



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

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OFFICE OF THE REGIONAL
ADMINISTRATOR

DEC 15 2016

Richard Whitman
Interim Director
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232

Dear Mr. Whitman:

Enclosed please find the U.S. Environmental Protection Agency's final report on the State Review Framework review of the Oregon Department of Environmental Quality's compliance and enforcement programs for air, water and hazardous waste. The final report shows that ODEQ is meeting or exceeding most of the SRF metric measures for implementing the air compliance program. For hazardous waste and surface water compliance programs, the report concludes that ODEQ needs to improve performance under a number of measures. Improvements are needed under metrics for data accuracy, inspection reports, violation identification (waste only), and formal enforcement (water only). In instances where the review identified concerns, we have collaborated with ODEQ managers on the steps necessary to address the underlying issues.

I appreciate the cooperation of your managers and staff in assisting with this review, providing additional information and helpful responses to the findings in the draft report, and addressing concerns.

The final report follows the format specified by national SRF guidance, including identification of specific, measurable action items for any areas needing improvement. The follow-up action items to address the areas needing improvement will be tracked nationally in the database called the SRF Tracker. The EPA Region 10 will provide periodic updates on progress toward completion of this action item to the EPA's Office of Enforcement and Compliance Assurance.

The EPA looks forward to continuing our positive working relationship with ODEQ. If you have any questions regarding the SRF report, Lauris Davies, Associate Director, Office of Compliance and Enforcement, is our primary management contact for SRF. Lauris can be reached by phone at (206) 553-2857.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michelle D. [unclear]".

Dennis J. McLerran *for*
Regional Administrator

Enclosure

cc: Ms. Leah Feldon, Deputy Director
Oregon Department of Environmental Quality

Ms. Sarah Wheeler, Compliance & Enforcement
Oregon Department of Environmental Quality

Ms. Lydia Emer, Operations Division Administrator
Oregon Department of Environmental Quality

Ms. Linda Hayes Gorman, Regional Administrator Eastern Region
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STATE REVIEW FRAMEWORK

Oregon

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

**U.S. Environmental Protection Agency
Region 10, Seattle**

**Final Report
December 1, 2016**

Executive Summary

Introduction

EPA Region 10 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Oregon Department of Environmental Quality (ODEQ) and the Lane Regional Air Protection Agency (LRAPA).

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

Areas of Strong Performance

- For all programs that were reviewed, penalty-related documentation was very good. National goals were met for almost all penalty-related metrics.
- LRAPA met national goals and exceeded national averages for inspection coverage and did an excellent job of documenting inspections.
- For CWA, ODEQ did a very good job of finding and entering single event violations by NPDES facilities into ICIS-NPDES.
- For CAA, ODEQ met national goals for addressing HPVs.
- For RCRA, ODEQ met national goals and exceeded national averages for frequency of both TSD and LQG inspections.

Priority Issues to Address

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

- For CWA, ODEQ has instituted a change in the issuance of Mutual Agreement and Orders (MAOs) so that the Office of Compliance and Enforcement out of the headquarters office is now the only office able to issue MAOs. However, ODEQ's use of MAOs to provide interim effluent limits and no action assurance for future violations continues to be a major issue. As a corrective action, EPA is recommending the State provide to EPA (i) a plan for closing out all of the existing MAOs, (ii) a new MAO template that removes the no action assurance language, and (iii) a standard operating procedure that lays out a procedure for including completion dates in the MAO.
- Also for CWA, there were a number of major NPDES facilities in significant non-compliance during the review period and none of them were addressed with timely and appropriate enforcement actions. EPA is recommending that the State develop standard operating procedures to screen major facilities for significant non-compliers (SNCs) and take proper formal enforcement action against the permittee in a timely manner.

- For RCRA, a high data error rate (that included wrong data and inconsistent coding of data elements) was found. EPA is recommending ODEQ implement a new process for manual data entry of compliance and enforcement data as well as ensure State data are accurately entered into the national database.
- Also for RCRA, ODEQ did not designate any facilities as SNCs in the database. At a minimum State Class I violations should be considered SNC. Guidelines for when to apply a Class I or Class II violation category (for example, to cases of long term storage) need to be developed.

Most Significant CWA-NPDES Program Issues¹

- ODEQ has instituted a change in the issuance of MAOs so that the Office of Compliance and Enforcement out of the headquarters office is now the only office able to issue MAOs. However, ODEQ’s use of MAOs to provide interim effluent limits and no action assurance for future violations continues to be a major issue. As a corrective action, EPA is recommending the State provide to EPA (i) a plan for closing out all of the existing MAOs, (ii) a new MAO template that removes the no action assurance language, and (iii) a standard operating procedure that lays out a procedure for including completion dates in the MAO.
- There were a number of major NPDES facilities in significant non-compliance during the review period and none of them were addressed with timely and appropriate enforcement actions. EPA is recommending that the State develop standard operating procedures to screen major facilities for SNC and take proper formal enforcement action against the permittee in a timely manner.
- ODEQ relies on several municipalities and districts as its “agents” to conduct inspections, but ODEQ does not appear to be routinely collecting information on planned inspections, inspections conducted, or results of inspections and does not appear to be providing oversight of these “agents. EPA is recommending that ODEQ develop an oversight plan and update its MOAs with these agents to address these deficiencies.
- Inspection reports were missing or incomplete. EPA is recommending that the State develop a Standard Operating Procedure for inspection reports that includes the requirement for a full and complete inspection report with an EPA 3560 form for all inspection reports entered into ICIS.
- There are data accuracy issues with violations data. EPA is recommending that the State investigate all violations in ECHO to ensure the violations are valid and correct all inaccuracies in ECHO and ICIS-NPDES.

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.”

Most Significant CAA Stationary Source Program Issues

- Only minor issues for ODEQ and LRAPA attention were found. These are discussed in the report.

Most Significant RCRA Subtitle C Program Issues

- A high data error rate (that included wrong data and inconsistent coding of data elements) was found. EPA is recommending ODEQ implement a new process for manual data entry of compliance and enforcement data as well as ensure State data are accurately entered into the national database.
- ODEQ did not designate any facilities as SNCs in the database. At a minimum State Class 1 violations should be considered SNC. Guidelines for when to apply a Class I or Class II violation category (for example, to cases of long term storage) need to be developed.
- Many of the ODEQ inspection reports did not adequately or completely document the evidence necessary to support the alleged violations should a facility question the inspection findings. EPA recommends that ODEQ provide training to inspectors on the template and how to adequately document violations.

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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 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 four 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: FFY 2014 data and activities were the focus for this review.

Key dates:

- Kick off Letter Sent to State on May 29, 2015
- Data Metrics Analyses and File Selection Lists Sent to State and LRAPA
 - CAA on June 12, 2015
 - RCRA on June 22, 2015
 - CWA on October 21, 2015
- On-Site File Reviews Conducted
 - CAA on July 27-30, 2015
 - RCRA on September 22, 2015
 - CWA on November 18-19, 2015
- Draft Report Sent to State and LRAPA on June 2 , 2016
- LRAP comments and State comments received July and August 2016 (respectively)
- Report Finalized on December 1, 2016

State and EPA key contacts for review:

Jim Billings, ODEQ NPDES Program

Anita Yap, ODEQ NPDES Program

Cindy Troupe, ODEQ CAA Program

Colleen Wagstaff, LRAPA CAA Program

David Livengood, ODEQ RCRA Program

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Aaron Lambert, Region 10 CAA Reviewer

Paul Koprowski, Region 10 CAA Reviewer

Cheryl Williams, Region 10 RCRA Reviewer

Mike Slater, Region 10 RCRA Reviewer

Christine Kelly, Region 10 SRF Coordinator

III. SRF Findings

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

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

There are three categories of findings:

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

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

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

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

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

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

Clean Water Act Findings

CWA Element 1 — Data						
Finding 1-1	Area for State Improvement					
Summary	Data are missing in ICIS. A number of facilities were shown in the data base as having violations, but the violations could not be confirmed with file review.					
Explanation	<p>There appear to be some errors in the violations data in ICIS.</p> <p>Of the files reviewed, NW Aluminum Specialists (OR0001708), City of Astoria (OR0027561), Clean Water Services – Hillsboro (OR0023345), City of Corvallis (OR0026361), City of The Dalles (OR0020885), H.J Heinz (OR0002402), City of Gresham (OR0026131), and City of Woodburn (OR0020001) all have violations showing in Enforcement and Compliance History Online (ECHO). The City of Astoria shows the violations for failing to submit two reports, the state should just update ICIS with the dates the reports were submitted. The City of Woodburn shows violations for failing to receive a DMR for pH. The City of Astoria, the City of Gresham, Northwest Aluminum, the City of Corvallis, and H.J. Heinz show violations of failing to submit DMR for numerous parameters. The Clean Water Services – Hillsboro facility shows violations for failing to receive DMR for total suspended solids. The City of The Dalles has reportable noncompliance violations, but ICIS does not show what those violations are.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	1b1 Permit limit rate for major facilities	>= 95%	91.10%	52	62	75.4%
	2b Files reviewed where data are accurately reflected in the national data system	100%		18	26	69.2%
	8c Percentage of SEVs identified as SNC reported timely at major facilities			3	3	100%
State response	<p>ODEQ agrees that there appears to be numerous violations including SNC for the 69 major individual permit sources on ECHO from ICIS data for past three years. Valid violations on both state data bases and ICIS have a related enforcement action by ODEQ on ICIS, but the majority of apparent compliance issues are D80 and D90 missing monitoring data.</p>					

This problem is related to, and the magnitude of the problem and solution is demonstrated by the EPA's decision in 2004 to halt the system of EPA sending and receiving pre-printed EPA Form 3320 DMR forms directly to and from facilities in Oregon with individual permits and inputting DMR summary statistic data in PCS (ODEQ migrated data from PCS to ICIS in 2012). This ICIS data problem stems primarily from the summary statistics data acquired via the 3320 not being incorporated into the state-approved DMRs after EPA relinquished the DMR reporting to ODEQ in 2004.

ODEQ was not ready to take over DMR reporting to PCS in 2004. ODEQ implemented a project in 2006 to update and reconcile PCS data since 2004. ODEQ completed the PCS data update project with complete and accurate data for all major sources in March 2008. ODEQ required a team of five temporary intern positions and three data staff on the project for nearly two years.

In 2015, permit managers were informed about the following measures to prevent further aggravation of ICIS data issues primarily of missing summary statistic monitoring data (coded D80 and D90 in ICIS) for major sources.

1. HQ revise the permit templates to add required reporting back (2009 through 2012 recommendations taken out of template tables apparently after 2014 template revision);
2. Inspectors' deliberate approval of DMR forms with required reporting by inspectors (existing permit condition of expired permits);
3. HQ review draft permits for required reporting prior to public notice;
4. Inspectors' deliberate review of new/reissued permit setups for DMS and ICIS (separate setups where ICIS is approximately 15% of state DMS data base setup with daily data plus);
5. Inspectors' review DMR Evaluation Report from DMS (emailed to inspectors after data for majors input in DMS every month) and notify WQ data crew of data problems*; and
6. Inspectors' review the preliminary Quarterly NonCompliance Reports from ICIS circulated weekly (preliminary QNCRs were replaced by the ICIS Monthly Limit Summary and Measurement Violation Report since May 2016) once a month and notify WQ data crew of data problems*.

*If data problems are errors, provide legally-defensible documentation to HQ for data reconciliation and provide enforcement action/justification memo for valid violations.

	<p>Particularly with limited ODEQ resources primarily focused on permit issuance backlog reduction, implementing EPA’s 2015 Electronic Reporting Rule (eRule), and doing routine work, ODEQ would need funding for additional resources for a project to re-evaluate and address the current backlog of ICIS data issues as demonstrated by the project of inputting and reconciling PCS data from 2004 to 2008. The project schedule to resolve ICIS data issues may exceed the window of twelve quarters visible through ECHO. Plans to resolve the ICIS backlog will need to be part of the collaborative work with EPA on reduction of the permit backlog and implementation of eRule.</p>
Recommendation	<p>Within 120 days of the final SRF report, the State will investigate all violations in ECHO, to ensure the violations are valid, and propose a schedule to EPA to correct all inaccuracies in ECHO and ICIS-NPDES.</p>

CWA Element 2 — Inspections

Finding 2-1	Area for State Attention																	
Summary	In the timeframe reviewed, ODEQ met its commitments under the Compliance Monitoring Strategy (CMS) for sources not delegated to “agents,” except for inspection coverage for individual major facilities. (For coverage of sources delegated to “agents,” see Finding 2-3.)																	
Explanation	<p>In order to fully evaluate this metric, the review for the inspection coverage spanned a two year timeframe. In those two years the State met all metrics except for inspection coverage for individual major facilities. The State committed to inspecting 50% of the major facilities every year, but their two year rate was 45% of the majors each year. The State committed to inspecting 20% of the individual minor facilities every year, and the two year count percentage was 25% of the minors each year, which is greater than the 20% per year inspection criteria. The State met the criteria for pretreatment compliance audits and inspections. They met the 10% of universe inspection criteria for both construction stormwater inspections and industrial stormwater inspections. The State met the criteria for 100% inspection of all of the combined feeding operations (CAFOs). The State also met their commitments in the other inspection areas.</p> <p>The State has agreed to follow the general inspection targets in the Compliance Monitoring Strategy issued by EPA rather than proposing an alternative inspection plan. Under CMS, individual major facilities are to be inspected once every two years. The State should strive to meet this CMS commitment.</p>																	
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>5a1 Inspection coverage of NPDES majors</td> <td>100% of CMS</td> <td>55.4%</td> <td>31</td> <td>69</td> <td>45%</td> </tr> </tbody> </table>		Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5a1 Inspection coverage of NPDES majors	100% of CMS	55.4%	31	69	45%				
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
5a1 Inspection coverage of NPDES majors	100% of CMS	55.4%	31	69	45%													
State response	Thank you for this acknowledgment of ODEQ’s compliance efforts despite limited resources focused on permit issuance backlog resolution.																	
Recommendation																		

CWA Element 2 — Inspections

Finding 2-2	Area for State Improvement						
Summary	Incomplete inspection reports and files lacking inspection reports.						
Explanation	<p>There were a number of inspection reports that did not have a 3560 in the file. There were also two inspection reports that were not in the file at all, and there were no 3560s to prove the inspection occurred. The reason EPA is confident the two inspections did occur is because they were entered in both ICIS and ODEQ's database, and a warning letter sharing the findings of the inspections was sent to the permittee. Without an inspection report with a 3560, EPA is unable to confirm the compliance determination made by the State.</p>						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	6a Inspection reports complete and sufficient to determine compliance at the facility		100%		12	18	66.7%
	6b Inspection reports completed within prescribed timeframe		100%		17	17	100%
State response	<p>ODEQ is unable to check EPA claims here without facilities/permit numbers identified. This issue may have been a result of ODEQ relying on electronic inspection report records in ODEQ's Agency Compliance and Enforcement System (ACES) rather than a paper inspection report in the regional files.</p> <p>ODEQ requires inspection reports for all NPDES and WPCF source evaluations. ODEQ requires at least a state inspection summary report be prepared. Completion of the EPA Form 3560 NPDES Compliance Inspection Report is required only for major individual permits (ODEQ only reports inspection dates, SEV codes, and other required compliance reporting data to ICIS for major source violations). In ACES, ODEQ constructed a hybrid of the state inspection summary report and EPA's 3560, namely the ODEQ Water Compliance Inspection Report (EPA 3560) for recording individual permits and stormwater permit inspections in ACES.</p> <p>Some inspections were recorded in ACES especially by those inspectors testing ACES prior to ODEQ officially implementing ACES for the Water Quality program in October 2014. If the inspector did not record the inspection in ACES, there should have been an inspection report in the regional paper files.</p>						

	<p>To fully implement EPA’s 2014 revision of CMS policy and Group 1 data sharing of compliance and enforcement of EPA’s 2015 eRule, ODEQ is planning on expanding ACES including the ODEQ 3560 form to all inspection types and SEV coding. ODEQ must submit a project request to ODEQ’s SDi information technology group to expand ACES for 3560 reports to accommodate inspections in addition from the current ACES capability of recording inspections for individual permits and stormwater permits. ODEQ must also provide adequate EPA NPDES compliance inspection training and ACES 3560 training to complete 3560 forms accurately.</p> <p>ODEQ will continue to collaborate with EPA and work with permit agents on developing and implementing inspection reporting according to local ordinances, state rules, and EPA’s CMS policy and eRule. However, this schedule may exceed 120 days after the final SRF report to develop an SOP for inspection reports including the EPA 3560 reporting. The EPA recommendation to update agent MOAs by December 31, 2017 in Finding 2-3 will likely exceed the 120 day deadline here.</p>
<p>Recommendation</p>	<p>Within 120 days of the final SRF report, the State will develop a Standard Operating Procedure for inspection reports that includes the requirement for a full and complete inspection report with an EPA 3560 form for all inspection reports entered into ICIS. With the e-rule implementation, the 3560 entry will be taken care of for ODEQ.</p>

CWA Element 2 — Inspections

Finding 2-3	Area for State Improvement						
Summary	ODEQ needs to collect data from and provide oversight of its designated agents.						
Explanation	<p>ODEQ relies on several municipalities and districts as its “agents” to conduct inspections of sources regulated by some stormwater and other general permits. However, ODEQ does not routinely collect data from these agents regarding inspections that are planned, inspections that have been conducted, and violations found during these inspections. Therefore, these inspections do not seem to be included in the State’s CMS commitments and they do not seem to be included in data provided from ODEQ to EPA.</p> <p>Furthermore, ODEQ does not appear to be providing any oversight of these agents in terms of adequacy of inspections, adequacy of determination of violations based on inspections, or the need for enforcement actions to address violations. It appears ODEQ only knows about violations if an agent refers them to ODEQ. Though some agents refer some violations to ODEQ for enforcement actions, others rarely, if ever, do so.</p>						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	4a8 Industrial stormwater inspections				?	?	?
	4a9 Phase I and II stormwater construction inspections				?	?	?
	5b2 Inspection coverage of NPDES non-majors with general permits for placer mining				?	?	?
State response	<p>While working collaboratively with EPA, ODEQ has been making plans to address this issue for the 2014 Compliance Monitoring Strategy and eRule.</p> <p>In 2016, ODEQ began the process of revising the MOAs with all of the agents that implement the construction stormwater general NPDES permit. The revised MOAs will include a minimum percentage of sites that must be inspected by agents annually. (The minimum percentage has not been agreed upon at this time but will not be less than EPA CMS target percentages). The revised MOAs will also include a requirement that agents consult ODEQ’s Enforcement Guidance to determine the appropriate response to a violation and take the Guidance’s recommended actions. In cases where agents use local codes and regulations for enforcement purposes, ODEQ and the agents will provide an explanation of how the local compliance and enforcement response links to ODEQ’s</p>						

Enforcement Guidance. This will help further the goal of a consistent statewide compliance and enforcement response.

ODEQ's industrial stormwater general permit will be renewed in 2017. Also during 2017, ODEQ will be implementing the eRule for construction stormwater general permits. After these two efforts are finalized, DEQ will begin the process of revising its MOAs with agents of ODEQ industrial stormwater and wastewater general permit program. We expect those MOAs to become final in 2017.

The revised MOAs for both construction and industrial stormwater programs will require agents submit timely reports on their inspection and enforcement activities to ODEQ.

At this time, ODEQ expects the "agent oversight plans" to be part of the MOAs its agents for permit administration. As EPA provides collaborative oversight of ODEQ's delegated NPDES programs (all except sewage sludge/biosolids), ODEQ will work with its agents to ensure state and federal requirements are met with coordination of local ordinances/codes to administer NPDES permits including adequate training and coordination of inspection targeting and end-of-year inspection performance reporting according to CMS policy. ODEQ anticipates doing joint inspections and having regular meetings with the agents moving forward.

ODEQ will incorporate applicable federal NPDES program requirements, tempered by state and local requirements in the MOAs. In addition to collaborative NPDES oversight with agents, ODEQ will continue its work with EPA and include plans to add agent compliance and enforcement data sharing of Group 1 implementation of eRule and addressing CMS policy in addition to other NPDES program requirements. ODEQ will also incorporate reporting of DMRs annually for industrial stormwater and wastewater general permits with the phased implementation schedule of sharing Group 3 DMR data for eRule.

Recommendation

ODEQ has indicated there is a need to update the Memoranda of Agreement (MOAs) with these agents. Within 120 days of the final SRF report, ODEQ will provide a plan to update all of these MOAs to include requirements for the agents to report anticipated upcoming inspections (for purposes of CMS planning), data on inspections conducted, information on results of inspections, and specific directives to refer violations to ODEQ for applicable action. The updated MOAs need to include dates by which the agents will submit their plans for inspections proposed for the upcoming year and their reports on the inspections conducted in the previous year so that ODEQ can include this agent information in ODEQ's annual CMS submittal to EPA. By December 31, 2017, ODEQ will also

develop a plan for oversight of these agents and will include any relevant provisions in the revised MOAs. ODEQ will provide draft versions of the MOAs and the oversight plan to EPA for review and comment before the MOAs and the oversight plan are finalized.

CWA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations					
Summary	The files reviewed indicate the State is appropriately determining violations.					
Explanation	All three of the primary metrics for this element were found to be satisfactory in the file review. Though inspection reports were not always complete, other documentation in the files (e.g., warning letters) provided additional information, such as what violations were found.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	7e Inspection reports reviewed that led to an accurate compliance determination			16	16	100%
	8b Single-event violations accurately identified as SNC or non-SNC			4	4	100%
	8c Percentage of SEVs identified as SNC reported timely at major facilities			3	3	100%
State response	Thank you again for this acknowledgment of ODEQ’s compliance efforts despite limited resources focused on permit issuance backlog resolution.					
Recommendation						

CWA Element 4 — Enforcement

Finding 4-1	Area for State Improvement						
Summary	Lack of Formal Enforcement action taken at major facilities in significant non-compliance.						
Explanation	<p>The data show that there were no formal enforcement actions taken against the six major facilities that should have received formal enforcement in the SRF review period. All of the six facilities were in significant non-compliance (SNC) during the reporting period. EPA enforcement guidance, <i>Clarification of NPDES EMS Guidance on Timely and Appropriate Response to Significant Noncompliance Violations</i>, date May 29, 2008, states “Administrating agencies are expected to take formal enforcement action before the violation appears on the second Quarterly Noncompliance Report, generally within 60 days of the first QNCR.” The only mechanism available to address SNC is for the permit authority to take a formal enforcement action against the permittee.</p>						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	10a1 Major facilities with timely action as appropriate		98%	29.1%	0	6	0%
State response	<p>From Finding 1-1, DEQ finds four sources, City of Astoria (OR0027561), Clean Water Services – Hillsboro (OR0023345), H.J Heinz (OR0002402), and City of Woodburn (OR0020001) with SNC in ECHO. As stated in the State Response for Finding 1-1, valid violations on both state data bases and ICIS have a related enforcement action by ODEQ on ICIS.</p> <p>ODEQ will need to evaluate the six SNC cases during the FFY2014 period cited by EPA. ODEQ may use ICIS and/or ODEQ’s anticipated Environmental Data Management System (EDMS) to address legitimate SNC (Significant NonComplier criteria in DEQ’s Appendix C of Enforcement Guidance for Field Staff is verbatim with EPA’s Significant NonCompliance for ICIS). However, EPA’s Recommendation details will not coincide with ODEQ’s current plan of anticipated EDMS with NPDES permit administration and reporting modules implementation in two to six years. Also, recommendations here will need to be coordinated with considerations for the ODEQ comments regarding recommendations by EPA for Finding 1-1 to resolve the ICIS data issues backlog with ODEQ limited resources for implementation of eRule and other priority work.</p> <p>ODEQ would like to hear more about EPA developing an enforcement targeting framework tool in conjunction with several States.</p>						

Recommendation

Within 120 days of the final SRF report, the State will develop a standard operating procedures (SOP) to screen major facilities for SNC (or utilize EPA's ICIS database) to ensure that, for those that continue in SNC, the State takes proper formal enforcement actions against the permittee in a timely manner. The plan will be submitted to EPA to document the State has addressed the problem.

EPA headquarters is developing an enforcement targeting framework in conjunction with several States. The final tool is slated to be released in December of 2016. If ODEQ prefers, it could adopt this tool in lieu of creating its own SOP, but ODEQ will need to inform EPA within 120 days of the final SRF report, if the State is choosing to adopt the new EPA tool or if it will be creating its own SOP within 120 days of the final report.

CWA Element 4 — Enforcement

Finding 4-2	Area for State Improvement					
Summary	Use of Mutual Agreements and Orders (MAOs)					
Explanation	<p>This finding pertains specifically to the use of Mutual Agreements and Orders (MAO) that ODEQ uses as an enforcement mechanism to get facilities (primarily municipalities) into compliance. EPA has several concerns with ODEQ’s present use of MAOs.</p> <p>First, ODEQ often includes interim limits in the MAOs that are different, sometimes significantly different, from the limits in the effective permit.</p> <p>Second, the MAO does not go through a public review, so there is no way for the public to comment on limits other than those in the permit.</p> <p>Third, language in the MAOs provides a “no enforcement action” assurance for the facility for future violations of the limits that are in the MAO. The specific language used in the MAOs is: “The Department and Permittee recognize that the DEQ has the power to impose a civil penalty and to issue an abatement order for the violations of conditions of the permit. Therefore, pursuant to ORS 183.415(5), the Department and Permittee wish to limit and resolve future violations referred to in Paragraph 4 [lists out parameters that would be violated, e.g., Chlorine] in advance by the Mutual Agreement and Order (MAO).”</p> <p>Fourth, some MAOs are in effect for a lengthy period of time and most lack any date certain by which the facility must come into compliance. For example, of the known MAOs in effect, two were issued in 1998 and are still in effect.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	9a Percentage of enforcement responses that return or will return source in violation to compliance	100%		9	11	81.8%
	10b Enforcement responses reviewed that address violations in an appropriate manner	100%		8	11	72.7%
State response	As EPA points out, ODEQ employs MAOs to address the problem presented by municipalities facing significant challenges, primarily those of time and money, in replacing or upgrading treatment facilities. MAOs, at their simplest, are an agreement between ODEQ and the permittee in which ODEQ agrees, in the exercise of its enforcement discretion, to settle					

future violations with no or reduced penalties in exchange for a binding commitment from the permittee to design, fund, and construct new or upgraded treatment facilities. Interim limits are the mechanism that ODEQ uses to determine which future violations during the term of the MAO will be settled without penalty and those that may be subjected to a stipulated civil penalty. Interim limits are based on ODEQ's best professional judgment as to the level of treatment that the system at issue can achieve when properly operated and maintained.

Regarding public comment, ODEQ is aware that MAOs, and specifically interim limits which are sometimes incorporated into MAOs, do not take the place of limits in the NPDES permits. ODEQ considers the interim limits to be part of the settlement of the enforcement action on the permit, and the MAO itself does not modify the permit. Therefore there is no Clean Water Act requirement that the interim limits or the MAOs themselves be subject to public notice or participation. ODEQ believes that settling violations of the permit in this manner is an appropriate strategy to reach compliance – it encourages the municipality to control pollution because it sets limits that are attainable, it creates an enforceable compliance schedule, and it creates a streamlined penalty process if the party violates the compliance order or the interim limits. Because it does not modify the permit, the MAO also leaves open the option for other parties to initiate enforcement for past or future violations.

ODEQ does not understand what EPA means when it states “language in the MAOs provides a “no enforcement action” assurance for the facility for future violations of the limits that are in the MAO.” MAOs set stipulated penalties for exceedances of the interim limits set forth in MAOs. Exceedances of permit limits that are below the interim limits are not penalized for the reasons described above.

While some MAOs may lack a date certain by which the facility must come into compliance, that is because ODEQ must account for the uncertain timing for municipalities to obtain funding for facility upgrades and for agency review and approval. Facilities, however, must complete each task in the schedule within a specific time frame or be subject to civil penalty.

ODEQ has made progress in closing out MAOs issued prior to ODEQ's MAO Internal Management Directive (IMD) implemented in 2012 and shortening the time frames when it enters into new MAOs. ODEQ has adhered to the MAO IMD since 2012. The IMD provides procedures including:

- Criteria for when to offer permittees a MAO,

	<ul style="list-style-type: none"> - Procedures for establishing milestone schedules, interim limits, and stipulated penalties, - Procedures for amending MAOs, - Procedures for tracking milestone schedules, - Procedures for demanding penalties for MAO violations. <p>In 2010, ODEQ initiated a centralized milestone tracking system and has more recently migrated to ACES.</p>
Recommendation	<p>Within 120 days of the final SRF report, the state shall set up a meeting with EPA to discuss (i) a plan for closing out all of the existing MAOs, (ii) a new MAO template that removes the no action assurance language, and (iii) a standard operating procedure that lays out a procedure for including completion dates in the MAO. The dates in the MAOs shall be based on calendar days, be transparent, and allow the reader to determine the final compliance date by the language in the MAO alone.</p>

CWA Element 5 — Penalties

Finding 5-1 Meets or Exceeds Expectations

Summary The files reviewed indicate the State is appropriately assessing and collecting penalties.

Explanation The State calculates appropriate penalties, using economic benefit and gravity appropriately. There is evidence in the file to show how this is being performed, as well as evidence of collecting the penalties. The four files reviewed all had the proper documentation in the file.

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				4	4
12a Documentation of the difference between initial and final penalty and rationale				4	4	100%
12b Penalties collected				4	4	100%

State response

Recommendation

Clean Air Act Findings – ODEQ

CAA Element 1 — Data																																										
Finding 1-1	Area for State Attention																																									
Summary	The State generally provides accurate and timely data entry into ICIS. However, reviewers found several important discrepancies between the information in the data base and the records reviewed.																																									
Explanation	<p>For metric 2b, four significant discrepancies were identified between the data entered into ICIS and the records included in the source files that were reviewed.</p> <ul style="list-style-type: none"> • Documentation of an informal action was found in the source file, but no informal action was entered into ICIS. • Title V Annual Compliance Certification review was not entered into ICIS, and the date of a penalty action in the source file did not match the date entered into ICIS. • Title V Annual Compliance Certification review was not entered into ICIS. • A stack test was in the source file, but was not entered into ICIS. <p>The data for metric 3b2 were reviewed with the State in an attempt to determine the root cause of the untimely reporting of stack test data and results. It was established that the primary cause of the low percentage for this metric was because the state had switched internal data management systems in May of 2014. Because of the switch in internal data management systems the entry of stack test data into ICIS shortly prior to and subsequent to this timeframe was not technically possible.</p>																																									
3b2 Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>2b Accurate MDR data</td> <td>100%</td> <td></td> <td>21</td> <td>25</td> <td>84%</td> </tr> <tr> <td>3a2 Untimely entry of HPV determinations</td> <td>0</td> <td></td> <td>0</td> <td>0</td> <td></td> </tr> <tr> <td>3b1 Timely reporting of compliance monitoring MDRs</td> <td>100%</td> <td>83.3%</td> <td>161</td> <td>171</td> <td>94.15%</td> </tr> <tr> <td>3b2 Timely reporting of stack test dates and results</td> <td>100%</td> <td>80.8%</td> <td>165</td> <td>237</td> <td>69.62%</td> </tr> <tr> <td>3b3 Timely reporting of enforcement MDRs</td> <td>100%</td> <td>77.9%</td> <td>11</td> <td>11</td> <td>100%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2b Accurate MDR data	100%		21	25	84%	3a2 Untimely entry of HPV determinations	0		0	0		3b1 Timely reporting of compliance monitoring MDRs	100%	83.3%	161	171	94.15%	3b2 Timely reporting of stack test dates and results	100%	80.8%	165	237	69.62%	3b3 Timely reporting of enforcement MDRs	100%	77.9%	11	11	100%
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3b3 Timely reporting of enforcement MDRs	100%	77.9%	11	11	100%																																					
State response	ODEQ will work with staff and provide training refresher for entering the informal actions, annual compliance certification, and stack test information into its database.																																									

Recommendation																															
CAA Element 2 — Inspections																															
Finding 2-1	Area for State Attention																														
Summary	ODEQ generally meets its FCE commitments as delineated in EPA’s Compliance Monitoring Strategy (CMS) Policy																														
Explanation	Of the 24 files reviewed against metrics 6a and 6b, two were found to be missing the necessary inspection documentation. One file was found to be missing the inspection report for an FCE, and the other file was missing documentation indicating that a PCE had been conducted, even though both of these actions were reported into ICIS. After additional conversations with the state, the missing files were located and added to their respective source files. Region 10 recommends that the state review its filing practices to ensure that all necessary FCE and PCE documentation are included in the source files.																														
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>5a FCE coverage: majors and mega-sites</td> <td>100%</td> <td>85.7%</td> <td>52</td> <td>52</td> <td>100%</td> </tr> <tr> <td>5b FCE coverage: SM-80s</td> <td>100%</td> <td>91.7%</td> <td>3</td> <td>3</td> <td>100%</td> </tr> <tr> <td>6a Documentation of FCE elements</td> <td>100%</td> <td></td> <td>22</td> <td>24</td> <td>91.7%</td> </tr> <tr> <td>6b Compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance</td> <td>100%</td> <td></td> <td>22</td> <td>24</td> <td>91.7%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5a FCE coverage: majors and mega-sites	100%	85.7%	52	52	100%	5b FCE coverage: SM-80s	100%	91.7%	3	3	100%	6a Documentation of FCE elements	100%		22	24	91.7%	6b Compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance	100%		22	24	91.7%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																										
5a FCE coverage: majors and mega-sites	100%	85.7%	52	52	100%																										
5b FCE coverage: SM-80s	100%	91.7%	3	3	100%																										
6a Documentation of FCE elements	100%		22	24	91.7%																										
6b Compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance	100%		22	24	91.7%																										
State response	ODEQ will work with staff and provide training refresher for entering inspection reports into the database and ensuring a copy of the Inspection Report is in the source file.																														
Recommendation																															

CAA Element 3 — Violations

Finding 3-1	Area for State Attention					
Summary	Overall ODEQ makes accurate violation and HPV compliance determinations.					
Explanation	For metric 7a the stack test in one source file clearly indicated that the source had failed the stack test because the stack test data indicated that it had exceeded the permitted VOC limit during testing. However, the ODEQ did not identify the VOC exceedance as a violation because the State did not yet have delegated authority to enforce. Had this violation been identified correctly, it should have been referred to Region 10 by the State. ODEQ should work with Region 10 to develop a procedure for identifying and referring violations to Region 10 when the State does not have delegated authority to enforce a federal requirement.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	7a Accuracy of compliance determinations	100%		24	25	96%
	8a HPV discovery rate at majors		3.1%	2	110	1.82%
	8c Accuracy of HPV determinations	100%		5	5	100%
State response	ODEQ will work with and inform EPA Region 10 to develop a procedure for referring violations when the State does not have delegated authority.					
Recommendation						

CAA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations					
Summary	HPVs are appropriately and timely addressed by the State.					
Explanation	Of the 10 files reviewed against metrics 9a and 10b, no discrepancies were identified. For metric 10a, the “lack of timeliness” ECHO shows for two cases was due to a concurrent criminal investigation of that source by Region 10 at the time.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe	100%		4	4	100%
	10a Timely action taken to address HPVs			2	4	50%
	10b Appropriate enforcement responses for HPVs	100%		6	6	100%
State response	ODEQ has quarterly HPV calls with EPA Region 10 to discuss ongoing HPVs. No additional comments from ODEQ.					
Recommendation						

CAA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations																													
Summary	Of the files with penalties that were reviewed, all documented the rationale for any reductions of penalties and the collection of penalties. One of the 5 files reviewed did not document consideration of the economic benefit and gravity components of the penalty.																													
Explanation	No discrepancies or other issues were identified in 4 of the files that were reviewed against metrics 11a, 12a, and 12b. Oregon administrative rules require ODEQ to include consideration of gravity and economic benefit in all penalty calculations, and including these is routine practice for ODEQ. However, in one file supporting documentation discussing the consideration of gravity and economic benefit was not included.																													
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>11a Penalty calculations include gravity and economic benefit</td> <td>100%</td> <td></td> <td>4</td> <td>5</td> <td>80%</td> </tr> <tr> <td>12a Documentation on difference between initial and final penalty</td> <td>100%</td> <td></td> <td>4</td> <td>4</td> <td>100%</td> </tr> <tr> <td>12b Penalties collected</td> <td>100%</td> <td></td> <td>5</td> <td>5</td> <td>100%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	11a Penalty calculations include gravity and economic benefit	100%		4	5	80%	12a Documentation on difference between initial and final penalty	100%		4	4	100%	12b Penalties collected	100%		5	5	100%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																									
11a Penalty calculations include gravity and economic benefit	100%		4	5	80%																									
12a Documentation on difference between initial and final penalty	100%		4	4	100%																									
12b Penalties collected	100%		5	5	100%																									
State response	No additional comments from ODEQ.																													
Recommendation																														

Clean Air Act Findings – LRAPA

CAA Element 1 — Data						
Finding 1-1	Area for State Attention					
Summary	Generally, LRAPA enters accurate MDR data in ICIS, but two of the files reviewed either contained data that were not entered into ICIS, or the data entered into ICIS did not match the records in the file.					
Explanation	<p>For Metric 2b, 2 of the 14 source files reviewed were found to have discrepancies.</p> <ul style="list-style-type: none"> • A stack test was in the source file that hadn't been entered into ICIS. • A Title V annual certification review that was in the source file was not entered into ICIS. • A Title V annual certification review was entered into ICIS, but no record of this Title V annual certification review was located in the source file. 					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2b Accurate MDR data in AFS	100%		12	14	85.7%
	3a2 Untimely entry of HPV determinations	0	0			
	3b1 Timely reporting of compliance monitoring MDRs	100%	83.3%	31	32	96.9%
	3b2 Timely reporting of stack test dates and results	100%	80.8%	15	15	100%
	Revised 3b2 Timely reporting of stack test dates and results	100%	80.8%	15	16	93.8%
	3b3 Timely reporting of enforcement MDRs	100%	77.9%	3	3	100%
<p>LRAPA response:</p> <ul style="list-style-type: none"> • Stack Test was entered into ICIS but was late. (LRAPA believed the requirement to be 180 days but is in fact, 120 days from the test date). LRAPA will be more timely with review and entry into ICIS. • LRAPA entered this data into AFS timely but for reasons unknown it appears the data did not transfer over from AFS into ICIS. LRAPA is currently working with Region 10 and EPA HQs to determine what went wrong and how to get it fixed. • LRAPA failed to pull the correct Title V annual certification but has since emailed it to EPA. LRAPA will take better care to pull all the files for future EPA reviews. 						
Recommendation						

CAA Element 2 — Inspections

Finding	Meets or Exceeds Expectations					
Summary	LRAPA does an excellent job at documenting FCE elements. Compliance monitoring reports are well organized and easy to locate in the source files.					
Explanation	All of the metrics that comprise this element adequately meet the national goal.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	5a FCE coverage: majors and mega-sites	100%	85.7%	10	10	100%
	5b FCE coverage: SM-80s	100%	91.7%	3	3	100%
	5e Review of Title V annual compliance certifications	100%	78.8%	17	18	94.4%
	6a Documentation of FCE elements	100%		14	14	100%
	6b Compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance	100%		14	14	100%
LRAPA Response:	LRAPA will continue with the current procedures.					
Recommendation						

CAA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations																								
Summary	LRAPA makes accurate compliance and HPV determinations.																								
Explanation	No discrepancies or other deficiencies were identified in any of the 14 source files that were reviewed against metrics 7a, 8a and 8c.																								
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>7a Accuracy of compliance determinations</td> <td>100%</td> <td></td> <td>14</td> <td>14</td> <td>100%</td> </tr> <tr> <td>8a HPV discovery rate at majors</td> <td></td> <td>3.1%</td> <td>0</td> <td>18</td> <td></td> </tr> <tr> <td>8c Accuracy of HPV determinations</td> <td>100%</td> <td></td> <td>1</td> <td>1</td> <td>100%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	7a Accuracy of compliance determinations	100%		14	14	100%	8a HPV discovery rate at majors		3.1%	0	18		8c Accuracy of HPV determinations	100%		1	1	100%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																				
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8a HPV discovery rate at majors		3.1%	0	18																					
8c Accuracy of HPV determinations	100%		1	1	100%																				
LRAPA response	LRAPA will continue with the current procedures.																								
Recommendation																									

CAA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations					
Summary	LRAPA uses formal enforcement responses that include corrective actions that return facilities to compliance in a specified timeframe. LRAPA’s response to HPV violations are well documented and appropriate.					
Explanation	No discrepancies or deficiencies were identified in the 2 files reviewed against metrics 9a and 10b. Metric 10a was correct in ICIS, but not in ECHO; a revised metric is included.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe	100%		1	1	100%
	10a Timely action taken to address HPVs		73.2%	0	0	
	Revised 10a Timely action taken to address HPVs		73.2%	1	1	100%
	10b Appropriate enforcement responses for HPVs	100%		1	1	100%
LRAPA response	LRAPA will continue with the current procedures.					
Recommendation						

CAA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations					
Summary	LRAPA’s penalty calculations include both gravity and economic benefit components. Penalties collected by LRAPA were documented appropriately and located in the source file.					
Explanation	No discrepancies or deficiencies were identified in the source files that were reviewed against metrics 11a, 12a and 12b.					
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%		1	1	100%
	12a Documentation on difference between initial and final penalty	100%		0	0	
	12b Penalties collected	100%		1	1	100%
LRAPA response	LRAPA will continue with the current procedures.					
Recommendation						

Resource Conservation and Recovery Act Findings

RCRA Element 1 — Data																																																												
Finding 1-1	Area for State Improvement																																																											
Summary	A high data error rate was found, which impacted multiple metrics and misrepresented state program status for 2013 and 2014.																																																											
Explanation	<p><u>Metric 2b</u>: More than half of the files reviewed had data errors. The types of errors included such things as:</p> <ul style="list-style-type: none"> inspection types were miscoded CEI when the report indicated FCI or NRR; enforcement orders and penalties were missing or wrong data were entered into the database. <p><u>Metric 8a</u>: Three files designated SNC violators but no SNY data was entered. Metrics 8a, 8b and 10a all rely upon accurate entry of SNY data for program evaluation.</p>																																																											
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>2a Long-standing secondary violators</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>2b Complete and accurate entry of mandatory data</td> <td>100%</td> <td></td> <td>14</td> <td>30</td> <td>46.7%</td> </tr> <tr> <td>5a Two-year inspection coverage for operating TSDFs</td> <td>100%</td> <td>88.4%</td> <td>4</td> <td>4</td> <td>100%</td> </tr> <tr> <td>5b Annual inspection coverage for LQGs</td> <td>20%</td> <td>20.1%</td> <td>48</td> <td>181</td> <td>26.5%</td> </tr> <tr> <td>5c Five-year inspection coverage for LQGs</td> <td>100%</td> <td>67.1%</td> <td>147</td> <td>181</td> <td>81.2%</td> </tr> <tr> <td>7b Violations found during inspections</td> <td></td> <td>36.7%</td> <td>69</td> <td>152</td> <td>45.4%</td> </tr> <tr> <td>8a SNC identification rate</td> <td></td> <td>2.0%</td> <td>0</td> <td>152</td> <td>0</td> </tr> <tr> <td>10a Timely enforcement taken to address SNC</td> <td>80%</td> <td>84.3%</td> <td>0</td> <td>1</td> <td>0</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2a Long-standing secondary violators						2b Complete and accurate entry of mandatory data	100%		14	30	46.7%	5a Two-year inspection coverage for operating TSDFs	100%	88.4%	4	4	100%	5b Annual inspection coverage for LQGs	20%	20.1%	48	181	26.5%	5c Five-year inspection coverage for LQGs	100%	67.1%	147	181	81.2%	7b Violations found during inspections		36.7%	69	152	45.4%	8a SNC identification rate		2.0%	0	152	0	10a Timely enforcement taken to address SNC	80%	84.3%	0	1	0
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																																																							
2a Long-standing secondary violators																																																												
2b Complete and accurate entry of mandatory data	100%		14	30	46.7%																																																							
5a Two-year inspection coverage for operating TSDFs	100%	88.4%	4	4	100%																																																							
5b Annual inspection coverage for LQGs	20%	20.1%	48	181	26.5%																																																							
5c Five-year inspection coverage for LQGs	100%	67.1%	147	181	81.2%																																																							
7b Violations found during inspections		36.7%	69	152	45.4%																																																							
8a SNC identification rate		2.0%	0	152	0																																																							
10a Timely enforcement taken to address SNC	80%	84.3%	0	1	0																																																							
State response	<p><u>Metric 2b</u>: At the time relevant to the audit, ODEQ transitioned to two new systems: Central Entity Management (CEM) and Agency Wide Compliance and Enforcement System (ACES). As the first program to use the new systems, Hazardous Waste identified many errors in data. ODEQ resolved those errors as part of the migration and recently developed staff guidance and training for entering data into the two systems.</p> <p>ODEQ conducts periodic quality assurance and quality control reviews throughout the year to correct manual data entry errors in RCRAInfo. ODEQ intends to also implement a quality assurance and quality control</p>																																																											

process to verify paper files match the ACES formal enforcement information. The Hazardous Waste program is nearing final deployment of translating compliance, monitoring and enforcement data to RCRAInfo through the Exchange Network (EN) Open Node 2. This will improve data quality by automatically sending all data including former, manually-entered formal enforcement data directly from ACES into RCRAInfo via the EN Node. This will eliminate manual entry errors. ODEQ did not include self-reported violations and EEO penalties in the flat file translations. However, once deployment is complete, the new module will translate self-disclosures and EEO penalties through the EN Node. Additionally, ODEQ created guidance for staff as to which RCRAInfo entries in ACES map to FCI's versus CEI's. Staff will now use an ACES entry that maps to FCI when completing focused compliance inspections at TSDFs.

Metric 8a: ODEQ addresses this response in Element 3: 8a.

Recommendation

A new process for manual data entry of compliance and enforcement data needs to be implemented ASAP that ensures activities are properly coded and input into the database. Once ODEQ's new information management system is operational, ODEQ will need to ensure that data are accurately entered into RCRAInfo. ODEQ must implement a process to ensure that all FFY 2016 compliance and enforcement data are accurately entered into RCRAInfo in time to be accurately portrayed in national ECHO reports and web pages in early FFY 2017.

RCRA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations					
Summary	Data metrics exceeded national averages with 100% coverage of TSDFs and very good coverage of LQGs.					
Explanation	ODEQ attained 100% inspection coverage of TSDFs in Oregon. ODEQ aims for higher inspection coverage of LQGs than EPA’s guidance of 20% coverage per year and succeeded by inspecting 26.5% of its LQGs (metric 5b). ODEQ collects annual generator reports, as compared with EPA’s biennial generator reports, and thereby updates its universe of LQGs more frequently than EPA’s biennial reports.					
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%	88.4%	4	4	100%
	5b Annual inspection coverage of LQGs	20%	20.1%	48	181	26.5%
	5c Five-year inspection coverage of LQGs	100%	67.1%	147	181	81.2%
State response						
Recommendation						

RCRA Element 2 — Inspections

Finding 2-2	Area for State Improvement																		
Summary	File metrics indicated that report quality needs to be more consistent and reports need to include better documentation of the actual evidence behind finding a violation.																		
Explanation	<u>Metric 6a</u> : Eight inspection reports needed improvement. Four of the inspection reports failed to meet the criteria and EPA considers that in four other reports the evidence was insufficient for the ODEQ to prevail if the Respondent had challenged the findings. Improvement is needed to consistently report observations in third person prose, document evidence rather than state conclusions, add photo verification and link photos to the report text, accurately describe photos, and provide other supporting documentation as appropriate.																		
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>6a Inspection reports complete and sufficient to determine compliance</td> <td>100%</td> <td></td> <td>22</td> <td>30</td> <td>73.3%</td> </tr> <tr> <td>6b Timeliness of inspection report completion</td> <td>100%</td> <td></td> <td>27</td> <td>30</td> <td>90%</td> </tr> </tbody> </table>	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%		22	30	73.3%	6b Timeliness of inspection report completion	100%		27	30	90%
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%		22	30	73.3%														
6b Timeliness of inspection report completion	100%		27	30	90%														
State response	Through its Kaizen process that EPA participated in, ODEQ developed an inspection report template and WL, EEO, and PEN templates. In addition, ODEQ developed a specific Hazardous Waste Field Manual that lays out specific procedures for inspections, inspection reports, and enforcement procedures. ODEQ inspectors also use LQG and SQG inspection checklists to document evidence of violations and observations. ODEQ considers that periodic refresher training on these existing tools will address the concerns EPA notes.																		
Recommendation	Conduct refresher training on ODEQ's developed tools and provide EPA one LQG or TSD inspection report from each region for EPA's review and comment no later than September 30, 2017.																		

RCRA Element 3 — Violations

Finding 3-1	Area for State Improvement																																															
Summary	<p>In the previous SRF review based on 2010 data, EPA found that ODEQ was not accurately identifying significant non-compliance (SNC) violations. After responding with a brief rise, ODEQ’s SNC designations declined to zero in 2014.* EPA reviewed six files that met SNC criteria that were not designated in 2014 in addition to the three that were designated but not entered in RCRAInfo (see Element 1). Several of the facilities that EPA considers should have been SNCs appeared to be cases of illegal storage (a Class 1 violation) instead of the Class 2 generator accumulation violations that were cited.</p>																																															
Explanation	<p><u>Metric 7a</u>: Five files with inaccurate compliance determinations were identified and several others were found to have insufficient evidence if the facility had challenged the ODEQ. For example, not all inspection reports, warning letters and pre-enforcement notices consistently cited the state OAR, and often adequate evidence supporting each violation was not available.</p> <p><u>Metric 8a</u>: There were no SNC designations entered in RCRAInfo for the 69 violators identified in 2014 inspections.</p> <p><u>Metric 8b</u>: The one SNC determination made in 2014 was 483 days after day zero, 10/04/2012. This case was a difficult case that took a long time to sort out. Though not timely, an appropriate determination was made. EPA policy allows for up to 10% of cases to be outside the goal range in such instances.</p> <p><u>Metric 8c</u>: There were six violators with State Class 1 violations that met at least one of the ERP SNC criteria but were not designated as SNC. For several of these, documentation in the files indicated that the facilities had “accumulated” hazardous waste for several months. In one case, this accumulation was for approximately a year. Such extensive “accumulation” should be considered <u>storage</u> of hazardous waste (in these cases, storage without a permit) resulting in a Class I violation and the facility should also be designated SNC.</p>																																															
Relevant metrics	<table border="1"> <thead> <tr> <th data-bbox="448 1520 1019 1612">Metric ID Number and Description</th> <th data-bbox="1019 1520 1105 1612">Natl Goal</th> <th data-bbox="1105 1520 1192 1612">Natl Avg</th> <th data-bbox="1192 1520 1278 1612">State N</th> <th data-bbox="1278 1520 1364 1612">State D</th> <th data-bbox="1364 1520 1435 1612">State % or #</th> </tr> </thead> <tbody> <tr> <td data-bbox="448 1612 1019 1661">2a Long-standing secondary violators</td> <td data-bbox="1019 1612 1105 1661"></td> <td data-bbox="1105 1612 1192 1661"></td> <td data-bbox="1192 1612 1278 1661"></td> <td data-bbox="1278 1612 1364 1661"></td> <td data-bbox="1364 1612 1435 1661"></td> </tr> <tr> <td data-bbox="448 1661 1019 1709">7a Accurate compliance determinations</td> <td data-bbox="1019 1661 1105 1709">100%</td> <td data-bbox="1105 1661 1192 1709"></td> <td data-bbox="1192 1661 1278 1709">25</td> <td data-bbox="1278 1661 1364 1709">30</td> <td data-bbox="1364 1661 1435 1709">83.3%</td> </tr> <tr> <td data-bbox="448 1709 1019 1757">7b Violations found during inspections</td> <td data-bbox="1019 1709 1105 1757"></td> <td data-bbox="1105 1709 1192 1757">36.7%</td> <td data-bbox="1192 1709 1278 1757">69</td> <td data-bbox="1278 1709 1364 1757">152</td> <td data-bbox="1364 1709 1435 1757">45.4%</td> </tr> <tr> <td data-bbox="448 1757 1019 1806">8a SNC identification rate</td> <td data-bbox="1019 1757 1105 1806"></td> <td data-bbox="1105 1757 1192 1806">2.0%</td> <td data-bbox="1192 1757 1278 1806">0</td> <td data-bbox="1278 1757 1364 1806">152</td> <td data-bbox="1364 1757 1435 1806">0</td> </tr> <tr> <td data-bbox="448 1806 1019 1854">8b Timeliness of SNC determinations</td> <td data-bbox="1019 1806 1105 1854">100%</td> <td data-bbox="1105 1806 1192 1854">85.2%</td> <td data-bbox="1192 1806 1278 1854">0</td> <td data-bbox="1278 1806 1364 1854">1</td> <td data-bbox="1364 1806 1435 1854">0</td> </tr> <tr> <td data-bbox="448 1854 1019 1896">8c Appropriate SNC determinations</td> <td data-bbox="1019 1854 1105 1896">100%</td> <td data-bbox="1105 1854 1192 1896"></td> <td data-bbox="1192 1854 1278 1896">22</td> <td data-bbox="1278 1854 1364 1896">28</td> <td data-bbox="1364 1854 1435 1896">78.6%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2a Long-standing secondary violators						7a Accurate compliance determinations	100%		25	30	83.3%	7b Violations found during inspections		36.7%	69	152	45.4%	8a SNC identification rate		2.0%	0	152	0	8b Timeliness of SNC determinations	100%	85.2%	0	1	0	8c Appropriate SNC determinations	100%		22	28	78.6%
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State response

Metric 7a: ODEQ refers to EPA’s Code of Federal Regulations (CFR) for many violations that DEQ has adopted in Oregon Administrative Rules by reference², unless there is a specific OAR reference for the violation or a state-only requirement. When ODEQ inspectors identify violations, inspectors determine the appropriate enforcement response following ODEQ’s enforcement guidance and OAR 340, Division 12. ODEQ managers review Warning Letters (WLs), Pre-enforcement Notices (PENs) and Expedited Enforcement Offers (EEOs). In addition, Oregon’s Office of Compliance and Enforcement provides feedback on EEOs and develops penalty orders to address the identified violations cited in PENs. If OCE and the program concur, OCE may cite a more relevant citation in the penalty order rather than the citation noted in the PEN. DEQ also provides opportunity for the generator to provide additional information or feedback throughout the process. DEQ has modified WLs, PENs and penalty orders based on relevant information provided by the generator. DEQ considers the final penalty order to be the final documentation of violation(s). DEQ considers these processes to be sufficient to document violations with ample evidence to support the ultimate determinations ODEQ makes.

Metric 8a: In the Summary section, EPA states there were zero SNCs for 2014 but later states three were designated SNCs (but not entered into RCRAInfo). ODEQ has corrected RCRAInfo to reflect these SNCs. ODEQ applies the SNC evaluation for cases referred for penalty and that meet established SNC criteria. According to ODEQ rules and enforcement guidance, not all Class 1 violations are referred for penalty. Not all class 1 violations match the SNC criteria. ODEQ has criteria in the enforcement guidance that identifies when a Class 1 or Class 2 violation is appropriate and follows that guidance and DEQ rules. ODEQ performs a SNC evaluation on formal enforcement actions (i.e. PENs, EEOs and not WLs) using the SNC criteria. DEQ considers the current rules, enforcement guidance and review procedures to be sufficient to correctly identify Class 1 or Class 2 violations. DEQ will reinforce the review and application of SNC criteria in the enforcement referral process. If EPA has applied the SNC criteria to those cases not referred for penalty ODEQ does not agree that these are subject to SNC evaluation or that the State SNC percentage is accurate. ODEQ will review the three SNCs identified to determine if they should be added into RCRAInfo.

Metric 8b: No response.

² OAR 340-100-0001 (3) OAR chapter 340, divisions 100 to 106, 109, 111, 113, 120, 124 and 142 incorporate by reference, hazardous waste management regulations of the federal program, included in 40 C.F.R. Parts 260 to 268, 270, 273 and Subpart A and Subpart B of Part 124, into Oregon Administrative Rules. Therefore, a person must consult these parts of 40 C.F.R. in addition to OAR chapter 340, divisions 100 to 106, 109, 111, 113, 120, 124 and 142, to determine all applicable hazardous waste management requirements

Metric 8c: ODEQ uses criteria identified in Internal Management Directive (IMD) 140.001.2012 for SNC determinations. The class of violation is not a determining factor in the SNC designation. In this IMD, criteria include: Cause actual exposure or a substantial likelihood of exposure to hazardous waste; flagrant or willful actions; chronic or recalcitrant; and, violations that deviate substantially from the terms of a permit, order, etc.

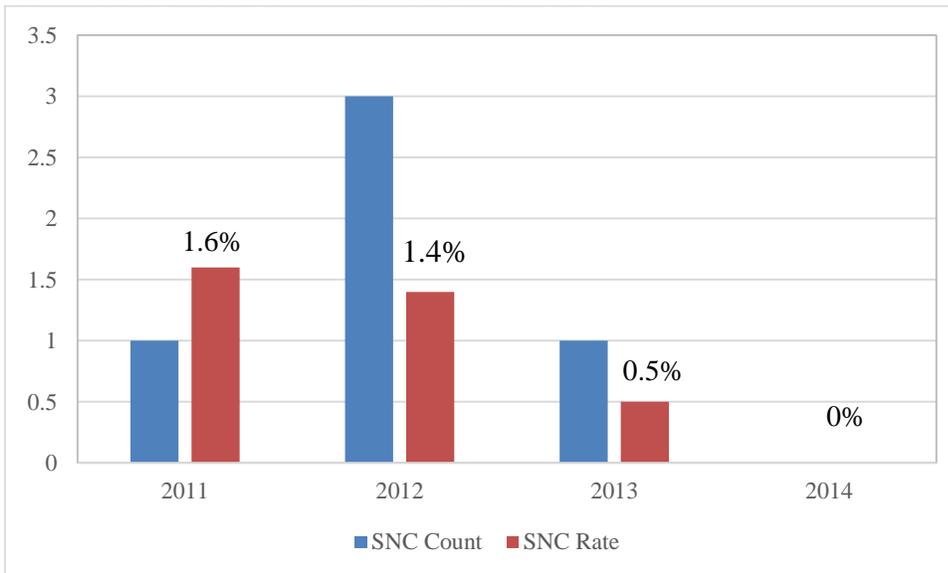
ODEQ will implement the following actions in an effort to help inspectors and OCE make the appropriate SNC determinations:

- ODEQ’s penalty matrix uses many of the same criteria to determine the penalty as found in the SNC IMD. ODEQ will use the penalty matrix results as a comparison to the SNC determination results. This will provide an opportunity for the Office of Compliance and Enforcement staff assigned to the case to verify SNC designation.
- ODEQ’s SNC IMD Appendix B, Hazardous Waste Management, Criteria for Applying Factors to Determine Significant Non-Complier Status, was updated after last SRF review to include additional SNC information. ODEQ also updated the enforcement referral templates to provide more detailed questions regarding the SNC criteria; however, the old template was not replaced in one location and some staff continued to use the older version. ODEQ has now corrected this by: 1) Replacing the outdated template with the newest version; 2) Providing a copy of the referral form to managers; and 3) Continue to encourage staff to use the recently-updated template.
- ODEQ will provide training to inspectors to implement these changes.

Within Metric 8c, EPA’s comment stated “extensive accumulation should be considered storage without a permit resulting in a Class I violation and the facility should also be designated SNC.” ODEQ believes that exceeding the generator accumulation limits alone do not constitute operation of a TSD facility without a permit, just as illegal treatment and or disposal do not warrant citing operating a TSD facility without a permit. Generally, unless a facility is taking waste generated offsite, DEQ will classify this violation as Class II [accumulating hazardous waste more than 30 days beyond the applicable time limit (OAR 340-012-0068(2)(d))] or Class III [accumulating hazardous waste up to 30 days beyond the applicable time limit (OAR 340-012-0068(3)(a))], rather than the Class I violation for operating without a permit. ODEQ will review how inspectors and managers make the distinction between Class I and Class II violations. ODEQ will review and clarify if additional guidance is needed for waste accumulation violations on when a generator has exceeded accumulation timelines versus when a generator becomes an illegally operated TSD

	without a permit taking into account recurrence, volume, quantity or hazard.
Recommendation	<p>ODEQ regional offices need to complete the full State evaluation criteria with every referral. Consider that Class 1 violations closely match the criteria and should have a bias toward SNC designation. Enforcement referral forms need to be copied to the ODEQ data managers for careful attention to RCRAInfo data entry of SNC.</p> <p>Guidelines of when to apply Class 1 or Class 2 violation category (for example, to cases of long term accumulation/storage) need to be developed by ODEQ, submitted to EPA, and agreed/disagreed with by EPA no later than September, 2017. If EPA disagrees with the adequacy of the guidelines, the two agencies will set up a process to resolve differences.</p> <p>For all enforcement cases a process must be put into place in which the manager signs that the proper Class 1 or Class 2 and SNC determinations have been made, consistent with the developed policy.</p>

***Data Metric Trend: 8a SNC identification rate**



RCRA Element 4 — Enforcement

Finding 4-1 Meets or Exceeds Expectations

Summary ODEQ used enforcement effectively to return violators to compliance. All State Class 1 violations as defined in OAR Division 12 are referred to formal enforcement.

Explanation
Metric 10a: Only one violator was designated as SNC. This designation was 483 days after inspection, but enforcement was taken 74 days after SNC date. This was an anomaly in ODEQ’s usual practices.
Metric 10b: Formal enforcement cases were completed for state Class 1 violations even though SNC designations were not made and not tracked in RCRAInfo.

Relevant metrics	Metric ID Number and Description	Natl	Natl	State	State	State
		Goal	Avg	N	D	% or #
	9a Enforcement that returns violators to compliance	100%		24	26	92.3%
	10a Timely enforcement taken to address SNC	80%	84.3%	0	1	0
	10b Appropriate enforcement taken to address violations	100%		27	28	96.4%

State response

Recommendation

RCRA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations					
Summary	Penalties were consistent with State regulations and well-documented.					
Explanation	<p><u>Metric 11a</u>: All but one formal enforcement case included narrative that addressed ODEQ penalty class, magnitude and gravity criteria, and economic benefit.</p> <p><u>Metric 12a</u>: Rationale was included in final orders with details of changes in penalty calculation factors based on contested case negotiations.</p> <p><u>Metric 12b</u>: Enforcement case files included documentation of receipts for cash and payments to SEP beneficiaries.</p>					
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%		15	16	93.8%
	12a Documentation on difference between initial and final penalty	100%		10	10	100%
	12b Penalties collected	100%		12	12	100%
State response						
Recommendation						