STATE REVIEW FRAMEWORK

Hawaii

Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2018

U.S. Environmental Protection Agency
Region 9

Final Report
June 10, 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

Clean Water Act (CWA)

Clean Air Act (CAA)

Resource Conservation and Recovery Act (RCRA)

Review Year: FY 2018 File Review Date: 6/12-13/2018 Hawaii Department of Health (HDOH) Contacts: Thomas Brand and Noa Klein EPA File Reviewers: Rick Sakow and John Schofield.

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)

30 of 33 files (91%) contained data that was accurately reflected in the RCRAInfo database.

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)

Improvement is needed for timeliness for completing inspection reports.
HDOH inspection coverage for Treatment, Storage and Disposal Facilities (TSDFs) meets the two-year coverage requirement. However, inspections of Large Quantity Generator (LQG) coverage were below the national average.

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1
Meets or Exceeds Expectations

Recurring Issue:
No

Summary:
30 of 33 files (91%) contained data that was accurately reflected in the RCRAInfo database.

Explanation:
EPA inspectors reviewed 33 files during the State Revolving Framework (SRF) evaluation. The Hawaii Department of Health (HDOH) conducted two inspections of the same facility during the SRF review period, and both inspections were added as individual entries on the Resource Conservation and Recovery Act (RCRA) File Review Spreadsheet. Three of the 33 files contained data that were inconsistent with RCRAInfo data. The following inaccuracies were noted: 1) HDOH marked a facility in RCRAinfo as Significant Non Compliance-Yes (SNY) on 06/08/2018 and had no return to compliance date entered in RCRAinfo. However, facility responded on 9/24/2018 showing that it had resolved the potential violations, but the facility was never changed to Significant Non-Compliance No (SNN). 2) A discrepancy was noted for the date of a Notice and Finding Of Violation Order (NOVO) issued and the date that was entered into RCRAinfo. 3) HDOH re-inspected a facility and the report was marked as a Focused Compliance Inspection (FCI), however, in RCRAinfo, it was marked as a Compliance Evaluation Inspection (CEI). HDOH has improved its rate of data accuracy since the previous SRF review. The Round 3 SRF found data errors in 16 of the 30 files reviewed during that review period. The majority of the data (90.9%) entered into RCRAinfo accurately reflected compliance activities, including inspection dates, inspection types and Significant Non-Compliance (SNC) status.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2b Accurate entry of mandatory data [GOAL]	100%		30	33	90.9%

State Response:
Hawaii Department of Health (HDOH) appreciates the recognition of the data quality improvements made since our SRF Round 3 review. Per correspondence between HDOH's

RCRAInfo data steward and U.S. Environmental Protection Agency, Region 9's (EPA) SRF reviewer, there was only one data error (Accuracy rate of 32/33 or 97%.). 1) SNN for the first facility (evaluation date September 26, 2018) was entered June 7, 2019, so this was an issue of timeliness, not correctness. 2) The Notice and Finding of Violation and Order (NOVO) date was correctly entered as the date the NOVO was signed by the Deputy Director ("effective date"), which did not match the date at the top of the cover letter. 3) This was indeed a focused inspection and was entered as a CEI in RCRAInfo rather than an FCI. The data error occurred because there was no appropriate focus area available to record the inspection, and the code FCI must be paired with a focus area. HDOH has updated the lookup tables with a state only focus area code "CMP" for "complaint inspection" that can be used to record these inspections as focused compliance inspections (FCIs). In addition, HDOH plans to create a new data entry standard operating procedure (SOP) for Compliance Monitoring and Enforcement data entry for RCRAInfo v6.

RCRA Element 2 - Inspections

Finding 2-1
Area for Improvement

Recurring Issue:
No

Summary:
HDOH inspection coverage for Treatment, Storage and Disposal Facilities (TSDFs) meets the two-year coverage requirement. However, inspections of Large Quantity Generator (LQG) coverage were below the national average.

Explanation:
At the time of EPA's SRF review, there were two operating TSDFs in Hawaii. During FY2018, (the timeframe of this SRF review) EPA R9 and HDOH had an arrangement where each Agency would alternate the annual inspections of these two permitted facilities. EPA R9 agreed that HDOH could count an EPA-led inspection toward their inspection commitment under their grant. A third facility was issued an individual permit in January 2019, but this date is outside the scope of EPA's SRF review for FY2018. According to FY2018 frozen RCRAinfo data, there are 97 active LQGs located in Hawaii. HDOH inspected 9 of the 97 LQGs, or 9.3%, which is below the national average of 9.9% for inspections of the LQG universe. The 5-year LQG coverage by HDOH is 60.8%, which is below the national goal of 100%.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
5c Five-year inspection coverage of LQGs [GOAL]	100%		59	97	60.8%
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	85%	2	2	100%
5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL]	20%	9.9%	9	97	9.3%

State Response:
HDOH's FY2018 End of Year report to EPA (submitted at the beginning of November 2018), stated, "Sixteen sites that were LQGs during FY18 were inspected; however, the current generator status recorded in RCRAInfo for four of these facilities is now SQG." In EPA's FY2018 End of Year grant evaluation of HDOH, 16 LQG inspections were counted. Due to the small size of the LQG universe in Hawaii, sites that are LQGs on a temporary or episodic basis due to planned events (e.g., construction/demolition, closure, tank cleaning) or unplanned events (e.g., building fire) or are retail pharmacies or retail stores with pharmacies that are episodic LQGs due to generation of p-listed pharmaceutical waste make up a significant percentage of the LQG universe. In the current grant workplan (FY2020-2021), HDOH notes: "The State received 108 Biennial Reports (BRs) for 2017, indicating these sites were LQGs at some point during the calendar year, but only 76 of these reporters (70%) were LQGs at the time of report completion. Based on an analysis of the LQG handler records and biennial report (BR) data, HDOH estimates the State's universe of "true" LQGs consists of approximately 40 to 75 sites. HDOH intends to keep limited compliance monitoring & enforcement (CM&E) resources focused on inspection of federally-owned TSDFs every year, all TSDFs every two years, and these true LQGs every five years." Therefore, HDOH believes that the cited percentage of the LQG universe covered (9.3%), based on counting only 9 LQGs as being inspected in FY2018 in a universe of 97 LQGs, does not accurately reflect coverage of the LQG universe at the time the sites were inspected, nor does it accurately reflect coverage of Hawaii's "true LQG" universe. As HDOH has discussed in recent grant workplans, attempting to focus resources on 100% coverage of the "true LQG" universe every 5 years means that a percentage value (60.8%) evaluating coverage of the current (ever changing) RCRAInfo LQG universe is not the most useful of metrics.

Recommendation:

Rec #	Due Date	Recommendation
1	03/31/2021	EPA R9 has reviewed HI's response to our findings and is satisfied with their response. We will continue to have monthly RCRA grant calls with HDOH. During these calls we will discuss the universe of "true LQGs", our expectations for annual and 5-year inspection coverage, and we will review progress toward meeting LQG inspections. If by March 31, 2021 HDOH is meeting agreed-to expectations for LQG inspection coverage, we will deem this recommendation completed.

RCRA Element 2 - Inspections

Finding 2-2
Meets or Exceeds Expectations

Recurring Issue:
No

Summary:
The inspection reports provide sufficient documentation to determine compliance.

Explanation:
All of the completed inspection reports reviewed were written in a standardized format that included the sufficient process descriptions and observations to support compliance determinations. The inspection reports often listed waste codes when describing waste containers, which is helpful in supporting follow-up compliance actions. Some abbreviations, such as "SAA" [satellite accumulation area] and "ASD" [accumulation start date] were not introduced or spelled out in the inspection reports.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		30	33	90.9%

State Response:

HDOH has met expectations under this element of review. The inspection reports generated were of good quality and generally adequate to determine compliance. There were a few findings of failure to identify an acronym in the reports. We understand that this is something that can make a report more difficult to comprehend and it is something that we will work harder to prevent.

RCRA Element 2 - Inspections

Finding 2-3
Area for Improvement

Recurring Issue:
No

Summary:
Improvement is needed for timeliness for completing inspection reports.

Explanation:
At the time of the Round 4 SRF Review Period, HDOH had no written policy or procedure for inspection report timeliness. On June 20, 2018, EPA's Office of Enforcement and Compliance Assurance (OECA) issued an Interim Policy on Inspection Report Timeliness and Standardization. This OECA Memo states that inspection reports should be completed within 60 calendar days of an inspection and be provided to the facility upon finalization. Therefore, EPA used 60 days as a benchmark to evaluate inspection report completion timeliness for the purposes of this review. The majority of the HDOH inspection reports took longer than 60 days to write, with an average of 190 days. Of the 33 files reviewed, only 7 of the files were completed within 60 days.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6b Timeliness of inspection report completion [GOAL]	100%		7	33	21.2%

State Response:
This finding has determined that HDOH has fallen behind in timeliness of inspection reports. As found in the review, only 7 of 33 or 21.2% of HDOH reports were completed within 60 days of the inspection. With an average of 190 days to complete the inspection report, HDOH has a lot of improvement to make to be in the desired range of 60 days. HDOH will review its Enforcement Response Policy and develop reasonable timelines for inspection follow-up and completion based

on EPA's Interim Policy on Inspection Report Timeliness and Standardization, dated June 29, 2018. The policy has a firm goal of 60 days to finalize the inspection report from the completion of an inspection. On May 13, HDOH committed to implement the 60-day inspection report goal effective October 1, 2020. The response from HDOH is below: The report timeline will be 60-days to completion effective October 1, 2020. The beginning of the FY 2021.

Recommendation:

Rec #	Due Date	Recommendation
1	10/01/2020	In an email to EPA dated 5/13/2020, HDOH committed to develop and implement a policy to meet the 60-day inspection report timeline goal. This policy will be effective on October 1, 2020. EPA will review this policy to ensure consistency and accuracy. EPA will address the timeliness of inspection reports during the monthly grant calls with HDOH.
2	07/01/2021	EPA will follow-up during monthly grant calls with HDOH to ensure that the new policy is being implemented. EPA will review HI inspection report data for timeliness. After three consecutive quarters of timely inspection reports i.e. approximately July 1, 2021) EPA will close this recommendation.

RCRA Element 3 - Violations

Finding 3-1
Meets or Exceeds Expectations

Recurring Issue:
No

Summary:
HDOH had made accurate compliance determinations and SNC (significant noncomplier) determinations in the reports that were reviewed during the Round 4 review period.

Explanation:
File review metric 7a assesses whether accurate compliance determinations were made based on the inspections conducted. HDOH field inspection reports contains narrative sections and the reports include photographs that document areas of compliance and non-compliance. Of the 33 completed files reviewed, 97% of inspection case files contained accurate compliance

determinations. The following issues were identified in three separate files: (1) One inspection report did not include photographs and was not well written to be able to ascertain what violations were observed at the facility, (2) One inspection report identified a storage time limit violation, but did not identify the number of days the storage limit was exceeded, and (3) Not all acronyms used in the report were defined. Of the enforcement files selected for review, only two cases involving potential formal enforcement actions were found during the Round 4 SRF Review Period. Data metric 2a measures long-standing secondary violators with violations open for more than 240 days that have not returned to compliance or have not been designated as being SNC. The 2017 frozen data for Hawaii shows four long-standing secondary violators. None of the files that EPA reviewed included long-standing secondary violators. Metrics 8b and 8c are review indicators which evaluate appropriate SNC determinations conducted during the year. Eighteen of the files reviewed had violations listed. Of the 18 files, one file identified an exceedance of the storage time limit, but the report did not identify this as a SNC violation. HDOH's SNC determinations were found to be 94.4% accurate. The national average for SNC rate is 1.6%. HDOH's SNC rate is 4.8%, according to the RCRAinfo frozen data for FY18, which is above the national average.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2a Long-standing secondary violators	0%		0	0	0
7b Violations found during CEI and FCI inspections		34.3%	8	23	34.8%
8a SNC identification rate at sites with CEI and FCI		1.6%	3	62	4.8%
8b Timeliness of SNC determinations [GOAL]	100%	76.5%	3	3	100%
7a Accurate compliance determinations [GOAL]	100%		32	33	97%
8c Appropriate SNC determinations [GOAL]	100%		17	18	94.4%

State Response:
HDOH appreciates EPA's analysis. This finding was that HDOH met expectations by making accurate compliance and SNC determinations in the reports that were reviewed. HDOH has improved in this element since the last EPA review. The HDOH inspection reports made accurate determinations in 97% of the case files. HDOH will continue strong efforts to conduct quality inspections, generate quality documentation and input data. HDOH is always striving to improve

the quality of the reports produced and the metrics seem to show that we have been quite successful in this.

RCRA Element 4 - Enforcement

Finding 4-1
Meets or Exceeds Expectations

Recurring Issue:
No

Summary:
HDOH effectively manages noncompliant facilities with appropriate enforcement responses.

Explanation:
EPA review found that HDOH enforcement actions returned the facilities to compliance in an appropriate manner. HDOH files contained well documented return to compliance information. Metric 10b assesses the appropriateness of enforcement actions for Secondary Violations and Significant Non-Compliance determinations. All 17 files with violations included appropriate enforcement to address the violations.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
9a Enforcement that returns sites to compliance [GOAL]	100%		17	17	100%

State Response:
HDOH appreciates EPA's review and the finding that our continued efforts to clearly document enforcements are successful.

RCRA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:
No

Summary:
HDOH penalties include gravity-based, multiday and economic benefit components in their penalty calculation procedures.

Explanation:
HDOH implements a penalty policy that is consistent with EPA's RCRA Civil Penalty Policy. The documentation within the files included penalty calculations (including gravity and economic benefit). During the file review, EPA determined that the penalty amounts were appropriate. EPA reviewed 2 case files during the Round 4 SRF reporting period that included penalties. The penalty calculation process includes a worksheet and justification memorandum that applied each of the penalty components to each violation listed. For that reason, EPA added an additional FY2017 penalty action to include in this review. The files included documentation supporting that the penalty is being collected (i.e., copy of the check or electronic transfer report) and included detailed penalty calculations and justification memorandums to explain the difference between initial and final penalties. During the Round 3 SRF, EPA recommended that HDOH demonstrate that it is capturing, when appropriate, economic benefit of non-compliance. The files reviewed during Round 4 SRF did include such analysis and consideration.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
11a Gravity and economic benefit [GOAL]	100%		3	3	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		3	3	100%
12b Penalty collection [GOAL]	100%		3	3	100%

State Response:
HDOH appreciates EPA's review and the finding that our continued efforts to clearly document enforcements are successful. The 2015 state review by EPA has resulted in changes which provided more documentation for this area of our files.