

STATE REVIEW FRAMEWORK

New Hampshire

Clean Air Act and Resource Conservation and Recovery Act (FFY 2019) Implementation in Federal Fiscal Year 2020

**U.S. Environmental Protection Agency
Region 1, Boston**

**Draft Report
September 8, 2022**

Executive Summary

Introduction

EPA Region 1 enforcement staff conducted a State Review Framework (SRF) compliance and enforcement program oversight review of the New Hampshire Department of Environmental Services (NHDES.)

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

Areas of Strong Performance

- NHDES does an excellent job of entering minimum data reporting requirements (MDRs) into ICIS-Air and RCRAInfo in a timely manner.
- NHDES does an excellent job of entering complete and accurate MDRs into ICIS-Air and RCRAInfo.
- NHDES has taken advantage of CMS flexibilities in the CAA program, with regards to the Covid-19 pandemic, and did an excellent job ensuring inspection coverage at all CMS sources.
- NHDES inspectors write very comprehensive and thorough inspection reports covering both state and federal regulations.
- NHDES does an excellent job identifying violations through inspections/report and record reviews/stack tests and permit renewal application reviews for federally reportable violators/high priority violators (FRVs/HPVs) in the CAA program and Significant Non-Compliers (SNCs) in the RCRA Program and takes timely and appropriate enforcement actions to address the violations identified.
- NHDES does an excellent job of including, in its informal and/or formal enforcement actions, corrective actions needed for a source to return to compliance, and in many cases, a source has returned to compliance prior to any enforcement being taken due to the implementation of an "early warning notice" program.
- NHDES does an excellent job of assessing penalties and documenting the collection of penalties for the formal enforcement actions it takes. The penalties associated with formal enforcement actions taken include gravity and economic benefit, where appropriate.

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I. Background on the State Review Framework

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

- Clean Air Act Stationary Sources (Title V)
- Resource Conservation and Recovery Act Subtitle C

Reviews cover:

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

EPA conducts SRF reviews in three phases:

- Analyzing information from the national data systems in the form of data metrics
- Reviewing facility files and compiling file metrics
- Development of findings and recommendations

EPA builds consultation into the SRF to ensure that EPA and the state understand the causes of issues and agree, to the degree possible, on actions needed to address them. SRF reports capture the agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state programs.

Each state's programs are reviewed once every five years. The first round of SRF reviews began in FY 2004. The fourth round of reviews began in FY 2018 and will continue through FY 2023.

II. SRF Review Process

Review period: 2020

Key dates: File Reviews -Air:
June 6 -9, 2022

File Reviews – RCRA:
May 15-16, 25, 2022

State and EPA key contacts for review:

Clean Air Act

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Resource Conservation and Recovery Act

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State Review Framework (EPA Region I Management)

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III. SRF Findings

Findings represent EPA’s conclusions regarding state performance and are based on findings made during the data and/or file reviews and may also be informed by:

- Annual data metric reviews conducted since the state’s last SRF review
- Follow-up conversations with state agency personnel
- Review of previous SRF reports, Memoranda of Agreement, or other data sources
- Additional information collected to determine an issue’s severity and root causes

There are three categories of findings:

Meets or Exceeds Expectations: The SRF was established to define a base level or floor for enforcement program performance. This rating describes a situation where the base level is met and no performance deficiency is identified, or a state performs above national program expectations.

Area for State Attention: An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, the state should correct the issue without additional EPA oversight. EPA may make recommendations to improve performance, but it will not monitor these recommendations for completion between SRF reviews. These areas are not highlighted as significant in an executive summary.

Area for State Improvement: An activity, process, or policy that one or more SRF metrics show as a significant problem that the agency is required to address. Recommendations should address root causes. These recommendations must have well-defined timelines and milestones for completion, and EPA will monitor them for completion between SRF reviews in the SRF Tracker.

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

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

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

Appendix

[The following information has been furnished by NHDES.]

NHDES

General Program Overview

NHDES is committed to a consistent, predictable and appropriate compliance assurance program, which is protective of public health and the environment while creating a credible deterrent against future violations. NHDES believes that compliance with environmental laws is best ensured by using a multi-tiered, multi-media approach that includes education and outreach, compliance assistance, compliance monitoring, and where appropriate, formal enforcement. Compliance and going beyond compliance are our fundamental goals. NHDES will endeavor to create incentives for compliance and will encourage the regulated community to surpass the minimum requirements of compliance through pollution prevention and innovative technologies.

NHDES seeks to prevent violations of environmental laws and the associated impacts on the environment and public health through education and outreach. When violations occur, NHDES encourages early identification and correction of environmental violations in order to minimize impacts to public health and the environment. NHDES encourages regulated entities to self-report violations to DES, especially if compliance legitimately will take time to achieve. If violations are observed or reported by other than the regulated entity, NHDES ordinarily will notify the responsible party as soon as possible after NHDES becomes aware of the violations. As appropriate, NHDES will offer or recommend assistance to correct violations even while formal enforcement action may concurrently be in development to address them. Where DES identifies trends or patterns of noncompliance, NHDES will investigate root causes and take action as appropriate.

Violators will be held responsible for repairing any environmental damage that they have caused. If remediation is not feasible, NHDES will require the violator to provide or undertake other compensatory measures. NHDES will focus its enforcement efforts to ensure the most positive impact.

Through its outreach and assistance activities, NHDES will encourage greater awareness of the requirements of environmental laws and promote environmental stewardship. Through its compliance actions, NHDES will encourage the regulated community to implement innovative alternatives that provide additional environmental benefits. Through its penalty actions, NHDES will strive to eliminate unfair competitive advantage or other economic benefit gained from the avoidance of environmental requirements. Penalties also will reflect the seriousness of the violation and its impact on the environment and public health.

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Summary:

Both the File Review Metrics and the Data Metric Analysis (DMA) metrics indicate that NHDES does an excellent job of entering required data into ICIS-Air in a timely fashion.

Explanation:

A review of Metric 3a2 of the DMA indicates that NHDES had one newly-identified HPV in FFY 2020, which was entered into ICIS-Air by NHDES in a timely manner (within 60 days of being identified as an HPV).

A review of Metric 3b1 of the DMA indicates that 2 out of 72 compliance monitoring activities (2.8%) were entered into ICIS-Air in an untimely manner (after 60 days of the activity). A total of 1 FCE and 1 annual compliance certification review were reported as being entered late.

A review of Metric 3b2 of the DMA indicates that 2 out of 57 stack tests (3.5%) were reported into ICIS-Air in an untimely manner (after 120 days of the activity).

A review of Metric 3b3 of the DMA indicates that NHDES entered all 11 enforcement-related minimum data requirements (MDRs) into ICIS-Air in a timely manner (100%).

A review of the DMA for Metric 3a2, 3b1, 3b2, and 3b3 indicates that NHDES well exceeded the national average for these metrics. As a result, a “Finding Level” of “Meets or Exceeds Expectations” is appropriate.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
3a2 Timely reporting of HPV determinations [GOAL]	100%	40.6%	1	1	100%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	74.3%	70	72	97.2%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	59.4%	55	57	96.5%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	76.3%	11	11	100%

State Response: It is the NHDES’ goal to complete all required reporting of compliance monitoring data to ICIS-Air in a timely manner. NHDES will continue to review data on a quarterly basis and ensure proper reporting to ICIS-Air.

Recommendation:

Rec #	Due Date	Recommendation
		None

CAA Element 1 - Data

Finding 1-2

Meets or Exceeds Expectations

Summary:

The applicable File Review Metrics, DMA metrics, and Data Verification Metrics (DVM) indicate that NHDES has done an excellent job regarding the completeness and accuracy of data entered into ICIS-Air.

Explanation:

A comparison of Metric 1h1 of the DVM (Total Amount of Assessed Penalties) for FFY 2020 and FFY 2021 (for applicable files reviewed for continuity purposes) with the NHDES information found in its files for this metric for FFY 2020 and FFY 2021 reveals that NHDES accurately reported to ICIS-Air the assessed penalties from all 5 files reviewed that contained formal enforcement with penalties.

A review of Metric 5e of the DMA (Reviews of Title V Annual Compliance Certifications Completed) indicates that NHDES conducted annual compliance certification reviews at 32 out of 32 sources (100%) where Title V annual compliance certifications were due in FFY 2020 and accurately reported this data into ICIS-Air. NHDES well exceeded the national average in this area and met the 100% goal.

A comparison of Metric 7a1 (FRV Discovery Rate Based on Evaluations of Active CMS Sources), for FFY 2020, with the files reviewed where federally-reportable violations (FRVs) should have been identified in FFY 2020, indicates that NHDES reported to ICIS-Air 7 out of 8 FRVs for FFY 2020 (one FRV was not identified as such and therefore not reported to ICIS-Air). In addition, for the 3 files reviewed that contained FRVs identified in FFYs 2018, 2019 and 2021 (1 FRV for each of these off years that were reviewed for other reasons for continuity purposes) and comparing the file information with Metric 7a1, for the appropriate years, indicates that NHDES reported to ICIS-Air these 3 FRVs, as required by EPA policy.

A review of Metric 8a of the DMA (Discovery Rate of HPVs at Major Sources) indicates that NHDES identified 1 HPV in FFY 2020. EPA's file review did not identify any additional HPVs that should have been reported to ICIS-Air (the files reviewed did include 3 additional HPVs, one for each of years 2015, 2018 and 2021, which were reviewed for continuity purposes, that were identified as HPVs by NHDES in the appropriate years).

Based on the file reviews, the following data completeness issues were found: the date 1 full compliance evaluation (FCE) was conducted, based on the file review, did not match the date reported in ICIS-Air (the date reported in ICIS-Air was the date the final report was sent to the facility, which was 7 days after the FCE was conducted); and, the review date for 1 annual compliance certification did not match between ICIS-Air and the file reviewed (NHDES believes the accurate date for this review was initially entered in ICIS-Air, but the date was overwritten months later when an intern was in the file entering additional data).

In total, the information contained in 27 files out of the 30 files reviewed were accurately reflected in ICIS-Air (90.0%).

Based on the above, a “Finding Level” of “Meets or Exceeds Expectations” is appropriate.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		27	30	90.0%

State Response: It is NHDES’ goal to ensure that its data is accurately reflected in ICIS-Air. NHDES will perform quarterly reviews of uploaded data and assess its upload protocols to ensure proper reporting of data. NHDES staff will review applicable EPA policies to ensure that FRVs are properly identified.

Rec #	Due Date	Recommendation
		None.

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

NHDES met all of its CMS Plan FCE commitments (this included 3 Title V major source offsite partial compliance evaluations (Off-site PCEs) that were allowed to replace the required FCEs under the Amendment to NHDES's FFY2020 CMS Plan due to COVID-19. ICIS-Air is not designed to capture the nuance of these flexibilities, so the DMA is under-counting by 3 the total number of major source FCEs conducted in FFY 2020. In addition, EPA granted approval for one Title V major source FCE to be pushed back to FFY 2021. This FCE was conducted in 2021. NHDES well exceeded the national average in this area and met the 100% goal, considering the impacts of COVID-19.

As previously discussed above, in Finding 1-2 of this report, a review of Metric 5e of the DMA (Reviews of Title V Annual Compliance Certifications Completed) indicates that NHDES conducted annual compliance certification reviews for all 32 (100%) of the Title V major sources where annual compliance certifications were due in FFY 2020. NHDES well exceeded the national average in this area and met the 100% goal.

Explanation:

A review of Metric 5a of the DMA (FCE Coverage at Majors and Mega-Sites) indicates that NHDES conducted FCEs at 11 out of 15 Mega-site/Title V major sources required to be inspected with an FCE in FFY 2020. Upon further review, EPA found that 3 of the missing FCEs at major sources were replaced by Off-site PCEs. These Offsite PCEs were allowed to replace the required FCEs under the Amendment to NHDES's FFY2020 CMS Plan due to COVID-19. The amended CMS Plan was approved in writing by EPA. ICIS-Air is not designed to capture the nuance of these flexibilities such that it appears as a discrepancy in the data metrics. Regarding the remaining major source FCE not conducted in FFY 2020, EPA granted NHDES permission to push back this FCE until FFY 2021, via NHDES's amended CMS Plan. NHDES conducted this remaining FCE on August 26, 2021.

A review of Metric 5b of the DMA (FCE Coverage at SM-80s) indicates that NHDES conducted all required FCEs at 26 out of 26 SM-80 sources required to be inspected with an FCE in FFY 2020.

A review of Metric 5e of the DMA (Reviews of Title V Annual Compliance Certifications Completed) indicates that NHDES conducted reviews of 32 out of 32 annual compliance certifications due in FFY 2020.

Based on the above, a "Finding Level" of "Meets or Exceeds Expectations" is appropriate.-

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a FCE coverage: majors and mega-sites [GOAL]	100%	85.7%	14	14	100%
5b FCE coverage: SM-80s [GOAL]	100%	93.6%	26	26	100%
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%	55.3%	0	0	NA
5d FCE coverage: minor facilities that are part of CMS plan. [GOAL]			0	0	NA
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	82.8%	32	32	100%

State Response: It is NHDES’ goal to complete all inspections in a timely manner and to complete reviews of all Title V annual compliance certifications. NHDES is committed to working with EPA to find appropriate alternatives when necessary to ensure that the goal is met.

Recommendation:

Rec #	Due Date	Recommendation
		None.

CAA Element 2 - Inspections

Finding 2-2

Meets or Exceeds Expectations

Summary:

NHDES inspectors did an excellent job writing comprehensive compliance monitoring reports (CMRs) for the FCEs conducted. The CMRs were very detailed and included a template that listed all applicable equipment and all applicable state and federal air regulations that applied to each piece of equipment maintained by a facility. The use of the inspection template is an enhancement to the already well-written narrative report that helps ensure that the inspectors are making full and complete compliance determinations for all applicable state and federal regulations that apply to each piece of equipment maintained by a facility.

Based on the file review, only 1 out of 22 files that contained a CMR for an FCE was found to be incomplete. In this case, NHDES inspectors did not provide an applicability and compliance discussion for a small emergency fire pump engine.

Explanation:

Of the 30 files reviewed, 22 contained CMR reports for FCEs. For 7 out of the 8 remaining files, the files contained informal and/or formal enforcement actions that were based on source self-disclosures or other information where there were no associated CMRs. For the 1 remaining file reviewed, a drive-by FCE was done to confirm that a facility had permanently shut down, which it had, so no formal CMR report was written.

A total of 21 out of 22 CMR reports reviewed (95.5%) were comprehensive and very well written. These 21 CMRs included detailed information that documented accurate compliance determinations for all state and federal regulations that applied to each piece of equipment maintained by each facility. For the remaining file, the CMR was also well written and comprehensive, with the exception of overlooking one small emergency fire pump engine such that the applicability of the engine to either the federal National Emission Standards for Hazardous Air Pollutants for stationary reciprocating internal combustion engines (RICE NESHAP) or the New Source Performance Standards for stationary, compression ignition, internal combustion engines (CI NSPS) could not be ascertained and compliance determinations were not made with regards to applicable recordkeeping and work practice requirements that would have been required by either of the above standards.

NHDES sends each of its final inspection reports to the applicable facility inspected. The final report is typically sent to the source the same day that the report is finalized. This serves as an “early warning notice” to facilities when violations are found. In the past, this “early warning notice” resulted in a finding of “Good Practice”. In 6 of the 14 files reviewed where enforcement was taken, the violation(s) was/were already resolved prior to issuing any informal or formal enforcement action. NHDES should be commended for this practice.

Of the 22 files where CMRs were reviewed for FCEs, 21 of the CMR reports were finalized and sent to the applicable facility inspected within 30 days of the FCE date. The remaining CMR was

finalized and sent to the state 62 days after the FCE date. EPA has a policy that inspection reports should be completed within 60 days of conducting an FCE or PCE. EPA Region I's Air Compliance Section has had a 30-day policy in effect for several years.

Based on the file review, a "Finding Level" of "Meets or Exceeds Expectations" is appropriate.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6a Documentation of FCE elements [GOAL]	100%		21	22	95.5%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		29	30	96.7%

State Response: It is NHDES' goal to ensure that all FCE elements are documented, and reports are completed within 30 days of the FCE. NHDES will review FCE status reports more frequently to ensure that reports are completed in a timely manner. NHDES will ensure that inspectors receive appropriate training and supervision to maintain a high level of thoroughness and accuracy.

Recommendation:

Rec #	Due Date	Recommendation
		None.

CAA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Summary:

NHDES does an excellent job of identifying and documenting violations and making accurate compliance determinations.

For FFY 2020, NHDES identified 1 HPV that was reported to ICIS-Air in a timely manner. EPA's file review did not identify any additional HPVs that should have been reported to ICIS-Air (the files reviewed did include 3 additional HPVs, one for each of years 2015, 2018 and 2021, which were reviewed for continuity purposes, that were identified as HPVs by NHDES in the appropriate years).

Explanation:

In 14 out of the 30 files reviewed, there were actionable violations where either informal and/or formal enforcement actions were taken. In all 14 files reviewed with actionable violations, NHDES made accurate compliance determinations based on inspections, stack test report reviews, permit renewal application reviews and various other types of record and report reviews. In 2 of the remaining files reviewed, documentation found in the files indicated that very minor violations occurred that were resolved very quickly where no enforcement action was deemed necessary. EPA agrees that no enforcement was warranted in these 2 instances. Regarding the review of documentation available from the remaining 14 files, EPA agrees that there were no violations to be identified.

For the 30 files reviewed, NHDES identified and reported to ICIS-Air 4 HPVs, 1 for FFY 2020, and one each for FFYs 2015, 2018 and 2021, which were reviewed for continuity purposes.

For the 30 files reviewed, NHDES identified 7 FRVs. EPA believes 1 additional FRV should have been identified for FFY 2020 regarding an SM80 source with violations of the Area Source Boiler NESHAP standard. There were 3 additional files reviewed where NHDES accurately identified FRVs, one each for FFYs 2018, 2019 and 2021, which were reviewed for continuity purposes.

A review of support Metric 7a1 related to the discovery rate of federally-reportable violators (FRVs) based on inspections at active CMS sources indicates that NHDES was slightly below the national average for this metric.

Based on the above, a "Finding Level" of "Meets or Exceeds Expectations" is appropriate.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		30	30	100%
7a1 FRV ‘discovery rate’ based on inspections at active CMS sources		6.8%	7	170	4.1%
8a HPV discovery rate at majors		2.4%	1	28	3.6%
8c Accuracy of HPV determinations [GOAL]	100%		14	14	100%
13 Timeliness of HPV Identification [GOAL]	100%	83.8%	1	1	100%

State Response: It is NHDES’ goal to ensure that FRVs and HPVs are properly identified in accordance with applicable EPA policies. As shown in the results above, NHDES achieved that goal. NHDES believes that the FRV and HPV discovery rates are an accurate reflection of the fact the sources have not had violations that rise to the level of a FRV or HPV.

Due Date	Recommendation
	None.

CAA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Summary:

NHDES does an excellent job of taking appropriate enforcement for all FRVs identified (i.e., HPVs/FRVs).

Explanation:

NHDES took informal and/or formal enforcement actions against 14 out of the 30 sources selected for a file review (3 of which were for FFY 2021). A total of 8 files reviewed included informal enforcement actions only, 4 files included formal enforcement actions only and 2 file included both an informal and a formal enforcement action.

For the files reviewed where actionable violations were found and informal and/or formal enforcement actions were taken, the enforcement actions included, as necessary, corrective actions to be taken by a facility to achieve or return to compliance. In some instances, NHDES was aware that a violating facility had already returned to compliance prior to issuing an enforcement action, due to its “early warning notice”. In these instances, NHDES would report in its enforcement actions that no further steps were necessary by the violating facility to address/resolve the violations identified.

In 5 out of the 6 files reviewed where formal enforcement was taken, a penalty was assessed. NHDES plans to assess a penalty in the remaining case as well where formal enforcement has already been taken that restricts the use of violating equipment to periods of testing and requires the facility to demonstrate compliance through stack testing before the equipment can be operated commercially.

A review of NHDES’s enforcement activities for FFY 2016 through FFY 2019 indicates that there has been a decrease in enforcement, from a high of 34 enforcement actions reported to ICIS-Air for FFY 2019 to 11 enforcement actions reported to ICIS-Air for FFY 2020. HPV identification has remained steady over this same time frame. It should be noted that due to changes in the national HPV Policy, the number of violations meeting the HPV criteria has decreased.

With regards to addressing HPVs within 180 days of Day 0, NHDES addressed 2 HPVs (1 from 2015 and 1 from 2018, whose files were reviewed for continuity purposes) well before Day 180 (in 1 case in 12 days after Day 0 and in 1 case the same day as Day 0) when NHDES referred the cases to the NH DOJ. For the 2 remaining files reviewed regarding HPVs, 1 HPV (from FFY 2021, whose file was reviewed for continuity purposes) was addressed in 297 days from Day 0 and 1 HPV, from FFY 2020, was addressed in 289 days from Day 0. In each of these two cases, a proper case management plan was in place by Day 225 from Day 0, as required by EPA’s policy entitled “Timely and Appropriate Enforcement Response to High Priority Violators”.

Based on the above, a “Finding Level” of “Meets or Exceeds Expectations” is appropriate.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		4	4	100%
10a1 Rate of Addressing HPVs within 180 days		44.2%	2	4	50%
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		4	4	100%
10b1 Rate of managing HPVs without formal enforcement action		11.8%	0	4	0%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		2	2	100%
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe, or the facility fixed the problem without a compliance schedule [GOAL]	100%		6	6	100%

State Response: It is NHDES’ goal to continue to properly manage FRVs and HPVs in accordance with applicable EPA policies

Due Date	Recommendation
	None.

CAA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Summary:

NHDES does an excellent job of assessing penalties that include both a gravity component and an economic benefit component, where applicable.

NHDES does an excellent job of documenting in their files that penalties have been collected.

Explanation:

NHDES continues to maintain excellent penalty records in its case files. The penalty records document both gravity and economic benefit components of the penalty calculations. When a reduction in penalty is justified for settlement purposes, NHDES includes a description of the penalty adjustment, as well as a justification for the adjustment in the case file. NHDES also keeps excellent records in the case file documenting that the penalty payment has been received.

For 1 file reviewed that included an assessed penalty of \$6,952.00, only \$5,000 of the assessed penalty was collected due to bankruptcy proceedings. NHDES did hire a collection agency to collect the remainder of the penalty to no avail.

In 1 case file reviewed that contained a penalty, NHDES suspended a portion of the penalty assessed in an Administrative Fine by Consent provided that the facility did not violate any provision of the Administrative Fine by Consent within two years of its effective date. In another case file reviewed, which was a judicial case, a portion of the assessed penalty was suspended by the Court.

Based on the above, a “Finding Level” of “Meets or Exceeds Expectations” is appropriate.

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%		5	5	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		5	5	100%
12b Penalties collected [GOAL]	100%		5	5	100%

State Response: It is NHDES’ goal to continue to properly assess and collect appropriate penalties in its enforcement actions in accordance with applicable EPA policies

Due Date	Recommendation
	None.

Resource Conservation and Recovery Act Findings FY 19 Draft 7 31 2022

RCRA Element 1 — Data						
Finding 1-1	Meets or Exceeds Expectations					
Summary	NH DES does an excellent job maintaining accurate data and reporting it in a timely manner into the national database. During the time period reviewed (FFY2019), inspection counts, documentation of violations and enforcement actions were accurate.					
Explanation	Twenty-five files were selected and reviewed to determine the completeness of the minimum data requirements. All of the selected files were accurately represented in the national database.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2b Complete and accurate entry of mandatory data	100%		25	25	100%
State response	NHDES completes the EPA Annual Data Verification to check and correct (if needed) data entered into the RCRAInfo national database for all compliance monitoring evaluation work. In addition, NHDES checks RCRAInfo data on a quarterly basis as reported in MTRS.					
Recommendation	None					

RCRA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations
Summary	<p>For FFY2019, NHDES exceeded the National Average for active Large Quantity Generators (LQGs) at 11.3%. NHDES also inspects generator categories other than LQGs, such as Small Quantity Generators (SQGs), Very Small Quantity Generators (VSQGs), Transporters and Others. Twenty-five inspection files were reviewed. In each instance, the files for these inspections included sufficient information to document the compliance status of the facilities.</p>
Explanation	<p>Each of the twenty-five inspection files reviewed included facility information, a description of RCRA-regulated activities, photographs when appropriate, and supporting information including maps, facility-diagrams, manifest history summaries, and descriptions of processes. In all files, the violations that were cited were supported in the inspection report. NH DES’s inspection procedures ensure that inspectors are completely evaluating each RCRA program element. Of the twenty-five inspection reports, NHDES had final trip report completed within an average of 113 days.</p> <p>A review of Metrics 5b1 of the DMA and relevant RCRAInfo data shows that NHDES met or exceeded the national average in each metric. Further, NHDES spends a considerable amount of time and effort in inspecting non-notifiers, following-up on <u>all</u> citizen-complaints, and in conducting inspections at VSQGs (11 inspections in FY 19), SQGs (6 inspections in FY 19), transporter/Hazardous Waste Transfer Facility 1 inspection in FY 19) and other sites inspected (3 inspections in FY 19). There are no operating TSDFs in NH.</p> <p>Of the twenty-five inspection reports completed during the time period of this SRF, NHDES had a final trip report completed within a timely average of 113 days. Four of the twenty-five inspection reports were completed beyond 150 days due to difficulty getting the documents and analytical results from the inspected facilities to determine if there were violations and these were assigned to a new inspector. One of the five of the twenty-five inspection reports completed beyond 150 days was a facility that was extremely difficult to deal with and did not provide the documents to determine if there were violations. Another one of the twenty-five inspection reports completed beyond 150 days was not a physical site inspection. It was a review of a Limited Permit Application submitted on 5/12/2017. During the review process, NHDES determined the facility was treating hazardous waste that was not identified in the Limited Permit. The Notice of Findings was dated</p>

	3/27/2018 (319 days) and the Report of Limited Permit was dated 5/1/2019 (719 days).					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	5a Two-year inspection coverage of operating TSDFs	100%	89.9%	0	0	0%
	5b1 Annual inspection coverage of LQGs	20%	9.3%	13	148	11.3%
	6a Inspection reports complete and sufficient to determine compliance	100%		25	25	100%
	6b Timeliness of inspection report completion	100%		20	25	80%
State response	In FFY 2019, NHDES had two LQG Flexibility Plans; one for traditional LQGs to inspect 15% (16 facilities) and one for Retail Pharmacy LQGs to inspect 5% (2 facilities). In FFY 19, NHDES inspected 17 traditional LQGs of the universe of 108, and 2 retail pharmacy LQGs of the universe of 36.					
Recommendation	None.					

RCRA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations																																				
Summary	NH DES prepares inspection reports that document compliance status and determine violations and document the observed violations in their inspection records and enforcement responses.																																				
Explanation	Each of the 25 enforcement and confidential files reviewed had accurate and complete descriptions of the violations observed during the inspection and had adequate documentation to support NHDES’s compliance determinations. NHDES finds violations regularly during their inspections. A review of Metrics 7b of the DMA and relevant RCRAInfo data shows that NHDES exceeded the national average in violations found during CEI and FCI compliance inspections.																																				
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>7a. Accurate compliance determinations [Goal]</td> <td>100%</td> <td>%</td> <td>25</td> <td>25</td> <td>100%</td> </tr> <tr> <td>7b. Violations found during CEI & FCI compliance evaluations</td> <td></td> <td>38.9%</td> <td>34</td> <td>39</td> <td>87.2%</td> </tr> <tr> <td>8a. SNC Identification rate at sites with CEI and FCI compliance evaluations</td> <td></td> <td>1.6%</td> <td>1</td> <td>70</td> <td>1.4%</td> </tr> <tr> <td>8c. Appropriate SNC determinations [Goal]</td> <td>100%</td> <td></td> <td>18</td> <td>18</td> <td>100%</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	7a. Accurate compliance determinations [Goal]	100%	%	25	25	100%	7b. Violations found during CEI & FCI compliance evaluations		38.9%	34	39	87.2%	8a. SNC Identification rate at sites with CEI and FCI compliance evaluations		1.6%	1	70	1.4%	8c. Appropriate SNC determinations [Goal]	100%		18	18	100%						
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State Response	NHDES completes a Hazardous Waste Generator Inspection Report for each inspection which is enclosed with all Informal Enforcement Actions. The Inspection Report documents compliance status at the time of the inspection and classifies any violations as Class 1 (more serious) or Class 2 (less serious).																																				
Recommendation	None.																																				

RCRA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations																																									
Summary	NHDES’s has a very strong enforcement program where enforcement actions are brought in a timely manner and return facilities to compliance in a timely manner.																																									
Explanation	<p>NHDES’s practice of issuing a Letter of a Deficiency (where there are outstanding violations that need to be corrected), in advance of formal enforcement, helps to achieve timely compliance to the violations cited, often before the formal enforcement is issued. NHDES can also issue a Notice of Finding to a generator to put them on notice of potential violations and to request additional information.</p> <p>NH DES issues formal enforcement actions to Facilities deemed as SV violators as well as SNC violators. NH DES issues Administrative fines or Civil penalties. Formal actions include: Administrative Fine by Consent (AFC), Notices of Proposed Fines (NPF), Motion to accept Settlement Agreements (MASA) and referrals to the New Hampshire Department of Justice for Civil penalties and Criminal Penalties.</p> <p>Informal Actions include Notice of Past Violation (NPV), , Letters of Deficiency (LOD), Administrative Orders (AO) and Imminent Hazard Orders (IHO).</p> <p>Of the 25 files reviewed, NH DES issued 18 formal enforcement actions with penalties (17 Administrative Fine by Consent and 1 Consent Decree) and there are two facilities that have formal actions in progress.</p>																																									
Relevant metrics	<table border="1"> <thead> <tr> <th data-bbox="483 1356 1008 1430">Metric ID Number and Description</th> <th data-bbox="1008 1356 1089 1430">Natl Goal</th> <th data-bbox="1089 1356 1182 1430">Natl Avg</th> <th data-bbox="1182 1356 1252 1430">State N</th> <th data-bbox="1252 1356 1321 1430">State D</th> <th data-bbox="1321 1356 1414 1430">State % or #</th> </tr> </thead> <tbody> <tr> <td data-bbox="483 1430 1008 1535">9a Enforcement that returns sites to compliance</td> <td data-bbox="1008 1430 1089 1535">100%</td> <td data-bbox="1089 1430 1182 1535"></td> <td data-bbox="1182 1430 1252 1535">20</td> <td data-bbox="1252 1430 1321 1535">20</td> <td data-bbox="1321 1430 1414 1535">100%</td> </tr> <tr> <td data-bbox="483 1535 1008 1619">10a Number of SNY evaluations with timely enforcement</td> <td data-bbox="1008 1535 1089 1619">80%</td> <td data-bbox="1089 1535 1182 1619">78.6%</td> <td data-bbox="1182 1535 1252 1619">0</td> <td data-bbox="1252 1535 1321 1619">1</td> <td data-bbox="1321 1535 1414 1619">0</td> </tr> <tr> <td data-bbox="483 1619 1008 1661">1d2 Number of informal enforcement actions</td> <td data-bbox="1008 1619 1089 1661"></td> <td data-bbox="1089 1619 1182 1661"></td> <td data-bbox="1182 1619 1252 1661">8</td> <td data-bbox="1252 1619 1321 1661"></td> <td data-bbox="1321 1619 1414 1661"></td> </tr> <tr> <td data-bbox="483 1661 1008 1703">1f2 Number of formal enforcement actions</td> <td data-bbox="1008 1661 1089 1703"></td> <td data-bbox="1089 1661 1182 1703"></td> <td data-bbox="1182 1661 1252 1703">35</td> <td data-bbox="1252 1661 1321 1703"></td> <td data-bbox="1321 1661 1414 1703"></td> </tr> <tr> <td data-bbox="483 1703 1008 1776">10b Appropriate enforcement taken to address violations</td> <td data-bbox="1008 1703 1089 1776">100%</td> <td data-bbox="1089 1703 1182 1776">%</td> <td data-bbox="1182 1703 1252 1776">20</td> <td data-bbox="1252 1703 1321 1776">20</td> <td data-bbox="1321 1703 1414 1776">100%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	9a Enforcement that returns sites to compliance	100%		20	20	100%	10a Number of SNY evaluations with timely enforcement	80%	78.6%	0	1	0	1d2 Number of informal enforcement actions			8			1f2 Number of formal enforcement actions			35			10b Appropriate enforcement taken to address violations	100%	%	20	20	100%
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State Response	NHDES has an 2012 EPA approved Hazardous Waste Civil and Administrative Enforcement Response Policy (ERP) that sets standards and guidelines for timely and appropriate enforcement actions.
Recommendation	None.

RCRA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations					
Summary	NH DES has a strong administrative and Civil enforcement program that assesses and collects monetary penalties from both SV and SNC violators.					
Explanation	NH DES uses a penalty matrix approach to determine and document the potential for harm and extent of deviation and brief narratives are included to explain the matrix selected. EPA reviewed 18 penalties, NH DES included the appropriate Economic Benefit and Gravity component in all 18.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	11a Penalty calculations include gravity and economic benefit			18	18	100%
State response	NHDES has a Hazardous Waste Enforcement Manager position that is the lead on coordinating all administrative and civil enforcements for the RCRA program.					
Recommendation	None.					

RCRA Element 5 — Penalties

Finding 5-2	Meets or Exceeds Expectations																		
Summary	NH DES has a strong administrative and Civil enforcement program that assesses and collects monetary penalties from both SV and SNC violators. NH DES includes the rationale for changes in penalties between the initial penalty and the final penalty collected is very specific and fully explains the reason and the extent of the reduction was determined.																		
Explanation	<p>NH DES uses a penalty matrix approach to determine and document the potential for harm and extent of deviation and brief narratives are included to explain the matrix selected.</p> <p>NH DES uses a Base Penalty Computation Table that includes the following: Violations documented in the Inspection report and Letter of Deficiency, Penalty Calculation to include the potential for harm and extent of deviation, Economic Benefit, Total Potential Penalty and Proposed Penalty for Settlement. NHDES uses a Case Closure Memo that documents the enforcement action and includes the final penalty collected.</p>																		
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12a Documentation of rationale for difference between initial penalty calculation and final penalty	100%		18	18	100%														
12b Penalties collection	100%		18	18	100%														
State Response	The NHDES Hazardous Waste Enforcement Program documents all penalty calculations, economic benefits, and penalty reductions to ensure consistent and fair application of any penalties.																		
Recommendation	None.																		