STATE REVIEW FRAMEWORK

Forsyth County, North Carolina

Clean Air Act
Implementation in Federal Fiscal Year 2017

U.S. Environmental Protection Agency
Region 4

Final Report
July 5, 2019

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 is to address significant performance issues and bring program performance back in line with federal policy and standards. All recommendations should include specific

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

III. Review Process Information

Clean Air Act (CAA)

Key dates:

- August 20, 2018, Round 4 kick-off letter sent to Local program
- September 4, 2018, DMA and file selection sent to county
- November 5-8, 2018, on-site file review for CAA
- December 21, 2018, file review spreadsheet provided to county

Local Program and EPA key contacts for review:

- Forsyth County: SRF Coordinator, Minor Barnette; CAA Contact: Peter Lloyd
- EPA Region 4: SRF Coordinator, William Bush; CAA Contacts: Mark Fite, OEC; Wendell Reed, APTMD

Executive Summary

Areas of Strong Performance

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

Clean Air Act (CAA)

Forsyth County Environmental Assistance & Protection (FCEAP) 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 aspects of the program that, according to the review, are not meeting federal standards and should be prioritized for management attention:

Clean Air Act (CAA)

Minimum data requirements (MDRs) were not entered into ICIS-Air within the required timeframes, and discrepancies between the files and ICIS-Air were identified in about 45% of the files reviewed.

FCEAP documented the consideration of gravity in their penalty calculations, but the consideration of economic benefit was not documented.

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1
Area for Improvement

Summary:
Minimum data requirements (MDRs) were not entered into ICIS-Air within the required timeframes, and discrepancies between the files and ICIS-Air were identified in about 45% of the files reviewed.

Explanation:
File Review Metric 2b indicated that 55% (11 of 20) of the files reviewed reflected accurate entry of all MDRs into ICIS-Air. The remaining nine files had one or more discrepancies between information in the files and data entered in ICIS-Air. Eight sources had missing or inaccurate activity or violation data. Three sources had missing Air Program subparts (e.g. MACT ZZZZ), and two sources had inaccurate facility information. Incorrect data has the potential to hinder EPA's oversight and targeting efforts and may result in inaccurate information being released to the public. Metric 3a2 (0%) indicated that FCEAP did not report any HPVs into ICIS-Air in FY17. Metrics 3b1 (6.7%), 3b2 (0%) and 3b3 (0%) indicated that MDRs for compliance monitoring, stack tests and enforcement activities were not entered timely.

Local Agency Response:
FCEAP agrees that improvement is needed in this area. The root cause for these reporting deficiencies was the separation of the reporting duties in the data management group of our organization from the compliance monitoring personnel as well as a lack of training with the ICIS-Air reporting system. FCEAP will provide EPA a written certification with the measures and procedures that have been implemented to ensure accurate and timely reporting to ICIS-Air.

The reporting deficiencies were identified prior to the SRF and reporting responsibilities were transitioned to the Compliance Coordinator in the compliance monitoring group. This change will be reflected in the revised Compliance Monitoring Quality Assurance Plan. During the SRF review, FCEAP staff became aware of routine errors during data entry that resulted in incomplete data reported in ICIS Air. Assistance from the SRF review staff and subsequent online training has corrected the routine data entry errors. FCEAP believes these steps have resolved this issue and will verify progress by reviewing SRF metrics annually.

Recommendation:

Rec #	Due Date	Recommendation
1	04/30/2020	By September 30, 2019, FCEAP should identify the root causes for late and inaccurate data entry, certify in writing to EPA what measures and/or procedures have been implemented to ensure accurate and timely entry of MDRs into ICIS-Air, and provide to EPA a written description or copy of any such measures or procedures. By April 30, 2020, following data verification, EPA will review the relevant data metrics to ensure implementation is taking place and timely data entry has improved.

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%	-	11	20	55%
3a2 Timely reporting of HPV determinations [GOAL]	100%	40.5%	0	0	-
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	82.3%	2	30	6.67%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	67.1%	0	27	0%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	77.6%	0	6	0%

CAA Element 2 - Inspections

Finding 2-1
Meets or Exceeds Expectations

Summary:
FCEAP 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 (100%) and Metric 5b (93.3%) indicated that FCEAP provided adequate inspection coverage for major and SM-80 sources during FY17 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 (87.5%) documented that FCEAP reviewed Title V annual compliance certifications submitted by major sources and recorded these reviews in ICIS-Air. Finally, Metric 6a (100%) and Metric 6b (100%) 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.

Local Agency Response:

This metric is the best measure of the actual performance of compliance monitoring programs in protecting public health and the environment. FCEAP has, and continues, to consider compliance monitoring and assurance to be the number one priority. We are pleased that this review of our program has demonstrated that it meets or exceeds national expectations.

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%	88.7%	5	5	100%
5b FCE coverage: SM-80s [GOAL]	100%	93.7%	14	15	93.33%
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	76.7%	7	8	87.5%
6a Documentation of FCE elements [GOAL]	100%	-	20	20	100%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%	-	20	20	100%

CAA Element 3 - Violations

Finding 3-1
Area for Attention

Summary:
FCEAP made accurate compliance determinations. FRV and HPV violations were documented in the files, but they were not reported into ICIS-Air.

Explanation:
Metric 7a indicated that FCEAP made accurate compliance determinations in 18 of 20 files reviewed (90%). Metric 8c indicated that FCEAP's HPV determinations for 12 of 13 files reviewed (92.3%) were accurate. Metric 13 indicated that FCEAP did not identify any HPVs during the review year. Although violations were accurately identified in the file, FRVs and HPVs were not recorded in ICIS-Air, so EPA provided training during the review for entering violations into ICIS-Air. In addition, EPA recommends that the checklists FCEAP uses to document FRV and HPV determinations be updated to reflect current policy and guidance and delete references to AFS. A review of FY2018 production data in ECHO indicates that FCEAP has self-corrected this issue and is now reporting HPVs and FRVs into ICIS-Air.

Local Agency Response: FCEAP strives to accurately identify violations and return facilities to compliance in a timely manner. We have reviewed our legislatively mandated, tiered enforcement policy to better align it with EPA's FRV policy and guidance. We have also revised our violation data form and integrated it with our other violation processing tools to reflect current EPA policy and guidance and improve internal oversight. FCEAP anticipates making analogous changes in our internal data systems once adequate resources are available in our data management group.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
13 Timeliness of HPV Identification [GOAL]	100%	-	0	0	-
7a Accurate compliance determinations [GOAL]	100%	-	18	20	90%
8c Accuracy of HPV determinations [GOAL]	100%	-	12	13	92.31%

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 all ten formal enforcement actions reviewed (100%) brought the sources back into compliance through corrective actions in the order, or compliance was achieved prior to issuance of the order. Since there were only three enforcement actions reported in the review year (FY17), additional actions from FY16 and FY18 were also included in the review. Metric 10a (100%) indicated that all three HPV actions reviewed were either addressed within 180 days or a case development and resolution timeline (CDRT) was discuss with EPA. Metric 14 (100%) indicated that one CDRT was developed and contained the required policy elements. Finally, Metric 10b (100%) indicated that appropriate enforcement action was taken to address these HPVs.

Local Agency Response:
Again FCEAP is pleased that this measure of our compliance and enforcement program meets or exceeds national expectations. We consider compliance monitoring and assurance to be our number one priority and strive to return facilities to compliance in a timely manner.

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	100%	-	3	3	100%
10b Percent of HPVs that have been have been addressed or removed consistent with the HPV Policy [GOAL]	100%	-	3	3	100%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%	-	1	1	100%
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule [GOAL]	100%	-	10	10	100%

CAA Element 5 - Penalties

Finding 5-1
Meets or Exceeds Expectations

Summary:
The collection of penalties was adequately documented in the file, and any difference between initial and final penalties was also documented.

Explanation:
Metric 12a indicated that all ten penalty calculations reviewed (100%) documented any differences between the initial and final penalties. In addition, Metric 12b confirmed that documentation of all penalty payments made by sources was included in the file (100%).

Local Agency Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%	-	10	10	100%
12b Penalties collected [GOAL]	100%	-	10	10	100%

Finding 5-2
Area for Improvement

Summary:
FCEAP documented the consideration of gravity in their penalty calculations, but the consideration of economic benefit was not documented.

Explanation:
Metric 11a (0%) indicated that none of the penalty calculations reviewed documented the consideration of economic benefit. FCEAP's penalty worksheet template has a place for recording both the value of any economic benefit and any rationale for its inclusion or exclusion. However, $0 was usually all that was recorded, with no rationale or discussion provided concerning why no economic benefit was realized or included. 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". Region 4 recommends that if no economic benefit is realized or it is de minimis, the county should document this rationale in the penalty worksheet.

Local Agency Response:
EPA found that none of the penalties reviewed documented economic benefit. While FCEAP does not dispute this finding, none of the penalties reviewed resulted in economic benefits. FCEAP's Tier Assignment and Gravity forms are completed for all enforcement actions. This form includes a specific area for documenting economic benefit. FCEAP considers economic benefit during penalty calculations, however, the basis for economic benefit has previously only been documented when an economic benefit has been identified.

FCEAP understands EPA's expectation to provide some analysis of whether a facility gains an economic benefit by violating air quality requirements. This process will be addressed in the revision to our Compliance Monitoring Quality Assurance Plan. We have integrated our violation processing tools to ensure economic benefit is always addressed and improve internal oversight. We also anticipate tracking economic benefit determinations using our internal data systems once adequate resources are available in our data management group. FCEAP will provide EPA a written certification with the measures and procedures that have been implemented to document economic benefit in penalty calculations and provide sample penalty calculations demonstrating their implementation.

Recommendation:

Rec #	Due Date	Recommendation
1	04/30/2020	By September 30, 2019, FCEAP 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 the documentation and consideration of economic benefit in all future penalty calculations. By April 30, 2020, FCEAP should submit and EPA will review sample penalty calculations to ensure that implementation of the revised procedures is taking place and the calculation of EB is either being included, or an explanation for not including it has been provided.

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%	-	0	10	0%