

STATE REVIEW FRAMEWORK

Kansas

**Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2018**

**U.S. Environmental Protection Agency
Region 7**

**Final Report
March 6, 2020**

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

Resource Conservation and Recovery Act (RCRA)

Key dates:

- SRF Kickoff letter mailed to KDHE: May 16, 2019
- File selection list sent to KDHE: May 10, 2019
- Data Metric Analysis sent to KDHE: May 10, 2019
- Entrance interview conducted: June 11, 2019
- File review conducted: June 11-14, 2019
- Exit interview conducted: June 14, 2019
- Draft report sent to KDHE: December 10, 2019
- Final report issued: March 6, 2020

State and EPA key contacts for review:

- Julie Coleman, KDHE, BWM, Director
- Brian Burbeck, KDHE, BWM, Compliance, Assistance & Enforcement Unit Chief
- Ken Powell, KDHE, BWM, Compliance & Enforcement, Waste Reduction & Assistance Section Chief
- Nicole Moran, USEPA Region 7, Acting RCRA Section Chief (July to November 2019)
- Edwin G. Buckner PE, USEPA Region 7, RCRA Compliance Officer and Acting RCRA Section Chief (November 2019 to March 2020)
- Kevin Snowden, USEPA Region 7, RCRA Compliance Officer
- Michael J. Martin, USEPA Region 7, RCRA Compliance Officer
- Kevin Barthol, USEPA Region 7, SRF Coordinator

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:

Resource Conservation and Recovery Act (RCRA)

- Most Minimum Data Requirements (MDRs) are accurately entered into the national data systems, except violations, which are not consistently linked in RCRAInfo to Significant Non-Compliers Yes flags (SNY) evaluations.
- Inspections are thorough and identify all violations. KDHE met the inspection numbers expected for TSDFs.
- All compliance and SNC determinations appear to be accurate.
- All enforcement actions were taken to conclusion and resulted in facilities return to compliance.
- KDHE properly uses its penalty guidance and obtains penalties appropriate to that guidance.

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)

- KDHE fell short of the expected inspection numbers for LQGs. KDHE did not meet the state 30-day timetable for completing inspection reports.
- Although SNC determinations appear to be accurate, the official determination takes longer than 150 days.
- KDHE penalty guidance does not specifically address economic benefit of noncompliance and thus penalty calculations do not account for EBN.

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Summary:

Most Minimum Data Requirements (MDRs) are accurately entered into the national data systems, except violations, which are not consistently linked in RCRAInfo to Significant Non-Compliers Yes flags (SNY) evaluations.

Explanation:

KDHE is accurately entering data such as facility information, inspections, violations, informal and formal enforcement actions, and penalties, two enforcement actions were not recorded. Although violations are identified in the database, in most cases the violations were not linked to the SNY evaluation.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Accurate entry of mandatory data [GOAL]	100%		32	34	94.1%

State Response: None

RCRA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

Inspections are thorough and identify all violations. KDHE met the inspection numbers expected for TSDFs.

Explanation:

Inspectors are well trained and make use of modern electronic inspection equipment. Reports are clear and convey sufficient information to make accurate enforcement decisions. KDHE inspected all eight of the TSDFs during the two-year cycle.

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%	85%	8	8	100%
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		34	34	100%

State Response: None

RCRA Element 2 - Inspections

Finding 2-2

Area for Improvement

Summary:

KDHE fell short of the expected inspection numbers for LQGs. KDHE did not meet the state 30-day timetable for completing inspection reports.

Explanation:

There is a high turnover rate among KDHE inspectors. KDHE consistently inspects fewer LQGs than expected. The five-year coverage percentage could vary based upon the baseline number of LQGs in the state over five years and does not address redundant inspections. The 54.5% timeliness rate is based upon the state's 30-day timetable. The state will be receiving a multi-purpose grant. It will be used to investigate and implement lean management methods to address this and other issues.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5b Annual inspection of LQGs using BR universe [GOAL]	20%	15.6%	30	227	13.2%
5c Five-year inspection coverage of LQGs [GOAL]	100%		179	207	86.5%
6b Timeliness of inspection report completion [GOAL]	100%		18	33	54.5%

State Response: *KDHE fell short of the expected inspection numbers for LQGs.*

We accept the recommendations made for this area of improvement and will work to meet the national goal of inspecting 20% of LQGs annually as follows.

There are about 1,416 hazardous waste generators in Kansas (not including Conditionally Exempt Small Quantity Generators). Of these 229, or 16%, are Large Quantity Generators (LQGs). In order to meet the national goal of inspecting 20% of LQGs annually, Kansas will need to inspect 46 per year. We have already planned to meet this goal in FFY 2020 by scheduling 53 LQGs for inspection and will strive to complete at least 46 of these.

As part of the multi-purpose grant, during 2020 BWM and BEFS also will conduct a Quality Improvement process mapping event for the inspection process in an effort to identify ways to make the inspection process more efficient while maintaining the integrity of inspections.

Despite our best efforts and intentions, there will be challenges to meeting this goal. There are 12 inspector positions in the six KDHE district offices. These inspectors are responsible for conducting all hazardous and solid waste inspections and complaint investigations, as well as assisting with disaster and emergency response as needed. Currently, two of the inspector positions are vacant and only seven of the existing inspectors are certified to perform hazardous waste inspections. Certified inspectors also are responsible for training new inspectors.

There also are three certified hazardous waste inspectors in central office of the Bureau of Waste Management who have been assigned five LQG inspections during FFY 2020. However, these inspectors are enforcement officers who are responsible for reviewing all district inspection reports for enforcement and developing enforcement orders. Therefore, to meet the recommendations for other areas of improvement identified in EPA's report their inspections may not be completed.

We expect this trend of vacancies to continue based on the turnover we have been experiencing and anticipated retirements in the next several years. When an inspector position is filled, it typically takes a new inspector from 1.5 to 2 years to complete the training and demonstrate competence to become certified to conduct hazardous waste inspections. Meeting EPA's national goal for LQG inspections may continue to be a challenge for Kansas despite our best efforts.

KDHE did not meet the 30-day timetable for completing inspection reports.

We will review this expectation with inspectors and improve tracking in an effort to ensure the 30-day goal is met most of the time. As part of the multipurpose grant we will be performing process mapping on the inspection process to determine any areas that can be improved to assure the timeliness of report completion. Because the 30-day timetable for completing inspection reports is an internal BWM goal (there is no statutory mandate requiring the 30-day timeframe) this will include re-evaluation of the 30-day goal.

As acknowledged in EPA's draft SRF report, there are legitimate factors that contribute to inspection reports occasionally exceeding the 30-day internal goal, for example: (1) delayed facility responses to inspector requests for information needed to complete reports, and (2) on-going and extended inspector vacancies which create greater demands on inspection staff can cause delays in report submittals.

Recommendation:

Rec #	Due Date	Recommendation
1	03/01/2021	<p>The state will be receiving a multi-purpose grant to investigate and implement lean management methods. EPA recommends KDHE to include this inspection coverage of LQGs and timeliness of inspection reports in its efforts. Report to EPA on monthly calls and a written report semi-annually on the progress/efforts. This recommendation will be deemed complete when:</p> <ol style="list-style-type: none">1. KDHE LQG inspections increase to meet the approximate 20% annual target of the BR universe. At the end of FY20, EPA will review KDHE inspection data in order to determine progress. If the FY20 data does not meet this threshold, EPA will review subsequent years data until met.2. If 85% or more of a selection of KDHE inspection reports meet the 30-day timetable. At the end of FY20, EPA will review a selection of inspection reports to determine progress. If the FY20 data does not meet this threshold, EPA will review subsequent year reports until met.

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Summary:

All compliance and SNC determinations appear to be accurate.

Explanation:

All compliance and SNC determinations are reasonable and accurate. The inspection reports provided ample details to assess the seriousness of cited violations. Five of the reviewed files had no cited violations. Fifteen of the 29 files with violations were accurately determined to be SNCs with the remaining 14 accurately determined to be only secondary violations.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		34	34	100%
8c Appropriate SNC determinations [GOAL]	100%		29	29	100%

State Response: None

RCRA Element 3 - Violations

Finding 3-2

Area for Improvement

Summary:

Although SNC determinations appear to be accurate, the official determination takes longer than 150 days.

Explanation:

All SNC determinations are reasonable and accurate, although the final decision by management is sometimes delayed. On average, it took 269 days to make a SNC determination, with the longest being 567 days and the shortest 148 days. Eight out of 15 SNC determinations were made within 270 days.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
8b Timeliness of SNC determinations [GOAL]	100%	76.5%	8	15	53.3%

State Response: Staff shortages have sometimes delayed meeting this deadline. We are working to hire new staff and improve training. As part of the multipurpose grant we will be performing process mapping on the enforcement process to determine any areas that can be improved to assure the timeliness of enforcement determinations.

The initial process mapping event has been scheduled for February 20, after which several follow up meetings and discussions will be needed before a revised enforcement process is adopted. Once adopted the new process can be implemented and we will be able to evaluate its effectiveness.

Recommendation:

Rec #	Due Date	Recommendation
1	03/01/2021	The state will be receiving a multi-purpose grant to investigate and implement lean management methods. EPA recommends KDHE to include this timeliness of SNC determinations in its efforts. Report to EPA on monthly calls and a written report semi-annually on the progress/efforts. EPA will deem this recommendation closed when the state achieves 85% or greater on this metric measured annually in the frozen data.

RCRA Element 4 - Enforcement

Finding 4-1

Area for Attention

Summary:

Certain enforcement actions exceed the expected timelines for conclusion.

Explanation:

Some actions were taken against particularly argumentative respondents. Two respondents appealed the state determinations and took their cases to hearing, thus dragging out the process. Two cases are not that many, but when only four actions occurred during the review period, it

appears to be a large percentage of cases. The state resolves cases swiftly when respondents do not appeal.

EPA Response to State Comments: To evaluate the KDHE's timeliness metric during the program review, the EPA used metric 10a to analyze the percentage of year-reviewed and previous-year significant noncomplier (SNC) designations addressed with a formal enforcement action or referral during the year reviewed and within 360 days of Day Zero as the criteria.

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%	87.7%	2	4	50%

State Response: EPA's report does not identify what the expected timeline is for conclusion of enforcement actions; therefore, we don't know what metric we are expected to achieve. We strive to complete enforcement actions in a timely measure. The enforcement process mapping event that is scheduled for February 20 will help us to identify changes in the process to make it more efficient and effective. Also, as noted in EPA's report, when facilities appeal an order the timeline for completion is often delayed beyond our control by the administrative process. Even during the appeal process we keep working to settle the case to shorten the time as much as possible.

RCRA Element 4 - Enforcement

Finding 4-2

Meets or Exceeds Expectations

Summary:

All enforcement actions were taken to conclusion and resulted in facilities return to compliance.

Explanation:

KDHE had 15 facilities in significant noncompliance and 14 facilities in secondary violation and concluded them all. Each enforcement response action was appropriate and returned the violating facility to compliance.

Relevant metrics:

10b Appropriate enforcement taken to address violations [GOAL]	100%		29	29	100%
9a Enforcement that returns sites to compliance [GOAL]	100%		29	29	100%

State Response: None

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

Area for Improvement

Summary:

KDHE penalty guidance does not specifically address economic benefit of noncompliance and thus penalty calculations do not account for EBN.

Explanation:

KDHE's penalty policy is clear and concise, but it does not specifically address the economic benefit of non-compliance (EBN) for individual violations. EBN is unique for each violation observed during an inspection, but the policy presents a generic, uncalculated, extra amount expected to cover EBN in every case.

EPA Response to State comments: EPA accepts KDHE's revised due date of August 31, 2020. The report language due date has been amended from June 30, 2020 to the revised date of August 31, 2020 for this finding.

Relevant metrics:

11a Gravity and economic benefit [GOAL]	100%		0	15	0%

State Response: We accept EPA's recommendations and will work to meet the requirements in the following manner.

We have determined that it has been several years since the penalty matrix was implemented and it should now be reassessed. As part of that reassessment we will be investigating the possibility of including a new line for EBN.

However, we feel that the proposed deadline of June 30, 2020 for submitting a draft, revised penalty guidance is insufficient and would like this deadline to be extended until August 31, 2020.

Recommendation:

Rec #	Due Date	Recommendation
1	08/31/2020	EPA recommends KDHE review its penalty policy and draft requirements to address EBN. EPA also recommends that KDHE incorporate these requirements into their current penalty calculation worksheet. The draft and updated worksheet should be submitted to EPA by August 31, 2020 for review. The EPA has resources to assist the state in this endeavor. At the end of FY20, EPA will review a selection of penalty calculations, and if EPA determines that the policy is appropriately being applied and EBN is being accounted for this recommendation will be closed.

RCRA Element 5 - Penalties

Finding 5-2

Meets or Exceeds Expectations

Summary:

KDHE properly uses its penalty guidance and obtains penalties appropriate to that guidance.

Explanation:

KDHE's penalty policy is clear and concise. It yields penalties appropriate to the violations considering the state's statutory maximum. KDHE files contained documentation of penalties collected.

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%		5	5	100%
12b Penalty collection [GOAL]	100%		14	14	100%

State Response: None

Appendix

Office of Legal Services
Curtis State Office Building
1000 SW Jackson St., Suite 560
Topeka, KS 66612-1368

Lee A. Norman, M.D., Secretary



Phone: 785-296-5334
Fax: 785-559-4272
www.kdheks.gov

Laura Kelly, Governor

January 27, 2020

Mr. David Cozad, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, KS 66219

RECEIVED

JAN 31 2020

ECAD/CHEMICAL

Dear Mr. Cozad:

On December 16, 2019, the KDHE Bureau of Waste Management received EPA's draft report for the State Review Framework of the Kansas RCRA Enforcement Program. We appreciate EPA's comments and guidance as we seek to continuously improve our program. Attached is our response to the draft report addressing the findings that specify "Areas for Improvement."

Please let me know if you have any questions about our response. Thank you for conducting this review efficiently and professionally.

Sincerely,

A handwritten signature in blue ink that reads "Julie Coleman". The signature is fluid and cursive.

Julie Coleman, Director
Bureau of Waste Management

e: Leo Henning, DOE
Ken Powell, BMW
Brian Burbeck, BMW
Erich Glave, BEFS
File

This response addresses findings from EPA's draft report that were assigned a rating of "Area for Improvement".

RCRA Element 2 - Inspections

Finding 2.2: KDHE fell short of the expected inspection numbers for LQGs.

We accept the recommendations made for this area of improvement and will work to meet the national goal of inspecting 20% of LQGs annually as follows.

There are about 1,416 hazardous waste generators in Kansas (not including Conditionally Exempt Small Quantity Generators). Of these 229, or 16%, are Large Quantity Generators (LQGs). In order to meet the national goal of inspecting 20% of LQGs annually, Kansas will need to inspect 46 per year. We have already planned to meet this goal in FFY 2020 by scheduling 53 LQGs for inspection and will strive to complete at least 46 of these.

As part of the multi-purpose grant, during 2020 BWM and BEFS also will conduct a Quality Improvement process mapping event for the inspection process in an effort to identify ways to make the inspection process more efficient while maintaining the integrity of inspections.

Despite our best efforts and intentions, there will be challenges to meeting this goal. There are 12 inspector positions in the six KDHE district offices. These inspectors are responsible for conducting all hazardous and solid waste inspections and complaint investigations, as well as assisting with disaster and emergency response as needed. Currently, two of the inspector positions are vacant and only seven of the existing inspectors are certified to perform hazardous waste inspections. Certified inspectors also are responsible for training new inspectors.

There also are three certified hazardous waste inspectors in central office of the Bureau of Waste Management who have been assigned five LQG inspections during FFY 2020. However, these inspectors are enforcement officers who are responsible for reviewing all district inspection reports for enforcement and developing enforcement orders. Therefore, to meet the recommendations for other areas of improvement identified in EPA's report their inspections may not be completed.

We expect this trend of vacancies to continue based on the turnover we have been experiencing and anticipated retirements in the next several years. When an inspector position is filled, it typically takes a new inspector from 1.5 to 2 years to complete the training and demonstrate competence to become certified to conduct hazardous waste inspections. Meeting EPA's national goal for LQG inspections may continue to be a challenge for Kansas despite our best efforts.

Finding 2.2: KDHE did not meet the 30-day timetable for completing inspection reports.

We will review this expectation with inspectors and improve tracking in an effort to ensure the 30-day goal is met most of the time. As part of the multipurpose grant we will be performing process mapping on the inspection process to determine any areas that can be improved to assure the timeliness of report completion. Because the 30-day timetable for completing inspection reports is an internal BWM goal (there is no statutory mandate requiring the 30-day timeframe) this will include re-evaluation of the 30-day goal.

As acknowledged in EPA's draft SRF report, there are legitimate factors that contribute to inspection reports occasionally exceeding the 30-day internal goal, for example: (1) delayed facility responses to inspector requests for information needed to complete reports, and (2) on-going and extended inspector vacancies which create greater demands on inspection staff can cause delays in report submittals.

RCRA Element 3 - Violations

Finding 3.2: Although SNC determinations appear to be accurate, the official determination takes longer than 150 days.

Staff shortages have sometimes delayed meeting this deadline. We are working to hire new staff and improve training. As part of the multipurpose grant we will be performing process mapping on the enforcement process to determine any areas that can be improved to assure the timeliness of enforcement determinations.

The initial process mapping event has been scheduled for February 20, after which several follow up meetings and discussions will be needed before a revised enforcement process is adopted. Once adopted the new process can be implemented and we will be able to evaluate its effectiveness.

RCRA Element 4 - Enforcement

Finding 4-1: Certain enforcement actions exceed the expected timelines for conclusion.

EPA's report does not identify what the expected timeline is for conclusion of enforcement actions; therefore, we don't know what metric we are expected to achieve. We strive to complete enforcement actions in a timely measure. The enforcement process mapping event that is scheduled for February 20 will help us to identify changes in the process to make it more efficient and effective. Also, as noted in EPA's report, when facilities appeal an order the timeline for completion is often delayed beyond our control by the administrative process. Even during the appeal process we keep working to settle the case to shorten the time as much as possible.

RCRA Element 5 - Penalties

Finding 5.1: KDHE penalty guidance does not specifically address economic benefit of noncompliance and this penalty calculations do not account for EBN [economic benefit of noncompliance].

We accept EPA's recommendations and will work to meet the requirements in the following manner.

We have determined that it has been several years since the penalty matrix was implemented and it should now be reassessed. As part of that reassessment we will be investigating the possibility of including a new line for EBN.

However, we feel that the proposed deadline of June 30, 2020 for submitting a draft, revised penalty guidance is insufficient and would like this deadline to be extended until August 31, 2020.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

11201 Renner Boulevard
Lenexa, Kansas 66219

SERVICE VIA ELECTRONIC MAIL
RECEIPT CONFIRMATION REQUESTED

Rick Brunetti, Director
Bureau of Air
Kansas Department of Health and Environment
1000 S.W. Jackson Street
Topeka, Kansas 66612
Rick.Brunetti@ks.gov

Dear Mr. Brunetti:

Enclosed is the draft report for the U.S. Environmental Protection Agency's review of the Kansas Department of Health and Environment Clean Air Act enforcement program for Federal Fiscal Year 2019. The document presents the findings and recommendations from the program review conducted by the EPA on July - August 2020. The findings in the report reflect what was discussed during the program review exit conference, as well as additional findings made after performing further analysis. With this transmittal, the EPA is requesting your response to the findings and recommendations contained in the report.

The EPA identified parts of KDHE's enforcement program needing improvement, which you will find in the report. The report describes the types of improvements the EPA envisions as being appropriate to resolve each finding. In your response please comment on the recommended actions and propose milestones for completing them. Upon reviewing your response, we will work in partnership to establish agreeable language for a final report. With exceptions for any actions that may require a long-term commitment of resources, we request that all actions be planned for completion by the end of FFY 2022.

The EPA anticipates finalizing the report within the next 90 days. Please submit your response to the recommendations along with any comments or clarifications of the findings within the next 45 days. If you have any questions or would like additional information, please contact Lisa Hanlon at (913) 551-7599.

Sincerely,

**DAVID
COZAD**

Digitally signed by DAVID
COZAD
Date: 2020.11.13
10:16:16 -06'00'

David Cozad
Director
Enforcement and Compliance Assurance Division

Enclosures

cc: Connie.Ellis@ks.gov



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STATE REVIEW FRAMEWORK

Kansas

Clean Air Act Implementation in Federal Fiscal Year 2019

**U.S. Environmental Protection Agency
Region 7**

**Draft Report
October 27, 2020**

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

- Finding 1-1: KDHE has demonstrated a solid arc of improvement in database accuracy over time. 88.9% of files reviewed had complete and accurate data entered into the database.
- Finding 2-1: KDHE demonstrates proficiency in inspection coverage, document review, and comprehensive report documentation.
- Finding 3-1: The state demonstrates excellence in their accuracy of compliance and HPV determinations. Timeliness of HPV identification is likewise exemplary.
- Finding 4-1: The state implements an excellent enforcement program with respect to HPV case development, as well as formal responses to return facilities to compliance.
- Finding 5-2: KDHE is successful with penalty collection.
- Supplementary Findings
 - The electronic File System is excellent, fast and transparent. Very well organized and complete.
 - Inspection Reports are of very high quality, thorough, and well organized.
 - The high technical skill of inspectors/enforcement staff evident in all documentation contained in the files.
 - The EPA/KDHE cross agency communication is excellent.

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)

- **Finding 1-2:** Timely reporting of HPV determinations, compliance monitoring Minimum Data Requirements; stack test dates and results; and enforcement MDRs are all below the national goal. The EPA is concerned with data flow and timeliness.
- **Finding 4-2:** KDHE did not consistently document addressed or removed HPVs in the national data system.

- **Finding 5-1:** KDHE's penalty calculations documentation for consideration of gravity and economic benefit as well as documentation of rationale for difference between initial penalty calculation and final penalty is below national goals.

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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 or high priority violators
- **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 the 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 Air Act

Key dates:

- SRF Kickoff letter transmitted to KDHE: May 4, 2020
- File selection list sent to KDHE: May 21, 2020
- Data Metric Analysis sent to KDHE: May 21, 2020
- Entrance interview conducted: May 26, 2020
- File review conducted: July – August 2020
- Exit interview conducted: September 8, 2020
- Draft report sent to KDHE [Date]
- Final report issued: [Insert Date]

State and the EPA key contacts for review:

- Connie Ellis, KDHE Bureau of Air; Air Compliance, Enforcement, Asbestos and KS Residential Lead Hazard Program Chief
- Allyson Prue, KDHE Bureau of Air; Air Compliance and Enforcement Unit Chief
- Lisa Hanlon, USEPA Region 7, Enforcement and Compliance Assurance Acting Air Branch Chief and SRF CAA Reviewer
- Lisa Gotto, USEPA Region 7, Lead SRF CAA Reviewer
- Sean Bergin, USEPA Region 7, SRF CAA Reviewer
- Joe Terriquez, USEPA Region 7, SRF CAA Reviewer
- Kevin Barthol, USEPA Region 7, SRF Regional Coordinator

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

KDHE has demonstrated a solid arc of improvement in database accuracy over time. 88.9% of files reviewed had complete and accurate data entered into the database.

Explanation:

Database accuracy was evaluated by comparing the KDHE electronic files with the Enforcement Compliance History Online detailed facility reports (metric 2b). 88.9% of files reviewed had complete and accurate data entered into the national database. The file review revealed relatively minor discrepancies between the ECHO database and the files. The common discrepancies between the two systems included inaccurate event dates, naming discrepancies, and typographical errors.

The EPA notes KDHE has demonstrated a solid arc of improvement in database accuracy over time, as demonstrated by the previous SRF's recommendation for this metric as an area for state attention, to the SRF Round 4 Finding, 'Meets or Exceeds Expectations'.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		32	36	88.9%

State Response:

CAA Element 1 - Data

Finding 1-2

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

Timely reporting of HPV determinations, compliance monitoring Minimum Data Requirements; stack test dates and results; and enforcement MDRs are all below the national goal. The EPA is concerned with data flow and timeliness.

Explanation:

The SRF review revealed a widespread issue with timeliness in reporting relevant enforcement actions and milestones. KDHE's timely reporting of HPV determinations, compliance monitoring Minimum Data Requirements; stack test dates and results; and enforcement MDRs are all below the national goals and national averages.

In terms of the timeliness of reporting compliance monitoring MDRs (metric 3b1), KDHE's Round 4 performance (60.4%) in this metric is below the national goal and this represents a decrease from the Round 3 achievement in this area (77.3%).

The timely reporting stack test dates and results (metric 3b2) is 58.8% likewise below the national goal. KDHE has improved substantially from the Round 3 performance (2.8%) but has decreased from the previous 2 years Annual Data Metric Analysis numbers in the mid-90's percent.

With respect to metric 3b3, KDHE achievement of 43.9% is well below the national goal and demonstrates a decline in achievement from Round 3 (91.1%).

Regarding these metrics related to timely data entry, the EPA is aware that KDHE transitioned to a new data system the Kansas Environmental Information Management System and there was some time needed to achieve this and train users. However, the EPA is generally concerned with data flow and timeliness issue.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
3a2 Timely reporting of High Priority Violation determinations [GOAL]	100%	44.9%	1	6	16.7%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	85.2%	564	934	60.4%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	65.1%	97	165	58.8%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	71.8%	36	82	43.9%

State Response:

Recommendation:

Rec No.	Due Date	Recommendation
1	05/01/2021	<p>The EPA recommends KDHE evaluate current data entry procedures with the goal of significantly improving timeliness in recording MDRs. To achieve this goal, the EPA recommends KDHE:</p> <ul style="list-style-type: none"> • Implement data entry review and tracking procedures specific to the relevant metrics (3a1, 3b1, 3b2, 3b3). • Review the revised HPV policy to ensure familiarity with the 2014 policy revisions and reporting HPVs into Integrated Compliance Information System-Air. <p>Provide Region 7 with a draft of the process improvement (in the form of an SOP) for review within 60 days of completion of the SRF Final Report that addresses the timeliness for reporting of HPV determinations; compliance MDRs; stack test dates and results; and enforcement MDRs.</p> <p>The EPA will use the data frozen during the regular ADMA process to assess progress on this recommendation.</p> <p>This recommendation will be deemed completed upon: Implementation of an EPA approved SOP; and achievement of 85% or greater in ADMA metrics 3a2, 3b1, 3b2, and 3b3.</p> <p>The EPA will review KDHE FY20 frozen data in order to determine progress in timely entry of MDRs. If the FY20 data does not meet this threshold, the EPA will review subsequent years data until met.</p>

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

KDHE demonstrates proficiency in inspection coverage, document review, and comprehensive report documentation.

Explanation:

KDHE's Full Compliance Evaluation coverage for CAA major facilities and mega-sites (metric 5a - 97.6%) and coverage of minors (metric 5c – 93.4%) are each nearing the national goal.

KDHE's FCE coverage for CAA synthetic minor facilities (metric 5b - 91.6%). The EPA will continue to coordinate our inspections with the state.

Kansas Title V facilities are inspected annually. In accordance with the approved Compliance Monitoring Strategy Plan, the larger Title V facilities receive multiple Partial Compliance Evaluations in one year, which combine to meet the annual FCE requirement. KDHE inspectors accompany the EPA inspectors on inspections in Kansas whenever possible. District Office inspectors are also called upon to execute complaint investigations when necessary. The KDHE air program inspectors perform over eight hundred assigned facility inspections each year. The KDHE field inspectors also perform up to one hundred and fifty additional inspections/investigations, beyond the assigned inspections. This substantial workload is accomplished with a high degree of communication and coordination with the six KDHE District Offices and local government offices on a frequent basis to ensure inspection targets are met.

KDHE's documentation of FCE elements in inspection reports (88.5%) is excellent. Inspection reports are thorough, succinct and of very high quality. Compliance issues are described clearly in the narrative portion. The reports are clear about the steps necessary for return to compliance. The reports contain strong, detailed narratives to connect the data and provide transparency to the regulated community and public.

File reviewers noted KDHE staff demonstrate proficiency in documenting FCE elements. Review of Title V annual compliance certifications (metric 5e – 90.8%) is nearing the national goal. KDHE's review of Compliance Monitoring Report and files that provide enough documentation to determine compliance is also near the national goal (metric 6b - 92.3%).

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
5a FCE coverage: majors and mega-sites [GOAL]	100%	88.1%	242	248	97.6%
5b FCE coverage: SM-80s [GOAL]	100%	93.7%	370	404	91.6%
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%	70.1%	57	61	93.4%
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	82.5%	248	273	90.8%
6a Documentation of FCE elements [GOAL]	100%		23	26	88.5%
6b Compliance monitoring reports or facility files reviewed that provide enough documentation to determine compliance of the facility [GOAL]	100%		24	26	92.3%

State Response:

CAA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state demonstrates excellence in their accuracy of compliance and High Priority Violation determinations. Timeliness of HPV identification is likewise exemplary.

Explanation:

The EPA and the state convene conference calls on a frequent and regular basis to discuss facility specific issues and coordinate program implementation issues including compliance determinations, HPV facility identification and timeliness.

All thirty-six of the files reviewed were determined to have accurate compliance determinations. Twenty-three of the twenty-seven files reviewed appear to have accurate HPV determinations, indicating that among the violations reviewed, KDHE is proficient in accurately identifying violations, as well as interpreting and applying the Federally Reportable Violation and HPV policy.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
13 Timeliness of HPV Identification [GOAL]	100%	89.5%	6	6	100%
7a Accurate compliance determinations [GOAL]	100%		36	36	100%
7a1 FRV 'discovery rate' based on inspections at active CMS sources		7.8%	61	999	6.1%
8a HPV discovery rate at majors		2.5%	3	266	1.1%
8c Accuracy of HPV determinations [GOAL]	100%		23	27	85.2%

State Response:

CAA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state implements an excellent enforcement program with respect to HPV case development, as well as formal responses to return facilities to compliance. All formal enforcement responses reviewed included language requiring the facility return to compliance.

Explanation:

With respect to the state's formal enforcement responses (metric 9a), KDHE's achievement of this component is excellent; as demonstrated in the files (95.2%), database, and in our frequent discussions with the state. KDHE's formal enforcement responses routinely include the required corrective actions that will return the facility to compliance.

Regarding the state's performance addressing and/or removing HPVs consistent with the HPV policy (metric 10a – 100%) and HPV Case developments/resolution (metric 14 – 100%), performance in the area is unimpeachable. The EPA's file review analysis metric results are consistent with the periodic HPV discussions with management and staff; each indicating the state routinely and expertly applies the HPV policy.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		12	12	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%		20	21	95.2%

State Response:

CAA Element 4 - Enforcement

Finding 4-2

Area for Improvement

Recurring Issue:

No

Summary:

KDHE did not consistently document addressed or removed HPVs in the national data system.

Explanation:

In its file review, the EPA found 2 of 3 HPVs that had been addressed or removed consistent with the HPV policy. The third facility had the HPV action concluded (a terminated Consent Agreement Final Order) but the action not successfully entered the national data system. This appears to be a data entry lag. The EPA will add this topic for the monthly enforcement coordination meetings for continued oversight and discussion.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		2	3	66.7%

State Response:

Recommendation:

Rec #	Due Date	Recommendation
1	12/31/2021	<p>The EPA recommends better oversight of concluded HPVs with the data management program.</p> <p>At the end of FY21, the EPA will review a selection of concluded HPVs for complete data entry into the national system. If the sampling of files and data indicates achievement of 85% or greater of the relevant metric (10b), the EPA will close this recommendation. If the FY21 pull does not achieve this threshold, the EPA will review data from subsequent years until the threshold is met.</p>

CAA Element 5 - Penalties

Finding 5-1

Area for Improvement

Recurring Issue:

No

Summary:

KDHE's penalty calculations documentation for consideration of gravity and economic benefit as well as documentation of rationale for difference between initial penalty calculation and final penalty is below national goals.

Explanation:

The 2015 Round 3 SRF review indicated that 92.9% of the enforcement actions taken by KDHE in the public files included a penalty calculation work sheet with a specific statement on consideration of economic benefit (metric 11a). In the Round 4 review, KDHE demonstrated a 63.3% achievement rate in this metric, a decline in performance in this area.

An important element of the State's implementation of the compliance and enforcements elements of the CAA program in Kansas is maintenance of documentation for public access in order for the public to determine facility compliance. In the eleven 2019 files reviewed, seven of the files included the penalty calculation worksheets (including documentation of the consideration of economic benefit (metric 11a). Of the four files reviewed, three contained documentation of the rationale for the difference between initial penalty calculation and final penalty (metric 12a).

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%		7	11	63.6%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		3	4	75%

State Response:

Recommendation:

Rec #	Due Date	Recommendation
1	05/01/2021	<p>The EPA recommends KDHE revise the standard penalty calculation worksheet and develop a documentation format/area, to include a specific section to:</p> <ul style="list-style-type: none"> • Document gravity and economic benefit; and • Document penalty reduction justification. <p>The EPA also recommends KDHE develop and include in its enforcement manual an SOP for including the revised penalty worksheet and documentation in the facility files.</p> <p>Submit a revised penalty worksheet and SOP for the EPA review within 90 days of receiving the final report.</p> <p>At the end of FY21, the EPA will review a selection of penalty calculations. If the sampling of files indicates achievement of 85% or greater of the relevant metrics (11a and 12a) and implementation of the SOP, documentation in the facility files, the EPA will close this recommendation. If the FY21 pull does not achieve this threshold, the EPA will review data from subsequent years until the threshold is met.</p>

CAA Element 5 - Penalties

Finding 5-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

KDHE is successful with penalty collection.

Explanation:

With respect to penalty collection, for the 2019 files reviewed, the EPA found ten of the eleven facility files included a copy of the check for documentation of penalty collection (metric 12b), achieving 90.9% in this program area.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12b Penalties collected [GOAL]	100%		10	11	90.9%

State Response:

Appendix