



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FEB 28 2017

Ref: 8ENF-PJ

Mr. Dave Glatt
Chief, Environmental Health Section
North Dakota Department of Health
918 East Divide Avenue
Bismarck, North Dakota 58501-1947

Re: Final State Review Framework (SRF) Evaluation Results for Fiscal Year 2014

Dear Mr. Glatt:

Enclosed you will find the final SRF report summarizing the evaluation of North Dakota's Clean Air Act Stationary Source, Resource Conservation and Recovery Act Subtitle C, and National Pollutant Discharge Elimination System enforcement programs for federal Fiscal Year 2014. This Environmental Protection Agency Region 8 report incorporates comments received from both the North Dakota Department of Health and the EPA's Office of Compliance. We look forward to working with your office in utilizing the results of this evaluation to advance our shared objective of protecting public health and the environment in North Dakota.

If you have any questions regarding the SRF evaluation or the SRF in general, please contact me at (303) 312-6352, or have your staff contact David Piantanida at piantanida.david@epa.gov, or (303) 312-6200. Program-specific questions may be directed to the EPA program contacts identified in the report.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Opekar".

Kimberly S. Opekar
Acting Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Enclosures

cc: Sent via electronic mail
Mr. Marty Haroldson, NPDES
Mr. Jim Semerad, CAA
Mr. Curt Erickson, RCRA
Ms. Debrah Thomas, Acting Regional Administrator, EPA, R8
Ms. Suzanne Bohan, Acting Deputy Regional Administrator, EPA, R8

STATE REVIEW FRAMEWORK

North Dakota

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

**U.S. Environmental Protection Agency
Region 8, Denver**

**Final Report
February 22, 2017**

Executive Summary

Introduction

The EPA Region 8 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the North Dakota Department of Health (NDDH).

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

Areas of Strong Performance

- Permit limit and discharge monitoring report (DMR) data entry rates for majors were above national goals and averages.
- The State met or exceeded nearly all of its inspection commitment numbers in each NPDES inspection type. This is an area where the state routinely does well from year-to-year.
- The State excels at comprehensive, clear and detailed CAA full compliance evaluations (FCE) at permitted facilities.
- The State meets the national goal of 100 percent entry of RCRA data that is complete and accurate based on file reviews.
- The State takes timely and appropriate action to address RCRA violations identified during inspections.
- The North Dakota RCRA program inspects 100 percent of their TSDFs annually, 68.40 percent of their large quantity generators (LQGs), which is more than three times the national goal, and 65.80 percent of their active small quantity generators (SQGs), which is almost five times the national average.
- The State has good RCRA inspection coverage of other sites including conditionally exempt small quantity generators, transporters and non-notifiers.

Priority Issues to Address

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

CWA

- The State has not finalized its draft enforcement management system (EMS) and although the draft EMS is being implemented, it is not always followed with respect to enforcement responses and time frames listed in the draft EMS. In addition, the draft

EMS does not address enforcement for CAFOs, construction stormwater, industrial stormwater or MS4s.

- Inspection reports lack detail to document compliance determination. Of the state's inspection reports reviewed, 78 percent were not complete in accordance with the *SRF Inspection Review Checklist*. To address this deficiency, the state needs to develop procedures to ensure reports are complete and support compliance determinations.
- Minimum data requirements (MDR) for facility information, inspection and enforcement data were not entered or were entered incorrectly into the ICIS database. Thirteen of the fifteen enforcement actions were not entered into ICIS for FY 2014. The State sent copies of all enforcement actions to the EPA.

CAA

- The State does not currently identify HPV or FRV violations as part of their enforcement activities.
- The State is using the Full Compliance Evaluation (FCE) to resolve non-compliance found during the inspection.

RCRA

- The State does not have any priority issues that need to be addressed during this SRF review period. They have met all their national goals and exceed many of the national averages. The universe for the inspection coverage metrics is based on the Biennial Reporting System (BRS). Use of the BRS data, which includes episodic generators, one-time generators, and one-time LQGs submitting one-time BRS notifications, may not justify inspection targeting for these one-time events on a continuing basis. The State has made a conscious effort to maintain their database to account for the flexibility of episodic changes in their RCRA universe.

Most Significant CWA-NPDES Program Issues¹

- Thirty-three percent of inspection reports had inaccurate compliance determinations. Different inspection checklists are being used for inspections that do not evaluate all the elements of the permit. Some violations identified in the inspection checklist part of the report were not identified as violations or issues to be corrected. DMR violations that

¹ The 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."

occurred during the period of the inspection review were not identified in the inspection reports as violations.

- Five out of 15 enforcement actions reviewed returned the facility to compliance.
- Penalty calculations did not account for economic benefit.
- Enforcement penalty documentation is incomplete. The State's documentation regarding the penalties in two out of five cases reviewed did not document the reasoning of the differences between the initially proposed and final penalty amounts.

Most Significant CAA Stationary Source Program Issues

- The State is properly using Full Compliance Evaluations (FCEs) to identify areas of non-compliance during an onsite inspection. However, the State is using that same report as a tool to get the company back into compliance. Beyond the inspection report, the EPA recommends using one of NDDH's enforcement tools (LOAN letter, ESA, ACA) to settle the violations and get the company back into compliance.
- The State developed and is utilizing Expedited Settlement Agreements (ESAs) as an effective enforcement tool for quick settlement of non-compliance with a non-negotiable settlement agreement and a standardized reduced penalty amount that essentially does away with negotiations. However, there is no rationale available for how standardized penalty amount is calculated; the EPA recommends NDDH calculates and captures the standardized penalty amount for consistency.
- The State is currently using an inspection frequency document as their compliance monitoring strategy (CMS). The EPA will work with NDDH to develop an updated CMS, per the 2014 CMS guidance, that accurately captures the State's appropriate inspection frequencies.

Most Significant RCRA Subtitle C Program Issues

- There are no significant RCRA issues which require State improvement.

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I. Background on the State Review Framework

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

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

Reviews cover:

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

The 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
- Developing findings and recommendations

The EPA builds consultation into the SRF to ensure that the 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. The 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 2014

Key Dates

SRF Kick-Off Letter (See Appendix)
CWA NPDES File Review
CAA File Review
RCRA File Review

January 25, 2015
April 6-10, 2015
June 22-26, 2015
June 30, 2015

Key EPA Review Contacts

U.S. Environmental Protection Agency Region 8
Office of Enforcement, Compliance and Environmental Justice
1595 Wynkoop St
Denver, CO 80202

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Alexis North	CAA	(303) 312-7005	north.alexis@epa.gov
Annette Maxwell	RCRA	(303) 312-6068	maxwell.annette@epa.gov

*David Piantanida is the new SRF coordinator, (303) 312-6200, piantanida.david@epa.gov

U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Ave., NW
Washington, DC 20460

Rob Lischinsky	CAA	(202) 564-2628	lischinsky.robert@epa.gov
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Key State Review Contacts

North Dakota Department of Health
Environmental Health Section
918 East Divide Avenue
Bismarck, ND 58501-1947

Dave Glatt	Chief	(701) 328-5151	dglatt@nd.gov
Marty Haroldson	NPDES	(701) 328-5210	mharolds@nd.gov
Jim Semerad	CAA	(701) 328-5188	jsemerad@nd.gov
Curt Erickson	RCRA	(701) 328-5166	cerickso@nd.gov

III. SRF Findings

Findings represent the 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. The 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 the EPA will monitor them for completion between SRF reviews in the SRF Tracker.

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

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

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

Clean Water Act Findings

CWA Element 1 — Data						
Finding 1-1	Meets or Exceeds Expectations					
Summary	Permit limits and DMR data entry rates for majors were above national goals and averages.					
Explanation	North Dakota has entered 96 percent of permit limits for majors. This exceeds both the national goal of 95 percent and the national average of 91.1 percent. North Dakota has a DMR entry rate for majors of 98.7 percent. This exceeds both the national goal of 95 percent and the national average of 96.6 percent.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	1b1 Permit limit rate for major facilities	≥95%	91.1%	24	25	96 %
	1b2 DMR entry rate for major facilities	≥95%	96.6%	935	947	98.7%
State response						
Recommendation	N/A					

CWA Element 1 — Data	
Finding 1-2	Area for State Improvement
Summary	Minimum data requirements were not entered or were entered incorrectly into the ICIS database.
Explanation	<p>Four out of 27 files reviewed for data accuracy were correctly entered into ICIS.</p> <p>North Dakota has a NDPDES database where the MDR are tracked for major and minor facilities. This database was upgraded in 2013 to batch upload data into ICIS on a monthly basis. Currently, major and minor POTW MDRs are batch uploaded into ICIS. Non-major facilities covered under a general permit (stormwater construction, stormwater industrial, MS4s, CAFOs and pretreatment industrial users) are not batch uploaded into ICIS. Fifteen of the 27 files reviewed were non-major general permit facilities; therefore, these 15 files were not in ICIS. MDRs for these type of facilities includes: name, street address, city, county, state, zip code, type of ownership, latitude, longitude, NPDES ID, universe, operating status, permit issue date, permit effective date, expiration date and general permit industry category (December 28, 2007, ICIS Addendum to the Appendix of the 1985 Permit Compliance System Statement)</p> <p>For the rest of the 12 files reviewed, the data accuracy issues fall into three main categories: facility information, inspection data and enforcement data.</p> <p>The following facility information was incorrect:</p> <ul style="list-style-type: none"> • The City of Langdon WWTF was reclassified from a major (ND0020630) to a minor (NDG220630) on November 10, 2014; however, it is still showing up in ICIS as a major facility. There were also two different street addresses for the facility (516 10th Avenue and 324 8th Avenue). • The City of Minot lagoon location is not correct in ICIS; the location listed appears to be the town office. • The American Crystal Sugar permit was reissued on April 1, 2015. ICIS indicates that the permit expired on March 31, 2015, and that it has been administratively extended. <p>The following inspection data was incorrect:</p> <ul style="list-style-type: none"> • The inspection date for Tesoro Mandan WWTF in ICIS was September 5, 2014, but the inspection was conducted on September 4, 2014.

	<ul style="list-style-type: none"> • For the City of Williston WWTF, SEV codes from the inspection were not entered into ICIS. Williston had numeric effluent violations (A0012), a failed wet test (A0013) and a fish kill (A0016). • The American Crystal Sugar inspection identified SEV code B0021 "lab not certified" on the 3560 form for the inspection report; however, this SEV code was not entered into ICIS. <p>Thirteen of the fifteen enforcement actions taken in FY 2014 had not been entered into ICIS. The Letter of Apparent Non-compliance (LOAN) sent on August 27, 2014, to the City of Williston for the fish kill was not entered into ICIS. Enforcement actions at major facilities are required to be entered into ICIS. The state sent copies of all enforcement actions to the EPA.</p>												
Relevant metrics	<table border="1"> <thead> <tr> <th data-bbox="483 764 1024 842">Metric ID Number and Description</th> <th data-bbox="1032 764 1092 842">Natl Goal</th> <th data-bbox="1101 764 1198 842">Natl Avg</th> <th data-bbox="1206 764 1250 842">State N</th> <th data-bbox="1258 764 1318 842">State D</th> <th data-bbox="1326 764 1440 842">State % or #</th> </tr> </thead> <tbody> <tr> <td data-bbox="483 852 1024 919">2b Files reviewed where data are accurately reflected in the national data system</td> <td data-bbox="1032 852 1092 919">100%</td> <td data-bbox="1101 852 1198 919"></td> <td data-bbox="1206 852 1250 919">4</td> <td data-bbox="1258 852 1318 919">27</td> <td data-bbox="1326 852 1440 919">14.8%</td> </tr> </tbody> </table>	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%		4	27	14.8%
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%		4	27	14.8%								
State response	<p>The Department feels that upgrades to the NDPDES database in regards to the Electronic Reporting Rule now being final will fulfill the recommendation for this element. Due to the vast number of upgrades to the NDPDES and the Environmental Protection Agency's (EPA) database that are required to allow compliance with the Electronic Reporting Rule, the Department is asking the EPA to extend the deadline until both databases are upgraded.</p>												
Recommendation	<ol style="list-style-type: none"> 1) By April 30, 2017, North Dakota will correct the facility and inspection ICIS data issues identified above and provide a report to the EPA. 2) By April 30, 2017, North Dakota will submit a schedule to the EPA outlining how non-major facilities (stormwater construction, stormwater industrial, MS4s, CAFOs and pretreatment industrial users) will be uploaded into ICIS. 3) North Dakota will enter enforcement actions into ICIS within 30 days upon issuance of the enforcement action. By April 30, 2017, North Dakota will provide the EPA with a Standard Operating Procedure (SOP) for entering enforcement actions into ICIS and indicate whether FY 2016 enforcement actions were entered into ICIS. 												

CWA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations					
Summary	Inspection commitment numbers were met or exceeded for all categories except for Phase II MS4 audits.					
Explanation	<p>The national goal is that the state conduct 100 percent of its inspection work plan outlined in its FY 2014 PPA. According to the End of Year Report provided to the EPA and ECHO, North Dakota met or exceeded their inspection commitments for majors, individual minors, general permitted minor POTWs, pretreatment, CAFO, industrial stormwater, and construction stormwater. According to ECHO, North Dakota completed five Phase II MS4 audits or inspections (three audits and two inspections). North Dakota committed to conduct four Phase II MS4 audits and two Phase II MS4 inspections. This is the only inspection commitment that North Dakota did not meet in FY 2014.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	4a1 Pretreatment compliance inspections and audits	100% of commitment		5	2	>100%
	4a2 Significant Industrial User inspections for SIUs discharging to non-authorized POTWs	100% of commitment		7	4	>100%
	4a4 Major CSO inspections	100% of commitment		0	0	N/A
	4a5 SSO inspections	100% of commitment		0	0	N/A
	4a7 Phase I & II MS4 audits or inspections	100% of commitment		5	6	83.3%
	4a8 Industrial stormwater inspections	100% of commitment		50	49	>100%
	4a9 Phase I and II stormwater construction inspections	100% of commitment		131	113	>100%
	4a10 Medium and large NPDES CAFO inspections	100% of commitment		69	40	>100%

	5a1 Inspection coverage of NPDES majors	100% of commitment	55.4%	25	25	100%
	5b1 Inspection coverage of NPDES non-majors with individual permits	100% of commitment	26.5%	21	96	21.9%
	5b2 Inspection coverage of NPDES non-majors with general permits	100% of commitment	7.1%	97	302	32.1%
State response						
Recommendation	N/A					

CWA Element 2 — Inspections

Finding 2-2

Area for State Improvement

Summary

Several inspection reports were not complete.

Explanation

Eight out of 36 inspection reports reviewed were considered to provide sufficient documentation to determine compliance. It is important to note that in the State of North Dakota, inspections of major and minor POTWs are conducted by both the Department of Water Quality and the Municipal Facilities Department and that their inspection reports differ.

Common inspection report deficiencies include:

- No 3560 Form used for stormwater construction, stormwater industrial, CAFOs and Minor POTW inspections conducted by the Municipal Facilities Department, and one major (September 2014 Valley City inspection).
- No facility description or description of the inspection procedure in some inspection reports.
- Inadequate DMR review conducted by the Municipal Facilities Department.
- DMR violations that occurred in the year prior to the inspection were not identified in the report as violations.

The cover letter for some inspection reports did not state if there were findings and whether a response was required from the facility within 30 days of the report. For some inspection reports, the findings for the inspection were included in small font in the comments section at the end of the report. Because some of the inspection reports' cover letters did not mention that there were findings, some facilities might not know that there were findings that need to be addressed.

This finding is a recurring area of improvement noted in the SRF Round 2 Report (Finding 6-1). The Round 2 SRF finding, under 6b and 6c, illustrated that the EPA determined that 0 percent of the inspection reports reviewed were complete and 0% of the inspection reports reviewed provided sufficient documentation to lead to an accurate compliance determination. The EPA and North Dakota had conference calls in 2011 to discuss inspection report improvements. Since then, the EPA has seen improvements in stormwater and CAFO inspection reports. North Dakota has revised its stormwater inspection checklist to ensure that all permit requirements are evaluated. A review of the CAFO and stormwater inspections reports showed that North Dakota requires a response (usually within 30 days) to the inspection reports that contain violations or significant deficiencies to ensure corrective actions have been taken and

	<p>compliance has been achieved. The EOY Report for FY 2010 identified that North Dakota was not including the cover letter for CAFO inspections when they were submitted to the EPA. In FY 2011, North Dakota provided CAFO inspection reports along with the cover letters for all of its CAFO inspection reports.</p>												
Relevant metrics	<table border="1"> <thead> <tr> <th data-bbox="483 436 1024 510">Metric ID Number and Description</th> <th data-bbox="1032 436 1089 510">Natl Goal</th> <th data-bbox="1097 436 1195 510">Natl Avg</th> <th data-bbox="1203 436 1243 510">State N</th> <th data-bbox="1252 436 1292 510">State D</th> <th data-bbox="1300 436 1438 510">State % or #</th> </tr> </thead> <tbody> <tr> <td data-bbox="483 520 1024 583">6a Inspection reports complete and sufficient to determine compliance at the facility</td> <td data-bbox="1032 520 1089 583">100%</td> <td data-bbox="1097 520 1195 583"></td> <td data-bbox="1203 520 1243 583">8</td> <td data-bbox="1252 520 1292 583">36</td> <td data-bbox="1300 520 1438 583">22.2%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	6a Inspection reports complete and sufficient to determine compliance at the facility	100%		8	36	22.2%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #								
6a Inspection reports complete and sufficient to determine compliance at the facility	100%		8	36	22.2%								
State response	<p>The Department is in the process of developing a Standard Operating Procedure (SOP) for the NDPDES program in regards to the recommendation listed in this element. An SOP will be sent to the EPA as requested by the SRF audit.</p>												
Recommendation	<ol style="list-style-type: none"> 1) By April 30, 2017, North Dakota will provide the EPA an inspection report SOP to ensure that inspection reports are complete. The inspection report completeness SOP will address the EPA’s inspection report completeness requirements and the six items listed below. <ol style="list-style-type: none"> a. Revise all compliance inspection report templates to include all required information including a description of the facility and a description of the inspection procedures and findings. Submit the templates to the EPA by April 2017. b. Include Form 3560 with stormwater construction, stormwater industrial, CAFOs, MS4s inspections or modify the inspection report template to include the information contained in Form 3560. c. Revise major and minor inspection report templates used by Municipal Facilities inspectors to ensure that all required information is reviewed during the inspection including DMR reviews. d. Before finalizing a compliance inspection report with findings, have another person review the report for completeness. e. If findings are identified in a report, update the cover letter to State that there are findings that require a response from the facility within 30 days of the report. f. If findings are identified in a report, the findings should be moved to the beginning of the report instead of in the comments section. 2) This finding will be removed from SRF tracker after three months of successful implementation of the inspection report completeness SOP. 												

CWA Element 2 — Inspections													
Finding 2-3	Meets or Exceeds Expectations												
Summary	Inspection reports were completed in a timely manner.												
Explanation	<p>Twenty-nine out of 36 inspection reports were completed within 45 days of the inspection. Inspection reports were completed in an average of 33 days. Out of the seven inspection report that were completed over 45 days, four of them were stormwater construction inspection reports with enforcement actions that were not sent out until the Expedited Settlement Agreement was mailed.</p> <p>The EPA’s EMS States that inspection reports will be completed within 30 days for inspection report for a non-sampling inspection and 45 days for inspections involving sampling.</p>												
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>6b Inspection reports completed within prescribed timeframe</td> <td>100%</td> <td></td> <td>29</td> <td>36</td> <td>80.6%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	6b Inspection reports completed within prescribed timeframe	100%		29	36	80.6%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #								
6b Inspection reports completed within prescribed timeframe	100%		29	36	80.6%								
State response													
Recommendation	N/A												

CWA Element 3 — Violations

Finding 3-1	Area for State Improvement																	
Summary	Inaccurate compliance determinations																	
Explanation	<p>Twenty-four out of 36 inspection reports had accurate compliance determinations. There are different inspection checklists that are being used for POTW facility inspections which leads to inconsistencies in compliance evaluations. For example, the Municipal Facilities POTW inspection checklist is different than the NPDES inspection checklist and the Municipal Facilities’ checklist does not cover all permit requirements (i.e. DMR review was not conducted by Municipal Facilities inspections).</p> <p>Common compliance determination deficiencies include:</p> <ul style="list-style-type: none"> • Violations identified in the inspection checklist part of the report were not identified as violations or issues to be corrected. • DMR violations that occurred during the period of the inspection review were not identified in the inspection reports as violations. • For some unpermitted stormwater construction sites, the inspection checklist was not commonly used; therefore, some of the permit requirements were not evaluated. <p>This finding is a recurring area of improvement noted in the SRF Round 2 Report (Finding 6-1). The Round 2 SRF finding, under 6c, illustrated that the EPA determined that 0% of the inspection reports reviewed provided sufficient documentation to lead to an accurate compliance determination.</p>																	
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>7e Inspection reports reviewed that led to an accurate compliance determination</td> <td>100%</td> <td></td> <td>24</td> <td>36</td> <td>66.7%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	7e Inspection reports reviewed that led to an accurate compliance determination	100%		24	36	66.7%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
7e Inspection reports reviewed that led to an accurate compliance determination	100%		24	36	66.7%													
State response	The Department is in the process of developing a Standard Operating Procedure (SOP) for the NDPDES program in regards to the recommendation listed in this element. An SOP will be sent to EPA as requested by the SRF audit.																	
Recommendation	<ol style="list-style-type: none"> 1) By April 30, 2017, North Dakota will provide the EPA an inspection report SOP to ensure that inspection reports have accurate compliance determinations. The inspection report SOP will address the two items listed below. <ol style="list-style-type: none"> a. Revise major and minor inspection report templates used by Municipal Facilities inspectors to ensure that all required 																	

information is reviewed during the inspection, including DMR reviews.

- b. Before finalizing a compliance inspection report with findings, have another person review the report to ensure that all violations were captured in the report.

- 2) This finding will be removed from SRF tracker after 3-months of successful implementation of the inspection report SOP.
-

CWA Element 3 — Violations

Finding 3-2	Area for State Improvement
Summary	Single Event Violations (SEV) codes resulting from inspections were not identified and were not entered into ICIS.
Explanation	<p>SEV codes are required to be entered for major facilities (40 CFR Part 123.26). A review of the ICIS-NPDES data indicated that North Dakota did not enter SEV codes for major facilities into ICIS-NPDES for FY 2014. One example where SEV codes were not identified or entered into ICIS is the City of Williston. During FY 2014 Williston had numeric effluent violations (A0012), a failed WET test (A0013) and a fish kill (A0016) which were not identified or entered into ICIS as SEV codes.</p> <p>EPA also recommends SEVs be entered for minors. During the file review, it was noted that there were three minor facilities where North Dakota had entered SEV codes into ICIS-NPDES. The facilities were Bakken Sanitary Solutions, Bakken Water Exchange and Marches Homes, Inc.</p> <p>SNC is captured automatically in ICIS for DMR violations. There were two major facilities in FY 2014 that were listed as SNC as a result of DMR violations. The facilities were the City of Williston and American Crystal Sugar Hillsboro.</p> <p>The State is expected to enter SEV codes for major facilities resulting from inspections conducted. SEV codes resulting from inspections are not entered into ICIS. For example, for the Williston inspection, SEV codes were not identified in the inspection report and were not entered into ICIS. During FY 2014 inspections, Williston had numeric violations (A0012), a failed wet test (A0013) and a fish kill (A0016). These SEV codes should have been identified as SNC. For American Crystal Sugar, SEV code B0021 "lab not certified" was entered in the 3560 Form for the inspection report; however, this SEV code was not entered into ICIS.</p> <p>This finding is a recurring area of improvement noted in the SRF Round 2 Report (Finding 7-1). North Dakota did not identify any SEVs in FY 2008. North Dakota did not enter SEVs into PCS or the NDPDES database. The EPA provided North Dakota with the guidance document outlining procedures for entering SEV violations into ICIS-NPDES. http://www.epa.gov/compliance/resources/policies/state/srf/npdes-sevguidance.pdf.</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	N/A		0	
7d1	Major facilities in noncompliance	N/A	78.7%	20	25	80%
7f1	Non-major facilities in Category 1 noncompliance	N/A		0		
7g1	Non-major facilities in Category 2 noncompliance	N/A		3		
8a2	Percentage of major facilities in SNC	N/A	20.7%	2	25	8%
8b	Single-event violations accurately identified as SNC or non-SNC	100%		3	5	60%
8c	Percentage of SEVs identified as SNC reported timely at major facilities	100%		2	4	50%
State response	The Department is in the process of developing a Standard Operating Procedure (SOP) for the NDPDES program in regards to the recommendation listed in this element. An SOP will be sent to EPA as requested by the SRF audit.					
Recommendation	By April 30, 2017, North Dakota will provide a SOP to the EPA for the identification of SEV codes resulting from inspections and the input of the SEV codes into ICIS. This finding will be removed from SRF tracker after six months of successful implementation of the developed SOP.					

CWA Element 4 — Enforcement

Finding 4-1	Area for State Improvement						
Summary	Some of the enforcement actions returned facilities to compliance.						
Explanation	<p>Five out of 15 enforcement actions reviewed returned the facility to compliance.</p> <p>Issues identified in the element include:</p> <ul style="list-style-type: none"> • LOANs did not require a response from the facility to verify that the facility was back into compliance. According to the North Dakota 2000 draft Enforcement Management System (EMS), LOANs should require a response from the facility to ensure that the facility returns to compliance. • NOVs also did not completely return a facility to compliance until the ACA is issued. • The ESA for stormwater required unpermitted sites to get permits, but it did not require the sites to submit records which showed the site was in compliance (e.g. a SWPPP, photos of fixed BMP issues, and records of self-inspections). • For one facility, the Administrative Compliance Agreement (ACA) required compliance with the permit on a monthly basis by submitting reports for FY 2014 and FY 2015. There were no records of the monthly reports in the facility file. No escalated enforcement was taken and no suspended penalties were collected as required by the ACA. <p>This finding is a recurring area of improvement noted in the SRF Round 2 Report (Finding 9-1). North Dakota’s FY 2008 enforcement actions generally did not promote a return to compliance. In FY 2012 North Dakota implemented a NDPDES database upgrade that includes an enforcement component to each facility which allows North Dakota staff to be able to track facility responses to enforcement action. This continues to be an area of concern.</p>						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	9a Percentage of enforcement responses that return or will return source in violation to compliance		100%		5	15	33.3%
State response	The Department will provide a write-up and develop an SOP for the stormwater Expedited Settlement Agreement (ESA) tool to the EPA by April 30, 2017.						

Recommendation

By April 30, 2017, North Dakota will provide the EPA with a report indicating how the following issues were corrected:

1. Modify the LOAN template letter to require a response from the facility to violations identified.
2. Amend stormwater ESA to require the site to submit a SWPPP, photos of fixed BMP issues, and records of self-inspections to ensure that the site returned to compliance.
3. Provide the inspectors with training on the NDPDES database enforcement tracking option and how to track enforcement actions and due dates for reports required by ACAs.

This finding will be removed from SRF Tracker after the three issues above have been corrected.

CWA Element 4 — Enforcement

Finding 4-2	Area for State Improvement
Summary	North Dakota has not finalized its draft Enforcement Management System (EMS) and was inconsistent in following the draft EMS.
Explanation	<p>Seven out of 15 enforcement actions reviewed followed the 2000 draft North Dakota EMS. The 2000 draft EMS does not cover stormwater, CAFOs and pretreatment violations. The stormwater ESA process is not covered in the North Dakota EMS.</p> <p>The North Dakota EMS indicates that for the second appearance on the Quarterly Non-compliance Report (QNCR) for majors (effluent limits exceeded), North Dakota would respond with a NOV/Order or a referral to the AG (90 days from appearance on 1st QNCR). The City of Williston WWTF was on the QNCR for two consecutive quarters for Biological Oxygen Demand (BOD) and Total Suspended Solids (TSS). The State has not addressed this issue according to their EMS because the facility has a compliance schedule in its current NPDES permit to build a new wastewater treatment plant by November 2016 that will alleviate the effluent violations.</p> <p>Furthermore, the City of Williston’s issues described above resulted in a SNC violation that was not resolved in a timely action. North Dakota issued an informal enforcement action by sending out a LOAN on August 27, 2014; however, this action was not entered into ICIS-NPDES. According to EPA policy, for an action to be timely it has to be a formal enforcement action within 60 days after the violation appears on the first QNCR (see May 29, 2008, memo on Appropriate Response to Significant Noncompliance Violations).</p> <p>The North Dakota EMS does not address stormwater violations and the stormwater ESA process which has caused inconsistent use of enforcement authority. For example, there was a file reviewed where the construction site was 12 acres and the photos show extreme lack of Best Management Practice (BMP) maintenance, sediment deposition to State waters, and no self-inspections. Yet the facility only received a LOAN compared to other smaller unpermitted sites that received an ESA with a penalty.</p> <p>For one facility, the ACA required compliance with the permit on a monthly basis by submitting reports for FY 2014 and FY 2015. There were no records of the monthly reports in the facility file. No escalated enforcement was taken and no suspended penalties were collected as stated in the ACA.</p>

	<p>This finding is a recurring area of improvement noted in the SRF Round 2 Report (Finding 10-1). North Dakota did not take appropriate enforcement action to address non-SNC violations in FY 2008. North Dakota took several enforcement actions in FY 2012 and FY 2013. In FY 2013, North Dakota implemented an expedited enforcement process, known as the Expedited Settlement Agreement (ESA), which was used on a significant number of stormwater construction violations. North Dakota has not finalized its Enforcement Management System. The EPA provided comments to the EMS on December 30, 2010. North Dakota indicated that it has incorporated the EPA’s suggestions into the state’s EMS but has not finalized the EMS.</p>																								
<p>Relevant metrics</p>	<table border="1"> <thead> <tr> <th data-bbox="483 653 1019 726">Metric ID Number and Description</th> <th data-bbox="1027 653 1101 726">Natl Goal</th> <th data-bbox="1109 653 1198 726">Natl Avg</th> <th data-bbox="1206 653 1247 726">State N</th> <th data-bbox="1255 653 1312 726">State D</th> <th data-bbox="1320 653 1443 726">State % or #</th> </tr> </thead> <tbody> <tr> <td data-bbox="483 737 1019 831">9a Percentage of enforcement responses that return or will return source in violation to compliance</td> <td data-bbox="1027 737 1101 831">100%</td> <td data-bbox="1109 737 1198 831"></td> <td data-bbox="1206 737 1247 831">5</td> <td data-bbox="1255 737 1312 831">15</td> <td data-bbox="1320 737 1443 831">33.3%</td> </tr> <tr> <td data-bbox="483 842 1019 905">10a1 Major facilities with timely action as appropriate</td> <td data-bbox="1027 842 1101 905">≥98%</td> <td data-bbox="1109 842 1198 905">9%</td> <td data-bbox="1206 842 1247 905">0</td> <td data-bbox="1255 842 1312 905">1</td> <td data-bbox="1320 842 1443 905">0%</td> </tr> <tr> <td data-bbox="483 915 1019 978">10b Enforcement responses reviewed that address violations in an appropriate manner</td> <td data-bbox="1027 915 1101 978">100%</td> <td data-bbox="1109 915 1198 978"></td> <td data-bbox="1206 915 1247 978">7</td> <td data-bbox="1255 915 1312 978">15</td> <td data-bbox="1320 915 1443 978">46.7%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	9a Percentage of enforcement responses that return or will return source in violation to compliance	100%		5	15	33.3%	10a1 Major facilities with timely action as appropriate	≥98%	9%	0	1	0%	10b Enforcement responses reviewed that address violations in an appropriate manner	100%		7	15	46.7%
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10b Enforcement responses reviewed that address violations in an appropriate manner	100%		7	15	46.7%																				
<p>State response</p>	<p>The Department will develop an SOP for the stormwater Expedited Settlement Agreement (ESA) tool and provide it and a write-up to the EPA by April 30, 2017.</p> <p>The Department will provide the EPA with an updated Enforcement Management System (EMS) document by April 30, 2017.</p>																								
<p>Recommendation</p>	<ol style="list-style-type: none"> 1) By April 30, 2017, North Dakota will develop a written SOP for the stormwater ESA. 2) By April 30, 2017 North Dakota will provide the EPA with an updated EMS that includes the following: <ol style="list-style-type: none"> a. Enforcement responses tables for stormwater (industrial, construction, MS4s), CAFOs, and SSOs/spills. b. The stormwater ESA policy. c. An internal enforcement review process that will ensure all violations are identified and addressed as appropriate to help ensure a full return to compliance. 3) By July 31, 2017, the EPA will provide comments to North Dakota’s EMS. By October 31st, 2017, North Dakota will address EPA comments and finalize its EMS. 																								

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- 4) Once the draft EMS is finalized, North Dakota will provide an internal training session for all NDPDES staff with an expectation that staff follow the EMS on all enforcement proceedings. North Dakota will notify the EPA when the training has been completed.
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CWA Element 5 — Penalties

Finding 5-1	Area for State Improvement												
Summary	Penalty calculations did not consider economic benefit of the non-compliance.												
Explanation	<p>Zero out of five penalties reviewed collected economic benefit. North Dakota’s penalty policy addresses how to calculate economic benefit, but the calculations for the five cases reviewed did not incorporate economic benefit into the penalty. The ESA for stormwater does not explain how the amounts take gravity and economic benefit into account.</p> <p>This finding is a recurring area of improvement noted in the SRF Round 2 Report (Finding 11-1). Economic benefit of noncompliance was not considered in the three stormwater cases reviewed in FY 2008. North Dakota developed a new penalty policy that has a matrix that incorporates economic benefit into their penalty calculations. The new penalty policy is found in the North Dakota Enforcement Management System (EMS). However, it appears that, based on the penalties reviewed for FY 2014, the economic benefit section of penalty policy is not being followed.</p> <p>The EPA offers free online training on economic benefit calculations using the EPA’s BEN software. The EPA recommends that State inspectors complete training on economic benefit calculations. Further information is found at: http://www2.epa.gov/enforcement/penalty-and-financial-models.</p>												
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>11a Penalty calculations reviewed that consider and include gravity and economic benefit</td> <td>100%</td> <td></td> <td>0</td> <td>5</td> <td>0%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	11a Penalty calculations reviewed that consider and include gravity and economic benefit	100%		0	5	0%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #								
11a Penalty calculations reviewed that consider and include gravity and economic benefit	100%		0	5	0%								
State response	The Department will submit all NDPDES FY16 penalty calculation sheets to the EPA by April 30, 2017.												
Recommendation	By April 30, 2017, North Dakota will submit all FY 2016 penalty calculation worksheets, including the economic benefit calculations, to the EPA for all final penalty actions issued in FY 2016. The EPA will review the penalty calculation worksheets to ensure the economic benefit is properly documented. If the penalty excludes the economic benefit component, the State’s penalty worksheet needs to provide a rationale for its exclusion. This finding will be removed from SRF tracker once the												

State consistently addresses the economic benefit of the penalty finding for one year.

CWA Element 5 — Penalties

Finding 5-2	Area for State Improvement					
Summary	There were differences between initial penalty calculated and final penalty collected that were not documented.					
Explanation	<p>Three out of five penalties reviewed documented the difference between the initial penalty calculated and final penalty amounts collected. There were two files where the ACA required information to be provided in order for part of the penalty to be suspended, but there was no evidence in the file that the facilities ever complied with the requirements in the ACA, and the suspended penalties were not collected as required by the ACA.</p> <p>This finding is a recurring area of improvement noted in the SRF Round 2 Report (Finding 12-1). North Dakota’s files did not have documentation of final penalty assessment for files reviewed in FY 2008.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	12a Documentation of the difference between initial and final penalty and rationale	100%		3	5	60%
State response	The Department will submit all NDPDES FY16 penalty calculation sheets to the EPA by April 30 th , 2017.					
Recommendation	By April 30th, 2017, North Dakota will submit all FY 2016 penalty calculation worksheets to the EPA for all final penalty actions issued in FY 2016. The EPA will review the penalty calculation worksheets to ensure the difference between the initial penalty and final penalty amounts are properly documented. The final penalty worksheets must include a rationale for the difference in the initial and final penalty amounts. This finding will be removed from SRF tracker once the State consistently addresses the finding for one year.					

CWA Element 5 — Penalties						
Finding 5-3	Area for State Attention					
Summary	For one facility, there was no documentation that the penalty was collected.					
Explanation	Four penalties were collected out of the five ACAs and ESAs reviewed. For Simplot, there was no evidence in the file that the corrective action required to be taken by September 2014 was accomplished, and North Dakota did not assess the suspended penalty as required in the ACA. Furthermore, there was an email in the file which stated that the corrective action required to be taken by January 2015 was not accomplished until February 2015 and the suspended penalty was not assessed by North Dakota as required by the ACA.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	12b Penalties collected	100%		4	5	80%
State response						
Recommendation	N/A					

Clean Air Act Findings

CAA Element 1 — Data																																																												
Finding 1-1	Area for State Improvement																																																											
Summary	There is no data available in AFS for FY 2014 NDDH permitting and enforcement activities.																																																											
Explanation	<p>The State’s air permitting and enforcement data appears to be non-existent based on the SRF Metrics Query Results for FY 2014 because this data pull for the query is happening from the outdated AFS database.</p> <p>While the NDDH maintains a “homegrown” permitting and enforcement database meeting the MDRs, in 2014, their database was not able to create bulk data transfer to the EPA’s aging AFS database. Due to staffing issues, NDDH was unable to focus on preparing bulk uploads from their database. The NDDH and the EPA both agreed that NDDH would focus on training newly acquired staff on the upcoming ICIS rather than the soon to be out of date AFS. The migration from AFS to ICIS occurred in late 2014.</p> <p>As of July 6, 2015, the NDDH has successfully mapped their minimum data requirements for permitting and enforcement database to the ICIS database including permitting details, inspection dates and frequencies, review of permit annual compliance certification and stack test reports.</p>																																																											
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	5d FCE coverage: minor facilities that are part of CMS plan	100%	4.40%	
	5e Review of Title V annual compliance certifications	100%	78.80%	
	7b1 Violations reported per informal actions	100%	65.60%	
	7b3 Violations reported per HPV identified	100%	63.20%	
State response				
Recommendation	Produce and review quarterly ICIS reports to determine if NDDH is flowing data from their state databases. Report to both NDDH contacts and EPA management of status of data. The most recent NDDH data was flowed to ICIS during the week of February 6 th , 2017. Periodically, the EPA can compare the Title V permit universe from what the NDDH publishes on their website to the universe in ICIS.			

CAA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations
Summary	<p>NDDH staff excels at comprehensive, clear and detailed CAA full compliance evaluations (FCE) at permitted facilities. During the SRF on-site file review, EPA reviewers were able to easily obtain and delineate process information and compliance status of each FCE reviewed.</p>
Explanation	<p>NDDH authors excellent FCEs and thoroughly reviews and documents stack test reviews. As a third party, it was very easy to come in and determine the process and compliance status of each facility FCE we reviewed as part of the SRF.</p> <p>While there are no metrics available in AFS (see CAA Element 1 for explanation), NDDH posts all Title V (T5), and Synthetic Minor (SM) permits on their website available to the public (click here). Based on the list of T5 and SM permits online and the inspection reports provided to the EPA as part of the state oversight commitment, the EPA is able to determine NDDHs inspection coverage at T5 and SM sources as follows:</p> <ul style="list-style-type: none">• Total number of T5 permits issued: 63• Total number of T5 on-site inspections in 2014: 40• Percentage of T5 permitted sources inspected in 2013 and 2014: 92%• Total number of T5 sources with overdue inspections in FY2014: 2 (Nordic and T&C Fiberglass) - Both received inspections in 2015 and are no longer overdue. <p>NDDH is committed to close oversight of Title V and SM permitted facilities in North Dakota. The NDDH believes striving for annual on-site inspections results in a heightened level of compliance from operators who are in close, consistent contact with NDDH regulators.</p> <p>For the last several years, NDDH has routinely submitted a copy of their July 23, 2003, inspection frequency and a list of upcoming T5 and synthetic minor inspections for the year. Based on the EPA’s 2014 “Issuance of the Clean Air Act Stationary Source Compliance Monitoring Strategy,” NDDH’s annual submittal covers two of the three CMS elements. NDDH and the EPA will utilize ICIS to identify any late or missing inspection commitments and address those deficiencies.</p> <p>Several years ago, the NDDH and the EPA negotiated an inspection frequency allowing for inspections at remotely located compressor stations and landfills once every five years. Due to the very few sources (eight compressor stations and five landfills) subject to this reduced inspection</p>

frequency, the EPA Region 8 does not think a formal alternative CMS approval is necessary.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
5a FCE coverage: majors and mega-sites	100%	85.70%	40	63	63%
5b FCE coverage: SM-80s	100%	91.70%	19	60	32%
5c FCE coverage: synthetic minors (non-SM 80s) that are part of CMS plan	100%				
5d FCE coverage: minor facilities that are part of CMS plan	100%				
5e Review of Title V annual compliance certifications	100%	78.80%	*	*	
6a Documentation of FCE elements	100%		22	22	100%
6b Compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance	100%		18	21	85.7%

*Data not available for 2014.

State response

Recommendation

N/A

CAA Element 3 — Violations

Finding 3-1	Area for State Improvement																								
Summary	The NDDH does not currently identify HPV or FRV violations as part of their enforcement activities.																								
Explanation	<p>The NDDH views the FRV and HPV policy as a mechanism requiring states to quickly resolve non-compliance. The NDDH maintains they quickly resolve any found non-compliance through one of their tools (LOAN letter, ESA, ACA) and do not feel the need to put an HPV or FRV label on any violation they intend to resolve quickly.</p> <p>This finding is a recurring area of improvement noted in the SRF Round 2 Report (Finding 8-1). The Round 2 SRF Finding, under 8f, illustrated NDDH’s lack of compliance with EPA HPV Policy.</p>																								
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>7a Accuracy of compliance determinations</td> <td>100%</td> <td></td> <td>12</td> <td>21</td> <td>57.1%</td> </tr> <tr> <td>8a HPV discovery rate at majors</td> <td>100%</td> <td>3.10%</td> <td>0</td> <td>0</td> <td>0%</td> </tr> <tr> <td>8c Accuracy of HPV determinations</td> <td>100%</td> <td></td> <td>2</td> <td>8</td> <td>25%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	7a Accuracy of compliance determinations	100%		12	21	57.1%	8a HPV discovery rate at majors	100%	3.10%	0	0	0%	8c Accuracy of HPV determinations	100%		2	8	25%
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State response																									
Recommendation	The EPA will continue to communicate guidance and training opportunities regarding HPV and FRV identification and reporting. Additionally, during quarterly calls, the EPA and NDDH will review new cases and determine if they are indeed FRV or HPV cases and address those accordingly. The EPA will monitor HPV and FRV identification and verify accurate NDDH reporting by May 30, 2017.																								

CAA Element 4 — Enforcement

Finding 4-1	Area for State Improvement																													
Summary	The NDDH is using the Full Compliance Evaluation (FCE) to resolve non-compliance found during the inspection.																													
Explanation	<p>NDDH is very thorough during their on-site inspections, at times finding non-compliance with permit conditions and/or regulations. While this is the proper use of the FCE, the NDDH is using that same report as a tool to get the company back into compliance.</p> <p>The NDDH provided the EPA with an “Enforcement Report” from their database detailing all air enforcement actions taken throughout their program. Thus, this report included everything from open burning of pallets to emissions violations at permitted facilities. The database tracks multiple information points including (but not limited to) company, facility, type of violation, and date the action began and ended. Using this report, looking at cases completed in FY 2014, the EPA counted 20 enforcement actions totaling \$134,500. Each of the 20 actions completed in FY 2014 averaged 104 days from begin date to complete date.</p>																													
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe</td> <td>100%</td> <td></td> <td>4</td> <td>10</td> <td>40%</td> </tr> <tr> <td>10a Timely action taken to address HPVs</td> <td>100%</td> <td>73.20%</td> <td>0</td> <td>0</td> <td>0%</td> </tr> <tr> <td>10b Appropriate enforcement responses for HPVs</td> <td>100%</td> <td></td> <td>0</td> <td>1</td> <td>0%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe	100%		4	10	40%	10a Timely action taken to address HPVs	100%	73.20%	0	0	0%	10b Appropriate enforcement responses for HPVs	100%		0	1	0%
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State response																														
Recommendation	<p>Beyond the inspection report, the EPA recommends using one of NDDH’s enforcement tools (LOAN letter, ESA, ACA) to settle the violations and get the company back into compliance.</p> <p>During quarterly calls, the EPA and NDDH will discuss use of NDDH’s enforcement tools to settle violations and return facilities to compliance. The EPA will verify NDDH’s revised approach to settling violations by May 30, 2017.</p>																													

CAA Element 5 — Penalties

Finding 5-1	Area for State Attention					
Summary	NDDH includes a supportive penalty calculation spreadsheet and penalty reduction rationale for their non-expedited settlements. For expedited settlements, NDDH is using a general penalty amount with no supporting calculations.					
Explanation	<p>The EPA observed an excellent example of a gravity and BEN penalty calculation at the ONEOK Rockies Midstream LLC- Alexander Compressor Station (Minor Facility). When calculating a penalty for an administrative action, BEN and gravity are broken down and an adjusted rational is applied if the amount is reduced. However, when utilizing the NDDH’s expedited settlement, which allows a company to quickly settle by paying a general penalty amount included in a standardized settlement document, the general penalty amount has no supportive documentation or explanation of limitation or applicability.</p> <p>NDDH developed and is utilizing Expedited Settlement Agreements (ESAs) as an effective enforcement tool for quick settlement of non-compliance with a non-negotiable settlement agreement and a standardized reduced penalty amount that essentially does away with negotiations. The EPA believes the lack of a rationale for the standardized penalty amount is a liability.</p> <p>This finding is a recurring area of improvement noted in the SRF Round 2 Report (Finding 11-1). The Round 2 SRF finding, under 11a, noted NDDH’s lack of penalty calculations that consider gravity and economic benefit.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	11a Penalty calculations include gravity and economic benefit	100%		2	4	50%
	12a Documentation on difference between initial and final penalty	100%		2	4	50%
	12b Penalties collected	100%		5	5	100%
State response						
Recommendation	The EPA recommends that NDDH calculate and capture the standardized penalty amount for consistency. The EPA can provide					

examples of federal penalty matrices. Additionally, the EPA can commit to assisting the NDDH in designing and implementing a matrix for internal use by May 30, 2017 for use in FY 2017 and beyond.

Resource Conservation and Recovery Act Findings

RCRA Element 1 — Data						
Finding 1-1	Meets or Exceeds Expectations					
Summary	All of the data elements required to be entered into RCRAInfo had been entered in a timely and accurate fashion for the 24 files reviewed by the EPA.					
Explanation	The mandatory data was complete and accurate.					
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	24	100%
	5a Two-year inspection coverage for operating TSDFs	100%	88.40%	5	5	100%
	5b Annual inspection coverage for LQGs	20%	20.10%	13	19	68.40%
	5c Five-year inspection coverage for LQGs	100%	67.10%	19	19	100%
	5d One-year inspection coverage for active SQGs		10.60%	52	79	65.8%
	5e1 Number of inspections at conditionally exempt SQGs					55
	5e2 Number of inspections at transporters					4
	5e3 Number of inspections at non-notifiers					0
	5e4 Number of inspections at facilities not covered by metrics 2c through 2f3					15
	7b Violations found during inspections		36.70%	12	37	32.40%
	8a SNC identification rate		2%	0	0	0%
State response						
Recommendation	N/A					

RCRA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations																																																						
Summary	<p>The State meets or exceeds the national goals for all inspection coverage areas including the 5-year inspection coverage for LQGs. The State conducts complete inspections at their large quantity generators. North Dakota’s large quantity generators, for the most part, are not complicated sites and are inspected on an annual basis. The LQG sites in North Dakota have a small number of waste streams that are considered hazardous (i.e. paint waste and thinners). Most of the staff have 10+ years of experience inspecting the facilities and are very familiar with the waste streams and operations of the facilities. An inspection checklist is also used by the inspectors so all aspects of the RCRA requirements are inspected. After each inspection, an inspection report is prepared documenting the inspector’s observations and findings.</p>																																																						
Explanation	<p>The State does an excellent job of LQG inspections, more than tripling the required 20% annually. The State also met the TSDf requirement by inspecting the five operating TSDfS in the State.</p> <p>Metric 5c indicates the State had a 5-year inspection coverage for LQG inspections of 100 percent, which exceeds the national average of 67.10 percent and meets the national goal of 100 percent LQG coverage on a 5-year basis.</p>																																																						
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	6a Inspection reports complete and sufficient to determine compliance	100%	24	24	100%
	6b Timeliness of inspection report completion	100%	24	24	100%
State response					
Recommendation	N/A				

RCRA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations					
Summary	The State accurately identifies violations in their inspection reports and enters these in the national database. Because of the small regulated universe, the State is able to provide considerable compliance assistance to facilities, which may help to keep them in compliance. Many of these facilities generate no more than three to four waste streams, and they are encouraged to call the State to request compliance assistance when needed.					
Explanation	The State accurately identifies violations. There were no SNCs though, in part, because the State provides compliance assistance to the regulated community and inspects their LQG and TSF facilities annually.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2a Long-standing secondary violators					0
	7a Accurate compliance determinations	100%		23	23	100%
	7b Violations found during inspections		36.70%	12	37	32.40%
	8a SNC identification rate		2%	0	37	0%
	8b Timeliness of SNC determinations	100%	85.20%	0	0	0%
	8c Appropriate SNC determinations	100%		0	0	0%
	State response					
Recommendation	N/A					

RCRA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations					
Summary	The State requires corrective measures in their formal and informal actions to return facilities to compliance and follows up through required submittals or onsite inspections. The State takes timely and appropriate enforcement action to address identified violations.					
Explanation	Five informal enforcement actions were reviewed. The enforcement actions returned violators to compliance. The enforcement actions were timely and appropriate for the violations identified.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	9a Enforcement that returns violators to compliance	100%		19	19	100%
	10a Timely enforcement taken to address SNC	80%	84.30%	0	0	0%
	10b Appropriate enforcement taken to address violations	100%		19	19	100%
State response						
Recommendation	N/A					

RCRA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations						
Summary	The State did not collect any penalties in FY 2014. At the request of the EPA Office of Compliance, the EPA Region 8 expanded the SRF review to include prior years. Since the State’s prior SRF review, no enforcement actions required penalty calculations.						
Explanation	Five prior violations were selected for review and were determined to be biennial report violations. No penalty was required since these were minor violations. The State requires every facility to submit a biennial report regardless of if the facility is an SQG facility. These facilities receive a warning letter if the biennial report is not submitted at a specific time. The five violations were reviewed during the annual report; therefore, no penalty calculation was required since reports were submitted immediately after the notices of violations were issued.						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	11a Penalty calculations include gravity and economic benefit		100%		0	0	0%
	12a Documentation on difference between initial and final penalty		100%		0	0	0%
	12b Penalties collected		100%		0	0	0%
State response							
Recommendation	N/A						

Appendix

January 25, 2014

Dave Glatt, Chief
North Dakota Department of Health
Environmental Health Section
918 East Divide Avenue
Bismarck, ND 58501-1947

Dear Mr. Glatt,

The U.S. Environmental Protection Agency (EPA) Region 8 will be conducting a State Review Framework (SRF) of the North Dakota Department of Health (NDDOH) Resource Conservation and Recovery Act (RCRA) Subtitle C, Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) and Clean Air Act (CAA) Stationary Source enforcement programs in 2015. We will review inspection and enforcement activity from Federal Fiscal Year 2014.

An integral part of the review process is the visit to your state agency office. Through this visit, EPA can have face-to-face discussions with enforcement staff and review their respective files to better understand the overall enforcement program. State visits for these reviews will include:

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

Following our visit to your office, EPA will summarize findings and recommendations in a draft report. Your management and staff will be provided with an opportunity to review and comment on this draft. EPA expects to complete the NDDOH review, including the final report, by December 31, 2015. If any areas for improvement are identified in the SRF, we will work with you to address them in the most constructive manner possible. Region 8 and NDDOH are partners in carrying out the review and we intend to assist you in meeting both federal standards and goals agreed to in NDDOH's Performance Partnership Workplan Agreement.

Region 8 has established a cross-program team of managers and senior staff to implement the NDDOH review. Kaye Mathews, SRF Coordinator at (303) 312-6889 will be your primary contact at Region 8 and will coordinate overall logistics for EPA. I am Region 8's senior manager with overall responsibility for the review. We request that you also identify a primary contact person for EPA to work with and provide that name to Ms. Mathews. The Region 8 program leads on the 2015 SRF review team are:

Phillipe Pierre-Louis	RCRA	303 312-6849	pierre-louis.phillipe@epa.gov
Emilio Llamozas	NPDES (Lead)	303 312-6407	llamozas.emilio@epa.gov
Natasha Davis	NPDES	303 312-6225	davis.natasha@epa.gov
Alexis North	CAA	303 312-7005	north.alexis@epa.gov

These program leads will be contacting NDDOH enforcement managers and staff to schedule a meeting to discuss expectations, procedures, and scheduling for the review. EPA will also send its analysis of the SRF data metrics and list of selected facility files prior to the on-site visit. General SRF review planning and logistics steps can be found in the attachment. Other documents used to evaluate the state's programs can be found on EPA's ECHO website at <https://echo.epa.gov/>. Links to past SRF reports and recommendations can be found at EPA's State Review Framework web page at <http://www.epa.gov/compliance/state/srf/>.

Please don't hesitate to contact me at (303) 312-6925 or have your staff contact Kaye Mathews at (303) 312-6889 with any questions about this review process. We look forward to working with you on the 2015 SRF review.

Sincerely,

Suzanne Bohan signature block

cc: By E-mail
State Commissioner
Regional Administrator
Deputy Regional Administrator
Region 8 Enforcement Office Directors and Deputies
Region 8 SRF Coordinator
Headquarters SRF Liaison, Office of Compliance, OECA

Attachment

Attachment

SRF Review Planning & Logistics

As the EPA begins this review process, NDDOH can expect the following:

- The EPA will contact NDDOH enforcement managers and staff to schedule a meeting or conference call to discuss expectations, procedures and scheduling for the review if this has not already occurred.
- The EPA will provide NDDOH with a list of reviewers and may ask for preliminary information that is readily available such as descriptions of agency and program structures, agency enforcement policies, staffing numbers and other organizational information.
- The EPA will send NDDOH a list of data metrics and conduct a data metric analysis.
- The EPA will send NDDOH a list of requested files for review at least two weeks in advance of onsite file reviews.
- The EPA will set up a call with NDDOH to verify that files in the EPA's requested file list will be available; where the files will be located; and to confirm review dates, arrival times and logistics.
- The EPA will conduct an entrance conference upon arrival for the review at the NDDOH offices and an exit meeting prior to departure for NDDOH managers and staff.
- The EPA will draft a report of its review findings, share the draft report with NDDOH and request comments.
- Once the report is final, the EPA will add the report and any recommendations in the report to the SRF Tracker.
- Once the report is final, the EPA will consult with the state and add agreed-upon action items in the report to the Action Item database.
- The EPA will initiate follow-up discussions periodically with NDDOH to see if progress is being made on the report recommendations.