

STATE REVIEW FRAMEWORK

US EPA Region 9 Direct Implementation of NPDES in the Pacific Territories

**Clean Water Act
Implementation in Federal Fiscal Year 2015**

**U.S. Environmental Protection Agency
Headquarters, Washington, D.C.**

**Final Report
June 13, 2018**

Executive Summary

Introduction

EPA's Headquarters Office of Compliance conducted a review under the State Review Framework (SRF) of EPA Region 9's NPDES compliance monitoring and enforcement program in the Pacific Islands (American Samoa, Guam, and the Mariana Islands).

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

- Permit data for major facilities are consistently entered into ICIS-NPDS.
- Region 9 makes accurate NPDES compliance determinations through inspections of facilities.

Priority Issues to Address

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

- Consistent enforcement follow-up on single event violations found during inspections
- Proactive follow-up on discharge monitoring reports that are either missing or incomplete to ensure that the full magnitude of violations reported are transparently recorded in EPA data systems

Most Significant SRF CWA-NPDES Program Issues¹

- Effluent limit data for major facilities are not consistently being entered into ICIS-NPDES and there are some minor discrepancies with facility location during data entry.
- Inspection reports were often incomplete and not completed on time.
- Many single-event violations (SEVs) are not accurately identified as SNC or non-SNC.

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 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."

- Most single-event violations (SEVs) identified as SNC at major facilities are not being reported in a timely manner.

Background on EPA Region 9 Enforcement and the Pacific Islands

The review of the Region 9 Pacific Islands DI enforcement SRF report completed in FY 2014 noted that Region 9 had recently reorganized its enforcement program in 2013 and therefore withheld making recommendations at that time. Prior to the reorganization, the Regional Pacific Islands Program Office was responsible for some aspects of compliance monitoring and enforcement (NPDES and UST). Since the reorganization, the Enforcement Division handles all compliance monitoring and enforcement efforts in the Pacific Islands and PI Program Office now handles mostly liaison and capacity building such as training and funding through grants. Work under development to develop standard operating procedures to improve discharge monitoring report analysis, inspection report completion timeliness, and consent decree tracking are notable programmatic success stories that are expected to greatly improve the efficiency and effectiveness of enforcement of effluent violations to protect human health.

For the Pacific Islands, the Region has several on-going consent decrees under long-term compliance schedules and is currently developing cases that the Region is planning to take this year soon.

The Region's Pacific Islands Program Office makes several efforts within current resource constraints to enhance the programmatic capacity of the PI governments through training and technical assistance, funding through grants, and work sharing through IPAs. EPA's goal has been to equip the local governments to take the lead for environmental protection. The agency also tries to backstop them when they fail to maintain the capacity to implement the laws.

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II. 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 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 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.

III. SRF Review Process

Review period: FY2015

Key dates:

- Data Metric Analysis (DMA) and File Section List sent to the region:
 - April 23, 2015
- File Review Conducted
 - August 15-19, 2016
- Draft Report
 - May 9, 2018
- Report Finalized
 - July 16, 2018

State and EPA key contacts for review:

- Ken Greenberg, Region 9 Water Section Chief 1
- Doug McDaniel, Region 9 Waste and Chemical Section Chief
- Julie Anderson, Region 9 OECA, Senior Advisor
- Michael Mason, HQ OECA State and Tribal Performance (STPB) Branch Chief
- Elizabeth Walsh, SRF Reviewer (STPB)
- Jonathan Pettit, SRF Reviewer (STPB)

IV. 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 Water Act Findings

	Area for Regional Improvement																							
	Effluent limit data for major facilities are not consistently being entered into ICIS-NPDES and there are some minor discrepancies with facility location during data entry.																							
	<p>The region entered 79% of discharge monitoring reports (DMRs) (metric 1b2) for major facilities. Given the national goal of $\geq 95\%$, this result does not meet the national performance expectation. The Region took the initiative to start drafting standard operating procedures to improve communication, coordination, compliance monitoring, and enforcement follow up on late and/or missing data including DMRs in the Pacific Islands prior to the on-site file review. The review team commends the region for recognizing and working to address a known problem in advance of the SRF review as part of their routine oversight.</p> <p>For file review metric 2b, the file review showed there are inaccuracies with the facility location (address and/or latitude/longitude) reflected in the national data system when compared to the permit. This is an improvement from past SRF reviews.</p> <p>The previous review in 2012 found 3 unreported enforcement actions and four unreported inspections. During the current review, only one inspection had an inaccurate date, and all required inspections and actions were reported. Based on the results of this review, the region has addressed recommendation 1-3 from the Round 2 review, and this recommendation is closed.</p>																							
	<table border="1"> <thead> <tr> <th style="text-align: left;">Metric ID Number and Description</th> <th colspan="2"></th> <th colspan="3" style="text-align: right;">% or #</th> </tr> </thead> <tbody> <tr> <td>1b2 DMR entry rate for major facilities</td> <td>$\geq 95\%$</td> <td>95%</td> <td>237</td> <td>300</td> <td>79%</td> </tr> <tr> <td>2b Files reviewed where data are accurately reflected in the national data system</td> <td>100%</td> <td>--</td> <td>15</td> <td>30</td> <td>50%</td> </tr> </tbody> </table>						Metric ID Number and Description			% or #			1b2 DMR entry rate for major facilities	$\geq 95\%$	95%	237	300	79%	2b Files reviewed where data are accurately reflected in the national data system	100%	--	15	30	50%
Metric ID Number and Description			% or #																					
1b2 DMR entry rate for major facilities	$\geq 95\%$	95%	237	300	79%																			
2b Files reviewed where data are accurately reflected in the national data system	100%	--	15	30	50%																			
Regional response																								

Recommendation	<ul style="list-style-type: none"> • Implement the standard operating procedures for DMR data entry discussed during the on-site file review by 10/31/18 • Region 9 will actively participate in the data verification process for FY 2016 data to correct any missing DMRs November 2018-January 2019 • The region will enter at least 95% of FY 2016 discharge monitoring reports (DMRs) by 10/31/2018. • OECA-HQ will verify improvement in DMR data entry for major facilities by conducting an annual data metric analysis of FY 2017 frozen data by 6/28/18. <ul style="list-style-type: none"> ○ HQ will continue to monitor DMR data entry if the national goal is not achieved in FY 2018 through annual data metric analyses until improvement occurs. ○ The recommendation regarding metric CWA 1b2 on DMR data entry will be considered implemented once $\geq 95\%$ DMR data entry occurs
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CWA Element 1 — Data

Finding 1-2	Meets or Exceeds Expectations
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Permit data for major facilities are consistently entered into ICIS-NPDES.

Data entry of permit and effluent limits is excellent and shows improvement since the last review of the Pacific Islands NPDES program. The region entered 100% of the permit limits for major facilities (metric 1b1). Given the national goal of $\geq 95\%$, this result exceeds national performance expectations.

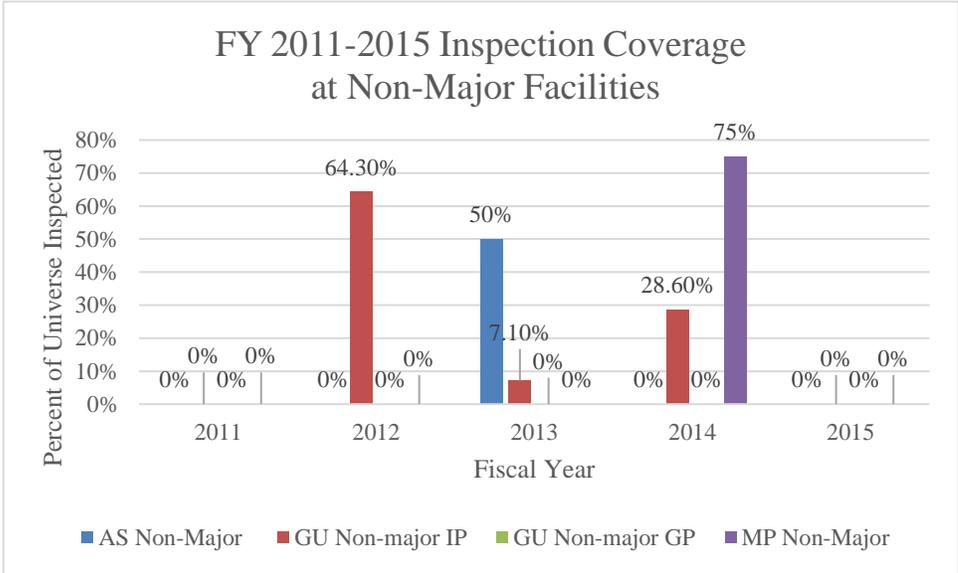
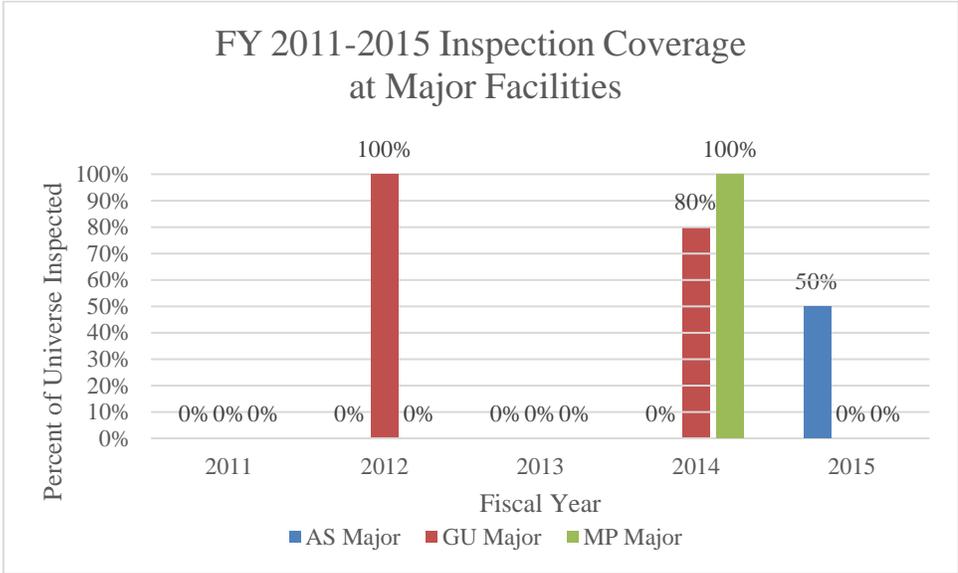
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	1b1 Permit limit rate for major facilities	$\geq 95\%$	67%	11	11	100%

Regional response	
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Recommendation	
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CWA Element 2 — Inspections

Finding 2-1	Area for Regional Improvement
Summary	<p>Inspection coverage of major and non-major facilities were not met for the Compliance Monitoring Strategy (CMS) plan goals by the Region, failed to meet the inspection commitments for FY15 goals.</p> <p><i>Although, a multi-year review of the Region’s major and non-major inspections indicates that the Region largely met EPA’s national CMS inspection goals. The Region inspected 100% (9 of 9) of the active majors between FY2015 and FY2016 (one major industrial discharger was shut down during this period and excluded from the count). During the five-year period FY2012 through FY2016, the Region inspected 17 of the 19 non-major dischargers in the Pacific Islands. The two missed inspections were completed in FY2017. While the Region was on target against EPA’s national CMS goals, it was not able to complete all the inspections in its FY2015 inspection plan due to cuts in its travel budget.</i></p> <p>Inspection reports were often incomplete and not completed on time. Inspection report completion timeliness is a recurring issue found in past SRF reviews.</p>
Explanation	<p><i>Major and Non-major Inspection Coverage</i></p> <p>The region committed to inspect 5 major and 5 non-major facilities in FY2015 in its inspection plan. Three inspections occurred at major facilities (60%) and 1 inspection non-major facilities (20%). Due to unexpected inclement weather in the Pacific Islands area, the Region was unable to complete all inspection commitments in the review year.</p> <p><i>Long term inspection coverage.</i></p>



Inspection Commitments

There are no commitments to conduct, nor inspections reported, for pretreatment, significant industrial user, or wet weather inspections in the Pacific Islands.

Inspection Report Quality & Timeliness

Inspection reports were mostly complete, but five of the fifteen inspection reports reviewed lacked a manager signature and date of report finalization, permit issuance/expiration date, and checklists. In some cases, inspection reports were sent to the facility without indication of management review. All inspection reports reviewed exceeded required completion timeframes in the

National Pollutant Discharge Elimination System Enforcement Management System (NPDES EMS) that calls for non-sampling inspection reports to be completed in 30 days and sampling inspection reports to be completed in 45 days.

In FY2015, the Region conducted a LEAN exercise to improve the quality of its inspection reports. Improved inspection report templates and revised standard operating procedures for completing inspection reports within 60 days are one of the outcomes of this effort. Due the LEAN effort, the reviewers included several reports from FY2016 to assess the results of the effort. In general, the reviewers found the quality of the inspection reports to be an improvement from previous years. HQ commends the region for identifying and working towards addressing inspection report timeliness in advance of the SRF file review.

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 Commitment		0	0	N/A
4a2 Significant Industrial User inspections for SIUs discharging to non-authorized POTWs	100% of Commitment		0	0	N/A
4a4 Major CSO inspections	100% of Commitment		-	-	N/A
4a5 SSO inspections	100% of Commitment		0	0	0/0
4a7 Phase I & II MS4 audits or inspections	100% of Commitment		0	0	0/0
4a8 Industrial stormwater inspections	100% of Commitment		0	0	0/0
4a9 Phase I and II stormwater construction inspections	100% of Commitment		0	0	0/0
4a10 Medium and large NPDES CAFO inspections	100% of Commitment		-	-	N/A
5a1 Inspection coverage of NPDES majors	100% of Commitment	3.9%	3	5	60%
5b1 Inspection coverage of NPDES non-majors with individual permits	100% of Commitment	27%	1	5	20%
5b2 Inspection coverage of NPDES non-majors with general permits	100% of Commitment	7%			
6a Inspection reports complete and sufficient to determine compliance at the facility	100%		10	15	66.7%

	<table border="1"> <tr> <td data-bbox="483 203 954 283">6b Inspection reports completed within prescribed timeframe</td> <td data-bbox="963 203 1206 283">100%</td> <td data-bbox="1214 203 1287 283">0</td> <td data-bbox="1295 203 1369 283">15</td> <td data-bbox="1377 203 1442 283">0%</td> </tr> </table>	6b Inspection reports completed within prescribed timeframe	100%	0	15	0%
6b Inspection reports completed within prescribed timeframe	100%	0	15	0%		
Regional response	<p>The Region had established an overly ambitious FY2015 inspection plan that, if completed, would have exceeded EPA’s national CMS goals for major and non-major inspections. The region committed to inspect 5 major and 5 non-major facilities in FY2015 in its inspection plan. Three inspections occurred at major facilities (60%) and 1 inspection at non-major facilities (20%) (see metrics 5a1 and 5b1).</p>					
Recommendation	<p>Region 9 should follow its 2015 SOP for inspection reports and complete manager reviewed and signed reports within 60 days of inspections.</p> <ul style="list-style-type: none"> • OECA-HQ will review a randomly selected set of FY 2018 inspection reports by 12/31/2018 to assess whether inspection reports are finalized within the 60-day deadline established in the Region 9 SOP. <ul style="list-style-type: none"> ○ HQ will continue to monitor inspection report on an annual basis until it meets or exceeds 90% completion of inspection reports. 					

CWA Element 3 — Violations

Finding 3-1	Area for Regional Improvement																																			
Summary	<p>Many single-event violations (SEVs) are not accurately identified as SNC or non-SNC in files reviewed, nor are these violations reported in the data system of record.</p> <p>Most of major facilities in the Pacific Islands (92%) are in significant non-compliance.</p>																																			
Explanation	<p>Single event violations (SEVs) are violations of the CWA NPDES requirements documented during a compliance inspection, reported by the facility, determined through other compliance monitoring methods by a regulatory authority, or unauthorized bypasses or discharges. SEVs do not include violations generated automatically by the facility (e.g., effluent violations from a discharge monitoring reports (DMRs), compliance schedule violations in ICIS-NPDES).</p> <p>While single event violations are clearly described in the inspection reports, the severity of the violation and determination of whether it is significant is not clear. No SNC determinations were documented in each of the four files reviewed.</p> <p>Metric 8c measures the timeliness of reporting SNC SEVs in the data system of record at major facilities. None of the SNC SEVs reviewed were reported in the ICIS database. Regional Guidance for Tracking Clean Water Act (CWA) NPDES Inspection Related Violations and Wet Weather Significant Noncompliance, October 15, 2008, “All single event violations and associated RNC detection codes should be reported in the data system before the QNCR reporting deadlines in 40 CFR 123.45(d),” which are generally 60 days after the end of a quarterly period.</p> <p>This is a recurring area for regional improvement identified in past SRF reviews.</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>7a1 Number of major facilities with single event violations</td> <td></td> <td></td> <td></td> <td></td> <td>0</td> </tr> <tr> <td>7d1 Major facilities in noncompliance</td> <td></td> <td></td> <td>11</td> <td>11</td> <td>100%</td> </tr> <tr> <td>7f1 Non-major facilities in Category 1 noncompliance</td> <td></td> <td></td> <td></td> <td></td> <td>17</td> </tr> <tr> <td>7g1 Non-major facilities in Category 2 noncompliance</td> <td></td> <td></td> <td></td> <td></td> <td>2</td> </tr> </tbody> </table>						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	7d1 Major facilities in noncompliance			11	11	100%	7f1 Non-major facilities in Category 1 noncompliance					17	7g1 Non-major facilities in Category 2 noncompliance					2
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																															
7d1 Major facilities in noncompliance			11	11	100%																															
7f1 Non-major facilities in Category 1 noncompliance					17																															
7g1 Non-major facilities in Category 2 noncompliance					2																															

	8a2 Percentage of major facilities in SNC	34%	11	12	92%
	8b Single-event violations accurately identified as SNC or non-SNC		0	4	0%
	8c Percentage of SEVs identified as SNC reported timely at major facilities		0	4	0%
Regional response					
Recommendation	<ul style="list-style-type: none"> • Within 120 days from the completion of this report, Region 9 shall incorporate a protocol for identifying SEVs as SNC in the inspection report standard operating procedures noted under Finding 2-1 that will explain how the Region will report SEVs identified in state inspections into ICIS-NPDES. • By October 31, 2018, Region 9 shall provide the Office of Compliance (OC) with a randomly selected set of 5 files to determine that SEVs in the Pacific Islands direct implementation program are accurately being identified as SNC or non-SNC in ICIS. If OC determines that the SEVs are reported accurately and timely on detailed facility reports available in ECHO, OC will close out the recommendation. 				

CWA Element 3 — Violations

Meets or Exceeds Expectations

Region 9 makes accurate NPDES compliance determinations based on EPA’s review of the region’s inspection reports.

In 100% of the case files reviewed, Region 9 made an accurate determination of compliance. It is unusual to see such a high value for this metric and it is evidence of the improved the quality of the inspection reports.

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%		15	15	100%

Regional response

Recommendation

CWA Element 4 — Enforcement

Meets or Exceeds Expectations

The region did not take any enforcement action during the review year. Although no enforcement files were available in FY2015 to be reviewed, EPA did review one FY2014 enforcement case

There are currently 5 enforcement cases in various stages of development, and 12 on-going settlements dating back to 2009 that have long-term compliance schedules to bring about return to compliance.

Returning facilities to compliance: Metric 9a evaluates the percentage of enforcement responses that promote return to compliance. Since none of the 2015 inspections resulted in formal or informal enforcement during the FY2015 review year, metric 9a was not evaluated. The one action reviewed occurred in FY2014 and will return the source in violation to compliance.

Relevant metrics

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%		1	1	100%

State response

Recommendation

CWA Element 4 — Enforcement

Finding 4-2	Area for Regional Improvement
Summary	During the review year (FY15), the Region did not take timely action nor address violations in an appropriate manner. Most of the facilities with significant violations, however, are under existing formal enforcement orders and agreements, and the region continues to monitor progress in implementing several long-term consent decrees for facilities reviewed in this report. The review team discussed progress in implementing milestones toward enforcement orders for many facilities reviewed.
Explanation	<p>Timely enforcement: Data metric 10a1 measures the timeliness of enforcement responses at major facilities with SNC. The Region had taken timely formal enforcement actions against most of its SNC majors prior to the review year. However, because metric 10a1 only looks for FY2015 enforcement actions, it does not register the enforcement actions taken by Region 9 in prior years. (None of the Region’s SNC enforcement actions were initiated in FY15.) Prior to FY15, the Region had issued longstanding court orders and compliance agreements against 6 of the 8 facilities listed as SNC in metric 10a1. The Region initiated a judicial referral against the 7th SNC facility in September 2016 and the 8th SNC facility permanently closed in December 2016. Region 9 anticipates that these pending and existing agreements/orders will result in compliance schedules to return non-compliant facilities back to compliance.</p> <p>Appropriate Enforcement: Metric 10b reviews the appropriateness of enforcement responses. The reviewers found 12 out of 32 enforcement responses were appropriate based on the guidelines set forth in the NPDES EMS enforcement response guide. The primary reason for low values for appropriate enforcement under this metric is due to a lack of enforcement follow-up for the non-receipt of DMRs for 13 facilities. Reviewers also found a few facilities with DMR effluent violations, single event violations, permit schedule violations, and compliance schedule violations unaddressed at the time of the on-site file review. Three facilities were in significant noncompliance for multiple quarters for exceeding compliance schedule deadlines in administrative compliance orders. At the time of the review, the Region was developing a judicial referral to address the noncompliance at one facility. At the other two facilities, state owned wastewater utilities, the Region elected to provide technical and financial assistance to the utility rather than escalating to judicial enforcement.</p> <p>During the on-site file review, the regional office shared several noteworthy improvements to existing processes that were under</p>

development in August 2016 to address timely and appropriate enforcement issues identified in this SRF review. Improvements to discharge monitoring report oversight and enforcement through the new standard operating procedures for DMR non-receipt are expected to provide a strong basis for resolving many of these SNC violations in out-lying years. This may include more proactive follow-up to encourage facilities to submit information timely and identification of missing information.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
8a2 Percentage of major facilities in SNC			11	12	92%
10a1 Major facilities with timely action as appropriate			0	8	0%
10b Enforcement responses reviewed that address violations in an appropriate manner			12	32	37.5%

Regional response

We were addressing the DMR nonreceipt violations at the time of the review and have since addressed all reporting violations and ensured that all dischargers are in compliance with the e-reporting rule.

Recommendation

- The region shall ensure that DMR non-receipt violations are addressed in a timely manner within 90 days of finalization of this report.
- HQ will review the implementation of this recommendation by monitoring Metric 8a2 in FY 2019 and in subsequent years as necessary through annual data metric analyses; progress in improving appropriate enforcement of violations will be monitored through detailed facility reports for DMR NR and DMR SNC effluent violations; and annual meetings to discuss updates on the status of long-term consent decree monitoring with particular emphasis on those consent decrees open for the longest period of time. This recommendation will be considered complete when 20 percent or fewer major facilities have SNC violations reported or SNC violations are being timely and appropriately addressed based on a review of a random set of selected enforcement files.

CWA Element 5 — Penalties

	N/A					
	No FY 2015 penalties were available for review, unable to establish an Element 5 report finding as a result.					
Explanation						
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			0	0	N/A
	12a Documentation of the difference between initial and final penalty and rationale			0	0	N/A
	12b Penalties collected			0	0	N/A
Regional response						
Recommendation						

STATE REVIEW FRAMEWORK

Guam

**Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2016**

**U.S. Environmental Protection Agency
Region 9**

**Final Report
October 31, 2018**

I. Introduction

A. Overview of the State Review Framework

The State Review Framework (SRF) is a key mechanism for EPA oversight, providing a nationally consistent process for reviewing the performance of state delegated compliance and enforcement programs under three core federal statutes: Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act. Through SRF, EPA periodically reviews such programs using a standardized set of metrics to evaluate their performance against performance standards laid out in federal statute, EPA regulations, policy, and guidance. When states do not achieve standards, the EPA will work with them to improve performance.

Established in 2004, the review was developed jointly by EPA and Environmental Council of the States (ECOS) in response to calls both inside and outside the agency for improved, more consistent oversight of state delegated programs. The goals of the review that were agreed upon at its formation remain relevant and unchanged today:

1. Ensure delegated and EPA-run programs meet federal policy and baseline performance standards
2. Promote fair and consistent enforcement necessary to protect human health and the environment
3. Promote equitable treatment and level interstate playing field for business
4. Provide transparency with publicly available data and reports

B. The Review Process

The review is conducted on a rolling five-year cycle such that all programs are reviewed approximately once every five years. The EPA evaluates programs on a one-year period of performance, typically the one-year prior to review, using a standard set of metrics to make findings on performance in five areas (elements) around which the report is organized: data, inspections, violations, enforcement, and penalties. Wherever program performance is found to deviate significantly from federal policy or standards, the EPA will issue recommendations for corrective action which are monitored by EPA until completed and program performance improves.

The SRF is currently in its 4th Round (FY2018-2022) of reviews, preceded by Round 3 (FY2012-2017), Round 2 (2008-2011), and Round 1 (FY2004-2007). Additional information and final reports can be found at the EPA website under [State Review Framework](#).

II. Navigating the Report

The final report contains the results and relevant information from the review including EPA and program contact information, metric values, performance findings and explanations, program responses, and EPA recommendations for corrective action where any significant deficiencies in performance were found.

A. Metrics

There are two general types of metrics used to assess program performance. The first are **data metrics**, which reflect verified inspection and enforcement data from the national data systems of each media, or statute. The second, and generally more significant, are **file metrics**, which are derived from the review of individual facility files in order to determine if the program is performing their compliance and enforcement responsibilities adequately.

Other information considered by EPA to make performance findings in addition to the metrics includes results from previous SRF reviews, data metrics from the years in-between reviews, multi-year metric trends.

B. Performance Findings

The EPA makes findings on performance in five program areas:

- **Data** - completeness, accuracy, and timeliness of data entry into national data systems
- **Inspections** - meeting inspection and coverage commitments, inspection report quality, and report timeliness
- **Violations** - identification of violations, accuracy of compliance determinations, and determination of significant noncompliance (SNC) or high priority violators (HPV)
- **Enforcement** - timeliness and appropriateness of enforcement, returning facilities to compliance
- **Penalties** - calculation including gravity and economic benefit components, assessment, and collection

Though performance generally varies across a spectrum, for the purposes of conducting a standardized review, SRF categorizes performance into three findings levels:

Meets or Exceeds: No issues are found. Base standards of performance are met or exceeded.

Area for Attention: Minor issues are found. One or more metrics indicates performance issues related to quality, process, or policy. The implementing agency is considered able to correct the issue without additional EPA oversight.

Area for Improvement: Significant issues are found. One or more metrics indicates routine and/or widespread performance issues related to quality, process, or policy. A recommendation for corrective action is issued which contains specific actions and schedule for completion. The EPA monitors implementation until completion.

C. Recommendations for Corrective Action

Whenever the EPA makes a finding on performance of *Area for Improvement*, the EPA will include a recommendation for corrective action, or recommendation, in the report. The purpose of recommendations are to address significant performance issues and bring program performance back in line with federal policy and standards. All recommendations should include

specific actions and a schedule for completion, and their implementation is monitored by the EPA until completion.

III. Review Process Information

Clean Water Act (CWA)

Clean Air Act (CAA)

Resource Conservation and Recovery Act (RCRA)

EPA reviewer: Jennifer MacArthur

Executive Summary

Introduction

Resource Conservation and Recovery Act (RCRA)

EPA Region 9 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Guam Environmental Protection Agency (GEPA).

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

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

Resource Conservation and Recovery Act (RCRA)

* GEPA is doing an excellent job of entering Resource Conservation and Recovery Act (RCRA) inspection information into RCRAInfo in a timely manner.

* GEPA is doing an excellent job of conducting regular inspections of facilities in their RCRA universes with limited staff and resources.

Priority Issues to Address

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

Resource Conservation and Recovery Act (RCRA)

* GEPA inspectors typically issue inspection letters rather than inspection reports following RCRA inspections. The lack of details in the letters makes it difficult to verify the accuracy of GEPA's compliance determinations.

* GEPA is not entering their RCRA inspection reports or follow-up letters into RCRAInfo.

Therefore, at first glance, it appears that GEPA isn't doing any enforcement work.

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Area for Attention

Summary:

EPA's review of GEPA's 2016 inspection and enforcement files found that 93.3% (14 out of 15) of the minimum data requirements were being entered completely and accurately into the national data system (RCRAInfo).

Explanation:

One inspection was accidentally entered into RCRAInfo twice as having been conducted on two different dates. This appears to be an isolated error and not cause for concern. However, since the national goal is 100% accuracy it is marked as an area for state attention.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Accurate entry of mandatory data [GOAL]	100%	%	14	15	93.33%

RCRA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

GEPA met the 2-year inspection coverage goal for Treatment, Storage and Disposal (TSD) facility inspections, exceeded the one-year inspection coverage goal for Large Quantity Generators (LQG) and exceeded the five-year national average for Small Quantity Generator (SQG) inspections.

Explanation:

Element 2-1 is supported by Metric 5a, 5b, 5c, and 5d. GEPA inspected 2 of their TSDs, or 100%, meeting the national goal of 100% and exceeding the national average of 90.3%. GEPA annual inspection percentage was 77.8%, significantly above the national average of 17.1%. GEPA's 5-

year inspection coverage goal for LQGs was 77.8% (& of 9 facilities) which is short of the 100% national goal. However, the 2 facilities that show up as not inspected were jointly inspected by EPA Region 9 and GEPA in 2015 or 2016. Therefore, it is reasonable to conclude that GEPA met the national goal. While there are no national coverage goals for SQGs, the national 5-year average for SQG inspections is 10.7% of the regulated SQG universe. GEPA inspected 20.8% of its SQG universe during the review period, well exceeding the national average.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	90.3%	2	2	100%
5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL]	20%	17.1%	7	9	77.78%
5c Five-year inspection coverage of LQGs [GOAL]	100%	54.8%	7	9	77.78%
5d One-year count of SQGs with inspections [100% COMMITMENT]	%	9.9%	10	48	20.83%

RCRA Element 2 - Inspections

Finding 2-2

Area for Improvement

Summary:

GEPA is issuing inspection letters rather than inspection reports, which lack the information needed to evaluate the accuracy of GEPA's compliance determinations.

Explanation:

EPA's review of GEPA's inspection and enforcement files found that GEPA issued inspection letters rather than inspection reports for every RCRA inspection conducted in 2016. The letters did not provide enough information about the facility and/or what the inspector(s) observed during the facility walk-through or record review. The letters did not provide enough information about the facility and/or what the inspector(s) observed during the facility walk-through or record review.

The letters only stated that no violations were noted during the inspections. Given the lack of details in the letters, we are unable to conclude that the reports are complete and sufficient to determine compliance. Since the reports aren't complete, we also aren't able to determine if they are timely. However, it is worth noting that all of the letters were issued within 45 days of the inspections, which is the agreed upon timeframe for issuing inspection reports in Guam's workplan.

State Response:

Guam EPA will start issuing inspection reports by the 4th Quarter of FY18.

Recommendation:

Rec #	Due Date	Recommendation
1	10/31/2019	EPA recognizes that GEPA has staffing and resource limitations. Inspectors are responsible for multiple programs so spending hours drafting detailed inspection reports may not be the best use of staff time. However, GEPA should develop a basic inspection report template containing enough facility-specific information and inspector observations to instill confidence in the accuracy of their compliance determinations. EPA Region 9 can provide GEPA with assistance in developing this template, as necessary. EPA Region 9 will pull 3 inspection reports at the end of FY19 and review to determine if quality has improved. If satisfactory, we will consider the recommendation closed by 10/31/2019.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%	%	0	15	0%
6b Timeliness of inspection report completion [GOAL]	100%	%	0	0	0

RCRA Element 3 - Violations

Finding 3-1

Area for Attention

Summary:

No violations were noted in the inspection letters reviewed from 2014, 2015, and 2016 and no SNC determinations were made. Lack of information in the letters made it difficult to evaluate the accuracy of GEPA's compliance determinations.

Explanation:

No potential violations were noted in any of the inspection letters, and no violations were noted in RCRAInfo. Due to lack of information in the files and inspection letters it was difficult to verify the accuracy of GEPA's compliance determinations. This issue will be addressed under RCRA Element 2 - Inspections, with GEPA developing and utilizing an inspection report template for future inspections. Any potential violations observed during an inspection should be noted in the inspection report and documented in RCRAInfo.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%	%	0	0	0
7b Violations found during inspections [INDICATOR]	100%	%	0	0	0
8a SNC identification rate [INDICATOR]	100%	%	0	0	0
8b Timeliness of SNC determinations [GOAL]	100%	%	0	0	0
8c Appropriate SNC determinations [GOAL]	100%	%	0	0	0

RCRA Element 4 - Enforcement

Finding 4-1

Area for Improvement

Summary:

GEPA had no enforcement actions for 2016 for which to evaluate.

Explanation:

Since GEPA is issuing inspection letters instead of inspection reports, it is difficult to determine if they are taking appropriate enforcement actions. Also, GEPA isn't entering their inspection reports/letters as enforcement actions in RCRAInfo, so they aren't getting credit for informal enforcement actions.

State Response:

Guam EPA will start entering inspection reports in RCRAInfo by the 4th quarter of FY18.

Recommendation:

Rec #	Due Date	Recommendation
	10/31/2019	We recommend that GEPA develop an SOP for entering inspection reports in RCRAInfo as an enforcement action (Enforcement Type 114-Inspection Report Written) within 5 business days of issuing an inspection report. For the three FY19 inspection reports EPA will pull at the end of FY19 as part of our recommendation for RCRA Element 2-Inspections, EPA will also verify that the reports have been entered as an enforcement action in RCRAInfo. If satisfactory, we will consider recommendation closed by 10/31/2019.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timely enforcement taken to address SNC [GOAL]	100%	%	0	0	0
10b Appropriate enforcement taken to address violations [GOAL]	100%	%	0	0	0
9a Enforcement that returns sites to compliance [GOAL]	100%	%	0	0	0

RCRA Element 5 - Penalties**Finding 5-1**

Area for Attention

Summary:

No penalties were collected as GEPA had no formal enforcement action during the review period.

Explanation:

Since GEPA is issuing inspection letters instead of inspection reports, it is difficult to determine if they are taking appropriate enforcement actions which may include penalties. Once GEPA starts using an inspection report template for any inspections, EPA Region 9 will be better able to evaluate whether appropriate enforcement actions were taken, and if penalties are warranted.

State Response:

Guam EPA will take appropriate enforcement actions when warranted.

Relevant metrics:

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