

STATE REVIEW FRAMEWORK

Oklahoma

**Clean Water Act and Clean Air Act
Implementation in Federal Fiscal Year 2018 and Resource
Conservation and Recovery Act
Implementation in Federal Fiscal Year 2019**

**U.S. Environmental Protection Agency
Region 6**

**Final Report
June 22, 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)

EPA Region 6 SRF for Oklahoma Department of Environmental Quality / August 5-9, 2019/
EPA: Esteban Herrera, 214-665-7213, herrera.esteban@epa.gov Damon McElroy, 214-665-7159, mcelroy.damon@epa.gov Darlene Whitten-Hill, 214-665-6636, whitten-hill.darlene@epa.gov Judy Edelbrock, 214-665-8582, edelbrock.judy@epa.gov ODEQ Contacts: Michael Moe, 405-702-8184, michael.moe@odeq.ok.gov Wayne T. Oraney, 405-702-8139, wayne.oraney@odeq.ok.gov Brian Clagg, 405-702-8118, brian.clagg@odeq.ok.gov

Clean Air Act (CAA)

EPA's file selection was provided to ODEQ May 13, 2019. File review conducted onsite June 18-21, by Diana Lundelius (214-665-7468), James Haynes (214-665-8546), and Lisa Schaub (214-665-8583). EPA Contacts Steve Thompson, Air Enforcement Branch Chief (214-665-2769) and Margaret Osbourne, Section Chief (214-665-6508). ODEQ Contacts Richard Groshong, Environmental Programs Manager (405-702-4100); Camas Frey, Enforcement Section Manager (405-702-4224); and Jeff Dye, Data Steward (405-702-4118).

Resource Conservation and Recovery Act (RCRA)

Resource Conservation & Recovery Act (RCRA) Review Period: State FY19 (7/1/18-6/30/19)
Key Dates: Kick-off Meeting:3/19/19 File Selection List sent:7/31/19 DMA sent:8/6/19 On-Site File Review conducted: 8/26-30/2019 EPA contacts: Lou Roberts 214-665-7579 Troy Stuckey 214-665-6432 Mark Potts 214-665-2723 ODEQ contacts: Michael Edwards 405-702-5226 Michael Stickney 405-702-5153 Hillary Young 405-702-5188 Fenton Rood 405-702-5159 Kelly Dixon 405-702-5100

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 Water Act (CWA)

EPA reviewed 26 Inspection Reports issued during the timeframe audited. The inspection file review was to determine timeliness of the report completion as determined by their CMS. ODEQ is doing a good job of identifying, quantifying and addressing significant noncompliance (SNC) and non-SNC violations at Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) Major and non-Major facilities. The Region reviewed 32 files and the results for all three categories of violations were 100% for accuracy of compliance determinations, 100% Single Event Violations (SEVs) accurately identified as SNC or non-SNC at major facilities, and 100% SEVs identified as SNC reported timely at major facilities. The file review results for enforcement indicated 100% of the files reviewed had responses that returned, or will return, a source in violation to compliance and enforcement responses indicating that ODEQ addressed the violations in an appropriate manner.

ODEQ'S inspection coverage for NPDES Majors and Non-Major and Non-Major general permit meet expectation. ODEQ has met commitment requirements for inspections in accordance with 106 604b grant priorities.

ODEQ reported they are currently working on getting their own in-house database, NPDES Management System (NMS), up and running for Industrial and Municipal NPDES permit, tracking, compliance, and enforcement. ODEQ is still doing clean up on the permits and having their contractor fix issues with the Permit, and tracking in NMS.

Clean Air Act (CAA)

- ODEQ maintains timely submission of compliance monitoring and enforcement MDRs.
- Rates of completing inspections per CMS commitments and ACC reviews exceed national averages.
- The State makes prompt and accurate HPV determinations.
- Enforcement responses appear to be appropriate and are generally expected to return the subject facilities to compliance.
- The State consistently collects assessed penalties.

Resource Conservation and Recovery Act (RCRA)

The ODEQ RCRA hazardous waste program is championed by a strong cadre of managers who are very experienced in the targeting/inspection/enforcement processes, and who have an excellent working relationship with EPA Region 6 exchanging feedback on issues and priorities of particular concern and working cooperatively to address them.

The ODEQ Executive Director and the RCRA hazardous waste program managers attend and participate in quarterly enforcement/compliance management meetings with the EPA Region 6 Enforcement and Compliance Assurance Division managers. There are on-going communications to ensure that all national priorities are addressed. Partnership with EPA Region 6 is encouraged in protection of human health and environment.

ODEQ continues every year to meet or exceed the inspection program goals identified in the RCRA Compliance Monitoring Strategy to do 100% of its Federal Treatment, Storage, Disposal (TSD) facilities every year; 100% of its operating TSD universe every two years; and 20% of its LQG universe every year. In addition, ODEQ responds to all hazardous waste complaints received usually with an on-site investigation/inspection within thirty days.

ODEQ is doing a good job of identifying, quantifying and addressing significant noncompliance (SNC). Its' SNC rate for this SRF review exceeded the national average by three times. ODEQ focused on the most environmentally significant handlers, promoting pollution prevention and encouraging a holistic view of compliance. The file review results for enforcement indicated 100% of the files reviewed had responses that returned, or will return, a source in violation to compliance. ODEQ pursues those enforcement actions that result in significant protection to human health and the environment while involving complex negotiations.

EDOCTUS, electronic document management system.

Standard Operating Procedures (SOPs) for targeting, pre-inspection planning, conducting inspections, enforcement process.

Use of standardized inspection report and detailed universe specific inspection checklists (e.g., TSDF, LQG, SQG, CESQG, Used Oil).

Use of multiple templates (e.g., NTC (Notice to Comply), NOV (Notice of Violation)).

Penalty documentation (e.g., calculation sheets to include Economic Benefit, collection memo to file).

Use/Negotiation of Supplemental Environmental Projects (SEPs)

Investment of resources to get data accurately and completely reflected in RCRAInfo, the EPA RCRA national database for tracking inspections and enforcement.

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)

EPA reviewed 26 Inspection Reports issued during the timeframe audited. The inspection file review was to determine timeliness of the report completion as determined by the State CMS Standard (60 days).

Metric	Round 3 Finding Level (FY 2013)	Round 4 Finding Level (FY 2018)
2b Files reviewed where data are accurately reflected in the national data system	Area for State Improvement	Meets or Exceeds Expectations
5a1 Inspection coverage of NPDES majors	Area for State Improvement	Meets or Exceeds Expectations
5b1 Inspection coverage of NPDES non-majors with individual permits	Area for State Improvement	Meets or Exceeds Expectations
5b2 Inspection coverage of NPDES non-majors with general permits	Area for State Improvement	Meets or Exceeds Expectations
7f1 Non-major facilities in Category 1 noncompliance	Area for State Improvement	Meets or Exceeds Expectations*
7g1 Non-major facilities in Category 2 noncompliance	Area for State Improvement	Meets or Exceeds Expectations**

*Note: Metric 7f1 became part of the universe of metric 8a3 on the percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year in Round 4.

**Note: Metric 7g1 became part of the universe of metric 7k1 on major and non-major facilities in noncompliance in Round 4.

Clean Air Act (CAA)

- ODEQ continues to have considerable time elapse before reporting HPVs in ICIS.
- As in the past, the state agency tends to require longer than the goal of 180 days to address HPVs. Further, the records maintained do not appear to fully satisfy the requirements of the case development and resolution timeline.

Metric	Round 3 Finding Level (FY 2013)	Round 4 Finding Level (FY 2018)
2b Timely and accurate reporting of MDRs	Area for State Improvement	Meets or Exceeds Expectations
3a2 Timely reporting of HPV determinations	Area for State Improvement	Area for State Improvement
10a Timely action taken to address HPVs	Area for State Improvement	Area for State Improvement
10a1 Rate of Addressing HPVs within 180 days	Was not a requirement in Round 3	Area for State Improvement
14 HPV case development and resolution timeline in place when required that contains required policy elements	Was not a requirement for Round 3	Area for State Improvement

Resource Conservation and Recovery Act (RCRA)

None

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

ODEQ's permit limits and DMR data entry rates for CWS-NPDES Major and Non-Major facilities in the national database meet the defined goal and exceed the national average.

Explanation:

1b5) Permit limit data entry rate for major and non-major facilities ODEQ's data entry of permit limit rates for CWA NPDES majors in FY 2018 is 100% and meets the defined goal of more than 95% and exceeds the national average of 90.60%. 1b6) DMR data entry rate for major and non-major facilities The DMR data entry rate for CWA NPDES Majors by ODEQ (99.10%) meets the defined goal of more than 95% and exceeds the national average of 93.30%.

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%	455	455	100%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%	93.3%	8673	8752	99.1%

State Response:

CWA Element 1 - Data

Finding 1-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Minimum Data Requirement for recording Non-Major general permits into ICIS.

Explanation:

2b) Files reviewed where data are accurately reflected in the national data system EPA reviewed 32 files (19 Majors, 12 non-majors, and 1 MS4). Of the 32 files reviewed, 36 actions were reviewed for data quality. 34 were completed accurately with inspection and enforcement information in the NPDES ICIS database at a rate of 94.4%. Of the two remaining files, 1 file contained a typo for the date of issuance for a single event (corrected), and 1 file had single events that were not correctly linked to the inspection. ODEQ has maintained a high consistency in entering the required data for their facilities. The State database is currently experiencing an application issue with certain fields with the Non-Major General Permit Inspections. Codes in the state database are not compatible with ICIS and do not flow over. State needs resources to address the issue. The State does provide this information in flowcharts to the Region from their database.

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%		34	36	94.4%

State Response:

CWA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

ODEQ'S inspection coverage for NPDES Majors and Non-Major and Non-Major general permit meet expectation. ODEQ has met commitment requirements for inspections in accordance with 106 604b grant priorities.

Explanation:

5a1) Inspection coverage of NPDES majors Goal 100% of state CMS plan - National 52.80% - Oklahoma 81% - Count 92 - Universe 103 Meets Expectations OK DEQ revised the facility inspections number from 85 to 92 on the FY18 OK SRF Data Verification. The inspection coverage meets the National Goal of 100% of state Compliance Monitoring Strategy (CMS). OK DEQ revised their CMS with EPA to 90%; The remaining 10% CEI inspections are performed on Minor or General facilities. Major permits CEIs, CSIs, PCIs, & Audits are in ICIS-NPDES. Routine Major are in the state database pending completion of the process to flow data from the state database to EPA's ICIS-NPDES database. 5b1) Inspection coverage of NPDES non-majors with individual permits Goal 100% of state CMS plan - at 10%. Count 249 - Universe 171 Meets Expectations. Non-CEI Routine inspections are not in ICIS-NPDES but are maintained in state database pending completion of process to electronically flow data into ICIS. 5b2 Inspection coverage of NPDES non-majors with general permits Goal 100% of state CMS plan - Count 78 - Universe 35 6a: Inspection reports complete and sufficient to determine compliance at the facility Of the 32 files reviewed, 22 contained Inspection Reports (4 with multiples reports for a total of 26). All 26 reports were complete and sufficient. Minimal Data Requirement information was in ICIS, compliance determination information and was available in the reports. Single Event Violations were created and properly linked. The inspection file review resulted in 100% for completeness and sufficiency to determine compliance. 4a1 through 4a11 - ODEQ is meeting the commitments stipulated in the approved CMS. The CMS commitment is 10% of CEI's for inspections focused on minor or general facilities. The 106 604b grant priorities, Oklahoma Focus document, inspection commitments were: Perform compliance or sampling inspections by June 30, 2018, at each major facility; Conduct an estimate of 80 technical site visits for stormwater facilities; Perform a minimum of 22 pretreatment compliance inspections and 3 audits; and conduct an estimate of 400 site visits or inspections to help wastewater facilities maintain compliance. 4a7 - Meets the criteria for this reporting period, all though the universe dictates 4 required inspections, the reporting period for MS4II should be reported for FY2019 per the CMS.

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]	100% of commitments		27	4	675%
4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL]	100% of commitments		92	19	484.2%
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL]	100% of commitments		29	4	725%
4a5 Number of SSO inspections. [GOAL]	100% of commitments		9	1	900%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments		3	3	100%
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments		295	140	210.7%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments		1211	154	786.4%
5a1 Inspection coverage of NPDES majors. [GOAL]	100%	52.8%	92	103	89.3%
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100%	22.6%	249	71	350.7%
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL]	100%	5.6%	78	35	222.9%
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%		26	26	100%

State Response:

CWA Element 2 - Inspections

Finding 2-2

Area for Attention

Recurring Issue:

No

Summary:

EPA reviewed 26 Inspection Reports issued during the timeframe audited. The inspection file review was to determine timeliness of the report completion as determined by the State CMS Standard (60 days).

Explanation:

6b: Inspection reports completed within prescribed timeframe of the state CMS. Of the 26 reports reviewed, 21 were completed within the timeframe for inspection completion. EPA found 5 inspection reports that were outside of the required timeframe with completion days recorded as 64, 67, 69, 70, and 80. Of the 5 Inspection reports that are out of the timeframe of completion, it should be noted that review of 2 reports were co-lead with EPA. Due to additional processes for the coordination of both the inspection and finalization of the reports between Agencies, the extension of time for report finalization dates is accountable to EPA. The resulted rating for timeliness was 80.8%

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6b Timeliness of inspection report completion [GOAL]	100%		21	26	80.8%

State Response:

21 out of 26 were within the 60 day timeframe (80.8%). I've been comparing the list of facilities reviewed with manager's records of dates to try to figure out which 5 facilities EPA identified as exceeding timelines. At least two were joint EPA inspections: the City of Moore and Koch Nitrogen-Enid. It is worth noting that at least some of the exceedances were joint EPA inspections.

CWA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Twenty-six (26) Inspection Reports were reviewed for compliance determination. Supporting documentation was available for the reports to determine accuracy of the determination, through the ability to identify violations.

Explanation:

7e: Accuracy of compliance determinations EPA found that ODEQ's identifies accurately identifies and addresses violations. Inspection Reports contain enough information to accurately determine compliance at a very high percentage. Of the 32 files reviewed, a total of 34 identified violations were reviewed. Thirty-three (33) of those violations appropriately identified and addressed; rating a 97.1 %.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7e Accuracy of compliance determinations [GOAL]	100%		33	34	97.1%
7j1 Number of major and non-major facilities with single-event violations reported in the review year.					94
7k1 Major and non-major facilities in noncompliance.		18.7%	458	794	57.7%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.		9%	238	787	30.2%

State Response:

CWA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

EPA evaluated timely and appropriate enforcement activities for compliance and violations.

Explanation:

9a: Enforcement responses that returned, or will return, sources in violation to compliance EPA found that ODEQ's enforcement responses are returning facilities to compliance at a very high percentage. Of the 32 files reviewed, a total of 34 enforcement responses were reviewed. Thirty-three (33) of those responses returned the facilities to compliance; rating a 97.1 %. 10b: Enforcement responses reviewed that address violations in an appropriate manner 91.4% (32 of 35) of enforcement responses in the reviewed files addressed violations in an appropriate manner. Enforcement responses included Notices of Non-Compliance, Warning Letters, Notices of Violations, Administrative Compliance Orders, Consent Orders, Addendums with compliance schedules, and Penalty Orders.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		32	35	91.4%
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		33	34	97.1%

State Response:

CWA Element 4 - Enforcement

Finding 4-2

Area for Attention

Recurring Issue:

No

Summary:

FY2018 Data Metric 10a1 indicates that ODEQ does not address facilities in SNC with timely actions in an appropriate manner. ODEQ was at 47.4%.

Explanation:

ODEQ meets the expectations in that the state addresses all SNC; however SNC that shows in the final quarter of the QNCR does not show resolved until the first quarter of the following FY. Enforcement actions in ICIS verify the state has addressed the SNC in a timely manner.

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%	9	19	47.4%

State Response:

CWA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

EPA evaluated 6 Consent Order for CWA penalties

Explanation:

11a- Penalty calculations that document and include gravity and economic benefit ODEQ is calculating and documenting penalty calculations and the calculations were available for all 6 files. Documentation included economic benefit and gravity for all 6 (100%). 12a- Documentation of the rationale for difference between initial penalty calculation and final penalty There was no difference between the initial and final penalty for 5 of the CAFOs. There was 1 CAFO with a renegotiated penalty; all BEN/ABLE calculation documentation was included in the record (100). 12b- Penalties collected A copy of the cancelled check was available to verify payment for each of the 6 CAFO (100%).

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%		6	6	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		6	6	100%
12b Penalties collected [GOAL]	100%		6	6	100%

State Response:

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

- ODEQ maintains timely submission of compliance monitoring and enforcement MDRs.

Explanation:

EPA Region 6 evaluated ODEQ's data accuracy and completeness. In the areas of timely reporting of compliance monitoring and enforcement MDRs, ODEQ continues to transmit data to EPA's data system, ICIS-Air, promptly.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	85.2%	673	677	99.4%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	71.8%	95	103	92.2%

State Response:

The State of Oklahoma Department of Environmental Quality ("ODEQ") is committed to data accuracy and completeness and believe our metrics show the quality of our data in ICIS-AIR.

CAA Element 1 - Data

Finding 1-2

Area for Attention

Recurring Issue:

No

Summary:

The data for the fiscal year under review in this SRF indicate reporting of stack test data to ICIS within 120 days of the test in the majority of instances.

Explanation:

The timely reporting of stack test data remains above the National Average of 65.1%, but has slipped from 91.9% at the time of the last SRF to 72.6% in FY2018. EPA recognizes that in the elapsed years the universe of stack tests has more than doubled from 684 in FY2013 to 1475 in FY2018. Furthermore, current data indicate that in FY2019, timeliness rebounded to 92.8%, so no recommendation is warranted.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
3b2 Timely reporting of stack test dates and results [GOAL]	100%	65.1%	1071	1475	72.6%

State Response:

The Department has seen an exponential increase in the number of stack tests conducted in Oklahoma that are submitted to ODEQ for review. This increase is primarily due to activity in the Oil and Gas industry. ODEQ has made efforts to “Lean” the review program to only review and enter into ICIS-AIR those facilities that are included in our CMS. This has allowed us to focus on the important facilities and therefore increase our ability to review Stack Tests within the recommended 120 days.

CAA Element 1 - Data

Finding 1-3

Meets or Exceeds Expectations

Recurring Issue:

Yes

Summary:

The majority of the selected files exhibited accurate MDRs.

Explanation:

Upon review of ODEQ's comments and additional supporting documentation supplied after the initial file review, accurate MDRs were found in 29 of 31 of the CAA files reviewed. Discrepancies existed between the subparts listed in the permit and those in ICIS for one facility. In two instances,

an onsite inspection was conducted but a report was not produced to document the findings; both cases involved employees who departed the agency, and for one of those the location description differed between the permit and ICIS. When documentation sufficient to determine compliance exists, the compliance monitoring activity should remain in ICIS as an FCE. While not factored into the metric calculation, another area for consideration is in the transmission of location information. The text box for Address accepts a limited number of characters, and many facilities only have directional information, which often exceeds the characters allowed, rather than physical addresses. The ICIS Comments section in the Facility Record can be used to provide complete navigational information, complemented with a note in the Address field to see the Comments. Alternatively, a reference in the Address section to the Coordinates section can be made. National averages are not provided for file review metrics such as 2b because the sample size is small and subject to each region’s file selection list. Those with national averages are data metrics based on each state’s entire set of data in ICIS-Air.

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%		29	31	93.5%

State Response:

ODEQ strives to draft complete and accurate Full Compliance Evaluations (“FCE”), and believes the quality of reports exceeds that of the majority of states in Region 6, if not the United States. We will continue to strive for 100% completeness and accuracy. Therefore, if discrepancies do exist between the subparts listed in the Permit and those reflected in ICIS-AIR, ODEQ will conduct additional training with employees to check the accuracy of ODEQ data. As for each Subpart discrepancy issue listed, ODEQ believes an explanation can illustrate there is not a discrepancy. For XTO-Elk City, the issue appears to be with NSPS JJJJ, and ODEQ found ICIS-AIR updated to inactive for Subpart JJJJ on 6/13/18 after the FCE was conducted. The Valero-Ardmore Subpart discrepancies were for failure to include Subpart A when ODEQ believes it is unnecessary to include this Subpart since this is always true for any Facility subject to an NSPS or MACT requirement. Regarding Pryor Chemical, ICIS-AIR shows that MACT Subpart VVVVVV was placed inactive in 2015. Then, MACT Subpart ZZZZ was activated in ICIS-Air on 3/15/19 after ODEQ received a start-up notice from Pryor Chemical for an engine subject to NSPS JJJJ and therefore, also MACT Subpart ZZZZ. Lastly, for OG&E-Muskogee, ODEQ is not aware of any EPA guidance regarding the necessity to include the SO2 FIP into FCE reports and ICIS-Air. Therefore, ODEQ requests official guidance on EPA’s expectation for FIPs moving forward. *ODEQ requests that EPA discuss each Subpart discrepancy with ODEQ staff before alleging in an official report that ODEQ is not meeting its responsibilities for reporting. Regarding the instances when an FCE is conducted by an ODEQ employee and the employee leaves prior to completing a report, EPA is recommending that ODEQ delete the FCE from ICIS-AIR and complete it at the next opportunity. Otherwise, ODEQ believes this will give the public a false impression that ODEQ is not providing adequate and timely oversight to the facilities. Rather,

ODEQ chooses to leave the FCE in ICIS-AIR, but the next FCE will cover the period originally covered in the previous FCE. This shows regular and timely oversight, while documenting compliance for the previous and current FCE period. In reference to the Holly East Refinery HPV case, without the specific case number, it is difficult to determine EPA's issue that was noted. It is believed based on ODEQ notes from the SRF review that EPA was looking at case #8220 because of the penalty amount listed in EPAs request during the SRF review. This enforcement case was determined to not be an HPV and was addressed as an FRV. The violations did rise to what ODEQ considers a Level 1 violation with a penalty and Consent Order issued, but this case was not considered an HPV by ODEQ. This should be removed from the report as an issue of concern. This SRF report only listed issues with 7 separate reviewed CAA case files. ODEQ asked Region 6 for an explanation and the other case was apparently regarding DCP-Reform Booster station and the resolve date and address date for enforcement case #9003 were the same date. This particular enforcement case was a State Level 1 violation and not an HPV. It was considered an FRV, for which the MDR only requires the identification of an FRV with a Day Zero. ODEQ's understanding of the MDRs is that FRVs are not required to have a resolve date and address date. Regarding the note about the text box for addresses having limited characters, the Department will evaluate whether our database and Batch upload should be changed to better meet the expectations for EPA. The Department would also like an explanation as to why no National Average is associated with this particular metric. It would be helpful to see how the State of Oklahoma is compares with the National Average.

CAA Element 1 - Data

Finding 1-4

Area for Improvement

Recurring Issue:

Yes

Summary:

- ODEQ continues to have considerable time elapse before reporting HPVs in ICIS.

Explanation:

The standard for timely reporting of HPVs to ICIS-Air, based on the 2014 HPV Policy, is within 60 days of Day Zero. During FY2018, ODEQ met this timeline for two cases, but the remaining 5 instances fell between 89 and 207 days after Day Zero. Untimely reporting of HPVs is a recurring issue for which the Round 3 recommendations of revising the State's practices to increase the timely report of HPVs was satisfactorily completed. While ODEQ succeeded in timely reporting of all HPVs in FY2015, in subsequent years the rate fell to 50% and then into the twenties in FY2017 and FY2018. This latency has continued into FY2019 with the unfrozen data showing 20% timely reporting. It appears that lengthy internal management and legal review may factor into the delays in reporting.

EPA accepts the requested adjustments to the deadlines, as reflecting in the Recommendation Table.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
3a2 Timely reporting of HPV determinations [GOAL]	100%	44.9%	2	7	28.6%

State Response:

The Department will be working with EPA Region 6 to develop a plan to reduce the time of reporting our HPV determination to ICIS-AIR. The Department has employees trained in the “Lean” process and does not expect the need to request a facilitator from EPA. Yet, the Department requests that additional time be given to develop our plan and implement a “Lean” process for our review of Full Compliance Evaluations. Therefore, we are requesting that a plan be submitted to EPA no later than September 1, 2020, and implemented within 30 days after EPA's concurrence. Then by October 31, 2021, ODEQ should be achieving 71% identification within 60 days of the Day Zero. ODEQ would also like to note that steps have already been taken by management to reduce the review burden on senior management and Legal. Senior managers are no longer reviewing every FCE report and only those with violations. Also, our Legal Department is not reviewing minor violations that are considered Level 3 violations. This should reduce the burden of review and decrease the overall review time for FCE reports that include HPVs.

Recommendation:

Rec #	Due Date	Recommendation
1	09/01/2020	Re-evaluate the levels of management and legal quality assurance review for all cases from the most routine to complex FCEs involving suspected HPVs or FRVs with the goal of reducing the time from inspection to approval. It is recommended that ODEQ take advantage of the Lean process to formulate a list of improvements and a schedule for implementation. EPA can provide a facilitator at the States' request. The resultant summary document of how the various types of case should be reviewed should be submitted for EPA's review and concurrence by the specified date.
2	10/31/2020	Begin implementing the improvements identified as a result of Recommendation 1 within 30 days after EPA's concurrence. Identify key metrics for targets or goals to track using a mechanism such as a spreadsheet or database that can generate a table or graph to show progress. This should be submitted to EPA in advance of the regular bi-monthly meetings to facilitate discussion, with completion of goals within one year.
3	10/31/2021	Through implementing the process improvements identified under Recommendation 2, achieve a minimum of 71% timely reporting of HPV determinations as measured by metric 3a2 on FY2021 production data.

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Rates of completing inspections per CMS commitments and ACC reviews exceed national averages.

Explanation:

In the area of FCE coverage for both SM-80 and Title V facilities, ODEQ continues to exceed the national average, completing nearly all of the inspections required for the fiscal year per the CMS Plan. Similarly, the completion rate of review of Title V Annual Compliance Certifications (ACCs) of 94.4% exceeds the national average by more than ten percent.

EPA acknowledges that ODEQ reviews all facilities due for compliance evaluations and metric

values below 100% can likely be attributed to differences in the state and federal fiscal years. Additionally, metric 5e does have the flaws enumerated by ODEQ.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a FCE coverage: majors and mega-sites [GOAL]	100%	88.1%	139	144	96.5%
5b FCE coverage: SM-80s [GOAL]	100%	93.7%	213	218	97.7%
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	82.5%	289	306	94.4%

State Response:

ODEQ completed 100 percent of the FCEs, and reviewed 100 percent of the ACCs that were due during FY18. The apparent discrepancy is due to several factors. For FCEs the first reason is due to the difference between the state and federal Fiscal Year calendars. ODEQ operates under the State of Oklahoma’s July 1 through June 30 fiscal year calendar. The second reason is due to facilities changing source categories prior to the data being pulled by EPA. For example, if at the time of the FCE, a facility was a major source, but between that time and the time the data was pulled, it dropped down to an SM80, it no longer showed up under the major source universe. For the state fiscal year, ODEQ completed 100 percent of the targeted major and mega-site, and SM80 FCEs. For ACC reviews, the discrepancy is apparently in how the data is pulled. Several of those shown to be missed had not had a TV permit issued, so the ACC would not be due for a least another year. Some permits had just been issued, so the ACC was not yet due. In one case the ACC was not submitted and an enforcement case was opened to address it. ODEQ has data to support these issues, and will be happy to provide them upon request. The main point is that all required FCEs were conducted and all required ACCs were reviewed.

CAA Element 2 - Inspections

Finding 2-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Staff retention adversely impacted ODEQ's ability to consistently record FCE elements, yet the existing documentation largely corresponded to the compliance determinations made.

Explanation:

Documentation for 22 of the 28 cases reviewed included sufficient information to determine compliance of the subject facility (Metric 6b). Two inspection reports, those for US Gypsum and Cardinal Glass Plant, were not produced due to the departure of the individual who conducted the on-site evaluation. For Enlink's Ruby Compressor Station and DCP's Amber Booster Station, changes in equipment onsite triggered the applicability of additional regulations which do not appear to have been considered. In the case of PSO Tulsa Power Station, the report provided total hours of operation whereas compliance determination requires hourly records. The inspections discussed above regarding Metric 6b contributed to the 72.7% rate of satisfactory documentation of FCE elements. Additionally, the review of Continental Carbon included an on-site FCE for which the report remains to be completed due to the departure of the responsible inspector. Sufficient evidence existed to evaluate the compliance of the stack tests, but the documentation of the FCE was not available at the preparation of this SRF Report. The remaining shortcoming lies in the report for Four Winds Midstream's Pod H3, which failed to mention whether visible emissions were observed.

In further discussions between EPA and ODEQ after receipt of ODEQ's written comments, the State indicated that the FCE for Enlink-Ruby Compressor Station incorrectly stated a potential to emit greater than ten tons per year (TPY) of formaldehyde existed. This increase in potential emissions would likely trigger additional regulations and requirements which were not considered. After discovering such an error in an inspection report, clear documentation of the errant information, justifying the absence of consideration of additional requirements, should be included in the file. After consultation with EPA experts regarding the installation of an existing engine at DCP Midstream-Amber Booster Station, it was determined that if said engine was installed without significant changes, the engine retains its original construction date. ODEQ provided supporting documentation for the compliance determination of Enable El Paso Canute which EPA found to support the state's evaluation. Additionally, EPA accepts the mention of fugitive dust in the Four Winds report as sufficient documentation of visible emission observation, bringing metric 6b to 24 of 28 reports with sufficient documentation to determine compliance with the metric performance meeting expectations.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%	70.1%	0	0	0
6a Documentation of FCE elements [GOAL]	100%		18	22	81.8%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		24	28	85.7%

State Response:

ODEQ believes that our compliance monitoring reports are more accurate than reflected by EPA and will address some of the issues below. If it is determined that the FCEs were accurate, ODEQ asks that the State percentage meeting the requirements be changed and this no longer be considered an area of attention. The requirement to maintain hours of operation for PSO-Tulsa Power Station is found under Specific Condition #7 of their permit. The requirement states “The following records shall be maintained on-site to verify insignificant activities...hours of operation for each reciprocating engine...”. The inspector verified that the records were maintained and are a part of the Semi- Annual reports. Since the records are maintained and reported as required, and the inspector verified the records were maintained, no additional compliance demonstration was necessary. ODEQ does not believe this to be an issue with the FCE being incomplete. The Enlink-Ruby Compressor Station FCE noted a violation of failure to correctly permit the addition of a 4,735-hp Caterpillar 3616 engine and was noted as a violation for adding equipment without a proper construction permit. This engine and associated compressor are potentially subject to NSPS Subparts JJJJ and Subpart OOOO for the compressor and the requirements of MACT Subpart ZZZZ. Each of these Subparts are in the permit and the compliance status for Ruby Compressor Station was addressed in the FCE. Therefore, ODEQ believes the regulations associated with the additional equipment was sufficiently addressed in the FCE. The DCP Midstream-Amber Booster Station had an engine replacement in February of 2017 and this new engine was identified as ENG-2a in the FCE. This engine is addressed in the Federal Regulations section of the report on page 4 and 5. The inspector noted that no equipment was subject to OOOO so the compressor is not subject. The engine was determined to not be subject to Subpart NSPS JJJJ, but was an existing engine subject to MACT Subpart ZZZZ which the inspector addressed. No other additional equipment has been added to the Facility. Therefore, ODEQ believes the regulations associated with this added engine were properly addressed and the FCE report to have addressed all relevant NSPS and MACT Subparts. In the Four Winds-Pod H3 Full Compliance Evaluation report the inspector on Page 14, letter (H) states “No fugitive dust was observed coming from the facility.” The Oil and Gas General Permit, which Pod H3 operates under, only discusses “visible emissions” under Section VII letter (H) for the Oil and Gas General permit. Therefore, the Department believes this report addressed the fact that no visible emissions were observed. ODEQ acknowledges that the FCE report for Cardinal Glass and US Gypsum were not fully complete due to employees conducting the On-Site evaluation, but not finishing the report prior to leaving ODEQ. See ODEQs response under Finding 1-3 regarding how ODEQ handles this particular

situation. The FCE report for Continental Carbon is now in Legal review and could be made available for review by EPA at their request.

CAA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

- The State makes prompt and accurate HPV determinations.

Explanation:

ODEQ continues to accurately identify violations as HPVs or FRVs the majority of the time - 93.3% in this sample of cases - and has done so promptly. The only instance in which this did not occur was Cardinal Glass Plant, where the inspection report was not completed due to departure of an employee, but stack test violations were noted. Also, the objective set forth in the HPV policy is to determine whether a violation is high priority within 90 days of the compliance monitoring activity or other discovery action, which the State accomplished in all cases.

EPA agrees that since Cardinal Glass Plant violation involved a pollutant which was not subject to an NSPS or Major Source NESHAP standard and therefore would not be an HPV, so the metric is adjusted in the final report.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
13 Timeliness of HPV Identification [GOAL]	100%	89.5%	7	7	100%
8c Accuracy of HPV determinations [GOAL]	100%		14	14	100%

State Response:

ODEQ acknowledges that due to the departure of the inspector, the Cardinal Glass Plant inspection report was not completed during this SRF review. However, ODEQ disputes that it failed to identify an HPV for the failed stack test. The only stack test failure in the past ten years (Test No. 10513) was for sulfuric acid, a minor pollutant that is not the subject of the applicable NSPS. Since there was no at violation of an NSPS or major source NESHAP limit, this does not qualify as an HPV. The violation will be addressed in the upcoming FCE as a state Level 2 (non-penalty) violation. Please remove this as an issue in the final report.

CAA Element 3 - Violations

Finding 3-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Changes in conditions at the facility being inspected can lead to additional or alternate regulatory applicability.

Explanation:

Initially, EPA Region 6's evaluation of ODEQ's overall accuracy of compliance determinations found appropriate determinations in 75% of the files reviewed. EPA noted that the majority of the instances with concerns about the determinations made occurred when the equipment or other conditions at the facility changed and consideration of regulations which would be applicable as a result was not evident in the inspection report. The FRV discovery rate for ODEQ falls below the national average, possibly due to the strength of the State's enforcement program and the concomitant tendency of facilities in Oklahoma to comply with regulations.

After reviewing the draft report, ODEQ provided additional documentation for EPA's consideration. With the determination that compliance was properly evaluated for the Enlink Ruby Compressor Station, the DCP Operating Amber Booster Station, as well as the Enable El Paso Canute facility, and the realization that one of the two facilities for which an inspection report was completed was left out of the count, the values for metric 7a become 24 out of 29 rather than 21 of 28, with a percentage of 82.8.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		24	29	82.8%
7a1 FRV 'discovery rate' based on inspections at active CMS sources		7.8%	114	2120	5.4%
8a HPV discovery rate at majors		2.5%	4	314	1.3%

State Response:

ODEQ is unsure which particular files or facilities EPA is addressing for the seven that did not have accurate compliance determinations for this section. If these seven are the same issues EPA

cited as addressed under Findings 1-3 and Findings 2-2, ODEQ believes some of the compliance determinations to be sufficient. If EPA finds that ODEQ has provided evidence that some of the files reviewed in the SRF were accurate, ODEQ asks the percentage of accurate compliance determinations be updated to reflect this change and this no longer be considered an Area for Attention.

CAA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

- Enforcement responses appear to be appropriate and are generally expected to return the subject facilities to compliance.

Explanation:

EPA evaluated ODEQ's enforcement program using several metrics. The selected HPV cases were evaluated for the appropriateness of the ensuing enforcement responses. All five cases included effective enforcement returning the facilities to compliance. Note that one HPV selected for the file review was reclassified as an FRV during the time between file selection and file review. The majority of formal enforcement actions (84.6%) were deemed to return the facility to compliance with or without a compliance schedule. ODEQ's frequently used tactic of requiring facilities to submit a compliance plan within 30 days of receipt of the Alternative Enforcement Letter (AEL) outlining the violations observed appears to be quite effective as assessed by review of the facility-submitted compliance plans. This alternate approach to the traditional NOV fosters cooperation by the facility while expediting return to compliance. Unlike a traditional Notice of Violation, the AEL "does NOT allow the company to dispute statutory or regulatory interpretations or dispute the findings in the compliance evaluation," per the agency's standard letter language. Should the facility wish to challenge the interpretation or findings, an NOV will be sent, and the traditional enforcement path followed. Penalties will be assessed through either route, as appropriate. The State reports AELs as Notices of Violation in ICIS.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		5	5	100%
10b1 Rate of managing HPVs without formal enforcement action		7%	0	8	0%
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%		11	13	84.6%

State Response:

No Response Necessary.

CAA Element 4 - Enforcement

Finding 4-2

Area for Improvement

Recurring Issue:

Yes

Summary:

- As in the past, the state agency tends to require longer than the goal of 180 days to address HPVs. Further, the records maintained do not appear to fully satisfy the requirements of the case development and resolution timeline.

Explanation:

Three metrics evaluate aspects of addressing and resolving HPVs. The current HPV Policy, which went into effect shortly after ODEQ's last SRF review, shortened the timeline for addressing high priority violations to 180 days (previously 270), or if this is not accomplished, having a case development and resolution timeline (CD&RT) in place. Two of the FY2018 HPV cases, XTO Elk City and Enable Dibble (which was determined to be eligible for closeout due to self-disclosure and the company's resolution of the violation) met the ambitious 180-day goal for being addressed. The State's HPV Day Zero Form auto-calculates the response date deadlines for HPVs from the entered Day Zero (180 and 225 days, as indicated in the Policy), but goals set by the enforcement team, based on case-specific circumstances, are not evident in the files. Without milestone goals, the Day Zero Form and TEAM Database, with which the State tracks accomplished milestones, do not fulfill the requirements of a CD&RT.

As explained above and during the on-site file review, with existing ODEQ documentation, the HPV Day Zero Form and the TEAM database, the state keeps good records of when times such as 180 days after discovery will elapse and the dates of actual milestones including the closure letter and enforcement conference. The full intent of the CD&RT is for the delegated agency to set goals for issuing notifications and holding conferences, etcetera, to facilitate realizing the goal of addressing HPVs within 180 days.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		4	6	66.7%
10a1 Rate of Addressing HPVs within 180 days		59.6%	0	8	0%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		1	4	25%

State Response:

ODEQ strives to meet all timelines associated with identifying, addressing, and resolving HPVs. ODEQ takes pride in the quality of our inspection reports and this can include a lengthy review process which can hinder our timeliness for addressing HPVs. ODEQ will be reviewing our peer review and management review practices to see how they can be improved to better meet policy expectations of addressing HPVs within 180 days of day zero. As mentioned previously, ODEQ has already implemented measures that reduce the time for review and approval of higher level violations, including HPVs. ODEQ believes that internal tracking devices for all Level 1 enforcement cases, which include all HPVs, could satisfy the requirements of a CD&RT. Examples of these reports can be provided upon request. ODEQ will be evaluating how to better meet the expectations of EPA in what should be included in a CD&RT and provide bi-monthly updates during our HPV calls.

Recommendation:

Rec #	Due Date	Recommendation
1	08/31/2020	The Lean process recommended for Finding 1-4 should additionally improve the timeline for addressing HPVs. The existing Day Zero Form already specifies when 180 and 225 days will elapse, satisfying some aspects of the 2014 HPV Policy requirement for a CD&RT for HPVs which will not be addressed by 225 days after Day Zero. Anticipated dates or goals for starting settlement negotiations and commencing enforcement should be recorded and shared with EPA during subsequent bi-monthly calls. The means of facilitating this additional documentation can be addressed as part of the Lean Project and a synopsis of what will be done provided to EPA.

CAA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The State excels at collecting assessed penalties.

Explanation:

Collection of assessed penalties has achieved in all of the cases reviewed (5 out of 5).

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12b Penalties collected [GOAL]	100%		5	5	100%

State Response:

No response required.

CAA Element 5 - Penalties

Finding 5-2Area for Attention

Recurring Issue:No

Summary:

Calculations of penalty reductions were included in the files for most cases, as was the consideration of gravity and economic benefit.

Explanation:

Of the five cases in which the initial and final penalties differed, only one instance lacked documentation of the difference. ODEQ settled multiple cases together through negotiations with the owner of several facilities. As a result, a penalty memo with calculations was not produced. Therefore, this case also did not include documentation of the consideration of gravity and economic benefit. The other cases reviewed included penalty calculations with consideration of economic benefit and gravity, in keeping with their penalty policy.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%		4	5	80%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		4	5	80%

State Response:

ODEQ strives to fully document our penalties in memo form and in line with our penalty policy. The case in question was once again the subject of multiple staff changes, including the two lead attorneys and two of three inspectors over the course of several years and multiple FCEs. Somewhere along the line, the original and subsequent memos were misfiled or lost. ODEQ will strive to achieve 100% documentation in the future.

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

ODEQ RCRA hazardous waste program personnel take RCRAInfo data entry seriously and make every effort to ensure data is entered and is correct. ODEQ has a written process for inspection and enforcement data to be entered into RCRAInfo. ODEQ has an inspector/enforcement officer dedicated to entering RCRAInfo data, however, each inspector/enforcement officer also has rights to enter and edit data in RCRAInfo. This position was vacant for a period of time during State's FY19. ODEQ has a Word document that is completed by inspectors/ enforcement officers and is routed electronically to the RCRAInfo data entry person.

Explanation:

Twenty-five facilities were identified for this SRF review. Of these, there were two facilities for which information was either missing or inaccurate. One facility had an incorrect date for when the informal enforcement action was issued (i.e., RCRAInfo shows 7/9/2018 and copy of NOV has date of 8/2/2018). One facility identified "Undetermined" violations yet an informal enforcement action (Code 122) was issued, and not linked to any violations. This was corrected. However, the return to compliance dates of 5/10/19 and 7/10/19 were not in RCRAInfo as identified from a closure letter in the file dated 7/30/2019.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Accurate entry of mandatory data [GOAL]	100%		23	25	92%

State Response:

RCRA Element 2 - Inspections

Finding 2-1Meets or Exceeds Expectations

Recurring Issue:No

Summary:

Twenty-five facilities were identified for this SRF review. A total of twenty-five inspection reports were reviewed. There were twenty-three inspection reports for compliance evaluation inspections (CEI) and two for focused compliance inspections (FCI) for sampling. There was a total of eighteen facilities that notified as an LQG and five of these were also TSDFs; four facilities notified as an SQG; two facilities notified as a VSQG (formerly CESQG) and one of these was also a TSDF, and one notified as Not Any Universe. The two FCIs involved facilities that notified as an SQG and the Not Any Universe. The inspection reports reviewed were well written and detailed and provide sufficient documentation to determine compliance.

Explanation:

ODEQ has developed templates and checklists for various inspection types and universes. ODEQ has also developed inspection report templates and checklists for individual TSDFs. ODEQ inspection reports include a detailed facility description, size of facility, number of employees, number of years operating at site, and waste streams generated. The inspection report narrative also includes any permitted units and discussion regarding storage areas. The inspection report identifies if the facility had been inspected previously and if so the date. Inspector usually identifies the types of documents reviewed and areas observed. Each inspection report includes the inspector's observation of violations documented with photos and identifies if any compliance assistance was provided and any discussion regarding Best Management Practices. The inspection report includes the appropriate checklist for the universe inspected. It is noted that not all of the inspection reports reviewed included these items:

- that the inspector presented their credentials and explained the purpose of the inspection;
- date and time of arrival with identification of those in attendance for the entry conference; and
- date and time of the exit conference along with the identification of those in attendance. It is noted that not all photos and/or photo log included these items:
 - date, time, and photographer;
 - direction photographer was facing when photo taken;
 - number of the photo;
 - brief description of photo (i.e., what picture represents);
 - EPA ID # of facility; and
 - location such as physical address, LAT/LONG.

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 [GOAL]	100%		25	25	100%

State Response:

RCRA Element 2 - Inspections

Finding 2-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

A total of twenty-five inspection reports were reviewed. The timeliness standard for completing inspection reports used for this review was 150 days from Day Zero.

Explanation:

The average time taken to prepare the twenty-five inspection reports reviewed was fifty days. The longest period of time was 265 days and the shortest period of time was one day (i.e., inspection report was completed and provided to facility during the exit conference). ODEQ has a Performance Management Program (PMP) detailed in a document entitled "PMPceiSNCprocedure." This document identifies timeframes for preparing an inspection package as well as enforcement documents. An inspection package timeframe may be extended subject to supervisor approval. Enforcement document timeframes are to meet the action times identified in the RCRA Hazardous Waste Enforcement Response Policy. The documents included in an inspection package varies depending on the facility type, nature of inspection, and the degree of complexity of the facility. An inspection package will, at a minimum, consist of the DEQ Form #205-001 (Hazardous Waste Inspection Record); a Facility Inspection Report form for the applicable generator status; applicable supplemental checklists; thank you letter for closures; notice to comply/warning letter; or a notice of violation. In addition, this PMP includes instructions and timeframes for routing and entry of inspection and enforcement information into RCRAInfo. It was difficult to determine the exact date that an inspection report was completed. The DEQ Form #205-001 (Hazardous Waste Inspection Record), the Facility Inspection Report form, and supplemental checklists have the date of the inspection and the inspector signature but no date the form was completed. In most cases for the twenty-five inspection reports reviewed, the date inspection report completed was determined by the control sheet initiating letter to be sent to facility. It was discussed that adding a date for report completed to the Facility Inspection Report form would be an easy solution.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6b Timeliness of inspection report completion [GOAL]	100%		23	25	92%

State Response:

RCRA Element 2 - Inspections

Finding 2-3

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

ODEQ conducts a CEI annually of its two operating Federal TSDF universe. ODEQ conducts annually a CEI at 50% of its operating non-Federal TSDF universe. In addition, ODEQ conducts a CEI annually of its two full enforcement Federal TSDF universe.

Explanation:

One facility not operating since 2014. FCIs done at this facility 12/13/17 and 3/2/18 to determine proper disposal of onsite waste while facility is being closed and assets sold. This facility is still identified in RCRAInfo as an operating TSDF for storage even though facility is no longer receiving materials per 6/19/2014 Biennial Report

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%	13	14	92.9%

State Response:

RCRA Element 2 - Inspections

Finding 2-4

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

State FY19 (SFY19) -- 7/1/2018 to 6/30/2019. LQG universe determined based on the number of LQGs in RCRAInfo on June 30, 2018. RCRAInfo LQG number for SFY19 was 228, which does not include the 14 operating TSDFs.

Explanation:

Twenty percent of SFY19 LQG RCRAInfo identified universe of 228 equals 46. Fourteen percent PPG funding reduction applied to number of LQG CEIs to be conducted equals 7. SFY19 grant year agreed number of LQG CEIs to be conducted was 39. ODEQ did a CEI at 43 of the 228 RCRAInfo identified LQGs and a FCI at one LQG. ODEQ also continues to target facilities that are in universes (e.g., SQG, CESQG) for which EPA has not established requirements concerning the type, or minimum number, of inspections. In addition, ODEQ responds to all hazardous waste complaints received usually with an on-site investigation/inspection which typically identifies a facility to be a SQG, CESQG, or Not Any Universe.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL]	20%	9.9%	44	228	19.3%
5d One-year count of SQGs with inspections [GOAL]	100% of commitments		3		3
5e5 One-year count of very small quantity generators (VSQGs) with inspections [GOAL]	100% of commitments		3		3
5e6 One-year count of transporters with inspections [GOAL]	100% of commitments		1		1
5e7 One-year count of sites not covered by metrics 5a - 5e6 with inspections [GOAL]	100% of commitments		5		5

State Response:

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Compliance determinations are based on the inspection report which identifies violations (if exist). Inspection report includes information that is found during administrative review (pre-inspection, on-site, post-inspection) along with observations made during the on-site visit. EPA's review of the twenty-five inspection reports indicated that the appropriate determination was made in all twenty-five facility files.

Explanation:

EPA requested to review files for twenty-five facilities. A total of twenty-five inspection reports were reviewed. There were twenty-three inspection reports for compliance evaluation inspections (CEI) and two for focused compliance inspections (FCI) for sampling. Of these twenty-three CEIs, nine facilities did not have any violations identified; seven facilities had an informal enforcement action issued; and seven facilities had a formal enforcement action issued. The two FCIs are formal enforcement actions. There was discussion during exit interview regarding those instances when a violation is corrected on-site during the inspection and is observed by inspector to be corrected.

Example of such an instance would be failure to have labeled/marked a drum or a used oil tank and this is corrected and inspector observed the labeling/markings. This is a violation and should be entered into RCRAInfo as a verbal informal enforcement action (Code 110). And this should be consistent with all inspectors doing this so there is transparency and a level playing field. As well as it should be clearly communicated to facility representative that this is a violation and with immediate correction there is no further action required. In addition, there was discussion regarding that the reason/explanation for a question or section of a Checklist to not be evaluated should be provided. All inspectors should be including this information as the inspection checklist is a “stand alone” document.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		25	25	100%

State Response:

RCRA Element 3 - Violations

Finding 3-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

EPA requested to review files for twenty-five facilities. A total of twenty-five inspection reports were reviewed. There were twenty-three inspection reports for compliance evaluation inspections (CEI) and two for focused compliance inspections (FCI) for sampling. Of these twenty-three CEIs, nine facilities did not have any violations identified; seven facilities had an informal enforcement action issued; and nine facilities had a formal enforcement action issued. The objective of file selection is to obtain sufficient information to draw conclusions regarding state performance under each SRF element. It is very important that reviewers have an adequate number of files to develop supportable findings and recommendations. Therefore, at least five facilities for each of the following categories should be selected for review:

- Inspections with enforcement
- Inspections without enforcement
- Non-SNC violations SNCs

- Informal enforcement actions
- Formal enforcement actions
- Penalties. For this SRF review, facilities with a formal enforcement action, SNC designation, and penalty prior to SFY19 were selected to have five for each category.

Explanation:

Three of the nine facilities that have a formal enforcement action were designated as SNC in SFY19. The other six facilities that have a formal enforcement action were designated as SNC in SFY18 (4); SFY17 (1); and SFY16 (1). SNC identification rate is three times that of the national average. ODEQ is to be commended for their improvement in this category for increasing their SNC designations to four in SFY18 and three in SFY19.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
8a SNC identification rate at sites with CEI and FCI		1.6%	7	146	4.8%
8c Appropriate SNC determinations [GOAL]	100%		16	16	100%

State Response:

RCRA Element 3 - Violations

Finding 3-3

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

At time of this SRF review, there was one facility identified as a Long-standing secondary violator.

Explanation:

At time of review, ODEQ was informed of this facility identified as a Long-standing secondary violator. CEI 4/17/2018 with a notice of comply (Code 122) issued 6/6/2018 for three violations (SFY18). A closure letter dated 7/26/2018 (SFY19) sent to facility showing a return to compliance

date of 4/20/2018 for one violation and 6/29/2018 for two violations. The 6/29/2018 return to compliance date was not entered into RCRAInfo at the time of this SRF review. ODEQ entered this data into RCRAInfo in September 2019.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2a Long-standing secondary violators			1		1

State Response:

RCRA Element 3 - Violations

Finding 3-4

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

ODEQ did sixty-five CEIs and two FCIs in SFY19 at sixty-six facilities.

Explanation:

CEIs resulted in violations identified at twenty facilities and FCIs resulted in violations identified at one facility for a total of twenty-one. CEIs resulted in no violations identified at forty-three facilities and FCIs resulted in no violations identified at one facility for a total of forty-four. ODEQ has not made a determination at two facilities where a CEI was done.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7b Violations found during CEI and FCI inspections		34.3%	21	67	31.3%

State Response:

RCRA Element 3 - Violations

Finding 3-5

Area for Attention

Recurring Issue:

No

Summary:

SNC identification rate is three times that of the national average. ODEQ is to be commended for their improvement in this category. SNC determination timeliness -- two of the three SNC identifications were done timely.

Explanation:

Three SNC identification determinations were made within 31 days, 78 days, and 265 days of inspection. The one facility determination having exceeded timeframe of 150 days of inspection involves a facility that has many complications to include: notified as a non-generator of hazardous waste; 7,112 tons of processed cathode ray tube (CRT) glass on site; CRT glass received from sister locations in Arizona and Texas; other regulatory agencies involved (civil and criminal); unresponsiveness to information requests; need to prove speculatively accumulated waste is hazardous; state used laboratory had never tried to analyze glass so logistics and mobilization for sampling event took longer than normal; and level of QA/QC required for samples was elevated due to the potential for enforcement thus results took longer.

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%	2	3	66.7%

State Response:

RCRA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Enforcement files are organized and include the inspection report, enforcement document, and correspondence. These are housed in ODEQ's electronic document management system, EDOCTUS.

Explanation:

Of the seven facilities reviewed that had an informal enforcement action issued, the actions were issued in an average of 38 days of the inspection date. Of the nine facilities reviewed that had a formal enforcement action issued, the action in six was issued within 360 days of the inspection date; one pending issuance of the final order which will be within 360 days of the inspection date; one was issued greater than 360 days; and one pending negotiations of a final order. All enforcement actions are reviewed by one or more ODEQ Land Protection Division managers. Enforcement actions are based upon thorough and timely investigative work. ODEQ enforcement actions require corrective measures to return facilities to compliance immediately or within thirty days. ODEQ follows up through required submittals and/or on-site visits. No further action closure letters are sent. Staff recommendation of closure letters are reviewed by one or more ODEQ Land Protection Division managers. Enforcement files contained documentation identifying the facility had achieved compliance or was on a compliance schedule.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timely enforcement taken to address SNC [GOAL]	80%	87.7%	5	6	83.3%
10b Appropriate enforcement taken to address violations [GOAL]	100%		15	15	100%
9a Enforcement that returns sites to compliance [GOAL]	100%		15	15	100%

State Response:**RCRA Element 5 - Penalties****Finding 5-1**

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

ODEQ issues a RCRAInfo Code 120, Written Informal Enforcement Action, NOV that includes a penalty. ODEQ includes both economic benefit and gravity components in their penalty calculations. ODEQ documents adjustment of the initial penalty to the settled amount. ODEQ documents the collection of penalties to include date and check number. Files reviewed had documentation of the collection of all final penalties.

Explanation:

Documentation of the penalty calculations, adjustments, settlement, and compliance measures taken were maintained in the files. ODEQ will negotiate proposed penalties to expedite the settlement process. During the negotiating process, ODEQ takes into consideration the types of violations, the amount of time the facility took to come into compliance, and history of non-compliance. If a facility claims inability to pay, ODEQ will use EPA's ABEL software to review the facilities' financial status. Penalty Calculation Worksheet does include Economic Benefit (EB) for each violation calculated based on EPA's BEN model or information gleaned during the inspection, provided by the violator, or obtained from other relevant sources. Penalty for facility was evaluated based on facilities current economic situation. Files reviewed had documentation of all considerations that resulted in the final penalty, SEP, ability to pay issues, payment schedule, and adjustments for such items as willingness to comply or history of non-compliance. Consent Order for one facility had not been finalized. However, the penalty calculation both initial and final were available and reviewed. Penalty not collected at time of SRF review.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Gravity and economic benefit [GOAL]	100%		8	8	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		8	8	100%
12b Penalty collection [GOAL]	100%		7	7	100%

State Response:
