

# **STATE REVIEW FRAMEWORK**

## **New York**

**Clean Water Act, Clean Air Act, and  
Resource Conservation and Recovery Act  
Implementation in Federal Fiscal Year 2022**

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

**Final Report  
December 14, 2023**

# **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 2022

**Key dates:**

- Kickoff letter sent to state: February 8, 2023
- Kickoff meeting conducted: March 29, 2023
- Data metric analysis sent to state: April 21, 2023
- File selection list sent to state: May 8, 2023
- Onsite file reviews conducted: May – June 2023
- Draft report sent to state: October 5, 2023
- Final report date: December 14, 2023

**State and EPA key contacts for review:**

- Kate Anderson, Acting Director, EPA-ECAD
- Doug McKenna, Acting Deputy Director, EPA-ECAD-WCB
- 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
- Justine Modigliani, Acting Chief, EPA-ECAD-WCB
- Christy Arvizu, Environmental Scientist, EPA-ECAD-WCB
- Lenny Voo, Chief, EPA-ECAD-RCB
- Derval Thomas, Section Chief, EPA-ECAD-RCB
- Scott Crisafulli, Deputy Counsel, Office of General Counsel
- Dena Putnick, Bureau Chief of General Enforcement, Office of General Counsel
- Edward Hampston, Director, Division of Water
- Khai Gibbs, Section Chief, Division of Air Resources, Office of General Counsel
- Chris LaLone, Program Director, Division of Air Resources
- Mark Lanzafarne, Chief, Division of Air Resources
- Daniel Evans, Director, Division of Materials Management
- Thomas Killeen, Supervisor, Division of Materials Management
- Patrick Logan, Senior Attorney, RCRA, Office of General Counsel

# **Executive Summary**

## **Areas of Strong Performance**

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

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

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

NYSDEC meets the inspection commitments for Combined Sewer Overflow (CSO), Sanitary Sewer Overflow (SSO) and Concentrated Animal Feeding Operations (CAFO), and inspection reports are complete and sufficient to determine compliance at the facility.

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

NYDEC meets its Full Compliance Evaluation (FCE) commitments for majors, mega-sites and SM-80s, and Title V Annual Compliance Certifications (TVACCs) are completed.

Inspection report documentation is complete and sufficient to determine compliance.

NYSDEC makes accurate compliance and High Priority Violation (HPV) determinations, and HPVs are identified timely.

Enforcement responses are timely, appropriate, and return facilities to compliance.

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

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

NYSDEC meets inspection commitments in all categories and inspection reports are complete and sufficient to determine compliance.

NYSDEC takes timely and appropriate enforcement actions.

NYSDEC consistently documents economic benefit and the rationale for the difference between initial and final penalty calculation.

NYSDEC's enforcement generally returns violators to compliance and NYSDEC takes timely and appropriate enforcement actions.

NYSDEC generally makes accurate compliance and SNC determinations.

NYSDEC consistently documents economic benefit and the rationale for the difference between initial and final penalty calculation. NYSDEC also consistently documents collection of penalties.

## **Priority Issues to Address**

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

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

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

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

Penalty calculations do not document and include gravity and economic benefit.

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

NYSDEC does not consistently document economic benefit or the rationale for the difference between initial penalty calculation and final penalty.

Minimum data requirements (MDRs) are not entered timely or accurately in the national data system.

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

Inspection reports are not always timely.

NYSDEC does not always make SNC determinations timely.

# Clean Water Act Findings

## CWA Element 1 - Data

### Finding 1-1

Meets or Exceeds Expectations

### Recurring Issue:

No

### Summary:

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

### Explanation:

Metric 1b5 shows that 1368 (100%) of 1368 expected permit limits for major and non-major facilities were entered into ICIS-NPDES.

Metric 1b6 shows that 35,304 (99.2%) 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%	98%	1368	1368	100%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%		35304	35599	99.2%

**State Response:**

NYSDEC appreciates the feedback and takes pride in implementation of our DMR program to document key self-reporting components of the compliance program.

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## CWA Element 1 - Data

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### Finding 1-2

Area for Improvement

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### Recurring Issue:

Recurring from Round 3

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### Summary:

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

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### Explanation:

Metric 2b shows that 25 (58.8%) of 44 files reviewed had data accurately reflected in the national data system.

The inaccuracies were mainly attributed to missing Notices of Violations (NOVs), but EPA observed additional errors in SEV dates or codes, incorrect SCH violation resolution dates, penalty inconsistencies and missing inspection data.

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### 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%		25	44	56.8%

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### State Response:

NYSDEC believes these inaccuracies are of minor nature, however, will work to resolve matters expeditiously. Additionally, due to limited resources, the inaccuracies identified have not been priorities for data management and NYSDEC believe are not indicative of an overall effective compliance program.

In addition to the recommendations below, NYSDEC proposes to engage with EPA R2 through the SNAP process on a strategy to prioritize certain data entry requirements (primarily NOVs and SEVs) that strike a balance between a sufficiently comprehensive data set that accurately represents compliance status and NYSDEC staffing and IT resource constraints.

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**Recommendation:**

<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1	03/01/2024	NYSDEC 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	03/01/2024	NYSDEC will correct the data errors identified in this review and inform EPA Region 2 that the corrections have been made.
3	03/15/2024	EPA Region 2 will verify that the data corrections have been made following the deadline listed in the recommendation above.

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## CWA Element 1 - Data

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### Finding 1-3

Area for Attention

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### Recurring Issue:

No

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### Summary:

Single Event Violations (SEVs) are not always resolved in national data system.

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### Explanation:

During the file review, EPA Region 2 identified six instances in which facilities had SEVs that pre-dated the review period that had not been closed in ICIS-NPDES. At least one of these cases dated back to 2006. NYSDEC was able to immediately correct four of six issues by entering the end dates for the particular SEVs identified.

While not directly related to an SRF metric, unresolved SEVs can impact a facilities' compliance statuses in ECHO; therefore, it is important to strive for data accuracy. As such, EPA Region 2 will work with NYSDEC to ensure that historical SEVs are resolved by providing the state with a full list of unresolved SEVs.

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### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7j1 Number of major and non-major facilities with single-event violations reported in the review year			17		17

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### State Response:

NYSDEC has not prioritized SEV entry into ICIS and this is not a typical part of NYSDEC CWA compliance and enforcement program. NYSDEC notes that these SEV issues pre-date any formal SEV program and represented a pilot use of the ICIS system for SEVs which was initiated to allow NYSDEC to evaluate the ability to utilize this function. NYSDEC proposes to engage with EPA R2 through the SNAP process to determine if a manageable NOV and SEV program can be implemented.

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## **CWA Element 2 - Inspections**

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### **Finding 2-1**

Area for Improvement

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### **Recurring Issue:**

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### **Summary:**

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

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### **Explanation:**

Metric 5a1 shows that NYSDEC inspected 179 (65%) of 275 NPDES majors required under the FY'22 Compliance Monitoring Strategy (CMS) plan.

Metric 4a7, 4a8 and 4a9 show that NYSDEC conducted 10 (42%) of 24 Phase I and II MS4 audits, 10 (12%) of 85 industrial stormwater inspections, and 152 (52%) of 290 Phase I and II construction stormwater inspections required under the FY'22 CMS plan.

Additionally, Metric 6b shows that 20 (66.7%) of 30 inspection reports reviewed were completed within the prescribed timeframe. On average, reports took 30 days to complete; however, of the 10 transmitted after 30 days, there was one instance in which the report was not transmitted to the facility until 263 days after the inspection.

Of the 10 reports that were counted as being over the 30-day deadline, five were inspections conducted by county health departments. After discussion with NYSDEC, EPA was informed that in the case of one county health department in NYSDEC Region 1, inspection reports are mailed within five (5) business days of the inspections, but NYSDEC did not have documentation of the transmitted report. As EPA was unable to verify when the inspection reports were completed and transmitted to the facility due to lack of documentation, these were therefore counted as untimely.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments		10	24	41.7%
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments		10	85	11.8%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments		152	290	52.4%
5a1 Inspection coverage of NPDES majors. [GOAL]	100%		179	275	65.1%
6b Timeliness of inspection report completion [GOAL]	100%		20	30	66.7%

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**State Response:**

NYSDEC notes that inspection metrics exceeded EPA goals in many areas but did not meet the NYSDEC enhanced CMS goals. NYSDEC typically tracks number of unique inspections rather than the number of unique facility inspections. The analysis of this metric was a change in methodology from past development of inspection goals and metric evaluation. NYSDEC will work with EPA for consistent accounting and update our CMS goals. NYSDEC will continue to prioritize several categories to exceed EPA goals.

NYSDEC agrees with the recommended actions below and looks forward to engaging with EPA for improvements in this area.

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**Recommendation:**

<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1	05/15/2024	EPA Region 2 will discuss FY'23 CMS commitments with NYSDEC and will work to adjust commitments accordingly. Based on these adjustments, EPA Region 2 and NYSDEC will 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, NYSDEC 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	12/31/2024	At the conclusion of FY'24, EPA Region 2 will evaluate end of year reporting to determine whether NYSDEC has met its CMS commitments. If the commitments have been met (e.g., 85% - 100% of inspections completed), this recommendation will be closed. If CMS commitments have not been met (e.g., less than 85% completed), EPA Region 2 and NYSDEC will have quarterly updates via established SNAP meetings to discuss/review NYSDEC's progress toward reaching at least 85% across all of its CMS commitments
3	03/01/2024	In order to address the timeliness issue, NYSDEC will draft and transmit a memo to NYSDEC's Regional Offices requiring that all county health department inspection reports conducted on behalf of/in coordination with NYSDEC include copies of the transmittal information. NYSDEC will retain copies of the letters as part of its electronic recordkeeping system. NYSDEC will also share a copy of the previously mentioned memo with EPA Region 2.

## CWA Element 2 - Inspections

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### Finding 2-2

Area for Attention

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### Recurring Issue:

No

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### Summary:

NYSDEC does not always meet inspection commitments for NPDES non-majors with individual permits.

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### Explanation:

Metric 5b1 shows that NYSDEC conducted 413 (72%) inspections of NPDES non-majors with individual permits. Under the FY'22 CMS plan, NYSDEC committed to conducting 570 inspections.

While this is not considered to be an area for state improvement, EPA Region 2 will include this inspection category in the CMS discussion recommended in Finding 2-1.

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### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100%		413	570	72.5%

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### State Response:

NYSDEC notes that several of our CWA inspection goals in CMS exceed EPA goals. As noted in the previous finding, NYSDEC has typically tracked unique inspections as opposed to unique facilities inspections. NYSDEC will work with EPA to re-evaluate CMS goals and inspection tracking. NYSDEC will continue to target inspections in this category exceeding standard EPA Nationwide targets.

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## **CWA Element 2 - Inspections**

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### **Finding 2-3**

Meets or Exceeds Expectations

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### **Recurring Issue:**

No

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### **Summary:**

NYSDEC meets the inspection commitments for Combined Sewer Overflow (CSO), Sanitary Sewer Overflow (SSO) and Concentrated Animal Feeding Operations (CAFO), and inspection reports are complete and sufficient to determine compliance at the facility.

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### **Explanation:**

Metric 4a4 shows that 48 (141%) of 34 CSO inspections were completed as required by the FY'22 CMS plan.

Metric 4a5 shows that 344 SSO inspections were completed in FY'22. EPA utilized the national CMS goal for this category as there was no state-specific commitment in the FY'22 CMS. NYSDEC's performance in this category is 1,186% of the national goal.

Metric 4a10 shows that 114 (88%) of 130 comprehensive large and medium NPDES permitted CAFOs were inspected as required by the FY'22 CMS plan.

Additionally, Metric 6a shows that 31 (96.9%) of 32 inspection reports reviewed were complete and sufficient to determine compliance.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
4a4 Number of CSO inspections. [GOAL]	100% of commitments		48	34	141.2%
4a5 Number of SSO inspections. [GOAL]	100% of commitments		344	29	1186.2%
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100% of commitments		114	130	87.7%
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%		31	32	96.9%

**State Response:**

NYSDEC will continue to make incremental adjustment and improvements to maintain a robust inspection program in these areas.

### CWA Element 3 - Violations

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**Finding 3-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

Compliance determinations assessed by inspectors are accurate.

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**Explanation:**

Metric 7e shows that 28 (84.8%) of 33 inspection reports reviewed led to an accurate determination.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7e Accuracy of compliance determinations [GOAL]	100%		28	33	84.8%
7j1 Number of major and non-major facilities with single-event violations reported in the review year.			17		17
7k1 Major and non-major facilities in noncompliance.		15.6%	2364	6218	38%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.			705	5924	11.9%

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**State Response:**

NYSDEC appreciates the input and strives to provide complete and accurate inspection reports. NYSDEC will continue to seek incremental improvement to maintain this metric.

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## **CWA Element 4 - Enforcement**

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### **Finding 4-1**

Meets or Exceeds Expectations

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### **Recurring Issue:**

No

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### **Summary:**

Enforcement responses return facilities to compliance and address violations appropriately.

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### **Explanation:**

Metric 9a shows that all 92 (100%) enforcement responses reviewed returned or will return facilities to compliance.

Additionally, Metric 10b shows that 81 (89%) of 91 enforcement responses reviewed addressed violations in an appropriate manner.

In these instances, it was found that NYSDEC generally follows their Technical and Operational Guidance Series 1.4.2 (2010), which was established to ensure consistent statewide understanding and implementation of the NPDES compliance and enforcement program.

While there is no goal for Metric 10a1, it is worthwhile to note that all 22 facilities categorized as not having timely enforcement action in response to SNC violations have been tracked by NYSDEC and EPA Region 2 through the quarterly Significant Non-Compliance Action Plan (SNAP) program.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		92	92	100%
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations		20.7%	2	24	8.3%
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		81	91	89%

**State Response:**

NYSDEC appreciates EPA involvement in review of this metric and the continued coordination with the SNAP process.

## CWA Element 5 - Penalties

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### Finding 5-1

Area for Improvement

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### Recurring Issue:

Recurring from Rounds 2 and 3

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### Summary:

Penalty calculations do not document and include gravity and economic benefit.

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### Explanation:

Metric 11a shows that 7 (35%) of 20 penalty calculations reviewed documented and included gravity and economic benefit.

When penalties are assessed, penalties are documented either in calculation worksheets prepared by NYSDEC's Division of Water as part of the case referral and / or in the Office of General Counsel's "NYSDEC Penalty Calculation Adjustment Form." Some penalty calculation forms included actual economic benefit, or a statement indicating that economic benefit had been considered.

Of the 13 actions that excluded economic benefit, six were short form orders issued in batches by NYSDEC's Central Office.

This finding continues from Round 3 and was previously addressed through a Memorandum of Understanding between NYSDEC and EPA Region 2.

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### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%		7	20	35%

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**State Response:**

NYSDEC will review existing policy and guidance with staff, including OGC-11 and TOGS 1.4.2, to seek improvements to this finding.

The Office of General Counsel has conducted training with all Regional Attorneys on November 15, 2023 to review the 2019 Memo listed in Recommendation 1 below, how to calculate Economic Benefit and Gravity factors.

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**Recommendation:**

Rec #	Due Date	Recommendation
1	02/01/2024	NYSDEC will reissue their March 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 NYSDEC regional offices and update internal policies and procedures as necessary. In order for this recommendation to be considered complete, NYSDEC will share the transmitted MOA with EPA Region 2.
2	03/01/2024	NYSDEC will update its short form calculation spreadsheet to include a section for the consideration of economic benefit and will share a copy with EPA Region 2.
3	11/15/2024	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 NYSDEC's performance remains above 80%. If performance does not improve, EPA Region 2 will discuss additional action items with NYSDEC.

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## CWA Element 5 - Penalties

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### Finding 5-2

Meets or Exceeds Expectations

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### Recurring Issue:

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### Summary:

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

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### Explanation:

Metric 12a shows that 13 (86.7%) of 15 enforcement files reviewed documented the rationale for the difference between initial penalty calculation and final penalty. This is a great improvement from Round 3, where NYSDEC's performance stood at 28.6%.

Metric 12b shows that in all 20 (100%) enforcement files reviewed, EPA Region 2 found verification of penalty collection.

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### 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%		13	15	86.7%
12b Penalties collected [GOAL]	100%		20	20	100%

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### State Response:

Noted.

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# Clean Air Act Findings

## CAA Element 1 - Data

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### Finding 1-1

Area for Improvement

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### Recurring Issue:

Recurring from Round 3

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### Summary:

Minimum data requirements (MDRs) are not entered timely or accurately in the national data system.

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### Explanation:

Metric 2b shows that 23 (71.9%) of 32 files reviewed had accurate MDR data in ICIS-Air. While this is a great improvement from Round 3, where NYSDEC performed at 32.4%, there continue to be issues with data accuracy. The inconsistencies were largely attributed to air program and pollutant data. EPA Region 2 found that there were 7 cases where the air programs did not match in ICIS and NYSDEC's Air Facility System (AFS) and 2 additional instances where the pollutants in ICIS-Air did not match AFS.

Metric 3a2 shows that 0 (0%) of 2 HPV determinations were reported timely.

Metric 3b1 shows that 532 (76.2%) of 698 compliance monitoring MDRs were reported timely. While this is a great improvement from Round 3, EPA Region 2 has determined that because this falls below 80% it should be considered an area for state improvement.

Metric 3b2 shows that 69 (67%) of 103 stack tests and stack test results were reported timely.

Metric 3b3 shows that 18 (51.4%) of 35 enforcement MDRs were reported timely.

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**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%		23	32	71.9%
3a2 Timely reporting of HPV determinations [GOAL]	100%	43.9%	0	2	0%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	78.2%	532	698	76.2%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	66.8%	69	103	67%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	78.1%	18	35	51.4%

**State Response:**

NYSDEC acknowledges that there is room for additional improvement to be made in the timely reporting of various MDRs. It is important to note that NYSDEC's performance is in line with the national average for many of the metrics reviewed despite fewer staff in many regional offices and competing workloads for many compliance staff. Regional Air Pollution Control Engineers (RAPCEs) were recently reminded of the reporting requirements of EPA's 2016 *Compliance Monitoring Strategy* and 2014 *Timely and Appropriate Response to High Priority Violations* with respect to reporting deadlines for various compliance and enforcement activities. Additional training will be provided to NYSDEC staff at a later date (see response to Finding 5-1).

Regarding data accuracy, NYSDEC understands that integration issues occasionally lead to inaccurate information remaining in ICIS-Air despite being correct in the AFS database. NYSDEC is committed to providing timely and accurate information to ICIS-Air. Accordingly, NYSDEC has already corrected the MDR discrepancies noted during the 2023 file review (see Recommendation #2 below). Further, the agency continues to seek the potential update or replacement of the AFS database to further improve integration with federal systems.

**Recommendation:**

<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1	02/15/2024	In order to ensure that new management and staff are aware of existing data accuracy and timeliness requirements, NYSDEC will reissue the 2018 memo to Regional Air Pollution Control Engineers (RAPCE) and Field Staff titled "State Review Framework (SRF) Finding: Accurate and Timely ICIS-Air Data Entry."
2	03/01/2024	Within 60 days of finalization of this report, NYSDEC will correct the MDR data discrepancies identified in the FY'22 data and shall inform EPA Region 2 when it has been completed.
3	05/31/2024	EPA Region 2 will hold a retreat with NYSDEC CAA management and staff in order to conduct a root cause analysis for the ongoing data timeliness and accuracy issues. Using the results of the root cause analysis, EPA Region 2 will work with NYSDEC to identify and follow through with additional corrective action items.
4	09/30/2024	To ensure that all management and staff are adequately trained in the national data system, EPA will coordinate with NYSDEC to provide a virtual ICIS-Air training to management and staff.

## CAA Element 2 - Inspections

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### Finding 2-1

Meets or Exceeds Expectations

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### Recurring Issue:

No

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### Summary:

NYDEC meets its Full Compliance Evaluation (FCE) commitments for majors, mega-sites and SM-80s, and Title V Annual Compliance Certifications (TVACCs) are completed.

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### Explanation:

Metrics 5a and 5b show that NYSDEC conducted 201 (95.3%) FCEs at majors and mega-sites, and 96 (93.2%) FCEs at SM-80s. These results are in line with the National Goals and NYSDEC's performance at major and mega-sites exceeds the National Average.

Metric 5e shows that NYSDEC completed 291 (88.7%) reviews of TVACCs in FY'22.

---

### 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%	201	211	95.3%
5b FCE coverage: SM-80s [GOAL]	100%	94.1%	96	103	93.2%
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%		0	0	0
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	82%	291	328	88.7%

**State Response:**

NYSDEC believes inspections and a consistent field presence is the best way to maintain compliance with Title V and SM80 sources. Accordingly, NYSDEC remains committed to the timely completion of its annual FCE obligation and the timely review of annual compliance certifications.

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## CAA Element 2 - Inspections

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### Finding 2-2

Meets or Exceeds Expectations

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### Recurring Issue:

No

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### Summary:

Inspection report documentation is complete and sufficient to determine compliance.

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### Explanation:

Metrics 6a and 6b indicate that FCE elements were documented, and sufficient documentation was provided to determine compliance in 28 (100%) of 28 files reviewed. This is consistent with NYSDEC's performance in the Round 3 SRF review.

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### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6a Documentation of FCE elements [GOAL]	100%		28	28	100%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		28	28	100%

---

### State Response:

NYSDEC acknowledges the importance of accurate and complete documentation for all inspection reports and FCEs.

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### CAA Element 3 - Violations

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#### Finding 3-1

Meets or Exceeds Expectations

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#### Recurring Issue:

No

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#### Summary:

NYSDEC makes accurate compliance and High Priority Violation (HPV) determinations, and HPVs are identified timely.

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#### Explanation:

Metrics 7a and 8c show that NYSDEC made accurate compliance and HPV determinations in all cases reviewed.

Metric 13 shows that 2 (100%) of 2 HPVs were identified timely according to the *Timely and Appropriate Enforcement Response to High Priority Violations Policy*.

---

#### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		31	31	100%
7a1 FRV ‘discovery rate’ based on inspections at active CMS sources		8.1%	9	831	1.1%
8a HPV discovery rate at majors		2.5%	2	358	.6%
8c Accuracy of HPV determinations [GOAL]	100%		16	16	100%
13 Timeliness of HPV Identification [GOAL]	100%	87.8%	2	2	100%

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**State Response:**

NYSDEC understands the importance of identifying and addressing HPVs in a timely manner and remains committed to ensuring HPVs are appropriately prioritized as required by EPA policy.

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## CAA Element 4 - Enforcement

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### **Finding 4-1**

Meets or Exceeds Expectations

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### **Recurring Issue:**

No

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### **Summary:**

Enforcement responses are timely, appropriate, and return facilities to compliance.

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### **Explanation:**

For Metric 9a, EPA Region 2 found that 14 (93.3%) of 15 formal enforcement responses reviewed included required corrective action that would return facilities to compliance in a specified time frame.

For Metric 10a and 10b, EPA Region 2 found that all 11 (100%) formal enforcement responses reviewed were timely in addressing HPVs or having a case development and resolution timeline in place, and were appropriate and consistent with HPV policy.

For Metric 14, EPA Region 2 found that all 6 (100%) HPV Case Development and Resolution Timeliness reviewed contained required policy elements.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule [GOAL]	100%		14	15	93.3%
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		11	11	100%
10a1 Rate of Addressing HPVs within 180 days			0	0	0
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		11	11	100%
10b1 Rate of managing HPVs without formal enforcement action			0	0	0
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		6	6	100%

**State Response:**

NYSDEC acknowledges the need for timely and appropriate enforcement responses that return violators to compliance as quickly as possible.

## CAA Element 5 - Penalties

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### **Finding 5-1**

Area for Improvement

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### **Recurring Issue:**

Recurring from Rounds 2 and 3

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### **Summary:**

NYSDEC does not consistently document economic benefit or the rationale for the difference between initial penalty calculation and final penalty.

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### **Explanation:**

For Metrics 11a and 12a, just 2 (28.7%) of 7 penalty calculations reviewed included economic benefit and 5 (71.4%) of 7 documented the rationale for penalty reduction.

While NYSDEC has improved their documentation of the rationale for penalty reduction since the Round 3 review, their performance still falls short of the National Goal of 100%.

According to the Revisions to the Policy Framework for State/EPA Enforcement Agreements (1993), agencies should document penalties sought, including the calculation of gravity and economic benefit where appropriate. The CAA Stationary Source Civil Penalty Policy (1991) also specified that to achieve deterrence, a penalty should not only recover any economic benefit of noncompliance, but also include an amount reflecting the seriousness of the violation, which is the gravity component.

This finding continues from Rounds 2 and 3 and was previously addressed with a memo to staff of the Office of General Counsel. NYSDEC's CAA program has seen significant management and staff turnover since the last SRF review. This fact has been considered in the following recommended action items.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%		2	7	28.6%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		5	7	71.4%

**State Response:**

NYSDEC recognizes the importance of accurately documenting the gravity and economic benefit component of penalty calculations. As EPA correctly points out, recent staff turnover has highlighted the need to redistribute policy memos and develop new training to ensure that NYSDEC staff are following long-standing penalty policy. Accordingly, NYSDEC recently proposed updates to two Division of Air Resources (DAR) policy documents that deal specifically with penalty calculations. In addition, DAR has begun to develop a training module on the enforcement and case development process, which is expected to be completed soon. The training module will specifically discuss NYSDEC's procedures for documenting penalties, including consideration of economic benefit, among other relevant topics. Once finalized, the training will be provided to regional and central office DAR staff, and a recording will be made for use by future hires.

NYSDEC also notes that a standardized form for documenting the rationale behind each penalty calculation is already in place. As discussed above, the high degree of staff turnover in recent years and EPA's findings during this review have highlighted the need for the redistribution of this document.

The Office of General Counsel has conducted training with all Regional Attorneys on November 15, 2023 to review the 2019 Memo listed in Recommendation 1 below, how to calculate Economic Benefit and Gravity factors.

**Recommendation:**

<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1	02/01/2024	NYSDEC will reissue their March 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 NYSDEC regional offices and update internal policies and procedures as necessary.
2	05/01/2024	Within 120 days of finalization of this report, EPA Region 2 will work with DEC to develop or improve a template to be included as part of the penalty documentation that will provide for the appropriate consideration of gravity and economic benefit. This template will be shared with all appropriate NYSDEC management and staff. A copy of this transmission will also be shared with EPA Region 2. This recommendation will be closed upon completion of all aforementioned actions.
3	09/30/2024	EPA will provide economic benefit training by September 30, 2024. NYSDEC will ensure that all appropriate staff have been required to attend, and will provide EPA Region 2 with a list of attendees following the conclusion of the training.
4	10/31/2024	In order to ensure that future penalty documentation appropriately includes consideration of economic benefit, EPA Region 2 will select a random subset of files to be reviewed following the third and fourth quarters of FY'24. If at least 70% of files meet the requirements set forth by the SRF, this recommendation will be closed.

## CAA Element 5 - Penalties

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### Finding 5-2

Meets or Exceeds Expectations

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### Recurring Issue:

No

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### Summary:

NYSDEC generally documents collection of penalties.

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### Explanation:

For Metric 12b, 6 (85.7%) of 7 files reviewed included documentation establishing that the assessed penalties had been paid.

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### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12b Penalties collected [GOAL]	100%		6	7	85.7%

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### State Response:

NYSDEC will continue to document the timely collection of enforcement penalties.

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# Resource Conservation and Recovery Act Findings

## RCRA Element 1 - Data

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### Finding 1-1

Meets or Exceeds Expectations

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### Recurring Issue:

No

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### Summary:

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

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### Explanation:

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

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### 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:

New York State has committed the resources necessary to maintain complete and accurate enforcement related data within the RCRAInfo database, and grateful that EPA recognizes this within this metric.

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## RCRA Element 2 - Inspections

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### Finding 2-1

Meets or Exceeds Expectations

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### Recurring Issue:

No

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### Summary:

NYSDEC meets inspection commitments in all categories and inspection reports are complete and sufficient to determine compliance.

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### Explanation:

For Metric 5a, NYSDEC inspected 24 (100%) of 24 operating TSDFs within a two-year period as required.

Metric 5b1 shows that NYSDEC also met the 20% annual inspection coverage requirement for LQGs, by conducting a compliance evaluation inspection (CEI) at 68 (19.5%) of 349 facilities identified as active LQGs.

Metric 6a shows that a 37 (100%) of the 37 inspection reports reviewed were complete and sufficient to determine compliance.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	87.6%	24	24	100%
5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL]	20%	8.8%	68	349	19.5%
5d1 Number of SQGs inspected			77		
5e5 One-year count of very small quantity generators (VSQGs) with inspections			174		174
5e6 One-year count of transporters with inspections			13		13
5e7 One-year count of sites not covered by metrics 5a - 5e6 with inspections			88		88
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		37	37	100%

**State Response:**

New York State has reviewed the data associated with the calculation of this data metric and concurs with the numbers presented in this table and continues to strive to attain a twenty percent coverage for our LQG universe.



## RCRA Element 2 - Inspections

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### Finding 2-2

Area for Attention

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### Recurring Issue:

No

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### Summary:

Inspection reports are not always timely.

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### Explanation:

Metric 6b shows that 32 (89%) of 36 inspection reports were completed within the *150-day policy prescribed by the Hazardous Waste Civil Enforcement Response Policy (2003)*.

Following comments and documentation provided by NYSDEC, EPA Region 2 has updated the data included in this metric to reflect minor corrections. The descriptions above reflect these changes.

---

### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6b Timeliness of inspection report completion [GOAL]	100%		32	36	88.9%

---

### State Response:

New York has reviewed the data which generated this metric and believe a minor adjustment for this metric is warranted, although we believe classifying this as an area for attention is warranted. New York has provided within the draft summary worksheet some specific comments on certain facilities which we believe may slightly change the metric calculation and have summarized those comments on an attachment to this submission.

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### RCRA Element 3 - Violations

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**Finding 3-1**

Meets or Exceeds Expectations

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**Recurring Issue:**

No

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**Summary:**

NYSDEC generally makes accurate compliance and SNC determinations.

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**Explanation:**

Metric 7a shows that NYSDEC made accurate compliance determinations in 38 (100%) of the 38 files reviewed.

Metric 8c shows that 16 (100%) of the 16 SNC determinations reviewed were appropriate.

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**Relevant metrics:**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2a Long-standing secondary violators			25		25
7a Accurate compliance determinations [GOAL]	100%		38	38	100%
7b Violations found during CEI and FCI inspections			168	402	41.8%
8a SNC identification rate at sites with CEI and FCI			18	754	2.4%
8c Appropriate SNC determinations [GOAL]	100%		16	16	100%

---

**State Response:**

New York has reviewed the data used to calculate these metrics and find the data to be accurate.

---

## RCRA Element 3 - Violations

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### Finding 3-2

Area for Attention

---

### Recurring Issue:

Recurring from Rounds 2 and 3

---

### Summary:

NYSDEC does not always make SNC determinations timely.

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### Explanation:

Metric 8b shows that 16 (72.7%) of 22 SNC determinations made by NYSDEC in FY'22 were timely. Per the Hazardous Waste Civil Enforcement Response Policy, state agencies should make and report SNC designations within 150 days of the first day of the inspection.

---

### Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
8b Timeliness of SNC determinations [GOAL]	100%	90.9%	16	22	72.7%

---

### State Response:

New York believes that the data used to calculate this metric is correct, however we would like to point out that EPA's national goal is also addressed within their own Hazardous Waste Civil Enforcement Response Policy which includes language shown below which articulated EPAs recognizes that not all enforcement responses can occur quickly and within the specified 150-day time frame. We acknowledge that the designation of this metric as an Area for Attention is appropriate.

“Response times articulated in the ERP should be adhered to by the Regions and States to the greatest extent possible. However, there are recognized circumstances (see discussion below) that may dictate an exceedance of the standard response times. A ceiling of 20% per year has been established for consideration of cases involving unique factors that may preclude the implementing agency from meeting the standard response times. The 20% exceedance figure should be calculated based on the total number of civil cases (administrative and judicial) existing in the Region or State at any given time.”

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**Recommendation:**

<b>Rec #</b>	<b>Due Date</b>	<b>Recommendation</b>
1	03/31/2024	Within 90 days of finalization of the report, NYSDEC will assess the implementation of the August 2020 "Updates to the Hazardous Waste Facility Inspection Process" signed by Daniel Evans to ensure that SNC determinations are made within the prescribed 150-day timeframe.
2	04/30/2024	Within one month of the completion of the previously described assessment, EPA Region 2 will meet with NYSDEC to discuss their findings and will determine if additional action items are required at this time.

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## RCRA Element 4 - Enforcement

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### Finding 4-1

Meets or Exceeds Expectations

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### Recurring Issue:

No

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### Summary:

NYSDEC's enforcement generally returns violators to compliance and NYSDEC takes timely and appropriate enforcement actions.

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### Explanation:

Metric 9a shows that 20 (90.9%) of 22 enforcement files reviewed successfully returned violators to compliance.

Overall, the national data system indicates that NYSDEC took timely enforcement to address SNC in 10 (100%) of 10 cases reviewed, exceeding the National Goal of 80% for Metric 10a.

For Metric 10b, EPA Region 2 reviewed 23 facilities with violations and NYSDEC took appropriate action to address violations in 100% (23) of all cases.

---

### 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%		20	22	90.9%
10a Timely enforcement taken to address SNC [GOAL]	80%		10	10	100%
10b Appropriate enforcement taken to address violations [GOAL]	100%		23	23	100%

---

**State Response:**

New York has reviewed the data associated with this metric and agrees with the calculations. Since the date of the review, one of the facilities within the calculation (metric 9a) has been returned to compliance and work on the additional three facilities is ongoing.

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## RCRA Element 5 - Penalties

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### Finding 5-1

Meets or Exceeds Expectations

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### Recurring Issue:

No

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### Summary:

NYSDEC consistently documents economic benefit and the rationale for the difference between initial and final penalty calculation. NYSDEC also consistently documents collection of penalties.

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### Explanation:

For Metric 11a, 14 (100%) of 14 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 10 (100%) of 10 files reviewed. This is a great improvement from Round 3, where both Metrics 11a and 12b were identified as being “Areas for State Improvement.”

Metric 12b shows that 13 (100%) of 13 files reviewed documented the collection of penalties. While EPA Region 2 has calculated this metric to be 100%, EPA Region 2 will follow up with NYSDEC regarding a case which was referred to the Attorney General's office (as referenced in NYSDEC’s comments below).

Following comments and documentation submitted by NYSDEC (seen below), EPA Region 2 updated the data to reflect minor corrections. The corrections are included in the descriptions above.

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**Relevant metrics:**

<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State %</b>
11a Gravity and economic benefit [GOAL]	100%		14	14	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		10	10	100%
12b Penalty collection [GOAL]	100%		13	13	100%

**State Response:**

New York has reviewed the data associated with the metric and agrees that the calculations are correct, however we believe that the facility which appears as a no for both metric 11a. and 12a. should be classified in this calculation as a NA, since the timeliness of the case as tracked in 8c is appropriately no, we should not have continued failures in subsequent metrics.

We believe there is a calculational error in metric 12b. One particular case included within this metric calculation is a site for which a final order has not yet been completed. Without a final order in place New York believes that tracking penalty payment should not be applicable. In addition, the other facility from which penalties have not been collected has gone out of business and the collection of the penalties has been referred to the Attorney General's office.