

STATE REVIEW FRAMEWORK

Alabama

**Clean Water Act, Clean Air Act, and
Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2012**

**U.S. Environmental Protection Agency
Region 4, Atlanta**

**Final Report
March 31, 2014**

SRF Executive Summary

Introduction

State Review Framework (SRF) oversight reviews of the Alabama Department of Environmental Management were conducted in April and May 2013 by EPA Region 4 permitting and enforcement staff.

The Clean Water Act National Pollutant Discharge Elimination System (CWA-NPDES) program was reviewed under both SRF and Permit Quality Review (PQR) protocols. The Clean Air Act (CAA) Stationary Source and Resource Conservation and Recovery Act (RCRA) Subtitle C programs were reviewed only under SRF.

SRF findings are based on file metrics derived from file reviews, data metrics, and conversations with program staff. PQR findings, which are not a part of this report and will be finalized at a later date, are based on reviews of permits, fact sheets, and interviews.

Priority Issues to Address

The following are the top priority issues affecting the state's program performance based on the findings in the year of review:

- ADEM is commended for their web-based eFile system which greatly facilitated EPA's review of files for the SRF. The eFile system, which was instituted by ADEM in 2009 and contains over 1.1 million electronic documents, allows permittees, the public and stakeholders access to documents stored in ADEM's document management system. This system is an effective and user-friendly interface for the retrieval of documents such as public notices, permits, discharge monitoring reports, and enforcement-related documents. Using eFile, EPA was able to conduct portions of the SRF file reviews remotely which contributed to the efficiency and timeliness of developing this SRF report.
- ADEM needs to improve the accuracy of data in the national databases of record, including ICIS-NPDES and RCRAInfo.
- ADEM needs to implement procedures for penalty calculations to ensure appropriate documentation of gravity and economic benefit and the rationale for differences between initial and final penalties for CAA and RCRA.

Major SRF CWA-NPDES Program Findings

- ADEM needs to implement revised procedures that ensure the accurate reporting of enforcement and compliance data in ICIS-NPDES. EPA will monitor progress through electronic file reviews and existing oversight calls and when sufficient improvement is observed the recommendation will be considered satisfied.

- ADEM needs to take steps to ensure that enforcement actions return facilities to compliance. EPA will monitor progress through existing oversight calls and other reviews and when sufficient improvement is observed the recommendation will be considered satisfied.
- ADEM needs to implement procedures that ensure that Significant Non-compliance (SNC) is addressed timely and appropriately. This is a recurring issue from the Round 2 SRF. EPA will monitor progress through existing oversight calls and electronic file reviews and when sufficient improvement is observed the recommendation will be considered satisfied.

Major SRF CAA Stationary Source Program Findings

- ADEM needs to implement procedures to ensure that the documentation of penalty calculations show the consideration of gravity and economic benefit and the rationale for differences between initial and final penalties. This is a recurring issue from SRF Rounds 1 and 2. When EPA observes appropriate documentation, this recommendation will be considered satisfied.

Major SRF RCRA Subtitle C Program Findings

- ADEM needs to develop and implement procedures to ensure the timely and accurate entry of data into RCRAInfo. EPA will monitor progress using ADEM's eFile system and RCRAInfo and once sufficient improvement is observed the recommendation will be considered complete.
- ADEM needs to implement procedures to ensure that the documentation of penalty calculations show the consideration of gravity and economic benefit and the rationale for differences between initial and final penalties. This is a recurring issue from SRF Rounds 1 and 2. When EPA observes appropriate documentation, this recommendation will be considered satisfied.

Major Follow-Up Actions

Recommendations and actions identified from the SRF review will be tracked in the SRF Tracker.

Table of Contents

State Review Framework	5
I. Background on the State Review Framework	5
II. SRF Review Process	6
III. SRF Findings.....	7
Clean Water Act Findings.....	8
Clean Air Act Findings.....	26
Resource Conservation and Recovery Act Findings.....	41

State Review Framework

I. Background on the State Review Framework

The State Review Framework (SRF) is designed to ensure that EPA conducts nationally consistent oversight. It reviews the following local, state, and EPA compliance and enforcement programs:

- Clean Air Act Stationary Source
- Clean Water Act National Pollutant Discharge Elimination System
- Resource Conservation and Recovery Act Subtitle C

Reviews cover these program areas:

- Data — completeness, timeliness, and quality
- Compliance monitoring — inspection coverage, inspection quality, identification of violations, meeting commitments
- Enforcement actions — appropriateness and timeliness, returning facilities to compliance
- Penalties — calculation, assessment, and collection

Reviews are conducted in three phases:

- Analyzing information from the national data systems
- Reviewing a limited set of state files
- Development of findings and recommendations

Consultation is also built into the process. This ensures that EPA and the state understand the causes of issues and seek agreement on actions needed to address them.

SRF reports are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify any issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state programs.

Each state's programs are reviewed once every four years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2012 and will continue through FY 2017.

II. SRF Review Process

Review period: FY 2012

Key dates:

- Kickoff letter sent to state: March 22, 2013
- Kickoff meeting conducted: April 29, 2013
- Data metric analysis and file selection list sent to state:
 - RCRA - March 29, 2013
 - CAA - April 5, 2013
 - CWA - April 12, 2013
- On-site file review conducted:
 - RCRA - April 29 – May 2, 2013
 - CAA – April 29 – May 2, 2013
 - CWA - May 13 – May 17, 2013
- Draft report sent to state: November 18, 2013
- Revised draft report sent to state: March 14, 2014
- Report finalized: March 31, 2014

Communication with the state: Every year, in the fall management from EPA Region 4 Office of Environmental Accountability meet with State Enforcement staff to provide information on enforcement priorities for the year ahead and to discuss enforcement and compliance issues of interest to the state and EPA. The meeting with ADEM staff occurred on October 24, 2012 and the schedule for conducting an integrated SRF-PQR review of AL using FY 2012 data was discussed. A follow up letter was sent on March 22, 2013 outlining the process.

Appendix F contains copies of correspondence between EPA and ADEM.

State and EPA regional lead contacts for review:

	AL Department of Environmental Management	EPA Region 4
SRF Coordinator	Marilyn Elliott	Becky Hendrix, SRF Coordinator Kelly Sisario, OEA Branch Chief
CAA	Christy Monk	Mark Fite, OEA Technical Authority Steve Rieck, Air and EPCRA Enforcement Branch
CWA	Glenda Dean Richard Hulcher	Ron Mikulak, OEA Technical Authority Laurie Jones, Clean Water Enforcement Branch
RCRA	Phil Davis Clethes Stallworth	Shannon Maher, OEA Technical Authority Paula Whiting, RCRA Alabama State Coordinator

III. SRF Findings

Findings represent EPA's conclusions regarding state performance, and may be based on:

- Initial findings made during the data and/or file reviews
- Annual data metric reviews conducted since the state's Round 2 SRF review
- Follow-up conversations with state agency personnel
- Additional information collected to determine an issue's severity and root causes
- Review of previous SRF reports, MOAs, and other data sources

There are four types of findings:

Good Practice: Activities, processes, or policies that the SRF metrics show are being implemented at the level of Meets Expectations, **and** are innovative and noteworthy, **and** can serve as models for other states. The explanation must discuss these innovative and noteworthy activities in detail. Furthermore, the state should be able to maintain high performance.

Meets Expectations: Describes a situation where either: a) no performance deficiencies are identified, or b) single or infrequent deficiencies are identified that do not constitute a pattern **or** problem. Generally, states are meeting expectations when falling between 91 to 100 percent of a national goal. The state is expected to maintain high performance.

Area for State Attention: The state has single or infrequent deficiencies that constitute a minor pattern or problem that does not pose a risk to human health or the environment. Generally, performance requires state attention when the state falls between 85 to 90 percent of a national goal. The state should correct these issues without additional EPA oversight. The state is expected to improve and achieve high performance. EPA may make recommendations to improve performance but they will not be monitored for completion.

Area for State Improvement: Activities, processes, or policies that SRF data and/or file metrics show as major problems requiring EPA oversight. These will generally be significant recurrent issues. However, there may be instances where single or infrequent cases reflect a major problem, particularly in instances where the total number of facilities under consideration is small. Generally, performance requires state improvement when the state falls below 85 percent of a national goal. Recommendations are required to address the root causes of these problems, and they must have well-defined timelines and milestones for completion. Recommendations will be monitored in the SRF Tracker.

Clean Water Act Findings

CWA Element 1 — Data Completeness: Completeness of Minimum Data Requirements.

Finding 1-1	Meets Expectations
Description	ADEM has ensured that the minimum data requirements (MDRs) were entered into the Integrated Compliance Information System (ICIS).
Explanation	Element 1 is supported by SRF Data Metrics 1a through 1g and measures the completeness of data in the national data system. EPA provided the FY2012 data metric analysis (DMA) to ADEM in April 2013. While several data communication/coordination issues have been noted between ADEM and EPA, no data completeness issues were identified for Element 1. Element 1 includes 15 data verification metrics which the State has the opportunity to verify annually. For the sake of brevity, these metrics are not listed here, but can be found in Appendix A.
Relevant metrics	Data Metrics 1a – 1g
State response	Since EPA did not, ADEM would like to point out that EPA’s finding for element was Area for State Improvement in the last SRF review. ADEM believes that the SRF report should note areas where performance has improved.
Recommendation	

CWA Element 2 — Data Accuracy: Accuracy of Minimum Data Requirements.

Finding 2-1	Area for State Improvement
Description	The accuracy of data between files reviewed and data reflected in ICIS needs improvement.
Explanation	<p>File Review Metric 2b measures files reviewed where data are accurately reflected in the national data system. Of the 36 files reviewed, 50% of the files documented information being reported accurately into ICIS.</p> <p>Common discrepancies or inconsistencies between the OTIS Detailed Facility Reports (DFRs) and the State's files were related to a facility's name or address, inspection type, dates, or enforcement action taken.</p> <p>While 8 of the 36 files were inaccurate solely due to facility name and/or address discrepancies, these data discrepancies while taken as a whole, could result in inaccurate information being released to the public, and potentially hinder EPA's oversight efforts. Data accuracy was an Area for State Attention identified during the Round 2 SRF review. Steps taken by the State in response to the Round 2 finding have not fully addressed the issue, so data accuracy remains as an issue and is now identified as an Area for State Improvement.</p>
Relevant metrics	<p>2b: Files reviewed where data are accurately reflected in the national data system: 18/36 = 50%</p> <ul style="list-style-type: none">• National Goal 95%
State response	<p>EPA found discrepancies in facility names/addresses in 12 of 36 files, and this was clearly the most common problem found. For 9 of the 12 instances, it was the only valid problem found for this metric. First, it has been ADEM's experience that applicants/permittees are often inconsistent in how facility names and addresses are provided on documents provided to the Department. Second, only the Facility Site Name is transferred from ICIS to OTIS/ECHO. The Permittee Name is not transferred. This may account for many of the discrepancies when comparing the OTIS Detailed Facility Reports to a facility's name in the State's files. Last, ADEM believes that many of the discrepancies with names/addresses predated the commencement of ADEM beginning its flow directly to ICIS.</p> <p>Since EPA did not provide a list citing the specific discrepancies with regard to names and addresses and did not provide copies of its detailed facility reports (DFR), we are unable to discern whether the differences were significant enough to have resulted in EPA or a member of the public failing to properly identify the facility. ADEM does not believe that EPA should include inconsequential discrepancies in its assessment of ADEM's performance.</p>

In the interest of transparency and to aid ADEM in its investigation of issues EPA may raise during the SRF file review, ADEM requests that EPA provide a copy of the DFR for each facility during the file review process. In addition, we request that EPA's comments be more detailed in the "Facility-specific comments" section whenever EPA is noting a discrepancy.

For two facilities, EPA's comment regarding the availability of the CEI report was inaccurate. The reports were available in eFile, the system available to EPA and the public. EPA personnel had difficulty finding the documents initially because of the search criteria they used.

For one facility, EPA's comment that "the inspection type was not indicated on the IR" is not appropriate under Metric 2b. This comment should only appear under Metric 6a.

The remaining data discrepancies were random errors that do not depict a systemic problem in ADEM's procedures or performance. However, ADEM is researching the errors and correcting them as necessary. Should ADEM's investigation indicate that procedural improvements or additional staff training is needed, it will undertake those efforts.

In the previous EPA SRF review, EPA identified this metric as an Area for State Attention. In that review, EPA did not note any discrepancies in names or addresses. It is unclear whether none were found or whether EPA chose not to mention them. Since half of the files only had name/address discrepancies and the other discrepancies found were not indicative of a systemic problem in ADEM's procedures or performance, ADEM believes that EPA's finding of Area for State Improvement be downgraded to Area of State Attention.

RE: EPA's Recommendation, to research the many of the discrepancies EPA found, ADEM will need the DFRs with EPA's notes in order to ensure that we understand the exact discrepancy.

Recommendation

It is recommended that ADEM take appropriate steps to research the data discrepancies and correct them as necessary. Should ADEM's investigation indicate that procedural improvements or additional staff training are needed, the State should undertake those efforts to ensure that information and data reported are accurate. EPA Region 4 will assess progress in ADEM's performance through periodic on-site and/or electronic file reviews. If by September 30, 2014, these periodic reviews indicate that sufficient improvement in data accuracy is observed, this recommendation will be considered complete.

CWA Element 3 — Timeliness of Data Entry: Timely entry of Minimum Data Requirements.

Finding 3-1

Unable to evaluate and make a finding

Description

Element 3 is designed to measure the timeliness of mandatory data entered into the national data system. Sufficient information to verify the timeliness of data entry, however, does not currently exist.

Explanation

The Office of Enforcement and Compliance Assistance (OECA) is currently reviewing this Element and the inability to make a finding based on the current design of ICIS. Modifications of this Element may be reflected in future SRF reviews.

Relevant metrics

State response

Recommendation

CWA Element 4 — Completion of Commitments: Meeting all enforcement and compliance commitments made in state/EPA agreements.

Finding 4-1

Meets Expectations

Description

ADEM met their inspection and non-inspection compliance/enforcement (C/E) commitments outlined in their FY12 Compliance Monitoring Strategy (CMS) Plan and FY 2012 CWA §106 Workplan.

Explanation

Element 4 measures planned inspections completed (Metric 4a) and other planned C/E activities completed (Metric 4b). The National Goal for this Element is for 100% of commitments to be met. Under Metric 4a, the State met or exceeded all FY 12 inspection commitments. Under Metric 4b, the State met or exceeded its planned C/E activities related to data management requirements; reporting/enforcement requirements; pretreatment facilities requirements; and policy, strategy and management requirements.

Relevant metrics

Metric: Universe

4a: Planned Inspections	Completed or exceeded
4b: Planned Commitments	Completed or exceeded

- National Goal 100%

State response

Since EPA did not, ADEM would like to point out that EPA’s finding for this element was Area for State Improvement in the last SRF review. ADEM believes that the SRF report should note areas where performance has improved.

Recommendation

CWA Element 5 — Inspection Coverage: Completion of planned inspections.

Finding 5-1

Meets Expectations

Description

Inspection goals for major and non-major traditional dischargers were exceeded in FY 2012.

Explanation

Element 5 addresses inspections reflected in the negotiated FY 12 CWA §106 Workplan. ADEM negotiated an inspection coverage goal of 97 major facilities (50% of the permit universe of 193), 297 non-majors with individual permits (20% of the permit universe of 1,485), and 155 non-majors with general permits (5% of the permit universe of 3,108).

Relevant metrics

<u>Metric: Universe</u>	<u>Completed/Committed</u>
5a1: Inspection coverage of NPDES majors.....	186/97 (192%)
5b1: Inspection coverage of NPDES non-majors with individual permits.....	390/297 (131%)
5b2: Inspection coverage of NPDES non-majors with general permits.....	283/155 (183%)

- National Goal 100% of CMS Plan commitments

State response

Recommendation

CWA Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.

Finding 6-1

Area for State Improvement

Description

ADEM’s inspection reports, while providing “sufficient” documentation to determine compliance, did not consistently provide “complete” information and were not consistently completed in a timely manner.

Explanation

Metric 6a addresses inspection reports reviewed that provide sufficient documentation to determine compliance at the facility. Of the 34 files for which inspection reports were reviewed, all were found to have “sufficient” information to support a compliance determination and Metric 6a was found to Meet Expectations. However, only 11 files (32%) were also determined to contain “complete” information as outlined in EPA’s NPDES Compliance Inspection Manual. Construction storm water and mining inspection reports appeared to be more complete than other sectors of the program. Many of the 23 reports that were found to lack complete information did not make a clear connection between observations noted in the inspection checklist/report and the relevant regulatory or permit requirements, did not describe the NPDES-regulated activity or facility operations, or did not describe nor document field observations beyond the Inspection Report’s Checklist. Without this type of information, it is difficult for a reviewer to clearly determine compliance, compliance status, or ascertain whether the findings are deficiencies needing correction or a recommendation for improved performance. Additionally, many of the inspection reports were missing other important or critical information that hindered EPA’s review of compliance determinations made. EPA, therefore, recommends that ADEM consider revising the State’s Inspection Report preparation process to be more consistent with the procedures and techniques outlined in EPA’s NPDES Compliance Inspection Manual to ensure that the State’s Inspection Reports are more complete and that they clearly describe the field observations and findings from an inspection.

Metric 6b addresses inspection reports completed within prescribed timeframes, not timeframes for data entry. For this analysis, EPA’s NPDES Enforcement Management System (EMS) was used as a guide for reviewing the State’s timeliness for the completion of non-sampling inspection reports (within 30 days) and sampling inspection reports (within 45 days). Thirty-four of the files reviewed contained inspection reports that were evaluated under this metric. Twenty-six of the thirty-four or 77% of the files were completed within the prescribed timeframes. The average number of days from inspection to report completion was found to be 19 days; with the reports that were not timely ranging from 34 days to 92 days. Additionally, 2 inspection reports were not dated and were,

therefore, not considered to be timely for this analysis. The degree to which the State’s inspection reports were timely was an issue that was raised during the Round 2 SRF review and was identified as an Area for State Improvement. At the time of the Round 3 File Review, steps taken by the State in response to the Round 2 recommendation for Metric 6b did not fully address this issue, however, the State has shown progress in the timely completion of Inspection Reports by recently revising its EMS and establishing goals for the completion of Inspection Reports. A “spot-check” of recently completed Inspection Reports, however, indicates that 52% of the State’s Inspection Reports met the “initial” timeliness goals of the recent EMS (i.e., 2 weeks for a non-sampling inspection and 45 days for a sampling inspection), but that no reports exceeded the EMS’s 90 day “secondary” timeliness goal. The State is to be recognized for the progress it has made in establishing timeliness goals in its EMS, however, because improvement in the State’s performance in the timely completion of Inspection Reports is still needed, this area will remain as an “Area for State Improvement.”

Relevant metrics

6a: Inspection reports reviewed that provide “sufficient” documentation to determine compliance at the facility: 34/34 = 100%.
 (However, only 11/34 or 32% of the inspection reports contained “complete” information).

- National Goal: 100%

6b: Inspection reports completed within prescribed timeframes:
 26/34 = 77%

- National Goal 100%

State response

Metric 6a: First, EPA made it clear that the content of the inspection reports was sufficient to determine compliance at the facility. An inspection is a fact finding activity, and ADEM’s inspection reports are only meant to reflect the information gathered during an inspection. The reports are not intended to be an in-depth overview of the facility or a final compliance determination. ADEM documents its final compliance determinations via correspondence sent to the facility be it a letter documenting the results or an actual enforcement action. When compliance issues are found, each enforcement action makes it clear for which specific permit condition or regulation the permittee was not in compliance.

EPA is comparing the content of ADEM’s inspection reports to the content prescribed in EPA’s NPDES Compliance Inspection Manual. Based on ADEM’s organizational structure, we do not find it necessary to include all of the information EPA’s policy/guidance suggests should be included in an inspection report. ADEM believes it is a waste of resources to

reproduce facility/permit information that is already readily available to our staff, EPA, and the public through our eFile system. Our staff/management has ready access to all of the information necessary to make a determination without duplicating it in the inspection report.

ADEM would like to point out that EPA is unable to meet the timeliness guidelines in following NPDES Compliance Inspection Manual for the content of its inspection reports. ADEM has observed that it often takes EPA 6 months to a year to finalize its inspection reports. ADEM believes that its resources are best spent conducting inspections in the field and producing inspection reports that gather the key data necessary to make a compliance determination rather than producing a lengthy document that includes information already available elsewhere.

Metric 6b: In FY2012, for inspections conducted by Water Division staff, ADEM's practice was to complete a compliance determination before finalizing the inspection report. This sometimes resulted in reports not being finalized within EPA's prescribed timeframes. During FY2013, the Water Division changed its standard practice to finalize the inspection report prior to conducting a compliance determination since the report is only a statement of findings/observations. As appropriate, the cover letter transmitting the report to the facility indicates that the compliance determination has not been completed.

ADEM has also updated its internal CMS/EMS (Rev. 4/17/2013) to state that it is ADEM's goal to finalize inspection reports within 2 weeks of the inspection, if no sampling analyses are required, or within 45 days of obtaining sampling analyses, but in no case more than 90 days after the inspection date. ADEM personnel are expected to adhere to these timeframes as strictly as possible. No timeframes were specified in our previous CMS/EMS.

Recommendation

In light of the recent progress the State has made in establishing timeliness goals in its EMS for the completion of Inspection Reports, EPA Region 4 will assess progress in ADEM's performance through periodic electronic file reviews. If by September 30, 2014, these periodic reviews indicate that sufficient improvement in the timeliness of Inspection Report completion is observed, this recommendation will be considered complete.

CWA Element 7 — Identification of Alleged Violations: Compliance determinations accurately made and promptly reported in national database based on inspection reports and other compliance monitoring information.

Finding 7-1

Area for State Attention

Description

The inspection reports reviewed included accurate compliance determinations, however, the State needs to focus attention on entering SEVs and closing out longstanding compliance schedule violations.

Explanation

SEVs are one-time or long-term violations discovered by the permitting authority typically during inspections and not through automated reviews of Discharge Monitoring Reports. Data metrics 7a1 tracks SEVs for active majors and 7a2 tracks SEVs for non-majors reported in ICIS. Both data metrics indicated that ADEM entered one SEV for each metric for FY 2012. To determine the extent to which the State is discovering/reporting SEVs, 22 files were reviewed. This review showed that the State is identifying but not entering SEVs into the national database since no SEVs were entered for the files reviewed. The State has, however, indicated that since December 2012, they have been flowing SEV information into ICIS. EPA has verified this practice and will continue to monitor the State’s progress through regular oversight reviews. Data metric 7b1 reports facilities with compliance schedule violations. ADEM’s data shows facilities with 85 violations of compliance schedule milestones in FY 2012. The file review confirmed this and noted that three facilities had longstanding compliance schedule violations from 2004, 2006, and 2007. It is recommended that the State analyze these compliance schedule violations and take the necessary steps to resolve/close these cases. File Metric 7e addresses Inspection Reports reviewed that led to an accurate compliance determination. Of the 34 files containing Inspection Reports, 31 (91%) contained accurate compliance determinations. The three files without an accurate compliance determination were noted because there was no enforcement response/compliance determination follow-up by the State subsequent to the issues identified by the inspection.

Relevant metrics

7a1: # of majors with SEVs:	1
7a2: # of non-majors with SEVs:	1
7b1: Compliance schedule violations:	85
7e: Inspection reports reviewed that led to an accurate compliance determination:	31/34 = 91%
• National Goal	100%

State response

ADEM is working to clean up data that erroneously indicates compliance schedule violations. A majority of these predated ADEM’s direct flow of enforcement data to ICIS. As resources allow, ADEM continues to work

Recommendation

toward flowing SEVs

CWA Element 8 — Identification of SNC and HPV: Accurate identification of significant noncompliance and high-priority violations, and timely entry into the national database.

Finding 8-1

Meets Expectations

Description

ADEM’s identification, reporting and tracking of major facilities in SNC and single-event violations (SEVs) that were determined as a result of an inspection meet expectations.

Explanation

Data Metric 8a2 addresses the percent of major facilities in SNC. ADEM identified that 19% of their major facilities are in SNC – the National Average is 21%. Metric 8b addresses the percentage of SEVs that are accurately identified as SNC or non-SNC. Of the 22 files reviewed in which potential SEVs were identified in an inspection report, all were accurately identified as SNC or non-SNC. Metric 8c addresses the percentage of SEVs identified as SNC that are reported timely at major facilities. One SEV at a major facility was reported and entered into ICIS, however, the SEV was not a SNC, therefore, a finding for this metric is not applicable. As noted in Element 7, the State started flowing SEV information into ICIS. This effort should be an important tool in more effectively reporting and tracking SEVs. ADEM is encouraged to continue this new practice and EPA will monitor the State’s progress through regular oversight reviews.

Relevant metrics

8a2: Percent of Major Facilities in SNC:	19%
• National Average:	21%
8b: Percentage of Single-Event Violations that are accurately identified as SNC or non-SNC: 22/22 =	100%
• National Goal:	100%
8c: Percentage of SEVs identified as SNC that are reported timely at major facilities:	NA
• National Goal:	100%

State response

Since EPA did not, ADEM would like to point out that EPA's finding for this element was Area for State Improvement in the last SRF review. ADEM believes that the SRF report should note areas where performance has improved.

Recommendation

CWA Element 9 — Enforcement Actions Promote Return to Compliance: Enforcement actions include required corrective action that will return facilities to compliance in specified timeframe.

Finding 9-1

Area for State Improvement

Description

Enforcement actions do not consistently result in violators returning to compliance within a certain timeframe.

Explanation

File Review Metric 9a shows the percentage of enforcement responses that have returned or will return a non-compliant facility to compliance. From a review of the files, 57% (16 of 28) of the facilities had documentation in the files showing that the facility had returned to compliance, or that the enforcement action required the facility to return to compliance within a certain timeframe. The rationales for the 12 facilities that did not have documentation include: continued non-compliance despite the State’s action; lack of a facility’s response in the file to the State’s enforcement action; longstanding Compliance Schedule Violations; or the State implemented its Escalating Enforcement Response Policy as outlined in their EMS, but the escalation action occurred after the review timeframe for this SRF.

Relevant metrics

9a: Percentage of enforcement responses that returned or will return a source in violation to compliance: $16/28 = 57\%$

- National Goal: 100%

State response

ADEM is working to clean up data that erroneously indicates compliance schedule violations. A majority of these predated ADEM’s direct flow of enforcement data to ICIS. In addition, ADEM would like to note that the number of major SNC violations has declined, which indicates that ADEM’s escalated enforcement approach is effective.

Recommendation

By September 30, 2014, ADEM should take steps to ensure that enforcement actions promote a return to compliance. EPA Region 4 will assess progress in implementation of the improvements through existing oversight calls and other periodic reviews. If by December 31, 2014, these periodic reviews indicate that sufficient improvement in promoting a return to compliance is observed, this recommendation will be considered complete

CWA Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.

Finding 10-1

Area for State Improvement

Description

SNCs are not being addressed in a timely and appropriate manner.

Explanation

Data Metric 10a1 indicates that ADEM completed none (0/10) of the enforcement actions that address SNC violations for major facilities with timely action as appropriate. File Metric 10b focuses on the State’s enforcement responses that address SNC that are appropriate to the violations. Of the eight major facilities with SNC, the State issued a formal Administrative Order for two (2/8 or 25%) of the facilities. For six of the eight facilities, the State’s enforcement response was an informal action - a Warning Letter or a Notice of Violation (NOV). According to State and EPA guidance, all SNC violations must be responded to in a timely and appropriate manner by administering agencies. The responses should reflect the nature and severity of the violation, and unless there is supportable justification, the response must be a *formal action*, or a return to compliance by the permittee. Furthermore, the State’s January 2011 EMS defines Warning Letters and NOVs as informal responses. Therefore, while the State did document enforcement responses for facilities with SNC, six of eight major facilities in SNC were responded to with an informal enforcement action with no supporting justification documenting why a formal action was not taken. The State’s informal enforcement actions are not consistent with the above-referenced EPA EMS and 1989 guidance. The degree to which the State takes timely enforcement actions was an issue raised during the Round 2 SRF review. Steps taken by the State in response to the Round 2 recommendation have not fully addressed the issue and this Element remains as an Area for State Improvement.

Relevant metrics

10a1: Major NPDES facilities with timely action, as appropriate:
 0/10 = 0%
 • National Goal: 98%

10b: Enforcement responses reviewed that address SNC that are appropriate to the violations:
 2/8 = 25%
 • Goal: 100%

State response

Metric 10a1: ADEM would like to point out that for FY2013, the current National Average for this metric is 0%, and for FY2012, the National Average was 3.6%. Given the disparity between the National Average and EPA’s National Goal of 98%, EPA should either reevaluate how this

metric is calculated or reconsider the timeliness criteria that is the basis for this metric.

Metric 10b1: States should retain their authority for enforcement discretion, and ADEM uses an escalated enforcement approach. As we clarified in the April 2013 revision to our CMS/EMS submitted to EPA, ADEM considers Notices of Violation to be formal actions. As mentioned before, the number of major SNC violations has declined, which indicates that ADEM's escalated enforcement approach is effective.

Recommendation

By September 30, 2014, ADEM should implement procedures to improve the timeliness and appropriateness of SNC addressing actions, including the use of appropriate enforcement responses that: include injunctive relief, include a compliance schedule, contain consequences for noncompliance that are independently enforceable, and subject the facility to adverse legal consequences for noncompliance. The timeliness and appropriateness of SNC addressing actions will be monitored by the EPA Region 4 through the existing oversight calls between ADEM and EPA and other periodic on-site and/or electronic file reviews. If by December 31, 2014, these periodic reviews indicate sufficient improvement in the preparation of timely and appropriate enforcement responses, this recommendation will be considered complete.

CWA Element 11 — Penalty Calculation Method: Documentation of gravity and economic benefit in initial penalty calculations using BEN model or other method to produce results consistent with national policy and guidance.

Finding 11-1

Area for State Attention

Description

EPA observed improvement since the previous SRF reviews in ADEM’s practice to include and document the rationale for the gravity and economic benefit (EB) components of penalty calculations, however, the practice is not applied consistently.

Explanation

Element 11 examines the documentation of penalty calculations, including the calculation of gravity and EB. In Round 2, ADEM did not maintain any penalty calculations for NPDES enforcement actions. The state now includes a “Penalty Synopsis” chart in the final NPDES Administrative Consent Orders that outlines the violations and considered in determining the penalty amount. The Penalty Synopsis chart also includes “Other Factors” for adjustments to the penalty, which include Results Reported/Permit Limit, Pollutant Characteristics, 303(d) Listing Status, Preventative Action Taken, Significance of Violation, Duration of Violation, and the Repeat Nature of the Violation. Of the eight files reviewed in which penalties were assessed one file contained a penalty that was issued via Court Order, not by ADEM and was, therefore, not included as part of this review. Of the seven remaining files, 4 files (57%) contained penalty documentation that included consideration of both gravity and EB, 1 file contained gravity but EB was not included because of the lack of information on the injunctive relief needed for EB calculations, and 2 files did not contain documentation for either gravity or EB.

The degree to which the State documents gravity and EB in penalty calculations was an issue raised during the SRF Rounds 1 and 2 reviews. In response to the Round 2 recommendation, the State indicated that it would continue to refine its penalty calculation process. Since the State has made considerable recent progress, as demonstrated during this SRF review, in refining and documenting its penalty calculations, this Element is now considered to be an Area of State Attention. EPA recommends that ADEM continue its progress in refining, documenting and implementing its penalty calculation process. EPA will conduct periodic on-site reviews to ensure that progress continues.

Relevant metrics

11a: Penalty determinations reviewed that document the State’s penalty process, including gravity and economic benefit components:

4 of 7 enforcement actions analyzed

57%

- National Goal:

100%

State response

Recommendation

CWA Element 12 — Final Penalty Assessment and Collection: Differences between initial and final penalty and collection of final penalty documented in file.

Finding 12-1

Area for State Attention

Description

ADEM did not consistently document the rationale for initial and final assessed penalty differences, but did regularly provide information documenting the collection of all final penalties.

Explanation

Metric 12a provides the percentage of enforcement actions that documented the difference and rationale between the initial and final assessed penalty. Of the 7 enforcement actions reviewed, 5 files (71%) provided documentation between the initial and final assessed penalty. In the 2 instances where the differences between the initial and final penalties were not documented, the file either did not contain the initial assessed penalty or the rationale for the difference between the initial and final assessed penalty. The lack of documentation in these cases appear to be related to staff transition and file maintenance and not a systemic issue and is, therefore, considered an Area of State Attention. It is recommended that the State analyze these file issues and take the necessary steps to correct the lack of consistent file documentation. Metric 12b provides the percentage of enforcement files reviewed that document the collection of a penalty. Of the 8 cases evaluated, 8 (100%) of the cases documented the collection of the penalty. One of the cases evaluated in this metric involved the issuance of a Final Order issued by a Circuit Court and was not, therefore, evaluated in Metric 12a above.

Relevant metrics

12a: Documentation of the difference between the initial and final penalty and rationale:	5/7 (71%)
• National Goal	100%
12b: Penalties collected:	8/8 (100%)
• National Goal	100%

State response

Recommendation

Clean Air Act Findings

CAA Element 1 — Data Completeness: Completeness of Minimum Data Requirements.

Finding 1-1

Meets Expectations

Description

ADEM has ensured that minimum data requirements (MDRs) were entered into the AFS.

Explanation

Element 1 of the SRF is designed to evaluate the extent to which the State enters MDRs into the national data system. No issues were identified for Element 1 in the Data Metrics Analysis (DMA).

Relevant metrics

Element 1 includes 33 data verification metrics which the State has the opportunity to verify annually. For the sake of brevity, these metrics were not listed here, but can be found in the DMA in Appendix A.

State response

Recommendation

CAA Element 2 — Data Accuracy: Accuracy of Minimum Data Requirements.

Finding 2-1

Area for State Attention

Description

There were some inaccuracies in the MDR data reported by ADEM into AFS. However, these were minor deficiencies which ADEM has corrected without the need for additional EPA oversight.

Explanation

File Review Metric 2b indicates that 25 of the 35 (71.4%) files reviewed documented all MDRs being reported accurately into AFS. The remaining 10 files had one or more discrepancies identified. The majority of inaccuracies related to missing or inaccurate subparts for MACT or NSPS in AFS. Some facilities did not have the appropriate pollutants included in AFS, and a few files had inaccuracies in city, government ownership, operating status, etc. Finally, two files had duplicate activities entered in AFS. As noted in ADEM’s response, the State has made the necessary corrections to AFS and taken steps to ensure that accurate data is maintained in the future. Therefore, this Element is designated as an Area for State Attention.

Relevant metrics

	<u>State</u>	<u>National Goal</u>
2b – Accurate MDR Data in AFS: 25/35 = 71.4%		100%

State response

ADEM has made all appropriate corrections to AFS. With the exception of the lack of pollutant data for several facilities, ADEM believes the inaccuracies found do not represent a systemic problem but merely oversights by responsible personnel. Air Division management brought the missing data issue to the attention of the responsible personnel and reminded all personnel of the necessity to update the Air Division’s database with this data. ADEM has corrected its batch upload to include pollutants for each facility.

Recommendation

CAA Element 3 — Timeliness of Data Entry: Timely entry of Minimum Data Requirements.

Finding 3-1

Meets Expectations

Description

MDRs are being entered timely into AFS.

Explanation

The data metrics for Element 3 indicate that ADEM is entering MDRs for compliance monitoring and enforcement activities into AFS within the appropriate timeframe. ADEM entered 100% of stack test and enforcement related MDRs into AFS within 60 days. In addition, most compliance monitoring MDRs (94.3%) were entered into AFS within 60 days.

Relevant metrics

	<u>State</u>	<u>National Goal</u>
3b1 – Timely Reporting of Compliance Monitoring MDRs: 870/923 =	94.3%	100%
3b2 – Timely Reporting of Stack Test MDRs: 863/863 =	100%	100%
3b3 – Timely Reporting of Enforcement MDRs: 35/35 =	100%	100%

State response

Recommendation

CAA Element 4 — Completion of Commitments: Meeting all enforcement and compliance commitments made in state/EPA agreements.

Finding 4-1

Meets Expectations

Description

ADEM met all enforcement and compliance commitments outlined in their FY 2012 Compliance Monitoring Strategy (CMS) Plan and their FY 2012 Air Planning Agreement.

Explanation

Element 4 evaluates whether the State met its obligations under the CMS plan and the Air Planning Agreement (APA) with EPA. ADEM follows a traditional CMS plan, which requires them to conduct a full compliance evaluation (FCE) every 2 years at Major sources and every 5 years at Synthetic Minor 80% (SM80) sources. ADEM met these obligations by completing over 100% of planned FCEs at both Major and SM80 sources. In addition, ADEM met all of its enforcement and compliance commitments (100%) under the FY 2012 Air Planning Agreement with EPA Region 4. Therefore, this element Meets Expectations.

Relevant metrics

	<u>State</u>	<u>National Goal</u>
4a1 – Planned Evaluations Completed: Title V Major FCEs: 326/314 =	103.8%	100%
4a2 – Planned Evaluations Completed: SM80 FCEs: 240/214 =	112.1%	100%
4b – Planned Commitments Completed: CAA compliance and enforcement commitments other than CMS commitments: 12/12 =	100%	100%

State response

Recommendation

CAA Element 5 — Inspection Coverage: Completion of planned inspections.

Finding 5-1

Meets Expectations

Description

ADEM met the negotiated frequency for compliance evaluations of CMS sources and reviewed Title V Annual Compliance Certifications.

Explanation

Element 5 evaluates whether the negotiated frequency for compliance evaluations is being met for each CMS source, and whether the State completes the required review of Title V Annual Compliance Certifications. ADEM met the national goal for all of the relevant metrics, so this element Meets Expectations.

Relevant metrics

	<u>State</u>	<u>National Goal</u>
5a – FCE Coverage Major: 310/310 =	100%	100%
5b – FCE Coverage SM-80: 201/201 =	100%	100%
5e – Review of Title V Annual Compliance Certifications Completed: 306/307 =	99.7%	100%

State response

Recommendation

CAA Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.

Finding 6-1

Meets Expectations

Description

ADEM documented all required elements in their Full Compliance Evaluations (FCEs) and compliance monitoring reports (CMRs) as required by the [Clean Air Act Stationary Source Compliance Monitoring Strategy](#) (CMS Guidance).

Explanation

Metric 6a indicated that ADEM documented all seven required elements of an FCE for most files reviewed (91.2% or 31 of 34). In addition, Metric 6b indicated that 32 of the 34 files reviewed with an FCE (94.1%) also included the seven CMR elements required by the CMS Guidance. Therefore this Element Meets Expectations.

EPA notes that a number of required CMR elements (i.e. facility information, applicable requirements, and enforcement history) are not routinely included in ADEM's inspection reports (CMRs), but they are available to EPA and the public through ADEM's E-file system. This electronic records management system makes enforcement, compliance, and permitting documentation maintained by ADEM easily accessible online.

Relevant metrics

6a – Documentation of FCE elements: 32/34 = 94.1%

- National Goal 100%

6b – Compliance Monitoring Reports (CMRs) that provide sufficient documentation to determine compliance of the facility: 0/34 = 0%

- National Goal 100%

State response

Recommendation

CAA Element 7 — Identification of Alleged Violations: Compliance determinations accurately made and promptly reported in national database based on inspection reports and other compliance monitoring information.

Finding 7-1

Meets Expectations

Description

Compliance determinations are accurately made and promptly reported into AFS based on inspection reports and other compliance monitoring information.

Explanation

Based on the File Review and DMA, EPA determined that ADEM makes accurate compliance determinations based on inspections and other compliance monitoring information.

Relevant metrics

	<u>State</u>	<u>National Goal</u>
7a – Accuracy of Compliance Determinations: 34/34 =	100%	100%
7b1 – Alleged Violations Reported Per Informal Enforcement Actions: 14/14 =	100%	100%
7b3 – Alleged Violations Reported Per HPV Identified: 6/6 =	100%	100%

State response

Recommendation

CAA Element 8 — Identification of SNC and HPV: Accurate identification of significant noncompliance and high-priority violations, and timely entry into the national database.

Finding 8-1

Meets Expectations

Description

EPA Region 4 determines which violations are HPVs and enters them into AFS on the State’s behalf. As a result, HPVs are accurately identified, although several were not entered into the national system in a timely manner.

Explanation

Element 8 is designed to evaluate the accuracy and timeliness of the State’s identification of high priority violations. EPA Region 4 and ADEM have a long-standing arrangement in which EPA determines which violations are HPVs and enters them into AFS on the State’s behalf. With respect to the accuracy of HPV identification, all HPV designations reviewed were accurate. Although four out of six HPVs identified in FY12 were entered late (>60 days) into AFS, three of these late entries were the responsibility of EPA, and they were only 2, 11, and 15 days late, respectively. EPA program staff will work to ensure that in the future, these entries are made into AFS within 60 days. One exception was a case that was entered 107 days after Day Zero. ADEM advises that they contacted the facility numerous times to gather key information needed to develop the Notice of Violation (NOV), but the facility was not responsive. In situations like this, the HPV policy allows up to 90 days from the date the agency first receives information to set the Day Zero. It is recommended that when ADEM experiences delays caused by the source, that this be communicated to EPA to ensure that the flexibilities allowed in the HPV policy are maximized. Since this situation does not constitute a significant pattern of deficiencies, and EPA was responsible for the majority of the late entries, this is element meets expectation.

Relevant metrics

	<u>State</u>	<u>National Goal</u>
8c – Accuracy of HPV Determinations: 9/9 =	100%	100%
3a1 – Timely Entry of HPV Determinations:	2	
3a2 – Untimely Entry of HPV Determinations:	4	0

State response

Recommendation

CAA Element 9 — Enforcement Actions Promote Return to Compliance: Enforcement actions include required corrective action that will return facilities to compliance in specified timeframe.

Finding 9-1

Meets Expectations

Description

Enforcement actions include required corrective action that will return facilities to compliance in a specified timeframe.

Explanation

All enforcement action files reviewed (14 of 14) returned the source to compliance. For enforcement actions that were penalty only actions, the files documented the actions taken by the facility to return to compliance prior to issuance of the order. ADEM met the national goal for all relevant metrics, so this element Meets Expectations.

Relevant metrics

	<u>State</u>	<u>National Goal</u>
9c – Formal enforcement returns facilities to compliance: 14/14 =	100%	100%

State response

Recommendation

CAA Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.

Finding 10-1

Meets Expectations

Description

HPVs are being addressed in a timely and appropriate manner.

Explanation

Element 10 is designed to evaluate the extent to which the State takes timely and appropriate action to address HPVs. All HPVs reviewed had an appropriate enforcement response that will return the source to compliance. With respect to timeliness, seven out of eight (87.5%) of the HPVs reviewed were addressed within 270 days. The remaining action was resolved in 278 days, which is not a significant concern. Therefore this element Meets Expectations.

Relevant metrics

	<u>State</u>	<u>National Goal</u>
10a – Timely action taken to address HPVs: 7/8 =	87.5%	100%
10b – Appropriate Enforcement Responses for HPVs: 8/8 =	100%	100%

State response

Recommendation

CAA Element 11 — Penalty Calculation Method: Documentation of gravity and economic benefit in initial penalty calculations using BEN model or other method to produce results consistent with national policy and guidance.

Finding 11-1

Area for State Improvement

Description

ADEM did not adequately consider and document economic benefit using the BEN model or other method which produces results consistent with national policy and guidance.

Explanation

Element 11 examines the state documentation of penalty calculations, as provided in the 1993 EPA “Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements.” In order to preserve deterrence, it is EPA policy not to settle for less than the amount of the economic benefit of noncompliance plus a gravity portion of the penalty. Specifically, file review metric 11a evaluates whether the state penalty calculations adequately document both gravity and economic benefit considerations. Metric 11a indicated that ADEM did not adequately consider and document economic benefit in the 14 penalty calculations reviewed.

EPA notes that ADEM has made significant improvements since the Round 2 SRF by including a narrative discussion of penalty factors considered and a “Penalty Synopsis” chart in each final Consent Order. However, two key issues remain a concern for EPA: First, the rationale for not calculating or assessing economic benefit in a specific case is not provided in sufficient detail in the Consent Order. Instead more general statements are used such as “the Department is not aware of any significant economic benefit from these violations.” This was the case for 9 of 14 penalties evaluated.

The second concern is that when ADEM determines that an economic benefit was likely gained, no calculations using the BEN model or another method are maintained in the file. This happened in 5 of the 14 penalties evaluated. As an example, one order (which addressed two facilities) included a statement that the Department believed that economic benefit was derived, but the “Penalty Synopsis” did not reflect any economic benefit, and the file did not include any supporting information that EPA could evaluate to determine if the amount was appropriate to the violation(s) and consistent with national policy.

This issue was identified as an Area for State Improvement in the SRF Round 1 and 2 reports. Therefore, this finding will continue to be an Area for State Improvement in Round 3.

Relevant metrics	<u>State</u>	<u>National Goal</u>
11a – Penalty calculations reviewed that consider and include gravity and economic benefit: 0/14 =	0%	100%
State response	<p>ADEM disagrees with EPA’s finding. Each order contains a paragraph indicating whether ADEM determined that the facility realized an economic benefit as a result of the violation(s). For instances where a significant economic benefit is realized, the amount of the penalty attributed to economic benefit is listed in the Penalty Synopsis. ADEM’s current process includes review of the available economic impact data and the results are entered on the Penalty Synopsis Worksheet. In cases where there is no significant benefit derived from the violation, the worksheet reflects zero and corresponding language is placed in the order. ADEM will modify the language in the order to reflect that the economic benefit was analyzed and determined to be insignificant.</p>	
Recommendation	<p>By June 30, 2014, ADEM should implement procedures to ensure appropriate consideration and documentation of economic benefit in their initial and final penalties. For verification purposes, ADEM should submit the following documents to EPA Region 4 for review for one year following issuance of the final SRF report:</p> <ul style="list-style-type: none"> (1) all <i>proposed administrative orders</i> and penalty calculations from the initiation of enforcement order negotiations (<i>versus the proposed consent orders</i> that are placed on public notice at the end of negotiations); and, (2) all final consent orders and penalty calculations. <p>If, by the end of one year appropriate penalty documentation is being observed, this recommendation will be considered completed.</p>	

CAA Element 12 — Final Penalty Assessment and Collection: Differences between initial and final penalty and collection of final penalty documented in file.

Finding 12-1

Area for State Improvement

Description

The collection of final penalty payments is documented in the files. However, the rationale for any differences between the initial and final penalty is not consistently documented.

Explanation

Part of the goal of the SRF is to ensure equitable treatment of violators through national policy and guidance, including systematic methods of penalty calculations. Without the availability of state penalty calculations, EPA is unable to assess the quality of the state’s overall enforcement program.

Metric 12a provides the percentage of formal enforcement actions that documented the difference and rationale between the initial and final assessed penalty. A total of 14 enforcement actions were reviewed where the state issued a proposed Consent Order and then negotiated a final Consent Order with the facility. In the files, there were no copies of the proposed Consent Orders sent to the respondent from the initiation of enforcement negotiations (versus the proposed consent orders that are placed on public notice at the end of negotiations). In addition no initial penalty calculations were made available for review for any of the 14 cases. Only the final Consent Orders were maintained in the files. . EPA’s “Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements” outlines the expectation that states maintain this documentation and “make case records available to EPA upon request and during an EPA audit of State performance.” EPA notes that the ADEM Water program preserves their initial penalty calculations from the proposed Administrative Orders, although the RCRA and Air programs do not follow this same practice of record retention.

In five of their orders, ADEM documented an adjustment to the final penalty and the rationale, including “ability to pay”, “other factors”, or “mitigating factors.” For the remaining nine orders, initial penalty calculations were not provided, so reviewers could not ascertain whether an adjustment was made. Clearly articulating the rationale for penalty adjustments is essential in maintaining consistency and providing transparency This is a continuing problem from the SRF Round 1 and 2 Reports, and therefore remains as an Area for State Improvement for Round 3.

Metric 12b provides the percentage of enforcement files reviewed that document the collection of a penalty. All of the 14 files reviewed provided evidence that ADEM had collected penalties, or were in the process of

seeking collection of penalties from enforcement actions. Therefore this metric Meets Expectations.

Relevant metrics

	<u>State</u>	<u>National Goal</u>
12a – Documentation on difference between initial and final penalty and rationale: 5/14 =	35.7%	100%
12b – Penalties collected: 14/14 =	100%	100%

State response

EPA’s reference to the practices of ADEM’s Water program is not appropriate for this Element given the significant differences in the types of violations identified by the two programs. The most common Air violations involve one time violation of the regulations. This is unlike the CWA program where the most common violations involve multiple self-reported excursion from a permitted discharge limit. These vastly different violation profiles do not lend themselves to the same penalty assessment methodology and should not be compared.

As a result of previous SRF reviews, the Department has revised its penalty documentation. These revisions were implemented during the period of concern for this SRF review. The Penalty Summary sheet is our documentation of the initial and final penalty and the adjustments made between the initial penalty and final penalty. There are no changes made to the amounts under "Seriousness of Violation", "Standard of Care", "History of Previous Violations", or "Economic Benefit" unless the facility provides evidence that our initial assessment in these areas was inaccurate, thereby making any such changes "corrections" not "adjustments". Adjustments made due to negotiations are reflected in the sections for "Mitigation Factors", "Ability to Pay", or "Other Factors". For the majority of Orders, "Other Factors" is the adjustment made and typically reflects a facility's good faith for negotiating. When no amounts are recorded in "Mitigation Factors", "Ability to Pay", or "Other Factors", it means that no adjustments to the initial penalty were made.

Of the 26 orders issued in FY12 (the SRF review year), 13 were not reduced by negotiation and were issued with the initial proposed penalty. Therefore the Penalty Synopsis Worksheet reflected no reduced amount in the “Other Factors”. Ten of the proposed penalties were reduced by negotiations and the amounts reduced were reflected in “Other Factors” on the Penalty Synopsis Worksheet. Three of the orders were issued prior to the change in procedure made as a result of the Round 2 SRF (explained above). In FY13, there were 14 orders issued with 8 penalties not being reduced during negotiation and 6 negotiated reductions with the amount of the penalty reductions reflected on the synopsis worksheet. Again ADEM’s process is truly transparent and efficient.

The Penalty Synopsis Worksheet was designed to reflect the initial and final penalty on one sheet so that it could be made available to the public

during the 30 day comment period. Based on this explanation, the Penalty Synopsis identifies the initial and final penalty and demonstrates that this Element (12) should be classified as “Meets Expectations”.

Recommendation

By June 30, 2014, ADEM should implement procedures to ensure appropriate documentation of the rationale for any difference between the initial and final penalty. For verification purposes, ADEM should submit the following documents to EPA Region 4 for review for one year following issuance of the final SRF report:

- (1) all *proposed administrative orders* and penalty calculations from the initiation of enforcement order negotiations (versus the *proposed consent orders* that are placed on public notice at the end of negotiations); and,
- (2) all final consent orders and penalty calculations.

If, by the end of one year appropriate penalty documentation is being observed, this recommendation will be considered completed.

Resource Conservation and Recovery Act Findings

RCRA Element 1 — Data Completeness: Completeness of Minimum Data Requirements.

Finding 1-1

Meets Expectations

Description

ADEM’s Minimum Data Requirements for compliance monitoring and enforcement activities were complete in RCRAInfo.

Explanation

RCRA Element 1 is supported by SRF Data Metrics 1a through 1g, and measures the completeness of the data in RCRAInfo, which is the National Database for the RCRA Program. EPA provided the FY2012 RCRA data metric analysis (DMA) to ADEM on March 29, 2013. No issues were identified for Element 1 in the DMA, so this element Meets Expectations. A complete list of the Data Metrics can be found in Appendix A.

Relevant metrics

State response

No response necessary

Recommendation

RCRA Element 2 — Data Accuracy: Accuracy of Minimum Data Requirements.

Finding 2-1

Area for State Improvement

Description

During the SRF evaluation, 77% of files were identified with data inaccuracies.

Explanation

The RCRA Enforcement Response Policy (ERP) says that a secondary violator (SV) should be resolved within 240 days or elevated to a significant non-complier (SNC) status. Data metric 2a indicated that there were three SV facilities that had violations open for longer than 240 days:

- Two cases were being pursued through formal enforcement actions by ADEM, but were not designated as SNCs in RCRAInfo until after this was brought to the state’s attention in the RCRA SRF file review. Both facilities were subsequently designated as SNCs in RCRAInfo.
- The third facility had open violations that had not been returned to compliance, even though the facility was a SNC and had been resolved through formal enforcement. Once the violations are closed out this facility will no longer show up in Metric 2a.

File Review Metric 2b verifies that data in the file is accurately reflected in RCRAInfo. A file is considered inaccurate if the information about the facility regulatory status, the inspection reports, enforcement actions, or compliance documentation is missing or reported inaccurately in RCRAInfo. Metric 2b indicated only 8 of 35 files (22.9%) reviewed had accurate data input into RCRAInfo. A large number of inaccuracies were due to inconsistent internal ADEM procedures for entering the dates of enforcement actions. There were also inaccuracies related to incorrect/missing violation citations and facility compliance status. This is a continuing issue from the SRF Round 2 evaluation, where data accuracy was identified as an Area for State Attention. For this review, data accuracy is considered an Area for State Improvement.

Relevant metrics

	<u>State</u>
2a – Longstanding Secondary Violators	3
2b – Accurate Entry of Mandatory Data	22.9% (8/35)

State response

The timeliness of formal enforcement actions can be complicated by many factors including penalty negotiations. Such was the case in two of the instances EPA identified in Metric 2a of its review. In the 3rd case, the violator ceased operations and closed its facility very soon after the SNC violations were identified. ADEM saw no efficacy in pursuing formal enforcement in this situation and are working to update our files and

RCRAInfo inputs accordingly.

Regarding metric 2b, following EPA's identification of this issue as part of the SRF Review, ADEM changed its procedures regarding the entry of enforcement action dates into RCRAInfo to avoid this issue in the future.

Recommendation

By March 31, 2014, ADEM should develop and implement procedures for timely and accurate entry of data into RCRAInfo. At the end of 2014, after allowing the state to implement the procedures, EPA will conduct a remote file review using ADEM's eFile system and RCRAInfo to assess progress in implementation of the improvements. If by December 31, 2014, sufficient improvement is observed this recommendation will be considered complete.

RCRA Element 3 — Timeliness of Data Entry: Timely entry of Minimum Data Requirements.

Finding 3-1

Unable to make a finding

Description

Sufficient evidence to establish a finding for this Element does not currently exist.

Explanation

Element 3 measures the timely entry of data into RCRAInfo. The RCRA ERP requires all violation data to be entered by Day 150 from the first day of inspection, and other types of data entered by timelines established in state policies, MOAs, PPA/PPGs, etc. In reviewing files, there is no method of determining *when* data was entered into RCRAInfo, only if the data was accurate (covered under Element 2). RCRAInfo does not have a date stamp to show when data is entered, therefore a determination of timely data entry could not be made.

Relevant metrics

State response

No response necessary

Recommendation

RCRA Element 4 — Completion of Commitments: Meeting all enforcement and compliance commitments made in state/EPA agreements.

Finding 4-1	Meets Expectations
Description	ADEM met the FY2012 Grant projections for non-inspection activities.
Explanation	Metric 4a measures the percentage of non-inspection commitments completed in the fiscal year of the SRF review. In their FY2012 grant work plan, ADEM included projections (versus commitments) for show-cause meetings, and informal and formal enforcement actions. Since these types of activities are not completely within the control of ADEM, they are considered grant workplan projections for resource planning versus workplan commitments (like inspections). ADEM's FY2012 End-of-Year report documented that the state fulfilled the majority of these projections.
Relevant metrics	4a - Planned non-inspection commitments completed 100%
State response	No response necessary
Recommendation	

RCRA Element 5 — Inspection Coverage: Completion of planned inspections.

Finding 5-1

Meets Expectations

Description

ADEM met the inspection coverage for operating TSDs and LQGs.

Explanation

Element 5 measures three types of required inspection coverage that are outlined in the EPA RCRA Compliance Monitoring Strategy: (1) 100% coverage of operating Treatment Storage Disposal (TSD) facilities over a two-year period, (2) 20% coverage of LQGs every year, and (3) 100% coverage of LQGs every five years. In FY2012, ADEM met or exceeded all inspections in these areas.

Relevant metrics

<u>Data Metric</u>	<u>State</u>	<u>National Goal</u>
5a – Two-year inspection coverage for operating TSDFs (11/11)	100%	100%
5b – Annual inspection coverage for LQGs (111/227)	48.9%	20%
5c – Five-year inspection coverage For LQGs (227/227)	100%	100%

State response

No response necessary

Recommendation

RCRA Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.

Finding 6-1

Meets Expectations

Description

ADEM’s inspection reports provided sufficient documentation to determine compliance at the facility, and were completed in a timely manner.

Explanation

File Review Metric 6a assesses the completeness of inspection reports and whether the reports provide sufficient documentation to determine compliance at the facility. Of the inspection reports reviewed, 93.5% (29 of 31) were complete and had sufficient documentation to determine compliance at the facility. The content and narrative of the reports varied widely across inspection staff, but in general the reports provided sufficient information for compliance determinations. File Review Metric 6b measures the timely completion of inspection reports. According to the RCRA ERP, violation determination should be made within 150 days of the first day of inspection. ADEM considers issue date of the informal enforcement action as the date of violation determination. In the file review, it was found that 94.1% of the reports were completed in by Day 150. The two criteria for inspection report quality meets SRF expectations.

Relevant metrics

<u>File Metric</u>	<u>State</u>	<u>National Goal</u>
6a – Percentage of inspection reports that are complete and provide documentation to determine compliance (29/31)	93.5%	100%
6b – Percentage of inspection reports that are completed timely (32/34)	94.1%	100%

State response

No response necessary

Recommendation

RCRA Element 7 — Identification of Alleged Violations: Compliance determinations accurately made and promptly reported in national database based on inspection reports and other compliance monitoring information.

Finding 7-1	Meets Expectations												
Description	ADEM makes accurate RCRA compliance determinations.												
Explanation	File Review Metric 7a assesses whether accurate compliance determinations were made based on a file review of inspection reports and other compliance monitoring activity. The file review indicated that 100% of the facilities (35 of 35) had accurate compliance determinations. Data Metric 7b is a review indicator that evaluates the violation identification rate for inspections conducted during the year of review. In the DMA, ADEM’s violation identification rate for FY2012 was 61.9%, which was significantly above the national average of 35.9%.												
Relevant metrics	<table border="1"> <thead> <tr> <th><u>File Metric</u></th> <th><u>State</u></th> <th><u>National Goal</u></th> </tr> </thead> <tbody> <tr> <td>7a – Percentage of inspection reports that led to accurate compliance determination (39/40)</td> <td>100%</td> <td>100%</td> </tr> <tr> <th><u>Data Metric</u></th> <th><u>State</u></th> <th><u>National Average</u></th> </tr> <tr> <td>7b – Violations found during inspection</td> <td>61.9%</td> <td>35.9%</td> </tr> </tbody> </table>	<u>File Metric</u>	<u>State</u>	<u>National Goal</u>	7a – Percentage of inspection reports that led to accurate compliance determination (39/40)	100%	100%	<u>Data Metric</u>	<u>State</u>	<u>National Average</u>	7b – Violations found during inspection	61.9%	35.9%
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7a – Percentage of inspection reports that led to accurate compliance determination (39/40)	100%	100%											
<u>Data Metric</u>	<u>State</u>	<u>National Average</u>											
7b – Violations found during inspection	61.9%	35.9%											
State response	No response necessary												
Recommendation													

RCRA Element 8 — Identification of SNC and HPV: Accurate identification of significant noncompliance and high-priority violations, and timely entry into the national database.

Finding 8-1

Area for State Attention

Description

In the majority of cases, ADEM makes timely and accurate SNC determinations.

Explanation

Data Metric 8a identifies the percent of facilities that received a SNC designation in FY2012, the year of data reviewed for ADEM’s SRF evaluation. ADEM’s SNC identification rate was 4.8% which was above the national average of 1.7%. Data Metric 8b measures the number of SNC determinations that were made within 150 days of the first day of inspection. Timely SNC designation is important so that significant problems are addressed in a timely manner. In FY2012, ADEM reported 85.7% (18 of 21) of their SNC designations by Day 150.

In the 1998 RCRA Memorandum of Agreement between ADEM and EPA Region 4, the state has agreed to take timely and appropriate enforcement action as defined in the 1996 RCRA ERP. The ERP provides the national definition of SNC facilities, and includes the criteria for taking timely and appropriate enforcement at these violating facilities. File Review Metric 8c measures the percentage of violations in the files that were accurately determined to be a SNC. Of the files reviewed, there were three facilities that were SNC-caliber, but were designated as Secondary Violators by the state and the violations were addressed through informal enforcement rather than appropriate formal enforcement actions. Thus, the percentage of files reviewed where the violation was accurately determined to be a SNC was 88% (22 of 25 SNC facilities). The accurate identification of SNC facilities and the timely entry of SNC designations into RCRAInfo are considered an Area for State Attention. The data entry procedures for SNC designations should be reviewed for possible efficiencies for timely data entry. ADEM should also refer to the criteria outlined in the RCRA ERP for accurate identification of SNC-caliber facilities. It is the expectation that by following these steps, the accurate identification of SNCs and timely entry of SNC designations will improve without further oversight by EPA.

Relevant metrics

	<u>State</u>	<u>National Average</u>
8a – SNC identification rate	4.8%	1.7%
	<u>State</u>	<u>National Goal</u>
8b – Percentage of SNC determinations entered into RCRAInfo by Day 150 (18/21)	85.7%	100%
8c – Percentage of violations in files		

reviewed that were accurately
determined to be SNCs (22/25) 88% 100%

State response

EPA identified three facilities with violations that it indicated should have been determined SNC's rather than Secondary Violations. ADEM does not agree with this assessment. In the three cases EPA identified, ADEM determined that the violations cited during the compliance evaluation inspections posed low potential threat of exposure to hazardous waste or hazardous waste constituents and decided no actual or imminent endangerment to human health or the environment. The facilities did not have known or documented histories of recalcitrant or non-compliant behavior with respect to the management of hazardous wastes and the nature of violations (i.e., failure to comply with certain administrative requirements of the Hazardous Waste Program regulations rather than failure to act or be in accordance with the substantive requirements of State law or regulations) was such that the sites could be expected to (and in fact did) return to compliance with the applicable rules.

The RCRA ERP provides generalized guidelines for determining which violations of RCRA constitute significant non-compliance. However, the ERP does not definitively or specifically categorize RCRA violations as instances of SNC or as Secondary Violations. This makes a SNC determination largely a judgment call.

ADEM acknowledges EPA's role in evaluating State enforcement programs and its use of the ERP to guide its oversight efforts. But since a SNC determination is a judgment call of the enforcement authority, ADEM does not believe it would be inappropriate for EPA to substitute its judgment for the Department's.

Recommendation

RCRA Element 9 — Enforcement Actions Promote Return to Compliance: Enforcement actions include required corrective action that will return facilities to compliance in specified timeframe.

Finding 9-1

Meets Expectations

Description

ADEM consistently issues enforcement responses that have returned or will return a facility in SNC or SV to compliance.

Explanation

File Review Metric 9a shows the percentage of SNC enforcement responses reviewed that have documentation that the facility has returned or will return to compliance. The file review showed 100% (18 of 18) of the SNC facilities had documentation in the files showing that the facility had returned to compliance, or that the enforcement action required the facility to return to compliance within a certain timeframe. At the time of drafting this report, there are an additional four SNC facilities that are in the process of negotiating consent orders that were not counted in this metric. File Review Metric 9b gives the percentage of SV enforcement responses reviewed that have documentation that the facility has returned or will return to compliance. The file review showed 100% of the SVs (12 of 12) had documentation showing that the facility had returned to compliance, or that the enforcement action required them to return to compliance within a certain timeframe.

Relevant metrics

<u>File Metric</u>	<u>State</u>	<u>National Goal</u>
9a - Percentage of enforcement responses that have or will return site in SNC to compliance (18/18)	100%	100%
9b - Percentage of enforcement responses that have or will return a SV to compliance (12/12)	100%	100%

State response

No response necessary

Recommendation

RCRA Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.

Finding 10-1

Meets Expectations

Description

ADEM takes timely and appropriate enforcement actions.

Explanation

Data Metric 10a indicated that ADEM completed 100% (10 out of 10) of the formal enforcement actions at SNC facilities within 360 days of the first day of inspection, the timeline outlined in the RCRA ERP. ADEM exceeded the national goal of 80% of enforcement actions meeting this timeline. This is a significant improvement from the SRF Rounds 1 and 2 evaluations. File Review Metric 10b assesses the appropriateness of enforcement actions for SVs and SNCs, as defined by the RCRA ERP. In the files reviewed, 91.4% of the facilities with violations (32 of 35) had the appropriate enforcement response to addressing the identified violations. There were three SNC-caliber facilities that were addressed through informal actions rather than formal actions as required by the RCRA ERP.

Relevant metrics

	<u>State</u>	<u>National Goal</u>
Data Metric 10a: Timely enforcement to address SNCs (10/10)	100%	80%
File Metric 10b: Percentage of files with appropriate enforcement responses (32/35)	91.4%	100%

State response

No response necessary

Recommendation

RCRA Element 11 — Penalty Calculation Method: Documentation of gravity and economic benefit in initial penalty calculations using BEN model or other method to produce results consistent with national policy and guidance.

Finding 11-1

Area for State Improvement

Description

ADEM has implemented procedures to better document gravity and economic benefit in penalty calculations, but there is room for improvement on documenting penalty rationale.

Explanation

Element 11a examines the state documentation of penalty calculations as provided in the 1993 EPA “*Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements.*” In order to preserve deterrence, it is EPA policy not to settle for less than the amount of the economic benefit of noncompliance and a gravity portion of the penalty. File review metric 11a determines if the state penalty includes both gravity and economic benefit considerations. In the SRF Round 2 evaluation, ADEM did not maintain any penalty calculations for RCRA enforcement actions. Since that time, the state has made significant improvement by including a “Civil Penalty Synopsis” chart in the final RCRA Administrative Consent Orders. However, two key issues remain a concern for EPA: First, the rationale for not calculating or assessing economic benefit in each case is not consistently provided in sufficient detail. Second, when ADEM determines that an economic benefit was likely gained, no supporting calculations using the BEN model or another method are maintained in the file

A total of 18 penalty calculations were reviewed, and all included the equivalent of a gravity component in the penalty calculation. However only three penalties included the appropriate consideration of economic benefit in the narrative of the orders. The remaining 15 orders included either:

- (1) A statement to the effect that there was no evidence indicating avoided or delayed economic benefit, or
- (2) A dollar amount for economic benefit in the “Civil Penalty Synopsis” without any supporting information to determine if the amount was appropriate to the violation(s) and consistent with national policy.

This is not sufficient information to determine the appropriateness of the ADEM penalties. This issue was identified as an Area for State Improvement in both Round 1 and Round 2 SRF reports, and now again in SRF Round 3. This finding will continue to be an Area for State Improvement in Round 3, as 16.7% of the enforcement cases reviewed had the complete penalty documentation for both gravity and economic benefit

of noncompliance.

Relevant metrics

	<u>State</u>	<u>National Goal</u>
11a – Penalty calculations consider and include a gravity and economic benefit (3 of 18)	16.7%	100%

State response

ADEM disagrees with EPA’s finding. Each order contains a paragraph indicating whether ADEM determined that the facility realized an economic benefit as a result of the violation(s). For instances where a significant economic benefit is realized, the amount of the penalty attributed to economic benefit is listed in the Penalty Synopsis. ADEM’s current process includes review of the available economic impact data and the results are entered on the Penalty Synopsis Worksheet. In cases where there is no significant benefit derived from the violation, the worksheet reflects zero and corresponding language is placed in the order. ADEM will modify the language in the order to reflect that the economic benefit was analyzed and determined to be insignificant.

Recommendation

By June 30, 2014, ADEM should implement procedures to ensure appropriate documentation of both gravity and economic benefit in penalty calculations, appropriately using the BEN model or another method that produces results consistent with national policy to calculate economic benefit. For verification purposes, for one year following issuance of the final SRF report, EPA shall review all initial and final ADEM orders and penalty calculations, including the calculations for the economic benefit of noncompliance. ADEM should submit to EPA:

- (1) all *proposed administrative orders* and penalty calculations from the initiation of enforcement order negotiations (versus the *proposed consent orders* that are placed on public notice at the end of negotiations); and,
- (2) all final consent orders and penalty calculations. If by the end of one year it is determined that appropriate penalty calculation documentation is being implemented, this recommendation will be considered complete

RCRA Element 12 — Final Penalty Assessment and Collection: Differences between initial and final penalty and collection of final penalty documented in file.

Finding 12-1

Area for State Improvement

Description

ADEM enforcement actions did not provide the adjustment rationale between the initial and final assessed penalty. There was documentation of the majority of final penalty collections.

Explanation

Part of the goal of the SRF is to ensure equitable treatment of violators through national policy and guidance, including systematic methods of penalty calculations. Without the availability of state penalty calculations (including economic benefit calculations), EPA is unable to assess the quality of the state’s overall enforcement program.

Metric 12a provides the percentage of formal enforcement actions that documented the difference and rationale between the initial and final assessed penalty. A total of 13 enforcement actions were reviewed where the state issued a proposed Administrative Order and then negotiated a final Consent Order with the facility.

In the files, there were no copies of the proposed Administrative Orders from the initiation of enforcement negotiations (versus the proposed consent orders that are placed on public notice at the end of negotiations), and no initial penalty calculations available for review for any of the 13 cases. EPA was informed that the proposed RCRA Administrative Orders are destroyed, and only the final Consent Orders were maintained in the files. EPA’s *“Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements”* outlines the expectation that states maintain this documentation and “make case records available to EPA upon request and during an EPA audit of State performance.” EPA notes that the ADEM Water program preserves their initial penalty calculations from the proposed Administrative Orders, although the RCRA and Air programs do not follow this same practice of record retention.

Rationale for penalty adjustments are essential in maintaining consistency and providing transparency; noting offsets for supplemental environmental projects or inability to pay issues; and ensuring that the final penalties recover any economic benefit due to noncompliance. This is a continuing problem from Round 1 and 2 SRF reports, and will continue as an Area for State Improvement in Round 3. Metric 12b provides the percentage of enforcement files reviewed that document the collection of a penalty. In 93.3% of the files reviewed (15 of 16), there was evidence that ADEM had collected penalties, or were in the process of seeking collection of penalties from enforcement actions.

Relevant metrics

	<u>State</u>	<u>National Goal</u>
12a – Formal enforcement actions that document the difference and rationale between the initial & final penalty (0 of 13)	0 %	100%
12b – Final formal actions that documented the collection of a final penalty (15 of 16)	93.8%	100%

State response

EPA’s reference to the practices of ADEM’s Water program is not appropriate for this Element given the significant differences in the types of violations identified by the two programs. The most common RCRA violations involve the discreet failure to perform specific preventative actions required by the regulations. This is unlike the CWA program where the most common violations involve the self-reported excursion from a permitted discharge limit. These vastly different violation profiles do not lend themselves to the same penalty assessment methodology and should not be compared. As a result of previous SRF reviews, the Department has revised its penalty documentation. These revisions were implemented during the period of concern for this SRF review. The Penalty Summary sheet is our documentation of the initial and final penalty and the adjustments made between the initial penalty and final penalty. There are no changes made to the amounts under "Seriousness of Violation", "Standard of Care", "History of Previous Violations", or "Economic Benefit" unless the facility provides evidence that our initial assessment in these areas was inaccurate, thereby making any such changes "corrections" not "adjustments". Adjustments made due to negotiations are reflected in the sections for "Mitigation Factors", "Ability to Pay", or "Other Factors". For the majority of Orders, "Other Factors" is the adjustment made and typically reflects a facility's good faith for negotiating. When no amounts are recorded in "Mitigation Factors", "Ability to Pay", or "Other Factors", it means that no adjustments to the initial penalty were made. All ten RCRA orders issued during the SRF review year used this outlined process. Two order were issued with no adjustment from the initial to the final penalty (the Penalty Synopsis Worksheet showed no adjustment). The remaining eight orders had adjustments made to the initial penalty. All were documented on the Penalty Synopsis Worksheet. This methodology is transparent in that it identifies the final penalty and all the compromises from the initial penalty. This documentation allows all citizen the ability to review not only the final penalty but the compromises between the initial and final penalty. Since the order (including the Penalty Synopsis Worksheet) is subject to a 30 day comment prior to actual issuance of the order, ADEM process provides complete transparency. Based on this explanation, the Penalty Synopsis identifies the initial and final penalty and demonstrates that this Element (12) should be classified as “Meets Expectations”.

Recommendation

By June 30, 2014 ADEM should implement procedures to ensure appropriate documentation of the rationale for any difference between the initial and final penalty. For verification purposes, for one year following issuance of the final SRF report, EPA shall review all initial and final ADEM orders and penalty calculations, including the calculations for the economic benefit of noncompliance. ADEM should submit to EPA:

- (1) all *proposed administrative orders* and penalty calculations from the initiation of enforcement order negotiations (versus the *proposed consent orders* that are placed on public notice at the end of negotiations); and,
- (2) all final consent orders and penalty calculations. If by the end of one year it is determined that appropriate penalty calculation documentation is being implemented, this recommendation will be considered completed.

