finding 5-1

Area for Improvement

Recurring Issue:

No

Summary:

The state did not provide penalty calculations to the EPA for review of this element.

Explanation:

The state did not provide penalty calculations to the EPA for review of this element. The EPA was unable to determine if and how penalties were being determined by the state.

No penalties were assessed by the state during the FY23 review period. A file from FY20 was chosen with a final penalty of \$6,642. The state provided the enforcement action and other relevant files for this case, but the penalty calculations information was not provided to evaluate whether the state included economic benefit and gravity. The state has committed to develop a worksheet for RCRA to convey more detailed penalty information, including gravity and economic benefit.

Relevant metrics:

| Metric ID Number and Description | Natl Goal | Natl Avg | State N | State D | State % |
|---|-----------|----------|---------|---------|---------|
| 11a Gravity and economic benefit [GOAL] | 100% | | 0 | 1 | 0% |
| 12a Documentation of rationale for difference between proposed penalty calculation and final penalty. | 100% | | 0 | 1 | 0% |
| 12b Penalty collection [GOAL] | 100% | | 0 | 1 | 0% |

State Response:

WYDEQ strongly disagrees with the overall finding and explanation of this element. The explanation above is inaccurate. WYDEQ did provide documentation of the penalty collection and documentation was provided that showed the proposed penalty was equal to the penalty collected. However, WYDEQ agrees that the penalty calculation was not provided.

The Inspection and Compliance Program uses the RCRA civil policy and the existing Wyoming State Statutes as stated in the approved 2023 Hazardous Waste Authorization. WYDEQ does not commit to recommendations 1 and 2. *See also EPA Draft Report for CAA Element 5 – Penalties: AQD Response to EPA Findings.*

EPA Response:

After receiving the State’s comments, EPA worked collaboratively with WDEQ to address their concerns regarding this recommendation. The explanation and recommendation were modified to reflect these conversations. The state is developing a penalty calculation memo template to share future individual penalty calculations with the EPA in accordance with the EPA Barnes memo of 1986 and the EPA Ruckelshaus memo of 1984.

Recommendation:

| Rec # | Due Date | Recommendation |
|-------|------------|---|
| 1 | 12/31/2026 | <p>The state is developing a penalty calculation memo template to document and share their final penalty calculations with the EPA in accordance with the EPA Barnes memo of 1986 and the EPA Ruckelshaus memo of 1984. The penalty calculation memo should include the following information:</p> <p>Note: these questions apply to final penalties calculated and not to draft penalties calculations.</p> <ol style="list-style-type: none"> 1. Did the penalty calculation include and document a gravity component? 2. Did the penalty calculation include and document calculation of economic benefit? 3. If economic benefit was not included in the penalty calculation, document the reasons for mitigating the economic benefit component. 4. Amount of initial penalty calculated: 5. Amount of final penalty assessed: 6. If there were differences between the initial penalty value calculated and the final penalty assessed, document the rationale for the reduction of the penalty amount. 7. Date penalty was collected: 8. Documentation of appropriate follow-up measures, if penalty was not paid. <p>The EPA will close this recommendation upon review of the template and agreement that it meets the above criteria.</p> |