STATE REVIEW FRAMEWORK

Hawaii

Clean Water Act
Implementation in Federal Fiscal Year 2018

U.S. Environmental Protection Agency
Region 9

FINAL Report
June 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 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 Water Act (CWA)

CWA Key Dates: On-site file review conducted June 17-20, 2019;
CWA EPA Key Contacts: John Tinger, Connor Adams, Eric Magnan (Manager);
CWA State Key Contact: Matt Kurano (Manager)

Clean Air Act (CAA)

Resource Conservation and Recovery Act (RCRA)

Executive Summary

Introduction

Clean Water Act (CWA)

EPA Region 9 CWA enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Hawaii Department of Health (DOH) in 2019.

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 and publish reports and recommendations in EPA's SRF Manager Database.

Areas of Strong Performance

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

Clean Water Act (CWA)

- DOH exceeded the national goal for entry of permit limit and discharge monitoring report (DMR) data for major and non-major facilities into EPA's national data base, Integrated Compliance Information System (ICIS).
- Ninety-six percent of the reviewed inspection reports were found complete enough to determine compliance at the facility and ninety-six percent of reports were deemed to have made accurate compliance determinations.

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 Water Act (CWA)

- Due to database issues, EPA is unable to obtain an accurate count of active NPDES facilities in each category of permits from ICIS.

Clean Water Act Findings

CWA Element 1 – Data

Metric 1b: Completeness and accuracy of permit limit and discharge data in EPA's national database.

Finding 1-1
Meets or Exceeds Expectations

Summary:
Hawaii exceeded the national goal for entry of permit limit and discharge monitoring report (DMR) data for major and non-major facilities into EPA's national data base, Integrated Compliance Information System (ICIS).

Explanation:
Metrics 1b5 and 1b6 measure the state's rate of entering permit limits and DMR data into ICIS. DOH entered 97.7% of permit limits into ICIS for major and non-major facilities, exceeding EPA's national goal of 95%. DOH entered 99.1% of DMR data into ICIS, exceeding EPA's national goal of 95%. DOH should periodically validate data to ensure the regulated universe and DOH's activities are accurately reflected in ICIS.

Additionally, EPA commends DOH for providing transparency by making all compliance documents and all permit documents available for public review through their database web portal.

At the time of review, several major facilities were not directly entering data into NetDMR, instead providing paper copies to DOH for data entry. DOH should ensure all major permittees are entering DMR data directly into ICIS and should provide EPA with a status report when full compliance is achieved.

DOH should continue to ensure all permit effluent limitations are written in a format that is codable for electronic submittal of Discharge Monitoring Reports. DOH has made significant progress in the codability of permits based on the findings of the SRF Round 3 report. EPA encourages the DOH database team to continue to review draft permits to ensure codability.

State Response: Meeting the national data management goals requires substantial investment by the State. HDOH continually supports development of data systems that meets the needs of the State while simultaneously reduces the amount of effort required to meet national goals. It should be noted that the volume of data requested by the EPA is continuously growing. EPA regional staff and management have provided much needed technical support to the HDOH and should share credit for HDOH success in this metric. However, the State has had to increase the amount of resources to meet national goals for environmental data management without adequate financial support by the EPA.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
1b5 Completeness of data entry on major and non-major permit limits. [GOAL]	>=95%	90.6%	43	44	97.7%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	>=95%	93.3%	2751	2776	99.1%

CWA Element 1 – Data

Metric 2b: Completeness and accuracy of inspections and enforcement action data in EPA's national database.

Finding 1-2
Area for Improvement

Summary:
DOH entered inspection and enforcement data accurately into ICIS in 65.5% of the files reviewed, below the national goal for 100% accurate entry.

EPA is unable to obtain an accurate count of active NPDES facilities in each permit category from ICIS due to DOH's unique methodology.

Explanation:
Under metric 2b, EPA compared inspection reports and enforcement actions found in selected files to determine if the inspections, inspection findings, and enforcement actions were accurately entered in ICIS. The analysis was limited to data elements mandated in EPA's ICIS data management policies. States are not required to enter inspections or enforcement actions for certain classes of facilities.

EPA reviewed 29 files for data accuracy. EPA found 19 of the 29 files reviewed (65.5%) had all required information (facility location, inspection, violation, and enforcement action information) accurately entered in ICIS. Five facilities had missing or mismatched facility information (addresses unknown or not matching permit, or longitude/latitude missing); one facility had a discrepancy in ownership and name; one facility was missing an SEV based on an inspection observation, and one facility had SEVs entered without an end date and therefore

were still showing as active SEVs even though they were several years old and should have been closed out.

For effluent limitations, two facilities appeared to have inconsistencies in effluent violations. In the files, the permittees had provided exceedance reports to DOH in accordance with the permit notification requirements. However, ICIS did not identify the effluent violation. For one facility, the cause is that the major permittee is not directly entering DMRs into ICIS. For the second facility, EPA believes it may be due to the complexity of the effluent limitations and permit coding of the effluent limitations. EPA Region 9 assisted DOH in coding this permit, in which EPA found the permit limitations extraordinarily difficult to code.

DOH is to be commended for improving rates of Single Event Violation (SEV) entry. In order to comply with ICIS requirements, DOH has developed their own Guidance Document for SEV data entry into ICIS. Additionally, DOH is entering SEVs for construction stormwater and industrial stormwater sites into ICIS, which exceeds EPA's expectation for data entry requirements.

A significant and recurring issue is that EPA is unable to obtain an accurate count of active NPDES facilities in each category from ICIS. This is a recurring issue for many years, complicated by DOH's permitting structure and the inability of DOH to complete an update to DOH's internal data system, Water Pollution Control, or "WPC". The issue relates to the number counts of non-major "traditional" (e.g., non-stormwater) permits. In ICIS, a database query will provide a count of several hundred individual non-major facilities. For example, for EPA's initial Data Metrics Analysis for Element 5b1 of the SRF counted a universe of 363 NPDES non-majors with individual permits. However, many of these permits are, in fact, construction or industrial stormwater permits. DOH has an actual count of 27 "traditional" NPDES non-majors with individual permits.

As an explanation for the high count of individual non-major facilities, EPA understands there are several scenarios in which DOH issues permits where an ICIS "Permit Type" label is "Individual Permit" in the database.

For "Traditional" permits such as:

1. Major and non-major sewage treatment plants and industrial wastewater facilities.

For "Non-Traditional" permits such as:

1. DOH issues a "Notice of General Permit Coverage" (NGPC) to a facility that files a Notice of Intent for Coverage under a Construction or Industrial General Permit. The NGPC may include effluent limits. If an NGPC contains effluent limits, it may appear similar to an individual permit in ICIS.
2. DOH issues individual permits for new permittees who apply for an expired General Permit, namely for Industrial and Construction Stormwater facilities.
3. DOH issues individual permits for stormwater facilities that discharge to Class AA waters. According to the General Permits, stormwater discharges into high quality waters are not eligible for coverage under the General Permit.

4. DOH sometimes issues a hybrid permit to effectively provide coverage under two or more separate general permits. For example, DOH may issue a single permit that covers both dewatering and construction activities that would otherwise be covered by two NGPCs. These hybrid permits may be represented as individual permits in ICIS.

Therefore, for DOH, the permit universe may be categorized by "Traditional" majors/non-majors and "Non-Traditional" non-majors (which include the NGPCs and expired Stormwater General permits). This is a large part of the data issues we have previously identified. As a component of the Phase I e-Rule, the Region, OECA and DOH agreed to remove the "non-traditional" NGPC permits from the counts of individual majors and non-majors: we accomplished this by having DOH utilize the UDF5 field in ICIS to state the type of permit. The UDF5 field now incorporates "Individual Minor (traditional)"; "Const SW NGPC (Phase I)", "Const SW NGPC (Phase II)", "Industrial Stormwater NGPC", and "Phase II MS4s". However, the Region has identified numerous data quality issues amongst various fields in ICIS that need to be corrected.

Working in coordination with DOH, the Region has produced a spreadsheet listing all permits in ICIS along with the errors that require database corrections. The Region has identified missing Component Type elements, mismatched errors in Component Type, missing UDF5 field elements, and permits listed as expired that should be listed as administratively continued due to missing permit application date. HDOH will need to update its WPC database and EPA will verify that all database elements have been corrected through ICIS queries.

State Response: The explanation provided in the SRF report included an analysis from which EPA concluded that HDOH only met data completeness for inspection and enforcement data in 65.5% of the files reviewed. However, specifics regarding which facilities and what corresponding data elements were identified as missing, were not included in the report. Without specific findings, HDOH is unable to respond (in either support or defense) to the conclusion. With regard to EPA's expanded explanation of the disharmony between data in the State data system and Federal data System, HDOH concurs and appreciates EPA's understanding. HDOH has received the data reconciliation spreadsheet referenced in the Recommendation section of the report and completed the data reconciliation in cooperation with EPA. HDOH will work to align NPDES permit language such that the Hawaii NPDES permit universe and permit requirements can be more accurately reflected in EPA's ICIS database.

Recommendation:

Rec #	Due Date	Recommendation
1	07/30/2020	DOH should correct all data elements in WPC/ICIS to ensure accurate counts of permitted facilities. DOH should utilize the spreadsheet provided by the Region to identify errors and correct Permit Type, Permit Status, Component Type, and UDF5 fields. DOH should provide a database query result to EPA to ensure the counts accurately reflect the permit universe.
2	8/15/2020	EPA will review the database query provided by DOH to ensure the counts accurately reflect the permit universe.

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%	%	19	29	65.5%

CWA Element 2 – Inspections

Metrics 4a, 5a, and 5b: Inspection coverage compared to state workplan commitments.

Finding 2-1
Meets or Exceeds Expectations

Summary:
DOH met or exceeded its inspection commitments in its Clean Water Act Section 106 grant workplan for 4 inspection categories: individual major facilities; individual traditional minor facilities, non-majors with general permits, and concentrated animal feeding operations (CAFOs).

Three categories are not applicable due to no known facilities: combined sewer systems, SIUs discharging to non-authorized POTWs, and sludge/biosolids inspections (DOH not authorized).

Explanation:

Metrics 4a, 5a, and 5b measure the number of inspections completed by the state in the Fiscal Year 2018 compared to the commitments in DOH's Clean Water Act Section 106 grant workplan. EPA Region 9 established workplan inspection commitments for DOH consistent with the inspection frequency goals established in EPA's 2014 Compliance Monitoring Strategy (CMS).

For Metric 5a1, DOH inspected 8 individual major facilities. DOH has met the CMS-based workplan commitments to conduct inspections of 8 individual major facilities.

For Metric 5b1, DOH inspected 5 individual traditional minor facilities. DOH has met the CMS-based workplan commitments to conduct inspections of 5 individual minor facilities.

For Metric 5b2, DOH conducted 33 inspections of 700 NPDES non-majors with general permits, or about 3.3% of the universe. DOH did not fail to meet the CMS-based workplan commitments because the workplan did not establish a minimum number of inspections.

For metric 4a2, DOH has not identified any SIU discharging to a non-authorized POTW. Therefore, DOH did not fail to meet the CMS-based workplan commitment of zero.

For metric 4a4, there are no CSOs within Hawaii. Therefore, DOH did not fail to meet the CMS-based workplan commitment of zero.

For metric 4a10, there are no permitted concentrated animal feeding operation (CAFO) in Hawaii. DOH did conduct 2 inspections at non-permitted CAFOs. Therefore, DOH did not fail to meet the CMS-based workplan commitment of zero.

For metric 4a11, DOH does not have authorization for the biosolids program. Therefore, DOH did not fail to meet the CMS-based workplan commitment of zero.

State Response: The HDOH appreciates the EPA's continued support and partnership with respect to coordinating and recognizing inspection priorities.

Recommendations: None

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL: 0 for FY18]	>=100% of commitments	%	2	NA	NA
4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL: 0. DOH not authorized]	>=100% of commitments	%	NA	NA	NA
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL: 0: none known]	>=100% of commitments	%	NA	NA	NA
4a5 Number of CSO inspections. [GOAL: 0: none known]	>=100% of commitments	%	NA	NA	NA
5a1 Inspection coverage of NPDES majors.	>=100% of commitments	%	8	8	100%

[GOAL: 47% (8 for FY18)]					
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL: 19% (5 for FY18)]	>=100% of commitments	%	5	5	100%
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL: 0]	>=100% of commitments	%	33	NA	NA

Finding 2-2

Area for Improvement

Summary:

While DOH met its inspection commitments in its Clean Water Act Section 106 grant workplan for 2 inspection categories: industrial stormwater inspections and construction stormwater inspections, those commitments failed to meet EPA's CMS inspection targets.

DOH did not fail to meet its inspection commitments in 3 additional categories because there were no CMS commitments specific to the year evaluated. DOH should commit to conducting inspections in the next workplan to ensure CMS commitments are met for the following categories of permits: pretreatment compliance inspections and audits; sanitary sewer systems, and Phase I and II MS4s.

Explanation:

Metrics 4a, 5a, and 5b measure the number of inspections completed by the state in the Fiscal Year 2018 compared to the commitments in DOH's Clean Water Act Section 106 grant

workplan. EPA Region 9 established workplan inspection commitments for DOH consistent with the inspection frequency goals established in EPA's 2014 Compliance Monitoring Strategy (CMS).

For metric 4a1, DOH conducted 0 pretreatment compliance inspections and 0 oversight inspections of industrial users. There is one approved local pretreatment program in the universe. Although DOH did not fail to meet the CMS-based workplan commitments for FY18 of zero, DOH must commit to conducting one audit and at least 2 oversight inspections within 5 years.

For metric 4a5, DOH did not inspect any sanitary sewer systems. There are 10 sanitary sewer systems in Hawaii with NPDES permits. Although DOH did not fail to meet the CMS-based workplan commitments for FY18 of zero, DOH must commit to conducting inspections 5% of sanitary sewers each year, or one system every two years. DOH must add the commitments to the workplan.

For metric 4a7, DOH did not conduct any audits or inspections of the 26 MS4s. ICIS does show DOH conducted 1 inspection at a MS4. However, EPA concluded the inspection should not count towards metric 4a7 because the inspection was conducted at a waste transfer facility that is owned by the MS4 and does not have an individual NPDES permit. The inspection was an inspection of the individual industrial stormwater facility, not an audit/inspection of the MS4, and EPA concluded this was a database entry error. Although DOH did not fail to meet the CMS-based workplan commitments for FY18 of zero, DOH must commit to conducting an on-site audit, MS4 inspection, or off-site desk audit of each MS4 permittee at least once within a five-year timeframe and an on-site audit or inspection at least once every seven years for each permittee. DOH must add the commitments to the workplan.

For metric 4a8, DOH conducted 15 of 182 industrial stormwater inspections, or about 8.2% of the universe. DOH met the workplan commitment of 15 inspections. However, DOH did not meet the CMS target to inspect 18 industrial stormwater facilities (10% of the universe).

For metric 4a9, DOH conducted 20 of 944 construction stormwater inspections, or approximately 2% of the universe. DOH met the workplan commitments of 20 inspections. However, DOH did not meet the CMS target to inspect 94 construction stormwater facilities (10% of universe).

State Response: Annually, HDOH and EPA agrees on 106 work grant inspection targets in September of the year preceding the applicable grant. In September 2017, HDOH and EPA agreed on an inspection schedule that included conducting 20 construction storm water inspections and 15 industrial storm water inspections. During Fiscal Year 2018, HDOH completed 15 industrial storm water inspections and exceeded the number of construction inspection commitments by completing 25 construction storm water inspections.

With regard to 106 grant commitments being less that the *goals* set forth in the EPA 2014 Compliance Monitoring Strategy (CMS), HDOH recognizes that the Hawaii 106 grant

commitments fall below the national goals for construction storm water inspections. However, it is increasingly difficult to achieve EPA CMS goals with the available resources for inspection and enforcement. Since the 2014 CMS was issued, there has been no significant increase in federal funding by the EPA. 106 grant funds have remained flat, or have, in some cases, decreased. The State has added funding annually in order to maintain the current level of effort. For the State to conduct 80 more construction storm water inspections as recommended in the report is unrealistic and unsupported by water quality based evidence.

Further, while the HDOH recognizes the importance of pretreatment and MS4 oversight, committing to conducting Pretreatment Compliance Audits and MS4 Compliance audits may not be attainable given the current level of resources available and a lack of National Compliance Initiatives for those sectors.

Recommendations

Rec #	Due Date	Recommendation
1	9/1/2020	DOH should commit to conducting inspections consistent with the CMS, or an approved alternative CMS strategy. The workplan for FY2021 should reflect these commitments. Inspection commitments should include: • at least one pretreatment audit and at least 2 oversight inspections of industrial users within 5 years. • at least one sanitary sewer system inspection every 2 years. • at least 10% of universe of industrial stormwater facilities each year. • at least 10% of the universe of construction stormwater facilities each year. • at least one on-site audit, MS4 inspection, or off-site desk audit of each MS4 permittee within a five- year timeframe and an on-site audit or inspection at least once every seven years for each permittee.
2	10/1/2020	EPA will review DOH workplan inspection commitments for pretreatment audit and oversight inspections of industrial users, sanitary sewer systems, industrial stormwater inspections and construction stormwater inspections.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL: 0 for FY18]	>=100% of commitments	%	NA	NA	NA
4a5 Number of SSO inspections. [GOAL: 0:]	>=100% of commitments	%	NA	NA	NA
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	>=100% of commitments	%	0	26	NA
4a8 Number of industrial stormwater inspections. [Work Plan Commitment=15 / CMS GOAL: 10% of 184=18 for FY18]	>=100% of commitments	%	15	15	100%
4a9 Number of Phase I and Phase II construction stormwater inspections. [Work Plan Commitment= 20 / CMS GOAL: 10% of 944= 94 inspections for FY18]	>=100% of commitments%	%	20	20	100%

CWA Element 2 – Inspections

Metric 6a: Quality of inspection reports.

Finding 2-3
Meets or Exceeds Expectations

Summary:
Ninety-six percent of the reviewed inspection reports were found complete enough to determine compliance at the facility. EPA has identified several potential areas to improve the quality of inspection reports.

Explanation:
Metric 6a assesses the quality of inspection reports to evaluate whether the inspection reports provide enough documentation to accurately determine the compliance status of inspected facilities.

EPA reviewed 29 files to determine compliance with the 2017 NPDES Compliance Inspection Manual (Chapter 2G Inspection Procedures) as described in the SRF Round 4 CWA File Review Facility Checklist and CWA Metrics Plain Language Guide. Of the 29 facility files reviewed for the SRF, inspections had been conducted for 24 of the facilities and EPA therefore reviewed 24 inspection reports.

Inspection reports were generally high quality with sufficient narrative, documentary support and evidence of findings. One inspection report was deemed insufficient because the report did not document findings in a manner that would connect observations with the permit requirements.

Several potential areas for improvements were noted:

- The "Findings" in inspection reports were often a mixture of facts, observations, and deficiencies. It was not always clear if the statements were written to identify a potential violation, or to merely observe a fact about the facility. EPA recommends inspection reports more clearly state "potential permit violations" "deficiencies" or "areas of concern" so that permittees are notified of deficiencies and/or potential permit violations. It would also be helpful for the inspection report to reference the specific permit language for any potential violation.

- No inspection reports contained checklists. It was not always clear from the inspection report that all areas of potential compliance were evaluated during the inspection, as reports often state problems without providing a narrative of compliant areas. A facility checklist, especially for construction and industrial stormwater sites, may be appropriate to efficiently document all areas of the facility compliance investigation that were reviewed during the comprehensive inspection.

State Response: The HDOH appreciates EPA's analysis. HDOH will continue to develop inspection reports that are actionable and effective at communicating compliance status.

Recommendation: None

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 at the facility. [GOAL: 100%]	>=100%	%	23	24	95.8%

CWA Element 2 – Inspections

Metric 6b: Timeliness of inspection reports.

Finding 2-4
Area for Improvement

Summary:
Fifteen of the 24 (62.5%) inspection reports reviewed by EPA were dated or completed within 60 days.

Explanation:
Metric 6b measures the state's timeliness in completing and issuing inspection reports.

EPA reviewed 24 inspection reports and found 15 (62.5%) were completed within a 60 day timeframe. Eight of the 9 reports exceeding 60 days were completed within 75 days, (with most of those delayed reports spanning the New Year holidays), while the longest was completed in 137 days. EPA notes the 137 days was in part due to delays resulting from EPA regional review of the draft report.

EPA commends DOH for their SOP to improve inspection report timeliness. DOH internally tracks each inspection report, the date it was drafted, the date comments were addressed, the date the report was sent to the permittee, and also tracks the need for follow-up response or enforcement actions related to the report.

State Response: As noted in the report, while only 62.5% of reports were finished within 60 calendar days, 96% were completed within 75 days. The report noted as taking 137 days was largely due to failed coordination efforts between the HDOH and EPA staff. HDOH concurs that a lack of timeliness is an area that requires attention. HDOH has developed general guidelines for the timeframes associated with developing reports. The general guidelines will be provided to EPA as a courtesy response to this finding when completed.

Recommendation:

Rec #	Due Date	Recommendation
1	8/30/2020	DOH should ensure that inspection reports are completed in a timely manner. DOH should updated its SOP and/or template to reflect required timelines.
2	9/15/2020	DOH should provide the SOP and/or template to EPA.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6b Timeliness of inspection report completion [GOAL: 60% within 60 days]	>=100%	%	15	24	62.5%

CWA Element 3 – Violations

Metric 7e: Accuracy of compliance determinations

Finding 3-1
Meets or Exceeds Expectations

Summary:
Nine-six percent of the inspection reports reviewed provide enough information to evaluate the accuracy of the compliance determinations.

Explanation:
Metric 7e measures the percent of inspection reports reviewed that led to an accurate compliance determination.

EPA reviewed 24 inspection reports and found that 23 of the reports (95.8%) led to accurate compliance determinations.

For the one facility determined to be inaccurate, the inspection report did not mention the fact that the facility was in significant noncompliance and did not identify follow-up actions to address the noncompliance.

Metric 7j1 measures the number of major and non-major facilities with single-event violations reported in the review year. Although several database errors were found with SEV data entry, EPA commends DOH for accurately identifying SEVs in inspection reports.

Metric 7k1 measures the number of major and non-major facilities in noncompliance. The universe is currently 36.4% in noncompliance. DOH is working to improve noncompliance rate, of which a number are due to DMR non-submittals from minor facilities, non-reporting, and non-reporting database errors. As indicated in Finding 1-1, DOH is working to clean up the database so that all electronic submittals are accurate. In order to obtain an accurate count for the SRF, EPA utilized the QNCR for the time period reviewed.

Metric 8a3 measures the percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year. The universe is currently 15.9% in significant noncompliance, with 3 major facilities in SNC. DOH and EPA are working to address two of the major SNC facilities through existing enforcement orders. As indicated in Finding 1-1, DOH is working to clean up the database so that all electronic submittals are accurate. In order to obtain an accurate count for the SRF, EPA utilized the Coordinator's Quarterly Noncompliant Report "QNCR" for the time period reviewed.

State Response: HDOH will continue to work on accurately documenting violations and prioritizing facilities in Significant Non-Compliance.

Recommendation: None

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7e Accuracy of compliance determinations [GOAL]	>=100%	%	23	24	95.8%
7j1 Number of major and non-major facilities with single-event violations reported in the review year	NA	NA	-	83	-
7k1 Major and non-major facilities in noncompliance.	%	18.7%	16	44	36.4%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.	%	%	7	44	15.9%

CWA Element 4 – Enforcement

Metric 9a: Enforcement actions promoting return to compliance

Finding 4-1
Area for Improvement

Summary:
63.6% percent of the reviewed enforcement actions resulted in a verifiable return to compliance.

Explanation:
Background Information: The information below highlights the number and type of NPDES enforcement actions taken by DOH during the review year and is not subject to a rating under EPA's SRF protocols.

During FY18, DOH issued 11 enforcement actions in response to NPDES violations. Ten of those 11 enforcement actions were field citations.

Metric 9a measures the percentage of enforcement responses that returned, or will return, a source in violation to compliance. During the file review, five of the enforcement actions did not have sufficient evidence in the record to document compliance. For one facility, the record contained a narrative response from the facility claiming that actions were taken, to which DOH sent a follow-up request for actual documentation that the actions were taken. However, no additional demonstration was in the record that the facility had documented its return to

compliance. For another facility, the facility provided a response and photo documentation of the corrective actions; however, the documentation appeared incomplete, and several photos appeared to show incorrect installation of BMPs that were inadequate to address the violations. Additionally, two of the field citations did not have documentation in the record that proved return to compliance. EPA notes that several enforcement actions were relatively recent, and therefore full documentation may not have been available at the time of review.

For deficiencies that were documented in inspection reports that may not warrant enforcement action, it was not always clear that DOH was requiring corrections. For example, one letter to a facility (where several somewhat minor deficiencies were found) did not request a response from the facility, and stated "the inspection report is being sent to you to provide you with information and feedback that will assist in your efforts to comply with your NPDES Permit", and further stated "DOH is not pursuing an enforcement action at this time". Generally, it is not advisable to curtail enforcement options prior to a facility achieving compliance. Additionally, it was not clear that the inspection report and documentation required the facility to address the minor deficiencies that were found. EPA provides a recommendation in Finding 2-2 to provide greater clarity to the discharger on deficiencies found and requirements for compliance.

State Response: EPA cites review of 11 enforcement actions, 10 of which were field citations. EPA notes that on 5 of the 11, there did not appear adequate evidence that the facility returned to compliance. HDOH believes that the responses from 5 enforcement actions that EPA judged were insufficient to determine a return to compliance were associated with field citations. HDOH uses field citations to address the lowest rung of non-compliance that requires correction. As such, the level of information necessary for HDOH to judge as adequate for the closure of the field citation is equally as low.

It is HDOH's practice to close a field citation upon affirmative response by a violator that the alleged violation occurred and the violation was corrected. Given the level of effort necessary to confirm a facility has returned to compliance, HDOH prefers to utilize follow-up inspections (when resources allow) which can lend itself to HDOH's escalating penalty system for facilities that have received field citations. This approach is believed to be more effective than spending a disproportionate amount of a time on enforcement response and oversight for low level violations.

HDOH disagrees with EPA's implication that a formal response to deficiencies that don't warrant an enforcement action, should be required. HDOH makes a determination on whether enforcement actions are warranted based on the information that is available at the time. Where HDOH does not judge that an enforcement action is needed, the HDOH does not invoke enforcement authority to obligate a formal response. HDOH communicates when it is not taking an enforcement action for the sake of transparency and credibility. HDOH also clearly communicates that it is not precluded from taking a future enforcement action using the same findings should one be warranted.

HDOH respectfully disagrees with EPA's determination that this is an "Area for Improvement". HDOH will develop a guidance and "SOP" better defining expectations regarding judging

responses; however, HDOH stands by its judgement on determining when (low level) enforcement actions may be closed and how to best communicate with NPDES permitted facilities in Hawaii.

Recommendation: EPA agrees that the document review was primarily focused on field citations, which are typically issued to address minor violations. EPA agrees with HDOH's response that HDOH makes a determination on whether enforcement actions are warranted based on the information that is available at the time. EPA is not necessarily stating a formal response is required to address minor violations and field citations. However, EPA believes HDOH should make an assessment on the return to compliance, and HDOH should document this assessment (e.g., that no further action is warranted) in the case file.

Rec #	Due Date	Recommendation
1	1/30/2020	DOH should ensure that all enforcement actions have documentation of return to compliance. DOH should develop and implement an SOP and/or template to request permittees to adequately document return to compliance through submittal of photos or other documentation, and, if documentation is insufficient, DOH should follow-up with a field inspection
2	3/1/2020	DOH should provide the SOP and/or template to EPA.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	>=100%	%	7	11	63.6%

CWA Element 4 – Enforcement

Metric 10b: Appropriate enforcement actions

Finding 4-2

Area for Attention

Summary:
Enforcement actions taken at major and non-major facilities have been appropriate.

Explanation:

Review Indicator metric 10a1 measures the percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations. DOH FY18 data indicated 3 major facilities in SNC and zero formal enforcement actions taken.

Of the three enforcement actions, one facility was in SNC due to a schedule event violation of an EPA enforcement action. For this facility, the SNC was due to a data quality issue, where the facility met the compliance schedules but the Region delayed updating ICIS until compliance could be confirmed. The SNC was resolved by the facility achieving full compliance and the Region updating ICIS entry. The SNC was resolved by the time of this review.

The second facility in SNC was already under a formal enforcement order. The SNC was due to non-submittal of a DMR. The SNC was resolved with a DMR submittal by the time of this review.

The third facility in SNC is an industrial facility with effluent violations for one pollutant. This facility is not under a formal enforcement order.

EPA policy dictates that SNC level violations must be addressed with a formal enforcement action (administrative compliance order or judicial action) issued within 5 ½ months of the end of the quarter when the SNC level violations initially occurred. Therefore, 2 of the 3 SNC facilities have met EPA policy because they are already under existing formal enforcement and SNC violations were corrected within the timeframe. The remaining facility in SNC has extenuating circumstances discussed with DOH regarding the effluent limits that DOH is addressing through informal compliance actions. EPA believes, in this limited instance, DOH enforcement response to this SNC facility to be appropriate; however, EPA concluded for the purposes of SRF that the action was not timely.

Metric 10b measures the percentage of enforcement actions reviewed during the onsite file review that were taken in an appropriate and timely manner. Metric 10b assesses DOH's enforcement response to any type of violation (SNC or lower level violations) at any type of facility (major, minor or general permit discharger). EPA expectations for enforcement response are provided in EPA's EMS Enforcement Response Guide. For metric 10b, 24 of the 29 files reviewed had an enforcement response. EPA therefore reviewed the 24 files that included documentation that one or more enforcement responses had occurred at the facility. EPA found that 20 of the 24 enforcement responses reviewed (83.3%) addressed violations in an appropriate manner. None of the enforcement responses were judicial actions.

The files included a mix of major, non-major and general permitted facilities. EPA found 20 instances where DOH's enforcement response was timely and appropriate for the nature of the

violation. EPA commends DOH for timeliness of penalty actions. Eleven penalties were issued and closed out within 4 months of issuing a field citation.

EPA considered 4 enforcement responses potentially not appropriate. One traditional minor had 4 quarters of category 1 noncompliance and ongoing RNC violations, but no formal enforcement was done. One industrial stormwater facility was issued a field citation based on an inspection but return to compliance was not documented or verified and EPA believes a more formal enforcement order may have been more appropriate. One traditional minor WWTP facility was found to be discharging wastewater without a permit but no actions were found to have been taken to address the violations. One stormwater construction site inspection appeared to merit follow-up due to violations found, but no additional documentation of enforcement was found in files. EPA notes that due to the timeline of inspections, DOH may have initiated follow-up enforcement actions at these facilities since the time of the review.

Generally, EPA found formal and informal enforcement actions taken at major and non-major facilities to be timely and appropriate. DOH should consider increased use of formal enforcement actions to address noncompliance.

State Response: HDOH appreciates EPA's detailed review of HDOH's exercise of enforcement discretion. HDOH is in general agreement and recognizes there may be occasional differences of opinion about when formal action is warranted, particularly when resource limitations are considered.

Recommendation: None

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations	%	15.4%	2	3	66.7%
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	>=100%	%	20	24	83.3%

CWA Element 5 – Penalties

Metrics 11a, 12a, and 12b: Penalty calculation and collection

Finding 5-1
Meets or Exceeds Expectations

Summary:
DOH took 11 penalty actions in the review year. Ten of those eleven penalties were "Field Citations".

Explanation:
Metric 11a assesses the state's method for calculating penalties and whether it properly documents the economic benefit and gravity components in its penalty calculations.

EPA evaluated the formal penalty action issued for one facility and found the penalty to have properly assessed and documented both economic benefit and gravity.

For the 10 field citation penalties, EPA evaluated the assessment and documentation of penalties in accordance with EPA's revised guidance on the use of Expediated Settlement Agreements. EPA found DOH correctly assessed field citation penalties for easily correctible violations that did not cause significant health or environmental harm. EPA found the field citations were generally issued for stormwater-related violations, especially for violations where no actual harm had been documented to occur such as failure to implement BMPs or paperwork violations.

Metric 12a assesses whether the state documents the rationale for changing penalty amounts when the final value is less than the initial calculated value. EPA found no change in penalty amounts from the calculated value to the assessed value and therefore no documentation of such actions.

Metric 12b assesses whether the state documents collection of penalty payments. EPA found copies of received checks in DOH's files for all of the penalties. There was one penalty without a record in the file because the penalty had been recently issued and the payment had not yet been processed. DOH later provided EPA with a copy of the received check.

State Response: HDOH appreciates EPA's review of HDOH's penalty assessments and collections. HDOH would like to note that State deviation from EPA's penalty policies are not actionable by EPA.

Recommendation: None

Relevant metrics:

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