

**Review of the
North Dakota Department of Health
Environmental Health Section
Enforcement Programs
Using the OECA/ECOS State Review Framework (SRF)**

Fiscal Year 2008

October 15, 2009

FINAL

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I. EXECUTIVE SUMMARY

The State Review Framework (SRF) is a program designed to ensure EPA conducts oversight of state and EPA direct implementation, compliance and enforcement programs in a nationally consistent and efficient manner. Reviews look at 12 program elements covering: data (completeness, timeliness, and quality); inspections (coverage and quality); identification of violations, enforcement actions (appropriateness and timeliness); and, penalties (calculation, assessment and collection). Reviews address implementation of the RCRA Subtitle C, CWA NPDES, and CAA Stationary Source enforcement programs. Reviews are conducted in three phases: analyzing information from the national data systems; reviewing a limited set of state files; and development of findings and recommendations. Considerable consultation is built into the process, to ensure EPA and the state understand the causes of issues, and to seek agreement on identifying the actions needed to address problems. The Reports generated by the reviews are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. The reports are designed to provide factual information and do not make determinations of program adequacy. EPA also uses the information in the reports to draw a “national picture” of enforcement and compliance, and to identify any issues that require a national response. Reports are not used to compare or rank state programs.

A. MAJOR STATE PRIORITIES AND ACOMPLISHMENTS

- **Priorities:**

According to its website, the Environmental Health Section's priorities include:

- Implementing strategies to address environmental impacts associated with new developments
- Administering a state hazardous waste management program
- Administering a water quality management program for cleaning up targeted lakes and rivers
- Protecting groundwater and drinking water aquifers
- Controlling air, radiation and solid waste pollution

- **Accomplishments:**

- **CAA** - North Dakota showed excellent work in the penalty documentation process and the files reviewed included the rationale for any differences between initial penalties and final penalty settlements. The State also

exceeded the national average for inspection coverage in all categories.

- **CWA** - North Dakota provided compliance assistance to 9 Municipal Separate Storm Sewer Systems (MS4), and provided compliance assistance workshops, training sessions and/or presentations for AFO/CAFO operators and Agricultural organizations in Fiscal Year 2008. Also, of note, the Department does not have a permit backlog.
- **RCRA** - North Dakota routinely provides compliance assistance to all RCRA facilities in the form of training and community outreach, contributing to a high compliance rate. Citizen complaints are generally investigated within weeks of the complaint, with a detailed written report provided by the Agency.
- **Element 13:** North Dakota has not submitted Element 13 information.

B. SUMMARY OF RESULTS

- North Dakota has three outstanding actions in the SRF Tracker from the Fiscal Year 2006 (Round 1) review, all for the CWA enforcement program. These actions are 1) failure to include inspection report cover letters in inspection files 2) need to improve documentation of and follow-up on potential stormwater violations, and 3) failure to escalate enforcement actions consistent with EMS. The State has made significant progress on the inclusion of inspection report cover letters in files; only CAFO inspection report cover letters were not found in files during the Round 2 review. The EMS has still not been finalized, and failure to escalate enforcement is still a significant issue.
- For the **Clean Air Act (CAA) enforcement program**, the review indicated that performance was good or that no issues were identified for the following review elements: Element 2 - Data Accuracy, Element 3 - Timeliness of Data Entry, Element 4 - Completion of Commitments, Element 5 - Inspection Coverage, Element 7 - Identification of Alleged Violations, Element 9 - Enforcement Actions Promote Return to Compliance, Element 10 - Timely and Appropriate Action, Element 12 - Final penalty assessment and collection. Element 12 - Final penalty assessment and collection was identified as an area of Good Practice. Areas for State Attention were identified as Element 1- Data completeness and Element 6 - Quality of Inspection or Compliance Evaluation Reports. Areas for State Improvement Requiring Recommendations were identified as follows:

- Element 8: Identification of SNC and HPV
 - a. Finding 8-1: State did not identify one HPV, and does not have a standard procedure to identify HPVs.
 - b. Recommendation 8-1: EPA and the State will work jointly to complete and implement a standard process to identify future HPVs.
- Element 11: Penalty Calculation Method
 - a. Finding 11-1: The State needs to include calculation of economic benefit in penalties.
 - b. Recommendation 11-1: The State will use the EPA model for calculating economic benefit (BEN) and forward penalty calculations to EPA for comment.
- For the **Clean Water Act (CWA) enforcement program**, the review indicated that performance was good or that no issues were identified for the following review elements: Element 1 - Data completeness, Element 2 - Data accuracy, Element 3 - Timeliness of data entry, Element 8 - Identification of SNC and HPV. Areas for State Attention were identified for the following review elements: Element 4 - Completion of commitments, and Element 5 - Inspection coverage. Areas for State Improvement Requiring Recommendations were identified as follows:
 - Element 6: Quality of Inspection or Compliance Evaluation Reports
 - a. Finding 6-1: Inspection reports for minor municipal facility inspections and stormwater inspections do not include all elements of Compliance Evaluation Inspections (CEIs). CAFO and stormwater inspections reports are consistently missing certain items (time, purpose of inspection, address, telephone number, facility description, information to support observations, etc.)
 - b. State Response: Information provided on the inspection reports in concert with the extensive data found in the file provide adequate information relating to the status of the facility and, as required, needed to determine compliance status or need to proceed with appropriate enforcement. EPA has been aware of the type and extent of inspection activities and the information collected for some time - and just now voice a concern. The information in a format being asked by EPA can be accomplished but it is acknowledged that the data has been available and accessible from Department files and by

providing the information in a different format does not increase or decrease the potential for enforcement action. The form of the inspection report and data collected during the inspection in the case of North Dakota becomes more a form of art and does not constitute a lack of program effectiveness.

- c. Recommendation 6-1: Improvements in inspection procedures, checklist and report completion will improve this metric finding. EPA will discuss with the State areas to improve its inspection reports to ensure they are both complete and sufficient to determine compliance status.
- o Element 7: Identification of Alleged Violations.
 - a. Finding 7-1: ND does not enter SEVs into PCS or the NDPDES database. ND does not evaluate violation trends (re-occurring violations) unless the major facility is in SNC in consecutive quarters. ND does not evaluate violation trends (re-occurring effluent violations) at minor facilities.
 - b. State Response: Due to the number and seasonal nature of many facilities, violation trends in North Dakota are speculative at best. Due to the amount of oversight and presence in the field, the Department is well aware of the types of potential violations and areas of emphasis that need to be part of compliance and educational outreach. We are not aware that reporting of minors is required pursuant to federal law, rather it is provided at the discretion of the state.
 - c. Recommendation 7-1: SEVs are required to be entered for major facilities (40 CFR Part 123.26). EPA also suggests SEVs be entered for minors. EPA emailed ND guidance documents outlining procedures for entering SEV violations into PCS. Improvements in DMR and records review will improve the evaluation of violation trends at majors (that are not SNC) and minors. ND should follow its draft EMS for the traditional core program. The EMS for the traditional core program shall be made final by 3/31/10. The EMS shall incorporate stormwater 6 months after the national stormwater EMS is finalized.
- o Element 9: Enforcement Actions Promote Return to Compliance
 - a. Finding 9-1: ND does not track compliance with the enforcement action or the facility's permit to ensure that the facility is back in

- compliance.
- b. State Response: Tracking of compliance is typically noted in the inspection reports and as required in consent agreements. The Department will emphasize the need to ensure that enforcement and program files emphasize continued and future compliance.
 - c. Recommendation 9-1: ND must track compliance at any facility under a consent agreement, and take the appropriate steps if additional noncompliance is found
- o Element 10: Timely and Appropriate Action
 - a. Finding 10-1: ND does not escalate enforcement when additional violations are found and does not collect suspended penalties.
 - b. State Response: Based upon the file reviews, EPA can not make a blanket statement that enforcement is not escalated or that suspended penalties are not collected as appropriate. The Department, as EPA has been aware, may suspend a portion of an enforcement action with the commitment by the violator to complete certain actions that will enhance the potential for future compliance (i.e., complete training for staff, etc.) and improve the environment. This action has proven to be an effective method in assuring compliance and cooperation with the regulated community. Collection of suspended penalties is pursued if the violator does not comply with the timelines or conditions of the consent agreement. As part of the PPA process and as agreed to by EPA and Department senior management, the state will share penalty calculations on potential enforcement actions of which EPA will provide a quick response. Due to the high compliance rate and the fact that EPA has insisted that they take the lead in enforcement on a select number of inspections; no enforcement actions have been identified by the state.
 - c. Recommendation 10-1: ND has agreed to share penalty calculations on potential enforcement actions with EPA, and EPA has agreed to provide comments in a timely fashion (7 days). To date, EPA has not received any actions for real-time review. EPA will continue to conduct NPDES inspections in ND and take the lead for any enforcement follow up related to those inspections
 - o Element 11: Penalty Calculation Method
 - a. Finding 11-1: Economic benefit was not considered in the 3

stormwater cases reviewed. EPA's review of the 3 cases indicates that economic benefit should have been considered in each case.

- b. State Response: This information will be provided to EPA for review. It is important to note that economic benefit for the wet weather facilities is of limited amount to the regulated community in the state (i.e., silt fencing, etc.) and does not constitute a major portion of any penalty calculation.
- c. Recommendation 11-1: The State should evaluate each case to determine if the economic benefit of noncompliance would be so minimal it does not need to be considered. EPA recommends using the BEN model to determine economic benefit. The State also needs to document in the file that the case was evaluated for economic benefit.
- o Element 12: Final Penalty Assessment and Collection
 - a. Finding 12-1: The State's files did not document the difference between initial and final penalties. The files did document the final penalty collected.
 - b. State Response: As noted in previous comment, will provide in the future.
 - c. Recommendation 12-1: The State should improve its documentation on the differences between initial and final penalties assessed and collected.
- For the **Resource Conservation and Recovery Act (RCRA) enforcement program**, the review indicated that performance was good or that no issues were identified for the following review elements: Element 1 - Data Completeness, Element 2 - Data Accuracy, Element 3 - Timeliness of Data Entry, Element 4 - Completion of Commitments, Element 5 - Inspection Coverage, Element 6 - Quality of inspection or compliance evaluation reports, Element 7 - Identification of Alleged Violations, Element 8 - Identification of SNC and HPV, Element 9 - Enforcement actions promote return to compliance, Element 10 - Timely and appropriate action, Element 11 - Penalty calculation method, Element 12 - Final penalty assessment and collection. There were no Areas for State Attention or Areas for State Improvement Requiring Recommendations identified for the RCRA program.

C. SIGNIFICANT CROSS-MEDIA FINDINGS AND RECOMMENDATIONS

- Quality of Inspection or Compliance Evaluation Reports – This is an issue across two programs at NDDH. CAA and CWA reports are missing required information.
- Penalty Calculation and Documentation – This is an issue with NDDH’s CAA and CWA programs. Neither program addresses or calculates economic benefit of noncompliance when calculating penalties. EPA recommends that each program use the BEN model to address this issue.

II. BACKGROUND INFORMATION

ON STATE PROGRAM AND REVIEW PROCESS

[Information for this section has been obtained from available sources (web-sites, PPAs, etc.). Information has been requested from the State but has not yet been provided. An opportunity to supplement the information will be provided when the draft report is sent to the State for review.]

A. GENERAL PROGRAM OVERVIEW

- **Agency Structure:** The Environmental Health Section is one of seven sections in the North Dakota Department of Health. The goal of the Environmental Health Section is to safeguard the quality of North Dakota's air, land and water resources. The section deals with issues that affect the comfort, health, safety and well-being of North Dakota citizens and their environment. Primary functions and responsibilities include coordinating communications with the U.S. Environmental Protection Agency (EPA) regarding state programs and related environmental issues, monitoring and enforcing compliance with state and federal environmental laws, and carrying out environmental chemistry analyses.
- **Compliance/Enforcement Program Structure:** The Environmental Health Section is decentralized, with the CAA, CWA and RCRA programs in three different divisions. The Department escalates the need for “compliance” and does not always show an escalated need for “enforcement.” Enforcement is escalated based on the environmental/public health impact of the violation, cooperation of violator, and whether the violation was a willful act. The Department continues to concentrate on compliance rates and not enforcement rates.
- **Roles and responsibilities:** The North Dakota Department of Health works with the North Dakota Attorney General’s Office on enforcement actions as needed. Each Division/program implements a compliance assistance/inspection program pursuant to the legal authority provided under the federal and state rules/laws associated with the CWA, CAA and RCRA.
- **Local Agencies included/excluded from review:** No local agencies are delegated to conduct work in the programs under the SRF.

- **Resources:**
 - The NDDH is dependent upon federal funds and to a lesser extent general funds and fees to administer RCRA, Water Pollution 106 and Air Pollution 105 federal programs in the state. Funding has been fairly level for several years; creating program implementation challenges as the NDDH's operating expenses (salaries, fringe, travel, indirect costs, etc.) and workload has increased.
- **Staffing/Training:**
 - Training is provided as needed and as required by EPA to maintain competency of staff.
- **Data reporting systems/architecture:**
 - **CAA** - North Dakota uses a state database for air data, and upload to EPA's AFS database using monthly batch uploads.
 - **CWA** - North Dakota uses one database for managing their NPDES program. The database called, NDPDES, is used for tracking all NPDES inspections and DMRs and can be uploaded to PCS.
 - **RCRA** -North Dakota uses RCRAInfo to manage data related to implementation of the RCRA program.

B. MAJOR STATE PRIORITIES AND ACOMPLISHMENTS

- **Priorities:**

CAA

The Division of Air Quality is responsible for administering programs to achieve the public policy established in the State's Air Pollution Control Law. The intent of such policy is to achieve and maintain the best air quality possible, consistent with the best available control technology, to protect human health, welfare, and property, to prevent injury to plant and animal life, to promote the economic and social development of this state, to foster the comfort and convenience of the people, and to facilitate the enjoyment of the natural attraction of the state. Major activities of the air program include reviewing and issuing permits to sources of air pollution, conducting annual compliance inspections of major and minor sources of air pollution, investigating complaints of air pollution, operating a state-wide ambient air quality monitoring network and overseeing industrial air quality monitoring programs. The air quality monitoring network provides data that demonstrates that North Dakota's ambient air is better than required by the North Dakota

and Federal Ambient Air Quality Standards. The concentrations of all criteria pollutants are well below federal standards making North Dakota one of only a handful of states that are considered attainment with all National Ambient Air Quality Standards (NAAQS).

CWA

The North Dakota Pollutant Discharge Elimination System (NDPDES) permit program regulates the release of wastewater and stormwater from point sources into waters of the state. There are approximately 2,600 permitted facilities in this state; and of this number, approximately 1,470 are for stormwater discharges. A focus of the Stormwater Program since its inception has been the education of the regulated community on the applicability of permits and on maintaining compliance with them. The Department has obtained pretreatment program delegation. The NDDH has two other programs to further the reduction of pollution. Under the CAFO Program, waste disposal systems for a majority of all animal feeding operations within North Dakota are reviewed and approved by the Department. There are approximately 650 such approved systems. Also, of note, the Department does not have a permit backlog.

RCRA

The Hazardous Waste Program regulates facilities that generate, store, treat, dispose or transport hazardous waste. The major program priorities for the Hazardous Waste Program are pollution prevention/waste minimization, compliance assistance, safe waste management and corrective action. The Program staff are knowledgeable in all areas of the Hazardous Waste Program and are involved with waste minimization, pollution prevention, permitting, corrective action, inspections and compliance assistance.

- **Accomplishments:** State accomplishments are identified in section I.A. of the Executive Summary.
- **Element 13:** North Dakota has not submitted Element 13 information.

C. PROCESS FOR SRF REVIEW

The following are the key steps in the review process and related information:

- **Review Period:** Fiscal Year 2008
- **Key Dates:** Kick-off letter mailed February 9, 2009, data pull/PDA January 30,

2009, on-site review: CAA May 18, 2009; CWA Exit Meeting May 22, 2009; RCRA June ,2009; Draft Report sent to state (will share with State after OECA comments incorporated).

- **Communication with the State:** Communications with the State have occurred by letter (e.g kick-off letter), conference call (e.g. kick-off meetings, file review exit meetings, follow-up discussions with staff/managers), and e-mail (e.g PDA transmittal, file selection list transmittal, etc.) The final report will be mailed to the State Environmental Director. This will be followed by a meeting between EPA and the State.
- **List state and regional lead contacts for review.** North Dakota contacts for the SRF are Dave Glatt and Teri Lunde. The Region 8 SRF Coordinator is Corbin Darling. Region 8 program staff, who performed on-site reviews, and data and file metric analysis are Joshua Rickard, CAA; Amy Clark, CWA; and, Phillipe Pierre-Louis, RCRA.

III. STATUS OF OUTSTANDING RECOMMENDATIONS FROM PREVIOUS REVIEWS

During the first SRF review of North Dakota’s compliance and enforcement programs, Region 8 and North Dakota identified a number of actions to be taken to address issues found during the review. The table below shows the actions that have not been completed at the time of the current SRF review. (Appendix A contains a comprehensive list of completed and outstanding actions for reference).

State		Status	Due Date	Media	Title	Finding	Element
ND - Round 1 □C0	Total:	Working	9/30/2009	CWA	Improve documentation of and follow-up on potential stormwater violations.	Stormwater inspection report areas of concern were identified.	Violations ID'ed Appropriately
ND - Round 1 □C0	Total:	Working	9/30/2009	CWA	Include inspection report cover letters in inspection files.	The timeliness of 8 inspection reports could not be established because it appeared that the cover letter that was sent with the inspection report was not maintained in the inspection file.	Violations ID'ed Timely
ND - Round 1 □C0	Total:	Working	9/30/2009	CWA	Escalate enforcement consistent with EMS; finalize stormwater EMS.	EPA believes that the lack of formal enforcement actions against storm water sites in non-compliance is inadequate.	Timely & Appropriate Actions

IV. FINDINGS

Findings represent the Region’s conclusions regarding the issue identified. Findings are based on the Initial Findings identified during the data or file review, as well as from follow-up conversations or additional information collected to determine the severity and root causes of the issue. There are four types of findings, which are described below:

Finding	Description
Good Practice	This describes activities, processes, or policies that the SRF data metrics and/or the file reviews show are being implemented exceptionally well and which the State is expected to maintain at a high level of performance. Additionally, the report may single out specific innovative and noteworthy activities, process, or policies that have the potential to be replicated by other States and that can be highlighted as a practice for other states to emulate. No further action is required by either EPA or the State.
Meets SRF Program Requirements	This indicates that no issues were identified under this Element.
Areas for State* Attention *Or, EPA Region’s attention where program is directly implemented.	This describes activities, processes, or policies that the SRF data metrics and/or the file reviews show are being implemented with minor deficiencies that the State needs to pay attention to strengthen its performance, but are not significant enough to require the region to identify and track state actions to correct. This can describe a situation where a State is implementing either EPA or State policy in a manner that requires self-correction to resolve concerns identified during the review. These are single or infrequent instances that do not constitute a pattern of deficiencies or a significant problem. These are minor issues that the State should self-correct without additional EPA oversight. However, the State is expected to improve and maintain a high level of performance.
Areas for State * Improvement – Recommendations Required *Or, EPA Region’s attention where program is directly implemented.	This describes activities, processes, or policies that the metrics and/or the file reviews show are being implemented by the state that have significant problems that need to be addressed and that require follow-up EPA oversight. This can describe a situation where a state is implementing either EPA or State policy in a manner requiring EPA attention. For example, these would be areas where the metrics indicate that the State is not meeting its commitments, there is a pattern of incorrect implementation in updating compliance data in the data systems, there are incomplete or incorrect inspection reports, and/or there is ineffective enforcement response. These would be significant issues and not merely random occurrences. Recommendations are required for these problems that will have well defined timelines and milestones for completion. Recommendations will be monitored in the SRF Tracker.

Clean Air Act Program

Review elements where SRF program requirements are being met with no issues identified are:

- Element 2 - Data Accuracy
- Element 3 - Timeliness of Data Entry
- Element 4 - Completion of Commitments
- Element 5 - Inspection Coverage
- Element 7 - Identification of Alleged Violations
- Element 9 - Enforcement Actions Promote Return to Compliance
- Element 10 - Timely and Appropriate Action
- Element 12 - Final penalty assessment and collection

Review element findings are as follows:

Element 1 Data Completeness. Degree to which the Minimum Data Requirements are complete.	
1-1	<p>Is this finding a(n) (select one):</p> <p><input type="checkbox"/> Good Practice</p> <p><input type="checkbox"/> Meets SRF Program Requirements</p> <p><input checked="" type="checkbox"/> Area for State Attention</p> <p><input type="checkbox"/> Area for State Improvement – Recommendations Required</p>
Finding	<p>Review of OTIS, AIRs and State Data sources show that the State has entered all the required MDRs except for penalties and informal actions and some of the specific Subpart information for facilities.</p>
Explanation.	<p>The State Tracks penalties and informal action in its internal database, but this data has not been uploaded into AIRs. Review of the State files showed that the State was issuing actions and collecting penalties, but needs to take the additional step of adding the data into AIRs</p> <p>The State has not entered all the Subpart data into AIRs. The programs are entered but some specific subparts are missing.</p>
Metric(s) and Quantitative Value	<p>1 c: Some facilities do not have the MACT or NSPS subparts entered into AIRs.</p> <p>1i & j: The State is not entering informal enforcement data or collected penalties into AIRs</p>

State Response	None
Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	State will begin to add enforcement information data into AIRs starting in October 09. The State will start entering missing Subpart data and will complete by the end of February 2010.

Element 2 Data Accuracy. Degree to which data reported into the national system is accurately entered and maintained (example, correct codes used, dates are correct, etc.). [example of completed finding]

2-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	Review of randomly selected files and Data metrics show that the State is maintaining accurate data in the AIRs system. Data found in the files matched the AIRs database.
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	The State has successfully integrated its new data system to report accurate data into AIRs. The State does have an issue that it was not allowed to update the CMS fields, or change operating codes. The State has requested permission to update these fields so that it can correct errors in the database. In the past when errors have been found the State notified EPA. This system has proven effective at this point and data errors still exist. State to fill out form to request permission for increased access to AIRs. EPA will follow-up to make sure the State is granted access by October 09.
	Metric(s) and Quantitative Value	2c: The state did not have the ability to change some of the AIRs data, and this data was incorrect in one of the files reviewed. EPA has sent the form to the State to fill out and gain access to these data fields.
	State Response	State would like ability to access the fields that it cannot currently correct.
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	

Element 3 Timeliness of Data Entry. Degree to which the Minimum Data Requirements are timely.

3-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	.AIRs and State data base were used to show good practice with timeliness of data entry.
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	State inspectors added data quickly into the State data tracking system. This system is regularly uploading into AIRs so that the data is documented in AIRs within 60 days after the inspection.
	Metric(s) and Quantitative Value	Data was timely
	State Response	None
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	No actions required

Element 4 Completion of Commitments. Degree to which all enforcement/compliance commitments in relevant agreements (i.e. PPAs, PPGs, categorical grants, CMS plans, authorization agreements, etc.) are met and any products or projects are completed.

4-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
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	Finding	The State is meeting almost all of the PPA commitments except for the HPV criteria
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	The State failed to report one HPV in the review period. All other commitments were met for fy 08 and the HPV issue is addressed under Element 8
	Metric(s) and Quantitative Value	4b: 83%, State did not enter an HPV into system. Action and area for improvement addressed in Element 8.
	State Response	Discussed in Element 8 finding
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	None

Element 5 Inspection Coverage. Degree to which state completed the universe of planned inspections/compliance evaluations (addressing core requirements and federal, state and regional priorities).		
5-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	Data metrics review shows that the state is completing adequate coverage as agreed to with EPA in the PPA and CMS policy

Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	The State completed 95% or 96% of the required coverage in each category as compared to the national average of approximately 65% for all categories. The State inspectors address all major sources for a given year, only missing a very small sources. A large number of sources have unknown compliance status in the database. These sources are on a five year inspection schedule as part of the State compliance monitoring strategy. These are simple remote sources, that the State can track compliance from the its offices through reports sent in by the company. In exchange for a relaxed inspection schedule for these facilities, the State inspects bigger sources. One example is facilities that have actual emissions greater than 100 tons per year are inspected on an annual basis.
Metric(s) and Quantitative Value	95-96%
State Response Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	None

Element 6 Quality of Inspection or Compliance Evaluation Reports. Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.

6-1	<p>Is this finding a(n) (select one):</p> <p><input type="checkbox"/> Good Practice</p> <p><input type="checkbox"/> Meets SRF Program Requirements</p> <p><input checked="" type="checkbox"/> Area for State Attention</p> <p><input type="checkbox"/> Area for State Improvement – Recommendations Required</p>
Finding	With the exception of enforcement history, the State documents all the required information clearly and completes reports in a timely manner.
Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	The State uses a template to inspect portable asphalt plants. This form is missing enforcement history that is required for a complete FCE. All other sources and reports had all the requirements.

Metric(s) and Quantitative Value	6b: 100% - % of CMRs or facility files reviewed that provide sufficient documentation to determine compliance at the facility. 6c: 85% - % of CMRs or facility files reviewed that provide sufficient documentation to determine compliance at the facility - The States Portable Asphalt Plant form does not have a place for Compliance history. This section needs to be added to form. These were the only instance where any issue was noted
State Response	Agreed to update portable asphalt form
Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	State to update portable asphalt form to include enforcement history before January 2010 asphalt inspections.

Element 7 Identification of Alleged Violations. Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information (e.g. facility-reported information).

7-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	The review of the data metrics and file review shows the State correctly identifying non-compliance.
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	State met all review criteria. Potential HPV concerns are not part of this Element and are addressed in Element 8. While metric 7C1 indicates that 46 facilities are in noncompliance, the actual universe is one facility. Also, the two facilities that are reflected as having failed stack tests for metric 7C2 failed only for state-only requirements.
	Metric(s) and Quantitative Value	7a: 100% - % of CMRs or facility files reviewed that led to accurate compliance determinations.
	State Response	none
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	none

Element 8 Identification of SNC and HPV. Degree to which the state accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner.

8-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	State did not identify the one HPV for the review period. All other enforcement actions did not meet the HPV criteria
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	After reviewing enforcement actions during the review period, one source was determined to meet the criteria for HPV and was not flagged. EPA routinely reviews State enforcement actions and has found in the past that the State has not traditionally had HPVs. The State is familiar with the HPV policy but it is so infrequently used that the State did not review the policy for applicability in this case. The State did take appropriate action and the only part of the policy that was not followed was the actually flagging the source as an HPV in AIRs. Other actions taken by the State in the review period were determined not to be HPV's.
	Metric(s) and Quantitative Value	8f: 50% -% of violations in files reviewed that were accurately determined to be HPV.
	State Response	Will look at HPV policy and figure out a system to identify in future
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	EPA and State to work jointly to complete and implement an SOP by November 09 to identify future HPV's in North Dakota. EPA will e-mail the State the HPV policy in September 2009.

Element 9. Enforcement Actions Promote Return to Compliance. Degree to which state enforcement actions include required corrective action (i.e. injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.

9-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	Enforcement actions taken by the State were able to return sources to compliance.
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	In the actions that were reviewed, the State was able to get injunctive relief and return the sources to compliance in a timely manner.
	Metric(s) and Quantitative Value	9b: 100%- % of formal enforcement responses that include required corrective action (i.e., injunctive relief or other complying actions) that will return the facility to compliance in a specified time frame.
	State Response	None
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	None

Element 10 Timely and Appropriate Action. Degree to which a state takes timely and appropriate enforcement action in accordance with policy relating to specific media.

10-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
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	Finding	The State is taking actions in a timely manner
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	The State issued a NOV to the facility in a timely manner. In addition the State had the facility shutdown at various times to make sure that excess emissions were avoided. The NOV was settled through an administrative action.
	Metric(s) and Quantitative Value	10c: 100%
	State Response	None
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	None

Element 11 Penalty Calculation Method. Degree to which state documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using BEN model or other method that produces results consistent with national policy.

North Dakota CAA

11-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	The State does not calculate economic benefit in penalties in accordance with EPA policy (or consistent State policy).
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	State is collecting appropriate penalties, but not correctly addressing economic benefit according to EPA policy.

Metric(s) and Quantitative Value	11a: 0% - % of reviewed penalty calculations that consider and include where appropriate gravity and economic benefit.
State Response	Will look at EPA's BEN model and start to use as a basis for calculation
Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	The State will download the BEN by October 09 and will forward penalty calculations to EPA for comment. EPA will send the State economic benefit guidance by September 09.

Element 12 Final Penalty Assessment and Collection. Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.

North Dakota CAA	
12-1	Is this finding a(n) (select one): <input checked="" type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	State did complete all documentation and documented justifications.
Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	The file review for the State showed excellent work in the documentation process and it was easy for EPA to follow all the work and rational behind the State's settlement. State additionally sends all information to EPA on request by EPA.
Metric(s) and Quantitative Value	12c: 100% - % of penalties reviewed that document the difference and rationale between the initial and final assessed penalty. 12d: 100% - % of files that document collection of penalty
State Response	None
Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	None

Clean Water Act Program

Review elements where SRF program requirements are being met with no issues identified are:

- Element 1 - Data Completeness
- Element 2 - Data Accuracy
- Element 3 - Timeliness of Data Entry
- Element 8 - Identification of SNC and HPV

Review element findings are as follows:

Element 1 Data Completeness. Degree to which the Minimum Data Requirements are complete.		
1-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	ND meets or exceeds the national average for data completeness. No recommendation needed.
	Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommended action.)	EPA reviewed all metrics for Element 1 and found that ND entered in the minimum data requirements into PCS and that the data was complete. ND only enters major facilities and minimal information (inspections) for traditional minors with individual permits into PCS and uses an internal State database (NDPDES database) for all other types of facilities including majors, minors, stormwater, CAFOs, pretreatment.
	Metric(s) and Quantitative Value	1b – Majors Permit Limits and DMR Entry 1c – Non-majors permit limits and DMR entry 1d – Quality of violation data at non-major NPDES facilities with individual permits (and that are expected to regularly submit DMRs) 1e – Informal action counts complete 1f – Formal action counts complete 1g – Assessed penalties complete All appear acceptable with little deviation from national database.
	State Response	None
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	No action needed.

Element 2 Data Accuracy. Degree to which data reported into the national system is accurately entered and maintained (example, correct codes used, dates are correct, etc.). [example of completed finding]

2-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	Data reported in the national system is accurately entered and maintained.
	Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommended action.)	<p>As stated in Element 1, ND only enters major facilities and traditional minor inspections into PCS. EPA’s review of 2 major facilities found that the data for those facilities was correctly entered and maintained in PCS. No incorrect codes or dates were found for those facilities.</p> <p>ND did not take any enforcement (formal or informal) against a major facility in FY08.</p>
	Metric(s) and Quantitative Value	<p>2a - Number of formal enforcement actions, taken against major facilities, with enforcement violation type (EVTP in PCS or equivalent in ICIS-NPDES) codes entered. (ND result: 0/0)</p> <p>2b – Files reviewed where data is accurately reflected in the national data system. Description of Metric – Percent of files reviewed where data is accurately reflected in the national data system. (ND result: 100%)</p>
	State Response	None
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	No action needed.

Element 3 Timeliness of Data Entry. Degree to which the Minimum Data Requirements are timely.

3-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
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	Finding	The minimum data requirements are generally timely.
	Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommended action.)	Only one change was made between the Production and Frozen data set for majors, which was “Majors Individual Permits Correctly Coded.” The count on the Frozen data set was 24 and the count on the Production set was 26. ND has 26 major facilities in PCS. Two majors appeared to have had permit coding changes which moved the facilities to the correctly coded category. Major inspections numbers match between the two data sets and there is only a slight difference in minor (with individual permits) inspection numbers between the two data sets. ND has an internal database (NDPDES database) that EPA has determine is adequate for minors, so the comparison of the Production and Frozen data sets in PCS for minors (other than non-major individual permit inspection coverage) is not a good indicator of the State’s management of its non-majors.
	Metric(s) and Quantitative Value	3a - Comparison of data sets; frozen data set shows a universe of 26 Majors, production data set shows 26 Majors
	State Response	None
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	Round 1 Recommendation: Initial and date DMRs and inspection reports. ND was not initialing and dating when DMRs were received so it was unable to document if the DMR was on-time. Similarly, inspection reports were not signed and dated. Update to Round 1 Recommendation: During the FY08 SRF file review, EPA determined that the State has corrected the Round 1 finding and does initial and date DMRs and inspection reports. This finding is complete. Additionally, this metric is no longer used to determine timeliness. No action needed.

Element 4 Completion of Commitments. Degree to which all enforcement/compliance commitments in relevant agreements (i.e. PPAs, PPGs, categorical grants, CMS plans, authorization agreements, etc.) are met and any products or projects are completed.

North Dakota CWA

4-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	ND conducted 24 of the 26 major inspections and most of its inspection commitment for stormwater construction and industrial inspections. ND was late with several PPA deliverables and some deliverables were inadequate or never finalized.

<p>Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommended action.)</p>	<p>ND has a small population of major sources; however, they overlooked 2 inspections in FY08. ND completed 75% of the stormwater inspections to which it committed; however, ND exceeded its minor inspection coverage by 85%.</p> <p>Of the 9 PPA deliverables required in FY08, ND submitted four of them late and two were determined to be inadequate. ND needs to improve on submitting PPA and SRF tracker items on time. Additionally, ND needs to work with EPA to ensure that PPA deliverables are adequate.</p>
<p>Metric(s) and Quantitative Value</p>	<p>4a - Planned inspections completed. Description of Metric – Percent of planned inspections completed (ND result: most met): Majors: 92.3% Minors: 205% Stormwater-industrial: 71% Stormwater-construction: 76% CAFOs: 206%</p> <p>4b - Planned commitments completed. Description of Metric – Reviewers should delineate all compliance and enforcement related commitments in the state work plan, and the progress the state has made in meeting them. (ND result: several late, some inadequate/not finalized): 7 out of 9 delivered=77%.</p>
<p>State Response</p>	<p>Two major facilities were not inspected and the commitment for stormwater inspections was not met for this reporting period. This is the first time we have not met the commitment for all inspections identified in the inspection plan and PPA. Each year the number of stormwater permitted facilities increases which increases the total number of inspections required of states. The North Dakota Program is asked to do more each year and there are limited staff and funding to complete all the commitments. If inspections are the top priority, North Dakota will have to decide what areas of the program will need less attention and adjust accordingly.</p>
<p>Action(s) (Include any uncompleted actions from Round 1 that address this issue.)</p>	<p>ND has stated that the 2 major inspections that were missed were an oversight on their part and that they intend to inspect 100% of their majors every year.</p> <p>Stormwater continues to be an EPA national wet weather priority area and the State should continue to ensure that it is capable of meeting its minimum inspection commitments either by re-prioritizing or having EPA conduct the remaining inspections. EPA will remind ND on upcoming PPA deliverables in FY10.</p>

Element 5 Inspection Coverage. Degree to which state completed the universe of planned inspections/compliance evaluations (addressing core requirements and federal, state and regional priorities).	
North Dakota CWA	
5-1	<p>Is this finding a(n) (select one):</p> <p><input type="checkbox"/> Good Practice</p> <p><input type="checkbox"/> Meets SRF Program Requirements</p> <p><input checked="" type="checkbox"/> Area for State Attention</p> <p><input type="checkbox"/> Area for State Improvement – Recommendations Required</p>
Finding	<p>ND nearly met its major facility inspection commitment of 100%.</p> <p>ND exceeded its minor facility inspection commitment of 20%.</p> <p>ND met most of its stormwater inspection commitments for construction or industrial.</p> <p>ND exceeded its CAFO inspection commitment.</p>
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommended action.)	<p>ND conducted 24 of its 26 major facility inspections. However, the State is committed to inspecting all majors annually and ND did inspect the 2 facilities in FY07</p> <p>ND conducted 96 of the 128 stormwater inspections committed to in FY08. As agreed to in the PPA, EPA did additional inspections in the State to help address the shortfall.</p> <p>ND conducted 139 minor inspections (ND committed to 75 inspections) and conducted 62 CAFO inspections (ND committed to 30 inspections).</p>
Metric(s) and Quantitative Value	<p>5a Inspection coverage – NPDES majors (ND result: 92.3%)</p> <p>5b1 – Inspections at NPDES non-majors with individual permits, excluding those permits which address solely stormwater, pretreatment, CAFOs, CSOs, or SSOs. (ND result: 40.8%)</p> <p>5b2 – Inspections at NPDES non-majors with general permits, excluding those permits which address solely stormwater, pretreatment, CAFOs, CSOs, or SSOs (ND result: 28.9%)</p> <p>5c - Other inspections performed (beyond facilities indicated in 5a and 5b.) (ND result: 0%)</p>
State Response	<p>Elements 4 and 5 are very similar in format and deal with inspections, see state response for Element 4.</p>
Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	<p>See action in Element 4.</p>

Element 6 Quality of Inspection or Compliance Evaluation Reports. Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.

North Dakota CWA

6-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Finding		<p>Inspections conducted at minor municipal facilities and CAFOs do not include all elements of a Compliance Evaluation Inspections (CEIs). Additionally, some stormwater inspection reports do not include enough information to make a compliance determination.</p>
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommended action.)		<p>The ND inspection checklist for minor facilities does not address/cover all permit requirements. CAFO inspection reports consistently do not include certain items (e.g. time, purpose of inspection, address, telephone number, and wastewater flows/treatment) and stormwater inspection reports generally do not include certain items (telephone number, facility description, information to support observations, etc.).</p> <p>EPA was unable to determine basic information (type of facility) for some of its inspection reports (e.g. minors) and no information such as a permit fact sheet was present in the files that would contain this information. EPA acknowledges that some of the requirements for a complete and sufficient inspection report are new based upon Round 2 SRF criteria, but some are not (e.g. type of facility). Additionally, EPA has made the State aware of its concerns with its quality of inspections and inspection reports in EPA’s oversight inspections that it conducts every year.</p> <p>Some storm water inspection reports reviewed consisted of a cover letter stating that an inspection was conducted and that the facility was “reviewed,” but no further information was included in the report regarding the extent of inspection and data/observations to verify compliance status.</p> <p>This is a continuing concern from the FY06 SRF review. A SRF Round 1 Tracker Recommendation that the State needs to improve its inspection procedures so that inspectors are making accurate descriptions of what was observed to sufficiently identify potential violations remains open.</p>
Metric(s) and Quantitative Value		<p>6a – Inspection reports reviewed. Description of Metric – Number of inspection reports reviewed. (ND result: 20) 6b – Inspection reports reviewed that are complete. Description of Metric – Percent of inspection reports reviewed that are</p>

	<p>complete. (ND result: 0%)</p> <p>6c - Inspection reports reviewed that provide sufficient documentation to determine compliance at the facility. Description of Metric – Percent of inspection reports reviewed that provide sufficient documentation to lead to an accurate compliance determination. (ND result: 0%)</p> <p>6d – Inspection reports completed within the prescribed time frame. Description of Metric – Percent of inspection reports reviewed that are timely. (ND result: 75%)</p>
<p>State Response</p>	<p>Information provided on the inspection reports in concert with the extensive data found in the file provide adequate information relating to the status of the facility and, as required, needed to determine compliance status or need to proceed with appropriate enforcement. EPA has been aware of the type and extent of inspection activities and the information collected for some time – and just now voice a concern. The information in a format being asked by EPA can be accomplished but it is acknowledged that the data has been available and accessible from Department files and by providing the information in a different format does not increase or decrease the potential for enforcement action. The form of the inspection report and data collected during the inspection in the case of North Dakota, becomes more a form of art and does not constitute a lack of program effectiveness.</p>
<p>Action(s) (Include any uncompleted actions from Round 1 that address this issue.)</p>	<p>Round 1 Recommendation: Improve documentation of and follow-up on potential stormwater violations. Update to Round 1 Recommendation: ND did prepare a draft schedule for addressing this deficiency; however, the schedule/plan was never finalized. This continues to be a requirement for the State to complete.</p> <p>Round 1 Recommendation: Include inspection report cover letters in inspection files. ND must maintain all inspection records including cover letters in the inspection file. Update to Round 1 Recommendation: ND includes cover letters with its inspection reports if the report is mailed.</p> <p>EPA will discuss with ND areas to improve its inspection reports to ensure they are both complete and sufficient to determine compliance status. On 9/25/09, EPA emailed ND an inspection report from the State’s RCRA program as an example of NPDES inspection reports that meet the criteria of a CEI. EPA will meet with ND to discuss this matter by 10/30/09.</p> <p>Improvements in inspection procedures, checklist and report completion will improve this metric finding. EPA will check progress on these activities by 3/31/10. Additionally, the State should finalize its inspection improvement schedule/plan by 12/31/09.</p>

Element 7 Identification of Alleged Violations. Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information (e.g. facility-reported information).

North Dakota CWA

7-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	<p>ND did not identify any single event violations (SEVs) in FY08. ND does not enter SEVs into PCS or the NDPDES database.</p> <p>ND does not evaluate violation trends (re-occurring violations) unless the major facility is in SNC in consecutive quarters.</p> <p>ND does not evaluate violation trends (re-occurring effluent violations) at minor facilities.</p>
	Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommended action.)	<p>EPA reviewed 2 major facilities in the file review. Of the 2 files reviewed, ND did not identify any deficiencies or violations in the inspection. Additionally, EPA did not identify any deficiencies or violations through the file review. Therefore, there were no violations noted or identified to be classified as an SEV. EPA did not conduct an oversight inspection at a major facility in FY08. ND stated that the SEVs are not entered because the NDPDES database does not have the functionality to allow entry of SEVs.</p> <p>Half of the majors reviewed and several of the minor files reviewed as part of the SRF had re-occurring effluent violations and there was no documentation in the file regarding State review of the violations or documentation on any informal or formal enforcement. Discussions with the State during the closeout indicated that some discussions occurred between the State and the major facility with a pattern of violations, and the State felt confident that the cause of the violations had been addressed by the facility.</p> <p>Tracking and reporting of minors in noncompliance is a federal requirement of the Annual Non-compliance Report (ANCR) for non-majors (40 CFR § 123.45 (c)). 40 CFR § 123.27(e)((2) requires that screenings be conducted of all permit compliance information to identify violations.</p>
	Metric(s) and Quantitative Value	<p>7a1 - Number of single-event violations at active majors. (ND result: 0)</p> <p>7a2 - Number of single-event violations at non-majors. (ND result: 0)</p> <p>7b - Compliance schedule violations. (ND result: 0/0)</p> <p>7c - Permit schedule violations (ND result: 0%)</p> <p>7d - Percent of major facilities with DMR violations reported to the</p>

		national database (ND result: 50%) 7e – Inspection reports reviewed that led to a compliance determination. Description of Metric – Percent of inspection reports or facility files reviewed that led to accurate compliance determinations. (ND result: 70%)
State Response		Due to the number and seasonal nature of many facilities, violation trends in North Dakota are speculative at best. Due to the amount of oversight and presence in the field, the Department is well aware of the types of potential violations and areas of emphasis that need to be part of compliance and educational outreach. We are not aware that reporting of minors is required pursuant to federal law, rather it is provided at the discretion of the state.
Action(s) (Include any uncompleted actions from Round 1 that address this issue.)		SEVs are required to be entered for major facilities (40 CFR Part 123.26). EPA also suggests SEVs be entered for minors. EPA emailed ND guidance documents outlining procedures for entering SEV violations into PCS. In FY10 EPA will review additional inspection reports and other compliance reports to determine if SEVs are entered into PCS. Progress on this item will be discussed at midyear (4/30/10) and end of year (1/31/11) reviews. ND should ensure the files include records of communication regarding informal follow up on violations identified. ND needs to routinely conduct a compliance review of its minors during inspections, DMR reviews, and permit reissuance, to ensure that it is tracking actual violations, and if noncompliance is found, it needs to take the appropriate enforcement response per its EMS. Improvements in DMR and records review and documentation will improve the evaluation of violation trends at majors (that are not SNC) and minors. ND should follow its draft EMS for the traditional core program. The EMS for the traditional core program shall be made final by 3/31/10. The EMS shall incorporate stormwater 6 months after the national stormwater EMS is finalized. EPA will review the State's progress with finalizing its traditional core program EMS by 12/31/09 to ensure the State is on-track with meeting the 3/31/10 deadline.

Element 8 Identification of SNC and HPV. Degree to which the state accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner.		
8-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required

	Finding	No facilities were in SNC in FY08.
	Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommended action.)	No majors appeared on the QNCR as SNC in FY08. As stated in Element 7, ND did not identify any major facility in SNC in FY08. Of the 2 major files reviewed by EPA, EPA did not identify any majors in SNC.
	Metric(s) and Quantitative Value	8a1 - Active major facilities in SNC during reporting year (ND result: 0) 8a2 - Percent of active major facilities in SNC during the reporting year (ND result: 0%) 8b Verify that facilities with an SEV were accurately determined to be SNC or non-SNC. Description of Metric – Percentage of single event violation(s) (SEVs) that are accurately identified as SNC or Non-SNC. (ND result: NA, no SEVs identified) 8c – Verify that SEVs that are SNC are timely reported. Description of Metric – Percent of single event violation(s) identified as SNC that are reported timely. (ND result: NA, no SEVs identified)
	State Response	None
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	No action needed.

Element 9 Enforcement Actions Promote Return to Compliance.
Degree to which state enforcement actions include required corrective action (i.e. injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.

North Dakota CWA

9-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	ND's enforcement actions generally do not promote a return to compliance.

<p>Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommended action.)</p>	<p>ND does not track compliance with the enforcement action or the facility's permit to ensure that the facility is back in compliance. EPA found the following for 2 of the 3 enforcement actions taken by the State:</p> <ul style="list-style-type: none"> ▪ A facility was determined to be in continuing noncompliance after the enforcement action was taken. This noncompliance was discovered during an inspection prompted by a citizen complaint. No escalated enforcement was taken and no suspended penalties were collected. This same facility was in noncompliance with the consent agreement and permit requirements based upon the information in the file. Per the consent agreement, the facility was required to submit reports which documented noncompliance with the permit. There was no documentation in the file regarding the State's review of the reports required by the consent agreement. Again, no escalated enforcement was taken and no suspended penalties were collected. ▪ There was no evidence in the file that another facility ever complied with the requirements in the consent agreement. No escalated enforcement was taken and no suspended penalties were collected.
<p>Metric(s) and Quantitative Value</p>	<p>9a – Enforcement responses reviewed. Description of Metric – Number of formal/informal enforcement responses reviewed. This metric establishes the universe to be used in calculating the percentages in 9b and 9c. (ND result: 3 files reviewed) 9b – Responses that have returned or will return a source in SNC to compliance. Description of Metric – Percent of enforcement responses that have returned or will return a source in SNC to compliance. (ND result: NA, no SNCs identified) 9c – Responses that have returned or will return sources with non-SNC violations to compliance. Description of Metric – Percent of enforcement responses that have returned or will returned a source with non-SNC violations to compliance. (ND result: 33%)</p>
<p>State Response</p>	<p>Tracking of compliance is typically noted in the inspection reports and as required in consent agreements. The Department will emphasize the need to ensure that enforcement and program files emphasize continued and future compliance.</p>
<p>Action(s) (Include any uncompleted actions from Round 1 that address this issue.)</p>	<p>ND must track compliance at any facility under a consent agreement, and take the appropriate steps if additional noncompliance is found. EPA will review the compliance status of ND's FY10 enforcement actions in the FY10 End-of-Year Report and follow-up with ND to ensure that escalated enforcement occurs for facilities which have not returned to compliance.</p>

Element 10 Timely and Appropriate Action. Degree to which a state takes timely and appropriate enforcement action in accordance with policy relating to specific media.

North Dakota CWA

10-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	ND did not take appropriate enforcement action to address non-SNC violations.
	Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommended action.)	<p>ND does not escalate enforcement when additional violations are found and does not collect suspended penalties. See Element 9 for a detailed explanation on the lack of escalation of enforcement or the collection of suspended penalties when additional violations are found.</p> <p>Two of the three enforcement actions initiated in FY08 were taken in a timely manner.</p> <p>In previous discussions between EPA and the State related to enforcement, the State has identified a philosophical difference with EPA as it relates to the role of formal enforcement. ND does not believe that formal enforcement is necessary when a violation is discovered and believes that compliance assistance is the preferred tool to bring facilities back into compliance.</p>
	Metric(s) and Quantitative Value	<p>10a – major facilities without timely action as appropriate (ND result: 0%)</p> <p>10b - Enforcement responses reviewed that address SNC in a timely manner. Description of Metric – Percent of reviewed enforcement responses to address SNC that are taken in a timely manner. (ND result: NA, no SNC identified)</p> <p>10c – Enforcement actions reviewed that address SNC that are appropriate to the violations. Description of Metric – Percent of enforcement responses reviewed that address SNC that are appropriate to the violations. (ND result: NA, no SNC identified)</p> <p>10d – Enforcement responses reviewed that appropriately address non-SNC violations. Description of Metric – Percent of enforcement responses reviewed that appropriately address non-SNC violations. (ND result: 33%)</p> <p>10e – Enforcement responses that address non-SNC violations in a timely manner. Description of Metric – Percent of enforcement responses for non-SNC violations where a response was taken in a timely manner. (ND result: 66%)</p>
	State Response	

	<p>Based upon the file reviews, EPA can not make a blanket statement that enforcement is not escalated or that suspended penalties are not collected as appropriate. The Department, as EPA has been aware, may suspend a portion of an enforcement action with the commitment by the violator to complete certain actions that will enhance the potential for future compliance (i.e., complete training for staff, etc.) and improve the environment. This action has proven to be an effective method in assuring compliance and cooperation with the regulated community. Collection of suspended penalties is pursued if the violator does not comply with the timelines or conditions of the consent agreement.</p> <p>As part of the PPA process and as agreed to by EPA and Department senior management, the state will share penalty calculations on potential enforcement actions of which EPA will provide a quick response. Due to the high compliance rate and the fact that EPA has insisted that they take the lead in enforcement on a select number of inspections; no enforcement actions have been identified by the state.</p>
<p>Action(s) (Include any uncompleted actions from Round 1 that address this issue.)</p>	<p>Round 1 Recommendation: Escalate enforcement consistent with EMS; finalize stormwater EMS.</p> <p>As stated above, ND has agreed to share penalty calculations on potential enforcement actions with EPA, and EPA has agreed to provide comments in a timely fashion (7 days). To date, EPA has not received any actions for real-time review. EPA will continue to conduct NPDES inspections in ND and take the lead for any enforcement follow up related to those inspections.</p> <p>ND should follow its draft EMS for the traditional core program. The EMS for the traditional core program shall be made final by 3/31/10. The EMS shall incorporate stormwater 6 months after the national stormwater EMS is finalized.</p>

Element 11 Penalty Calculation Method. Degree to which state documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using BEN model or other method that produces results consistent with national policy.

North Dakota CWA

11-1	<p>Is this finding a(n) (select one):</p>	<p><input type="checkbox"/> Good Practice</p> <p><input type="checkbox"/> Meets SRF Program Requirements</p> <p><input type="checkbox"/> Area for State Attention</p> <p><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required</p>
	<p>Finding</p>	<p>Economic benefit of noncompliance was not considered in the 3 stormwater cases reviewed.</p>

<p>Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommended action.)</p>	<p>EPA's review of the 3 formal enforcement actions indicated that economic benefit of noncompliance should have been considered in each case, as no stormwater controls were installed. ND has stated that because the benefit can be low on stormwater cases, it does not need to be considered. EPA agrees that the economic benefit of noncompliance can be lower in stormwater cases than cases which require installation of additional treatment or construction of new treatment or storage facilities. However, the actual costs to comply with the construction storm water permit will be vary considerably depending on the size of the site, length of construction, and the best management practices required. Therefore the economic benefit of noncompliance must be considered in each case to determine its worth.</p>
<p>Metric(s) and Quantitative Value</p>	<p>11a – Penalty calculations reviewed that consider and include where appropriate gravity and economic benefit. Description of Metric –Percentage of penalty calculations that consider and include where appropriate gravity and economic benefit. (ND result: 0%).</p>
<p>State Response</p>	<p>This information will be provided to EPA for review. It is important to note that economic benefit for the wet weather facilities is of limited amount to the regulated community in the state (i.e., silt fencing, etc.) and does not constitute a major portion of any penalty calculation.</p>
<p>Action(s) (Include any uncompleted actions from Round 1 that address this issue.)</p>	<p>ND needs to evaluate each case to determine if the economic benefit of noncompliance would be so minimal it does not need to be considered. EPA suggests using the BEN model to determine the economic benefit. ND also needs to document that it conducted such evaluation. In FY10, ND will provide its penalty calculations to EPA for review. EPA will provide comments to ND on the penalty calculations and consideration of economic benefit of noncompliance in a timely fashion A full review of ND's FY10 enforcement actions with regards to calculation and documentation of economic benefit will be conducted as part of the FY10 End-of-Year Report.</p>

Element 12 Final Penalty Assessment and Collection. Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.

North Dakota CWA

<p>12-1</p>	<p>Is this finding a(n) (select one):</p>	<p><input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required</p>
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	Finding	ND's files did not have documentation of final penalty assessment.
	Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommended action.)	ND's file did not document the difference between initial and final penalties. The files did document the final penalty collected.
	Metric(s) and Quantitative Value	12a – Document the rationale for differences between the initial proposed penalty amount and final assessed penalty that was collected. Description of Metric – Percent of penalties reviewed that document the difference and rationale between the initial and final assessed penalty. (ND result: 0%) 12b – Penalties collected. Description of Metric – Percent of enforcement actions with penalties that document collection of penalty. (ND result: 100%)
	State Response	As noted in State Response section to Element 11, we will provide in the future.
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	ND needs to improve its documentation on the differences between initial and final penalty assessed. EPA will conduct a review of ND's FY10 enforcement actions in the FY10 End-of-Year Report and follow-up with ND to determine if documentation of the final penalty assessment is included.

RCRA Program

Review elements where SRF program requirements are being met with no issues identified are:

- Element 1 - Data Completeness
- Element 2 - Data Accuracy
- Element 3 - Timeliness of Data Entry
- Element 4 - Completion of Commitments
- Element 5 - Inspection Coverage
- Element 6 - Quality of Inspection or Compliance Evaluation Reports
- Element 7 - Identification of Alleged Violations
- Element 8 - Identification of SNC and HPV
- Element 9 - Enforcement actions promote return to compliance
- Element 10 - Timely and appropriate action
- Element 11 - Penalty calculation method
- Element 12 - Final penalty assessment and collection

Review element findings are as follows:

Element 1 Data Completeness. Degree to which the Minimum Data Requirements are complete.		
1-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	Based on the files reviewed and RCRA/Info Report data were accurate and timely
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	
	Metric(s) and Quantitative Value	1a - site universe counts 1b - inspection counts 1c - violation counts 1d - informal action counts 1e - SNC counts 1f - Formal action counts 1g - Assessed penalty counts All appear acceptable with little deviation from national database.

State Response	
Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	

Element 2 Data Accuracy. Degree to which data reported into the national system is accurately entered and maintained (example, correct codes used, dates are correct, etc.).

2-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
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Finding	Mandatory data was accurately reflected in the national data system for 100% of the files reviewed.
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Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	
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Metric(s) and Quantitative Value	2b -- # of sites in violation for more than 240 days. (There is no numeric goal or national average for this data metric.) Value: 0 sites in violations for more than 240 days. 2c -- % of files reviewed where mandatory data are accurately reflected in the national data system. Value: 100%
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State Response	
Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	

Element 3 Timeliness of Data Entry. Degree to which the Minimum Data Requirements are timely.

3-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	There were no SNCs identified in North Dakota, so no data entry was required in this area.
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	
	Metric(s) and Quantitative Value	3a—timely entry of SNC data. 0/0, no SNCs identified in North Dakota.
	State Response	
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	

Element 4 Completion of Commitments. Degree to which all enforcement/compliance commitments in relevant agreements (i.e. PPAs, PPGs, categorical grants, CMS plans, authorization agreements, etc.) are met and any products or projects are completed.

4-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
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	Finding	ND did not have any enforcement activity for this review period. The state did meet their commitment inspection schedule for the year including submitting their PPA and inspection schedule.
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	
	Metric(s) and Quantitative Value	4a - planned inspections complete = 100% 4b - planned commitments complete = 100%
	State Response	
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	

Element 5 Inspection Coverage. Degree to which state completed the universe of planned inspections/compliance evaluations (addressing core requirements and federal, state and regional priorities).

5-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	The state exceeded its inspection commitment and performed a total of 43 CEI inspections, 15 Non Financial Record Reviews and 5 FRR addressing core program and regional priorities.
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	

Metric(s) and Quantitative Value	5a -- Inspection coverage of TSDFs = 100% 5b -- Inspection coverage of LQGs (annual) = 92.3% 5c -- Inspection coverage of LQGs (five year) = 100%
State Response	
Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	

Element 6 Quality of Inspection or Compliance Evaluation Reports. Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.

6-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	The files reviewed revealed that the State has produced good documentation of their inspections documenting their observation and properly documenting their finding. Inspection reports were timely complete and accurate.
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	The state does a good job writing their inspection reports in a timely manner and documenting their inspection findings. However, although not a requirement, it would be beneficial for state inspectors to include general information about the facility such as: years the property has been in business, type of business, process, number of employees and photographs (especially where violations are found).
	Metric(s) and Quantitative Value	6a -- # of inspection reports reviewed = 32 6b -- % of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance at the facility = 100% 6c -- Inspection reports completed within a determined time frame = 100%
	State Response	This State Response was submitted after review of the initial draft of this SRF report, the finding was changed to Meets SRF Program Requirements. In this Element the State's RCRA Program has been evaluated as an "Area for State Attention". Under Metric(s) and Quantitative Value we were given a 100% for 6b and 6c which means that 100% of inspection reports EPA reviewed

are complete and provide sufficient documentation to determine compliance at the facility. Also, 100% of Inspection reports were completed within a determined time frame. Under the Finding it is stated that the files reviewed⁴⁵ revealed that the State has produced good documentation of their inspections documenting their observation and properly documenting their finding. Inspection reports were timely, complete and accurate. Under Explanation it is stated that the State does a good job writing their inspection reports in a timely manner and documenting their inspection

	<p>findings.</p> <p>So it appears that we have been "downgraded" for not including general information about the facility in our inspection report that is not part of or a requirement of SRF.</p> <p>Based on all of the information that is part of this SRF, it is our opinion that we should receive a "Meets SRF Program Requirements" for Element 6. We don't believe this area is an Area for State Attention and we recommend that this rating be changed to Meets SRF Program Requirements</p>
Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	

Element 7 Identification of Alleged Violations. Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information (e.g. facility-reported information).

7-1	<p>Is this finding a(n) (select one):</p> <p><input type="checkbox"/> Good Practice</p> <p><input checked="" type="checkbox"/> Meets SRF Program Requirements</p> <p><input type="checkbox"/> Area for State Attention</p> <p><input type="checkbox"/> Area for State Improvement – Recommendations Required</p>
Finding	Compliance determinations were properly made and documented which result in the state issuing 24 notices of violations and properly documenting them in RCRA Info.
Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	
Metric(s) and Quantitative Value	7a -- % of accurate compliance determinations based on inspection reports = 100% 7b -- % of violation determinations in the files reviewed that are reported timely to the national database (within 150 days) = 100%
State Response	
Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	

Element 8 Identification of SNC and HPV. Degree to which the state accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner.

8-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	There were no significant violations detected during this review period.
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	EPA reviewed all file documentation including inspection reports and any enforcement actions. Compliance determinations were appropriate, no SNCs were identified.
	Metric(s) and Quantitative Value	8a -- SNC identification rate = 0% 8b -- timely SNC determinations = 0 8c -- SNC reporting indicator = 0 8h -- % of violations in files reviewed that were accurately determined to be SNC = 0 No SNC violations were detected.
	State Response	
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	

Element 9 Enforcement Actions Promote Return to Compliance. Degree to which state enforcement actions include required corrective action (i.e. injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.

9-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
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	Finding	All the informal enforcement actions reviewed for this review period were back into compliance within 20 to 30 days of the facility receiving a notice of violation.
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	
	Metric(s) and Quantitative Value	9a -- # of enforcement responses reviewed = 3 9b -- % of enforcement responses that have returned or will return a source in SNC to compliance = 100% 9c -- % of enforcement responses that have returned or will return Secondary Violators (SV's) to compliance = 100%
	State Response	
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	

Element 10 Timely and Appropriate Action. Degree to which a state takes timely and appropriate enforcement action in accordance with policy relating to specific media.

10-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	The state issued 24 informal actions during this review period and actions were taken within 20 days of the inspections.
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	

	Metric(s) and Quantitative Value	10a -- Percent of SNCs with formal action/referral taken within 360 days (1 FY) = 0% 10c -- % of enforcement responses reviewed that are taken in a timely manner = 100% 10d -- % of enforcement responses reviewed that are appropriate to the violations = 100%
	State Response	
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	
Element 11 Penalty Calculation Method. Degree to which state documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using BEN model or other method that produces results consistent with national policy.		
11-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	There were no formal enforcement actions issued for this review by ND. Therefore, no penalties were calculated for this review period.
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	
	Metric(s) and Quantitative Value	11a -- % of reviewed penalty calculations that consider and include where appropriate gravity and economic benefit = 0% Violations detected did not rise to the level of penalty.
	State Response	
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	

Element 12 Final Penalty Assessment and Collection. Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.

12-1	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	Same as 11. Violations detected did not rise to the level of penalty.
	Explanation. (If Area for State Attention,, describe why action not required, if Area for Improvement,, provide recommended action.)	
	Metric(s) and Quantitative Value	
	State Response	
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	

V. Element 13 Submission

There is no Element 13 submission from North Dakota.

APPENDIX A: STATUS OF RECOMMENDATIONS FROM PREVIOUS REVIEWS

During the first SRF review of North Dakota’s compliance and enforcement programs, Region 8 and North Dakota identified a number of actions to be taken to address issues found during the review. The table below shows the status of progress toward completing those actions.

State	Status	Due Date	Media	Title	Finding	Element
ND - Round 1	Working	9/30/2009	CWA	Improve documentation of and follow-up on potential stormwater violations.	Stormwater inspection report areas of concern were identified.	Violations ID'ed Appropriately
ND - Round 1	Working	9/30/2009	CWA	Include inspection report cover letters in inspection files.	The timeliness of 8 inspection reports could not be established because it appeared that the cover letter that was sent with the inspection report was not maintained in the inspection file.	Violations ID'ed Timely
ND - Round 1	Working	9/30/2009	CWA	Escalate enforcement consistent with EMS; finalize stormwater EMS.	EPA believes that the lack of formal enforcement actions against storm water sites in non-compliance is inadequate.	Timely & Appropriate Actions
ND - Round 1	Completed	9/29/2008	CWA	Improve timeliness of PPA deliverables.	The CAFO Mid-year and the Stormwater Permit Tracking (Quarterly) were the only agreements not delivered on time.	Grant Commitments
ND - Round 1	Completed	9/30/2009	CWA	Initial and date DMRs and inspection reports.	For many files reviewed, there were no indications of when and by whom data was entered into PCS and so the reviewer was unable to determine if the State is meeting the standard for timeliness.	Data Timely

ND - Round 1	Completed	9/29/2008	CWA	NDDH should enter inspection information into PCS for individual minor permits.	There were discrepancies related to the number of inspections conducted as reflected in PCS.	Data Complete
ND - Round 1	Completed	3/29/2008	CAA	Semiannual data metric review for accuracy.	Certain facilities should not have been counted as not inspected in this data metric.	Insp Universe

APPENDIX B: OFFICIAL DATA PULL

OTIS State Review Framework Results, CAA Data for North Dakota (Review Period Ending: FY08)

Metric	Metric Description	Agency	National Goal	National Average	North Dakota Metric	Count	Universe	Not Counted
1. Data completeness, degree to which the minimum data requirements are complete.								
	Title V Universe: AFS Operating Majors (Current)	State				68	NA	NA
	Title V Universe: AFS Operating Majors (Current)	Combined				69	NA	NA
	Title V Universe: AFS Operating Majors with Air Program Code = V (Current)	State				65	NA	NA
A	Title V Universe: AFS Operating Majors with Air Program Code = V (Current)	Combined				65	NA	NA
	Source Count: Synthetic Minors (Current)	State				99	NA	NA
	Source Count: Synthetic Minors (Current)	Combined				99	NA	NA
	Source Count: NESHAP Minors (Current)	State				2	NA	NA

	Source Count: NESHAP Minors (Current)	Combined	2	NA	NA	NA
	Source Count: Active Minor facilities or otherwise FedRep, not including NESHAP Part 61 (Current)	State	41	NA	NA	NA
B	Source Count: Active Minor facilities or otherwise FedRep, not including NESHAP Part 61 (Current)	Combined	41	NA	NA	NA
	CAA Subprogram Designations: NSPS (Current)	State	84	NA	NA	NA
	CAA Subprogram Designations: NSPS (Current)	Combined	84	NA	NA	NA
	CAA Subprogram Designations: NESHAP (Current)	State	6	NA	NA	NA
	CAA Subprogram Designations: NESHAP (Current)	Combined	6	NA	NA	NA
	CAA Subprogram Designations: MACT	State	16	NA	NA	NA

(Current)	CAA Subprogram Designations:	MACT	Combined			17	NA	NA	NA
(Current)	CAA Subpart Designations:	Percent NSPS facilities with FCEs conducted after 10/1/2005	State	100%	73.4%	35.6%	26	73	47
(Current)	CAA Subpart Designations:	Percent NESHAP facilities with FCEs conducted after 10/1/2005	State	100%	32.4%	0.0%	0	4	4
(Current)	CAA Subpart Designations:	Percent MACT facilities with FCEs conducted after 10/1/2005	State	100%	88.9%	12.5%	2	16	14
C	CAA Subpart Designations:	Percent MACT facilities with FCEs conducted after 10/1/2005	Combined	100%	86.2%	11.8%	2	17	15
	Compliance Monitoring:	Sources with FCEs (1 FY)	State				44	NA	NA
	Compliance Monitoring:	Number of FCEs (1 FY)	State				46	NA	NA

	Compliance Monitoring:								
D	Number of PCEs (1 FY)	State				3	NA	NA	NA
	Historical Non-Compliance Counts (1 FY)	State				4	NA	NA	NA
E	Historical Non-Compliance Counts (1 FY)	Combined				7	NA	NA	NA
	Informal Enforcement Actions: Number Issued (1 FY)	State				0	NA	NA	NA
F	Informal Enforcement Actions: Number of Sources (1 FY)	State				0	NA	NA	NA
	HPV: Number of New Pathways (1 FY)	State				0	NA	NA	NA
G	HPV: Number of New Sources (1 FY)	State				0	NA	NA	NA
	HPV Day Zero Pathway Discovery date: Percent DZs with discovery	State	100%	53.7%	0 / 0		0	0	0
	HPV Day Zero Pathway Violating Pollutants: Percent DZs	State	100%	64.9%	0 / 0		0	0	0

HPV Day Zero Pathway									
Violation Type Code(s):									
Percent DZs with HPV									
H	Violation Type Code(s)	State	100%	65.3%	0 / 0	0	0	0	
	Formal Action: Number								
	Issued (1 FY)	State				0	NA	NA	NA
	Formal Action: Number of								
I	Sources (1 FY)	State				0	NA	NA	NA
	Assessed Penalties: Total								
J	Dollar Amount (1 FY)	State			\$0		NA	NA	NA
	Major Sources Missing								
	CMS Policy Applicability								
K	(Current)	State		0		0	NA	NA	NA
2. Data accuracy, degree to which the minimum data requirements are accurate.									
	Number of HPVs/Number								
	of NC Sources (1 FY)	State	<= 50%	58.3%	0.0%	0	1	1	
	Number of HPVs/Number								
A	of NC Sources (1 FY)	Combined	<= 50%	58.3%	0.0%	0	4	4	
	Stack Test Results at								
	Federally-Reportable								
	Sources - Without								
	Pass/Fail Results (1 FY)	State	0%	1.5%	0.0%	0	18	18	
	Stack Test Results at								
	Federally-Reportable								
	Sources - Number of								
B	Failures (1 FY)	State				2	NA	NA	NA

3. Timeliness of data entry. degree to which the minimum data requirements are complete.								
A	Percent HPVs Entered <= 60 Days After Designation, Timely Entry (1 FY)	State	100%	37.7%	0 / 0	0	0	0
B	Percent Compliance Monitoring related MDR actions reported <= 60 Days After Designation, Timely Entry (1 FY)	State	100%	64.6%	61.3%	114	186	72
B	Percent Enforcement related MDR actions reported <= 60 Days After Designation, Timely Entry (1 FY)	State	100%	74.9%	0 / 0	0	0	0

5. Inspection coverage. degree to which state completed the universe of planned inspections/compliance evaluations.								
	CMS Major Full Compliance Evaluation (FCE) Coverage (2 FY CMS Cycle)	State	100%	58.5%	46.3%	31	67	36
	CMS Major Full Compliance Evaluation (FCE) Coverage (2 FY CMS Cycle)	Combined	100%	58.7%	47.1%	32	68	36

	CAA Major Full Compliance Evaluation (FCE) Coverage(most recent 2 FY)	State	100%	81.3%	69.1%	47	68	21
A	CAA Major Full Compliance Evaluation (FCE) Coverage(most recent 2 FY)	Combined	100%	81.8%	69.6%	48	69	21
	CAA Synthetic Minor 80% Sources (SM-80) FCE Coverage (5 FY CMS Cycle)	State	20% - 100%	68.0%	85.3%	29	34	5
	CAA Synthetic Minor 80% Sources (SM-80) FCE Coverage (5 FY CMS Cycle)	Combined	20% - 100%	68.4%	85.3%	29	34	5
	CAA Synthetic Minor 80% Sources (SM-80) FCE Coverage (last full 5 FY)	State	100%	100.0%	100.0%	12	12	0
B	CAA Synthetic Minor 80% Sources (SM-80) FCE Coverage (last full 5 FY)	Combined		100.0%	100.0%	12	12	0
	CAA Synthetic Minor FCE and reported PCE Coverage (last 5 FY)	State		81.2%	42.4%	42	99	57

C	CAA Synthetic Minor FCE and reported PCE Coverage (last 5 FY)	Combined		81.5%	42.4%	42	99	57
D	CAA Minor FCE and Reported PCE Coverage (last 5 FY)	State		30.4%	23.6%	33	140	107
	Number of Sources with Unknown Compliance Status (Current)	State				25	NA	NA
E	Number of Sources with Unknown Compliance Status (Current)	Combined				25	NA	NA
F	CAA Stationary Source Investigations (last 5 FY)	State				0	NA	NA
G	Review of Self-Certifications Completed (1 FY)	State	100%	93.0%	98.4%	60	61	1

7. Identification of alleged violations. degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information.

	Percent facilities in noncompliance that have had an FCE, stack test, or enforcement (1 FY)	State	> 1/2 National Avg	21.5%	2.2%	1	46	45
	Percent facilities that have had a failed stack test and have noncompliance	State	> 1/2 National Avg	44.7%	0.0%	0	2	2

				status (1 FY)							
				Percent facilities that have had a failed stack test and have noncompliance status (1 FY)	EPA	> 1/2 National Avg	0.0%	0 / 0	0	0	0
C				High Priority Violation Discovery Rate - Per Major Source (1 FY)	State	> 1/2 National Avg	7.5%	0.0%	0	68	68
				High Priority Violation Discovery Rate - Per Major Source (1 FY)	EPA		0.5%	0.0%	0	68	68
				High Priority Violation Discovery Rate - Per Synthetic Minor Source (1 FY)	State	> 1/2 National Avg	0.7%	0.0%	0	99	99
				High Priority Violation Discovery Rate - Per Synthetic Minor Source (1 FY)	EPA	> 1/2 National Avg	0.0%	0.0%	0	99	99
B				Percent Formal Actions With Prior HPV - Majors (1 FY)	State	> 1/2 National Avg	74.2%	0 / 0	0	0	0
C				Percent Informal Enforcement Actions	State	< 1/2 National Avg	41.1%	0 / 0	0	0	0
D											

Without Prior HPV -
Majors (1 FY)

Percentage of Sources
with Failed Stack Test
Actions that received HPV
listing - Majors and
Synthetic Minors (2 FY)
Percent HPVs not
meeting timeliness goals

E	State	Avg	> 1/2 National	24.4%	0.0%	0	3	3
A	State			39.5%	0 / 0	0	0	0

12. Final penalty assessment and collection. Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.

No Activity Indicator -
Actions with Penalties (1
FY)
Percent Actions at HPVs

A	State					0	NA	NA	NA
B	State	>= 80%		86.3%	0 / 0	0	0	0	

OTIS State Review Framework Results, CWA Data for North Dakota (Review Period Ending: FY08)

Metric	Metric Description	Metric Type	Agency	National Goal	National Average	North Dakota Metric	Count	Universe	Not Counted
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1. Data completeness. degree to which the minimum data requirements are complete.

Active facility universe:
NPDES major individual
permits (Current)

	Data Quality	Combined				26	NA	NA	NA
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Active facility universe: NPDES major general permits (Current)	Data Quality	Combined				0	NA	NA	NA
Active facility universe: NPDES non-major individual permits (Current)	Data Quality	Combined				98	NA	NA	NA

Active facility universe: NPDES non-major general permits (Current)	Data Quality	Combined				329	NA	NA	NA
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Major individual permits: correctly coded limits (Current)	Goal	Combined	≥95%	50.1%	92.3%	24	26	2
Major individual permits: DMR entry rate based on MRs expected (Forms/Forms) (1 Qtr)	Goal	Combined	≥95%	0 / 0	0 / 0	0	0	0
Major individual permits: DMR entry rate based on	Goal	Combined	≥95%	0 / 0	0 / 0	0	0	0

	DMRs expected (Permits/Permits) (1 Qtr)							
B	Major individual permits: manual RNC/SNC override rate (1 FY)	Data Quality	Combined	0 / 0	0	0	0	
	Non-major individual permits: correctly coded limits (Current)	Informational Only	Combined	1.0%	1	98	97	
	Non-major individual permits: DMR entry rate based on DMRs expected (Forms/Forms) (1 Qtr)	Informational Only	Combined	0 / 0	0	0	0	
C	Non-major individual permits: DMR entry rate based on DMRs expected (Permits/Permits) (1 Qtr)	Informational Only	Combined	0 / 0	0	0	0	
	Violations at non-majors: noncompliance rate (1 FY)	Informational Only	Combined	7.1%	7	98	91	
	Violations at non-majors: noncompliance rate in the annual noncompliance report (ANCR)(1 CY)	Informational Only	Combined	0 / 0	0	0	0	
D	Violations at non-majors: DMR non-receipt (3 FY)	Informational Only	Combined		1	NA	NA	NA
	Informal actions: number of major facilities (1 FY)	Data Quality	State		0	NA	NA	NA

Informal actions: number of major facilities (1 FY)	Data Quality	EPA	0	NA	NA	NA
Informal actions: number of actions at major facilities (1 FY)	Data Quality	State	0	NA	NA	NA
Informal actions: number of actions at major facilities (1 FY)	Data Quality	EPA	0	NA	NA	NA
Informal actions: number of non-major facilities (1 FY)	Data Quality	State	0	NA	NA	NA
Informal actions: number of non-major facilities (1 FY)	Data Quality	EPA	0	NA	NA	NA
Informal actions: number of actions at non-major facilities (1 FY)	Data Quality	State	0	NA	NA	NA
Informal actions: number of actions at non-major facilities (1 FY)	Data Quality	EPA	0	NA	NA	NA
Formal actions: number of major facilities (1 FY)	Data Quality	State	0	NA	NA	NA
Formal actions: number of major facilities (1 FY)	Data Quality	EPA	0	NA	NA	NA
Formal actions: number of actions at major facilities (1 FY)	Data Quality	State	0	NA	NA	NA
Formal actions: number of actions at major facilities (1 FY)	Data Quality	EPA	0	NA	NA	NA

	actions at major facilities (1 FY)						
	Formal actions: number of non-major facilities (1 FY)	Data Quality	State	0	NA	NA	NA
	Formal actions: number of non-major facilities (1 FY)	Data Quality	EPA	0	NA	NA	NA
	Formal actions: number of actions at non-major facilities (1 FY)	Data Quality	State	0	NA	NA	NA
F	Formal actions: number of actions at non-major facilities (1 FY)	Data Quality	EPA	0	NA	NA	NA
	Penalties: total number of penalties (1 FY)	Data Quality	State	0	NA	NA	NA
	Penalties: total number of penalties (1 FY)	Data Quality	EPA	0	NA	NA	NA
	Penalties: total penalties (1 FY)	Data Quality	State	\$0	NA	NA	NA
	Penalties: total penalties (1 FY)	Data Quality	EPA	\$0	NA	NA	NA
	Penalties: total collected pursuant to civil judicial actions (3 FY)	Data Quality	State	\$0	NA	NA	NA
	Penalties: total collected pursuant to civil judicial actions (3 FY)	Data Quality	EPA	\$0	NA	NA	NA

	Penalties: total collected pursuant to administrative actions (3 FY)	Informational Only	State				\$0	NA	NA	NA
	Penalties: total collected pursuant to administrative actions (3 FY)	Informational Only	EPA				\$0	NA	NA	NA
	No activity indicator - total number of penalties (1 FY)	Data Quality	State				\$0	NA	NA	NA
G	No activity indicator - total number of penalties (1 FY)	Data Quality	EPA				\$0	NA	NA	NA
2. Data accuracy. degree to which the minimum data requirements are accurate.										
	Actions linked to violations:									
	major facilities (1 FY)	Data Quality	State	≥80%			0 / 0	0	0	0
	Actions linked to violations:									
A	major facilities (1 FY)	Data Quality	EPA	≥80%			0 / 0	0	0	0
3. Timeliness of data entry. degree to which the minimum data requirements are complete.										
A	Comparison of Frozen Data Set Available after December 2008									
5. Inspection coverage. degree to which state completed the universe of planned inspections/compliance evaluations.										
	Inspection coverage:									
	NPDES majors (1 FY)	Goal	State	100%	56.4%	92.3%	24	26	2	
	Inspection coverage:									
	NPDES majors (1 FY)	Goal	EPA	100%	5.9%	0.0%	0	26	26	
	Inspection coverage:									
A	NPDES majors (1 FY)	Goal	Combined	100%	59.3%	92.3%	24	26	2	
	Inspection coverage:									
	NPDES non-major	Goal	State				40.8%	40	98	58

individual permits (1 FY)							
	Inspection coverage:						
	NPDES non-major						
	individual permits (1 FY)	Goal	EPA	0.0%	0	98	98
	Inspection coverage:						
	NPDES non-major						
	individual permits (1 FY)	Goal	Combined	40.8%	40	98	58
	Inspection coverage:						
	NPDES non-major general						
	permits (1 FY)	Goal	State	28.9%	95	329	234
	Inspection coverage:						
	NPDES non-major general						
	permits (1 FY)	Goal	EPA	4.9%	16	329	313
	Inspection coverage:						
	NPDES non-major general						
B	permits (1 FY)	Goal	Combined	33.7%	111	329	218
	Inspection coverage:						
	NPDES other (not 5a or 5b)	Informational					
	(1 FY)	Only	State	0.0%	0	46	46
	Inspection coverage:						
	NPDES other (not 5a or 5b)	Informational					
	(1 FY)	Only	EPA	10.9%	5	46	41
	Inspection coverage:						
	NPDES other (not 5a or 5b)	Informational					
C	(1 FY)	Only	Combined	10.9%	5	46	41

7. Identification of alleged violations. degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information.

	Single-event violations at Review								
	majors (1 FY)	Indicator	Combined			0	NA	NA	NA
	Single-event violations at Informational								
A	non-majors (1 FY)	Only	Combined			0	NA	NA	NA
	Facilities with unresolved compliance schedule								
B	violations (at end of FY)	Data Quality	Combined	39.3%	0 / 0		0	0	0
	Facilities with unresolved permit schedule violations								
C	(at end of FY)	Data Quality	Combined	30.4%	0.0%		0	5	5
	Percentage major facilities								
D	with DMR violations (1 FY)	Data Quality	Combined	55.3%	50.0%		13	26	13

8. Identification of SNC and HPV. degree to which the state accurately identifies significant noncompliance & high priority violations and enters information into the national system in a timely manner.

	Major facilities in SNC (1 FY)	Review							
		Indicator	Combined			0	NA	NA	NA
	SNC rate: percent majors in	Review							
A	SNC (1 FY)	Indicator	Combined	24.4%	0.0%		0	26	26

10. Timely and appropriate action. degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.

A	Major facilities without timely action (1 FY)	Goal	Combined	< 2%	16.8%	0.0%		0	26	26
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Metric	Metric Description	Metric Type	Agency	National Goal	National Average	North Dakota Metric	Count	Universe	Not Counted
1. Data completeness. degree to which the minimum data requirements are complete.									
	Number of operating TSDFs in RCRAInfo	Data Quality	State			5	NA	NA	NA
	Number of active LQGs in RCRAInfo	Data Quality	State			14	NA	NA	NA
	Number of active SQGs in RCRAInfo	Data Quality	State			69	NA	NA	NA
	Number of all other active sites in RCRAInfo	Data Quality	State			628	NA	NA	NA
A	Number of LQGs per latest official biennial report	Data Quality	State			13	NA	NA	NA
	Compliance monitoring: number of inspections (1 FY)	Data Quality	State			39	NA	NA	NA
	Compliance monitoring: number of inspections (1 FY)	Data Quality	EPA			4	NA	NA	NA
	Compliance monitoring: sites inspected (1 FY)	Data Quality	State			39	NA	NA	NA
B	Compliance monitoring: sites inspected (1 FY)	Data Quality	EPA			4	NA	NA	NA
	Number of sites with violations determined at any time (1 FY)	Data Quality	State			20	NA	NA	NA

	Number of sites with violations determined at any time (1 FY)	Data Quality	EPA	0	NA	NA	NA
	Number of sites with violations determined during the FY	Data Quality	State	19	NA	NA	NA
C	Number of sites with violations determined during the FY	Data Quality	EPA	0	NA	NA	NA
	Informal actions: number of sites (1 FY)	Data Quality	State	17	NA	NA	NA
	Informal actions: number of sites (1 FY)	Data Quality	EPA	0	NA	NA	NA
	Informal actions: number of actions (1 FY)	Data Quality	State	23	NA	NA	NA
D	Informal actions: number of actions (1 FY)	Data Quality	EPA	0	NA	NA	NA
	SNC: number of sites with new SNC (1 FY)	Data Quality	State	0	NA	NA	NA
	SNC: number of sites with new SNC (1 FY)	Data Quality	EPA	0	NA	NA	NA
	SNC: Number of sites in SNC (1 FY)	Data Quality	State	0	NA	NA	NA
E	SNC: Number of sites in SNC (1 FY)	Data Quality	EPA	0	NA	NA	NA
	Formal action: number of	Data	State	0	NA	NA	NA

	sites (1 FY)	Quality						
	Formal action: number of sites (1 FY)	Data Quality	EPA		0	NA	NA	NA
	Formal action: number taken (1 FY)	Data Quality	State		0	NA	NA	NA
F	Formal action: number taken (1 FY)	Data Quality	EPA		0	NA	NA	NA
	Total amount of final penalties (1 FY)	Data Quality	State		\$0	NA	NA	NA
G	Total amount of final penalties (1 FY)	Data Quality	EPA		\$0	NA	NA	NA
2. Data accuracy. degree to which the minimum data requirements are accurate.								
	Number of sites SNC-determined on day of formal action (1 FY)	Data Quality	State		0	NA	NA	NA
	Number of sites SNC-determined within one week of formal action (1 FY)	Data Quality	State		0	NA	NA	NA
	Number of sites in violation for greater than 240 days	Data Quality	State		0	NA	NA	NA
B	Number of sites in violation for greater than 240 days	Data Quality	EPA		0	NA	NA	NA
3. Timeliness of data entry. degree to which the minimum data requirements are complete.								
	Percent SNCs entered ≥ 60 days after designation (1	Review Indicator	State		0 / 0	0	0	0

	FY)								
	Percent SNCs entered ≥								
	60 days after designation (1	Review							
A	FY)	Indicator	EPA			0 / 0	0	0	0
		Available	after						
B	Comparison of Frozen Data Set	December 2008							
	5. Inspection coverage. degree to which state completed the universe of planned inspections/compliance evaluations.								
	Inspection coverage for								
	operating TSDFs (2 FYs)	Goal	State	100%	87.7%	100.0%	5	5	0
A	Inspection coverage for								
	operating TSDFs (2 FYs)	Goal	Combined	100%	92.1%	100.0%	5	5	0
	Inspection coverage for								
	LQGs (1 FY)	Goal	State	20%	23.0%	92.3%	12	13	1
B	Inspection coverage for								
	LQGs (1 FY)	Goal	Combined	20%	25.4%	92.3%	12	13	1
	Inspection coverage for								
	LQGs (5 FYs)	Goal	State	100%	67.7%	100.0%	13	13	0
C	Inspection coverage for								
	LQGs (5 FYs)	Goal	Combined	100%	73.1%	100.0%	13	13	0
	Inspection coverage for	Informational							
	active SQGs (5 FYs)	Only	State			71.0%	49	69	20
D	Inspection coverage for	Informational							
	active SQGs (5 FYs)	Only	Combined			72.5%	50	69	19
	Inspections at active	Informational							
	CESQGs (5 FYs)	Only	State				62	NA	NA

Inspections at active sites (5 FYs)	Informational Only	Combined	65	NA	NA	NA
Inspections at active transporters (5 FYs)	Informational Only	State	15	NA	NA	NA
Inspections at active transporters (5 FYs)	Informational Only	Combined	20	NA	NA	NA
Inspections at non-notifiers (5 FYs)	Informational Only	State	0	NA	NA	NA
Inspections at non-notifiers (5 FYs)	Informational Only	Combined	0	NA	NA	NA
Inspections at active sites other than those listed in 5a-d and 5e1-5e3 (5 FYs)	Informational Only	State	1	NA	NA	NA
Inspections at active sites other than those listed in 5a-d and 5e1-5e3 (5 FYs)	Informational Only	Combined	1	NA	NA	NA

7. Identification of alleged violations. degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information.

Violation identification rate at sites with inspections (1 FY)	Review Indicator	State	48.7%	19	39	20
Violation identification rate at sites with inspections (1 FY)	Review Indicator	EPA	0.0%	0	4	4

8. Identification of SNC and HPV. degree to which the state accurately identifies significant noncompliance & high priority violations and enters information into the national system in a timely manner.

SNC identification rate at sites with inspections (1 FY)	Review Indicator	State	1/2 Avg	National	3.1%	0.0%	0	39	39
SNC identification rate at sites with inspections (1 FY)	Review Indicator	Combined	1/2 Avg	National	3.3%	0.0%	0	39	39

	sites with evaluations (1 FY)	Indicator		Avg					
	Percent of SNC determinations made within 150 days (1 FY)	Goal	State	100%	79.0%	0 / 0	0	0	0
B	Percent of formal actions taken that received a prior SNC listing (1 FY)	Review		1/2 National					
	Percent of formal actions taken that received a prior SNC listing (1 FY)	Indicator	State	Avg	58.7%	0 / 0	0	0	0
	Percent of formal actions taken that received a prior SNC listing (1 FY)	Review		1/2 National					
C	Percent of formal actions taken that received a prior SNC listing (1 FY)	Indicator	EPA	Avg	81.4%	0 / 0	0	0	0

10. Timely and appropriate action. degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.

	Percent of SNCs with formal action/referral taken within 360 days (1 FY)	Review							
	Percent of SNCs with formal action/referral taken within 360 days (1 FY)	Indicator	State	80%	23.3%	0 / 0	0	0	0
	No activity indicator - number of formal actions (1 FY)	Review							
A	No activity indicator - number of formal actions (1 FY)	Indicator	Combined	80%	21.8%	0 / 0	0	0	0
B	No activity indicator - number of formal actions (1 FY)	Indicator	State				0	NA	NA
								NA	NA

12. Final penalty assessment and collection. degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.

	No activity indicator - penalties (1 FY)	Review							
A	Percent of final formal actions with penalty (1 FY)	Indicator	State			\$0	NA	NA	NA
	Percent of final formal actions with penalty (1 FY)	Review		1/2 National					
	Percent of final formal actions with penalty (1 FY)	Indicator	State	Avg	79.3%	0 / 0	0	0	0

B	Percent of final formal actions with penalty (1 FY)	Review Indicator	Combined	1/2 National Avg	78.5%	0 / 0	0	0	0
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APPENDIX C: PDA TRANSMITTAL LETTER

Appendices D and E provide the results of the Preliminary Data Analysis (PDA). The Preliminary Data Analysis forms the initial structure for the SRF report, and helps ensure that the data metrics are adequately analyzed prior to the on-site review. This is a critical component of the SRF process because it allows the reviewers to be prepared and knowledgeable about potential problem areas before initiating the on-site portion of the review. In addition, it gives the region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metrics results.

Region 8 reviewers transmitted the results of the Preliminary Data Analysis to the State via email. The email did not include any discussion of the analysis itself. Explanations concerning the PDA initial findings and identification of any areas that the data review suggests needed further examination and discussion were addressed through discussions with the State staff during phone calls.

APPENDIX D: PRELIMINARY DATA ANALYSIS CHART

This section provides the results of the Preliminary Data Analysis (PDA). The Preliminary Data Analysis forms the initial structure for the SRF report, and helps ensure that the data metrics are adequately analyzed prior to the on-site review. This is a critical component of the SRF process because it allows the reviewers to be prepared and knowledgeable about potential problem areas before initiating the on-site portion of the review. In addition, it gives the region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metrics results.

The PDA reviews each data metric and evaluates state performance against the national goal or average, if appropriate. The PDA Chart in this section of the SRF report only includes metrics where potential concerns are identified or potential areas of exemplary performance. The full PDA Worksheet (Appendix E) contains every metric: positive, neutral or negative. Initial Findings indicate the observed results. Initial Findings are preliminary observations and are used as a basis of further investigation that takes place during the file review and through dialogue with the state. Final Findings are developed only after evaluating them against the file review results where appropriate, and dialogue with the state have occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

Clean Air Act

Metric	Metric Description	Metric Type	Agency	National Goal	National Average	North Dakota Metric	Evaluation (Preliminary)	Initial Findings
1. Data completeness. degree to which the minimum data requirements are complete.								
	Formal Action: Number Issued (1 FY)	Data Quality	State			0	Potential Concern	This is a minimum data requirement and must be reported in AIRS

I	Formal Action: Number of Sources (1 FY) Assessed	Data Quality	State			0	Potential Concern	This is a minimum data requirement and must be reported in AIRS
J	Penalties: Total Dollar Amount (1 FY)	Data Quality	State			\$0	Potential Concern	This is a minimum data requirement and must be reported in AIRS

8. Identification of SNC and HPV. degree to which the state accurately identifies significant noncompliance & high priority violations and enters information into the national system in a timely manner.

	High Priority Violation Discovery Rate - Per Major Source (1 FY)	Review Indicator	State	> 1/2 National Avg	7.5%	0.0%	Potential Concern	Consistant with past findings
A	High Priority Violation Discovery Rate - Per Major Source (1 FY)	Review Indicator	EPA		0.5%	0.0%	Potential Concern	Consistant with past findings
	High Priority Violation Discovery Rate - Per Synthetic Minor Source (1 FY)	Review Indicator	State	> 1/2 National Avg	0.7%	0.0%	Potential Concern	Consistant with past findings
B	High Priority Violation Discovery Rate - Per Synthetic Minor Source (1 FY)	Review Indicator	EPA	> 1/2 National Avg	0.0%	0.0%	Potential Concern	Consistant with past findings
C	Percent Formal Actions With Prior HPV - Majors (1 FY)	Review Indicator	State	> 1/2 National Avg	74.2%	0 / 0	Potential Concern	Consistant with past findings
D	Percent Informal Enforcement Actions Without Prior HPV - Majors (1 FY)	Review Indicator	State	< 1/2 National Avg	41.1%	0 / 0	Potential Concern	Consistant with past findings
E	Percentage of Sources with Failed Stack Test Actions that received HPV listing - Majors and	Review Indicator	State	> 1/2 National Avg	24.4%	0.0%	Potential Concern	Consistant with past findings

Synthetic Minors (2 FY)

10. Timely and Appropriate Action. Degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.

	Percent HPVs not meeting timeliness goals (2 FY)	Review Indicator	State		39.5%	0 / 0	Potential Concern	Will pull as suplimental files
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12. Final penalty assessment and collection. Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.

	No Activity Indicator - Actions with Penalties (1 FY)	Review Indicator	State			0	Potential Concern	Consistant with past findings
B	Percent Actions at HPVs With Penalty (1 FY)	Review Indicator	State	>= 80%	86.3%	0 / 0	Potential Concern	Consistant with past findings

Clean Water Act

Metric	Metric Description	Metric Type	Agency	National Goal	National Average	North Dakota Metric	Evaluation (Preliminary)	Initial Findings
1.	Data completeness. degree to which the minimum data requirements are complete.							
	Major individual permits: DMR entry rate based on MRs expected (Forms/Forms) (1 Qtr)	Goal	Combined	≥95%	0 / 0	0 / 0	Inconclusive	For the majors identified in the file selection list, the review will evaluate the permit parameters and how they are monitored or recorded for DMRs reporting.

	Major individual permits: DMR entry rate based on DMRs expected (Permits/Permits) (1 Qtr)	Goal	Combined	≥95%	0 / 0	0 / 0	Inconclusive	For the majors identified in the file selection list, the review will evaluate the reporting frequency.
B	Major individual permits: manual RNC/SNC override rate (1 FY)	Data Quality	Combined			0 / 0		
	Non-major individual permits: correctly coded limits (Current)	Informational Only	Combined			1.0%	Inconclusive	ND will be requested to demonstrate this database activity during the file review.
	Non-major individual permits: DMR entry rate based on DMRs expected (Forms/Forms) (1 Qtr)	Informational Only	Combined			0 / 0	Inconclusive	ND will be requested to demonstrate how they track facility DMRs.
C	Non-major individual permits: DMR entry rate based on DMRs expected (Permits/Permits) (1 Qtr)	Informational Only	Combined			0 / 0	Inconclusive	ND will be requested to demonstrate that DMRs are entered into its database. ND will be requested to discuss how they track minor facility exceedences and enforcement actions.
	Violations at non-majors: noncompliance rate (1 FY)	Informational Only	Combined			7.1%	Inconclusive	

D	Violations at non-majors: DMR non-receipt (3 FY)	Informational Only	Combined	1	Inconclusive	ND will be requested to discuss how they track minor facility exceedences and enforcement actions. ND will be requested to discuss how they track minor facility exceedences and enforcement actions.
	Informal actions: number of non-major facilities (1 FY)	Data Quality	State	0	Inconclusive	State reported to EPA in an email on 3/6/09 that it conducted 4 informal non-major enforcement actions at 4 facilities. Informal enforcement was conducted at Houston Engineering, NDDOT District, Sonnet Height Development, and City of Fargo for stormwater related issues.
	Informal actions: number of actions at non-major facilities (1 FY)	Data Quality	State	0	Inconclusive	
E	Informal actions: number of actions at non-major facilities (1 FY)	Data Quality	EPA	0		

	Formal actions: number of non-major facilities (1 FY)	Data Quality	State	0	Inconclusive	State reported to EPA in an email on 3/6/09 that it conducted 3 formal non-major enforcement actions at 3 facilities. The 3 facilities are Brendel Homes, Apple Creek LLP, and East Hills Developers LLP.
	Formal actions: number of non-major facilities (1 FY)	Data Quality	EPA	0		
	Formal actions: number of actions at non-major facilities (1 FY)	Data Quality	State	0	Inconclusive	State reported to EPA in an email on 3/6/09 that it conducted 3 formal non-major enforcement actions at 3 facilities. It is a WENDB requirement to track formal enforcement actions at minor facilities. ND should provide a demonstration of how it tracks this activity.
F	Formal actions: number of actions at non-major facilities (1 FY)	Data Quality	EPA	0		

Penalties: total number of penalties (1 FY)	Data Quality	State	0	Inconclusive	State reported to EPA in an email on 3/6/09 that it conducted 3 penalty actions at the 3 facilities it conducted formal enforcement.
Penalties: total number of penalties (1 FY)	Data Quality	EPA	0		
Penalties: total penalties (1 FY)	Data Quality	State	\$0	Inconclusive	State reported to EPA in a telephone call on 4/21/09 that it collected \$12,500 in penalties and proposed \$77,500 in penalties. Therefore, \$65,000 in penalties was suspended. It is a WENDB requirement to track penalties collected at major and minor facilities. ND should discuss the absence of these entries in PCS or provide a demonstration of how it tracks this information.

Penalties: total penalties (1 FY)	Data Quality	EPA			\$0		
Penalties: total collected pursuant to administrative actions (3 FY)	Informational Only	State			\$0	Inconclusive	\$14,500
Penalties: total collected pursuant to administrative actions (3 FY)	Informational Only	EPA			\$0		
No activity indicator - total number of penalties (1 FY)	Data Quality	State			\$0	Inconclusive	3
5. Inspection coverage. degree to which state completed the universe of planned inspections/compliance evaluations.							
Inspection coverage: NPDES majors (1 FY)	Goal	State	100%	56.4%	92.3%	Potential Concern	ND inspected 24 of its 26 majors.
Inspection coverage: NPDES majors (1 FY)	Goal	EPA	100%	5.9%	0.0%		
A Inspection coverage: NPDES majors (1 FY)	Goal	Combined	100%	59.3%	92.3%		

	Inspection coverage: NPDES non-major general permits (1 FY)	Goal	State	28.9%	Inconclusive	ND cannot accurately enter stormwater or CAFO inspections into PCS. The State inspected 158 stormwater and CAFO facilities that were not entered into PCS. Therefore, the number of non-major facilities inspected on general permits should be 253.
	Inspection coverage: NPDES non-major general permits (1 FY)	Goal	EPA	4.9%		
B	Inspection coverage: NPDES non-major general permits (1 FY)	Goal	Combined	33.7%		
	Inspection coverage: NPDES other (not 5a or 5b) (1 FY)	Informational Only	State	0.0%	Inconclusive	State does not enter other NPDES inspections in PCS.
	Inspection coverage: NPDES other (not 5a or 5b) (1 FY)	Informational Only	EPA	10.9%		
C	Inspection coverage: NPDES other (not 5a or 5b) (1 FY)	Informational Only	Combined	10.9%		

RCRA

Metric	Metric Description	Metric Type	Agency	National Goal	National Average	North Dakota Metric	Evaluation (Preliminary)	Initial Findings
8. Identification of SNC and HPV. degree to which the state accurately identifies significant noncompliance & high priority violations and enters information into the national system in a timely manner.								
	SNC identification rate at sites with inspections (1 FY)	Review Indicator	State	1/2 National Avg	3.1%	0.0%	potential concern	consistent with past findings
A	SNC identification rate at sites with evaluations (1 FY)	Review Indicator	Combined	1/2 National Avg	3.3%	0.0%	potential concern	consistent with past findings
B	Percent of SNC determinations made within 150 days (1 FY)	Goal	State	100%	79.0%	0 / 0	potential concern	consistent with past findings
	Percent of formal actions taken that received a prior SNC listing (1 FY)	Review Indicator	State	1/2 National Avg	58.7%	0 / 0	potential concern	consistent with past findings
C	Percent of formal actions taken that received a prior SNC listing (1 FY)	Review Indicator	EPA	1/2 National Avg	81.4%	0 / 0	potential concern	consistent with past findings
10. Timely and appropriate action. degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.								
	Percent of SNCs with formal action/referral taken within 360 days (1 FY)	Review Indicator	State	80%	23.3%	0 / 0	potential concern	consistent with past findings
A	Percent of SNCs with formal action/referral taken within 360 days (1 FY)	Review Indicator	Combined	80%	21.8%	0 / 0	potential concern	consistent with past findings
B	No activity indicator - number of formal actions (1 FY)	Review Indicator	State			0	potential concern	consistent with past findings
12. Final penalty assessment and collection. degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.								
A	No activity indicator - penalties (1 FY)	Review Indicator	State			\$0	potential concern	consistent with past findings

	Percent of final formal actions with penalty (1 FY)	Review Indicator	State	1/2 National Avg	79.3%	0 / 0	potential concern	consistent with past findings
B	Percent of final formal actions with penalty (1 FY)	Review Indicator	Combined	1/2 National Avg	78.5%	0 / 0	potential concern	consistent with past findings

APPENDIX E: PDA WORKSHEET (with State and EPA Comments)

See attached Excel file.

APPENDIX F: FILE SELECTION

Files to be reviewed are selected according to a standard protocol (available to EPA and state users here: http://www.epa-otis.gov/srf/docs/fileselectionprotocol_10.pdf) and, typically, using a web-based file selection tool (available to EPA and state users here: http://www.epa-otis.gov/cgi-bin/test/srf/srf_fileselection.cgi). The protocol and tool are designed to provide consistency and transparency in the process. Based on the description of the file selection process in section A, states should be able to recreate the results in the table in section B (where the web-based tool was used).

A File Selection Process

The web-based file selection tool was used to select files for the CAA and RCRA programs. The CWA file selection was based on other information since the data in OTIS for that program is incomplete. File selection lists were provided to the State via e-mail by the program reviewers.

CAA File Selection Process

According to the file selection tool, activities occurred during FY08 at 65 facilities. Based on this and the file selection protocol, 17 files were selected for review. These include a representative number of major, synthetic minor, and other facilities both with and without violations. No supplemental files were needed.

RCRA File Selection Process

According to the file selection tool, activities occurred during FY08 at 48 facilities. Based on this and the file selection protocol, 15 files were selected for review. These include a representative number of TSD, large quantity generator, small quantity generator, and conditionally exempt small quantity generator facilities both with and without violations. No supplemental files were needed.

CWA File Selection Process

OTIS does not have the majority of data needed to conduct the ND SRF. Therefore, ND's response to the OTIS SRF Results was used to determine the universe (major and minor inspection, formal enforcement action, and CAFO inspection numbers) and is as follows:

Universe: 327 activities

- 26 major facilities inspected
- 135 minor facilities inspected
- 68 stormwater inspections – Construction
- 31 stormwater inspections – Industrial
- 59 CAFO inspections
- 5 pretreatment inspections
- 3 ACAs

20 files were selected for review representing the facility and activity areas above.

B. File Selection Table

CAA File Selection Table

F_name	Program ID	f_street 18049 COUNTY ROAD 8 EAST	f_city	LCON	f_state	f_zip	FCE	PCE	Viol	Stack Test Failure	Title V Dev	HPV	Inf Action	Formal Action	Penalty	Universe	Select
CARGILL CORN MILLING	3807700110	18049 COUNTY ROAD 8 EAST	WAHPETON		ND	58075	1	0	0	0	0	0	0	0	0	MAJR	accepted_represen
DAKOTA GASIFICATION CO.	3805700013	P.O. BOX 1149	BEULAH		ND	58523	1	0	0	0	0	0	0	0	0	MAJR	accepted_represen
DEVELOPMENTAL CENTER	3809900001	701 WEST 6TH STREET	GRAFTON		ND	58237	1	0	0	1	0	0	0	0	0	SM80	accepted_represen
HEALTH CARE ENVIRONMENTAL SERVICES, INC.	3801700075	1420-40TH STREET NW	FARGO		ND	58102	0	0	0	0	2	0	0	0	0	OMIN	accepted_represen
J.R. SIMPLOT	3803500004	3630 GATEWAY DRIVE	GRAND FORKS		ND	58203	1	0	0	0	0	0	0	0	0	MAJR	accepted_represen
JOHN DEERE SEEDING GROUP VALLEY CITY	3800300011	1725 7TH STREET SE	VALLEY CITY		ND	58072	0	1	0	0	0	0	0	0	0	SM	accepted_represen
MAYO CONSTRUCTION COMPANY, INC.	3877700101	P.O. BOX 310	CAVALIER		ND	58220	1	0	0	0	0	0	0	0	0	SM80	accepted_represen
MINN-DAK FARMERS COOPERATIVE	3807700026	7525 RED RIVER ROAD	WAHPETON		ND	58075	1	0	0	1	0	0	0	0	0	MAJR	accepted_represen
MINNKOTA POWER COOP: M R YOUNG #2 MINNKOTA POWER COOPERATIVE, INC.	3806500020	S4-T141N- R83W	CENTER		ND	58530	1	0	0	0	0	0	0	0	0	MAJR	accepted_represen
NODAK CONTRACTING, A DIV. OF STRATA COR	3806500001	P.O. BOX 127	CENTER		ND	58530	1	0	4	0	0	0	0	0	0	MAJR	accepted_represen
	3877700099	P.O. BOX 13500	GRAND FORKS		ND	58208	1	0	0	0	0	0	0	0	0	SM80	accepted_represen

PRIMEBOARD, INC.	3807700103	3M DRIVE/23RD AVE.	WAHPETON	ND	58074	1	0	4	0	0	0	0	0	0	0	OMIN	accepted_represen
ROD'S WEST ACRES AMOCO	3801700001	4350 13TH AVE. SO.	FARGO, ND	ND	58103	0	0	4	0	0	0	0	0	0	0	OTHR	accepted_represen
SEARS, ROEBUCK AND CO.	3801500002	2700 STATE STREET	BISMARCK, ND	ND	58501	0	0	4	0	0	0	0	0	0	0	OTHR	accepted_represen
WILLISTON BASIN IPC: GLEN ULLIN	3805900006	NE1/4 NE1/4 S21-T139N-R88W	GLEN ULLIN	ND	58631	2	0	0	0	0	0	0	0	0	0	MAJR	accepted_represen
<u>DEVELOPMENTAL CENTER</u>	<u>3809900001</u>	701 WEST 6TH STREET	Grafton	ND	58237												

RCRA File Selection Table

f_name	Program ID	f_street	f_city	f_state	f_zip	Evaluation	Violation	SNC	Informal Action	Formal Action	Penalty	Universe	Select
AMITY TECHNOLOGY, LLC	NDD087246575	2800 7TH AVE N	FARGO	ND	58102	0	1	0	1	0	0	SQG	accepted_representative
BNI COAL, LTD	NDD071500912	2360 35TH AVE SW	CENTER	ND	58530	1	0	0	0	0	0	SQG	accepted_representative
BRAY'S CLEANERS	NDD064776099	10 1ST ST NW	MINOT	ND	58703	1	0	0	0	0	0	OTH	accepted_representative
CEDRIC THEEL INC.	NDD131539322	1144 MISSOURI AVE.	BISMARCK	ND	58504	1	1	0	1	0	0	OTH	accepted_representative
CON-WAY FREIGHT - XFG	NDR000007831	1756 2ND AVE NW	WEST FARGO	ND	58078	1	0	0	0	0	0	SQG	accepted_representative

CROP PRODUCTION SERVICES, INC. DBA AG DEPOT	ND0000994186	1160 12TH ST NE	GRAND FORKS	ND	58201	1	1	0	1	0	0	LQG	accepted_representative
GREAT RIVER ENERGY-COAL CREEK STATION	NDD030019145	2875 3RD ST SW	UNDERWOOD	ND	58576	1	0	0	0	0	0	SQG	accepted_representative
MOTOR COACH INDUSTRIES, INC.- PAINT SHOP	ND0000479071	150 SOUTH 5TH ST	PEMBINA	ND	58271	0	1	0	1	0	0	SQG	accepted_representative
PHOENIX INTERNATIONAL	ND0000889501	1441 44TH ST NW	FARGO	ND	58102	1	0	0	0	0	0	SQG	accepted_representative
RUGBY MANUFACTURING CO	ND0000441113	515 1ST ST NE	RUGBY	ND	58368	0	1	0	1	0	0	SQG	accepted_representative
SAFETY-KLEEN SYSTEMS, INC	NDD000716738	1537 FIRST AVE SOUTH	FARGO	ND	58103	1	2	0	2	0	0	TSD(TSF)	accepted_representative
SAFETY-KLEEN SYSTEMS, INC	NDD980957070	3707 SARATOGA AVE	BISMARCK	ND	58503	1	1	0	1	0	0	TSD(TSF)	accepted_representative
TELPRO INC	NDR000007609	7251 SOUTH 42ND ST	GRAND FORKS	ND	58201	1	0	0	0	0	0	CES	accepted_representative
TESORO REFINING AND MARKETING COMPANY	NDD006175467	900 OLD RED TRAIL NE	MANDAN	ND	58554	1	0	0	0	0	0	TSD(LDF)	accepted_representative

CWA File Selection

Category	# of files	Name of File	File Selection Rationale
Majors	2	American Crystal Sugar Hillsboro ND0024279 City of Minot ND0022896	Random selection from 26 inspections. Additionally, OTIS indicates DMR violation concerns with American Crystal and Minot.
Minors (industrial and municipal facilities)	8	City of New Leipzig ND0022519 Mandan WTP ND0023493 Dakota Adventist Academy NDG324929 City of Marion NDG321555 City of Mayville NDG122586 City of Osnabrock NDG320851 City of Stanton NDG123043	Random selection from 135 inspections. Additionally, OTIS indicates noncompliance at New Leipzig and Mandan WTP.
CAFO	4	Hexagon Pork NDAFO0547 Richter Feedlot NDAFO0594 Tim Erbele NDAFO0618	Random selection from 59 inspections which were not part of the EPA oversight inspections.
Storm Water	6	Ackerman Acres NDR102412 Capital Electric Cooperative NDR101001 Velva Wind Farm NDR101292 Hubbard Feeds - Bismarck Facility NDR050633 Johnsons Wrecking NDR050300	Random selection from 99 inspections (construction and industrial) which were not part of the EPA oversight inspections
Formal Enforcement Actions	3	Brendel Homes NDR101269 Apple Creek LLP NDR101859 East Hills Developers LLP NDR101445	All formal enforcement actions were selected since the State only conducted 3 formal actions.

APPENDIX G: FILE REVIEW ANALYSIS

This section presents the initial observations of the Region regarding program performance against file metrics. Initial Findings are developed by the region at the conclusion of the File Review process. The Initial Finding is a statement of fact about the observed performance, and should indicate whether the performance indicates a practice to be highlighted or a potential issue, along with some explanation about the nature of good practice or the potential issue. The File Review Metrics Analysis Form in the report only includes metrics where potential concerns are identified, or potential areas of exemplary performance.

Initial Findings indicate the observed results. Initial Findings are preliminary observations and are used as a basis for further investigation. Findings are developed only after evaluating them against the PDA results where appropriate, and dialogue with the state have occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

The quantitative metrics developed from the file reviews are initial indicators of performance based on available information and are used by the reviewers to identify areas for further investigation. Because of the limited sample size, statistical comparisons among programs or across states cannot be made.

Clean Air Act Program

Name of State: North Dakota

Review Period: Fiscal Year 2008

CAA Metric #	CAA File Review Metric Description:	Metric Value	Initial Findings
Metric 2c	% of files reviewed where MDR data are accurately reflected in AFS.	92%	The state did not have the ability to change some of the AIRs data, and this data was incorrect in one of the files reviewed. EPA has sent the form to the State to fill out and gain access to these data fields.
Metric 4a	Confirm whether all commitments pursuant to a traditional CMS plan (FCE every 2 yrs at Title V majors; 3 yrs at mega-sites; 5 yrs at SM80s) or an alternative CMS plan were completed. Did the state/local agency complete all planned evaluations negotiated in a CMS plan? Yes or no? If a state/local agency implemented CMS by following a traditional CMS plan, details concerning evaluation coverage are to be discussed pursuant to the metrics under Element 5. If a state/local agency had negotiated and received approval for conducting its compliance monitoring program pursuant to an alternative plan, details concerning the alternative plan and the S/L agency's implementation (including evaluation coverage) are to be discussed under this Metric.		
Metric 4b	Delineate the air compliance and enforcement commitments for the FY under review. This should include commitments in PPAs, PPGs, grant agreements, MOAs, or other relevant agreements. The compliance and enforcement commitments should be delineated.		
Metric 6a	# of files reviewed with FCEs.	13	
Metric 6b	% of FCEs that meet the definition of an FCE per the CMS policy.	100%	
Metric 6c	% of CMRs or facility files reviewed that provide sufficient documentation to determine compliance at the facility.	85%	The States Portable Asphalt Plant form does not have a place for Compliance history. This section needs to be added to form. These were the only instance where any issue was noted.
Metric 7a	% of CMRs or facility files reviewed that led to accurate compliance determinations.	100%	
Metric 7b	% of non-HPVs reviewed where the compliance determination was timely reported to AFS.	N/A	State Files have no Documented HPV
Metric 8f	% of violations in files reviewed that were accurately determined to be HPV.	50%	Review of actions shows that one of them should have been classified as and HPV
Metric 9a	# of formal enforcement responses reviewed.	1	
Metric 9b	% of formal enforcement responses that include required corrective action (i.e., injunctive relief or other complying actions) that will return the facility to compliance in a specified time frame.	100%	

Metric 10b	% of formal enforcement responses for HPVs reviewed that are addressed in a timely manner (i.e., within 270 days).	0%	State Not following HPV policy
Metric 10c	% of enforcement responses for HPVs appropriately addressed.	100%	
Metric 11a	% of reviewed penalty calculations that consider and include where appropriate gravity and economic benefit.	0%	Economic benefit not calculated correctly. Recommend State use BEN mode
Metric 12c	% of penalties reviewed that document the difference and rationale between the initial and final assessed penalty.	100%	
Metric 12d	% of files that document collection of penalty.	100%	

Evaluation Criteria

Minor Issues/Appears Acceptable -- No EPA recommendation required.

Potential Concern -- Not a significant issue. Issues that the state may be able to correct without specific recommendation. May require additional analysis.

Significant Issue -- File review shows a pattern that indicates a significant problem. Will require an EPA Recommendation.

CWA Program

Name of State: North Dakota

Review Period: Fiscal Year 2008

CWA Metric #	CWA File Review Metric:	Metric Value	Initial Findings
Metric 2b	% of files reviewed where data is accurately reflected in the national data system.	100%	Appears Acceptable -No EPA recommendation required.
Metric 4a	% of planned inspections completed. Summarize using the Inspection Commitment Summary Table in the CWA PLG.	See metric 4a worksheet below	Potential Concern - ND needs to increase its stormwater inspection coverage. ND failed to meet its commitment for stormwater construction and industrial inspections and major facilities.
Metric 4b	Other Commitments. Delineate the commitments for the FY under review and describe what was accomplished. This should include commitments in PPAs, PPGs, grant agreements, MOAs, or other relevant agreements. The commitments should be broken out and identified.	See metric 4b worksheet below	Potential Concern - ND needs to improve on submitting PPA and SRF tracker items on time. Additionally, ND needs to work with EPA to ensure that PPA deliverables are adequate.
Metric 6a	# of inspection reports reviewed.		20 files reviewed
Metric 6b	% of inspection reports reviewed that are complete.	0%	Significant Issue -- File review shows a pattern that indicates a significant problem. Specifically, minor municipal and some stormwater inspections need improvement to meet CEI definitions.
Metric 6c	% of inspection reports reviewed that provide sufficient documentation to lead to an accurate compliance determination.	0%	Significant Issue -- File review shows a pattern that indicates a significant problem. Inspection reports need to provide more documentation to lead to a compliance determination (e.g. meet the minimum requirements of a CEI).
Metric 6d	% of inspection reports reviewed that are timely.	75%	Minor issue -No EPA recommendation required. Only 5 reports reviewed were not timely (exceeded 45 days).
Metric 7e	% of inspection reports or facility files reviewed that led to accurate compliance determinations.	70%	Potential Concern - ND needs to make compliance determinations on all inspections. If the compliance determination indicates a violation or deficiency, the State needs to take the appropriate enforcement action.
Metric 8b	% of single event violation(s) that are accurately identified as SNC or Non-SNC.	NA	ND did not identify any SEVs.
Metric 8c	% of single event violation(s) identified as SNC that are reported timely.	NA	ND did not identify any SEVs.
Metric 9a	# of enforcement files reviewed		3 files reviewed
Metric 9b	% of enforcement responses that have returned or will return a source in SNC to compliance.	NA	ND did not identify any SNC.
Metric 9c	% of enforcement responses that have returned or will return a source with non-SNC violations to compliance.	33%	Significant Issue - ND does not track compliance with the enforcement action or the facility's permit to ensure that the facility is back in compliance.

Metric 10b	% of enforcement responses reviewed that address SNC that are taken in a timely manner.	NA	ND did not identify any SNC.
Metric 10c	% of enforcement responses reviewed that address SNC that are appropriate to the violations.	NA	ND did not identify any SNC.
Metric 10d	% of enforcement responses reviewed that appropriately address non-SNC violations.	33%	Significant Issue - ND does not escalate enforcement when additional violations are found and does not collect suspended penalties.
Metric 10e	% enforcement responses for non-SNC violations where a response was taken in a timely manner.	66%	Minor issue -No EPA recommendation required.
Metric 11a	% of penalty calculations that consider and include where appropriate gravity and economic benefit.	0%	Significant Issue - BEN was not considered for any of the 3 enforcement cases. ND needs to evaluate each case to determine if the BEN would be so minimal that it does not need to be considered. A review of the 3 formal enforcement actions indicated that BEN should have been considered in each case.
Metric 12a	% of penalties reviewed that document the difference and rationale between the initial and final assessed penalty.	0%	Significant Issue - ND needs to document differences between initial and final penalty amounts. If other offices within the state (e.g. Attorney General) are changing penalty amounts, documentation of such needs to be put into the case file.
Metric 12b	% of enforcement actions with penalties that document collection of penalty.	100%	Appears Acceptable -No EPA recommendation required.
Findings Criteria			
Minor Issues/Appears Acceptable -- No EPA recommendation required.			
Potential Concern -- Not a significant issue. Issues that the state may be able to correct without specific recommendation. May require additional analysis.			
Significant Issue -- File review shows a pattern that indicates a significant problem. Will require an EPA Recommendation.			

RCRA Program

Name of State: North Dakota

Review Period: Fiscal Year 2008

RCRA Metric #	RCRA File Review Metric Description:	Metric Value	Initial Findings
Metric 2c	% of files reviewed where mandatory data are accurately reflected in the national data system.	100%	
Metric 4a	Planned inspections completed	100%	
Metric 4b	Planned commitments completed	100%	
Metric 6a	# of inspection reports reviewed.	15	
Metric 6b	% of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance at the facility.	100%	
Metric 6c	Inspections reports completed within a determined time frame.	100%	
Metric 7a	% of accurate compliance determinations based on inspection reports.	100%	
Metric 7b	% of violation determinations in the files reviewed that are reported timely to the national database (within 150 days).	100%	
Metric 8h	% of violations in files reviewed that were accurately determined to be SNC.	0%	No SNC violations were detected
Metric 9a	# of enforcement responses reviewed.	3	
Metric 9b	% of enforcement responses that have returned or will return a source in SNC to compliance.	100%	there were not SNC Violations
Metric 9c	% of enforcement responses that have returned or will return Secondary Violators (SV's) to compliance.	100%	all the facilities that received notice of violations were returned into compliance within around 20 days
Metric 10e	% of enforcement responses reviewed that are taken in a timely manner.	100%	
Metric 10d	% of enforcement responses reviewed that are appropriate to the violations.	100%	
Metric 11a	% of reviewed penalty calculations that consider and include where appropriate gravity and economic benefit.	0%	violations detected did not rise to the level of penalty
Metric 12a	% of penalties reviewed that document the difference and rationale between the initial and final assessed penalty.	0%	The violations detected were not at the level to receive penalty.
Metric 12b	% of files that document collection of penalty.	0%	
Findings Criteria			
No or only minor issue. Finding or recommendation may not be required in the final report.			
Potential area of concern. State is expected to make corrections on their own. Finding may be required, but EPA recommendation may not be required.			
Significant issues. Finding(s) and EPA recommendation(s) required.			

APPENDIX H: CORRESPONDENCE



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-PJ

L. David Glatt, Chief
Environmental Health Section
North Dakota Department of Health
918 E. Divide Avenue
Bismarck, ND 58501-1947

Re: FY 2008 State Review Framework (SRF)
Review

Dear Mr. Glatt:

Through this letter, the Environmental Protection Agency (EPA) Region 8 is initiating a review of the North Dakota Department of Health Environmental Health Section (NDDOH) Resource Conservation and Recovery Act (RCRA) Subtitle C, Clean Water Act National Pollutant Discharge Elimination System (NPDES), and Clean Air Act Stationary Source Enforcement Programs. We will review inspection and enforcement activity from Federal Fiscal Year 2008.

In FY2007, EPA regions completed the first round of reviews using the State Review Framework (SRF) protocol. This work created a baseline of performance from which future oversight of state compliance and enforcement programs can be tracked and managed. In early FY2008, implementation of the first round of reviews was evaluated and a work group composed of EPA headquarters, regional managers and staff, Environmental Council of States (ECOS), state media associations and other state representatives revised the SRF elements, metrics, process and guidance.

The second round of the SRF is a continuation of a national effort that allows Region 8 to ensure that NDDOH meets agreed upon minimum performance levels in providing environmental and public health protection. The review will include:

- ▶ discussions between Region 8 and NDDOH program managers and staff,
- ▶ examination of data in EPA and (if applicable) NDDOH data systems, and
- ▶ review of selected NDDOH inspection and enforcement files and (if applicable) policies.

Region 8 and NDDOH have the option of agreeing to examine state programs that broaden the scope of traditional enforcement. This may include programs such as pollution prevention, compliance assistance, innovative approaches to achieving compliance, documenting and reporting outputs, outcomes and indicators, or supplemental environmental projects. We welcome NDDOH suggesting other compliance programs for inclusion.

We expect to complete the NDDOH review, including the final report, by September 30, 2009. Our intent is to assist NDDOH in achieving implementation of programs that meet federal standards and are based on the goals we have agreed to in NDDOH's Performance Partnership Agreement. Region 8 and NDDOH are partners in carrying out the review. If we find issues, we want to address them in the most constructive manner possible.

Region 8 has established a cross program team of managers and senior staff to implement the NDDOH review. Corbin Darling will be Region 8's primary contact for the review ((303) 312-6426, darling.corbin@epa.gov). He will coordinate the review for the Region. I am Region 8's senior manager with overall responsibility for the review. The program experts on the review team will be:

- Amy Clark, NPDES, (303) 312-7014, Clark.amy@epa.gov
- Joshua Rickard, CAA, (303) 312-6460, Rickard.joshua@epa.gov
- Phillipe Pierre-Louis, RCRA, (303) 312-6849, Pierre-louis.phillipe@epa.gov

On December 30, 2008, Corbin Darling and I met with you and Teri Lunde via conference call to go over the review expectations, procedures and schedule. Program-specific kick off meetings with your program managers and/or program SRF contacts are underway, and should be wrapped up next week.

The review protocol includes numerous program specific worksheets, metrics, and report templates that Region 8 and NDDOH will use to complete the review. We believe it will assist us in carrying out an efficient, focused review. All of these materials have been developed jointly by EPA regional and HQ staff and numerous state officials.

Enclosed with this letter are the Official Data Sets (ODS) that will be used in the review (one for each program). Please respond by February 27, 2009, with an indication that you agree with the ODS, or if there are discrepancies, please provide that information in the spreadsheet file and send it electronically to the applicable EPA review team member and Corbin Darling. Please note that minor discrepancies that would not have a substantive impact on the review do not need to be

reported. If you do not respond by the date noted above, we will proceed with our preliminary data analysis and file selection under the assumption that the ODS is correct.

EPA has designed the SRF Tracker as the repository for holding all SRF products including draft and final documents, letters, data sets, etc. It is also a management tool used to track the progress of a state review and to follow-up on the recommendations. Regions will enter and update all information for their states in the SRF Tracker. The Office of Enforcement and Compliance Assurance (OECA) will use the Tracker to monitor implementation of the review. States can view and comment on their information securely on the Internet.

All information and materials used in this review may be subject to federal and/or state disclosure laws. While EPA does not intend to post this information on any public website, EPA will release the information, as appropriate, in response to a request under the Freedom of Information Act that is properly submitted.

If you have any questions regarding the SRF review, please contact me at (303) 312-6051 or have your staff contact Corbin Darling at (303) 312-6426.

Sincerely,

- *signed* -

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Enclosure: Official Data Sets

cc: Teri Lunde, NDDOH
Dennis Fewless, NDDOH
Terry O'Clair, NDDOH
Scott Radig, NDDOH
Curt Erickson, NDDOH

cc: By *e-mail*
Carol Rushin , Acting Regional Administrator
Steve Tuber, Acting Deputy Regional Administrator

----- Forwarded by Corbin Darling/R8/USEPA/US on 09/21/2009 11:25 AM -----

From: "Lunde, Teri L." <tlunde@nd.gov>
To: Corbin Darling/R8/USEPA/US@EPA
Cc: "Glatt, Dave D." <dglatt@nd.gov>
Date: 09/21/2009 08:12 AM
Subject: FW: Comments - Draft State Review Framework - North Dakota

Hi Corbin: Attached please find our comments regarding the Round 2 – SRF. We have attached our letter of comments and a copy of the report (second attachment) with our suggestions incorporated. Please let us know if you have any questions regarding this. If you need a Word copy of the report, please let me know. Teri

P.S. Dave Glatt, Environmental Health Section Chief, e-mailed me September 20, 2009, with some additional thoughts as follows:

Teri,

Some more thoughts on the SRF along with the PPA etc...

I wonder if we should state that we are concerned about the program escalation being seen in several areas specifically in Enforcement. The state will need to prioritize activities and do some well, some not so well and some not at all. We need to reiterate that for the program to work there must be a true partnership and give and take on both side for the programs to be meaningfully implemented at the state level. We may have to rethink our responsibilities to the programs with the stagnant funding that has been experienced over the past few years. Either funding needs to be increased with additional staff or program expectations/priorities must be shortened.

Thanks Dave G



0592_001.pdf



2009 ND Round 2 Report 08 25 09 (comments).pdf



September 18, 2009

Corbin P. Darling, P.E., Chief
Policy and Environmental Justice Unit
Office of Enforcement, Compliance, and Environmental Justice US EPA Region 8
1595 Wynkoop Street (8ENF-PJ)
Denver, CO 80202-1129

Dear Corbin:

Thank you for the opportunity to review the Draft North Dakota Round 2 State Review Framework Report, dated August 25, 2009. We note that this draft report is a total of 104 pages (not including the Preliminary Data Analysis). The draft report that we received from EPA May 4, 2007, was a total of 33 pages. We appreciate the time and effort that EPA has put into developing a more comprehensive report; however, it has increased the amount of time in reviewing and providing comment on this report.

We have organized our comments as per general comments and program specific comments. We have included suggested changes in red and blue font in the attached report. Also, due to time and resource constraints, we were not able to go in and review the Official Data Pull information in Appendix B, pages 51 – 74 or Appendix D: Preliminary Data Analysis Chart, pages 76 – 86. Our RCRA program did note Page 98, RCRA Program, Metrics 6a, 6b, 6c in RCRA comments.

General Comments

Page 3, Executive Summary, the report states: “The reports are designed to provide factual information and do not make determinations of program adequacy.” If this is the case why does EPA rate/rank the program elements as EPA does throughout this SRF report?

Pages 3 and 4, Major State Priorities and Accomplishments, we suggest some minor wording changes here.

Page 4, Summary of Results – here, too, we have some suggestions.

Pages 5 and 6, Element 6, we have added a new b. for the Clean Water Act (CWA) enforcement program information and the previous “b” is now a “c.” We have included this item in the State Response section on page 31 also.

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Pages 6 and 7, Element 7, we have added a new “c” and have included this item in the State Response section on page 32 also.

Page 7, Element 9, we have added a new “c” and have included this item in the State Response section on page 34 also.

Pages 7 and 8, Element 10, we have added new “c” and “d” and have included this information in the State Response section on page 35 also.

Page 8, Element 11, we have added a new “c” and have included this in the State Response section on page 36 also.

Page 8, Element 12, we have added a new “c” and have included this in the State Response section on page 37 also.

Page 9, C. “SIGNIFICANT CROSS-MEDIA FINDINGS AND RECOMMENDATIONS, Quality of Inspection or Compliance Evaluation Report – This is an issue across two programs at NDDH. CWA reports are missing required information. RCRA reports meet all requirements, but recommendations are made to make the reports more comprehensive.”

We request that the Quality of Inspection or Compliance Evaluation Report statement be deleted in this report for the following reasons:

“CWA reports are missing required information.” Information provided on the inspection reports in concert with the extensive data found in the file provide adequate information relating to the status of the facility and, as required, needed to proceed with appropriate enforcement.

“RCRA reports meet all requirements, but recommendations are made to make the reports more comprehensive.” We question why this is listed under SIGNIFICANT FINDINGS AND RECOMMENDATIONS as the state meets all requirements and the suggestions are only provided to improve and fine-tune these reports. It is not that we are deficient in anyway and we feel this should not be identified within “SIGNIFICANT CROSS-MEDIA FINDINGS AND RECOMMENDATIONS.” We do not comprehend how this can be a significant finding when the program meets all requirements!

Pages 10 and 11, we have incorporated information in the General Program Overview Section, Roles and responsibilities, Resources and Staffing/Training items.

Page 12, We note some suggestions on this page.

CAA

Page 18, Element 2, Data Accuracy, Explanation section – we have marked some changes in this section in the attached.

Page 20, Element 5, Inspection Coverage, Explanation section – minor typo – last word should be source (not sources).

Page 22, Element 8, Identification of SNC and HPV, Explanation and Metrics sections, we have incorporated some minor changes.

Page 23, Element 9, Enforcement Actions Promote Return to Compliance; we have incorporated some minor changes in the Metrics section.

Page 24, Element 11, Penalty Calculation Method; we have suggested some minor changes in the Metrics section.

NPDES

“Areas for State Attention” were identified for Element 4: Completion of Commitments; and Element 5: Inspection Coverage. We have incorporated state comments into the State Response section for each of these elements on pages 29 and 30.

“Areas for State Improvement Requiring Recommendations” were identified for:

Element 6: Quality of Inspection or Compliance Evaluation Reports. We have incorporated comments into the State Response Section on page 31.

Element 7: Identification of Alleged Violations. Our comments are incorporated into the State Response section on page 32.

Element 9: Enforcement Actions Promote Return to Compliance. Our comments are incorporated into the State Response section on page 34.

Element 10: Timely and Appropriate Action. Our comments are incorporated into the State Response section on page 35.

Element 11: Penalty Calculation Method. Our comments are incorporated into the State Response section on page 36.

Element 12: Final Penalty Assessment and Collection. Our comments are incorporated into the State Response section on page 37.

Having the NPDES SRF program review in May and the five-year audit of the same program in September has been very challenging. One audit or review of any program is quite time consuming let alone having two in less than six months. We only remind EPA that our time and resources are taken away from conducting other work we have committed to in the PPA.

We believe the SRF’s NPDES Program’s “Areas for State Improvement Requiring Recommendations” identified in this review do not warrant the lowest rating. We understand that the areas identified can use improvements especially in documenting enforcement correspondence and improving our state database. However, this review seems to focus on areas that do not deal with permit backlogs and our major permits.

It would be a great benefit for the public and states if EPA would provide for a direct comparison of state and federal run programs to see that we are all subject to the same rules of performance.

We are being requested to go above and beyond what EPA is able to do in the states and areas that EPA administers this federal program.

There still continues to be a philosophical difference with EPA as it relates to the role formal enforcement plays in gaining overall program compliance. We have always believed that formal enforcement is a "tool" that can be used to gain compliance, but that it is not the only tool used by the states. Compliance assistance, facility one-on-one consultation, and a strong field presence all have been shown to contribute to a strong enforcement presence and result in high rates of compliance in the state. Since we have primacy for these programs, EPA needs to allow for each state to use its own discretion in their efforts to gain compliance in a manner that fits the violation, is protective of public health and gains the confidence of the regulated community. If not, it would be great to see how EPA can regulate this program in North Dakota with the limited resources and funding available, which also includes the 200 stormwater inspections expected of our program next year.

RCRA

One "Area for State Attention" was identified for Element 6: Quality of Inspection or Compliance Evaluation Reports. There were no "Areas for State Improvement Requiring Recommendations" identified for this program.

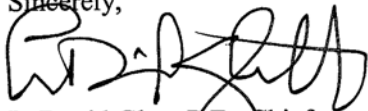
1. Page 42, "Element 6, Quality of Inspection or Compliance Evaluation Reports. Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations." In this Element the State's RCRA Program has been evaluated as an "Area for State Attention." Under Metric(s) and Quantitative Value we were given a 100% for 6b and 6c. Under the Finding it is stated that the files reviewed revealed that the State has produced good documentation of their inspections documenting their observation and properly documenting their finding. Inspection reports were timely, complete and accurate. Under Explanation it is stated that the State does a good job writing their inspection reports in a timely manner and documenting their inspection findings. However, although not a requirement, it is listed as an element for State Attention. So it appears that we have been "downgraded" for not including general information about the facility in our inspection report that is not part of or a requirement of SRF.

2. Page 98, RCRA Program, Metric 6a, 6b, 6c. 6a is number of inspection reports that were reviewed (15). Metric 6b and 6c is 100%.

Based on all of the information that is part of the RCRA SRF, we believe this finding should be changed to "**Meets SRF Program Requirements**" for Element 6.

That concludes our suggestions. Please feel free to contact Jim Semerad at (701)328-5188 for CAA; Gary Bracht at (701)328-5210 for NPDES/CWA comments; and, Curt Erickson at (701)328-5166 for RCRA comments or discussion. Or, please feel free to contact me at (701)328-5150 if you wish to discuss further. Thank you for the opportunity to provide comment on this draft report.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. David Glatt', written over a circular stamp or seal.

L. David Glatt, P.E., Chief
Environmental Health Section

cc: Dennis Fewless, NDDH
Gary Bracht, NDDH
Terry O'Clair, NDDH
Jim Semerad, NDDH
Scott Radig, NDDH
Curt Erickson, NDDH



October 8, 2009

Corbin P. Darling, P.E., Chief
Policy and Environmental Justice Unit
Office of Enforcement, Compliance, and Environmental Justice US EPA Region 8
1595 Wynkoop Street (8ENF-PJ)
Denver, CO 80202-1129

Dear Corbin:

Thank you for the opportunity to review the Final Draft North Dakota State Review Framework (SRF) Report, dated October 1, 2009.

We find ourselves struggling with the SRF process and its purpose. We know that we all can improve on our work and find ways of becoming more effective and efficient. However, we're wondering if this process helps us with this.

We believe the state's actual compliance records should be incorporated into this process. We are concerned that the current process does not adequately acknowledge compliance history and overall program effectiveness. It provides little deference to compliance rates yet emphasizes enforcement processes which in reality do not improve the condition or quality of the environment (for example, elements which downgrade the state for content of an inspection report header). Our concern is that if compliance information is not incorporated on equal footing with enforcement within the SRF, a citizen or an EPA Headquarters Enforcement official reading this report would probably conclude that the state is doing a terrible job - when in fact, many of the programs indicate compliance well above the national average! We believe that if this process is to continue with hope of improving EPA's and the state's performance, the Elements/Criteria to which states are reviewed should change.

In reviewing the Final Draft of this report, we very much appreciate EPA's revision to the RCRA Program Finding in Element 6, page 42, to "Meet SRF Requirements?" We note that State Response section on this page could reflect that the finding was changed. Also, with this change, corresponding changes will need to be made to pages 7 and 38.

We have no comments to the CAA section of this report. We were disappointed that the draft final reflects a change from the August 25, 2009 draft, in Element 6, Quality of Inspection or Compliance Evaluation Reports from "Meets SRF Program Requirements" to "Area for State Attention."

In the NPDES section, we are pleased that our State Response section comments were incorporated into the final draft. We were disappointed that some of the elements reviewed were

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not changed from "Area for State Attention" to "Meets SRF Requirements." We will continue to work on this program's enforcement activities as resources allow.

We wonder if we were to comment on the August 25, 2009, Draft Report's, Section II., Background Information on State Program and Review Process and Section III., Status of Outstanding Recommendations from Previous Reviews (pages 3 - 10 in the Final Draft Report). We don't see where our previous comments and information have been incorporated into the final report.

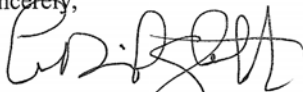
Although the Review Schedule was provided months ahead of time, this report and request for comments has come at the same time as several other competing priorities and ongoing environmental work. Please keep in mind for future reviews that states need an ample amount of time to review and provide comment as states already have ongoing work and competing priorities.

This year's State Review Framework increased in report information and comprehensiveness. In comparing the two SRFs completed now, we found the SRF first round completed in 2007 to be easier and quicker to comment on as program findings were presented so program staff could quickly review and provide comment. Only the program findings were presented—so, one didn't need to review and indicate changes to summary and overview information upfront to coincide with the changes/comments presented in the Findings Section of the report.

We feel we must find a way to put our combined resources together to enhance each others programs and effectiveness and make for a better working relationship in overall program implementation. Conflicts between EPA and the state in areas which do not improve environmental quality have placed a strain on both agencies. Perhaps we could have a staff exchange program where for a certain amount of time (two weeks to a month or longer), staff would work on-site with the other agency's staff. We could then experience what each agency encounters on a daily basis and move to a better understanding of each other's positions. We are uncertain where funding could come from for such an arrangement since the more expensive part of this suggestion would be staff temporary lodging and per diem arrangements.

This concludes our suggestions. Thanks again for providing us the opportunity to review this report!

Sincerely,



L. David Glatt, P.E., Chief
Environmental Health Section

cc: Dennis Fewless, NDDH
Terry O'Clair, NDDH
Scott Radig, NDDH