

STATE REVIEW FRAMEWORK

South Dakota

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

**U.S. Environmental Protection Agency
Region 8**

**Final Report
December 22, 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

A. Selecting Metric Values:

The information below offers suggested metric value ranges for help in deciding on a finding level. These value ranges are simply a guide in selecting an appropriate finding level. Other factors may be considered in choosing an appropriate level, such as the universe size of the metric or whether the issue has recurred across several SRF rounds.

- Meets or Exceeds Value Range: 85% - 100%
- Area for Attention Value Range: 71% - 84%
- Area for Improvement Value Range: 70% and below

B. Metric Tables

In the relevant metric tables contained throughout this report, the state **N** designates the numerator, and the state **D** designates the denominator. For example, metric 2b measures the percentage of files reviewed where substantive minimum data requirements (MDR) are accurately reflected in ICIS-AIR. The state numerator measures the number of files reviewed where file data and ICIS-AIR data are the same for substantive MDRs. And the state denominator measures the total number of files reviewed.

C. Review period: Fiscal Year 2021

D. Key dates:

- SRF Kick-Off Letter: December 22, 2021 (See Appendix)
- CWA NPDES File Review: February 28 – March 4, 2022
- CAA File Review: April 25-28, 2022
- RCRA File Review: March 14-17, 2022

E. State and EPA key contacts for review:

Key EPA Review Contacts

- David Piantanida, SRF Coordinator and NPDES File Reviewer: (303) 312-6200, piantanida.david@epa.gov
- Michael Boeglin, NPDES File Reviewer, (303) 312-6250, boeglin.michael@epa.gov
- Jessica Duggan, NPDES Lead, (has accepted another position at EPA)
- Stephanie Meyers, NPDES File Reviewer, (303) 312-6938, Meyers.stephanie@epa.gov
- Colin Lecortz, CAA File Reviewer, (303) 312-6043, lecortz.colin@epa.gov

- Sara Loiacono, CAA File Reviewer, (303) 312-6626, loiacano.sara@epa.gov
- Dave Hoffman, CAA File Reviewer, (202) 564-0725, Hoffman.dave@epa.gov
- Rob Lischinsky, CAA File Reviewer, (202) 564-2628, Lischinsky.robert@epa.gov
- Linda Jacobson, RCRA Lead File Reviewer, (303) 312-6503, jacobson.linda@epa.gov

Executive Summary

Clean Water Act (CWA)

Areas of Strong Performance

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

The EPA Region 8 enforcement staff conducted a SRF enforcement program oversight review of the South Dakota Department of Agriculture & Natural Resources (SDDANR) in 2022 based on state activities completed in federal fiscal year (FY) 2021. This file review was conducted remotely.

The EPA bases SRF findings on data and file review metrics, and conversations with state program management and staff. The EPA will track recommended actions from the review in the SRF Manager and publish reports and recommendations on the EPA's Enforcement and Compliance State Review Framework website - [State Review Framework | US EPA](#).

- The state's permit limit data entry rate (100%) for Metric 1b5 exceeded the national goal of 95%. The state's discharge monitoring report (DMR) data entry rate (100%) for metric 1b6 also exceeded the national goal and average of 95%.
- The state met its FY21 commitments for the following inspection types: majors, non-majors, Sanitary Sewer Overflows (SSOs), industrial stormwater, and sludge/biosolids inspections at each major Publicly Owned Treatment Works (POTW).
- In 23 out of 26 (88.5%) files reviewed for Metric 7e, the state accurately determined compliance. Documents reviewed for compliance determinations included inspection reports, cover letters, and other correspondence associated with compliance monitoring.
- The state did not have any major facilities in Significant Non-compliance (SNC) lacking a timely enforcement response in FY21.

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:

- ICIS (Integrated Compliance Information System) did not contain complete and accurate required data for all facilities with stormwater and concentrated animal feeding operation permits. In particular, data on permits, compliance activities, enforcement actions, and penalties were missing for these facilities.
- Formal and informal enforcement actions did not consistently result in violators returning to compliance.
- Informal enforcement actions were not consistently appropriate with respect to the state's enforcement response guide for timeliness of warning letters.
- State penalties did not consistently include economic benefit or a justification for not including an economic benefit.

Finding Summary:

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
4a2 - Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL]	Area for Improvement	Meets or Exceeds Expectations
4a7 - Number of Phase I and II MS4 audits or inspections. [GOAL]	Area for Improvement	N/A
6b - Timeliness of inspection report completion [GOAL]	Area for Improvement	Area for Attention
9a - Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	Meets or Exceeds Expectations	Area for Improvement
10b - Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	Area for Improvement	Area for Improvement
11a - Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	Area for Attention	Area for Improvement
12a - Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	Meets or Exceeds Expectations	Area for Improvement

Clean Air Act (CAA)

Areas of Strong Performance

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

- The state conducts inspections at Title V major and SM-80 sources at frequencies greater than specified by the CAA Stationary Source Compliance Monitoring Strategy (CAA CMS).

- The state’s documentation of Full Compliance Evaluation (FCE) elements is exceptional, and the inspection reports were clear and concise enough to understand what the inspector was asking or reviewing.
- The state's reporting of compliance monitoring MDRs (Metric 3b1), stack test dates and results (Metric 3b2) and enforcement MDRs (Metric 3b3) was completed in a timely manner.
- The state met its inspection commitments for major and SM-80 sources (Metrics 5a, 5b), FCE element documentation, and compliance monitoring reports documentation (Metrics 6a and 6b).
- The state met its expectation to review Title V annual compliance certifications review (Metric 5e). Note: no FCE coverage of minor sources (Metric 5c) were needed or conducted as part of the CMS plan and are therefore, not applicable.

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:

- Issues with accurate and timely HPV determinations and errors were found, some minor in nature, throughout the HPV process that could have resulted in greater penalties. The EPA recommends that the state review the HPV/FRV Policy and prioritize coordination with EPA to better diagnose HPV determinations earlier if in question.
- The accuracy of minimum data requirements reflected in the Enforcement and Compliance History Online (ECHO), ICIS, and the inspection reports had a multitude of minor errors administrative in nature, including address, Title V Annual Compliance Certifications (TVACCs) information from state entries not transferring into ICIS, or ICIS and ECHO identifying facility numbers. This also was noted for Compliance Monitoring Reports (CMRs) where previous inspection history was not addressed in the inspection reports where sources had issues with previous enforcement actions. More detail should be included when discussing compliance at a facility where previous enforcement took place or is in progress.
- Multiple source files had MDRs (Metric 2b) that were inaccurate or contained incorrect or missing information from ICIS-AIR.
- Timely reporting of HPV determinations (Metric 3a2) falls into the area for improvement category however note the low number of HPVs affecting the percentages.

The state met its expectations with timely and appropriate enforcement to return the sources to compliance.

Finding Summary:

Metric	Round 3 Finding Level	Round 4 Finding Level
2b - Accurate entry of mandatory data [GOAL]	Area for Improvement	Area for Improvement
3a2 - Timely reporting of HPV determinations [GOAL]	Area for Improvement	Area for Improvement
3b1 - Timely reporting of compliance monitoring MDRs [GOAL]	Area for Improvement	Meets or Exceeds Expectations
3b3 - Timely reporting of enforcement MDRs [GOAL]	Area for Improvement	Meets or Exceeds Expectations
6a - Documentation of FCE elements [GOAL]	Area for Improvement	Area for Attention
6b - Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	Area for Improvement	Area for Attention
10a - Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	Area for Improvement	Area for Attention
14 - HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	Area for Improvement	Area for Attention

Resource Conservation and Recovery Act Findings (RCRA)

Areas of Strong Performance

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

- The state's enforcement actions effectively return facilities to compliance. The state follows up through required submittals or onsite inspections to verify return to compliance.
- The state makes accurate, timely, and appropriate compliance determinations. Additionally, identified violations are entered into RCRAInfo.
- The state RCRA program inspection coverage consistently exceeds the national goals. The state inspects 100% of their treatment, storage, and disposal facilities (TSDFs) annually.

- Large quantity generator (LQG) inspections are conducted at a rate greatly exceeding the national goal of 20% and significantly higher than the national average.
- The state inspection reports are of high quality and thorough, allowing timely and appropriate violation determination.

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:

There are no priority RCRA issues which require state improvement or attention.

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state's permit limit data entry rate exceeded the national goal. The state's discharge monitoring report (DMR) data entry rate also exceeded the national goal and average.

Explanation:

For Metric 1b5 on completeness of data entry on major and non-major permit limits, the state's permit limit data entry rate was 100%, exceeding the national goal of 95% and the national average of 96.8%.

For Metric 1b6 on completeness of data entry on major and non-major discharge monitoring reports, the state's DMR data entry rate was 100%, exceeding the national goal of 95% and the national average of 99.2%.

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%	96.8%	230	230	100%
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%	99.2%	3,759	3,759	100%

State Response:

No comment from DANR.

CWA Element 1 - Data

Finding 1-2

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

ICIS did not contain complete and accurate required data for all facilities, enforcement actions, and penalties.

Explanation:

For Metric 2b on files reviewed where data are accurately reflected in the national data system, 14 of 27 files reviewed (51.9%), met the minimum data requirements of the EPA's National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (40 CFR 127, Appendix A). The national goal is 100%.

Instances where the minimum data requirements were not met are outlined below:

1. Minimum data requirements for Stormwater and CAFO facilities are not reflected in the national data system (ICIS); in particular, data on permits, compliance activities and enforcement actions are missing from these facilities; and,
2. In two instances, inspection report dates did not match what is in ICIS.

To address the DANR response comments below, EPA has added this response.

It was not clear from previous conversations with DANR that the denial of grant resources to support the Livestock Services program's migration of data to ICIS means your trajectory for migrating data defaults back to the schedule and commitments in the MOU for using the NeT tool MOU. EPA apologizes for the misunderstanding, and we have changed the recommendation reporting date from 2023 to 2025.

Additionally, EPA recognizes the misunderstanding about what data for industrial stormwater permittees resides in NeT, which is part of the national data system alongside ICIS. Acknowledging that it is acceptable for data to reside in NeT without migrating into ICIS, we are modifying the explanation and recommendation language in the SRF report.

We regret that data management continues to be a significant sink of resources for the DANR but appreciate the ongoing efforts to meet the requirements of the Electronic Reporting Rule. Region 8's data steward and the Office of Compliance/OECA will continue to provide technical support to DANR as needed and upon request.

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%		14	27	51.9%

State Response:

As we mentioned during the SRF review and every quarterly meeting for the last couple of years, the database development has been a huge problem. DANR has spent significant time and resources on database development for NPDES permitting and will continue to need to expend resources until all the NPDES elements are fully in ICIS.

Since the SRF review, the Surface Water Quality Program has begun sending construction stormwater permitting information to ICIS. Nearly 500 permits have been entered, but we are still working to fully integrate our database with ICIS and keep all of our permits updated. Over the last couple of years, we worked with EPA to put our industrial stormwater permits into NeT. However, EPA's business rules for ICIS will not allow that information to flow to ICIS until our administratively continued general permit is reissued.

The Livestock Services Program has submitted a request for EPA grant funding in order to attempt to proceed with database updates necessary to allow for electronically reporting CAFO information into ICIS. The grant was denied.

The Livestock Services Program has been in contact with Windsor Solutions and has begun preliminary database work, pending the outcome of grant funding. Funding to cover the cost of the database updates necessary to allow migrating of data to ICIS is to be determined, with a projected estimated initial cost of up to \$550,000. As a second option, the Livestock Services Program requested, and EPA accepted in the recent MOU, a schedule date of January 1, 2025, to begin working with EPA on development of a NeT tool in the event entering data into ICIS could not be achieved through a third-party vendor.

Recommendation:

Rec #	Due Date	Recommendation
1	12/21/2025	By December 21, 2025, the State should share with the EPA NPDES team a status report on regular electronic reporting of inspection and enforcement data for stormwater and CAFO facilities into the national data system, in accordance with Electronic Reporting Rule requirements. The report should also describe the status of CAFO permit data migration via NeT or other mechanism into the national data system. The EPA will close this recommendation when at least 71% of permits, inspections, and enforcement actions for stormwater and CAFOs that occurred in FY25 are entered in ICIS, as determined by comparison to information in the state's FY24 end-of-year report to EPA.

CWA Element 2 - Inspections**Finding 2-1**

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state met its FY21 commitments for all inspection types. The state adjusted some of its commitments through the course of the year due to the COVID-19 pandemic.

Explanation:

The state satisfied or exceeded its original FY21 commitments for the following inspection types. The national goal for each is 100%. In many circumstances, the state far exceeded its commitments because inspections conducted entirely outdoors were easier to arrange during the pandemic than indoor inspections.

- NPDES majors, Metric 5a1 – 19 facilities inspected versus a commitment of 15 (126.7%).
- NPDES non-majors (individual and general permits), Metric 5b – 124 facilities inspected versus a commitment of 90 (137.8%).
- Sanitary sewer overflow systems, Metric 4a5 – 77 systems inspected versus a commitment of 54 (142.6%).
- Industrial stormwater inspections, Metric 4a8 – 142 facilities inspected versus a commitment of 15 (946.7%).

- Sludge/biosolids inspections, Metric 4a11 – 10 sites inspected versus a commitment of 7 (142.9%).

The state modified its original FY21 commitments for several inspection categories throughout the year due to limitations imposed by the ongoing pandemic – e.g., state travel restrictions, vehicle capacity limits, facility restrictions for visitors on their premises, heightened biosecurity protocols limiting the number of certain CAFO inspections per week, and the challenge of providing sufficient field training to prepare new inspectors. EPA acknowledged these downward adjustments as being consistent with the flexibilities granted through EPA’s April 7, 2021, letter to partner agencies regarding adjustments to commitments due to the pandemic. For the following inspection types, the state satisfied 100% of its adjusted commitments, meeting the national goal of 100%:

- Pretreatment compliance inspections and audits, Metric 4a1 – one facility inspected versus a commitment of one (inspection it had committed to (100%).
- Significant industrial user inspections, Metric 4a2 – seven facilities inspected versus an adjusted commitment of seven (100%).
- Combined sewer overflow systems, Metric 4a4 – zero systems inspected versus an adjusted commitment of zero (numeric percentage not applicable).
- Construction stormwater sites, Metric 4a9 – 148 sites inspected versus an adjusted commitment of 148 (100%).
- Concentrated animal feeding operations (CAFOs), Metric 4a10 – 46 facilities inspected versus an adjusted commitment of 46 (100%); and
- Phase I and phase II municipal separate storm sewer systems, Metric 4a7 – zero inspections or audits versus an adjusted commitment of zero (numeric percentage not applicable).

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		1	1	100%
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL]	100% of commitments		7	7	100%
4a4 Number of CSO inspections. [GOAL]	100% of commitments		0	0	0
4a5 Number of SSO inspections. [GOAL]	100% of commitments		77	54	142.6%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments		0	0	0
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments		142	15	946.7%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments		148	148	100%
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100% of commitments		46	46	100%
4a11 Number of sludge/biosolids inspections at each major POTW. [GOAL]	100% of commitments		10	7	142.9%
5a1 Inspection coverage of NPDES majors. [GOAL]	100% of commitments	47.7%	19	15	126.7%
5b Inspections coverage of NPDES non-majors (individual and general permits) [GOAL]	100% of commitments		124	90	137.8%

State Response:

No comment from DANR.

CWA Element 2 - Inspections

Finding 2-2

Area for Attention

Recurring Issue:

No

Summary:

The state's inspection reports were not consistently complete and sufficient to determine compliance and were not consistently completed within the goal time frame specified in their EMS.

Explanation:

For Metric 6a on inspection reports complete and sufficient to determine compliance at the facility, 18 of 25 inspection reports reviewed (72%) were complete and sufficient to determine compliance at facilities. The national goal is 100%. Of the seven reports not meeting this metric, four were from stormwater reconnaissance inspections, two were wastewater reconnaissance inspections, and one was a poultry facility inspection, with an understanding that South Dakota's reconnaissance inspection reports do not document the extent of details equivalent to compliance evaluation inspections. Critical information to make all reports defensible was omitted from these reports, including purpose and scope of onsite activities, who was present, date/time, and basic permit information.

For Metric 6b on timeliness of inspection report completion, 18 of 22 inspection reports reviewed (81.8%) were completed within the 45-day time frame specified in the state's Environmental Management System (EMS). The national goal is 100%.

To address the DANR response comments below, EPA has added this response.

We appreciate and understand the value of reconnaissance inspections to make efficient use of limited inspection resources. EPA has requested that DANR add a few additional areas to their recon reports including information about the facility and scope of inspection, as well as who was involved and date/time information, which could be added to the DANR templates. Doing so would require little increase in inspection workload.

In our recent conversation with DANR, we discussed EPA's concerns about the contents of that one poultry facility report (i.e., the CAFO inspection referenced in DANR's comment) and appreciate the clarifying information from the Livestock Services Program. We have revised the SRF report to more accurately characterize the facility and inspection report, with the final language more clearly describing the two specific items lacking with respect to EPA's expectations for inspection report contents.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%		18	25	72%
6b Timeliness of inspection report completion [GOAL]	100%		18	22	81.8%

State Response:

The stormwater reconnaissance inspections EPA noted above were conducted by our Minerals and Mining Program. This staff already conduct onsite inspections at gravel pits to determine compliance with state mining law and have agreed to include a brief review of the industrial stormwater permit in their inspections. The Minerals and Mining Program does not send follow up reports to their permittees after their inspections. This information was provided to DANR's stormwater staff for further follow-up where necessary.

The wastewater reconnaissance inspections EPA noted were conducted by our surface water quality standards team. This team regularly conducts field work near permitted facilities as part of their stream surveys for Use Attainability Analyses. These reports are intended to guide basic observations about the facility while they are in the area and are not intended to be full compliance inspections. The information is shared electronically with our wastewater team before the standards field staff even leaves the site. The SWD Permitting team then verbally follows up with the permittees as necessary.

DANR agrees with EPA that these examples of reconnaissance inspections might not fit EPA's expectation of an inspection as no follow-up report is sent to the permittee. However, this is an excellent example of cross-training and expanding our inspection presence with minimal additional resources. These stormwater and wastewater reconnaissance inspections meet the definition and goal of a "reconnaissance inspection" in EPA's Compliance Monitoring Strategy. One stated objective of the Reconnaissance Inspection is to expand inspection coverage without increasing inspection resources.

The Livestock Services Program believes there is a disconnect between EPA expectations and requirements for this finding. The poultry facility inspected has no record keeping requirements for manure application due to manure being sold and/or given away in accordance with federal rule. The inspection form is self-explanatory and contains relevant information on the purpose and scope of onsite activities, who was present, the date and time, and basic permit information. If data elements are missing from the general operation and maintenance inspection report, we request the missing items be explained and/or EPA provide an example inspection form to ensure the missing items are included on updated Livestock Services inspection forms.

CWA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

In all files reviewed except three, the state accurately determined compliance.

Explanation:

For Metric 7e on accuracy of compliance determinations, the state returned accurate compliance determinations in 23 of 26 (88.5%) relevant files reviewed. Documents reviewed for compliance determinations included inspection reports, cover letters, and other correspondence associated with compliance monitoring. The national goal is 100%.

Metrics 7j1, 7k1, and 8a3 are review indicator metrics which are not used to develop findings. Review indicator metrics use national averages to indicate when agencies diverge from national norms and are used to identify areas for further analysis during the file review. When an indicator diverges significantly from the national average, the EPA should pull a sufficient sample of files to evaluate the issue during the file review. No concerns were identified with these three-indicator metrics.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7e Accuracy of compliance determinations [GOAL]	100%		23	26	88.5%
7j1 Number of major and non-major facilities with single-event violations reported in the review year.			0	0	0
7k1 Major and non-major facilities in noncompliance.		16.7%	123	512	24%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.		6.3%	31	512	6.1%

State Response:

No comment from DANR.

CWA Element 4 - Enforcement

Finding 4-1

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

Formal and informal enforcement actions did not consistently result in violators returning to compliance. Informal enforcement actions were not consistently appropriate with respect to the state's enforcement response guide for timeliness of warning letters. SDDANR did not have any major facilities in Significant Non-compliance (SNC) lacking a timely enforcement response in FY21.

Explanation:

EPA reviewed 44 informal enforcement actions and 7 formal enforcement actions for which Metric 9a applies, for a total of 51 actions issued to 17 facilities in FY21 and preceding years when multiple actions at a single facility were part of a chain of actions by the state. The state's informal actions (e.g., warning letters) achieved a return to compliance in only 17 instances involving 13 facilities, while the formal actions (e.g., notices of violation (NOVs) and orders, and consent agreements for penalty) achieved a return to compliance in five instances involving five facilities. In scenarios where an NOV/order and consent agreement were issued to a single facility for the same set of violations, EPA counted them as only one action.

SDDANR's orders for compliance contain language necessary to obtain a compulsory return to compliance with legal consequences for failure to do so, and in only two circumstances did formal enforcement not result in a return to compliance for the underlying violations. Facilities that received an NOV/order and/or consent agreement for penalty but continue to face non-compliance for the same violations included two facilities, one for effluent violations and the other for late DMRs.

In situations where the state ultimately used formal enforcement to address violations, informal enforcement was used as a first option but unsuccessful at getting a return to compliance. For several facilities in violation, the state issued multiple warning letters in succession, none of which resulted in a return to compliance. The state used strong language in its warning letters but usually did not escalate the matter to stronger enforcement tools when the violations recurred. The state's enforcement response guide does not specify an escalation policy or procedure for such patterns of repeat violations or failure to improve at the facility. EPA notes that the state is developing an NOV for Discharge Monitoring Report non-receipt that can be used to address repeat DMR non-receipt violations.

For Metric 10a1, the state's rate of SNC remained very low through FY21, and no major facilities were in SNC in South Dakota in FY21. EPA commends SDDANR for the quality of its technical assistance to keep nearly all individually permitted facilities out of SNC.

Metric 10a1 is a review indicator metric which is not used to develop findings. Review indicator metrics use national averages to indicate when agencies diverge from national norms and are used to identify areas for further analysis during the file review. When an indicator diverges significantly from the national average, the EPA should pull a sufficient sample of files to evaluate the issue during the file review. As mentioned above, no concerns were identified with this indicator metric and EPA is commending DANR for its efforts.

For Metric 10b on enforcement responses reviewed that address violations in an appropriate manner, the state addressed violations in accordance with their ERG in 25 out of 53 (47.2%) files reviewed. The national goal is 100%.

The 28 files lacking an enforcement response to address violations in an appropriate manner are outlined below, with some files fitting into more than one of these categories:

1. In 18 instances, enforcement responses were not taken in a timely manner in accordance with the ERG.
2. In seven instances, the state used a formal enforcement action - a notice of violation (NOV) and order for compliance, and/or a consent agreement for penalty - to require corrective action. In six of those seven scenarios, the state's use of formal action was appropriate and timely, with the one exception, whereby six warning letters were issued to the facility over a period of nearly three years. The facility finally returned to compliance with the last warning letter, which was issued following the formal enforcement action.
3. For 17 of 18 files, an informal enforcement response was warranted and/or used, with one exception where the state took only formal enforcement for the violations reviewed in FY21. In the case of 10 of these files, the state responded to violations with one or more warning letters that were sent late, relative to the ERG goal timeframe of 14 days for a warning letter to be sent following violation discovery. The length of time lapsing before a warning letter was sent varied from a few weeks to several months. EPA found 26 late warning letters for 10 facilities.
4. In one instance, the state used no formal or informal enforcement tool in response to a significant non-compliance violation (missing discharge monitoring reports for quarter one of FY2021). EPA also notes that several violations were found during an 8/12/2021 inspection without a written response from the state to ensure correction. The state used a formal enforcement action - a notice of violation (NOV) and order for compliance, and/or a consent agreement for penalty - to require corrective action. In six of those seven scenarios, the state's use of formal action was appropriate and timely, with the one exception, whereby six warning letters were issued to the facility over a period of nearly three years. The facility finally returned to compliance with the last warning letter, which was issued following the formal enforcement action.

The state explained its preference to provide technical assistance to facilities upon discovery of violations, prior to sending a warning letter, as a benefit to human health and the environment as their permittees can begin to correct violations sooner and work to prevent future violations. EPA's one critique is that this practice results in delays relative to the ERG goal of 14 days before a facility is put on notice in writing that a violation has occurred and needs (or needed) to be corrected.

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%		24	51	47.1%
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations		18.4%	0	0	0
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		25	53	47.2%

State Response:

The Woonsocket NOV is one of the DMR non-receipt NOV's. The one time since the NOV went into effect where Woonsocket did not submit the report on time was when the report was due over the Thanksgiving weekend. The report was submitted prior to the facility receiving a 7-day late warning email. Every other DMR from the Woonsocket has been submitted on time. This NOV has been successful in addressing the noncompliance and correcting the violations.

As we reported to EPA, the delay with sending our Warning letters is in large part due to the ongoing issues of connecting our new database to ICIS. Since we utilize NetDMR for report submittal, we must import violation information from ICIS and from our database to combine them into a warning letter. We recently resolved these issues and have been sending warning letters in a timely manner over the last month.

We do not provide operator assistance in lieu of Warning letters; we still send Warning letters to all facilities with effluent violations or missing DMRs. As EPA's notes, we have an excellent overall compliance rate. We believe that working with operators is a key component to our success in maintaining our low SNC rate.

We will review and update our Enforcement Response Guide in light of EPA's comments and make changes where appropriate.

Recommendation:

Rec #	Due Date	Recommendation
1	10/01/2023	EPA recommends the state develop and implement an escalation policy as part of, or as a supplement to SDDANR's enforcement response guide (ERG). The escalation policy should address common types of violations reported on DMRs that, after occurring in a repeat pattern and being met with repeat warning letters from the state, warrant escalation to stronger enforcement tools. The policy should also address how and when the state should escalate specific enforcement tools for these categories of violations. The state will solicit EPA review of the draft escalation policy by July 31, 2023 and begin implementing the policy by October 1, 2023.
2	10/31/2024	During Federal Fiscal Year 2024, the state will track scenarios in which escalated enforcement tools were used to address repeat patterns of violations pursuant to the new escalation policy and send a summary to EPA by October 31, 2024, describing these scenarios and the effectiveness of the state's escalation approach to getting a return to compliance for the subject facilities. EPA will close this recommendation upon review and verification of the state's implementation of its escalation policy and at least 71% of the scenarios described in the summary sent to EPA.
3	06/01/2025	By June 1, 2025, EPA will randomly select a set of five files with warning letters to determine whether letters are timely based on the state's revised standard for warning letter timeliness in its ERG. EPA will close this recommendation once 71% or greater of enforcement files reviewed have a timely response based on the state's revised ERG.

CWA Element 5 - Penalties

Finding 5-1

Area for Improvement

Recurring Issue:Recurring from Rounds 2 and 3

Summary:

Two of the state's four penalty calculations reviewed did not account for economic benefit of noncompliance. Penalty actions showing a difference between the initial and final penalty amount did not include rationale in the file explaining this difference.

Explanation:

For Metric 11a, the EPA reviewed four penalty actions memorialized in settlement agreements signed by the state in FY21. All four actions included documentation showing how the penalty was calculated and noted justifications for the gravity component of the penalty. Two of the four files showed the same documentation for economic benefit of noncompliance. In two files, however, the state's documentation omitted any economic benefit, with a justification of why the state believed economic benefit was not relevant. EPA's review found that the circumstances of the violations in this case did in fact result in quantifiable delayed or avoided costs (i.e., economic benefit) that should have been included in the penalty calculation. The circumstance involved avoided costs of acquiring more personnel in one case and avoided costs of a treatment upgrade in the other.

For metric 12a, EPA reviewed four files with a signed consent agreement for penalty, one of which had a difference between the initial proposed penalty and the final settled penalty. In this instance, the state did not document any rationale to explain why the penalty was reduced. The state explained that the penalty was suspended pending a successful return to compliance.

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%		2	4	50%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		0	1	0%

State Response:

We understand the need to fully document our penalty calculations and determinations. As discussed during the SRF review, the state took a very prompt action to a significant violation. The documentation was lacking due to the speed of our response. The state has added a section to our penalty calculations document to detail any differences between initial and final penalties.

Recommendation:

Rec #	Due Date	Recommendation
1	03/31/2023	South Dakota will provide a revised penalty calculation worksheet to EPA by March 31, 2023, explaining how the state will add notation to its penalty files to record the rationale for any difference between initial calculated and final assessed penalties.
2	10/31/2023	By October 31, 2023, South Dakota will submit all FY23 penalty calculation worksheets to the EPA for all final penalty actions issued in FY23, ensuring that delayed costs of noncompliance and avoided costs of noncompliance are captured in the calculations. EPA will review the penalty calculation worksheets to ensure that delayed and avoided costs are considered and that any absence of these penalty factors is justified on the worksheets. This finding will be closed once the state has consistently accounted for delayed and avoided costs in at least 71% of its penalty justifications.
3	10/31/2024	By October 31, 2024, the state will report to EPA on the penalty actions the state executed in FY23 and FY24 wherein the final assessed penalty differed from the initial calculated penalty and provide documentation showing how this difference was memorialized in the case file. EPA will close this recommendation once evidence is produced (five penalty actions) showing the state has documented this information for penalty actions.

CWA Element 5 - Penalties

Finding 5-2

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Four out of four finalized penalty actions resulted in the state collecting the assessed penalty.

Explanation:

For metric 12b, South Dakota's finalized penalty actions included information in the file showing that the assessed penalty had been collected in four out of four instances or 100%.

Relevant metrics:

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

State Response:

No comment from DANR.

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state's reporting of compliance monitoring MDRs, stack test dates and results, and enforcement MDRs was completed in a timely manner.

Explanation:

For Metric 3b1 on timely reported compliance monitoring MDRs, the state timely reported at a rate of 99.4%. No deficiencies were identified, and this level of performance meets national expectations.

For Metric 3b2 on timely reported stack test dates and results, the state reported at a rate of 92.1%. No deficiencies were identified, and this level of performance meets national expectations.

For Metric 3b3 on timely reported enforcement MDRs, the state reported at a rate of 100%. No deficiencies were identified, and this level of performance meets national expectations.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	80.5%	164	165	99.4%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	53.4%	35	38	92.1%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	77.1%	1	1	100%

State Response:

No comment from DANR.

CAA Element 1 - Data

Finding 1-2

Area for Improvement

Recurring Issue:

Recurring from Round 3

Summary:

Multiple source files had MDRs that were inaccurate or contained incorrect or missing information from ICIS-AIR. Timely reporting of HPV determinations falls into the area for improvement category; however, a low count and universe had substantial effects on percentages for HPV determinations.

Explanation:

For Metric 2b on files reviewed where data are accurately reflected in the national data system, EPA found 64.0% of files had all MDRs accurately reported into ICIS-AIR. For the files with MDR errors, the most common issues were administrative such as typos or errors with facility location not matching the inspection reports. It should also be noted that a few missing “Air Program” reporting fields in ICIS-AIR included missing or not including specific subparts (e.g., NSPS JJJJ).

For Metric 3a2, the timely reporting of HPVs, this deficiency reporting of HPV determinations (one of two or 50%) was due to a single stack test reported late into ICIS-AIR. During the review, EPA also observed that a few HPVs and action dating back to 2018 were not entered into ICIS-AIR. Upon receiving responses from SDDANR it appears that this facility had other instances of violations ongoing and there could have been an error with the SDDANR system reporting into ICIS-AIR.

One of the MDRs evaluated in Metric 2b is reporting of FRVs into ICIS-AIR. Although the state did not achieve the national goal for this data metric, the EPA would like to note, that prior to FY 2020, the state did not report FRVs into ICIS-AIR, which is reflected in Metric 2b. Therefore, while the metric results indicate an area for improvement, the EPA believes that the state will see improvement in Metric 2b as it continues to report FRVs and other MDRs into ICIS-AIR in subsequent years.

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%		16	25	64%
3a2 Timely reporting of HPV determinations [GOAL]	100%	38.6%	1	2	50%

State Response:

DANR's Air Quality Program's position is a facility's compliance with its air emission limits is what protects the environment. As such, priority on conducting inspections, having a robust presence, and assisting a facility comply with the air quality emission limits in its permit is a higher priority than harsh compliance with administrative records and report deadlines.

DANR's Air Quality Program acknowledges and agrees that there are some administrative typographical or errors in the inspection reports. DANR does agree to develop a protocol or sample review on how to update DANR's inspection report and databases. DANR feels this would be beneficial for new staff and a friendly reminder to existing staff.

Recommendation:

Rec #	Due Date	Recommendation
1	03/31/2023	It is recommended that the state develop a protocol for entering compliance monitoring report/inspection information into ICIS that includes a confirmation of the source's information and regulatory applicability in the "Air Program" reporting field. This protocol should be developed and implemented by the data entry steward(s) and shared with the EPA by March 31, 2023. The recommendation will be closed when the protocol is received by the EPA.

2	03/31/2024	During the first half of FY2024 and no later than March 31, 2024, EPA will randomly select five facilities with inspection reports that have been conducted in either 3 rd or 4 th quarter of FY2023 to confirm the correct information has been entered into ICIS-AIR and matches the inspection reports. A verification of greater than or equal to 71% of facilities reviewed will constitute a recommendation close out. This review by EPA will continue semiannually until the close out threshold has been achieved.
3	03/31/2025	By March 31, 2025, the state will work with EPA to evaluate and enter HPVs into ICIS-AIR. This issue will be discussed on quarterly calls between the EPA and the state and EPA will close this recommendation when at least 71% of HPVs (metric 3a2 and a minimum of five HPVs) are entered correctly into ICIS-AIR.

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state met its inspection commitments for major and SM-80 as well as their Full Compliance Evaluation (FCE) element documentation and compliance monitoring reports documentation. In addition, the state met its expectation to review Title V annual compliance certifications. Note: no FCE coverage of minor sources (Metric 5c) were needed or conducted as part of the CMS plan and are therefore, not applicable.

Explanation:

For Metric 5a on FCE coverage at majors and mega-sites, the state completed 70 major source FCEs meeting their CMS commitment of 70 FCEs, or 100%. The national goal is 100% and the national average is 85.6%.

For Metric 5b on FCE coverage for SM-80s, the state completed 11 SM-80 FCEs out of their CMS commitment of 12 FCEs, or 91.7%. The national goal is 100% and the national average is 92.7%. The state conducts inspections of major sources at a greater frequency than required by the CMS for both major and SM-80 sources. The single SM-80 source missed by the state is due to the loss of the owner of a small operation of a post and pole company. The facility does not appear to be operating and the state called and followed up onsite on different occasions. This facility appears to be shut down and no longer operating.

For Metric 5e on reviews of Title V annual compliance certifications (ACCs) completed, the state completed 94.3% (72 of 74) reviews. However, according to the state, of the two missing ACC reviews one was because the internal system did not transfer into ICIS-AIR. The other

source was because South Dakota requires sources to obtain a Title V permit by rule if applicable to a federal standard; however, this facility is an SM-80 source and is not part of the Title V CMS universe. The national goal is 100% and the national average is 79.9%.

For Metric 6a, of the inspection reports reviewed, 24 out of 24 were complete (100%), meeting the goal of 100%. The inspection reports were well written, accurate, and the inspector notes documented each aspect of the permitted activities.

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%	85.6%	70	70	100%
5b FCE coverage: SM-80s [GOAL]	100%	92.7%	11	12	91.7%
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%	68%	0	0	0
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	79.9%	72	74	97.3%
6a Documentation of FCE elements [GOAL]	100%		24	24	100%

State Response:

No comment from DANR.

CAA Element 2 - Inspections

Finding 2-2

Area for Attention

Recurring Issue:

No

Summary:

The state inspection reports reviewed were missing information to provide sufficient documentation to determine compliance at the facility from certain inspection reports.

Explanation:

For Metric 6b, 83.3% of files reviewed (20 out of 24) had complete inspection reports or facility files reviewed that provided sufficient documentation to determine compliance at the facility. The issues appeared to be primarily from earlier inspection reports and occasionally in more recent ones. The documentation inherently missing with each metric was information on previous enforcement actions. The EPA reminded SDDANR to review previous case files and make sure to include any action the state takes against a facility is included in the inspection report.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		20	24	83.3%

State Response:

No comment from DANR.

CAA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

Accuracy of compliance determinations was evaluated for metric 7a. HPV identification was timely for FY2021 when reported into ICIS-AIR, but identification of a few serious violations were not accurately identified.

Explanation:

For Metric 7a on accurate compliance determinations, the majority (22 out of 25) of the files reviewed were accurate and the compliance determinations were accurately reported in the Detailed Facility Report (DFR). The national goal is 100%. For the three instances where determinations were not accurately reported, the inspection reports discussed instances of not

providing notification of intent to conduct a performance test for a facility. There are elements of flexibility in these compliance determinations, and overall, the determinations were correct for all remaining facilities.

Metric 13 on the timeliness of identifying the HPVs for FY2021 was met for the two HPV's identified (100%). The inspection reports reviewed from FY2017 - FY2021 all appeared to have timely identification of HPV's. The national goal is 100% and the national average is 80.8%.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		22	25	88%
13 Timeliness of HPV Identification [GOAL]	100%	80.8%	2	2	100%

State Response:

No comment from DANR.

CAA Element 3 - Violations

Finding 3-2

Area for Attention

Recurring Issue:

No

Summary:

Data indicates that accuracy of the state's HPV determinations slipped compared to the previous SRF round, however the EPA has no concerns with the state's performance.

Explanation:

For Metric 8c, 80.0% of files reviewed had accurate HPV determinations (12 out of 15 reports). The national goal is 100%.

Two of the HPV determinations flagged by the EPA as inaccurate were related to failure to provide required annual or quarterly reports. Although SDDANR did not determine that these

reporting violations rose to the level of HPV, upon review of historical reporting trends for the facilities, the EPA determined that the failure to report was a repeated offense, and thus met criteria five of the HPV Policy. Therefore, these two violations were marked during the review as inaccurate HPV determinations. The remaining facility reported a failed stack test which did not appear to be addressed or entered into ICIS-AIR. The facility report was reviewed as part of a look back prior to FY2021. It is likely that this is a one-off and that future metrics will show continued high levels of performance; the inspections from FY2019 – FY2021 showed improved results when compared to FY2017 and FY2018 for Metric 8c.

To address the State Response comments below, EPA has added the following explanation:

As discussed with DANR on December 7, 2022, according to the August 25, 2014, HPV Policy^[1], HPV criteria apply to violations that occur at (1) a major source as defined in CAA Sec. 501(2) (Title V Major Source) or (2) a non-Title V Major Source, otherwise known as a minor source or area source, with a Compliance Monitoring Strategy (CMS) plan. Since the facilities in question are SM-80s under a CMS plan, any violations identified at those facilities should be compared to the criteria in the HPV Policy to determine if the violation is an HPV. Reporting violations are considered HPVs, as specified in Criterion 5 of the HPV Policy, when they substantially interfere with enforcement of a requirement or determination of a source's compliance. Repeated reporting violations can interfere with enforcement of a requirement or a determination of a source's compliance.

It is EPA's position that, due to the repeated failure by the facilities to submit reports, the violations would rise to the level of HPV; however, we understand DANR's rationale. Two sources discussed in Metric 8c failed to submit annual and quarterly reports. Regulating agencies are unable to determine compliance for a reporting period without those reports. Ongoing compliance determinations are a benefit for public transparency. DANR is allowed flexibility in determining whether certain violations warrant additional tracking as HPVs. According to the HPV Policy, the determination of what is considered substantial under HPV Criterion 5 shall be part of a case-by-case analysis/discussion between EPA and DANR. In these instances, we request that DANR consult with EPA, per the HPV policy, to determine if these violations are substantial enough to warrant an HPV. If during the case-by-case consultation with EPA, it is determined that the violation does not warrant the oversight envisioned for HPVs, then DANR may pursue other enforcement alternatives (See Section III, B of the revised HPV Policy) and the rationale for determining not to classify the violation as an HPV will be documented. However, absent the case-by-case discussion, failing to comply with the permit terms or enforceable emissions limitations cannot be determined with the chronic nature of these two specific reporting violations. While these reporting violations could have risen to the level of HPVs, per the HPV Policy noted above, it is possible that additional information presented by DANR in a case-by-case discussion may have resulted in a mutual determination that the violations did not warrant the additional tracking reserved for HPVs. We are noting these two sources to highlight the importance of case-by-case analyses for potential HPVs and believe that, overall, the State is conducting its determinations of HPVs in an accurate manner. No additional revisions will be made to the final SRF report.

[1] See Timely and Appropriate Enforcement Response to High Priority Violations – Revised 2014 at <https://www.epa.gov/sites/default/files/2015-01/documents/hvpolicy2014.pdf>.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
8c Accuracy of HPV determinations [GOAL]	100%		12	15	80%

State Response:

DANR’s Air Quality Program does agree two facilities did not submit their quarterly and/or annual reports in a timely manner. However, DANR’s Air Quality Program disagrees with EPA’s position these violations were significant enough to be elevated from a federally reportable violation to a high priority violation.

- EPA’s policy involving the compliance monitoring strategy includes a category listed as synthetic minor 80 (SM80). The SM80 designation is to represent a facility that has emissions at 80% or greater of a major source. In past discussion DANR’s Air Quality Program and EPA have disagreed on how to define SM80 type facilities. EPA has pushed to define these types of facilities by the potential to emit, whereas DANR’s air quality program feels it should be defined based on actual emissions. The two facilities in question meet the SM80 definition based on potential to emit (EPA) but not by actual emissions (DANR). Both facilities have actual emissions less than 10% of the major source threshold. When each facility’s minor air quality permit comes up for renewal, DANR will discuss with the facility to lower their emission limit to a level that represents 79% of the major source threshold. If the facility agrees to this revision, both facilities will no longer fall under EPA’s compliance policies.

EPA’s HPV policy criteria five notes that violation involving reporting must substantially interfere with determining a source’s compliance. DANR’s Air Quality Program believes the priority for a source’s compliance as compliance with its emission limits. Based on historical reports, previous inspections and the current inspection, the available information indicated that emission limits had not been exceeded. Even though a facility did not maintain its air emission records or submitted its quarterly and/or annual reports, there was sufficient information justifying that emission limits were not exceeded. As such, DANR’s Air Quality Program does not feel that not submitting the reports substantially interfered with determining compliance with the emission limits.

CAA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state met its expectations with timely and appropriate enforcement to return the sources to compliance.

Explanation:

For Metric 9a regarding enforcement responses that require corrective action, eight of eight files (100%) reviewed with formal enforcement included corrective action that returned the facility to compliance in a specified time frame. The national goal is 100%.

For Metric 10b regarding HPV cases that have been addressed/removed consistent with the HPV Policy, six of six of the HPV violations (100%) reviewed were settled. The national average is 100%.

The state uses a novel approach for enforcement actions that includes concurrent NOV and settlement agreements. While we would typically see a NOV issued first and settlement agreement separately, the state has managed to return the facilities to compliance in a specified time frame. It appeared that all evaluated facilities for metric 9a and 10b were consistent in their use of the HPV policy timeliness (100%). The policy appears to be used as guidance which benefits these enforcement metrics. The EPA recommends informal actions and formal actions be entered separately into ICIS instead of just one action being entered because the NOV and settlement agreements are concurrent.

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%		8	8	100%
10a1 Rate of Addressing HPVs within 180 days		31.7%	1	1	100%
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		6	6	100%
10b1 Rate of managing HPVs without formal enforcement action		10.6%	1	1	100%

State Response:

No comment from DANR.

CAA Element 4 - Enforcement

Finding 4-2

Area for Attention

Recurring Issue:

No

Summary:

The state's Case Development and Resolution Timelines (CD&RT) was missing. For the same source, the timeliness of addressing the HPV occurred later than 180 days.

Explanation:

For Metric 10a (five of six or 83.3%) and Metric 14 (four of five or 80%), one facility resulted in the national goal of 100% not being met or exceeded. For this facility, and as discussed in Finding 4-1, paragraph 3, SDDANR's concurrent NOV and settlement agreement notification process was followed.

The NOV and settlement agreement took longer than 180 days from the Day Zero. Since the HPV was not addressed timely, the state should have developed a CD&RT or other

documentation of case timelines; such documentation was not identified by the EPA. At this facility, SDDANR granted test deadline extensions, which may have affected the timeliness. SDDANR has the authority to grant test extensions in certain circumstances, however deadline extensions should be formal and should be discussed with the EPA prior to acceptance. These can have an impact on timelines of violations and should not be accepted without cause.

To address the State Response comments below, EPA has added the following explanation:

We appreciate the additional information and context provided by DANR regarding air quality permits and extension deadlines. The final SRF report has been revised to reflect this additional information. We also understand the difficult natural environment that exists, which sometimes leads to performance testing delays. During EPA’s file review, the extension requests granted by DANR appeared to be lacking details regarding the full nature of the issues warranting test delays. Both the public and industry are better served when the record of the reasoning behind test delays is available and, going forward, we encourage DANR to create a record of documentation for all extensions granted.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		5	6	83.3%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		4	5	80%

State Response:

DANR’s Air Quality Program does agree that not all of its notice of violations and settlement agreements are signed within 180 days after day zero. In addition, DANR’s Air Quality Program does agree that EPA’s HPV policy indicates if a high priority violation (HPV) is not address within 180 days, EPA would consider our enforcement response as untimely.

The issue with EPA’s policy is that EPA considers addressing a high priority violation as a formal signed document (i.e., judicial consent decree, referral to Attorney General, issued order, etc.). DANR’s Air Quality Program disagrees with EPA that addressing a high priority violation needs to be a formal action and that our process is not meeting the intent of EPA’s HPV policy.

If DANR’s Air Quality Program believes a facility may have a violation that qualifies as a high priority violation, staff draft a notice of violation and settlement agreement and send those drafts to the facility for review. We submit the drafts to the facility for two reasons. 1) We want to

inform the facility that there may be a high priority violation that needs resolved and 2) In South Dakota, we still believe a source or person is innocent until proven guilty. Therefore, we want to make sure we have our facts correct before we move forward. In most cases the draft notice of violation and settlement agreement have been submitted to the facility within 180 days of day zero. In reviewing the identified source, the source was provided the drafts within 180 days.

Once the facility tentatively agrees with the notice of violation and settlement agreement, the drafts are sent to EPA for review. In most cases the drafts are submitted to EPA within the 180 days of day Zero. If EPA has concerns with the timeline and the need for a case development and resolution timeline, then EPA needs to speak up when reviewing the documents. In EPA's HPV policy, the policy does not provide when a violation should be resolved, with the exception of the term "as soon as possible." South Dakota's position has been to rectify the violation first and worry about the administrative enforcement action second. In most cases, the violation is resolved, and the facility is back into compliance within 180 days. However, the formal enforcement action may not be. In the identified case, the issue was resolved within a few months of identifying the issue. However, since the limit was a 12-month rolling total and the first month is what causes the issue, the remedy would not show up in the mathematical calculation for one year even though the solution was implemented 11 months prior.

In EPA's finding, EPA makes note of testing deadlines and extensions. As we have discussed, DANR has permit language that allows the Secretary to extend a test deadline that is not federally required (i.e., NSPS, MACT, etc.). In these instances, South Dakota does not need EPA permission to grant these extensions. South Dakota needs flexibility for testing requirements due to its rural nature. Most companies that conduct performance test originate outside of South Dakota. This means most of them have to travel days and not hours to get to a facility. We have had a test company have a vehicle accident. We have had a test company postpone its testing due to blizzard conditions and no travel advisory in the state. In both instances, the testing company could not schedule or re-schedule in the timeframe indicated by the permit.

CAA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state has met the expectations regarding documentation of gravity and economic benefit as appropriate in penalty calculations (Metric 11a), documentation of penalty calculation differences (Metric 12a) and collection of penalties (Metric 12b).

Explanation:

For Metric 11a (six of six or 100%) and Metric 12a (six of six or 100%), the EPA found that the penalty calculations were clear and succinct. The national goal is 100%.

The calculations match the CMRs for being thorough and easy to follow. The state uses a spreadsheet template to calculate penalties, which facilitates consistency in penalty calculations. All requested penalty calculations were shared with the EPA. Economic benefit and gravity were included in all penalty calculations reviewed. The state's penalties are lower than the EPA would have assessed, however EPA finds them to be acceptably calculated. In addition, many states do not have the resources to engage in long litigation and we believe these penalties are enough of a deterrence to both penalize and assist the state in making for faster penalty close-outs.

For Metric 12b, all penalties (six of six or 100%) assessed were collected and documentation of receipt of payment was contained in files. The national goal is 100%.

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%		6	6	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		6	6	100%
12b Penalties collected [GOAL]	100%		6	6	100%

State Response:

No comment from DANR.

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The majority of the state data entry for compliance and enforcement activities is accurate and complete in RCRAInfo.

Explanation:

For Metric 2b regarding accurate entry of mandatory data, data for 29 of the 30 files reviewed were entered accurately into RCRAInfo, resulting in a rate of 96.7%. The national goal is 100%.

The state did not enter a warning letter for one of its informal actions into RCRAInfo. The state had entered the needed information in the Citations and Violations modules but missed entering the warning letter action into that separate module. They have ensured the information was put into the system and is reflected in RCRAInfo now.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Accurate entry of mandatory data [GOAL]	100%		29	30	96.7%

State Response:

No comment from DANR.

RCRA Element 2 – Inspections

Finding 2-1Meets or Exceeds Expectations

Recurring Issue:No

Summary:

The state RCRA program inspection coverage consistently exceeds the national goals. The state inspects 100% of their treatment, storage, and disposal facilities (TSDFs) annually. Large quantity generator (LQG) inspections are conducted at a rate exceeding the required 20% and significantly higher than the national average. The state inspection reports are of high quality and thorough, allowing timely and appropriate violation determination.

Explanation:

For Metric 5a on the two-year inspection coverage of operating TSDFs, both operating TSDFs in South Dakota (100%) were inspected during 2021, meeting the national goal of 100% and exceeding the national average of 82.50%.

For Metric 5b1 on annual inspection coverage of large LQGs using the RCRAInfo universe, inspections were conducted at 26.50% of the active RCRAInfo LQGs. The national goal is 20% and the national average is 7.70%. LQGs generate 1,000 kilograms (2,200 lbs.) of hazardous waste or more than one kilogram (2.2 lbs.) of acutely hazardous waste per calendar month.

For Metric 6a on inspection reports complete and sufficient to determine compliance, 25 out of 25 files reviewed were complete, resulting in a rate of 100%, meeting the national goal.

For Metric 6b on timeliness of inspection report completion, 25 out of 25 files reviewed were timely, resulting in a rate of 100%. The national goal is 100%.

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%	82.5%	2	2	100%
5b1 Annual inspection coverage of LQGs using RCRAinfo universe [GOAL]	20%	7.7%	9	34	26.5%

6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		25	25	100%
6b Timeliness of inspection report completion [GOAL]	100%		25	25	100%

State Response:

No comment from DANR.

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state makes accurate, timely, and appropriate compliance determinations. Additionally, identified violations are entered into RCRAInfo.

Explanation:

For Metric 2a on long-standing secondary violators, there were no long-standing secondary violators listed. A long-standing violator represents the number of secondary violators (SVs) with violations open for more than 240 days that have not returned to compliance or have not been designated as being a significant noncomplier (SNC).

For Metric 7a on accurate compliance determinations, 25 of the 25 compliance determinations were determined to be accurate, resulting in a rate of 100%. The national goal is 100%. Metric 7a is based on the evidence in the inspection reports corresponding to the determination of violations. The state accurately identifies violations.

For Metric 7b on violations found during compliance evaluation inspections (CEIs) and focused compliance inspection (FCI), the state found 0 violations in 76 inspections, resulting in a rate of 0%, compared to a national average of 31.90%.

For Metric 8a on SNC identification rate at sites with CEI and FCI compliance evaluations and Metric 8b on timeliness of SNC determinations, zero SNCs were reported. The national average for 8a is 1.40% and for 8b is 90.40%. The state had a zero rate for both of these metrics, since no SNCs were identified in FY21.

For Metric 8c on appropriate SNC determinations, the national goal is 100%. There were no SNCs identified by the State in the review timeframe, resulting in a rate of 0%.

Metrics 7b and 8a are review indicator metrics, which are not used to develop findings. Review indicator metrics use national averages to indicate when agencies diverge from national norms and are used to identify areas for further analysis during the file review. When an indicator diverges significantly from the national average, the EPA should pull a sufficient sample of files to evaluate the issue during the file review. No concerns were identified with these two-indicator metrics.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2a Long-standing secondary violators			0	0	0
7a Accurate compliance determinations [GOAL]	100%		25	25	100%
7b Violations found during CEI and FCI inspections		31.9%	0	76	0%
8a SNC identification rate at sites with CEI and FCI		1.4%	0	100	0%
8b Timeliness of SNC determinations [GOAL]	100%	90.4%	0	0	0
8c Appropriate SNC determinations [GOAL]	100%		0	0	0

State Response:

No comment from DANR.

RCRA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

The state's enforcement actions effectively return facilities to compliance. The state follows up through required submittals or onsite inspections to verify return to compliance.

Explanation:

For Metric 9a on enforcement that returns sites to compliance, five of the five informal enforcement actions resulted in a return to compliance, resulting in a rate of 100%. The national goal is 100%. The state requires corrective measures in their enforcement actions to return facilities to compliance and follows up through required submittals or onsite inspections to verify return to compliance has occurred.

For Metric 10a on the number of SNC evaluations with timely enforcement, zero SNCs were reported.

For Metric 10b on appropriate enforcement to address violations, five of five of the enforcement actions were determined to be appropriate, resulting in a rate of 100% which meets the national goal.

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%		5	5	100%
10a Timely enforcement taken to address SNC [GOAL]	80%	78%	0	0	0
10b Appropriate enforcement taken to address violations [GOAL]	100%		5	5	100%

State Response:

No comment from DANR.

RCRA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Recurring Issue:

No

Summary:

There were no penalties collected during the review timeframe which was expanded to include FY2017 through FY2021.

Explanation:

For Metrics 11a, 12a, and 12b, there were no formal enforcement actions taken during the review timeframe (FY2021) or between FY2017 and FY2020, and, therefore, no penalties were assessed or collected. The national goal for all three metrics is 100%.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Gravity and economic benefit [GOAL]	100%		0	0	0
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		0	0	0
12b Penalty collection [GOAL]	100%		0	0	0

State Response:

No comment from DANR.
