

STATE REVIEW FRAMEWORK

Rhode Island

**Clean Water Act, Clean Air Act, and
Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2023**

**U.S. Environmental Protection Agency
Region 1**

**Final Report
December 16, 2024**

I. Introduction

A. Overview of the State Review Framework

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

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

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

B. The Review Process

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

The SRF is currently in its 5th Round (FY2024-2028) of reviews, preceded by Round 4 (FY2018-23), Round 3 (FY2012-2017), Round 2 (2008-2011), and Round 1 (FY2004-2007). Additional information and final reports can be found at the EPA website under [State Review Framework](#).

II. Navigating the Report

The final report contains the results and relevant information from the review including EPA and program contact information, metric values, performance findings and explanations, program

responses, and EPA recommendations for corrective action where any significant deficiencies in performance were found.

A. Metrics

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

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

B. Performance Findings

The EPA makes findings on performance in five program areas:

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

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

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

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

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

C. Recommendations for Corrective Action

Whenever the EPA makes a finding on performance of *Area for Improvement*, the EPA will include a recommendation for corrective action, or recommendation, in the report. The purpose of recommendations is to address significant performance issues and bring program performance back in line with federal policy and standards. All recommendations should include specific actions and a schedule for completion, and their implementation is monitored by the EPA until completion.

III. Review Process Information

Clean Water Act (CWA)

Kickoff Meeting for Rhode Island DEM: April 19, 2024
SRF File Review Dates: June 4, 5, 6, 7, 10, 17, 18 and 20, 2024
Rhode Island DEM Contacts: David Chopy (401) 537-4442
Joseph Haberek (401) 537-4238
Heidi Travers (401) 537-4186
EPA CWA Regional Reviewer: David Turin (617) 918-1598

Clean Air Act (CAA)

SRF Kickoff Meeting for Rhode Island Department of Environmental Management (RIDEM):
April 19, 2024
RIDEM SRF File Review Dates: June 24 & 25, 2024
RIDEM SRF Review Contacts: David Chopy (401) 222-1360 ext. 2770400
Laurie Grandchamp (401) 537-4378
Sean Carney (401) 537-4441
Reviewer: Tom McCusker (617) 918-1862

Resource Conservation and Recovery Act (RCRA)

Kickoff Meeting for Rhode Island DEM: April 19, 2024

RCRA SRF File Review Dates: June 13, 14 & 17, 2024
Rhode Island DEM Contacts: David Chopy (401) 537-4442 david.chopy@dem.ri.gov
Tracey Tyrell (401) 537-4480 tracey.tyrrell@dem.ri.gov
Nicole Pelletier (401) 537-4476 nicole.pelletier@dem.ri.gov
EPA RCRA Regional Reviewer: Lisa Papetti (617) 918-1756 papetti.lisa@epa.gov

Executive Summary

Clean Water Act (CWA)

Areas of Strong Performance

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

RIDEM is entering 100 percent of its NPDES permit limits and 100 percent of its discharge monitoring reports (DMR) for major and non-major facilities. RIDEM does an excellent job with inspection coverage of facilities experiencing operational issues, often conducting multiple inspections at these facilities, and inspection reports are complete and sufficient to assess facility compliance with O&M requirements of permits. RIDEM inspections and its identification of SEVs led to accurate compliance determinations and RIDEM has taken appropriate enforcement actions to return facilities in violation to compliance.

Priority Issues to Address

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

RIDEM did not meet its inspection commitments for several categories under its CMS.

Clean Air Act (CAA)

Areas of Strong Performance

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

RIDEM inspectors do an excellent job related to inspection coverage, timely completion of most inspection reports and writing well-documented and comprehensive inspection reports with accurate compliance determinations.

RIDEM staff do an excellent job of documenting violations and making accurate compliance and HPV determinations.

RIDEM staff do an excellent job, in most cases, of taking timely and appropriate enforcement.

RIDEM also does an excellent job of providing early warning notice to facilities with violations to expedite their return to compliance, which was considered a “good practice” in earlier SRF rounds.

RIDEM staff do an excellent job of assessing and collecting penalties. RIDEM calculates both the gravity component and economic benefit component, as appropriate, of its penalties using its Rules and Regulations for the Assessment of Penalties. Regarding the documentation for

economic benefit, or lack thereof, RIDEM includes information in the file; especially when not seeking economic benefit due to the fact that the economic benefit is below the significance level. RIDEM also does an excellent job of documenting that a penalty has been collected and documenting when an assessed penalty has been lowered for any reason.

Priority Issues to Address

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

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

Both the file review metrics and the data metrics indicate that RIDEM had minor issues regarding the timely entry of compliance monitoring and enforcement-related minimum data requirements (MDRs) into ICIS.

The data metrics indicate that RIDEM had a major issue regarding the timely entry of stack test data MDRs into ICIS. Due to the outbreak of COVID -19, RIDEM CAA program staff were required to work from home. This presented an unforeseen problem as RIDEM staff did not have access to government-owned electronic devices such as laptop and desktop computers, cell phones and tablets to perform their work. As a result, work-related documents, such as stack test reports, were being stored on staff personal devices. Several stack test reports, stored on the personal laptop of the RIDEM staff person responsible for reviewing stack test reports, were unrecoverable for an extended period of time when the hard drive “crashed” on the personal laptop.

A review of the file review metrics and the data metrics (Data Metric Analysis and Data Verification) indicate that RIDEM had minor issues regarding the accuracy and/or completeness of data entered into ICIS. For one file reviewed, the penalty amount found in the file did not match the penalty amount reported in ICIS (\$1000 vs \$1500), and additionally, for this same file, an informal enforcement action from 2019, and reviewed for continuity purposes, was not entered into ICIS. In two files reviewed, regarding federally-reportable violations (FRVs), the FRV case files were not created in ICIS (one for a file reviewed for 2020 and one for a file reviewed for 2022).

Resource Conservation and Recovery Act Findings (RCRA)

Areas of Strong Performance

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

- RIDEM does an excellent job maintaining accurate data and reporting it in a timely manner into the national database. During the time periods reviewed, inspections, documentation of violations and enforcement actions were accurate.

- RIDEM's enforcement actions return facilities to compliance in a timely manner.
- RIDEM's Office of Compliance and Inspection (OC&I) prepares inspection reports that document compliance status and determine violations and document the observed violations in their inspection records and enforcement responses. Each of the 28 OC&I files reviewed that identified violations had accurate and complete descriptions of the violations observed during the inspection and had documentation to support RIDEM's compliance determinations. The technical competency of the OC&I staff is reflected in the documentation.

RIDEM's OC&I staff and program manager have made significant efforts at documenting all steps of the enforcement process from inspection to case closure, resulting in easy-to-follow, complete files that represent decisions at all steps of the process.

- RIDEM completed its Treatment, Storage and Disposal Facilities (TSDF) inspections on a two-year cycle and completed inspections required by its alternative compliance monitoring strategy. RIDEM inspected 11 facilities in EJ areas in FY23.

Priority Issues to Address

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

- RIDEM should ensure that enforcement actions are issued in a timely manner.
- RIDEM must ensure that all penalties are collected unless there is an ability to pay or other mitigating factors.

End Executive Summary

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

RIDEM is entering 100 percent of its NPDES permit limits and 100 percent of its discharge monitoring reports (DMR) for major and non-major facilities.

Explanation:

RIDEM has exceeded the national goal of entering 95% of the data for Metrics 1b5 and 1b6. In addition, RIDEM has continued to maintain its significant improvements to the entry rate of formal and informal actions into the ICIS-NPDES data system initiated since the Round 2 SRF review.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
1b5 Permit limit data entry rate for major and non-major facilities	95%	99%	65	65	100%
1b6 Discharge monitoring report (DMR) data entry rate for major and non-major facilities.	95%	96.9%	1427	1427	100%

State Response:

No response necessary.

CWA Element 1 - Data

Finding 1-2Area for Attention

Recurring Issue:No

Summary:

The file review indicates a moderately high degree of completeness between the data in the ICIS database and the data in the files reviewed.

Explanation:

For 5 of the files reviewed, there were minor omissions from either the file or ECHO. While this reflects a decrease from 92.3% agreement in Round 4, most of the discrepancies reflected a failure to accurately maintain paper files or track in ECHO actions taken by the Agency, as opposed to a failure to take an action. Many of the omissions appear to be related to RIDEM's continued reliance on paper files as the official record rather than transitioning to the use of electronic files. Examples of omissions include a copy of a final permit missing from the (paper) file, an informal enforcement letter missing from the file, occasional inspection reports and SEVs not coded into ECHO, and a post-inspection letter that should have been entered into ECHO as an informal action. The omissions are primarily related to record keeping and did not affect enforcement decisions or follow-up.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		22	27	81.5%

State Response:

While RIDEM has transitioned over to electronic files for certain permit-related documents (e.g., DMRs), we will continue to use the paper records as the official record for the foreseeable future. RIDEM will reinforce practices to ensure that all documents are maintained in these files.

CWA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The review indicates that RIDEM met or exceeded its CMS inspection targets coverage commitments in several CMS categories.

Explanation:

RIDEM met or exceeded its CMS inspection targets for MS4 audits (Metric 4a7), industrial stormwater (Metric 4a8), construction stormwater (Metric 4a9), biosolids (Metric 4a11), and NPDES non-major facilities (Metric 5b).

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% CMS%		8	8	100%
4a8 Number of industrial stormwater inspections. [GOAL]	100% CMS%		16	16	100%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments%		113	61	185.2%
4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL]	100% CMS%		20	4	500%
5b Inspections coverage of NPDES non-majors (individual and general permits) [GOAL]	100% CMS%		12	12	100%

State Response:

No response necessary.

CWA Element 2 - Inspections

Finding 2-2

Area for Improvement

Recurring Issue:

No

Summary:

The review indicates that Rhode Island did not meet inspection coverage commitments in several CMS categories.

Explanation:

RIDEM did not meet inspection coverage commitments for several CMS categories. For pretreatment, Metric 4a1, RIDEM performed 3 of 5 proposed inspections (60% of its target) and for major NPDES facilities, Metric 5a1, RIDEM performed 9 of 12 proposed inspections (75% of its target). For CSO and SSO inspections, Metrics 4a4 and 4a5, respectively, RIDEM did not complete any inspections. Cumulatively, completing inspection targets for 5 of 9 categories of inspections corresponds to a 55.6% completion rate.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL]	100% CMS%		3	5	60%
4a4 Number of CSO inspections. [GOAL]	100% CMS%		0	1	
4a5 Number of SSO inspections. [GOAL]	100% CMS%		0	1	0%
5a1 Percentage of NPDES major facilities with individual or general permits inspected	100% CMS%		9	12	75%

State Response:

EPA's count for DEM's FY23 commitment for CSO inspections appears to be in error: DEM committed to only 1 CSO Inspection, not 3.

Failure to meet the FY23 CMS inspection goals was due to staff turnover in the RIPDES Program. This continued to be a problem in FY24 and was only recently addressed. As a result, RIDEM will fail to meet its FY24 CMS inspection targets due to staffing shortages, but expects to meet its FY25 inspection targets. RIDEM will continue to report out on annual inspections during the 4th calendar quarter 2025 (i.e., by mid- December).

Recommendation:

Rec #	Due Date	Recommendation
1	06/30/2025	RIDEM shall develop a strategy to complete its CMS inspection targets in future years, including as necessary a plan to develop and justify alternative CMS plans that it can justify and meet. EPA will evaluate RIDEM's FY24 CMS end of year report and if RIDEM performance is at or above 70% for the metrics listed above, will close this recommendation; if not, EPA will review subsequent CMS end of year reports and will close this finding when RIDEM's performance is at or above 70%.

CWA Element 2 - Inspections

Finding 2-3

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Inspection reports are complete and sufficient to assess facility compliance with O&M requirements of permits.

Explanation:

RIDEM uses checklists and photographs to document inspection observations. In addition, the inspection reports identify single event violations (SEVs) that are often the basis for Informal Enforcement Actions following the inspection.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6a Inspection reports complete and sufficient to assess permit requirements at the facility and document inspector observations.	100%%		60	64	93.8%
6b Timeliness of inspection report completion [GOAL]	100%		59	64	92.2%

State Response:

No response necessary.

CWA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Based on the files reviewed, RIDEM inspections and its identification of SEVs led to accurate compliance determinations.

Explanation:

In the majority of the 64 inspection reports reviewed, RIDEM inspectors do a good job identifying operational concerns and identifying SEVs. However, there were three identified SEVs that were not well supported by the documentation in the associated inspection reports. In discussions with the RIDEM inspector, EPA learned that in two of these cases, the inspector believed SEVs identified as numeric permit violations were related to either a numeric permit violation reported during the inspection or a visible discharge plume observed by the inspector. In the third case, the RIDEM inspector explained that an SEV characterized as an unauthorized discharge may have been associated with a plant bypass discharged through a stormwater catch basin at the facility. While these characterizations may be accurate, documentation in the inspection reports were insufficient to support the finding. In its review of files, EPA found evidence of an SEV in an inspection report that was not reflected in ECHO, bringing the total observed to 14. Consistent with SRF guidance that Metrics 7k1, 8a3, and 8a4 are to be used to identify areas for further analysis during the file review and not to develop EPA's findings, EPA did not make findings associated with these metrics. While these metrics are higher than the national averages, the SNC and Category 1 noncompliance rates meet the goal established in the EPA National Enforcement and Compliance Initiative (NECI) established for SNC from FY20 through FY23 and do not warrant additional investigations.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7e Accuracy of compliance determinations [GOAL]	100%		57	60	95%
7j1 Number of major and non-major NPDES facilities with new single-event violations reported that began in the review year			13	14	92.9%
7k1 Major and non-major facilities in noncompliance.		14.3%	124	354	35%
8a3 Percentage of active major facilities in SNC and non-major individual permit facilities in Category I noncompliance during the fiscal year			32	349	9.2%
8a4 Percentage of active non-major general permit facilities in Category I noncompliance during the reporting year		3.6%	26	282	9.2%

State Response:

No response necessary.

CWA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Based on files reviewed, in most cases, RIDEM has taken appropriate enforcement actions to return facilities in violation back into compliance.

Explanation:

Based on files reviewed, for Metric 9a, in 26 of 31 enforcement responses (83.9%), actions by RIDEM will return the facility to compliance. For Metric 10b, in 28 of 31 cases RIDEM's response addressed the violations in a timely and appropriate manner. Metric 10a1 was an Area for Attention in Round 4 because three facilities were flagged with late DMR SNC violations and none of them were addressed timely. In Round 5, no facilities were flagged for late DMR SNC violations, Metric 10a1, an improvement over Round 4. There were no facilities flagged for Metrics 10a2, 10a3, or 10a4 in Round 5.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		26	31	83.9%
10a1 Percentage of major individually permitted NPDES facilities with formal enforcement action taken in a timely manner in response to late DMR SNC violations			0	0	0
10b Enforcement responses reviewed that address violations in a timely and appropriate manner.	100%		28	31	90.3%

State Response:

No response necessary.

CWA Element 5 - Penalties**Finding 5-1**

Area for Attention

Recurring Issue:

No

Summary:

Not all penalty calculations adequately consider economic benefits.

Explanation:

In the files reviewed, penalty calculations were determined in accordance with DEM penalty matrix worksheets, which are appended to the formal action notices. In 4 out of the 5 penalty cases reviewed, economic benefits were not included in the penalty calculations and there is a note in a comment field on the penalty matrix worksheet indicating that there was "no economic benefit or economic benefit cannot be quantified." In the remaining case, economic benefit was assessed; however, this case is under appeal and the final penalty is not yet known. In 2 of the 4 cases without EB assessed, the facts of the decision reasonably support this determination, in the 3rd case without EB, EPA believes that the omission of EB is a not as well justifiable. In the 4th case without EB, there is not sufficient justification to have excluded EB. This represents an improvement over Rounds 1 through 4, when this Matrix generated an Area for Improvement, however it illustrates that continued effort is needed to assure that EB is collected in all cases where it is reasonable.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%		4	5	80%

State Response:

The State includes an economic benefit component to assessed penalties for all water pollution enforcement actions where it appears that an economic benefit has occurred, and the economic benefit value can be accurately calculated. If an economic benefit cannot be accurately calculated, it will not be included in the penalty assessment. Otherwise, a poorly calculated economic benefit value would be challenged in administrative hearings and/or RI Superior Court.

CWA Element 5 - Penalties

Finding 5-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

All 4 files reviewed with administrative penalty orders contained documentation of final penalty amounts and that the penalty was collected.

Explanation:

RIDEM provided an acceptable rationale for differences between initial penalty calculations and final penalty and provided documentation that all penalties were collected in files reviewed. In one file reviewed, EPA did not find documentation of a decision to apportion the final penalty for a multimedia case between CWA and the other program, although the adjustment appeared to be approximately proportional from initial penalty calculation.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		3	3	100%
12b Penalties collected [GOAL]	100%		4	4	100%

State Response:

No response necessary.

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Area for Improvement

Recurring Issue:

No

Summary:

The data metrics analysis (DMA) indicates that RIDEM had major issues regarding the timely entry of stack test MDRs into ICIS, which was primarily due to work practices that arose from COVID – 19 that were continued into 2023.

Explanation:

A review of Metric 3b2 of the DMA indicates that 2 out of 19 stack test results (10.5%) were reported in an timely manner (within 120 days of the activity).

Due to the outbreak of COVID -19, RIDEM CAA program staff were required to work from home. This presented an unforeseen problem as RIDEM staff did not have access to government-owned electronic devices such as laptop and desktop computers, cell phones and tablets to perform their work. As a result, work-related documents, such as stack test reports, were requested to be submitted electronically (no hardcopies submitted) and stored on staff personal devices during and after the COVID - 19 outbreak and into 2023 as staff continued to work from home on a more regular basis. Several stack test reports, stored on the personal laptop of the RIDEM staff person responsible for reviewing stack test reports, were unrecoverable for an extended period of time when the hard drive “crashed” on the personal laptop. As a result, most stack test results were entered into ICIS late.

RIDEM has since instituted a practice to ensure that, among other documents, stack test reports are saved, digitally, on their SharePoint drive and backed up to the OneDrive account of the staff person responsible for reviewing stack test reports. RIDEM is currently working to maintain all of its records electronically.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
3b2 Timely reporting of stack test dates and results [GOAL]	100%	74.7%	2	19	10.5%

State Response:

RIDEM acknowledges the oversight and has taken steps to ensure the timely reporting of stack test dates and results. The use of personal equipment was temporary, and the result of an unforeseeable condition created by the Covid-19 pandemic. RIDEM has directed all staff in the Office of Air Resources (OAR) to process and store all government related work documents on State owned equipment or in SharePoint and OneDrive directories leased and operated by RIDEM. The stack testing program has been assigned to another engineer who is maintaining the records in RIDEM's SharePoint directory and backing up the data in a separate government issued OneDrive account to prevent data loss. The engineer is also maintaining a tracking spreadsheet in SharePoint to ensure the timely review of all stack testing protocols/reports and timely entry of the information into ICIS. These corrective actions began in December 2023. RIDEM will codify these policies into a standard operating procedure according to the instructions in the recommendation.

Recommendation:

Rec #	Due Date	Recommendation
1	03/31/2025	<p>RIDEM shall develop and implement a standard operating procedure to ensure that all government-related work documents will only be stored on government issued electronic devices such as government-owned laptop and desktop computers, phones, and tablets.</p> <p>This SOP shall include instructions on how to save/backup data and include the frequency used to save/backup data (i.e., save/backup data within one day of receiving and/or entering an electronic document. EPA will close this recommendation out, after reviewing FFY 24 data for Metric 3b2, if the FFY24 percentage value is at, or above, 71%. If the value is not at least 71% then EPA will keep this recommendation open until such time that EPA determines that RIDEM has achieved at least a value of 71% for this metric value.</p>

CAA Element 1 - Data

Finding 1-2

Area for Attention

Recurring Issue:

No

Summary:

The data metrics indicate that RIDEM had some issues regarding the timely entry of compliance monitoring minimum data requirements (MDRs) into ICIS, specifically pertaining to the entry of Title V annual compliance certification reviews.

Explanation:

A review of Metric 3b1 of the DMA indicates that 39 compliance monitoring activities out of 47 (83.0%) were entered into ICIS in a timely manner (within 60 days of the activity). The eight compliance monitoring activities entered late were all for Title V annual compliance certification reviews. A total of seven out of eight untimely entries were entered into ICIS two to three months late and one was entered into ICIS over four months late.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	85.3%	39	47	83%

State Response:

RIDEM acknowledges the data entry issue. Review of internal practices identified a few data entry issues relating to the difference between the planned end date and the actual end date in ICIS. The issue was addressed in a staff meeting to ensure all staff are entering the proper dates in the correct fields. RIDEM has corrected the data for the eight facilities in ICIS. RIDEM is using an Excel spreadsheet to track the review of Annual Compliance Certifications and will ensure timely entry of all ACCs moving forward.

CAA Element 1 - Data

Finding 1-3

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The file review metrics and the data verification metrics indicate that RIDEM had very minor issues regarding the accuracy and completeness of data entered into ICIS.

Explanation:

A review of Metric 3a2 of the Data Metric Analysis (DMA) indicates that RIDEM had no newly identified HPVs in FFY 2023. RIDEM has identified no HPVs since 2018 when one HPV was identified (this case file was reviewed as part of this SRF review). This is not a concern because EPA meets with RIDEM, on a quarterly basis, to discuss violations and potential HPVs. EPA is in agreement that no further HPVs should have been identified since 2018. This reduction in the number of HPVs identified can be explained by the decrease in the number of major sources found in the State of Rhode Island (as of FFY 2023, there were 25 major sources) and the revisions made to the EPA HPV Policy, back in 2014, that revised the criteria used to define an HPV such that less HPVs would be identified compared to the past. Based on this review, one out of one HPV (100%) was entered into ICIS in a timely manner (within 60 days of being identified as an HPV). The metric table below for Metric 3a2 doesn't reflect the data for the 2018 HPV.

A review of Metric 3b3 of the DMA indicates that 6 enforcement related MDRs out of 46 (13.0%) were entered into ICIS in an untimely manner (more than 60 days after the enforcement action). Each of the 6 untimely enforcement related MDRs were entered into ICIS within 77 days so none were more than 17 days late.

A comparison of Metric 1h1 of the Data Verification Metrics (Total Amount of Assessed Penalties) with the information in the RIDEM files reviewed indicates that the penalty assessed in one case file reviewed out of 10 (10%), where penalties were assessed, didn't match. In this instance, the RIDEM file indicated that a penalty was assessed and collected in the amount of \$1,000, this was reported in ICIS as an assessed penalty of \$1,500. RIDEM has since updated ICIS with the correct penalty information.

Metric 2b of the file review metric (Accurate MDR Data in ICIS-Air) reveals that of the 30 files reviewed (two files were for the same facility for two different time periods) three out of the 30 files (10%) had missing or inaccurate data. One file, discussed in the above paragraph was found to have a mismatch between the RIDEM file and ICIS with regards to the penalty amount assessed. In addition, for this same file, one informal enforcement action, Letter of Noncompliance (LNC)

from 2019, was not entered into ICIS. This informal action was reviewed for continuity purposes. The missing LNC has since been entered into ICIS. Two other files reviewed found that federally-reportable violations (FRVs) were not reported to ICIS. One missing FRV was for a file reviewed for FFY 2020 and the other missing FRV was for a file reviewed for FFY 2022. RIDEM has since created case files in ICIS for the two missing FRVs.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		27	30	90%
3a2 Timely reporting of HPV determinations [GOAL]	100%	53%	0	0	
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	82.4%	40	46	87%

State Response:

No response necessary.

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

RIDEM met all its CMS Plan FCE commitments for Title V major sources and SM-80 sources.

In most cases, RIDEM inspectors write well-documented and comprehensive inspection reports with accurate compliance determinations

Explanation:

Metric 5a of the Data Metric Analysis (DMA) (FCE Coverage at Majors and Mega sites) indicates that RIDEM met its FCE commitments. A total of 13 out of 13 (100%) FCEs were conducted at

major sources. All inspection-related MDRs for major sources were entered into ICIS in a timely and accurate/complete manner.

Metric 5b of the DMA (FCE Coverage at SM-80s) indicates that RIDEM met its FCE commitments. A total of 14 out of 14 (100%) FCEs were conducted at SM80 sources. All inspection-related MDRs for SM80 sources were entered into ICIS in a timely and accurate/complete manner.

A review of Metric 5e of the DMA (Reviews of Title V Annual Compliance Certifications Completed) indicates that RIDEM conducted reviews at 17 out of 21 (81.0%) sources where Title V annual compliance certifications were due in FFY 2023. Information in RIDEM's files indicate that two of the Title V certifications not reviewed were because RIDEM did not receive the certifications. In one instance, RIDEM took an enforcement action, and the certification was submitted and reviewed in early FFY 24 and entered into ICIS. In the other instance, RIDEM used enforcement discretion since there were extenuating circumstances and the certification was also submitted and reviewed in early FFY 2024 and entered into ICIS (EPA is in agreement with the use of enforcement discretion in this case since the employee responsible for completing the compliance certification left the facility and there were no issues with tardy compliance certifications in the past). As to the other two certifications not reviewed, one was misplaced and since reviewed and entered into ICIS and the other was assigned to a staff person who retired before completing the certification review. That certification has also since been reviewed and entered into ICIS. As a result, RIDEM actually reviewed 17 out of 19 (89.5%) annual compliance certifications received in FFY 2023 (the metric table below for Metric 5e has been revised to reflect the additional findings from the file review, which would provide 89.5% rather than 81% under the "State %" column).

With regards to File Review Metric 6b (Compliance Monitoring Reports (CMRs) or Facility Files Reviewed that Provide Sufficient Documentation to Determine Compliance of the Facility), all 30 files reviewed (two files were reviewed for separate review years to evaluate failed stack tests) contained sufficient documentation to determine compliance. The RIDEM files were well organized.

Of the 30 files reviewed, 20 contained compliance monitoring reports (CMRs). In the other instances, files contained informal and/or formal enforcement actions that were based on test results or failure to submit annual emission inventory information where there were no associated CMRs. In all 20 of the CMRs reviewed, RIDEM documented the elements listed in Chapter IX of the CMS Policy. For those reports where a full compliance evaluation (FCE) was done, the inspection file included a completed checklist that lists each condition of a Title V or other minor source permits (including an inventory of emission units), the method used to determine compliance, and the compliance status of each permit condition. This has been considered a "Good Practice" in past SRF rounds and RIDEM should be commended for taking the initiative to develop and continue to use this checklist and for expanding its use to synthetic minor sources too.

There were three CMR reports reviewed where the narrative didn't go into much detail regarding observations made during the inspection; however, overall, these three reports were satisfactory because the Inspection Checklist used in each case provided compliance determinations for all applicable requirements. In addition, for these same three reports, in a couple of places in the Inspection Checklist, a permit condition was reported as a "Statement of Fact" when there was a compliance determination to be made. For instance, one such permit condition had to do with operating the source consistent with good engineering practices and according to manufacturer recommendations and in another instance the permit condition required the facility to operate its equipment according to how it was described in its permit application. EPA discussed with RIDEM the need for its inspectors to be cautious when using the "Statement of Fact" option in the Inspection Checklists to ensure it is only used as appropriate.

EPA has a general policy that inspection reports should be completed within 60 days of conducting an FCE or PCE (partial compliance evaluation), but in no case later than 60 days. With the exception of four inspection reports out of the 20 reviewed, all reports were completed in a timely manner (within 60 days). As to the remaining four reports, one was completed in 64 days, one in 67 days, one in 98 days and one in 120 days.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a FCE coverage: majors and mega-sites [GOAL]	100%	86%	13	13	100%
5b FCE coverage: SM-80s [GOAL]	100%	92.7%	14	14	100%
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%		17	19	89.5%
6a Documentation of FCE elements [GOAL]	100%		20	20	100%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		30	30	100%

State Response:

RIDEM agrees with the findings described above and will improve its practices when completing inspection reports to ensure the narrative adequately describes the industrial processes and status of the control devices present at each facility. RIDEM will also adjust its practices when completing the permit condition checklist to ensure the phrase "Statement of Fact" is used in accordance with EPA's recommendations. RIDEM endeavors to complete all FCE reports within 60 days of the physical site inspection. On occasion, there is back and forth with the facility

regarding the production of required paperwork, which can delay the preparation of the report. In these circumstances, RIDEM will issue an information request to record the activity in ICIS.

CAA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

RIDEM does an excellent job of documenting violations and making accurate compliance and HPV determinations.

Explanation:

In 20 out of the 30 files reviewed, violations were identified. In all 20 files with violations, RIDEM made accurate compliance and HPV determinations, based on inspections, stack test report reviews, and various other types of report reviews. RIDEM continues to face resource challenges that prevent it from providing inspector coverage to observe emissions testing. However, RIDEM's inspectors continue to invest time to review test protocols and test reports associated with facilities in its CMS Plan. HPV determinations are a collaborative effort between RIDEM and EPA. On an ongoing basis, at a minimum once per quarter, RIDEM and EPA discuss every enforcement action (informal and formal) taken by RIDEM to determine whether any of the violations meet the HPV criteria. The ultimate HPV determination is mutually agreed by both RIDEM and EPA. In the 10 files reviewed without violations, the compliance determinations appeared accurate based on the CMR reports, where applicable, or other information found in the file.

RIDEM is well above the national average when it comes to identifying and reporting to ICIS federally reportable violations (FRVs).

RIDEM has identified no HPVs since 2018 when one HPV was identified (this case file was reviewed as part of this SRF review). This is not a concern because EPA meets with RIDEM, on a quarterly basis, to discuss violations and potential HPVs. EPA is in agreement that no further HPVs should have been identified, based on its review of 20 files where violations were found by RIDEM. (The metric table below for Metric 13 doesn't reflect the timeliness of the HPV identification from 2018, which would have provided for 100% under the "State % column".)

Metric 8a of the DMA (Discovery Rate of HPVs at Major Sources) indicates that for FFY 2023 RIDEM did not identify HPVs at any of its 25 major sources. EPA's review of 12 Title V major

source files did not identify any HPVs either indicating that this was not an issue. Two factors have impacted HPV identification's downward trend. The first factor regards the 2014 revisions to the HPV Policy that revised the criteria used to define an HPV, such that less HPVs would now be identified. The second factor regards the continued reduction in the number of major sources found in Rhode Island.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		30	30	100%
7a1 FRV 'discovery rate' based on inspections at active CMS sources		9.3%	25	121	20.7%
8a HPV discovery rate at majors		2.5%	0	25	0%
8c Accuracy of HPV determinations [GOAL]	100%		20	20	100%
13 Timeliness of HPV Identification [GOAL]	100%	88%	0	0	0

State Response:

No response necessary.

CAA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

RIDEM does an excellent job of taking timely and appropriate enforcement most of the time. RIDEM also does an excellent job of providing early warning notice to facilities with violations to expedite their return to compliance.

Explanation:

RIDEM took informal and/or formal enforcement actions against 17 out of the 30 facilities in the files reviewed. A total of 16 informal and 10 formal enforcement actions were taken against these 17 facilities. For the 17 facilities with violations, 16 of the 17 violations included corrective actions to be taken in the informal enforcement stage and one included corrective actions to be taken in the formal enforcement stage. In many cases, the violating facility had returned to compliance prior to formal enforcement being taken. RIDEM should be commended for its continued use of an early warning notice to violators to help expedite their return to compliance. This has been considered a Good Practice in earlier SRFs. For the one HPV case file reviewed (there has only been one HPV identified since 2018 and that case file was reviewed), RIDEM addressed the HPV in 137 days of "Day Zero". Due to changes in the HPV Policy, the number of violations meeting the HPV criteria has decreased. Currently, RIDEM has streamlined the enforcement process by issuing Closure Letters in lieu of Consent Agreements in simple penalty cases requiring no injunctive relief and by issuing Expedited Citations for violations where the violation can be easily corrected and the economic benefit is at, or below, the significance level of \$5,000, such that economic benefit doesn't have to be considered in the penalty calculation. In addition, Expedited Citations are only issued for cases where the entire assessed penalties are no more than \$5,000.

Of the 10 files reviewed that included formal enforcement with a penalty, RIDEM issued Expedited Citations to seven facilities. In the remaining three files reviewed, RIDEM issued Notices of Violation and Administrative Penalty (NOVAPs). One of the files where a NOVAP was issued also included a Consent Agreement since the facility requested a Hearing rather than paying the assessed penalty associated with the NOVAP. For each of the 10 files reviewed where formal enforcement was taken, there was an assessed penalty.

With regards to the four files reviewed where failed tests were found, RIDEM did not take any formal enforcement for any of the failed tests and took informal enforcement action against one facility with a failed test. One facility in each of FFYs 2019, 2020, 2021 and 2022 had a failed test conducted. These four failed tests were found outside of FFY 2023 and were reviewed so that a representative number of files with failed tests could be reviewed for this SRF. Regarding the failed test from FFY 2019, the failure was for particulate matter (PM). The excess PM emissions were reported to be 0.11 pounds per hour above the applicable permit limit for a period of less than two months (failed test was conducted on 8/30/19 and the retest demonstrating compliance was conducted on 10/23/19). Since the excess emissions were insignificant (less than 160 pounds) and the violation was of short duration (less than two months), RIDEM decided that informal enforcement was sufficient in this case. Regarding the failed test from FFY 2020, this failure was also for PM. Since the failed PM test occurred shortly before this seasonal-operation facility shutdown for the season and the facility retested and demonstrated compliance for PM shortly after starting up again for the next season in 2020, and due to the outbreak of COVID-19 in early 2020, RIDEM didn't prioritize this failed test for enforcement. Regarding the four failed tests from FFY 2021, these four failed tests were for volatile organic compounds (VOCs) (four failed tests at one facility between December 2020 and March 2021). These four failed tests were conducted when the facility was undergoing equipment commissioning and the tests were performed during the "shakedown" period, before the facility started up the applicable equipment commercially. In addition, the facility was sold to another entity on July 27, 2021, within approximately four months

of the last failed test performed on March 25, 2021. Since the facility had not started up yet commercially, at the time of the reported failed testing, there is a question as to whether these VOC tests should have been reported as failed tests. As a side note, in FFY 24, RIDEM did take formal enforcement against the owner who purchased the facility shortly after the testing discussed above, for various other violations. In addition, the equipment that failed the VOC testing has yet to operate commercially. Lastly, regarding the failed test from FFY 2022, this failure was for carbon monoxide. In this case, an engine was required to retest within three years of its last test, which was in the end of October 2018. During the testing conducted on 10/6/21, there was an equipment failure, and the testing was discontinued before the required three test runs could be completed (whether this should have been considered a failed test or a late test should be considered here). The facility retested and demonstrated compliance as of 11/18/21. Again, because of COVID – 19 and the short duration of violation, RIDEM didn't prioritize any enforcement here. Another item to factor into the above four failed tests concerns the issue already highlighted in Element 1 for "Data" where a recommendation is provided. This has to do with the storing of test reports on a staff person's personal laptop. Since the hard drive "crashed" on the personal laptop, where these stack tests were stored, the stack test reports were unrecoverable for an extended period of time and so the test results were not known until well past the failed testing dates. (See Recommendation 1 under Element 1, Finding 1-1).

Metric 10a1 in the metric table below doesn't reflect the HPV from 2018 that was addressed in 137 days, which would have provided for 100% in the "State %" column.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule [GOAL]	100%		10	10	100%
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		1	1	100%
10a1 Rate of Addressing HPVs within 180 days		35.8%	0	0	0
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		1	1	100%
10b1 Rate of managing HPVs without formal enforcement action		11.1%	0	0	0
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		0	0	0

State Response:

RIDEM acknowledges an issue with data entry associated with the stack testing program as noted in the response to Element 1 above. Additionally, relating to the four failed stack tests at one facility, RIDEM issued a Notice of Intent (NOI) to the company on August 24, 2023 for several instances of noncompliance. The NOI included violations for stack testing and required the company to submit protocols and conduct the required tests to attain compliance with its permit. This case remains under investigation at this time.

CAA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

RIDEM does an excellent job of calculating the gravity portion and the economic benefit portion of its penalties, as applicable, according to RIDEM's Rules and Regulations for the Assessment of Penalties. RIDEM also does an excellent job of documenting that penalties have been collected and justifying when an assessed penalty is lowered

Explanation:

A total of 10 out of the 30 files reviewed included formal enforcement with penalties. Of these 10 files, RIDEM issued Expedited Citations to seven facilities. In the remaining three files reviewed, RIDEM issued Notices of Violation and Administrative Penalty (NOVAPs). One of the files where a NOVAP was issued also included a Consent Agreement since the facility requested a "Hearing" rather than paying the assessed penalty associated with the NOVAP. For each of the 10 files reviewed where formal enforcement was taken, there was an assessed penalty.

In all 10 penalty cases, RIDEM calculated the gravity component of the penalty and determined whether there was an economic benefit component. In all 10 cases, it was determined that economic benefit was insignificant (at, or below, \$5,000). Based on a review of the applicable files, EPA agrees that economic benefit was insignificant in these 10 cases. With regards to Expedited Citations, the RIDEM Guidance Policy for issuing Expedited Citations include eligibility criteria such as the need for the violation to be easily correctable and the need for the economic benefit to be at, or below, the significance level of \$5,000. In addition, Expedited Citations are only issued in cases where the entire assessed penalty is at, or below, \$5,000. In nine out of the 10 penalty cases, the initial proposed penalty was the final assessed penalty. In one case where a penalty was assessed, the facility requested a "Hearing" and the final penalty amount was lowered. In this case, a penalty justification memo for lowering the final penalty amount was found in the file. For all 10 penalty cases, documentation was found in the files that the penalties were paid.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%		10	10	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		1	1	100%
12b Penalties collected [GOAL]	100%		10	10	100%

State Response:

No response necessary.

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

During the time period reviewed (FY23,) RIDEM maintained accurate data and reported activities in a timely manner to RCRAInfo. The files selected for review were accurately represented when compared to the SRF file review metrics.

The data from 30/30 files reviewed had accurate data entered and there was only one long-standing secondary violator.

Explanation:

Thirty files were reviewed to determine RIDEM's adherence to the minimum data requirements. Files selected were accurately represented in RCRAInfo including facility identifiers, inspection information, violations, and penalty information. This metric was an area for state attention during the last review. RIDEM has made significant efforts to ensure that data is accurate and up-to-date. RIDEM developed an "inspection data entry form" to ensure that inspections are entered in a timely manner.

RIDEM is adequately addressing long-standing secondary violators with only one identified during this review period. RIDEM has kept track of secondary violators and updated data entry as necessary.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2a Long-standing secondary violators			1		1
2b Complete and accurate entry of mandatory data.	100%		30	30	100%

State Response:

No response necessary.

RCRA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

RIDEM met its annual LQG inspection coverage as agreed upon in its annual compliance plan which included LQG and pharmacy flexibility as per the RCRA Compliance Monitoring Strategy and also completed its tow-year inspection coverage of TSDFs. Most inspection reports are written with sufficient detail to determine compliance with hazardous waste regulations and were completed in a timely fashion.

Explanation:

RIDEM participated in an alternative compliance monitoring strategy (ACMS,) specifically, retail pharmacy flex as set out on page 42 of the EPA's RCRA Compliance Monitoring Strategy in FY23. RIDEM's FY23 compliance plan included 15 traditional LQGs and 3 retail pharmacies. Two LQGs evaluated in FY23 changed status after the inspection, so those inspections did not pull as LQGs inspections at the time of the data freeze. Although the data metric shows only 17 LQG inspections completed, 19 were actually completed, which included 16 traditional LQGs and 3 retail pharmacies, therefor RIDEM met what was set out in its FY23 ACMS RIDEM finalized an Environmental Justice Policy in 2023 and conducted 11 inspections in EJ areas in FY23.

There were four files reviewed for which the inspection reports either were not completed within 150 day or there was no date on the report. Two inspection reports were not dated. Two other inspection reports were completed 163 days and 245 days, respectively. For the remaining 26 files the average time to complete the report was just 21 days.

RIDEM generally does an excellent job documenting inspection. Inspection documentation includes both checklist and narrative portions which describe processes and waste generated, and evidence of violations. Most inspection reports include photos, copies of manifests and a facility diagram. Inspection documentation for two inspections conducted at TSDFs did not include sufficient detail to fully describe all operations and to be able to identify whether a full compliance evaluation inspection had been conducted. Documentation should describe all waste management operations, and the generation and handling of waste at the location. One report was not dated. It appears that RIDEM’s Office of Compliance and Inspection (OC&I) and RIDEM’s Office of Waste Management (OWM) do not use the same format for documenting inspections.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	88.7%	2	2	100%
5b1 Annual inspection coverage of LQGs and reverse distributor (RD) universes combined using RCRAInfo universe [GOAL]	20%		19	18	105.6%
5d1 Number of SQGs inspected			16		16
5e5 One-year count of very small quantity generators (VSQGs) with inspections	100% of commitments%		20		20
5e6 One-year count of transporters with inspections	100% of commitments%		6		6
6a Inspection reports sufficient to determine compliance.	100%		28	30	93.3%
6b Timeliness of inspection report completion [GOAL]	100%		26	30	86.7%

State Response:

The SRF makes reference to two TSDF inspections, we are responding to each one separately.

As you know, TSDf operations are quite complex. As the first TSDf's application fills two large binders, to fully document what is already in the permit application would be exhaustive and repetitive. However, we agree that documentation should be sufficient to allow reviewers to determine what areas and processes were examined during the CEI. In reviewing the documentation for this inspection, it appears our documentation was mostly focused on documenting non-compliance and could be more detailed in describing operations and inspection activities in areas that did not have compliance issues detected during the inspection. Although we had not received your SRF report by the time of our latest TSDf inspection, EPA Region I did during a conversation with us, bring up these issues so that we were aware of them. As a result, during our TSDf inspection in July 2024, we made an effort to document and photograph compliant, as well as non-compliant operations.

There seems to have been a misunderstanding regarding the nature of this operation of the second facility, as the SRF report implies, this is a TSDf. This site, is permitted as a hazardous waste **transfer** operation, not a TSDf. The adjacent facility is an active TSDf operation, however, the inspection at this facility was not reviewed.

Although the transfer operation is permitted, they have yet to receive any hazardous waste. However, the Department regularly inspects the facility to ensure this is the case. In the report, we indicated the facility is licensed to accept and transship hazardous, but no hazardous waste present onsite and the facility reports they have never received hazardous waste at this site. We do not believe additional detail is warranted as there were no operations to describe. Regarding the date of the report, we do agree that the date of signature (that was not included) should have been included along with the date of inspection (that was present) and we will revise procedures accordingly.

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

RIDEM does an excellent job of identifying violations discovered during inspections, makes accurate compliance determinations. RIDEM is also accurately determining SNCs.

Explanation:

EPA evaluated the inspection reports/checklists, enforcement documents, and enforcement actions for violations resulting from compliance determinations. RIDEM documented its compliance determinations and is making appropriate determinations of when a case is SNC or a secondary violator.

RIDEM identified violations at a rate almost twice the national average and was also significantly above the national average for SNC determination rate.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		30	30	100%
7b Violations found during CEI and FCI inspections		40.7%	58	80	72.5%
8a SNC identification rate at sites with CEI and FCI		1.9%	5	164	3%
8c Appropriate SNC determinations [GOAL]	100%		30	30	100%

State Response:

No response necessary.

RCRA Element 3 - Violations

Finding 3-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Only two of five SNC determinations were identified within 150 days of Day Zero of the inspection.

Explanation:

Although three SNC determinations were made later than 150 days, program backlog and staff changes delayed the determination in one case. The two other cases proceeded from secondary violators (SV) to significant non-compliers (SNC) after the issuance of two low-level actions. Page 11 of EPA's RCRA Enforcement Response Policy states that, "In the case of SV facilities that have failed to return to compliance, Day Zero is the date that the violator is reclassified a SNC." One SV issued a low-level enforcement on 12/28/23 and reclassified as SNC on 3/9/23, The other was issued a low-level enforcement on 8/9/22 and was reclassified as SNC on 12/7/22. Therefore, four of five cases were identified in a timely manner as per the RCRA Enforcement Response Policy.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
8b Timeliness of SNC determinations [GOAL]	100%	90%	2	5	40%

State Response:

No response necessary.

RCRA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

RIDEM is taking enforcement actions that brings facilities into compliance and is taking appropriate enforcement to address violations identified.

Explanation:

RIDEM has multiple administrative enforcement options available. The following is a brief summary of enforcement types represented in the files review:

Letter of Deficiency (LOD), Notice of Noncompliance (NON), Notice of Intent to Enforce (NOI) or Notice of Responsibility (NOR) are lower-level written warnings or notifications concerning a suspected or threatened violation of a legal requirement which, in the Director's judgement, does not justify further enforcement action at that time but may require the party cited to take such actions necessary to achieve compliance.

Notice of Violation (NOV) – is a higher-level enforcement action which is a formal notice of a suspected violation that cites the law, Rule, Regulation, license, permit and/or order allegedly violated, states the facts which form the basis for the Department's belief that a violation has occurred, states the administrative penalty and other relief deemed appropriate by the Director; and specifies a reasonable deadline or deadlines by which the entity must comply. Expedited Citation Notices are Expedited Citation Notice (ECN) - ECN is similar to an NOV in that it advises the party/parties of the alleged facts that support the violation and the statutes and regulations that are alleged to have been violated. It can include requirements to meet compliance, but it cannot order corrective action. It always includes an administrative penalty of up to \$5,000. Unlike an NOV, the party/parties do not have a right of appeal and the ECN expires after 60 days. After that time, if the party/parties have not complied with the ECN, RIDEM can issue an NOV.

Thirty files were reviewed by EPA where formal, informal, and no actions were taken against facilities. All cases where violations were found had sufficient documentation to substantiate the alleged violations. For cases in which no violations were observed, most inspection reports were also sufficient to demonstrate this conclusion. RIDEM does an excellent job in determining violations and returning facilities to compliance.

Case files include inter-office memos and telephone memos to document important milestones and decisions during the enforcement process. Higher-level case files also include documentation of compliance schedule inspections to document return to compliance for all companies. Many files lower-level enforcement also include documentation of a compliance schedule inspection. Overall, RIDEM's documentation is excellent, and staff and the program manager are doing high-level work and documentation throughout the enforcement process.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Enforcement that returns violators to compliance.		100%	28	28	100%
10b Appropriate enforcement taken to address violations [GOAL]	100%		28	28	100%

State Response:

No response necessary.

RCRA Element 4 - Enforcement

Finding 4-2

Area for Improvement

Recurring Issue:

No

Summary:

Two of three files reviewed for higher-level enforcement actions were issued greater than 360 days of day zero, however, there were extenuating circumstances in both of these cases, rather than program deficiencies.

Explanation:

Only one of three enforcement action were issued within 360 days of day zero. Staff changes and a complex technical case delayed one action. The second case was initially inspected during RIDEM enforcement blackout period during which a RI Superior Court decision limited RIDEM's ability to bring administrative cases. A RI legislative correction was completed in July 2021. The facility was reinspected after the backout period ended and new violations were added to the original action.

The RCRA metric 10A has a national goal of only 80% to allow for cases that may take more time for reasons such as those listed above. In RIDEM's case, since there were only three cases counted in FY23, the overall state performance percentage was amplified. Even if there had only been one technically complex case (as recognized by the 80% national goal indicator) the result would have been only 66% timely actions. There would be no way to achieve a higher finding than area for state improvement even when only one case took more than 360 days.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timely enforcement taken to address SNC [GOAL]	80%		1	3	33.3%

State Response:

RIDEM agrees that extenuating circumstances in two out of the three cases made issuing higher-level enforcement actions within 360 days not possible. As noted above, one of the cases was initially inspected during RIDEM’s enforcement blackout period which did not allow RIDEM to bring administrative cases. RIDEM then performed another inspection once the blackout period ended to accurately reflect the facility’s current compliance status. The second inspection ultimately added more violations to the original action, which added additional time to issuing and resolving the NOV. The second case as previously mentioned was technically complex because it involved a company that was subject to the national recall of airbag modules/inflators manufactured by the Takata Company (“Takata Recall”), which was part of the 2018, Interim Final Rule: Safety Management of Recalled Airbags. RIDEM has yet to adopt the rule, and this resulted in a longer review time and legal discussion within the Department and the subject company. Lastly, during the period of these cases RIDEM’s hazardous waste program faced managerial and staff changes but has since filled these positions and is currently fully staffed.

RIDEM is committed to issuing and resolving higher level enforcement actions as efficiently as we can and agrees with the recommendation provided by EPA.

Recommendation:

Rec #	Due Date	Recommendation
1	07/30/2025	Since the cause of the two SNC cases for which enforcement was not taken in a timely manner have been resolved, that being the end of the enforcement blackout period when the legislative change was implemented and the resolution of staffing issues at RIDEM, specific actions are not recommended. Rather, RIDEM should continue to ensure that enforcement cases are resolved within 360 days of day zero unless there are extenuating circumstances and then, only 20% of cases should take longer than 360 days. EPA will review enforcement actions taken to address SNCs in FY24, and if more than 70% are resolved within 360 days, will close this recommendation. If more than 70% are not resolved within 360 days in FY24, EPA will review FY25 data.

RCRA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

RIDEM considered and documented the gravity and economic benefit in its administrative enforcement actions. The rationale between the initial and final penalty is well documented.

Explanation:

RIDEM completes a penalty summary and a penalty matrix worksheet for its administrative penalty cases which include factors considered in arriving at penalties, including gravity and economic benefit. RIDEM also includes internal memos documenting decisions made throughout the enforcement process.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Gravity and economic benefit [GOAL]	100%		9	9	100%
12a Documentation of rationale for difference between proposed penalty calculation and final penalty.	100%		5	5	100%

State Response:

No response necessary.

RCRA Element 5 - Penalties**Finding 5-2**

Area for Attention

Recurring Issue:

No

Summary:

RIDEM provides clear documentation of documenting penalties collected, however, penalties were not collected for two files reviewed.

Explanation:

RIDEM's file also included documentation of penalty payment including copes of checks or documentation of wire transfer.

Penalties were not collected for two case files for which Expedited Compliance Notices were issued. There was documentation in the files for why the penalties were not collected. In one case, the small business stated that it had not received the document, had returned to compliance and the violations were not significant. In the other case, the physical violations were resolved, and the violations were not significant, so the case was closed.

RIDEM should make every effort to collect penalties, even those resulting from ECNs, unless there is a documented ability to pay or other exceptional circumstances.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12b Penalty collection [GOAL]	100%		5	7	71.4%

State Response:

RIDEM follows an ECN policy which identifies the penalty amount depending on the type of violation that is observed at the time of the inspection. ECN's are not true formal actions because by statute the ECN expires after sixty days, and the party does not have a right of appeal. Therefore, we do not calculate economic benefit, we do not execute consent agreements, and we do not negotiate the penalty or required actions. If the party does not comply with the ECN, it expires, and the next action RIDEM would have to take would be to issue a NOV. Since, the noncompliance can be easily achieved and where any economic benefit, by nature of the violation, would be less than the de minimus amount of \$5,000 and therefore not pursued.

The two case files mentioned above were Conditionally Exempt Hazardous Waste Generators (CESQGs) which were originally determined to be informal actions because the nature and extent of the violations were not significant, easily achievable, and neither facility had been inspected within the past five (5) years. The enforcement decisions were only upgraded in both cases to ECN because the companies were not responsive to the initial informal enforcement response. Both facilities returned to compliance, but the sixty-day window passed, and the ECN expired including the penalty and neither case warranted upgrading to a NOV for the reasons previously mentioned.
