

STATE REVIEW FRAMEWORK

Round 3

Chattanooga-Hamilton County, Tennessee

**Clean Air Act
Implementation in Federal Fiscal Year 2016**

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

**Final Report
November 26, 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 Final 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 steps to be taken and timeline. The EPA monitors implementation until completion.

C. Recommendations for Corrective Action

Wherever findings of *Area for Improvement* are made, those findings will include recommendations for corrective actions, or recommendations, in the report. The purpose of recommendations is to address any significant performance issues that are identified so that program performance gradually improves until it is back in line with federal policy and standards. Recommendations are meant to include specific actions and a schedule for completion which are monitored by the EPA until completed.

III. Review Process Information

Executive Summary

Areas of Strong Performance

CAA

APCB 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).

Enforcement actions bring sources back into compliance within a specified timeframe, and HPVs are addressed in a timely and appropriate manner.

Priority Issues to Address

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

CAA

Minimum data requirements (MDRs) for compliance monitoring activities were not entered into ICIS-Air within the required timeframe.

APCB did not develop or maintain penalty calculations, so the consideration of gravity and economic benefit and any difference between initial and final penalties was not documented.

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Summary:

Minimum data requirements (MDRs) reported by the Chattanooga-Hamilton County Air Pollution Control Board (APCB) into ICIS-Air are accurate for most files.

Explanation:

File Review Metric 2b indicated that 85% (17 of 20) of the files reviewed reflected accurate entry of all MDRs into ICIS-Air. The remaining 3 files had one or more discrepancies between information in the files and data entered into ICIS-Air. Two sources had missing Air Programs (e.g. MACT) and subparts, and one source had inaccurate facility information and activity dates.

State Response:

None

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%	NA	17	20	85%

Finding 1-2

Area for Improvement

Summary:

Minimum data requirements (MDRs) for compliance monitoring activities were not entered into ICIS-Air within the required timeframe.

Explanation:

Metric 3a2 and 3b3 indicated that APCB did not have any HPV or enforcement related MDRs in the review year. Metric 3b2 (100%) indicated that APCB met the national goal by entering MDR data for stack tests into ICIS-Air within 120 days. However, Metric 3b1 (26.9%) indicated that MDRs for compliance monitoring activities were generally not entered into ICIS-Air within 60 days. APCB's FY18 production data for Metric 3b1 shows significant improvement to 74.1%, indicating the program's efforts to improve timeliness of data entry are having a tangible effect.

State Response:None

Recommendation:

Rec #	Due Date	Recommendation
1	03/31/2019	By March 31, 2019, APCB should identify the root causes for late data entry, certify in writing to EPA what measures and/or procedures have been implemented to ensure that MDRs will be entered timely into ICIS-Air, and provide to EPA a written description or copy of any such measures or procedures.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
3a2 Timely reporting of HPV determinations [GOAL]	100%	18.4%	0	0	NA
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	68.3%	21	78	26.92%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	63.8%	2	2	100%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	61.3%	0	0	NA

CAA Element 2 - Inspections

Finding 2-1Meets or Exceeds Expectations

Summary:

APCB met the negotiated frequency for inspection of sources, reviewed Title V Annual Compliance Certifications, and included all required elements in their Full Compliance Evaluations (FCEs) and Compliance Monitoring Reports (CMRs).

Explanation:

Metrics 5a and 5b indicated that APCB provided adequate inspection coverage for major and SM-80 sources during FY16 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 APCB reviewed Title V annual compliance certifications submitted by major sources and recorded these reviews in ICIS-Air. 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.

State Response:

None

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a FCE coverage: majors and mega-sites [GOAL]	100%	86.6%	10	12	83.33%
5b FCE coverage: SM-80s [GOAL]	100%	91.6%	50	50	100%
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	69.4%	15	15	100%
6a Documentation of FCE elements [GOAL]	100%	NA	18	18	100%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%	NA	18	18	100%

CAA Element 3 - Violations

Finding 3-1

Area for Attention

Summary:

APCB made accurate compliance determinations in most instances, but some violations were not classified and reported into ICIS-Air.

Explanation:

Metric 7a indicated that APCB made accurate compliance determinations in 15 of 18 files reviewed (83.3%). However, in three instances, a violation was identified, but the federally reportable violation (FRV) was not recorded in ICIS-Air. EPA recommends that APCB self-correct this issue by developing an improved process for FRV and HPV determination and data entry. Metric 8c indicated that, of the four files with violations, one should have been designated as an HPV (3 of 4 or 75%). This involved an NSPS violation with a duration of more than 7 days, which would qualify as an HPV under Criterion 3. Metric 13 indicated that APCB did not identify any HPVs during the review year.

State Response:

None

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
13 Timeliness of HPV Identification [GOAL]	100%	NA	0	0	NA
7a Accurate compliance determinations [GOAL]	100%	NA	15	18	83.33%
8c Accuracy of HPV determinations [GOAL]	100%	NA	3	4	75%

CAA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Summary:

Enforcement actions bring sources back into compliance within a specified timeframe, and HPVs are addressed in a timely and appropriate manner.

Explanation:

Metric 9a indicated that the formal enforcement action reviewed (100%) brought the source back into compliance through corrective actions in the order, or compliance was achieved prior to issuance of the order. Since there were no enforcement actions in the review year (FY16), an action from FY17 was included in the review. Metric 10a indicated that the one HPV action in FY17 was addressed within 180 days (100%). In addition, Metric 10b indicated that appropriate enforcement action was taken to address the HPV. Metric 14 indicated that no case development and resolution timeline was developed or needed since this HPV was addressed within the target timeframe.

State Response:

None

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place. [GOAL]	100%	NA	1	1	100%
10b Percent of HPVs that have been have been addressed or removed consistent with the HPV Policy [GOAL]	100%	NA	1	1	100%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%	NA	0	0	NA
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule [GOAL]	100%	NA	1	1	100%

CAA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Summary:

The collection of penalties was adequately documented in the file.

Explanation:

Metric 12b confirmed that documentation of all penalty payments made by sources was included in the file.

State Response:

None

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12b Penalties collected [GOAL]	100%	NA	1	1	100%

Finding 5-2

Area for Improvement

Summary:

APCB did not develop or maintain penalty calculations, so the consideration of gravity and economic benefit and any difference between initial and final penalties was not documented.

Explanation:

One penalty action from FY17 was reviewed. However, no penalty calculations were developed, so the extent to which economic benefit was considered in the penalty was not documented, as indicated in Metric 11a (0%). EPA's expectation that state and local enforcement agencies document the consideration and assessment of both gravity and economic benefit is outlined in the 1993 Steve Herman memo entitled "Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework from State/EPA Enforcement Agreements." APCB advised that there was no difference between the initial and final penalty, but this is not clearly documented in the file, since initial and final penalty calculations were not generated, as indicated by Metric 12a (0%).

State Response:

None

Recommendation:

Rec #	Due Date	Recommendation
1	03/31/2019	By March 31, 2019, APCB should certify in writing to EPA what revised procedures have been implemented to document penalty calculations in accordance with EPA policy and provide EPA a copy of such revised procedures. These procedures should address and document the consideration of gravity and economic benefit and document any differences between the initial and final penalty in all future penalty calculations.

Relevant metrics:

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