

STATE REVIEW FRAMEWORK

North Dakota

**Clean Water Act, Clean Air Act, and
Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2019**

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

**Final Report
October 05, 2021**

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

A. Selecting Metric Values

The information below offers suggested metric value ranges for help in deciding on a finding level. These value ranges are simply a guide in selecting an appropriate finding level. Other factors may be considered in choosing an appropriate level, such as the universe size of the metric or whether the issue has recurred across several SRF rounds.

- Meets or Exceeds Value Range: 85% - 100%
- Area for Attention Value Range: 71% - 84%
- Area for Improvement Value Range: 70% and below

B. Review period: FY 2019

C. Key dates:

- SRF Kick-Off Letter: February 14, 2020 (See Appendix)
- CWA NPDES File Review: July 20 – 31, 2020
- CAA File Review: July 21 – 25, 2020
- RCRA File Review: August 25 – October 15, 2020

D. State and EPA key contacts for review:

Key EPA Review Contacts

- David Piantanida, SRF Coordinator and NPDES File Reviewer: (303) 312-6200, piantanida.david@epa.gov
- Emilio Llamozas, NPDES Lead: (303) 312-6407, llamozas.emilio@epa.gov
- Alex North, CAA Lead: (303) 312-7005, north.alexis@epa.gov
- Kristin McNeill, RCRA Lead: (303) 312-6278, mcneill.kristin@epa.gov

Key State of North Dakota Review Contacts

- Marty Haroldson, NPDES Manager: mharolds@nd.gov
- Karl Rockeman, Division of Water Quality, Director: krockema@nd.gov
- Jim Semerad, CAA Manager: jsemerad@nd.gov
- Keith Hinnenkamp, CAA Manager: khinnenk@nd.gov
- Derek Kannenberg, RCRA Manager: dkannenberg@nd.gov

Executive Summary

Introduction

The EPA Region 8 enforcement staff conducted a SRF enforcement program oversight review of the North Dakota Department of Environmental Quality (NDDEQ) in 2020 based on state activities completed in federal fiscal year 2019. This file review was done remotely because of the Covid-19 pandemic.

The EPA bases SRF findings on data and file review metrics, and conversations with state 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 Enforcement and Compliance State Review Framework website - [State Review Framework](#).

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)

- The state's permit limit and discharge monitoring reports (DMRs) data entry rates for majors and non-majors were above national goals and averages.
- The state's inspection commitment numbers for FY2019 were met or exceeded for almost all categories, and inspection reports were completed in a timely manner.

Clean Air Act (CAA)

- The state enters Title V permit annual compliance certifications (TV ACCs) into ICIS-Air in a timely manner.
- The state excels in properly capturing all the elements of a full compliance evaluation (FCE). The state's inspection reports clearly and consistently outline records reviewed, on site documents reviewed and observations and/or assessments made while onsite.
- During the 2015 SRF (conducted in 2016), EPA noted that the state was not using their enforcement tools to return companies to compliance when issues were identified as part of routine inspections. During this 2019 review (conducted in 2020), the state showed improvement in use of their informal enforcement tool, Letter of Alleged Non-Compliance or LOAN letter, to document, address and resolve issues.

- The state has a clear enforcement response identifying, communicating, correcting and, when necessary, settling CAA violations. NDDAQ utilizes a memo to the enforcement file format to properly memorialize penalty calculations (including economic benefit) and any rationale that went into a final penalty.

Resource Conservation and Recovery Act (RCRA)

- The state RCRA program inspection coverage consistently exceeds the national goals. The state inspects 100% of their treatment, storage, and disposal facilities (TSDFs) annually. Large quantity generator (LQG) inspections are conducted at a rate greatly exceeding the required 20% and significantly higher than the national average.
- The state RCRA program is very timely in writing inspection reports and providing compliance determinations to facilities. Enforcement actions are also taken in a timely manner.
- The state's formal and informal enforcement actions effectively return facilities to compliance. 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 to verify return to compliance has occurred.

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)

- The state's minimum data requirements for facilities, inspections, violations, enforcement actions and penalties were not entered or were entered incorrectly into the national data system (ICIS) for thirteen out of thirty files reviewed.
- The state did not always address violations in accordance with the state's Enforcement Management System (EMS).
- State penalties did not consistently include economic benefit or a justification for not including an economic benefit.
- There were differences between initial penalties calculated and final penalties collected that were not documented.

The table below outlines the ND CWA Areas for Improvement found during the current and previous reviews.

Metric	Round 3 Finding Level (FY14)	Round 4 Finding Level (FY19)
2b Files reviewed where data are accurately reflected in the national data system (ICIS)	Area for Improvement	Area for Improvement
6a Inspection reports complete and sufficient to determine compliance at the facility.	Area for Improvement	Area for Attention
7e Accuracy of compliance determinations	Area for Improvement	Area for Attention
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe	Area for Improvement	Area for Attention
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations.	Area for Improvement	N/A – no finding level determination required*
10b Enforcement responses reviewed that address violations in an appropriate manner.	Area for Improvement	Area for Improvement
11a Penalty calculations reviewed that document gravity and economic benefit	Area for Improvement	Area for Improvement
12a Documentation on difference between initial and final penalty	Area for Improvement	Area for Improvement

*This is a CWA review indicator in Round 4 and review indicators are not used to develop findings. They are used to identify areas for further analysis during the file review. When an indicator diverges significantly from the average, EPA should ensure that it pulls a sufficient sample size to evaluate the issue during the file review.

Clean Air Act (CAA)

- The state is below the national average for accurately reporting data into ICIS-AIR.
 - The state completes the accurate compliance determination based on the file review but does not enter that determination into ICIS-Air.
 - The state did not enter all Title V certification reviews into ICIS-Air.
 - While the state timely reports violations, they don't identify certain violations as HPV.

- The state's Title V full compliance evaluations (FCEs) coverage performed at major facilities and the Synthetic Minor (SM) FCE are below the national average.
- The state has utilized two homegrown databases. One to track permitted facilities (including their CAA inspections) and another to track multimedia enforcement actions. Neither database was designed to package and feed data to a third-party database, and thus, issues consistently arose when attempting to map EPA's ICIS database to the state's permitting database. Recently, the state purchased technology and support that will enable the state to upload data to meet EPA requirements in FY2022.

The table below outlines the ND CAA Areas for Improvement found during the current and previous reviews.

Metric	Round 3 Finding Level (FY14)	Round 4 Finding Level (FY19)
2b Files reviewed where data are accurately reflected in the national data system	Area for Improvement	Area for Improvement
3a2 Timely reporting of HPV determinations [GOAL]	Area for Improvement	Area for Improvement
3b1 Timely reporting of compliance monitoring MDRs.	Area for Improvement	Meets or Exceeds Expectations
3b2 Timely reporting of stack test dates and results.	Area for Improvement	Area for Attention
3b3 Timely Reporting of enforcement MDRs	Area for Improvement	Area for Improvement*
5a FCE coverage: majors and mega-sites.	Area for Improvement	Area for Improvement
5b FCE Coverage: SM-80s [GOAL]	Area for Improvement	Area for Attention
5e Reviews of Title V Annual Compliance certifications completed	Area for Improvement	Area for Improvement
7a Accuracy of Compliance determinations	Area for Improvement	Area for Improvement
7b1 Violations reported per informal actions.	Area for Improvement	N/A-Metric was not part of Round 4 review **
7b3 Violations reported per HPV identified.	Area for Improvement	N/A-Metric was not part of Round 4 review **
8a HPV discovery rate at majors	Area for Improvement	Area for Attention
8c Accuracy of HPV determinations	Area for Improvement	Area for Attention
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe	Area for Improvement	Meets or Exceeds Expectations
10a Timeliness of addressing HPVs or alternatively having a case	Area for Improvement	Area for Attention

Metric	Round 3 Finding Level (FY14)	Round 4 Finding Level (FY19)
development and resolution timeline in place		
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy	Area for Improvement	Area for Attention

* N/A – State did not report data for this finding. There should be data.

** N/A – Metric was not part of the Round 4 review.

Resource Conservation and Recovery Act (RCRA)

There are no priority RCRA issues which require state improvement or attention.

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state's permit limit data entry rate for majors and non-majors exceeded the national goal and average. The state's discharge monitoring reports (DMRs) data entry rate also exceeded the national goal and average.

Explanation:

For Metric 1b5 on completeness of data entry on major and non-major permit limits, the state's permit limit data entry rate was 100%, exceeding the national goal of 95%. The national average is 93.5%.

For Metric 1b6 on completeness of data entry on major and non-major discharge monitoring reports, the state's DMR data entry rate for majors was 99.7%. The national goal is 95% and the national average is 92.3%.

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%	93.5%	86	86	100%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%	92.3%	3854	3867	99.7%

State Response:

No comment from the State.

CWA Element 1 - Data

Finding 1-2

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

Minimum data requirements for facilities, inspections, violations, enforcement actions and penalties were not entered or were entered incorrectly into ICIS - Integrated Compliance Information System (ICIS) for thirteen out of thirty files reviewed.

Explanation:

NDDEQ has two databases where the minimum data requirements are tracked for major and non-major facilities. The first database is called the North Dakota Pollutant Discharge Elimination System Database (NDPDES Database), where facility, inspection, and *informal* enforcement data requirements are tracked for major and non-major facilities. The NDPDES Database batch uploads facility and inspection data into the ICIS database monthly. The NDPDES Database has an option to upload informal enforcement actions into ICIS if the informal enforcement action is selected for upload. In FY2019, while some informal enforcement actions were uploaded from the NDPDES Database into ICIS, the majority of informal enforcement actions were not because they were not selected for upload in the NDPDES Database.

The second database used by North Dakota is the enforcement database that tracks *formal* enforcement actions and penalties; however, this database does not currently have the capability to batch upload enforcement actions into ICIS. Historically, the state had been manually entering all formal enforcement actions into ICIS, but the FY2019 formal enforcement actions and penalties were not entered into ICIS due to resource issues. North Dakota is currently updating the enforcement database so that formal enforcement actions and penalties can be batch uploaded into ICIS.

For Metric 2b on files reviewed where data are accurately reflected in ICIS, 13 of 30 (43.3%) files reviewed met the minimum data requirements of the EPA's National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (40 CFR 127, Appendix A). The national goal is 100%.

The data accuracy issues fell into four main categories: 1) Facility information data; 2) Inspection data; 3) Violation data; and 4) Enforcement data, as indicated below.

1. Facility Information: There were two stormwater construction facilities with formal enforcement and penalty actions, where the facilities' information was not entered into ICIS. In addition, there were 13 Standard Industrial Classification (SIC) and North American Industry Classification System (NAICS) codes that were not entered into ICIS for certain facilities.

Lastly, there were certain facilities with incorrect addresses and latitude/longitude coordinates in ICIS.

2. Inspection Data: There was one inspection that was not entered into ICIS.

3. Violations Data: There were two single event violations (SEV) codes for one facility that were not entered into ICIS.

4. Enforcement Data: The majority of informal enforcement actions were not entered into ICIS and no formal enforcement actions or penalties were entered into ICIS.

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%		13	30	43.3%

State Response:

No response from the State.

Recommendation:

Rec #	Due Date	Recommendation
1	10/15/2021	By October 15, 2021, NDDEQ will submit a summary of the state's procedures for ensuring informal and formal enforcement actions and penalties are correctly and consistently entered into ICIS within the timeframes specified in 40 CFR Part 127 (within 40 days of the completed activity). The EPA will close this recommendation after reviewing the state's procedure and ensuring it meets the requirements for entering informal and formal enforcement actions and penalties into ICIS within the required timeframes.
2	10/31/2021	By October 31, 2021, NDDEQ will provide training to staff on the minimum required data elements pursuant to 40 CFR Part 127 for data entry into ICIS for facilities, permits, violations, single event violations (SEVs), inspections, informal and formal enforcement actions and penalties. The EPA will close this recommendation when NDDEQ submits a report (syllabus and agenda) indicating that 100% of the NDPDES staff received the minimum required data elements ICIS training.
3	11/15/2021	By November 15, 2021, NDDEQ will submit a list of informal and formal enforcement actions, including respondent names and dates of the enforcement actions, that occurred in FY2021. By November 15, 2021, NDDEQ will submit a list of all penalties issued, including respondent names, assessment and collection dates, and collected amounts, that occurred in FY2021. The EPA will close this recommendation when at least 71% of informal and formal enforcement actions, and penalties assessed and collected in FY2021 are entered in ICIS-addressing metric (2b). If the state does not meet 71% data entry goal by November 15, 2021, EPA will review additional informal and formal enforcement actions and penalties in subsequent fiscal years.

CWA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Inspection commitment numbers for FY2019 were met or exceeded for almost all categories, including majors, non-majors, approved pretreatment programs, MS4s, industrial stormwater,

construction stormwater, and CAFOs. The state's inspection reports are complete and sufficient to determine compliance and were completed within the goal time frame specified in their EMS.

Explanation:

The national goal is that the state conduct 100% of its commitments outlined in its FY2019 inspection work plan. According to the End of Year Report provided to the EPA and the Enforcement and Compliance History Online (ECHO) database, NDDEQ met or exceeded their inspection commitments for majors, individual non-majors, general permitted non-major publicly owned treatment works (POTWs), pretreatment, concentrated animal feeding operations (CAFO), sanitary sewer overflows (SSO), industrial stormwater, construction stormwater and municipal separate storm sewer system (MS4s). The only inspection commitment that was not met in FY2019 was for significant industrial users (SIUs) inspections. The state inspected 18 SIUs and had committed to inspect 19 SIUs. This is an increase in SIU inspections from FY2018 when NDDEQ inspected 10 SIUs. NDDEQ is working on developing a pretreatment program to have two part-time inspectors that will allow them to inspect 100% of the SIUs each year. There are no combined sewer overflows (CSOs) in North Dakota. NDDEQ has not been delegated the biosolids program and EPA retains the authority; therefore, there were no CSOs or biosolids inspection commitments for NDDEQ.

For Metric 5a1 on inspection coverage of NPDES major facilities, a review of the DMA revealed that the number of major facilities inspected by NDDEQ was 23 of 24 (95.80%). In FY2019, NDDEQ had a total of 24 major facilities. Some of the major facilities were inspected twice, two major facilities were inspected three times and one wasn't inspected in FY19. Both the Clean Water Act National Pollutant Discharge Elimination System Compliance Monitoring Strategy (CMS) and the NDDEQ CMS require that major facilities be inspected once every two years.

NDDEQ met the planned commitment of 24 inspections at major facilities. However, there is a discrepancy in the total number of inspections at major facilities: According to the ICIS database, NDDEQ performed 35 inspections at major facilities, but according to the FY2019 NDDEQ End of Year (EOY) Report, NDDEQ performed 45 inspections at major facilities.

For metric 5b on inspections coverage of NPDES non-majors, NDDEQ exceeded its FY2019 Inspection Work Plan commitment to inspect 85 non-major facilities by inspecting 267 non-major facilities in FY 2019. However, there is a discrepancy in the total number of inspections at non-major facilities. According to the ICIS database, NDDEQ performed 267 inspections at non-major facilities (243 non-majors with general permits and 24 non-majors with individual permits), but according to the FY2019 NDDEQ EOY Report, NDDEQ performed 158 inspections at non-major facilities. This discrepancy occurs because ICIS groups together the total non-major inspections at wastewater treatment facilities, stormwater construction facilities, stormwater industrial facilities, and MS4s. North Dakota non-major inspection numbers from the FY2019 NDDEQ EOY report do not include inspections at stormwater construction facilities, stormwater industrial facilities and MS4s.

For Metric 6b regarding timeliness of inspection report completion, 26 of 29 inspection reports reviewed (89.7%) were completed within the 45-day time frame specified in the state's inspection procedure. The national goal is 100%. Inspection reports were completed in an average of 26 days. Three inspection reports were completed over 45 days. Two of them were inspection reports

completed by the Municipal Facilities Group and one was for a pretreatment compliance inspection.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL]	100% of commitments		2	2	100%
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100% of commitments		85	20	425%
4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL]	100% of commitments		0	0	0
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL]	100% of commitments		18	19	94.7%
4a4 Number of CSO inspections. [GOAL]	100% of commitments		0	0	0
4a5 Number of SSO inspections. [GOAL]	100% of commitments		114	2	5700%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments		4	3	133.3%
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments		50	48	104.2%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments		158	140	112.9%
5a1 Inspection coverage of NPDES majors. [GOAL]	100%	52.9%	23	24	95.8%
5b Inspections coverage of NPDES non-majors (individual and general permits) [GOAL]	100%		267	85	314.1%
6b Timeliness of inspection report completion [GOAL]	100%		26	29	89.7%

State Response:

No comment from the State.

CWA Element 2 - Inspections

Finding 2-2

Area for Attention

Recurring Issue:

No

Summary:

The state's inspection reports are generally complete and sufficient to determine compliance. However, the Municipal Facilities Group inspection reports were neither complete nor sufficient to determine compliance at the facility.

Explanation:

For Metric 6a, regarding inspection reports completeness to determine compliance at the facility, 24 of 29 inspection reports reviewed (82.8%) were complete and generally sufficient to determine compliance at facilities. The national goal is 100%.

The Municipal Facilities Group inspection reports were not complete and sufficient to determine compliance at the facility.

Inspection report findings included:

1. The Municipal Facilities Group inspection reports did not have a narrative information section to explain what happened during the inspection (opening conference, file review, facility review, closing conference).
2. The supplementary lab records reviewed were not attached to one of the reports.
3. One of the reports indicated that there were “no defects noted at this time.” However, the facility was in significant non-compliance (SNC) for sulfide violations from January 1, 2019 to September 30, 2019.
4. The Municipal Facilities Group inspection reports encompassed both the drinking water and wastewater inspection for the city. The inspection report was in a checklist format and only two pages of the report covered the wastewater inspection of the city. The inspection reports did not identify if the receiving waters were inspected. This is important to determine if a discharge is occurring during the inspection.
5. One of the inspection reports indicated that the inspector did not review the facility’s DMRs. That inspection report did not identify the effluent violations that were reported by the facility in their DMR.

It is recommended that the Municipal Facilities Group use the inspection procedure developed by the NDPDES Group and develop an inspection report template to include a narrative section to explain what happened during the inspection (opening conference, file review, facility review,

closing conference). It is recommended that the Municipal Facilities Group include the DMR violations in its inspection reports. The NPDES group could print out a list of DMR violations for the Municipal Facilities group, two weeks prior to their inspection, so the Municipal Facilities Group could be aware of the DMR violations during the inspection and include them in their inspection reports.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%		24	29	82.8%

State Response:

No comment from the State.

CWA Element 3 - Violations

Finding 3-1

Area for Attention

Recurring Issue:

No

Summary:

There were some inspection reports with inaccurate compliance determinations.

Explanation:

For Metric 7e accuracy of compliance determinations, 24 out of 32 files had accurate compliance determinations (75%). However, there were some inspection reports with inaccurate compliance determinations. The national goal is 100%.

Compliance determination deficiencies included:

1. There were inspection reports that did not list all the findings identified during the oversight inspections with the EPA.
2. There were violations identified in the inspection checklist part of the reports and the comments section; however, these violations were not identified as violations or issues to be corrected in the deficiencies section or the cover letter of the reports.

3. Discharge monitoring report (DMR) violations that occurred during the period of the inspection review were not identified in the inspection reports as violations.

4. There were reports that indicated that there were “no defects noted at this time.” However, the facilities were in significant non-compliance (SNC) for the period prior to the inspections.

There are two groups at NDDEQ that perform inspections at major and non-major publicly owned treatment works (POTWs), the NDPDES Group and the Municipal Facilities Group. The Municipal Facilities Group POTW inspection checklist is different than the NDPDES inspection checklist and the Municipal Facilities’ checklist does not cover all permit requirements (i.e. DMR review is very limited in the Municipal Facilities inspections). The Municipal Facilities Group inspection reports did not identify DMR violations for facilities that had DMR violations prior to the inspections, including facilities that were in significant non-compliance (SNC).

In FY2019, the Municipal Facilities Group performed approximately 75% of the POTW inspections. Most of the POTWs inspected by the Municipal Facilities Group are non-major facilities. During the SRF review, there were eight of 32 files where inaccurate compliance determinations were made in the inspection report. Three of the eight inaccurate compliance determinations were made by the Municipal Facilities Group.

EPA is recommending that NDDEQ:

1. Provide training to the NDPDES Group and the Municipal Facilities Group on how to include DMR violations in their inspection reports.

2. In preparation for the inspection, it is recommended that the NDPDES Group print out a list of DMR violations for a facility two weeks prior to the inspection by either the NDPDES group or the Municipal Facilities Group. Doing so will make the NDPDES Group inspector or Municipal Facilities Group inspector aware of the DMR violations during the inspection and help to ensure these violations are included in their inspection reports.

3. It is also recommended that inspection reports be peer reviewed to ensure that all violations were captured in the report.

There are no finding level determinations required for Metrics 7j1, 7k1, and 8a3.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7e Accuracy of compliance determinations [GOAL]	100%		24	32	75%
7j1 Number of major and non-major facilities with single-event violations reported in the review year.			4		4
7k1 Major and non-major facilities in noncompliance.		18.4%	383	4236	9%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.		8.1%	272	4235	6.4%

State Response:

No comment from the State.

CWA Element 4 - Enforcement

Finding 4-1

Area for Attention

Recurring Issue:

No

Summary:

The majority of enforcement actions returned facilities to compliance. However, there were some facilities that did not receive enforcement actions and there were some instances where enforcement actions were not escalated after the initial enforcement action did not return the facility to compliance.

Explanation:

For Metric 9a on percentage of enforcement responses that returned, or will return, a source in violation to compliance, the state issued enforcement responses that returned, or will return, sources in violation to compliance in 16 out of 20 (80%) of files reviewed. The national goal is 100%.

Enforcement action findings included:

1. Some of the inspection reports did not address the facility's DMR violations; therefore, SNCs and DMR reporting violations were not addressed by the state.
2. NDDEQ did not always follow their Enforcement Management System (EMS) to address the violations and SNC issues continued at some facilities.

3. There were some instances where NDDEQ issued Letters of Apparent Non-compliance (LOANs); however, SNC violations continued to occur at the facilities for several quarters after the informal enforcement actions. There was no escalation of enforcement by NDDEQ.

It is recommended that EMS training be provided to NDPDES staff on appropriate enforcement responses to address DMR violations and the process for escalating enforcement actions for continued DMR violations including facilities designated as SNC.

For Metric 10a1, there were no major facilities with SNC violations that were required to have a timely enforcement action in FY2019.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		16	20	80%
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations		14.4%	0	0	0

State Response:

No comment from the State.

CWA Element 4 - Enforcement

Finding 4-2

Area for Improvement

Recurring Issue:

Recurring from Rounds 2 and 3

Summary:

The state did not always address violations in accordance with the state's Enforcement Management System (EMS).

Explanation:

For Metric 10b, regarding enforcement responses reviewed that address violations in an appropriate manner, the state addressed violations in accordance with their EMS in 17 out of 28 (60.7%) files reviewed. The national goal is 100%.

Enforcement response findings included:

1. NDDEQ did not follow their EMS to address DMR violations. The EMS indicates that minor effluent violations would be addressed through a phone call or letter of apparent non-compliance (LOAN) within 14 days of discovery. The EMS also indicates that infrequent or isolated significant non-compliance (SNC) would result in a LOAN within 14 days of discovery.

2. NDDEQ did not follow their EMS to address some violations found during the inspection process. The EMS indicates that major permit violations uncovered by an inspection would result in a LOAN within 30 days of discovery.

3. NDDEQ did not follow their EMS to address SNC violations. The EMS indicates that for exceeding effluent limits for the first appearance on quarterly non-compliance report (QNCR) for majors, the state would issue one of the following: a phone call or LOAN. The selected enforcement action would occur within 21 days of discovery.

4. NDDEQ did not follow their EMS because there was no escalation of enforcement for facilities with SNC violations in consecutive quarters. The EMS indicates that for exceeding effluent limits for the second appearance on the QNCR for majors in a rotating four quarter calendar, the state would issue one of the following: an ESA, a NOV, an Order or a Referral to the Attorney General. The selected enforcement action would occur within 90 days from appearance on the first QNCR.

5. NDDEQ did not follow their EMS to address major permit violations uncovered by an inspection. One inspection report found violations of the stormwater no exposure certification; however, the inspection report did not require a response from the facility to show that the findings had been 24 addressed. The EMS indicates that for major permit violations uncovered by an inspection, the state would issue a LOAN for the first instance. Furthermore, NDDEQ renewed the no exposure recertification for the facility without verification that the findings from the inspection report had been addressed.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		17	28	60.7%

State Response:

No comment from the State.

Recommendation:

Rec #	Due Date	Recommendation
1	10/31/2021	By October 31, 2021, NDDEQ will provide training to NDPDES staff on implementation of the North Dakota EMS. The training should include: 1) Enforcement responses for different types of violations identified during inspections, DMR reviews and facility notifications; 2) Enforcement responses for SNC violations including escalation of enforcement responses for continuing violations; 3) Ensuring that corrective actions are required for inspection findings; and 4) Ensuring that corrective actions are completed so the facility can return to compliance. By October 31, 2021, NDDEQ will provide to EPA a syllabus or agenda for the training described above. The EPA will close this recommendation when NDDEQ submits a report with the syllabus or agenda for the training and indicates that 100% of the NDPDES staff received training on implementation of the North Dakota EMS.
2	04/15/2022	By April 15, 2022, NDDEQ will report a list of all facilities in violation due to DMR violations and/or violations discovered during inspections covering the period October 1, 2021 through March 31, 2022. The report will also list enforcement responses (formal and informal) taken in response to any violations identified. EPA will select for review at least five of the facilities identified in the report. The EPA will close this recommendation when the NDDEQ report indicates that 71% or greater for metric (10b) of the facilities with violations were addressed in accordance with the EMS.

CWA Element 5 - Penalties

Finding 5-1

Area for Improvement

Recurring Issue:

Recurring from Rounds 2 and 3

Summary:

State penalties did not usually include economic benefit or a justification for not including an economic benefit. In addition, there were differences between initial penalties calculated and final penalties collected that were not documented.

Explanation:

For Metric 11a on penalty calculations reviewed that document and include gravity and economic benefit, one out of five (20%) files reviewed included penalty calculations with documentation of economic benefit considerations. The national goal is 100%.

The economic benefit was not considered in four out of five penalty calculations and there was no documentation for reasons to mitigate the economic benefit component of the penalty. All penalties did include a gravity component. NDDEQ developed an economic benefit standard operating procedure in May 2019, which they started implementing in FY2020.

For Metric 12a on documentation of rationale for difference between initial penalty calculation and final penalty, one of three (33.3%) files reviewed documented the rationale for differences between initial penalty calculations and final penalties assessed. The national goal is 100%.

There were two penalties where the initial penalty calculated was higher than the final penalty collected, but there was no documentation in the file for the rationale for the reduction in the penalty amount.

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%		1	5	20%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		1	3	33.3%

State Response:

No comment from the State.

Recommendation:

Rec #	Due Date	Recommendation
1	11/02/2021	By November 2, 2021, NDDEQ will provide training to NDPDES staff on implementation of the North Dakota Economic Benefit standard operating procedure. The training should include: 1) How to use the BEN Model; 2) If there was no economic benefit to the facility, how to document on the penalty calculation spreadsheet the reasons to mitigate the economic benefit component of the penalty. The EPA will close this recommendation when NDDEQ submits a report (syllabus or agenda) indicating that 100% of the NDPDES staff received implementation of the North Dakota Economic Benefit standard operating procedure training.
2	06/30/2022	By June 30, 2022, NDDEQ will submit all FY2021 penalty calculation worksheets, including the economic benefit calculations, to the EPA for all final penalty actions issued in FY2021. 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. EPA will close this recommendation once 71% or greater for metric (11a) of the FY2021 penalties addresses the economic benefit or document the rationale for no economic benefit.
3	06/30/2022	By June 30, 2022, NDDEQ will submit five FY2021 penalty calculation worksheets to the EPA. EPA will review the penalty calculation worksheets to ensure any difference between the initial penalty and final penalty amounts is properly documented. The final penalty worksheets must include a rationale for the difference in the initial and final penalty amounts. This recommendation will be closed once the state documents the rationale for the reduction in the penalty amount from the initial value calculated to the final value assessed in 71% or greater for metric (12a) of the penalties assessed for FY2021.

CWA Element 5 - Penalties

Finding 5-2

Area for Attention

Recurring Issue:

No

Summary:

For one facility there was no documentation that the whole penalty was collected.

Explanation:

For Metric 12b on penalties collected, in four out of five (80%) files reviewed, penalties were collected. The national goal is 100%.

For one of the penalties, the Administrative Consent Agreement (ACA) stated that part of the penalty could be suspended if the facility achieved corrective actions by certain dates. The corrective actions documentation to suspend part of the penalty was not in the facility's file for several of the corrective actions and the suspended penalties were not collected as required by the ACA.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12b Penalties collected [GOAL]	100%		4	5	80%

State Response:

No comment from the State.

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Area for Improvement

Recurring Issue:

Recurring from Rounds 2 and 3

Summary:

The state is below the national goal for accurately reporting data into ICIS-Air. In addition, while the state timely reports violations, they don't identify certain violations as HPV.

Explanation:

For Metric 2b on files reviewed where data are accurately reflected in ICIS-Air, 12 out of 25 (48%) of files were reported accurately in ICIS-Air. The national goal is 100%.

For Metric 3a2 on timely reporting of HPV determinations, while the state timely reports violations, the state doesn't identify certain violations as HPV.

Metric 3a2 examines the percentage of case file records with an HPV with a day zero determination made during the review year by the state that were reported to ICIS-Air within the required 60-day timeframe.

As part of this review, Region 8 assessed five CAA enforcement actions and calculated a day zero through closeout. Overall, the state averaged 153.6 days from obtaining enough information to determine if the violation in question would have been an HPV (aka day zero) through case closeout for the following five CAA cases: Dakota Gasification, JR Simplot, Oasis, Wild Oasis, and North Red Tail.

The 2014 HPV policy was implemented to ensure the focus is on a subset of CAA violations that are most likely to significantly impact human health and the environment. The HPV policy requires prompt resolution of a violation, helps monitor progress with the states, and increases transparency.

NDDEQ is not identifying violations in the way described in the HPV policy, but they are addressing all violations promptly. In addition, the CAA Title V universe in North Dakota is relatively small and the State treated all violations, regardless of their HPV classification, equally and resolved them within 180 days on average based on data reviewed by Region 8.

While NDDEQ is not currently inputting HPV information into the ICIS-Air database, they have committed to ensuring that their internal compliance schedules meet or exceed those outlined in EPA's HPV Program, which includes a commitment to settling state CAA violations within HPV Program timelines. EPA will review the NDDEQ CAA violation timeframes as part of our

quarterly EPA state meetings and in our End of Year (EOY) report. If the state's timelines exceed 180 days on average, Region 8 will raise this issue with the state.

Region 8 works closely with NDDEQ on CAA enforcement matters and will devote additional attention to ensuring the state continues addressing CAA violations in a timely manner in accordance with the HPV policy.

For Metric 3b3 on the timely reporting of enforcement Minimum Data Requirements (MDRs), the state reported no formal or informal enforcement actions records into ICIS-Air in 2019. The national goal is 100% and the national average is 74.4%.

The state has, for the past several years, utilized two homegrown databases. One to track permitted facilities (including their CAA inspections, permitting status etc.) and another to track multimedia enforcement actions. Neither database was designed to package and feed data to a third-party database, and thus, issues consistently arose when attempting to map EPA's ICIS database to the state's homegrown permitting database. To complicate matters further, ICIS can only be mapped to a singular database for each state. Consequently, the state had to choose which of its two applicable databases should be mapped to ICIS; there was no functionality for mapping both. Thus, ICIS, at the time of this review, was populated with partially accurate permitted facilities information (including some compliance monitoring) and no enforcement actions. While there was some success in FY2018 mapping ICIS to the state's permit database, the connections necessary to routinely flow information from the state to ICIS were not maintained by the state due to personnel and resource issues.

In October 2020, the state purchased and implemented the Combined Environmental Regulatory Information System – North Dakota (CERIS-ND) database. CERIS-ND is an online, public facing portal used by the state and the regulated community for multimedia permitting and compliance.

This new database provides the state with the following improved functionality:

1. The state can track and report on CAA permitted facilities including electronic permitting, notifications, compliance reporting, inspections, and enforcement.
2. Permitted facilities can now submit CAA permitting and compliance reports electronically.
3. CERIS-ND makes environmental compliance permitting and reporting easier for the state and the regulated community while making environmental records open to the regulated community and the public.
4. Most importantly, CERIS-ND can, and is, flowing CAA major/synthetic minor source information and CAA enforcement information to ICIS-Air.

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%		12	25	48%
3a2 Timely reporting of HPV determinations [GOAL]	100%	44.9%	0	0	0
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	74.4%	0	0	0

State Response:

As the State continues to utilize CERIS-ND, it is expected that the flow of information to ICIS should improve. The State will continue to update CERIS-ND as needed to improve the accuracy and completeness of the data submitted to ICIS.

Recommendation:

Rec #	Due Date	Recommendation
1	11/15/2021	By November 15, 2021, the state will timely report enforcement MDRs for metric (3b3) and EPA will close this recommendation when the state achieves 71% or greater MDR submissions that are reported timely (using FY2021 data) regarding enforcement actions. In addition, after closing this recommendation, EPA will continue to monitor MDR data during end of year reports by evaluating the state's continued performance in metric (3b3) (percentage of compliance monitoring-related MDR actions achieved during the review year that were reported within 60 days of the date achieved).
2	09/30/2022	On September 30, 2022, the state will have met with EPA quarterly since October 1, 2021 to discuss CAA violations and to ensure the state continues to address them in a timely manner in accordance with the HPV policy, and by December 30, 2022, EPA will review the North Dakota CAA violation timeframes as part of the End of Year (EOY) report. EPA will close this recommendation if the state's timelines do not exceed 180 days on average.

CAA Element 1 - Data

Finding 1-2

Meets or Exceeds Expectations

Recurring Issue:

Recurring from Rounds 2 and 3

Summary:

The state enters the majority of Title V permit annual compliance certifications (TV ACCs) into ICIS-Air in a timely manner.

Explanation:

For Metric 3b1 the timely reporting of compliance monitoring minimum data requirements (MDRs) into ICIS-Air, FY 2019 data shows the state entered 39 out of 43 (90.7%) FCEs and TVACC reviews into ICIS-Air within 60 days of report receipt or inspection.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	85.7%	39	43	90.7%

State Response:

The State concurs, no additional comments.

CAA Element 1 - Data

Finding 1-3

Area for Attention

Recurring Issue:

No

Summary:

Timely reporting of stack tests into ICIS-Air is below the national goal but is higher than the national average. The state has made improvements since the last SRF.

Explanation:

For Metric 3b2 the timely reporting of stack tests reviewed, ICIS-Air show the state entered 17 out of 23 (73.9%) stack tests in FY2019 within 120 days. The state has a process in place where stack tests are reviewed using a standard form, which can be provided to EPA upon request. The national goal is 100% and the national average is 69.4%.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
3b2 Timely reporting of stack test dates and results [GOAL]	100%	69.4%	17	23	73.9%

State Response:

The State is committed to reviewing all stack tests in a timely manner following standard internal procedures. Delays in most cases were likely due to data input or data flow inefficiencies stemming from the previous database system.

As the State continues to utilize CERIS-ND, it is expected that the flow of stack test information to ICIS should improve. The State will continue to update CERIS-ND as needed to improve the accuracy and completeness of the data submitted to ICIS.

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state excels in properly capturing all the elements of a full compliance evaluation (FCE).

Explanation:

For Metric 6a on documentation of FCE elements, 19 out of 21 (90.5%) files showed proper documentation of FCE elements. The national goal is 100%.

The state's inspection reports clearly and consistently outline records reviewed, on site documents reviewed and observations and/or assessments made while onsite. Additionally, the state's move to maintaining online records enabled a seamless remote file review. The state's actual FCE's tracked very closely to the review items in the EPA SRF file review checklist. For example, Metric 6a, first item, "Review of all required reports..." was easy to confirm for all FCE's reviewed as the state FCE consistently began with a table titled "Pre-inspection Reports Review." As part of the file review checklist, the reviewer copied tables and included comments in the section of Metric 6a to show clear support.

Similarly, for Metric 6b on compliance monitoring reports (CMRs) or facility files, 21 out of 21 or 100% of files reviewed provided sufficient documentation to determine compliance of the facility. The national goal is 100%.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6a Documentation of FCE elements [GOAL]	100%		19	21	90.5%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		21	21	100%

State Response:

The State concurs, no additional comments.

CAA Element 2 - Inspections

Finding 2-2

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

The state's Title V full compliance evaluations (FCE) coverage performed at major facilities is below the national average. In addition, the state did not enter all Title V certification reviews into ICIS-Air.

Explanation:

A major source is defined as a stationary source or group of stationary sources that emit or have the potential to emit 10 tons per year or more of a hazardous air pollutant or 25 tons per year of a combination of hazardous air pollutants (HAP).

For Metric 5a on FCE coverage: majors and mega-sites, 43 out of 65 FCEs were performed, resulting in a 66.2% completion rate. The national goal of 100% and the national average is 87%. This metric takes the number of total Title V permitted facility FCE's performed in that year (metric numerator), divided by the total universe of Title V permitted sources (metric denominator).

Calculation of the state's FCE coverage completion rate is based on their 2003 North Dakota Compliance Monitoring Strategy (CMS). The CMS requires annual inspections at facilities with actual emissions greater than 100 tons per year, once every five years at compressor stations, and once every 2 years at facilities with HAP or VOC flares. In the past, it has been difficult to determine what sources were due for inspections (metric numerator) since the state's CMS was based largely on untraceable facility distinctions (e.g., actual annual emissions and/or potential to emit) that were not readily available to EPA. Additionally, EPA was unable to verify the total universe of Title V permitted facilities (metric denominator), which is also key to calculating an accurate performance metric. Thus, EPA is not able to determine what Title V sources are due (or overdue) for FCEs and thus is unable to calculate an actual performance metric. The metric calculated for this review is based off a list of FCE's performed provided by the state (numerator) and a download from the state's permitting website tallying up all potential Title V facilities (denominator).

However, the state recently deployed a new database (CERIS-ND) that clearly lays out inspection frequencies for each major and synthetic minor permitted facility allowing EPA to quickly assess whether a source is overdue for scheduled CAA FCE. As part of the FY2020 end of year report, EPA was able to download a CMS report from ICIS-Air showing all the state's major and synthetic minor permitted facilities, their FCE frequency (based on the 2003 NDDAQ CMS), the data of the last FCE and whether that facility was overdue for an inspection.

For Metric 5e on reviews of Title V annual compliance certifications completed, 34 out of 68 or (50%) were successfully entered into ICIS. The national goal is 100% and the national average is 86.1%.

EPA is aware of the state's in-house process for reviewing Title V certifications including a standard review form. EPA views this as a FY2019 data issue only because while the state is completing the required Title V certification review, the state is not properly reporting those reviews into ICIS-Air. EPA expects the Title V certifications will more closely align with the Title V permitted facilities based on the expected data flow between the state's new database (CERIS-ND) and ICIS-Air in FY2022.

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%	87%	43	65	66.2%
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	86.1%	34	68	50%

State Response:

The State is currently following the EPA and State approved plan regarding the frequency of inspections and types of facilities to be inspected. While the State believes there have been minimal

deviations to the approved plan, the State may consider expanding the Title V inspections conducted annually.

While the review of every Title V compliance certification is being conducted in accordance with internal standard operations, issues in most cases were likely due to data input or data flow inefficiencies stemming from the previous database system. The State expects this to improve with the use of CERIS-ND and the flow of information to ICIS.

Recommendation:

Rec #	Due Date	Recommendation
1	11/30/2021	By November 30, 2021, the state will update their 2003 CMS to eliminate untraceable facility distinctions (e.g., actual annual emissions and/or potential to emit) or annually provide a complete list to EPA including each major source and how the 2003 CMS applies and at what frequency. EPA will close this recommendation when the above is completed and there is at least 71% coverage of FCE at majors for metric (5a).
2	11/30/2021	By November 30, 2021, the state will complete the reviews of Title V annual compliance certifications. EPA will close recommendation when at least 71% of Title V annual compliance certifications are completed and entered in ICIS-Air for metric (5e).

CAA Element 2 - Inspections

Finding 2-3

Area for Attention

Recurring Issue:

No

Summary:

The state's Synthetic Minor (SM) FCE performance is below the national average.

Explanation:

For Metric 5b on FCE coverage: SM-80s, 8 out of 10 inspections were performed, resulting in an 80% completion rate. The national goal is 100% and the national average is 93%. Synthetic minors (SM-80) are minor sources that have taken an enforceable limit to remain minor sources. They emit or have the potential to emit (PTE) at or above 80% of the Title V major source threshold. This metric takes the number of total synthetic minor permitted facility FCE's performed in that

year (metric numerator), divided by the total universe of synthetic minor permitted sources (metric denominator).

Calculation of the state's FCE coverage completion rate is based on their existing 2003 North Dakota CMS. The CMS requires a variety of FCE frequencies for synthetic minor permitted facilities based on untraceable facility distinctions (source type, rock, sand and gravel plants, tanks, non-NSPS) and treats all synthetic minor permitted facilities as SM-80. In the past it has been difficult to determine what sources were due for inspections (metric numerator) since the NDDAQ CMS was based largely on source type specifics that were not readily available to EPA. EPA recommends that the state update their 2003 CMS to eliminate untraceable facility distinctions (e.g., source type, NSPS applicability) or annually provide a complete list to EPA including each synthetic minor source and how the 2003 CMS applies and at what frequency.

Additionally, EPA was unable to verify the total universe of synthetic minor permitted facilities (metric denominator), which is also key to calculating an accurate performance metric. Thus, EPA is not able to determine what synthetic minor sources are due (or overdue) for FCEs and thus is unable to calculate an actual performance metric. The metric calculated for this review is based off a list of FCE's performed provided by the state (numerator) and a download from the state's permitting website tallying up all potential Title V facilities (denominator).

However, NDDAQ recently deployed a new database (CERIS-ND) that clearly lays out inspection frequencies for each major and synthetic minor permitted facility allowing EPA to quickly assess whether a source is overdue for scheduled CAA FCE.

For Metric 5c on FCE coverage: minor and synthetic minor (non-SM-80s) sources that are part of a CMS Plan and Alternative CMS Facilities, the state CMS does not specify inspection frequency for minor sources and treats all synthetic minor permitted facilities as SM-80's so this metric does not apply. The national goal is 100% and the national average is 70.1%.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5b FCE coverage: SM-80s [GOAL]	100%	93%	8	10	80%
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%	70.1%	0	0	0

State Response:

The State is currently following the EPA and State approved plan regarding the frequency of inspections and types of facilities to be inspected. While the State believes there have been minimal deviations to the approved plan, the State may consider expanding the synthetic minor inspections conducted annually.

CAA Element 3 - Violations

Finding 3-1

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

The state completes the accurate compliance determination based on the file review but does not enter that determination accurately into ICIS-Air.

Explanation:

For Metric 7a on accurate compliance determinations, 12 out of 25 files reviewed showed accurate compliance determinations were made, resulting in a rate of 48%. The national goal is 100%.

Metric 7a specifically dictates that in order to satisfy this metric, the compliance determination is based not only on the information in the source file, but also on whether "the compliance determination was accurately reported into ICIS-Air,". While an accurate compliance determination has been made based on the source file, the data was not entered into ICIS-Air. EPA reviewed multiple compliance determinations and found them to be accurately based on the compliance monitoring reports reviewed as part of onsite FCE. The lack of data entry of findings into ICIS-Air are driving this metric's designation as an "Area for Improvement." EPA expects this data issue to be resolved by the updated database (CERIS-ND) deployed by the state in FY2020.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		12	25	48%

State Response:

We concur with EPA that the rating in this category is the result of problems entering data into ICIS-Air, and not with improper or incomplete compliance determinations. North Dakota has put a tremendous amount of time and money into the new CERIS-ND system.

As the State continues to utilize CERIS-ND, it is expected that the flow of information to ICIS should improve. The State will continue to update CERIS-ND as needed to improve the accuracy and completeness of the data submitted to ICIS.

Recommendation:

Rec #	Due Date	Recommendation
1	11/30/2021	By November 30, 2021, the state will timely report enforcement MDRs for metric (3b3) and properly enter compliance determinations in ICIS-Air for metric (7a). EPA will close this recommendation when the state achieves 71% or greater MDR submissions that are reported timely (using FY2021 data) regarding enforcement actions.

CAA Element 3 - Violations**Finding 3-2**

Area for Attention

Recurring Issue:

Recurring from Round 3

Summary:

The state does not identify violations as HPV; however, EPA conducted additional reviews to establish that violations are identified accurately and timely.

Explanation:

For Metric 8a on discovery rate of HPVs at majors, 0 out of 80 evaluations led to the discovery of an HPV, resulting in a 0% rate. The national average is 2.5%.

For Metric 8c on accurate HPV determinations, 0 out of 6 files reviewed showed accurate HPV determinations were made, resulting in a rate of 0%. The national goal is 100%.

For Metric 13 on the timeliness of HPV identification, no HPVs were identified. The national goal is 100% and the national average is 89.5%.

The state does not identify violations as HPVs and, as noted in Finding 1-1, has not been able to flow data (until recently) into the EPA data system, which affected EPA's ability to establish a numeric result in the Relevant Metrics table below. However, per the HPV policy, EPA Region 8 and the state meet quarterly to review violations and enforcement responses. Based on these reviews, EPA Region 8 can confirm that the state is identifying violations and returning facilities to compliance consistent with the intent of the HPV policy. Therefore, EPA has assigned a finding level of "Area for Attention" and will continue to monitor the state performance through the frequent reviews and through the End of Year (EOY) report and will elevate any issues with violation identification or enforcement identified through this oversight.

As part of this SRF, Region 8 reviewed five CAA enforcement actions and calculated a day zero through closeout. On average, the state averaged 153.6 days from obtaining enough information to determine if the violation in question would have been an HPV (aka day zero) through case closeout for the following five CAA cases: Dakota Gasification, JR Simplot, Oasis, Wild Oasis, and North Red Tail.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
8a HPV discovery rate at majors		2.5%	0	80	0%
8c Accuracy of HPV determinations [GOAL]	100%		0	6	0%
13 Timeliness of HPV Identification [GOAL]	100%	89.5%	0	0	0

State Response:

The State believes that all enforcement actions are critical to our environment and places the highest priority on handling each one in a timely manner. Due to this philosophy and our successful enforcement processing timeline, the HPV system has not been found to be a tool that enhances our enforcement process. Instead, the extra work in “labeling” specific actions is counterproductive. EPA Region 8 has (rightfully) reviewed our process and has not found timeliness problems that the HPV system would correct.

CAA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state has a clear enforcement response, which includes identifying, communicating, correcting and, when necessary, settling CAA violations.

Explanation:

For Metric 9a on 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, 1 out of 1 or 100% of files reviewed included the required corrective action. The national goal is 100%.

The state identifies non-compliance with the CAA through any number of pathways, e.g., CAA onsite inspection, stack test results review, report submittal review, etc. When non-compliance is identified, the state then communicates the violation(s) to the company and provides an opportunity for response via their LOAN letter (letter of alleged non-compliance). From there, the state and company exchange letters showing a clear picture of required corrective actions and a return to compliance that may or may not result in a formal or informal CAA settlement.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
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%		1	1	100%

State Response:

The State concurs, no additional comments.

CAA Element 4 - Enforcement

Finding 4-2

Area for Attention

Recurring Issue:

No

Summary:

The state does not identify violations as HPV, however EPA conducted additional review to establish that violations are resolved timely.

Explanation:

As mentioned earlier in the draft report (Finding 3-2), the state does not identify violations as HPVs and, as noted in Finding 1-1, has not been able to flow data (until recently) into the EPA data system, which affected EPA's ability to establish a numeric result in the Relevant Metrics table below. However, per the HPV policy, EPA Region 8 and the state meet quarterly to review violations and enforcement responses. Based on these reviews, EPA Region 8 can confirm that the state is identifying violations and returning facilities to compliance consistent with the intent of the HPV policy. Therefore, EPA will continue to monitor state performance through the frequent

reviews and through the End of Year (EOY) report and will elevate any issues with violation identification or enforcement identified through this oversight.

For Metrics 10a, 10b, and 14, the national goal is 100%.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		0	1	0%
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		0	1	0%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		0	0	0

State Response:

The State believes that all enforcement actions are critical to our environment and places the highest priority on handling each one in a timely manner. Due to this philosophy and our successful enforcement processing timeline, the HPV system has not been found to be a tool that enhances our enforcement process. Instead, the extra work in “labeling” specific actions is counterproductive. EPA Region 8 has (rightfully) reviewed our process and has not found timeliness problems that the HPV system would correct.

CAA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state utilizes a memo to the enforcement file format to properly memorialize penalty calculations (including economic benefit) and any rationale that went into a final penalty.

Explanation:

For Metric 11a (gravity and economic benefit), Metric 12a (documentation of rationale for difference between initial penalty calculation and final penalty), and Metric 12b (penalty collection), 1 out of 1 enforcement files reviewed met these metrics, resulting in a rate of 100% and meeting the national goals of 100%. Only one penalty was available for review for FY2019 and the three previous years.

The state has consistently used this memo format over the years to great success in this element. As part of the SRF review, the state provides copies (e.g., copy of check in the files) to EPA, but they are not copied and included as part of the review documentation as they are determined to be enforcement confidential. EPA is confident in the state's documentation of penalty process.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%		1	1	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		1	1	100%
12b Penalties collected [GOAL]	100%		1	1	100%

State Response:

The State concurs, no additional comments.

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Minimum data entry requirements for compliance and enforcement activities generally appear to be accurate and complete in the RCRAInfo database (RCRAInfo).

Explanation:

For Metric 2b (accurate entry of mandatory data), data for 22 of the 25 files reviewed were entered accurately into RCRAInfo, resulting in a rate of 88.0%. The national goal is 100%.

There were three instances where inspection and enforcement data were not entered accurately, including:

1. Two instances involved incorrect regulation citations in RCRAInfo. The North Dakota hazardous waste regulations were updated in 2019; however, it appears that the corresponding citations in RCRAInfo have not all been updated, causing incorrect citations to be entered into the database.
 2. The remaining instance involved a significant noncompliance (SNC) determination that was made, but not entered into RCRAInfo.
-

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Accurate entry of mandatory data [GOAL]	100%		22	25	88%

State Response:

Updating the regulatory citations in RCRAInfo is a priority moving forward. We have updated rules in 2019 and 2021, and that should finalize any major changes to the rules for some time. The SNC determination was an oversight and has been addressed. Additionally, clarification is being made in Program documents to better describe the relation between state enforcement actions and SNC determinations.

RCRA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state does an excellent job with inspection coverage of large quantity generators (LQGs) and Treatment, Storage, and Disposal Facilities (TSDFs), meeting or exceeding the national goals for all inspection coverage areas. The areas of report quality and timeliness met the requirements of national inspection and enforcement policies. Inspection reports are sufficient to determine compliance and consistently completed within appropriate timeframes.

Explanation:

For Metric 5a (two-year inspection coverage of operating treatment, storage, and disposal facilities (TSDFs)), all five operating TSDFs in North Dakota (100%) were inspected during 2019, exceeding the national goal of inspecting 100% of TSDFs every two years. The national average is 89.9%.

For Metric 5b1 (annual inspection coverage of LQGs using the RCRAInfo universe), inspections were conducted at 63% of the active RCRAInfo LQGs. The national goal is 20% and the national average is 9.3%. LQGs generate 1,000 kilograms (2,200 lbs.) of hazardous waste or more than one kilogram (2.2 lbs.) of acutely hazardous waste per calendar month.

For Metric 6a (inspection reports complete and sufficient to determine compliance), 27 out of 27 files reviewed were complete, resulting in a rate of 100%. The national goal is 100%. Regarding the minimum report recommendations, inspectors are encouraged to include supporting documentation or photos of suspected violations.

For Metric 6b (timeliness of inspection report completion), 27 out of 27 files reviewed were timely, resulting in a rate of 100%. The national goal is 100%.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	89.9%	5	5	100%
5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL]	20%	9.3%	17	27	63%
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		27	27	100%
6b Timeliness of inspection report completion [GOAL]	100%		27	27	100%

State Response:

We have made some changes to our inspection priorities. Permitted TSDFs will continue to be inspected annually, but LQG inspection rates have been lowered to 50%. This was done to provide more support to smaller facilities. It also continues to ensure we will exceed the goal of 20% per year.

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state generally makes accurate compliance determinations based on violations described in inspection reports. Regarding SNC determinations, two facilities with numerous and significant violations were not determined to be SNCs. One SNC was identified; however, the determination was not entered into RCRAInfo, as noted in RCRA Element 1 - Data. This instance was considered a data entry issue rather than a SNC determination issue. Two other facilities with numerous and significant violations were not determined to be SNCs but should have been.

Explanation:

For Metric 2a (long-standing secondary violators), there was one long-standing violator identified in the FY2019 data that was addressed with formal enforcement in FY2020. A long-standing violator represents the number of secondary violators (SVs) with violations open for more than 240 days that have not returned to compliance or have not been designated as being a significant noncomplier (SNC).

For Metric 7a (accurate compliance determinations), 27 of the 27 compliance determinations were determined to be accurate, resulting in a rate of 100%. The national goal is 100%. Metric 7a is based on the evidence in the inspection reports corresponding to the determination of violations. The state accurately identifies violations. All the inspection reports reviewed led to accurate compliance determinations.

For Metric 7b (violations found during compliance evaluation inspections (CEI) and focused compliance inspections (FCI)), the state found violations in 19 of 46 inspections, resulting in a rate of 41.3%. The national average is 38.9%.

For Metric 8a (SNC identification rate at sites with CEI and FCI compliance evaluations) and Metric 8b (timeliness of SNC determinations), zero SNCs were reported. However, because of the data discrepancy noted in RCRA Element 1 – Data, one SNC was identified by the state and the determination was accurate and made in a timely manner, based on timing of the enforcement action. The national average for Metric 8a is 1.6%. If the data had been correctly entered, the state would have a rate of 1.4% SNCs identified at sites with CEI and FCI compliance evaluations, consistent with the national average.

Metric 8b has a national goal of 100%, which would have been met if the data had been correctly entered.

For Metric 8c (appropriate SNC determinations), 11 of the 13 SNC determinations were determined to be accurate, resulting in a rate of 84.6%. The national goal is 100%.

The SNC definition in the 2003 RCRA Enforcement Response Policy includes violators that deviate substantially from the RCRA regulatory requirements. The number and significance of the violations at two facilities indicated that they should have been designated as SNCs.

The SNC violations at the two facilities included:

1. One facility failed to complete weekly inspection logs, update the contingency plan, conduct annual hazardous waste training, ensure proper volume and pressure of water for firefighting, and properly label and date containers of hazardous waste, used oil, and universal waste batteries.
2. The other facility failed to make hazardous waste determinations, complete weekly inspection logs, provide secondary containment for hazardous waste, update the contingency plan, conduct hazardous waste training, send manifests to the state, properly label and date hazardous waste containers, properly label and close hazardous waste satellite accumulation containers, properly label and close universal waste lamps containers, and ship off universal waste within a year.

These two facilities deviated substantially from the RCRA regulatory requirements but were not determined to be SNCs by the state. The violations were addressed with informal enforcement rather than formal enforcement.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2a Long-standing secondary violators			1		1
7a Accurate compliance determinations [GOAL]	100%		27	27	100%
7b Violations found during CEI and FCI inspections		38.9%	19	46	41.3%
8a SNC identification rate at sites with CEI and FCI		1.6%	0	69	0%
8b Timeliness of SNC determinations [GOAL]	100%	84.2%	0	0	0
8c Appropriate SNC determinations [GOAL]	100%		11	13	84.6%

State Response:

An SNC determination would correlate, approximately, to the issuance of a Notice of Violation (NOV) at the state level. NOV's are generally reserved for major failures that have caused, or are likely to cause, harm to human or environmental health. In the cases above, the initial response involves a Letter of Apparent Non-Compliance (LOAN), followed by a response. Once the LOAN response has been reviewed, the decision to issue an NOV is made. The facilities in question were issued LOANs and it was determined there was no need to issue an NOV to ensure future compliance with HazWaste requirements.

The Program is in the process of reviewing the enforcement practices and ensuing there is no conflict with federal requirements. Program QA documents have been updated with additional language making NOV/SNC determinations more consistent.

RCRA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state takes timely enforcement actions to address identified violations. Generally, appropriate enforcement actions are taken to address identified violations. All of the formal and informal enforcement actions resulted in the facilities returning to compliance.

Explanation:

For Metric 9a (enforcement that returns sites to compliance), 13 of the 13 formal and informal enforcement actions resulted in a return to compliance, resulting in a rate of 100%. The national

goal is 100%. 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 to verify return to compliance has occurred.

For Metric 10a (number of SNC evaluations with timely enforcement), zero SNCs were reported. However, because of the data discrepancy noted in RCRA Element 1 – Data, one SNC was identified by the state and the formal enforcement action was completed in a timely manner. Metric 10a has a national goal of 80%, which would have been met if the data had been correctly entered.

For Metric 10b (appropriate enforcement taken to address violations), 11 of the 13 enforcement actions were determined to be appropriate, resulting in a rate of 84.6%. The national goal is 100%.

As noted in RCRA Element 3 – Violations, the violations resulting from two inspections were numerous and significant enough to meet the SNC definition. According to the RCRA Enforcement Response Policy (2003), SNCs should be addressed through formal enforcement. For the one formal enforcement action that was taken, compliance requirements were specified by the state and the files contained documentation of the return to compliance.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Enforcement that returns sites to compliance [GOAL]	100%		13	13	100%
10a Timely enforcement taken to address SNC [GOAL]	80%	78.6%	0	0	0
10b Appropriate enforcement taken to address violations [GOAL]	100%		11	13	84.6%

State Response:

The Program prioritizes compliance through cooperation. Our enforcement practice involves initial “unofficial” enforcement action, with the possibility of all actions being elevated if compliance is not achieved. We have integrated the “unofficial” enforcement actions as “Step 1” of the official enforcement action.

RCRA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The files reviewed for the formal enforcement action included a penalty per the EPA RCRA Enforcement Penalty Policy (2003). The file contained documentation of the penalty calculation, which included information about the gravity and economic benefit components. The file also contained documentation of the difference between the initial penalty and final penalty, along with documentation that the penalty had been collected.

Explanation:

For Metric 11a (gravity and economic benefit), Metric 12a (documentation of rationale for difference between initial penalty calculation and final penalty), and Metric 12b (penalty collection), 1 out of 1 enforcement files reviewed met these metrics, meeting the national goals of 100%. Only one penalty was available for review for FY2019 and the four previous years.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Gravity and economic benefit [GOAL]	100%		1	1	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		1	1	100%
12b Penalty collection [GOAL]	100%		1	1	100%

State Response:

Penalty assessment is done using the federal standards. The only change is the statutory maximum of \$25,000/day established by NDCC 23.1-04-15(2).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

FEB 14 2020

Ref: 8ENF-IO

Mr. Dave Glatt, Director
North Dakota Department of Environmental Quality
918 East Divide Avenue, 4th Floor
Bismarck, ND 58501-1947

Re: 2020 State Review Framework Review of Fiscal Year 2019

Dear Mr. Glatt:

As an integral part of our U.S. Environmental Protection Agency – State of North Dakota partnership, Region 8 will be conducting a State Review Framework (SRF) review of the North Dakota Department of Environment Quality (ND DEQ) this year. Specifically, the EPA will be looking at the 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 2020. We will review inspection and enforcement activity from fiscal year 2019.

An important part of the review process is the visit to your state agency office for the three program areas listed above. Through these visits, which will likely take place between May and July (to be scheduled), the 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 ND DEQ program managers and staff;
- examination of data in EPA and ND DEQ data systems; and,
- review of selected ND DEQ inspection and enforcement files and policies.

Following our visits to your office, the 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 by late summer or early fall. The EPA expects to complete the ND DEQ review, including the final report, by the end of March 2021. 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 ND DEQ are partners in carrying out the review, and we intend to assist you in meeting both federal standards and goals agreed to in ND DEQ's Performance Partnership Agreement.


Region 8 has established a cross-program team of managers and senior staff to implement the ND DEQ review. David Piantanida, SRF Coordinator at (303) 312-6200, will be your primary contact at Region 8 and will coordinate overall logistics for the 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 the EPA to work with and provide that name to Mr. Piantanida. The Region 8 program leads on the 2020 SRF review team are:

Kristin McNeill	RCRA	(303) 312-6278	mcneill.kristin@epa.gov
Emilio Llamozas	NPDES (Lead)	(303) 312-6407	llamozas.emilio@epa.gov
Akash Johnson	NPDES	(303) 312-6067	johnson.akash@epa.gov
Alexis North	CAA	(303) 312-7005	north.alexis@epa.gov

These program leads will be contacting ND DEQ enforcement managers and staff to schedule a meeting to discuss SRF Round 4 changes, expectations, lessons learned from previous reviews, procedures and scheduling for the review. The EPA will also send its analysis of the SRF data metrics and list of selected facility files prior to the on-site visits. General SRF review planning, scheduling, and logistics steps can be found in the attachment. Other documents used to evaluate the state's programs can be found on the EPA's ECHO website at <https://echo.epa.gov/>. Links to past SRF reports and recommendations can be found at the EPA's State Review Framework web page at <https://www.epa.gov/compliance/state-review-framework-compliance-and-enforcement-performance>.

Please do not hesitate to contact me at (303) 312-6925, or have your staff contact David Piantanida (piantanida.david@epa.gov) at (303) 312-6200 with any questions about this review process. We look forward to working with you on the 2020 SRF review and furthering our critical EPA-State partnership.

Sincerely,



Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division

Enclosure

Attachment

ND DEQ SRF Review Planning & Logistics

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

- The EPA will contact ND DEQ enforcement managers and staff to schedule a conference call for the three program areas to SRF Round 4 changes, discuss expectations, procedures, and scheduling for the review if this has not already occurred.
- The EPA 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 ND DEQ a list of data metrics and conduct a data metric analysis.
- The EPA will send ND DEQ a list of requested files for review at least two weeks in advance of onsite file reviews.
- The EPA will set up calls (one for each Program area) with ND DEQ 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 for the review upon arrival at the ND DEQ offices and an exit meeting for ND DEQ managers and staff prior to the EPA's departure.
- The EPA will draft a report of its review findings, share the preliminary draft during the summer and a more final draft report with ND DEQ in late fall, 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 recommendation items in the report to the Recommendation section of the SRF Tracker.

The EPA will initiate periodic follow-up discussions with ND DEQ (quarterly calls) to monitor progress on report recommendations.