

STATE REVIEW FRAMEWORK

Puerto Rico

Clean Water Act and Resource Conservation and Recovery Act Implementation in Federal Fiscal Year 2013

**U.S. Environmental Protection Agency
Headquarters, Washington, D.C.**

**Final Report
November 25, 2015**

Executive Summary

Introduction

EPA Headquarters enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of EPA Region 2's direct implementation of the RCRA and CWA enforcement program in Puerto Rico.

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

- Region 2 has created an effective inspection/return-to-compliance system for the PRASA and some other Puerto Rico NPDES facilities. Most facilities appear to take corrective action when, following an inspection, Region 2 provides them with a letter that lists the deficiencies identified through the inspection, and includes a requirement that the facility provide a written response describing how it corrected or is in the process of correcting each deficiency.
- Region 2 exceeded the national goal for data entry of both NPDES permit limit and discharge monitoring report (DMR) data.
- Region 2 staff make accurate NPDES compliance determinations through inspections of PR facilities.
- Region 2's NPDES enforcement actions in Puerto Rico consistently return facilities to compliance.
- Region 2 consistently considered and documented gravity and economic benefit when calculating an appropriate penalty for its civil enforcement cases in Puerto Rico.
- Region 2 consistently documents payment of the penalty in the enforcement case file.
- RCRA inspection reports were complete and sufficient to determine compliance and were completed within the expected timeframe.
- RCRA one-year and five-year inspection coverage for LQGs also met or exceeded national goals.
- RCRA files reviewed showed that accurate compliance determinations were made and violations were being identified correctly.
- RCRA files reviewed showed that enforcement actions returned facilities to compliance.

Priority Issues to Address

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

- R2 needs to document compliance determinations related to the deficiencies identified through its NPDES inspections in Puerto Rico. The Region needs to document which

deficiencies qualify as single event violations (SEVs) and identify and document which SEVs place the facility in an SNC status.

- Region 2 needs to improve timeliness of completing NPDES Puerto Rico inspection reports and timely response to violations (identified via inspections and ICIS-NPDES SNC). Late completion of inspection reports appears in some instances to have affected the region's ability to timely respond to violations.

CWA-NPDES Integrated SRF-PQR Findings

This section will be updated upon completion of the 2014 Permit Quality Review report

Most Significant PQR CWA-NPDES Findings

This section will be updated upon completion of the 2014 Permit Quality Review report

Most Significant SRF CWA-NPDES Program Issues¹

- Region has not been making/documenting SEV or SNC non-compliance determinations based on inspection reports.
- Region has not been reporting SEVs or SEV-SNCs to ICIS.
- Documentation supporting inspection findings has not been consistently placed into the official facility enforcement file.
- Interim effluent limits for some of the POTW's covered by the PRASA consent decree have not been correctly entered into ICIS-NPDES;
- Stipulated penalties paid have not all been entered into ICIS.
- Inspection reports have not been consistently completed timely (apparently causing enforcement responses to be untimely).

Most Significant SRF RCRA Subtitle C Program Issues

- Mandatory data are not all accurately reflected in the national data system.
- Files lacked adequate documentation of gravity, economic benefit, and the difference between initial and final penalties for most penalty actions.

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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I. CWA-NPDES Integrated SRF and PQR Review

[This section will be updated upon completion of the 2014 Permit Quality Review report]

II. CWA-NPDES Permit Quality Review

[This section will be updated upon completion of the 2014 Permit Quality Review report]

III. Background on the State Review Framework

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

- Clean 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

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

EPA builds consultation into the SRF to ensure that 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. 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.

IV. SRF Review Process

Review period: Fiscal Year 2013

Key dates:

<i>September 9, 2014</i>	<i>Data metric analysis and file selection list sent to R2</i>
<i>September 22, 2014</i>	<i>Kick off call</i>
<i>October 20-24, 2014</i>	<i>On-site review conducted at the Region 2, Caribbean Environmental Protection Division offices</i>
<i>November 20, 2014</i>	<i>On-site review conducted at the Region 2, New York City offices</i>
<i>November 25, 2015</i>	<i>Draft Report</i>

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V. SRF Findings

Findings represent 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 Water Act Findings

CWA Element 1 — Data							
Finding 1-1	Meets or Exceeds Expectations						
Summary	Data in the ICIS-NPDES data system indicates that R2 has exceeded the national goal for data entry of both NPDES permit limit and discharge monitoring report (DMR) data.						
Explanation	Region 2 exceeded the national goal (95%) and the national average (99.2%) for NPDES permit limit data entry, and exceeded the national goal (95%) for DMR data entry.						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	EPA R2 N	EPA R2 D	EPA R2 % or #
	1b1 Permit limit rate for major facilities		95%	99.2%	69	69	100%
	1b2 DMR entry rate for major facilities		95%	98.9%	1275	1325	96.2%
Region response							
Recommendation	None.						

CWA Element 1 — Data						
Finding 1-2	Area for Region Improvement					
Summary	Data related to the compliance status of NPDES facilities in Puerto Rico is not reliable in ICIS-NPDES; Region 2 has trouble determining whether Puerto Rico NPDES enforcement files are located in CEPD/PR or DECA/NY.					
Explanation	Review of 40 Region 2 Puerto Rico NPDES inspection/enforcement files showed only 4 (or 10.0%) of those files had all the relevant data accurately recorded in ICIS. The problem with data completeness and accuracy, with few exceptions, was failing to identify SEVs or SNCs identified during inspections. When significant compliance problems were identified (and usually addressed via an exchange of letters) the deficiencies identified were not categorized as SEVs or SNCs and, consequently, this information					

was not recorded in ICIS. (Note, a finding from the Round 2 SRF review of Region 2/PR/NPDES, was “Single Event Violations and Compliance/Permit Schedule Violations are not being entered in ICIS-NPDES.”) Per finding 3-2 below, Region 2 needs to regularly review NPDES inspection reports to determine SEVs and SNCs and then record these violation determinations in ICIS. To accomplish this, the compliance officer in CEPD needs to make these determinations and communicate them to the data entry personnel in New York.

A discussion with Region 2 early in the SRF process revealed that the Region has not entered all of the correct interim effluent limitation data from the PRASA consent decree into ICIS. Entry of the correct interim effluent limits to ICIS would impact the compliance status of many of the 61 PRASA facilities covered by the consent decree. The result is PRASA facilities showing inaccurate violation and/or SNC status information in ICIS/ECHO. (Note that PRASA consent decree data being inaccurate in ICIS was also an issue identified in the SRF Round 2 report.)

These two problems, not entering SEVs and SNCs from inspections and missing interim effluent limits, render the noncompliance rates and SNC rates for Puerto Rico NPDES facilities unreliable.

We also found that some stipulated penalties that had been imposed and paid for violations of the PRASA consent decree had not been entered into ICIS.

The number of facilities in the NPDES majors universe varies for the SRF data metrics. For metrics 1a1, 1b1 and 7d1 the number is 65, for metric 5a1 it is 69, and for metric 8a2 the number is 74. Also, for these (and other) metrics there are activities recorded in the DMA attributed to the state/PR rather than EPA. Given the unauthorized status of PR this does not appear to make sense. We suspect that these data inconsistencies are all attributable ICIS-NPDES data errors.

Outside these specific concerns, the Region’s NPDES data entry for Puerto Rico was generally complete and accurate. This includes entry of other inspection data, facility information, DMR data, and required enforcement action information.

Finally, we note that Region 2 had difficulty determining whether Puerto Rico NPDES inspection/enforcement files resided with CEPD or DECA. Many files the Region originally thought were in New York appeared during the review in Puerto Rico. Later, in New York we found additional, similar problems. Throughout the review it never became clear why a facility was being handled out of DECA vs. CEPD. Ultimately, all

the SRF materials needed were provided, but coordination between CEPD and DECA appears to be a problem.

Because of the large number of PRASA facilities with inaccurate compliance data, the lack of entering SEVs and SEV/SNCs into ICIS-NPDES, and the problems associated with Region 2's records management practices, reviewers determine this finding to be an Area for Regional Improvement.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	EPA R2 N	EPA R2 D	EPA R2 % or #
2b Files reviewed where data are accurately reflected in the national data system			4	40	10.0%

Region response

CEPD has direct and complete authority for all NPDES inspection and enforcement work in PR. DECA provides support as requested. Region 2 also explained, subsequent to the review, that “there are some legacy practices related to file maintenance that are still being updated as the Region develops its records management program and finalizes transition of programs to CEPD.”

At this time all interim effluent limitations from the PRASA consent decree have been corrected in ICIS. The problem was not that the information was not entered, but that there was a discrepancy in understanding the terms of the consent decree. This misunderstanding has been resolved and the effluent limitations corrected. NY is currently reviewing and reorganizing its PR NPDES permit files which will help resolve any questions about file location. There is an SOP for communication and data entry of SEVs now in place and compliance officers have received training and are provided annual refresher training on the process. A process for communicating any changes to consent decree limits and penalties for violations has also recently been established.

After the enforcement review, instructions were provided to MWPB staff to start submitting SEVs to DECA/CAPS for input into ICIS. Several entries have been done so far.

Recommendations

Recommendation #1: Within 60 days of finalization of this report, Region 2 will submit to the Office of Compliance (OC) an SOP that assures SEV and SNC information is reported timely into ICIS. Within 30 days of receipt of OC comments, Region 2 will finalize and begin to implement this SOP.

Recommendation #2: Region 2 shall include-- in this or a separate SOP a mechanism for insuring that interim effluent limits written into consent decrees and stipulated penalties imposed for violation of a consent decree are entered into ICIS. If this is done using a separate SOP, this SOP should be final and implemented within three months following final issuance of this report.

Recommendation #3: The Region, working with the Office of Compliance as necessary, should examine and correct two issues related to the NPDES data in ICIS (to the extent these issues have continued beyond FY 2013):

- 1) the NPDES majors universe inconsistencies; and,
- 2) the facilities/activities attributed in the SRF NPDES data metrics to PR (rather than EPA).

Assuming these issues did continue, investigation of and corrections to the data in ICIS-NPDES to correct these two issues should be completed in ICIS-NPDES, and completion attested to by the Region in an email to the Office of Compliance, within three months of issuance of this report.

Recommendation #4: Region 2 shall complete updating its legacy practices related to file maintenance as the Region develops its records management program and finalize transition of programs to CEPD. This effort shall be completed within 6 months of the issuance of this report.

CWA Element 2 — Inspections

Finding 2-1 Meets or Exceeds Expectations

Summary Region 2 is conducting inspections sufficient to meet CMS commitments for the Puerto Rico CSO, MS4 and stormwater universes.

Explanation Region 2 met or exceeded their FY13 CMS inspection commitments for NPDES majors, non-majors, and for the CSO, MS4 and stormwater programs.

Per the FY13 CMS, the Region committed to inspect 53 majors and 142 minors. Upon reviewing a draft of this report, Region 2 explained that the FY13 CMS NPDES non-majors inspection commitment number of 142 was in error and should have been 108. The Region also agreed that they actually conducted 122 inspections of non-majors in FY13, per ICIS-NPDES, and not 143 as reported by the Region in the CMS.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	EPA R2 N	EPA R2 D	EPA R2 % or #
4a4 Major CSO inspections	100% of Commitment		5	1	500%
4a5 SSO inspections	100% of Commitment		30	1	3000%
4a7 Phase I & II MS4 audits or inspections	100% of Commitment		25	25	100%
4a8 Industrial stormwater inspections	100% of Commitment		21	20	105%
4a9 Phase I and II stormwater construction inspections	100% of Commitment		10	10	100%
4a10 Medium and large NPDES CAFO inspections	100% of Commitment		0	0	N/A
5a1 Inspection coverage of NPDES majors	100% of Commitment	56.8%	53	69	76.8%
5b1 Inspection coverage of NPDES non-majors with individual permits	100% of Commitment	26.0%	96	175	54.9%
5b2 Inspection coverage of NPDES non-majors with general permits	100% of Commitment	7.0%	26	70	37.1%

Region response

Recommendation	None.
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CWA Element 2 — Inspections

Finding 2-2	Area for Region Improvement
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Summary	Region 2 compliance files often do not contain checklists and/or documentary support. Inspection reports are not completed in a timely manner. Based on reported information, Region 2 did not conduct any pretreatment compliance inspections in FY13 and did not report any SIU inspection information.
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Explanation	<p>Most of the NPDES facility enforcement files reviewed did not contain field notes from inspections, and many did not contain adequate photo documentation from the inspection. As a result, the file review found only 19% of the inspection files (10 of 53) were complete. According to the CEPD managers, photo logs and field notes generally are being kept in each inspector’s office rather than being placed in the official case files and a number of examples were produced for the SRF team demonstrating this.</p> <p>49% of the Puerto Rico NPDES inspections reports reviewed (26 of 53) were submitted in a timely manner. According to the EMS, inspection reports should be submitted between 30-45 calendar days after an inspection is done, depending on the type of inspection. Region 2 inspection reports were submitted anywhere between 42-429 days beyond the recommended deadline. The report at the upper end of the range for an inspection that occurred on 8/21/13 had not yet been submitted as of mid-October. The average number of days for a report to be completed and signed was 84 days. (Notably, the median number of days for report completion was 42 indicating that the few reports that were very late significantly impacted the average.)</p> <p>For FY 13 the Region committed to undertake one pretreatment compliance inspection or audit but reported doing none.</p>
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Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	EPA R2 N	EPA R2 D	EPA R2 % or #
	4a1 Pretreatment compliance inspections and audits			0	1	0%
	4a2 Significant Industrial User inspections for SIUs discharging to non-authorized POTWs			0	0	NA

	6a Inspection reports complete and sufficient to determine compliance at the facility	10	53	18.9%
	6b Inspection reports completed within prescribed timeframe	26	53	49.1%
Region response	In relation to the timeliness of inspection reports, this finding was also observed during an internal audit [by Region 2]. Corrective measures were developed and shared with MPCB staff in 2014. Training on inspection reports was included as part of a mandatory training (FOG) provided to CEPD staff in November 2014. This included training on including all field notes, checklists and photos in each facility's official enforcement file.			
Recommendation	Within 90 days of finalization of this SRF report, Region 2 shall submit an SOP to OC that: a) directs the NPDES inspection staff to place their inspection checklists and all other documentation that supports the inspection in the facility enforcement file; b) provides a plan to improve and assure the timely submission of inspection reports; and c) ensures management reviews inspection reports and confirms that inspection information is complete in the facility file.			

CWA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations																
Summary	Region 2 staff make accurate NPDES compliance determinations through inspections of PR facilities.																
Explanation	Review of case files show that Region 2 inspectors consistently accurately determine when a facility in Puerto Rico is in compliance with the CWA.																
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>EPA R2 N</th> <th>EPA R2 D</th> <th>EPA R2 % or #</th> </tr> </thead> <tbody> <tr> <td>7e Accuracy of compliance determinations</td> <td>100%</td> <td></td> <td>52</td> <td>52</td> <td>100%</td> </tr> </tbody> </table>					Metric ID Number and Description	Natl Goal	Natl Avg	EPA R2 N	EPA R2 D	EPA R2 % or #	7e Accuracy of compliance determinations	100%		52	52	100%
Metric ID Number and Description	Natl Goal	Natl Avg	EPA R2 N	EPA R2 D	EPA R2 % or #												
7e Accuracy of compliance determinations	100%		52	52	100%												
Region response																	
Recommendation	None.																

CWA Element 3 — Violations

Finding 3-2	Area for Region Improvement						
Summary	The Region does not accurately identify SEVs.						
Explanation	<p>Region 2 generally does not document compliance determinations related to the deficiencies identified through its NPDES inspections in Puerto Rico. The Region does not document which deficiencies qualify as single event violations and does not identify or document which SEVs place the facility in an SNC status. In none of the inspection reports/files where the Region identified serious compliance deficiencies did the Regions identify these as “SEVs” or enter them as SEVs into ICIS. The Region also did not record any of these SEVs in ICIS as SNC.</p> <p>The number of major facilities with SEV-based noncompliance is uncertain because Region 2 has not been reporting SEVs to ICIS. The same is true for SNC’s based on SEVs. See Finding 1-2.</p>						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	EPA R2 N	EPA R2 D	EPA R2 % or #
	7a1 Number of major facilities with single event violations				0	69	0%
	7d1 Major facilities in noncompliance			62.3%	67	69	97.1%
	8a2 Percentage of major facilities in SNC			34.5%	52	78	66.7%
	8b1 Single-event violations accurately identified as SNC or non-SNC		100%		3	48	6.3%
	8c Percentage of SEVs identified as SNC reported timely at major facilities		100%		2	45	4.4%
Region response	After the enforcement review, instructions were provided to MWPB staff to start submitting SEV to DECA / CAPS for input into ICIS. Several entries have been done so far. There is a draft SOP available.						
Recommendation	Within 60 days of finalization of this report, Region 2 shall submit an SOP to OC for review describing how the Region will make and record SEV’s and SNC status determinations resulting from NPDES inspections in Puerto Rico. Within 30 days of receipt of OC’s comments, Region 2 will finalize and begin to implement the SOP.						

Within 30 days of the end of each of the two quarters following finalization of the SOP, Region 2 will submit to OC documentation from two inspections from each NPDES inspector that did an inspection in PR that quarter showing the compliance determination (SEVs and SNCs) made for each deficiency identified in the inspection, and screen shots from ICIS showing that the SEVs/SNCs identified were entered into ICIS. Once OC has determined that Region’s actions have addressed these deficiencies, OC will mark this recommendation complete.

CWA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations					
Summary	Region 2’s NPDES enforcement actions in Puerto Rico return facilities to compliance.					
Explanation	In 31 of 34 enforcement responses reviewed, R2 succeeded in returning the facility to compliance. (The three instances where this was not the case were Essroc San Juan (ongoing quarterly SNC violations), Hato Nuevo Construction Project (not clear that enforcement action returned facility to compliance), and PREPA (ongoing quarterly RNC violations).)					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	EPA R2 N	EPA R2 D	EPA R2 % or #
	9a Percentage of enforcement responses that return or will return source in violation to compliance	100%		31	34	91.2%
Region response						
Recommendation	None.					

CWA Element 4 — Enforcement

Finding 4-2	Area for Region Improvement					
Summary	Region 2 does not always respond to NPDES violations in Puerto Rico timely.					
Explanation	<p>Data in ICIS indicate that the Region undertakes timely enforcement actions against major NPDES facilities with violations in Puerto Rico 34.4% of the time. Though this is above the national average, it is well below the national goal of 98%.</p> <p>In six instances (of 35 enforcement responses reviewed) the time between identification of a significant violation and the initiation of the enforcement action exceeded the expected response time described in the CWA Enforcement Management System (see Memorandum, “<i>Clarification of NPDES EMS Guidance on Timely and Appropriate Enforcement Response to Significant Noncompliance Violations</i>” (May 29, 2008)). Enforcement responses were otherwise found to be appropriate in approximately 83% of the files reviewed.</p> <p>Note: In all but one of these instances of untimely enforcement response, the inspection report that underlay the enforcement action was not completed within the timeliness guidelines (30-45 days), likely causing or contributing to the untimeliness of the enforcement action. Per the recommendation under CWA Element 2, Finding 2-2, the region needs to improve the timeliness of completing NPDES PR inspection reports. If this is done it will likely, largely solve the problem of untimely enforcement response to NPDES violations identified through inspections.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	EPA R2 N	EPA R2 D	EPA R2 % or #
	10a1 Major facilities with timely action as appropriate	>=98%	24.7%	11	33	34.4%
	10b Enforcement responses reviewed that address violations in an appropriate manner	100%		29	35	82.9%
Region response	See comment above in relation to timeliness of reports. Inspectors received training on timing for completing inspection reports and on required contents of reports. Timely completion of inspection reports will allow staff to respond to violations in a more timely fashion.					

Recommendation	For SNC at PR facilities identified through DMR reporting, the Region needs to more closely monitor SNC status in ICIS-NPDES and resolve these SNC's timely and appropriately, in accordance with NPDES enforcement guidance (EMS). To accomplish this, the region should first determine why DMR-based SNC at PR facilities is not being timely addressed, and identify a mechanism for correcting the problem. Region 2 should send a description of the cause of the issue and the region's mechanism for resolution to OC within 30 days of completion of this report.
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CWA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations																		
Summary	Files reviewed showed that the R2 consistently considered and documented gravity and economic benefit when calculating an appropriate penalty for its civil enforcement cases in Puerto Rico; R2 also consistently documents payment of the penalty in the enforcement case file.																		
Explanation	One hundred percent (7 of 7) of penalty calculations reviewed included consideration of both economic benefit and gravity. For collection of penalties, 24 of 26 (or 92%) of files reviewed included documentation establishing that the assessed penalty had been paid.																		
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>EPA R2 N</th> <th>EPA R2 D</th> <th>EPA R2 % or #</th> </tr> </thead> <tbody> <tr> <td>11a Penalty calculations reviewed that consider and include gravity and economic benefit</td> <td>100%</td> <td></td> <td>7</td> <td>7</td> <td>100%</td> </tr> <tr> <td>12b Penalties collected</td> <td>100%</td> <td></td> <td>24</td> <td>26</td> <td>92.3%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	EPA R2 N	EPA R2 D	EPA R2 % or #	11a Penalty calculations reviewed that consider and include gravity and economic benefit	100%		7	7	100%	12b Penalties collected	100%		24	26	92.3%
Metric ID Number and Description	Natl Goal	Natl Avg	EPA R2 N	EPA R2 D	EPA R2 % or #														
11a Penalty calculations reviewed that consider and include gravity and economic benefit	100%		7	7	100%														
12b Penalties collected	100%		24	26	92.3%														
Region response																			
Recommendation	None.																		

CWA Element 5 — Penalties

Finding 5-2	Area for Region Improvement																
Summary	None of the case files reviewed included documentation explaining the difference between the initial and final penalty calculations.																
Explanation	<p>Three Region 2 Puerto Rico enforcement cases that were reviewed resulted in a penalty and had the initial penalty calculation revised. In all three instances the case file did not include an explanation or justification for the changes to lower the penalty amounts. The enforcement case files included two or more penalty calculations, but no written explanations for the penalty calculation changes. This is contrary to the requirement in the Interim CWA Settlement Penalty Policy (1995) which states, “Each component of the settlement penalty calculation (including all adjustments and subsequent recalculations) must be clearly documented with supporting materials and written explanations in the case file.” For every change to a penalty calculation, Region 2 should include in the case file, attached to the changed calculation, a narrative explaining and justifying the change. From this narrative the reader should be able to determine exactly how the calculation was changed, why the changes were made, and how these changes are in accordance with the). The settlement should not be approved by Region 2 management until the penalty documentation is complete and the penalty is in accordance with the Penalty Policy.</p>																
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>EPA R2 N</th> <th>EPA R2 D</th> <th>EPA R2 % or #</th> </tr> </thead> <tbody> <tr> <td>12a Documentation of the difference between initial and final penalty and rationale</td> <td>100%</td> <td></td> <td>0</td> <td>3</td> <td>0%</td> </tr> </tbody> </table>					Metric ID Number and Description	Natl Goal	Natl Avg	EPA R2 N	EPA R2 D	EPA R2 % or #	12a Documentation of the difference between initial and final penalty and rationale	100%		0	3	0%
Metric ID Number and Description	Natl Goal	Natl Avg	EPA R2 N	EPA R2 D	EPA R2 % or #												
12a Documentation of the difference between initial and final penalty and rationale	100%		0	3	0%												
Region response	Staff should be aware that a narrative explaining and justifying changes to penalty calculations must be prepared in accordance with the penalty policy. Staff will be reminded (through written notification or through an SOP) that a copy of the narrative should be included in the case file.																
Recommendation	The Region should develop an SOP to relevant staff and managers that describes the appropriate penalty documentation requirements as identified in Interim CWA Settlement Penalty Policy (1995) and ensures management review of this documentation prior to approval. This SOP should be finalized within three months following the date of final issuance of this report and a copy should be sent to OC.																

Resource Conservation and Recovery Act Findings

RCRA Element 1 — Data																		
Finding 1-1	Area for State Improvement																	
Summary	Mandatory data are not all accurately reflected in the national data system.																	
Explanation	<p>SRF reviewers examined files from both R2 and EQB to review the performance of the RCRA enforcement program. For R2, data discrepancies between the files reviewed and the national data system included 4 NOV's and 2 inspections not entered into the data system and 7 violation determinations from inspections not being updated from "undetermined" status after violation determinations had been made. There was also 1 violation and 1 penalty not entered into the data system, 1 permit ID that did not match and 1 facility name change that had not been updated. In the EQB files, reviewers found 2 NOV's not entered into the system and a few minor address discrepancies.</p> <p>For R2, 10 of 24 files showed accurate entry of mandatory data. For EQB, 11 of 17 files showed accurate entry of mandatory data. The total combined was 21 of 41 files showing evidence of complete and accurate data entry.</p>																	
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>EPA N</th> <th>EPA D</th> <th>EPA % or #</th> </tr> </thead> <tbody> <tr> <td>2b Complete and accurate entry of mandatory data</td> <td>100%</td> <td></td> <td>21</td> <td>41</td> <td>51.2%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	EPA % or #	2b Complete and accurate entry of mandatory data	100%		21	41	51.2%
Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	EPA % or #													
2b Complete and accurate entry of mandatory data	100%		21	41	51.2%													
State response	A Standard Operation Procedure (SOP) for RCRA has been prepared and implemented. The SOP includes a description of when and how to enter all the enforcement into the national data system as well as the update. The SOP became in effect on 2014.																	
Recommendation	It is recommended that R2 develop and implement a process to ensure all NOV's and inspections are entered into the national data system, and compliance determinations from inspections are updated and accurately reflected in the data system once a compliance determination has been made. It is also recommended that EQB and R2 develop a process to periodically check to make sure all of the enforcement data is being entered and updated in the national data system. At a minimum this																	

should be done through participation in the annual data verification process. It could also be done through quarterly or semi-annual checks, or another mechanism.

RCRA Element 2 — Inspections

Finding 2-1 Area for State Attention

Summary Two-year inspection coverage for operating TSDFs did not meet the national goal of 100%.

Explanation RCRA requires that every operating TSDFs be inspected at least once every two years. According to the national data system, R2 inspected 6 of 8 operating TSDFs in PR. EQB inspected 5 of 8. Combined this covered 75% of the universe compared to the national goal of 100%.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	EPA % or #
	5a Two-year inspection coverage of operating TSDFs	100%	93.9%	6	8	75%

State response The universe of the TSD facilities in Puerto Rico has been reduced significantly. Some of the TSD facilities have been closed but permits still active. Review the use of resources to conduct TSD inspections to closed facilities with open permits will be evaluated.

Recommendation It is recommended that R2 take appropriate steps to ensure that every operating TSDF is inspected at least once every two years. Additional upfront planning, sharing of inspection lists, and/or increased coordination between R2 and EQB may be one way to accomplish this.

RCRA Element 2 — Inspections

Finding 2-2	Meets or Exceeds Expectations					
Summary	Both R2 and EQB’s inspection reports were generally complete and sufficient to determine compliance and were completed within the expected timeframe. One-year and five-year inspection coverage for LQGs also met or exceeded national goals.					
Explanation	<p>R2 and EQB files reviewed included narrative discussions of the nature of facility activities, discussed manufacturing, process and waste management operations, described generation and handling of wastes, and provided documentary evidence of potential violations such as photographs, maps, drawings, and statements. EQB also included good onsite and pre-inspection checklists and other information as part of their files. Reviewers found two inspections where R2 failed to write reports and 3 inspection reports that were not complete and sufficient to determine compliance. However, the majority of R2 reports were written well as described above.</p> <p>R2 and EQB exceeded the national goal and national average for annual inspection coverage of LQGs. Given that the RCRA universe is constantly changing, R2 and EQB met the five-year goal national goal and exceeded the national average for inspection coverage of LQGs. In addition, R2 and EQB far exceeded the five-year national average for inspections of active SQGs. According to the national data system, the two agencies also inspected almost 500 other facilities, including 183 CESQs in the same five year period. While this number was high, we do not believe that the quantity of SQGs inspected adversely impacted the quality of the LQG inspections, a potential concern in some states where too many inspections are conducted without proper attention to the quality of the inspections.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	EPA % or #
	5b Annual inspection coverage of LQGs	20%	23.2%	20	81	24.7%
	5b Annual inspection coverage of LQGs	100%	71.7%	78	81	96.3%

	5d Five-year inspection coverage of active SQGs	11.6%	86	154	55.8%
	5e1 Five-year inspection coverage of active conditionally exempt SQGs				183
	5e4 Five-year inspection coverage of active sites not covered by metrics 2c through 2f3				310
	6a Inspection reports complete and sufficient to determine compliance	100%	33	38	89.5%
	6b Timeliness of inspection report completion	100%	29	38	76.3%
State response					
Recommendation					

RCRA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations
Summary	Files reviewed for R2 and EQB showed that accurate compliance determinations were made and violations were being identified correctly.
Explanation	<p>For all the files reviewed, R2 and EQB were accurately making compliance determinations and accurately identifying violations as SV or SNC.</p> <p>EQB also did a good job of finding violations during inspections. According to the data system, EQB found violations in 33 of 102 inspections for a rate of 32.4%. R2's rate was a little more than half the national average.</p> <p>While R2 had an SNC identification rate of 0%, the file reviewers believe this may be evidence of a data entry issue, rather than a proper identification issue, due to the fact that R2 took formal enforcement actions for SNCs, even though the formal actions were not timely, as described below under Finding 4-2. EQB had an SNC identification of 2.9% which is slightly above the national average, but file reviewers believe EQB was properly identifying and characterizing violations.</p> <p>Regarding timeliness of making SNC determinations, the national data system had no data to determine whether R2 was making SNC determinations in a timely manner (within 150 days). Based on the files reviewed and the timeliness of inspection reports described in Finding 2-2, it seemed that R2 was in fact making timely SNC determinations. For the EQB, the data system showed that 2 of 5 SNC determinations were made in a timely manner. However, based on the inspection reports and other file information reviewed at EQB, reviewers believe that EQB is making determinations in a timely manner, but delays involved in the administrative process of referring inspection results through to the legal division, and ultimately through the EQB Board, may be artificially skewing these data results.</p>

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	EPA % or #
	7a Accurate compliance determinations	100%		37	37	100%
7b Violations found during inspections		31.1%	9	50	18%	
8a SNC identification rate		2.3%	0	50	0%	
8b Timeliness of SNC determinations	100%	57.1%	0	0	0%	
8c Appropriate SNC determinations	100%		28	28	100%	

State response

Recommendation

RCRA Element 4 — Enforcement

Finding 4-1 **Meets or Exceeds Expectations**

Summary Files reviewed showed that R2 and EQB enforcement actions returned facilities to compliance.

Explanation With only two exceptions, every enforcement file reviewed at the R2 and EQB offices included evidence that facilities were returning to compliance as a result of proper enforcement actions. Of the two exceptions, one was an EBQ file where EQB took appropriate action, but the violator refused to comply. EQB then acted appropriately and referred the case for follow-up formal enforcement. At the time of the review, there was no evidence to suggest that EQB’s legal division had acted on the referral and thus no evidence that the facility was brought back into compliance at the time of the review. The other exception was a R2 file that had no evidence in it indicating whether the facility returned to compliance.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	EPA % or #
	9a Enforcement that returns violators to compliance	100%		22	24	91.7%

State response

Recommendation

RCRA Element 4 — Enforcement

Finding 4-2	Area for State Attention						
Summary	Timely and appropriate enforcement actions are usually taken to address SNC.						
Explanation	<p>EQB is taking timely action to address SNC violations. The data systems shows 2 out of 2 enforcement actions to address SNC were timely.</p> <p>Data on timely enforcement to address SNCs does not exist in the data system for R2. Based on the file review, it appears that timely enforcement to address SNC may still be an issue from the last SRF review that R2 needs to continue to pay attention to. One facility that was identified in the last SRF report as not receiving timely and appropriate enforcement for SNC violations was identified again, and like the last review, it did not receive timely enforcement action to address new SNC violations. Three other facilities received a formal action, but the actions took more than 360 days.</p> <p>Both R2 and EQB took appropriate enforcement actions to address violations in the files reviewed with the exception of examples mentioned above.</p>						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	EPA N	EPA D	EPA % or #
	10a Timely enforcement taken to address SNC		80%		0	0	0
	10b Appropriate enforcement taken to address violations		100%		14	18	77.8%
State response	A Standard Operation Procedure (SOP) for RCRA has been prepared and implemented. The SOP includes a description of when and how to enter all the enforcement into the national data system as well as the update. The SOP became in effect on 2014.						
Recommendation							

RCRA Element 5 — Penalties

Finding 5-1	Area for State Improvement																								
Summary	Files lacked adequate documentation of gravity, economic benefit, and the difference between initial and final penalties for most penalty actions.																								
Explanation	<p>Of the five R2 files that included a penalty action, three lacked documentation of gravity, economic benefit, and collection of the penalty. Two of R2's files also lacked rationale on the difference between the initial and final penalties.</p> <p>None of the EQB files reviewed associated with penalty actions contained documentation of gravity, economic benefit, or the difference between initial and final penalties. Based on discussions with EQB, EPA believes EQB could benefit from training on how to better calculate and document penalties. This is a continuing recommendation that was in the Round 2 SRF report. File reviewers did observe photocopies of checks as evidence that penalties were being collected.</p>																								
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>EPA N</th> <th>EPA D</th> <th>EPA % or #</th> </tr> </thead> <tbody> <tr> <td>11a Penalty calculations include gravity and economic benefit</td> <td>100%</td> <td></td> <td>3</td> <td>6</td> <td>50%</td> </tr> <tr> <td>12a Documentation on difference between initial and final penalty</td> <td>100%</td> <td></td> <td>3</td> <td>5</td> <td>60%</td> </tr> <tr> <td>12b Penalties collected</td> <td>100%</td> <td></td> <td>6</td> <td>9</td> <td>66.7%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	EPA % or #	11a Penalty calculations include gravity and economic benefit	100%		3	6	50%	12a Documentation on difference between initial and final penalty	100%		3	5	60%	12b Penalties collected	100%		6	9	66.7%
Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	EPA % or #																				
11a Penalty calculations include gravity and economic benefit	100%		3	6	50%																				
12a Documentation on difference between initial and final penalty	100%		3	5	60%																				
12b Penalties collected	100%		6	9	66.7%																				
State response	Acknowledged. EPA will work with EQB as recommended. The Region requests that OECA support this recommendation by taking the lead on providing economic benefits training to EQB.																								
Recommendation	It is recommended that within 90 days of this final report, R2 begin working with EQB to train all appropriate EQB staff on how to properly calculate and document penalties with an emphasis on gravity, economic benefit and the rationale between initial and final penalties. As part of the training, it is recommended that R2 collect and share some good examples of penalty documentation that have been done in accordance with EPA penalty policies. It is recommended that for a 12 month period beginning after the training is completed, EQB send documentation of all its penalty calculations as they are being developed to R2 to for review, so that R2 can work with the EQB to ensure sufficient documentation of penalties continues. It is recommended that																								

once EQB properly documents its penalties, EQB place a copy of that completed documentation in the corresponding enforcement file in the RCRA enforcement branch that prompted the penalty action. If R2 is satisfied that penalties are being properly documented after one year of reviewing EQB penalty actions, this recommendation will be closed.

It is also recommended that R2's NY office take steps to ensure that all files for penalty actions taken in the future include adequate documentation of gravity, economic benefit, the difference between initial and final penalty, and collection.

VI. Appendix

[This section is optional. Content with relevance to the SRF review that could not be covered in the above sections should be included here. Regions may also include file selection lists and metric tables at their discretion. Delete this page if it isn't used.]

Roles and responsibilities: Since its inception, the goal has been for the Caribbean Environmental Protection Division (CEPD) to be responsible for implementing hazardous waste programs under the Resource Conservation and Recovery Act (RCRA) in Puerto Rico. CEPD's Response and Remediation Branch (RRB) has responsibility for the core RCRA program in the Puerto Rico and the Virgin Islands. RRB, in consultation with RCB and based on national priorities, performs their own targeting, inspections, and enforcement, and is responsible for setting and meeting their own goals.

Nevertheless, RRB and Region 2's RCRA Compliance Branch (RCB) have a workplan agreement in place. This workplan serves to prevent duplication of efforts and to ensure that activities performed by RRB and RCB complement each other. Due to resource and expertise constraints, RCB coordinates with RRB to perform inspections and enforcement at air emission facilities, landfills, and certain other hazardous and solid waste facilities. Both RCB and RRB work closely together to coordinate with each other to ensure the effective implementation of a full RCRA compliance and enforcement program in the Caribbean.

RCB continues to coordinate with RRB at the beginning of each fiscal year to ensure that the Region's Annual Commitment System (ACS) commitments in Puerto Rico are met. CEPD has the lead in meeting the Region's RCRA ACS commitments in Puerto Rico and Virgin Islands; however, RCB generally has the lead in performing RCRA 40 CFR 264/265 Subpart AA, BB and CC inspections and may assist and perform other inspections as well. RCB also has the lead in addressing the municipal and industrial solid waste management facilities (e.g. landfills, recycling collection sites) located in Puerto Rico and Virgin Islands.

RCB and RRB are each responsible for entry of their own data into RCRAInfo. However, RCB-Information Technology enters RCB and RRB-RCRA RCRAInfo data into ICIS to avoid duplicity and error. In the past, RCB provided training to RRB inspectors on inspections, regulations, data entry, etc. and continues to do so on an as-needed basis.

RCB and RRB communicate often to ensure effective program implementation. Owing to its large reservoir of experience, RCB also serves as a source of advice and consultation for RRB.

Regarding EQB, a Memorandum of Agreement between EPA and EQB was signed in 1986. The MOA expired around 2000. During FY2015, CEPD will work to include the work agreement in EQBs grant application. We expect to have the new language ready by May 2015.