

# **STATE REVIEW FRAMEWORK**

## **Florida**

### **Clean Water Act, Clean Air Act, and Resource Conservation and Recovery Act Implementation in Federal Fiscal Year 2015**

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

**Final Report  
May 30, 2017**

# Executive Summary

## Introduction

EPA Region 4 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Florida Department of Environmental Protection (FDEP).

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

- FDEP CAA met or exceeded expectations in all elements of the SRF.
- Inspection commitments are met and inspection reports are complete and sufficient in all media.
- FDEP accurately made compliance determinations/violation identification in all media.
- Economic benefit was calculated and documented in the CAA and RCRA programs.

## Priority Issues to Address

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

- FDEP should implement procedures to ensure timely issuance of inspection reports in the RCRA and CWA programs.
- FDEP should take necessary steps to ensure that enforcement actions are timely, appropriate to the violations and are escalated when needed in the CWA program.

## Most Significant CWA-NPDES Program Issues<sup>1</sup>

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<sup>1</sup> 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 unlevel 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."

- FDEP should develop and implement procedures to identify and code SEVs at major facilities using the entire suite of SEV codes as appropriate.
- FDEP should ensure that enforcement actions are timely, appropriate to the violations and escalated when there is continuing non-compliance.
- Appropriate consideration should be given for gravity and economic benefit, and the calculations should be documented.

### **Most Significant CAA Stationary Source Program Issues**

- FDEP CAA met or exceeded all elements of the SRF.

### **Most Significant RCRA Subtitle C Program Issues**

- FDEP should ensure the consistent calculation of gravity in penalty assessments.

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# 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 violators (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 every five years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2013 and will continue through FY 2017.

## II. SRF Review Process

**Review period:** FY 2015

**Key dates:** February 26, 2016: Kick-off Letter sent to State  
 May 9-11, 2016 RCRA on-site file review  
 May 16-20, 2016 CWA on-site file review  
 June 13-16, 2016 CAA on-site file review

**State and EPA key contacts for review:**

	<b>Florida DEP</b>	<b>EPA Region 4</b>
SRF Coordinator	Mike Halpin, Assistant Deputy Secretary	Kelly Sisario, Enforcement Coordinator
CAA	Jessica Dalton, Compliance and Enforcement Administrator Division of Air Resources	Mark Fite, Office of Enforcement Coordination Seneca Anderson and Jason Dressler, Air, Pesticides and Toxic Management Division
CWA	Jessica Kleinfelter, Program Administrator, Division of Water Resource Management	Laurie Ireland, Office of Enforcement Coordination Alenda Johnson and Sara Janovitz, Water Protection Division
RCRA	Glenn Perrigan, Environmental Manager Division of Waste Management	Shannon Maher, Office of Enforcement Coordination Parvez Mallick, Resource Conservation and Recovery Division

### III. SRF Findings

Findings represent EPA’s conclusions regarding state performance and are based on findings 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 an 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						
<b>Finding 1-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	Minimum Data Requirements (MDRs) are entered accurately into ICIS-Air.					
<b>Explanation</b>	Metric 2b indicated that 40 of the 44 files reviewed (90.9%) had all MDRs reported accurately into ICIS-Air. The remaining 4 files had a handful of individual, isolated errors that did not reflect any pattern of incorrect data entry.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	2b Accurate MDR data in ICIS-Air	100%		40	44	90.9%
<b>State response</b>	FDEP acknowledges the importance of keeping accurate data and continuously strives to improve accuracy and completeness of data through data systems enhancements and regular data quality audits.					
<b>Recommendation</b>						



## CAA Element 1 — Data

<b>Finding 1-2</b>	<b>Meets or Exceeds Expectations</b>
<b>Summary</b>	MDR data was entered timely into the state data system during the Agency's transition from AFS to the ICIS-Air database.
<b>Explanation</b>	<p>At the beginning of FY2015, EPA transitioned the national database for Clean Air Act compliance and enforcement data from the AFS legacy system to ICIS-Air. During the initial transition period in October 2014, data was migrated from AFS to ICIS-Air, and no new data could be entered either directly or through electronic data transfer (EDT). Following the migration of historical data, delegated agencies that used EDT (including FDEP) worked with EPA to resume the flow of data into the national system. This involved either the use of new "plug ins" developed by EPA or the reprogramming of their data systems to facilitate the transfer of data from their state data system to the new national database. In addition, FDEP transitioned to a new state data system during the same timeframe. Therefore, FDEP was not successfully flowing data from their new database into ICIS-Air until May 2015.</p> <p>As a result of these unique circumstances, the national averages for timeliness of data entry were adversely affected, and the impacts to FDEP's timeliness metrics was even more significant.</p> <p>In order to more fairly evaluate the timeliness of FDEP's data reporting protocols, EPA requested that FDEP provide information on the timeliness of their input to the state data system. Based on this data, EPA concluded that FDEP was meeting EPA's expectations for timely data entry, as indicated by the analysis below:</p> <p>Metric 3a2 indicates that all HPV determinations (100%) were entered timely into ICIS-Air</p> <p>Whereas Metric 3b1 indicates that 27.9% of compliance monitoring MDRs were entered timely into ICIS-Air, FDEP's data indicates that over 98% of these MDRs were entered into the state data system within 60 days.</p>

Although Metric 3b2 indicates only 60.2% of stack test MDRs were entered into ICIS-Air within 120 days, data supplied by FDEP from their internal state data system indicates that over 95% of stack tests were entered within 120 days.

Finally, although Metric 3b3 indicates 15.4% of enforcement related MDRs were entered timely, FDEP’s data indicates that over 97% of enforcement MDRs were entered into the state data system within 60 days.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	3a2 Timely reporting of HPV determinations	100%	99.6%	10	10	100%
3b1 Timely reporting of compliance monitoring MDRs	100%	64.2%	194	696	27.9%	
3b2 Timely reporting of stack test dates and results	100%	64.5%	1035	1718	60.2%	
3b3 Timely reporting of enforcement MDRs	100%	56.4%	6	39	15.4%	
(state) 3b1 Timely reporting of compliance monitoring MDRs	100%	64.2%			98%	
(state) 3b2 Timely reporting of stack test dates and results	100%				95%	
(state) 3b3 Timely reporting of enforcement MDRs	100%	64.5%			97%	

**State response** FDEP appreciates the acknowledgement of software development challenges faced during FY2015 and consideration of information related to the timeliness of data input into our state data system. FDEP’s new data system (AirCom) is now fully functional and proving to be a more efficient tool for tracking, managing, and uploading compliance and enforcement data. Additionally, FDEP has implemented several oversight protocols that have contributed to an upward trend in the timeliness of data reporting over the past few years.

**Recommendation**

## CAA Element 2 — Inspections

<b>Finding 2-1</b>	<b>Meets or Exceeds Expectations</b>																																								
<b>Summary</b>	FDEP 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).																																								
<b>Explanation</b>	Metrics 5a and 5b indicated that FDEP provided adequate inspection coverage for major and SM-80 sources during FY15 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 FDEP 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 facility files reviewed.																																								
<b>Relevant metrics</b>	<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 FCE coverage: majors and mega-sites</td> <td>100%</td> <td>63.2%</td> <td>176</td> <td>185</td> <td>95.1%</td> </tr> <tr> <td>5b FCE coverage: SM-80s</td> <td>100%</td> <td>79.5%</td> <td>119</td> <td>126</td> <td>94.4%</td> </tr> <tr> <td>5e Review of Title V annual compliance certifications</td> <td>100%</td> <td>39.1%</td> <td>361</td> <td>377</td> <td>95.8%</td> </tr> <tr> <td>6a Documentation of FCE elements</td> <td>100%</td> <td></td> <td>34</td> <td>35</td> <td>97.1%</td> </tr> <tr> <td>6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility</td> <td>100%</td> <td></td> <td>33</td> <td>35</td> <td>94.3%</td> </tr> </tbody> </table>					Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5a FCE coverage: majors and mega-sites	100%	63.2%	176	185	95.1%	5b FCE coverage: SM-80s	100%	79.5%	119	126	94.4%	5e Review of Title V annual compliance certifications	100%	39.1%	361	377	95.8%	6a Documentation of FCE elements	100%		34	35	97.1%	6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility	100%		33	35	94.3%
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6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility	100%		33	35	94.3%																																				
<b>State response</b>	<p>FDEP appreciates EPA’s recognition that we met our commitments outlined in the FY2015 Compliance Monitoring Strategy (CMS) Plan. FDEP would like to further note the following:</p> <p>Metric 5a indicates that nine major sources did not receive an FCE. However, four of these facilities did have an FCE conducted and entered into AirCom, but due to automated upload issues these activities did not transfer to ICIS-Air. Once the missing FCE activities were noticed, they were manually uploaded. The remaining five sources were permanently</p>																																								

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closed, but the CMS code was not updated before the data were frozen. If this metric were revised to consider closed sources and late data uploads, it would be 100%.

Similarly, Metric 5b indicates that seven SM-80 sources did not receive an FCE. All but one of these sources were permanently closed, but again the CMS code was not updated before the data were frozen. The one remaining active source did have an FCE conducted and entered into AirCom, but the activity failed to upload to ICIS-Air. Upon discovering that it was missing, the activity was manually uploaded. If this metric were revised to consider closed sources and late data uploads, it would be 100%.

Metric 5e indicates that 16 TV sources did not receive a TV ACC review. Out of these 16 sources, three did have TV ACCs reviewed and entered into AirCom, but the activities failed to upload to ICIS-Air. These missing activities were discovered during data verification and manually uploaded. Although these activities were uploaded before the data were frozen, they were not refreshed in the ECHO data metric counts. In addition, five of these 16 sources should not have been included in this metric as they became active TV sources during the 2015 calendar year and were not due to submit their first TV ACC until March 1, 2016.

FDEP has raised concerns with EPA regarding the logic for Metric 5e and provided the following comment last year when EPA solicited input for changes to SRF Round 4:

Data Metric 5e – Reviews of TV annual compliance certifications (ACC) completed.

Comment: This metric is based on the number of active TV sources that had an ACC review completed within the federal fiscal year. ACCs are required to be submitted based on a calendar year. The problem with this metric is that as soon as a facility becomes an active TV source, it is automatically added to the universe for requiring an ACC review, even if it was not active during the previous calendar year for which an ACC was due.

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	Recommendation: Develop a programming mechanism that accounts for facilities becoming active after January 1st and adds them to the universe the following federal fiscal year.
<b>Recommendation</b>	

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### CAA Element 3 — Violations

<b>Finding 3-1</b>	<b>Meets or Exceeds Expectations</b>																													
<b>Summary</b>	FDEP made accurate and timely compliance determinations for both HPV and non-HPV violations.																													
<b>Explanation</b>	<p>Metric 7a indicated that FDEP made accurate compliance determinations in 41 of 44 files reviewed (93.2%).</p> <p>Metric 8c confirmed that FDEP’s HPV determinations were accurate for all 19 of 20 files reviewed (95%).</p> <p>Metric 13 indicates that all HPV determinations (100%) were made within 90 days of the discovery action.</p>																													
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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																									
7a Accuracy of compliance determinations	100%		41	44	93.2%																									
8c Accuracy of HPV determinations	100%		19	20	95.0%																									
13 Timeliness of HPV determinations	100%	82.6%	10	10	100%																									
<b>State response</b>	FDEP appreciates EPA’s recognition that accurate and timely compliance determinations were made. FDEP continues to perform regular reviews of newly created violation records to ensure that they are appropriately identified and documented. An FRV-HPV Determination Checklist was also developed for inspectors to complete and add to violation records. This checklist aids in the proper classification and documentation of violations.																													
<b>Recommendation</b>																														

## CAA Element 4 — Enforcement

<b>Finding 4-1</b>	<b>Meets or Exceeds Expectations</b>																																			
<b>Summary</b>	Enforcement actions bring sources back into compliance within a specified timeframe, and HPVs are addressed in a timely and appropriate manner.																																			
<b>Explanation</b>	<p>Metric 9a indicated that all formal enforcement actions (100%) 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 10a indicated that 100% of the HPVs were addressed within 180 days. Metric 14 indicated that since all HPVs were addressed within the 180-day target timeframe, no case development and resolution timelines were developed or needed in FY15.</p> <p>Metric 10b indicated that appropriate enforcement action was taken to address all HPVs (100%) evaluated during the file review.</p>																																			
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14 HPV Case Development and Resolution Timeline in Place When Required that Contains Required Policy Elements	100%		0	0	NA																															
<b>State response</b>	FDEP recognizes that the most important enforcement goal is returning a facility to compliance. Thank you for recognizing FDEP's efforts to effectively return facilities to compliance.																																			
<b>Recommendation</b>																																				

## CAA Element 5 — Penalties

<b>Finding 5-1</b>	<b>Meets or Exceeds Expectations</b>																													
<b>Summary</b>	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.																													
<b>Explanation</b>	<p>Metric 11a indicates that 13 of the 15 penalty actions reviewed (86.7%) provided adequate documentation of the State’s consideration of gravity and economic benefit. In two instances, the file suggested that the source potentially profited from the cited violations, but no economic benefit was assessed in the penalty.</p> <p>Metric 12a indicated that all penalty calculations reviewed (100%) documented the rationale for any difference between the initial and final penalty.</p> <p>Metric 12b confirmed that documentation of all penalty payments made by sources was included in the file (100%).</p>																													
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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																									
11a Penalty calculations reviewed that document gravity and economic benefit	100%		13	15	86.7%																									
12a Documentation of rationale for difference between initial penalty calculation and final penalty	100%		15	15	100%																									
12b Penalties collected	100%		15	15	100%																									
<b>State response</b>	FDEP has implemented several measures to ensure appropriate and consistent assessment of penalties and economic benefit. In addition to conducting peer reviews on all formal enforcement actions, DEP has made enhancements to the Air Program penalty calculation spreadsheet and developed a peer review memo template, which provides a concise summary of the enforcement case and facilitates peer reviews. DEP has also reached out to EPA for training regarding economic benefit calculations and is pleased that EPA has agreed to come to Florida to provide this training.																													



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**Recommendation**

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## Clean Water Act Findings

CWA Element 1 — Data							
<b>Finding 1-1</b>	<b>Meets or Exceeds Expectations</b>						
<b>Summary</b>	FDEP exceeded National Goals for the entry of key data metrics for major facilities.						
<b>Explanation</b>	<p>FDEP exceeded National Goals for the entry of key Data Metrics (1b1 and 1b2) for major facilities. Issues with Data Metrics (7a1) are discussed in Element 3. For the FY15 period of review, FDEP entered 100% of their permit limits and 99.8% of DMRs for NPDES major facilities.</p> <p>Entry of key data metrics for major facilities met and exceeded the SRF requirements in Round 3.</p>						
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>		<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	1b1 Permit limit rate for major facilities		≥95%	90.9%	207	207	100%
	1b2 DMR entry rate for major facilities		≥95%	96.7%	6647	6662	99.8%
<b>State Response</b>	FDEP acknowledges the importance of keeping accurate data. Data is one of the methods by which information is relayed to the public and is a significant part of how the Department evaluates its performance under the CWA. Florida appreciates EPA’s recognition that the data corresponding to the data verification metrics in Element 1 was properly entered and reflected in ICIS-NPDES, exceeding the national goals.						
<b>Recommendation</b>							

**CWA Element 1 — Data**

<b>Finding 1-2</b>	<b>Area for State Attention</b>						
<b>Summary</b>	The accuracy of data between files reviewed and data reflected in the national data system had minor discrepancies.						
<b>Explanation</b>	<p>Metric 2b indicated that 86.4% (38/44) of the files reviewed reflected accurate data entry of minimum data requirements (MDR) for NPDES facilities into Integrated Compliance Information System (ICIS). In the six files where MDR discrepancies between ICIS and the State’s files were observed, the errors were related to the number and/or dates of inspections and enforcement actions. In addition, similar discrepancies which were not MDR were observed in five NPDES minor permit and general permit files. The observed discrepancies do not appear to reflect a systemic problem and were promptly corrected once brought to the state’s attention.</p> <p>Data Accuracy was raised in Rounds 1 and 2 as an Area for State Improvement. While considerable progress has been made to ensure data accuracy and to prepare for implementation of the NPDES e-reporting rule, additional work is needed to meet the SRF national goal. Therefore, this is an Area for State Attention.</p>						
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>		<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	2b Files reviewed where data are accurately reflected in the national data system		100%	--	38	44	86.4%
<b>State Response</b>	<p>The metric increase (by 20%) is directly reflective of process improvements implemented since Round 2.</p> <p>FDEP has recently utilized an audit process of our files in order to identify common data entry deficiencies between the compliance and enforcement data found in Oculus, COMET and ICIS-NPDES. Including the creation of monthly data verifications of inspections, enforcement actions, and SEV codes. As deficiencies are identified, routine training sessions and data checks will be conducted to ensure the data in ICIS-NPDES is accurate. FDEP will continue to work with staff to ensure that compliance and enforcement activities are accurately entered into our database and coded correctly in ICIS-NPDES. FDEP is in the process of creating a database</p>						

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	called WaterCom, which will assist in ensuring accurate data collection and upload to ICIS-NPDES.
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<b>Recommendation</b>	
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## CWA Element 2 — Inspections

<b>Finding 2-1</b>	<b>Meets or Exceeds Expectations</b>																																																																	
<b>Summary</b>	FDEP met its FY15 Compliance Monitoring Strategy (CMS) Plan and CWA §106 Workplan inspection commitments.																																																																	
<b>Explanation</b>	<p>Element 2 includes metrics that measure planned inspections completed (Metrics 4a1 – 4a10) and inspection coverages (Metrics 5a1, 5b1, and 5b2) for NPDES majors and non-majors. The National Goal for this Element is for 100% of state specific CMS Plan commitments to be met. Review of the FDEP CWA §106 Workplan end of year report indicated that the State met or exceeded each of its inspection commitments in FY15.</p> <p>Meeting inspection commitments and coverages was an Area for State Attention in SRF Round 2. FDEP implemented measures to ensure they meet inspection commitments and coverages as evident by the State meeting or exceeding its state specific CMS in FY15.</p>																																																																	
<b>Relevant metrics</b>	<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>4a1 Pretreatment compliance inspections and audits</td> <td>100% of CMS</td> <td>--</td> <td>PPA: 13 PCI: 33</td> <td>PPA:13 PCI: 33</td> <td>PPA: 100% PCI: 100%</td> </tr> <tr> <td>4a2 SIU inspections for SIUs discharging to non-authorized POTWs</td> <td>100% of CMS</td> <td>--</td> <td>-</td> <td>-</td> <td>-</td> </tr> <tr> <td>4a4 Major CSO inspections</td> <td>100% of CMS</td> <td>--</td> <td>-</td> <td>-</td> <td>-</td> </tr> <tr> <td>4a5 SSO inspections</td> <td>100% of CMS (as needed)</td> <td>--</td> <td>Major: 33 Minor: 22</td> <td>Major: 33 Minor: 17</td> <td>Major: 100% Minor: 129%</td> </tr> <tr> <td>4a7 Phase I &amp; II MS4 audits or inspections (including co-permittees)</td> <td>100% of CMS</td> <td>--</td> <td>Phase I: 69 Phase II:24</td> <td>Phase I: 52 Phase II: 21</td> <td>Phase I: 133% Phase II:114%</td> </tr> <tr> <td>4a8 Industrial stormwater inspections</td> <td>100% of CMS</td> <td>--</td> <td>333</td> <td>319</td> <td>104%</td> </tr> <tr> <td>4a9 Phase I &amp; II SW construction inspections</td> <td>100% of CMS</td> <td>--</td> <td>372</td> <td>344</td> <td>120%</td> </tr> <tr> <td>4a10 Medium and large NPDES CAFO inspections</td> <td>100% of CMS</td> <td>--</td> <td>11</td> <td>11</td> <td>100%</td> </tr> <tr> <td>5a1 Inspection coverage of NPDES majors</td> <td>100% of CMS</td> <td>--</td> <td>93</td> <td>92</td> <td>101%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	4a1 Pretreatment compliance inspections and audits	100% of CMS	--	PPA: 13 PCI: 33	PPA:13 PCI: 33	PPA: 100% PCI: 100%	4a2 SIU inspections for SIUs discharging to non-authorized POTWs	100% of CMS	--	-	-	-	4a4 Major CSO inspections	100% of CMS	--	-	-	-	4a5 SSO inspections	100% of CMS (as needed)	--	Major: 33 Minor: 22	Major: 33 Minor: 17	Major: 100% Minor: 129%	4a7 Phase I & II MS4 audits or inspections (including co-permittees)	100% of CMS	--	Phase I: 69 Phase II:24	Phase I: 52 Phase II: 21	Phase I: 133% Phase II:114%	4a8 Industrial stormwater inspections	100% of CMS	--	333	319	104%	4a9 Phase I & II SW construction inspections	100% of CMS	--	372	344	120%	4a10 Medium and large NPDES CAFO inspections	100% of CMS	--	11	11	100%	5a1 Inspection coverage of NPDES majors	100% of CMS	--	93	92	101%
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	5b1 Inspection coverage of NPDES non-majors with individual permits	100% of CMS	52	45	115%
	5b2 Inspection coverage of NPDES non-majors with general permits	100% of CMS	86	85	101%
<b>State Response</b>	FDEP appreciates EPA’s recognition that we have exceeded the inspection commitments outlined in the PPA.				
<b>Recommendation</b>					

## CWA Element 2 — Inspections

<b>Finding 2-2</b>	<b>Meets or Exceeds Expectations</b>																	
<b>Summary</b>	FDEP’s inspection reports were well written, complete, and provided sufficient documentation to determine compliance.																	
<b>Explanation</b>	<p>Metric 6a requires that inspection reports are complete and sufficient to determine compliance at a facility. Approximately 96.2% (51/53) of FDEP’s inspection reports and accompanying cover letter were found to be well written, complete, sufficient, and included field observations noting compliance issues, where appropriate. FDEP also noted if noncompliance had been corrected by a facility prior to finalization of the report.</p> <p>While the inspection reports were well-written, many of the reports did not include important elements such as the facility entrance/exit times or a place for the inspector’s signature on the stormwater inspection reports. Corrective actions, such as revising the inspection form, were promptly taken by FDEP to address these concerns in future reports.</p> <p>Quality of inspection reports was an Area for State Improvement in Rounds 1 and 2. FDEP has taken the steps to improve the quality of inspection reports and was found to meet this SRF requirement in FY15.</p>																	
<b>Relevant metrics</b>	<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>51</td> <td>53</td> <td>96.2%</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%	--	51	53	96.2%
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6a Inspection reports complete and sufficient to determine compliance at the facility	100%	--	51	53	96.2%													
<b>State Response</b>	<p>The metric increase (by 36%) is directly reflective of process improvements implemented since SRF Round 2.</p> <p>The inspection report form templates have been updated to include inspector signature, reviewer date, SEV code list, and rule citations. The addition of these citations more clearly depicts the compliance determination, as well as corrective actions needed to return to compliance. Training will continue to be utilized to highlight the importance of completing all fields in the inspection report forms.</p>																	

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	<p>FDEP has developed data entry and program timelines that summarize and simplify the timeframes for completing inspection functions, data entry and enforcement. Additionally, we enhanced EPA’s CWA Round 3 File Review Checklist to include verification that all documentation is in OCULUS and to evaluate the quality of each inspection report. This checklist can also be used as a guide to ensure inspection reports are complete.</p>
<b>Recommendation</b>	

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## CWA Element 2 — Inspections

<b>Finding 2-3</b>	<b>Area for State Improvement</b>																	
<b>Summary</b>	FDEP inspection reports were not completed in a timely manner.																	
<b>Explanation</b>	<p>File Metric 6b indicated that 41.5% (22/53) of FDEP’s inspection reports were not completed in a timely manner. Because FDEP’s Enforcement Manual and Wastewater Enforcement Response Guide (ERG) does not prescribe timeframes for inspection report completion; EPA relied on its NPDES EMS which allows for 30 days and 45 days to complete non-sampling and sampling inspection reports, respectively. The average number of days to complete an inspection report was 61 days, with a range of 1-253 days.</p> <p>In nine of the files reviewed which had untimely inspection reports, FDEP waited until a facility had come back into compliance before they finalized and issued the report. This business practice unnecessarily increased the length of time to finalize the inspection report.</p> <p>Timeliness of inspection reports is a continuing issue from Round 2 and is an Area for State Improvement in Round 3.</p>																	
<b>Relevant metrics</b>	<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>22</td> <td>53</td> <td>41.5</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%	--	22	53	41.5
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
6b Inspection reports completed within prescribed timeframe	100%	--	22	53	41.5													
<b>State Response</b>	<p>We will provide additional guidance and training to address the timeliness issues associated with inspection report completion and issuance. We have updated our standardized inspection report forms to clarify timeliness data points and needs.</p> <p>We have also made database changes to capture the manager reviewer date so timeliness can now be tracked through a standardized report. This is also a performance expectation for the district offices. Inspectors are now balancing time necessary to allow the facility to return to compliance and timely issuing the inspection report.</p>																	

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**Recommendation**

By November 30, 2017, FDEP should reassess their practices and procedures to ensure the timely completion of inspection reports. FDEP also has the ability to establish their own timeframes for inspection report completion. 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 May 31, 2018, these reviews indicate that the State is timely in completing inspection reports; the recommendation will be considered completed.

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## CWA Element 3 — Violations

<b>Finding 3-1</b>	<b>Meets or Exceeds Expectations</b>																	
<b>Summary</b>	The State’s Inspection Reports documented accurate compliance determinations.																	
<b>Explanation</b>	<p>Metric 7e indicated that 94.3% (50/53) of the inspection reports reviewed documented an accurate compliance determination for each facility.</p> <p>Most of the State’s inspection reports were well written, complete, included field observations, and a compliance status that accurately documented compliance determinations. The State has developed an inspection report format that is used effectively for documenting inspection field observations and making compliance determinations.</p>																	
<b>Relevant metrics</b>	<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>7e Inspection reports reviewed that led to an accurate compliance determination</td> <td>100%</td> <td>--</td> <td>50</td> <td>53</td> <td>94.3%</td> </tr> </tbody> </table>						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%	--	50	53	94.3%
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%	--	50	53	94.3%													
<b>State Response</b>	The recent development of the audit checklist and the implementation of the new auditing procedures of inspection reports helps ensure the accuracy of the compliance determinations made during inspections. The enhanced checklists are comprised of the components that are detailed in EPA’s CWA Round 3 File Review Checklist and program specific standard operating procedures. The checklists are also used as a tool to assist in accurately capturing compliance determinations when completing inspection reports.																	
<b>Recommendation</b>																		

### CWA Element 3 — Violations

Finding 3-2	Area for State Improvement
<b>Summary</b>	The State does not routinely identify and report Single Event Violations (SEVs) and Significant Noncompliance (SNCs) at major facilities.
<b>Explanation</b>	<p>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.</p> <p>For the FY15 review period, Data Metrics 7a1 and 7a2 indicated that FDEP entered 0 SEVs for NPDES major facilities and 114 SEVs for non-major NPDES facilities, respectively.</p> <p>File review Metric 8b indicated that the State did not identify and report any SEVs at NPDES major facilities as required by the ICIS SEV Entry Guidance (SEV Guidance). Because no SEVs were identified by FDEP at major facilities in FY15, File Metric 8c (timely reporting of SEVs) could not be assessed. Of the 19 NPDES major files reviewed, the review team identified 13 files where SEVs (operation and maintenance violations, numerous Sanitary Sewer Overflows (SSO), and spills) occurred and should have been documented and reported as such</p> <p>The on-site file review did observe eight NPDES non-major inspection reports which included SEV codes. While these facilities are included in the Data Metric 7a2 total, they do not count towards File Review Metric 8b because the facilities are not NPDES majors.</p> <p>In SRF Round 2, this finding was Meets Expectations as FDEP identified, reported, and tracked SEVs for the FY11 period of review. In FY10, Region 4 began to require its states to enter SEVs (per the SEV Guidance) as set forth in the CWA Section 106 Workplans. At that time, FDEP asked to use a subset of (ten) SEV codes rather than the entire suite of (200+) SEV codes. EPA agreed to this subset at that time. Since FY10, FDEP has not been consistent in the use of these ten codes or requested to use additional codes to accurately depict the issues identified. For these reasons, this is 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 #
	7a1	Number of major facilities with single event violations	N/A	--	-	-
7a2	Number of non-major facilities with single event violations	N/A	--	-	-	114
8b	Single-event violations accurately identified as SNC or non-SNC	100%	--	0	13	0%
8c	Percentage of SEVs identified as SNC reported timely at major facilities	100%	--	0	0	-

**State Response**

SEV code data entry became a requirement in the Florida FY09 106 Enforcement workplan. The requirement remains unchanged and is as follows:

Task = Enter inspection data for all NPDES program areas into ICIS-NPDES

Due Date = Enter the permit number, the name of the facility, the date of the inspection and inspection type within 15 days of completion of the inspection report, but no later than 45 days from the date of the inspection. All other information (single event violations) must be entered within 90 days of inspection so that all information is entered into ICIS-NPDES no later than 12/31/09 for FY09.

Per the 106 requirements, we have been identifying/documenting SEV codes used in Florida based on inspection findings and feel this initial EPA finding is not reflective of the process we've been following for the past 8 years. Florida received positive feedback from this EPA finding in the past and was not made aware of any need to expand our SEV Code list. However, based on the initial Round 3 results, several comments noted that we were not entering SEV codes for spills. After the initial Round 3 results, FDEP began an internal state-wide SEV workgroup to analyze available SEV codes and determine their applicability to Florida. FDEP will soon have a newly expanded list of SEV codes for use. Additionally, inspection forms have been updated to include the list of potential SEV codes, and further training and guidance will be provided.

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**Recommendation**

By November 30, 2017, FDEP should develop and implement procedures to ensure that reported SSO events and violations documented during compliance monitoring activities are properly identified as SEVs and coded into ICIS using the entire suite of SEV codes per the SEV Guidance. 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 May 31, 2018, these reviews indicate that SEVs are being identified and coded, the recommendation will be considered completed.

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## CWA Element 4 — Enforcement

<b>Finding 4-1</b>	<b>Meets or Exceeds Expectations</b>																	
<b>Summary</b>	The State’s Enforcement Responses (ERs) taken promoted a Return to Compliance (RTC).																	
<b>Explanation</b>	<p>Metric 9a indicated that in 31 of 35 files reviewed (88.6%) the chosen ERs did return or were expected to return a facility to compliance. Of the four files where the ER did not promote a RTC:</p> <ul style="list-style-type: none"> <li>• Two files documented numerous SSO events throughout the period of review without any ER; and,</li> <li>• Two files where FDEP offered compliance assistance following an inspection and the facility indicated they addressed the areas of non-compliance. However, at a subsequent inspection, continued non-compliance was observed and there was no escalation to a formal ER to promote a RTC.</li> </ul> <p>In response to the finding of Area of State Attention in Round 2, FDEP has taken steps to ensure that their chosen ERs will promote a facility’s RTC. As evident by the file review, this area meets the expectations of this SRF requirement.</p>																	
<b>Relevant metrics</b>	<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>31</td> <td>35</td> <td>88.6%</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%	--	31	35	88.6%
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%	--	31	35	88.6%													
<b>State Response</b>	Through additional training and guidance, we will continue to ensure that staff are selecting the appropriate enforcement response and that they are including appropriate documentation in the record that demonstrates the facility's return to compliance.																	
<b>Recommendation</b>																		

## CWA Element 4 — Enforcement

<b>Finding 4-2</b>	<b>Area for State Improvement</b>					
<b>Summary</b>	The State’s Enforcement Responses were not always timely or appropriate.					
<b>Explanation</b>	<p>Metric 10a1 looks at the number of formal enforcement actions taken in a timely manner that address SNC violations at major facilities. Metric 10b1 looks at the appropriateness of enforcement actions taken. Per EPA’s NPDES EMS, formal enforcement should occur at facilities in SNC prior to the second official Quarterly Noncompliance Report unless there is supportable, written justification for an alternative action was appropriate.</p> <p>In FY15, Data Metric 10a1 indicated that four of six major (66.7%) facilities in SNC received a timely, formal ERs. Upon further review of the files, it was determined that an additional two facilities did not receive timely, formal ER that addressed the SNC violations. One facility received an EPA formal enforcement action that was unrelated to the SNC violation. The second facility was in SNC for six quarters before a formal action was initiated. Therefore, the adjusted Data Metric 10a1 is 33.3% (2/6) of major facilities in SNC received a timely and formal ER.</p> <p>File Metric 10b documented in that in 73.7% (28/38) of the files reviewed, FDEP took an appropriate ER to address violations. In the 10 files without an appropriate ER, the State did not provide written justification for why a formal action was not taken for facilities in SNC, why the ER did not escalate when noncompliance continued, or why no ER was taken. For example, two files documented numerous SSOs without an ER and did not contain justification for why an enforcement action was not taken. Several other files documented non-compliance, but did not follow the ER outlined in FDEP’s ERG.</p> <p>Taking a timely and appropriate enforcement response is a continuing issue from Rounds 1 and 2 of the SRF and remains as an Area for State Improvement in Round 3.</p>					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	10a1 Major facilities with timely action as appropriate	≥98%	11.8%	4	6	66.7%



	<table border="1"> <tr> <td>* (Corrected) 10a1 Major facilities with timely action as appropriate</td> <td>≥98%</td> <td>11.8%</td> <td>2</td> <td>6</td> <td>33.3%</td> </tr> <tr> <td>10b Enforcement responses reviewed that address violations in an appropriate manner</td> <td>100%</td> <td>--</td> <td>27</td> <td>38</td> <td>73.7%</td> </tr> </table>	* (Corrected) 10a1 Major facilities with timely action as appropriate	≥98%	11.8%	2	6	33.3%	10b Enforcement responses reviewed that address violations in an appropriate manner	100%	--	27	38	73.7%
* (Corrected) 10a1 Major facilities with timely action as appropriate	≥98%	11.8%	2	6	33.3%								
10b Enforcement responses reviewed that address violations in an appropriate manner	100%	--	27	38	73.7%								
<b>State Response</b>	<p>10a1: FDEP has been working with EPA and received additional training and guidance on developing procedures to track and capture violations prior to their appearance on the QNCR. Increasing our understanding of how facilities will appear on the QNCR ensures timely initiation of appropriate enforcement actions, as outlined in the Wastewater Enforcement Response Guide.</p> <p>10b: We will create additional guidance and engage in further training on this item. The focus will be to reinforce the need to timely escalate matters if compliance assistance offers are not accepted, completed timely or ignored. We will also reiterate how staff should view, document and address chronic noncompliance issues. We have implemented a checklist that will assist staff to ensure that all enforcement documentation has been entered into OCULUS as well as the corresponding data entry into COMET. We will also address the documentation issues so that the record accurately reflects the Department's determination not to take formal action.</p> <p>FDEP now uses a SharePoint Site to post and track comments for the QNCR. The SharePoint Site streamlines communication between the Districts and Division Office and stores historical QNCR data for easy access. Continuous QNCR training has improved District offices understanding of EPA's expectations of timely and appropriate enforcement. Staff have received training on the importance of timely enforcement response and escalation.</p>												
<b>Recommendation</b>	<p>By November 30, 2017, FDEP should develop and/or update procedures to ensure that ERs are timely, appropriate, and escalate when needed. Additionally, FDEP should ensure that adequate documentation is included in files to support the chosen ER. EPA will review these procedures and monitor the State's implementation efforts through existing oversight calls and periodic data and/or file reviews. If by May 31, 2018, these reviews indicate that the revised procedures appear to result in timely/appropriate enforcement responses that reflect a RTC; this recommendation will be considered completed.</p>												

## CWA Element 5 — Penalties

Finding 5-1	Area for State Improvement
<b>Summary</b>	The State does not include documentation in the file that demonstrates the consideration of economic benefit (EB).
<b>Explanation</b>	<p>Metric 11 indicated that 0% (0/19) of the files reviewed documented the consideration of both gravity and EB.</p> <p>For the majority of the penalties reviewed (16/19), FDEP calculated gravity per the procedures set forth in Florida’s Environmental Litigation Reform Act (ELRA). Five of these files were unclear in how the violations cited in the Short Form Consent Order or Consent Order matched the violations used to calculate the gravity portion of the penalty per ELRA. Additionally, three files used an alternative method for penalty calculation, the “Checklist for DMR Enforcement.”</p> <p>None of the 19 files reviewed included EB in the final penalty amount. One file considered EB and contained a calculation of EB, but the calculated EB amount was ultimately not included because the “penalty assessed was significantly greater.” In the remaining 18 files, the following occurred:</p> <ul style="list-style-type: none"><li>• Six files included inappropriate rationale, such as the costs to RTC, for consideration of EB that was deemed inappropriate.</li><li>• Nine files stated EB was “considered but not appropriate” without rationale of why EB was determined to be inappropriate.</li><li>• Three files used the costs of avoided monitoring to calculate gravity rather than, more appropriately, using those costs to calculate the EB component of the penalty.</li></ul> <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; 1993</i>) 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.</p>

	<p>The documentation of economic benefit consideration in penalty calculations is a continuing issue from Rounds 1 and 2 of the SRF and remains as an Area for State Improvement in Round 3.</p>					
<p><b>Relevant metrics</b></p>	<p><b>Metric ID Number and Description</b></p>	<p><b>Natl Goal</b></p>	<p><b>Natl Avg</b></p>	<p><b>State N</b></p>	<p><b>State D</b></p>	<p><b>State % or #</b></p>
	<p>11a Penalty calculations reviewed that consider and include gravity and economic benefit</p>	<p>100%</p>	<p>--</p>	<p>0</p>	<p>19</p>	<p>0%</p>
<p><b>State Response</b></p>	<p>In our previous reviews, economic benefit (EB) documentation was noted as a deficiency because the penalty computation worksheet line for economic benefit was either left blank, had a "0" or a "NA". We were advised that those notations (blank, "0" or "NA") were not sufficient because it wasn't clear if EB had been considered. In discussions with EPA staff, we were told a statement indicating that "EB had been considered, but wasn't appropriate" would be sufficient documentation for this metric moving forward. We have been implementing this guidance for many years. We disagree with the initial EPA finding, as these files did contain the EB Statement mentioned above because the Department has been considering EB and documenting that consideration and Florida should receive credit for this documentation.</p> <p><b>Element 11a: Penalty Calculation Method</b>  We have implemented a new peer review process for formal enforcement actions and penalty calculations. A committee now evaluates each enforcement action and penalty calculation including economic benefit for completeness and appropriateness. Additionally, staff has been instructed to consider economic benefit in each enforcement case. Their assessment is evaluated during a peer review committee meeting.</p> <p>We are in the process of revising the penalty calculation worksheet. The creation of a new standardized form will ensure uniformity statewide in the penalty calculation process and revisions.</p> <p>Economic benefit requirements have recently been clarified to district staff by the Division and further insight is expected from the EPA Economic Benefit Training to be held May 17 and 18, 2017.</p>					
<p><b>Recommendation</b></p>	<p>FDEP should implement necessary procedures to include appropriate gravity and economic benefit considerations in CWA penalty assessments</p>					

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by November 30, 2017. After a six-month implementation period, EPA will review a sample of final enforcement penalty orders to assess if gravity and EB are appropriately considered and documented in penalty calculations. If by July 31, 2018, appropriate improvement is observed this recommendation will be considered complete.

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## CWA Element 5 — Penalties

<b>Finding 5-2</b>	<b>Area for State Attention</b>					
<b>Summary</b>	The rationale for differences between initial and final penalties assessed are not always documented by the State.					
<b>Explanation</b>	Metric 12a is used when the final penalty value is lower than the initial value. In 80% (8/10) of the files reviewed with initial and final penalty amounts, FDEP documented the differences and/or rationale between the initial and final penalty assessments. In the two files without rationale documentation, the staff who worked on the cases were no longer with FDEP and the rationale was unable to be ascertained. Because FDEP met this SRF requirement in Round 2, documentation of differences between initial and final penalties does not appear to be a systemic issue. Therefore, this is an Area for State Attention.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	12a Documentation of the difference between initial and final penalty and rationale	100%	--	8	10	80%
<b>State Response</b>	FDEP will work on enhancing the penalty collection process to ensure that the appropriate documentation details the rationale between the initial and final penalty amounts, when there is a change. The implementation of the improved penalty collection process and worksheet will confirm that adequate documentation is included in files to support the basis for the change in penalty amounts. It is now clear that any changes to the penalty are to be captured in Part III of the Penalty Calculation Worksheet.					
<b>Recommendation</b>						

## CWA Element 5 — Penalties

<b>Finding 5-3</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	The State consistently documented the collection of penalties.					
<b>Explanation</b>	Metric 12b indicated that 100% (17/17) files reviewed documented either the collection of final penalty payment by the facility or the completion of an in-kind project.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	12b Penalties collected	100%	--	17	17	100%
<b>State Response</b>	FDEP appreciates EPA’s acknowledgement that the Department properly documented the collection of penalties.					
<b>Recommendation</b>						

## Resource Conservation and Recovery Act Findings

RCRA Element 1 — Data																		
<b>Finding 1-1</b>	<b>Meets or Exceeds Expectations</b>																	
<b>Summary</b>	The FDEP RCRA program maintains accurate data in their files and the national database, RCRAInfo.																	
<b>Explanation</b>	During the SRF file review, information in the facility files was checked for accuracy with the information in the national RCRA database, RCRAInfo. The data was found to be accurate in 34 of the 35 files (97.1%). Files were easily accessible through FDEP’s Oculus Online Electronic Document Management System, and the data in RCRAInfo was consistent and thorough. This element meets SRF requirements.																	
<b>Relevant metrics</b>	<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>100%</td> <td>--</td> <td>34</td> <td>35</td> <td>97.1%</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	100%	--	34	35	97.1%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
2b Complete and accurate entry of mandatory data	100%	--	34	35	97.1%													
<b>State Response</b>	FDEP appreciates EPA’s acknowledgement that the RCRA program maintains accurate data in both RCRA info and in the state’s Compliance and Enforcement Tracking (CHAZ) database.																	
<b>Recommendation</b>																		

## RCRA Element 2 — Inspections

### Finding 2-1 Meets or Exceeds Expectations

**Summary** Florida met national goals for all TSD and LQG inspections.

**Explanation** 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.

In FY 2015, Florida met expectations for all inspections in these areas. All 25 operating TSDs were inspected over the two-year time period. The state also met the annual LQG inspection coverage (25.4%) that is above the national goal of 20%.

For the five-year LQG inspection coverage, the initial data metric of 83% was below the national goal of 100%. Upon reviewing the facilities that were not inspected during this five-year time frame, it was noted that 67 of the 393 facilities were not part of the LQG inspection universe during the entire five years. These facilities were episodic or one-time LQG notifiers, and were not part of the more permanent LQG universe that is subject to the five-year inspection coverage requirement. The 67 facilities were removed from the metric calculation, and the corrected universe is actually shows that 100% of the LQGs were inspected in the five-year period (a total of 326 facilities).

### Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
5a Two-year inspection coverage of operating TSDFs	100%	90.6%	25	25	100%
5b Annual inspection coverage of LQGs	20%	18.3%	100	393	25.4%
5c Five-year inspection coverage of LQGs	100%	52.5%	326	393	83%
<b>* (Corrected) 5c Five-year inspection of LQGs (see explanation above)</b>			<b>326</b>	<b>326</b>	<b>100%</b>



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**State Response**

FDEP appreciates EPA’s acknowledgement that the RCRA Program met the national goals for all TSD and LQG inspections.

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**Recommendation**

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## RCRA Element 2 — Inspections

<b>Finding 2-2</b>	<b>Meets or Exceeds Expectations</b>																	
<b>Summary</b>	The RCRA inspection reports reviewed provided sufficient documentation to determine compliance at the facility.																	
<b>Explanation</b>	<p>A total of 35 inspection reports were evaluated for completeness and sufficiency to determine compliance with the RCRA requirements. It was found that 91.4% (32 of 35) of the inspection reports met this standard.</p> <p>The completeness and sufficiency of the RCRA inspection reports meets SRF requirements. The quality of the FDEP RCRA inspection reports reviewed were excellent, with thorough descriptions of facility processes, waste management activities, potential violations and supporting photo documentation.</p>																	
<b>Relevant metrics</b>	<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>--</td> <td>32</td> <td>35</td> <td>91.4%</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%	--	32	35	91.4%
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%	--	32	35	91.4%													
<b>State Response</b>	FDEP appreciates EPA’s acknowledgement that the RCRA program’s inspection reports provided sufficient documentation to determine facility compliance.																	
<b>Recommendation</b>																		

## RCRA Element 2 — Inspections

<b>Finding 2-3</b>	<b>Area for State Improvement</b>																	
<b>Summary</b>	The RCRA inspection reports reviewed were not completed in a timely manner.																	
<b>Explanation</b>	<p>In the Florida <i>Compliance and Enforcement Process for DEP's Hazardous Waste Program (August 2014 Memorandum)</i>, it provides that RCRA inspection reports should be final within 75 days. During the file review, it was noted that many inspection reports in the file were not the final reports (e.g., not signed by inspector and/or supervisor). Subsequent to the file review, FDEP quickly updated the files with the final reports. A total of 34 inspection reports were evaluated, and it was found that 61.8% (21 of 34) of the inspection reports met this standard. An average time for report completion at 80 days.</p> <p>The timeliness of inspection reports is considered an Area for State Improvement.</p>																	
<b>Relevant metrics</b>	<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 Timeliness of inspection report completion</td> <td>100%</td> <td>--</td> <td>21</td> <td>34</td> <td>61.8%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	6b Timeliness of inspection report completion	100%	--	21	34	61.8%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
6b Timeliness of inspection report completion	100%	--	21	34	61.8%													
<b>State Response</b>	<p>FDEP acknowledges that several of the selected FFY2015 inspection reports reviewed were not completed within FDEP's RCRA program target inspection report completion timeframe (75 days) and that some completed inspection reports did not include dated signatures. FDEP has modified our SWIFT inspection system to ensure finished inspection reports include dated inspector signatures and supervisor approval, and prioritized inspection report completion tracking by providing quarterly updates to district management. As shown below, the RCRA program is now completing a very high percentage (98%) within the target and a much lower average mean days to close (32).</p>																	

	Means Days to Close	Total Number of Inspections Done by Day 75	Percent Done by Day 75
FFY 2017 YTD	32	257	98%
FFY 2016	33	354	92%
FFY 2015	51	445	78%

**Recommendation**

It is recommended that FDEP implement necessary procedures to address timeliness of inspection report completion by September 30, 2017. After the end of calendar year 2017, EPA will review a sample of inspection reports to assess the timeliness of the reports. If by March 31, 2018, appropriate improvement is observed this recommendation will be considered complete.

## RCRA Element 3 — Violations

<b>Finding 3-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	Florida makes timely and accurate compliance determinations and the appropriate identification of the majority SNC facilities.					
<b>Explanation</b>	<p>File Review Metric 7a assesses whether accurate compliance determinations were made based on a file review of inspection reports and other compliance monitoring activity (i.e., record reviews). The file review indicated that 91.4% of the files reviewed had accurate compliance determinations (32 of 35 files).</p> <p>The majority of SNCs (92.9%) were identified correctly by the state in the national database and in accordance with the RCRA ERP. Of the 28 SNC-caliber facility files reviewed, there were two facilities that were not identified as SNCs by the state, and violations were addressed through informal rather than formal enforcement actions, as required per the RCRA ERP.</p> <p>The initial data metric that measures the timeliness of SNC determinations indicated that 84.2% (32 of 38) of the SNC determinations met the ERP timeline of 150 days in FY 2015. Upon reviewing the files, it was determined that two of these SNC determinations were originally Secondary Violators (SVs) that became SNCs when they did not return to compliance through informal enforcement actions. Per the ERP, SVs have up to 240 days to return to compliance before they should be elevated to SNC status. Therefore, the adjusted percentage of timely SNC determinations is 89.4% (34 of 38 SNCs).</p> <p>The accuracy of the state’s RCRA compliance determinations and the appropriateness and timeliness of the SNC identifications meet SRF requirements.</p>					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	7a Accurate compliance determinations	100%	n/a	32	35	91.4%
	8a SNC identification rate	n/a	2.2%	20	624	3.2%
	8c Appropriate SNC determinations	100%	n/a	26	28	92.9%
	8b Timeliness of SNC determinations	100%	79%	32	38	84.2%

	* (Corrected) 8b timeliness of SNC determinations (see explanation above)	34	38	89.4%
<b>State Response</b>	FDEP appreciates EPA’s acknowledgement that the RCRA program makes accurate compliance determinations and appropriate SNC determinations for most SNC facilities.			
<b>Recommendation</b>				

## RCRA Element 4 — Enforcement

<b>Finding 4-1</b>	<b>Meets or Exceeds Expectations</b>																													
<b>Summary</b>	FDEP consistently issued timely and appropriate RCRA enforcement responses that returned violating facilities to compliance.																													
<b>Explanation</b>	<p>A total of 27 files were reviewed that included informal or formal enforcement actions, and 100% of the enforcement actions returned the facilities to compliance with the RCRA requirements.</p> <p>The FY 2015 data metric that measures the timeliness of formal enforcement showed that 97.4% (38 of 39) of the formal enforcement actions met the ERP in FY 2015. The national goal is 80%, and the state far exceeded that percentage.</p> <p>Facility noncompliance was documented in the 29 of the files reviewed. In evaluating the enforcement responses taken, 89.7% (26 of 29) cases were addressed with the appropriate enforcement response. For the remaining three cases, two facilities were not identified as SNCs and the state addressed the violations through an informal action rather than an appropriate formal enforcement action (referenced in Finding 3-1). In the third case the state did identify the facility as a SNC, but the consent agreement that was negotiated with the facility is not considered formal enforcement since the action did not mandate compliance and is not enforceable.</p> <p>The state met the SRF expectations for the criteria for timely and appropriate enforcement actions that return violators to compliance.</p>																													
<b>Relevant metrics</b>	<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 Enforcement that returns violators to compliance</td> <td>100%</td> <td>n/a</td> <td>29</td> <td>29</td> <td>100%</td> </tr> <tr> <td>10a Timely enforcement taken to address SNC</td> <td>80%</td> <td>81.4%</td> <td>38</td> <td>39</td> <td>97.4%</td> </tr> <tr> <td>10b Appropriate enforcement taken to address violations</td> <td>100%</td> <td>n/a</td> <td>26</td> <td>29</td> <td>89.7%</td> </tr> </tbody> </table>						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	29	29	100%	10a Timely enforcement taken to address SNC	80%	81.4%	38	39	97.4%	10b Appropriate enforcement taken to address violations	100%	n/a	26	29	89.7%
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	29	29	100%																									
10a Timely enforcement taken to address SNC	80%	81.4%	38	39	97.4%																									
10b Appropriate enforcement taken to address violations	100%	n/a	26	29	89.7%																									
<b>State Response</b>	FDEP appreciates EPA’s acknowledgement that the RCRA program consistently issued timely and appropriate RCRA enforcement responses returning violators to compliance.																													

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**Recommendation**

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## RCRA Element 5 — Penalties

<b>Finding 5-1</b>	<b>Area for State Improvement</b>					
<b>Summary</b>	The consistent calculation of gravity in penalty assessments is a concern in state RCRA penalty assessments.					
	<p>One of the objectives of the SRF is to ensure equitable treatment of violators through national policy and guidance, including systematic methods of penalty calculations. As provided in the 1993 EPA “<i>Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements</i>” it is EPA policy not to settle for less than the amount of the economic benefit of noncompliance (EBN) and a gravity portion of the penalty. There were 22 penalty calculations reviewed and 13 of the cases (59.1%) had the appropriate gravity and/or EBN and had documentation included in the file. The remaining nine cases did not include appropriate gravity considerations due to the compression of unrelated violations into one violation count. The inclusion of the appropriate gravity considerations in RCRA penalty assessments is considered an area for state improvement.</p> <p>In past SRF reviews, there had been recommendations for the appropriate consideration of EBN in RCRA penalty assessments. The file review confirmed that FDEP has implemented procedures to address the issue, and the state RCRA EBN calculations meet the SRF requirements.</p>					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	11a Penalty calculations include gravity and economic benefit	100%	N/A	13	22	59.1%
<b>State Response</b>	FDEP understands that some selected files did not include what EPA considers to be appropriate gravity considerations due to the compression of unrelated violations into one violation count. The RCRA Program has recently (February 9, 2017) developed guidelines for combining penalties for related violations to aid in statewide					

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	consistency. These guidelines are largely based on EPA’s 2003 RCRA Civil Penalty Policy and examples from past inspections.
<b>Recommendation</b>	It is recommended that FDEP implement necessary procedures to include appropriate gravity considerations in RCRA penalty assessments by September 30, 2017. After the end of calendar year 2017, EPA will review a sample of final enforcement penalty orders to assess the timeliness of the reports. If by March 31, 2018, appropriate improvement is observed this recommendation will be considered complete.

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## RCRA Element 5 — Penalties

<b>Finding 5-2</b>	<b>Meets or Exceeds Expectations</b>																		
<b>Summary</b>	<p>Florida provides appropriate justification for adjustments between initial and final negotiated RCRA penalties. Documentation is also maintained on the collection of all final assessed penalties</p> <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. FDEP provided satisfactory documentation on penalty adjustments. In the 17 RCRA enforcement cases in FY2015 that included penalty adjustments, all 17 cases (100 %) provided the appropriate rationale to document the decision.</p> <p>In 100% of the enforcement cases with final penalties (21 of 21), there was documentation in the file indicating that final penalties had been collected, or that the state is pursuing collection where respondent had failed to pay the penalty.</p> <p>The documentation of penalty adjustment rationale and final penalty collection meet the SRF requirements.</p>																		
<b>Relevant metrics</b>	<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>17</td> <td>17</td> <td>100%</td> </tr> <tr> <td>12b Penalties collected</td> <td>100%</td> <td>N/A</td> <td>21</td> <td>21</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	17	17	100%	12b Penalties collected	100%	N/A	21	21	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	17	17	100%														
12b Penalties collected	100%	N/A	21	21	100%														
<b>State Response</b>	FDEP appreciates EPA’s acknowledgement that the RCRA program properly documented penalty adjustment rationale and for penalties collected.																		
<b>Recommendation</b>																			

