

# **STATE REVIEW FRAMEWORK**

## **New Mexico**

### **Clean Air Act, and Resource Conservation and Recovery Act Implementation in Federal Fiscal Year 2012**

**U.S. Environmental Protection Agency  
Region 6, Dallas**

**Final Report  
November 19, 2014**

# **Executive Summary**

## **Introduction**

EPA Region 6 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the New Mexico Environment. NMED has not assumed the Clean Water Act NPDES program and is therefore not part of this review.

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

## **Areas of Strong Performance**

- NMED met the CAA compliance and enforcement program expectations in several areas, including quality of compliance monitoring reports, accuracy of HPV determinations, formal enforcement and enforcement responses. Furthermore, all penalty calculations and penalties collected were well documented. NMED should be recognized for maintaining its enforcement productivity in the face of personnel losses.
- NMED, for the most part, is meeting or exceeding the RCRA compliance and enforcement program expectations in all review elements. The state continues to focus some of its resources on conducting inspections at facilities that have "never been inspected" to ensure that they are correctly identified in the appropriate universe. NMED continues to have a violation discovery rate (42.7%) greater than the national average (35.9%).

## **Priority Issues to Address**

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

- Timely and appropriate action taken to address CAA high priority violations (HPVs).
- FCE coverage per the CAA Compliance Monitoring Strategy.

## **Most Significant CAA Stationary Source Program Issues**

- Compliance monitoring and enforcement related data accuracy and timeliness.
- Timely and appropriate action taken to address high priority violations (HPVs).
- FCE coverage per the Compliance Monitoring Strategy.
- Review of Title V annual compliance certifications.

## **Most Significant RCRA Subtitle C Program Issues**

- None at this time.

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# I. Background on the State Review Framework

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

- Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES)
- Clean Air Act (CAA) Stationary Sources (Title V)
- Resource Conservation and Recovery Act (RCRA) Subtitle C

Reviews cover:

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

EPA conducts SRF reviews in three phases:

- Analyzing information from the national data systems in the form of data metrics
- Reviewing facility files and compiling file metrics
- Development of findings and recommendations

EPA builds consultation into the SRF to ensure that EPA and the state understand the causes of issues and agree on actions needed to address them. SRF reports capture the agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state programs.

Each state's programs are reviewed once every five years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2013 and will continue through FY 2017.

## II. SRF Review Process

**Review period:** FY 2012

**Key dates:**

- Kickoff letter sent to state: December 5, 2012
- Kickoff meeting conducted: May 13, 2013
- Data metric and file selection list sent to state: April 16, 2013 (Air) and May 15, 2013 (RCRA)
- On-site file review conducted: May 13-15, 2013 (Air) and May 28-30, 2013 (RCRA)
- Draft report to state: August 28, 2014
- Report finalized: November 19, 2014

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### III. SRF Findings

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

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

There are three categories of findings:

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

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

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

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

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

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

## Clean Air Act Findings

Element 1 — Data						
<b>Finding 1-1</b>	<b>Area for State Improvement</b>					
<b>Summary</b>	There were issues identified with timely and accurate reporting of Minimum Data Requirements (MDRs)					
<b>Explanation</b>	<p>2b In 10 of 29 FCEs reviewed, the air program and/or subpart data contained in the CMR did not match the data appearing in AFS. CAA data issues with missing Subparts were identified in the previous SRF conducted of the State. Regarding accuracy of data entry, we understand that during FY 2012, NMED had one member of the three-person AFS data team move to another Bureau within NMED. A replacement was selected; however, this individual is no longer with NMED. A replacement was identified, but this individual has not had AFS training other than on-the-job and assistance from Region 6 and staff at NMED.</p> <p>3a2 Nine HPVs were entered untimely. This was identified as an area for “State Attention” in the previous SRF report. Data entry timeliness was due to a staffing issue.</p> <p>3b1 Fifty-two of 256 compliance monitoring MDRs were not entered timely. Data entry timeliness was due to a staffing issue.</p> <p>7b1 Notices of Violations were issued to 24 facilities but pollutant compliance status was not changed to reflect violation on 23 facilities.</p> <p>7b3 Nine of 10 HPVs did not have the pollutant compliance status changed to reflect non-compliance. The nine HPVs referenced in 3a2 were not entered timely; therefore the “auto-generate” compliance status was not generated in the appropriate month and quarter.</p>					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	2b Accurate MDR data in AFS	100%		19	29	65.5%
	3a2 Untimely entry of HPV determinations	0		9	9	
	3b1 Timely reporting of compliance monitoring MDRs	100%	80%	204	256	79.7%
	7b1 Violations reported per informal actions	100%	59.7%	1	24	4.2%
	7b3 Violations reported per HPV identified	100%	53.4%	1	10	10%

<p><b>State Response</b></p>	<p>2b The Minimum Data Requirements have been electronically uploaded from the State TEMPO database into AFS. Subparts have not been accurately reported in AFS, because the State has not accurately entered data into the TEMPO database. The State is taking steps to provide quality assurance to the data entered into TEMPO by permitting staff. As permits are reviewed, permit managers will verify that Subparts are entered properly into TEMPO.</p> <p>3a2 In April 2013, the Enforcement Section provided training to the Bureau’s Compliance Sections on identifying potential HPVs. The training was followed by strategic planning with the Compliance Sections to develop methods for delivering HPV related information to the Enforcement Section expeditiously. The processes developed during the strategic planning process have been implemented, resulting in timely entry of HPV determinations.</p> <p>3b1 The State has evaluated past practices for compilation of data and found that significant revisions are needed. Coinciding with the roll-out of the new ICIS reporting system, the State will implement new procedures to ensure the accuracy and completeness of MDR’s entered on the system.</p> <p>7b1 AQB was unaware that the pollutant compliance status was required to be changed. As soon as the Enforcement Manager was made aware of this requirement, steps were taken to correct this situation.</p> <p>7b3 AQB was unaware that the pollutant compliance status was required to be changed. As soon as the Enforcement Manager was made aware of this requirement, steps were taken to correct this situation by contacting the AFS support group to automate the process.</p>
<p><b>Recommendation</b></p>	<p>As facilities are scheduled for an FCE or permit renewal, we recommend that TEMPO data be compared to the permit, verified and corrected as necessary to be uploaded properly to AFS. AFS data needs to be verified and corrected as necessary. Facilities without Subpart information on NSPS and NESHAP air programs will not migrate properly to ICIS-Air. We recommend the missing/inaccurate air program and/or Subpart information be corrected in AFS no later than September 30, 2014, prior to the final data migration from AFS to ICIS-Air.</p> <p>NMED should evaluate its current practices and procedures to determine if changes can be made to improve timeliness in entering HPVs.</p>



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Region 6 will continue providing assistance/guidance to NMED staff with AFS until ICIS-Air becomes functional at the end of October 2014.

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**Element 1 — Data**

<b>Finding 1-2</b>	<b>Meets Expectations</b>																		
<b>Summary</b>	EPA Region 6 evaluated NMED’s data timeliness for entry of stack test data and enforcement (MDRs). EPA identified minor problems with metrics 3b2 and 3b3.																		
<b>Explanation</b>	<p>3b2 The State was minimally below the national goal of 100% for timely reporting of stack test dates and results, reporting 273 of 275 stack tests/results timely.</p> <p>3b3 The State was slightly below the national goal of 100% for timely reporting of enforcement MDRs, reporting 60 of 61 MDRs timely.</p> <p>However, NMED exceeded the national average for each metric.</p>																		
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>3b2 Timely reporting of stack test dates and results</td> <td>100%</td> <td>73.1%</td> <td>273</td> <td>275</td> <td>99.3%</td> </tr> <tr> <td>3b3 Timely reporting of enforcement MDRs</td> <td>100%</td> <td>73.7%</td> <td>60</td> <td>61</td> <td>98.4%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	3b2 Timely reporting of stack test dates and results	100%	73.1%	273	275	99.3%	3b3 Timely reporting of enforcement MDRs	100%	73.7%	60	61	98.4%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #														
3b2 Timely reporting of stack test dates and results	100%	73.1%	273	275	99.3%														
3b3 Timely reporting of enforcement MDRs	100%	73.7%	60	61	98.4%														
<b>State Response</b>	<p>3b2. The State is just short of meeting the national goal of 100% and will strive to meet it in the future. The State is developing an online test document submittal system that will reduce the time required for the review and compliance evaluation process.</p> <p>3b3 The State is just short of meeting the national goal of 100% and will strive to meet it in the future.</p>																		
<b>Recommendation</b>	None.																		

## Element 2 — Inspections

<b>Finding 2-1</b>	<b>Area for State Improvement</b>																								
<b>Summary</b>	The CMS FCE coverage National Goal of 100% was not met. Review of Title V Annual Compliance Certifications (ACCs) also did not meet the National Goal of 100%.																								
<b>Explanation</b>	<p>5a The State was unable to meet the CMS frequency goals for 20 of 82 Title V major facilities which was below the National Average of 75.6% due to staffing issues. There was a deficiency identified in the review of Title V Annual Compliance Certifications (ACCs). An FCE for a facility cannot be completed without the ACC being reviewed for that facility, so this was another factor.</p> <p>5b The State did not meet the CMS frequency goal for 14 of 36 SM-80 facilities which it committed to inspect during FY 2012. NMED's percentage was 61.1%, well below the National Average of 93.4% due to staffing issues.</p> <p>5e The State did not review 100% of the ACCs received in FY2012 – 36 ACCs not reviewed timely and was below the National Average of 81.8%. Fourteen of the 36 Title V ACCs were classified as synthetic minors and one of the 36 was classified as a minor source; these facilities had an operating Title V air program. One facility was not operating in FY2012. Five ACCs were received during FY2012, but were not reviewed until FY2013.</p>																								
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>5a FCE coverage: majors and mega-sites</td> <td>100%</td> <td>90.4%</td> <td>62</td> <td>82</td> <td>75.6%</td> </tr> <tr> <td>5b FCE coverage: SM-80s</td> <td>100%</td> <td>93.4%</td> <td>22</td> <td>36</td> <td>61.1%</td> </tr> <tr> <td>5e Review of Title V annual compliance certifications</td> <td>100%</td> <td>81.8%</td> <td>136</td> <td>172</td> <td>79.1%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5a FCE coverage: majors and mega-sites	100%	90.4%	62	82	75.6%	5b FCE coverage: SM-80s	100%	93.4%	22	36	61.1%	5e Review of Title V annual compliance certifications	100%	81.8%	136	172	79.1%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																				
5a FCE coverage: majors and mega-sites	100%	90.4%	62	82	75.6%																				
5b FCE coverage: SM-80s	100%	93.4%	22	36	61.1%																				
5e Review of Title V annual compliance certifications	100%	81.8%	136	172	79.1%																				
<b>State Response</b>	5a While the State did not conduct inspections on twenty (20) of the Title V major facilities in the FFY 2012 CMS plan, twelve (12) of the twenty (20) facilities were added to the FY2013 CMS Plan and conducted in FY2013. When FCE's are not conducted due to low staffing levels, a report review team normally conducts annual compliance certification (ACC) reviews for the uninspected facilities. The State again operated with reduced compliance inspections staff in FFY2013.																								

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The State is aggressively pursuing full inspection staffing for FFY2015 and is developing an improved inspector training program to enable new inspectors to function more efficiently and independently within the first year of duty.

5b While the State did not conduct inspections on fourteen (14) of the SM-80 facilities in the FFY2012 CMS plan, five (5) of fourteen (14) were added to the FY2013 CMS Plan and conducted in FY2013. When FCE's are not conducted due to low staffing levels, a report review team normally conducts annual compliance certification (ACC) reviews for the uninspected facilities. The State again operated with reduced compliance inspections staff in FY2013.

The State is aggressively pursuing full inspection staffing for FFY2015 and is developing an improved inspector training program to enable new inspectors to function more efficiently and independently within the first year of duty.

5e. Of the 36 ACC's that were noted to not have been reviewed, 5 were received and not reviewed for FFY2012. The status of the remaining 31 facilities was investigated and the State's findings on the status of these facilities are different from EPA's. The State found that eighteen (18) facilities did not have Title V permits issued prior to FFY2013, twelve (12) facilities that had Title V permits issued previously were reclassified below the Title V major source status prior to FFY2012, and one (1) facility which had a Title V permit issued during FFY2012 but did not have an ACC report due during FY2012. See attached spreadsheet.

Considering the correct permitting status of facilities in New Mexico, only 141 facilities were required to submit ACCs in FFY 2012. Of the 141 ACCs received in FFY 2012, 136 ACC's were reviewed and 5 were not reviewed. With only 5 ACC's not reviewed out of the 141 received, the State's review percentage is 96 percent for FFY2012. The five ACC's not reviewed in FFY 2012 were reviewed in early FFY2013.

Poor data entry into the TEMPO database accounts for the uncertainty regarding facility status. The State does a good job of reviewing ACC's received, but needs to improve how facilities are classified and entered into TEMPO. The State will continue to make a concerted effort to clean up the major source universe in the TEMPO data base (correctly identify operating programs for facility) and strive to review 100% of ACC's received and enter data timely and accurately. As staff vacancies have affected our ACC review, the State will fill vacancies as quickly as possible to meet our goal.

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**Recommendation**

NMED was unable to inspect 100% of its FCE commitments in FY 2012 due to staff vacancies for more than half of the Federal FY. We recommend that NMED fill staff vacancies as quickly as possible in order to complete the universe of planned inspections consistent with the approved compliance monitoring strategy (CMS) for Title V major, mega-major and SM-80 facilities. NMED has made progress in filling vacancies; however, new hires require training to become fully functional in their job.

We recommend that the State continues to strive to review ACCs timely for the entire Title V universe annually and enter data timely and accurately. Timely review of ACCs is affected by staff vacancies.

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## Element 2 — Inspections

<b>Finding 2-2</b>	<b>Area for State Attention</b>																	
<b>Summary</b>	EPA's review indicated issues with NMED's documentation of the full compliance (FCE) elements in the Compliance Monitoring Reports (CMRs) reviewed during the on-site SRF review.																	
<b>Explanation</b>	<p>6a. EPA Region 6 evaluated NMED's documentation of full compliance evaluation (FCE) elements per the Compliance Monitoring Strategy (CMS) guidance and identified two of the 26 FCEs that did not document all the elements in the files and/or Compliance Monitoring Report (CMR).</p> <p>State CMRs should contain all elements listed in Section IX of the CMS policy. We request that the State review the CMS policy by December 31, 2014. Region 6 will request five FY 2015 CMRs from NMED to review to ensure CMRs contain the elements recommended by the CMS policy. CMRs will be randomly selected using ICIS-Air data by March 31, 2015.</p>																	
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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
6a Documentation of FCE elements	100%		24	26	92.3%													
<b>State Response</b>	6a. The State will review the CMS policy before December 31, 2014 and compare current procedures with requirements. Prior to December 31, 2014, the State will provide refresher training to all inspectors to ensure that each person fully understands and can meet CMS policy requirements.																	
<b>Recommendation</b>	None.																	

## Element 2 — Inspections

<b>Finding 2-3</b>	<b>Meets Expectations</b>					
<b>Summary</b>	NMED CMRs contained sufficient documentation to determine facility compliance.					
<b>Explanation</b>	6b EPA Region 6’s review of the State’s documentation of compliance information in CMRs did not indicate any deficiencies or issues.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	6b Compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance	100%		29	29	100%
<b>State Response</b>	None.					
<b>Recommendation</b>	None.					

### Element 3 — Violations

<b>Finding 3-1</b>	<b>Meets Expectations</b>					
<b>Summary</b>	EPA Region 6 evaluated NMED’s accuracy in determining compliance and HPV determinations. EPA did not identify any issues with Metrics 7a, 8a, and 8c.					
<b>Explanation</b>	The onsite file review evaluated Metrics 7a, 8a, and 8c. In all of the files reviewed, NMED made correct compliance and HPV determinations.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	7a Accuracy of compliance determinations			29	29	100%
	8a HPV discovery rate at majors		4.3%	10	153	6.5%
	8c Verify the accuracy of HPV determinations	100%		29	29	100%
<b>State Response</b>	None.					
<b>Recommendation</b>	None.					



## Element 4 — Enforcement

<b>Finding 4-1</b>	<b>Area for State Improvement</b>												
<b>Summary</b>	EPA Region 6 evaluated NMED’s effectiveness in taking timely and appropriate enforcement, and using enforcement to return facilities to compliance. Six of nine enforcement actions taken to address HPVs did not meet the timeliness goal of the HPV Policy (within 270 days from Day Zero).												
<b>Explanation</b>	10a Of the six enforcement actions taken to address HPVs not meeting the timeliness goal, Four of the six enforcement actions taken had a Day Zero based on an Excess Emission Report, an Annual Compliance Certification, or a Semi-Annual Monitoring Report which was not reviewed and referred for enforcement timely. The remaining two HPV actions required extensive data analysis and additional violations occurred after the original violation(s) which were added to the case, thereby slowing case completion.												
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10a Timely action taken to address HPVs		70.5%	3	9	33.3%								
<b>State Response</b>	10a The State is committed to meeting the timeliness goals of the HPV Policy. In Federal Fiscal Year 2013, 10 Day Zero HPVs were identified. All 10 HPVs identified with Day Zeros in FFY13 were timely addressed. Initial implementation of the strategies and improvements in our workflow that EPA recognized below is having the desired results. By the end of this FFY, the State anticipates implementing all identified strategies for taking timely action to address HPVs.												
<b>Recommendation</b>	<p>EPA recommends that the Air Quality Bureau (AQB) strive to meet the timeliness goals of the HPV Policy. The AQB advised Region 6 that it is looking at long term strategies for processing HPVs more quickly and will continue to review its strategies and make improvements as necessary. The AQB shared its milestones for improving the HPV process with the Region:</p> <ul style="list-style-type: none"> <li>• The AQB updated its Area of Concern (AOC) form to more easily identify HPVs. The new form is in use currently.</li> <li>• AQB’s NOV and Settlement Offer template has been standardized for pursuing enforcement of excess emission (EE) concerns.</li> </ul>												

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- The AQB issued a contract to create an online reporting application to enable electronic submittal and storage of annual and semi-annual reports to allow more efficient review.
  - November 30, 2014: Complete beta-testing the new application
  - January 31, 2015 – Establish a contract for the review and analysis of EE reports.
  - January 31, 2015 – Implement standardized procedures for addressing EE in revised NMED Civil Penalty Policy.
  - April 30, 2015: AQB accepts online report submittal
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## Element 4 — Enforcement

<b>Finding 4-2</b>	<b>Meets Expectations</b>																		
<b>Summary</b>	EPA Region 6 evaluated NMED’s formal enforcement and enforcement responses. EPA did not identify any issues with 9a or 10b.																		
<b>Explanation</b>	<p>9a The onsite file review evaluated Metric 9a. Metric 9a met the national goal of 100%.</p> <p>10b A penalty was assessed for all three HPVs reviewed. Metric 10b met the national goal of 100%.</p>																		
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>9a Formal enforcement to return the facility to compliance</td> <td>100%</td> <td></td> <td>3</td> <td>3</td> <td>100%</td> </tr> <tr> <td>10b Appropriate enforcement responses for HPVs</td> <td>100%</td> <td></td> <td>2</td> <td>2</td> <td>100%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	9a Formal enforcement to return the facility to compliance	100%		3	3	100%	10b Appropriate enforcement responses for HPVs	100%		2	2	100%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #														
9a Formal enforcement to return the facility to compliance	100%		3	3	100%														
10b Appropriate enforcement responses for HPVs	100%		2	2	100%														
<b>State Response</b>	None.																		
<b>Recommendation</b>	None.																		

## Element 5 — Penalties

<b>Finding 5-1</b>	<b>Meets Expectations</b>																								
<b>Summary</b>	Penalties are calculated properly, taking into consideration both gravity and economic benefit. Penalty amounts were well documented.																								
<b>Explanation</b>	<p>All eleven enforcement actions reviewed documented a penalty that included both gravity and economic benefit. The files reviewed documented differences between the initial settlement amount and the final assessed penalty. However, these two amounts were not entered into AFS in all instances. Region 6 is working with NMED staff to make sure that the correct action code and associated penalty amount is entered in all enforcement cases.</p> <p>We commend the State on its calculation of penalties that consider and include both economic benefit and gravity components and that the difference between the initial penalty and the final penalty are documented, as well as the penalty collected.</p>																								
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>11a Penalty calculations include gravity and economic benefit</td> <td>100%</td> <td></td> <td>11</td> <td>11</td> <td>100%</td> </tr> <tr> <td>12a Documentation on difference between initial and final penalty</td> <td>100%</td> <td></td> <td>11</td> <td>11</td> <td>100%</td> </tr> <tr> <td>12b Penalties collected</td> <td>100%</td> <td></td> <td>11</td> <td>11</td> <td>100%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	11a Penalty calculations include gravity and economic benefit	100%		11	11	100%	12a Documentation on difference between initial and final penalty	100%		11	11	100%	12b Penalties collected	100%		11	11	100%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																				
11a Penalty calculations include gravity and economic benefit	100%		11	11	100%																				
12a Documentation on difference between initial and final penalty	100%		11	11	100%																				
12b Penalties collected	100%		11	11	100%																				
<b>State Response</b>	The State works hard to accurately assess, document and collect all penalties assessed.																								
<b>Recommendation</b>	None.																								

## Resource Conservation and Recovery Act Findings

NMED operates on a different schedule than the SRF. Whereas the SRF measures accomplishments during the federal fiscal year (October 1 through September 30), New Mexico plans and measures its accomplishments during its fiscal year (July 1 through June 30). NMED’s RCRA Grant Work Plan is also organized on the State’s fiscal year.

<b>Element 1 — Data</b>	
<b>Finding 1-1</b>	<b>Meets Expectations</b>
<b>Summary</b>	FY 2012 inspections data in RCRAInfo is accurate, no major discrepancies noted.
<b>Explanation</b>	<p>EPA requested to review files for 25 facilities.</p> <p>2b: There was one minor discrepancy noted for one of the files reviewed; Day Zero and Return To Compliance (RTC) date need to be reconciled.</p> <p>5a: One of the 11 TSDFs was inappropriately included as an “operating” facility. RCRAInfo identifies this facility as not operating. The facility’s one hazardous waste management unit, a surface impoundment, has been in a state of closure since 1993 and by definition would not be operating.</p> <p>5c: Three of the 32 LQGs were no longer an LQG or had gone out of business. The State has many facilities in this universe that are one-time or episodic generators so the number is in constant flux. NMED believes it covers its core LQG universe (i.e., facilities that are routinely LQGs rather than one-time or episodic LQGs) every five years while also emphasizing less-inspected SQGs, CESQGs and “never inspected” facilities.</p> <p>8b: There was one facility listed in the frozen FY12 SRF data that indicated NMED did not determine a SNC designation timely. This was a facility with a unique issue. NMED policy dictates that SNC designations will not be made until an enforcement action is issued. NMED typically issues an informal enforcement action for most of its violations that are found during an inspection. One facility that was issued an informal enforcement action resolved all of the violations except one. NMED, in consultation with Region and EPA HQs, decided that it should re-designate this facility from a secondary violator to a SNC, thus the delay in entering the SNC designation in RCRAInfo.</p> <p>Given the circumstances of this particular case and NMED’s history in timely entering data, EPA would not consider this an area of concern.</p>

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2b Complete and accurate entry of mandatory data	100%		24	25	96%
1c1 Number of sites with violations determined during the review year					41	
2a Long-standing secondary violators					4	
5a Two-year inspection coverage for operating TSDFs	100%	88.9%	10	11	90.9%	
5b Annual inspection coverage for LQGs	20%	21.7%	13	32	40.6%	
5c Five-year inspection coverage for LQGs	100%	64.2%	29	32	90.6%	
5d One-year inspection coverage for active SQGs		10.9%	101	305	33.1%	
5e1 Number of inspections at conditionally exempt SQGs					305	
5e2 Number of inspections at transporters					15	
5e3 Number of inspections at non-notifiers					5	
5e4 Number of inspections at facilities not covered by metrics 2c through 2f3					36	
7b Violations found during inspections		35.9%	41	96	42.7%	
8a SNC identification rate		1.7%	0	96	0.0%	
8b Timeliness of SNC determinations	100%	78.7%	0	1	0.0%	
10a Timely enforcement taken to address SNC	80%	83.2%	1	1	100%	
<b>State Response</b>						
<b>Recommendation</b>	None.					

## Element 2 — Inspections

### Finding 2-1

### Meets Expectations

#### Summary

NMED uses a typed form that contains specific information for the inspectors to complete, such as name of facility, facility address, reason for inspection, facility universe, inspection participants, etc., as well as, areas for the inspector to make handwritten notes of their observations and activities, potential areas of concern (citing the applicable regulation(s)), as well as waste streams generated by the facility and a description of the process that produces the waste stream(s). Inspectors will also use typed “checklist” for the specific facility universe.

EPA requested to review files for 25 facilities. During the review, EPA found two inspections where the inspector made a very general comment about touring the facility without specifically indicating what areas of the facility were inspected or were not inspected. EPA suggested to NMED managers that they instruct their inspectors to provide more specificity in this area even using something as simple as a facility layout with notes on it from the inspector or more specifics on the inspection form.

NMED does not produce typed inspection reports from this form. The form is the “inspection report” along with any additional documentation obtained during the inspection. Therefore, it is important to ensure that inspectors use legible handwriting. During review of the files, EPA noticed that some handwriting was easier to read than others, but there were no instances where EPA was not able to decipher the inspector’s handwriting.

NMED also uses a pre-formatted photo log for any photos that are taken during an inspection. The photos were of good quality and provided good documentation for potential areas of concern and in some cases provided photos of good practices being implemented at the facility. EPA did notice on one photo log that the time was not included for particular photos and suggested that all information relative to the photos (and included in the pre-formatted form) be completed at the time of inspection in inspector’s logbook or recording notebook.

The hard copy files of the inspection report and associated documentation, enforcement documents, and facility generator information are consolidated into one file. EPA considered the inspection files reviewed to be well organized and all documents associated with the facility made the review easier and more productive.

EPA did note and discussed with NMED the following: 1) inspection reports with general comments regarding the facility tour and not identifying areas inspected and location of any noted violations; 2) some

	inspection reports were more legible to read than others, and 3) some inspection photo logs did not include the time and date when photo was taken.					
<b>Explanation</b>	State exceeded the National Average for Metrics 5a, 5c and 5d. State exceeded both the National Goal and National Average for Metric 5b. State continues to exceed its Grant projections for conducting inspections of “Other” Facilities and CESQGs for which there is no National Program Guidance coverage requirement for these types of facilities.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	5a Two-year inspection coverage of operating TSDFs	100%	88.9%	10	11	90.9%
	5b Annual inspection coverage of LQGs	20%	21.7%	13	32	40.6%
	5c Five-year inspection coverage of LQGs	100%	64.2%	29	32	90.6%
	5d Five-year inspection coverage of active SQGs		10.9%	101	305	33.1%
	5e1 Five-year inspection coverage of active conditionally exempt SQGs					305
	5e2 Five-year inspection coverage of active transporters					15
	5e3 Five-year inspection coverage of active non-notifiers					5
	5e4 Five-year inspection coverage of active sites not covered by metrics 2c through 2f3					36
	6a Inspection reports complete and sufficient to determine compliance			25	25	100%
	6b Timeliness of inspection report completion			25	25	100%
<b>State Response</b>						
<b>Recommendation</b>	None.					



## Element 3 — Violations

<b>Finding 3-1</b>	<b>Meets Expectations</b>
<b>Summary</b>	<p>Of the 25 inspection reports reviewed, 6 did not identify any violations. From the 19 that identified violations, 18 informal enforcement actions were issued, and one formal enforcement action was issued.</p> <p>NMED has a violation discovery rate of 42.7% which exceeded the national average of 35.9%.</p> <p>NMED continues to have a low rate of SNC designation. NMED made one new SNC designation in FY12.</p> <p>NMED has 4 facilities identified in its FY12 frozen data as long-standing secondary violators.</p>
<b>Explanation</b>	<p>2a: These are no longer SV or SNC. All 4 facilities returned to compliance in FY13.</p> <p>8a: SNC identification rate -- NMED stated it was not finding violations that, in their opinion, warrant SNC designation.</p> <p>8b: Timeliness of SNC determination – NMED policy dictates that SNC designations will not be made until an enforcement action is issued. NMED typically issues an informal enforcement action for most of its violations that are found during an inspection. One facility that was issued an informal enforcement action resolved all of the violations except one. NMED later decided that it should re-designate this facility from a secondary violator to a SNC, thus the delay in entering the SNC designation in RCRAInfo.</p> <p>NMED states that enforcement actions and SNC determinations often require considerable time due to request(s) to a facility for additional information and/or security evaluations of information to be supplied to the agency. NMED suggest there should be a way for Day Zero to be reset in RCRAInfo to reflect the day that the State has all the information it needs to make an accurate determination that a violation has occurred.</p> <p>8c: Of the 19 enforcement files reviewed, only one was determined to be SNC. EPA’s review indicated that the appropriate determination was made in all 19 enforcement files.</p>

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2a Long-standing secondary violators					
7a Accurate compliance determinations				25	25	100%
7b Violations found during inspections			35.9%	41	96	42.7%
8a SNC identification rate			1.7%	0	96	0%
8b Timeliness of SNC determinations		100%	78.7%	0	1	0%
8c Appropriate SNC determinations				19	19	100%
<b>State Response</b>						
<b>Recommendation</b>	None.					

## Element 4 — Enforcement

<b>Finding 4-1</b>	<b>Meets Expectations</b>					
<b>Summary</b>	The 19 enforcement files reviewed indicate that NMED enforcement actions require compliance and specify compliance timeframes. The enforcement actions reviewed were timely and appropriate.					
<b>Explanation</b>	Enforcement files contained documentation identifying the facility had either achieved compliance or was on a compliance schedule.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	9a Enforcement that returns violators to compliance			19	19	100%
	10a Timely enforcement taken to address SNC	80%	83.2%	1	1	100%
	10b Appropriate enforcement taken to address violations			19	19	100%
<b>State Response</b>						
<b>Recommendation</b>	None.					

## Element 5 — Penalties

<b>Finding 5-1</b>	<b>Meets Expectations</b>					
<b>Summary</b>	One penalty enforcement action file was reviewed.					
<b>Explanation</b>	The file documented that the calculation considered both gravity and economic benefit. The file also documented that the penalty was paid.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	11a Penalty calculations include gravity and economic benefit	100%		1	1	100%
	12a Documentation on difference between initial and final penalty	100%				0
	12b Penalties collected	100%		1	1	100%
<b>State Response</b>						
<b>Recommendation</b>	None.					

# **STATE REVIEW FRAMEWORK**

**City of Albuquerque,  
New Mexico**

**Clean Air Act, and  
Implementation in Federal Fiscal Year 2012**

**U.S. Environmental Protection Agency  
Region 6, Dallas**

**Final Report  
August 28, 2014**

# **Executive Summary**

## **Introduction**

EPA Region 6 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the City of Albuquerque, NM. The City of Albuquerque's Environmental Health Department, Air Quality Program (City) implements the Clean Air Act program within Bernalillo County, NM, and receives direct funding from EPA Region 6.

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

## **Areas of Strong Performance**

- The City conducts a Full Compliance Evaluation (FCE) at the entire universe of Title V Majors and Synthetic Minor 80% (SM-80) facilities once every two years which we feel provides a strong enforcement presence in Bernalillo County.

## **Priority Issues to Address**

- We commend the City on the improvement made in FY2013 in the areas of data accuracy, completeness and timeliness; however, continued improvement is a top-priority issue.
- Timely review of Title V annual compliance certifications is also a top-priority issue.

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## I. Background on the State Review Framework

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

- Clean Air Act Stationary Sources (Title V)

Reviews cover:

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

EPA conducts SRF reviews in three phases:

- Analyzing information from the national data systems in the form of data metrics
- Reviewing facility files and compiling file metrics
- Development of findings and recommendations

EPA builds consultation into the SRF to ensure that EPA and the state understand the causes of issues and agree, to the degree possible, on actions needed to address them. SRF reports capture the agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state programs.

Each state's programs are reviewed once every five years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2013 and will continue through FY 2017.



## II. SRF Review Process

**Review period:** FY2012

**Key dates:**

- Kickoff letter sent to the City: April 16, 2013
- Kickoff meeting conducted: May 16, 2013
- Data metric analysis and file selection list sent to city: April 16, 2013
- On-site file review conducted: May 16-17, 2013
- Draft report sent to City: July 11, 2014
- Report finalized: August 28, 2014

**State and EPA key contacts for review:**

- City
  - Danny Nevarez, 505.768.2639, [dnevarez@cabq.gov](mailto:dnevarez@cabq.gov)
  - Damon Reyes, 505.768.1958, [dreyes@cabq.gov](mailto:dreyes@cabq.gov)
  - Larry Sims, 505.768.1937, [lrsims@cabq.gov](mailto:lrsims@cabq.gov)
  - Matt Stebleton, 505.768.1948, [mstebleton@cabq.gov](mailto:mstebleton@cabq.gov) was not present for the review; however, Mr. Stebleton provided input via email and teleconference.
- EPA
  - Toni Allen, 214.665.7271, [allen.toni@epa.gov](mailto:allen.toni@epa.gov)
  - Dominique Duplechain, 214.665.7484, [duplechain.dominique@epa.gov](mailto:duplechain.dominique@epa.gov)
  - James Leathers, 214.665.6569, [leathers.james@epa.gov](mailto:leathers.james@epa.gov)

### III. SRF Findings

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

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

There are three categories of findings:

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

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

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

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

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

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

## Clean Air Act Findings

CAA Element 1 — Data						
<b>Finding 1-1</b>	<b>Area for State Improvement</b>					
<b>Summary</b>	There were issues identified with timely and accurate reporting of Minimum Data Requirements (MDRs). The City's data in AFS did not match information in facility files. CAA data issues were identified in the previous SRF conducted of the City. We believe the recurring issues were due to lack of AFS training and the fact that the AFS data person is also an inspector.					
<b>Explanation</b>	<p>2b For six of 13 FCEs reviewed, the air program and/or subpart data contained in the compliance monitoring report (CMR) did not match the data appearing in AFS.</p> <p>3b1 Nine of 16 CMR MDRs were not entered timely.</p> <p>3b2 Seven of 17 stack tests were not entered timely. The responsibility for reviewing stack tests has been reassigned at the City.</p> <p>3b3 One of three enforcement MDRs was not entered timely.</p> <p>7b1 A Notice of Violation was issued to a facility but the pollutant compliance status was not changed by a former employee.</p> <p>The SRF Team Leader provided AFS training and assistance to City staff during the on-site review and has continued assisting City staff with entering MDRs timely and accurately. The City has made significant improvements in timely and accurate reporting of MDRs, as evidenced by the FY2013 frozen data metrics. For example, metric 3b3 improved from 66.7% in FY2012 to 100% in FY2013.</p>					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	2b Accurate MDR data in AFS	100%		7	13	53.8%
	3b1 Timely reporting of compliance monitoring MDRs	100%	80%	7	16	43.8%
	3b2 Timely reporting of stack test dates and results	100%	73.1%	10	17	58.8%
	3b3 Timely reporting of enforcement MDRs	100%	73.7%	2	3	66.7%
	7b1 Violations reported per informal actions	100%	59.7%	0	1	0%

**State response**

2b Accurate MDR data in AFS - Within the Air Quality Program (AQP), AFS entries, until just recently, were independently being performed by the Permitting, Enforcement and Compliance Sections, depending on what action was occurring. Each of these sections had its own Data Steward (Steward) who was only intimately aware of the data entry actions that were occurring within their own section. The air programs and subparts that need to be entered into AFS for a newly permitted facility are entered during the permitting action. These entries, until recently, were being performed by AQP's Permitting Section. It was the Enforcement Section's understanding that during any subsequent permitting actions to the facility, any new air programs or subparts that were now applicable would now be added to AFS. Unfortunately, the process of updating AFS with applicable air programs and subparts during permit modifications or revisions does not appear to have been done consistently. In order to correct this issue, we have reduced the AQP's Stewards to a single person with a trained alternate. The Steward is now responsible for entering the required AFS entries that are generated from each section. This will help to ensure uniformity and consistency. Also, it has been discussed and agreed, with AQP's Permitting Section, that all permitting actions will be captured within AFS. Also, the AQP is in the process of installing matrices within our database that will track when these AFS updates are requested and when they are completed. These AFS actions will need to be completed within the allowed time as dictated by the action being requested. In addition, the QAPP will be reviewed and revised to add any necessary detail and or clarity so that the necessary data entry fields are populated and or revised in AFS during permitting actions. Missing MDRs are near completion and our Steward will continue to work with Region 6 to ensure that all MDRs are completed to their satisfaction by December 31, 2014.

3b1 Timely reporting of compliance monitoring MDRs - The Enforcement Section was incorrectly operating with the understanding that inspection reports and any associated enforcement actions needed to be fully resolved prior to entering CMR MDRs. Upon receiving clarification from Region 6, regarding when these entries could be made, we have been able to significantly improve our entry timeliness of CMR MDRs.

3b2 Timely reporting of stack test dates and results - We believe that moving the Steward duties under the responsibility of a single person, who's AFS duties will be a primary function of their job responsibilities, AFS entries will be performed timely. In addition, the AQP is in the

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process of installing matrices within our database that will track when these test reports come in, who they are assigned to for review and when the review has been completed. AFS entry will also be tracked, within our database, to ensure that it is performed within the necessary time.

3b3 Timely reporting of enforcement MDRs - This appears to have been an oversight of the Compliance Section Steward, and not a reoccurring issue. As cited above, the changes to the Steward position that has already been made, as well as the planned changes, we feel will result in timely AFS entries.

7b1 Violations reported per informal actions - This appears to have been a result of a lack of understanding on the entirety of changes that are required when inputting data regarding a notice of violation. The Air Quality Program is now aware of this requirement.

We would like to thank Region 6 for their continued support and assistance with regards to AFS entries, especially Ms. Toni Allen. Ms. Allen is always available to discuss any questions we may have and provide clear direction. We believe the changes that have been made, planned changes, continued communication with Region 6 and additional training will only improve AQP's Element 1 – Data requirements.

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**Recommendation**

EPA recommends that the City continues to ensure all applicable air programs and/or subpart information for each facility is correct in AFS, and that MDRs be entered timely and accurately. The City's management and staff have been very proactive in seeking guidance and assistance to enter data accurately and timely for which we commend them.

Region 6 provided AFS training on May 17, 2013 to City data staff. Region 6 will continue to provide assistance to City staff when guidance/assistance is requested and continue to monitor improvement of the City by reviewing the FY2013 frozen data metrics compared to the FY2014 production data metrics. Missing MDRs will be entered by December 31, 2014.

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**CAA Element 2 — Inspections**

<b>Finding 2-1</b>	<b>Meets or Exceeds Expectations</b>						
<b>Summary</b>	Planned evaluations (FCEs and PCEs toward an FCE) were completed pursuant to a negotiated CMS Plan at Title V Majors. The City committed to inspect three of nine Title V Majors and conducted three FCEs.						
<b>Explanation</b>	<p>5a The City met the CMS commitment for Title V Majors.</p> <p>6b EPA Region 6’s review of the City’s documentation of compliance information in CMRs did not indicate any deficiencies or issues. CMRs are well written.</p>						
<b>Relevant metrics</b>	Metric ID Number and Description		<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	5a FCE coverage: majors and mega-sites		100%	90.4%	3	3	100%
	6b Compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance		100%		13	13	100%
<b>State response</b>	None						
<b>Recommendation</b>	None						

## CAA Element 2 — Inspections

<b>Finding 2-2</b>	<b>Area for State Attention</b>												
<b>Summary</b>	The City committed to inspect ten of 17 SM80s.												
<b>Explanation</b>	5b The City was scheduled to conduct an FCE in FY2012 at an SM80 that has a minor facility with a similar name co-located at the same site. An FCE was conducted at the minor facility in error but entered as being conducted at the SM80 facility (error has been corrected). An FCE was conducted at the SM80 facility as soon as possible after the error was identified during the SRF review (on August 13, 2013). A closed SM80 facility (closed as of December 7, 2007) had not had the CMS code and frequency removed so it appeared as not being inspected in FY2012.												
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>5b FCE coverage: SM-80s</td> <td>100%</td> <td>93.4%</td> <td>8</td> <td>9</td> <td>88.9%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5b FCE coverage: SM-80s	100%	93.4%	8	9	88.9%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #								
5b FCE coverage: SM-80s	100%	93.4%	8	9	88.9%								
<b>State response</b>	5b FCE coverage: SM-80s -The error that occurred in an inspection being performed at the wrong facility appears to be an isolated event. However, a Standard Operating Procedure (SOP) for outlining what needs to be included in the CMR to meet the CMS Policy requirements will be drafted. This SOP will be put in place to assist the supervisor during their review of the FCE, and the SOP will include language that directs the supervisor to verify that the facility inspected is the facility identified in the CMS commitment list and the permit used in the inspection is the current active permit. Our SOP for Performing Inspections includes the FCE elements of the CMS Policy. However, our SOP for Performing Inspections will be updated to include that the inspector verify the FCE they are performing for the CMS commitment is on the commitment list and the current active permit is being used for the FCE. Our inspectors and Enforcement and Compliance Supervisor will be required to review their respective SOPs and the CMS Policy.												
<b>Recommendation</b>	EPA recommends that the City continue to strive to meet its CMS commitments annually, conducting FCEs at the correct facility. We believe inspection of the minor facility instead of the SM80 facility to be an oversight and was corrected within 90 days of the on-site review.												

## CAA Element 2 — Inspections

<b>Finding 2-3</b>	<b>Area for State Improvement</b>																							
<b>Summary</b>	The EPA review indicated a low percentage of the City's review Title V annual compliance certifications (ACCs).																							
<b>Explanation</b>	<p>5e City staff explained that several of the Title V Majors were undergoing significant Operating Permit (permit) modifications and/or revisions or there was not an issued final permit. The ACC due date had been erroneously reset by the Permitting staff to the date of the new permit.</p> <p>The City has reorganized since Region 6 conducted its on-site review and made revisions to its procedures. The City has improved its review of ACCs as evidenced by FY2013 frozen data. The City's percentage is above the National Average in FY2013 and showed a significant improvement (88.9% reviewed in FY2013).</p> <p>6a EPA Region 6 evaluated the City's documentation of full compliance evaluations (FCE) elements per the CMS Policy and identified three of 12 FCEs that did not document all elements in the files and/or Compliance Monitoring Report (CMR).</p>																							
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>5e Review of Title V annual compliance certifications</td> <td>100%</td> <td>81.8%</td> <td>3</td> <td>9</td> <td>33.3%</td> </tr> <tr> <td>6a Documentation of FCE elements</td> <td>100%</td> <td></td> <td>9</td> <td>12</td> <td>75%</td> </tr> </tbody> </table>					Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5e Review of Title V annual compliance certifications	100%	81.8%	3	9	33.3%	6a Documentation of FCE elements	100%		9	12	75%	
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
5e Review of Title V annual compliance certifications	100%	81.8%	3	9	33.3%																			
6a Documentation of FCE elements	100%		9	12	75%																			
<b>State response</b>	<p>5e Review of Title V annual compliance certifications - As cited above, the AQP has made changes to the way AFS data is entered. Also, matrices are being put in place that will track facility reporting to ensure that it is reviewed and entered into AFS timely.</p> <p>6a Documentation of FCE elements - As cited above, a CMR SOP for outlining what needs to be verified during review of the CMR, by the supervisor, will be drafted. Also, our inspectors and Enforcement and Compliance Supervisor will be required to review their respective SOPs and the CMS Policy.</p> <p>To further the AQP's internal discussion of corrective actions needed for the deficiencies discovered during review of element 6a, the AQP is</p>																							



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	requesting Region 6 provide AQP with the elements of the CMS policy that were not addressed in the CMRs reviewed?
<b>Recommendation</b>	<p>EPA recommends that the City continue to strive to review ACCs timely for the entire Title V universe annually and enter data timely.</p> <p>EPA recommends that the City’s CMRs contain all elements listed in Section IX of the CMS policy. We request that the City review the CMS policy by September 30, 2014. Region 6 will request five FY 2015 CMRs from the City to review to ensure CMRs contain the elements recommended by the CMS policy. CMRs will be randomly selected using ICIS-Air data.</p>

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### CAA Element 3 — Violations

<b>Finding 3-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	The review indicated that the City made the correct compliance and HPV determination in all files reviewed.					
<b>Explanation</b>	EPA Region 6 evaluated the City’s accuracy in determining compliance and identifying HPVs. EPA did not identify any issues with Metrics 7a and 8c.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	7a Accuracy of compliance determinations	100%		13	13	100%
	8c Accuracy of HPV determinations			10	10	100%
<b>State response</b>	None					
<b>Recommendation</b>	None					

**CAA Element 4 — Enforcement**

<b>Finding 4-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	All three enforcement cases reviewed included required corrective action and the file documented completion of corrective action. An appropriate enforcement response was issued in accordance with EPA’s HPV for the one identified HPV case reviewed.					
<b>Explanation</b>						
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe	100%		3	3	100%
	10b Appropriate enforcement responses for HPVs	100%		1	1	100%
<b>State response</b>	None					
<b>Recommendation</b>	None					

## CAA Element 5 — Penalties

<b>Finding 5-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	The City consistently considers economic benefit and gravity when calculating a penalty.					
<b>Explanation</b>	From the two penalties reviewed, the penalties appeared to be comparable to the amount EPA’s penalty policy would generate and factoring in the differences between the City’s and EPA’s penalty policies (e.g., economic benefit thresholds and statutory maximum).					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	11a Penalty calculations include gravity and economic benefit	100%		2	2	100%
	12a Documentation on difference between initial and final penalty	100%		2	2	100%
	12b Penalties collected	100%		2	2	100%
<b>State response</b>	None					
<b>Recommendation</b>	None					

# **STATE REVIEW FRAMEWORK**

**New Mexico**

**Clean Water Act  
Implementation in Federal Fiscal Year 2012**

**U.S. Environmental Protection Agency  
Headquarters, Washington, DC**

**Final Report  
November 19, 2014**

# Executive Summary

## Introduction

EPA Headquarters enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the EPA Region 6 CWA NPDES program.

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

## Areas of Strong Performance

- Permit and effluent limit data for major facilities is completely entered for most facilities
- Inspection coverage meets expectations for major facilities as well as pretreatment and stormwater construction Phase I facilities
- Inspection report quality is complete and sufficient to determine compliance in most inspection reports reviewed
- Documentation of penalty collection is well documented in files reviewed

## Priority Issues to Address

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

- Clean Water Act timely and appropriate enforcement action
- Clear documentation of Clean Water Act compliance determinations

## CWA-NPDES Integrated Findings

The following issues are affecting performance of both the permitting and enforcement program:

- All of the permits reviewed contain penalty amounts that do not reflect current penalty inflation adjustments; as a result, penalty amounts are lower than those reflected in the 2013 Civil Monetary Penalty Inflation Adjustment Rule (see 40 CFR § 19).
- Permit reissuance occurs for facilities with unaddressed significant non-compliance effluent violations

## **Most Significant SRF CWA-NPDES Program Findings<sup>1</sup>**

- Sixty percent of files reviewed contained facility, inspection, violation, or enforcement action information that is required to be reported to ICIS
- Inspection coverage for significant industrial users, sanitary sewer, stormwater, and concentrated animal feeding operation facilities does not meet national inspection coverage goals
- Single event violations are not consistently reported
- Compliance determinations resulting from inspections are not well documented in inspection and enforcement files
- The majority of major and non-major facilities in non-compliance in FY 2012 did not receive timely enforcement action
- Economic benefit and gravity calculations are not consistently documented in enforcement files

## **Major Follow-Up Actions**

Recommendations and actions identified from the SRF review will be tracked in the SRF Tracker.

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<sup>1</sup> EPA's "National Strategy for Improving Oversight of State Enforcement Performance" identifies the following as significant recurrent issues: "Widespread and persistent data inaccuracy and incompleteness, which make it hard to identify when serious problems exist or to track state actions; routine failure of states to identify and report significant noncompliance; routine failure of states to take timely or appropriate enforcement actions to return violating facilities to compliance, potentially allowing pollution to continue unabated; failure of states to take appropriate penalty actions, which results in ineffective deterrence for noncompliance and an unlevel playing field for companies that do comply; use of enforcement orders to circumvent standards or to extend permits without appropriate notice and comment; and failure to inspect and enforce in some regulated sectors."

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# I. Background on the State Review Framework

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

- Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES)
- Clean Air Act (CAA) Stationary Sources (Title V)
- Resource Conservation and Recovery Act (RCRA) Subtitle C

Reviews cover:

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

EPA conducts SRF reviews in three phases:

- Analyzing information from the national data systems in the form of data metrics
- Reviewing facility files and compiling file metrics
- Development of findings and recommendations

EPA builds consultation into the SRF to ensure that EPA and the state understand the causes of issues and agree, to the degree possible, on actions needed to address them. SRF reports capture the agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state programs.

Each state's programs are reviewed once every five years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2013 and will continue through FY 2017.

## **II. SRF Review Process**

**Review period:** FY 2012

### **Key dates:**

- Kickoff meeting conducted:
  - CWA: March 27, 2013
- Data metric analysis and file selection list sent to state and region:
  - CWA: April 4, 2013 (DMA); July 17, 2013 (file selection)
- On-site file review conducted:
  - CWA: August 5-8, 2013
- Draft report sent to state & region:
  - CWA: August 6, 2014
- Report finalized:
  - CWA: November 19, 2014

### **State and EPA contacts for review:**

- Mark Hansen: Region 6 SRF Coordinator
- Jerry Saunders: Region 6 Water Enforcement Branch, Associate Director
- Paulette Johnsey: Region 6
- Diana McDonald: Region 6 (retired)
- Hannah Branning: Region 6
- Elizabeth Walsh: SRF reviewer
- Greg Siedschlag: SRF reviewer
- Daniel Palmer: SRF reviewer

### III. SRF Findings

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

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

There are three categories of findings:

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

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

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

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

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

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

## Clean Water Act Findings

Element 1 — Data																								
<b>Finding 1-1</b>	<b>Meets or Exceeds Expectations</b>																							
<b>Summary</b>	Permit and effluent limit data for major facilities are consistently entered in the Integrated Compliance Information System (ICIS).																							
<b>Explanation</b>	<p>Data entry of permit and effluent limits is excellent. Region 6 entered 100% of permit limits for major facilities (metric 1b1). The region entered 98% of discharge monitoring reports (metric 1b2) for major facilities. Given the national goal of <math>\geq 95\%</math>, these results exceed the national performance expectation.</p> <p>The Region identified a number of discrepancies associated with the universe of major and non-major facilities in reviewing FY 2012 frozen data. The Region is encouraged to actively participate in the FY 2014 data verification process to correct universe counts to ensure that accurate information for these facilities is displayed on the CWA Dashboard and ECHO data metric analyses for New Mexico.</p>																							
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>1b1: Permit limit data entry for major facilities</td> <td><math>\geq 95\%</math></td> <td>98.3%</td> <td>42</td> <td>42</td> <td>100%</td> </tr> <tr> <td>1b2: DMR data entry rate for major facilities</td> <td><math>\geq 95\%</math></td> <td>97.9%</td> <td>1,148</td> <td>1,172</td> <td>98%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	1b1: Permit limit data entry for major facilities	$\geq 95\%$	98.3%	42	42	100%	1b2: DMR data entry rate for major facilities	$\geq 95\%$	97.9%	1,148	1,172	98%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
1b1: Permit limit data entry for major facilities	$\geq 95\%$	98.3%	42	42	100%																			
1b2: DMR data entry rate for major facilities	$\geq 95\%$	97.9%	1,148	1,172	98%																			
<b>Regional Response</b>																								
<b>Recommendation</b>																								

## Element 1 — Data

### Finding 1-2

### Area for Regional Improvement

#### Summary

Single event violations and other non-compliance events are not consistently entered in the ICIS database.

#### Explanation

Information in 15 of 25 reviewed files (60%) is accurately reflected in the ICIS database.

Five of ten reviewed files contain information documenting single event violations at major facilities that are not in ICIS; regional offices are required to report single event violations as indicated in the 2008 Single Event Violation Data Entry Guide and the 2008 Regional Guidance for Tracking Clean Water Act NPDES Inspection-Related and Wet Weather Significant Noncompliance Memorandum. This is a recurring problem found in past SRF reviews.

Some enforcement actions and inspections in files reviewed are not reported in ICIS. Four informal enforcement actions in files reviewed were not entered into ICIS for 4 major facilities. One file has no copy of the formal enforcement action for an administrative penalty order. Two inspections for major facilities are not reported in ICIS.

Some facility location and permit id information is missing or inaccurate in ICIS for four files for 3 major facilities and one non-major facility.

Reporting violations, informal and formal enforcement actions, facility location, inspections, and permit ids are minimum data requirements in ICIS for all major facilities in states where programs are directly implemented by EPA. Facility location, inspections, permit ID, Category I violations, and formal enforcement actions are minimum data requirements in ICIS for non-major facilities in states where programs are directly implemented by EPA.

The Region developed a new tracking system in FY 2013 that may be helpful in resolving these data accuracy issues found in FY 2012 inspection and enforcement files. The eCRAS system newly developed by Region 6 to track and monitor the accuracy and completeness of information contained in inspection and enforcement files and in EPA data systems will be very helpful in correcting these known data issues. EPA HQ commends the regional office for developing this comprehensive tracking system months prior to the State Review Framework evaluation.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2b: Files reviewed where data are accurately reflected in the national data system.	100%	-	15	25	60%
8c: Percentage of SEVs identified as SNC reported timely at major facilities.	100%	-	5	10	50%	

**Regional Response**

- Recommendation**
- Any new tracking, inspection, and enforcement employees will be trained in eCRAS procedures and compliance monitoring and enforcement EPA policies and guidance within 30 days of entry on duty.
  - The Region will provide an update on the status of implementing of this recommendation by April 1, 2015.
  - EPA HQ will monitor FY 2014 SEV data entry for major facilities through review of data under SRF metric 7a1 by May 30, 2015 and communicate the results to Region 6
  - If data entry for SEVs appears low under Metric 7a1 in May 2015, EPA HQ will monitor FY 2015 SEV data entry for Metric 7a1 submitted by the end of the fiscal year
  - EPA HQ may request scanned copies of inspection reports and associated compliance determinations for a small sample of 5-10 inspections reported at major facilities where no SEVs are reported to verify that SEVs for major facilities are being appropriately entered in ICIS by December 30, 2016 if SEV data entry appears low in FY 2014 or FY 2015

## Element 2 — Inspections

<b>Finding 2-1</b>	<b>Meets or Exceeds Expectations</b>
<b>Summary</b>	Inspection coverage at major facilities meets and exceeds inspection commitments in the state’s FY 2012 inspection list submitted to the region. Inspection reports are generally complete and sufficient to determine compliance at the facility.
<b>Explanation</b>	<p>Region 6 directly implements the NPDES program in New Mexico and inspection coverage is accomplished utilizing both EPA inspectors and federally credentialed State inspectors. The state conducts the majority of inspections in New Mexico with EPA credentials under this directly implemented program.</p> <p><i>Major and Non-major Inspection Coverage</i></p> <p>The state committed to inspect 11 major facilities and 35 non-major facilities in FY 2012 in its inspection plan. Nineteen inspections occurred at major facilities and 57 inspections occurred at non-major facilities, exceeding the commitment in the state’s inspection plan according to data available in ICIS. Some of these inspections are not accurately reflected in SRF data for metric 5a1, 5b1 and 5b2 given that inspections conducted by state inspectors with EPA credentials do not show up in frozen, verified SRF data metrics because the formula used to extract data for directly implemented programs is limited to federal inspections only, and does not include state inspections, and due to inaccuracies in the major universe used to calculate the denominator for this metric.</p> <p><i>Pretreatment Inspection Coverage</i></p> <p>Pretreatment inspections are conducted by both Regional and state inspectors which have also met national Clean Water Act National Pollutant Discharge Elimination System Compliance Monitoring Strategy for the Core Program and Wet Weather Sources (NPDES CMS policy) policy coverage goals for pretreatment facilities. The NPDES CMS policy calls for two pretreatment inspections and one audit at each approved local pretreatment program every five years. The state’s inspection plan calls for one pretreatment compliance inspection to be conducted at a specific facility. Of the five pretreatment facilities in New Mexico, one pretreatment compliance inspection occurred in FY 2012, resulting in 20% inspection coverage for pretreatment facilities.</p>

*Stormwater Construction Inspection Coverage*

Regional and state inspectors met NPDES CMS policy coverage goals for stormwater construction Phase I facilities. The NPDES CMS calls for annual inspections of 10% of the Phase 1 stormwater construction universe. The state inspection plan calls for 10 stormwater inspections and does not specify whether these inspections should focus on municipal separate storm sewer systems (MS4s), industrial, or construction facilities. The state and EPA conducted a total of 16 stormwater inspections in FY 2012. One Phase I stormwater construction inspection occurred at the state's 5 Phase I stormwater and construction facilities, meeting and exceeding the NPDES CMS 10% inspection coverage goal with 20% inspection coverage in New Mexico.

*Sanitary Sewer Overflow Inspection Coverage*

NPDES CMS coverage goals for inspections of reported sanitary sewer overflows are conducted on an as needed basis based on information received on overflow occurrences. There are no specific commitments regarding SSOs in the state inspection list. One inspection occurred in response to reported SSO violations.

*Inspection Report Quality*

Inspection reports are generally complete and provide sufficient information to determine compliance. Fourteen of 16 reviewed inspections reports are complete and sufficient to determine compliance. Two inspection reports were not sufficient to determine compliance due to lack of sufficient narrative, pictures, and maps in one report, and an inspection report checklist that indicates that no single event violations occurred for a facility with SSO violations reported in the review year.

**Relevant metrics**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
5a1: Permit limit data entry for major facilities	100% state specific CMS Plan	57.6%	11	42	26.2%
5b1: Inspection coverage of NPDES non-majors with individual permits	100% state specific CMS Plan	25.6%	20	103	19.4%
5b2: Inspection coverage of NPDES non-majors with general permits	100% state specific CMS Plan	5.9%	3	393	0.8%
4a1: Pretreatment compliance inspections and audits	100% state specific CMS Plan	-	1	N/A	1



	4a5: SSO inspections	As needed based on overflow info received by EPA	-	1	N/A	1
	4a9: Phase I and II construction stormwater inspections.	100% state specific CMS Plan	-	1	N/A	1
	6a: Inspections reports complete and sufficient to determine compliance at the facilities	100%	-	14	16	87.5%
<b>Regional Response</b>						
<b>Recommendation</b>						

## Element 2 — Inspections

<b>Finding 2-2</b>	<b>Area for Regional Attention</b>																	
<b>Summary</b>	Inspection report timeliness is generally quite good, however, a few files reviewed indicated some inspection reports took longer than 30-45 days to complete.																	
<b>Explanation</b>	<p>The Region finalized most inspection reports reviewed within, or close to, the 30 day timeframe to complete an inspection report for a non-sampling inspection. This includes those inspection reports completed on behalf of the Region by federally credentialed state inspectors. The National Pollutant Discharge Elimination System Enforcement Management System (NPDES EMS) calls for completion of inspection reports within 30 days for non-sampling inspections in Chapter 5, Section A. Ten of 16 reviewed inspection reports were completed within 30 days or less. Of the remaining six reports, 3 inspection reports were completed within 33 – 39 days, and 3 inspection reports took 65-303 days to complete.</p> <p>This is identified as an Area for Regional Attention given the large number of inspection reports completed at, or soon after, the thirty day timeframe for inspection report completion. In addition, the region identified inspection report timeliness as one of the items the region is working to address under the eCRAS system designed to track follow-up actions necessary for inspection and enforcement personnel. This new system should serve the region well in improving oversight of inspection report timeliness prior to the SRF review. The region developed this system well in advance of the next SRF review, and improvement is expected without a formal recommendation for an area for improvement.</p>																	
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>6b: Timeliness of inspection report completion.</td> <td>100%</td> <td>-</td> <td>10</td> <td>16</td> <td>62.5%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	6b: Timeliness of inspection report completion.	100%	-	10	16	62.5%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
6b: Timeliness of inspection report completion.	100%	-	10	16	62.5%													
<b>Regional Response</b>	The region has a new system for finalizing and publishing reports on the Region 6 web page within 60 days of the inspection.																	
<b>Recommendation</b>																		

## Element 2 — Inspections

Finding 2-3	Area for Regional Improvement
<b>Summary</b>	Inspection coverage in some of the National Pollutant Discharge Elimination System Compliance Monitoring Strategy (CMS) focus areas is low.
<b>Explanation</b>	<p>The New Mexico Environment Department inspection plan does not specify specific inspection commitments for inspections at pretreatment, significant industrial users (SIUs), sanitary sewer overflow, stormwater MS4, stormwater construction, stormwater industrial, or concentrated animal feeding operation (CAFO) facilities. EPA evaluates state and regional direct implementation programs under the coverage goals of the NPDES CMS when a state or regional program does not have a state specific CMS Plan with coverage goals specific to SIU and wet weather facilities.</p> <p><i>Inspection Coverage</i></p> <p>Progress in inspecting significant industrial user and wet weather facilities is not meeting national inspection coverage goals for some of the Compliance Monitoring Strategy focus areas. No significant industrial user, Phase I or Phase II MS4, or CAFO inspections occurred by either the region or state inspectors in FY 2012. Inspection coverage for Phase I MS4 facilities does not meet the national coverage goal in the CMS policy (each facility Phase I MS4 facility every 5 years) since only one inspection occurred at the state’s 28 Phase I MS4 facilities in FY 2012. During FY2012, no inspections occurred at the eight Phase II MS4 facilities in New Mexico, so it is therefore unclear whether the program is on track to meet the goal to inspect or audit each Phase II MS4 by October 2014 per the NPDES CMS policy. State and regional staff inspected 14 of the 234 stormwater industrial facilities (6%) in New Mexico, not meeting the NPDES CMS policy goal to inspect 10% of the stormwater industrial facility universe. No inspections are reported for the state’s Phase II stormwater construction facility in FY 2012, but this may be acceptable given the national goal to inspect 5% of the universe of stormwater construction Phase II facilities each year and a small facility universe of 1. No CAFO inspections are reported at the state’s 193 concentrated animal feeding operations. Given that there are no combined sewer overflow facilities in New Mexico, inspection coverage for metric 4a4 was not evaluated as part of this SRF review.</p>

*State Specific CMS Plans*

There is no state specific Compliance Monitoring Strategy Plan for New Mexico for this directly implemented program. The state submits an inspection list to the region indicating a list of specific major and non-major facilities the state plans to inspect in the fiscal year. The inspection list submitted by the state does not have specific commitments for pretreatment, significant industrial users, and wet weather inspections. The regional 2012 inspection strategy does not specify a set number of facilities, or provide a specific list of pretreatment, significant industrial user, or wet weather inspection commitments.

The FY 2012 New Mexico Environment Department inspection plan contains the following commitments:

- 11-major facilities
- 35 non-major facilities
- 10 stormwater facilities

Establishing numeric commitments for specific types of state and regional inspections based on the state universe and CMS national policy goals would be helpful in targeting inspections toward the inspection coverage goals of the NPDES CMS policy. A comprehensive (state and regional) CMS plan would ideally cover all applicable sectors regulated under NPDES. In particular, setting inspection coverage goals for pretreatment, SIU, and wet weather inspections would help the program meet the goals of the NPDES CMS policy. The greatest number of violations reported in FY 2012 appear in the pretreatment and stormwater MS4 universe. Prioritization of inspections at facilities in these two universe areas of pretreatment and stormwater MS4 facilities may be beneficial for the FY 2015 inspection plan and for addressing apparent widespread noncompliance at 73.8% of the state’s major facilities and 100 of the state’s non-major facilities.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	4a2: Significant industrial user (SIU inspections).	1 pretreatment inspection annually at each SIU	N/A		0	N/A

4a7: Phase I and II MS4 audits and inspections	1 audit at each Phase I MS4 by Oct. 2012 and 1 every 5 years thereafter; 1 inspection/audit at each Phs. II MS4 by 10/14	N/A	0	N/A	0
4a8: Industrial stormwater inspections	10% universe: 23 inspections	N/A	14	N/A	14
4a9: Phase I and II construction stormwater inspections.	10% Phase I universe; 5% Phase II universe each year	N/A	1 (Phase I)	N/A	1
4a10: Inspections of large and medium NPDES-permitted CAFOs	1 inspection every 5 years	N/A	0	N/A	0
7d1: Major facilities in noncompliance	N/A	59.5%	31	42	73.8%
7f1: Non-major facilities in Category 1 noncompliance	N/A	N/A	N/A		62
7g1: Non-major facilities in Category 2 noncompliance	N/A	N/A			38

**Regional Response** Travel to NM is expensive and the Region does not have adequate funding to cover the NM NPDES universe. Region 6 has worked to have some state personnel qualified as inspectors to do inspections for EPA. Unless OECA provides more targeted travel funds to assist the region to expand its coverage in NM, we cannot conduct additional PT, wet weather or SIU inspections. Considering the distance and rainfall, approximately 10- 20” of rain a year, timing inspections for wet weather in NM is unrealistic.

- Recommendation**
- Develop a CMS plan that encompasses the work done by both state and regional inspectors to increase inspection coverage in areas with no, or insufficient, inspection coverage based on coverage goals in the national CMS policy, by 09/30/15
  - Submit the FY 2015 CMS plan to HQ for verification that this recommendation has been completed by 10/1/15

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- Monitor the implementation of the FY 2015 CMS plan to ensure that state and regional inspectors achieve better inspection coverage across the universe of facilities covered under the NPDES CMS policy.
  - Send FY 2015 performance results on New Mexico inspection coverage for pretreatment, SIU, and wet weather inspections to HQ based on information entered in ICIS by 3/30/16
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### Element 3 — Violations

Finding 3-1	Area for Regional Improvement
<b>Summary</b>	Approximately half of the files reviewed contain no evidence of compliance determinations resulting from inspections in a state with a significant percentage of noncompliance in the major and non-major facility universe.
<b>Explanation</b>	<p>Compliance determinations are not clearly documented in all inspection and enforcement files. Nine of 16 inspection and enforcement files reviewed (56.3%) under metric 7e contain violation summaries that clearly document compliance determinations. Compliance determinations are important to determine whether enforcement follow-up is necessary.</p> <p>A large portion of the universe of major facilities in New Mexico (73.8%) are in non-compliance as shown below in the data for Metric 7d1. The non-compliance rate at major facilities in New Mexico is 73.8% as reported under metric 7d1, which is above the national average of 59.5%. The number of major facilities in significant noncompliance (30.2%) is above the national average (20.6%).</p> <p>Four of ten reviewed files have single event violations accurately identified as SNC or non-SNC violations. Single event violations without SNC determinations are generally the leading reason for the low score on metric 8b on single event violations accurately identified as SNC or non-SNC.</p> <p>Nine single event violations are reported at major facilities under SRF metric 7a1. Lack of single event violation data entry into ICIS discovered in files reviewed is addressed under findings and recommendations for Element 1-2, see metric 8c.</p> <p>Some of the permits reviewed were reissued to facilities with well documented noncompliance in multiple quarters. Permit writers should consider whether additional monitoring requirements, interim effluent limits, or compliance schedules are necessary to protect water quality, particularly for facilities discharging pollutants to receiving waters with known water quality impairment.</p>

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	7a1: Number of major facilities with single event violations	-	-	-	-	9
7d1: Major facilities in noncompliance	-	59.5%	31	42	73.8%	
7e: Files reviewed that led to an accurate compliance determination	100%	-	9	16	56.3%	
7f1: Non-major facilities in Category 1 noncompliance	-	-	-	-	62	
7g1: Non-major facilities in Category 2 noncompliance	-	-	-	-	38	
8a2: Percentage of active major facilities in SNC during the reporting year	-	20.6%	13	43	30.2%	
8b: Single event violations accurately identified as SNC or non-SNC	100%	-	4	10	40%	
<b>Regional Response</b>	<p>The Region’s Enforcement Division has a required format for all media and a peer review process. Lead Enforcement Officers are provided draft permits to review. Region 6 currently uses enforcement officer responses to the eCRAS system as a record of decision, and are working on an integrated electronic database and tracking system with forms and links to document storage. We will be developing the forms as suggested by HQ for a system that will take some time to develop and implement.</p>					
<b>Recommendation</b>	<ul style="list-style-type: none"> <li>• Develop an electronic database tracking system standard form to document compliance determinations in inspection and enforcement files by March 30, 2017</li> <li>• Provide training to staff in use of the new form to document compliance determinations by May 31, 2017</li> <li>• Monitor use of the electronic compliance determination form in inspection and enforcement files through the newly developed database system and follow-up monthly on files with missing compliance determinations in FY 2018</li> <li>• Ask enforcement personnel to review draft permit issuance or reissuance for facilities with existing effluent violations to determine whether the permit needs to be modified, or an order needs to be issued, to help the facility return to compliance and to ensure the permit is enforceable.</li> </ul>					



## Element 4 — Enforcement

<b>Finding 4-1</b>	<b>Area for Regional Improvement</b>					
<b>Summary</b>	Some enforcement actions do not promote return to compliance, and a number of enforcement actions are not taken in a timely manner. Timely and appropriate enforcement is a recurring recommendation for an Area for Regional Improvement found during the last SRF evaluation of NM.					
<b>Explanation</b>	<p>One of 7 enforcement actions taken (14.3%) at major facilities in FY 2012 are timely responses to significant noncompliance according to data metric 10a1. Timely response to significant noncompliance at major facilities is a formal enforcement action that occurs within 2 quarters of a SNC violation according to the National Pollutant Discharge Elimination System Enforcement Management System (NPDES EMS).</p> <p>Fifteen of 23 enforcement action files (65.2%) reviewed demonstrate appropriate enforcement action taken in FY 2012. The low result under Metric 10b on the appropriateness of enforcement actions taken in files reviewed is largely due to informal response to SNC violations at 3 major facilities; no action taken to address SSO violations in the review year at 1 major facility; and no enforcement response to violations at 4 non-major facilities in the review year. Appropriate response to violations is determined by the range of recommended enforcement responses for specific types of violations discovered as noted in the NPDES Enforcement Management System’s Enforcement Response Guide.</p> <p>Sixteen of 19 enforcement responses (84.2%) returned, or will return, sources in violation to compliance. Three files reviewed did not have documentation that the action covered all significant violations found in the file, or that the action will return the facility to compliance for facilities with long-term, recurring violations.</p>					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	9a: Percentage of enforcement responses that returned, or will return, a source in violations to compliance.	100%	-	16	19	84.2%
	10a1: Percentage of major NPDES facilities with formal enforcement action taken in a timely manner	98%	3.6%	1	7	14.3%
	10b: Enforcement responses reviewed that address violations in an appropriate manner.	100%	-	15	23	65.2%

<b>Regional Response</b>	<p>R6 believes some SOPs could be helpful. We will review this recommendation and determine which processes need such checklists and SOPs. We will provide HQ with our proposed processes, checklists, and/or SOPs by 7/1/15.</p>
<b>Recommendation</b>	<ul style="list-style-type: none"> <li>• Develop a checklist that guides staff in setting deadlines in enforcement actions and the appropriate response based on the NPDES Enforcement Management System guidelines for SNC, non-SNC, major and non-major facilities by 6/30/15</li> <li>• Submit the checklist EPA HQ to document completion of this recommendation by 7/1/15</li> <li>• Provide training to staff who develop and track enforcement actions and eCRAS system users in the NPDES EMS guidelines for promoting return to compliance and the use of the new checklist by 12/31/15</li> <li>• Develop a standard operating procedure to screen and prioritize enforcement actions and send the plan to EPA HQ by May 31, 2015 <ul style="list-style-type: none"> <li>• Place particular emphasis on prioritizing timely enforcement action for significant noncompliance at major facilities within 2 quarters, and screening procedures to prioritize Category 1 violations at non-major facilities and facilities that discharge to impaired waters</li> </ul> </li> <li>• Submit to EPA HQ the standard operating procedures in June 2015</li> <li>• EPA HQ will conduct annual data metric analyses by April 30, 2015 and April 30, 2016 under Metric 10a1 to evaluate whether timely and appropriate action is occurring at major facilities in significant noncompliance</li> </ul>

## Element 5 — Penalties

Finding 5-1	Area for Regional Improvement
<b>Summary</b>	One third of penalty actions reviewed do not clearly document consideration of economic benefit and gravity. One penalty action reviewed did not document the change between the initial and final penalty.
<b>Explanation</b>	<p>Two of the six penalty actions reviewed did not clearly document consideration of economic benefit and gravity in penalty calculation. Three of the six files reviewed did not document economic benefit penalty calculation, and 2 files did not have adequate documentation of the gravity portion of the penalty. The Clean Water Act calls for documentation of the way in which agencies determine the amount of a civil penalties including information on:</p> <ul style="list-style-type: none"><li>• the seriousness of the violation or violations (gravity),</li><li>• the economic benefit to the violator resulting from the violation,</li><li>• the degree of culpability involved,</li><li>• any other penalty for the same incident,</li><li>• any history of prior violations,</li><li>• the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge,</li><li>• the economic impact of the penalty on the violator</li></ul> <p>All permits reviewed contain former civil penalty values that do not reflect current penalty adjustment inflation factors. The Civil Monetary Penalty Inflation Adjustment Rule, as mandated by the Debt Collection Improvement Act of 1996 (DCIA), adjusts statutory civil monetary penalties for inflation that may be assessed for violations of EPA-administered statutes and their implementing regulations. Pursuant to section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note, each federal agency is required to issue regulations adjusting for inflation in the statutory civil monetary penalties (“civil penalties” or “penalties”) that can be imposed under the laws administered by that agency. Given that the purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes, it is important to list the correct penalty amounts adjusted for inflation in all permits. The DCIA requires adjustments to be made at least once every four years following the initial adjustment. The Agency is required to review the civil monetary penalties under the statutes it administers at least</p>

	once every four years and to adjust such penalties as necessary for inflation according to a formula specified in the DCIA.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	11a: Penalty calculation reviewed that consider and include gravity and economic benefit.	100%	-	2	6	33.3%
	12a: Percentage of major NPDES facilities with formal enforcement action taken in a timely manner	100%	-	1	2	50%
<b>Regional Response</b>	The Region uses a standardized penalty calculation worksheet using BEN. Additional emphasis will be made to ensure penalty reduction considerations are properly documented.					
<b>Recommendation</b>	<ul style="list-style-type: none"> <li>• Provide a standardized penalty calculation worksheet to all Region 6 NPDES data, inspection, and enforcement personnel that contains information from the Civil Penalty Policy in the NPDES Enforcement Management System (NPDES EMS), or training in BEN calculation procedures, by March 31, 2015</li> <li>• Send confirmation that NPDES staff received BEN calculation training/standardized worksheet, to EPA HQ by April 30, 2015</li> <li>• Incorporate the inclusion of penalty calculation documentation into the Region’s eCRAS system by May 30, 2015</li> <li>• Provide documentation of 5 penalty calculations randomly selected by EPA Headquarters using the new penalty calculation worksheet by April 30, 2016 following the availability of frozen data on FY 2015 penalty actions</li> <li>• Use current inflation adjustments listed in 40 CFR § 19 Table 1 in all newly issued or renewed permits and send a copy of the region’s first permit renewal, new permit, or a copy of the region’s standard permit form with updated inflation adjustment values by 3/31/2015. <ul style="list-style-type: none"> <li>○ Current inflation adjustment factors when report finalization occurred are FY 2013 penalty inflation adjustment values</li> </ul> </li> </ul>					

## Element 5 — Penalties

<b>Finding 5-2</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	Documentation of penalty collection is well organized in most penalty files reviewed.					
<b>Explanation</b>	Four of the 5 penalty actions reviewed clearly documented collection of penalties. One file did not clearly document collection of the penalty assessed, and did not contain documentation of follow-up with the facility to collect the outstanding penalty.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	12b: Penalty calculation reviewed that consider and include gravity and economic benefit.	100%	-	4	5	80%
<b>Regional Response</b>						
<b>Recommendation</b>						