

STATE REVIEW FRAMEWORK

Minnesota

Clean Water Act Implementation in Federal Fiscal Year 2022

U.S. Environmental Protection Agency Region 5

**Final Report
January 29, 2024**

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 (FY2008-2011), 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 is to address significant performance issues and bring program performance back in line with federal policy and standards. All recommendations should include specific

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

III. Review Process Information

Clean Water Act (CWA)

The State Review Framework (SRF) file review was conducted in conjunction with the Minnesota Pollution Control Agency (MPCA) between May 15 and June 2, 2023. The Round 4 SRF was conducted for the review period of FY 2022.

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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)

Minnesota's inspection documentation is of high quality.

Minnesota does an outstanding job determining facility compliance.

Minnesota utilizes enforcement action responses that return facilities to compliance.

Minnesota's enforcement responses address non-compliance in an appropriate manner.

Minnesota's penalty calculations were sufficient and included consideration of gravity and economic benefit.

Minnesota documents collection of penalties.

Minnesota does an outstanding job utilizing enforcement to return non-compliant facilities to compliance.

Minnesota's enforcement responses addressed non-compliance in an appropriate manner.

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)

MPCA doesn't report all required data into ICIS.

Finding Summary:

Note that the Round 3 SRF, conducted in 2015-2016, focused on the metallic mining industry. Region 5 chose a focused review in response to a 2015 Petition to Withdraw Minnesota’s NPDES program. Overall NPDES data accuracy and completeness was evaluated, but only mining files were reviewed. The Round 3 finding levels should be viewed in this context.

Metric	Round 3 Finding Level	Round 4 Finding Level
2b - Files reviewed where data are accurately reflected in the national data system [GOAL]	Area for Improvement	Area for Improvement
6a - Inspection reports complete and sufficient to determine compliance [GOAL]	Area for Improvement	Meets or Exceeds Expectations
9a - Enforcement that returns sites to compliance [GOAL]	Area for Improvement	Meets or Exceeds Expectations

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

MPCA doesn't report all required data into ICIS.

Explanation:

The review team found that 14 of 38 or 36.8% of facility files had accurate data reflected in ICIS.

Incomplete data is a long-standing challenge in the NPDES program, for several reasons.

In 2015, MPCA transitioned from one data system (Delta) to a new system (Tempo), and the transition resulted in data flow problems to ICIS. While some problems were resolved quickly, a large number of expired permits and administratively extended permits that were issued before the transition to Tempo are generally not flowing DMR data to ICIS. Permit limit sets and other key features haven't been created for these permits. However, once MPCA issues or re-issues a permit in Tempo, DMR data flows with a high accuracy rate (see Metric 1b6).

MPCA has a permit issuance backlog that has affected the pace of data completeness in ICIS. Metric 1b5 illustrates the difference between the overall number of individual permits in Minnesota versus the actual number of permits that flow complete DMR data from Tempo to ICIS. Currently 70% of all permits have complete data flowing to ICIS. This number is steadily increasing monthly as permits are re-issued.

MPCA manually flows a considerable amount of data to ICIS to ensure that inspections and enforcement data are reflected in ICIS. Due to a state court decision (the 2004 Westrom Decision Minn Stat 13.39), violation and enforcement data are flowed only after an enforcement action is considered complete.

The number of SEVs flowing to ICIS is low. The review team concluded that there may be a few reasons for this, including inconsistent staff documentation of SEVs, and not flowing SEV violations until a case is concluded.

The low number of facility files with complete data (14 / 38) is also due to the fact that data flows for certain classes of permits have not yet been reissued in Tempo and are therefore not flowing to

ICIS. These include MS4s, CAFOs, and Construction Storm water permits. Inspections and enforcement actions for these permits were required under the Phase 1 E-Rule. A supplemental file selection was needed to conduct reviews of facilities in these categories.

The following is a more specific breakdown of the team's observations:

The 11 supplemental files are not flowing data to ICIS.

From the file selection out of ICIS/ECHO (27), 14 had sufficient data, 13 did not.

5 of these files had expired or administratively extended permits and DMR data didn't appear to be flowing.

In 6 of these files, documentation in ICIS is either missing or incorrect compared to file review data. Examples:

Monitoring activity in ICIS is described as a desk audit, but file indicates a CEI was performed.

Reports or informal actions (such as letters of warning) are in the file but not reflected in ICIS.

In 2 files, prohibition of data sharing may have been a factor in documenting timely enforcement in ICIS (i.e., actions were underway but not completed and closed out).

Some files contained more than one of the above issues.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
1b5 Completeness of data entry on major and non-major permit limits. [GOAL]	95%		564	347	61.5%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%	97.1%	12572	12599	99.8%
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%		14	38	36.8%
7j1 Number of major and non-major facilities with single-event violations reported in the review year			5		5

State Response:

The MPCA and EPA discussed our long-term solutions to our data reporting issues in 2021. The following are the outcome of that discussion:

Permit Projections for Individual NPDES Permits not in ICIS-NPDES for wastewaters is to prioritize reissuing permits in the Tempo database triggering that permit level data along with the DMR data to flow to ICIS-NPDES. We will also continue to work with the vendor to establish new payloads and flowing the required data to ICIS. We will also continue to research other avenues for data sharing capabilities.

The vendor capacity for OpenNode 2 development and support is very limited and is likely to decrease in the future. If the MPCA is unable to contract for the development resources needed to meet our current timeline, we will have to reassess our schedule and may need technical assistance from the EPA.

Recommendation:

Rec #	Due Date	Recommendation
1	12/15/2024	MPCA will create a report to Region 5 for sharing data not currently available in ICIS. The report will include MS4 and Construction Storm Water permits summary data, including facility name, location, permit issuance and expiration dates, violations, compliance monitoring and enforcement activities, and penalties, if assessed. (EPA recognizes that MN is prohibited from sharing some data until enforcement actions are complete.) The initial report will cover activities in the 2024 fiscal year.
2	12/19/2025	Submit report to Region 5 as described above for the 2025 fiscal year.
3	12/15/2024	Within one year of finalizing the SRF Report, MPCA will successfully flow all outstanding Phase 1 compliance payloads. MPCA and Region 5 will assess progress 6 months after finalizing the report and, if necessary, make adjustments to the deadline.
4	5/15/2025	MPCA will provide a report to Region 5 assessing progress toward meeting all Phase 2 E-Rule deadlines. The report should include anticipated dates for meeting rule requirements. A request to EPA HQ for an E-Rule compliance extension will fulfill this recommended action item.

CWA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

All 36 files reviewed (100%) included complete inspection reports that contained sufficient information to determine compliance.

Explanation:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%		36	36	100%

State Response:

No comment needed.

CWA Element 2 - Inspections

Finding 2-2

Area for Attention

Recurring Issue:

No

Summary:

In the file review, 24 of 36 inspections, or 66.7%, were found to be timely when evaluated against Minnesota's timeliness standard of 30 days.

Explanation:

The team found that 24 of 36 files had timely inspections. For this metric, the Region 5 CWA team used the state's timeliness goal of 30 days.

The average number of days for inspection completion is 37 days. The review team found that a few outliers - i.e., inspections that took 100 days or more to finalize - caused the bump in the overall average.

The average of 37 days is well below the federal inspection timeliness goal of 60 days.

Information in several files indicated that prior to issuing an inspection report, MPCA and the facility communicated about compliance issues identified during the inspection. In addition, the inspection report was often accompanied by a corresponding informal or formal enforcement action, i.e., a Letter of Warning or Notice of Violation.

Inspection timeliness is important. However, the team recognizes that inspectors may be investing valuable time in working with the facility to return to compliance, or preparing for formal enforcement if the severity of the violations warrant such action.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
6b Timeliness of inspection report completion [GOAL]	100%		24	36	66.7%

State Response:

Minnesota will continue the goal of 30 days for inspection reports for timely correspondence but make no changes to procedures as we are more stringent than national goals.

CWA Element 2 - Inspections

Finding 2-3

Area for Improvement

Recurring Issue:

No

Summary:

Overall, in 2022, Minnesota met, nearly met, or exceeded CMS commitments in 7 of 9 or 77 % of categories tracked. Region 5 has added action items related to inspection coverage in one category, explained below.

Explanation:

Overall, in 2022, Minnesota met, nearly met, or exceeded CMS commitments in 7 of 9, or 77%, of categories tracked. Pretreatment program staff spent considerable time in 2022 developing a program for statewide PFAS testing. This had an impact on performance in the SIU commitment category. The Region 5 CWA Team understands that additional staff resources are forthcoming to support management of the state's PFAS program.

The MS4 audit commitment has been a challenge for the state to meet over the past several years, due to staffing challenges and the practice of conducting comprehensive audits as the state's primary coverage tool. Since 2021, there have been ongoing discussions between MPCA and Region 5 about MS4 compliance monitoring, including various ways that coverage can be met through activities beyond comprehensive audits.

EPA and MPCA will continue to work together to agree on compliance monitoring targets and track state performance annually through the CMS planning process.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL]	100% of CMS commitment (audit only)		3	3	100%
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL]	100% of CMS commitment		2	18	11.1%
4a5 Number of SSO inspections. [GOAL]	100% of CMS commitment		177	27	655.6%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of CMS commitment		15	28	54%

4a8 Number of industrial stormwater inspections. [GOAL]	100% of CMS commitment		58	65	89.2%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of CMS commitment		278	280	99.3%
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100% of CMS commitment		100	50	200%
5a1 Inspection coverage of NPDES majors. [GOAL]	100% of CMS commitment		39	42	93%
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100% of CMS commitment		208	186	111.8%

State Response:

Minnesota’s municipal stormwater (MS4) regulatory program accepts EPAs recommendations to increase MS4 compliance monitoring activities to ensure consistency with the NPDES CMS policy.

Recommendation:

Rec #	Due Date	Recommendation
1	10/11/2024	Minnesota will increase MS4 coverage to ensure consistency with the NPDES CMS policy. In FY 2024, MPCA will increase MS4 coverage to 12% (30 compliance monitoring activities) of the state's universe. Minnesota’s mid-year CMS report should include a breakdown of what has been accomplished in this program area, and how the program intends to meet the commitment for the remainder of the year.
2	10/10/2025	Minnesota will increase MS4 coverage to ensure consistency with the NPDES CMS policy. In FY 2025, Minnesota will increase MS4 coverage to 14% (36 compliance monitoring activities) of the state's universe. Minnesota’s mid-year CMS report should include a breakdown of what has been accomplished in this program area, and how the program intends to meet the commitment for the remainder of the year.

CWA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Minnesota does an outstanding job determining facility compliance.

Explanation:

In all 38 files reviewed (100%), Minnesota made accurate compliance determinations.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
7e Accuracy of compliance determinations [GOAL]	100%		38	38	100%
7j1 Number of major and non-major facilities with single-event violations reported in the review year.					5
7k1 Major and non-major facilities in noncompliance.	Indicator%		400	1587	25.2%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.	Indicator%		94	1587	5.9%

State Response:

No comment needed.

CWA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Minnesota does an outstanding job utilizing enforcement to return non-compliant facilities to compliance.

Explanation:

In all files reviewed, Minnesota's enforcement responses returned, or will return, facilities to compliance. This is exceptional performance.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		34	34	100%

State Response:

No comment needed.

CWA Element 4 - Enforcement

Finding 4-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Minnesota's enforcement responses addressed non-compliance in an appropriate manner.

Explanation:

In 33 of 34 files reviewed, Minnesota's enforcement responses addressed non-compliance in an appropriate manner. This is exceptional performance.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		33	34	97.1%

State Response:

No comment needed.

CWA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Minnesota's penalty calculations were sufficient and included gravity and economic benefit.

Explanation:

In 14 of 14 files reviewed, Minnesota's penalty considerations documented consideration of gravity and economic benefit.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%		14	14	100%

State Response:

No comment needed.

CWA Element 5 - Penalties

Finding 5-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Minnesota documents the rationale between proposed and actual penalties assessed.

Explanation:

In cases where proposed and final penalties differ, Minnesota documents the rationale between the difference.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		13	13	100%

State Response:

No comment needed.

CWA Element 5 - Penalties

Finding 5-3

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Minnesota documents collection of penalties.

Explanation:

In all 13 files reviewed, Minnesota documented collection of penalties.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State Total
12b Penalties collected [GOAL]	100%		13	13	100%

State Response:

No comment needed.
