

STATE REVIEW FRAMEWORK

Nebraska

**Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2019**

**U.S. Environmental Protection Agency
Region 7**

**Final Report
January 27, 2022**

Executive Summary

Areas of Strong Performance

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

Resource Conservation and Recovery Act (RCRA)

- NDEE met the national goal for the two-year inspection coverage of operating TSDFs.
- Inspections are thorough in identifying violations. Inspection reports are clear and convey sufficient information to determine compliance.
- NDEE did an excellent job of accurately determining compliance and documenting compliance status.
- NDEE met the SRF expectations for the criteria for appropriate enforcement actions that return violators to compliance.
- Penalty calculations adequately considered gravity components and economic benefit.

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:

Resource Conservation and Recovery Act (RCRA)

- Mandatory data for inspection and enforcement activities are not complete and accurately reflected in RCRAInfo. This is a repeat finding from the previous Round 3 SRF review.
- NDEE inspected less than 20% of the biennial report system (BRS) LQG universe. This is a repeat finding from the previous Round 3 SRF review.
- RCRAInfo identifies 16 long-standing secondary violators which have not returned to compliance by Day 240 and should had been designated as a significant non-complier (SNC). NDEE reported no SNCs in FFY19.

- No documentation of the rationale between initial penalty calculation and final penalty are in NDEE's files. This is a repeat finding/long standing finding from the previous Round 2 and 3 SRF reviews.

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

Resource Conservation and Recovery Act (RCRA)

Review period: FFY2019

Key dates:

- SRF kickoff letter mailed to NDEE: May 18, 2021
- File selection list sent to NDEE: May 18, 2021
- Data metric analysis sent to NDEE: May 18, 2021
- Entrance interview conducted: June 7, 2021
- File review conducted: June 7, 2021 - July 9, 2021
- Exit interview conducted: July 20, 2021
- Draft report sent to NDEE: October 28, 2021
- Final report issued: January 27, 2022

State and EPA key contacts for review:

- Brad Pracheil, NDEE, Inspection and Compliance Division, Administrator
- Jeffery Edwards, NDEE, Waste/RCRA Compliance Section, Supervisor
- Annette Kovar, NDEE, Legal Counsel
- Kara Valentine, NDEE, Deputy Director
- Amber Whisnant, EPA Region 7, RCRA Section Chief
- Mike Martin, EPA Region 7, RCRA Coordinator
- March Matthews, EPA Region 7, File Reviewer
- Kevin Barthol, EPA Region 7, SRF Coordinator

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

Mandatory data for inspection and enforcement activities are not complete and accurately reflected in RCRAInfo. This is a repeat finding from the previous Round 3 SRF review. Previous recommendations had been implemented correcting the issue, but it resurfaced.

Explanation:

Of the 37 facility files reviewed, 25 had missing or inaccurate data when comparing file information to RCRAInfo data. Data was missing for three formal actions, one informal action, two penalty payments, one significant non-complier, one no longer a significant non-complier, and return to compliance dates for 13 long-standing secondary violators. NDEE promptly entered missing RTC dates for 12 of 13 long-standing secondary violators. Data entry was inaccurate for two informal actions (notice of violation date and notice of violation entered as an inspection) and one set of SNY/SNN flags entered with the same date. The discrepancies appear to be incidents of input error or direct omission.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2b Accurate entry of mandatory data [GOAL]	100%		19	37	51.4%

State Response:

The Waste Compliance Section has reviewed and corrected the list of data metrics that was noted as missing or was input in error that was provided at the time of the program review. After completing the updates the data was again checked for accuracy in RCRAInfo, some items were from a time frame going back several years, so it took time to get the detailed records reviewed to get the right information to enter into RCRAInfo. The Waste Compliance Section has reviewed its ongoing data entry practices and instituted backups to review the data on a quarterly basis to make sure data is entered and confirmed to be correct in accordance with the NDEE RCRA inspection SOP and Annual Workplan. Staff, where necessary, who provide the data (Environmental Specialist II's) and those who are entering the data (Two Environmental Specialist II's and Waste Compliance Section Supervisor) have retrained on the data entry and

data quality processes. Additional discussions between Waste Compliance Section staff and Region 7 staff have been held so that those who enter data can improve accuracy when data is entered the first time into RCRAinfo, and that it is entered timely in accordance with the NDEE/EPA Performance Partnership Agreement.

Recommendation:

Rec #	Due Date	Recommendation
1	06/01/2023	Within 60 days of completion of the SRF report, NDEE should develop and submit a plan to address RCRAinfo data deficiencies. EPA will randomly pull data for 10 facilities in the 2nd quarter of FFY23 in order to review FFY22 data. If this random sampling indicates that data entry processes and accuracy has sufficiently improved (85% or greater), this recommendation will be considered complete.

RCRA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

NDEE met the national goal for the two-year inspection coverage of operating TSDFs.

Explanation:

The RCRA statute allows the combined efforts of the State and Region to accomplish the biennial inspection frequency for non-government TSDFs. NDEE and Region 7 together provided the required inspection coverage for the TSDF universe of three [3]. NDEE inspected two TSDFs (66.7% of TSDF universe) and Region 7 inspected one TSDF (33.3% of TSDF universe). Although the State has primary responsibility for the TSDF inspection coverage obligation, NDEE and Region 7 together provided 100% coverage of the TSDF universe of three [3] and meet the national goal.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	89.9%	3	3	100.0%

State Response:

The NDEE Waste Compliance Section appreciates the acknowledgement that the Nebraska RCRA Program meets this element.

RCRA Element 2 - Inspections

Finding 2-2

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

NDEE inspected less than 20% of the biennial report system (BRS) LQG universe. This is a repeat finding from the previous Round 3 SRF review.

Explanation:

Per the negotiated FFY19 workplan, NDEE would inspect at least nine LQGs and alternative non-LQG facilities at a ratio of two SQGs to one LQG. This approach consisted of inspecting at least 10% of the BRS LQG universe and directing freed resources to inspect non-LQG facilities. NDEE had been operating under an alternative compliance monitoring strategy (CMS) for LQGs, but had not submitted the alternative plan (Alternative 3 - Straight Trade-Off Approach) per the CMS for the RCRA Subtitle C Program [September 2015]. NDEE had no agreement in place to collect identified outcomes and perform a year end analysis of the benefits/outcomes from implementing the alternative approach. NDEE did not submit expected outcomes or year-end analysis from implementing the alternative approach in the FFY19 workplan nor completion report. An approved alternative CMS for LQGs had not been incorporated in the FFY19 workplan.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
5b Annual inspection of LQGs using BR universe [GOAL]	20%	14.70%	10	81	12.30%
5d One-year count of SQGs with inspections	100% of commitments		11		11
5e5 One-year count of VSQGs with inspections	100% of commitment		6		6
5e7 Number of other sites inspected	100% of commitment		2		2

State Response:

The Waste Compliance Section (RCRA Program) has reviewed the State/EPA Performance Partnership Agreement to confirm that the inspections conducted of LQGs, SQGs, CESQGs and TSDFs meet the minimum inspection expectation levels. The NDEE's Waste Compliance Section has continued to follow the combining state inspections with those of EPA which had been the procedure up until 2022 and will now follow the recently approved Compliance Monitoring Strategy. NDEE has established this Compliance Monitoring Strategy (based on LQGs in the Biennial Reporting System) that will in the future document better the numbers of necessary inspections. Previous reviews of the inspections and previous allowances under the State Review Framework combined a larger number of EPA inspections which has now been revised. We have already completed the suggested recommendation listed below.

Recommendation:

Rec #	Due Date	Recommendation
1	10/31/2022	Within 120 days of completion of the SRF report, NDEE should submit a written plan for an alternative CMS for LQGs. The plan should include, but not limited to, the type and the number of facilities to be inspected, the expected outcomes of the alternative approach, and a measurement plan. Upon approval of the alternative CMS, this recommendation will be considered complete.

RCRA Element 2 - Inspections

Finding 2-3

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Inspections are thorough in identifying violations. Inspection reports are clear and convey sufficient information to determine compliance.

Explanation:

All 35 inspection reports reviewed were complete, provided excellent documentation (e.g., photos, descriptive narrative of observations, consistency in report formats) and sufficient to determine compliance.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		35	35	100%

State Response:

The NDEE Waste Compliance Section appreciates the acknowledgement that the Nebraska RCRA Program meets this element.

RCRA Element 2 - Inspections

Finding 2-4

Area for Attention

Recurring Issue:

No

Summary:

Completion percentage of timely inspection reports are inconsistently meeting NDEE’s 45-day timeframe.

Explanation:

The timeliness of inspection report completion was calculated based upon the date that the report was signed by the inspector. The 71.4% timeliness rate is based upon a 45-day standard determined by NDEE. Ten of 35 inspection reports were not completed in a timely manner. On average, NDEE staff completed inspection reports within 41 days of the inspection.

EPA suggests NDEE provide refresher training to inspection staff on the importance of report timeframes.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6b Timeliness of inspection report completion [GOAL]	100%		25	35	71.4%

State Response:

The NDEE Waste Compliance Section for the review year (2019) was internally operating on a goal of completion of reports and compliance letters within a 4 to 6-week time frame. There were inspections completed during that time frame that didn’t meet the goal. The Waste Compliance Section worked on retraining and improvements to shorten the timeframe for completion of the reports. NDEE has implemented a goal for each inspector and the supervisors of working to complete inspection follow up (letter and report) to be sent to the facility or site of 15 days on average. This included retraining on RCRAinfo data entry expectations and review of why reports were not being completed in the goal timeframes. The Section continually seeks to improve on this metric and believes it has noted the areas where the program needed to take steps to improve. These are discussed during individual meetings with staff inspectors and on monthly meetings of the section.

RCRA Element 3 - Violations**Finding 3-1**

Area for Improvement

Recurring Issue:

No

Summary:

RCRAInfo identifies 16 long-standing secondary violators (SV) which have not returned to compliance (RTC) by Day 240 and should have been designated as a SNC. NDEE reported no SNCs in FFY19.

Explanation:

Program files for 13 of 16 long-standing SVs were reviewed. Based on file review, EPA considered the SVs to be in compliance and RTC dates within 240 days. NDEE had not entered the RTC dates in RCRAInfo. This discrepancy appears to be incidents of direct omission. During the file review, NDEE promptly entered missing RTC dates for 12 of 13 SVs. Out of 56 CEIs, NDEE did not identify any SNCs. This may be due to long-standing SVs not being timely reclassified as SNCs or the majority of violations were determined to be low priority (no likelihood of substantial exposure to hazardous waste and no substantial deviation from RCRA) and therefore a non-affirmative SNC determination.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
2a Long-standing secondary violators			16		16
8a SNC identification rate at sites with CEI and FCI		1.60%	0	56	0%
8b Timeliness of SNC determinations [GOAL]	100%	84.20%	0	0	0

State Response:

The NDEE Waste Compliance Section, when apprised of the missing data information on return to compliance dates not showing up in RCRAInfo immediately took an effort to review data and facility files to identify why the information was not entered in RCRAInfo. It was noted that data for returning facilities to compliance within standard timeframes was in the file, however the data had not been updated in RCRAInfo. The Waste Compliance Section has new staff that are accomplishing data entry for RCRAInfo related to inspections, findings, and return to compliance activities for generators and we have a goal of entering RCRAInfo data for inspections within the 15-day time frame of sending out the final letter and report as part of our internal SOP. We have trained two staff and reminded others who have data to be entered into RCRAInfo that the EPA expectations are to update any new RCRAInfo data within thirty days of it being completed related to any RCRAInfo data it updates. We will be performing quarterly reviews of the facilities that are being inspected in the FFY that is being operated under.

Recommendation:

Rec #	Due Date	Recommendation
1	12/18/2022	Within 90 days of completion of the SRF report, NDEE should provide staff training on SNC classification set forth in the current EPA Hazardous Waste Civil Enforcement Response Policy. EPA will monitor improvements to SNC identification on bi-monthly coordination calls. If by end of the FFY22 grant performance evaluation (12/18/2022) increase in SNC identification is observed, this recommendation will be considered complete.

RCRA Element 3 - Violations

Finding 3-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

NDEE did an excellent job of accurately determining compliance and documenting compliance status.

Explanation:

For inspections completed by NDEE, there was an accurate record of the violations determined at each facility. A review of these records showed that NDEE made accurate determinations of violator status and if the facility was identified as an SNC. NDEE's violation rate is significantly higher than the national average. NDEE followed its guidance and policies and appropriately used informal enforcement to return the violating facility to compliance.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
7a Accurate compliance determinations [GOAL]	100%		36	36	100%
7b Violations found during CEI and FCI inspections		38.90%	24	29	82.80%
8c Appropriate SNC determinations [GOAL]	100%		33	34	97.1%

State Response:

The NDEE Waste Compliance Section appreciates the acknowledgement that the Nebraska RCRA Program meets this element.

RCRA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

NDEE met the SRF expectations for the criteria for appropriate enforcement actions that return violators to compliance.

Explanation:

Enforcement actions taken by NDEE were appropriate to the specific case details. The NDEE closely follows its policies regarding enforcement and follows up on all inspections to assure facilities return to compliance. NDEE followed its guidance and policies and appropriately used informal enforcement to return the violating facility to compliance.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10b Appropriate enforcement taken to address violations [GOAL]	100%		33	34	97.1%
9a Enforcement that returns sites to compliance [GOAL]	100%		34	34	100%

State Response:

The NDEE Waste Compliance Section appreciates the acknowledgement that the Nebraska RCRA Program meets this element.

RCRA Element 4 - Enforcement

Finding 4-2

Area for Improvement

Recurring Issue:

No

Summary:

No SNCs were reported in FFY19.

Explanation:

NDEE did not report any SNCs in FFY19. This may be due to long-standing SVs not being timely reclassified as SNCs or the majority of violations were determined to be low priority (no likelihood of substantial exposure to hazardous waste, no chronic or recalcitrant violators; or no substantial deviation from RCRA) and therefore a non-affirmative SNC determination.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10a Timely enforcement taken to address SNC [GOAL]	80%	78.60%	0	0	0

State Response:

The NDEE Waste Compliance Section Staff have been retrained on the expectations related to SNC's when there is a need to identify in RCRAinfo and how the process proceeds. The Waste Compliance Section will review the enforcement process as a routine item on monthly inspections and as part of the quarterly review that is being undertaken in FFY22 and FFY23.

Recommendation:

Rec #	Due Date	Recommendation
1	12/18/2022	Within 90 days of completion of the SRF report, NDEE should provide staff training on SNC classification set forth in the current EPA Hazardous Waste Civil Enforcement Response Policy. EPA will monitor improvements on bi-monthly coordination calls. If by end of the FFY22 grant performance evaluation (12/18/2022) increase in SNCs identification is observed, this recommendation will be considered complete.

RCRA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Penalty calculations adequately considered gravity components and economic benefit. Penalty collection documentation is present.

Explanation:

Based on the two penalties, in FFY19 the only two that rose to SNC status. NDEE's files demonstrate the documentation of the consideration of gravity and economic benefit in penalty calculations. Proof of penalty payment is documented thru Satisfaction of Judgement files. A Satisfaction of Judgement is not filed until the payment of the penalty is made.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
11a Gravity and economic benefit [GOAL]	100%		2	2	100%
12b Penalty collection [GOAL]	100%		2	2	100%

State Response:

The NDEE appreciates the acknowledgement that the Nebraska RCRA Program meets this element.

RCRA Element 5 - Penalties

Finding 5-2

Area for Improvement

Recurring Issue:

Recurring from Rounds 2 and 3

Summary:

No documentation of rationale for difference between initial penalty calculation and final penalty. This is a repeat finding/long standing finding from the previous Round 2 and 3 SRF reviews.

Explanation:

In the review of enforcement files with two penalties, there was no documentation of the rationale for difference between initial penalty calculation and final penalty. NDEE sends their case referral (penalty calculation evaluation with gravity and economic benefit) to the Attorney General's Office (AG's Office). The AG's Office determines a penalty calculation evaluation independently of the penalty evaluation provided in the case referral from NDEE and historically has not discussed its independent penalty calculation evaluations and final determinations on settlement with NDEE.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		0	2	0%

State Response:

NDEE has discussed EPA’s issue with the Attorney General’s office. As we have noted in the past, the Attorney General and Department of Justice represent the department and enforce the state’s environmental laws in court but have independent prosecutorial and settlement authority. Communications between NDEE and the Attorney General’s office regarding enforcement matters including any penalty are strictly confidential and subject to attorney-client privilege under state law. NDEE’s attorneys will continue to work with the Attorney General’s office to obtain appropriate penalties and NDEE’s attorneys will share confidential documentation of the rationale for penalty amounts when possible.

Recommendation:

Rec #	Due Date	Recommendation
1	12/18/2022	EPA recommends that the NDEE have better coordination with the AG’s Office and meaningful participation on penalty calculation evaluations. EPA will monitor improvements on bi-monthly coordination calls. At the end of the FFY22 grant performance evaluation (12/18/2022), EPA will document any coordination improvements and/or determine the next steps of elevation.

Appendix 1

Nebraska Department of Energy and Environment Response Letter

NEBRASKA

Good Life. Great Resources.

DEPT. OF ENVIRONMENT AND ENERGY

JAN 06 2022



Pete Ricketts, Governor

U.S. EPA Region 7
Diane Huffman, Acting Director
Enforcement and Compliance Assurance Division
11201 Renner Boulevard
Lenexa, Kansas 66219

RE: Nebraska Department of Environment and Energy response to U.S EPA Region 7 draft
State Review Framework Nebraska RCRA Subtitle C Implementation in Federal Fiscal Year 2019

Dear Ms. Huffman:

This letter is submitted in response to the EPA Region 7's draft State Review Framework (SRF) Nebraska RCRA Subtitle C Implementation in Federal Fiscal Year 2019 program review report. The Department's Waste Section of the Inspection and Compliance Division has reviewed the draft report and is providing comments related to the report below and has included a general statement in the State Response comment box in the report.

Here are the responses NDEE provides to the items found as needing improvement.

RCRA Element 1 – Data

1. The Waste Compliance Section has reviewed and corrected the list of data metrics that was noted as missing or was input in error that was provided at the time of the program review. After completing the updates the data was again checked for accuracy in RCRAinfo, some items were from a time frame going back several years so it took time to get the detailed records reviewed to get the right information to enter into RCRAinfo. The Waste Compliance Section has reviewed its ongoing data entry practices and instituted backups to review the data on a quarterly basis to make sure data is entered and confirmed to be correct in accordance with the NDEE RCRA inspection SOP and Annual Workplan. Staff, where necessary, who provide the data (Environmental Specialist II's) and those who are entering the data (Two Environmental Specialist II's and Waste Compliance Section Supervisor) have retrained on the data entry and data quality processes. Additional discussions between Waste Compliance Section staff and Region 7 staff have been held so that those who enter data can improve accuracy when data is entered the first time into RCRAinfo, and that it is entered timely in accordance with the NDEE/EPA Performance Partnership Agreement.

Department of Environment and Energy
P.O. Box 98922
Lincoln, Nebraska 68509 8922



Jim Macy, Director
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ndee.moreinfo@nebraska.gov

RCRA Element II – Finding 2-2 Inspections

2. The Waste Compliance Section (RCRA Program) has reviewed the State / EPA Performance Partnership Agreement to confirm that the inspections conducted of LQG's, SQG's, CESQG's and TSDF's meet the minimum inspection expectation levels. The NDEE's Waste Compliance Section has continued to follow the combining state inspections with those of EPA which had been the procedure up until 2022 and will now follow the recently approved Compliance Monitoring Strategy. NDEE has established this Compliance Monitoring Strategy (based on LQG's in the Biennial Reporting System) that will in the future document better the numbers of necessary inspections. Previous reviews of the inspections and previous allowances under the State Review Framework combined a larger number of EPA inspections which has now been revised. We have already completed the suggested recommendation listed below.

RCRA Element II – Finding 2-4 Inspections

3. The NDEE Waste Compliance Section for the review year (2019) was internally operating on a goal of completion of reports and compliance letters within a 4 to 6-week time frame. There were inspections completed during that time frame that didn't meet the goal. The Waste Compliance Section worked on retraining and improvements to shorten the timeframe for completion of the reports. NDEE has implemented a goal for each inspector and the supervisors of working to complete inspection follow up (letter and report) to be sent to the facility or site of 15 days on average. This included retraining on RCRAinfo data entry expectations and review of why reports were not being completed in the goal timeframes. The Section continually seeks to improve on this metric and believes it has noted the areas where the program needed to take steps to improve. These are discussed during individual meetings with staff inspectors and on monthly meetings of the section.

RCRA Element III – Finding 3-1 Violations

4. The NDEE Waste Compliance Section, when apprised of the missing data information on return to compliance dates not showing up in RCRAinfo immediately took an effort to review data and facility files to identify why the information was not entered in RCRAinfo. It was noted that data for returning facilities to compliance within standard timeframes was in the file, however the data had not been updated in RCRAinfo. The Waste Compliance Section has new staff that are accomplishing data entry for RCRAinfo related to inspections, findings, and return to compliance activities for generators and we have a goal of entering RCRAinfo data for inspections within the 15 day time frame of sending out the final letter and report as part of our internal SOP. We have trained two staff and reminded others who have data to be entered into RCRAinfo that the EPA expectations are to update any new RCRAinfo data within thirty days of it being completed related to any RCRAinfo data it updates. We will be performing quarterly reviews of the facilities that are being inspected in the FFY that is being operated under.

RCRA Element III – Finding 4-2 Enforcement

5. The NDEE Waste Compliance Section Staff have been retrained on the expectations related to SNC's when there is a need to identify in RCRAinfo and how the process proceeds. The Waste Compliance Section will review the enforcement process as a routine item on monthly inspections and as part of the quarterly review that is being undertaken in FFY22 and FFY23.

RCRA Element V – Finding 5-2 Penalties

6. NDEE has discussed EPA's issue with the Attorney General's office. As we have noted in the past, the Attorney General and Department of Justice represent the department and enforce the state's environmental laws in court but have independent prosecutorial and settlement authority. Communications between NDEE and the Attorney General's office regarding enforcement matters including any penalty are strictly confidential and subject to attorney-client privilege under state law. NDEE's attorneys will continue to work with the Attorney General's office to obtain appropriate penalties and NDEE attorneys will share confidential documentation of the rationale for penalty amounts when possible.

The Department's Waste Compliance Section thanks EPA Region 7 for the ability to review the draft report and comment on the accuracy and is committed to working with EPA to work through any of the parts of the Program Review where there is an ability to discuss the findings.

If you have any other questions you can contact me or Jeffery Edwards of my staff at (402) 471-4210.

Sincerely,



Brad Pracheil, Administrator
Inspection and Compliance Division

CC: Mike Martin, RCRA Coordinator, Region VII US EPA
Amber Whisnant, RCRA Section Chief, Region VII US EPA

STATE REVIEW FRAMEWORK

Nebraska

Clean Water Act Implementation in Federal Fiscal Year 2017

**U.S. Environmental Protection Agency
Region 7**

**Final Report
July 30, 2019**

I. Introduction

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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

Clean Water Act (CWA)

Executive Summary

Introduction

Clean Water Act (CWA)

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)

- NDEQ accuracy and completeness of data entry related to major and non-major Discharge Monitoring Reports is above the national average and very close to the national goal.
- State enforcement actions document facility return to compliance.
- NDEQ files contain calculation sheets which define gravity and economic benefit.

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 facility data information entered into the national database ICIS does not match the state activities, indicating the state is not reporting certain Minimum Data Requirements (MDRs).
- NDEQ did not perform MS4, SSO inspections, and NDEQ did not meet the Compliance Monitoring Strategy (CMS) Goal for Construction Stormwater inspections.
- Information reported in ECHO identified facility noncompliance and violations. NDEQ inspection reports did not evaluate facilities for SNC. NDEQ did not incorporate SNC violations from compliance schedule violations or DMR non-compliance into inspections or when making compliance determinations, therefore NDEQ did not adequately identify and address SNC violations.

- NDEQ compliance determinations are not communicated to the facility when noncompliance is found during inspections.
- The national database reported that there were no NDEQ responses to Majors that were in noncompliance. Based on the reported and available data, NDEQ did not respond appropriately to facilities listed as SNC.
- NDEQ files did not contain information which identified the difference or justification between the initial penalty and the final penalty.

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Area for Attention

Summary:

NDEQ completeness of data entry of major and non-major permit limits is above the national average yet is not meeting the national goal.

Explanation:

EPA Enforcement Compliance History Online (ECHO) pulls data from EPA Integrated Compliance Information System (ICIS). This data is attached to this report as an Excel spreadsheet 1b5. Out of 699 facilities that should have permit limit data entered, 74 facilities were missing permit limit data. EPA suggests that NDEQ review the attached spreadsheet and correct all missing data, such as, permit limits or any other missing Minimum Data Requirements. EPA also suggests that NDEQ develop a strategy to ensure MDRs are entered into ICIS in the future and that the missing data in ICIS corrected.

Update: Since the EPA concluded its' SRF review, the NDEQ has addressed the initial explanation as explained in the State Response section below.

State Response:

NDEQ currently has 100% of its permits that contain limits entered into ICIS.

73 of the 74 facilities listed are NPDES CAFO permits and do not have limits, therefore cannot be entered. The remaining discharge permit is the Nebraska Emergency management, ice dusting which also does not have permit limits.

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%	88.1%	625	699	89.4%

CWA Element 1 - Data

Finding 1-2

Meets or Exceeds Expectations

Summary:

NDEQ accuracy and completeness of data entry related to major and non-major Discharge Monitoring Reports is above the national average and very close to the national goal.

Explanation:

EPA ECHO data pulled from ICIS is attached to this report as Excel spreadsheet 1b6. This metric evaluated the state DMR entry rate for majors and non-majors. The ECHO data pull identified that the state had 215 facilities that required discharge monitoring data to be entered. Given the universe of facilities, 2,412 DMRs were missing in ICIS from FY17. NDEQ performed a complimentary data pull from the state data system using the same data elements that EPA used, resulted in the NDEQ data completeness meets the national goal. An EPA review of the FY 2018 frozen data shows NDEQ above the national goal at 95.56%. Based on the state response and the FY 2018 data, the EPA has adjusted the finding level and metric numbers.

State Response:

The Department reviewed the first 75 facilities listed on sheet 1b6_missing DMRs. 45 of the 75 reviewed for missing DMRs did not have any missing DMRs in ICIS. 21 of 75 did have missing DMRs but had less than what 1b6 is listing. After reviewing 75 facilities it was found that 88% are inaccurately listed on sheet 1b6.

With the findings above the Department ran a current unsubmitted DMR report from ICIS and concluded the following as of 4/6/2019. Attached excel doc: Unsubmitted_Status_FY2017

153 Facilities with missing DMRs

612 total missing DMRs

11,006 total submitted DMRs

11,618 total expected DMRs

94.73% revised 1b6 metric, meets recommended metric of 90%

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%	90.6%	11006	11618	94.7%

CWA Element 1 - Data

Finding 1-3

Area for Improvement

Summary:

The facility data information entered into the national database ICIS does not match the reported state activities, indicating the state is not reporting certain Minimum Data Requirements (MDRs) into ICIS.

Explanation:

The EPA reviewed 23 facility files where data should be entered into the National Database. ICIS was missing data for 13 of the 23 facilities. Majority of the missing data was associated with either a formal or informal enforcement action taken by NDEQ yet not identified as occurring in the database report. This is a similar finding that was eventually closed in the NDEQ SRF Round 3 Report after NDEQ signed the ICIS Rules of Behavior (ROB) agreement and therefore allowed the MDRs to be entered by the state. The review of Specific File Data identified formal and informal enforcement information that was not entered or captured into the national database including: Notices of Violation (NOV), Administrative Orders, and Consent Decrees. The FY17 NDEQ Performance Partnership Grant (PPG) Annual Report reported that the agency conducted 52 major inspections, however, 10 of the inspections were not captured in ICIS. Because NDEQ does not sub-divide their 5b1 and 5b2 inspections, the EPA cannot differentiate which inspections were conducted of Minor individual or Minor general permitted facilities. NDEQ reported to EPA that 100 inspections were conducted at Minor facilities; while only 90 Minor inspections were captured in ICIS.

State Response:

The department has created an internal process to input informal enforcement actions into ICIS. Going forward informal enforcement will be entered. Nebraska RA users currently do not have access in ICIS to record formal enforcement.

Recommendation:

Rec #	Due Date	Recommendation
1	04/01/2020	<p>NDEQ should ensure that their completed activities are accurately entered into and reflected in the national database. Please respond to EPA with the following:</p> <ol style="list-style-type: none"> 1. Report to EPA quarterly on the actions taken to address this finding; and, 2. Provide a written explanation to improve data quality and describe why the information has not been entered; 3. Describe corrective actions taken to address the findings, including actions to address missing or inaccurate data and to ensure entry of the missing data is conducted in the future; 4. Complete the data entry by April 1, 2020. <p>EPA will randomly pull 5 facilities in the 2nd quarter of FY 2020 in order to review the NDEQ data for FY 2019. If this random sampling indicates that data entry processes and accuracy has sufficiently improved (90% or greater) the recommendation will be deemed complete.</p>

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%	%	10	23	43.48%

CWA Element 2 - Inspections

Finding 2-1

Area for Improvement

Summary:

NDEQ did not perform MS4, SSO inspections, and NDEQ did not meet the Compliance Monitoring Strategy (CMS) Goal for Construction Stormwater inspections.

Explanation:

NDEQ did not perform MS4 and SSO inspections, while Construction Stormwater inspections are conducted infrequently. NDEQ did not define their activities to address the CMS goals of these sectors in an approved alternative CMS Plan.

State Response:

Since May 2018, the Department has conducted 5 MS4 inspections. The ability to perform these is largely attributed to the implementation of the online CSW NOI process. The online process frees more time for the coordinator to conduct these inspections. Based on this, the Department will be able to commit to a limited number in the CMS.

SSO inspections are conducted on an as-needed basis. These are documented but are not specifically identified as a SSO inspection or reported as a CMS parameter. These can be documented and reported as SSO inspections in the future. The Department will consider how to approach this as part of the CMS.

The CMS goal for completing CSW inspections would require additional full time effort that is not available to the Department. The Department can continue committing to a smaller number in the CMS.

Recommendation:

Rec #	Due Date	Recommendation
1	09/30/2019	NDEQ should develop an alternative CMS plan to EPA Region 7 to account for resource restrictions or other issues that the state may have in meeting the MS4, SSO, and construction stormwater sector CMS Goals. Complete the recommendation by September 30, 2019 for the FY20 CMS plan.

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]	%	%			
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	%	%	480	841	57.07%
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL]	100%	%	13	14	92.86%
4a4 Number of CSO inspections. [GOAL]	%	%	1	1	100%
4a5 Number of SSO inspections. [GOAL]	%	%	0	315	0%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	%	%	0	21	0%
4a8 Number of industrial stormwater inspections. [GOAL]	100%	%	165	772	21.37%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100%	%	14	31	45.16%
5a1 Inspection coverage of NPDES majors. [GOAL]	100%	54.2%	39	51	76.47%
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100%	22%	86	648	13.27%
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL]	100%	5.9%	0	1031	0%

CWA Element 2 - Inspections

Finding 2-2

Area for Attention

Summary:

NDEQ performed complaint, follow-up, and other informational inspections. These are not being entered into ICICS, the database, as completed inspections.

Explanation:

NDEQ performed inspections that were not being captured or accounted for either in ICIS, the CMS, or any other type of inspection accounting system. The inspections completed by NDEQ meet many of the requirements of an inspection. The NDEQ should consider making some changes to these inspections, for example, making a compliance determination, to receive credit for resources expended to perform these inspections. These inspections should be captured and entered into the national database.

State Response:

The Department will review its current process to record inspections / complaints in ICIS and revise accordingly. Consideration may be needed for complaint investigations not linked to an ICIS affiliated facility.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
			N/A	N/A	N/A

CWA Element 2 - Inspections**Finding 2-3**

Area for Attention

Summary:

NDEQ inspection reports typically contained enough information to determine compliance. NDEQ inspection reports are typically completed within established timeframes.

Explanation:

The EPA selected 34 inspection reports to review. 28 of the 34 inspection reports contained enough information for the reader to understand the compliance status and noncompliant items of the facility. Eight of the inspection reports did not contain enough data to determine compliance. The summary from review of the Specific File Information revealed that: 1. An inspection report indicated that samples were collected at the time of the inspection. However, the inspection report

did not contain a discussion of the sample results. 2. A facility inspection report discussed outfall discharges with flow data. However, DMRs stated no discharge. The report did not contain narrative descriptions to clarify the discrepancy. 3. A facility had DMR effluent violations in the previous quarters prior to the NDEQ inspection. Questions during an inspection should specifically ask for a compliance report or compliance history for DMRs. Inspection Reports should address and incorporate DMR noncompliance in the months, years, or designated time period prior to the inspections. 4. A facility inspection report identified that DMRs were satisfactory yet requested a noncompliance report. Requests for noncompliance reports indicate facility non-compliance or violations. Inspections should include information and reasons for why the noncompliance reports are needed. The facility was identified to be in SNC the two quarters prior to the NDEQ inspection. The inspection report did not define or discuss the instance of SNC. 5. ECHO reported that a facility had been in SNC noncompliance for DMR-NR for the quarter before and the quarter that the inspection occurred. No discussion of the DMR non-receipt was in the inspection report. 6. A facility inspection report stated that past DMRs were reviewed, however it did not make an affirmative statement that the lab reports supporting the DMRs were reviewed. Without reviewing the lab sheets, permit and sampling reporting requirements were unable to be verified. 7. An inspection report did not address whether the facility's fact sheet or the permit stated affirmatively that the facility does not use the lead sheathing process; therefore, there was some difficulty in knowing the true compliance status of the industry with the 40 CFR 428 regulations. 8. ECHO listed a facility as being in SNC for compliance schedule violations. The facility inspection report did not mention the compliance schedule violations. Inspection Report Timeliness information: Based on the review of inspections and inspection reports, approximately 73.5% of the inspection reports were completed within timeframes established in NDEQ's Compliance Manual.

State Response:

1. Findings should take into account that sample results may not be available at the time the inspection report is completed and sent to the facility.
 2. The discrepancy should be attributed to an oversight in preparing the inspection report.
 3. Most inspections and reports do account for reporting history. The Department has updated the inspection template to be clearer about DMR compliance.
 4. DMRs can be reported correctly yet a violation may still have occurred. Reporting noncompliance is a reporting issue, but not necessarily a DMR issue. SNC can be shown in ECHO even if the reporting violation has been addressed and resolved. The Department has yet to receive an answer from EPA that addresses the appearance of violations after resolution. SNC was also not a defining program priority in 2017.
 5. The Department will clarify this in inspection reports. However, ECHO will continue to show noncompliance after the issue has been resolved.
 6. Inspection reports include the line "Laboratory". At a minimum, this line included an affirmative yes or no, with a column designated for comment. This has been sufficient for making this determination. The Department has updated the inspection template to be clearer.
 7. The fact sheet and permit are available in the records system. Fact sheets and permits go through a review process that includes the compliance inspector.
 8. Inspection templates have been updated to include compliance schedule information.
-

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%	%	26	34	76.47%
6b Timeliness of inspection report completion [GOAL]	100%	%	25	34	73.53%

CWA Element 3 - Violations

Finding 3-1

Area for Improvement

Summary:

Information reported in ECHO identified facility noncompliance and violations. NDEQ inspection reports did not evaluate facilities for SNC. NDEQ did incorporate SNC violations from compliance schedule violations or DMR non-compliance into inspections or when making compliance determinations, therefore NDEQ did not adequately identify and address SNC violations.

Explanation:

EPA selected 11 files that were identified by ECHO to be in either SNC or Category 1 noncompliance. Seven of the 11 files did not identify or determine whether the facility was in still in SNC during the site inspection. The NDEQ inspection reports often neglected to review DMR compliance or non-compliance prior to conducting an inspection. This is a similar finding to the NDEQ SRF Round 3 Report. This item was closed on October 31, 2014. At the time of closure, NDEQ reported that they would take the following actions: "NDEQ has established a procedure for the quarterly reception of DMRs. Data from the DMRs is entered by the 28th of the following month. The compliance evaluation is made at the time of entry and if further action is needed the information is forwarded to an inspector to review during a site evaluation. Inspectors verify DMR compliance with file review prior to conducting an evaluation." The EPA has attached Metric 7k1 and 8a3 spreadsheets if NDEQ would like to review the National Database information. The summary from review of the Specific File Information revealed that: 1. A facility had compliance schedule violations from a previous enforcement action. There was no discussion in the inspection report of compliance schedule noncompliance. 2. A facility was identified where non-compliance was Resolved and SNC resolved. 3. A Major facility with Resolved/DMR Non-receipt. The facility was reported to be in SNC two quarters prior to the NDEQ inspection. The inspection did not define or discuss the instance of SNC. 4. A Major facility with DMR Non-receipt violations. The inspection report only identified one WET test violation. Inspection report checked the box for potential violation 'PV'. ECHO reported that the facility had been in SNC for DMR-NR for the quarter before and the quarter in which the inspection occurred. No discussion of the DMR non-receipt in the inspection report. 5. A Minor facility identified in ECHO as a facility in SNC for compliance schedule violations from an enforcement action. The inspection report did not mention

the compliance schedule noncompliance. 6. A facility that ECHO listed to be in SNC for effluent violations. No NDEQ inspection in FY17. Two NOV's were issued to the facility in 2017. One for numerous effluent violations and other for not having an industrial SW permit. The facility was under a compliance order in 2017. 7. A facility that ECHO identified as being in SNC for effluent violations. The facility had DMR noncompliance in the months prior to the inspection. The inspection did not identify this noncompliance. 8. A facility where an NOV stated that the facility was in SNC for TSS violations that occurred in the six-month period between October 2016 and March 2017. ICIS did not reflect SNC for this period. NDEQ data from the inspection was not entered into ICIS. 9. A facility with SNC for failing to sample and submit reports from October 2016 through April 2017. ICIS did not show SNC for this period. NDEQ data from the inspection was not entered into ICIS. 10. A facility that failed to submit multiple DMRs for nearly 3 years, and continued failure to submit DMRs in 2018. The NDEQ issued NOV. 11. A facility that ECHO listed in SNC for compliance schedule violations. NDEQ inspection report identified noncompliance. The past violations should have warranted at a minimum an informal action, i.e. warning letter. Based on the information in the file, the facility received nothing other than the inspection report.

State Response: The Department will update the NPDES inspection manual to include these determinations. Updated inspection report templates already include these database reviews. Transmittal letters are issued from the main office in Lincoln. Examples from each field office are not necessary.

Recommendation:

Rec #	Due Date	Recommendation
1	04/01/2020	<p>The EPA recommends that NDEQ review the facility's compliance status in the national database prior to inspections and prior to creating the facility's inspection report or transmittal letter. EPA recommends NDEQ:</p> <ol style="list-style-type: none"> 1. Report to EPA quarterly on the actions taken to address this finding. 2. Revise the inspection manual to ensure this requirement is defined and memorialized. 3. Report to EPA when the inspection manual has been updated. 4. Provide an example inspection report template which identifies the review of database compliance when performing inspections by April 1, 2020. 5. Submit to EPA an example transmittal letter where a clear compliance determination has been made from inspections.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7k1 Major and non-major facilities in noncompliance.	%	18.6%	468	1744	26.83%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.	%	7.5%	249	1737	14.34%

CWA Element 3 - Violations

Finding 3-2

Area for Improvement

Summary:

NDEQ compliance determinations are not communicated to the facility when noncompliance is found during inspections.

Explanation:

The EPA reviewed 34 NDEQ inspection reports, most of which contained adequate information to determine compliance. However, NDEQ does not follow their ERG requirements to issue Letters of Warnings or Notices of Violations when noncompliance is found. It is unclear how or when a compliance determination is made by NDEQ and how it is communicated to the facility.

State Response:

Inspection cover letters as of 2018 now include a clear determination statement. These letters either state compliance or request corrective actions for infrequent noncompliance. NOV's are used in place of a cover letter where informal enforcement is required, such as with SNC. Exit summaries are now used to close an inspection on site that gives the facility our initial observed concerns.

Recommendation:

Rec #	Due Date	Recommendation
1	12/31/2019	Based on the state process changes indicated in the response above, the recommendations below have been altered. The EPA recommends that NDEQ clearly define the compliance status of a facility within the inspection report transmittal letter when issuing the inspection report. 1. Submit to EPA an example transmittal letter where a clear compliance determination has been made from inspections. 2. Provide EPA an example exit summary to illustrate the process changes identified in the state response.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7e Accuracy of compliance determinations [GOAL]	100%	%	27	34	79.41%

CWA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Summary:

State enforcement actions document facility return to compliance.

Explanation:

90 % of NDEQ enforcement actions will result in a facility returning to compliance.

State Response:

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%	%	18	20	90.06%

CWA Element 4 - Enforcement

Finding 4-2

Area for Improvement

Summary:

The national database reported that there were no NDEQ responses to Majors that were in noncompliance. Based on the reported and available data, NDEQ did not respond appropriately to facilities listed in SNC.

Explanation:

For the review period, the national database reported that 9 Majors in Nebraska were in SNC. The database also reported that the NDEQ did not perform any follow-up responses to address the SNC.

NDEQ submitted their data with their CMS annual report and PPG annual report. According to the 2017 PPG Annual Report, NDEQ took one enforcement action at a Major in SNC. This data is attached to this report as excel spreadsheet 10a1.

State Response:

The Department is reviewing procedures to enter this data into ICIS.

Recommendation:

Rec #	Due Date	Recommendation
1	09/30/2019	NDEQ should take appropriate action against facilities listed in SNC and ensure that their activities are accurately entered into the national database. EPA's recommendation: 1. Report to EPA quarterly on the actions taken to address these actions. 2. Describe corrective actions taken to develop a process for identifying and addressing SNC violations. 3. Begin tracking informal and formal enforcement data entry into ICIS for Majors by September 30, 2019.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations	%	14.3%	0	9	0%

CWA Element 4 - Enforcement

Finding 4-3

Area for Attention

Summary:

The majority of the NDEQ enforcement actions resulted in the facility coming back into compliance; however, a percentage of the enforcement actions did not result in a return to compliance.

Explanation:

The EPA selected 22 files where either a formal or informal enforcement action occurred. The EPA found that 18 of the 22 actions were expected to result in the facility returning to compliance. The summary from review of the Specific File Information revealed that: 1. A facility file with: No response to violations was found during a complaint inspection on May 8, 2017, the compliance inspection on June 27, 2017, or the chronic violations submitted in the DMRs. 2. A facility file where: An industry was allowed to certify compliance with its TTO limit because it had developed, and had approved, a Toxic Organics Management Plan. The Plan could not be located in the file; however, it may have been prior to the electronic format. The TTO certification statement is

required to be submitted every six months but the Industry failed to certify for TTO compliance for the April through September 2017 period. 3. Facility with: Numerous O&M violations noted at the time of the inspection. The facility had not submitted DMRs in nearly 3 years, so compliance with effluent limits was unknown. A formal action would likely have increased the chance of the facility returning to compliance. 4. A facility file indicating: The facility's past violations should have warranted at a minimum an informal enforcement action, i.e. warning letter. Based on the information in the file, the facility received nothing other than the inspection report.

State Response:

The actions described in the above responses 2-1 through 3-2 address the finding in 4-3.

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%	%	18	22	81.82%

CWA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Summary:

NDEQ files contain calculation sheets which define gravity and economic benefit.

Explanation:

EPA selected six files to review. Each penalty action included the documentation which provides the calculations made to determine gravity and economic benefit which were then referred to the State AGO for collection of penalties.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%	%	6	6	100%

CWA Element 5 - Penalties

Finding 5-2

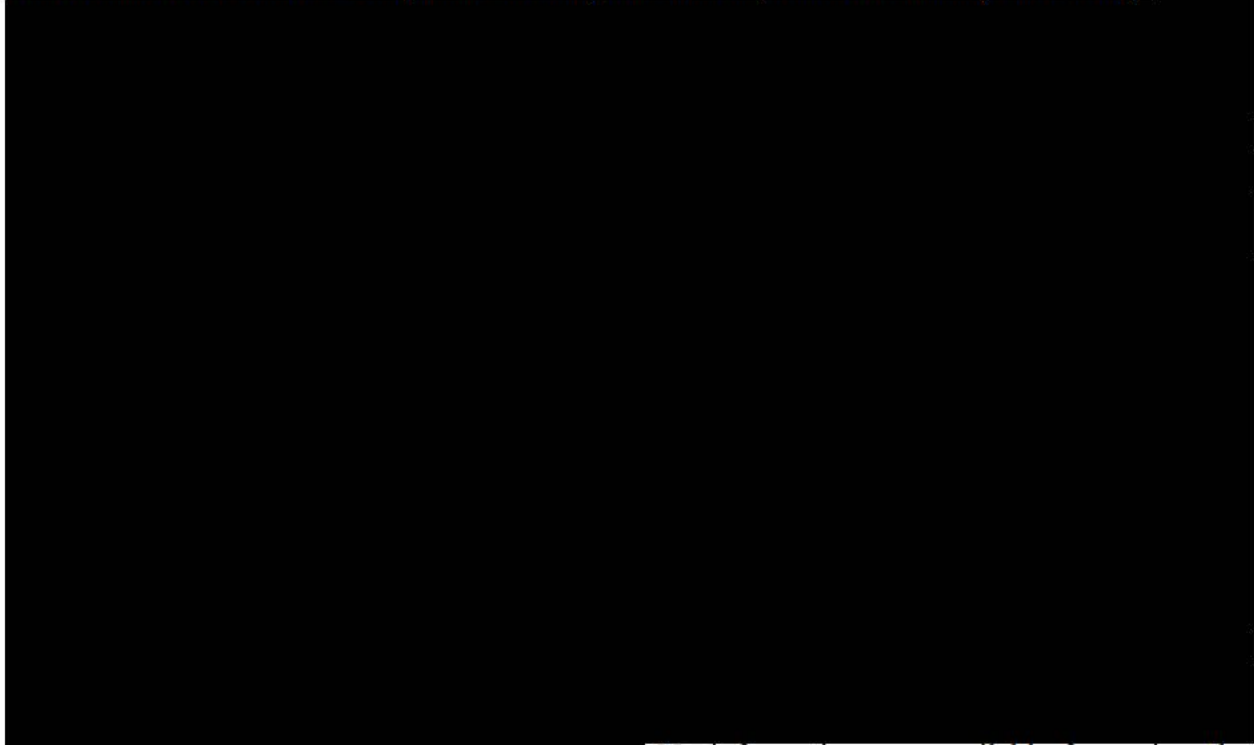
Area for Improvement

Summary:

NDEQ files did not contain information which identified the difference or justification between the initial penalty and the final penalty.

Explanation: *Modified 11/23/2021 - Redacted for Attorney-Client Privilege

The EPA reviewed six penalty actions by NDEQ. Each penalty action included a penalty calculation sheet which is completed either by the Attorney General attorneys or NDEQ.



No information was available for review that provided justification for the reductions given by the AG.

State Response:

The Department does not have direct authority to administer penalties or enforce penalty payment. Penalties are administered through the State Attorney General's Office. The ability to achieve this recommendation is outside the scope of the Department's ability.

Recommendation:

Rec #	Due Date	Recommendation
1	12/31/2019	Based on the state response above, the recommendation has been altered. NDEQ should encourage the NDEQ AG's office to include a memo to the file to track the final penalty determination.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%	%	0	6	0%

CWA Element 5 - Penalties

Finding 5-3

Area for Attention

Summary:

NDEQ files contain information which identifies that penalties were collected.

Explanation:

The majority of the penalties reviewed contained information which identified that penalties were collected. These are often in narrative statements within the documents of the file. EPA recommends that NDEQ also add a statement of payment from the account where penalties must be paid by the facility to ensure this occurred. In instances where a SEP was done, EPA recommends that NDEQ include a statement of payment from the facility to show the money allocated for SEPs was actually delivered.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12b Penalties collected [GOAL]	100%	%	4	6	66.67%

Appendix – NDEQ Response Letter

Finding 1-1, spreadsheet 1b5, permit limits entered in ICIS

Response: NDEQ currently has 100% of its permits that contain limits entered into ICIS.

73 of the 74 facilities listed are NPDES CAFO permits and do not have limits, therefore cannot be entered. The remaining discharge permit is the Nebraska Emergency management, ice dusting which also does not have permit limits.

Finding 1-2, spreadsheet 1b6, accuracy and completeness on DMRs FY17

Response: The Department reviewed the first 75 facilities listed on sheet 1b6_missing DMRs.

45 of the 75 reviewed for missing DMRs did not have any missing DMRs in ICIS.

21 of 75 did have missing DMRs but had less than what 1b6 is listing.

After reviewing 75 facilities it was found that 88% are inaccurately listed on sheet 1b6.

With the findings above the Department ran a current unsubmitted DMR report from ICIS and concluded the following as of 4/6/2019. Attached excel doc: Unsubmitted_Status_FY2017

153 Facilities with missing DMRs

612 total missing DMRs

11,006 total submitted DMRs

11,618 total expected DMRs

94.73% revised 1b6 metric, meets recommended metric of 90%

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
1b6 Completeness of data entry on major and non-major discharge monitoring reports.	95%	90.60%	11,006	11,618	94.73%

The missing DMRs from this list are being reviewed for accuracy and corrections are being made were needed.

Finding 1-3, ICIS data elements

Formal and Informal enforcement actions not being recorded in ICIS.

Response: The department has created an internal process to input informal enforcement actions into ICIS. Going forward informal enforcement will be entered. Nebraska RA users currently do not have access in ICIS to record formal enforcement.

Finding 2-1, did not meet CMS compliance monitoring strategy for construction Stormwater inspections or SSOs

Response: Since May 2018, the Department has conducted 5 MS4 inspections. The ability to perform these is largely attributed to the implementation of the online CSW NOI process. The online process frees more time for the coordinator to conduct these inspections. Based on this, the Department will be able to commit to a limited number in the CMS.

SSO inspections are conducted on an as-needed basis. These are documented but are not specifically identified as a SSO inspection or reported as a CMS parameter. These can be documented and reported as SSO inspections in the future. The Department will consider how to approach this as part of the CMS.

The CMS goal for completing CSW inspections would require additional full time effort that is not available to the Department. The Department can continue committing to a smaller number in the CMS.

Finding 2-2, recording complaint investigations

EPA recommends recording complaint investigations in the same manner as inspections in ICIS
Response: The Department will review its current process to record inspections / complaints in ICIS and revise accordingly. Consideration may be needed for complaint investigations not linked to an ICIS affiliated facility.

Finding 2-3, inspection report review, SNC etc.

Response:

1. Findings should take into account that sample results may not be available at the time the inspection report is completed and sent to the facility.
2. The discrepancy should be attributed to an oversight in preparing the inspection report.
3. Most inspections and reports do account for reporting history. The Department has updated the inspection template to be clearer about DMR compliance.
4. DMRs can be reported correctly yet a violation may still have occurred. Reporting noncompliance is a reporting issue, but not necessarily a DMR issue. SNC can be shown in ECHO even if the reporting violation has been addressed and resolved. The Department has yet to receive an answer from EPA that addresses the appearance of violations after resolution. SNC was also not a defining program priority in 2017.
5. The Department will clarify this in inspection reports. However, ECHO will continue to show noncompliance after the issue has been resolved.
6. Inspection reports include the line "Laboratory". At a minimum, this line included an affirmative yes or no, with a column designated for comment. This has been sufficient for making this determination. The Department has updated the inspection template to be clearer.
7. The fact sheet and permit are available in the records system. Fact sheets and permits go through a review process that includes the compliance inspector. Does the inspection report need to include determinations made as a part of the permitting process?
8. Inspection templates have been updated to include compliance schedule information.

Finding 3-1, addressing SNC violations in inspection reports or compliance determinations

9 items listed

Response: The Department will update the NPDES inspection manual to include these determinations. Updated inspection report templates already include these database reviews. Transmittal letters are issued from the main office in Lincoln. Examples from each field office are not necessary.

Finding 3-2, compliance determination are not communicated to the facility when a noncompliance is found during inspection. Letter of warning / NOV

Response:

Inspection cover letters as of 2018 now include a clear determination statement. These letters either state compliance or request corrective actions for infrequent noncompliance. NOVs are used in place of a cover letter where informal enforcement is required, such as with SNC. Exit summaries are now used to close an inspection on site that gives the facility our initial observed concerns.

Finding 4-1, Enforcement actions leading to compliance, 90% meets

Response: No comments.

Finding 4-2, ICIS "National Database" did not show that NDEQ responded to Majors that were in SNC

Response: The Department is reviewing procedures to enter this data into ICIS.

Finding 4-3, The actions described in the above responses 2-1 through 3-2 address the findings in 4-3.

Finding 5-1, penalty actions to the AG meet expectations

Response: No comments.

Finding 5-2, DEQ files did not contain info to identify differences between initial penalty and the final penalty

Response: The Department does not have direct authority to administer penalties or enforce penalty payment. Penalties are administered through the State Attorney General's Office. The ability to achieve this recommendation is outside the scope of the Department's ability.

Finding 5-2, DEQ files did not contain info to identify differences between initial penalty and the final penalty

Response: The Department does not have direct authority to administer penalties or enforce penalty payment. Penalties are administered through the State Attorney General's Office. The ability to achieve this recommendation is outside the scope of the Department's ability.

Finding 5-3, penalty collection, recommend a statement of payment

Response: Please see the above comment.