

STATE REVIEW FRAMEWORK

New Jersey

**Clean Water Act, Clean Air Act, and
Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2021**

**U.S. Environmental Protection Agency
Region 2**

**Final Report
December 08, 2022**

I. Introduction

A. Overview of the State Review Framework

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

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

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

B. The Review Process

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

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

II. Navigating the Report

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

A. Metrics

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

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

B. Performance Findings

The EPA makes findings on performance in five program areas:

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

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

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

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

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

C. Recommendations for Corrective Action

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

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

III. Review Process Information

Review period: Fiscal Year 2021

Key dates:

- Kickoff letter sent to state: February 15, 2022
- Kickoff meeting conducted: March 28, 2022
- File selection list sent to state: May 13, 2022
- Data metric analysis sent to state: May 13, 2022
- Onsite file reviews conducted: May – June 2022
- Draft report sent to state: September 22, 2022
- Report finalized: December 8, 2022

State and EPA key contacts for review:

- Dore LaPosta, Director, EPA-ECAD
- Kate Anderson, Deputy Director, EPA-ECAD
- Barbara McGarry, Chief, EPA-ECAD-CAPSB
- Daniel Teitelbaum, Team Leader, EPA-ECAD-CAPSB
- Andrea Elizondo, SRF Coordinator, EPA-ECAD-CAPSB
- Robert Buettner, Chief, EPA-ECAD-ACB
- Nancy Rutherford, Air Data Steward, EPA-ECAD-ACB
- Doug McKenna, Chief, EPA-ECAD-WCB
- Christy Arvizu, Environmental Scientist, EPA-ECAD-WCB
- Lenny Voo, Chief, EPA-ECAD-RCB
- Derval Thomas, Section Chief, EPA-ECAD-RCB
- Kimberly Cahall, Chief Enforcement Officer, NJDEP
- Armando Alfonso, Deputy Chief Enforcement Officer, NJDEP
- Paul Stofa, Chief Advisor, NJDEP
- Richelle Wormley, Director, Division of Air Enforcement, NJDEP
- Carlton Dudley, Director, Division of Water Enforcement, NJDEP
- Michael Hastry, Director, Division of Waste & UST Compliance and Enforcement, NJDEP

Executive Summary

Areas of Strong Performance

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

Clean Water Act (CWA)

NJDEP maintains complete permit limit and discharge monitoring report (DMR) data in the national data system (ICIS-NPDES).

Compliance determinations assessed by inspectors are accurate.

NJDEP consistently documents the rationale for difference between initial penalty calculation and final penalty as well as payments collected.

Clean Air Act (CAA)

NJDEP meets its Full Compliance Evaluation (FCE) commitments for majors, mega-sites and SM80s.

Inspection report documentation is complete and sufficient to determine compliance.

NJDEP consistently documents the rationale for the difference between initial penalty calculation and final penalty as well as collection of penalties.

Resource Conservation and Recovery Act (RCRA)

NJDEP maintains complete and accurate data in the national data system.

NJDEP meets inspection commitments in all categories and inspection reports are timely, complete and sufficient to determine compliance.

NJDEP consistently documents economic benefit, the rationale for the difference between initial and final penalty calculation, and collection of all penalties.

NJDEP generally maintains complete and accurate data in the national data system.

Priority Issues to Address

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

Clean Water Act (CWA)

Some data are missing or inaccurate in the national data system.

File data is not accurately reflected in the national data system.

Some enforcement responses do not address violations appropriately.

NJDEP does not consistently document economic benefit.

Clean Air Act (CAA).

Significant amounts of inspection data are not entered into the national data system and Minimum Data Requirements (MDRs) are not entered timely or accurately.

NJDEP does not consistently document gravity and economic benefit.

Resource Conservation and Recovery Act (RCRA)

Some inspections are not loaded into RCRAInfo and some facilities are incorrectly listed as longstanding secondary violators.

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

NJDEP maintains complete permit limit and discharge monitoring report (DMR) data in the national data system (ICIS-NPDES).

Explanation:

Metric 1b5 shows that 368 (99.5%) of 370 expected permit limits for major and non-major facilities were entered into ICIS-NPDES.

Metric 1b6 shows that 5,013 (98.9%) of expected DMRs for major and non-major facilities were received into ICIS-NPDES during the fiscal year.

In both cases, this is above the national goal of 95%.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
1b5 Completeness of data entry on major and non-major permit limits. [GOAL]	>=95%		368	370	99.5%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	>=95%		5013	5070	98.9%

State Response:

No comments.

CWA Element 1 - Data

Finding 1-2

Area for Improvement

Recurring Issue:

No

Summary:

Some data are missing or inaccurate in the national data system.

Explanation:

The data metric analysis was complicated by the fact that some inspection data were not initially present or accurately represented in ICIS. Data were loaded into ICIS-NPDES after the SRF data freeze date, and some inspections did not transfer from NJEMS to ICIS at all. The issues were categorized as follows:

- Metric 5a1 - numerator adjusted by 12 (4 were entered late, 3 were not entered at all and 5 were miscategorized)
- Metric 5b1 - numerator adjusted by 28 (20 were entered late and 8 were not entered at all)
- Metric 5b2 - numerator adjusted by 57 (37 were entered late and 20 were not entered at all)

NJDEP does not manually enter data in ICIS-NPDES, so the fact that some inspections were missing indicates that the automated data transfer process is unsuccessful in a very small share of cases.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a1 Inspection coverage of NPDES majors. [GOAL]	100%		101	138	73.2%
5b1 Inspection coverage of NPDES non-majors with individual permits [GOAL]	100%		266	469	56.7%
5b2 Inspection coverage of NPDES non-majors with general permits [GOAL]	100% of commitments		900	11503	7.8%

State Response:

During the SRF review process, NJDEP uploaded missing data into ICIS-NPDES. As EPA recognized, NJDEP is largely successful with its automated data transfer process. NJDEP will continue to work with EPA to enhance ICIS-NPDES migration of data and will implement the Recommendations for Finding 1-2.

Recommendation:

Rec #	Due Date	Recommendation
1	02/01/2023	In order to address timeliness, NJDEP will send out a memo reiterating the importance of data entry timeliness and any associated timelines and share a copy with EPA Region 2.
2	03/01/2023	NJDEP will implement a quarterly process to verify that entry of inspections and enforcement actions is complete and send EPA a memo describing the process. EPA Region 2 has a process in which automated activity lists from ICIS-NPDES are shared with managers, who must certify semiannually that these lists are accurate and complete; NJDEP may wish to set up a similar process with NJEMS.
3	03/01/2023	In order to address the data transfer issue, NJDEP will set up an automated process for sending EPA Region 2 a report listing all inspections and enforcement actions in NJEMS. EPA Region 2 will set up an automated process for comparing these lists to ICIS-NPDES, and will work with NJDEP to ensure that any missing data is entered into ICIS before the data verification deadline. This process will be implemented beginning with FY'22 data and successful implementation will be confirmed by EPA Region 2 at the FY'22 data verification deadline.

CWA Element 1 - Data

Finding 1-3

Area for Improvement

Recurring Issue:

No

Summary:

File data is not accurately reflected in the national data system.

Explanation:

Metric 2b shows that 15 (34.9%) of 43 files reviewed had data accurately reflected in the national data system. The inaccuracies were attributed to incorrect use of Single Event Violation (SEV codes), mischaracterization of Notices of Violations (NOVs) and discrepancies in address, enforcement action (EA) dates, and significant deviations in lat/long. The discrepancies in EA dates may be the result of an incorrect field in NJEMS being used to populate ICIS-NPDES.

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%		15	43	34.9%

State Response:

NJDEP will work with EPA to update internal processes to ensure NJEMS can extract the specific Single Event Violation (SEV) codes EPA requires. NJDEP will implement Recommendations 1 and 2 and will coordinate with EPA on Recommendations 3, 4 and 5 for Finding 1-3.

Recommendation:

Rec #	Due Date	Recommendation
1	02/01/2023	NJDEP will issue a memo with instructions for avoiding common data entry errors identified during the review and share a copy with EPA Region 2.
2	02/01/2023	NJDEP will correct the data errors identified in this review and inform EPA Region 2 that the corrections have been made.
3	02/15/2023	EPA Region 2 will verify that the data corrections have been made following the deadline listed in the recommendation above.
4	03/01/2023	EPA Region 2 will meet with NJDEP to discuss their SEV identification procedures and make additional recommendations as appropriate.
5	03/01/2023	EPA Region 2 will work with NJDEP to determine if a data transfer issue is causing inconsistencies in EA dates between NJEMS and ICIS and propose additional recommendations if this is the case.

CWA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

NJDEP meets the inspection commitments for Pretreatment Compliance Inspections (PCI), Concentrated Animal Feeding Operation (CAFO), and Combined Sewer Overflow (CSO), and inspection reports are complete and sufficient to determine compliance at the facility.

Explanation:

Metric 4a1, 4a4 and 4a10 show that 100% of PCI, CAFO and CSO inspections were completed as required by the FY'21 CMS plan.

Metric 6a shows that 44 (100%) of the 44 inspection reports reviewed were complete and sufficient to determine compliance.

Due to the EPA Region 2 Disinvest Directive, NJDEP does not have any CMS commitments related to Metric 4a11 (sludge / biosolid inspections at POTWs).

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL]	100% of commitments		18	18	100%
4a4 Number of CSO inspections. [GOAL]	100% of commitments		23	23	100%
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100% of commitments		2	2	100%
4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL]	100% of commitments		0	0	0

6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%		44	44	100%
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State Response:

We thank the EPA for recognizing that NJDEP meets the inspection commitments for this metric.

CWA Element 2 - Inspections

Finding 2-2

Area for Attention

Recurring Issue:

No

Summary:

NJDEP did not meet inspection commitments for NPDES majors or several other CMS categories, and some inspection reports are not completed timely.

Explanation:

Metric 5a1 shows that NJDEP inspected 101 (73.2%) of 138 NPDES majors required under the FY'21 Compliance Monitoring Strategy (CMS) plan. NJDEP also fell short of its inspection commitments but exceeded 70% of the CMS requirements for Metrics 4a2, 4a5, 4a7 and 4a8. NJDEP has not previously had issues meeting their inspection commitments, and FY'21 results were impacted by the COVID-19 pandemic as well as reorganizations within NJDEP. Thus, EPA Region 2 is citing this as an "Area for Attention."

NJDEP's CMS plan does not include any specific commitments related to metric 5b2 (NPDES non-majors with general permits). Therefore, there is no basis for determination of program performance on this specific metric.

EPA Region 2 plans to discuss NJDEP's CMS commitments while planning for FY'23 and will adjust commitments as appropriate.

Metric 6b shows that 30 (68.2%) of 44 inspection reports reviewed were completed within the prescribed timeframe. On average, reports took 25 days to complete; however, 14 were not completed within 30 days and there were 2 instances in which reports were not reviewed or approved for at least 100 days.

Given that 41 / 44 (93%) of reports met EPA's internal timeliness policy requirement of 60 days for inspection report completion, EPA Region 2 views this as an Area for Attention not requiring significant EPA oversight. NJDEP could consider utilizing a similar system to what is detailed in Recommendation #3 of Finding 1-2 as a way to track the timeliness of inspections if an internal system for alerting managers about upcoming and overdue inspection reports does not already exist.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL]	100% of commitments		80	94	85.1%
4a5 Number of SSO inspections. [GOAL]	100% of commitments		53	71	74.6%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments		280	374	74.9%
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments		252	309	81.6%
5a1 Inspection coverage of NPDES majors. [GOAL]	100% of commitments		101	138	73.2%
5b2 Inspection coverage of NPDES non-majors with general permits [GOAL]	100% of commitments		900	11503	7.8%
6b Timeliness of inspection report completion [GOAL]	100%		30	44	68.2%

State Response:

During FY21, NJDEP inspectors faced significant challenges due to the COVID-19 public health emergency that could not have been anticipated when the CMS plan was developed. Despite those challenges and as EPA acknowledges, NJDEP exceeded 70% of the CMS requirements for Metrics 4a2, 4a5, 4a7 and 4a8.

NJDEP recently effectuated organizational and process changes to its compliance and enforcement programs to better protect the environment and public health. The reorganization was effective as of September 25, 2021 (five days before the conclusion of the federal FY21 review period), and the FY21 results are therefore not reflective of NJDEP's realigned approach to compliance and enforcement. These organizational changes are designed to promote a unified enforcement vision and integrate planning, permitting, compliance and enforcement initiatives within their respective media areas to facilitate compliance and enforcement.

Consistent with NJDEP's focus on promoting an integrated approach to compliance and enforcement, NJDEP is committed to meeting and/or exceeding its inspection commitments while further enhancing its ability to effectuate other commitments set forth herein. NJDEP will coordinate with EPA to assess the CMS commitments and make the appropriate adjustments. DEP

will also proactively evaluate creating a procedure to ensure appropriate prioritization of required inspections. While the overwhelming majority (93%) of reports met EPA's internal timeliness policy requirement, NJDEP strives to improve this metric and agrees to create a report to track the timeliness of inspections to alert managers about upcoming or overdue inspection reports.

CWA Element 2 - Inspections

Finding 2-3

Area for Improvement

Recurring Issue:

No

Summary:

NJDEP does not meet inspection coverage commitments for NPDES non-majors with individual permits or Phase I and Phase II Construction Stormwater Inspections.

Explanation:

Metric 5b1 shows that NJDEP completed 266 (56.7%) NPDES inspections at non-majors with individual permits. NJDEP had committed to completing 469 inspections under the FY'21 CMS plan.

Metric 4a9 shows that NJDEP completed 20 (47.6%) of 42 inspections at Phase I and Phase II Construction Stormwater inspections. NJDEP had committed to completing 42 inspections under the FY'21 CMS plan.

As previously mentioned in Finding 2-2, EPA Region 2 will work with NJDEP to adjust future CMS commitments as appropriate.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments		20	42	47.6%
5b1 Inspection coverage of NPDES non-majors with individual permits [GOAL]	100%		266	469	56.7%

State Response:

NJDEP will coordinate with EPA to assess the CMS commitments and make the appropriate adjustments where appropriate.

Recommendation:

Rec #	Due Date	Recommendation
1	05/15/2023	EPA Region 2 will discuss FY'23 CMS commitments with NJDEP and will work to adjust commitments accordingly. Based on these adjustments, EPA Region 2 and NJDEP shall schedule a mid-year check in on CMS commitments to ensure that sufficient progress is being made. If reasonable progress has not been made at mid-year, NJDEP will document the reason in writing and will submit a plan explaining how the commitments will be met by the end of the fiscal year.
2	11/15/2023	At the conclusion of FY'23, EPA Region 2 will confirm that NJDEP has met its CMS commitments. If the commitments have been met, this recommendation will be closed.

CWA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Compliance determinations assessed by inspectors are accurate.

Explanation:

Metric 7e shows that 44 (100%) of 44 inspection reports reviewed led to an accurate determination.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7e Accuracy of compliance determinations [GOAL]	100%		44	44	100%
7j1 Number of major and non-major facilities with single-event violations reported in the review year.			50		50
7k1 Major and non-major facilities in noncompliance.		16.7%	2993	12094	24.7%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.		6.3%	234	11977	2%

State Response:

We thank the EPA for recognizing NJDEP's successes in making accurate compliance determinations.

CWA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Enforcement responses return facilities to compliance.

Explanation:

Metric 9a shows that all 47 enforcement responses reviewed returned or will return facilities to compliance.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		47	47	100%
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations		18.4%	2	10	20%

State Response:

We thank the EPA for recognizing NJDEP's successes in returning facilities to compliance.

CWA Element 4 - Enforcement

Finding 4-2

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

Some enforcement responses do not address violations appropriately

Explanation:

Metric 10b shows that 31 (60.8%) of 51 enforcement responses reviewed addressed violations in an appropriate manner. Of the 20 enforcement responses that were observed to not have addressed violations in an appropriate manner, nine were for unpermitted discharges. The remaining 11 were instances where NJDEP did not escalate enforcement for recurring violations or instances of non-compliance noted, did not address in the Notice of Violation (NOV) all instances of non-compliance observed by the inspector, or did not take action in a timely manner.

In instances of unpermitted discharge, the Enforcement Management System (EMS) states that the minimum range of response is an Administrative Order or an Administrative Penalty Order. For all files reviewed that had an unpermitted discharge, NJDEP's initial enforcement action consisted of a NOV. Of four facilities with unpermitted discharges, NJDEP followed up on the initial NOV with an administrative penalty order for three facilities.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		31	51	60.8%

State Response:

In three of the four instances of unpermitted discharge, DEP addressed the violations expeditiously through a formal enforcement action after an NOV. NJDEP’s existing practice is to issue an NOV, which can be prepared more quickly than a formal enforcement document, to promote faster compliance and cessation of the environmental harm. As was done in these instances, NJDEP practice is to issue a formal enforcement document shortly thereafter. NJDEP will review the EMS and consult with EPA regarding the issuance of enforcement actions, NOV’s, and timeliness with staff to avoid non-compliance with Metric 10b in the future. In response to this finding, NJDEP will review its procedure for consistency with the EMS and will develop a policy outlining the enforcement response requirements, in accordance with revised Recommendation #1. NJDEP will also ensure compliance with the EMS requirements as outlined in Recommendation #2. In addition, NJDEP’s recent organizational changes to integrate planning, permitting, compliance and enforcement initiatives within their respective media areas will facilitate appropriate compliance and enforcement responses by enhancing coordination.

Recommendation:

Rec #	Due Date	Recommendation
1	03/01/2023	NJDEP will issue updated policy guidance regarding enforcement response requirements consistent with EPA's EMS, particularly related to situations of unpermitted discharge and escalation procedures for cases where compliance is not achieved expeditiously after taking initial action and share a copy with EPA Region 2.
2	10/16/2023	At the conclusion of FY'23, NJDEP's Director of the Division of Water Enforcement will certify to EPA Region 2 that all enforcement actions were completed and issued according to the EMS.

CWA Element 5 - Penalties

Finding 5-1

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

NJDEP does not consistently document economic benefit.

Explanation:

Metric 11a shows that 8 (57.1%) of 15 penalty calculations reviewed considered economic benefit.

This finding continues from Round 3 and was previously addressed through a Memorandum of Agreement between NJDEP and EPA Region 2. It appears that some NJDEP regional offices may be implementing the MOA more consistently than others.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%		8	15	53.3%

State Response:

NJDEP recognizes the importance of ensuring penalty calculations consistently consider economic benefit. NJDEP will review and recirculate the MOA as suggested in revised Recommendation 1 for Finding 5-1. NJDEP will re-educate staff and emphasize the resources that are available on economic benefit and update internal policies and procedures as necessary. In addition, NJDEP will evaluate implementing internal spot checks as an added compliance control.

Recommendation:

Rec #	Due Date	Recommendation
1	02/01/2023	NJDEP will reissue their May 2019 MOA titled "State Review Framework (SRF) Recommendations on the Appropriate Consideration and Documentation of Economic Benefit and Penalty Rationale," reiterate the importance of consistency between NJDEP regional offices and update internal policies and procedures as necessary.
2	11/01/2023	EPA Region 2 will conduct a review of a random subset of penalty files on a quarterly basis concluding at the end of the fiscal year as long as NJDEP's performance remains above 80%. If performance does not improve, EPA Region 2 will discuss additional action items with NJDEP.

CWA Element 5 - Penalties

Finding 5-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

NJDEP consistently documents the rationale for difference between initial penalty calculation and final penalty as well as payments collected.

Explanation:

For Metric 12a, the initial penalty differed from the final in two files, and both (100%) included documentation of the rationale for the difference. As an “Area for Improvement” in Round 3, NJDEP has greatly improved their performance in relation to this metric and was previously addressed through a Memorandum of Agreement between NJDEP and EPA Region 2.

Metric 12b shows that all 11 (100%) enforcement files reviewed included verification of penalty collection.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		2	2	100%
12b Penalties collected [GOAL]	100%		11	11	100%

State Response:

NJDEP thanks EPA for its recognition of NJDEP achieving its goals on penalty collection and documenting penalty rationales.

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

Significant amounts of inspection data are not entered into the national data system and Minimum Data Requirements (MDRs) are not entered timely or accurately.

Explanation:

Through the Data Metrics Analysis process, it was found that significant amounts of compliance monitoring data were missing from the national data system (ICIS-Air). The missing inspection data were categorized as follows:

- Metric 5a - 2 missing major / mega-site inspections
- Metric 5b - 1 missing SM-80 inspection
- Metric 5c - 110 missing minors / synthetic minor (non-SM80) inspections
- Metric 5e - 116 missing Title V Annual Compliance Certification reviews
- Metric 3b2 – 36 missing stack test dates and results

NJDEP's CAA program is the only one of the three programs that continues to manually input data into both NJEMS and the national database. The double data entry is not only time-consuming but introduces more opportunity for errors transferring data between the two data systems. In the case of the missing inspections, an incomplete report was provided to the NJDEP staff responsible for copying data from NJEMS into ICIS-Air. As a result, the records missing from the report were not entered into the national data system.

Metric 2b show that 15 (42.9%) of the 35 files reviewed had accurate MDR data in ICIS-Air. The most prevalent issue is related to Federally Reportable Violation (FRV) dates. The FRV issues were broken down in the following ways:

- FRV dates in ICIS-Air did not match those in NJEMS in 6 instances.
- 8 FRVs were missing from ICIS-Air.

In addition, 4 files were missing North American Industry Classification System (NAICs) codes and 1 file included NAICs codes that were not consistent with ICIS-Air.

For Metric 3b1, 249 (51.5%) of 484 compliance monitoring MDRs were reported timely in ICIS-Air, compared to a national goal of 100%.

For Metric 3b2, 1 (2.44%) of 41 stack tests and stack test results were reported timely. This metric fell from 82.4% in the Round 3 review.

For Metric 3b3, 22 (13.4%) of 164 enforcement MDRs were reported timely, compared to the national goal of 100%.

Both Metrics 3b1 and 3b2 were impacted by NJDEP’s use of the incomplete report pulled from NJEMS for ICIS-Air data entry. All of the compliance monitoring activities listed as “missing” above were entered after the data freeze date and counted as not timely.

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%		15	35	42.9%
3a2 Timely reporting of HPV determinations [GOAL]	100%	35.6%	0	0	0
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	79.2%	249	484	51.4%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	51.1%	1	41	2.4%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	74.2%	22	164	13.4%

State Response:

NJDEP manually inputs data into both NJEMS and the national database. Automated nightly or weekly batch uploading to ICIS-Air would greatly improve timely reporting. NJDEP requests the opportunity to coordinate with EPA to identify opportunities to obtain federal grant assistance to develop automated data batch uploading.

On the EPA finding that some FRV dates in ICIS-Air did not match those in NJEMS, NJDEP clarifies that the FRV date in NJEMS is the date the supervisor locks the document once review is complete. It appears that EPA may define the FRV date differently, and NJDEP welcomes further discussion to ensure alignment.

Currently, the FRV date field in NJEMS is a hidden field. To ensure FRV date reporting going forward, NJDEP plans to retrieve the FRV dates and compile into a report to provide to EPA on a regular basis.

Recommendation:

Rec #	Due Date	Recommendation
1	02/01/2023	EPA Region 2 will schedule a meeting with EPA HQ and NJDEP to determine if NJDEP's CAA data can be batch uploaded into ICIS-Air to alleviate the issue of errors from double data entry. This would also reduce workload for DEP.
2	02/01/2023	EPA Region 2 will share a list of FCEs and enforcement actions (both formal and informal) entered into ICIS-Air with NJDEP prior to the FY'22 data verification deadline in early FY'23.
3	03/15/2023	NJDEP's Director of the Division of Air Enforcement will submit a memo to EPA Region 2 certifying that all data have been entered and verified by the FY'22 data verification deadline.
4	03/01/2023	NJDEP will update and reissue their 2017 memorandum to staff reiterating the importance of timely and accurate data entry and share a copy with EPA Region 2 to confirm resolution of this action item. The memo will address all data entry issues identified in this report.
5	03/01/2023	NJDEP will correct the specific data entry errors identified in this review and send a memorandum to EPA Region 2 confirming that errors have been resolved. EPA Region 2 will then review the corrected data in ICIS-Air to verify completion.
6	11/01/2023	NJDEP will compile all FRV dates from NJEMS and will share this report with EPA Region 2 on a quarterly basis. This report will be used to compare data entered into ICIS-Air. Any discrepancies found will be sent to NJDEP for correction. This process will begin in the second quarter of FY'23 and will conclude at the end of the fiscal year if NJDEP's progress remains at or above 80%. If performance does not improve, EPA Region 2 will discuss additional action items with NJDEP.
7	11/15/2023	EPA Region 2 will conduct a review of a random subset of 10 activities entered into the NJEMS database to confirm that inconsistencies with ICIS-Air have not recurred. Reviews will take place on a quarterly basis beginning in the second quarter of FY'23 and continuing through the end

		of the fiscal year. If performance is above 80%, EPA Region 2 will consider this action closed.
8	03/15/2023	EPA Region 2 will implement a process for sharing reports on data entry timeliness in advance of each quarterly meeting with NJDEP and will add this topic as a standing item on the quarterly meeting agenda.

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

NJDEP meets its Full Compliance Evaluation (FCE) commitments for majors, mega-sites and SM80s.

Explanation:

Metrics 5a and 5b show that NJDEP conducted 90 (125% of goal) FCEs at majors and mega-sites and 41 (102.5% of goal) FCEs at SM80s in FY'21, exceeding their commitments of 72 and 40, respectively. These results are in line with the National Goals and far exceed the National Averages.

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%	86.2%	90	72	125%
5b FCE coverage: SM-80s [GOAL]	100%	92.9%	41	40	102.5%

State Response:

We thank the EPA for recognizing that NJDEP has exceeded its FCE commitments and far exceeded the National Averages.

CAA Element 2 - Inspections

Finding 2-2

Area for Attention

Recurring Issue:

No

Summary:

Title V Annual Compliance Certifications (TVACCs) are not always completed.

Explanation:

Metric 5e shows that 179 (80.6%) of 222 TVACCs were reviewed by NJDEP in FY'21. While the national goal for this metric is 100%, NJDEP's performance in regard to this metric has greatly improved between Round 3 (38.4%) and Round 4. Additionally, NJDEP's performance falls near the national average of 81.1%.

EPA Region 2 will continue quarterly discussions with NJDEP and will check in on the progress of TVACCs during these meetings.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	81.1%	179	222	80.6%

State Response:

As EPA recognized, NJDEP's performance of 80.6% is near the national average of 81.1% and represents a significant improvement from Round 3 and Round 4. To enable NJDEP to achieve the national goal of 100%, NJDEP estimates that it would need additional funding for three full time employees to achieve 100% performance. DEP requests EPA's assistance to identify funding opportunities and looks forward to working with EPA to achieve this goal.

CAA Element 2 - Inspections

Finding 2-3

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Inspection report documentation is complete and sufficient to determine compliance.

Explanation:

Metrics 6a and 6b indicate FCE elements were documented, and sufficient documentation was provided to determine compliance in 25 (100%) of 25 files reviewed. An “Area for State Improvement” in the Round 3 report, NJDEP successfully implemented management controls to ensure that all inspections that are counted as FCEs cover all applicable regulations.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6a Documentation of FCE elements [GOAL]	100%		25	25	100%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		25	25	100%

State Response:

NJDEP thanks EPA for recognizing that NJDEP’s inspection report documentation is complete and sufficient to determine compliance.

CAA Element 2 - Inspections

Finding 2-4

Area for Improvement

Recurring Issue:

No

Summary:

NJDEP does not meet FCE commitments for minor and synthetic minor (non-SM80) sources.

Explanation:

Metric 5c shows that NJDEP completed 174 (57.4%) of the 303 minor and synthetic minor (non-SM80) FCEs committed as part of the 2021 alternative compliance monitoring strategy (CMS). NJDEP has historically met their FCE commitments and expressed that during the COVID-19 public health emergency, NJDEP's ability to conduct on-site, indoor inspections to meet applicable program priorities was impacted because of the need to protect the health and safety of inspectors.

While EPA Region 2 does not expect that this issue will persist, we will track progress in FY'23 through the recommendations below.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%		174	303	57.4%

State Response:

During the COVID-19 public health emergency, NJDEP's ability to conduct on-site, indoor inspections to meet applicable program priorities was impacted by the need to protect the health and safety of inspectors. In addition, NJDEP accepts EPA's recommendations to have a mid-year check in on its CMS commitments, and if necessary, adjust commitments in the event of any unforeseen events. Finally, NJDEP will proactively evaluate additional internal compliance mechanisms and policies to ensure inspection prioritization, including internal spot checks.

Recommendation:

Rec #	Due Date	Recommendation
1	05/15/2023	EPA Region 2 will discuss FY'23 CMS commitments with NJDEP and emphasize the need to adjust commitments in the event of unforeseen circumstances. Based on any adjustments made, EPA Region 2 and NJDEP shall schedule a mid-year check in on CMS commitments to ensure that sufficient progress is being made. If reasonable progress has not been made at mid-year, NJDEP will document the reason in writing and will submit a plan explaining how the commitments will be met by the end of the fiscal year.
2	11/15/2023	At the conclusion of FY'23, EPA Region 2 will confirm that NJDEP has met its CMS commitments. If the commitments have been met, this recommendation will be closed.

CAA Element 3 - Violations

Finding 3-1

Area for Attention

Recurring Issue:

No

Summary:

NJDEP did not identify any HPVs in FY'21.

Explanation:

Metric 8a shows that 0 HPVs were discovered at 247 majors in FY'21 meaning there is no basis on which to make a finding for Metric 13, timeliness of HPV determinations. Additionally, Metric 8c shows that HPV determinations were accurate in 25 (89.3%) of 28 files reviewed. The inaccurate HPV determinations were related to FRVs in the files that were not identified in either NJEMS or ICIS-Air.

EPA Region 2 will work with NJDEP to ensure that the FRV policy is redistributed and will continue to work with the state as needed to ensure that the policy is properly implemented in the future.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a1 FRV 'discovery rate' based on inspections at active CMS sources		7.8%	24	512	4.7%
8a HPV discovery rate at majors		2.8%	0	247	0%
8c Accuracy of HPV determinations [GOAL]	100%		25	28	89.3%
13 Timeliness of HPV Identification [GOAL]	100%	81.4%	0	0	0

State Response:

As noted in Finding 4-1 below, NJDEP's enforcement responses are effective in returning facilities to compliance, and NJDEP's success in this metric likely contributes to the low HPV discovery rate. NJDEP acknowledges that it did not timely report the FRV for the cited three files into ICIS-Air. NJDEP will coordinate with EPA to redistribute the FRV policy and will emphasize the reporting issue to ICIS-AIR within NJDEP's internal Quality Assurance (QA)/ Quality Control (QC).

CAA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Enforcement responses return facilities to compliance.

Explanation:

For Metric 9a, EPA Region 2 found that all 21 (100%) formal enforcement responses reviewed included required corrective action that would return the facility to compliance in a specified time frame or found that the facility had fixed the problem without a compliance schedule. This meets the National Goal of 100% for this metric.

The other metrics under this element concern HPVs. As noted under finding 3-1, NJDEP did not identify any HPVs in FY'21 so no determination can be made for these metrics.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame, or the facility fixed the problem without a compliance schedule [GOAL]	100%		21	21	100%
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		13	13	100%
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		0	0	0
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		0	0	0

State Response:

We thank EPA for recognizing that NJDEP's enforcement responses were effective in returning facilities to compliance.

CAA Element 5 - Penalties

Finding 5-1

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

NJDEP does not consistently document gravity and economic benefit.

Explanation:

For Metric 11a, 4 (21.1%) of 19 penalty calculations reviewed showed consideration of gravity and economic benefit (EB). The details concerning the 15 files not counted in the numerator are as follows:

- 10 files state “no” for the box labeled “EB analyzed?” and provide no justification for the exclusion.
 - 3 files state “no” in a box labeled “EB analyzed?” but have a note stating, “de minimis;” it the wording of the form thus makes it unclear whether EB was or was not considered.
 - 2 files failed to mention EB (no boxes were checked).
-

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%		4	19	21.1%

State Response:

The May 31, 2019, Memorandum of Agreement (MOA), “State Review Framework (SRF) Recommendations on the Appropriate Consideration and Documentation of Economic Benefit and Penalty Rationale” between EPA and NJDEP states that “Justifications for the exclusion of economic benefit calculation include: The benefit component is a de minimis amount.” NJDEP recognizes the importance of ensuring penalty calculations consistently consider economic benefit. NJDEP will coordinate with EPA to implement the recommendations for Finding 5-1. NJDEP will re-educate staff, emphasize the resources that are available on economic benefit and revise internal policies as necessary.

Recommendation:

Rec #	Due Date	Recommendation
1	03/01/2023	EPA Region 2 will meet with NJDEP to determine if their current form should be updated in order to clarify the requirements for economic benefit analysis. If so, NJDEP will submit a draft revised form for EPA review and approval.
2	03/15/2023	NJDEP will update and reissue the May 2019 memorandum of agreement titled “State Review Framework (SRF) Recommendations on the Appropriate Consideration and Documentation of Economic Benefit and Penalty Rationale”, ensuring that it includes guidance for avoiding the common errors observed.
3	04/01/2023	NJDEP will finalize their form in accordance with the discussion mentioned in recommendation #1 and will share a copy with EPA Region 2.
4	11/15/2023	EPA Region 2 will conduct a review of a random subset of penalty files on a quarterly basis concluding at the end of the fiscal year, as long as NJDEP’s performance remains above 80%. If performance does not improve, EPA Region 2 will discuss additional action items with NJDEP.

CAA Element 5 - Penalties

Finding 5-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

NJDEP consistently documents the rationale for the difference between initial penalty calculation and final penalty as well as collection of penalties.

Explanation:

For Metric 12a, all 19 (100%) of penalty calculations reviewed documented the rationale for penalty reduction. This finding is a great improvement from Round 3 and was previously addressed through a memorandum of agreement between NJDEP and EPA Region 2.

For Metric 12b, 18 (94.7%) of 19 files reviewed included documentation establishing that the assessed penalty had been paid.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		19	19	100%
12b Penalties collected [GOAL]	100%		18	19	94.7%

State Response:

No comments.

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

Some inspections are not loaded into RCRAInfo and some facilities are incorrectly listed as longstanding secondary violators.

Explanation:

It was determined that 26 NJDEP inspections were not entered into RCRAInfo. In these instances, NJDEP indicated that they did not receive an error message from RCRAInfo indicating that the file exchange was unsuccessful. (NJDEP's inspection data is automatically transferred into RCRAInfo from NJEMS on a daily basis but occasionally fails to transmit.) After EPA flagged the issue during this review, NJDEP resubmitted the 26 inspections and they were transmitted to RCRAInfo successfully.

For Metric 2a, RCRAInfo listed 98 longstanding secondary violators. After a discussion with NJDEP, it was determined that 82 of the violations had been resolved in NJEMS but were continuing to appear as unresolved in RCRAInfo. This issue has been attributed to an error in data migration from NJEMS to RCRAInfo, and NJDEP has since entered the compliance dates into RCRAInfo manually. The remaining 16 violations have been categorized by NJDEP in the following ways:

- NJDEP added the associated compliance dates for eight sites in both NJEMS and RCRAInfo after the data had been frozen for purposes of this review.
- Two sites included inspection reports that were inadvertently locked with an item marked as being out of compliance when there was no violation. NJDEP has corrected the statuses to “in compliance.”
- Six sites remain open as long-standing secondary violators because they did not attain compliance and have filed hearing requests.

In sum, NJDEP's automated data transfer process is largely successful in accurately populating RCRAInfo, but inspection and violation data fail to transmit in a small number of cases. This results in incomplete compliance data in RCRAInfo and EPA's public-facing ECHO website.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2a Long-standing secondary violators			98		98

State Response:

NJDEP will continue to work with EPA to ensure minimal errors regarding the migration of data to RCRAInfo.

Recommendation:

Rec #	Due Date	Recommendation
1	03/01/2023	EPA Region 2 will work with NJDEP to set up an automated monthly process for transmitting the list of newly entered inspections and “return to compliance” dates in NJEMS to EPA.
2	04/01/2023	EPA Region 2 will implement an automated process for comparing the NJEMS reports to RCRAInfo and will send NJDEP lists of missing inspections for them to resubmit and missing “return to compliance” dates for them to manually enter.
3	04/01/2023	EPA Region 2 will confirm that all inspections, as well as return to compliance dates for all violations have been appropriately entered during FY'22 data verification in early 2023.

RCRA Element 1 - Data

Finding 1-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

NJDEP generally maintains complete and accurate data in the national data system.

Explanation:

Metric 2b shows that mandatory data were accurate and complete for all 36 files reviewed (100%).

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Accurate entry of mandatory data [GOAL]	100%		36	36	100%

State Response:

No comments.

RCRA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

NJDEP meets inspection commitments in all categories and inspection reports are timely, complete and sufficient to determine compliance.

Explanation:

For Metric 5a, NJDEP inspected 16 (100%) of 16 operating TSDFs within a two-year period as required. Metric 5b shows that NJDEP also exceeded the 20% annual inspection coverage requirement for LQGs, by conducting a compliance evaluation inspection (CEI) at 176 (23.8%) of 739 facilities identified as LQGs during the 2019 Biennial Report cycle.

Metric 6a shows that all of the 36 inspection reports reviewed were complete and sufficient to determine compliance. This is a great improvement from Round 3 when it was determined that none of NJDEP's inspection reports met this standard.

In addition to inspection reports being complete and sufficient to determine compliance, Metric 6b shows that 34 (94%) of the 36 inspection reports reviewed were completed timely.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	82.9%	16	16	100%
5b Annual inspection of LQGs using BR universe [GOAL]	20%	12.7%	176	739	23.8%
5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL]	20%		210		210
5d One-year count of SQGs with inspections [GOAL]	100% of commitments%		124		124
5e5 One-year count of very small quantity generators (VSQGs) with inspections	100% of commitments%		78		78
5e6 One-year count of transporters with inspections	100% of commitments%		23		23
5e7 One-year count of sites not covered by metrics 5a - 5e6 with inspections	100% of commitments%		112		112
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		36	36	100%
6b Timeliness of inspection report completion [GOAL]	100%		34	36	94.4%

State Response:

NJDEP thanks EPA for recognizing that NJDEP meets its inspection commitments in all categories for Element 2-1.

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

NJDEP makes timely and appropriate SNC determinations.

Explanation:

Metric 7a shows that NJDEP made accurate compliance determinations for 36 (100%) of 36 inspections reviewed.

Metric 8a shows that NJDEP's SNC identification rate is more than three times the national average, with SNC identified for 34 (4.6%) of the 742 inspections. This is because NJDEP's definition of SNC is broader than EPA's, which is permissible. Metric 8c shows that all 28 SNC determinations reviewed were appropriate.

Additionally, Metric 8b shows that all 49 SNC determinations made by NJDEP in FY'21 were timely.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		36	36	100%
7b Violations found during CEI and FCI inspections		32.4%	113	482	23.4%
8a SNC identification rate at sites with CEI and FCI		1.5%	34	743	4.6%
8b Timeliness of SNC determinations [GOAL]	100%	91.7%	49	49	100%
8c Appropriate SNC determinations [GOAL]	100%		28	28	100%

State Response:

No comments.

RCRA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

NJDEP takes timely and appropriate enforcement to return violations to compliance.

Explanation:

For Metric 9a, EPA Region 2 reviewed 28 enforcement responses that addressed violations and found that all of them (100%) returned violators to compliance. For metric 10b, EPA Region 2 found 28 facilities with violations, and NJDEP took appropriate action to address violations in all cases (100%).

Overall, the national data system indicated that NJDEP took timely enforcement to address SNC in 39 (90.7%) of 43 cases in FY'21, exceeding the National Goal of 80% for Metric 10a.

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%		28	28	100%
10a Timely enforcement taken to address SNC [GOAL]	80%	77.8%	39	43	90.7%
10b Appropriate enforcement taken to address violations [GOAL]	100%		28	28	100%

State Response:

NJDEP thanks EPA for recognizing that NJDEP takes timely and appropriate enforcement action to return violations to compliance.

RCRA Element 5 - Penalties

Finding 5-1Meets or Exceeds Expectations

Recurring Issue:No

Summary:

NJDEP consistently documents economic benefit, the rationale for the difference between initial and final penalty calculation, and collection of all penalties.

Explanation:

For Metric 11a, 25 (92.6%) of 27 penalty calculations reviewed provided sufficient documentation of gravity and economic benefit. Additionally, Metric 12a shows that the rationale for the difference between initial penalty calculation and final penalty was included in 26 (96.3%) of the 27 files reviewed. This is a great improvement from Round 3 where both Metric 11a and 12b were identified as being “Areas for State Improvement.”

Metric 12b shows that 25 (92.6%) of the 27 files reviewed included documentation establishing that the assessed penalty had been paid.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Gravity and economic benefit [GOAL]	100%		25	27	92.6%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		26	27	96.3%
12b Penalty collection [GOAL]	100%		25	27	92.6%

State Response:

No comments.