

STATE REVIEW FRAMEWORK

Kansas

Resource Conservation and Recovery Act Implementation in Federal Fiscal Year 2013

**U.S. Environmental Protection Agency
Region 7, Kansas City**

**Final Report
October 28, 2014**

Executive Summary

Introduction

The EPA Region 7 enforcement staff conducted a RCRA Subtitle C oversight review of the Kansas Department of Health and Environment, Bureau of Waste Management, Compliance/Enforcement Unit using the State Review Framework guidance on June 16–20, 2014.

The EPA bases SRF findings on data and file review metrics, and conversations with program management and staff. The EPA will track recommended actions from the review in the SRF Tracker and publish reports and recommendations on the EPA's ECHO web site.

Areas of Strong Performance

- Kansas is effective at identifying violations of its RCRA regulations, bringing facilities back into compliance, and obtaining penalties from significant non-compliers through formal enforcement actions using a well written state penalty policy.
- Kansas is good at providing compliance assistance to the regulated community.

Priority Issues to Address

The following are the top-priority issues affecting the state program's performance:

- Element 5: Kansas follows its penalty policy very well, but when calculating penalties, the state does not calculate, document, or seek the economic benefit of non-compliance (EBN). Its policy assumes the gravity component of the penalty will address EBN.
- Element 3: Although Kansas took appropriate enforcement actions, it was somewhat lax in identifying significant non-compliers in the data system.

Most Significant RCRA Subtitle C Program Issues¹

¹ EPA's "National Strategy for Improving Oversight of State Enforcement Performance" identifies the following as significant recurrent issues: "Widespread and persistent data inaccuracy and incompleteness, which make it hard to identify when serious problems exist or to track state actions; routine failure of states to identify and report significant noncompliance; routine failure of states to take timely or appropriate enforcement actions to return violating facilities to compliance, potentially allowing pollution to continue unabated; failure of states to take appropriate penalty actions, which results in ineffective deterrence for noncompliance and an unlevel playing field for companies that do comply; use of enforcement orders to circumvent standards or to extend permits without appropriate notice and comment; and failure to inspect and enforce in some regulated sectors."

- The State does not calculate the economic benefit of noncompliance in penalty calculations nor document this in its files; this problem continues from Rounds 1 and 2.

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I. Background on the State Review Framework

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

- Clean Water Act National Pollutant Discharge Elimination System
- Clean Air Act Stationary Sources (Title V)
- Resource Conservation and Recovery Act Subtitle C

Reviews cover:

- **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, determination of significant noncompliance (SNC) for the CWA and RCRA programs and high priority violators (HPV) for the CAA program, and accuracy of compliance determinations
- **Enforcement** — timeliness and appropriateness, returning facilities to compliance
- **Penalties** — calculation including gravity and economic benefit components, assessment, and collection

The EPA conducts SRF reviews in three phases:

- Analyzing information from the national data systems in the form of data metrics
- Reviewing facility files and compiling file metrics
- Development of findings and recommendations

The EPA builds consultation into the SRF to ensure that the EPA and the state understand the causes of issues and agree, to the degree possible, on actions needed to address them. SRF reports capture the agreements developed during the review process in order to facilitate program improvements. The EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify 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 five years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2013 and will continue through FY 2017.

II. SRF Review Process

Review period: FY 2013

Key dates:

Data metric analysis and file selection list sent to KDHE: May 2, 2014

On-site and internet file review conducted: June 16-19, 2014

Draft report sent to headquarters: August 18, 2014

Draft report sent to KDHE: September 16, 2014

Final report issued: October 28, 2014

State and EPA key contacts for review:

EPA Region 7 SRF Coordinator: Kevin Barthol

EPA Region 7 Kansas RCRA Coordinator: Edwin Buckner

EPA Region 7 Reviewer: Elizabeth Koesterer

KDHE/BWM Compliance/Enforcement Unit Chief: Rebecca Wenner

KDHE/BWM Data Manager: Phyllis Funk

III. SRF Findings

Findings represent the EPA’s conclusions regarding state performance and are based on findings made during the data and/or file reviews and may also be informed by:

- Annual data metric reviews conducted since the state’s last SRF review
- Follow-up conversations with state agency personnel
- Review of previous SRF reports, Memoranda of Agreement, or other data sources
- Additional information collected to determine an issue’s severity and root causes

There are three categories of findings:

Meets or Exceeds Expectations: The SRF was established to define a base level or floor for enforcement program performance. This rating describes a situation where the base level is met and no performance deficiency is identified, or a state performs above national program expectations.

Area for State Attention: An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, the state should correct the issue without additional EPA oversight. The EPA may make recommendations to improve performance, but it will not monitor these recommendations for completion between SRF reviews. These areas are not highlighted as significant in an executive summary.

Area for State Improvement: An activity, process, or policy that one or more SRF metrics show as a significant problem that the agency is required to address. Recommendations should address root causes. These recommendations must have well-defined timelines and milestones for completion, and the EPA will monitor them for completion between SRF reviews in the SRF Tracker.

Whenever a metric indicates a major performance issue, the EPA will write up a finding of Area for State Improvement, regardless of other metric values pertaining to a particular element.

The relevant SRF metrics are listed within each finding. The following information is provided for each metric:

- **Metric ID Number and Description:** The metric’s SRF identification number and a description of what the metric measures.
- **Natl Goal:** The national goal, if applicable, of the metric, or the CMS commitment that the state has made.
- **Natl Avg:** The national average across all states, territories, and the District of Columbia.
- **State N:** For metrics expressed as percentages, the numerator.
- **State D:** The denominator.
- **State % or #:** The percentage, or if the metric is expressed as a whole number, the count.

Resource Conservation and Recovery Act Findings

RCRA Element 1 — Data						
Finding 1-1	Area for State Attention					
Summary	KDHE was lacking in the entry of the mandatory data in the enforcement area.					
Explanation	Four SNCs were not recorded, one set of violations was not linked to the formal enforcement action, one penalty payment schedule was not entered, and one follow-up inspection was not recorded. The four SNC not recorded were appropriately addressed through formal enforcement. The other instances of missing data were minor oversights.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2b Complete and accurate entry of mandatory data	100%		23	29	79.3%
State response	KDHE will review established procedures with Compliance and Enforcement staff to try to improve our rate from 79.3% to 100% in the future.					
Recommendation	During monthly coordination calls, the EPA and KDHE enforcement staff will discuss current enforcement actions to assure SNC status and other pertinent information is recorded.					

RCRA Element 2 — Inspections

Finding 2-1	Area for State Attention					
Summary	KDHE inspected less than the expected number of LQGs, but inspected many other facilities during the year. The EPA inspections raised the total to expected levels.					
Explanation	KDHE faced a staffing shortfall during 2013 and concentrated efforts in areas of greater potential environmental harm such as SQGs and facilities that had never been inspected. KDHE is very responsive to citizen complaints which typically do not occur at LQGs. To avoid unnecessary duplication of effort, KDHE did not inspect TSDFs and LQGs that were inspected by the EPA during the year. The EPA inspections are not counted toward the state totals below, but if included would raise levels to meet the national goals. The EPA does not plan to change its level of inspection activity because maintaining a federal inspection presence is an EPA priority. KDHE shouldn't expend additional resources to inspect facilities already inspected by the EPA. KDHE should still fill the three inspector positions that are vacant.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	5a Two-year inspection coverage of operating TSDFs	100%	87.6%	9	12	75%
	5b Annual inspection coverage of LQGs	20%	21%	21	174	12.1%
	5c Five-year inspection coverage of LQGs	100%	66.6%	154	174	88.5%
	5d Five-year inspection coverage of active SQGs		11.0%	459	709	64.7%
	5e1 Five-year inspection coverage of active conditionally exempt SQGs			401		
	5e2 Five-year inspection coverage of active transporters			6		
	5e3 Five-year inspection coverage of active non-notifiers			0		
	5e4 Five-year inspection coverage of active sites not covered by metrics 2c through 2f3			336		
State response	When planning our inspection schedule, KDHE always considers inspections planned by EPA. This eliminates duplication of resources and frustration from the regulated community because of multiple inspections. If EPA's inspections were considered in the numbers, this					

	would not be an area for state attention. KDHE will continue to fill vacant positions as long as funding allows.
Recommendation	KDHE should plan for and maintain adequate staffing levels to meet its inspection commitments.

RCRA Element 2 — Inspections

Finding 2-2	Area for State Attention					
Summary	Several inspection reports lack narrative or sufficient detail in the narrative to make a compliance determination. Inspection reports are not signed or dated affecting the credulity of the report.					
Explanation	<p>The narrative in the reports need to describe the waste generation process sufficiently to allow accurate hazardous waste determinations. The EPA reviewers observed eight of the 29 reports were lacking sufficient narrative or waste stream descriptions. The state recently started using electronic checklists on tablets to document inspection findings. The tablets can record narrative on the checklists as necessary; however, some inspectors have neglected the narrative in this electronic format. Undated reports allow those arguing against a report to suggest the information in the report was not recorded in a timely manner, thus casting suspicion on its accuracy. Signing and dating reports help verify the documentation of the inspector’s observations has not changed since it was observed. The metric 6b was determined by reviewing the narrative and attachments to reports and other documents. None of the 29 reports were dated, but the EPA reviewers were able to determine that 20 of 22 reports were timely written, by observing evidence such as the date of the facility’s response to the report or when KDHE issued a compliance letter or initiated enforcement.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	6a Inspection reports complete and sufficient to determine compliance	100%		21	29	72.4%
	6b Timeliness of inspection report completion	100%		20	22	90.9%
State response	<p>KDHE has added to its inspection reports, next to the field listing the name of the inspector completing the report, a date field to record the date the inspection report is completed. This should suffice in lieu of a signature, which would be expensive to add to the reports because it would require a change to our electronic system. KDHE will also alter the waste stream table and/or other areas of the report to discuss or list processes generating wastes.</p>					
Recommendation	<p>The EPA recommends that KDHE provide refresher training to all inspectors to assure each inspector records complete narratives of their observations.</p>					

The EPA concurs that adding fields for the name of the inspector completing the report and the date of report completion should suffice to authenticate each inspector's testimony regarding the inspection report. The EPA will verify this recommendation has been implemented within 180 days of this final report being issued.

RCRA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations																													
Summary	The state excels at identifying violations and returning facilities to compliance.																													
Explanation	Kansas inspectors are meticulous in documenting all violations identified during inspections and are adept at discovering those violations. In the one case where the reviewers identified an inaccurate compliance determination, it was because the state did not cite violations of a previous administrative order in its actions. In one case, the EPA felt the identified violations should have been a SNC and formal enforcement initiated, but the state demonstrated that it was acting in concert with its written policies for enforcement in that case.																													
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>7a Accurate compliance determinations</td> <td>100%</td> <td></td> <td>29</td> <td>30</td> <td>96.7%</td> </tr> <tr> <td>7b Violations found during inspections</td> <td></td> <td>34.8%</td> <td>126</td> <td>247</td> <td>51%</td> </tr> <tr> <td>8a SNC identification rate</td> <td></td> <td>1.7%</td> <td>1</td> <td>247</td> <td>0.40%</td> </tr> </tbody> </table>					Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	7a Accurate compliance determinations	100%		29	30	96.7%	7b Violations found during inspections		34.8%	126	247	51%	8a SNC identification rate		1.7%	1	247	0.40%	
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8a SNC identification rate		1.7%	1	247	0.40%																									
State response	None																													
Recommendation	None																													

RCRA Element 3 — Violations

Finding 3-2	Area for State Improvement					
Summary	The state excels at identifying violations but is lax in documenting relevant violations as SNCs in the database. Existing SNC determinations are timely.					
Explanation	The low value for 8c comes from the state not identifying the facilities as a SNC in the database, but the state took appropriate enforcement actions in spite of lacking the formal determination. So, the issue is lack of documenting SNCs, not lack of appropriate action.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2a Long-standing secondary violators			9		
	8b Timeliness of SNC determinations	100%	77.8%	8	9	88.9%
	8c Appropriate SNC determinations	100%		23	29	79.3%
State response	KDHE will review all established procedures with enforcement staff. This should help improve our entry to SNC and SNN evaluations in RCRAInfo.					
Recommendation	The state should institute a periodic database review process of violations and enforcement actions to make certain the appropriate SNC determination has been documented. This process will be discussed during KDHE/EPA enforcement coordination calls.					

RCRA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations					
Summary	The state closely follows its policies regarding enforcement and follows up on all inspections to assure facilities return to compliance.					
Explanation	For 9a, the state is still pursuing compliance in one case that received formal enforcement. This situation is atypical. For 10b, the EPA felt formal enforcement was appropriate for one case, but KDHE followed its own guidance appropriately using informal enforcement in that case.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	9a Enforcement that returns violators to compliance	100%		24	25	96.0%
	10b Appropriate enforcement taken to address violations	100%		25	26	96.2%
State response	None					
Recommendation	None					

RCRA Element 4 — Enforcement

Finding 4-2	Meets or Exceeds Expectations												
Summary	The state takes expeditious enforcement actions and closely monitors the respondent to assure penalties are timely paid and compliance is achieved.												
Explanation	Field inspectors follow-up with the facility independent of enforcement staff to assure facility compliance with the regulations. Inspection reports are sent to enforcement staff in Topeka for review and potential SNCs are indicated. Enforcement staff review the cases and immediately initiate pre-filing negotiations with SNC facilities. Penalties are calculated using the state's penalty policy which is precise, simple, and thorough, except for the lack of an economic benefit of noncompliance (EBN) calculation. KDHE vigorously pursues negotiations with the aid of Attorney General staff specifically assigned to KDHE. This results in quick and appropriate resolution of enforcement actions.												
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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #								
10a Timely enforcement taken to address SNC	80%	77.3%	6	6	100%								
State response	None												
Recommendation	None												

RCRA Element 5 — Penalties

Finding 5-1	Area for State Improvement																													
Summary	The state closely follows its guidance documents for calculating penalties, but those documents do not address the economic benefit of noncompliance (EBN). It typically obtains the penalties issued and well documents its calculations and justifications for the amounts.																													
Explanation	<p>State penalty calculations for the gravity component are accurate and follow state guidance. Its penalty matrix is easy to use and produces unbiased, appropriate numbers, but the policy does not address EBN and the state does not calculate or seek it. State law directs the Department to consider EBN in its penalty calculations. Metric 12b includes an ongoing enforcement action.</p> <p>During the close-out meeting the state said it believes that EBN in RCRA cases is typically very small in comparison to the gravity component. It believes the amount calculated for the gravity component is adequate to address the EBN as well as the gravity. Often the cost of correcting the violations outweighs any benefit the facility might have gained through noncompliance. Further, KDHE RCRA management thinks EBN should be calculated consistently across the different enforcement programs and KDHE Air and Water apparently also do not calculate EBN.</p> <p>Although EBN in RCRA penalty calculations is often quite small in comparison to the gravity component, in some cases, especially illegal disposal or avoided actions such as training, it can be a comparatively large sum. The state should at least do a cursory calculation of EBN before entering negotiations so it will not fail to obtain EBN if it is significant. This is a longstanding issue that was identified during SRF Rounds 1 and 2 and will remain unresolved until state upper management decides to calculate EBN as part of the state’s penalty.</p>																													
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12b Penalties collected	100%		6	7	85.7%																									
State response	KDHE believes that our penalty matrix takes into consideration economic benefit by penalizing more for violations that could have a																													

	<p>direct economic benefit. Further, our statutes (Kansas Statutes Annotated (K.S.A.) 65-3446) authorizes us only to impose a penalty which “shall constitute an actual and substantial economic deterrent to the violation for which it is assessed.”</p>
Recommendation	<p>The KDHE needs to develop a standard procedure where EBN is consistently considered and calculated for each penalty action. Although K.S.A 65-3446 does not specify recovery of economic benefit in calculating penalties, it does require a penalty that is “an actual and substantial economic deterrent to the violation.” It does not forbid calculation of economic benefit. The EPA believes calculating and recovering the violator’s economic benefit of noncompliance in addition to a gravity component better meets the goal of actual and substantial economic deterrent. In K.S.A. 65-3444(b)(4), which addresses civil penalties as opposed to administrative penalties, the statute calls for the district court to consider “the economic savings realized by the person in not complying with the provisions for which a violation is charged. . . .” The statute’s intended result of seeking EBN in civil actions translates to administrative penalties.</p> <p>The KDHE BWM should coordinate with other KDHE media enforcement programs to develop an equitable policy for seeking EBN in each program’s penalties. Further discussions between upper management of the KDHE and the EPA will be necessary to make this change across all media enforcement programs.</p>

Appendix

KDHE Bureau of Waste Management Response letter

Division of Environment
Curtis State Office Building
1000 SW Jackson St., Suite 400
Topeka, KS 66612-1367



Phone: 785-296-1535
Fax: 785-296-8464
www.kdheks.gov

Robert Moser, MD, Secretary

Department of Health & Environment

Sam Brownback, Governor

October 28, 2014

Mr. Donald Toensing
Chief, Waste Enforcement and Materials Management Branch
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

Dear Mr. Toensing:

The KDHE Bureau of Waste Management has reviewed EPA's Draft Report of the State Review Framework of the Kansas RCRA Enforcement Program dated September 2, 2014. We appreciate EPA's comments and guidance as we seek to continuously improve our program. I have attached our response to the draft report addressing the "Areas of Improvement" and findings that specify "Areas for State Attention."

Please let me know if you have any questions about our response. Thank you for conducting this review efficiently and professionally.

Sincerely,

A handwritten signature in blue ink that reads "William L. Bider".

William L. Bider
Director
Bureau of Waste Management

- C John Mitchell, Director, Division of Environment
Rebecca Wenner, Chief, Compliance Assistance and Enforcement Unit
Christine Mennicke, Chief, Regulations and Data Unit

KDHE's Response/Comments on State Review Framework

October 27, 2014

Areas of Improvement:

1. Penalty calculations should specifically recover the economic benefit of noncompliance. As previously discussed, KDHE believes that our penalty matrix takes into consideration economic benefit by penalizing more for violations that could have a direct economic benefit. Further, our statutes (Kansas Statutes Annotated (K.S.A.) 65-3446) authorizes us only to impose a penalty which "shall constitute an actual and substantial economic deterrent to the violation for which it is assessed."
2. Documentation of significant non-complying facilities in the database. KDHE will work to improve the timeliness of entering the SNN and SNY evaluations.
3. Complete inspection reports including sufficient narrative, dating, and inspector signature. KDHE has added a date field in our reports next to the field listing the name of the inspector completing the report. This should suffice in lieu of a signature, which would be expensive because it would require a change to our electronic system. We will also modify our waste stream table to include additional information regarding processes generating the waste.

RCRA Findings:

- Finding 1-1 KDHE will review established procedures with Compliance and Enforcement staff to try to improve our rate from 79.3% to 100% in the future.
- Finding 2-1 When planning our inspection schedule, KDHE always considers inspections planned by EPA. This eliminates duplication of resources and frustration from the regulated community because of multiple inspections. If EPA's inspections were considered in the numbers, this would not be an area for state attention. KDHE will continue to fill vacant positions as long as funding allows.
- Finding 2-2 As stated above, KDHE has added a date field to its inspection reports to record the date the inspection report is completed. KDHE will also alter the waste stream table and/or other areas of the report to discuss or list processes generating waste.
- Finding 3-2 KDHE will review all established procedures with enforcement staff. This should help improve our entry to SNC and SNN evaluations in RCRA Info.
- Finding 5-1 As previously discussed, KDHE believes that our penalty matrix takes into consideration economic benefit by penalizing more for violations that could have a direct economic benefit. Further, our statutes (Kansas Statutes Annotated (K.S.A.) 65-3446) authorizes us only to impose a penalty which "shall constitute an actual and substantial economic deterrent to the violation for which it is assessed."

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EPA bases SRF findings on data and file review metrics, and conversations with program management and staff. EPA will track recommended actions from the review in the SRF Tracker and publish reports and recommendations on EPA's ECHO web site.

Areas of Strong Performance

- **Finding 2-1.** KDHE is exceeding national averages for Full Compliance Evaluation (FCE) inspection targets and review of Title V Annual Compliance Certifications.
- **Finding 2-2.** KDHE's documentation of FCE elements in inspection reports was exemplary. KDHE review of compliance monitoring reports to ensure completeness was likewise noteworthy.
- **Finding 3-1.** Accuracy of compliance and High Priority Violator (HPV) determinations were at or near the national goal of 100%.
- **Finding 3-2.** The KDHE is properly identifying HPV violations.
- **Finding 4-1.** All formal enforcement responses reviewed included language requiring the facility return to compliance.
- **Finding 5-1.** KDHE files demonstrate the state's documentation of the consideration of economic benefit in the calculations has improved significantly.
- **Finding 5-2.** KDHE has a strong performance record for penalty collection. KDHE consistently documents rationale for reducing the initial penalty.

Areas for State Attention

The following are the priority issues affecting the state's program performance:

- **Finding 1-1.** The review revealed several inaccuracies in the CAA database as compared to the facility file.
- **Supplemental Finding.** EPA experienced several issues with the KDHE electronic file review system during the SRF review.

Area for State Improvement - Significant CAA Stationary Source Program Issues¹

- **Finding 1-2.** The review revealed issues with timely data entry, most notably the reporting of stack test data is substantially below the national average and goal.

¹ EPA's "National Strategy for Improving Oversight of State Enforcement Performance" identifies the following as significant recurrent issues: "Widespread and persistent data inaccuracy and incompleteness, which make it hard to identify when serious problems exist or to track state actions; routine failure of states to identify and report significant noncompliance; routine failure of states to take timely or appropriate enforcement actions to return violating facilities to compliance, potentially allowing pollution to continue unabated; failure of states to take appropriate penalty actions, which results in ineffective deterrence for noncompliance and an unlevel playing field for companies that do comply; use of enforcement orders to circumvent standards or to extend permits without appropriate notice and comment; and failure to inspect and enforce in some regulated sectors."

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- Data Metric Analysis sent to KDHE: April 14, 2015
- File selection list sent to KDHE: April 14, 2015
- Entrance interview conducted April 28, 2015
- File review conducted: May - June, 2015
- Exit interview conducted: August 26, 2015
- Draft report sent to headquarters: September 8, 2015
- Draft report sent to KDHE: November 10, 2015
- Final report issued: December 21, 2015

State and EPA key contacts for review:

- Russ Brichacek, KDHE Air Compliance and Enforcement Section
- Javier Ahumada, KDHE Air Compliance and Enforcement Section
- Lisa Gotto, EPA Region 7, SRF Review Lead
- Joe Terriquez, EPA Region 7 Air Compliance and Enforcement Section
- Hugh McCullough, EPA Region 7 Air Compliance and Enforcement Section
- Kevin Barthol, EPA Region 7 SRF Coordinator

III. SRF Findings

Findings represent the EPA’s conclusions regarding state performance and are based on findings made during the data and/or file reviews and may also be informed by:

- Annual data metric reviews conducted since the state’s last SRF review
- Follow-up conversations with state agency personnel
- Review of previous SRF reports, Memoranda of Agreement, or other data sources
- Additional information collected to determine an issue’s severity and root causes

There are three categories of findings:

Meets or Exceeds Expectations: The SRF was established to define a base level or floor for enforcement program performance. This rating describes a situation where the base level is met and no performance deficiency is identified, or a state performs above national program expectations.

Area for State Attention: An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, the state should correct the issue without additional EPA oversight. EPA may make recommendations to improve performance, but it will not monitor these recommendations for completion between SRF reviews. These areas are not highlighted as significant in an executive summary.

Area for State Improvement: An activity, process, or policy that one or more SRF metrics show as a significant problem that the agency is required to address. Recommendations should address root causes. These recommendations must have well-defined timelines and milestones for completion, and EPA will monitor them for completion between SRF reviews in the SRF Tracker.

Whenever a metric indicates a major performance issue, EPA will write up a finding of Area for State Improvement, regardless of other metric values pertaining to a particular element.

The relevant SRF metrics are listed within each finding. The following information is provided for each metric:

- **Metric ID Number and Description:** The metric’s SRF identification number and a description of what the metric measures.
- **Natl Goal:** The national goal, if applicable, of the metric, or the CMS commitment that the state has made.
- **Natl Avg:** The national average across all states, territories, and the District of Columbia.
- **State N:** For metrics expressed as percentages, the numerator.
- **State D:** The denominator.
- **State % or #:** The percentage, or if the metric is expressed as a whole number, the count.

Clean Air Act Findings

CAA Element 1 — Data						
Finding 1-1	Area for State Attention					
Summary	KDHE maintains the Clean Air Act data in the Air Facility System ² (AFS). The review revealed several inaccuracies in the CAA database as compared to the facility file.					
Explanation	<p>Database accuracy was evaluated by comparing the KDHE electronic files with the Enforcement Compliance History Online (ECHO) detailed facility reports. 28 of 36 files reviewed had complete and accurate data entered into AFS. The remaining files revealed relatively minor discrepancies between AFS and the files. The common discrepancies between AFS and the facility files included inaccurate event dates typographical errors, inaccurate compliance status, and missing events. EPA also notes that alleged violations reported per informal enforcement actions were below the national average of 65.60%; indicating the state may have been issuing Notices Of Violations (NOVs) without reporting the minimum data requirements in AFS for compliance status.</p> <p>EPA notes KDHE has demonstrated a trajectory of improvement in database accuracy over time. EPA expects KDHE will continue the arc of improvement; EPA will continue to monitor this data element for improvement in the future.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2b Accurate MDR data in AFS	100%		28	36	77.8%
	3a2 Untimely entry of HPV determinations	0				0
	3b1 Timely reporting of compliance monitoring MDRs	100%	83%	667	863	77.3%
	3b3 Timely reporting of enforcement MDRs	100%	77.9%	51	56	91.1%
	7b1 Violations reported per informal actions	100%	65.60%	5	36	13.90%
	7b3 Violations reported per HPV identified	100%	63.2%	0	0	0

² The AFS data system has been retired and is now a part of the Integrated Compliance and Information System (ICIS-AIR).

State response	The report noted BOA's improvement in this metric since the previous SRF and we intend to continue improving. With the introduction of ICISAir, there was a period of time where staff was learning the system and may have made some initial errors, but overall, the new system allows our staff the ability to directly enter data into the CAA database which will further reduce and discrepancies between our file and the CAA database. The report mentions a possibility that all notices of noncompliance (NONs) may have not been uploaded into AFS. BOA is not sure if that is the case, or if it was a statistical anomaly, but will put additional emphasis on entering NONs into the CAA database going forward.
Recommendation	

CAA Element 1 — Data

Finding 1-2	Area for State Improvement												
Summary	<p>KDHE maintains CAA data in AFS. The review revealed issues with timely data entry; most notably the reporting of stack test data is substantially below the national average and goal. EPA is concerned with data flow and timeliness.</p>												
Explanation	<p>Untimely stack test data reporting into AFS is a likely function of the size of the current KDHE universe; KDHE staffing resource challenges; and 2014 procedures for receiving, prioritizing, and entering data. During the review, EPA noted KDHE has challenges getting the file scanned into the facility file in a timely manner. The majority of inspections are conducted by the KDHE regional offices. Inspection reports are then submitted to the KDHE main office – which may result in data entry time-lag of 45 days or more. The delay in receiving inspection reports has potential impacts on the timely issuance of enforcement activities. During the time period under review, CAA data entry was accomplished by a single KDHE staff member. Physical copies of the documents (inspection reports, enforcement documents, stack test observations, etc.) were provided to the data entry staff member, who reviewed the documents and identified the information to be recorded in AFS. EPA notes KDHE only met the standard for timely reporting of stack test dates and results 2.8% of the time. KDHE averages 229 days to complete the reporting of stack test dates and results in the database; 109 days more than the required within 120 days of the stack test.</p>												
Relevant metrics	<table border="1"> <thead> <tr> <th data-bbox="483 1407 997 1474">Metric ID Number and Description</th> <th data-bbox="1003 1407 1075 1474">Natl Goal</th> <th data-bbox="1081 1407 1172 1474">Natl Avg</th> <th data-bbox="1179 1407 1211 1474">State N</th> <th data-bbox="1218 1407 1250 1474">State D</th> <th data-bbox="1256 1407 1409 1474">State % or #</th> </tr> </thead> <tbody> <tr> <td data-bbox="483 1482 997 1558">3b2 Timely reporting of stack test dates and results</td> <td data-bbox="1003 1482 1075 1558">100%</td> <td data-bbox="1081 1482 1172 1558">80.80%</td> <td data-bbox="1179 1482 1211 1558">2</td> <td data-bbox="1218 1482 1250 1558">71</td> <td data-bbox="1256 1482 1409 1558">2.80%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	3b2 Timely reporting of stack test dates and results	100%	80.80%	2	71	2.80%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #								
3b2 Timely reporting of stack test dates and results	100%	80.80%	2	71	2.80%								
State response	<p>EPA metrics in this category specify that performance test results should be entered into the CAA database within 120 days of the end of the performance test. Currently, this information is entered into ICIS-Air but in FFY2014 the database was AFS. BOA strives to enter test data into the CAA database as quickly as possible but asks consideration of the fact that 120 days is actually reduced to 60 days when a federal regulation, such as a MACT or NESHAP, allows the facility to submit the final test report no later than 60 days after the end of testing. During</p>												

FFY2014, Kansas had a very large number of reciprocating internal combustion engine performance tests conducted due to implementation of the new RICE MACT, 40 CFR Part 63, Subpart ZZZZ, regulation which happened to coincide with the oil exploration boom. Not only were the total number of performance tests conducted in that year between two to three times higher than average due to this new rule, but this regulation is one which allows 60 days for final report submittal. Not only was our program asked by EPA to absorb a huge increase in work, but we were then told it had to be completed within 60 days of our receipt. In addition, due to budgetary constraints at the time, there was only a single staff member tasked with running the entire performance testing program for the entire state. To further complicate this, in FFY2012, BOA did batch uploads into AFS from our internal database once a month. Therefore, performance tests that were reviewed the day after the upload would not be reflected in AFS for another month. BOA would like to note that although the arbitrary 120 day, effectively 60 day, deadline was not met on most stack test reports in FFY2014, 100% of stack test and RATA reports, including Acid Rain reports which we review out of courtesy to EPA, were thoroughly reviewed for scientific accuracy and compliance demonstration.

BOA believes this was a "perfect storm" event which has already been alleviated by a number of factors. BOA preemptively took action to solve this problem prior to it being called to our attention in the Data Metric Analysis, received in April 2015, by hiring additional staff in late 2014 to help process the increased workload created from this regulation. Input into AFS was also discontinued when ICIS-Air went live. Staff now inputs performance test results directly into ICISAir when review is complete, which has helped our timeliness. Finally, the number of newly subject engines dropped in the last federal fiscal year due in part to a decline in oil prices. BOA still contends that a deadline of 120 days after the stack test date, which is effectively reduced to 60 days after CAA regulation allowances, is not conducive to thorough and thoughtful review and we question whether other states are simply reporting the stack test data without proper review in order to meet this deadline.

Recommendation

Region 7 recommends KDHE continue to evaluate current data entry procedures with the goal of improving speed by identifying opportunities to collect and enter data from the Regional Offices and Local Government Agencies more efficiently so data entry may occur in a timely manner. KDHE should consider the use of a data entry form which may be provided electronically to data entry staff upon completion of reportable activities. KDHE should provide Region 7 with a draft of the process improvements for review within 60 days of

completion of this SRF Report. If review of KDHE data at the end of FY2016 shows that timeliness has sufficiently improved, the Recommendation will be deemed completed.

CAA Element 2 — Inspection

Finding 2-1	Meets or Exceeds Expectations					
Summary	KDHE is exceeding national average for FCE Inspection targets and review of Title V Annual Compliance Certifications.					
Explanation	<p>KDHE is above the national average for FCE coverage for Title V Major and Synthetic Minor (SM)-80 facilities, along with review of Title V Annual Compliance Certifications. FCE coverage of Major facilities was 95.50% (national average of 85.70%) and FCE coverage of SM-80s was 98.60% (national average of 91.70%). Kansas Title V facilities are inspected annually. The larger Title V facilities receive multiple Partial Compliance Evaluations (PCEs) in one year, which combine to meet the annual FCE requirement. KDHE inspectors accompany the EPA inspectors on inspections in Kansas whenever possible. Inspectors are also called upon to execute complaint investigations when necessary. The KDHE air program inspectors perform over 800 assigned facility inspections each year. The KDHE field inspectors perform 100 to 150 additional inspections/investigations beyond the assigned inspections. This substantial workload is accomplished with a high degree of communication and coordination with the six KDHE Regional Offices and local government offices on a frequent basis to ensure inspection targets are met.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	5a FCE coverage: majors and mega-sites	100% of commitment	85.70%	212	222	95.50%
	5b FCE coverage: SM-80s	100% of commitment	91.70%	353	358	98.60%
	5e Review of Title V annual compliance certifications	100%	78.80%	262	280	93.60%
State response						
Recommendation						

CAA Element 2 — Inspection

Finding 2-2	Meets or Exceeds Expectations						
Summary	KDHE’s documentation of FCE elements in inspection reports was exemplary. KDHE review of compliance monitoring reports to ensure completeness was likewise noteworthy.						
Explanation	KDHE performed well on the SRF inspection elements and inspection metrics 6a and 6b. In the subset of reports reviewed, 96.7% of the FCE’s reviewed effectively documented the full complement of FCE elements. During the review year, 33 of the 34 compliance monitoring reports reviewed provided sufficient documentation to determine facility compliance.						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	6a Documentation of FCE elements		100%		29	30	96.7%
	6b Compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance		100%		33	34	97.1%
State response							
Recommendation							

CAA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations					
Summary	Accuracy of compliance and HPV determinations were at or near the national goal of 100%.					
Explanation	30 of the 32 files reviewed appeared to have accurate compliance determinations. 13 of the 13 files reviewed appear to have accurate HPV determinations, indicating that among the violations reviewed, KDHE is accurately identifying the violations and interpreting the HPV policy. EPA reached beyond the scope of the 2014 review period to gain a broader picture of KDHE's HPV determinations and policy interpretation by reviewing enforcement files for a facility identified in a previous year as an HPV. EPA concluded KDHE is appropriately applying the HPV policy.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	7a Accuracy of compliance determinations	100%		30	32	93.8%
	8c Accuracy of HPV determinations	100%		13	13	100%
State response						
Recommendation						

CAA Element 3 — Violations

Finding 3-2	Meets or Exceeds Expectations					
Summary	The KDHE is properly identifying HPV violations.					
Explanation	KDHE management discusses HPV cases and HPV identification with Region 7 staff during their scheduled monthly conference calls. The data demonstrate proper application of the HPV policy. Although the KDHE HPV discovery rate is lower than the national average, KDHE is properly identifying HPV violations.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	8a HPV discovery rate at majors		3.10%	0	0	0%
State response						
Recommendation						

CAA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations					
Summary	All formal enforcement responses reviewed included language requiring the facility return to compliance.					
Explanation	All formal enforcement settlement documents reviewed included a condition that required the facility to return to compliance. When practical, the return to compliance was required immediately. In situations where immediate compliance was not feasible, a compliance schedule was incorporated into the settlement document.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe	100%		16	16	100%
	10b Appropriate enforcement responses for HPVs	100%		4	4	100%
State response						
Recommendation						

CAA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations						
Summary	KDHE files demonstrate the state’s documentation of the consideration of economic benefit in the calculations has improved significantly.						
Explanation	<p>The 2010 SRF review indicated that a number of the enforcement actions taken by KDHE in the public files did not include a penalty calculation work sheet with a specific statement on consideration of economic benefit. The 2015 SRF review demonstrates KDHE has made significant progress in addressing this issue. As part of the 2010 review recommendation, KDHE instituted a requirement for a statement at the end of each Penalty Work Sheet pertaining to economic benefit that may have been gained by the facility for failure to comply. KDHE protocol for consideration and documentation of economic benefit has been included in the KDHE Air Program Enforcement Policy. The policy includes setting base penalties within the matrix at the end of the policy. The policy sets different base penalties for various violations – more serious violations have a higher base penalties. KDHE also sets a multiplier to the violation as appropriate for the situation – one instance; weeks, months, or years in violation. A history of compliance is noted for each facility, and degree of cooperation to return to a state of compliance is likewise evaluated. For the KDHE files reviewed in 2015, thirteen out of fourteen penalty calculation worksheets included documentation of the consideration of economic benefit.</p>						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	11 a Penalty calculations include gravity and economic benefit		100%		13	14	92.9%
State response							
Recommendation							

CAA Element 5 — Penalties

Finding 5-2	Meets or Exceeds Expectations					
Summary	KDHE consistently documents rationale for reducing the initial penalty. KDHE has a strong performance record for penalty collection.					
Explanation	KDHE is consistently and adequately documents rationale for reducing an initial penalty, 10 out of 11 files reviewed included the appropriate documentation. KDHE has a strong performance record for penalty collection; 12 of the 13 files reviewed demonstrated penalties were collected.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	12a Documentation on difference between initial and final penalty	100%		10	11	90.9%
	12b Penalties collected	100%		12	13	92.3%
State response						
Recommendation						

Appendix

Supplemental Finding Summary: EPA experienced several issues with the KDHE electronic file review system during the SRF review

Explanation: As a means of assessing the access, capabilities and potential public user experience of the KDHE's online electronic file system, EPA elected to conduct the file review remotely by accessing the KDHE's file system off-site. Due to software incompatibilities and limitations, EPA found it difficult for off-site users to access and navigate in the system. A portion of the file review was therefore conducted off-site, and a portion was conducted on-site. EPA encountered several issues with the electronic filing system, as follows:

1. KDHE files are organized chronologically, resulting in the occasional inability to follow the status and/or resolution of individual issues. Overall, EPA had a measure of difficulty following threads of information when all site-related issues were clustered together.
2. The electronic file system is cumbersome and difficult for users outside of KDHE to navigate. EPA encountered software incompatibilities, while attempting to review the files off site. Discussions with the KDHE district office revealed similar issues. Substantial amounts of time were required for the SRF reviewers to navigate the documents using the Webnow software outside the agency.
3. EPA had difficulties searching the electronic files for specific documents.
4. EPA encountered misfiled sets documents (i.e., the files for a facility were filed in the wrong facility file).
5. EPA is concerned about accessibility of the KDHE compliance and enforcement files to the general public, as well as other agencies (EPA included).

To address these issues, EPA recommends KDHE develop a Standard Operating Procedure (SOP) or guidance for outside users detailing how the search function works and KDHE pursue updating the Webnow software.

State Response: The SRF report contained an appendix which states several issues with the BOA electronic file review system. BOA believes the two main reasons for difficulty in using the system had to do with the EPA computers not being fully compatible with our software and the lack of user familiarity with the software. BOA receives numerous Kansas Open Records Act (KORA) requests every year and we have not been made aware of any problems accessing the requested files. After receiving these complaints, BOA invited the Region 7 SRF team to our office in order to use our computers and to receive some basic instruction in use of the software. We were told that the review went much faster at that point. It is not uncommon for an SRF team

to visit the state office in order to do their review, especially if paper files are still used. Therefore, BOA does not think this complaint warrants mention in this audit since our system, while it may have inconvenienced the SRF team by forcing them to travel to our office, did not prevent them from actually seeing the files they requested.

KDHE Bureau of Air Response Letter

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Susan Mosier, MD, Secretary

Department of Health & Environment

Sam Brownback, Governor

November 17, 2015

Becky Weber
Air and Waste Management Division
U.S. EPA, Region 7
11201 Renner Blvd.
Lenexa, KS 66219

Dear Ms. Weber:

On November 16, 2015, the Kansas Department of Health and Environment (KDHE) received the draft report of the State Review Framework (SRF) of the KDHE Bureau of Air (BOA) Compliance and Enforcement Program conducted by EPA Region 7 staff. This SRF audited federal fiscal year 2014 activities. BOA would like to comment on portions of the draft report.

The SRF report identified one area for improvement relating to the lack of timely date entry of performance test results. EPA metrics in this category specify that performance test results should be entered into the CAA database within 120 days of the end of the performance test. Currently, this information is entered into ICIS-Air but in FFY2014 the database was AFS. BOA strives to enter test data into the CAA database as quickly as possible but asks consideration of the fact that 120 days is actually reduced to 60 days when a federal regulation, such as a MACT or NESHAP, allows the facility to submit the final test report no later than 60 days after the end of testing. During FFY2014, Kansas had a very large number of reciprocating internal combustion engine performance tests conducted due to implementation of the new RICE MACT, 40 CFR Part 63, Subpart ZZZZ, regulation which happened to coincide with the oil exploration boom. Not only were the total number of performance tests conducted in that year between two to three times higher than average due to this new rule, but this regulation is one which allows 60 days for final report submittal. Not only was our program asked by EPA to absorb a huge increase in work, but we were then told it had to be completed within 60 days of our receipt. In addition, due to budgetary constraints at the time, there was only a single staff member tasked with running the entire performance testing program for the entire state. To further complicate this, in FFY2012, BOA did batch uploads into AFS from our internal database once a month. Therefore, performance tests that were reviewed the day after the upload would not be reflected in AFS for another month. BOA would like to note that although the arbitrary 120 day, effectively 60 day, deadline was not met on most stack test reports in FFY2014, 100% of stack test and RATA reports, including Acid Rain reports which we review out of courtesy to EPA, were thoroughly reviewed for scientific accuracy and compliance demonstration.

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We would like to thank the Region 7 SRF team for being courteous, patient and considerate of our time in this audit. If you have any questions concerning these comments please contact me at JAhumada@kdheks.gov or call at (785) 296-0243.

Sincerely,



Javier Ahumada
Chief, Compliance and Enforcement Section
Bureau of Air

c: Rick Brunetti, BOA Director