

STATE REVIEW FRAMEWORK

Minnesota

**Clean Water Act, Clean Air Act, and
Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2022**

**U.S. Environmental Protection Agency
Region 5**

**Final Report
August 01, 2024**

I. Introduction

A. Overview of the State Review Framework

The State Review Framework (SRF) is a key mechanism for EPA oversight, providing a nationally consistent process for reviewing the performance of state delegated compliance and enforcement programs under three core federal statutes: Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act. Through SRF, EPA periodically reviews such programs using a standardized set of metrics to evaluate their performance against performance standards laid out in federal statute, EPA regulations, policy, and guidance. When states do not achieve standards, the EPA will work with them to improve performance.

Established in 2004, the review was developed jointly by EPA and Environmental Council of the States (ECOS) in response to calls both inside and outside the agency for improved, more consistent oversight of state delegated programs. The goals of the review that were agreed upon at its formation remain relevant and unchanged today:

1. Ensure delegated and EPA-run programs meet federal policy and baseline performance standards
2. Promote fair and consistent enforcement necessary to protect human health and the environment
3. Promote equitable treatment and level interstate playing field for business
4. Provide transparency with publicly available data and reports

B. The Review Process

The review is conducted on a rolling five-year cycle such that all programs are reviewed approximately once every five years. The EPA evaluates programs on a one-year period of performance, typically the one-year prior to review, using a standard set of metrics to make findings on performance in five areas (elements) around which the report is organized: data, inspections, violations, enforcement, and penalties. Wherever program performance is found to deviate significantly from federal policy or standards, the EPA will issue recommendations for corrective action which are monitored by EPA until completed and program performance improves.

The SRF is currently in its 4th Round (FY2018-2022) of reviews, preceded by Round 3 (FY2012-2017), Round 2 (2008-2011), and Round 1 (FY2004-2007). Additional information and final reports can be found at the EPA website under [State Review Framework](#).

II. Navigating the Report

The final report contains the results and relevant information from the review including EPA and program contact information, metric values, performance findings and explanations, program responses, and EPA recommendations for corrective action where any significant deficiencies in performance were found.

A. Metrics

There are two general types of metrics used to assess program performance. The first are **data metrics**, which reflect verified inspection and enforcement data from the national data systems of each media, or statute. The second, and generally more significant, are **file metrics**, which are derived from the review of individual facility files in order to determine if the program is performing their compliance and enforcement responsibilities adequately.

Other information considered by EPA to make performance findings in addition to the metrics includes results from previous SRF reviews, data metrics from the years in-between reviews, multi-year metric trends.

B. Performance Findings

The EPA makes findings on performance in five program areas:

- **Data** - completeness, accuracy, and timeliness of data entry into national data systems
- **Inspections** - meeting inspection and coverage commitments, inspection report quality, and report timeliness
- **Violations** - identification of violations, accuracy of compliance determinations, and determination of significant noncompliance (SNC) or high priority violators (HPV)
- **Enforcement** - timeliness and appropriateness of enforcement, returning facilities to compliance
- **Penalties** - calculation including gravity and economic benefit components, assessment, and collection

Though performance generally varies across a spectrum, for the purposes of conducting a standardized review, SRF categorizes performance into three findings levels:

Meets or Exceeds: No issues are found. Base standards of performance are met or exceeded.

Area for Attention: Minor issues are found. One or more metrics indicates performance issues related to quality, process, or policy. The implementing agency is considered able to correct the issue without additional EPA oversight.

Area for Improvement: Significant issues are found. One or more metrics indicates routine and/or widespread performance issues related to quality, process, or policy. A recommendation for corrective action is issued which contains specific actions and schedule for completion. The EPA monitors implementation until completion.

C. Recommendations for Corrective Action

Whenever the EPA makes a finding on performance of *Area for Improvement*, the EPA will include a recommendation for corrective action, or recommendation, in the report. The purpose of recommendations are to address significant performance issues and bring program performance back in line with federal policy and standards. All recommendations should include

specific actions and a schedule for completion, and their implementation is monitored by the EPA until completion.

III. Review Process Information

Clean Water Act (CWA)

The State Review Framework (SRF) file review was conducted in conjunction with the Minnesota Pollution Control Agency (MPCA) between May 15 and June 2, 2023. The Round 4 SRF was conducted for the review period of FY 2022.

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Clean Air Act (CAA)

The State Review Framework (SRF) file review was conducted in conjunction with the Minnesota Pollution Control Agency (MPCA) staff on May 2-4, 2023. Region 5 EPA Round 4

Minnesota SRF was conducted for the review period of FY2022. The EPA review team consisted of

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Resource Conservation and Recovery Act (RCRA)

The Review year for the RCRA portion of SRF Round 4 was Federal Fiscal Year 2022. Twenty-five selected files were generated in accordance with the State Review Framework (SRF) Round 4 selection criteria from EPA's Enforcement Compliance and History Online (ECHO) system. The Data Metrics Analysis and File Review were conducted from April 2023 through July 2023.

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Executive Summary

Clean Water Act (CWA)

Areas of Strong Performance

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

Minnesota's inspection documentation is of high quality.

Minnesota does an outstanding job determining facility compliance.

Minnesota utilizes enforcement action responses that return facilities to compliance.

Minnesota's enforcement responses address non-compliance in an appropriate manner.

Minnesota's penalty calculations were sufficient and included consideration of gravity and economic benefit.

Minnesota documents collection of penalties.

Minnesota does an outstanding job utilizing enforcement to return non-compliant facilities to compliance.

Minnesota's enforcement responses addressed non-compliance in an appropriate manner.

Priority Issues to Address

The following are aspects of the program that, according to the review, are not meeting federal standards and should be prioritized for management attention:

MPCA doesn't report all required data into ICIS.

Note that the Round 3 SRF, conducted in 2015-2016, focused on the metallic mining industry. Region 5 chose a focused review in response to a 2015 Petition to Withdraw Minnesota's NPDES program. Overall NPDES data accuracy and completeness was evaluated, but only mining files were reviewed. The Round 3 finding levels should be viewed in this context.

Finding Summary:

Metric	Round 3 Finding Level	Round 4 Finding Level
2b - Files reviewed where data are accurately reflected in the national data system [GOAL]	Area for Improvement	Area for Improvement
6a - Inspection reports complete and sufficient to determine compliance [GOAL]	Area for Improvement	Meets or Exceeds Expectations
9a - Enforcement that returns sites to compliance [GOAL]	Area for Improvement	Meets or Exceeds Expectations

Clean Air Act (CAA)

Areas of Strong Performance

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

All files reviewed contained accurate documentation of FCE elements, and all files reviewed contained CMRs that provide sufficient documentation to determine compliance.

Minnesota met or exceeded expectations for all inspection metrics in this review and is to be commended for this high level of performance.

Minnesota is commended for taking on important cases and timely and appropriately returning facilities to compliance.

Priority Issues to Address

The following are aspects of the program that, according to the review, are not meeting federal standards and should be prioritized for management attention:

While the minimum data requirements (MDRs) were entered into the ICIS data system completely and accurately for a majority of the files reviewed, 40% of the files contained errors or were missing data elements.

Minnesota's Data Privacy law means that EPA (and the public) does not become aware of HPVs until the case is concluded, thus has no way to track their progress against suggested timelines,

such as the obligation to create a Case Development and Resolution Timeline after 225 days. This state law limits the timeliness, accuracy, and meaningfulness of some of the enforcement metrics in this review. Proactive oversight of the state's most significant enforcement activities is also impacted.

Minnesota does not keep records of penalty calculations for cases that ultimately are settled with a Stipulated Agreement. These tend to be the larger cases with higher penalties. Additionally, Minnesota should recover Economic Benefit in its penalty calculations when the company has avoided or delayed costs. The state should document its penalty calculations, including its decision to apply or not apply Economic Benefit.

Minnesota addressed HPVs in a timely fashion or had a case development and resolution timeline in place in 4 of 7 files reviewed.

In 5 of 12 files reviewed, Minnesota documented gravity and economic benefit in penalty calculations. In addition, Minnesota documented the rationale for any difference between the initial penalty calculation and the final penalty assessed in 4 of 6 files reviewed.

Finding Summary:

Metric	Round 3 Finding Level	Round 4 Finding Level
2b - Files reviewed where data are accurately reflected in the national data system [GOAL]	N/A	Area for Improvement
3a2 - Timely reporting of HPV determinations [GOAL]	Area for Improvement	Area for Improvement
3b2 - Timely reporting of stack test dates and results [GOAL]	Area for Improvement	Area for Improvement
3b3 - Timely reporting of enforcement MDRs [GOAL]	Area for Attention	Area for Improvement
10a - Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	N/A	Area for Improvement
11a - Penalty calculations reviewed that document gravity and economic benefit [GOAL]	N/A	Area for Improvement
12a - Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	N/A	Area for Improvement

Resource Conservation and Recovery Act Findings (RCRA)

Areas of Strong Performance

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

The Minnesota Pollution Control Agency (MPCA) met 100% of the National Goals for complete and accurate entry of mandatory data, inspection report completion and sufficiency, and for timeliness of inspection report completion, as related to inspections of generators and Treatment, Storage, and Disposal Facilities (TSDFs). MPCA also met 100% of the National Goals for accurate compliance determinations, appropriate SNC determinations, enforcement that returns violators to compliance, appropriate enforcement taken to address violations, gravity and economic benefit calculations, with a rationale for differences between initial penalty calculation and final penalty, and penalty calculation.

Priority Issues to Address

The following are aspects of the program that, according to the review, are not meeting federal standards and should be prioritized for management attention:

Note for Metric 5a - Two year inspection coverage of operating TSDFs. MPCA's state total was 83.3% for inspecting TSDs every two years, based on the Data Metric Analysis. MPCA and EPA commit to inspecting all of the 12 TSDs every two years. During the two year time period, fiscal years 2021 and 2022, MPCA inspected the TSDs that it had agreed to inspect, thus meeting the goal of the metric. However, in the fiscal year of 2022, EPA had not inspected two of the TSDs it had agreed to inspect, which is the reason that the percentage is not 100%. Therefore, EPA did not achieve the TSD inspections it had committed to do, during this time period, as part of a joint agreement with MPCA, causing the state total of this metric to be 83.3% versus 100%.

Finding Summary:

Metric	Round 3 Finding Level	Round 4 Finding Level
2b - Accurate entry of mandatory data [GOAL]	Area for Improvement	Meets or Exceeds Expectations
6a - Inspection reports complete and sufficient to determine compliance [GOAL]	Area for Improvement	Meets or Exceeds Expectations
6b - Timeliness of inspection report completion [GOAL]	Area for Improvement	Meets or Exceeds Expectations

End Executive Summary

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

MPCA doesn't report all required data into ICIS.

Explanation:

The review team found that 14 of 38 or 36.8% of facility files had accurate data reflected in ICIS.

Incomplete data is a long-standing challenge in the NPDES program, for several reasons.

In 2015, MPCA transitioned from one data system (Delta) to a new system (Tempo), and the transition resulted in data flow problems to ICIS. While some problems were resolved quickly, a large number of expired permits and administratively extended permits that were issued before the transition to Tempo are generally not flowing DMR data to ICIS. Permit limit sets and other key features haven't been created for these permits. However, once MPCA issues or re-issues a permit in Tempo, DMR data flows with a high accuracy rate (see Metric 1b6).

MPCA has a permit issuance backlog that has affected the pace of data completeness in ICIS. Metric 1b5 illustrates the difference between the overall number of individual permits in Minnesota versus the actual number of permits that flow complete DMR data from Tempo to ICIS. Currently 70% of all permits have complete data flowing to ICIS. This number is steadily increasing monthly as permits are re-issued.

MPCA manually flows a considerable amount of data to ICIS to ensure that inspections and enforcement data are reflected in ICIS. Due to a state court decision (the 2004 Westrom Decision Minn Stat 13.39), violation and enforcement data are flowed only after an enforcement action is considered complete.

The number of SEVs flowing to ICIS is low. The review team concluded that there may be a few reasons for this, including inconsistent staff documentation of SEVs, and not flowing SEV violations until a case is concluded.

The low number of facility files with complete data (14 / 38) is also due to the fact that data flows for certain classes of permits have not yet been reissued in Tempo and are therefore not flowing to

ICIS. These include MS4s, CAFOs, and Construction Storm water permits. Inspections and enforcement actions for these permits were required under the Phase 1 E-Rule. A supplemental file selection was needed to conduct reviews of facilities in these categories.

The following is a more specific breakdown of the team's observations:

The 11 supplemental files are not flowing data to ICIS.

From the file selection out of ICIS/ECHO (27), 14 had sufficient data, 13 did not.

5 of these files had expired or administratively extended permits and DMR data didn't appear to be flowing.

In 6 of these files, documentation in ICIS is either missing or incorrect compared to file review data. Examples:

Monitoring activity in ICIS is described as a desk audit, but file indicates a CEI was performed.

Reports or informal actions (such as letters of warning) are in the file but not reflected in ICIS.

In 2 files, prohibition of data sharing may have been a factor in documenting timely enforcement in ICIS (i.e., actions were underway but not completed and closed out).

Some files contained more than one of the above issues.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
1b5 Permit limit data entry rate for major and non-major facilities	95%		564	347	61.5%
1b6 Discharge monitoring report (DMR) data entry rate for major and non-major facilities.	95%	97.1%	12572	12599	99.8%
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		14	38	36.8%
7j1 Number of major and non-major NPDES facilities with new single-event violations reported that began in the review year			5		5

State Response:

The MPCA and EPA discussed our long-term solutions to our data reporting issues in 2021. The following are the outcome of that discussion:

Permit Projections for Individual NPDES Permits not in ICIS-NPDES for wastewaters is to prioritize reissuing permits in the Tempo database triggering that permit level data along with the DMR data to flow to ICIS-NPDES. We will also continue to work with the vendor to establish new payloads and flowing the required data to ICIS. We will also continue to research other avenues for data sharing capabilities.

The vendor capacity for OpenNode 2 development and support is very limited and is likely to decrease in the future. If the MPCA is unable to contract for the development resources needed to meet our current timeline, we will have to reassess our schedule and may need technical assistance from the EPA.

Recommendation:

Rec #	Due Date	Recommendation
1	12/15/2024	MPCA will create a report to Region 5 for sharing data not currently available in ICIS. The report will include MS4 and Construction Storm Water permits summary data, including facility name, location, permit issuance and expiration dates, violations, compliance monitoring and enforcement activities, and penalties, if assessed. (EPA recognizes that MN is prohibited from sharing some data until enforcement actions are complete.) The initial report will cover activities in the 2024 fiscal year.
2	12/19/2025	Submit report to Region 5 as described above for the 2025 fiscal year.
3	12/15/2024	Within one year of finalizing the SRF Report, MPCA will successfully flow all outstanding Phase 1 compliance payloads. MPCA and Region 5 will assess progress 6 months after finalizing the report and, if necessary, make adjustments to the deadline.
4	05/15/2025	MPCA will provide a report to Region 5 assessing progress toward meeting all Phase 2 E-Rule deadlines. The report should include anticipated dates for meeting rule requirements. A request to EPA HQ for an E-Rule compliance extension will fulfill this recommended action item.

CWA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

All 36 files reviewed (100%) included complete inspection reports that contained sufficient information to determine compliance.

Explanation:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6a Inspection reports complete and sufficient to assess permit requirements at the facility and document inspector observations.	100%		36	36	100%

State Response:

No comment needed.

CWA Element 2 - Inspections

Finding 2-2

Area for Attention

Recurring Issue:

No

Summary:

In the file review, 24 of 36 inspections, or 66.7%, were found to be timely when evaluated against Minnesota's timeliness standard of 30 days.

Explanation:

The team found that 24 of 36 files had timely inspections. For this metric, the Region 5 CWA team used the state's timeliness goal of 30 days.

The average number of days for inspection completion is 37 days. The review team found that a few outliers - i.e., inspections that took 100 days or more to finalize - caused the bump in the overall average.

The average of 37 days is well below the federal inspection timeliness goal of 60 days.

Information in several files indicated that prior to issuing an inspection report, MPCA and the facility communicated about compliance issues identified during the inspection. In addition, the inspection report was often accompanied by a corresponding informal or formal enforcement action, i.e., a Letter of Warning or Notice of Violation.

Inspection timeliness is important. However, the team recognizes that inspectors may be investing valuable time in working with the facility to return to compliance, or preparing for formal enforcement if the severity of the violations warrant such action.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6b Timeliness of inspection report completion [GOAL]	100%		24	36	66.7%

State Response:

Minnesota will continue the goal of 30 days for inspection reports for timely correspondence but make no changes to procedures as we are more stringent than national goals.

CWA Element 2 - Inspections

Finding 2-3

Area for Improvement

Recurring Issue:

No

Summary:

Overall, in 2022, Minnesota met, nearly met, or exceeded CMS commitments in 7 of 9 or 77% of categories tracked. Region 5 has added action items related to inspection coverage in one category, explained below.

Explanation:

Overall, in 2022, Minnesota met, nearly met or exceeded CMS commitments in 7 of 9 or 77% of categories tracked. Pretreatment program staff spent considerable time in 2022 developing a program for statewide PFAS testing. This had an impact on performance in the SIU commitment category. The Region 5 CWA Team understands that additional staff resources are forthcoming to support management of the state's PFAS program.

The MS4 audit commitment has been a challenge for the state to meet over the past several years, due to staffing challenges and the practice of conducting comprehensive audits as the state's primary coverage tool. Since 2021, there have been ongoing discussions between MPCA and Region 5 about MS4 compliance monitoring, including various ways that coverage can be met through activities beyond comprehensive audits.

EPA and MPCA will continue to work together to agree on compliance monitoring targets and track state performance annually through the CMS planning process.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL]	100% of commitments%		3	3	100%
4a2 EPA or state Significant Industrial User inspections for SIUs discharging to nonauthorized POTWs	100% of commitments%		2	18	11.1%
4a5 Number of SSO inspections. [GOAL]	100% of commitments%		177	27	655.6%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments%		15	28	54%
4a8 Number of industrial stormwater inspections. [GOAL]	100% of CMS%		58	65	89.2%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of CMS%		278	280	99.3%
4a10 Number of comprehensive inspections of large and medium NPDES permitted concentrated animal feeding operations (CAFOs) [GOAL]	100% of CMS%		100	50	200%
5a1 Percentage of NPDES major facilities with individual or general permits inspected	100% of CMS%		39	42	93%
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100 of CMS%		208	186	111.8%

State Response:

Minnesota's municipal stormwater (MS4) regulatory program accepts EPAs recommendations to increase MS4 compliance monitoring activities to ensure consistency with the NPDES CMS policy.

Recommendation:

Rec #	Due Date	Recommendation
1	10/11/2024	Minnesota will increase MS4 coverage to ensure consistency with the NPDES CMS policy. In FY 2024, MPCA will increase MS4 coverage to 12% (30 compliance monitoring activities) of the state's universe. Minnesota's mid-year CMS report should include a breakdown of what has been accomplished in this program area, and how the program intends to meet the commitment for the remainder of the year.
2	10/10/2025	Minnesota will increase MS4 coverage to ensure consistency with the NPDES CMS policy. In FY 2025, Minnesota will increase MS4 coverage to 14% (36 compliance monitoring activities) of the state's universe. Minnesota's mid-year CMS report should include a breakdown of what has been accomplished in this program area, and how the program intends to meet the commitment for the remainder of the year.

CWA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Minnesota does an outstanding job determining facility compliance.

Explanation:

In all 38 files reviewed (100%), Minnesota made accurate compliance determinations.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7e Accuracy of compliance determinations [GOAL]	100%		38	38	100%
7j1 Number of major and non-major NPDES facilities with new single-event violations reported that began in the review year					5
7k1 Major and non-major facilities in noncompliance.	Indicator%		400	1587	25.2%
8a3 Percentage of active major facilities in SNC and non-major individual permit facilities in Category I noncompliance during the fiscal year	Indicator%		94	1587	5.9%

State Response:

No comment needed.

CWA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Minnesota does an outstanding job utilizing enforcement to return non-compliant facilities to compliance.

Explanation:

In all files reviewed, Minnesota's enforcement responses returned, or will return, facilities to compliance. This is exceptional performance.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		34	34	100%

State Response:

No comment needed.

CWA Element 4 - Enforcement

Finding 4-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Minnesota's enforcement responses addressed non-compliance in an appropriate manner.

Explanation:

In 33 of 34 files reviewed, Minnesota's enforcement responses addressed non-compliance in an appropriate manner. This is exceptional performance.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10b Enforcement responses reviewed that address violations in a timely and appropriate manner.	100%		33	34	97.1%

State Response:

No comment needed.

CWA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Minnesota's penalty calculations were sufficient and included gravity and economic benefit.

Explanation:

In 14 of 14 files reviewed, Minnesota's penalty considerations documented consideration of gravity and economic benefit.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%		14	14	100%

State Response:

No comment needed.

CWA Element 5 - Penalties

Finding 5-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Minnesota documents the rationale between proposed and actual penalties assessed.

Explanation:

In cases where proposed and final penalties differ, Minnesota documents the rationale between the difference.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		13	13	100%

State Response:

No comment needed.

CWA Element 5 - Penalties

Finding 5-3

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Minnesota documents collection of penalties.

Explanation:

In all 13 files reviewed, Minnesota documented collection of penalties.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12b Penalties collected [GOAL]	100%		13	13	100%

State Response:

No comment needed.

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

While the minimum data requirements (MDRs) were entered into the ICIS data system completely and accurately for a majority of the files reviewed, 40% of the files contained errors or were missing data elements.

Explanation:

The review found that 15 out of 25 facilities had MDRs accurately reported into ICIS, but 10 of the 25 files contained errors or missing data. The most common discrepancies were missing or incorrectly dated stack tests, and informal enforcement actions (Alleged Violation Letters, or AVLs) which were not entered into ICIS. Timely reporting of MDRs also continues to fall below national averages and the policy goal of 100% timely reporting.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		15	25	60%
3a2 Timely reporting of HPV determinations [GOAL]	100%	43.9%	0	1	0%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	78.2%	278	397	70%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	66.8%	96	157	61.1%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	78.1%	34	71	47.9%

State Response:

For data errors or missing data, additional training and guidance has been given to staff to decrease errors in data entry. We have also clarified what is to be used by staff for a date of discovery for Performance test failures so there is consistency with dates that are used and referenced in inspections and enforcement documents. Additional adjustment to the NEIEN dataflow may also be needed for more accurate delineation of all relevant dates supplied to ICIS. Regarding the transfer of Alleged Violation Letters (AVLs), the MPCA enforcement function maintains AVLs are not a stand-alone informal action in all instances. At times the AVL serves more as an information gathering tool (Request for Information) rather than an enforcement document. If information supplied satisfies the request, no violation is identified and facilities should not be labeled as such. For this reason, across enforcement programs at the MPCA, the AVL is considered a precursor tool for enforcement. The MPCA has certain situations when the AVL may be treated more like a Notice of Violation, such as a failed stack test, and does now for them as an Informal Enforcement in ICIS. An additional complication is considering the various actions an AVL may be managed within the MPCA's data system, TEMPO, it would require more complex logic to accurately flow data than the current capabilities of the design. AVL's may appropriately be employed as part of an inspection, stack test, or other enforcement. Accounting for each of these instances would require complex logic for the NEIEN dataflow, more than likely lead to different errors, and inaccurately portray the amount of enforcement the Agency actually pursues. The MPCA already utilizes Letters of Warning and Notices of Violations for informal enforcement actions.

Recommendation:

Rec #	Due Date	Recommendation
1	10/15/2024	<p>Minnesota should ensure that all formal and informal enforcement actions are entered into the ICIS data system in a timely manner, ensuring that the state's full level of effort is accurately and transparently represented. To that end, Minnesota will within 120 days of the date of this report review current data reporting practices and provide appropriate staff training or guidance regarding data reporting requirements. The state will provide to EPA documentation of this review and training or guidance. EPA will consider this recommendation resolved when this documentation is received and will continue to monitor data completeness and accuracy and discuss any ongoing discrepancies during bimonthly data and enforcement coordination calls.</p>

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Minnesota met or exceeded expectations for all inspection metrics in this review and is to be commended for this high level of performance.

Explanation:

All files reviewed contained accurate documentation of Full Compliance Evaluation (FCE) elements and contained Compliance Monitoring Reports (CMRs) that provide sufficient documentation to determine compliance. Specifically, the FCE template provides for evaluation of all necessary and applicable permit and regulatory requirements.

It should be noted that EPA observed in several files there was insufficient justification in the CMR to ascertain whether the facility was in compliance with a regulatory obligation. Further, MPCA should require the inspector to make specific notation regarding whether compliance was achieved for each obligation, making clear that the requirement was specifically reviewed. Several

reports simply noted that the facility was in compliance with a requirement but did not specify how this determination was made or provide specific evidence supporting that status. EPA would encourage MPCA to require inspectors to provide sufficient detail to support all compliance determinations.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a FCE coverage: majors and mega-sites [GOAL]	100%	86.7%	95	103	92.2%
5b FCE coverage: SM-80s [GOAL]	100%	94.1%	21	24	87.5%
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%	74.4%	32	36	88.9%
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	82%	245	252	97.2%
6a Documentation of FCE elements [GOAL]	100%		15	15	100%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		18	18	100%

State Response:

The MPCA was not aware of the EPA's stance on fields being completed when compliance was observed. Additional guidance has been given to staff to ensure that all fields have data entered for inspection reports, for items found to be noncompliant and compliant, so that the method of determination of compliance is included for all requirements.

CAA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

In 22 of 25 files reviewed, Minnesota accurately determined the compliance status of the facilities.

Explanation:

No systemic issues were found in our review of Minnesota's application of FRV criteria.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		22	25	88%
7a1 FRV 'discovery rate' based on inspections at active CMS sources		8.1%	21	386	5.4%
8a HPV discovery rate at majors		2.5%	1	255	.4%
13 Timeliness of HPV Identification [GOAL]	100%	87.8%	0	1	0%

State Response:

No response

CAA Element 3 - Violations

Finding 3-2
Area for Attention

Recurring Issue:
No

Summary:

Minnesota accurately determined the HPV status of facilities in 14 of 20 files reviewed.

Explanation:

Minnesota's Data Privacy law means that EPA (and the public) does not become aware of HPVs until the case is concluded, thus has no way to track their progress against suggested timelines, such as the obligation to create a Case Development and Resolution Timeline after 225 days. This state law limits the timeliness, accuracy, and meaningfulness of some of the compliance and enforcement metrics in this review. Proactive oversight of the state's most significant enforcement activities is also impacted. EPA and Minnesota will continue to engage in frequent and open communication regarding current enforcement activities, mitigating the impact of this limitation, but while this law is in effect, we are unlikely to see significant improvements in transparency.

During the file review, EPA noted a few instances in which Minnesota correctly noted violations (most frequently stack test exceedances) but incorrectly failed to identify these violations as HPVs. EPA discussed these cases with MPCA but does not believe the problems identified are systemic. We will continue to discuss stack test failures with Minnesota during monthly data and enforcement coordination calls. EPA suggests that Minnesota should regularly review violation identification and classification procedures and provide training to enforcement staff as needed.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
8c Accuracy of HPV determinations [GOAL]	100%		14	20	70%

State Response:

Work is currently being done to update our guidance documents used by staff to help determine HPVs. The determination of whether a violation is an HPV is now discussed and decided on during our forum process. A related issue was also identified that there are two screens in TEMPO where Violation information can be adjusted however only one of these locations transfers to ICIS. Staff

have now been further informed on the correct screen to use. With the limitations on sharing non public information due to Minnesota's data privacy laws, MPCA staff will include in the already scheduled monthly calls with EPA a summary of HPV cases, status, and timeliness without identifying facilities.

CAA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Minnesota is commended for taking on environmentally impactful cases and timely and appropriately returning facilities to compliance.

Explanation:

Minnesota executed enforcement actions which required corrective actions that will return the facility to compliance in a specified timeframe in 13 of 13 files reviewed.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule [GOAL]	100%		13	13	100%

State Response:

No response

CAA Element 4 - Enforcement

Finding 4-2

Area for Attention

Recurring Issue:

No

Summary:

Minnesota takes effective enforcement actions to address HPVs and returns facilities to compliance in the majority of cases.

Explanation:

Minnesota took appropriate enforcement responses against facilities with HPVs in 5 of 6 files reviewed. Four of 5 files reviewed also followed HPV case development and resolution timelines containing required policy elements. EPA will continue to monitor Minnesota's timely and appropriate enforcement responses to high priority violations via monthly case update and coordination calls.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		5	6	83.3%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		4	5	80%

State Response:

MPCA staff will include a summary of HPV cases during our already scheduled monthly calls with EPA that will include timeliness, without identifying facilities. There was also clarification made with EPA staff during the review regarding starting dates used for HPV violations. Specifically, Minnesota was using the date of discovery (Inspection date or file review date), when it should have been using the date the violation was determined to be a HPV, which will be the date of forum moving forward. This should also have a positive effect on timeliness. Due to the variety of dates needed from different compliance and enforcement activities and timeliness tracking requirements of the MPCA which differ from EPA's, further adjustment to the NEIEN dataflow and MPCA business process will more than likely be required.

CAA Element 4 - Enforcement**Finding 4-3**

Area for Improvement

Recurring Issue:

No

Summary:

Minnesota addressed HPVs in a timely fashion or had a case development and resolution timeline in place in 4 of 7 files reviewed.

Explanation:

While, as mentioned in Finding 3-2, Minnesota's data privacy law creates difficulties in assessing the agency's performance on metric 10a in cases which have not yet been concluded, where we could review resolved cases which were addressed more than 225 days from determination of the violation, we found three cases for which there was in the file no conclusive evidence that a case development and resolution timeline had been in place.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		4	7	57.1%
10a1 Rate of Addressing HPVs within 180 days		36.1%	1	7	14.3%
10b1 Rate of managing HPVs without formal enforcement action		7.2%	0	7	0%

State Response:

MPCA staff will include a summary of HPV cases during our already scheduled monthly calls with EPA that will include violation descriptions, case status, and timeliness, without identifying facilities to maintain compliance with Minnesota data privacy laws. There was also clarification made with EPA staff during the review regarding starting dates used for HPV violations. Specifically, Minnesota was using the date of discovery (Inspection date or file review date), when it should have been using the date the violation was determined to be a HPV, which will be the date of forum moving forward. This should also have a positive effect on timeliness. Due to the variety of dates needed from different compliance and enforcement activities and timeliness tracking requirements of the MPCA which differ from EPA's, further adjustment to the NEIEN dataflow and MPCA business process will more than likely be required.

Recommendation:

Rec #	Due Date	Recommendation
1	10/15/2024	Minnesota will within 120 days of the date of this report submit in writing to EPA a description of the methods MPCA will use to create and maintain a list of all open HPVs, the regulatory citation for each HPV, the date identified, and the status of the case. To accommodate data privacy concerns, this list need not contain facility identifiers. The list will clearly note any cases not fully addressed beyond 225 days from the date the violation was identified. EPA will consider this recommendation resolved when documentation of these revised methods is received.

CAA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Minnesota has an effective system for collecting penalties assessed in enforcement cases.

Explanation:

Minnesota collected assessed penalties in 12 of 12 files reviewed.

Relevant metrics:

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

State Response:

No response

CAA Element 5 - Penalties

Finding 5-2

Area for Improvement

Recurring Issue:

No

Summary:

In 5 of 12 files reviewed, Minnesota documented gravity and economic benefit in penalty calculations. In addition, Minnesota documented the rationale for any difference between the initial penalty calculation and the final penalty assessed in 4 of 6 files reviewed.

Explanation:

Minnesota does not keep records of penalty calculations for cases that ultimately are settled with a Stipulated Agreement. These tend to be the larger cases with higher penalties.

Minnesota should recover Economic Benefit in its penalty calculations when the company has avoided or delayed costs. The state should document its penalty calculations, including its decision to apply or not apply Economic Benefit.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%		5	12	41.7%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		4	6	66.7%

State Response:

Regarding the inclusion of gravity and economic benefit in penalty calculations, MPCA compliance and enforcement staff have incorporated in penalty guidance for all programs the inclusion of gravity and economic benefit. Staff are directed to include economic benefit, when identified, in all cases. What wasn't being done consistently in the program, was including justification in the penalty calc for why economic benefit wasn't included, leaving this blank. Staff have been directed to include justifications and reasoning for why economic benefit was assessed and also why it was not assessed, either not being identified in the case or being a minimal amount. For the retention of penalty calculations for negotiated enforcement actions, it is MPCA's policy across programs to not retain penalty calculations for Stipulation Agreements for all programs. They are part of the negotiation process and not considered public. The MPCA enforcement

program and legal staff are currently looking further into this matter, however, to see if any changes can occur or are allowed.

Recommendation:

Rec #	Due Date	Recommendation
1	10/15/2024	Within 120 days of the date of this report Minnesota will update its enforcement procedures to include 1) the requirement to consider Economic Benefit in all penalty calculations, and 2) documentation of all penalty calculations and the rationale for changes between initial penalty calculations and final assessed penalties. Minnesota will share these updated procedures with EPA and will give EPA access to documentation of penalty calculations in three formal enforcement actions following implementation of these changes. EPA will consider this recommendation resolved when documentation of these updated procedures is received.

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

In 25 out of 25 files reviewed (100%), data was accurately reflected in RCRAInfo.

Explanation:

Note: MPCA has been working with EPA Headquarters to improve the data flow between TEMPO and RCRAInfo. MPCA is aware that the two databases are not compatible, and is actively working on resolving the issue. On December 20, 2023, MPCA did a batch load of over 21,000 handler records into RCRAInfo to update fields such as, site names, contact information, and generator size. MPCA will continue to try to do this on a monthly basis until the data flow is resolved. MPCA appreciates the support of EPA Headquarters making it possible to do batch loads of data. MPCA will continue to manually enter C&E related data until the data flow is resolved.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Complete and accurate entry of mandatory data.	100%		25	25	100%

State Response:

RCRA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

In 25 of 25 files reviewed (100%), MPCA, Hennepin County and Ramsey County met inspection goals, and demonstrated that the inspection reports are complete and provide sufficient information to make accurate compliance determinations.

MPCA met 100% of the National Goal for timeliness of inspection report completion. MPCA does not include a requirement in the MPCA enforcement response policy (ERP) for inspection report completion within a certain time-period. For the files reviewed, the timeframe for completion was well within the 150 days, in accordance with the Hazardous Waste ERP violation determination. Reports were completed with an average of two days from the date of the inspection.

Explanation:

The files reviewed were determined to have complete and sufficient information in the inspection reports to determine compliance. MPCA submitted a Flexibility Plan, approved by EPA, which included Joint Powers Agreements with Hennepin County and Ramsey County to conduct proposed large quantity generator (LQG) inspections, and allowed for flexibility in fulfilling the LQG requirement. Twenty percent of LQGs should be inspected once every year, but the plan allows for flexibility in fulfilling this requirement in order to improve the overall outcomes of compliance assurance activities. Using this flexibility for the period of October 1, 2021 through September 30, 2022, MPCA substituted multimedia, pollution prevention (MMP2) inspections of Small Quantity Generators (SQGs) for 23 LQGs at a 1:1 ratio. Due to the expanded scope of the inspections and resulting follow-up beyond typical Compliance Evaluation Inspections (CEIs), as well as the additional data metric reporting requirements that accompany a flexibility plan, this initiative required a comparable level of effort.

Each agency conducts its own inspections and completes its own inspection reports. Each report for each entity was completed well within the 150 days (Hazardous Waste ERP violation determination). Hennepin County and Ramsey County inspection reports included the required elements of the metric.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5b Annual inspection of LQGs using BR universe [GOAL]	20%		51	294	17.3%
5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL]	20%		54	413	13.1%
5d One-year count of SQGs with inspections [GOAL]	100% of commitments%		16		16
5e5 One-year count of very small quantity generators (VSQGs) with inspections	100% of commitments%		25		25
5e6 One-year count of transporters with inspections	100% of commitments%		3		3
5e7 One-year count of sites not covered by metrics 5a - 5e6 with inspections	100% of commitments%		1		1
6a Inspection reports sufficient to determine compliance.	100%		25	25	100%
6b Timeliness of inspection report completion [GOAL]	100%		25	25	100%

State Response:

RCRA Element 2 - Inspections

Finding 2-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

MPCA's state total was 83.3% for inspecting TSDs every two years, based on the Data Metric Analysis. MPCA and EPA commit to inspecting all of the 12 TSDs every two years. During the two year time period, fiscal years 2021 and 2022, MPCA inspected the TSDs that it had agreed to inspect, thus meeting the goal of the metric. However, in the fiscal year of 2022, EPA had not inspected two of the TSDs it had agreed to inspect. This was the reason that the percentage is not 100%. Therefore, EPA did not achieve the TSD inspections it had committed to do, during this time period, as part of a joint agreement with MPCA, causing the state total of this metric to be 83.3% versus 100%.

Explanation:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%		10	12	83.3%

State Response:

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

MPCA met 100% of the National Goal for accurate compliance determinations. They had taken the appropriate enforcement response for returning violators back into compliance, making proper SNC determinations, pursuing formal action, and taking the appropriate enforcement actions in response to the types of violations cited within the files.

In addition, MPCA met 100% of the National Goal for appropriate SNC determinations. MPCA made accurate compliance determinations from the information gathered during inspections. They

made proper SNC determinations based on their inspections, their compliance determinations, and their response to the types of violations cited within the files.

Explanation:

EPA reviewer found that based on the files reviewed, MPCA's inspections and reports led to accurate compliance determinations. Of the 25 inspections, six resulted in SNC designations. Sixteen of the 25 inspections produced enforcement actions of secondary violators.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2a Long-standing secondary violators			7		7
7a Accurate compliance determinations [GOAL]	100%		25	25	100%
7b Violations found during CEI and FCI inspections			37	96	38.5%
8a SNC identification rate at sites with CEI and FCI			5	187	2.7%
8b Timeliness of SNC determinations [GOAL]	100%		18	19	94.7%
8c Appropriate SNC determinations [GOAL]	100%		6	6	100%

State Response:

RCRA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

MPCA met 100% of the National Goal for enforcement that returns violators to compliance. For the files reviewed, MPCA had taken the appropriate enforcement response that returned violators back into compliance. In six of the 25 files reviewed, MPCA's SNC designations were addressed in a timely manner with a formal enforcement action. And in ten of the files, the cited violations led to appropriate secondary violator enforcement actions, that were addressed in a timely manner. Also, MPCA met 100% of the National Goal for appropriate enforcement taken to address violations. In the files reviewed, the inspection reports and files led to accurate compliance determinations.

Explanation:

EPA review team found that based on the files reviewed, in the cases that were finalized, MPCA ensured that the violations were corrected prior to returning facilities back into compliance.

Based on the file review, MPCA found sufficient and documented evidence that led to accurate compliance determinations. In six of the files, the cited violations led to accurate SNC determinations. In ten of the files, the cited violations led to appropriate secondary violator enforcement actions. In all cases, the facilities were returned to compliance.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Enforcement that returns violators to compliance.	100%		16	16	100%
10a Timely enforcement taken to address SNC [GOAL]	80%		16	17	94.1%
10b Appropriate enforcement taken to address violations [GOAL]	100%		16	16	100%

State Response:

RCRA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

MPCA met 100% of the National Goal for gravity and economic benefit of penalty calculations. The six files, that resulted in SNC determinations, with enforcement actions and penalty, included documentation of the gravity and economic benefit components.

MPCA meets 100% of the National Goal for documentation of rationale for difference between initial penalty calculation and final penalty. According to MPCA, the gravity of the violation(s) is used to determine the base penalty. Gravity is determined by the potential for harm and the deviation from compliance. Various adjustments may be used to make an upward or downward adjustment to the gravity portion, depending on factors such as, willfulness and history, history of past violations, an unusual or anomalous factor that compels the adjustment, and economic benefit. These adjustments were evaluated and documented by MPCA for each of the six formal enforcement cases reviewed.

MPCA documented the penalty collection in their Case Conclusion Letter, where they confirm that they had received the penalty from the facility.

Explanation:

Based on EPA's review, the documentation in the files indicated that MPCA considered both gravity and economic benefit. The gravity of the violation(s) was used to determine the base penalty. Gravity was determined by the potential for harm and the deviation from compliance. For economic benefit, MPCA considered economic benefit in all cases. If the cost of compliance was delayed, MPCA attempted to recover any savings that the Regulated Party may have realized as a result of the delay (i.e., the "avoided cost of capital"). However, for the six files reviewed, economic benefit was not included after consideration by MPCA.

The calculation of a penalty is a discretionary act of MPCA's Commissioner based on an evaluation of the facts of each case. When the circumstances are appropriate, staff may deviate from Agency guidelines in whole or in part when recommending a penalty amount to the Commissioner. All penalties can be forgiven in whole or in part based on appropriate circumstances. However, if a violation is neither serious nor repeat, a forgivable penalty is mandated.

The EPA reviewer found that based on the files reviewed, MPCA included documentation of penalty collection in their Case Conclusion Letter.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Gravity and economic benefit [GOAL]	100%		6	6	100%
12a Documentation of rationale for difference between proposed penalty calculation and final penalty.	100%		6	6	100%
12b Penalty collection [GOAL]	100%		6	6	100%

State Response:
