

# **STATE REVIEW FRAMEWORK**

## **Nevada**

**Clean Air Act and Resource Conservation and Recovery Act  
Implementation in Federal Fiscal Year 2019 and Clean  
Water Act Implementation in Federal Fiscal Year 2020**

**U.S. Environmental Protection Agency  
Region 9**

**Final Report  
March 11, 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 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 is 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)**

- CWA Key Dates: Off-site file review conducted August 2020
- CWA EPA Key Contacts:
  - Wastewater: John Tinger, Eric Magnan (Manager)
  - Stormwater: Kristine Karlson, Jamie Marincola (Manager)
- CWA State Key Contact:
  - Wastewater: Katrina Pascual (Manager)
  - Stormwater: Andrew Dixon (Manager)

#### **Clean Air Act (CAA)**

- Review Year: Calendar Year (CY) 2019
- File Review dates: August 17, 2020 – September 17, 2020
- Clark County Department of Environment and Sustainability (Clark County) Contacts: Shibi Paul (Air Quality Compliance Manager), Anna Sutowska (Air Quality Supervisor), and Scott Jelinek (Air Quality Supervisor)
- EPA Reviewers: Roshni Brahmhatt, Nathan Dancher, Rose Galer, and Heather Haro

#### **Resource Conservation and Recovery Act (RCRA)**

- On June 15, 2020, EPA held an initial conference call/meeting with NDEP to set up the process for uploading files to EPA.
- Participants: EPA: Kaoru Morimoto, Dan Fernandez, and John Schofield.
- NDEP: Daren Winkelman, Mike Leigh, Mike Richardson, Annalyn Settlemeyer, Mandy Hood, and Christine Andres.
- File Review: Began on August 21, 2020 and was completed on September 22, 2020.
- Files were reviewed as they were uploaded to EPA's OneDrive Site established for the 2019 NV SRF.

## Executive Summary

### Areas of Strong Performance

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

#### **Clean Water Act (CWA):**

- NDEP exceeded the national goal for entry of permit limit and discharge monitoring report (DMR) data for major and non-major facilities into EPA's national data base, Integrated Compliance Information System (ICIS).
- NDEP met or exceeded its inspection commitments in its Clean Water Act Section 106 grant workplan for four inspection categories: individual major facilities, individual traditional minor facilities, non-majors with general permits (including both construction and industrial stormwater), and concentrated animal feeding operations (CAFOs).
- NDEP wastewater inspection reports typically include a very good narrative description of the facility operations, a thorough assessment of monitoring data, and major facilities are accompanied by a NDEP sampling event to verify facility compliance.
- NDEP stormwater inspection reports are uniformly timely and are immediately shared with stormwater facility operators, providing crucial real-time feedback on compliance status. Likewise, 89% of NPDES wastewater inspection reports are completed within 60 days and timely provided to facilities.
- As part of the formal enforcement response to stormwater violations, NDEP routinely issues an order requiring the operator return to compliance, whether or not a penalty is assessed.
- When penalties are assessed, the penalty amount appears appropriate to the violations, and NDEP was able to collect the entire original, assessed penalty in all cases reviewed.

#### **Clean Air Act (CAA)**

- Clark County's timely reporting of enforcement and compliance monitoring Minimum Data Requirements (MDRs) and stack test results into Integrated Compliance Information System-Air (ICIS-Air) is excellent.
- Clark County's review of Title V Annual Compliance Certifications met expectations.

#### **Resource Conservation and Recovery Act (RCRA)**

- NDEP inspection coverage for Treatment, Storage and Disposal Facilities (TSDFs) meets the two-year coverage requirement. The inspection coverage for Large Quantity Generators (LQG) exceeds the national average.

- NDEP has made accurate compliance determinations in the reports that were reviewed during the Round 4 review period

### **Priority Issues to Address**

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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 rate of non-compliance for major and non-major individual facilities was 50%, below EPA expectations. As a matter of practice, NDEP does not document findings for reconnaissance visits, no exposure eligibility inspections, or termination inspections in a written report. Because these categories make up the majority of NDEP's inspections, that means the majority of the inspections recorded in ICIS are not documented outside of that database. This does not align with expectations and guidance in EPA's NPDES Compliance Inspection Manual.

- Stormwater inspection reports lacked routine information including inspection conditions, photo descriptions, facility details, and associated SWPPP documentation.
- Wastewater inspection reports generally were missing some routine information or were unclear if compliance elements were reviewed during inspection. EPA previously recommended in Round 3 that NDEP develop a standardized inspection checklist to address missing information.
- NDEP did not meet expectations for frequency of MS4 inspections in the year reviewed.
- NDEP does not maintain records of how penalties are calculated for stormwater enforcement.
- NDEP is not coding Whole Effluent Toxicity (WET) limits or monitoring requirements into ICIS. NDEP does not appear to be evaluating WET results during inspections.

#### **Clean Air Act (CAA)**

- Data Reporting: Clark County's reporting of data into ICIS-Air needs improvement. Clark County incorrectly entered dates for activity data and facility identifiers.
- Identification of High Priority Violations (HPVs): Clark County failed to identify certain Federally Reportable Violations (FRVs) as HPVs. The last SRF for Clark County for FY 2010 found a similar issue of not correctly identifying HPVs.
- Inclusion of Economic Benefit in Penalties: Clark County did not demonstrate consideration of economic benefit in their penalty calculations.

## **Resource Conservation and Recovery Act (RCRA)**

NDEP must improve adherence to the SNC determination procedures contained in the Staff Guide.

- 29 of 35 of inspection/enforcement files (83%) reviewed contained data that was accurately reflected in the RCRAInfo database.

## Resource Conservation and Recovery Act Findings

### RCRA Element 1 - Data

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#### **Finding 1-1**

Area for Attention

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#### **Recurring Issue:**

No

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#### **Summary:**

29 of 35 of inspection/enforcement files (83%) reviewed contained data that was accurately reflected in the RCRAInfo database.

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#### **Explanation:**

EPA staff reviewed 34 complete inspection/enforcement files and one enforcement file for a total 35 files as part of the State Review Framework (SRF) review process. • Most of the files reviewed were of inspection and enforcement actions that were initiated and concluded during the FY2019 review period. • For one facility there were two inspections performed by the Nevada Division of Environmental Protection (NDEP) during the review period. • Another facility had one enforcement action completed during the review period. • The facility also had a self-disclosure enforcement action that was initiated during a prior fiscal year but was concluded during the 2019 review period. • Lastly, to have five formal enforcement actions to review, an additional inspection/enforcement file from a prior period was reviewed. To summarize EPA's review process, each independent inspection/enforcement file reviewed was added as individual entries on the Resource Conservation and Recovery Act (RCRA) File Review Spreadsheet (i.e., 35 files). Six of the 35 files contained inaccuracies between file documentation/information and RCRAInfo data entries: 1. two facilities in RCRAInfo had Significant Non-Compliance (SNY) entries with no corresponding Not a Significant Non-Complier (SNN) entries. File documentation included return NDEP return to compliance documentation. Additionally, RCRAInfo data entries had shown the facilities had returned to compliance noted as observed or documented by the inspector. 2. one facility had listed as an evaluation type Focused Compliance Inspection (FCI) when in fact the facility had self-disclosed the violation(s). Based on the information provided by NDEP, the RCRAInfo evaluation data entry for this evaluation should have been coded as a Facility Self Disclosure (FSD). Note: this facility also had an SNY discrepancy. 3. two formal enforcement actions did not have a SNY entry for one or more of the observed or reported violations. The violations noted in the information/documents provided warranted a SNC determination (e.g., permit violation). 4. two facilities enforcement entries were coded as Verbal Informal, Code (110). However, the 110 dates listed corresponded on the dates there was inspection follow-up and not the dates the 110 enforcement actions occurred.

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#### **Relevant metrics:**

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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Accurate entry of mandatory data [GOAL]	100%		29	35	82.9%

**State Response:**

NDEP-BSMM staff are reviewing the BSMM Hazardous Waste Enforcement Policy and Procedure STAFF GUIDE (December 2018) to determine if the process relating to Significant Non-Complier (SNC) designations is clear. Appendix B of the guide outlines the procedures for designating a facility as a SNC and all staff follow these procedures. If, during the review, the process needs to be changed/clarified, staff will make the necessary adjustments. Additionally, SRF Round 4 included a review of a RCRA facility inspected by the NDEP Bureau of Federal Facilities (BFF) that had not been included in the past SRF reviews. NDEP-BSMM will also work with the appropriate bureaus, which use our STAFF GUIDE, to ensure the guide is used consistently across each bureau.

**RCRA Element 2 - Inspections**

**Finding 2-1**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

NDEP inspection coverage for Treatment, Storage and Disposal Facilities (TSDFs) meets the two-year coverage requirement. The inspection coverage for Large Quantity Generators (LQG) exceeds the national average.

**Explanation:**

At the time of EPA’s SRF review, there are seven operating TSDFs in Nevada. NDEP attempts to inspect each operating TSDF on an annual basis, including Compliance Evaluation Inspections (CEIs), Focused Compliance Inspections (FCIs) and, if appropriate, Operation and Maintenance inspections (OAM). The EPA 2015 Compliance Monitoring Strategy (CMS) states that federal TSDFs must be inspected every year and other operating TSDFs every two-years. RCRAInfo data shows that NDEP is meeting the inspection coverage requirements for TSDFs. According to FY2019 frozen RCRAInfo data, there are 187 active LQGs located in Nevada. NDEP inspected 98 of the 187 LQGs, or 52%, which is well above the national goal for inspections of the LQG universe.

**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	85%	7	7	100%
5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL]	20%	9.3%	98	187	52.4%
5d One-year count of SQGs with inspections [GOAL]	100% of commitments%		49	363	13.5%
5e5 One-year count of very small quantity generators (VSQGs) with inspections	100% of commitments%		18	3431	.5%
5e6 One-year count of transporters with inspections	100% of commitments%		2	125	1.6%
5e7 One-year count of sites not covered by metrics 5a - 5e6 with inspections	100% of commitments%		8	218	3.7%

**State Response:**

No Comment

**RCRA Element 2 - Inspections**

**Finding 2-2**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

NDEP's inspection reports provide sufficient documentation to determine compliance.

**Explanation:**

All but one of the completed inspection reports reviewed were well written in a standardized format that included sufficient process descriptions and observations to support compliance determinations. The lone report that did not follow the standardized format was a Beta test of an inspection report template. Only two of the 34 inspection reports did not include photographs documenting observations made during the inspection. Photographs are important to demonstrate compliance or document a compliance issue identified during the inspection. No undefined terms were observed in the inspection reports reviewed. Additionally, NDEP staff clearly identified the

listing (e.g., F003) or characteristics (e.g., D007) of the hazardous waste generated by the facility or observed by the inspector.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		34	34	100%

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**State Response:**

No Comment

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**RCRA Element 2 - Inspections**

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**Finding 2-3**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

NDEP inspection reports are completed within the timeframe specified in NDEP's Hazardous Waste Compliance and Enforcement Policy and Procedure.

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**Explanation:**

NDEP's Hazardous Waste Compliance and Enforcement Policy and Procedure, Staff Guide, dated December 1, 2018 (Staff Guide) was used by EPA staff to determine timeliness of inspection reports. According to the Staff Guide, written inspection reports are to be completed by NDEP inspectors within 150 days of the inspection. EPA used the Staff Guide to measure timeliness of inspection reports. The number of days specified in the Staff Guide corresponds to the timeframe set forth in EPA's 2003 Hazardous Waste Civil Enforcement Response Policy (ERP). Both the Staff Guide and ERP require inspection/enforcement staff to determine if alleged violations were determined during or following the inspection, and if formal enforcement action is to be initiated. Of the 34 files reviewed that contained reports, 30 or 88% of the reports were written within the 150-day timeframe specified in the Staff Guide. The average number of days a written inspection report was completed was 61 days. This number of days nearly matches the 60-calendar day requirement to complete inspection report in the EPA's Office of Enforcement and Compliance Assurance (OECA), Interim Policy on Inspection Report Timeliness and Standardization, June 20, 2018.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6b Timeliness of inspection report completion [GOAL]	100%		30	34	88.2%

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**State Response:**

No Comment

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**RCRA Element 3 - Violations**

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**Finding 3-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

NDEP has made accurate compliance determinations in the reports that were reviewed during the Round 4 review period

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**Explanation:**

File review metric 7a assesses whether accurate compliance determinations were made based on the inspector's observations and information obtained during inspections. NDEP's field inspection reports have narrative sections that describes a facility's operation, the inspector's observation and includes any supporting documentation (e.g., photographs) as an attachment to support an observation or finding. Of the 34 completed files reviewed, 100% of inspection case files contained sufficient information to document the inspector's compliance determination. Only two of the reports did not contain photographs documenting the inspector's observations. However, both inspection reports contained appropriate facility information and/or other documentation to support the inspector's findings.

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**Relevant metrics:**

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
2a Long-standing secondary violators			18		18
7a Accurate compliance determinations [GOAL]	100%		35	35	100%
8c Appropriate SNC determinations [GOAL]	100%		3	3	100%

**State Response:**

No Comment

**RCRA Element 3 - Violations**

**Finding 3-2**

Area for Attention

**Recurring Issue:**

No

**Summary:**

NDEP must improve adherence to the SNC determination procedures contained in the Staff Guide.

**Explanation:**

NDEP RCRA inspections and enforcement actions are performed by two bureaus within NDEP: Bureau of Sustainable Materials and Bureau of Federal Facilities. While the Bureau of Sustainable Materials prepared the Staff Guide, both bureaus follow the same guide. Metric 8a measures the SNC determination rate of NDEP. The rate is 0.5%. The national indicator 1.6%. NDEP inspects its LQG and TSDF universe on a more frequent basis than is recommended under EPA's 2015 CMS. As a result of more frequent inspections of its regulated universe, NDEP does not find many violations that warrant a SNC determination. Three files reviewed contained violations that were determined by NDEP to be SNC violations. Two additional formal enforcement files reviewed contained violations where a SNC determination should have been made by NDEP staff per the Staff Guide. Metric 8b shows that 2 (40%) of 5 SNC determinations were timely. Five formal enforcement files were selected for review. Four of the formal enforcement actions were concluded during the review period. An additional formal enforcement action concluded during prior fiscal year was obtained to have five formal actions to review. Of the five formal enforcement actions reviewed, three of the actions had SNC determinations. The other two formal enforcement actions did not have SNC determinations listed in RCRAInfo even though inspection/enforcement file for each facility identified one or more violations that warranted a SNC determination (e.g., storage over 90-days, permit violation). The permit violation was a facility that self-disclosed the SNC violation (i.e., no inspection report). The Staff Guide prepared by NDEP is comprehensive and includes detailed procedures for NDEP staff make accurate and timely SNC determinations.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
8a SNC identification rate at sites with CEI and FCI		1.6%	2	375	.5%
8b Timeliness of SNC determinations [GOAL]	100%	76.5%	2	5	40%

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**State Response:**

NDEP-BSMM makes SNC determinations on all formal penalty actions. Appendix B of the NDEP-BSMM Hazardous Waste Enforcement Policy and Procedure STAFF GUIDE, December, 2018, outlines the procedures for designating a facility as a Significant Non Complier (SNC). All NDEP-BSMM staff follow these procedures. Copies of the SNC Determination Checklists for facilities that were issued formal enforcement actions and were not designated as SNC's were not included in the facility files reviewed by EPA Region IX. In the future, BSMM will place SNC Determination Checklists for facilities that are not designated as SNC's in the facility file. Additionally, SRF Round 4 included a review of a RCRA facility inspected by the NDEP Bureau of Federal Facilities (BFF) that had not been included in the past SRF reviews. NDEP-BSMM will also work with the appropriate bureaus, which use our STAFF GUIDE, to ensure the guide is used consistently across each bureau.

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**RCRA Element 4 - Enforcement**

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**Finding 4-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

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**Summary:**

NDEP effectively manages noncompliant facilities with appropriate enforcement responses.

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**Explanation:**

EPA's review found that NDEP enforcement actions returned the facilities to compliance in an appropriate manner. Except for 1 formal enforcement action where there was a SNC violation, all enforcement actions were timely. NDEP files contained well documented return to compliance information. Metric 10b assesses the appropriateness of enforcement actions for Secondary Violations and Significant Non-Compliance determinations. All 24 files with violations included appropriate enforcement to address the violations.

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**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%		24	24	100%
10a Timely enforcement taken to address SNC [GOAL]	100%	87.7%	4	5	80%
10b Appropriate enforcement taken to address violations [GOAL]	100%		24	24	100%

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**State Response:**

No Comment

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**RCRA Element 5 - Penalties**

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**Finding 5-1**

Area for Attention

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**Recurring Issue:**

No

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**Summary:**

NDEP penalties generally include gravity-based, multiday, and economic benefit components in their penalty calculation procedures.

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**Explanation:**

Of the five formal enforcement actions reviewed, NDEP provided penalty calculation worksheets to review for four of the formal enforcement actions. Each worksheet had gravity-based, multiday, and economic benefit components completed. As part of the Round 3 SRF, EPA identified that while economic benefit was listed on the worksheet, NDEP was not using criteria to establish when economic benefit would be included in penalty calculations. During the prior review, the calculated or estimated economic benefit line on the worksheet was left blank. This has been corrected by NDEP in Round 4.

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**Relevant metrics:**

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
11a Gravity and economic benefit [GOAL]	100%		4	5	80%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		4	5	80%
12b Penalty collection [GOAL]	100%		5	5	100%

**State Response:**

NDEP-BSMM estimates an economic benefit component on all formal penalty actions. NDEP-BSMM Hazardous Waste Enforcement Policy and Procedure STAFF GUIDE, December 2018, outlines the procedures for calculating economic benefit. All NDEP-BSMM staff follow those procedures. NDEP-BSMM relies on documents such as U.S. EPA's "Estimating Costs for The Economic Benefit of RCRA Non-Compliance, September 1997 and EPA Region! X's spreadsheet titled Table 1 Economic Benefits of Non-Compliance Scope of Work for the calculation of economic benefit. These documents only provide economic benefit values for a very limited number of RCRA requirements. Because most RCRA requirements do not lend themselves to an economic benefit analysis, they are not included in the above mentioned EPA documents. Recorded values of \$0 or "None" on the penalty calculation worksheets represent alleged violations of the latter RCRA requirements which do not lend themselves to economic benefit. This benefit determination is described as policy in the Hazardous Waste Enforcement Policy and Procedure STAFF GUIDE, December 2018. NDEP BSMM does not believe that justification for \$0 or "None" is required to be on the form because it is covered in the policy staff guide. However, in the future, NDEP-BWM staff will include an explanation in cases where the economic benefit is \$0 or "none." Additionally, SRF Round 4 included a review of a RCRA facility inspected by the NDEP Bureau of Federal Facilities (BFF) that had not been included in the past SRF reviews. NDEP-BSMM will also work with the appropriate bureaus, which use our STAFF GUIDE, to ensure the guide is used consistently across each bureau.

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## Clean Water Act Findings

### CWA Element 1 - Data

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**Finding 1-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

NDEP exceeded the national goal for entry of permit limit and discharge monitoring report (DMR) data for major and non-major facilities into EPA's national data base, Integrated Compliance Information System (ICIS).

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**Explanation:**

Metrics 1b5 and 1b6 measure the state's rate of entering permit limits and DMR data into ICIS. NDEP entered 100% of permit limits into ICIS for major and non-major facilities, exceeding EPA's national goal of 95%.

NDEP entered 98.8% of DMR data into ICIS, exceeding EPA's national goal of 95%.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
1b5 Completeness of data entry on major and non-major permit limits.	>=95%	93.5%	88	88	100%
1b6 Completeness of data entry on major and non-major discharge monitoring reports.	>=95%	92.30%	3372	3415	98.8%

**State Response:** NDEP will continue to meet the national goal for entry of permit limit and discharge monitoring report (DMR) data for major and non-major facilities into EPA's national data base, Integrated Compliance Information System (ICIS). NDEP is working towards completing Phase II of e-reporting to meet the 2025 extended deadline.

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## CWA Element 1 - Data

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### Finding 1-2

Area for Improvement

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### Recurring Issue:

No

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### Summary:

NDEP does not appear to be coding Whole Effluent Toxicity (WET) limits or monitoring requirements into ICIS. Effluent limits established based on TMDL requirements incorporating seven facilities are not fully coded into ICIS.

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### Explanation:

EPA reviewed major permits for coding of WET effluent limits. The permits require monthly acute WET testing, establish limits as described below, and require the permittee to submit an annual WET summary report. Neither the WET monitoring nor the effluent limits were found in ICIS.

EPA was unclear on the interpretation of the monitoring and effluent limits in the permit language. The 1st paragraph appears to require a test of significant toxicity (TST); but the 2nd and 3rd paragraphs seem to indicate a dilution series test would be required. Either monitoring approach would be consistent with 40 CFR Part 136 approved methods, however the methodology for how to interpret the effluent limit is unclear. EPA Region 9 generally recommends the TST approach.

B.WET.1.1. Acute Toxicity Limit:

B.WET.1.1.1. The effluent shall be deemed acutely toxic when there is a statistically significant difference at the 95th percentile confidence interval between the survival of the control test organisms exposed to 0% effluent and the survival of the test organisms exposed to 100% effluent at the following limits:

B.WET.1.1.1.1. When the survival of test organisms in the undiluted effluent (100%) sample is less than 90 percent in six (6) out of eleven (11) consecutive samples; or

B.WET.1.1.1.2. When the survival rate of test organisms in the undiluted effluent (100%) sample is less than 70 percent in any two (2) of eleven (11) consecutive samples.

For several TMDLs, NDEP permits have taken a somewhat unique approach. The permits establish an individual waste load allocation for each facility, and then a sum waste load allocation for all facilities. A facility is only in violation if both their individual loading and the

sum of all loadings is exceeded. This in effect allows trading among the dischargers to meet the waste load allocation. ICIS is unable to code this logic. As currently coded, a facility will trigger a violation in ICIS if they exceed their individual limit, but ICIS cannot account for the 2nd part of the limit and therefore may erroneously report non-compliance. EPA has suggested an alternative coding that NDEP is evaluating to be able to account for this situation.

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**Relevant metrics:** N/A

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**State Response:** Currently, NDEP requires the WET testing results to be submitted with the DMR as an attachment and therefore the results do not flow into the ICIS system. Permits will need to be modified to create a limit to flow data into ICIS. NDEP will be updating permits in their next renewal cycles to have limits that will flow from the State DMR system into ICIS.

NDEP is evaluating EPA suggestions for coding TMDL strategies into ICIS. If it is determined that the coding does not resolve the issue, further discussion with EPA will be required to find a resolution to an IT problem that does not reflect the permit style.

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**Recommendation:**

Rec #	Due Date	Recommendation
1	06/30/2021	EPA has suggested an alternative coding that NDEP is evaluating to be able to account for this situation.

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**CWA Element 1 - Data**

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**Finding 1-3**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

NDEP entered inspection and enforcement data accurately into ICIS in 90.9% of the files reviewed, below the national goal for 100% accurate entry.

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**Explanation:**

Under metric 2b, EPA compared inspection reports and enforcement actions found in selected files to determine if the inspections, inspection findings, and enforcement actions were accurately entered in ICIS. The analysis was limited to data elements mandated in EPA's ICIS data management policies. States are not required to enter inspections or enforcement actions for certain classes of facilities.

For wastewater, EPA reviewed 19 files for data accuracy. EPA found 16 of the 19 files reviewed had all required information (facility location, inspection, violations, and enforcement action information) accurately entered in ICIS. One facility was missing a Single Event Violations (SEVs) that was identified in the inspection report and was missing a formal enforcement action. One facility was missing a second inspection conducted during FY19 (reconnaissance inspection in response to a spill event) that was not entered into in ICIS. One facility was missing a formal enforcement action and penalty in ICIS.

For stormwater, EPA reviewed 14 files for data accuracy. We found that ICIS contained complete and accurate entries for all the facilities and associated inspections reviewed. NDEP is not using SEV codes to track stormwater violations and reports that it does not have the capacity to do so in its database of record. Because entry of stormwater SEV codes is not required at this time, this is not a major finding. For enforcement actions against stormwater operators, similarly, neither informal nor formal enforcement actions reviewed on paper were entered into ICIS.

Suggestion for improvement: NDEP should establish a protocol to ensure SEVs and all formal Enforcement actions are correctly entered into ICIS as a required data element. No formal corrective actions are required at this time.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
2b Files reviewed where data are accurately reflected in the national data system	>=100%		30	33	90.9%

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**State Response:** NDEP is in the process of identifying potential improvements and enhancing the online compliance and enforcement database to flow enforcement data to ICIS automatically. NDEP is also currently working on enforcement checklists to ensure that the step of inputting enforcement data into ICIS is manually completed until the data can be flowed between systems.

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## **CWA Element 2 - Inspections**

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### **Finding 2-1**

Meets or Exceeds Expectations

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### **Recurring Issue:**

No

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### **Summary:**

NDEP met or exceeded its inspection commitments in its Clean Water Act Section 106 grant workplan for 4 inspection categories: individual major facilities; individual traditional minor facilities, non-majors with general permits, and concentrated animal feeding operations (CAFOs).

Three categories are not applicable: combined sewer systems (no known facilities), pretreatment program and SIUs discharging to non-authorized POTWs (NDEP not authorized for pretreatment), and sludge/biosolids (NDEP not authorized for biosolids).

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### **Explanation:**

Metrics 4a, 5a, and 5b measure the number of inspections completed by the state in the Fiscal Year 2019 compared to the commitments in NDEP's Clean Water Act Section 106 grant workplan. EPA Region 9 established workplan inspection commitments for NDEP consistent with the inspection frequency goals established in EPA's 2014 Compliance Monitoring Strategy (CMS).

For Metric 5a1, NDEP inspected 11 individual major facilities. NDEP has exceeded the CMS-based workplan commitments to conduct inspections of 6 individual major facilities.

For Metric 5b1, NDEP met the CMS-based workplan commitments to conduct inspections of 17 individual minor facilities during FY19.

For Metric 5b2, NDEP conducted 8 inspections of approximately 711 NPDES non-majors with general permits, or about 0.2% of the universe. NDEP did not fail to meet the CMS-based workplan commitments because the CMS does not establish a minimum number of inspections. There is no set compliance monitoring frequency for the universe of non-majors with general permits such as de minimis discharges.

For metric 4a1, NDEP does not have authorization for the pretreatment program. Therefore, NDEP did not fail to meet the CMS-based workplan commitment of zero.

For metric 4a2, NDEP does not have authorization for the pretreatment program. Therefore, NDEP did not fail to meet the CMS-based workplan commitment of zero.

For metric 4a4, there are no CSOs within Nevada. Therefore, NDEP did not fail to meet the CMS-based workplan commitment of zero.

For metric 4a8, NDEP conducted 241 industrial stormwater inspections. Compared to its universe of 715 industrial stormwater dischargers this represents 34% coverage, well above the 10% commitment.

For metric 4a9, NDEP conducted 898 construction site inspections among the 1,969 permitted sites, representing 45% coverage of the universe. This is well-above the 10% coverage commitment in NDEP's workplan.

For metric 4a10, NDEP individually permits all CAFOs. There are 4 individually permitted concentrated animal feeding operations (CAFOs) in Nevada. NDEP conducted 2 inspections at permitted CAFOs and exceeded workplan commitments.

For metric 4a11, NDEP does not have authorization for the biosolids program. Therefore, NDEP did not fail to meet the CMS-based workplan commitment of zero.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL: 1 for FY19]	>=100% of commitments		2	1	100%
4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL: 0. NDEP not authorized]	>=100% of commitments		NA	NA	NA
4a1 Number of pretreatment compliance inspections and	>=100% of commitments		NA	NA	NA

audits at approved local pretreatment programs. [GOAL: 0. NDEP not authorized]					
4a2 Number of inspections at Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL: 0. NDEP not authorized]	>=100% of commitments		NA	NA	NA
4a8 Number of industrial stormwater inspections. [GOAL: 10% = 71 inspections for FY19]]	>=100% of commitments		241	715	34%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL: 10% = 198 inspections for FY19]	>=100% of commitments%		898	1969	45%
5b1 Inspection coverage of NPDES non-majors with individual permits [GOAL: 21.8% (17 for FY19)]	>=100% of commitments	25.3%	17	17	100%
5b2 Inspection coverage of NPDES non-majors with general permits [GOAL: 0; No minimum frequency established.]	>=100% of commitments		8	711	NA

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**State Response:** NDEP will continue to meet all the goals in our inspection commitments.

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## CWA Element 2 - Inspections

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### Finding 2-2

Area for Improvement

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### Recurring Issue:

No

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**Summary:**

The state did not meet CMS expectations for MS4 audits or for sanitary sewer inspections. For industrial and construction stormwater, many inspections were termination or drive-by reconnaissance inspections.

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**Explanation:**

Metrics 4a, 5a, and 5b measure the number of inspections completed by the state in the Fiscal Year 2019 compared to the commitments in NDEP's Clean Water Act Section 106 grant workplan. EPA Region 9 established workplan inspection commitments for NDEP consistent with the inspection frequency goals established in EPA's 2014 Compliance Monitoring Strategy (CMS).

For metric 4a5, NDEP did not formally inspect any sanitary sewer systems. However, NDEP typically will conduct a review of a sewer system in response to a reported spill during which time NDEP will review the root cause of the spill. The evaluation may include pump stations and capacity management of the sewer system. There are approximately 30 sanitary sewer systems in Nevada with NPDES permits. Although NDEP did not fail to meet the CMS-based workplan commitments for FY19 of zero, NDEP must commit to conducting inspections of 5% of sanitary sewers each year, or one system every two years, to meet CMS requirements. NDEP must add the commitments to the workplan.

For metric 4a7, NDEP did not conduct any municipal separate storm sewer (MS4) inspections. To meet the annual 10% goal in its workplan, NDEP should have inspected or audited at least one of the nine MS4s.

For metric 4a8, NDEP's inspection numbers reflect inspections conducted to assess compliance with both its industrial and mining stormwater permits. Together, the universe of such facilities is 715. NDEP's workplan set a goal of 10% inspection coverage within this universe, or 72 inspections. In the reviewed year, NDEP conducted inspections of 241 industrial stormwater dischargers, which represents 34% of the universe. According to NDEP, half of these site visits were limited to confirming eligibility to terminate coverage or be granted a no-exposure waiver. Percent coverage of both total and active permittees exceeds expectations. EPA generally recommends emphasis on large, more exposed sectors, to ensure the potential environmental harm from these sites is adequately prioritized.

For metric 4a9, NDEP committed to inspecting at least 10% of its universe of 1969 facilities, translating to 197 inspections. NDEP well-exceeded this number, performing 898 construction site inspections. NDEP reports that roughly 15% of its construction stormwater inspections occurred at active sites, with most of the remainder conducted at project termination. EPA recognizes that NDEP's total inspections represent a significant workload and well-establish the department's field-presence with the regulated community. Nevertheless, since most environmental harm tends to occur during the clearing, grubbing, and grading portion of construction projects, it is recommended that NDEP conduct more active construction inspections.



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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
4a5 Number of SSO inspections. [GOAL: 0:]	>=100% of commitments		0	14	0
4a7 Number of Phase I and II MS4 audits or inspections.	>=100% of commitments		0	9	0

---

**State Response:** NDEP inspectors often conduct sanitary sewer inspections as part of the wastewater treatment plant inspections. NDEP intends to create enhancements to the current inspection tracking and logging system. The NDEP system will need to be adjusted to identify sanitary sewer systems, resulting in the ability to track and log inspections separate from that of wastewater treatment systems, and subsequently submit this information to EPA. For Metric 4a7, NDEP received training and participated in two EPA contractor led MS4 audits in August of 2020. NDEP will audit at least one MS4 by 9/30/21 and will schedule MS4 audits to comply with the workplan.

For Metric 4a8, NDEP pulled information from its database and found that 241 total inspections were conducted in FY19 which included reconnaissance, termination, and waiver inspections. Of this total, 129 of these inspections were active inspections. Staff evaluated BMP performance, site deficiencies in need of correction, and general permit compliance during these active site inspections; these findings were documented in reports provided to the permittee. With 741 active sites during FY19, this puts NDEP's active site inspection for industrial stormwater at 17.4% and total inspections at 32.5%.

For Metric 4a9, NDEP performed active site inspections on 7% of active sites during FY19 and will work to inspect at least 10% of active sites going forward.

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**Recommendation:**

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Rec #	Due Date	Recommendation
1	06/30/2021	<p>NDEP will conduct MS4 inspections as necessary to meet minimum workplan and CMS commitments.</p> <p>NDEP will conduct the minimum number of sanitary sewer system inspections necessary to meet workplan and CMS commitments.</p>

## CWA Element 2 - Inspections

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### Finding 2-3

Area for Improvement

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### Recurring Issue:

Recurring from Round 3

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### Summary:

Sixty-seven percent of the reviewed inspection reports were found complete enough to determine compliance at the facility. EPA has identified recommendations to improve the quality of inspection reports.

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### Explanation:

Metric 6a assesses the quality of inspection reports to evaluate whether the inspection reports provide enough documentation to accurately determine the compliance status of inspected facilities.

#### Wastewater

For wastewater, EPA reviewed 18 files to determine compliance with the 2017 NPDES Compliance Inspection Manual (Chapter 2G Inspection Procedures) as described in the SRF Round 4 CWA File Review Facility Checklist and CWA Metrics Plain Language Guide. Of the 18 facility files reviewed for the SRF, inspections had been conducted for 14 of the facilities and EPA therefore reviewed 14 inspection reports. Thirteen of those inspection reports had sufficient information to make a compliance determination.

#### Positive Attributes:

- Inspection reports typically include a thorough review and assessment of monitoring data.

- Inspection reports all included a very good narrative description of the facility operations and wastewater treatment systems.
- The inspections are often accompanied by a NDEP sampling event to verify facility compliance.
- Inspection reports included recommendations for increased compliance and health and safety where applicable.

Inspection reports were missing some relevant information or were unclear if compliance elements were reviewed during inspection, including:

- Reports are not signed.
- Reports do not indicate if facility was provided advanced notification of inspection.
- Reports do not generally indicate if there was rain, snow or antecedent weather that could impact inspection conclusions.
- Reports do not appear to include an evaluation of facility self-monitoring procedures, including: Are sampling SOPs, correct? Is sampling representative of outfall? If outside laboratory is used, was data accurately reported on DMRs? Were approved Part 136 CWA methods used? Does facility use their own laboratory or analysis for compliance monitoring? If so, is laboratory certified?
- Generally, reports were unclear if whole effluent toxicity (WET) test results were evaluated, as only one report specifically included a review of WET test results.
- While some reports addressed the “Free from” water quality standards by describing effluent as free from odors or free from oil sheen, many reports did not describe appearance of effluent and receiving water. Note that the permits only include “free from” standards by reference and the water quality standards are not specifically included in the permit.
- It was not always clear if a document review was conducted as part of the inspection, such as operations and maintenance, CMMS, operator certification, operator training, lab reports, etc.
- The reports often did not identify the position/responsibility of the facility contacts participating in the inspection.

EPA notes that many of the facilities inspected were unique in that they either did not discharge or did not contain all elements described above for review. In these cases, the narrative provided a description of the non-discharge status but may not have evaluated additional permit components. EPA recommends NDEP develop a checklist for Inspectors to document the compliance elements that were reviewed, not applicable, or were found not to have concerns. NDEP does not have a formal inspector training program and does not issue inspection credentials to inspectors. New inspectors receive training by reviewing internal inspection protocols (currently in draft form), sampling manuals, and by apprenticeship with a senior inspector for approximately 1 year, then they lead an inspection under supervision until they can perform inspections on their own. NDEP does internal trainings for inspectors including sampling procedures and inspection protocols. NDEP can routinely take advantage of trainings and conferences sponsored by groups such as AWWA, Western States and by EPA. NDEP does not have a formal health and safety program for inspectors. The Bureau provides

yearly safety briefing for all NDEP employees, and NDEP regularly reviews health and safety protocols for inspectors including sampling procedures and safe driving. Inspectors who inspect mines may participate in the MSHA 24 hour and 8-hour refresher course.

### **Stormwater Summary:**

None of the reviewed stormwater inspection reports contained all the expected basic information set forth in the NPDES Compliance Inspection Manual, and few contained adequate corroborating documentation needed to determine compliance at the facility. Many inspections were recorded in ICIS but were not documented outside of the database. EPA has identified several potential recommendations to improve documentation of inspections.

For stormwater, EPA reviewed 14 files to determine compliance with the 2017 NPDES Compliance Inspection Manual (Chapter 2G Inspection Procedures) as described in the SRF Round 4 CWA File Review Facility Checklist and CWA Metrics Plain Language Guide. All the 14 facility files reviewed for the SRF contained at least one inspection report. Four of those inspection reports had sufficient information to make a compliance determination.

### **Positive Attributes:**

- When inspections were documented, inspection reports cited specific permit conditions, providing clarity with regard to noncompliant findings.
- When inspections were documented, they included photographs of the facility inspected.
- Initial inspections that found violations were often accompanied by follow-up inspections.

Multiple files reviewed as part of this process uncovered inspections recorded in ICIS but that were not documented outside of the electronic database. In other words, these had no written report. EPA interviewed NDEP and learned that as a matter of practice, no stormwater inspection report is written for complaint response reconnaissance visits, permit termination inspections, “no exposure” eligibility inspections, or even some follow-up inspections. Because a large portion of stormwater inspections by NDEP fit into these categories (for example, 85% of construction stormwater inspections are conducted at termination), a large portion of inspections are not documented other than in ICIS. This does not comport with minimal recommendations in EPA’s NPDES Compliance Inspection Manual.

Written reports reviewed as part of this SRF process, with only one exception, consisted of a single-page blank table into which inspectors recorded permit requirements not being met by the operator. Most also were accompanied by a photograph log, but most such photograph logs lacked captions or other descriptions of what was photographed. Reports also exhibited the following deficiencies, which should be addressed for all stormwater inspections going forward:

- Reports did not indicate the time of entry and provide room to list all participants.
- Reports do not indicate if facility was provided advanced notification of inspection.
- Reports do not generally indicate if there was rain, snow or antecedent weather that could impact inspection conclusions.

- Reports do not include a description of the industrial facility or construction project, including slopes, size, direction of flow, discharge points, potential pollutant sources, or industrial activities present.
- Reports do not appear to include an evaluation of facility self-monitoring procedures, including whether self-inspections are timely and adequate.
- Reports generally provided no corroborating documentation of inspector conclusions, such as site maps, copies of self-inspection reports, SWPPP excerpts, or operator statements.
- Reports did not generally indicate which portions of permit compliance were reviewed – or omitted from – the inspection.

Suggestion for improvement: EPA suggests NDEP develop a formal health and safety program for inspectors. EPA recommends NDEP develop a formal training program for credentialing inspectors.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL: 100%]	>=100%		17	28	60.7%

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**State Response:**

NDEP is currently in the process of developing more robust inspection checklists that are to be utilized for in-person and virtual inspections. NDEP intends to create tailored checklists for all the specific categories of discharge permits to make them more streamlined for the inspection process. These checklists will address both items that will be addressed in the field and the review of records and data required for the review of the permitted facility. These checklists will make the data gathered more consistent and will serve as a training tool for new and previous inspectors to make more consistent inspection reports. NDEP will refer to the NPDES Compliance Inspection Manual while developing checklists and report forms.

For stormwater, NDEP intends to make these more robust checklists and inspection report forms electronic to help facilitate the flow of data, improve tracking, and better use available technology. The initial forms will continue to be Microsoft Word and PDFs and will serve as the basis for the electronic forms as they are developed. We request the following modified due dates for completion of the recommendations.

NDEP has health and safety programs for employees. This apparently was not clear during the SRF review and additional conversation can occur.

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**Recommendation:**

<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1	01/31/2022	EPA recommends NDEP develop a consistent format for inspection reports including the above elements and covering the expectations set forth in the NPDES Compliance Inspection Manual for Inspectors to document the compliance elements that were reviewed, not applicable, or were found not to have concerns. EPA previously suggested in Round 3 that NDEP develop a standardized inspection checklist to address missing information.

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**CWA Element 2 - Inspections**

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**Finding 2-4**

Area for Attention

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**Recurring Issue:**

No

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**Summary:**

24 of the 27 (88.9%) inspection reports reviewed by EPA were dated or completed within 60 days.

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**Explanation:**

Metric 6b measures the state's timeliness in completing and issuing inspection reports. For wastewater, EPA reviewed 13 inspection reports and found 10 were completed within a 60-day timeframe, below EPA's target for timeliness.

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**Relevant metrics:**

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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6b Timeliness of wastewater inspection report completion [GOAL: 60% within 60 days]	>=100%		10	13	76.9%

**State Response:**

NDEP will continue to work toward meeting the goal of finalizing inspection reports within 60 days of inspections. NDEP intends to use the inspection checklist to ensure that all inspectors gather all the pertinent data to complete the inspection reports on time. NDEP will add the 60-day timeline to the inspection checklist as a reminder for the timely issuance of inspections.

**CWA Element 2 - Inspections**

**Finding 2-5**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

24 of the 27 (88.9%) inspection reports reviewed by EPA were dated or completed within 60 days.

**Explanation:**

Metric 6b measures the state's timeliness in completing and issuing inspection reports. For Stormwater, 14 of 14, or 100% of reports were completed and shared with the facility operator the same day as the inspection.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6b Timeliness of stormwater inspection report completion [GOAL: 60% within 60 days]	>=100%		14	14	100%

**State Response:**

NDEP will continue to complete inspection reports and provide them to the facility in timely manner. Given the increasing amount of information expected to be included in a stormwater inspection report discussed herein, NDEP will have to balance the tradition of providing the facility with a same day report, versus a more comprehensive report at a date following the inspection. Providing the facility with a report of the immediate findings the same day as the inspection is a very valuable and timely communication tool.

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### **CWA Element 3 - Violations**

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#### **Finding 3-1**

Meets or Exceeds Expectations

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#### **Recurring Issue:**

No

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#### **Summary:**

84.6% percent of the inspection reports reviewed provide enough information to evaluate the accuracy of the compliance determinations.

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#### **Explanation:**

Metric 7e measures the percent of inspection reports reviewed that led to an accurate compliance determination.

For wastewater, EPA reviewed 13 inspection reports and found that 11 of the reports (84.6%) led to accurate compliance determinations:

One facility inspection correctly identified a deficiency, but this was not categorized as a potential violation. EPA reviewed the permit conditions and determined the permit contained a specific requirement for a berm. Due to the specific permit requirement, it appears the inspection should have identified this as a violation of the permit and required corrective action.

One facility inspection report did not appear to make an accurate compliance determination or require corrective actions for deficiencies identified. The inspection report did not identify what appeared to be an unauthorized discharge to the non-process water outfall. For stormwater discharges to the non-process water outfall, the inspection did not appear to include an evaluation of potential pollutant sources in the stormwater. NDEP's sampling of the non-process water outfall identified a potential exceedance of an effluent limit, but NDEP did not require an evaluation or corrective action to determine the cause of the exceedance. Additionally, the report



noted several past effluent violations (DMR reports), and the facility provided an explanation for those exceedances (data mistakes and laboratory inconsistencies), but NDEP does make a determination on the validity of these explanations.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
7e Accuracy of compliance determinations [GOAL]	>=100%		11	13	84.6%
7j1 Number of major and non-major facilities with single-event violations reported in the review year	NA		0	0	NA

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**State Response:**

NDEP will be implementing a checklist inspection system for both in-person and virtual inspections to streamline and standardize the inspection report data collected and the compliance information that is also collected. These checklists will make data collection consistent to ensure that there is enough data to evaluate the accuracy of compliance determinations.

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**CWA Element 3 - Violations**

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**Finding 3-2**

Area for Improvement

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**Recurring Issue:**

No

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**Summary:**

28.6 % percent of the inspection reports reviewed provide enough information to evaluate the accuracy of the compliance determinations.

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**Explanation:**

Metric 7e measures the percent of inspection reports reviewed that led to an accurate compliance determination.

For stormwater, only four of the 14 inspection reports reviewed contained accurate information to determine compliance. These four facilities are on formal enforcement from NDEP. See recommendation above for Metric 6a.

Metric 7j1 measures the number of major and non-major facilities with single-event violations reported in the review year. For stormwater, no SEV codes were entered for any violations. Because this is not yet a requirement, there is no recommendation for improvement.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
7e Accuracy of compliance determinations [GOAL]	>=100%		4	14	28.6%
7j1 Number of major and non-major facilities with single-event violations reported in the review year	NA		0	0	NA

---

**State Response:**

NDEP is currently in the process of developing more robust inspection checklists that are to be utilized for in-person and virtual inspections. NDEP intends to create tailored checklists for all the specific categories of permits to make them more streamlined for the inspection process. These checklists will address both items that will be addressed in the field and the review of records and data required for the review of the permitted facility. These checklists will make the data gathered more consistent and will serve as a training tool for new and existing inspectors to make more consistent inspection reports. NDEP will use the NPDES Compliance Inspection Manual while developing checklists and report forms. The use of these new checklists and forms will improve documentation for tracking of compliance determinations.

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**Recommendation:**

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<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1	01/31/2021	NDEP will begin developing a consistent format for construction and industrial stormwater inspection reports that includes the above elements and covers the expectations set forth in the NPDES Compliance Inspection Manual, for Inspectors to document compliance elements that were reviewed, not applicable, or were found not to have concerns.
2	06/30/2021	NDEP will submit the revised format to EPA for review.
3	09/30/2021	NDEP will begin using the new, approved inspection report format when conducting all construction and industrial stormwater inspections.
4	06/30/2022	EPA will review inspection reports for consistency with the required elements as contained in the ND PES Compliance Inspection Manual.

### **CWA Element 3 - Violations**

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#### **Finding 3-3**

Area for Attention

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#### **Recurring Issue:**

No

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#### **Summary:**

50.6% percent of major and non-major facilities demonstrated non-compliance at some time during FY19. 13.4% percent of major and non-major facilities demonstrated SNC at some point during FY19. By the third quarter of FY20, NDEP had reduced SNC to 8.7%.

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#### **Explanation:**

Metric 7k1 measures the percentage of major and non-major facilities in noncompliance and Metric 8a3 measures the percentage of major facilities in Significant Non-Compliance (SNC) and non-major facilities Category I non-compliance during the reporting year. During FY19, 11 facilities were in SNC, consisting of one major facility and 10 non-major facilities (13%) of which (6) non-major SNC facilities were due to missing DMR data (ICIS also measures non-compliance where facilities have missing data or effluent violations that are not considered in SNC). During FY19, a total of 42 facilities (inclusive of SNC facilities) were in non-compliance (50.6%) of which twenty of those were due to missing DMR data.

The number of facilities in non-compliance is higher than EPA expects. Additionally, NDEP

took no formal enforcement actions against facilities in non-compliance. EPA notes that much of the non-compliance is due to missing or late DMR submissions, many from smaller facilities. NDEP indicated they only have the authority to pursue enforcement actions through a formal and lengthy process generally reserved for large compliance issues with environmental harm. NDEP indicated they do not have the authority to issue smaller penalties such as through an administrative citation or expediated settlement agreement that would be appropriate to address missing or late DMRs. NDEP currently relies on sending multiple emails and offering compliance assistance to obtain compliance.

For the last quarter of 2019, NDEP has improved SNC to 8.7%.

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**Recommendation:** EPA recommends NDEP consider the development of authority and a process for citations or expediated settlements for failure to report DMRs. No recommendations for corrective actions are required because NDEP has already reduced SNC to acceptable levels.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7k1 Major and non-major facilities in noncompliance.	%	18.7%	42	83	50.6%
8a3 Percentage of major facilities in SNC and non-major facilities in Category I noncompliance during the reporting year.	%		11	83	13.4%

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**State Response:**

NDEP is addressing issues in data flow from the Nevada NetDMR system to ICIS to ensure that SNC data obtained is the most accurate. NDEP’s NetDMR system continues to send DMR reminder emails and NDEP staff is proactively contacting facilities to reduce late DMR submittals to further reduce SNC. NDEP is also working with EPA on a quarterly basis to review and address permittees with past SNCs. In FY20, NDEP has reduced the SNC to below 10% and intends to continue to reduce the SNC in facilities.

Upon further consideration of EPA comments related to enforcement authority, it appears important to make clear that NDEP has sufficient enforcement authority in the Water Pollution Control Law to address violations that occur in this program, regardless of severity.<sup>1</sup> Traditionally, NDEP has favored compliance assistance over formal enforcement, and will continue to prioritize formal enforcement efforts toward the more egregious violators. NDEP has noted the EPA recommendations regarding development of a process for issuing citations or expediated settlement agreements.

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<sup>1</sup> NRS 445A.675 – 445A.710 at <https://www.leg.state.nv.us/NRS/NRS-445A.html>

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## **CWA Element 4 - Enforcement**

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### **Finding 4-1**

Meets or Exceeds Expectations

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### **Recurring Issue:**

No

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### **Summary:**

100 % percent of the reviewed enforcement actions resulted in a verifiable return to compliance.

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### **Explanation:**

The information below highlights the number and type of NPDES enforcement actions taken by NDEP during the review year and is not subject to a rating under EPA's SRF protocols.

Metric 9a measures the percentage of enforcement responses that returned, or will return, a source in violation to compliance.

For wastewater, NDEP issued one enforcement action in response to NPDES violations. The action resulted in the facility returning to compliance. Additionally, for one major facility that was in SNC at the end of FY19 into FY20, NDEP issued an enforcement action against that facility in FY20. EPA reviewed the enforcement action but cannot determine at this time that the action will result in a verifiable return to compliance because the enforcement action is ongoing and was therefore not included in this metric.

For stormwater, NDEP concluded four cases against construction stormwater operators in the review year. As part of all four cases, orders citing specific corrective actions were issued to compel a return to compliance.

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### **Relevant metrics:**

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	>=100%		5	5	100%

**State Response:**

NDEP will continue to strive for appropriate enforcement actions.

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**CWA Element 4 - Enforcement**

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**Finding 4-2**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

Enforcement actions taken at major and non-major facilities have been appropriate.

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**Explanation:**

Review Indicator metric 10a1 measures the percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations.

EPA policy dictates that SNC level violations must be addressed with a formal enforcement action (administrative compliance order or judicial action) issued within 5 ½ months of the end of the quarter when the SNC level violations initially occurred.

NDEP FY19 data indicated one major facility in SNC, and no formal enforcement actions taken. EPA evaluated each of the SNC results. One major POTW was in SNC due to one sample exceedance of total residual chlorine. The facility returned to compliance immediately thereafter. EPA concluded the response was appropriate.

Metric 10b measures the percentage of enforcement actions reviewed during the onsite file review that were taken in an appropriate and timely manner. Metric 10b assesses NDEP's enforcement response to any type of violation (SNC or lower-level violations) at any type of facility (major, minor, or general permit discharger). EPA expectations for enforcement response are provided in EPA's EMS Enforcement Response Guide.

For wastewater, two of the files reviewed had a formal enforcement response. EPA found that 2 of the 2 enforcement responses reviewed addressed violations in an appropriate manner. None of the enforcement responses were judicial actions.

For one incident (sewer spill), the enforcement response was timely, with a Finding of Violation issued within 2 months. EPA found the enforcement response addressed violations in an appropriate manner and the response returned the facility to compliance. For the second facility, the non-compliance occurred in FY19/FY20, and enforcement is still ongoing. NDEP issued Finding of Alleged Violation (FOAV) and Order in a timely manner. The FOAV appears appropriate and appears will result in returning the facility to compliance.

EPA notes that neither enforcement action required the respondent to provide a certification statement along with their response. EPA recommends NDEP evaluate the inclusion of a certification statement similar to DMR requirements. (e.g., that “under penalty of law that ... to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations”.)

For stormwater, every inspection that was documented also constituted an informal notification of non-compliance requiring immediate correction. The state followed these inspections with additional inspections recorded in ICIS but not documented on paper. In one case, a formal order was also issued, containing specific corrective actions. There were three cases in which the informal notification was followed by both a formal order and information request, and assessment of a penalty. The timing and level of enforcement in these cases appeared appropriate to the violations.

Suggestions for program improvement: EPA suggests enforcement actions contain a requirement for facility response certification. EPA suggests NDEP develop a process to obtain accurate cost information from facilities for NDEP to make an independent determination of economic benefits. No recommendations for corrective actions are required.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations		%	2	2	100%
10b Enforcement responses reviewed that address violations in an appropriate manner	100%	%	2	2	100%

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**State Response:**

NDEP will continue to ensure that enforcement actions are appropriate.

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## **CWA Element 5 - Penalties**

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### **Finding 5-1**

Area for Improvement

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### **Recurring Issue:**

No

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### **Summary:**

NDEP took four penalty actions in the review year.

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### **Explanation:**

Metric 11a assesses the state's method for calculating penalties and whether it properly documents the economic benefit and gravity components in its penalty calculations.

For wastewater, NDEP assessed one penalty in FY19 for a sewage spill that occurred in FY18. The penalty amount was documented correctly. NDEP concluded there was no associated economic benefit associated with the spill. Although the enforcement response was issued quickly, the penalty does not appear to have been issued in a timely manner, with over one year passing after the facility responded to the FOAV.

EPA was unable to evaluate NDEP's calculation of the economic benefit because the one penalty action reviewed concluded there was no economic benefit associated with a sewer spill. The second formal enforcement action is still in process and a penalty has not yet been addressed. However, the Findings of Alleged Violation (FOAV) and Order included a statement that required the respondent to "provide the economic benefit, if any, realized from" the noncompliance. EPA questions the efficacy of this approach for several reasons. EPA recommends NDEP require the respondent provide the necessary information (e.g., specific capital and maintenance costs needed to achieve compliance) and that NDEP use this data to make its assessment of the economic benefit.

For stormwater, NDEP took three penalty actions in the review year. EPA evaluated all the cases and concluded that although the penalties seem commensurate with those that might be assessed by EPA, it was not possible to further evaluate the penalty calculations. Correspondence between NDEP and respondents, as well as NDEP policies, show that NDEP incorporates economic benefit into its penalty calculations. That said, no such calculations were included in the facility records provided to EPA. EPA was told that as a matter of practice, a meeting is held to discuss and decide upon the penalty. Any notes that are produced at the meeting are not kept as part of the record. Therefore, EPA was unable to review the three stormwater penalty actions



NDEP indicated that its current penalty development process for both wastewater and stormwater is to not retain calculations to keep enforcement decisions confidential. Although EPA acknowledges the desire for confidentiality, EPA recommends that NDEP find a way to maintain more detailed penalty calculations to ensure it is consistent and appropriate application of NDEP’s penalty policies.

Metric 12a assesses whether the state documents the rationale for changing penalty amounts when the final value is less than the initial calculated value. EPA found no change in penalty amounts from the calculated value to the assessed value and therefore no documentation of such actions.

For both wastewater and stormwater, NDEP did not have to change any penalty demands – all offers were accepted as-is.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL: 100%]	>=100%	%	1	1	25 %
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL: 100%]	>=100%	%	0	0	NA

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**State Response:**

NDEP already has written policy that covers both branches of Water Pollution Control that oversee enforcement. This policy requires the consideration of economic benefit when evaluating the settlement offers; therefore, NDEP requests that Rec #1 in the Recommendations table for this finding focus on creating penalty policy amendments related to the type of information needed for an economic benefit analysis to be completed. Near the end of EPA’s completion of SRF Round 3, NDEP staff attended EPA training on use of the BEN model for estimating economic benefit. The material learned at that training has since been applied to enforcement cases. NDEP will begin to document the justification of excluding the economic benefit when that component is not included in the final settlement.

NDEP is going through an agency-wide evaluation of enforcement processes. This process is ongoing and will likely result in changes to several enforcement procedures in the next year, some modifications to language in Order documents has already begun to occur.

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**Recommendation:**

Rec #	Due Date	Recommendation
1	01/31/2021	NDEP will begin developing written policies and procedures for calculating and documenting penalties that ensure economic benefit is included by using the BEN model or equivalent. The policy will cover both wastewater and stormwater penalties and include a requirement to maintain records of how the penalty was calculated. The policy should include a process to obtain accurate cost information from facilities for NDEP to make an independent determination of economic benefits. The policy should ensure enforcement actions are entered into ICIS.
2	06/30/2021	NDEP will submit the penalty calculation and recordkeeping policy for EPA to review.
3	12/31/2021	NDEP will begin using the new penalty calculation and recordkeeping policy.
4	06/30/2022	EPA will review penalty calculation and recordkeeping by reviewing 3 files.

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## CWA Element 5 - Penalties

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### Finding 5-2

Meets or Exceeds Expectations

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### Recurring Issue:

No

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### Summary:

NDEP collected penalties from four penalty actions in the review year.

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### Explanation:

Metric 12b assesses whether the state documents collection of penalty payments. For both wastewater and stormwater, penalty actions were concluded with a closeout letter documenting payment of the penalty.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
12b Penalties collected [GOAL: 100%]	>=100%	%	4	4	100%

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**State Response:**

NDEP will continue to meet this standard.

## Clean Air Act Findings

### CAA Element 1 - Data

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#### **Finding 1-1**

Meets or Exceeds Expectations

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#### **Recurring Issue:**

No

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#### **Summary:**

The file review indicated that compliance-related MDRs, enforcement-related MDRs, and stack tests and related information were timely reported into ICIS-Air.

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#### **Explanation:**

Metric 3b1 measures the timeliness for reporting compliance related MDRs (FCEs and Reviews of Title V ACCs). Clark County reported all 55 of its compliance related MDRs accurately within 60 days.

Metric 3b2 evaluates whether stack test dates and results are reported within 120 days of the stack test. The national goal for reporting results of stack tests is to report 100% of all stack tests within 120 days. Out of the 40 stack tests reported, Clark County reported all the stack tests within 120 days.

Metric 3b3 measures timeliness for reporting enforcement related MDRs within 60 days of the action. Clark County did report enforcement actions into ICIS-Air. The enforcement related MDR reporting resulted in 18 MDRs reported accurately within 60 days (94.7%).

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#### **Relevant metrics:**

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	85.7%	55	55	100%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	69.4%	40	40	100%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	74.4%	18	19	94.7%

**State Response:**

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**CAA Element 1 - Data**

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**Finding 1-2**

Area for Improvement

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**Recurring Issue:**

Recurring from Round 3

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**Summary:**

The file review indicated that information reported into ICIS-Air was inconsistent with the information found in the files reviewed.

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**Explanation:**

Metric 2b evaluates the completeness and accuracy of reported Minimum Data Requirements (MDRs) in ICIS-Air. The national goal is to accurately report 100% of data in ICIS-Air. We reviewed 31 files for data accuracy. We found that seven of the reviewed 31 files were accurately reported. Inaccuracies included dates of activity data (e.g., Title V Annual Compliance Certifications (ACCs) and facility identifiers (e.g., names, addresses). Dates of most annual Full Compliance Evaluation (FCE) performed, when applicable, were correctly reported.

Incorrect and missing data in ICIS-Air potentially hinders targeting efforts, and results in inaccurate and incomplete information being released to the public. For example, informal enforcement actions should be reported in ICIS-Air. For this reason, we request Clark County to diagnose the root cause and address it in a Standard Operating Plan (SOP), as identified in the Recommendation below.

Metric 3a2 measures whether HPV determinations are entered into ICIS-Air in a timely manner (within 60 days) in accordance with the CY 2019 ICIS-Air requirements. According to the metric, neither of the two HPVs reported in CY 2019 were timely reported.

We request Clark County to diagnose the root cause, including processing of information from files to ICIS-Air, and address it in a SOP, as recommended below.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		9	31	29%
3a2 Timely reporting of HPV determinations [GOAL]	100%	42.1%	0	2	0%

---

**State Response:**

Clark County Response, Metric 2b: EPA identified 22 sources with incorrect and missing data in ICIS-Air. For the sources with inaccurate names, addresses, and facility identifiers, Clark County has updated the information accordingly. The sources with inaccurate addresses were originally entered into the AFS mainframe during the preconstruction phase of the facility and have never been altered by Clark County. These source locations were migrated from the AFS mainframe to the ICIS database in or around 2015. Updating addresses was not mentioned in the 2010 SRF nor in any EPA/Clark County quarterly call since then. The 2010 SRF, which was finalized in 2015, stated Clark County met SRF program requirements for data completeness and data accuracy. All sources have now been updated with the correct addresses and current contact information.

In three of the 22 sources that the EPA identified had incorrectly entered data into ICIS-Air, Clark County found that the information entered is consistent with our standard practice and is correct. However, we can acknowledge that the differing procedure for FCE/PCE dates for major and SM-80 sources can get convoluted. Moving forward, Clark County will use the internal closing conference date at the completion of an FCE/PCE for the inspection date entry into ICIS for FCEs and PCEs resulting in formal or informal enforcement action regardless of the source classification. When formal or informal enforcement action is not taken for a FCE, Clark County will use the date of the closing conference with the source which will be in the form of email correspondence. All data inaccuracies identified by EPA have been updated accordingly.

As recommended by EPA, a comprehensive SOP on how to report MDR into ICIS-Air will be developed to ensure the data entered is true and accurate. The SOP will be submitted to EPA for review by the June 30, 2021, deadline.

Clark County Response, Metric 3a2: Clark County standard procedure is to create the case files and enter enforcement actions into ICIS-Air once the NOV's have been adjudicated. This is usually done more than 60 days from the HPV determination. Moving forward, Clark County will create the case file in ICIS-Air within 60 days of HPV determination.

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**Recommendation:**

<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1	06/30/2021	EPA to offer HPV and FRV training to Clark County by June 30, 2021.
2	06/30/2021	Clark County will begin to have quarterly meetings with Region 9 to discuss HPV and FRV requirements, data entry progress and challenges, and ongoing Clark County questions and issues.
3	06/30/2021	EPA Region 9 ICIS-Air Coordinator to offer a training on ICIS-Air reporting to Clark County by June 30, 2021.
4	03/01/2022	<p>Clark County will develop a Standard Operating Procedure (SOP) on how to report the MDR data into ICIS-Air for EPA approval.</p> <ol style="list-style-type: none"> <li>1. The SOP should identify the problems/root causes that hinder complete/timely/accurate data reporting and address how such problems can be addressed.</li> <li>2. Clark County will submit SOP to EPA by June 30, 2021.</li> <li>3. The SOP will be reviewed by EPA and approved by July 31, 2021.</li> <li>4. Clark County will implement the approved SOP by September 30, 2021. All previous data from 2014 to present will be entered into ICIS-Air, and all future data will comply with the SOP.</li> </ol> <p>Clark County will perform an annual evaluation to determine efficiency and accuracy MDR data being entered into ICIS-Air through CY 2021 by March 1, 2022.</p>

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**CAA Element 2 - Inspections**

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**Finding 2-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

Clark County has conducted FCEs of the CMS source universe for Clark County, Nevada, that met expectations.

Clark County completed the required reviews for each Title V ACC. Clark County entered the Title V ACCs into ICIS-Air, resulting in a high achievement rate in metrics.

Clark County's compliance monitoring reports (CMRs) were satisfactory. Clark County consistently covered relevant information, such as assessing process parameters and control equipment parameters, in the reviewed reports.

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**Explanation:**

This element evaluates whether the negotiated frequency for compliance evaluations is being met for each source. Clark County met the national goal for the relevant metrics. Clark County met the negotiated frequency for conducting FCEs of Title V Major Sources, Mega-Sites, and SM80s. Clark County ensured each major source was evaluated with an FCE once every two years, each Mega-Site once every three years, and each SM80 once every five years. EPA notes that Clark County has satisfactorily performed FCEs at major facilities. Clark County has kept the CMS source universes and CMS plan up to date in ICIS-Air.

This element evaluates whether the delegated agency has completed the required review for Title V ACC. Based on the files reviewed, Clark County completed the required reviews of the Title V ACC as part of annual FCEs for all facilities.

Only one CMR did not document all required FCE elements to determine whether Clark County reviewed a facility's compliance accurately and comprehensively. Per EPA policy, stack test report reviews are needed to complete an FCE. Additionally, inspection reports included enforcement history, a basic element that was included per the CMS Policy.

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**Relevant metrics:**

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
5a FCE coverage: majors and mega-sites [GOAL]	100%	87%	16	16	100%
5b FCE coverage: SM-80s [GOAL]	100%	93%	6	6	100%
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	86.1%	32	32	100%
6a Documentation of FCE elements [GOAL]	100%		24	25	96%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		24	25	96%

**State Response:**

Clark County Response, Metric 6a and 6b: Upon further review of the enforcement record for the Las Vegas Paving Lone Mountain source, Clark County determined that the CMR in question documented all required FCE elements. The stack test report review was conducted for this CMR, and there was an enforcement action for failing to conduct the performance testing. EPA acknowledged in email correspondence dated November 18, 2020, that they will review this finding and clarify the language in the report. [EPA acknowledges the county’s comment on the completeness of the report in question and our subsequent communication on this issue. We appreciate the County’s efforts to review this file. After reviewing, EPA confirms that findings for metrics 6a and 6b included insufficient data. The results of this Finding 2-3, remains “Exceeds Expectations”.]

**CAA Element 3 - Violations**

**Finding 3-1**

Meets or Exceeds Expectations

**Recurring Issue:**

No

**Summary:**

Compliance determinations are accurately made in most instances. The compliance determinations are often reported into ICIS-Air based on the CMRs and other compliance monitoring information reviewed.

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**Explanation:**

Metric 7a is designed to evaluate the overall accuracy of compliance determinations. In 30 out of 31 files reviewed, Clark County provided an appropriate level of detail in inspection reports for an FCE. This allowed for an appropriate determination of compliance.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		30	31	96.8%

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**State Response:**

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**CAA Element 3 - Violations**

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**Finding 3-2**

Area for Attention

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**Recurring Issue:**

No

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**Summary:**

Compliance determinations are accurately made in most instances.

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**Explanation:**

Metric 8c focuses on the accurate identification of violations that are determined to be HPVs.

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**Relevant metrics:**

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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
8c Accuracy of HPV determinations [GOAL]	100%		11	15	73.3%

**State Response:**

Metric 8c: The sources that EPA identified as having wrong determinations are LVP Lone Mountain, Nevada Ready Mix, Republic Services, and Robertson’s 15 Ready Mix. Clark County agrees with EPA’s assessment for three of the four files. However, for Robertson’s Ready Mix, while Clark County agrees that the HPV policy does not exclude SM-80 sources in the CMS plan, this source is not classified as a major HAPs source and therefore, per HPV criteria number 4, the violation for failure to conduct subsequent performance testing of the diesel fired engine required by 40 CFR 63 Subpart ZZZZ would not be classified as an HPV. Also, subsequent performance tests on two baghouses and the subsequent testing are not required by NSPS or major source NESHAP, therefore it was not designated as an HPV in ICIS-Air, per HPV criteria number 5.

**CAA Element 3 - Violations**

**Finding 3-3**

Area for Improvement

**Recurring Issue:**

No

**Summary:**

Compliance determinations are accurately made in most instances.

**Explanation:**

To note, Clark County issues warning letters as a warning for violations, which are considered informal enforcement actions if they are not FRVs. A warning letter can also be considered an FRV, where applicable. Clark County has not reported the warning letters in ICIS-Air, though EPA policy is to report all informal and formal enforcement actions into ICIS-Air.

EPA will provide Clark County with FRV and HPV training to increase their accuracy of HPV determinations.

**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
13 Timeliness of HPV Identification [GOAL]	100%	90.6%	1	2	50%

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**State Response:**

Clark County Response, Metric 13: Clark County will ensure that entry of the HPV determinations is timely.

Clark County will also develop an SOP as recommended by EPA to ensure warning letters are reported into ICIS-Air when the violation is determined to be an FRV.

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**Recommendation:**

Rec #	Due Date	Recommendation
1	06/30/2021	Clark County will take FRV, and HPV training provided by Region 9 by June 30, 2021.
2	06/30/2021	Clark County will develop an SOP to ensure warning letters are reported into ICIS-Air when the violation is determined to be an FRV.

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**CAA Element 4 - Enforcement**

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**Finding 4-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

EPA's review found that most of Clark County's enforcement actions of HPVs or FRVs did address and resolve the issues in a timely manner.

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**Explanation:**

EPA found that one of the 15 case files reviewed contained enforcement actions that did not result in timely compliance. Metric 9a is designed to evaluate whether the agency takes formal enforcement actions that return facilities to compliance. For 14 of the 15 files reviewed (93.3%), Clark County issued a Notice of Violation (NOV), considered to be formal information actions, which required the facilities to return to compliance. There was one facility that was not returned to compliance in the time frame of the file review. This facility filed for Chapter 11 restructuring bankruptcy and has been in ongoing noncompliance. Clark County has continued to inspect and evaluate the compliance status of this facility and issued multiple NOVs in 2019 and 2020. The Chapter 11 restructuring bankruptcy may affect how and when the facility pays the required civil penalties and returns to compliance. Clark County recently held an administrative hearing according to their enforcement policy, for the most recently issued NOV, on September 17, 2020.

Metric 10a is designed to evaluate the extent to which the agency takes timely action to address HPVs. EPA reviewed files from FY 2018 and FY 2019 to understand how Clark County addressed HPVs. All four files reviewed (100%) that included HPVs, demonstrated that Clark County addressed all four files with HPVs in a timely manner.

Metric 10b is designed to evaluate the extent to which the agency takes appropriate enforcement responses for HPVs. All four files reviewed (100%) had appropriate enforcement responses and resolutions for the HPVs.

Metric 14 is designed to evaluate the timeliness of case development and resolution involving HPVs according to the HPV Policy. This policy measures HPVs that are not addressed, or otherwise have had a case completion within 180 days from the time of violation. According to the policy, the case development and resolution timeline is 180 days. All four files reviewed with HPVs were found to be resolved within the 180-day time frame therefore, this metric was nonapplicable.

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**Relevant metrics:**

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<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
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%		14	15	93.3%
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%	47.8%	4	4	100%
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%	7.9%	4	4	100%

**State Response:**

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**CAA Element 5 - Penalties**

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**Finding 5-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

Clark County's files included penalty calculations that documented rationale in penalty changes and collection of final penalty.

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**Explanation:**

Metric 12a is designed to evaluate the extent to which the agency documents the rationale for the difference between the initial and final penalty. This metric applied to only one facility in Clark County and the file review found that the Agency explained the rationale between the differences in initial and final penalty.

Metric 12b is designed to evaluate whether there is documentation that the final penalty was collected. Out of fifteen files reviewed, they each had a unique invoice listing the payment type and date received by Clark County.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		1	1	100%
12b Penalties collected [GOAL]	100%		14	15	93.3%

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**State Response:**

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**CAA Element 5 - Penalties**

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**Finding 5-2**

Area for Improvement

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**Recurring Issue:**

Recurring from Round 3

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**Summary:**

Clark County's files included penalty calculations that documented gravity but failed to include a standard economic benefit calculation in its penalty assessment.

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**Explanation:**

The File Review indicated that fifteen cases in CY 2019 had been closed with a penalty. The review looked back to CY 2018-2019 to gather enough data to review this metric.

Metric 11a is designed to discuss the penalty calculations and whether gravity and economic benefit is documented in the case file. Each reviewed file followed Clark County's standard operating procedure (SOP) for penalty calculations. The use of gravity was expressed in detail in Clark County's SOP. Economic benefit was not discussed in the SOP and not included in penalty calculations. To address this, Clark County will develop an economic benefit portion of the penalty calculation policy moving forward.

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**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%		0	15	0%

**State Response:**

Clark County finalized our current penalty procedure for stationary sources in May 2019 where we identified that economic benefit is an area that requires attention. Clark County will revise our procedure to include an economic benefit calculation on a case-by-case basis for sources subject to the CMS plan where there is sufficient proof of economic benefit. Clark County is requesting examples of NOV's where economic benefit has been calculated as well as supporting documentation to assist Clark County with developing its SOP. Upon finalization, Clark County will provide the SOP to EPA.

**Recommendation:**

Rec #	Due Date	Recommendation
1	06/30/2021	Clark County will submit to EPA for review and approval an SOP to include the penalty calculation of both the gravity and economic benefit, by June 30, 2021. A final SOP should be agreed by September 30, 2021.
2	09/30/2021	By this date, Clark County will submit 5 to 10 files with penalties, to ensure Clark County is implementing the SOP. If by this date, there are less than 5 files with penalties, Clark County will work with EPA to determine a 3–6-month extension to the schedule.