UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

APR 1 9 2018

Honorable Austin Caperton
Secretary
West Virginia Department of Environmental Protection
601 57th Street
Charleston, WV 25304

Dear Secretary Caperton: Austin

The U.S. EPA conducted the third round of the State Review Framework (SRF) review of the West Virginia Department of Environmental Protection's (WVDEP) Clean Water Act-National Pollution Discharge Elimination System (NPDES), Clean Air Act-Stationary source program (CAA), and the Resource Conservation Recovery Act (RCRA). The review evaluated enforcement data and files from Fiscal Year 2016.

I want to thank you and your staff for cooperating with us throughout this review. We found significant qualitative and quantitative program advances in your NPDES programs. WVDEP has worked closely with EPA to address recommendations from the 2014 WV SRF review. Activities undertaken by the Division of Water and Waste Management and the District of Mining and Reclamation have resulted in substantial program improvements in several critical areas. For example, WVDEP has made considerable resource investments to enhance NPDES data management capabilities in both the Clean Water and Mining programs. We look forward to continuing collaborative efforts, including training and sharing best practices from our other State partners to help WVDEP in those areas identified as needing improvement as well as other matters that may arise affecting these compliance assurance programs. The enclosed report summarizes findings from the review, areas of strong performance, and planned actions to facilitate program improvements.

If you have any questions, please do not hesitate to contact me or have your staff contact Ms. Samantha Phillips Beers, Director, Office of Enforcement, Compliance and Environmental Justice at (215) 814-2627.

Sincerely,

Cosmo Servidio
Regional Administrator

Enclosure

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STATE REVIEW FRAMEWORK

West Virginia

Clean Water Act, Clean Air Act, and Resource Conservation and Recovery Act Implementation in Federal Fiscal Year 2016

U.S. Environmental Protection Agency
Region 3, Philadelphia

Final Report
March 20, 2018

Executive Summary

Introduction

In 2017, EPA Region III enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the West Virginia Department of Environmental Protection (WVDEP). The Region reviewed enforcement files from Fiscal Year 2016 for the Clean Water Act -National Pollution Discharge Elimination System (NPDES) Clean Air Act - Stationary source program (CAA), and the Resource Conservation Recovery Act (RCRA). The CWA-NPDES section of report includes findings for the following NPDES sector programs: municipal and industrial wastewater; industrial and construction stormwater; and mining.

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

Areas of Strong Performance

NPDES

- EPA acknowledges WVDEP's significant qualitative and quantitative program advances in its NPDES programs. Over the last several years, WVDEP has worked closely with EPA to address recommendations from the 2014 WV SRF Round 2 Final Report. Activities undertaken by the Division of Water and Waste Management and the District of Mining and Reclamation have resulted in substantial program improvements in several critical areas. For example, WVDEP has made considerable resource investments to enhance NPDES data management capabilities in both the Clean Water and Mining programs. Additionally, EPA recognizes WVDEP's efforts to strengthen the compliance monitoring and enforcement program through enhancements to penalty calculation forms to ensure consideration of gravity and economic benefit, and training on calculating penalties.

RCRA

- WVDEP's RCRA Program routinely prepared well written inspection reports that were completed expeditiously and contained enough information to make accurate compliance determinations.
- WVDEP's RCRA Program pursued appropriate enforcement actions that helped violators come into compliance with regulations.
- WVDEP's RCRA Program effectively assessed and collected monetary penalties.

Priority Issues to Address None

Most Significant CWA-NPDES Program Issues[1]

The SRF Round 3 file review of WVDEP's municipal separate storm sewer system (MS4) enforcement files identified deficiencies with the documentation of facilities' return to compliance after enforcement actions were issued.

EPA will work with WVDEP's MS4 program to ensure sufficient information is included in enforcement files to document return to compliance or progress in meeting compliance schedules. Additionally, EPA will monitor the WVDEP's progress through quarterly enforcement management calls.

Most Significant CAA Stationary Source Program Issues: None

Most Significant RCRA Subtitle C Program Issues: None

[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. 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 (3) 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 (5) 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 2016

Key dates:
SRF Kick-Off Meeting with WVDEP March 8, 2017
CWA-NPDES File Review: WVDEP - Charleston Office June 13, 2017
Air File Review 6/5-6/17
RCRA File Review June 22, 2017 – August 11, 2017

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RCRA Contacts:
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Clean Water Act Findings

CWA Element 1 — Data

Finding 1-1 **Area for State Attention**

Summary

WVDEP's NPDES mining program does not currently enter or upload NPDES inspection or enforcement data into the national data system (metric 2b).

WVDEP's NPDES municipal ("Muni") and industrial ("Ind") wastewater ("WW"), program did not enter or upload informal enforcement actions NPDES monthly discharge reports ("MDRs") into the national database (metric 2b), however other MDRs were uploaded.

WVDEP's municipal and industrial wastewater program reported 57 NPDES major facilities in SNC during the FY16 SRF review year (metric 8a2). In some cases, facilities are reported in SNC as a result of data not entered such as 'compliance schedule achieved,' when enforcement order interim limits are not entered into the national database, Integrated Compliance Information System (ICIS), or when limits are stayed by the Environmental Quality Board.

Explanation

EPA Region III and WVDEP Division of Clean Water and WVDEP Division of Mining Programs have been working cooperatively to enhance WVDEP's ability to flow NPDES MDRs to ICIS from the state data system. In addition, Region III and WVDEP are implementing an NPDES Data Management Strategy which establishes a plan with milestones for WVDEP to meet all federal NPDES data management requirements as set forth by the NPDES Electronic Reporting Rule.

WVDEP should continue to implement the West Virginia NPDES Data Management Strategy to correct data quality issues that result in inaccurate reports of violations and significant noncompliance. Specifically, include missing compliance data for NPDES permitted facilities in ICIS such as, but not limited to, 'compliance schedule achieved,' enforcement order interim limits, and when limits are stayed by the Environmental Quality Board.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
1b1 Permit limit rates for major facilities	>=95%	91.1%	97	100	97%
1b2 DMR entry rate for major facilities	>=95%	96.8%	5441	5618	96.8%
2b Files reviewed where data are accurately reflected in the national data system	>=98		55	73	75%
8a2 Percentage of major facilities in SNC (Muni/Ind WW)	-	20.3%	57	100	57%

State response	1) WVDEP Mining has developed and is now using electronic NPDES Inspection forms. This information will be loaded into ICIS for all Minor permits, along with the Major permit information that has always been loaded, as programming issues between WV ERIS data system and EPA ICIS system are resolved. 2) WVDEP agrees to continue to implement the West Virginia NPDES Data Management Strategy to correct data quality issues that result in inaccurate reports of violations and significant noncompliance.
Recommendation	None

CWA Element 2 — Inspections

Finding 2-1	**Meets or Exceeds Expectations**
Summary	WVDEP met or exceeded its FY16 Compliance Monitoring Strategy ("CMS") commitments for inspection coverage of NPDES facilities (metrics 4a1, 4a2, 4a4, 4a5, 4a7, 4a8 and 4a9, 5a1, 5b1, and 5b2). WVDEP's NPDES municipal and industrial wastewater programs, industrial storm water ("Ind SW"), construction storm water ("Const SW"), CAFO, and mining programs consistently produced complete inspection reports with sufficient documentation to determine compliance (metric 6a). WVDEP's NPDES municipal and industrial wastewater program, industrial stormwater, construction stormwater, CAFO and mining programs consistently completed inspection reports within the prescribed federal and state policy timeframes (metric 6b).
Explanation	WVDEP met all FY16 CMS compliance monitoring commitments. Additional detail on CMS commitments and accomplishments can be found in Metric spreadsheet 4a. WVDEP's SRF file review determined the following results as measured under metric 6a, complete inspection reports that provided sufficient documentation to determine compliance: municipal and industrial wastewater program 14 out of 14 reports; industrial stormwater two (2) out of two (2) reports; construction stormwater three (3) out of three (3) reports; CAFO one (1) out of one (1) report; and mining 13 out of 15 reports. The SRF file review under metric 6b determined the following program averages for completing an inspection report: the municipal and industrial wastewater program averaged 28 days; the industrial storm water program averaged seven (7) days; the construction storm water program averaged one (1) day; the CAFO program averaged 26 days; and the mining program averaged nine (9) days for completing a timely inspection report.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
4a1 Pretreatment Compliance Inspections and Audits	WV CMS		10	9	111%
4a2 Significant industrial user (SIU) inspections for SIUs discharging to non-authorized POTWs	WV CMS		0	0	100%
4a4 CSO Inspections	WV CMS		7	23	117%
4a5 SSO Inspections	WV CMS		N/A	N/A	N/A

4a7 Phase I and II MS4 audits or inspections	WV CMS		10	49	20%
4a8 Industrial stormwater inspections	WV CMS		129	1216	10.6%
4a9 Phase I and II construction stormwater inspections	WV CMS				
5a1 Inspection coverage of NPDES majors	WV CMS	51 %	57	100	57%
5b1 Inspection coverage of NPDES non-majors with individual permits	WV CMS	23.9%	112	2023	5.5%
5b2 Inspection coverage of NPDES non-majors with general permits*	WV CMS	5.6%	N/A	N/A	N/A
6a Inspection reports complete and sufficient to determine compliance at the facility (Muni/Ind WW)	100%		14	14	100%
6a Inspection reports complete and sufficient to determine compliance at the facility (Ind SW)	100%		2	2	100%
6a Inspection reports complete and sufficient to determine compliance at the facility (Const SW)	100%		3	3	100%
6a Inspection reports complete and sufficient to determine compliance at the facility (CAFO)	100%		2	2	100%
6a Inspection reports complete and sufficient to determine compliance at the facility (Mining)	100%		13	15	87%
6a Inspection reports complete and sufficient to determine compliance at the facility (MS4)	100%		2	2	100%
6a Inspection reports complete and sufficient to determine compliance at the facility (Cumulative)	100%		36	38	95%
6b Inspection reports completed within prescribed timeframe (Muni/Ind WW)	100%		11	14	79%
6b Inspection reports completed within prescribed timeframe (Ind SW)	100%		2	2	100%
6b Inspection reports completed within prescribed timeframe (Const SW)	100%		3	3	100%
6b Inspection reports completed within prescribed timeframe (CAFO)	100%		2	2	100%
6b Inspection reports completed within prescribed timeframe (Mining)	100%		14	14	100%
6b Inspection reports completed within prescribed timeframe (MS4)	100%		2	2	100%
6b Inspection reports completed within prescribed timeframe (Cumulative)	100%		34	37	92%

State response None

Recommendation None

***Inspections for minor facilities and general permits are not all entered into the federal database therefore some metrics are artificially low.**

CWA Element 3 — Violations

Finding 3-1 **Meets or Exceeds Expectations**

Summary

WVDEP's NPDES municipal and industrial wastewater, industrial stormwater, construction stormwater, CAFO and mining programs consistently produce inspection reports with sufficient documentation leading to an accurate compliance determination (metric 7e).

Explanation

WVDEP reported 94% of major facilities in noncompliance with discharge monitoring report (DMR) violations (national average is 73.3%) as measured under data metric 7d1.

The file review determined that WVDEP's NPDES municipal and industrial wastewater program made an accurate compliance determination in 15 out of 15 inspection reports; the industrial stormwater program made accurate compliance determinations in two (2) out of two (2) inspection reports; the construction stormwater program made accurate compliance determinations in three (3) out of three (3) inspection reports; the CAFO program made accurate compliance determinations in two (2) out of two (2) inspection reports; and the mining program made accurate compliance determinations in 15 out of 16 inspection reports as measured under file metric 7e.

WVDEP reported 301 NPDES non-major facilities with individual permits in Category 1 noncompliance (metric 7f1).

WVDEP reported 202 NPDES non-major facilities with individual permits in Category 2 noncompliance (metric 7g1).

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
7d1 Major facilities in noncompliance		73.3%	94	100	94%
7f1 Non-major facilities in Category 1 noncompliance			301		
7g1 Non-major facilities in Category 2 noncompliance			202		
7e Inspection reports reviewed that led to an accurate compliance determination (Muni/Ind WW)	100%		15	15	100%
7e Inspection reports reviewed that led to an accurate compliance determination (Ind SW)	100%	-	2	2	100%

7e Inspection reports reviewed that led to an accurate compliance determination (Const SW)	100%	-	3	3	100%
7e Inspection reports reviewed that led to an accurate compliance determination(CAFO)	100%	-	2	2	100%
7e Inspection reports reviewed that led to an accurate compliance determination (Mining)	100%	-	15	16	94%
7e Inspection reports reviewed that led to an accurate compliance determination (MS4)	100%	-	2	2	100%

State response	None
Recommendation	None

CWA Element 3 — Violations

Finding 3-2	**Meets or Exceeds Expectations**
Summary	WVDEP's municipal and industrial wastewater program has started to identify SEVs as SNC or non-SNC at NPDES major facilities (metric 8b). WVDEP does identify and report on a timely basis SEVs as SNC (metric 8c).
Explanation	WVDEP identified SEVs as SNC or non-SNC in one (1) out one (1) inspection files reviewed by EPA (metric 8b). WVDEP did enter/upload SEV data into ICIS. WVDEP identified one (1) out of one (1) SEVs as SNC and reported timely at major facilities (metric 8c). EPA Region III and WVDEP have been working cooperatively to enhance the WVDEP's capability to flow NPDES MDRs to ICIS from their Environmental Resources Information System (ERIS) database. In addition, Region III and WVDEP are implementing an NPDES Data Management Strategy which establishes a plan with milestones for WVDEP to meet all federal NPDES data management requirements including entry of SEV data as set forth by the NPDES Electronic Reporting Rule.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
8b Single-event violations accurately identified as SNC or non-SNC (muni/ind ww)	100%		1	1	100%
8c Percentage of SEVs identified as SNC reported timely at major facilities (muni/ind ww)	100%		1	1	100%

State response	None
Recommendation	None

CWA Element 4 — Enforcement	
Finding 4-1	**Meets or Exceeds Expectations**
Summary	The WVDEP NPDES industrial stormwater, construction stormwater, CAFO, and mining programs consistently address violations with enforcement responses that return or will return a source in violation to compliance (metric 9a). The WVDEP NPDES municipal and industrial wastewater, industrial stormwater, construction stormwater, MS4, CAFO, and mining programs initiate enforcement responses that address violations in an appropriate manner (metric 10b).
Explanation	The SRF file review of WVDEP's NPDES municipal and industrial wastewater program identified 12 out of 17 (71%) enforcement actions that returned facilities to compliance as measured under metric 9a. The SRF file review of WVDEP's NPDES industrial stormwater program identified five (5) out of five (5) enforcement actions that returned facilities to compliance as measured under metric 9a. The SRF file review of WVDEP's NPDES construction stormwater program identified five (5) out of five (5) enforcement actions that returned facilities to compliance as measured under metric 9a. The SRF file review of WVDEP's NPDES mining program identified 20 out of 22 (91%) enforcement actions that returned facilities to compliance as measured under metric 9a. The SRF file review of WVDEP's NPDES municipal and industrial wastewater program identified 13 out of 15 (86%) enforcement responses that addressed violations in an appropriate manner as measured under metric 10b. The SRF file review of WVDEP's NPDES industrial stormwater program identified five (5) out of five (5) (100%) enforcement responses that addressed violations in an appropriate manner as measured under metric 10b. The SRF file review of WVDEP's NPDES construction stormwater program identified five (5) out of five (5) (100%) enforcement responses that addressed violations in an appropriate manner as measured under metric 10b.

The SRF file review of WVDEP's NPDES MS4 program identified four (4) out of four (4) (100%) enforcement responses that addressed violations in an appropriate manner as measured under metric 10b.

The SRF file review of WVDEP's NPDES mining program identified 21 out of 22 enforcement responses that addressed violations in an appropriate manner as measured under metric 10b (96%).

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 (Muni/Ind WW))	100%	-	12	17	71%
9a Percentage of enforcement responses that return or will return source in violation to compliance (Ind SW)	100%	-	5	5	100%
9a Percentage of enforcement responses that return or will return source in violation to compliance (Const SW)	100%	-	5	5	100%
9a Percentage of enforcement responses that return or will return source in violation to compliance (Mining)	100%	-	20	22	91%
10b Enforcement responses reviewed that address violations in an appropriate manner (Muni/Ind WW)	100%	-	13	15	86%
10b Enforcement responses reviewed that address violations in an appropriate manner (Ind SW)	100%	-	5	5	100%
10b Enforcement responses reviewed that address violations in an appropriate manner (Const SW)	100%	-	5	5	100%
10b Enforcement responses reviewed that address violations in an appropriate manner (Mining)	100%	-	21	22	96%
10b Enforcement responses reviewed that address violations in an appropriate manner (MS4)	100%		4	4	100%
*Metrics 9a and 10b are N/A for the CAFO and MS4 universes since enforcement actions were not taken during the review period.					

State response None

Recommendation None

CWA Element 4 — Enforcement

Finding 4-2	**Area for State Improvement**
Summary	WVDEP's MS4 program addresses violations with enforcement responses that return or will return a source in violation to compliance (metric 9a). However, facility return to compliance is not documented.
Explanation	The SRF file review of WVDEP's MS4 program identified one (1) out of four (4) (25%) enforcement actions that returned facilities to compliance as measured under metric 9a. Three (3) out of four (4) (75%) files did not document compliance with enforcement actions. EPA staff requested documentation of return to compliance after the initial file reviews, however, documentation was not located by WVDEP staff. The MS4 program did initiate timely and appropriate enforcement actions in four (4) out of four (4) files reviewed (metric 10a.)

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 (MS4)			1	4	25%

State response	At the start of FY18, WVDEP implemented a new data entry form for all non-mining NPDES inspections that allows the Agency to more accurately track and document return to compliance for any violations. This practice will ensure appropriate follow-up and escalation of enforcement in accordance with the existing guidance in our Environmental Enforcement Inspector Manual for any documented non-compliance.
Recommendation	Within 180 days of the issuance of this report, the WVDEP MS4 program should develop and provide to EPA a SOP that will establish appropriate enforcement escalation policies; and identify the process WVDEP staff will follow to evaluate and document a MS4 facility's return to compliance. EPA will monitor WVDEP's progress through quarterly enforcement management calls, and confirm completion of the recommendation through a limited desktop file review of WVDEP MS4 compliance monitoring activities.

CWA Element 5 — Penalties	
Finding 5-1	**Meets or Exceeds Expectations**
Summary	WVDEP's NPDES municipal and industrial wastewater, construction stormwater, industrial stormwater, and mining programs consistently documents penalty calculations that include gravity and economic benefit (metric 11a). WVDEP's NPDES municipal and industrial wastewater, construction stormwater, industrial stormwater, and mining programs consistently documents difference between initial penalty calculation and amount collected (metric 12a). WVDEP's NPDES municipal and industrial wastewater, industrial stormwater, construction stormwater, and mining programs consistently document collection of penalties (metric 12b).
Explanation	The SRF file review of WVDEP's NPDES municipal and industrial wastewater program identified seven (7) out of seven (7) enforcement files that contained documentation of penalty calculations that included gravity and economic benefit as measured under metric 11a. The SRF file review of WVDEP's NPDES industrial stormwater program identified five (5) out of five (5) enforcement files that contained documentation of penalty calculations that included gravity and economic benefit as measured under metric 11a. The SRF file review of WVDEP's NPDES construction stormwater program identified four (4) out of four (4) enforcement files that contained documentation of penalty calculations that included gravity and economic benefit as measured under metric 11a. The SRF file review of WVDEP's NPDES mining program identified six (6) out of seven (7) enforcement files that contained documentation of penalty calculations that included gravity and economic benefit as measured under metric 11a. The SRF file review of WVDEP's municipal and industrial wastewater program identified seven (7) out of seven (7) enforcement files that contained documentation of the penalty collection as measured under metric 12b. The SRF file review of WVDEP's industrial stormwater program identified five (5) out of five (5) enforcement files that contained documentation of the penalty collection as measured under metric 12b.

The SRF file review of WVDEP's construction stormwater program identified four (4) out of four (4) enforcement files that contained documentation of the penalty collection as measured under metric 12b.

The SRF file review of WVDEP's mining program identified six (6) out of six (6) enforcement files that contained documentation of the penalty collection as measured under metric 12b.

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 (Muni/Ind WW)	100%		7	7	100%
11a Penalty calculations reviewed that consider and include gravity and economic benefit (Const SW)	100%		4	4	100%
11a Penalty calculations reviewed that consider and include gravity and economic benefit (Ind SW)	100%		5	5	100%
11a Penalty calculations reviewed that consider and include gravity and economic benefit (Mining)	100%		6	7	86%
12a Documentation of the difference between initial and final penalty and rationale (Muni/Ind WW)	100%		4	4`	100%
12a Documentation of the difference between initial and final penalty and rationale (Const SW)	100%		1	1	100%
12a Documentation of the difference between initial and final penalty and rationale (Ind SW)	100%		5	5	100%
12a Documentation of the difference between initial and final penalty and rationale (Mining)	100%		2	2	100%
12b Penalties collected (Muni/Ind WW)	100%		7	7	100%
12b Penalties collected (Const SW)	100%	-	4	4	100%
12b Penalties collected (Ind SW)	100%	-	7	7	100%
12b Penalties collected (Mining)	100%		2	2	100%

*Metrics 11a, 12a, 12b are N/A for the CAFO and MS4 universes since penalties were not assessed during the review period.

State response None

Recommendation None

CAA Element 1 — Data

Finding 1-1 **Area for State Improvement**

Summary

The majority of Title V Annual Compliance Certifications (TVACC) appear in EPA's ICIS-Air database as duplicates. In addition, there were eight other miscellaneous discrepancies found in the files that did not match entries in ICIS-Air.

Explanation

For 13 facilities with TVACCs during the review year, ICIS-Air showed two (2) TVACCs completed per facility. Most of the entries were within one month of each other, therefore leading the EPA Review Team to believe that they were duplicate entries. After comparing the files to the ICIS-Air entries for these facilities, the EPA Review Team found there was actually only one (1) FY16 TVACC in the file for each facility and not two as the data showed. The duplicate entries occurred because WVDEP entered separate dates for received and reviewed on the same ICIS-Air record which resulted in a duplicate TVACC entry in ICIS-Air. WVDEP has confirmed that the TVACC duplicate entry error has been corrected as of October 2017. The EPA Review Team confirmed this with a data pull from ICIS-Air. EPA will continue to monitor WVDEP progress by conducting quarterly data reviews in conjunction with Timely & Appropriate (T&A) meetings.

The other eight data discrepancies found were random errors and were not a consistent or reoccurring pattern. They are as follows:

1) Two (2) instances where the dates of the FCE in the file did not match entries in ICIS-Air;
2) Three (3) Federally Reportable Violation (FRV) Case Files had incorrect dates. The date of the Consent Agreement was used instead of the date of the Notice of Violation (NOV);
3) One (1) instance where a stack test report was found in the file but not reported to ICIS-Air;
4) A failed stack test at an SM-80 was not reported as an FRV Case File; and
5) One (1) instance where a High Priority Violator (HPV) Case file was not reported accurately in ICIS-Air (i.e., used incorrect criteria).

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
2b Accurate MDR data in AFS	100%	NA	9	26	34.6%

State response	Agree with finding, data corrections completed.
Recommendation	1) WVDEP to perform a root cause analysis for "duplicate TVACCs" in ICIS-Air along with the other data discrepancies found. WVDEP to submit the final root cause analysis report to EPA for their review and approval within 60 days after the date of the final report. 2) WVDEP to develop protocols (e.g., data management plan, SOP) to address issues and ensure accurate data entry into ICIS-Air within 120 days after the date of the final report. EPA to review and approve the final protocol(s).

CAA Element 1 — Data

Finding 1-2	**Area for State Improvement**
Summary	WVDEP entered approximately 75% of compliance monitoring minimum data requirements (MDRs) into ICIS-Air in a timely manner.
Explanation	WVDEP had approximately 75% timely compliance monitoring MDR entries into ICIS-Air. The EPA review team broke down the timely data entry rate for the two compliance monitoring MDR types that comprise this metric (i.e., data metric 3b1) and found no significant difference in performance. FCEs were entered timely into ICIS-Air at a rate of 74.8% while Title V Annual Compliance Certification (TVACCs) were entered timely into ICIS-Air at a rate of 74.8%. EPA will continue to monitor WVDEP progress by conducting quarterly data reviews in conjunction with Timely & Appropriate (T&A) meetings.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
3b1 Timely reporting of compliance monitoring MDRs	100%	80.9%	262	348	75.3%

State response	Agree. WVDEP has begun to upload data twice per month, rather than the once per month format we were following. This should eliminate the timeliness issues.
Recommendation	1) WVDEP to perform a root cause analysis for untimely reporting of compliance monitoring MDRs. WVDEP to submit the final root cause analysis report to EPA for their review and approval within 60 days after the date of the final report. 2) WVDEP to develop protocols (e.g., data management plan, SOP) to address issues and ensure timely data entry into ICIS-Air for compliance monitoring MDRs within 120 days after the date of the final report. EPA to review and approve the final protocol.

CAA Element 1 — Data

Finding 1-3 **Area for State Attention**

Summary WVDEP entered approximately 81% - 83% of stack tests and enforcement MDRs into ICIS-Air in a timely manner.

Explanation WVDEP was above the national average for the relevant metrics, but needs to be closer to the national goal of 100%. In reviewing the underlying data, the review team found that the data entry for metric 3b2 ranged from 2-53 days late, the majority being closer to 15 days late, while the data for metric 3b3 ranged from 2-15 days late. The review team believes that while WVDEP's performance is good for these metrics, it should strive to be closer to the national goal. It should also be noted that WVDEP improved significantly for these metrics since the mini data metric analysis was done for FY15. In FY15, metric 3b2 was 38.6% and 3b3 was 57.1%.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
3b2 Timely reporting of stack test dates and results	100%	77.1%	100	120	83.3%
3b3 Timely reporting of enforcement MDRs	100%	77.2%	55	68	80.9%

State response

Recommendation None

CAA Element 1 — Data	
Finding 1-4	**Meets or Exceeds Expectations**
Summary	All HPVs identified by WVDEP in FY 2016 were entered into ICIS-Air in a timely manner.
Explanation	There was only one (1) HPV identified by WVDEP in FY 2016 and it was entered into ICIS-Air in a timely manner.
Relevant metrics	

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
3a2 Timely reporting of HPV determinations	100%	99.9%	1	1	100%

State response	
Recommendation	None

CAA Element 2 — Inspections

Finding 2-1	**Meets or Exceeds Expectations**
Summary	WVDEP met the negotiated frequency for compliance evaluations for the major and SM-80 synthetic minor sources scheduled to be inspected in FY16, and all Title V Annual Compliance Certifications scheduled to be reviewed. All but one CMR reviewed provided sufficient documentation to determine facility compliance and document the FCE elements.
Explanation	All required FCEs at major and synthetic minor sources were conducted. In addition, WVDEP reviewed 100 % of the Title V Annual Compliance Certifications scheduled to be reviewed. There were nine (9) facilities included in the universe that did not have a TVACC reviewed because the facility had either shutdown, had an inactive permit, or a TVACC was not due yet. Thus, a TVACC was not required to be submitted and reviewed in FY2016. Since ICIS-Air is unable to make this distinction, the EPA Review Team manually corrected the universe to reflect 157 facilities. Finally, all but one CMR reviewed provided sufficient documentation to determine facility compliance and document the FCE elements, and the EPA review team found the majority of the CMRs reviewed to be well-written.

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%	84.50%	105	108	97.2%
5b FCE coverage: SM-80s	100%	91.30%	23	23	100%
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan.	100%	NA	NA	NA	NA
5e Review of Title V annual compliance certifications (*)	100%	69.6%	157	157	100%
6a Documentation of FCE elements	100%	NA	18	19	94.7%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility	100%	NA	19	20	95%

(*) The numbers in this metric do not match the original DMA. Original DMA indicated a universe of 166 Title V annual compliance certifications. The above explanation provides information regarding the accurate universe.

State response	
Recommendation	None

CAA Element 3 — Violations

Finding 3-1	**Area for State Improvement**
Summary	With the exception of HPV Criteria 5, WVDEP did a thorough job in making High Priority Violation determinations.
Explanation	Fourteen (14) of the 18 violations reviewed were found to be accurate HPV determinations. The four (4) HPV determinations found to be not accurate were violations that WVDEP reported to ICIS-Air as FRVs, but should have been reported to ICIS-Air as HPV Criteria 5 violations. HPV Criteria 5 are "violations that involve federally enforceable work practices, testing requirements, monitoring requirements, recordkeeping or reporting that substantially with the enforcement of a requirement or determination of the source's compliance. The determination of what is substantial shall be part of a case-by-case analysis/discussion between the EPA Region and the enforcement agency." The EPA review team did not find evidence that any of these four (4) violations were discussed with the EPA Region prior to WVDEP determining that the violations were FRVs instead of HPVs. Finally, it should be noted that WVDEP did not identify any HPV Criteria 5 HPVs in FY16. EPA will continue to provide training on the HPV policy on an as-needed basis. Additionally, EPA will continue to monitor WVDEP FRV identification by conducting quarterly data reviews in conjunction with the Timely & Appropriate (T&A) meetings.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
8c Accuracy of HPV determinations	100%	NA	15	19	78.9%

State response	Agree. This recommendation is already being implemented.
Recommendation	WVDEP to discuss/provide FRV determinations to EPA for discussion at quarterly T&A meetings. EPA to close out recommendation by September 30, 2018.

CAA Element 3 — Violations

Finding 3-2	**Meets or Exceeds Expectations**
Summary	WVDEP did a thorough job in accurately reporting High Priority Violations and Federally Reportable Violations into ICIS-Air. However, there was a stack test violation found in the file for which an FRV Case file was not created in ICIS-Air. See recommendation under finding 1-1.
Explanation	While > 96% of the 29 compliance determinations reviewed were accurately reported to ICIS-Air, there was an instance where a "failed" stack test at an SM-80 source found in the file for which an FRV Case File was not created in ICIS-Air. Finally, the only HPV determination made by WVDEP in FY 2016 was made in a timely manner (i.e., within 90 days of the discovery action).

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
7a Accuracy of compliance determinations	100%	NA	28	29	96.6%
13 Timeliness of HPV determinations	100%	83.6%	1	1	100%

State response

Recommendation

CAA Element 4 — Enforcement

Finding 4-1	**Meets or Exceeds Expectations**
Summary	WVDEP included corrective actions in formal responses and took timely and appropriate enforcement action consistent with the HPV policy.
Explanation	All formal enforcement responses reviewed required the facility to return to compliance if they had not already done so at the time of the execution of the Consent Agreement. In addition, all enforcement responses reviewed by the EPA team were determined to be appropriate. The only HPV not addressed by Day 180, had an adequate Case Development and Resolution Timelines in place that contained required policy elements.

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 time frame or the facility fixed the problem without a compliance schedule.	100%	NA	13	13	100%
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place.	100%	NA	3	3	100%
10b Percent of HPVs that have been have been addressed or removed consistent with the HPV Policy.	100%	NA	3	3	100%
14 HPV Case Development and Resolution Timeline In Place When Required that Contains Required Policy Elements	100%	NA	1	1	100%

State response

Recommendation None

CAA Element 5 — Penalties

Finding 5-1	**Meets or Exceeds Expectations**
Summary	WVDEP did a thorough and comprehensive job in documenting penalty calculations. The difference between the initial and final penalties were included, where applicable.
Explanation	All of the penalty calculations reviewed included the gravity and economic benefit components and, where applicable, documented the difference between the initial and final penalties. In general, the EPA review team found the penalty files to be complete and thorough. All documentation of the penalties collected in FY 2016 were found in the files.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
11a Penalty calculations reviewed that document gravity and economic benefit	100%	NA	13	13	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty	100%	NA	6	6	100%
12b Penalties collected	100%	NA	13	13	100%

State response

Recommendation None

RCRA Element 1 — Data

Finding 1-1	**Meets or Exceeds Expectations**
Summary	WVDEP accurately entered mandatory data elements into RCRAInfo.
Explanation	WVDEP consistently and accurately entered required data elements into RCRAInfo including Facility Identifiers, Evaluation Type, Evaluation Date(s), Enforcement Action Type, and Return to Compliance Dates. One of the discrepancies found was attributed to a facility name and address change that occurred during the review period. The other inconsistencies were attributed to the enforcement action dates entered in RCRAInfo. EPA considers the enforcement action date to be the date the action was signed. For some of WVDEP's files, the enforcement action date entered in RCRAInfo was the date the action was mailed or the date the enforcement was received by the facility. EPA agreed all of these dates (i.e. date enforcement action was signed, date action was mailed, or date action was received) could be considered the dates an enforcement action was issued and all could be viewed as correct for RCRAInfo data entry.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
2a Long-standing secondary violators	-	-	-	-	12
2b Complete and accurate entry of mandatory data	100%	-	28	35	80.0%

State response	None
Recommendation	No Recommendation

RCRA Element 2 — Inspections

Finding 2-1	**Meets or Exceeds Expectations**
Summary	In FY16, WVDEP surpassed all inspection commitments negotiated in the EPA/State Cooperative Agreement.
Explanation	WVDEP exceeded inspection coverage targets for TSDFs and LQGs in FY16. Pursuant to the *Compliance Monitoring Strategy (CMS) for the RCRA Subtitle-C Program*, EPA and WVDEP consult with one another to maximize inspection coverage at facilities, ensure inspection coverage goals for LQGs and TSDFs are met, and avoid duplicative inspections at the same facilities. RCRA file reviewers concurred that files contained sufficient information, including written narratives and photographs, to substantiate compliance determinations. For all 35 files reviewed, the inspection reports were completed in a timely manner. On average, the time to complete inspection reports was 15 days from the date of the inspection.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
5a Two-year inspection coverage of operating TSDFs	100%	90.3%	14	15	93.3%
5b Annual inspection coverage of LQGs	20%	17.1%	50	144	34.7%
5c Five-year inspection coverage of LQGs	100%	54.8%	131	144	91.0%
5d Five-year inspection coverage of active SQGs	-	9.9%	201	266	75.6%
5e1 Five-year inspection coverage of active conditionally exempt SQGs	-	-	-	-	727
5e2 Five-year inspection coverage of active transporters	-	-	-	-	16
5e4 Five-year inspection coverage of active sites not covered by metrics 2c through 2f3	-	-	-	-	739
6b Timeliness of inspection report completion	100%	-	35	35	100%

State response

WVDEP has additional information regarding Metric 5a: Two-year inspection coverage at operating TSDFs. Specifically, WVDEP has information for the facility at issue: Solutia Nitro Site (WVD039990965). The Solutia Nitro Site was once an operating TSDF, but has been cleaned closed since 2005. However, the national RCRA database was not updated to reflect the closure status of this facility at the time of EPA's review. Thus, the facility was included in the count of operating TSDFs. WVDEP

	has since corrected the national RCRA database to show that this facility is no longer an operating TSDF.
Recommendation	No Recommendation

RCRA Element 2 — Inspections

Finding 2-2	**Area for State Attention**
Summary	Reports for RCRA Organic Air Emission Standards inspections lacked detail regarding facility components inspected and observations.
Explanation	WVDEP's Division of Water and Waste Management (DWWM) conducted most of the RCRA Subtitle C inspections. However, a subset of these inspections, RCRA Subparts AA/BB/CC (RCRA Organic Air Emission Standards for TSDFs and Generators), were performed by the Division of Air Quality (DAQ). EPA reviewed two inspection reports prepared by DAQ and determined that the reports lacked enough detail and observations to make a compliance determination. EPA is currently working with DAQ to address the lack of detail in its inspection reports. EPA has provided DAQ a RCRA Inspection Report Template, as well as guidance documents for RCRA Subparts AA/BB/CC inspections. Next steps include offering DAQ the opportunity to have their inspection reports peer-reviewed by EPA. EPA also intends to develop and provide RCRA Subparts AA/BB/CC training either as an online or classroom training in late FY18 or early FY19 depending on budgetary constraints.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
6a Inspection reports complete and sufficient to determine compliance	100%	-	29	35	82.9%

State response	None
Recommendation	No Recommendation

RCRA Element 3 — Violations	
Finding 3-1	**Meets or Exceeds Expectations**
Summary	WVDEP consistently made accurate compliance and SNC determinations.
Explanation	EPA file reviewers agreed that WVDEP regularly made appropriate compliance and SNC determinations. WVDEP's violations found and SNC identification rates are consistent with national averages.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
7a Accurate compliance determinations	100%	-	31	35	88.6%
7b Violations found during inspections	-	35.9%	152	476	31.9%
8a SNC identification rate	-	2.1%	10	476	2.1%
8c Appropriate SNC determinations	100%	-	31	33	93.9%

State response	None
Recommendation	No Recommendation

RCRA Element 3 — Violations

Finding 3-2	**Area for State Attention**
Summary	WVDEP made timely SNC determinations 76.5% of the time.
Explanation	EPA's *Hazardous Waste Civil Enforcement Response Policy* (December 2003) states that agencies should make and report SNC designations within 150 days of the first day of inspection (day zero). In FY16, WVDEP identified a total of 17 SNCs,13 of which were identified within 150 days. Under WVDEP's policy, a facility must fulfill two criteria to be identified as a SNC: (1) The facility must have "hazardous waste" violations (i.e. Universal Waste and Used Oil violations were excluded); *and* (2) A referral proposing a penalty action was made to the enforcement group. WVDEP's process for making SNC determinations occurs *after* case development has been completed. With respect to the four (4) instances where SNC determinations were not made within 150 days, EPA determined that the SNC determinations were delayed due to unique and complex circumstances. For example, WVDEP performed several inspections at one facility because WVDEP and the facility disagreed on whether one of the facility's significant waste streams was a hazardous waste. The initial inspection at the facility (i.e., day zero) was performed by a new inspector. A follow-up inspection was conducted by a senior inspector to gather additional evidence to substantiate WVDEP's claim and prove violations occurred. Furthermore, WVDEP requested assistance from EPA regarding whether or not the waste in questions met the definition of a hazardous waste. Due to the complexity of the case, WVDEP was unable to make a SNC determination within 150 days.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
8b Timeliness of SNC determinations	100%	84.2%	13	17	76.5%

State response	None
Recommendation	No Recommendation

RCRA Element 4 — Enforcement

Finding 4-1	**Meets or Exceeds Expectations**
Summary	WVDEP took appropriate and timely enforcement action to address violations and its enforcement actions were effective in returning violators to compliance.
Explanation	For 30 of the 31 inspection files with violations, RCRA file reviewers found that WVDEP took appropriate and timely enforcement action to address violations. WVDEP's inspection files included correspondence from the facilities outlining corrective action measures the facilities had taken or would take in the future to rectify violations. With respect to Metric 10a – Timely enforcement taken to address SNC, EPA determined that the four (4) instances where enforcement was delayed to address SNC was due to unique and complex circumstances. For example, WVDEP performed several inspections at one facility because WVDEP and the facility disagreed on whether one of the facility's significant waste streams was a hazardous waste. The initial inspection at the facility (i.e., day zero) was performed by a new inspector. A follow-up inspection was conducted by a senior inspector to gather additional evidence to substantiate WVDEP's claim and prove violations occurred. Furthermore, WVDEP requested assistance from EPA regarding whether or not the waste in questions met the definition of a hazardous waste.

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%	-	30	31	96.8%
10a Timely enforcement taken to address SNC	80%	86.4%	14	18	77.8%
10b Appropriate enforcement taken to address violations	100%	-	30	31	96.8%

State response

Recommendation No Recommendation

RCRA Element 5 — Penalties	
Finding 5-1	**Meets or Exceeds Expectations**
Summary	WVDEP maintained documentation of penalty calculations and penalties collected.
Explanation	Inspection files for which penalties were assessed included penalty calculation forms, factored in gravity and economic benefit adjustments, provided justifications for reductions in penalties, and contained documentation showing WVDEP collected the monetary penalties.

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%	-	10	10	100%
12a Documentation on difference between initial and final penalty	100%	-	8	9	88.9%
12b Penalties collected	100%	-	9	10	90.0%

State response	None
Recommendation	No Recommendation