



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

March 30, 2020

Shawn Garvin, Secretary
Delaware Department of Natural Resources
and Environmental Control
The Richardson & Robbins Building
89 Kings Highway
Dover, DE 19901

Dear ~~Secretary~~ ^{Shawn} Garvin,

The U.S. Environmental Protection Agency (EPA) conducted the Round Four SRF review of the Delaware Department of Natural Resources and Environmental Control (DNREC) Clean Air Act (CAA) Stationary Source, Resource Conservation and Recovery Act (RCRA), and the Clean Water Act National Pollutant Discharge, Elimination System (NPDES) enforcement programs. We thank you and your staff for your cooperation in finalizing the State Review Framework (SRF). The SRF is a program designed so that EPA may conduct oversight of state compliance and enforcement programs to ensure that states are implementing these programs in a nationally consistent and efficient manner. The review evaluated compliance and enforcement data and files from Fiscal Year 2018.

The enclosed report includes findings from the review and planned actions to facilitate program improvements. Since the last SRF review, DNREC has succeeded in implementing programmatic improvements in several areas of concern that were identified in the last SRF report. EPA considers DNREC's air stack testing program to be a best practice and has shared DNREC's process with other Region 3 states. Additionally, DNREC's RCRA program routinely prepared timely, complete, and sufficient inspection reports that were successfully used to take appropriate enforcement actions. Finally, DNREC's NPDES program generally maintains a good enforcement presence in their permitted universe.

This review also documented continued areas of concern related to the implementation of the NPDES program. EPA will continue to assist DNREC in meeting the eRule Phase II deadline of December 2023. Additionally, EPA will continue to review DNREC's NPDES enforcement cases to ensure they are consistent with DNREC's Compliance and Enforcement Response Guidance (CERG). The consistency in meeting the requirements of the CERG will be evaluated in SRF Round 5.



We look forward to continuing to work with you to improve program performance in pursuit of our shared mission to protect public human health and the environment. If you have any questions, please feel free to contact me or have your staff call Ms. Karen Melvin, Director of the Enforcement and Compliance Assurance Division at 215-814-3275.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cosmo Servidio", with a long, sweeping horizontal line extending to the right.

Cosmo Servidio
Regional Administrator

STATE REVIEW FRAMEWORK

Delaware

**Clean Water Act, Clean Air Act, and
Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2018**

**U.S. Environmental Protection Agency
Region 3**

**Final Report
March 31, 2020**

I. Introduction

A. Overview of the State Review Framework

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

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

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

B. The Review Process

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

The SRF is currently in its 4th Round (FY2018-2022) of reviews, preceded by Round 3 (FY2012-2017), Round 2 (2008-2011), and Round 1 (FY2004-2007). Additional information and final reports can be found at the EPA website under [State Review Framework](#).

II. Navigating the Report

The final report contains the results and relevant information from the review including EPA and program contact information, metric values, performance findings and explanations, program responses, and EPA recommendations for corrective action where any significant deficiencies in performance were found.

A. Metrics

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

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

B. Performance Findings

The EPA makes findings on performance in five program areas:

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

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

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

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

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

C. Recommendations for Corrective Action

Whenever the EPA makes a finding on performance of *Area for Improvement*, the EPA will include a recommendation for corrective action, or recommendation, in the report. The purpose of recommendations are to address significant performance issues and bring program performance back in line with federal policy and standards. All recommendations should include

specific actions and a schedule for completion, and their implementation is monitored by the EPA until completion.

III. Review Process Information

For Delaware Natural Resources and Environmental Control (DNREC): Clean Water Act – National Pollution Discharge Elimination System (NPDES), Clean Air Act (CAA), Resource Conservation and Recovery Act (RCRA) enforcement programs. **Review Year FY18.**

SRF Kick-off meeting held on May 10, 2019
CWA-NPDES File Review: August 5-7, 2019
CAA File Review: July 22-25, 2019
RCRA File Review: August 6-8, 2019

Contacts:

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Clean Water Act (CWA)

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Resource Conservation and Recovery Act (RCRA)

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Executive Summary

Introduction

Clean Water Act (CWA)

EPA Region III's Enforcement and Compliance Assurance Division (ECAD) staff conducted the SRF Round 4 review of the NPDES program. The goal of the review was to ensure DNREC has been conducting complete and timely inspections, making accurate compliance determinations, and issuing timely and appropriate enforcement to their NPDES permitted universe.

ECAD reviewed 60 facilities of DNREC's permitted universe which included the following sectors: Industrial & Municipal Wastewater; Municipal Separate Storm Sewer Systems (MS4); Industrial Stormwater; Concentrated Animal Feeding Operations (CAFO) and Construction Stormwater.

For certain sectors, DNREC delegates inspection and/or enforcement duties to delegated agencies. DNREC delegates their CAFO program to Delaware Department of Agriculture. For construction stormwater, DNREC has eight delegated agencies to implement the program. At each SRF, for the review of the implementation of the construction stormwater program, EPA has chosen a select number of agencies to review. This round, two agencies were chosen for review, the City of Wilmington (COW) and New Castle Conservation District (NCCD). DNREC directly implements the construction stormwater program for state-owned facilities, or when a facility is referred to DNREC by a delegated agency.

Clean Air Act (CAA)

In fiscal year 2019, staff from EPA Region III's Enforcement and Compliance Assurance Division (ECAD) and Air & Radiation Division (ARD), conducted the SRF Round 4 review of the CAA program. The goal of the review was to ensure that DNREC has been conducting complete and timely inspections, making accurate compliance determinations, and issuing timely and appropriate enforcement of their CAA permitted universe.

The team reviewed twenty-five (25) files. Specifically, there were 17 Title V (major) sources;

7 synthetic minor sources and 1 mega source in the sample. Finally, the 25 files contained a mix of compliance and enforcement activities. Specifically,

- Inspections with enforcement: 6
- Inspections without enforcement: 10
- Federally reportable violations: 7
- Failed stack tests: 5
- High Priority Violators: 6
- Informal enforcement actions: 8
- Formal enforcement actions: 5
- Penalties: 5

Resource Conservation and Recovery Act (RCRA)

In 2019, EPA Region III's Enforcement and Compliance Assurance Division (ECAD), RCRA Section staff, assisted by Land, Chemicals and Redevelopment Division's (LCRD) RCRA Program staff, conducted the State Review Framework (SRF) Round 4 (FY18) review of DNREC's RCRA program. The goal of the review was to ensure that DNREC has been conducting complete and timely inspections, making accurate compliance determinations, and issuing timely and appropriate enforcement of their RCRA hazardous waste generator universe.

ECAD reviewed 29 RCRA case files from Fiscal Year 2018 within DNREC's hazardous waste generator universe which included:

- 1 Permitted Facility
- 11 Large Quantity Generators
- 9 Small Quantity Generators
- 7 Very Small Quantity Generators

The review included files with informal enforcement actions, formal enforcement actions, significant noncompliers, and penalties.

Areas of Strong Performance

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

Clean Water Act (CWA)

- DNREC's industrial wastewater and municipal wastewater inspection reports reviewed were well-written and included extensive supporting documentation.
- DNREC generally maintains a good enforcement presence in their permitted universe.
- DNREC consistently identifies non-compliance in facilities through inspection reports.

- DNREC has migrated to using streamlined electronic reporting generation tools for several programs.
- DNREC has, in response to the previous SRF report, developed new enforcement guidance for their NPDES program.
- DNREC has, in response to the previous SRF report, taken appropriate formal enforcement actions against major facilities that had histories of non-compliance.

DNREC provides extensive training for its delegated construction stormwater agencies and to permitted facilities.

Clean Air Act (CAA)

- DNREC thoroughly documented all penalty calculations. In particular, the penalty tables contained well laid out penalty calculations.
- DNREC conducted all required FCEs at major and synthetic minor sources. All of the CMRs reviewed were found to be complete, very detailed and well written.
- DNREC entered the vast majority of their data into ICIS-Air in a timely manner.
- Finally, EPA considers DNREC's stack testing program to be a best practice. EPA has shared DNREC's process with other Region 3 states.

Resource Conservation and Recovery Act (RCRA)

- DNREC's RCRA Program routinely prepared timely, complete, and sufficient inspection reports that were successfully used to take appropriate enforcement actions.
- DNREC's enforcement actions routinely brought violators back into compliance with the regulations.
- DNREC consistently generated inspection reports that were timely, complete and sufficient to determine compliance. In FY18, DNREC also surpassed all inspection commitments negotiated in the EPA/State Cooperative Agreement.
- DNREC consistently made accurate compliance and SNC determinations. Enforcement responses consistently addressed violations in a timely and appropriate manner to return facilities to compliance.

Priority Issues to Address

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

Clean Water Act (CWA)

- Several facilities identified during the review required an elevated enforcement response, as the facilities were issued informal enforcement actions but failed to return to compliance.
- Not all of DNREC's issued formal enforcement actions were issued timely.
- DNREC is not producing inspection reports in a timely manner for its industrial and municipal wastewater program or MS4 program.
- Delegated agency inspection reports did not consistently contain all minimum inspection report elements.

Clean Air Act (CAA)

None

Resource Conservation and Recovery Act (RCRA)

None

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Summary:

DNREC generally uploads all NPDES data for major and non-major individually permitted facilities into the national database.

Explanation:

DNREC consistently uploads data into the national database, ICIS, for major and non-major individually permitted facilities. For metric 2b, DNREC was found to have input data for 17 of 21 individually permitted facilities reviewed where all minimum data elements were entered correctly. These facilities include 19 industrial and municipal wastewater facilities, and two municipal separate storm sewer systems (MS4s).

Of the 19 industrial and municipal wastewater facilities reviewed, 16 facilities were found to have the minimum data elements entered into the national database. DNREC currently uses a software called the Delaware Environmental Navigator (DEN) to identify and record single event violations (SEVs). DNREC's software then transfers that data to ICIS. While generally DNREC uploads SEVs correctly, of the 19 industrial and municipal wastewater facilities reviewed, three facilities

were identified as having SEVs identified in inspection reports and non-compliance reports that were not entered into the national database.

Single Event Violations (SEVs) are identified violations that are not system-generated effluent limit violations or schedule violations. SEVs are to be entered into the national database for all facilities designated as majors, as well as all facilities classified as POTWs. Identification of SEVs are of critical importance as SEVs are a necessary precursor data element to determining a facility's SNC status.

Of the two MS4s reviewed, one facility was found to have the required data entered into the national database. One MS4 facility was missing the minimum data elements required to be entered into the national database.

State Response:

DNREC endeavors to maintain the individual industrial and municipal wastewater data in both the state databases and the national database. However staffing constraints and delays in IT support limit the ability to enter data and troubleshoot data issues. Most discrepancies found in this arena can be tracked back to a failure of our two data management systems to communicate effectively, often requiring state or EPA IT support to resolve. DNREC is unaware which three facilities EPA found deficient in this universe so is unable to comment further.

DNREC currently has one Phase I and four Phase II individually permitted MS4 communities. DNREC has been working on the development of a Phase II MS4 General Permit. Once the general permit is issued, the four individually permitted Phase II permittees would terminate their individual permits and move to the general permit. Additionally, DNREC, in conjunction with Delaware's Department of Technology and Information (DTI), has been working on developing a data management system to comply with the NPDES Electronic Reporting Rule, which would include the reporting of MS4 general permitting information. DNREC has focused its limited MS4 resources on these projects to move its program forward.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
1b5 Completeness of data entry on major and non-major permit limits. [GOAL]	95%	90.6%	43	43	100%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%	93.3%	1187	1187	100%
2b (IMWW) Files reviewed where data are accurately reflected in the national data system (Industrial and Municipal WW)	100%	%	16	19	84.2%
2b (MS4) Files reviewed where data are accurately reflected in the national data system (MS4)	100%	%	1	2	50%
2b (TOTAL – Individual Permits) Files reviewed where data are accurately reflected in the national data system.	100%	%	17	21	81.0%
7j1 Number of major and non-major facilities with single-event violations reported in the review year	%	%	2		2
7j1 Number of major and non-major facilities with single-event violations reported in the review year.	%	%	2		2

CWA Element 1 - Data

Finding 1-2

Area for State Attention

Summary:

DNREC has not entered all data for non-major general permitted facilities into ICIS, but has developed a plan to implement the electronic reporting rule (eRule) Phase 2, which incorporates

the inputting of all non-major facility data into ICIS. The deadline for Phase 2 implementation, at the time of this review is December 21, 2020.

Explanation:

To meet the requirements of the eRule, DNREC has developed their eRule Phase 2 implementation plan, which includes their plan for inputting non-major general permit data into ICIS. DNREC is not currently inputting data for the 39 general permitted facilities reviewed into the national database. As part of their Phase 2 implementation plan, DNREC will establish systems to flow data for their general permits from their state electronic database (DEN) and their eNOI systems into ICIS. DNREC regularly participates in monthly calls with the Region to track their progress in meeting the milestones of their Phase 2 implementation plan. The deadline for Phase 2 implementation plan, at the time of this review, is December 21, 2020. Tentatively, there are plans to propose an extension to that deadline to give states more time to meet these requirements.

Currently, DNREC is tracking industrial stormwater data within an internal database, which documents information regarding inspections, compliance, and enforcement.

Construction stormwater data is being tracked using an electronic filing system referred to as the eNOI database. DNREC has plans to integrate industrial stormwater data and small MS4 data into its eNOI database.

CAFOs data is tracked in an internal Salesforce database. Documentation was provided in spreadsheets, which documented general information as well as inspection and compliance information.

State Response:

DNREC continues to work with DTI on our eRule Phase II implementation plan and is on track to meet established deadlines.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b (CAFO) Files reviewed where data are accurately reflected in the national data system (CAFO)	100%	%	0	10	0%
2b (CSWNCCD) Files reviewed where data are accurately reflected in the national data system (Construction SW-NCCD)	100%	%	0	5	0%
2b (ISW) Files reviewed where data are accurately reflected in the national data system (Industrial SW)	100%	%	0	8	0%
2b (CSWCOW) Files reviewed where data are accurately reflected in the national data system, Construction SW (COW)	100%	%	0	7	0%
2b (CSWDNRE) Files reviewed where data are accurately reflected in the national data system, Construction SW (DNREC)	100%	%	0	9	0%
2b (TOTAL General Permits) Files reviewed where data are accurately reflected in the national data system.	100%	%	0	39	0%

CWA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

DNREC is consistently producing inspection reports that contain sufficient documentation to determine compliance at facilities.

Explanation:

DNREC's inspection reports were consistently found to contain sufficient documentation to determine compliance.

DNREC’s industrial and municipal wastewater staff developed complete inspection reports that provided sufficient documentation to determine compliance in 20 of 22 inspection reports reviewed. These inspections consistently contained well-documented findings with narratives and necessary supporting documentation when applicable. Two facilities were found to have incomplete narratives in documenting deficiencies.

DNREC’s MS4 staff developed complete inspection reports that provided sufficient documentation to determine compliance in 2 of 2 inspection reports reviewed.

DNREC’s industrial stormwater staff developed complete inspection reports that provided sufficient documentation to determine compliance in 5 of 8 inspection reports reviewed.

CAFO inspection reports were developed by DDA and contained sufficient documentation to determine compliance at facilities in 12 of 13 inspection reports reviewed.

Inspection reports reviewed of DNREC’s construction stormwater delegated agencies were found to have sufficient documentation to determine compliance in 6 of 6 files for New Castle Conservation District and in 7 of 8 files for City of Wilmington. For construction sites that DNREC was the responsible party for inspecting or inspected in instances of oversight of delegated agencies, 9 of 10 files reviewed contained sufficient documentation to determine compliance.

For the determination of metric 5b2 (inspections of non-majors with general permits), the Region utilized DNREC’s Compliance Monitoring Strategy (CMS) to determine the inspection coverage of facilities. Inspections of construction stormwater, industrial stormwater, and CAFO facilities were summed for this metric. The Region noted that the inspection coverage of construction stormwater facilities was estimated due to the large number of NOIs in their system, as well as the amount of inspection data present. In response to this SRF and CMS review, DNREC has developed an auditing form for their agencies and will report this data to the Region on a bi-annual basis.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100% of commitments%	%	30	13	230.8%
4a4 Number of CSO inspections. [GOAL]	100% of commitments%	%	1	1	100%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments%	%	2	1	200%
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments%	%	59	37	159.5%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments%	%	600	468	128.2%
5a1 Inspection coverage of NPDES majors. [GOAL]	100%	52.8%	17	10	170%
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100%	22.6%	23	13	176.9%
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL]	100%	5.6%	689	518	133%
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL]	100%	5.6%	689	518	133%
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%	%	61	69	88.4%
6a (CAFO) Inspection reports complete and sufficient to	100%	%	12	13	92.3%

determine compliance at the facility (CAFO)					
6a (IMWW) Inspection reports complete and sufficient to determine compliance at the facility (Industrial and Municipal WW)	100%	%	20	22	90.9%
6a (ISW) Inspection reports complete and sufficient to determine compliance at the facility, Industrial SW	100%	%	5	8	62.5%
6a (MS4) Inspection reports complete and sufficient to determine compliance at the facility (MS4)	100%	%	2	2	100%
6a (CSWCOW) Inspection reports complete and sufficient to determine compliance at the facility, Construction SW (COW)	100%	%	7	8	87.5%
6a (CSWDNRE) Inspection reports complete and sufficient to determine compliance at the facility (Construction SW-DNREC)	100%	%	9	10	90%
6a (CSWNCCD) Inspection reports complete and sufficient to determine compliance at the facility (Construction SW-NCCD)	100%	%	6	6	100%
6a (TOTAL) Inspection reports complete and sufficient to determine compliance at the facility	100%	%	61	69	88.4%

CWA Element 2 - Inspections

Finding 2-2

Area for Improvement

Summary:

DNREC is not producing inspection reports in a timely manner for its industrial and municipal wastewater program or MS4 program. DNREC's delegated agency inspection reports did not contain all basic elements.

Explanation:

DNREC's staff did not finalize inspection reports in a timely manner for its industrial and municipal wastewater program. Reports were excessively delayed in both their transmittal to the facility and final signature from a manager. On average, reports took 142 days to finalize.

DNREC's staff did not finalize inspection reports in a timely manner for its MS4 program. On average, reports took 147 days to finalize.

DNREC's inspection reports developed by delegated agencies for construction stormwater and CAFO inspections are consistently missing elements, including final signatures and inspection report completion dates. DNREC's delegated agencies have migrated to generating digital inspection reports for these programs and would benefit from updating these programs to require the inputting of these fields. Because these elements were missing, EPA could not verify that these reports were finalized and transmitted to the facilities in a timely manner.

For the City of Wilmington, inspection reports were being written and generated in Cityworks and consistently did not have a final signature. For New Castle Conservation District, inspection reports appeared to be done in an electronic format and signatures were electronically typed, but the reports did not consistently contain finalization dates.

CAFO reports reviewed did not have finalization signatures or completion dates. Also, while CAFO inspection reports contained minimum data requirements such as checklists and narratives, the reports would benefit from additional information to provide a clearer understanding of site conditions.

State Response:

The DNREC Division of Water gives facilities feedback over the course of each inspection so that facilities can quickly remedy any violations found. Close out meetings are held at all wastewater inspections to discuss findings, violations, and any necessary corrective actions. In addition, when the Compliance and Enforcement Branch is fully staffed, inspection letters documenting compliance status are generally sent to the facility within a few weeks of the inspection to document in writing any corrective actions needed. Detailed inspection reports may follow at a later date; however, that does not delay a return to compliance at the facility. It should also be noted, that the wastewater Compliance and Enforcement Branch was down two

staff (out of a staff of 3) for 10 months of the review year, and generally when fully staffed is very timely with inspection report issuance.

DNREC's Industrial Stormwater Program is transitioning to the use of a mobile application which allows inspectors to email an inspection report to the permittee immediately following the close of the inspection. Therefore, although staff turnover and competing priorities can periodically impede the finalization of inspection reports, DNREC is confident that permittees are verbally notified of violations and corrective action requirements prior to the DNREC inspector leaving the facility. In addition, DNREC is actively working to streamline our inspection and follow-up process through the utilization of electronic tracking and reporting tools.

A MS4 audit or a comprehensive inspection is not a one or two day, on-site activity as some other types of inspections may be. These typically involve multiple site visits to review multiple minimum control measures and a greater degree of follow-up, making tight inspection turn-around times generally unobtainable. However, DNREC's MS4 Program continues to pursue efficiencies and ways to streamline inspection report completion. In addition, please note the MS4 Program also had staff turnover during the review period which resulted in a delay in inspection report issuance as new staff were hired and trained.

The CAFO inspection report form is very streamlined. However, the Delaware Department of Agriculture (DDA) does have a significant amount of supporting documentation such as narrative comments tracked in the database, photos stored on a separate server, or field notes. Some, if not all, of the missing elements from the SRF review may be present, but not tracked in an easily retrievable and reportable format. DNREC and DDA are working to address this point to ensure all required minimum inspection report elements are recorded, tracked and more readily retrievable in the future.

The DNREC Sediment and Stormwater Program will develop an SOP for all Delegated Agencies which will contain all minimum inspection report elements.

Recommendation:

Rec #	Due Date	Recommendation
1		<p>Within 120 days of the effective date of this SRF report, DNREC should develop an SOP for issuing inspection reports in a timely manner for the industrial and municipal wastewater and MS4 programs. This SOP should detail a process with timelines for drafting the report, manager review, final signature, and transmittal to the facility. DNREC shall submit the SOP to EPA for approval. Upon approval, DNREC shall implement the SOP immediately.</p>
2		<p>Within 120 days of the effective date of this SRF report, DNREC shall share a list of minimum inspection reporting elements with delegated CSW agencies. This list shall include at minimum the following requirements:</p> <ul style="list-style-type: none"> • Entry & Exit Times; • narratives of site observations and deficiencies noted; • copies of completed checklists; • documentary support including photographs of deficiencies if necessary; • completion date of report; • final; and • transmittal procedures for final inspection reports. <p>At the time of submittal of the End of Year FY2021 CMS, EPA will perform a review of inspection reports from the delegated agencies.</p>
3		<p>Within 120 days of the effective date of this SRF report, DNREC shall share a list of minimum inspection reporting elements with its delegated CAFO agency. This list shall include at minimum the following requirements:</p> <ul style="list-style-type: none"> • Completion date of report; • final signature; • animal type (Dairy, Beef, Swine, Poultry, Ducks, Etc.); • number of animals at time of inspection and permit; • Permit and Nutrient Management Plan (NMP) effective and expiration dates; • date of manure analysis and/or if conducted in the year. • checkbox for ‘export only’; • number of houses, composters, and sheds; • clear cross-references in the narratives when referencing deficiencies noted in the checklist; • references to photographs in the narrative; and documentation of records reviewed at the site if they are noted as incomplete to be made as an attachment to the inspection report. <p>At the time of submittal of the End of Year FY2021 CMS, EPA will perform a review of inspection reports from the delegated agencies.</p>

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6b (CAFO) Timeliness of inspection report completion (CAFO)	100%	%	0	13	0%
6b (IMWW) Timeliness of inspection report completion (Industrial and Municipal WW)	100%	%	4	22	18.2%
6b (ISW) Timeliness of inspection report completion (Industrial SW)	100%	%	8	8	100%
6b (MS4) Timeliness of inspection report completion (MS4)	100%	%	0	2	0%
6b (CSWCOW) Timeliness of inspection report completion (Construction SW-COW)	100%	%	2	8	25%
6b (CSWDNRE) Timeliness of inspection report completion (Construction SW-DNREC)	100%	%	0	10	0%
6b (CSWNCCD) Timeliness of inspection report completion (Construction SW-NCCD)	100%	%	1	6	16.7%
6b (TOTAL) Timeliness of inspection report completion	100%	%	15	69	21.7%

CWA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Summary:

DNREC is consistently producing accurate compliance determinations.

Explanation:

DNREC's inspection reports are of sufficient quality to produce accurate compliance determinations for the facilities reviewed.

For the industrial and municipal wastewater programs, 21 of 22 inspection reports reviewed contained sufficient documentation leading to an accurate compliance determination. One facility was found to have a compliance determination that did not consider all potential violations.

For the MS4 program, 2 of 2 inspection reports reviewed contained sufficient documentation leading to an accurate compliance determination.

For the industrial stormwater program, 6 of 8 inspection reports reviewed contained sufficient documentation leading to an accurate compliance determination. One facility reviewed was found to lack a complete narrative to sufficiently determine compliance. One facility reviewed was found to have a mischaracterized violation; however, DNREC did require corrective actions at the facility to address the violation in a timely manner.

For the CAFO program, 12 of 13 reports reviewed contained sufficient documentation leading to an accurate compliance determination. One report reviewed noted deficiencies with a facility's records, however the facility was noted as in compliance.

For the delegated agencies implementing the construction stormwater program, inspection reports were found to have sufficient documentation leading to an accurate compliance determination in 6 of 6 files for New Castle Conservation District and in 8 of 8 files for City of Wilmington. For construction sites that DNREC was the responsible party for inspecting or inspected in instances of oversight of delegated agencies, 9 of 10 files reviewed contained sufficient documentation leading to an accurate compliance determination. One facility inspected by DNREC was found to lack a clear narrative to produce a compliance determination.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7e (TOTAL) Accuracy of compliance determinations	100%	%	65	69	94.2%
7e (CAFO) Accuracy of compliance determinations (CAFO)	100%	%	12	13	92.3%
7e (IMWW) Accuracy of compliance determinations (Industrial and Municipal WW)	100%	%	22	22	100%
7e (ISW) Accuracy of compliance determinations (Industrial SW)	100%	%	6	8	75%
7e (MS4) Accuracy of compliance determinations (MS4)	100%	%	2	2	100%
7e (CSWCOW) Accuracy of compliance determinations (Construction SW-COW)	100%	%	8	8	100%
7e (CSWDNRE) Accuracy of compliance determinations (Construction SW-DNREC)	100%	%	9	10	90%
7e (CSWNCCD) Accuracy of compliance determinations (Construction SW- NCCD)	100%	%	6	6	100%
7j1 Number of major and non-major facilities with single-event violations reported in the review year	%	%	2		2
7j1 Number of major and non-major facilities with single-event violations reported in the review year.	%	%	2		2
7k1 Major and non-major facilities in noncompliance.	%	18.7%	19	47	40.4%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.	%	9%	0	47	0%

CWA Element 4 - Enforcement

Finding 4-1

Area for Attention

Summary:

DNREC does not always issue enforcement responses to industrial stormwater, industrial wastewater, and municipal wastewater facilities that address violations in an appropriate manner to return the facilities to compliance.

Explanation:

DNREC's enforcement process is defined in their Compliance Enforcement and Response Guide (CERG). This document, dated 2002, details the process of for issuing informal and formal enforcement to facilities.

In the Round 3 SRF, it was found that DNREC was not consistently addressing violations with formal enforcement responses that returned facilities to compliance. A significant finding from the Round 3 SRF was that there were no formal enforcement actions issued for the review year selected. Formal enforcement actions are considered appropriate responses to facilities having repeated violations of the same nature or high-priority violations. Recommendations from that report included updating relevant NPDES policies within DNREC's CERG to ensure consistency with national timely and appropriate enforcement guidance.

Since the Round 3, DNREC has worked with EPA to address this priority issue. In June 2019, DNREC finalized a supplemental CERG for their NPDES program, which included updated guidance on timeliness and escalation policies for NPDES enforcement. As the guidance was formalized after the fiscal year reviewed, the additional policy guidance cannot be evaluated yet for its effectiveness on DNREC's enforcement process.

During this SRF Round 4, it was noted that DNREC consistently issues informal enforcement to facilities in an effort to achieve compliance. DNREC's programs generally utilize warning letters or Notices of Violation (NOVs) to facilities in non-compliance. DNREC issued five formal enforcement actions during this review period.

Of the industrial and municipal wastewater facilities reviewed, eight enforcement responses were reviewed that were issued to seven different facilities. Five of the eight enforcement actions were formal enforcement. DNREC's formal enforcement actions in FY18 were penalties issued to major industrial and municipal facilities. For all five actions issued in FY18, there were significant delays between dates of issuance of the penalties and the dates of violations, with instances of violations dating back to as early as 2012. It was noted that DNREC attempted to resolve these instances of non-compliance with informal enforcement, before issuing formal enforcement actions. In evaluating these formal actions, EPA chose to critically evaluate these penalties for their appropriateness. Of the five actions reviewed, while these actions were untimely, EPA found that three of the five actions addressed the violations appropriately, whereas DNREC pursued and justified penalties as a deterrence for future non-compliance. EPA found that two of the five

facilities had additional violations during that fiscal year that should have been considered as part of these formal actions.

For the industrial and municipal wastewater facilities, three of eight enforcement responses reviewed were informal. Of those responses, two were found to address violations in an appropriate manner. For one facility, deficiencies noted in the national database were significant enough to warrant an informal enforcement response; however, no response was issued. For the industrial stormwater facilities, seven of seven enforcement responses reviewed were found to address violations in an appropriate manner. For two of the six facilities, a return to compliance was not achieved and DNREC had initiated the enforcement escalation process. For one of the six facilities, it was found that there was insufficient documentation in the file to demonstrate that the facility had returned to compliance after being issued an enforcement action.

As DNREC has recently updated their CERG to reflect more timely NPDES guidance, and this update occurred in FY19 (after the review year), EPA will continue to monitor DNREC's progress in issuing timely and appropriate formal enforcement actions using the updated policy guidance.

State Response:

DNREC's main goal when violations have been noted is an expeditious return to compliance. Often the most expeditious way to address noncompliance is via informal enforcement tools that can quickly be utilized by the program. DNREC's formal enforcement process involves elevation to DNREC leadership and Department of Justice coordination, which can be time consuming. Informal enforcement tools allow DNREC to obtain quick resolution to violations while the formal enforcement process is still in progress. In addition, there are times when cited violations do not warrant formal action on their own, but they are rolled into a formal enforcement action for a more significant violation at a later date. This is why violations from 2012 may appear in an enforcement action in 2018. DNREC is working to implement the June 2019 NPDES Supplemental CERG Policy for timely and appropriate enforcement protocols.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations	%	15.4%	4	5	80%
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%	%	25	27	92.6%
10b (IMWW) Enforcement responses reviewed that address violations in an appropriate manner (Industrial and Municipal WW)	100%	%	6	8	75%
10b (ISW) Enforcement responses reviewed that address violations in an appropriate manner (Industrial SW)	100%	%	7	7	100%
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%	%	20	25	80%
9a (IMWW) Enforcement responses that returned, or will return, sources in violation to compliance (Industrial and Municipal WW)	100%	%	6	7	85.7%
9a (ISW) Enforcement responses that returned, or will return, sources in violation to compliance (Industrial SW)	100%	%	3	6	50%
9a (TOTAL – IMWW & ISW) Enforcement responses that returned, or will return, sources in violation to compliance	100%	%	9	13	69.2%
10b (TOTAL – IMWW & ISW) Enforcement responses reviewed that address violations in an appropriate manner	100%	%	13	15	86.7%

CWA Element 4 - Enforcement

Finding 4-2

Meets or Exceeds Expectations

Summary:

DNREC's MS4, CAFO, and CSW programs consistently issue enforcement responses that address violations in an appropriate manner.

Explanation:

DNREC's MS4, CAFO, and CSW programs consistently address violations in an appropriate manner through various enforcement responses.

For the MS4 program, one enforcement response was issued that was found to address violations in an appropriate manner. The enforcement action was addressed through a transmittal letter requiring the facility to address deficiencies noted during the inspection.

For the CAFO program, three of three enforcement responses reviewed were found to address violations in an appropriate manner. CAFO enforcement actions were primarily issued by DDA by means of verbal warnings given to facilities. While EPA recommends, at minimum, written documentation of violations, it was noted that DDA was re-inspecting facilities found to be in non-compliance to ensure the correction of identified deficiencies.

For the construction stormwater program, four enforcement responses were reviewed for each the COW facilities and for facilities inspected by DNREC. EPA noted no enforcement actions were taken by NCCD during this review period. For one COW facility that was in repeated non-compliance, it was noted that inspectors issued the site a stop work order. EPA did note one facility inspected by DNREC where an NOV was issued, but the site did not return to compliance.

Generally, DNREC implements a proactive program to ensure site compliance. Delegated agencies and site contractors are required to take extensive training given by DNREC. All construction stormwater sites are required to have a responsible person onsite that has taken this training. Delegated agencies are required to take DNREC's Certified Construction Reviewer (CCR) training. Instances of non-compliance identified by delegated agencies can be elevated to DNREC, in which DNREC will directly inspect and enforce when a delegated agency fails to bring a site into compliance.

EPA does note that while some of these programs utilize enforcement policies from the CERGL, enforcement policies and mechanisms differ between programs. If a delegated agency utilizes policies that differ from the CERGL due to the nature of their program, DNREC should still communicate through written correspondence to the delegated agencies and ensure that the delegated agency's policies are generally consistent with DNREC's policies. Communicating to the delegated agencies the acceptable enforcement mechanisms they may use, as well as the specified requirements for timeliness and appropriateness that DNREC utilizes in their CERGL, would ensure agencies are aware of DNREC's continued commitment for compliance. It would

also be useful to designate who is primarily responsible for issuing enforcement (either DNREC or the delegated agency) for each enforcement mechanism that is utilized, and describing situations where escalating to DNREC would be appropriate.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10b (CAFO) Enforcement responses reviewed that address violations in an appropriate manner, CAFO	100%	%	3	3	100%
10b (MS4) Enforcement responses reviewed that address violations in an appropriate manner (MS4)	100%	%	1	1	100%
10b (CSWCOW) Enforcement responses reviewed that address violations in an appropriate manner (Construction SW- COW)	100%	%	4	4	100%
10b (CSWDNR) Enforcement responses reviewed that address violations in an appropriate manner (Construction SW-DNREC)	100%	%	4	4	100%
9a (CAFO) Enforcement responses that returned, or will return, sources in violation to compliance (CAFO)	100%	%	3	3	100%
9a (MS4) Enforcement responses that returned, or will return, sources in violation to compliance (MS4)	100%	%	1	1	100%
9a (CSWCOW) Enforcement responses that returned, or will return, sources in violation to compliance (Construction SW- COW)	100%	%	4	4	100%
9a (CSWDNRE) Enforcement responses that returned, or will return, sources in violation to compliance (Construction SW-DNREC)	100%	%	3	4	75%
9a (TOTAL – CSW, MS4, CAFO) Enforcement responses that returned, or will return, sources in violation to compliance	100%	%	11	12	91.7%
10b (TOTAL – CSW, MS4, CAFO) Enforcement responses reviewed that address violations in an appropriate manner	100%	%	12	12	100%

CWA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Summary:

DNREC's penalties consistently contain justifications and necessary supporting documentation.

Explanation:

DNREC generally prepared thorough penalty justifications that demonstrated consideration for economic benefit and gravity. Penalty justifications had accompanying supporting documentation. DNREC generally had sufficient documentation of penalties collected.

Of the five facilities reviewed that had penalties issued, 4 of 5 facilities had sufficient penalty calculations documented. 1 of 5 facilities did not have an appropriate economic benefit justification. Of the five facilities reviewed, 5 of 5 had documentation detailing differences between initial proposed penalties and final penalties collected. Of the five facilities reviewed, 5 of 5 had documentation demonstrating the collection of penalties.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%	%	4	5	80%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%	%	5	5	100%
12b Penalties collected [GOAL]	100%	%	5	5	100%

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Area for Improvement

Summary:

There were 7 files reviewed that were found to have some inaccurate data when comparing the files to ICIS-Air. The majority of the inaccuracies involved the HPV Case Files.

Explanation:

Overall, only 72% of the files reviewed were completely accurate when comparing the files to ICIS-Air. The majority of the inaccuracies involved the HPV case files. Specifically,

- 1) the three (3) HPV Case Files at Synthetic Minor Sources had the wrong criteria in the case file pathway. For Synthetic Minor Sources, only HPV Criteria 1 and/or 6 are applicable. DNREC applied a combination of HPV Criteria 2, 3, 4, and 5 to these case files.;
 - 2) there were two (2) HPV Case files that had an NOV memo summarizing the violations as the discovery action. The discovery action should have been the compliance monitoring activity where the violations were discovered; and
 - 3) there was an HPV Case file whose Day Zero was not within 90 days of the discovery action. Finally, there was one other data discrepancy found during the file review. An FCE date in the file didn't match the date in ICIS-Air. The EPA Review Team believed this was an isolated incident.
-

State Response:

- 1) DNREC discussed HPV status determinations with EPA via email and at our quarterly meetings as they proceeded throughout the review period. In 2019 DNREC requested and EPA obtained clarification of the HPV Policy as it relates to SM sources. Following clarification from EPA, DNREC has applied the specified procedure. Additionally, it should be noted that at no time were HPVs under-reported.
- 2) Identification of the discovery action was discussed with EPA throughout the review period, during regular quarterly meetings. Following clarification during the SRF review, DNREC has adjusted this definition.
- 3) DNREC is working on streamlining the procedures regarding issuing Notices of Violation. The FCE date discrepancy was an isolated incident and was promptly corrected once identified.

DNREC finds the quarterly T&A meeting very useful and hopes that they provide an opportunity to ensure continuous accuracy in compliance with EPA policies. DNREC welcomes the opportunity for additional training.

Recommendation:

Rec #	Due Date	Recommendation
1	06/30/2020	EPA will conduct training on the HPV policy within 6 months after the issuance of the final report.
2	12/31/2020	EPA to conduct quarterly data reviews, focusing on HPV case file accuracy, in conjunction with T&A meetings for one (1) year.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%	%	18	25	72%

CAA Element 1 - Data

Finding 1-2

Meets or Exceeds Expectations

Summary:

DNREC entered the vast majority of their data into ICIS in a timely manner.

Explanation:

All Minimum Data Requirements were entered timely into ICIS-Air at a rate > 90%.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
3a2 Timely reporting of HPV determinations [GOAL]	100%	44.9%	3	3	100%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	85.2%	89	97	91.8%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	65.1%	195	195	100%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	71.8%	10	10	100%

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

DNREC conducted all required FCEs at major and SM-80 synthetic minor sources. The majority of the Title V Annual Compliance Certifications that were scheduled to be reviewed were completed. All of the CMRs reviewed were found to be complete and well written. DNREC does not have an alternative CMS plan and does not have any minor sources included in their CMS plan.

Explanation:

DNREC conducted all required FCEs at major and SM-80 sources. The DMA initially showed that one FCE at an SM-80 source scheduled to be conducted in FY 2018 was not conducted. DNREC reported to EPA that the source has been closed but was not removed from the CMS plan. The source was subsequently removed from the CMS plan. Over 94% of Title V Annual Compliance Certifications that were scheduled to be reviewed were completed. The EPA Review Team found all of the CMRs reviewed to be well written and considers this an area of strong performance. Additionally, DNREC has a very good process for reviewing stack test reports. They require the facility to submit a one-page letter with the stack test report that summarizes the result and certifies its accuracy. When the report is reviewed by DNREC engineers, they prepare a summary of the test which highlights the test method, emissions, and if DNREC agrees with the result. It should be noted that DNREC is experiencing retirements and with that the loss of stack testing knowledge. EPA supports DNREC in continuing their thorough stack testing reviews. The EPA review team considers DNREC's process to be a best practice.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a FCE coverage: majors and mega-sites [GOAL]	100%	88.1%	28	28	100%
5b FCE coverage: SM-80s [GOAL]	100%	93.7%	19	19	100%
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	82.5%	48	51	94.1%
6a Documentation of FCE elements [GOAL]	100%	%	19	19	100%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%	%	19	19	100%

CAA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Summary:

DNREC did a thorough job in making accurate HPV and FRV determinations. However, the review team found that discovery actions were not linked to any of the HPV case files. DNREC immediately corrected this issue. In addition, incorrect HPV criteria were selected for the HPV Case Files at synthetic minor sources.

Explanation:

Because DNREC's performance for data metric 7a1 (FRV discovery rate based on evaluations at active CMS sources) was <50% of the National Average, supplemental files were pulled as part of the file review to determine if violations are being accurately identified. All HPV and FRV compliance determinations reviewed were found to be accurate (file review metrics 7a and 8c). When the Data Metrics were downloaded from ECHO as part of the Data Metric Analysis, the performance of Data Metric 13 was 0/0. Upon further review, the EPA Review Team found that discovery actions were not linked to any of the FY2018 HPV Case Files (3 total). Thus, the

timeliness of HPV identifications could not be determined. The EPA Review Team subsequently looked at all of the HPV Case files created by DNREC since ICIS-Air's inception in October 2014 and noticed that none of them included a discovery action linked to the HPV Case file. Upon notification of this issue, DNREC promptly identified the root cause of the issue (i.e., a EDT glitch when uploading the HPV Case files from their data system to ICIS-Air), and modified all of the HPV Case Files to include the discovery actions. At the time of the on-site File Review, the EPA Review Team confirmed all of the discovery actions were linked to the HPV Case files created by DNREC since October 2014. Finally, there were three (3) HPV Case Files reviewed involving Synthetic Minor Sources. While the EPA Review Team determined that all three of these violations were indeed HPVs, the incorrect HPV criteria was selected for these case files. This is further discussed and addressed in Finding 1-1.

State Response:

Relevant Metrics:

Metric ID	Metric Description	Natl goal	Natl Avg	State N	State D	State # or %
7a1	FRV 'discovery rate' based on inspections at active CMS sources	-	7.8%	4	125	3.2%
8a	HPV discovery rate at majors	-	2.5%	2	50	4%
7a	Accurate compliance determinations [GOAL]	100%	-	30	30	100%
8c	Accuracy of HPV determinations [GOAL]	100%	-	12	12	100%
13	Timeliness of HPV Identification [GOAL]	100%	89.5%	0	0	0

CAA Element 4 – Enforcement

Finding 4-1

Meets or Exceeds Expectations

Summary:

DNREC includes corrective actions in formal responses and took timely and appropriate enforcement consistent with the HPV policy.

Explanation:

All formal enforcement reviewed required the facility to return to compliance if they had not already done so at the time of the execution of the Consent Agreement. In addition, all enforcement responses reviewed by the EPA Review Team were determined to be appropriate. With regards to timely and appropriate enforcement, if a state does not address an HPV by Day 180, the HPV Policy requires a Case Development and Resolution Timeline to be put in place. For metric 10a1, DNREC was at 0%, however they had adequate Case Development and Resolution Timelines in place that contained the required policy elements. Even though DNREC did not address HPVs by Day 180, they did follow the HPV Policy and had timely and adequate Case Development plans in place. The Review Team was confident that DNREC was in compliance with the HPV Policy because metric 10a was 100%.

State Response:

Relevant metrics:

Metric ID	Metric Description	Natl goal	Natl Avg	State N	State D	State # or %
10a	Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%	-	5	5	100%
10a1	Rate of Addressing HPVs within 180 days	-	59.6%	0	3	0%
10b	Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%	-	4	4	100%
10b1	Rate of managing HPVs without formal enforcement action	-	7%	0	3	0%
14	HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%	-	2	2	100%
9a	Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule [GOAL]	100%	-	7	7	100%

CAA Element 5 – Penalties

Finding 5-1

Meets or Exceeds Expectations

Summary:

DNREC’s penalty policy was mirrored after EPA’s penalty policy. Penalties were calculated in accordance with the DNREC penalty policy. DNREC thoroughly documented all penalty calculations. In particular, the penalty tables were organized and contained detailed penalty calculations.

Explanation:

All penalty calculations reviewed included penalty tables that documented both gravity and economic benefit components. The EPA Review Team considers the penalty table format a best practice. Adequate documentation existed for the penalty calculations where the initial and final penalties differed. Finally, all files that contained a formal enforcement action had copies of checks in the file.

State Response:

Relevant metrics:

Metric ID	Metric Description	Natl goal	Natl Avg	State N	State D	State # or %
11a	Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%	-	5	5	100%
12a	Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%	-	4	4	100%
12b	Penalties collected [GOAL]	100%	-	5	5	100%

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Summary:

In 86.2% of files reviewed, all mandatory data were accurately reflected in RCRAInfo, the national database for the RCRA program.

Explanation:

Four out of the 29 files reviewed were found to have inaccurate data elements in RCRAInfo. The 4 deficiencies include dates of action (such as date a Notice of Violation was issued or dates of return to compliance for violations) were slightly off. No major discrepancies, such as incorrect/missing violations or enforcement actions, in the data were found.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Accurate entry of mandatory data [GOAL]	100%	%	25	29	86.2%

RCRA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

DNREC consistently generated inspection reports that were timely, complete and sufficient to determine compliance. In FY18, DNREC also surpassed all inspection commitments negotiated in the EPA/State Cooperative Agreement.

Explanation:

89.7% of the inspection reports reviewed were complete and sufficient to determine compliance. Overall, the review team observed detailed reports that could be successfully used in follow-up enforcement actions. 85.7% of inspection reports were completed in a timely fashion. The review

team used DNREC's 60-day completion deadline to determine this finding. Average # of days to complete inspection reports is 39 - well below 60-day deadline. Of the 4 that were over 60 days - 2 out of the 4 reports were only 1 and 5 days over the deadline, whereas the other 2 reports were 10 and 30 days over the deadline.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a Two year inspection coverage for operating TSDFs	100%	85%	1	1	100%
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	85%	1	1	100%
5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL]	20%	9.9%	18	86	20.9%
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%	%	26	29	89.7%
6b Timeliness of inspection report completion [GOAL]	100%	%	24	28	85.7%

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Summary:

DNREC consistently made accurate compliance and SNC determinations.

Explanation:

EPA found that 92.9% of the time, DNREC made accurate compliance determinations and 96.4% of the time, DNREC made appropriate SNC determinations.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2a Long-standing secondary violators	%	%			0
2a Long-standing secondary violators	%	%			0
7a Accurate compliance determinations [GOAL]	100%	%	26	28	92.9%
7b Violations found during inspections	%	34.3%	45	65	69.2%
7b Violations found during CEI and FCI inspections	%	34.3%	45	65	69.2%
8a SNC identification rate.	%	1.6%	4	168	2.4%
8a SNC identification rate at sites with CEI and FCI	%	1.6%	4	168	2.4%
8c Appropriate SNC determinations [GOAL]	100%	%	27	28	96.4%

RCRA Element 3 - Violations**Finding 3-2**

Area for Attention

Summary:

Half of the significant noncompliance (SNC) determinations were made in a timely manner, within 150 days from the first day of the inspection. The average number of days to SNC determinations was 146 days, below the 150-day timeframe.

Explanation:

The December 2003 Hazardous Waste Civil Enforcement Response Policy states that agencies should make and report SNC designations by Day 150. On-time SNC designation ensures that agencies address significant problems in a timely manner. Three out of the 6 FY18 SNC files, or 50%, had timely SNC determinations. This metric was recalculated following the file review to consider the 2 additional FY18 SNC files that were not captured by ECHO. In addition, one file is counted as timely because the SNC determination was made only 5 days above the 150-day

timeframe. The average number of days to SNC determination in the 6 FY18 files is 146 days, below the 150-day timeframe. While 50% metric value is generally an indication of an Area for State Improvement finding, EPA recommends Area for State Attention. DNREC is currently making the changes EPA would recommend improving the timeliness of SNC determinations. In the September 2002 DNREC Compliance Enforcement Response Guide, <http://www.dnrec.delaware.gov/Admin/Documents/DNREC-Compliance-Enforcement-Response-Guide.pdf>, DNREC describes an Enforcement Panel, in use since the 1980s to review any potential enforcement actions and make recommendations to the Secretary. A primary goal of the Panel was to promote consistency in enforcement actions taken, as well as amounts assessed for administrative and civil penalties. The Enforcement Panel met once a month and consisted of directors, program administrators, and branch/section managers of the Air and Waste Management, Water Resources, and Soil and Water Conservation Divisions and a representative from the Attorney General’s Office. It is likely that RCRA cases were held up in this comprehensive review process which delayed SNC determinations. DNREC is working to review and revise the September 2002 DNREC Compliance Enforcement Response Guide. In the meantime, the Division of Waste & Hazardous Substances released a streamlined update to their Formal Enforcement Review Process in May 2019, attached to the tracker. The wait for a monthly panel meeting was eliminated and directors, program administrators, branch/section managers, and DOJ become involved earlier in the formal enforcement process. Eliminating the need to wait for the monthly enforcement panel meeting and having DOJ involved earlier in the formal enforcement process saves weeks and enables DNREC to move an action along quicker. DNREC and EPA are confident this change will improve the SNC determination timeliness. However, EPA does suggest DNREC monitor this metric and make additional adjustments if necessary.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
8b Timeliness of SNC determinations [GOAL]	100%	76.5%	3	6	50%

RCRA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Summary:

Enforcement responses consistently addressed violations in a timely and appropriate manner to return facilities to compliance.

Explanation:

EPA found that 96.4% of the time, DNREC took enforcement that successfully returned the violator to compliance and that 100% of the time, DNREC took an appropriate enforcement to address the violations. Additionally, 5 out of 6 FY18 SNC files, or 83.3%, had timely formal enforcement actions or referrals within 360 days of the inspection date (Day Zero). This metric was recalculated following the file review to consider the 3 additional FY18 SNC and formal enforcement action files that were not captured by ECHO. EPA determined that DNREC meets or exceeds expectations for this finding.

State Response:**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timely enforcement taken to address SNC.	80%	87.7%	5	6	83.3%
10a Timely enforcement taken to address SNC [GOAL]	80%	87.7%	5	6	83.3%
10b Appropriate enforcement taken to address violations [GOAL]	100%	%	28	28	100%
9a Enforcement that returns sites to compliance [GOAL]	100%	%	27	28	96.4%

RCRA Element 5 - Penalties**Finding 5-1**

Meets or Exceeds Expectations

Summary:

DNREC maintained documentation of penalty calculations and penalties collected.

Explanation:

In 87.5% of penalty files reviewed, the file review team observed penalty calculation sheets that included a calculation of gravity using the RCRA penalty policy and penalty matrix and included a consideration of whether economic benefit should be calculated. In one instance, the economic benefit consideration or calculation was not observed in the file. In this one instance, violations

against the facility were unlikely to warrant an economic benefit calculation. Subsequently, this file was likely just missing the penalty calculation sheet which indicates economic benefit was considered, but not warranted. This indicated by "N/A" in the file.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Gravity and economic benefit [GOAL]	100%	%	7	8	87.5%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%	%	8	8	100%
12b Penalty collection [GOAL]	100%	%	7	7	100%
