

STATE REVIEW FRAMEWORK

Montana

**Clean Water Act, Clean Air Act, and
Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2014**

**U.S. Environmental Protection Agency
Region 8, Denver**

**Final Report
February 1, 2016**

Executive Summary

Introduction

EPA Region 8 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Montana Department of Environmental Quality (MDEQ). 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

Following are the State's strong areas of performance:

- ICIS is the database of record for the State's NPDES program, whereby the State has tracked all of its permits, inspections, violations, and enforcement actions using ICIS. Data entry into ICIS was performed to a high degree of completeness and timeliness.
- The State conducted NPDES inspections that led to thorough inspection reports with sufficient information and evidence to support compliance determinations.
- The State performed very well related to including gravity and economic benefit in CAA penalty calculations, documenting the difference between initial and final penalty and penalty collection.
- The State also performed very well related to the accuracy of compliance determinations at facilities with air quality permits.
- The Montana RCRA program meets the national goal of 100% entry of data which is complete and accurate based on file reviews.
- The State takes timely and appropriate action to address RCRA violations identified during inspections.
- The State's RCRA penalty calculations consider and include as appropriate both a gravity and economic benefit component. The State maintains documentation of any penalty adjustments from the assessed to the collected amount. The State files contain documentation of penalty payment and supplemental environmental project (SEP) implementation as appropriate.
- The Montana RCRA program inspects 100% of their TSDFs annually, 48.9% of their large quantity generators (LQGs) which is more than twice the national goal, and 70.7% of their active small quantity generators (SQGs) which is almost seven times the national average. They have good inspection coverage of other sites, including conditionally exempt small quantity generators, transporters, and non-notifiers.

Priority Issues to Address

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

- All NPDES penalty calculations included gravity, but most lacked economic benefit because it either was not calculated in whole or in part or was excluded in the decision to

proceed with only stipulated penalties. EPA recommends that the economic benefit in all new NPDES cases having a penalty component for past violations should be calculated using the template provided in the State's Enforcement Manual.

- A continuing issue which the Region and the Montana RCRA program have discussed is the 5-year inspection coverage of the large quantity generator universe which exceeds the national average but falls below the national goal. The universe for the inspection coverage metrics is based on the Biennial Reporting System (BRS). Use of the BRS data, which includes episodic generators, one-time generators, and one-time LQGs submitting one-time BRS notifications, may not justify inspection targeting for these one-time events on a continuing basis. The State has increased its annual LQG inspection rate to approximately 50% which will ensure capture of more of the LQG universe in the five-year cycle.

Most Significant CWA-NPDES Program Issues¹

- Half of the State's formal enforcement actions issued in FY 2014 had delays leading up to making a settlement offer and executing the action. EPA recommends that the State commence settlement negotiations in all new NPDES cases within the timeframe set forth in the State's Enforcement Manual and to continue tracking case development milestones.
- All penalty calculations included gravity, but most lacked economic benefit because it either was not calculated in whole or in part or was excluded in the decision to proceed with only stipulated penalties. EPA recommends that the economic benefit in all new NPDES cases having a penalty component for past violations should be calculated in a manner that follows the template provided in the State's Enforcement Manual.

Most Significant CAA Stationary Source Program Issues

- The State needs to address issues related to accuracy of minimum data requirements.

Most Significant RCRA Subtitle C Program Issues

- There are no significant RCRA issues which require State improvement.

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."

Table of Contents

I. Background on the State Review Framework	5
II. SRF Review Process.....	6
III. SRF Findings	7
Clean Water Act Findings.....	8
Clean Air Act Findings	23
Resource Conservation and Recovery Act Findings.....	40
Appendix.....	46

I. Background on the State Review Framework

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

- Clean 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.

II. SRF Review Process

Review Period FY 2014

Key Dates

SRF Kick-Off Letter (See Appendix)	January 25, 2015
CWA NPDES File Review	April 20-24, 2015
CAA File Review	May 29, June 25 and July 16, 2015
RCRA File Review	May 21 – July 15, 2015

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III. 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	Area for State Attention																													
Summary	Minor omissions or errors in required data were identified.																													
Explanation	<p>Occasional errors or omissions of required and non-required data were found. Isolated examples include: Letter of Violation (VL) dated 3/26/2014 in the file for Big Fork WWTP (MT0020397) was missing from ICIS; VL's sent to the City of Livingston were dated differently in the file compared to the dates in ICIS; Westmoreland Resources Inc. – Absaloka Mine contained a misspelled facility address in ICIS; street address was incorrect in the ICIS record for New Rockport Colony; and Compliance Sampling Inspections (CSI's) were miscoded in ICIS for Phillips 66 – Billings Refinery and the City of Whitefish WWTF.</p> <p>Errors in non-required data entry are not included in this metric calculation but should be considered for correction, since the State relies on ICIS as the database of record. The State does a commendable job identifying and reporting Single Event Violations, and data entry is performed to a high degree of completeness. Because this finding concerns only minor errors, Finding 1-1 is categorized as an <i>Area for State Attention</i> not requiring a trackable recommendation.</p>																													
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>2b Files reviewed where data are accurately reflected in the national data system</td> <td>100%</td> <td>-</td> <td>28</td> <td>34</td> <td>82.4%</td> </tr> <tr> <td>1b1 Permit limit rate for major facilities</td> <td>>=95%</td> <td>91.1%</td> <td>33</td> <td>35</td> <td>94.3%</td> </tr> <tr> <td>1b2 DMR entry rate for major facilities</td> <td>>=95%</td> <td>96.6%</td> <td>3994</td> <td>4018</td> <td>99.4%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2b Files reviewed where data are accurately reflected in the national data system	100%	-	28	34	82.4%	1b1 Permit limit rate for major facilities	>=95%	91.1%	33	35	94.3%	1b2 DMR entry rate for major facilities	>=95%	96.6%	3994	4018	99.4%
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1b2 DMR entry rate for major facilities	>=95%	96.6%	3994	4018	99.4%																									
State response	The above errors were corrected in ICIS.																													
Recommendation	N/A																													

CWA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations					
Summary	Inspection reports contained sufficient information to support compliance determinations.					
Explanation	<p>All 27 inspection reports reviewed contained sufficient information and evidence from observations at the facility to support a compliance determination for the facility. The accuracy of compliance determinations is addressed in Element 3.</p> <p>Note for Metrics 4a1 through 4a10 below that inspection commitments are based on the state’s compliance monitoring strategy (CMS), which was negotiated with EPA. The state is not authorized to implement pretreatment program components (4a1 and 4a2), has no CSO communities (4a4), and made no SSO or MS4 inspection commitments in FY 2014. The facilities subject to metric 5b2 were addressed in metrics 4a8-4a10. See Finding 2-2 for an evaluation of metric 4a9.</p> <p>The state has 35 majors but committed to inspecting half of them (18), utilizing the flexibility of the CMS framework; see Metric 5a1. Similarly for non-majors in metric 5b1, the CMS commitment was to inspect 20% of the universe of 134 facilities.</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 at the facility	100%	-	27	27	100%
	4a1 Pretreatment compliance inspections and audits	100%	-	n/a	n/a	-
	4a2 Significant Industrial User inspections for SIUs discharging to non-authorized POTWs	100%	-	n/a	n/a	-
	4a4 Major CSO inspections	100%	-	0	0	-
	4a5 SSO inspections	100%	-	0	0	-
	4a7 Phase I & II MS4 audits or inspections	100%	-	0	0	-
	4a8 Industrial stormwater inspections	100%	-	10	10	100%
	4a10 Medium and large NPDES CAFO inspections	100%	-	17	15	113%
	5a1 Inspection coverage of NPDES majors	100%	55.4%	18	18	100%
	5b1 Inspection coverage of NPDES non-majors with individual permits	100%	26.5%	30	27	111%

	5b2 Inspection coverage of NPDES non-majors with general permits	100%	7.1%	n/a	n/a	-
State response	No State response received.					
Recommendation	N/A					

CWA Element 2 — Inspections

Finding 2-2	Area for State Attention					
Summary	Some inspection reports were not signed by management within 30 days of inspection. The number of completed stormwater construction inspections was less than the state commitment.					
Explanation	<p>The State has a target timeframe for producing a signed inspection report within 30 days following an on-site inspection, which is more stringent than EPA’s internal target timeframe of 45 days. The average timespan found during the file review was 26 days, with a range from 12 to 50 days. A majority of the inspection reports (22 of 27 reviewed) were signed and issued in a timely manner, and those that did not meet the timeliness criteria were completed shortly after 30 days. Because the timeliness criteria were not met for only a small fraction of inspection reports and none were significantly late, even by the State’s more stringent standard, the finding is categorized as an Area for State Attention not requiring a trackable recommendation. The State should continue to be mindful of the target timeframe.</p> <p>For Metric 4a9, the state completed 41 stormwater construction inspections, whereas the commitment made in the state’s inspection plan per EPA’s Compliance Monitoring Strategy was 45.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	6b Inspection reports completed within prescribed timeframe	100%	-	22	27	81.5%
	4a9 Phase I and II stormwater construction inspections	100%	-	41	45	91%
State response	<p>DEQ appreciates EPA’s thorough review of the timeframes for issuing inspection reports. DEQ evaluated EPA’s guidance for issuance of inspection reports (45 days non-sampling and 60 days with sampling) and determined these timeframes prolonged noncompliance and potentially caused further impacts to water quality. DEQ set 30 days as a guideline to reduce the number of days of noncompliance and avoid or mitigate further water quality impacts. New staff and management, as well as some necessary cross-program coordination, had resulted in a few extended internal review periods beyond the target timeframes. DEQ will continue to emphasize meeting report deadlines without sacrificing accuracy, consistency and customer service.</p>					

	DEQ performed 45 construction inspections. 41 were permitted and four were unpermitted sites.
Recommendation	N/A

CWA Element 3 — Violations

Finding 3-1	Area for State Attention																																									
Summary	In inspection report cover letters, compliance determinations were not consistently accurate and SEV notification in the case of SNC was not clear.																																									
Explanation	<p>The inspection files for three facilities had a report cover letter suggesting there were no compliance problems, despite the description of deficiencies in the inspection report body. The facilities and deficiencies not identified as compliance issues include 1) the City of Whitefish – BOD weekly average limit exceedances and a final CMOM report due 3/5/2014 that was not in the file and shows as a violation in ICIS; 2) Stillwater Mining Co. – a chain of custody deficiency; and 3) Town of Kevin – monitoring, analysis, and operation and maintenance issues. These examples appear to represent minor aberrations from the State’s protocol, which was followed for 88.9% of the inspection reports reviewed.</p> <p>SEVs were accurately identified as SNC at major facilities, but the State has room to improve facility notification. The one facility with an SEV constituting SNC (Livingston) also had SNC effluent limit exceedances. For this facility as well as three others with SNC effluent limit exceedances (Bonner Property Development, Cenex Harvest States, and Paleo Search), the State sent violation letters (VLs) with a table of effluent violations attached as a separate page proceeding the signature block. The table had a column indicating whether the violation was SNC, and it explained what SNC means. However, in all four cases the body of the VL itself did not make reference to the presence of SNC. In any letter addressing violations that constitute SNC, whether SEVs or not, the State should ensure that the body of the letter articulates, or makes reference to, information describing why the facility is in SNC and why SNC is important.</p>																																									
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>7a1 Number of major facilities with single event violations</td> <td>-</td> <td>-</td> <td>14</td> <td>-</td> <td>-</td> </tr> <tr> <td>7d1 Major facilities in noncompliance</td> <td>-</td> <td>78.7%</td> <td>30</td> <td>35</td> <td>85.7%</td> </tr> <tr> <td>7e Inspection reports reviewed that led to an accurate compliance determination</td> <td>100%</td> <td>-</td> <td>24</td> <td>27</td> <td>88.9%</td> </tr> <tr> <td>7f1 Non-major facilities in Category 1 noncompliance</td> <td>-</td> <td>-</td> <td>37</td> <td>-</td> <td>-</td> </tr> <tr> <td>7g1 Non-major facilities in Category 2 noncompliance</td> <td>-</td> <td>-</td> <td>83</td> <td>-</td> <td>-</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	7a1 Number of major facilities with single event violations	-	-	14	-	-	7d1 Major facilities in noncompliance	-	78.7%	30	35	85.7%	7e Inspection reports reviewed that led to an accurate compliance determination	100%	-	24	27	88.9%	7f1 Non-major facilities in Category 1 noncompliance	-	-	37	-	-	7g1 Non-major facilities in Category 2 noncompliance	-	-	83	-	-
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7f1 Non-major facilities in Category 1 noncompliance	-	-	37	-	-																																					
7g1 Non-major facilities in Category 2 noncompliance	-	-	83	-	-																																					

8a2 Percentage of major facilities in SNC	-	20.7%	4	36	11.1%
8b Single-event violations accurately identified as SNC or non-SNC	100%	-	3	3	100%

State response

DEQ appreciates the insight into the accuracy and notification of compliance determinations. DEQ will evaluate its letters and reports to improve documentation of violations and communication with facilities. However, DEQ would like to clarify some of the findings on the facilities stated above:

- (1) City of Whitefish’s inspection happened on January 29, 2014, well before the deficiencies occurred, so the inspection report and letter are correct as of January 29, 2014. New deficiencies did happen between the inspection and mailing of the findings. Whitefish was reminded of these deficiencies during the next inspection on January 12, 2015.
- (2) Stillwater Mining was notified of the chain of custody deficiency in a letter dated January 10, 2015.
- (3) Town of Keven had just replaced its operator, who had not taken the operator certification exam at the time of the inspection. Small towns like Kevin have a poor history of keeping operators so the monitoring, analysis, and operation and maintenance issues were due to lack of an experienced operator. DEQ decided the best course of action was to encourage and teach the new operator rather than risk creating confusion and perhaps distrust with a lengthy violation letter.
- (4) Bonner Property Development and Paleo Search have not operated in many years so there is no discharge and no limit being violated.
- (5) Cenex Harvest States and Livingston. DEQ believes adequate notification is provided to facilities in SNC, but will make improvements in the notification process. Currently, detailed information is provided in three formats:

- a) Inspection Reports address SNCs by providing an explanation of the SNC and any corrective actions that have been completed by the facility. Supplemental attachments are also included with inspection reports that address each SNC and explain the SNC.
- b) Monthly violation letters (E90, D80, and D90) provide an attachment that identifies the SNC and explains what a SNC is.
- c) Formal Enforcement Violation Letters are issued to facilities that have not taken appropriate corrective actions to address any SNC. These letters explain why the facility is begin referred to enforcement and the criterial used to determine the SNC.

In regards to SEVs, DEQ evaluates a facility’s overall operations before identifying the SEV as a SNC. For all SEVs, DEQ requires corrective actions be completed to return to compliance. If a facility fails to complete

	required corrective action and/or the SEV has resulted in SNCs to occur, the facility can be referred to formal enforcement.
Recommendation	N/A

CWA Element 3 — Violations						
Finding 3-2	Meets or Exceeds Expectations					
Summary	SEVs that were SNC at major facilities were reported to ICIS in a timely manner.					
Explanation	Among the inspection reports reviewed at major facilities, only one identified an SEV that constituted SNC. The State reported that SEV to ICIS within the timeframe prescribed by national program guidance.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	8c Percentage of SEVs identified as SNC reported timely at major facilities	100%	-	1	1	100%
	7a1 Number of major facilities with single event violations	-	-	14	-	-
	8a2 Percentage of major facilities in SNC	-	20.7%	4	36	11.1%
State response	No State response received.					
Recommendation	N/A					

CWA Element 4 — Enforcement						
Finding 4-1	Area for State Attention					
Summary	Twenty eight of 32 files had informal and/or formal enforcement actions that returned facilities to compliance, while the remaining four files had ongoing or stalled enforcement with or without corrective action requirements in place.					
Explanation	The State issued formal and informal enforcement actions that, with few exceptions, required facilities to return to compliance and obtained a return to compliance. Among the four exceptions was one file handled informally. The first of multiple VLs issued to John ERB did not specify a date for taking corrective actions, although subsequent VLs did so. The other three exceptions began with VLs and escalated to formal enforcement. These cases included Whisper Ridge (no evidence that the facility has returned to compliance following enforcement referral), Stillwater (an administrative order with a compliance schedule in place has compliance milestones that have been extended since issuance of the order in 2010), and Kevin (construction of a new aerated lagoon is required by order, but the path for return to compliance remains prolonged).					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	9a Percentage of enforcement responses that return or will return source in violation to compliance	100%	-	28	32	87.5%
State response	No State response received.					
Recommendation	N/A					

CWA Element 4 — Enforcement

Finding 4-2	Area for State Improvement																							
Summary	Four files with a formal enforcement action had a delay leading up to making a settlement offer.																							
Explanation	<p>The State’s consistent use of formal actions following VLs is generally appropriate. However, four of the eight formal enforcement files reviewed had long delays in either opening settlement negotiations or making a settlement offer (e.g. Carrell Oil - 10 months from enforcement request (ER) to drafting of an administrative order on consent (AOC); Choteau – 16 months from ER to date of AOC; Regal Land – one year from ER to AOC; and Willow Creek – nine months from ER to sending a settlement offer letter). The State prefers to negotiate AOCs rather than issue unilateral orders to avoid costly and prolonged litigation. Doing so, however, extends the time to final order beyond the time needed for unilateral actions, and in the four examples above, beyond the timelines in the State’s Enforcement Manual. Timeliness of enforcement actions is important in order to secure a prompt return to compliance and to convey the seriousness of noncompliance. EPA appreciates that the State has limited control over the duration of settlement talks once negotiations begin.</p> <p>Note for Metric 10a1 that the single facility not counted as having timely enforcement action was sold during the review period and the underlying non-reporting violation has been resolved by the State.</p>																							
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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
10a1 Major facilities with timely action as appropriate	>=98%	9%	0	1	0%																			
10b Enforcement responses reviewed that address violations in an appropriate manner	100%	-	28	32	87.5%																			
State response	MDEQ already tracks the dates listed in the Recommendations. Ad hoc reports are available upon request.																							
Recommendation	During State FY 2017, the State should commence settlement negotiations on all new NPDES cases within the timeframe set forth in the State’s Enforcement Manual, which gives 115 days following approval of the enforcement request. The State should track the dates for each of the following case development milestones for consent orders: 1) Approval of enforcement request (received date for the case); 2) Sending settlement offer to respondent to open negotiation (initial action date); and 3) Final																							

signature of DEQ Director (final action date). By August 31, 2017, the State should report to EPA the milestone dates for all of its consent orders issued in State FY 2017. Once EPA is satisfied that State action has resolved this concern, the recommended action will be marked complete.

CWA Element 5 — Penalties

Finding 5-1	Area for State Improvement						
Summary	All penalty calculations included gravity, but most lacked economic benefit because it either was not calculated in whole or in part or was excluded in the decision to proceed with only stipulated penalties.						
Explanation	<p>Regal Land had the only penalty with a robust calculation of avoided or delayed costs of noncompliance. The inputs for calculating these costs were clearly specified based on the facts in the case, as was the method for calculating economic benefit using those inputs. Two other cases, Carrell and Willow Creek, included economic benefit (BEN) for failure to obtain a permit, but they omitted consideration of the failure to monitor and submit DMRs and for missing stormwater controls, respectively. For Stillwater and Kevin, EPA disagrees with the State’s determination that there was no economic benefit, although the State reverted to only stipulated penalties (stips) in the final enforcement documents. Similarly for Big Timber, Choteau, and Whitefish, the final penalty orders contained only stips and no certain up-front civil penalty. In all five of the latter examples, the value of stips for different types of violations (\$50, \$100, or \$500 depending on the type) was so small that, without an up-front penalty amount, the State was unlikely to ever collect a penalty that accounts for at least BEN and that presents a credible deterrence to future noncompliance. Accounting for at least BEN in penalties is a national expectation in the NPDES program, with the exception that part of the BEN penalty can be waived for municipalities that have made a good faith effort to comply.</p>						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	11a Penalty calculations reviewed that consider and include gravity and economic benefit		100%		1	8	12.5%
State response	<p>One incentive for signing a consent order is no penalty for past violations, provided the entity agrees to pay stipulated penalties for future violations. MDEQ prefers a small town’s scarce financial resources be directed into returning to compliance, rather than paying large penalties. The stipulated penalties are not designed to capture economic benefit and MDEQ believes the amounts of the stipulated penalties provide an adequate deterrent. Where MDEQ does assess a penalty for past violations, MDEQ will calculate economic benefit of noncompliance.</p>						

	<p>Montana Administrative Rules require that a penalty calculation be attached to an order. If a unilateral order is issued, a copy of the order with the attached penalty calculation will be sent to the EPA Helena Office. A penalty calculation is attached to proposed consent orders, however proposed consent orders are not provided to EPA. EPA is copied on final consent orders, which do not include a penalty calculation because the settlement penalty that usually different from the original penalty calculation. Ad hoc reports are available upon request.</p>
<p>Recommendation</p>	<ol style="list-style-type: none"> 1) During State FY 2017, the State should calculate the economic benefit component of all new NPDES cases having a penalty component for past violations using the template provided in the State’s Enforcement Manual; see the penalty calculation for Regal Land as a model. By August 31, 2017, provide EPA a copy of all NPDES penalty calculations completed in State FY 2017. 2) DEQ should evaluate the use of stipulated penalties in Water Quality Act Administrative Orders on Consent as follows: <ol style="list-style-type: none"> i. By October 1, 2016, provide documentation to the EPA on how DEQ determines municipalities do not gain an economic benefit of non-compliance. ii. By October 1, 2016, provide documentation to the EPA on how DEQ determines that the financial status of municipalities warrants the use of stipulated penalties rather than the recovery of economic benefit of non-compliance. iii. By August 31, 2017, evaluate the appropriateness of current stipulated penalty amounts, taking into account inflationary increases since the first date the current stipulated penalty amounts were used. iv. Provide a final report addressing the items in the above-listed bullets to the EPA not later than August 31, 2017. <p>Once EPA is satisfied that State action has resolved this concern, the recommended action will be marked complete.</p>

CWA Element 5 — Penalties						
Finding 5-2	Meets or Exceeds Expectations					
Summary	Final assessed penalties were collected, and the files documented any difference from the initial penalty calculation.					
Explanation	Eight formal enforcement actions with penalties were reviewed. Four of those actions had a final assessed penalty that was lower than the initial calculated penalty, and in all four cases the State included a rationale in the file for the difference. Seven of the eight formal penalty actions were due for payment by the date of review, and the files for all seven included documentation showing that the penalties had been collected.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	12a Documentation of the difference between initial and final penalty and rationale	100%	-	4	4	100%
	12b Penalties collected	100%	-	7	7	100%
State response	No State response received.					
Recommendation	N/A					

Clean Air Act Findings

CAA Element 1 — Data						
Finding 1-1	Meets or Exceeds Expectations					
Summary	Reporting of enforcement MDRs and violations reported per HPV identified were timely.					
Explanation	The State met or exceeded expectations for metrics associated with data, including timely reporting of enforcement MDRs and violations reported per HPV identified. These two observed relevant metrics for CAA Element 1 – Data scored 100%.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	3b3 Timely reporting of enforcement MDRs	100%	77.9%	22	22	100%
	7b3 Violations reported per HPV identified	100%	63.2%	2	2	100%
State response	Montana DEQ agrees that its air program meets/exceeds expectations. Montana DEQ has invested and continues to invest significant time and resources in ensuring that its data is of the highest quality. DEQ continues to place a high priority on its data. Furthermore, DEQ has devoted many hours to ensuring that its data will be successfully transmitted to ICIS-AIR in the future.					
Recommendation	N/A					

CAA Element 1 — Data

Finding 1-2	Area for State Attention																								
Summary	Timeliness of reporting compliance monitoring MDRs and stack test dates and violations reported per informal actions can be improved.																								
Explanation	<p>The State has room for improvement related to timely reporting of compliance monitoring MDRs; timely reporting of stack test dates and results; and violations reported per informal actions.</p> <p>These three metrics show that the State is performing above the corresponding national averages, but can improve in attempting to meet the national goal of 100%.</p>																								
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>3b1 Timely reporting of compliance monitoring MDRs</td> <td>100%</td> <td>83.3%</td> <td>65</td> <td>73</td> <td>89%</td> </tr> <tr> <td>3b2 Timely reporting of stack test dates and results</td> <td>100%</td> <td>80.8%</td> <td>222</td> <td>243</td> <td>91.4%</td> </tr> <tr> <td>7b1 Violations reported per informal actions</td> <td>100%</td> <td>65.6%</td> <td>10</td> <td>12</td> <td>83.3%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	3b1 Timely reporting of compliance monitoring MDRs	100%	83.3%	65	73	89%	3b2 Timely reporting of stack test dates and results	100%	80.8%	222	243	91.4%	7b1 Violations reported per informal actions	100%	65.6%	10	12	83.3%
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3b2 Timely reporting of stack test dates and results	100%	80.8%	222	243	91.4%																				
7b1 Violations reported per informal actions	100%	65.6%	10	12	83.3%																				
State response	<p>DEQ believes that its rating in this area should be “Meets or Exceeds Expectations.” With EPA’s stance of “room for improvement,” the standard of rating “meets or exceeds expectations” becomes nearly impossible to attain – particularly in the same year that EPA decides to transition to another database. The inherent problems with getting data into AFS in the same year that EPA converted to ICIS-AIR seems to be significantly downplayed in this review. DEQ believes that it has operated an outstanding program with regard to this data element and should be rated as “Meets or Exceeds Expectations.”</p> <p>[DEQ provided feedback to EPA relative to these metrics in a 7/10/15 e-mail. DEQ described the data transmittal problem with AFS and provided a list of the actions that had been completed but not successfully uploaded to AFS. Montana’s percentages were negatively impacted by the fact that AFS could not be successfully uploaded with the data.]</p>																								
Recommendation	N/A																								

CAA Element 1 — Data

Finding 1-3	Area for State Improvement																																				
Summary	Minimum data requirements (MDR) data in AFS are inaccurate. Entry of HPV determinations was not timely. FCE coverage of majors, mega-sites, SM-80s, and review of Title V annual compliance certifications is inadequate in the Federal database.																																				
Explanation	<p>The State needs to improve minimum data requirements (MDR) accuracy in AFS. There are errors within the MDR data including company names that have changed, missing company addresses for portable synthetic minor facilities, etc. A portion of the low percentage score can be attributed to the database transition from AFS to ICIS-AIR. There are numerous Title V Certifications documented in the State database that do not appear in ICIS-AIR probably related to the AFS to ICIS-AIR database transition.</p> <p>The State needs to improve entry timeliness of HPV determinations. There were two HPV determinations entered into AFS that were classified as untimely.</p> <p>Related to Metrics 5a, 5b, and 5e, a large portion of these low percentage scores can be attributed to the database transition from AFS to ICIS-AIR. Numerous FCEs covering major and SM-80 facilities and Title V Certifications are documented in the State's database that do not appear in ICIS-AIR. The State had an opportunity to double check and correct the data prior to the data being froze in ECHO, but it does not appear that the State exercised that option.</p>																																				
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>2b Accurate MDR data in AFS</td> <td>100%</td> <td></td> <td>8</td> <td>26</td> <td>30.8%</td> </tr> <tr> <td>3a2 Untimely entry of HPV determinations</td> <td>0</td> <td></td> <td></td> <td></td> <td>2</td> </tr> <tr> <td>5a FCE coverage: majors and mega-sites</td> <td>100%</td> <td>85.7%</td> <td>15</td> <td>30</td> <td>50%</td> </tr> <tr> <td>5b FCE coverage: SM-80s</td> <td>100%</td> <td>91.7%</td> <td>14</td> <td>23</td> <td>60.9%</td> </tr> <tr> <td>5e Review of Title V annual compliance certifications</td> <td>100%</td> <td>78.8%</td> <td>32</td> <td>65</td> <td>49.2%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2b Accurate MDR data in AFS	100%		8	26	30.8%	3a2 Untimely entry of HPV determinations	0				2	5a FCE coverage: majors and mega-sites	100%	85.7%	15	30	50%	5b FCE coverage: SM-80s	100%	91.7%	14	23	60.9%	5e Review of Title V annual compliance certifications	100%	78.8%	32	65	49.2%
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State response	EPA's rating of DEQ in this area is not appropriate, accurate, or factual. Upon initially learning of the numbers showing in EPA's data metric for Federal Fiscal Year 2014, DEQ provided EPA with significant data to show that the work had been completed and that the data in ECHO was																																				

not up-to-date/accurate. DEQ also tried to work with its EPA contact to determine what had happened to the data transfer. Unfortunately, it appears that EPA did not fully consider the information provided by DEQ, even though its own language in the report suggests that follow-up conversations with state personnel will be considered in the findings.

To rate DEQ as “Area for State Improvement” for this data in Federal Fiscal Year 2014 disregards EPA’s responsibility for AFS/ICIS data inaccuracies, and focuses responsibility solely on the state of Montana. DEQ’s staff have confirmed that the effort was made to send the data to AFS—yet the data was not accepted by AFS. The work was completed and the corresponding data is accurately reflected in DEQ’s database. EPA has not adequately factored in the implications of the conversion from AFS to ICIS-Air and the corresponding problems with state’s getting data into a database that was being phased out. EPA states in the “Recommendation” section below that “some” or “most” of the purported “errors related to this element are associated with the database transition from AFS to ICIS-Air.” If that is the case then rating the Montana program as an “Area for State Improvement” is a clear misrepresentation.

DEQ has treated the company addresses for “portable” sources the same for years and has not received negative feedback from EPA in previous SRF reviews over this data element. As Portable Sources, the physical location of the facility can and does change regularly. To raise this issue in our 3rd SRF review and to use this issue as part of the reason for rating DEQ’s program with the lowest rating of “Area for State Improvement” is not only inaccurate, but wrong.

DEQ has continued to implement EPA’s policies regarding High Priority Violations (HPV). While DEQ maintains that it has addressed HPV’s appropriately for the individual circumstances related to each HPV, the conversion to ICIS-AIR has created an opportunity for DEQ to enhance its entry/tracking of HPVs and Federally Reportable Violations (FRV). DEQ’s mechanism of reporting HPVs to ICIS-AIR has been upgraded and the new reporting process will enhance the information provided, as it relates to HPVs.

As with all of DEQ’s efforts to operate a high quality air compliance/enforcement program, DEQ has evaluated its processes related to HPVs, FRVs, and State Violations, specifically related to the new HPV Policy and FRV Policy that were issued by EPA in 2014. DEQ has made changes to its Workflow software program to address EPA’s new policies and the data demands of the new ICIS-AIR system. For future operations, DEQ requests that EPA ask any questions that

EPA staff may have about HPVs and/or FRVs throughout the year, rather than waiting for end of year reviews to raise such questions. DEQ takes significant issue with a finding of “Area for State Improvement.”

[DEQ provided information to EPA relative to these metrics in person on 03/19/15 and via e-mails dated 03/20/15, 04/03/15, 07/09/15, 07/10/15, and 08/17/15. DEQ provided EPA with complete lists of the FCEs completed in FFY 2014 and the Title V Certifications completed in FFY 2014. Furthermore, DEQ provided EPA with a description of its findings regarding the data transfer failure to AFS.]

Recommendation

Although some of the errors related to this element are associated with the database transition from AFS to ICIS-AIR (6/26 or 23% of Title V Annual Certification Reviews were not showing in ECHO), some of the errors include no information related to location or street address of companies with portable synthetic minor facilities (4/26 or 15%) and no company name or previous company name (7/26 or 27%). The State should double check the data in ECHO and update names of companies and include any missing addresses for companies with portable synthetic minor facilities by December 31, 2015 prior to the 2015 data being frozen in February of 2016. EPA will review the database during the End of Year Review looking for missing information and correct company names.

The State will need to pay closer attention to timelines associated with HPV determinations. Within 90 days from the date of the final SRF report (by April 1, 2016), the State should complete an evaluation of its guidelines and practices as it relates to updating the current database with program information and determine if any improvements need to be made to assure the timely entry of HPV determinations. EPA will review the HPV determinations during the End of Year Review focusing on timeliness.

Although most of the errors related to this element are associated with the database transition from AFS to ICIS-AIR, the State should double check this data in ECHO by January 31, 2016, prior to the 2015 data being frozen in February of 2016. EPA will review ECHO during the End of Year Review focusing on the FCEs and the Review of Title V Certifications metrics.

CAA Element 2 — Inspections

Finding 2-1	Area for State Attention
Summary	FCE coverage of majors, mega-sites, SM-80s, and review of Title V annual compliance certifications is inadequate. Review of compliance monitoring reports to provide sufficient documentation to determine facility compliance can be improved. Documentation of FCE elements can be improved.
Explanation	<p>The State needs to improve FCE coverage of majors and mega-sites; FCE coverage of SM-80s; and review of Title V annual compliance certifications. A large portion of these low percentage scores can be attributed to the database transition from AFS to ICIS-AIR.</p> <p>According to the database information received from the State, there were 24 FCEs conducted for majors and mega-sites during FY 2014. Of the 15 majors that were not in ECHO, eight were shown to be in the State database, six FCEs had been completed in the previous FY, and one had changed from an A source to an SM-80.</p> <p>Also, according to the database information received from the State, there were 25 FCEs conducted for SM-80s during FY 2014. Of the nine SM-80s that were not in ECHO, seven were shown to be in the State database, one FCE had been completed in the previous FY, and one facility was still in the database although it had never been constructed and the air quality permit had been revoked.</p> <p>Finally, according to the database information received from the State, there were 65 reviews of Title V Annual Compliance Certifications conducted during FY 2014.</p> <p>The State has room for improvement related to documentation of FCE elements. One FCE (from Yellowstone County, a local agency with authorization) was entered into the database as an FCE; however, the report was only an inspection report (PCE). The information was incorrectly entered into the database.</p> <p>The State has room for improvement related to compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance. Three CMRs (from Yellowstone County, a local agency with authorization) listed the facilities as B sources when the facilities should have been listed as synthetic minors (non-SM-80). The three facilities all showed associated violations in ECHO and therefore, were included in the SRF file selection. However, none of the violations</p>

were found in the CMRs, the State’s files, or database for those facilities. These violations in ECHO may have been related to the database transition.

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%	85.7%	15	30	50%
5b FCE coverage: SM-80s	100%	91.7%	14	23	60.9%
5e Review of Title V annual compliance certifications	100%	78.8%	32	65	49.2%
6a Documentation of FCE elements	100%		16	17	94.1%
6b Compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance	100%		14	17	82.4%

State response

EPA’s finding of “Area for State Attention” is not accurate or factual. As previously mentioned, upon initially learning of the numbers showing in EPA’s data metric for Federal Fiscal Year 2014, DEQ provided EPA with significant data to show that the work had been completed and that the data in ECHO was not up to date/accurate. In fact, the data was sent by DEQ, but was not accepted into the AFS system. Unfortunately, it appears that EPA did not fully consider the information provided by DEQ, even though its own language in the report suggests that follow-up conversations with state personnel may be considered in reaching the findings.

Aside from the data transition errors, DEQ is ironically being penalized for conducting FCEs too frequently. For example, of the 15 FCEs at issue for major facilities and Mega-sites, 8 were proven to be in the state database (data transfer issue), 6 were shown to be completed in the previous fiscal year (apparently done too frequently), and one was shown to have changed size (thus the FCE minimum frequency changed as well). All of the corresponding FCE work had been done, explanations were provided for the discrepancies, and yet EPA apparently disregarded the information in reaching its finding. DEQ is very puzzled as to why, with all of the supporting information, EPA would make a finding of “Area for State Attention” with sound, supporting information counter to that finding.

Similar rationale was used to describe the FCEs conducted for SM-80 facilities with an FCE in 2014. Again, DEQ is puzzled as to why the data in ECHO, with logical supporting documentation for discrepancies, is being used to reduce EPA’s finding to “Area for State Attention.”

[DEQ provided information to EPA pertinent to these metrics in e-mails

	<p>dated 02/19/15, 03/06/15, 03/20/15, 04/03/15, 06/25/15, 07/09/15, 07/10/15, 08/10/15 (3 different e-mails), and 08/17/15. Information was also provided to EPA, in person, on 09/19/15 relating to these metrics. With the correspondence, DEQ provided lists of all of the relevant FCEs and Title V compliance certifications completed for Federal Fiscal Year 2014. DEQ also provided information to EPA related to the three Yellowstone County sources cited in EPA's explanation for its finding.]</p>
Recommendation	N/A

CAA Element 2 — Inspections

Finding 2-2	Area for State Attention																							
Summary	FCE coverage for synthetic minors (non-SM-80s) and for minor facilities that are part of CMS plan is inadequate.																							
Explanation	<p>The State will need to improve FCE coverage: synthetic minors (non-SM-80s) that are part of CMS plan and FCE coverage: minor facilities that are part of CMS plan. The State has been working to clean up the database and has requested that non-SM-80s and minor facilities be removed from the database so that they do not appear in ICIS-AIR. These actions should make the relevant metrics irrelevant in the future.</p> <p>The State must be certain that the synthetic minors (non-SM-80s) and minor source facilities have been removed from the current database ICIS-AIR. The State should double check this by January 31, 2016, prior to the 2015 data being frozen in February of 2016. EPA will review ECHO during the End of Year Review assuring that the facilities of these sizes have been removed from the database.</p>																							
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>5c FCE coverage: synthetic minors (non-SM 80s) that are part of CMS plan</td> <td>100%</td> <td>15.6%</td> <td>0</td> <td>6</td> <td>0%</td> </tr> <tr> <td>5d FCE coverage: minor facilities that are part of CMS plan</td> <td>100%</td> <td>4.4%</td> <td>0</td> <td>3</td> <td>0%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5c FCE coverage: synthetic minors (non-SM 80s) that are part of CMS plan	100%	15.6%	0	6	0%	5d FCE coverage: minor facilities that are part of CMS plan	100%	4.4%	0	3	0%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
5c FCE coverage: synthetic minors (non-SM 80s) that are part of CMS plan	100%	15.6%	0	6	0%																			
5d FCE coverage: minor facilities that are part of CMS plan	100%	4.4%	0	3	0%																			
State response	<p>EPA’s finding in this area is inaccurate and disregards the facts surrounding Montana’s program. EPA is aware that DEQ has not included minor sources or non-SM-80s in its CMS plans. DEQ has been regularly working with EPA and its contractors to ensure that these size facilities are not part of Montana’s reported universe or related SRF reviews. In fact, DEQ has had to ask EPA numerous times to remove some of these size sources from the EPA database, often without success.</p> <p>DEQ did not commit to conducting FCEs for minor or non-SM-80 facilities in its CMS document. DEQ regulates approximately 1,775 minor and non-SM-80 facilities. EPA has reached its lowest finding for a program (“Area for State Improvement”) based on 9 sources of a total universe of 1,775 sources—equating to 0.5% of Montana’s minor and non-SM-80 universe. That means that of 1,775 regulated minor sources and non-SM-80 sources, EPA found 9 of these facilities still in AFS. EPA has determined that the 9 remaining facilities (from this universe of</p>																							

	<p>1,775 facilities) warrant the lowest rating offered by EPA and a mandate to conduct future work based on the finding; a rating and mandate that are clearly unwarranted based on the available facts.</p> <p>DEQ takes significant issue with a finding of “Area for State Improvement.”</p> <p>[DEQ called EPA about cleaning up its minor source data on 2/27/14, 3/3/14, and 3/4/14. DEQ sent information to EPA regarding these metrics on 07/02/14, 07/16/14, 08/20/14, 05/20/15, 06/18/15, 07/16/15, and 08/07/15. In the correspondence to EPA, DEQ requested various help from EPA in cleaning up the minor sources that were part of AFS. DEQ worked with EPA’s contractor, TRC Solutions, to get a large portion of this data cleaned up. DEQ then followed-up directly with EPA to get some of the remaining data cleaned up. Most of that work was completed, but EPA informed DEQ that it was not able to make the final clean-up changes that were requested by DEQ. These last changes were put on hold until EPA’s contractor could help.]</p>
Recommendation	N/A

CAA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations					
Summary	Compliance determinations are accurate.					
Explanation	The State has met or exceeded the expectations for the metric associated with violations including accuracy of compliance determinations. This observed relevant metric for CAA Element 3 – Violations scored 100%.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	7a Accuracy of compliance determinations	100%		31	31	100%
	8a HPV discovery rate at majors		3.1%	2	68	2.9%
State response	Montana DEQ agrees that its program meets/exceeds expectations. Montana DEQ has and continues to invest significant time in compliance determinations.					
Recommendation	N/A					

CAA Element 3 — Violations

Finding 3-2	Area for State Attention						
Summary	Some HPV determinations are inaccurate.						
Explanation	<p>The State has room to improve accuracy of HPV determinations. The HPV determinations of four of the facilities could not be determined as the associated Federally Reportable Violations (FRVs) and could not be found in the State files or the State database. Even though three of these facilities were non-SM-80 synthetic minors that had been inspected by Yellowstone County (a local agency with authorization) they were included in the file review because of associated FRVs. The State had an opportunity to double check and correct the data prior to the data being froze in ECHO, but it does not appear that the State exercised that option.</p>						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	8c Accuracy of HPV determinations		100%		26	30	86.7%
State response	<p>DEQ believes that EPA’s finding in this area is not factual. EPA is making its finding based on facilities that are not subject to either the HPV Policy or the FRV Policy. Furthermore, DEQ looked into the facilities at question and could not even confirm that a violation had occurred at those facilities. DEQ staff and EPA staff discussed these discrepancies. DEQ provided information to EPA specifically relating to these facilities. Even with supporting information counter to this finding and the corresponding explanation, EPA still moved forward with such a finding. EPA appears to have provided no thoughtful consideration to the information/comments provided by DEQ.</p> <p>The explanation provided above by EPA should be compared in context to the applicable policies. Non SM-80s should not be part of Montana’s SRF review and surely shouldn’t be used as the basis for lowering EPA’s finding to “Area for State Attention.”</p> <p>[DEQ sent information to EPA regarding these metrics on 06/25/15 & 08/10/15 (3 e-mails). With the e-mails, DEQ provided information to EPA that was directly counter to the findings and explanation shown above. DEQ specifically provided information about Johnson Lane Materials, NA Degerstrom Inc., and Matriarch Construction. DEQ provided printouts from its database as well as a corresponding description of the problems with the data that EPA was using in its program evaluation.]</p>						

Recommendation

N/A

CAA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations					
Summary	Formal enforcement responses include required corrective action that will return the facility to compliance in a specified timeframe.					
Explanation	The State has met or exceeded expectations for the metric associated with Enforcement, including formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe. This observed relevant metric for CAA Element 3 – Enforcement scored 100%.					
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%		8	8	100%
State response	Montana DEQ agrees that its program meets/exceeds expectations.					
Recommendation	N/A					

CAA Element 4 — Enforcement

Finding 4-2	Area for State Attention					
Summary	HPVs are not addressed in a timely or appropriate manner.					
Explanation	<p>The State needs to improve timeliness of action taken to address HPVs and appropriateness of enforcement responses for HPVs.</p> <p>The State needs to improve related to Metric 10a – Timely action taken to address HPVs scoring 50% with a National Average of 73.2%.</p> <p>Related to Metric 10a, it appears as one of the HPVs was addressed on Day 272 (two days late), otherwise the State would've been at 75%.</p> <p>Related to Metric 10b, appropriate enforcement responses for HPVs, there were two HPVs that were closed with informal actions that showed no formal enforcement. However, one of these HPVs was closed with a formal penalty in a following fiscal year.</p> <p>The State needs to pay closer attention to timelines associated with actions addressing HPVs. Within 90 days from the date of the final SRF report (by April 1, 2016), the State should review the 2014 HPV Policy. The State shall advise EPA if an HPV will not be addressed on or before 180 days from Day Zero. If this is the case, then the State shall conduct a workload analysis and determine what improvements need to be made in order to address HPVs in a timely manner. EPA believes that HPVs should not be addressed with informal enforcement actions and it appears that the State addressed two of the seven HPVs informally. EPA will review the HPV responses during the End of Year Review focusing on timeliness.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	10a Timely action taken to address HPVs		73.2%	2	4	50%
	10b Appropriate enforcement responses for HPVs	100%		5	7	71.4%
State response	<p>DEQ believes that EPA's finding in this area is inappropriate. DEQ regularly assesses violations and pursues enforcement as appropriate. Some violations and corresponding enforcement will easily fit within EPA's suggested timeframes and some violations will not. DEQ is more concerned with making the right decisions with regard to discovered violations than meeting an arbitrary timeframe. For EPA to base its findings on percentages calculated from such a small data set is overly</p>					

	<p>prescriptive and eliminates any thoughtful consideration with regard to the actual quality/effectiveness of the state program. DEQ takes significant issue with a finding of “Area for State Improvement.”</p> <p>[DEQ sent information to EPA regarding this metric in an 8/17/15 e-mail]</p>
Recommendation	N/A

CAA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations					
Summary	Penalty calculations include gravity and economic benefit. Differences between initial and final penalty are documented and penalties are collected.					
Explanation	The State has met or exceeded the expectations for the metrics associated with penalties. All three of the observed relevant metrics for CAA Element 5 – Penalties scored 100%.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	11a Penalty calculations include gravity and economic benefit	100%		6	6	100%
	12a Documentation on difference between initial and final penalty	100%		4	4	100%
	12b Penalties collected	100%		6	6	100%
State response	Montana DEQ agrees that its program meets/exceeds expectations.					
Recommendation	N/A					

Resource Conservation and Recovery Act Findings

RCRA Element 1 — Data							
Finding 1-1	Meets or Exceeds Expectations						
Summary	All of the data elements required to be entered into RCRAInfo had been entered in a timely and accurate fashion for the 32 files reviewed by EPA.						
Explanation	The mandatory data was complete and accurate.						
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	
	2a Long-standing secondary violators					2	
	2b Complete and accurate entry of mandatory data	100%		32	32	100%	
	5a Two-year inspection coverage for operating TSDFs	100%	88.40%	4	4	100%	
	5b Annual inspection coverage for LQGs	20%	20.10%	22	45	48.90%	
	5c Five-year inspection coverage for LQGs	100%	67.10%	36	45	80%	
	5d One-year inspection coverage for active SQGs		10.60%	53	75	70.70%	
	5e1 Number of inspections at conditionally exempt SQGs					153	
	5e2 Number of inspections at transporters					10	
	5e3 Number of inspections at non-notifiers					1	
	5e4 Number of inspections at facilities not covered by metrics 2c through 2f3					88	
	7b Violations found during inspections		36.70%	17	81	21%	
	8a SNC identification rate		2%	0	81	0%*	
	10a Timely enforcement taken to address SNC	80%	84.30%	0	0	0%*	
	<i>*FY 2014 data only. This does not include the 5 prior-year enforcement actions which were reviewed for penalty and SNC identification.</i>						
	State response	No State response received.					
Recommendation	N/A						

RCRA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations																							
Summary	<p>The State meets or exceeds the national goals for all inspection coverage areas with the exception of the 5-year inspection coverage for LQGs. Unfortunately, this SRF metric is based on the biennial report system values which may include one-time generators or episodic LQGs. Including one-time and episodic generators in the metric inflates the LQG count beyond those generators which are consistently in the largest handler category and may skew a simple comparison to indicate that a lower percentage of “static” LQGs were inspected. One-time and episodic handlers can move quickly in and out of the LQG category, and can be very difficult to inspect within a year.</p>																							
Explanation	<p>The State does an excellent job of LQG inspections, more than doubling the required 20% annually. The State also met the TSDf requirement by inspecting the 4 operating TSDfS in the State.</p> <p>The state inspection reports are thorough and complete. There is sufficient detail to allow violation determination. Additionally, the reports document facility processes, identify waste streams, and waste management practices.</p> <p>Metric 5c indicates the State had a 5-year inspection coverage for LQG inspections of 80%, which exceeds the national average of 67.10% but fails to achieve the national goal of 100% LQG coverage on a 5-year basis.</p> <p>The universe for the inspection coverage metrics is based on the Biennial Reporting System (BRS). Episodic generators, one-time generators, and one-time LQGs submitting one-time BRS notifications may not justify inspection targeting for these one-time events.</p> <p>However, by using RCRARep data for FY 2014, to extract new generators, one-time generators or one-time corrective action sites from the LQG universe, the State has 100% coverage of the static LQG universe for the last five years.</p>																							
Relevant metrics	<table border="1"> <thead> <tr> <th data-bbox="480 1692 997 1759">Metric ID Number and Description</th> <th data-bbox="1010 1692 1078 1759">Natl Goal</th> <th data-bbox="1091 1692 1159 1759">Natl Avg</th> <th data-bbox="1172 1692 1208 1759">State N</th> <th data-bbox="1221 1692 1256 1759">State D</th> <th data-bbox="1269 1692 1414 1759">State % or #</th> </tr> </thead> <tbody> <tr> <td data-bbox="480 1776 997 1835">5a Two-year inspection coverage of operating TSDfS</td> <td data-bbox="1010 1776 1078 1835">100%</td> <td data-bbox="1091 1776 1159 1835">88.40%</td> <td data-bbox="1172 1776 1208 1835">4</td> <td data-bbox="1221 1776 1256 1835">4</td> <td data-bbox="1269 1776 1414 1835">100%</td> </tr> <tr> <td data-bbox="480 1852 997 1883">5b Annual inspection coverage of LQGs</td> <td data-bbox="1010 1852 1078 1883">20%</td> <td data-bbox="1091 1852 1159 1883">20.10%</td> <td data-bbox="1172 1852 1208 1883">22</td> <td data-bbox="1221 1852 1256 1883">45</td> <td data-bbox="1269 1852 1414 1883">48.90%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5a Two-year inspection coverage of operating TSDfS	100%	88.40%	4	4	100%	5b Annual inspection coverage of LQGs	20%	20.10%	22	45	48.90%					
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
5a Two-year inspection coverage of operating TSDfS	100%	88.40%	4	4	100%																			
5b Annual inspection coverage of LQGs	20%	20.10%	22	45	48.90%																			

	5c Five-year inspection coverage of LQGs	100%	67.10%	36	45	80%*
	5d Five-year inspection coverage of active SQGs		10.60%	53	75	70.70%
	5e1 Five-year inspection coverage of active conditionally exempt SQGs					153
	5e2 Five-year inspection coverage of active transporters					10
	5e3 Five-year inspection coverage of active non-notifiers					1
	5e4 Five-year inspection coverage of active sites not covered by metrics 2c through 2f3					88
	6a Inspection reports complete and sufficient to determine compliance	100%		30	30	100%
	6b Timeliness of inspection report completion	100%		26	30	86.7%**
	<i>*Using RCRARep data, the State has 100% coverage of the static LQG universe.</i> <i>**Inspection report timeliness was evaluated using the Region 8 standard of 45 days rather than the 150 days allowed by the national checklist.</i>					
State response	No State response received.					
Recommendation	N/A					

RCRA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations					
Summary	The State accurately identifies violations in their inspection reports and enters these in the national database. The five SNCs identified during this review period which included prior years since the last State SRF review were both timely and appropriate.					
Explanation	The State accurately identifies violations. The five SNCs identified during this review period received appropriate enforcement actions. EPA reviewed the SNC compliance rate as part of the file review. Based on the number of inspections completed for which a determination of no violations found, EPA concluded that the SNC identification rate was appropriate though lower than half the national average.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2a Long-standing secondary violators					2
	7a Accurate compliance determinations	100%		32	32	100%
	7b Violations found during inspections		36.70%	17	81	21%
	8a SNC identification rate		2%	0	81	0%*
	8b Timeliness of SNC determinations	100%	85.20%	0	0	0%*
	8c Appropriate SNC determinations	100%		32	32	100%
	<i>*FY 2014 data only. This does not include the 5 prior-year enforcement actions which were reviewed for penalty and SNC identification.</i>					
State response	No State response received.					
Recommendation	None required.					

RCRA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations					
Summary	The State requires corrective measures in their formal and informal actions to return facilities to compliance and follows up through required submittals or onsite inspections. The State takes timely and appropriate enforcement action to address identified violations.					
Explanation	Six informal enforcement actions, five formal enforcement actions, and five penalties were reviewed. The enforcement actions returned violators to compliance. The penalties were collected and compliance measures were taken pursuant to those actions. The enforcement actions were timely and appropriate for the violations identified.					
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%		11	11	100%
	10a Timely enforcement taken to address SNC	80%	84.30%	0	0	0%*
	10b Appropriate enforcement taken to address violations	100%		11	11	100%
	<i>*FY 2014 data only. This does not include the 5 prior-year enforcement actions which were reviewed for penalty and SNC identification.</i>					
State response	No State response received.					
Recommendation	N/A					

RCRA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations																														
Summary	The State did not collect any penalties in FY 2014. At HQ’s request, EPA Region 8 expanded our review to include prior years since the last State SRF review. The State includes both economic benefit and gravity components in their penalty calculations and documents adjustment of the initial penalty to the settled amount. The State maintains documentation in its files that the final penalty has been collected or SEP projects completed.																														
Explanation	Five penalty actions were reviewed by EPA. For four of these penalty actions, the State included both economic benefit and gravity components as appropriate in their penalty calculations and documented any adjustments to the penalty. The fifth penalty action resulted from financial records review and collection of stipulated penalties. Documentation of the penalty calculations, adjustments, settlement, and compliance measures taken were maintained in the State files.																														
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>11a Penalty calculations include gravity and economic benefit</td> <td>100%</td> <td></td> <td>4</td> <td>4</td> <td>100%*</td> </tr> <tr> <td>12a Documentation on difference between initial and final penalty</td> <td>100%</td> <td></td> <td>3</td> <td>3</td> <td>100%*</td> </tr> <tr> <td>12b Penalties collected</td> <td>100%</td> <td></td> <td>5</td> <td>5</td> <td>100%*</td> </tr> <tr> <td colspan="6"><i>*These figures are for penalty actions taken in prior years, including one action which was a collection of stipulated penalties.</i></td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	11a Penalty calculations include gravity and economic benefit	100%		4	4	100%*	12a Documentation on difference between initial and final penalty	100%		3	3	100%*	12b Penalties collected	100%		5	5	100%*	<i>*These figures are for penalty actions taken in prior years, including one action which was a collection of stipulated penalties.</i>					
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State response	No State response received.																														
Recommendation	N/A																														

Appendix



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

Ref: 8ENF-PJ

Mr. Tom Livers, Director
Montana Department of Environmental Quality
1520 E. Sixth Avenue
P.O. Box 200901
Helena, Montana 59601

Dear Mr. Livers:

The U.S. Environmental Protection Agency (EPA) Region 8 will be conducting a State Review Framework (SRF) of the Montana Department of Environmental Quality (MDEQ) Resource Conservation and Recovery Act (RCRA) Subtitle C, Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) and Clean Air Act (CAA) Stationary Source enforcement programs in 2015. We will review inspection and enforcement activity from Federal Fiscal Year 2014.

An integral part of the review process is the visit to your state agency office. Through this visit, the EPA can have face-to-face discussions with enforcement staff and review their respective files to better understand the overall enforcement program. As an alternative to a state visit, staff may also make use of electronic file reviews to conserve travel and staff resources. State visits for these reviews will include:

- discussions between Region 8 and MDEQ program managers and staff;
- examination of data in the EPA and MDEQ data systems; and
- review of selected MDEQ inspection and enforcement files and policies.

Following our visit to your office, the EPA will summarize findings and recommendations in a draft report. Your management and staff will be provided with an opportunity to review and comment on this draft. The EPA expects to complete the MDEQ review, including the final report, by December 31, 2015. If any areas for improvement are identified in the SRF, we will work with you to address them in the most constructive manner possible. Region 8 and MDEQ are partners in carrying out the review, and we intend to assist you in meeting both federal standards and goals agreed to in MDEQ's Performance Partnership Workplan Agreement.

Region 8 has established a cross-program team of managers and senior staff to implement the MDEQ review. Kaye Mathews, SRF Coordinator at (303) 312-6889, will be your primary contact at Region 8 and will coordinate overall logistics for the EPA. Julie DalSoglio and I are Region 8's senior managers with overall responsibility for the review. We request that you also identify a primary contact person for the EPA to work with and provide that name to Ms. Mathews. The Region 8 program leads on the 2015 SRF review team are:

Linda Jacobson	RCRA	(303) 312-6503	jacobson.linda@epa.gov
Michael Boeglin	NPDES Lead	(303) 312-6250	boeglin.michael@epa.gov
David Rise	NPDES	(406) 457-5012	rise.david@epa.gov
Bob Gallagher	CAA	(406) 457-5020	gallagher.bob@epa.gov

These program leads will be contacting MDEQ enforcement managers and staff to schedule a meeting to discuss expectations, procedures, and scheduling for the review. The EPA will also send its analysis of the SRF data metrics and list of selected facility files prior to the on-site visit. General SRF review planning and logistics steps can be found in the attachment. Other documents used to evaluate the state's programs can be found on EPA's ECHO website at <https://echo.epa.gov/>. Links to past SRF reports and recommendations can be found at EPA's State Review Framework web page at <http://www.epa.gov/compliance/state/srf/>.

Please don't hesitate to contact me at (303) 312-6925 or have your staff contact Kaye Mathews at (303) 312-6889 with any questions about this review process. We look forward to working with you on this SRF review.

Sincerely,

Suzanne J. Bohan
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Julie DalSoglio, Director
EPA Region 8 Montana Office

Attachment

cc: By electronic mail
Shaun L. McGrath, Regional Administrator
Debra H. Thomas, Acting Deputy Regional Administrator
Region 8 Enforcement Office Directors and Deputies:
Kim Opekar, 8ENF-PJ

Corbin Darling, 8ENF-PJ
Cindy Reynolds, 8ENF-AT
Art Palomares, 8ENF-W
Gwen Campbell, 8ENF-W-NP, UFO
Kelcey Land, 8ENF-RC
Aaron Urdiales, 8ENF-RC
Kaye Mathews, Region 8 SRF Coordinator
Eddie Sierra, Deputy Assistant Regional Administrator, 8ENF-IO
Elizabeth Walsh, Headquarters SRF Liaison, Office of Compliance, OECA



Printed on Recycled Paper

Attachment

SRF Review Planning & Logistics

As the EPA begins this review process, MDEQ can expect the following:

- The EPA will contact MDEQ enforcement managers and staff to schedule a meeting or conference call to discuss expectations, procedures, and scheduling for the review if this has not already occurred.
- The EPA will provide MDEQ with a list of reviewers and may ask for preliminary information that is readily available such as descriptions of agency and program structures, agency enforcement policies, staffing numbers and other organizational information.
- The EPA will send MDEQ a list of data metrics and conduct a data metric analysis.
- The EPA will send MDEQ a list of requested files for review at least two weeks in advance of onsite file reviews.
- The EPA will set up a call with MDEQ to verify that files in EPA's requested file list will be available; where the files will be located; and to confirm review dates, arrival times and logistics.
- The EPA will conduct an entrance conference upon arrival for the review at the MDEQ offices and an exit meeting prior to departure for MDEQ managers and staff.
- The EPA will draft a report of its review findings, share the draft report with MDEQ and request comments.
- Once the report is final, the EPA will add the report and any recommendations in the report to the SRF Tracker.
- Once the report is final, the EPA will consult with the state and add agreed-upon action items in the report to the Action Item database.
- The EPA will initiate follow-up discussions periodically with MDEQ to see if progress is being made on the report recommendations.