

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.

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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

<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%

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.

Appendix A: Data Metric Analysis

Attached below are the results of the SRF data metric analyses. All data metrics are analyzed prior to the on-site file review. This provides reviewers with essential advance knowledge of potential problems. It also guides the file selection process as these potential problems highlight areas for supplemental file review.

The initial findings are preliminary observations. They are used as a basis for further investigation during the file review and through dialogue with the state. Where applicable, this analysis evaluates state performance against the national goal and average. Final findings are developed only after evaluating the data alongside file review results and details from conversations with the state. Through this process, initial findings may be confirmed or modified. Final findings are presented in Section III of this report.

Clean Water Act

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Alabama	Count	Universe	Not Counted	Initial Finding	Explanation
1a1	Number of Active NPDES Majors with Individual Permits	Data Verification	State			190				Meets Expectations	
1a2	Number of Active NPDES Majors with General Permits	Data Verification	State			0				Meets Expectations	
1a3	Number of Active NPDES Non-Majors with Individual Permits	Data Verification	State			1,401				State Attention	A count discrepancy exists among the 106 workplan, CMS and the verified data.

1a4	Number of Active NPDES Non-Majors with General Permits	Data Verification	State			15,366				State Attention	A count discrepancy exists between the CMS and the verified data.
1b1	Permit Limits Rate for Major Facilities	Goal	State	>= 95%	98.3%	100%	190	190	0	Meets Expectations	
1b2	DMR Entry Rate for Major Facilities.	Goal	State	>= 95%	97.9%	99.8%	6836	6849	13	Meets Expectations	
1b3	Number of Major Facilities with a Manual Override of RNC/SNC to a Compliant Status	Data Verification	State			19				Meets Expectations	
1c1	Permit Limits Rate for Non-Major Facilities	Informational only	State		67.2%	74.2%	1040	1401	361	Meets Expectations	
1c2	DMR Entry Rate for Non-Major Facilities.	Informational only	State		83.1%	90.7%	10629	11718	1089	Meets Expectations	
1e1	Facilities with Informal Actions	Data Verification	State			2,099				Meets Expectations	
1e2	Total Number of Informal Actions at CWA NPDES Facilities	Data Verification	State			2,204				Meets Expectations	

1f1	Facilities with Formal Actions	Data Verification	State			78					Meets Expectations
1f2	Total Number of Formal Actions at CWA NPDES Facilities	Data Verification	State			77					Meets Expectations
1g1	Number of Enforcement Actions with Penalties	Data Verification	State			55					Meets Expectations
1g2	Total Penalties Assessed	Data Verification	State			\$1,283,250					Meets Expectations
2a1	Number of formal enforcement actions, taken against major facilities, with enforcement violation type codes entered.	Data Verification	State			0					Meets Expectations
5a1	Inspection Coverage - NPDES Majors	Goal metric	State		57.6%	98.9%	188	190	2		Meets Expectations
5b1	Inspection Coverage - NPDES Non-Majors	Goal metric	State		25.6%	27%	378	1401	1023		Meets Expectations
5b2	Inspection Coverage - NPDES Non-Majors with General Permits	Goal metric	State		5.9%	13.9%	2139	15366	13227		Meets Expectations

7a1	Number of Major Facilities with Single Event Violations	Data Verification	State			1				State Attention	The low rate of SEVs will be further examined during the file reviews.
7a2	Number of Non-Major Facilities with Single Event Violations	Informational only	State			1				State Attention	The low rate of SEVs will be further examined during the file reviews.
7b1	Compliance schedule violations	Data Verification	State			85				State Attention	The high rate of compliance schedule violations will be further examined during the file reviews.
7c1	Permit schedule violations	Data Verification	State			1				Meets Expectations	
7d1	Major Facilities in Noncompliance	Review Indicator	State		60.3%	52.1%	99	190	91	Meets Expectations	
7f1	Non-Major Facilities in Category 1 Noncompliance	Data Verification	State			493				Meets Expectations	

7g1	Non-Major Facilities in Category 2 Noncompliance	Data Verification	State			196				Meets Expectations	
7h1	Non-Major Facilities in Noncompliance	Informational only	State			44.8%	627	1401	774	Meets Expectations	
8a1	Major Facilities in SNC	Review indicator metric	State			37				Meets Expectations	
8a2	Percent of Major Facilities in SNC	Review indicator metric	State		20.6%	19.1%	37	194	157	Meets Expectations	
10a1	Major facilities with Timely Action as Appropriate	Goal metric	State		3.6%	0%	0	10	10	State Improvement	The low rate of timely action as appropriate will be further examined during the file reviews.

Clean Air Act

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Alabama (state only)	Count	Universe	Not Counted	Initial Finding	Explanation
1a1	Number of Active Major Facilities (Tier I)	Data Verification	State			316				Meets Expectations	
1a2	Number of Active Synthetic Minors (Tier I)	Data Verification	State			241				Meets Expectations	

1a3	Number of Active NESHAP Part 61 Minors (Tier I)	Data Verification	State			2				Meets Expectations	
1a4	Number of Active CMS Minors and Facilities with Unknown Classification (Not counted in metric 1a3) that are Federally-Reportable (Tier I)	Data Verification	State			3				Meets Expectations	
1a5	Number of Active HPV Minors and Facilities with Unknown Classification (Not counted in metrics 1a3 or 1a4) that are Federally-Reportable (Tier I)	Data Verification	State			0				Meets Expectations	
1a6	Number of Active Minors and Facilities with Unknown Classification Subject to a Formal Enforcement Action (Not counted in metrics 1a3, 1a4 or 1a5) that are Federally-Reportable (Tier II)	Data Verification	State			13				Meets Expectations	
1b1	Number of Active Federally-Reportable NSPS (40 C.F.R. Part 60) Facilities	Data Verification	State			245				Meets Expectations	

1b2	Number of Active Federally-Reportable NESHAP (40 C.F.R. Part 61) Facilities	Data Verification	State			27				Meets Expectations	
1b3	Number of Active Federally-Reportable MACT (40 C.F.R. Part 63) Facilities	Data Verification	State			321				Meets Expectations	
1b4	Number of Active Federally-Reportable Title V Facilities	Data Verification	State			307				Meets Expectations	
1c1	Number of Tier I Facilities with an FCE (Facility Count)	Data Verification	State			571				Meets Expectations	
1c2	Number of FCEs at Tier I Facilities (Activity Count)	Data Verification	State			571				Meets Expectations	
1c3	Number of Tier II Facilities with FCE (Facility Count)	Data Verification	State			11				Meets Expectations	
1c4	Number of FCEs at Tier II Facilities (Activity Count)	Data Verification	State			11				Meets Expectations	
1d1	Number of Tier I Facilities with Noncompliance Identified (Facility Count)	Data Verification	State			27				Meets Expectations	
1d2	Number of Tier II Facilities with Noncompliance Identified (Facility Count)	Data Verification	State			6				Meets Expectations	

1e1	Number of Informal Enforcement Actions Issued to Tier I Facilities (Activity Count)	Data Verification	State			15				Meets Expectations	
1e2	Number of Tier I Facilities Subject to an Informal Enforcement Action (Facility Count)	Data Verification	State			14				Meets Expectations	
1f1	Number of HPVs Identified (Activity Count)	Data Verification	State			6				Meets Expectations	
1f2	Number of Facilities with an HPV Identified (Facility Count)	Data Verification	State			6				Meets Expectations	
1g1	Number of Formal Enforcement Actions Issued to Tier I Facilities (Activity Count)	Data Verification	State			14				Meets Expectations	
1g2	Number of Tier I Facilities Subject to a Formal Enforcement Action (Facility Count)	Data Verification	State			14				Meets Expectations	
1g3	Number of Formal Enforcement Actions Issued to Tier II Facilities (Activity Count)	Data Verification	State			4				Meets Expectations	
1g4	Number of Tier II Facilities Subject to a Formal Enforcement Action (Facility Count)	Data Verification	State			4				Meets Expectations	

1h1	Total Amount of Assessed Penalties	Data Verification	State			\$272,250				Meets Expectations	
1h2	Number of Formal Enforcement Actions with an Assessed Penalty	Data Verification	State			18				Meets Expectations	
1i1	Number of Stack Tests with Passing Results	Data Verification	State			862				Meets Expectations	
1i2	Number of Stack Tests with Failing Results	Data Verification	State			1				Meets Expectations	
1i3	Number of Stack Tests with Pending Results	Data Verification	State			0				Meets Expectations	
1i4	Number of Stack Tests with No Results Reported	Data Verification	State			0				Meets Expectations	
1i5	Number of Stack Tests Observed & Reviewed	Data Verification	State			485				Meets Expectations	
1i6	Number of Stack Tests Reviewed Only	Data Verification	State			378				Meets Expectations	
1j	Number of Title V Annual Compliance Certifications Reviewed	Data Verification	State			341				Meets Expectations	
2a	Major Sources Missing CMS Source Category Code	Review Indicator	State			1				Meets Expectations	Supplemental file selection
3a1	Timely Entry of HPV Determinations	Review Indicator	State			2				State Improvement	Two-thirds of HPVs entered late into AFS (> 60 days)

3a2	Untimely Entry of HPV Determinations	Goal	State	0		4				State Improvement	Two-thirds of HPVs entered late into AFS (> 60 days). Supplemental file selection.
3b1	Timely Reporting of Compliance Monitoring Minimum Data Requirements	Goal	State	100%	80%	94.3%	870	923	53	Meets Expectations	All of the late entries are Title V Annual Compliance Certification reviews. Timeframes range from 61 to 436 days late. Supplemental file selection.
3b2	Timely Reporting of Stack Test Minimum Data Requirements	Goal	State	100%	73.1%	100%	863	863	0	Meets Expectations	
3b3	Timely Reporting of Enforcement Minimum Data Requirements	Goal	State	100%	73.7%	100%	35	35	0	Meets Expectations	
5a	FCE Coverage Major	Goal	State	100%	90.4%	100%	310	310	0	Meets Expectations	
5b	FCE Coverage SM-80	Goal	State	100%	93.4%	100%	201	201	0	Meets Expectations	
5c	FCE Coverage Synthetic Minors (non SM-80)	Goal	State	100%	53.8%	0/0	0	0	0	Meets Expectations	NA
5d	FCE Coverage Minors	Goal	State	100%	26.7%	0/0	0	0	0	Meets Expectations	NA

5e	Review of Title V Annual Compliance Certifications Completed	Goal	State	100%	81.8%	99.7%	306	307	1	Meets Expectations	
7b1	Alleged Violations Reported Per Informal Enforcement Actions (Tier I only)	Goal	State	100%	59.7%	100%	14	14	0	Meets Expectations	
7b2	Alleged Violations Reported Per Failed Stack Tests	Review Indicator	State		40.8%	100%	1	1	0	Meets Expectations	
7b3	Alleged Violations Reported Per HPV Identified	Goal	State	100%	53.4%	100%	6	6	0	Meets Expectations	
8a	HPV Discovery Rate Per Major Facility Universe	Review Indicator	State		4.3%	1.9%	6	316	310	State Attention	Discovery rate is below national average, but EPA makes HPV determinations on behalf of State.
8b	HPV Reporting Indicator at Majors with Failed Stack Tests	Review Indicator	State		20.5%	0%	0	1	1	Meets Expectations	
10a	HPV cases which meet the timeliness goal of the HPV Policy	Review Indicator	State		70.5%	87.5%	7	8	1	State Attention	Only one HPV exceeded the 270-day timeline, and it was just 8 days late. The one source that was untimely was selected as a representative file, and will be discussed with the state during the file review

Resource Conservation and Recovery Act

Metric	Metric Name	Metric Type	Agency	National Goal	National Average	Alabama	Count	Universe	Not Counted	Initial Finding	Comments
1a1	Number of operating TSDFs	Data Verification	State			11				Meets SRF Expectations	
1a2	Number of active LQGs	Data Verification	State			313				Meets SRF Expectations	
1a3	Number of active SQGs	Data Verification	State			1130				Meets SRF Expectations	
1a4	All other active sites	Data Verification	State			3483				Meets SRF Expectations	
1a5	Number of BR LQGs	Data Verification	State			227				Meets SRF Expectations	
1b1	Number of sites inspected	Data Verification	State			294				Meets SRF Expectations	
1b2	Number of inspections	Data Verification	State			301				Meets SRF Expectations	
1c1	Number of sites with new violations during review year	Data Verification	State			203				Meets SRF Expectations	
1c2	Number of sites in violation at any time during the review year regardless of determination date	Data Verification	State			219				Meets SRF Expectations	
1d1	Number of sites with informal enforcement actions	Data Verification	State			46				Meets SRF Expectations	
1d2	Number of informal enforcement actions	Data Verification	State			62				Meets SRF Expectations	
1e1	Number of sites with new SNC during year	Data Verification	State			19				Meets SRF Expectations	

1e2	Number of sites in SNC regardless of determination date	Data Verification	State			25				Meets SRF Expectations	
1f1	Number of sites with formal enforcement actions	Data Verification	State			10				Meets SRF Expectations	
1f2	Number of formal enforcement actions	Data Verification	State			10				Meets SRF Expectations	
1g	Total dollar amount of final penalties	Data Verification	State			\$109,200				Meets SRF Expectations	
1h	Number of final formal actions with penalty in last 1 FY	Data Verification	State			4				Meets SRF Expectations	
2a	Long-standing secondary violators	Review Indicator	State			3				Area for State Attention	Discuss with sta during file review
5a	Two-year inspection coverage for operating TSDFs	Goal	State	100%	88.9%	100%	11	11	0	Meets SRF Expectations	
5b	Annual inspection coverage for LQGs	Goal	State	20%	21.7%	48.9%	111	227	116	Meets SRF Expectations	
5c	Five-year inspection coverage for LQGs	Goal	State	100%	64.2%	100%	227	227	0	Meets SRF Expectations	
5d	Five-year inspection coverage for active SQGs	Informational Only	State		10.9%	20%	226	1130	904	Meets SRF Expectations	
5e1	Five-year inspection coverage at other sites (CESQGs)	Informational Only	State			232				Meets SRF Expectations	
5e2	Five-year inspection coverage at other sites (Transporters)	Informational Only	State			42				Meets SRF Expectations	
5e3	Five-year inspection coverage at other sites (Non-notifiers)	Informational Only	State			6				Meets SRF Expectations	

5e4	Five-year inspection coverage at other sites (not covered by metrics 5a-5e3)	Informational Only	State			453				Meets SRF Expectations	
7b	Violations found during inspections	Review Indicator	State		35.9%	61.9%	179	289	110	Meets SRF Expectations	
8a	SNC identification rate	Review Indicator	State		1.7%	4.8%	14	289	275	Meets SRF Expectations	
8b	Timeliness of SNC determinations	Goal	State	100%	78.7%	85.7%	18	21	3	Area for State Attention	Discuss with sta during file review
10a	Timely enforcement taken to address SNC	Review Indicator	State	80%	83.2%	100%	10	10	0	Meets SRF Expectations	

Appendix B: File Metric Analysis

This section presents file metric values with EPA’s initial observations on program performance. Initial findings are developed by EPA at the conclusion of the file review.

Initial findings are statements of fact about observed performance. They should indicate whether there is a potential issue and the nature of the issue. They are developed after comparing the data metrics to the file metrics and talking to the state.

Final findings are presented above in the CWA Findings section.

Because of limited sample size, statistical comparisons among programs or across states cannot be made.

Clean Water Act

State: Alabama							Year Reviewed: FY 2012
CWA Metric #	Description	Numerator	Denominator	Metric Value	Goal	Initial Findings	Details
2b	Files reviewed where data are accurately reflected in the national data system: Percentage of files reviewed where data in the file are accurately reflected in the national data systems	18	36	50.0%	95%	State Improvement	There are many discrepancies between information in the OTIS DFRs and the file - most commonly related to names and addresses; several did have discrepancies between compliance and enforcement actions.
3a	Timeliness of mandatory data entered in the national data system	0	0	NA	100%	NA	
4a1	Pretreatment compliance inspections and audits	NA	NA	NA	100%	NA	
4a2	Significant industrial user (SIU) inspections for SIUs discharging to non-authorized POTWs	303	303	100.0%	100%	Meets Expectations	

4a3	EPA and state oversight of SIU inspections by approved POTWs	NA	NA	NA	100%	NA	
4a4	Major CSO inspections	NA	NA	NA	100%	NA	
4a5	SSO inspections	NA	NA	NA	100%	NA	
4a6	Phase I MS4 audits or inspections	1	1	100.0%	100%	Meets Expectations	
4a7	Phase II MS4 audits or inspections	5	5	100.0%	100%	Meets Expectations	
4a8	Industrial stormwater inspections	63	63	100.0%	100%	Meets Expectations	
4a9	Phase I and II stormwater construction inspections	750	750	100.0%	100%	Meets Expectations	
4a10	Inspections of large and medium NPDES-permitted CAFOs	86	60	143.3%	100%	Meets Expectations	
4a11	Inspections of non-permitted CAFOs	NA	NA	NA	100%	NA	
4b	Planned commitments completed: CWA compliance and enforcement commitments other than CMS commitments, including work products/commitments in PPAs, PPGs, grant agreements, MOAs, MOUs or other relevant agreements	6	6	100.0%	100%	Meets Expectations	

6a	Inspection reports reviewed that provide sufficient documentation to determine compliance at the facility	34	34	100.0%	100%		While "sufficient" for compliance determinations, many inspection reports are not "complete", i.e., the checklist may be marked as "yes or no" but it's difficult to determine what was evaluated during the inspection and why the facility was compliant or not - there is little or no documentation on how a compliance determination was reached. Many reports do not include important elements such as a narrative describing the field activities and observations, permit status (particularly when the permit has expired), facility description, identifying the water body discharged to, regulatory citations, permit citations, dates and signatures, etc.
6b	Inspection reports completed within prescribed timeframe: Percentage of inspection reports reviewed that are timely	26	34	76.5%	100%	State Improvement	Many inspection reports are not timely using 30 days for a non-sampling inspection and 45 for sampling...2 of these had no date for an inspection report completion, therefore, they are recorded as not timely...
7e	Inspection reports reviewed that led to an accurate compliance determination	31	34	91.2%	100%	Meets Expectations	Meets Expectations

8b	Single-event violation(s) accurately identified as SNC or non-SNC	22	22	100.0%	100%	Meets Expectations	SEVs were not being entered into ICIS....ADEM has apparently made progress in this area and SEVs data are now flowing...
8c	Percentage of SEVs Identified as SNC Reported Timely: Percentage of SEVs accurately identified as SNC that were reported timely	NA	NA	NA	100%	NA	NA - no SEVs were identified as SNC...
9a	Percentage of enforcement responses that return or will return source in SNC to compliance	16	28	57.1%	100%	State Improvement	Many of the enforcement responses have not returned the source to compliance - in several cases, there has been no response to the State's enforcement action and noncompliance continues or noncompliance continues despite the State's actions. There were 3 cases in which compliance schedule violations are ongoing and 1 in which the State escalated but after the review period.
10b	Enforcement responses reviewed that address violations in a timely manner	2	8	25.0%	100%	State Improvement	6 of 8 State enforcement actions were informal with no supporting justification documenting why a formal action was not taken.
11a	Penalty calculations that include gravity and economic benefit: Percentage of penalty calculations reviewed that consider and include, where appropriate, gravity and economic benefit	4	7	57.1%	100%	State Attention	1 muni case with no EB and 1 with partial EB (for failure to sample but not eff vio), 2 older mining cases with no Gravity or EB. Methodologies are now being implemented to better document penalty calculations...

12a	Documentation on difference between initial and final penalty: Percentage of penalties reviewed that document the difference between the initial and final assessed penalty, and the rationale for that difference	5	7	71.4%	100%	State Attention	2 older mining cases with no documentation on the difference between initial and final penalties....
12b	Penalties collected: Percentage of penalty files reviewed that document collection of penalty	8	8	100.0%	100%	Meets Expectations	

Finding Categories

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.

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.

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.

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.

Clean Air Act

State: Alabama				Year Reviewed: FY 2012			
CAA Metric #	CAA File Review Metric Description	Numerator	Denominator	Percentage	Goal	Initial Findings	Details
2b	Accurate MDR data in AFS: Percentage of files reviewed where MDR data are accurately reflected in AFS	23	35	65.7%	100%	State Improvement	Discrepancies between the files and AFS were identified in about one third of the files reviewed.
4a1	Planned evaluations completed: Title V Major FCEs	326	314	103.8%	100%	Meets Requirements	
4a2	Planned evaluations completed: SM-80 FCEs	240	214	112.1%	100%	Meets Requirements	
4b	Planned commitments completed: CAA compliance and enforcement commitments other than CMS commitments	12	12	100.0%	100%	Meets Requirements	
6a	Documentation of FCE elements: Percentage of FCEs in the files reviewed that meet the definition of a FCE per the CMS policy	31	34	91.2%	100%	Meets Requirements	
6b	Compliance Monitoring Reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility: Percentage of CMRs or facility files reviewed that provide sufficient documentation to determine facility compliance	0	34	0.0%	100%	State Improvement	Although compliance monitoring reports (CMRs) provided sufficient documentation to determine compliance at the facility, all CMRs were missing one or more key elements required by the CMS Guidance.
7a	Accuracy of compliance determinations: Percentage of CMRs or facility files reviewed that led to accurate compliance determinations	34	34	100.0%	100%	Meets Requirements	

8c	Accuracy of HPV determinations: Percentage of violations in files reviewed that were accurately determined to be HPVs	9	9	100.0%	100%	Meets Requirements	
9a	Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame: Percentage of formal enforcement responses reviewed that include required corrective actions that will return the facility to compliance in a specified time frame	14	14	100.0%	100%	Meets Requirements	
10a	Timely action taken to address HPVs: Percentage of HPV addressing actions that meet the timeliness standard in the HPV Policy	7	8	87.5%	100%	Meets Requirements	
10b	Appropriate Enforcement Responses for HPVs: Percentage of enforcement responses for HPVs that appropriately address the violations	8	8	100.0%	100%	Meets Requirements	
11a	Penalty calculations reviewed that consider and include gravity and economic benefit: Percentage of penalty calculations reviewed that consider and include, where appropriate, gravity and economic benefit	0	14	0.0%	100%	State Improvement	ADEM did not consider and document economic benefit using the BEN model or other method which produces results consistent with national policy and guidance.
12a	Documentation on difference between initial and final penalty and rationale: Percentage of penalties reviewed that document the difference between the initial and final assessed penalty, and the rationale for that difference	5	14	35.7%	100%	State Improvement	The rationale for any differences between the initial and final penalty is not consistently documented.

12b	Penalties collected: Percentage of penalty files reviewed that document collection of penalty	14	14	100.0%	100%	Meets Requirements	
Finding Category Descriptions							
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.							
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.							
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.							
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.							

Resource Conservation and Recovery Act

State: Alabama				Year Reviewed: FY 2012			
RCRA Metric #	Name and Description	Numerator	Denominator	Metric %	Goal	Initial Findings	Details
2b	Accurate entry of mandatory data: Percentage of files reviewed where mandatory data are accurately reflected in the national data system	8	35	22.9%	100%	Area for Improvement	
3a	Timely entry of mandatory data: Percentage of files reviewed where mandatory data are entered in the national data system in a timely manner	0	0	N/A	100%		Cannot make a finding, no method to determine timeliness data entry in file review.
4a	Planned non-inspection commitments completed: Percentage of non-inspection commitments completed in the review year	3	3	100.0%	100%	Meets Requirements	The enforcement activities in the grant workplan are projections, rather than commitments, which are outside the control of ADEM. Counting actual activities rather than grant categories, ADEM completed 99% of the grant projections.
6a	Inspection reports complete and sufficient to determine compliance: Percentage of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance	29	31	93.5%	N/A	Meets Requirements	
6b	Timeliness of inspection report completion: Percentage of inspection reports reviewed that are completed in a timely manner	32	34	94.1%	100%	Meets Requirements	
7a	Accurate compliance determinations: Percentage of inspection reports reviewed that led to accurate compliance determinations	35	35	100.0%	100%	Meets Requirements	

8c	Appropriate SNC determinations: Percentage of files reviewed in which significant noncompliance (SNC) status was appropriately determined during the review year	22	25	88.0%	100%	Area for Attention	Three facilities were not identified as SNC, and were addressed through informal enforcement by the state
9a	Enforcement that returns SNC sites to compliance: Percentage of enforcement responses that have returned or will return a site in SNC to compliance	19	19	100.0%	100%	Meets Requirements	
9b	Enforcement that returns SV sites to compliance: Percentage of enforcement responses that have returned or will return a secondary violator to compliance	12	12	100.0%	100%	Meets Requirements	
10b	Appropriate enforcement taken to address violations: Percentage of files with enforcement responses that are appropriate to the violations	32	35	91.4%	100%	Meets Requirements	Three facilities were not identified as SNC, and were addressed through informal enforcement by the state
11a	Penalty calculations include gravity and economic benefit: Percentage of reviewed penalty calculations that consider and include, where appropriate, gravity and economic benefit	3	18	16.7%	100%	Area for Improvement	
12a	Documentation on difference between initial and final penalty: Percentage of penalties reviewed that document the difference between the initial and final assessed penalty, and the rationale for that difference	0	14	0.0%	100%	Area for Improvement	No initial penalties for review to compare with final order
12b	Penalties collected: Percentage of files that document collection of penalty	15	16	93.8%	100%	Meets Requirements	

Finding Categories

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.

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.

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.

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.

Appendix C: File Selection

Files are selected according to a standard protocol using a web-based file selection tool. These are designed to provide consistency and transparency to the process. Based on the description of the file selection process below, states should be able to recreate the results in the table.

Clean Water Act

File Selection Process

Using the OTIS File Selection Tool, 40 FY 2012 Representative Files were selected for review as part of Round 3 of the Alabama State Review Framework (SRF) review to be conducted from May 13 - 17, 2013. As specified in the SRF File Selection Protocol, between 35 and 40 files are to be selected for a state with a universe greater than 1,000 facilities. Since Alabama's universe is greater than 1,000; 40 files were selected for the SRF review and between 35 and 40 files will be reviewed during the on-site file review. The Permit Quality Review (PQR)/SRF Integrated File Selection Process calls for additional files to be selected and reviewed as part of the integrated review. Common files that will be reviewed by permits and enforcement staff include files selected for the PQR core review and additional files randomly selected from the Regional Topics.

There are 190 major individual permits, 1,401 non-major individual permits and 15,366 non-major general permits in the Alabama universe of facilities. Of the 40 files to review: 55 percent (or 22) of the files selected are majors, and 45 percent (or 18) of the files are non-majors.

For the major facilities, the Alabama universe was sorted based on Inspections, Significant Noncompliance (SNC), Single Event Violations (SEV), Violations, Informal/Formal Actions and Penalties. Twenty-two major facilities were then randomly selected for a file review.

For non-major facilities, the Alabama universe was also sorted based on Inspections, SNC, SEVs, Violations, Informal/Formal Actions and Penalties. Eighteen non-major facilities were then randomly selected for a file review.

Using the sorting criteria noted above, the 40 facilities selected for the SRF file review include facilities with a total of 37 inspections, 28 violations, 1 SEV, 17 SNCs, 22 informal actions, 9 formal actions, and 9 penalties.

Of the 40 files selected for the SRF review, 14 of the files include those selected for the integrated PQR/SRF review as follows: 9 are Core Permits, and 5 permits are covered by Regional Topics (i.e., Compliance Schedules, Quarry/Sand and Gravel Mines, and Coal Bed Methane). The remaining files were selected for SRF review purposes; however, several files selected for the SRF review will include a focus on major facilities with timely action as appropriate and storm water construction general permits.

CWA File Selection Table

#	ID Number	Facility Name	City	Universe	Permit Components	Inspections	Violation	Single Event Violations	SNC	Informal Actions	Formal Actions	Penalties
1	AL0000116	DECATUR FACILITY (ASCEND)	DECATUR	Major		1	No	0	No	0	0	0
2	AL0000868	ARCLIN USA INC	RIVER FALLS	Major		1	Yes	0	SNC	0	0	0
3	AL0002844	POWER SOUTH ENERGY COOPERATIVE	ANDALUSIA	Non-Major		1	Yes	0	Category 1	1	0	0
4	AL0020044	ENTERPRISE SOUTHEAST LAGOON	ENTERPRISE	Major	POTW, Pretreatment	2	Yes	0	SNC	0	1	16400
5	AL0020150	GUNTERSVILLE WWTP	GUNTERSVILLE	Major	Biosolids, POTW, Pretreatment	2	Yes	0	No	1	0	0
6	AL0020991	BRIDGEPORT LAGOON	BRIDGEPORT	Major	POTW, Pretreatment	2	Yes	0	No	2	0	0
7	AL0021997	MASLAND CARPETS INC	ATMORE	Major		1	Yes	0	No	1	0	0
8	AL0022209	PHENIX CITY WWTP	PHENIX CITY	Major	POTW, Pretreatment	1	Yes	1	No	1	0	0
9	AL0022764	OMMUSSEE CREEK (DOTHAN)	DOTHAN	Major	Biosolids, POTW, Pretreatment	1	No	0	No	0	0	0
10	AL0023116	HELENA WWTP	HELENA	Major	POTW, Pretreatment	1	Yes	0	SNC	1	0	0
11	AL0024589	COLUMBIAN A WWTP	COLUMBIAN A	Major	POTW, Pretreatment	1	Yes	0	No	0	0	0

1 2	AL002478 3	J AND M CYLINDERS GASES INC	DECATUR	Non- Major		1	Yes	0	Category 1	1	0	0
1 3	AL002598 4	TUSKEGEE SOUTH WPCP	TUSKEGEE	Major	POTW, Pretreatme nt	1	Yes	0	SNC	0	1	175000
1 4	AL002659 0	JIM WALTER MINE 4	BROOKWOO D	Major		2	Yes	0	SNC	1	0	0
1 5	AL002772 3	PINE CREEK WASTEWAT ER TRMT PLT	PRATTVILLE	Major	Biosolids, POTW, Pretreatme nt	1	Yes	0	No	1	0	0
1 6	AL002797 9	DEEP SEA FOODS INC	BAYOU LA BATRE	Non- Major		1	Yes	0	Category 1	1	0	0
1 7	AL004084 3 (Core)	HANCEVILL E FACILITY (AM. PROTEIN)	HANCEVILL E	Major		3	Yes	0	No	1	0	0
1 8	AL004410 5	BRUNDIDGE WWTP	BRUNDIDGE	Non- Major	POTW, Pretreatme nt	2	Yes	0	No	1	0	0
1 9	AL004750 3	EVERGREEN LAGOON	EVERGREEN	Major	POTW, Pretreatme nt	1	Yes	0	No	0	0	0
2 0	AL005013 0	OPELIKA WESTSIDE WWTP	OPELIKA	Major	POTW, Pretreatme nt	1	Yes	0	No	0	0	0
2 1	AL005042 3	CULLMAN WWTP	CULLMAN	Major	Biosolids, POTW, Pretreatme nt	2	Yes	0	SNC	1	0	0
2 2	AL005093 8	CALERA POLLUTION CONTROL PLANT	CALERA	Major	POTW, Pretreatme nt	1	Yes	0	SNC	1	0	0
2 3	AL005433 0 (Core)	FOX VALLEY APARTMEN TS LAGOON	MAYLENE	Non- Major		0	Yes	0	Category 1	1	0	0
2 4	AL005463 1	CLANTON CITY OF	CLANTON	Major	POTW, Pretreatme	1	Yes	0	SNC	1	0	0

					nt							
25	AL0055859	MOBILE FACILITY (SHELL)	SARALAND	Major		1	No	0	No	0	0	0
26	AL0056197	CUMBERLAND HEALTH AND REHAB	BRIDGEPORT	Non-Major		1	Yes	0	No	0	0	0
27	AL0056871	CAHABA PARK WEST LAGOON	SELMA	Non-Major		1	Yes	0	Category 1	2	0	0
28	AL0057657	ATTALLA WASTEWATER TREATMENT LAGOON	RAINBOW CITY	Major	POTW, Pretreatment	1	Yes	0	SNC	1	0	0
29	AL0057720	AUTAUGAVILLE WWTP	AUTAUGAVILLE	Non-Major	POTW, Pretreatment	0	Yes	0	Category 1	0	1	2400
30	AL0058408	OXFORD TULL C ALLEN WWTP	OXFORD	Major	POTW, Pretreatment	1	Yes	0	SNC	0	1	20450
31	AL0060216	MAXWELL CROSSING FACILITY	BUHL	Non-Major		1	No	0	No	0	0	0
32	AL0061786	MINE NO. 1 (TACOA MINERALS)	MONTEVALLO	Non-Major		1	No	0	No	0	1	75000
33	AL0068900	NORTH ALABAMA SAND AND GRAVEL	PHIL CAMPBELL	Non-Major		2	No	0	No	0	1	40000
34	AL0073237	MALBIS PIT	SPANISH FORT	Non-Major		1	No	0	No	1	0	0
35	AL0075671	MADISON MATERIALS GUNTERSVILLE QUARRY	GUNTERSVILLE	Non-Major		1	No	0	No	1	1	16250

3 6	AL007775 5	RUSSELL MATERIALS PIT	KENT	Non- Major		1	No	0	No	0	0	0
3 7	AL007814 0	COOSA VALLEY WATER TRMT PLT	RAGLAND	Non- Major		0	Yes	0	Categor y 1	2	0	0
3 8	ALR10732 6	HONS AT SAVANNAH WOODS	SPANISH FORT	Non- Major		3	No	0	No	3	0	0
3 9	ALR16EB XG	LESLIE GREENE CUTRATE GRADING	PHENIX CITY,	Non- Major		2	No	0	No	0	2	27000
4 0	ALR16EG RK	PARK PLACE	ENTERPRISE	Non- Major		3	No	0	No	0	1	24800

Clean Air Act

File Selection Process

Using the OTIS File Selection Tool, 35 files were selected for review during the April 2013 file review visit (28 representative and 7 supplemental). As specified in the File Selection Protocol, since the Alabama universe includes 584 sources, 30 to 35 files must be reviewed.

Representative Files

The file review will focus on sources with compliance and enforcement activities occurring during the review period (FY12). Therefore, the targeted number of representative files to review was determined to be approximately 30, with 5 available for supplemental review.

Enforcement files: In order to select files with enforcement related activity, the facility list was sorted to identify those sources that had a formal enforcement action during the review period. There were 14 Tier 1 sources with a formal enforcement action in FY12, so all of these were selected for review.

Compliance files: There were about 570 remaining sources with full compliance evaluations (FCEs) during FY12. This list was sorted by universe (major, SM, etc.), and every 38th file was selected, resulting in 14 additional representative files.

Supplemental Files

Metric 2a: The Data Metrics Analysis (DMA) indicated 1 major source that was missing the CMS source category code, so this was selected for supplemental review (0107100010).

Metric 3a2: The DMA identified 4 sources that had an untimely High Priority Violation (HPV) entry in AFS. All but one had already been selected as representative files because they had a formal enforcement action. The remaining source (0100300039) took 107 days to enter the HPV, and it did not have a formal enforcement action, so it was selected for supplemental review.

Metric 3b1: The DMA identified 53 sources with late compliance monitoring activity data entry. All of these sources had a late Title V Annual Compliance Certification (ACC) review, so two of these were selected for supplemental review (0109708026 & 0111700004) to facilitate further discussion with the State during the file review.

Universe Distribution: A review of the representative and supplemental files selected indicated a preponderance of Major sources, and only 7 SM sources, so 3 additional SM sources were randomly selected for supplemental review (0100100005, 0105900010, & 0110100025), bringing the total number of files to 35.

CAA File Selection Table

	ID Number	City	ZIP CODE	LCON	Universe	FCEs	Stack Tests Failed	Violations	HPVs	Informal Actions	Formal Actions	Penalties	Flag Value
1	0100100001	PRATTVILLE	36067	00	Major	1	0	0	0	0	0	0	Representative
2	0100100005	PRATTVILLE	36067	00	Synthetic Minor	1	0	0	0	0	0	0	Supplemental
3	0100300039	FAIRHOPE	36532	00	Major	1	0	1	1	1	0	0	Supplemental
4	0101500068	JACKSONVILLE	36265	00	Synthetic Minor	1	0	0	0	0	0	0	Representative
5	0101900001	LEESBURG	35983	00	Major	1	0	1	0	0	1	24000	Representative
6	010250S003	FULTON	36446	00	Major	1	0	1	0	0	1	4000	Representative
7	010270S008	ASHLAND	36251	00	Major	1	0	0	0	0	0	0	Representative
8	0104500014	DOTHAN	36303	00	Major	1	0	0	0	0	0	0	Representative
9	0105300082	ATMORE	36502	00	Synthetic Minor	1	0	0	0	0	0	0	Representative
10	0105300086	NOT GIVEN		00	Tier I Minor	1	0	1	0	0	1	17500	Representative
11	0105300088	EVERGREEN		00	Major	1	0	1	0	0	1	17500	Representative
12	0105300090	BROOKLYN	36401	00	Major	1	0	1	0	0	1	7500	Representative
13	0105900010	RED BAY	35582	00	Synthetic Minor	1	0	0	0	0	0	0	Supplemental
14	0107100010	SCOTTSBORO	35769	00	Major	1	0	0	0	0	0	0	Supplemental
15	0107900001	COURTLAND	35618	00	Major	1	0	0	0	0	0	0	Representative
16	0108300025	ATHENS	35611	00	Synthetic Minor	1	0	0	0	0	0	0	Representative
17	0109100012	DEMOPOLIS	36732	00	Synthetic Minor	0	0	1	0	0	1	10000	Representative
18	0109500014	GUNTERSVILLE	35976	00	Major	1	0	1	0	1	1	10000	Representative
19	0109700009	MOBILE	36601	00	Major	1	0	0	0	0	0	0	Representative
20	0109700095	CALVERT	36513	00	Major	1	1	1	1	2	1	75000	Representative
21	0109700106	CALVERT	36513	00	Major	1	0	1	1	1	1	20000	Representative
22	0109704005	NOT IN A CITY	36606	00	Major	1	0	1	1	1	1	10000	Representative
23	0109708026	THEODORE	36582	00	Major	1	0	0	0	0	0	0	Supplemental
24	0110100025	MONTGOMERY	36108	00	Synthetic Minor	1	0	0	0	0	0	0	Supplemental

25	0110100033	MONTGOMERY	36108	00	Synthetic Minor	1	0	0	0	0	0	0	0	Representative
26	0110100078	MONTGOMERY	36104	00	Major	1	0	0	0	0	0	0	0	Representative
27	0110300005	DECATUR	35602	00	Major	1	0	1	0	1	1	10000	Representative	
28	0110300009	DECATUR	35609	00	Major	1	0	1	0	0	1	6000	Representative	
29	0111100026	ROANOKE	36274	00	Synthetic Minor	1	0	0	0	0	0	0	0	Representative
30	0111300004	NOT IN A CITY	36851	00	Major	1	0	1	1	1	1	16000	Representative	
31	0111500028	RAGLAND	35131	00	Major	1	0	0	0	0	0	0	0	Representative
32	0111700004	CALERA	35040	00	Major	1	0	0	0	0	0	0	0	Supplemental
33	0112500058	TUSCALOOSA	35401	00	Major	1	0	0	0	0	0	0	0	Representative
34	0112500111	TUSCALOOSA	35401	00	Synthetic Minor	1	0	0	0	0	0	0	0	Representative
35	0112900022	MCINTOSH	36553	00	Major	1	0	1	1	1	1	25000	Representative	

Resource Conservation and Recovery Act

File Selection Process

Using the OTIS File Selection Tool, 35 files were selected for review in the April 2013 file review. As outlined in the SRF File Selection Protocol, between 30 and 35 files must be reviewed for states with between 301 and 1000 compliance and enforcement activities during the review period. ADEM had 322 RCRA activities during FY2012 review period, and a total of 35 files were selected for review. The general process used to identify the files is provided below.

A random, representative selection of facilities was completed using the OTIS File Selection Tool. As outlined in the SRF File Selection Protocol, at least half of the facilities selected should have compliance monitoring activity, and if possible, half should have enforcement activity.

Enforcement files - In order to identify files with enforcement related activity, the list of RCRA facilities with FY2012 activities was sorted to identify those facilities which had a final formal enforcement action during the review period. There were ten facilities with a formal enforcement action finalized in FY2012 in Alabama, and all ten facilities were selected for review.

Compliance Monitoring files - For the remaining 25 files, the OTIS File Selection Tool was then sorted on the following categories:

- SNC - Ten files were selected for facilities that were identified as SNCs in FY2012, but did not have formal enforcement actions taken during that fiscal year;
- Informal Action - Ten facilities that received informal enforcement actions (but were not SNCs) in FY2012 were then selected;
- Evaluations - The remaining five files were then selected from facilities that had inspections during FY2012, but did not have any informal or formal enforcement action during that period.

In all instances, a mix of RCRA facility types was included in the selection. There were no supplemental files selected as part of the file review.

RCRA File Selection Table

	Facility Name	Program ID	City	Evaluation	Violation	SNC	Informal Action	Formal Action	Penalty	Universe
1	TECHTRIX, INC	ALD982167678	GADSDEN	1	20	1	1	1	0	LQG
2	THYSSENKRUPP STEEL USA, LLC	ALR000042689	CALVERT	1	13	1	1	1	15,000	LQG
3	PLAINS PIPELINE, LP	ALR000049700	EIGHT MILE	1	10	1	1	1	19,300	LQG
4	LP EVERGREEN	ALD000653097	EVERGREEN	0	0	1	1	1	0	SQG
5	ALABAMA STATE PORT AUTHORITY- AWTC SITE	ALD058221326	MOBILE	1	3	1	1	1	8,400	TSD(LDF)
6	DUNBARTON CORPORATION REDIFRAME DIVISION	ALR000012674	DOTHAN	0	0	1	0	1	0	LQG
7	BERG SPIRAL PIPE	ALR000044453	MOBILE	0	0	1	0	1	11,500	LQG
8	AAR PRECISION SYSTEMS - HUNTSVILLE	ALD084948157	HUNTSVILLE	0	0	0	0	1	24,000	LQG
9	YOUNG OIL SERVICE	ALR000000364	OAKMAN	0	0	0	0	1	0	OTH
10	U.S. ARMY CENTER OF EXCELLENCE	AL6210020776	FORT RUCKER	0	1	0	0	1	31,000	TSD(LDF)
11	NEXEO SOLUTIONS LLC	OHR000162800	DUBLIN	2	2	2	2	0	0	OTH
12	CLEAN TIDE CONTAINER	ALR000043976	ROBERTSDALE	1	7	2	2	0	0	SQG
13	METAL MANAGEMENT ALABAMA INC	ALR000014431	BIRMINGHAM	2	6	1	1	0	0	CES
14	UNIVERSITY OF ALABAMA AT BIRMINGHAM	ALD063690705	BIRMINGHAM	1	15	1	1	0	0	LQG
15	ALFAB INC	ALD983171638	ENTERPRISE	1	15	1	1	0	0	LQG
16	GRAVES PLATING COMPANY, INC	ALD004012050	FLORENCE	1	11	1	1	0	0	LQG

17	STELLA-JONES CORPORATION	ALD983166653	WARRIOR	1	10	1	1	0	0	LQG
18	EUROFINS MWG OPERON	ALR000038919	HUNTSVILLE	1	16	1	1	0	0	LQG
19	PI PROTEOMICS LLC	ALR000041202	HUNTSVILLE	1	9	1	1	0	0	SQG
20	TENNESSEE VALLEY AUTHORITY ENVIRONMENTAL RESEARCH CENTER	AL3640090004	MUSCLE SHOALS	0	7	1	1	0	0	TSD(LDF)
21	TITAN COATINGS, INC	AL0000266569	BESSEMER	1	17	0	1	0	0	LQG
22	EMERSON FABRICATION GROUP LLC- PAINT B2	ALR000051490	ONEONTA	1	13	0	1	0	0	LQG
23	WELLBORN CABINET, INC	ALD031482037	ASHLAND	1	12	0	1	0	0	LQG
24	UTILITY TRAILER MANUFACTURING COMPANY	ALD077911915	ENTERPRISE	1	9	0	1	0	0	LQG
25	MOBIS ALABAMA LLC	ALR000034207	MONTGOMERY	1	14	0	1	0	0	LQG
26	ALTEC INDUSTRIES INC	ALD004001731	BIRMINGHAM	1	13	0	1	0	0	LQG
27	METALPLATE GALVANIZING, L.P	ALD003398575	BIRMINGHAM	1	7	0	1	0	0	LQG
28	GERMAN MOTOR WORKS LLC	ALR000051045	ENTERPRISE	1	2	0	1	0	0	OTH
29	EMERSON FABRICATION BLOUNTSVILLE LLC	ALR000047878	BLOUNTSVILLE	1	17	0	1	0	0	SQG
30	ANNISTON ARMY DEPOT	AL3210020027	ANNISTON	1	4	0	1	0	0	TSD(COM)
31	TETLP-CODEN	ALR000034769	CODEN	1	4	0	0	0	0	CES
32	FONTAINE TRAILER MILITARY PRODUCTS	ALR000009308	JASPER	1	10	0	0	0	0	LQG
33	PEMCO WORLD AIR SERVICES	ALD009825944	DOTHAN	1	9	0	0	0	0	LQG

34	SOUTHEAST ALABAMA FABRICARE INC	ALR000026864	DOTHAN	1	8	0	0	0	0	SQG
35	T.R. MILLER MILL COMPANY, INC	ALD008161416	BREWTON	2	7	0	0	0	0	TSD(LDF)

Appendix D: Status of Past SRF Recommendations

During the Round 1 and 2 SRF reviews of Alabama’s compliance and enforcement programs, EPA Region 4 recommended actions to address issues found during the review. The following table contains all outstanding recommendations for Round 1, and all completed and outstanding actions for Round 2. The statuses in this table are current as of Select date.

For a complete and up-to-date list of recommendations from Rounds 1 and 2, visit the [SRF website](#).

	Status	Due Date	Media	E#	Element	Finding	Recommendation
ROUND 1	Long Term Resolution	9/30/2010	CAA	E7	Penalty Calculations	No written penalty policy	It is recommended that ADEM develop a comprehensive penalty policy.
ROUND 1	Long Term Resolution	9/30/2010	CAA	E8	Penalties Collected	ADEM does not document how they calculate penalties.	ADEM needs to document its implementation of the six factors used when determining a penalty.
ROUND 1	Not Completed in Round 1 - Identified in Round 2	9/30/2010	CWA	E4	SNC Accuracy	False SNC data entries impacting Watchlist	ADEM should develop and submit to EPA for review procedures to improve the quality of data entry so that ICIS-NPDES can accurately identify SNCs and prevent the identification of false SNCs.
ROUND 1	Long Term Resolution	9/30/2010	CWA	E7	Penalty Calculations	Need for a written penalty policy	ADEM should develop a comprehensive written penalty policy
ROUND 1	Long Term Resolution	9/30/2010	CWA	E8	Penalties Collected	Need for a written penalty policy	ADEM should develop a comprehensive written penalty policy
ROUND 1	Not Completed in Round 1 - Identified in Round 2	9/30/2010	CWA	E10	Data Timely	Data entry issues	Alabama should ensure timely implementation of the NMS.

ROUND 1	Not Completed in Round 1 - Identified in Round 2	9/30/2010	CWA	E11	Data Accurate	Data entry issues	Alabama should continue to utilize the current standard operating procedures, or update it as necessary, for entering all required data into PCS both timely and accurately until NMS can be relied on.
ROUND 1	Not Completed in Round 1 - Identified in Round 2	9/30/2010	RCRA	E6	Timely & Appropriate Actions	SNC identification issues	EPA recommends that ADEM closely review the RCRA Enforcement Response Policy for the appropriate identification of SNC facilities, as well to determine the appropriate response to violations at RCRA facilities.
ROUND 1	Long Term Resolution	9/30/2010	RCRA	E7	Penalty Calculations	Lack of a written penalty policy	ADEM should develop a comprehensive written penalty policy
ROUND 1	Long Term Resolution	9/30/2010	RCRA	E8	Penalties Collected	No written penalty policy	ADEM should develop a comprehensive written penalty policy
ROUND 2	Completed	12/31/2011	CAA	E2	Data Accuracy	The state's reporting of the compliance status of HPV sources is not consistent with national policy.	ADEM should implement procedures that ensure that the compliance status and HPV status codes are properly entered into AFS consistent with national HPV Policy. Reviews indicate that ADEM is accurately reporting the compliance status of sources into AFS.
ROUND 2	Long Term Resolution	9/30/2013	CAA	E11	Penalty Calculation Method	Alabama does not maintain penalty documentation in their enforcement files, and no other penalty calculations were provided to EPA upon request.	Alabama should develop and implement procedures for the documentation of initial and final penalty calculation, including both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.

ROUND 2	Long Term Resolution	9/30/2013	CWA	E11	Penalty Calculation Method	Alabama does not maintain penalty documentation in their enforcement files, and no other penalty calculations were provided to EPA upon request.	Alabama should develop and implement procedures for the documentation of initial and final penalty calculation, including both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.
ROUND 2	Long Term Resolution	9/30/2013	CWA	E12	Final Penalty Assessment and Collection	Alabama did not provide EPA with documentation of the rationale between their initial and assessed penalty.	Alabama should develop and implement procedures for the documentation of initial and final penalty calculation, including both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.
ROUND 2	Completed	12/31/2011	CWA	E1	Data Completeness	Upon examination of the MDRs in PCS for Alabama, it was determined that the data was not complete.	ADEM should develop and submit to EPA for review a protocol that ensures data is entered completely. Region 4's FY 10 end-of-year review found that the State met the required 95% entry level for every month in FY 10. Region 4 confirmed that data in ICIS largely reflects the same information in NMS for FY 11.
ROUND 2	Completed	3/31/2012	CWA	E4	Completion of Commitments	Six grant commitments were not met.	ADEM should promptly take actions to fulfill the commitments in the CWA §106 Grant Workplan and the requirements of the EPA/ADEM NPDES MOA. Region 4 confirmed that ADEM was in full compliance with their FY11 grant commitments

ROUND 2	Completed	4/17/2013	CWA	E6	Quality of Inspection Reports	The review identified issues with the completeness and timeliness of the state's inspection reports.	ADEM submitted a revised EMS to EPA on April 17, 2013, which adequately addresses the recommendation on this finding that two inspection report timeframes be clearly incorporated and implemented through the CWA EMS: one for non-sampling inspections and another for sampling inspections that depend on laboratory results.
ROUND 2	Completed	6/30/2012	CWA	E8	Identification of SNCs	Alabama does not adequately identify and report SNCs into the national database.	ADEM should develop and submit to EPA for review procedures to improve the quality of data entry so that ICIS-NPDES can accurately identify SNCs and prevent the identification of false SNCs. Region 4 has verified that ADEM has done an outstanding job reducing false SNCs by improving their DMR entry rates.
ROUND 2	Completed	12/31/2011	CWA	E10	Timely & Appropriate Actions	Alabama does not take timely enforcement action for their SNCs in accordance with CWA policy.	ADEM should implement procedures to ensure that timely enforcement is taken in accordance with CWA policy. Progress by ADEM has been observed and it no longer appears to be a systemic issue.
ROUND 2	Completed	6/30/2012	RCRA	E8	Identification of SNCs	Alabama is not entering the required SNC information into RCRAInfo in a timely manner.	ADEM should ensure that the timelines in the RCRA Enforcement Response Policy (ERP) are met. Region 4 reviews in FY2010 and FY2011 showed the timely SNC entry rate was 94.4% and 100% respectively.
ROUND 2	Completed	9/30/2011	RCRA	E10	Timely & Appropriate Actions	Timely enforcement response for SNC violations is a continuing concern for Alabama.	ADEM should ensure that the timelines in the RCRA Enforcement Response Policy are met. A review of FY 2010 data in RCRAInfo showed a pattern of timely enforcement actions.

ROUND 2	Long Term Resolution	9/30/2013	RCRA	E11	Penalty Calculation Method	Alabama does not maintain penalty documentation in their enforcement files, and no other penalty calculations were provided to EPA upon request.	Alabama should develop and implement procedures for the documentation of initial and final penalty calculation, including both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.
ROUND 2	Long Term Resolution	9/30/2013	RCRA	E12	Final Penalty Assessment and Collection	Alabama did not provide EPA with documentation of the rationale between their initial and assessed penalty.	Alabama should develop and implement procedures for the documentation of initial and final penalty calculation, including both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.

Appendix E: Program Overview

Appendix F: SRF Correspondence

Kick Off Letter

March 22, 2013

Mr. Lance R. LeFleur
Director
Alabama Department of
Environmental Management
Post Office Box 301463
Montgomery, Alabama 36130-4163

Dear Director LeFleur:

As we discussed last Fall during our annual visit with you and your staff, Region 4 is initiating a review this year of the enforcement and compliance programs of the Alabama Department of Environmental Management (ADEM) using the Round 3 State Review Framework (SRF) protocol. The review will look at ADEM's Clean Air Act (CAA) Stationary Source program, Resource Conservation and Recovery Act (RCRA) Subtitle C program and the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) program, which will include an NPDES Permit Quality Review (PQR) along with the Round 3 CWA SRF. The SRF and NPDES PQR will be conducted by regional staff and will be based on inspection and enforcement activities from federal fiscal year 2012 and from permitting actions taken during federal fiscal years 2010, 2011, 2012 and 2013.

While discussions are beginning between our staff and yours regarding logistics and scheduling, we thought it would be helpful to provide additional background and context for the upcoming review.

SRF Background

The SRF is a continuation of a national effort that allows EPA to ensure that State agencies meet agreed-upon minimum performance levels in providing environmental and public health protection. The SRF looks at twelve program elements covering data (completeness, timeliness, and quality); inspections (coverage and quality); identification of violations; enforcement actions (appropriateness and timeliness) and penalties (calculation, assessment and collection). The review is conducted in three phases: analyzing information from the national data systems, reviewing a limited set of state files, and the development of findings and recommendations.

Alabama's CAA, RCRA and CWA NPDES enforcement and compliance programs were reviewed under the SRF protocol in 2006 and 2010. A copy of these reports can be found on the SRF website at: <http://www.epa.gov/compliance/state/srf/>

Permit Quality Review and the Integrated Review Background

EPA reviews state NPDES programs every four years as part of the PQR process. The PQR assesses the State's implementation of the requirements of the NPDES program as reflected in the permit and other supporting documents (e.g., fact sheet, calculations, etc.).

As part of the Clean Water Act Action Plan, the Office of Water (OW) and the Office of Enforcement and Compliance Assurance (OECA) have developed a process to integrate oversight of state NPDES permitting and enforcement programs by integrating the SRF and the PQR at the regional level. In FY2011, a workgroup was formed to revise the PQR process, and develop guidance for implementation of these reviews. The revised PQR process will continue to assess how well states implement NPDES program requirements as reflected in permits and other supporting documents, and shifts responsibility for conducting reviews from EPA Headquarters to the regional offices. This integrated approach will also provide a better appreciation of the work and challenges of a state NPDES program by coordinating the SRF and PQR processes, and allow increased transparency by making the PQR and SRF results publically available on EPA's website.

For your information, a Permitting for Environmental Results review of Alabama's NPDES program was conducted in 2005. The resulting report is available on the EPA website at: http://www.epa.gov/npdes/pubs/alabama_final_profile.pdf. The Office of Wastewater Management, Water Permits Division at EPA Headquarters performed the most recent PQR for Alabama in November of 2010; a report detailing the findings of that PQR is pending.

Overview of the Process for Reviews

Staff from the Region's Office of Environmental Accountability (OEA) and the Water Protection Division will be conducting the SRF/PQR integrated review. As mentioned previously the SRF will also include a review of the State's CAA and RCRA programs. An integral part of the integrated review process is the visit to state agencies. State visits for this review will include:

- Discussions between Region 4 and ADEM program managers and staff
- Examination of data in EPA and ADEM data systems
- Review of selected permitting, inspection and enforcement files and policies

The EPA Region 4 Integrated SRF/PQR Review Team members, their responsibilities, and contact information are as follows:

- Becky Hendrix – SRF Review Coordinator: (404) 562-8342; hendrix.becky@epa.gov
- Mark Fite – CAA SRF Technical Authority (404) 562-9740; fite.mark@epa.gov
- Shannon Maher – RCRA SRF Technical Authority (404) 562-9623; maher.shannon@epa.gov
- Ron Mikulak – CWA SRF Technical Authority (404) 562-9233; mikulak.ronald@epa.gov
- Alicia Thomas – PQR/Wastewater: (404) 562-8059; thomas.alicia@epa.gov

- Sam Sampath – PQR/Pesticides and Industrial Stormwater: (404) 562-9229; sampath.sam@epa.gov
- Michael Mitchell – PQR/Municipal Separate Storm Sewer Systems and construction General Permits: (404) 562-9303; mitchell.michael@epa.gov
- David Phillips – PQR/Industrial Pretreatment: (404) 562-9773; phillips.david@epa.gov

To facilitate the on-site file and permit review and to ensure that we maintain effective and open communication between our offices, we will be coordinating with program contacts identified by your management. We will also work closely with Marilyn Elliott as the point of contact for management review.

Following the SRF and PQR file reviews, which will be coordinated with your staff and are tentatively scheduled for April and May, Region 4 will summarize findings and recommendations in a draft report. Your management and staff will be provided an opportunity to review the draft report and provide a response to the findings, which will be incorporated in the final report.

Region 4 and ADEM are partners in carrying out the review. If any areas for improvement are identified, we will work with you to address them in the most constructive manner possible. As we have discussed, we are committed to conducting these reviews as efficiently as possible and we will work with your staff to ensure this is accomplished.

Next Steps

After the Data Verification Process is concluded later in March, we will provide ADEM points of contact with an analysis of the SRF CWA, CAA and RCRA Data Metrics that will be used for the review, along with a list of selected facility enforcement files to be reviewed. Later in the fiscal year, the Regional PQR coordinator will provide a list of permits to be reviewed and set a schedule for the PQR file review. We will continue to work with your staff to coordinate convenient times for our on-site file reviews.

Should you have questions or wish to discuss this matter in greater detail, please feel free to contact either of us through Scott Gordon, Associate Director of OEA, at (404) 562-9741.

Sincerely,

/s/

Nancy Tommelleo
Acting Regional Counsel and Director of the
Office of Environmental Accountability

/s/

James D. Giattina
Director
Water Protection Division

Transmittal of DMA and File Selections

CAA

To: Christy Monk and RFH at ADEM

Fri 4/5/2013

As promised in our kickoff letter, I'm forwarding the following SRF Round 3 materials for your review:

- (1) EPA's Data Metrics Analysis (DMA) which is our analysis of Alabama's CAA SRF data metrics (using the FY2012 "frozen data" on EPA's OTIS website);
- (2) the files that have been selected for the CAA SRF file review (35 total);
- (3) the file selection logic explaining the process used to select the files.

The CAA SRF schedule is as follows:

April 29 @ 11:30 Central – Opening Conference

April 29 – May 2 - File Review

May 2 @ 10 Central – Closing Conference

As with previous SRF reviews, we ask that ADEM provide the following types of paper or electronic records for the selected files for the review year (Federal FY12): current permit, inspection reports, notices of violation, enforcement documents and related correspondence, penalty calculations and payment documentation, stack test reports, annual and semi-annual compliance reports, etc.

If you have any questions about the attached materials or the above schedule, please feel free to email or call. I will be out on Spring Break vacation next week, but will respond when I return.

I look forward to working with you over the next several months on this Round 3 review.

Thanks!

Mark J. Fite
Acting Chief, Analysis Section
Enforcement & Compliance Planning & Analysis Branch
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth St., SW
Atlanta, GA 30303

fite.mark@epa.gov
404.562.9740

RCRA

March 11, 2013

Clethes Stallworth (CS@adem.al.state.us)

Cc: pdd@adem.state.al.us; yhc@adem.state.al.us; RTS@adem.al.state.us; sac@adem.state.al.us
Whiting.Paula@epa.gov; Lamberth.Larry@epa.gov, Zapata.Cesar@epa.gov,
Fite.Mark@epa.gov, Hendrix.Becky@epa.gov

Hi Clethes,

After discussing schedules internally here at EPA, I think we might have a tentative roll-out for the RCRA portion of the SRF. My understanding is that the ADEM SRF kick-off letter is being prepared, so ADEM should receive that before long. Here is the tentative RCRA schedule that we've pulled together:

March 14 - FY2012 data is "frozen" in EPA's national data systems (and will be available for review on March 18). This is the data will be used in the SRF Data Metric Analysis.

March 29 - By this date, I plan to send you the initial RCRA SRF Data Metric Analysis and list of facilities for the RCRA File Review;

April 1-26 - EPA will review the files remotely using ADEM's impressive eFile system;

Meeting during April 29 week - Paula Whiting and I propose to meet in person to wrap up any questions from the file review and conduct the exit conference. We are thinking that the meeting should last the afternoon of one day, and morning of the next. We will wait to hear from you on what the best dates are for this meeting.

If this looks like a compressed time frame, it's due to in large part to conflicting schedules. Paula and I are trying to wrap up most of the SRF field work in April, since there are only a handful of days were both Paula and I are in the office in May. If the week of April 29 doesn't work for an onsite visit, let me know and we can start looking for a couple of days in May as an alternative.

If there are any questions or concerns with any part of the proposed schedule, please don't hesitate to contact me. Looking forward to working with you.

Thanks, Shannon Maher

U.S. Environmental Protection Agency - Region 4 | Office of Environmental Accountability
61 Forsyth Street, SW | Atlanta, GA 30303

Voice: 404-562-9623 | Fax: 404-562-9487 | Email: maher.shannon@epa.gov

March 29, 2013

pdd@adem.state.al.us; vhc@adem.state.al.us; sac@adem.state.al.us;
cs@adem.state.al.us; rts@adem.state.al.us
Richard Hulcher (rfh@adem.state.al.us)

Hi everyone,

As outlined in a previous email, I'm forwarding the following SRF Round 3 materials for your review:

- (1) EPA's analysis of Alabama's RCRA SRF data metrics (using the FY2012 "frozen data" on EPA's OTIS website);
- (2) the files that have been selected for the RCRA SRF file review (35 total);
- (3) the file selection logic explaining the process used to select the files.

From here, the RCRA SRF schedule looks like this:

April 1-26 (File Review) - During the month of April, Paula Whiting (the EPA RCRA Alabama State Coordinator) and I will meet periodically to review the RCRA SRF files using ADEM's eFile system. If questions about the facilities come up during the file review, do we continue to contact Clethes Stallworth directly?

May 1 & 2 (Onsite Visit) - We plan to arrive about 1:00 pm (CST) the afternoon of May 1, 2013. That afternoon we plan to wrap up any questions on the file review and data metric analysis. If schedules permit, we would like to conduct the SRF exit conference at 9:00 am (CST) Thursday morning, May 2.

If there are any questions about the attached materials or the above schedule, please let me know. I look forward to working with you over the next couple of months.

Thanks, Shannon Maher

U.S. Environmental Protection Agency - Region 4 | Office of Environmental
Accountability

61 Forsyth Street, SW | Atlanta, GA 30303

Voice: 404-562-9623 | Fax: 404-562-9487 | Email: maher.shannon@epa.gov

CWA

Fri 4/12/2013 3:45 PM

To: GLD@adem.state.al.us

Poolos, Ed

jwk@adem.state.al.us

Hulcher, Richard

Smart, Daphne Y

As noted in the attached kickoff letter, I am forwarding the following State Review Framework (SRF) Round 3 materials for your review:

- (1) EPA's Data Metrics Analysis (DMA) which is our analysis of Alabama's CWA SRF data metrics (using the FY2012 "frozen data" on EPA's OTIS website);
- (2) the files that have been selected for the CWA SRF file review (40 total);
- (3) the file selection logic explaining the process used to select the files.

The CWA SRF schedule is as follows:

May 13th at 9:00 a.m. Central Time – Opening Conference

May 13th through May 17th - File Review

May 17th at 10:00 a.m. Central Time – Closing Conference

As with previous SRF reviews, we ask that ADEM provide the following types of paper or electronic records for the selected files for the review year (Federal FY12): current permit, inspection reports, notices of violation, enforcement documents and related correspondence, penalty calculations and payment documentation, etc.

If you have any questions about the attached materials or the above schedule, please feel free to email or call.

I look forward to working with you over the next several months on this Round 3 SRF review.

Thanks - Ron

Ronald J. Mikulak
Water Technical Authority
Office of Environmental Accountability
EPA - Region 4

Phone #: 404-562-9233

e-mail: mikulak.ronald@epa.gov

Other communication with State

June 3, 2013

Email to mge@adem.state.al.us Marilyn Elliott, ADEM

From: Sisario.kelly@epa.gov

Marilyn,

As we begin drafting the Round 3 State Review Framework report, we are asking for your input to the Program Overview section of the report which deals with ADEM's organization, resources, staffing and training, data reporting systems and architecture, and major state priorities and accomplishments. This information will be incorporated in the report as Appendix E. We would appreciate the information in 30 days. It can be sent electronically to Becky Hendrix (hendrix.becky@epa.gov).

If you have any questions, please give me a call at 404-562-9054.

Thanks,
Kelly

July 26, 2013

Marilyn,

Just wanted to follow-up on a couple SRF related items. One is the penalty calculation issue. Did you get a chance to talk with your RCRA and CAA folks about their documentation of economic benefit and the documentation between the initial and final penalties? Before we finalize our language for those two Elements of the report, I wanted to be sure we had all the documents available for review.

Secondly, if you could fill out the State background information in the attachment by August 15th and return it to Becky Hendrix, that would be very helpful.

Please give me a call if you have any questions or want to discuss further.

Thanks,
Kelly