

STATE REVIEW FRAMEWORK

Mississippi

**Clean Water Act, Clean Air Act, and
Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2014**

**U.S. Environmental Protection Agency
Region 4, Atlanta**

**Final Report
March 3, 2016**

Executive Summary

Introduction

EPA Region 4 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Mississippi Department of Environmental Quality (DEQ).

EPA bases SRF findings on data and file review metrics, and conversations with program management and staff. EPA will track recommended actions from the review in the SRF Tracker and publish reports and recommendations on EPA's ECHO web site.

Areas of Strong Performance

- CWA and RCRA files accurately reflected data in the national data systems. Key data metrics for majors were also entered.
- CWA and CAA inspection reports were well written, complete, and documented accurate compliance determinations.
- CAA high priority violations (HPVs) were accurately identified.
- CAA penalty documentation demonstrated consideration of gravity and economic benefit and documented the rationale for differences between the initial and final penalty.
- DEQ addressed RCRA and CAA violators with appropriate enforcement actions that return facilities to compliance. RCRA enforcement actions were also timely.
- CAA, CWA and RCRA collected final enforcement penalties.

Priority Issues to Address¹

The following are the top-priority issues affecting the state program's performance:

- DEQ should provide the rationale for the exclusion of the economic benefit of noncompliance in CWA and RCRA penalty calculations.
- DEQ should improve the timeliness of CWA and RCRA inspection reports and compliance monitoring reports to better comply with the State's inspection protocols.
- DEQ should improve the timeliness of CAA data reporting into the national database

¹ EPA's "National Strategy for Improving Oversight of State Enforcement Performance" identifies the following as significant recurrent issues: "Widespread and persistent data inaccuracy and incompleteness, which make it hard to identify when serious problems exist or to track state actions; routine failure of states to identify and report significant noncompliance; routine failure of states to take timely or appropriate enforcement actions to return violating facilities to compliance, potentially allowing pollution to continue unabated; failure of states to take appropriate penalty actions, which results in ineffective deterrence for noncompliance and an unleveled playing field for companies that do comply; use of enforcement orders to circumvent standards or to extend permits without appropriate notice and comment; and failure to inspect and enforce in some regulated sectors."

Most Significant CWA-NPDES Program Issues

- DEQ's enforcement responses are not always timely, do not always achieve a return to compliance, and enforcement responses do not always address violations in an appropriate manner.

Most Significant CAA Stationary Source Program Issues

- Minimum data requirements (MDRs) associated with HPVs, stack tests, and enforcement actions were not always reported timely.

Most Significant RCRA Subtitle C Program Issues

- There are concerns regarding accurate RCRA violation identification and documentation by MDEQ inspectors. This could be addressed with inspector refresher training on the RCRA regulatory requirements and/or DEQ's inspection and enforcement protocols.
- RCRA Significant Noncompliers (SNCs) are not consistently identified by the state in the national RCRA database, RCRAInfo. This data feeds into EPA's national database (ECHO) which provides compliance and enforcement information to the public, government agencies, and the regulated community.

Table of Contents

I. Background on the State Review Framework	1
II. SRF Review Process.....	2
III. SRF Findings	3
Clean Air Act Findings	4
Clean Water Act Findings	13
Resource Conservation and Recovery Act Findings.....	27

I. Background on the State Review Framework

The State Review Framework (SRF) is designed to ensure that EPA conducts nationally consistent oversight. It reviews the following local, state, and EPA compliance and enforcement programs:

- Clean Water Act National Pollutant Discharge Elimination System
- Clean Air Act Stationary Sources (Title V)
- Resource Conservation and Recovery Act Subtitle C

Reviews cover:

- **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, determination of significant noncompliance (SNC) for the CWA and RCRA programs and high priority violations (HPV) for the CAA program, and accuracy of compliance determinations
- **Enforcement** — timeliness and appropriateness, returning facilities to compliance
- **Penalties** — calculation including gravity and economic benefit components, assessment, and collection

EPA conducts SRF reviews in three phases:

- Analyzing information from the national data systems in the form of data metrics
- Reviewing facility files and compiling file metrics
- Development of findings and recommendations

EPA builds consultation into the SRF to ensure that EPA and the state understand the causes of issues and agree, to the degree possible, on actions needed to address them. SRF reports capture the agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state programs.

Each state's programs are reviewed once during each SRF cycle. The first round of SRF reviews began in FY 2004, and the second round began in FY 2009. The third round of reviews began in FY 2013 and will continue through 2017.

II. SRF Review Process

Review period: FY 2014

Key dates: March 4, 2015: letter sent to the State kicking off the Round 3 review
May 11-15, 2015: onsite file reviews for CWA, RCRA and CAA programs

State and EPA key contacts for review:

	Mississippi DEQ	EPA Region 4
SRF Coordinator		Kelly Sisario, Enforcement Coordinator
CAA	Chris Sanders, Chief, Environmental Compliance & Enforcement Division, Office of Pollution Control	Mark Fite, Office of Enforcement Coordination Todd Groendyke, Air, Pesticides & Toxics Management Division
CWA		Ronald Mikulak, Office of Enforcement Coordination Ahmad Dromgoole, Water Protection Division
RCRA		Shannon Maher, Office of Enforcement Coordination Hector Danois, Resource Conservation & Restoration Division

III. SRF Findings

Findings represent EPA's conclusions regarding state performance and are based on observations made during the data and/or file reviews and may also be informed by:

- Annual data metric reviews conducted since the state's last SRF review
- Follow-up conversations with state agency personnel
- Review of previous SRF reports, Memoranda of Agreement, or other data sources
- Additional information collected to determine an issue's severity and root causes

There are three categories of findings:

Meets or Exceeds Expectations: The SRF was established to define a base level or floor for enforcement program performance. This rating describes a situation where the base level is met and no performance deficiency is identified, or a state performs above national program expectations.

Area for State Attention: An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, the state should correct the issue without additional EPA oversight. EPA may make recommendations to improve performance, but it will not monitor these recommendations for completion between SRF reviews. These areas are not highlighted as significant in the executive summary.

Area for State Improvement: An activity, process, or policy that one or more SRF metrics show as a significant problem that the agency is required to address. Recommendations should address root causes. These recommendations must have well-defined timelines and milestones for completion, and EPA will monitor them for completion between SRF reviews in the SRF Tracker.

Whenever a metric indicates a major performance issue, EPA will write up a finding of Area for State Improvement, regardless of other metric values pertaining to a particular element.

The relevant SRF metrics are listed within each finding. The following information is provided for each metric:

- **Metric ID Number and Description:** The metric's SRF identification number and a description of what the metric measures.
- **Natl Goal:** The national goal, if applicable, of the metric, or the CMS commitment that the state has made.
- **Natl Avg:** The national average across all states, territories, and the District of Columbia.
- **State N:** For metrics expressed as percentages, the numerator.
- **State D:** The denominator.
- **State % or #:** The percentage, or if the metric is expressed as a whole number, the count.

Clean Air Act Findings

CAA Element 1 — Data																													
Finding 1-1	Area for State Attention																												
Summary	MDR data reported by MDEQ into AFS is accurate for most files. Discrepancies between the files and AFS were identified in about 19% of the files reviewed.																												
Explanation	<p>Metric 2b indicated that 21 of the 26 (80.8%) files reviewed had all MDRs reported accurately into AFS. The remaining 5 files had one or more discrepancies identified. The most significant inaccuracies related to missing air programs and subparts for applicable Maximum Achievable Control Technology (MACT) or New Source Performance Standards (NSPS) regulations in AFS. Other discrepancies related to facility information (name, address, zip), and a few sources had inaccurate activity data entered in AFS (e.g. missing NOVs, HPVs).</p> <p>This incorrect data could potentially hinder EPA's oversight and targeting efforts or result in inaccurate information being released to the public. However, these instances do not appear to represent a systemic problem, and EPA expects the state will be able to self-correct the identified discrepancies.</p> <p>Metrics 7b1 and 7b3 indicated that MDEQ's violation reporting into AFS associated with notices of violation (NOVs) and HPVs exceeds the national average. Supplemental file reviews showed that MDEQ was reporting non-HPV violations in AFS.</p>																												
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>2b Accurate MDR data in AFS</td> <td>100%</td> <td>21</td> <td>26</td> <td>80.8%</td> </tr> <tr> <td>7b1 Violations reported per informal actions</td> <td>100%</td> <td>65.6%</td> <td>23</td> <td>29</td> <td>79.3%</td> </tr> <tr> <td>7b3 Violations reported per HPV identified</td> <td>100%</td> <td>63.2%</td> <td>4</td> <td>5</td> <td>80%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2b Accurate MDR data in AFS	100%	21	26	80.8%	7b1 Violations reported per informal actions	100%	65.6%	23	29	79.3%	7b3 Violations reported per HPV identified	100%	63.2%	4	5	80%
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State response	MDEQ's data reported to the federal databases is generated from a multitude of programs and staff. MDEQ spends significant resources to ensure data quality. For metric 7b1 and 7b3, MDEQ's data far exceeded the national averages. Furthermore, the CWA and RCRA data metrics report that MDEQ's data meets or exceeds expectations and exceeds national averages where applicable. MDEQ disagrees with EPA's rating for this metric. Data quality continues to be a MDEQ priority, and																												

without regard to EPA's rating for this metric, MDEQ will continue to coordinate internally among its programs to maintain a high level of data accuracy.

Recommendation

CAA Element 1 — Data

Finding 1-2	Area for State Improvement																														
Summary	Whereas MDR data for compliance monitoring were reported timely into AFS, MDR data associated with other areas (HPVs, stack tests, and enforcement actions) were not always reported timely.																														
Explanation	Metric 3b1 (98%) indicated that MDEQ met the national goal in entering MDR data for compliance monitoring activities into AFS within the specified timeframe. However, Metrics 3a2 (5) and 3b3 (66.7%) indicated that HPVs and enforcement actions were often not entered into AFS within 60 days, as required by the Information Collection Request (ICR). In addition, Metric 3b2 (67.9%) showed that stack tests are often entered into AFS late (over 120 days). EPA noted that about 27% of the late stack test entries were more than 30 days late.																														
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State response	<p>With respect to metrics 3a2 and 3b3, MDEQ's business process for entering enforcement MDRs into AFS has been based on making an accurate HPV/non-HPV determination before beginning the data entry. MDEQ entered data into AFS via EPA's Universal Interface and linking of enforcement actions to a Day Zero was least complicated when the Day Zero already existed. Therefore, NOVs were entered at the time the Day Zero was entered. Changing a HPV Day Zero action to a non-HPV Day Zero, and vice versa, was a very complicated process requiring assistance from EPA Region IV staff and potentially EPA Headquarters staff. Therefore, we took the time, which often involved reviewing a source's response to our NOV, to make sure we had the correct HPV determination to ensure our data entry was as accurate as possible to avoid having to change a Day Zero. MDEQ believes the data entry occurred shortly after a HPV determination was made.</p> <p>EPA should note that MDEQ has commented similarly in both SRF Round 1 and SRF Round 2. MDEQ made conscious decisions not to change its business practices merely to comply with a SRF metric.</p>																														

However, now that EPA has improved its air data management system from AFS to ICIS-Air and data modifications are more readily available to MDEQ, we have begun evaluating our business practices for opportunities to improve timeliness of data entry. MDEQ will also reemphasize to staff the importance of completing data entry forms timely for input into the ICIS-Air. Finally, in EPA's new HPV policy, Day Zero has been increased from forty-five (45) to ninety (90) days from the date of discovery. The ninety (90) days more realistically reflects actual HPV determination times and this additional time will help towards meeting data entry goals.

With respect to metric 3b2, stack test reports are due to MDEQ within forty-five (45) days or sixty (60) days of conducting the test, depending on the facility's permit. Our data shows that over 64% of these stack test reports were received in excess of forty-five (45) days from the test date. Roughly 40% of the test reports received by MDEQ exceeded sixty (60) days from test date. While late reporting is a violation, it also limits MDEQ's ability to meet data entry timelines. MDEQ generally tries to conduct a cursory review of all stack test reports upon receipt for obvious violations. Those with violations receive MDEQ priority. Completing the detailed review of compliant stack test reports receives less priority and is done as expeditiously as possible. MDEQ, due to limited staff and resources, must prioritize work to focus on the most important matters. MDEQ does not intend to give compliant stack test reviews priority solely to comply with this metric. MDEQ strongly encourages EPA to focus on untimely stack test report reviews whereby the untimely review resulted in failing to meet an established ERP.

Recommendation	By September 30, 2016, MDEQ should provide documentation to EPA concerning efforts to identify and address the causes of untimely MDR reporting. If by March 31, 2017, EPA determines that MDEQ's efforts appear to be adequate to meet the national goal, the recommendation will be considered complete.
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CAA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations																																				
Summary	MDEQ met the negotiated frequency for inspection of sources, reviewed Title V Annual Compliance Certifications, and included all required elements in their Full Compliance Evaluations (FCEs) and Compliance Monitoring Reports (CMRs).																																				
Explanation	Metrics 5a and 5b indicated that MDEQ provided adequate inspection coverage for the major and SM-80 sources during FY14 by ensuring that each major source was inspected at least every 2 years, and each SM-80 source was inspected at least every 5 years. In addition, Metric 5e documented that MDEQ reviewed Title V annual compliance certifications submitted by major sources. Finally, Metrics 6a and 6b confirmed that all elements of an FCE and CMR required by the Clean Air Act Stationary Source Compliance Monitoring Strategy (CMS Guidance) were addressed in most facility files reviewed.																																				
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State response	None																																				
Recommendation																																					

CAA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations																								
Summary	MDEQ made accurate compliance determinations for both HPV and non-HPV violations.																								
Explanation	<p>Metric 7a indicated that MDEQ made accurate compliance determinations in 25 of 26 files reviewed (96.2%).</p> <p>Metric 8a indicated that the HPV discovery rate for majors (1.8%) was below the national average of 3.1%. This is a “review indicator” metric, so several supplemental files were selected for further evaluation. Based on evaluation of these and other sources with violations, file reviewers concluded that MDEQ is accurately identifying HPVs.</p> <p>Metric 8c confirmed that MDEQ’s HPV determinations were accurate for 13 of the 15 files reviewed (86.7%). In one instance, the state classified routine violations at an SM-80 source as an HPV under General Criteria 3, though they should probably have been designated as FRVs; another source violated a previous state order, and an NOV was issued, but this was not designated as an HPV under General Criteria 4. Other than these isolated examples, EPA believes MDEQ is making a concerted effort to appropriately identify HPVs and enter them into AFS.</p>																								
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State response	None																								
Recommendation																									

CAA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations																							
Summary	Enforcement actions bring sources back into compliance within a specified timeframe, and HPVs are addressed in an appropriate manner.																							
Explanation	<p>Metric 9a indicated that all formal enforcement actions reviewed brought sources back into compliance through corrective actions in the order, or compliance was achieved prior to issuance of the order.</p> <p>Metric 10b indicated that appropriate enforcement action was taken to address all 6 HPVs (100%) evaluated during the file review.</p>																							
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10b Appropriate enforcement responses for HPVs	100%		6	6	100%																			
State response	None																							
Recommendation																								

CAA Element 4 — Enforcement

Finding 4-2	Area for State Attention												
Summary	About 29% of HPVs were not addressed in a timely manner.												
Explanation	Metric 10a indicated that 71.4% of the HPVs (5 of 7) addressed in FY14 were addressed within 270 days, which is very close to the national average of 73.2%. The two sources with HPV addressing actions exceeding 270 days were 49 and 143 days past the required timeframe, respectively. However, a review of EPA's monthly HPV call notes indicates that the state was in active negotiations with each source, but site specific factors delayed negotiations. In one case, the source had an ability to pay issue, and in the other, the source proposed a SEP. These circumstances resulted in additional internal review by the state, but do not appear to reflect a systemic problem. For future HPV cases, the state is encouraged to follow the timelines established in the new HPV policy dated August 25, 2014. If an addressing action cannot be achieved within 180 days of day zero, the state should develop a case-specific development and resolution timeline as required by the new policy and consult at least quarterly with EPA Region 4 until the HPV is addressed.												
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10a Timely action taken to address HPVs	73.2%	5	7	71.4%									
State response	EPA's comments are noted.												
Recommendation													

CAA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations																								
Summary	Appropriate documentation was evident to demonstrate the following: consideration of gravity and economic benefit in initial penalty calculations; the rationale for differences between the initial and final penalty; and the collection of penalties.																								
Explanation	<p>Metric 11a indicates that 6 of the 7 penalty actions reviewed (85.7%) provided adequate documentation of the State's consideration of gravity and economic benefit. In one instance, the source violated an MDEQ order and resumed operations during adverse atmospheric conditions. No attempt was made to calculate the economic benefit of these actions.</p> <p>Metric 12a indicated that 6 of 7 penalty calculations reviewed (85.7%) documented the rationale for any difference between the initial and final penalty. In one instance, although the state explained the rationale for waiving the economic benefit, no explanation was provided for reducing the gravity portion of the penalty by 36%, although the source had made an offer for the full gravity with a combination of cash and SEP.</p> <p>Metric 12b confirmed that documentation of all penalty payments made by sources was included in the file.</p>																								
Relevant metrics	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Metric ID Number and Description</th> <th style="text-align: center;">Natl Goal</th> <th style="text-align: center;">Natl Avg</th> <th style="text-align: center;">State N</th> <th style="text-align: center;">State D</th> <th style="text-align: center;">State % or #</th> </tr> </thead> <tbody> <tr> <td>11a Penalty calculations include gravity and economic benefit</td><td style="text-align: center;">100%</td><td style="text-align: center;">6</td><td style="text-align: center;">7</td><td style="text-align: center;">85.7%</td><td></td></tr> <tr> <td>12a Documentation on difference between initial and final penalty</td><td style="text-align: center;">100%</td><td style="text-align: center;">6</td><td style="text-align: center;">7</td><td style="text-align: center;">85.7%</td><td></td></tr> <tr> <td>12b Penalties collected</td><td style="text-align: center;">100%</td><td style="text-align: center;">7</td><td style="text-align: center;">7</td><td style="text-align: center;">100%</td><td></td></tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	11a Penalty calculations include gravity and economic benefit	100%	6	7	85.7%		12a Documentation on difference between initial and final penalty	100%	6	7	85.7%		12b Penalties collected	100%	7	7	100%	
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11a Penalty calculations include gravity and economic benefit	100%	6	7	85.7%																					
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12b Penalties collected	100%	7	7	100%																					
State response	None																								
Recommendation																									

Clean Water Act Findings

CWA Element 1 — Data																														
Finding 1-1	Meets or Exceeds Expectations																													
Summary	The State exceeded National Goals for the entry of key data metrics for major facilities. The accuracy of data between files reviewed and data reflected in the national data system also met expectations.																													
Explanation	<p>The State exceeded National Goals for the entry of key Data Metrics (1b1 and 1b2) for major facilities.</p> <p>Of the files reviewed, discrepancies that occurred between the Detailed Facility Reports (DFRs) in EPA's Enforcement and Compliance History Online (ECHO) and the State's files Metric 2b) were relatively minor and the finding for this Element is Meets Expectations.</p>																													
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>1b1 Permit limit rate for major facilities</td> <td>≥95%</td> <td>91.1%</td> <td>92</td> <td>95</td> <td>96.8%</td> </tr> <tr> <td>1b2 DMR entry rate for major facilities</td> <td>≥95%</td> <td>96.6%</td> <td>2038</td> <td>2038</td> <td>100%</td> </tr> <tr> <td>2b Files reviewed where data are accurately reflected in the national data system</td> <td>100%</td> <td></td> <td>28</td> <td>30</td> <td>93%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	1b1 Permit limit rate for major facilities	≥95%	91.1%	92	95	96.8%	1b2 DMR entry rate for major facilities	≥95%	96.6%	2038	2038	100%	2b Files reviewed where data are accurately reflected in the national data system	100%		28	30	93%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																									
1b1 Permit limit rate for major facilities	≥95%	91.1%	92	95	96.8%																									
1b2 DMR entry rate for major facilities	≥95%	96.6%	2038	2038	100%																									
2b Files reviewed where data are accurately reflected in the national data system	100%		28	30	93%																									
State Response	None																													
Recommendation																														

CWA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations					
Summary	The State met all but one of their FY14 Compliance Monitoring Strategy (CMS) Plan and CWA §106 Workplan inspection commitments. The FY14 inspection commitment was not met for Significant Industrial User (SIU) inspections.					
Explanation	<p>Element 2 includes metrics that measure planned inspections completed (Metrics 4a1 – 4a10) and inspection coverages (Metrics 5a1, 5b1, and 5b2) for majors and non-majors. The National Goal for this Element is for 100% of state specific CMS Plan commitments to be met. Under Metrics 4a and 5, the State met all their FY 14 inspection commitments except for their inspection commitment related to 4a2 (SIU Inspections). Inspection shortfalls were attributed to facilities not discharging at the time of inspection, understaffing and staff turnover.</p> <p>Since the State had met all CMS and Workplan commitments in FY 13, the State's performance in missing a small number of SIU inspection commitments in FY 14 does not constitute a significant pattern of deficiency.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	4a1 Pretreatment compliance inspections and audits	100% of CMS		0	0	-
	4a2 SIU inspections for SIUs discharging to non-authorized POTWs	100% of CMS		171 (CMI) 193 (CEI)	195 (CMI) 195 (CEI)	88% 99%
	4a4 Major CSO inspections	100% of CMS		0	0	-
	4a5 SSO inspections	100% of CMS		53	53	100%
	4a7 Phase I & II MS4 audits or inspections	100% of CMS		7	7	100%
	4a8 Industrial stormwater inspections	100% of CMS		184	158	117%
	4a9 Phase I & II SW construction inspections	100% of CMS		160	113	142%
	4a10 Medium and large NPDES CAFO inspections	100% of CMS		10	10	100%
	5a1 Inspection coverage of NPDES majors	100% of CMS		50	50	100%
	5b1 Inspection coverage of NPDES non-majors with individual permits	100% of CMS		161	161	100%
	5b2 Inspection coverage of NPDES non-majors with general permits	100% of CMS		-	-	-

State Response	Thirteen (13) of the scheduled Pretreatment CMIs were not conducted because the facilities no longer held a permit, were no longer operating, or had not constructed. Nine (9) of the CMIs were “incomplete” because the facilities were not discharging during the unannounced inspection.
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Recommendation	
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CWA Element 2 — Inspections

Finding 2-2	Meets or Exceeds Expectations												
Summary	The State's inspection reports were well written, complete and provided sufficient documentation to determine compliance.												
Explanation	The State's inspection reports were complete and sufficient to determine compliance. The State has developed an Inspection Report template in its Compliance Inspection Manual. Most of the State's inspection reports are consistent with the Inspection Report template and were well written; complete; and included field observations noting compliance issues, where appropriate (File Metric 6a).												
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>6a Inspection reports complete and sufficient to determine compliance at the facility</td> <td>100%</td> <td></td> <td>19</td> <td>19</td> <td>100%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	6a Inspection reports complete and sufficient to determine compliance at the facility	100%		19	19	100%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #								
6a Inspection reports complete and sufficient to determine compliance at the facility	100%		19	19	100%								
State Response	None												
Recommendation													

CWA Element 2 — Inspections

Finding 2-3	Area for State Improvement												
Summary	Many of the State's inspection reports were not completed in a timely manner.												
Explanation	File Metric 6b addresses inspection reports completed within prescribed timeframes. For this analysis, the State's NPDES Enforcement Management System (EMS) provides guidance that reports must be finalized and transmitted to the facility within 45 days of the inspection (if no violations were found). Generally, if violations are found, a Notice of Violation must be transmitted to the facility within 50 days of the inspection. As noted below, 42% of the reports reviewed were completed in a timely manner pursuant to the State's EMS, while the National Goal is 100%. The average number of days to complete an inspection report was 67 days.												
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>6b Inspection reports completed within prescribed timeframe</td> <td>100%</td> <td></td> <td>8</td> <td>19</td> <td>42%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	6b Inspection reports completed within prescribed timeframe	100%		8	19	42%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #								
6b Inspection reports completed within prescribed timeframe	100%		8	19	42%								
State Response	<p>It is important to note that in EPA's "Explanation" section above, portions of MDEQ's policy on completing inspection reports timely were omitted. With respect to Metric 6.b, MDEQ's inspection manual states: "The report must be finalized and transmitted to the facility within 45 days of the inspection, if no violations were found. Generally, if violations are found, a Notice of Violation must be transmitted to the facility within 50 days of completion of the inspection. If additional information (i.e. beyond that obtained during the inspection) is needed to make a compliance determination – for example, the results of laboratory analysis of samples taken during the inspection – the inspection report must be finalized as soon as practicable after the additional information is received. In any event, the inspection report must be finalized such that the appropriate enforcement action can be initiated within the time frames set forth in the MDEQ CWA Enforcement Management System."</p> <p>EPA should consider the following:</p> <ol style="list-style-type: none"> 1. Timeliness of inspection reports should only be evaluated when (a) violations are found during an inspection AND (b) there is not an addressing action in accordance with an EPA ERP for the violation(s) described in the inspection report. To evaluate states on report timeliness otherwise, especially on compliant reports, is 												

	<p>Federal micromanagement of delegated programs and is irrelevant to MDEQ and EPA shared priorities of correcting noncompliance.</p> <p>2. By evaluating a state's timeliness of inspection reports (where no violations are found or there is an addressing action in accordance with EPA ERPs), EPA by default is encouraging States to INCREASE the amount of time given to complete inspection reports for the sole purpose of complying with SRF metrics. As a result of EPA's findings and as an example, MDEQ has increased its self-imposed timeline for completing reports to sixty (60) days for all reports. A copy of MDEQ's new EMS and Inspection Protocol manuals will be provided to EPA in the near future.</p> <p>3. As you will note later in the RCRA portion of the SRF report, EPA-lead RCRA inspections were omitted from the calculations on report timeliness by EPA's own admission that its staff is routinely untimely on completing reports. EPA felt that MDEQ should not be "penalized" where EPA was the root cause of any late report. While MDEQ appreciates the omission, we challenge the fairness of EPA to criticize states on report timeliness and make such recommendations as "Area for State Improvement." Given states' dwindling resources, both monetary and staffing, and EPA's ever increasing unfunded mandates, MDEQ believes its report timeliness is adequate and disagrees in principle with EPA's rating for this metric.</p>
Recommendation	By June 30, 2016, MDEQ should re-assess their practices and procedures to ensure the timely completion of inspection reports. EPA will review these practices and procedures and monitor the State's implementation efforts through existing oversight calls and other periodic data reviews. If by September 30, 2016, these reviews indicate that the State is timely in completing inspection reports; the recommendation will be considered completed.

CWA Element 3 — Violations

Finding 3-1	Area for State Attention					
Summary	The State's Inspection Reports documented accurate compliance determinations.					
Explanation	<p>Most of the State's inspection reports were well written; complete; included field observations, and compliance status that accurately documented compliance determinations. The State has developed a comprehensive inspection report template that is used effectively for documenting inspection field observations and making compliance determinations. However, 3 of the inspection reports did not accurately reflect operational or maintenance issues that were observed at the facilities during the inspection.</p> <p>The State uses an inspection checklist in the development of an inspection plan. These checklists are, however, not typically included in the file. The State has also developed an inspection report template that is used in writing the inspection reports. To ensure that the inspection report does provide a complete and comprehensive description of the field inspection and observations, it is suggested the State consider incorporating some of the detail from the inspection checklist into the inspection report. In some cases, this additional level of detail would ensure that the inspection reports are documenting compliance determinations.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	7e Inspection reports reviewed that led to an accurate compliance determination	100%		16	19	84%
State Response	EPA's comments have been noted, and MDEQ is currently evaluating the applicability of incorporating items from our checklist into the report template. Quality, well written reports remain a MDEQ priority.					
Recommendation						

CWA Element 3 — Violations

Finding 3-2	Area for State Improvement					
Summary	The State is not identifying and reporting Single Event Violations (SEVs) at major facilities.					
Explanation	SEVs are one-time or long-term violations, including unauthorized bypasses or discharges, discovered by the permitting authority typically during inspections and not through automated reviews of Discharge Monitoring Reports. Data metric 7a1 tracks SEVs for active majors. The data metrics for SEVs indicated that the State entered no SEVs for majors in FY 14. The file review metric (8b1) shows that although permittees may have experienced and/or reported bypasses, the State is not entering SEVs into the national data system. Three instances were noted where bypasses for major facilities were documented in the file, but were not entered into ICIS as SEVs. It is noted, however, that the State has entered 4 non-major SEVs into the ICIS.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	7a1 Number of major facilities with single event violations					0
	8b1 Single-event violations accurately identified as SNC or non-SNC	100%		0	3	0%
	8c Percentage of SEVs identified as SNC reported timely at major facilities	100%		-	-	-
State Response	MDEQ contacted EPA for guidance on SEVs. MDEQ is currently evaluating SEVs and developing procedures to input SEV data more consistently into ICIS-NPDES.					

Recommendation By June 30, 2016, MDEQ should develop and implement procedures to ensure that SEVs are identified and coded accurately into the national data system. EPA will review the State's procedures and monitor the State's implementation efforts through existing oversight calls and other periodic data reviews. If by September 30, 2016, these reviews indicate that SEVs are being identified and coded accurately, the recommendation will be considered completed.

CWA Element 4 — Enforcement

Finding 4-1	Area for State Improvement																								
Summary	The State's Enforcement Responses (ERs) were not always timely or appropriate. Additionally, the State's ERs did not always achieve a Return to Compliance (RTC).																								
Explanation	<p>ERs did not always achieve a RTC (File Metric 9a); 7 of 28 files reviewed (25%) did not reflect ERs that returned or were expected to return a facility to compliance. The most frequently identified issue in facilities not returning to compliance was because the ECHO DFRs still reflected noncompliance despite the enforcement response taken by the State. In one case, a RTC was complicated by the facility seeking funding through the State Revolving Fund.</p> <p>Data Metric 10a1 documents that none of the State's 6 major facilities in SNC had timely ERs.</p> <p>Additionally, the State did not consistently address violations in an appropriate manner (File Metric 10b). Twenty-one of the twenty-eight files reviewed (75%) were found to include an ER that was appropriate. Of the remaining 25% of the files reviewed, ERs were not appropriate because numerous informal and/or formal enforcement actions were taken and noncompliance appears to continue with no further escalation of an ER to achieve compliance, or the State did not provide written justification for why a formal action was not taken for facilities in SNC.</p>																								
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>9a Percentage of enforcement responses that return or will return source in violation to compliance</td> <td>100%</td> <td></td> <td>21</td> <td>28</td> <td>75%</td> </tr> <tr> <td>10a1 Major facilities with timely action as appropriate</td> <td></td> <td>3.6%</td> <td>0</td> <td>6</td> <td>0%</td> </tr> <tr> <td>10b Enforcement responses reviewed that address violations in an appropriate manner</td> <td>100%</td> <td></td> <td>21</td> <td>28</td> <td>75%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	9a Percentage of enforcement responses that return or will return source in violation to compliance	100%		21	28	75%	10a1 Major facilities with timely action as appropriate		3.6%	0	6	0%	10b Enforcement responses reviewed that address violations in an appropriate manner	100%		21	28	75%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																				
9a Percentage of enforcement responses that return or will return source in violation to compliance	100%		21	28	75%																				
10a1 Major facilities with timely action as appropriate		3.6%	0	6	0%																				
10b Enforcement responses reviewed that address violations in an appropriate manner	100%		21	28	75%																				
State Response	MDEQ recently updated its CWA EMS and will provide that to EPA as agreed upon in the CWA 106. EPA should be reminded that every compliance/enforcement case is different. MDEQ believes in many of these cases, given the circumstances of each individual case, that our actions were appropriate and justified. Unfortunately, EPA's review does not take into account case specific challenges. MDEQ's EMS does allow enforcement discretion and deviation from normal business practices when																								

situations warrant such. EPA should also consider that many of the facility files reviewed during the SRF were local government POTWs. EPA surely understands the challenges local governments face, and MDEQ remains sensitive to those challenges but prudent in our actions to bring them to compliance. While we understand EPA believes this is an “Area for State Improvement,” MDEQ will continue to take enforcement responses that we believe are appropriate given all the facts and circumstances of each case.

Recommendation	By June 30, 2016, MDEQ should develop and implement procedures to ensure that ERs are timely and appropriate and achieve a RTC. EPA will review these procedures and monitor the State’s implementation efforts through existing oversight calls and other periodic data reviews. If by September 30, 2016, these reviews indicate that the revised procedures appear to result in timely/appropriate enforcement responses that reflect a RTC; the recommendation will be considered completed.
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CWA Element 5 — Penalties

Finding 5-1	Area for State Improvement
Summary	The State does not routinely include documentation in the file that demonstrates the consideration of gravity and economic benefit (EB).
Explanation	<p>One of the seven (14%) files reviewed documented the consideration of gravity and EB. While the State's files contain penalty calculation worksheets, in 6 instances, the State did not document the rationale for why EB related to delayed or avoided costs was not included. While the State's CWA Penalty Policy makes it clear that every effort should be made to calculate and recover the EB of noncompliance, and provides common examples of delayed or avoided costs (e.g., monitoring or reporting costs, capital improvement costs or repairs, or operating and maintenance expenses), the State does not typically include documentation to support the rationale for zero EB in penalty calculations.</p> <p>Additionally, the State's CWA Penalty Policy notes that the gravity component of a penalty should quantify the risk of harm to human health <u>and</u> the environment; and a Gravity Adjustment Factor allows for the consideration of these factors. The State's penalty calculation worksheets also provide an opportunity for the State to document a gravity component for actual or possible harm to the environment, however, the worksheets reviewed all note that no harm to the environment was quantified and harm to human health was not addressed.</p> <p>In support of considering EB in penalty calculations, EPA guidance (<i>Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework from State/EPA Enforcement Agreements</i>; 1993) notes that to remove economic incentives for noncompliance and establish a firm foundation for deterrence, EPA, the States, and local agencies shall endeavor, through their civil penalty assessment practices, to recoup at least the economic benefit the violator gained through noncompliance. Additionally, in underscoring the importance of complete penalty calculation records, the NPDES Memorandum of Agreement (MOA) between Mississippi and EPA - Region 4 indicates that in accordance with 40 CFR §123.24(b)(3), DEQ shall retain certain records related to numerous enforcement procedures and that such records would include penalty calculations and/or rationale.</p> <p>Penalty calculation documentation is a continuing issue from Round 2 of the SRF and remains as an Area for State Improvement in Round 3.</p>

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	11a Penalty calculations reviewed that consider and include gravity and economic benefit	100%	1	7	14%	
State Response	<p>Effective January 1, 2016, MDEQ has implemented new procedures whereby all penalty calculations are reviewed by both Environmental Compliance and Enforcement Division (ECED) Legal Counsel and the ECED Division Chief before being presented to the responsible party. Generally penalty calculations will not be approved without adequate consideration for both gravity adjustments and economic benefit. Furthermore, the ECED Division Chief reviews all final negotiated settlement amounts to account for any reduction in either gravity adjustment or economic benefit.</p>					
Recommendation	<p>By June 30, 2016, MDEQ should develop and implement procedures which document the consideration of EB and gravity in their penalty calculations. EPA will monitor the State's efforts through existing oversight calls and other periodic file reviews. EPA will review all initial and final MDEQ orders and penalty calculations, including the calculations for the economic benefit of noncompliance, to assess progress in implementation of these improvements. If by September 30, 2016, these reviews indicate that the State is documenting the consideration of gravity and EB; the recommendation will be considered completed.</p>					

CWA Element 5 — Penalties

Finding 5-2	Meets or Exceeds Expectations																		
Summary	The difference between initial and final penalty amount; or the rationale for any differences between initial and final penalties assessed is largely documented by the State. Additionally, the State documents the collection of penalties assessed.																		
Explanation	<p>Six of the seven files (86%) reviewed documented the difference between the initial and final penalty or the rationale for the difference (File Metric 12a).</p> <p>Most of the files documented the difference between the initial and final penalty or the rationale for the difference. Only one file did not contain documentation supporting the rationale for the difference in the initial and final penalty.</p> <p>Since the majority of the State's files did document difference between initial and final penalty amount; or the rationale for any differences between initial and final penalties assessed, issues related to this metric do not appear to be systemic and the State's level of performance for this Element is identified as Meeting Expectations.</p> <p>The State also effectively documents the collection of penalties assessed (File Metric 12b) and has met the National Goal of 100%.</p>																		
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>12a Documentation of the difference between initial and final penalty and rationale</td> <td>100%</td> <td></td> <td>6</td> <td>7</td> <td>86%</td> </tr> <tr> <td>12b Penalties collected</td> <td>100%</td> <td></td> <td>7</td> <td>7</td> <td>100%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	12a Documentation of the difference between initial and final penalty and rationale	100%		6	7	86%	12b Penalties collected	100%		7	7	100%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #														
12a Documentation of the difference between initial and final penalty and rationale	100%		6	7	86%														
12b Penalties collected	100%		7	7	100%														
State Response	None																		
Recommendation																			

Resource Conservation and Recovery Act Findings

RCRA Element 1 — Data																		
Finding 1-1	Meets or Exceeds Expectations																	
Summary	All of Mississippi's RCRA Minimum Data Requirements for compliance monitoring and enforcement activities were complete in RCRAInfo.																	
Explanation	During the SRF file review, information in the facility files was checked for accuracy with the information in the national database, RCRAInfo. The FY2014 data was found to be accurate in all 23 files reviewed (100%).																	
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>2b Complete and accurate entry of mandatory data</td> <td></td> <td></td> <td>23</td> <td>23</td> <td>100%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2b Complete and accurate entry of mandatory data			23	23	100%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
2b Complete and accurate entry of mandatory data			23	23	100%													
State Response	None																	
Recommendation																		

RCRA Element 2 — Inspections						
Finding 2-1	Meets or Exceeds Expectations					
Summary	Mississippi met the national RCRA goals for TSD and LQG inspections.					
Explanation	<p>Element 2 measures three types of required inspection coverage that are outlined in the EPA RCRA Compliance Monitoring Strategy: (1) 100% coverage of operating Treatment Storage Disposal (TSD) facilities over a two-year period, (2) 20% coverage of Large Quantity Generators (LQGs) every year, and (3) 100% coverage of LQGs every five years.</p> <p>The FY2014 data metrics indicate that both the two-year TSD inspection coverage and the one-year LQG inspection coverage requirements were met. For the five-year LQG inspection coverage, the data metric</p>					

	indicated that 93.9% of the universe had been inspected (124 of 132 LQGs) from FY2010-FY2014. This LQG inspection coverage is proximate enough to the national goal of 100% coverage to allow for fluctuation of LQG status over the five-year period.																								
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr> </thead> <tbody> <tr> <td>5a Two-year inspection coverage of operating TSDFs</td><td>100%</td><td>88.4%</td><td>5</td><td>5</td><td>100%</td></tr> <tr> <td>5b Annual inspection coverage of LQGs</td><td>20%</td><td>21.2 %</td><td>28</td><td>132</td><td>100%</td></tr> <tr> <td>5c Five-year inspection coverage of LQGs</td><td>100%</td><td>67.1 %</td><td>124</td><td>132</td><td>93.9%</td></tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5a Two-year inspection coverage of operating TSDFs	100%	88.4%	5	5	100%	5b Annual inspection coverage of LQGs	20%	21.2 %	28	132	100%	5c Five-year inspection coverage of LQGs	100%	67.1 %	124	132	93.9%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																				
5a Two-year inspection coverage of operating TSDFs	100%	88.4%	5	5	100%																				
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State Response	None																								
Recommendation																									

RCRA Element 2 — Inspections

Finding 2-2	Area for State Improvement
Summary	Some RCRA inspection reports were incomplete in the documentation of facility hazardous waste management activities, and timely inspection reports continue to be a concern.
Explanation	<p>During the SRF file review, 23 inspection reports were evaluated for completeness and sufficiency to determine compliance with the RCRA requirements. It was found that 73.9% (17 of 23) of the inspection reports met this standard. There were six RCRA inspection reports with incomplete documentation of the facility's management of hazardous waste in the inspection observations.</p> <p>According to EPA's RCRA Enforcement Response Policy (ERP), a violation determination should be made within 150 days from the date of the inspection. In MDEQ's <i>Compliance Inspection Manual</i> for the RCRA program, the state established a deadline of 45 days as the timeline for report completion for inspections if no violations are found, and 50 days of violations were noted. There were 23 inspection reports reviewed. Six inspection reports were omitted from the timeliness evaluation because they were EPA-lead inspections. In addition, one MDEQ report had no dated document in the file. Of the remaining 16 inspection reports, it was found that 75% (12 of 16) were timely, with the average time for report completion at 63 days. The timeliness of inspection reports was also identified as an "Area for State Attention" in</p>

	<p>the MDEQ SRF Round 2 report. In SRF Round 3, inspection reports continue to exceed the state-established deadlines for inspection report completion.</p> <p>The completeness and timeliness of the RCRA inspection reports is considered an Area for State Improvement. The state established thorough guidelines for these requirements in the MDEQ <i>Compliance Inspection Manual</i> for the RCRA program. Considerations for resolving this concern could include inspector refresher training for the RCRA regulatory requirements and the RCRA <i>Compliance Inspection Manual</i>.</p>																		
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr> </thead> <tbody> <tr> <td>6a Inspection reports complete and sufficient to determine compliance</td><td>100%</td><td>n/a</td><td>17</td><td>23</td><td>73.9%</td></tr> <tr> <td>6b Timeliness of inspection report completion</td><td>100%</td><td>n/a</td><td>12</td><td>16</td><td>75 %</td></tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	6a Inspection reports complete and sufficient to determine compliance	100%	n/a	17	23	73.9%	6b Timeliness of inspection report completion	100%	n/a	12	16	75 %
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #														
6a Inspection reports complete and sufficient to determine compliance	100%	n/a	17	23	73.9%														
6b Timeliness of inspection report completion	100%	n/a	12	16	75 %														
State Response	<p>MDEQ is evaluating available RCRA training for both new and tenured staff. Affordable training continues to be a concern.</p> <p>It is important to note that in EPA's "Explanation" section above, portions of MDEQ's policy on completing inspection reports timely were omitted. With respect to Metric 6.b, MDEQ's inspection manual states: "The report must be finalized and transmitted to the facility within 45 days of the inspection, if no violations were found. Generally, if violations are found, a Notice of Violation must be transmitted to the facility within 50 days of completion of the inspection. If additional information (i.e. beyond that obtained during the inspection) is needed to make a compliance determination – for example, the results of laboratory analysis of samples taken during the inspection – the inspection report must be finalized as soon as practicable after the additional information is received. In any event, the inspection report must be finalized such that the appropriate enforcement action can be initiated within the time frames set forth in the MDEQ RCRA Enforcement Management System."</p> <p>EPA should consider the following:</p> <ol style="list-style-type: none"> 1. Timeliness of inspection reports should only be evaluated when (a) violations are found during an inspection AND (b) there is not an addressing action in accordance with an EPA ERP for the violation(s) described in the inspection report. To evaluate states on report timeliness otherwise, especially on compliant reports, is Federal micromanagement of delegated programs and is irrelevant to MDEQ and EPA shared priorities of correcting noncompliance. 																		

2. By evaluating a state's timeliness of inspection reports (where no violations are found or there is an addressing action in accordance with EPA ERPs), EPA by default is encouraging States to INCREASE the amount of time given to complete inspection reports for the sole purpose of complying with SRF metrics. As a result of EPA's findings and as an example, MDEQ has increased its self-imposed timeline for completing reports to sixty (60) days for all reports. A copy of MDEQ's new EMS and Inspection Protocol manuals will be provided to EPA in the near future.
3. As noted above, EPA-lead RCRA inspections were omitted from the calculations on report timeliness by EPA's own admission that its staff is routinely untimely on completing reports. EPA felt that MDEQ should not be "penalized" where EPA was the root cause of any late report. While MDEQ appreciates the omission, we challenge the fairness of EPA to criticize states on report timeliness and make such recommendations as "Area for State Improvement." Given states' dwindling resources, both monetary and staffing, and EPA's ever increasing unfunded mandates, MDEQ believes its report timeliness is adequate and disagrees in principle with EPA's rating for this metric.

Recommendation	It is recommended that MDEQ implement necessary procedures and/or training to address the identified RCRA inspection report issues by March 31, 2016. After the end of calendar year 2016, EPA will review a sample of inspection reports to assess the completeness, sufficiency, and timeliness of the reports. If by March 31, 2017, appropriate improvement is observed this recommendation will be considered complete.
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RCRA Element 3 — Violations

Finding 3-1	Area for State Improvement
Summary	There are concerns regarding correct violation determinations and SNC designations.
Explanation	<p>During the file review, 23 inspection reports were evaluated to determine the accuracy of compliance determinations. The findings indicated that 78.3% of the inspection reports (18 of 23) had accurate compliance determinations. Of the remaining five reports, there were apparent violations observed during the inspection that were not cited in the inspection report.</p> <p>RCRA SNC designations were found to be accurate in nine of the 12 (75%) facility files reviewed. The remaining three facilities had SNC-caliber violations, but had not been designated as a SNC in RCRAInfo as</p>

	<p>required by the RCRA ERP. MDEQ issued penalty enforcement actions at all three violating facilities.</p> <p>The accuracy of violation determinations and appropriate SNC designations is an Area for State Improvement.</p>																		
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr> </thead> <tbody> <tr> <td>7a Accurate compliance determinations</td><td>100%</td><td>n/a</td><td>18</td><td>23</td><td>78.3 %</td></tr> <tr> <td>8c Appropriate SNC determinations</td><td>100%</td><td>n/a</td><td>9</td><td>12</td><td>75 %</td></tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	7a Accurate compliance determinations	100%	n/a	18	23	78.3 %	8c Appropriate SNC determinations	100%	n/a	9	12	75 %
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #														
7a Accurate compliance determinations	100%	n/a	18	23	78.3 %														
8c Appropriate SNC determinations	100%	n/a	9	12	75 %														
State Response	<p>MDEQ believes additional staff training will assist in improving accurate compliance determinations. MDEQ is evaluating available RCRA training for both new and tenured staff. Affordable training continues to be a concern.</p> <p>MDEQ has reviewed SNC designation criteria and has also re-emphasized the importance of accurate designations with staff. However, MDEQ prioritizes correcting noncompliance. As noted MDEQ took formal enforcement with penalties where substantive violations existed. MDEQ believes that its enforcement responses in all cases, those reviewed by EPA and otherwise, are appropriate. SNC/Secondary violation designations can be subjective. While MDEQ will gravitate towards conservative SNC determinations in the future, correcting noncompliance will remain our priority.</p>																		
Recommendation	<p>It is recommended that MDEQ develop and implement procedures to address the identified RCRA violation and SNC determination issues by March 31, 2016. After the end of calendar year 2016, EPA will review a sample of inspection reports to assess the accuracy of violation and SNC determinations. If by March 31, 2017, appropriate improvement is observed this recommendation will be considered complete.</p>																		

RCRA Element 3 — Violations

Finding 3-2	Meets or Exceeds Expectations
Summary	Mississippi is timely in facility SNC determinations and returning secondary violators to compliance.
Explanation	The FY2014 SRF data metrics indicated that all RCRA secondary violators were returned to compliance by the RCRA ERP timeline of 240

	days. In addition, MDEQ entered 100 % (7 of 7 facilities) of the SNC facilities within the 150 day timeline also provided in the RCRA ERP.																		
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr> </thead> <tbody> <tr> <td>2a Long-standing secondary violators</td><td></td><td></td><td>0</td><td>0</td><td>0</td></tr> <tr> <td>8b Timeliness of SNC determinations</td><td>100%</td><td>85.2%</td><td>7</td><td>7</td><td>100%</td></tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2a Long-standing secondary violators			0	0	0	8b Timeliness of SNC determinations	100%	85.2%	7	7	100%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #														
2a Long-standing secondary violators			0	0	0														
8b Timeliness of SNC determinations	100%	85.2%	7	7	100%														
State Response	None																		
Recommendation																			
RCRA Element 4 — Enforcement																			
Finding 4-1	Meets or Exceeds Expectations																		
Summary	MDEQ takes timely and appropriate enforcement to address violations and return the RCRA facilities to compliance.																		
Explanation	<p>In the SRF file review, of the 23 total files reviewed there were 13 RCRA facilities where violations were found. These 13 files were reviewed to determine if the state had taken the appropriate enforcement response and if enforcement had returned the facilities to compliance.</p> <p>Twelve of the 13 facilities (92.3%) returned to compliance as a result of MDEQ enforcement. During the file review, there was one case that did not have documentation of a return to compliance in the file or in RCRAInfo. This data was subsequently entered by the state into the database.</p> <p>There were 12 cases where enforcement had been concluded in the files reviewed. All 12 cases (100%) were addressed with the appropriate enforcement response.</p> <p>The data metric that measures the timeliness of formal enforcement at SNC facilities showed that 75% of the FY2014 cases (3 of 4) met the ERP timeline of 360 days. The national goal is 80%. However, there were three additional SNC-caliber cases where MDEQ took formal action in FY2014 (see finding 3-1), and all three cases were concluded within the 360 days outlined in the ERP. If all seven cases were included in the data metric, MDEQ would have taken timely enforcement at 85.7% of the cases.</p>																		

	MDEQ demonstrates a solid performance in responding to RCRA violations and returning facilities to compliance.						
Relevant metrics	Metric ID Number and Description						
		Natl Goal	Natl Avg	State N	State D	State % or #	
	9a Enforcement that returns violators to compliance	100%	n/a	12	13	92.3 %	
	10a Timely enforcement taken to address SNC	80%	84.3 %	3	4	75 %	
	10b Appropriate enforcement taken to address violations	100%	n/a	12	12	100 %	
State Response	None						
Recommendation							

RCRA Element 5 — Penalties	
Finding 5-1	Area for State Improvement
Summary	Mississippi does not fully document the rationale for excluding the economic benefit of noncompliance in their enforcement penalties.
Explanation	<p>Following the SRF Round 1 evaluation, Mississippi made substantial progress on the documentation of penalty calculations, the economic benefit of noncompliance, and adjustments between initial and final penalties. RCRA penalty documentation procedures were memorialized in the MDEQ Enforcement Management System (EMS) for the RCRA program.</p> <p>In the SRF Round 2 report, EPA found that 70% of the RCRA enforcement cases included sufficient documentation of the appropriate economic benefit considerations. For the remaining 30%, it was recommended that even if economic benefit is determined to be nonexistent or <i>de minimis</i> (e.g., labeling violations, inspection records, etc.), the rationale for that decision should be included in the penalty calculation. MDEQ agreed to implement this practice immediately following the onsite SRF review.</p> <p>In the SRF Round 3 evaluation, the documentation of economic benefit rationale has reemerged as a concern. There were 11 penalty calculations reviewed and there was no appropriate justification for omitting economic benefit in any of the penalty calculations (0%). Moreover,</p>

	<p>there appeared to be several cases where the economic benefit of noncompliance may have exceeded the <i>de minimus</i> amount outlined in the <i>RCRA Civil Penalty Policy (June 2003)</i> and the <i>MDEQ RCRA EMS</i>.</p> <p>This metric will continue to be an Area for State Improvement until consistent and thorough documentation of the consideration of the economic benefit of noncompliance is included in all RCRA penalty calculations.</p>												
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr> </thead> <tbody> <tr> <td>11a Penalty calculations include gravity and economic benefit</td><td>100%</td><td>n/a</td><td>0</td><td>11</td><td>0 %</td></tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	11a Penalty calculations include gravity and economic benefit	100%	n/a	0	11	0 %
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #								
11a Penalty calculations include gravity and economic benefit	100%	n/a	0	11	0 %								
State Response	<p>Effective January 1, 2016, MDEQ has implemented new procedures whereby all penalty calculations are reviewed by both Environmental Compliance and Enforcement Division (ECED) Legal Counsel and the ECED Division Chief before being presented to the responsible party. Generally penalty calculations will not be approved without adequate consideration for both gravity adjustments and economic benefit. Furthermore, the ECED Division Chief reviews all final negotiated settlement amounts to account for any reduction in either gravity adjustment or economic benefit.</p>												
Recommendation	<p>Consistent with the MDEQ RCRA EMS, the state should ensure that all RCRA enforcement cases are evaluated for economic benefit on noncompliance, using the BEN model or a state method that is equivalent to and consistent with national policy, and that the evaluation is documented in penalty calculations.</p> <p>By June 30, 2017, MDEQ should provide copies of all final RCRA enforcement actions and penalty calculations for the previous nine months. EPA will review the documentation to assess progress in implementation of the improvements. If by September 30, 2017, sufficient improvement is observed for the consideration of economic benefit in penalty calculations, this recommendation will be considered complete.</p>												

RCRA Element 5 — Penalties

Finding 5-2

Meets or Exceeds Expectations

Summary	Mississippi provides appropriate justification for adjustments between initial and final negotiated penalties. Documentation is also maintained on the collection of all final assessed penalties.																		
Explanation	<p>It is important that documentation of any differences and rationale between initial and final penalty calculations are maintained to determine if appropriate penalties have been recovered for the violations cited in the enforcement actions. MDEQ continues to provide satisfactory documentation on penalty adjustments. In the six RCRA enforcement cases in FY2014 that included penalty adjustments, all six cases (100 %) provided the appropriate rationale to document the decision.</p> <p>In 100% of the eleven penalty files reviewed, documentation was provided that Mississippi had collected penalties, or were in the process of seeking collection of penalties, from all FY2014 enforcement actions.</p>																		
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>12a Documentation on difference between initial and final penalty</td><td>100%</td> <td>n/a</td> <td>6</td> <td>6</td> <td>100 %</td> </tr> <tr> <td>12b Penalties collected</td><td>100%</td> <td>n/a</td> <td>11</td> <td>11</td> <td>100 %</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	12a Documentation on difference between initial and final penalty	100%	n/a	6	6	100 %	12b Penalties collected	100%	n/a	11	11	100 %
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #														
12a Documentation on difference between initial and final penalty	100%	n/a	6	6	100 %														
12b Penalties collected	100%	n/a	11	11	100 %														
State Response	None																		
Recommendation																			