

Nebraska Department of Environmental Quality

SRF Round 2

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Final Report January 4, 2012



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Nebraska Department of Environmental Quality (NDEQ) – Clean Air Act Program

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I. EXECUTIVE SUMMARY

Major Issues

The SRF review of the Nebraska Clean Air Act program identified the following major issues:

- Data entry of noncompliant status;
- 2011 Work Plan requires inclusion of Minimum Data Requirements (MDRs) to include Title V deviations data;
- High Priority Violations (HPV) discovery rate is low;
- HPVs are not entered into AFS within 60 days of designation;
- Lack of Administrative penalty authority delays bringing source back into compliance;
- Documentation of Economic Benefit needs to be included in source files; and
- Documentation of Final Penalty needs to be included in source files.

Summary of Program Reviewed

Clean Air Act Program

Areas for State Improvement - The problems which necessitate state improvement and require recommendations and actions include the following:

- Data Accuracy, changing facility status codes to “out of compliance;”
- HPVs are no entered within 60 days;
- Completion of Commitments to enter Title V certification deviations;
- Identification of Alleged Violations;
- Identification of SNC and HPV;
- Nebraska needs a plan to return sources to compliance; and
- Nebraska files do not document penalty calculation method and economic benefit on final penalty.

Areas which Meet SRF Program Requirements:

- Nebraska meets minimum data requirements;
- The Nebraska Inspection Coverage met the goal for FCE at Major and SM80;
- The Nebraska Quality of Inspections produces reports that are accurate and detailed;
- The state meets Timely and Appropriate Action with 80% of HPV’s meeting timeliness goal, and
- Nebraska’s Final Penalty Assessment included a penalty for all HPVs.

II. BACKGROUND INFORMATION **ON STATE PROGRAM AND REVIEW PROCESS**

The State Review Framework (SRF) is a program designed to ensure EPA conducts oversight of state compliance and enforcement programs in a nationally consistent and efficient manner. Reviews look at 12 program elements covering: data (completeness, timeliness, and quality); inspections (coverage and quality); identification of violations, enforcement actions (appropriateness and timeliness); and, penalties (calculation, assessment and collection).

Reviews are conducted in three phases: analyzing information from the national data systems; reviewing a limited set of state files; and development of findings and recommendations. Considerable consultation is built into the process, to ensure EPA and the state understand the causes of issues, and to seek agreement on identifying the actions needed to address problems.

The reports generated by the reviews are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. The reports are designed to provide factual information and do not make determinations of program adequacy. EPA also uses the information in the reports to draw a “national picture” of enforcement and compliance, and to identify any issues that require a national response. Reports are not used to compare or rank state programs.

A. GENERAL PROGRAM OVERVIEW

- **Agency Structure:**

The Nebraska Department of Environmental Quality was created pursuant to passage of the Nebraska Environmental Protection Act in 1971. Although the Department has grown and been given additional responsibilities over the years, its ongoing mission has remained the same - the protection of Nebraska’s air, land, and water resources. Presently, the Agency is authorized a staffing level of 217 full-time employees, of which 35 FTEs are dedicated to the Air Quality Division.

- **Compliance and Enforcement Program Structure:**

The objectives of the Air Quality Division are to achieve and maintain the ambient air quality standards, to protect the quality of the air in areas of the state that have air cleaner than the standards, and to implement air quality rules and regulations. By fulfilling these objectives, the Department states that it is confident that public health and the environment will be adequately protected.

The major programs in the Air Quality Division are: the Permitting Section, which consists of the construction permit program, and the operating permit program; the Compliance Section which conducts ambient air quality monitoring, stack testing observations, and

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inspections. The Program Planning and Development Unit (PPD) are also part of the Air Quality Division. The PPD is responsible for regulatory development, emission inventory, modeling, State Implementation Plan submittals, compliance assistance, and outreach.

The establishment of six local field offices has enabled the agency to provide the public with greater access to NDEQ staff. They are also able to provide timely response to citizens and to develop a better understanding of local issues because NDEQ staff live and work in the local community. The Field Office Section consists of 15 employees who conduct compliance inspections, complaint investigations, environmental sampling, project management, and local compliance assistance for the agency's Air Quality, Waste Management and Water Quality Divisions.

The State and EPA signed a Performance Partnership Agreement in 2010. Basic or "Core" Air Quality Division Management Program components consists of:

- Compliance and Enforcement of the Air Quality Regulations
- Permitting in accordance with the State Implementation Plan (SIP), federal, and state regulations
- New Source Performance Standards
- Regulatory Development and Program Planning
- Hazardous Air Pollutants
- Ambient Air Monitoring and Stack Testing
- Emission Inventory
- Outreach, Training and oversight of Local Agencies
- Support and active participation in national, regional, state, and local organizations
- Data Communication and Support

The overarching goal of the Clean Air Act (CAA) and Amendments is to authorize States to assume primary responsibility for implementing the air quality regulations. In order for a State to assume the regulatory lead as the implementing agency, it must be authorized by EPA to do so. The State of Nebraska, by Memorandum of Agreement with the U. S. Environmental Protection Agency (EPA), dated July 3, 2003 has established policies, responsibilities and procedures for the Air Quality program. The Memorandum of Agreement (MOA), the current Performance Partnership Agreement (PPA), Performance Partnership Grant (PPG) and any additional agreement(s) should be consistent with the statutory and regulatory requirements.

As stated on the NDEQ home page, enforcement actions are pursued by the agency when compliance issues are serious, chronic, or cannot be otherwise resolved. NDEQ's maximum penalty is \$10,000 per day per violation. The NDEQ works with the Attorney General's Office to resolve enforcement actions. All penalty monies collected are distributed to the local school district where the violation occurred.

As part of any settlement, the source may voluntarily agree to undertake an environmentally beneficial project related to the violation in exchange for mitigation of the penalty. This is referred to as a Supplement Environmental Project or a SEP. SEPs must be

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activities that go above and beyond with is necessary to comply with the law.

The Air Compliance Section may discover violations in a variety of ways, including, but not limited to compliance inspections, report reviews, complaint investigations, and referral from other agencies, follow-up inspections, and reviews permit applications. Once violations have been detected they are documented in an inspection report or memorandum as soon as possible. When violations do occur, Nebraska may seek a voluntary return to compliance through informal means or seek formal enforcement. Depending on the type of violations, one or more of the following actions and enforcement mechanisms may be pursued:

- Voluntary Compliance
- Letters of Warning
- Notice of Violation
- Permit Denial, Revocation, or Modification
- Administrative Order
- Consent Orders, Agreement, Stipulations
- Injunctive Relief
- Referral to State Attorney General (AG)
- Referral to EPA
- Joint State/EPA Enforcement
- SEPs

To initiate an enforcement action, the Air Quality Compliance Section recommends enforcement to the Division Administrator who then makes a recommendation to the Deputy Director. Should the Division Administrator and Deputy Director agree, the enforcement case is then referred to their Legal Division. An Enforcement Request Form is completed by the Air Compliance Section Staff. These forms may be completed by the inspector and must be approved by the Section Supervisor and Division Administrator. Multi-media enforcement requests may require multiple approvals from the appropriate supervisors and Division Administrators in all media. The Air Quality Division and the Waste Division occasionally have joint enforcement actions. The types of enforcement action that may be requested are described in Chapter 3 of the Nebraska Enforcement Manual.

Once the Enforcement Request is sent to the Legal Division, the matter will be assigned a case number and a staff attorney for review and handling. Depending on the type of enforcement action requested, the attorney may contact the individual initiating the enforcement request for more information regarding the case, discuss alternatives, and other possible remedies. The Penalty Computation Worksheet, along with any economic benefit is calculated by the Legal Division Staff. If penalties or further judicial action is determined to be warranted by the Director, the case is referred to the Attorney General's (AG's) Office.

All penalties must be assessed in the context of a civil or criminal judicial action taken by the AG. The AG has authority to issue a judicial compliance order and/or assess penalties. If penalties are deemed appropriate, the amount of any negotiated penalty is left to the discretion of the AG. NDEQ senior management is informed of the status of actions referred to the AG's office, but staff in the Legal Division and the Air Division apparently gets little feedback

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regarding the basis for a final penalty assessment by the AG's office. The attorney should work closely with all levels of NDEQ air staff and the AG's office, if appropriate, to develop the case and bring it to conclusion. During a pending enforcement action, discussions with the violator are coordinated through the NDEQ attorney and/or AG's Office.

For civil proceedings, with the prior approval of the AG, the NDEQ may contact a violator in advance of referring the matter to the Attorney General, in an attempt to reach an amicable settlement. The Legal Counsel will usually make this decision on a case-by-case basis after consultation with the Assistant Attorney. The staff attorney and Director give consideration to timeliness issues and the likelihood of settlement.

- **Roles and Responsibilities:**

The Compliance Section consists of 12 employees who conduct compliance inspections, complaint investigations, environmental sampling, project management, and local compliance assistance for the agency's Air Quality Divisions.

- **Local Agencies**

Two local agencies, the Lincoln/Lancaster County Health Department (LLCHD), and the Omaha Air Quality Control, have accepted, through contract with the NDEQ, and direct delegation from EPA, responsibility for various facets of the program. These responsibilities include air quality monitoring, planning, permitting and enforcement within their areas of jurisdiction. The City of Omaha and the LLCHD air compliance and enforcement program are reviewed by NDEQ annually. This review will include discussions of the Local Agencies with respect to their relationship with and responsibilities to NDEQ. However, this review does not include an in depth evaluation or site visit to the Local Agencies.

- **Resources:**

The Compliance Section of the Air Quality Division is responsible for conducting compliance inspections of air pollution sources, responding to citizen complaints, observing and evaluating stack tests, ambient air monitoring, and overseeing the acid rain program. The Compliance Section consists of 12 Full Time Equivalent (FTE) employees working in the air program. The Compliance Section employees have a total of 28 years of inspector experience, 28 years of attorney experience, 32 years of supervisor/manager experience, 1 years of clerical experience, 35 years of data management and 13 years of stack tester experience.

- **Staffing/Training:**

The following information was provided by the NDEQ in their Annual Report to the Legislature dated December 1, 2010. Because the department deals with a wide array of complex environmental issues, it is essential to our operations that technically competent people are hired for vacant positions. Without highly trained and experienced staff, the department would not be able to effectively carry out its mission of protecting Nebraska's environment. Staff retention

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continues to be an important goal for the agency. Staff turnover impacts continuity in the department's programs and enforcement activities, and causes additional costs for training of replace staff members. The department strives to foster and maintain an employee-friendly workplace by offering transfer and promotional opportunities for qualified internal applicants. In addition, training and tuition assistance are provided to interested staff. The January 2011, NDEQ organizational chart, shows the Compliance Section is fully staffed, except for the clerical support position. That position has now been filled. The Air Quality Division has been challenged in the past to retain trained technical staff. With the economic downturn, however, all positions are filled with no expected changes in the near future.

Nebraska encourages the office and field staff to take advantage of all available training which provides the knowledge and understanding to improve the performance of their duties. Staff participate in regulatory training provided by EPA (including the annual EPA Region 7 meeting with the states and locals), CenSara training, NETI training, APTI Online Webinars, and the EPA field inspector workshop when available.

The Compliance Section continued to support the efforts of the Program Planning and Development Unit in fulfilling assistance and outreach activities. The PPD produced a comprehensive training DVD for use by both staff and regulated industry was developed. The PPD also produced a web-based information center on regulated hazardous air pollutants called the Air Toxics Notebook and another for New Source Performance Standards. The Compliance Section supported the PPD efforts of developing fact sheets and guidance documents to help Nebraska businesses understand and comply with air quality regulations and also participated in the annual Air Program Update Workshops in the summer 2010 for representatives from businesses, consulting firms, and industry. In addition to training, the Compliance and Enforcement Section communicates with the field staff on a regular basis.

- Additional training reported by Nebraska included:
 - PSD/Enforcement Training
 - Non-Attainment Series
 - NACAA/EPA Retreat
 - National Air quality Conference
 - EPA Basic Inspector Course
 - EPA/Regional State/Local Modelers Workshop
 - Ozone 101
 - Air Toxics 101
 - EPA Compliance and Enforcement Webinar
- **Data reporting systems/architecture:**

Nebraska enters the minimum data elements in their Integrated Information System (IIS) database. The Universal Interface (UI) uploads the IIS data into AFS on the 15th of each month.

B. MAJOR STATE PRIORITIES AND ACOMPLISHMENTS

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- **Priorities:**

The Air Quality Compliance and Enforcement Section's priority is to ensure that facilities are in compliance with the CAA. The Section has, in particular, focused attention on compliance of the ethanol industry, and implemented use of a FLIR Camera to better enable assessment of this industry.

- **Accomplishments:**

- For FY10 NDEQ accomplished the following:
 - 140 Inspections;
 - 47 NOVs;
 - 41 Stack Tests observed;
 - 15 RATA tests Conducted/31 RATA Test Reports Reviewed;
 - Penalties collected in the amount of \$233,363;
 - 20 Compliance Assistance visits;
 - Participated in cement global discussions;
 - Participated with EPA in power plant case development; and
 - Developed and SOP improving their inspection process and reports. The SOP directed improvement to permit writing by providing clearer applicable requirements and subsequent compliance

- **Best Practices:**

Fact Sheets

The Air Quality Division of the Nebraska Department of Environmental Quality (NDEQ) continue to develop fact sheets and guidance documents which assist Nebraska businesses to better understand and comply with air quality regulations.

Inspection Reports

Due to improvement to their inspection process and reports, and improved permit writing with clearer applicable requirements, the Compliance and Enforcement Section's inspections and reports were consistent in content. Each of the inspectors uses a checklist of permit requirements. A consistent format provides a more detailed observation and findings which better documents compliance.

Inspection Frequency

The CMS states that major sources should be inspected once every two years and SM80 are to be inspected once every 5 years. The NDEQ conducts inspections every other year at major source annually and SM80 sources on a 4 year schedule.

HPV with Penalty

Nebraska collected \$233.363 in penalties on CAA violations. The SRF data show that Nebraska is collecting a penalty on 100% of HPVs.

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- **Element 13:**

Nebraska did not submit information under Element 13.

C. PROCESS FOR SRF REVIEW

- **Review Period and Key Dates:**

The EPA Region 7 enforcement on site review team included Angela Catalano, Gary Bertram and Joe Terriquez, all representing the Air Compliance and Enforcement Section (ACES) of the Air Permitting and Compliance Branch (APCO) of the Air Waste and Management Division (AWMD). The CAA data “production” data of 2010 is the basis for review. Todd Ellis and Ken Almquist are the primary representatives for the NDEQ air compliance program.

- **Communication with the State**

On November 9, 2010, a letter to NDEQ confirmed that a review of the air program would occur in 2011. The CAA SRF kickoff meeting was held by conference call on January 6, 2011 to discuss program review procedures. On February 28, 2011, a list of source files to be reviewed was prepared and provided to Nebraska via email, along with the official data set. The number of files to be reviewed was determined based on the protocol in the SRF Implementation Guide, and was based on the number of facilities in the universe, the number of inspections performed and the level of enforcement activity in the program. Each program file was selected randomly within a representation of types or program areas within each program. The report contains findings of the review for each program and areas of concern with a full explanation of these concerns along with the recommendations for resolution. The file list included 12 inspection files and 12 enforcement files. Providing the file list in advance provided ample opportunity to Nebraska to pull all necessary information into a central location. A Preliminary Data Analysis (PDA) was performed on the 2010 production data and provided to NDEQ on March 10, 2011. The PDA was uploaded to the SRF tracker at this time as well. The on site visit at NDEQ was conducted on March 29-31, 2011. On March 29, 2011, the EPA and NDEQ staff met, prior to initiating the file review. Discussions with staff, inspectors and management were held. A closeout meeting was conducted on March 31 with NDEQ representatives from the Program and Management, EPA review team staff, and EPA managers via telephone. Each Metric was described and findings were discussed. The recommendation process was discussed to correct issues. NDEQ management requested that Headquarters provide comment on the draft report, prior to their review. The NDEQ would then review the final draft, which would include the comments made by Headquarters.

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- **List of State and Regional Lead Contacts for Review:**

EPA	NDEQ
Angela Catalano, Environmental Scientist Air Permits and Compliance Branch Air Enforcement and Compliance Section	Todd Ellis, Section Supervisor, Compliance Section
Gary Betram, Environmental Engineer Joe Terriquez, Environmental Engineer	Ken Almquist, Unit Supervisor, Inspection & Compliance Unit

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III. STATUS OF OUTSTANDING RECOMMENDATIONS FROM PREVIOUS REVIEWS

During Round 1 (2007) of the SRF review of Nebraska's compliance and enforcement programs, Region 7 and Nebraska identified a number of actions to be taken to address issues found during the review. The table below (and Appendix) shows the status of progress toward completing those actions. While Nebraska completed recommendations from Round 1, the state has additional data coding issues.

State	Status	Due Date	Media	E#	Element	Finding
NE - Round 1	Completed	12/30/2007	CAA	E11, E12	Data Accurate, Data Complete	AFS data accurately and timely
NE - Round 1	Completed	12/30/2007	CAA	E8	Penalties Collected	Enter Penalties on the correct action type
NE - Round 1	Completed	12/30/2007	CAA	E1	Insp Universe	No documentation that inspection report sent to the facility
NE - Round 1	Completed	7/9/2007	CAA	E11	Data Accurate	Facilities incorrectly coded as SM-80
NE - Round 1	Completed	7/1/2007	CAA	E11, E12	Data Accurate, Data Complete	Universal Interface does not provide minimum data elements

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IV. FINDINGS

NEBRASKA 2011 SRF FINDINGS AND RECOMMENDATIONS

CAA Element 1	
Degree to which the Minimum Data Requirements are Complete	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	Although MDR data are complete overall, Nebraska including the local agencies need to review and properly classify NSPS data.
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.)	<p>The NDEQ has placed an emphasis on data management and data accuracy and spend time ensuring the minimum data elements have been properly entered into the data system. NDEQ's effort has resulted in achieving the National Goal of 100% for four of the six metrics identified below. The metric 1c4 – 81% requires that not only NDEQ, but LLCHE and the City of Omaha review the NSPS data and clean up sources that are incorrectly classified or do not contain a subpart code(s). The metric 1c6 – 91% is above the National Average and just below the National Goal.</p> <p>NDEQ, LLCHD and the City of Omaha need to review their facilities and reclassify facilities or provide the proper subpart codes as needed.</p>
Metric(s) and Quantitative Value	<p>1c4 – CAA subprogram designation: % NSPS Facilities with FCE conducted after 10/1/05 NE – 81.4%; National Goal – 100%; National Average – 87.6%</p> <p>1c5 – CAA subprogram designation: %NESHAP Facilities with FCE conducted after 10/1/05 NE – 100%; National Goal – 100%; National Average – 45%</p> <p>1c6 – CAA subprogram designation: %MACT Facilities with FCE conducted after 10/1/05 NE – 91%; National Goal – 100%; National Average – 84.7%</p> <p>1h1 – HPV Day Zero Pathway Discovery date: Percent DZs with discovery NE – 100%; National Goal – 100%; National Average – 58%</p> <p>1h2 – HPV Day Zero Pathway Violating Pollutants: Percent DZs NE – 100%; National Goal – 100%; National Average – 91. %</p> <p>1h3 – HPV Day Zero Pathway Violation Type Code(s): Percent DZs with HPV Violation Type Code(s) NE <input type="checkbox"/> – 100%; National Goal – 100%; National Average – 91.35%</p>
State Response	
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	No recommendations necessary

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CAA Element 2 – Data Accuracy	
Degree to which data reported into the national system is accurately entered and maintained	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	Nebraska is not coding sources out of compliance when an NOV is issued or stack test failures. This results in incorrect and missing data. Data accuracy is a continuing issue from Round 1.
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.	<p>Nebraska has placed an emphasis on data management and data accuracy. The file review identified a number of situations where data was entered incorrectly into AFS or may have been missing. The following describes discrepancies noted during the file review</p> <p>Source – 067-00008: Two PCEs one in file, not in AFS; one in AFS, but not in file. Source – 059-00030: FCE conducted on 10/20/10 not found in file. Of the 22 source files reviewed, specific AFS data were entered into AFS for 20 out of 22. Nebraska inspects each of its synthetic minor sources on a four year schedule, which is more frequent than the CMS requirements.</p> <p>Nebraska is not coding sources “out of compliance” when an NOV is issued.</p> <p>The discrepancies appear to be incidents of input error or inadvertent omission. As such, EPA is bringing its concerns to Nebraska’s attention so that they can address them.</p>
Metric(s) and Quantitative Value	2a - # of HPVs/# of noncompliant sources NE – 116.7%; National Goal – ≤ 50%; National Average – 45.5% 2b1 - % stack tests without pass/fail result NE – 0%; National Goal – 0%; National Average – 1.3%
State Response	<p>On a NACAA enforcement call on November 2, 1011, an EPA AFS contact discussed AFS modernization. In her discussion, she stated EPA is going to eliminate the “compliance status” from future MDR requirements. As such, it is proposed that the following response be tabled. If EPA changes its mind on this requirement, the following proposal could be enacted. The NDEQ proposes that when a determination is made that a violation is an HPV, upon EPA concurrence, EPA will change the facility status to “out of compliance”. When the violation is closed, an HB (returned to compliance) code will be entered by the NDEQ. Upon receipt of the HB code, with EPA concurrence, EPA will change the facility status back to compliance. This approach seems logical since it is EPA who elevates a facility violation to the HPV status. Resolutions of violations are typically discussed during the bi-monthly calls and it seems reasonable that once agreement is reached, EPA would “resolve” the violation by changing the facility status back to compliance. This approach ensures discussion and agreement between both agencies before changes to a facility status are made.</p>

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	<p>In addition, the two PCEs identified are not required data elements. They are voluntary and as such, should not appear in a report as needing attention. The FCE mentioned above was an EPA lead inspection. There was no inspection report because we had yet to receive the report from EPA even though the inspection was conducted six months prior to their on-site evaluation.</p>
<p>Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)</p>	<p>Nebraska should correct the input errors and inadvertent omissions noted by June 1, 2012.</p> <p>For all federally reportable violations, HPVs and Non-HPVs the compliance status code should be maintained. When a source is elevated to HPV status, or is in violation, the facility status needs to be changed to “out of compliance,” and the facility status code also needs to be changed when the facility returns to compliance. EPA can assist Nebraska in this effort with training or by providing data entry assistance. Future input of “out of compliance” status should be entered on facilities listed as HPVs. Nebraska may need to revisit the mapping of the IIS system with the UCI and work with EPA to determine that the compliance status is being captured correctly in AFS.</p>

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CAA Element 3 – Timeliness of Data Entry	
Degree to which the Minimum Data Requirements are timely	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	Nebraska has not entered any HPVs into AFS within 60 days. Entry of approximately one-third of both compliance monitoring and enforcement MDRs is untimely.
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.)	No HPVs have been entered into AFS in a timely manner. Approximately one-third of both compliance monitoring and enforcement MDRs are entered into AFS in an untimely manner. EPA will continue to work with Nebraska ensure the timeliness of entering HPV data actions into AFS. There is a lag of at least 30, if not 60 days before HPV actions are uploaded from the IIS to AFS. To assist in decreasing this lag, the frequency of compliance calls between EPA and the state should be increased.
Metric(s) and Quantitative Value	3a - % HPVs entered in less than/equal 60 days NE – 0%; National Goal – 100%; National Average – 34.7% 3b1 - % compliance monitoring MDRs entered more than 60 days NE – 64.6%; National Goal – 100%; National Average – 59% 3b2 - % enforcement MDRs entered more than/equal 60 days NE – 69.8%; National Goal – 100%; National Average – 70.3%
State Response	The NDEQ proposes that instead of increasing the frequency of calls, which will not address the lag time between the issuance of an NOV and a call, we will contact EPA through e-mail declaring our interpretation of HPV status of a violation. If in EPA’s review of the NOV and HPV declaration, a disagreement exists, a call can be initiated as soon as possible to resolve the issue. If EPA is in agreement with NDEQ interpretation, EPA will elevate the violation to HPV status. The bi-monthly calls can still address the ongoing status of the agreed upon HPV sources.
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	Beginning January 1, 2012, EPA and Nebraska will review enforcement actions and coordinate HPV identification/interpretation on monthly State-EPA conference calls rather than bimonthly calls. This will shorten the time lag for discussion of HPVs and entry of data related to HPVs

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CAA Element 4 – Completion of Commitments	
Degree to which all enforcement/compliance commitments in relevant agreements are met and any products or projects are completed	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	Nebraska needs to meet the requirements of all enforcement and compliance agreements with EPA. (See 2011-2012 CAA 105 Work Plan: Item 6.3)
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.)	Work plan item 6.3 requires Nebraska to update the IIS data system for Title V certification data entry, including the reviewed date, due/received date, result code, and deviation data. Deviations are not currently being entered in the data system.
Metric(s) and Quantitative Value	
State Response	We are committed to making these changes but other IT priorities have delayed progress. We will try and initiate these changes as soon as possible.
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	By June 1, 2012, Nebraska will update data screen to reflect MDRs for Title V compliance deviations.

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CAA Element 5 – Inspection Coverage	
Degree to which local program completed the universe of planned inspections/compliance evaluations	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	Nebraska meets the requirements for inspection coverage
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.)	<p>Nebraska met the national goal for self certification review. Nebraska was well above the national average for FCE at Major, Sm80 facilities, and PCE coverage.</p> <p>Nebraska inspects each of its synthetic minor sources on a four year schedule, which is more frequent than the CMS minimum requirement.</p> <p>While Nebraska’s inspection of other minor sources was below the national average, but there is no national goal.</p> <p>A typical Nebraska FCE observes emission points, evaluates rule and/or permit requirements, interviews employees and reviews records. FCEs conducted by Nebraska met the EPA definition of FCE.</p> <p>There are 13 sources with “unknown” compliance status; although it is a small number, a regular review of this field is a wise practice given that it helps to ensure a valid compliance status.</p>
Metric(s) and Quantitative Value	5a1 – FCE coverage – Majors NE – 97.5%; National Goal – 100%; National Average – 88.7% 5a2 – FCE coverage – All Majors NE – 97.5%; National Goal – 100%; National Average – 88.9% 5b1 – FCE coverage – SM80 NE 92.7%; National Goal – 20 – 100%; National Average – 85% 5b2 – FCE coverage – CMS SM80 NE – 96/6%; National Goal – 100%; National Average – 89.1% 5c – FCE/PCE coverage – All SMs NE – 91.2%; National Average – 81.4% 5d – FCE/PCE coverage – other minors NE – 6.9%; National Average – 26% 5E- Sources with unknown compliance status NE – 13; No National Average or goal. 5g – Review of Self Certifications completed NE – 100%; National Goal – 100%; National Average – 94%
State Response	

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Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	No recommendations are necessary.
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CAA Element 6 – Quality of Inspection or Compliance Evaluation Reports	
Degrees to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	The Nebraska inspection reports are accurate and properly document observations.
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.)	<p>Nebraska has made improvements to the inspection process since SRF Round 1. A format has been developed in which the rule and permit requirements are incorporated into the report and the inspector documents findings in detail. In general, the inspection reports appear to be accurate, detailed and complete. The following were observed during the file review:</p> <p>Source - 067-00008: Two PCEs one in file, not in AFS; one in AFS, but not in file. Source - 047-00050: Inspection entered as FCE, but facility not constructed. Source - 145-000113: PCE (10/27/10) not entered into AFS Source - 141-00025: File index is not correct date range or documents in the file. Source – Abengoa, York and Ravenna files had comingling of documents.</p> <p>In general, files were well organized and documents were easy to find.</p>
Metric(s) and Quantitative Value	
State Response	
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	No recommendations are necessary.

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CAA Element 7 – Identification of Alleged Violations	
Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	Nebraska compliance determinations appear to be accurate and prompt; however, Nebraska falls far below the national guideline as it relates to discovery of facilities in noncompliance with FCE, stack, or enforcement. Nebraska does not report noncompliance status for failed stack tests.
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.)	<p>Nebraska utilizes a number of tools to determine compliance with the CAA requirements. In addition to FCEs and PCEs, Nebraska reviews submitted reports and certifications, and received/reviewed voluntary disclosure of violations from some facilities. Utilizing these approaches, Nebraska has been able to identify violations that may not be evident during an on-site inspection.</p> <p>Nebraska falls below the national average for facilities in noncompliance with FCE, stack test or enforcement. Nebraska management should try to understand and address this situation, if necessary. The Nebraska annual inspection rate, which is more frequent than the CMS inspection requirement, provides a greater regulator presence at the facilities. Such frequency may result in most facilities not only understanding their regulatory requirements under the CAA, but also the awareness that an inspector will be visiting them annually instead of once every five years. For these reasons, an increased inspection frequency should result in a lower noncompliance rate.</p>
Metric(s) and Quantitative Value	7c1 - % facilities in noncompliance with FCE, stack test, or enforcement NE – 6.3%; National Goal - >1/2 National Average; National Average – 22.3% 7c2 - % facilities with failed stack test and have noncompliance status NE– 0%; National Goal - >1/2 National Average; National Average – 46.4%
State Response	See response in element # 2
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	By June 1, 2012, Nebraska needs to enter out of compliance codes when facilities are out of compliance due to violations or stack tests failure. Nebraska will review the results code of the nine failed stack tests and confirm that the pollutant compliance status reflected the same compliance outcome. Nebraska should incorporate a process to confirm that both data elements (results code and compliance status) reflect the same outcome.

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CAA Element 8 – Identification of SNC and HPV

Degree to which the state program accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner

	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Finding		Nebraska’s HPV discovery rate of 2.6% is just below the national goal and below the national average.
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.		<p>The Nebraska annual inspection rate for major sources, which is more frequent than the CMS inspection requirement, provides a greater regulator presence at the facilities. Such frequency may result in most facilities not only understanding their regulatory requirements under the CAA, but also the awareness that an inspector will be visiting them annually instead of once every five years. For these reasons, an increased inspection frequency should result in a lower noncompliance rate.</p> <p>Nebraska also reviews facility submitted semi-annual and annual reports in an effort to identify violations and HPVs.</p> <p>Nebraska has also been able to reduce HPVs with up front compliance assistance activities. For example, Title V facilities are notified prior to their renewal application deadline. These metrics indicate a possible problem in applying the HPV definition to violations the state has discovered.</p> <p>HPV training/refresher with enforcement staff is encouraged.</p> <p>Nebraska and EPA will review enforcement actions and coordinate HPV identification/interpretation on monthly State-EPA conference calls rather than bimonthly.</p> <p>Although Nebraska appears to be deficient in Element 7c2, Element 8e shows that Nebraska is elevating failed stack test to HPV status above the National Average.</p>
Metric(s) and Quantitative Value		<p>8a – HPV discovery rate – Major sources NE – 2.6%; National Goal - >1/2 National Average; National Average – 6.4%</p> <p>8b – HPV discovery rate – SM sources NE – .6%; National Goal - >1/2 National Average; National Average – 0.4%</p> <p>8c - % formal actions with prior HPV – Majors NE – 80%; National Goal - >1/2 National Average; National Average – 67%</p> <p>8d - % informal enforcement actions without prior HPV – Majors NE –50%; National Goal - <1/2 National Average; National Average – 49%</p> <p>8e - % sources with failed stack test actions that received HPV listing – Majors and Synthetic Minors NE – 50%; National Goal - >1/2 National Average; National Average – 40.57%</p>
State Response		The EPA file review did not identify a single instance were DEQ failed to accurately identify a

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	violation as an HPV. Training on HPV identification is unwarranted when EPA has not shown that a problem exists. EPA inspections in NE have not shown inconsistent non-compliance rates compared to those identified by NDEQ. Unless EPA can document an issue with HPV identification, NDEQ is not compelled to take action on unfounded assumptions.
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	During FY 2012, EPA will conduct a training/refreshers course on HPV identification at the EPA - State/Local Permit and Enforcement meeting.

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CAA Element 9 – Enforcement Actions Promote Return to Compliance

Degree to which local enforcement actions include required corrective action that will return facilities to compliance in a specific time frame

	Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required						
Finding		<p>The Nebraska formal enforcement process includes actions to bring facilities into compliance, however, Nebraska does not currently have statutory authority to assess civil penalties administratively, therefore civil penalty cases must be pursued in state court by the Nebraska Attorney General's Office. This leads to some issues with timeliness of actions and adequacy of documentation of actions in NDEQ's files.</p>						
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.		<p>Nebraska formal enforcement actions focus on bringing the facility back into compliance. 3 files were reviewed with penalty actions. One of the three enforcement actions reviewed is pending at AG's office.</p> <p>Source - 019-00095: Consent Decree not found in file. No documentation of payment found. The penalty calculation did not take into consideration economic benefit.</p> <p>Source - 089-00044: Economic benefit not calculated even though letter from Linder to AG (10/21/09) states that controls were required.</p> <p>Source - 185-00030: No documentation of payment.</p> <p>NDEQ should review and resolve the reason for the 3-4 year delays in the AG's office, including:</p> <p>Source - 119-00078 (referral 12/21/07) Source - 141-00032 (referral 5/1/08) Source - 139-00023 (referral 9/9/09) Source - 119-00044 (referral 5/28/09) Source - 043-00029 (referral 5/1/09)</p>						
Metric(s) and Quantitative Value		<table border="0"> <tr> <td>File Review</td> <td></td> </tr> <tr> <td>9a – number of files with enforcement actions reviewed</td> <td>3</td> </tr> <tr> <td>9b - % enforcement actions returning source to compliance</td> <td>60%</td> </tr> </table>	File Review		9a – number of files with enforcement actions reviewed	3	9b - % enforcement actions returning source to compliance	60%
File Review								
9a – number of files with enforcement actions reviewed	3							
9b - % enforcement actions returning source to compliance	60%							
State Response		<p>We agree with this recommendation. EPA correctly notes that NDEQ does not have the authority to assess administrative penalties against violators. The NDEQ must refer cases to the AG to seek judicial civil or criminal penalties. NDEQ has developed and uses a penalty calculation worksheet to calculate the gravity and economic benefit for actions referred to the AG. The AG will typically file a Satisfaction of Judgment in a case when the penalty has been paid and all required compliance has been achieved. This usually occurs approximately 6 months after the consent decree has been signed by the judge. We will work to ensure that we consistently use and document the proposed penalty and enhance the description of economic benefit in future</p>						

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	enforcement referrals. We agree that better communication with the AG is desirable to ensure timely and appropriate penalties are achieved in negotiated settlements.
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	NDEQ air program along with legal counsel should develop a plan to coordinate and communicate with the Attorney General's office. Nebraska needs to communicate with the AG to identify information about a case that would be helpful for the AG when calculating a penalty. The plan should include discussions and address adequate documentation of the proposed penalty versus final penalty, how it was calculated and payment of penalty. Also, the plan should address how to eliminate delays in the AG's office. A draft plan should be submitted to EPA Region 7 by June 1, 2012.

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CAA Element 10 – Timely and Appropriate Action	
Degree to which a local program takes timely and appropriate enforcement actions in accordance with policy relating to specific media	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	80% of Nebraska’s HPV Enforcement actions meet timeliness goals.
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.)	<p>The AFS data pull shows that only 20% of the state HPVs did not meet timeliness goals for the previous two year period. This is above the national average of 35%.</p> <p>Nebraska makes effort to conduct timely and appropriate enforcement actions and settle cases quickly. However, each enforcement case is unique in its own way. Nebraska’s approach is to refer cases to the State AG. EPA understands that enforcement cases may take more time to bring to resolution, and encourages ongoing dialogue between EPA and Nebraska where individual case considerations require additional time to resolve the case. Data shows that the majority of Nebraska’s cases in 2010 were “addressed” in a timely manner, by sending these cases to the AG. The following cases were identified in the AG office:</p> <p>Source - 119-00078 (referral 12/21/07) Source - 141-00032 (referral 5/1/08) Source - 139-00023 (referral 9/9/09) Source - 119-00044 (referral 5/28/09) Source - 043-00029 (referral 5/1/09) See recommendation from Element 9.</p>
Metric(s) and Quantitative Value	10a - % HPVs not timely NE– 20%; National Average – 35.9%
State Response	We agree that timely and appropriate enforcement is a major goal. We will continue to work with the AG to meet our enforcement goals.
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	No recommendations are necessary.

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CAA Element 11 – Penalty Calculation Method	
Degree to which local program documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	Penalty calculation documentation in the file did not include economic benefit calculations.
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.	<p>Nebraska’s penalty policy does provide for consideration of economic benefit in addition to gravity calculation of the penalty to be assessed. Documentation was not found in files to indicate an economic benefit was determined when calculating penalties. The Nebraska Legal Staff calculates a “base” penalty. The file review discovered penalties for three cases (185-00030, 019-00095, and 177-00052) , however, there was no evidence in the file that showed whether penalties were calculated considering economic benefit.</p> <p>Nebraska did not calculate the economic benefit gained through noncompliance. In some cases, such as smaller facilities in which the current economic downturn would make it difficult to pay a penalty, the state may have a legitimate reason to lower an assessed penalty. However, the file does not document justification for not including an economic benefit component. Nebraska should be documenting calculation, or rationale for not calculating economic benefit as part of each penalty calculation.</p> <p>Legal staff should communicate penalty calculations with air staff. Since Air Program staff enters final penalty assessment in their data system, Legal needs to provide that information. (Currently, staff retrieves the penalty information from the public web site). It is suggested that the Legal staff share final penalty assessments with air staff for input into the IIS at the same time it is posted on the Nebraska public site.</p> <p>Nebraska files need to include documentation in the file how economic benefit was or was not assessed.</p>
Metric(s) and Quantitative Value	11a - % penalty calculations that consider & include gravity and economic benefit 0%
State Response	The Legal Division provides a copy of the filed consent decree or judgment in a case to a designated individual in the Air Division at the same time it is placed on the public webpage. In the future, the Legal Division will send a notice to the entire Air Division notifying them of the filing. We understand that Air staff may possess or could obtain information that would assist in calculation of a proposed penalty and economic benefit. We will work to enhance our penalty calculations and improve communication between the Legal and Air staff in this regard. We will work to develop appropriate enforcement training to assist staff.

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Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	By June 1, 2012, Nebraska needs to document the calculation of economic benefit and, if needed, staff should be trained on calculating economic benefit. Final penalty payment needs to be documented in the file.
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CAA Element 12 – Final Penalty Assessment and Collection	
Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	Differences between initial and final penalty, as well as the final penalty collected are not documented in the files.
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.)	Proposed and final penalties sent forward to the AG should be justified. Penalties were drastically reduced by Legal staff. Reasons for such reductions need justification and documentation in the file. Documentation of receipt of a final payment was not included in the file.
Metric(s) and Quantitative Value	12a – Actions with penalties NE - 6 12b - % HPV actions with penalty NE– 100%; National Goal - ≥ 80%; National Average – 88%
State Response	We believe the difference between the NDEQ proposed penalty to the AG and the final penalty are adequately documented in the file. As noted above, the AG will typically file a Satisfaction of Judgment in a case when the penalty has been paid and all required compliance has been achieved. This usually occurs approximately 6 months after the consent decree has been signed by the judge. However, we acknowledge that what is missing is an explanation of the reasons for this difference. The AG is an independent constitutional office with final decision-making on cases. We agree that feedback regarding final penalty amounts would assist the agency in evaluating the result of our enforcement actions and in pursuing appropriate enforcement cases in the future. We agree that better communication with the AG is desirable to ensure timely and appropriate penalties are achieved in negotiated settlements and we will work to improve those communications.
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	By June 1, 2012, Nebraska should document receipt of a final payment in the facility file. Nebraska needs to include copy of receipt of payment in the file.

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V. APPENDICES

APPENDIX A: STATUS OF RECOMMENDATIONS FROM PREVIOUS REVIEWS

During the first SRF review of The Nebraska Department of Environmental Quality's compliance and enforcement programs, Region 7 and Nebraska identified a number of actions to be taken to address issues found during the review. The table below shows the status of progress toward completing those actions.

State	Status	Due Date	Media	E#	Element	Finding
NE - Round 1	Completed	12/30/2007	CAA	E11, E12	Data Accurate, Data Complete	AFS data accurately and timely
NE - Round 1	Completed	12/30/2007	CAA	E8	Penalties Collected	Enter Penalties on the correct action type
NE - Round 1	Completed	12/30/2007	CAA	E1	Insp Universe	No documentation that inspection report sent to the facility
NE - Round 1	Completed	7/9/2007	CAA	E11	Data Accurate	Facilities incorrectly coded as SM-80
NE - Round 1	Completed	7/1/2007	CAA	E11, E12	Data Accurate, Data Complete	Universal Interface does not provide minimum data elements

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APPENDIX B: OFFICIAL DATA PULL

See the 2010 Production Data. Frozen Data set was not available.

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APPENDIX C: PDA TRANSMITTAL LETTER

Appendices C, D, and E provide the results of the Preliminary Data Analysis (PDA). The Preliminary Data Analysis forms the initial structure for the SRF report, and helps ensure that the data metrics are adequately analyzed prior to the on-site review.

This is a critical component of the SRF process because it allows the reviewers to be prepared and knowledgeable about potential problem areas before the on-site review. In addition, it gives the region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metric results.

This section, Appendix C, contains the letter transmitting the results of the Preliminary Data Analysis to the state. This letter identifies areas that the data review suggests the need for further examination and discussion during the review process.

E-mail of 3/10/11 to Shelley Schneider and Todd Ellis at NDEQ.

Shelley and Todd,

On February 28, 2011, EPA Region 7 notified the Nebraska Department of Environmental Quality (NDEQ) of its intention to begin the Clean Air Act (CAA) State Review Framework (SRF) by an opening letter (attached). As noted, the base year for review will be federal fiscal year 2010. The EPA analyzed the data against set goals and commitments, and we are now providing the analysis (also attached).

This follow-up includes EPA's preliminary data analysis of the state data metrics results, and the CAA focus areas for the upcoming on-site file review that is scheduled on March 29-30, 2011.

The ODA and the list of files to be reviewed were provided to you in advance so that you would have adequate time to compile the files that we will review and you can begin pulling together any supplemental information that may be of assistance during the review. After reviewing the attached information, if there are additional circumstances that the region should consider during the review, please provide that information to me prior to the on-site file review.

Please note that the attached preliminary findings are based only on the data metrics results themselves. Final findings may be different based upon the results of the file review and ongoing discussions with you and your staff.

All information and material used in this review may be subject to federal and/or state disclosure laws. While EPA intends to use this information only for discussions with Nebraska, it may be necessary to release information in response to a properly submitted request.

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If you have questions about the SRF process or of this attachment, please let me know.
Thanks.



Angela Catalano
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Air and Waste Management Division
Air Permitting and Compliance Branch
913-551-7411
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APPENDIX D: PRELIMINARY DATA ANALYSIS CHART

This section provides the results of the Preliminary Data Analysis (PDA). The Preliminary Data Analysis forms the initial structure for the SRF report, and helps ensure that the data metrics are adequately analyzed prior to the on-site review. This is a critical component of the SRF process, because it allows the reviewers to be prepared and knowledgeable about potential problem areas before initiating the on-site portion of the review. In addition, it gives the region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metrics results. The full PDA is available in Appendix A of this report.

The PDA reviews each data metric and evaluates state performance against the national goal or average, if appropriate. The full PDA contains every metric positive, neutral or negative. Initial Findings indicate the observed results. Initial Findings are preliminary observations and are used as a basis for further investigation. Findings are developed only after evaluating them against the file review results where appropriate, and dialogue with the state have occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

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Clean Air Act

Original Data Pulled from Online Tracking Information System (OTIS)										EPA Preliminary Analysis	
Metric	Metric Description	Metric Type	Agency	National Goal	National Average	NE	Count	Universe	Not Counted	Evaluation	Initial Findings
1A1-C	Title V Universe: AFS Operating Majors (Current)	Data Quality	Combined			110	NA	NA	NA	appears acceptable	
1A2-C	Title V Universe: AFS Operating Majors with Air Program Code = V (Current)	Data Quality	Combined			105	NA	NA	NA	appears acceptable	
1B1-C	Source Count: Synthetic Minors (Current)	Data Quality	Combined			158	NA	NA	NA	appears acceptable	
1B2-C	Source Count: NESHAP Minors (Current)	Data Quality	Combined			158	NA	NA	NA	appears acceptable	
1B3-C	Source Count: Active Minor facilities or otherwise FedRep, not including NESHAP Part 61 (Current)	Informational Only	Combined			230	NA	NA	NA	appears acceptable	

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1C1-C	CAA Subprogram Designation: NSPS (Current)	Data Quality	Combined			71	NA	NA	NA	appears acceptable
1C2-C	CAA Subprogram Designation: NESHAP (Current)	Data Quality	Combined			3	NA	NA	NA	appears acceptable
1C3-C	CAA Subprogram Designation: MACT (Current)	Data Quality	Combined			62	NA	NA	NA	appears acceptable
1C4-S	CAA Subprogram Designation: Percent NSPS facilities with FCEs conducted after 10/1/2005	Data Quality	State	100%	87.60%	78.6%	98	141	43	appears acceptable
1C5-S	CAA Subprogram Designation: Percent NESHAP facilities with FCEs conducted after 10/1/2005	Data Quality	State	100%	45/0%	100%	40	40	0	appears acceptable

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1C6-S	CAA Subprogram Designation: Percent MACT facilities with FCEs conducted after 10/1/2005	Data Quality	State	100%	84.70%	91.6%	65	71	6	appears acceptable	
1D1-S	Compliance Monitoring: Sources with FCEs (1 FY)	Data Quality	State			126	NA	NA	NA	appears acceptable	
1D2-S	Compliance Monitoring: Number of FCEs (1 FY)	Data Quality	State			140	NA	NA	NA	appears acceptable	
1D3-S	Compliance Monitoring: Number of PCEs (1 FY)	Informational Only	State			23	NA	NA	NA	appears acceptable	
1E-S	Historical Non-Compliance Counts (1 FY)	Data Quality	State			37	NA	NA	NA	potential concern	See metric 2a.
1F1-S	Informal Enforcement Actions: Number Issued (1 FY)	Data Quality	State			41	NA	NA	NA	appears acceptable	

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1F2-S	Informal Enforcement Actions: Number of Sources (1 FY)	Data Quality	State			35	NA	NA	NA	appears acceptable
1G1-S	HPV: Number of New Pathways (1 FY)	Data Quality	State			7	NA	NA	NA	appears acceptable
1G2-S	HPV: Number of New Sources (1 FY)	Data Quality	State			7	NA	NA	NA	appears acceptable
1H1-S	HPV Day Zero Pathway Discovery date: Percent DZs reported after 10/01/2005 with discovery	Data Quality	State	100%	58.90%	100.0%	7	7	0	appears acceptable
1H2-S	HPV Day Zero Pathway Violating Pollutants: Percent DZs reported after 10/01/2005	Data Quality	State	100%	91%	100.0%	7	7	0	appears acceptable

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1H3-S	HPV Day Zero Pathway Violation Type Code(s): Percent DZs reported after 10/01/2005 with HPV Violation Type Code(s)	Data Quality	State	100%	91.3	100.0%	7	7	0	appears acceptable
111-S	Formal Action: Number Issued (1 FY)	Data Quality	State			10	NA	NA	NA	appears acceptable
112-S	Formal Action: Number of Sources (1 FY)	Data Quality	State			10	NA	NA	NA	appears acceptable
1J-S	Assessed Penalties: Total Dollar Amount (1 FY)	Data Quality	State			#####	NA	NA	NA	appears acceptable
1K-S	Major Sources Missing CMS Policy Applicability (Current)	Review Indicator	State			3	NA	NA	NA	potential concern

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2A-S	Number of HPVs/Number of NC Sources (1 FY)	Data Quality	State	less than 50%	45%	116%	7	7	0	potential concern	The state does not appear to be reporting many sub-program compliance status or pollutant-level violations, while the state issued NOVs to major facilities that appear to be fully compliant (see 1f1).
2B1-S	Stack Test Results at Federally-Reportable Sources - % Without Pass/Fail Results (1 FY)	Goal	State	0%	1.30%	0.0%	0	69	69	appears acceptable	
2B2-S	Stack Test Results at Federally-Reportable Sources - Number of Failures (1 FY)	Data Quality	State				15	NA	NA	NA	appears acceptable

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3A-S	Percent HPVs Entered less than 60 Days After Designation, Timely Entry (1 FY)	Goal	State	100%	35\$	0.0%	11	19	8	potential concern	
3B1-S	Percent Compliance Monitoring related MDR actions reported more than 60 Days After Designation, Timely Entry (1 FY)	Goal	State	100%	60.10%	64.6%	203	314	111	minor issue	Below the national goal, but above the national average.
3B2-S	Percent Enforcement related MDR actions reported more than 60 Days After Designation, Timely Entry (1 FY)	Goal	State	100%	71%	69.8%	30	43	13	potential concern	Below the national goal and below the national average.

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5A1-S	CMS Major Full Compliance Evaluation (FCE) Coverage (2 FY CMS Cycle)	Goal	State	100%	88.7%	97.5%	115	118	3	appears acceptable
5A2-S	CAA Major Full Compliance Evaluation (FCE) Coverage (most recent 2 FY)	Review Indicator	State	100%	88.9%	97.5%	115	116	3	appears acceptable
5B1-S	CAA Synthetic Minor 80% Sources (SM-80) FCE Coverage (5 FY CMS Cycle)	Review Indicator	State	20-100%	85%	92.7%	114	123	9	appears acceptable
5B2-S	CAA Synthetic Minor 80% Sources (SM-80) FCE Coverage (last full 5 FY)	Informational Only	State	20-100%	89.1%	96.6%	142	147	6	appears acceptable
5C-S	CAA Synthetic Minor FCE and reported PCE Coverage (last 5 FY)	Informational Only	State		81.40%	91.2%	165	181	16	appears acceptable

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5D-S	CAA Minor FCE and Reported PCE Coverage (last 5 FY)	Informational Only	State		28.60%	6.9%	244	3,533	3,286	potential concern
5E-S	Number of Sources with Unknown Compliance Status (Current)	Review Indicator	State			13	NA	NA	NA	potential concern
5F-S	CAA Stationary Source Investigations (last 5 FY)	Informational Only	State			0	NA	NA	NA	appears acceptable
5G-S	Review of Self-Certifications Completed (1 FY)	Goal	State	100%	94%	100.0%	100	100	0	appears acceptable
7C1-S	Percent facilities in noncompliance that have had an FCE, stack test, or enforcement (1 FY)	Review Indicator	State	> 1/2 National Avg	22.60%	6.5%	10	165	146	potential concern

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7C2-S	Percent facilities that have had a failed stack test and have noncompliance status (1 FY)	Review Indicator	State	> 1/2 National Avg	46.00%	0.0%	0	9	9	potential concern	
8A-S	High Priority Violation Discovery Rate - Per Major Source (1 FY)	Review Indicator	State	> 1/2 National Avg	6.50%	2.6%	3	116	113	potential concern	The state is below half of the national average for HPV identification. These metrics indicate a possible problem in applying the HPV definition to violations the state has discovered.
8B-S	High Priority Violation Discovery Rate - Per Synthetic Minor Source (1 FY)	Review Indicator	State	> 1/2 National Avg	0.4	0.6%	1	158	157	appears acceptable	
8C-S	Percent Formal Actions With Prior HPV - Majors (1 FY)	Review Indicator	State	> 1/2 National Avg	69.10%	80.0%	4	5	1	appears acceptable	

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8D-S	Percent Informal Enforcement Actions Without Prior HPV - Majors (1 FY)	Review Indicator	State	< 1/2 National Avg	50%	50.0%	5	10	5	appears acceptable	The state is equal to the national average for informal actions without prior HPV status.
8E-S	Percent Failed Stack Test Actions that received HPV listing - Majors and Synthetic Minors (2 FY)	Review Indicator	State	> 1/2 National Avg	40.7	50.0%	5	10	5	appears acceptable	
10A-S	Percent HPVs not meeting timeliness goals (2 FY)	Review Indicator	State		35.9	26.7%	4	15	11	appears acceptable	
12A-S	No Activity Indicator - Actions with Penalties (1 FY)	Review Indicator	State				6	NA	NA	appears acceptable	
12B-S	Percent Actions at HPVs With Penalty (1 FY)	Review Indicator	State	80%	88.7	100.0%	3	3	0	appears acceptable	

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APPENDIX E: PDA WORKSHEET

Original Data Pulled from Online Tracking Information System (OTIS)										State Response				EPA Preliminary Analysis	
Metric	Metric Description	Metric Type	Agency	National Goal	National Average	NE	Count	Univers	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation	Evaluation	Initial Findings
1A1-C	Title V Universe: AFS Operating Majors (Current)	Data Quality	Combined			110	NA	NA	NA					appears acceptable	
1A2-C	Title V Universe: AFS Operating Majors with Air Program Code = V (Current)	Data Quality	Combined			105	NA	NA	NA					appears acceptable	
1B1-C	Source Count: Synthetic Minors (Current)	Data Quality	Combined			158	NA	NA	NA					appears acceptable	
1B2-C	Source Count: NESHAP Minors (Current)	Data Quality	Combined			158	NA	NA	NA					appears acceptable	
1B3-C	Source Count: Active Minor facilities or otherwise FedRep, not including NESHAP Part 61 (Current)	Informational Only	Combined			230	NA	NA	NA					appears acceptable	
1C1-C	CAA Subprogram Designation: NSPS (Current)	Data Quality	Combined			71	NA	NA	NA					appears acceptable	
1C2-C	CAA Subprogram Designation: NESHAP (Current)	Data Quality	Combined			3	NA	NA	NA					appears acceptable	

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1C3-C	CAA Subprogram Designation: MACT (Current)	Data Quality	Combined			62	NA	NA	NA					appears acceptable	
1C4-S	CAA Subprogram Designation: Percent NSPS facilities with FCEs conducted after 10/1/2005	Data Quality	State	100%	87.60%	78.6%	98	141	43					appears acceptable	
1C5-S	CAA Subprogram Designation: Percent NESHAP facilities with FCEs conducted after 10/1/2005	Data Quality	State	100%	45/0%	100%	40	40	0					appears acceptable	
1C6-S	CAA Subprogram Designation: Percent MACT facilities with FCEs conducted after 10/1/2005	Data Quality	State	100%	84.70%	91.6%	65	71	6					appears acceptable	
1D1-S	Compliance Monitoring: Sources with FCEs (1 FY)	Data Quality	State				126	NA	NA	NA				appears acceptable	
1D2-S	Compliance Monitoring: Number of FCEs (1 FY)	Data Quality	State				140	NA	NA	NA				appears acceptable	
1D3-S	Compliance Monitoring: Number of PCEs (1 FY)	Informational Only	State				23	NA	NA	NA				appears acceptable	
1E-S	Historical Non-Compliance Counts (1 FY)	Data Quality	State				37	NA	NA	NA				potential concern	See metric 2a.
1F1-S	Informal Enforcement Actions: Number Issued	Data Quality	State				41	NA	NA	NA				appears acceptable	

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	(1 FY)													
1F2-S	Informal Enforcement Actions: Number of Sources (1 FY)	Data Quality	State			35	NA	NA	NA					appears acceptable
1G1-S	HPV: Number of New Pathways (1 FY)	Data Quality	State			7	NA	NA	NA					appears acceptable
1G2-S	HPV: Number of New Sources (1 FY)	Data Quality	State			7	NA	NA	NA					appears acceptable
1H1-S	HPV Day Zero Pathway Discovery date: Percent DZs reported after 10/01/2005 with discovery	Data Quality	State	100%	58.90%	100.0%	7	7	0					appears acceptable
1H2-S	HPV Day Zero Pathway Violating Pollutants: Percent DZs reported after 10/01/2005	Data Quality	State	100%	91%	100.0%	7	7	0					appears acceptable
1H3-S	HPV Day Zero Pathway Violation Type Code(s): Percent DZs reported after 10/01/2005 with HPV Violation Type Code(s)	Data Quality	State	100%	91.3	100.0%	7	7	0					appears acceptable
1I1-S	Formal Action: Number Issued (1 FY)	Data Quality	State			10	NA	NA	NA					appears acceptable
1I2-S	Formal Action: Number of Sources (1 FY)	Data Quality	State			10	NA	NA	NA					appears acceptable

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1J-S	Assessed Penalties: Total Dollar Amount (1 FY)	Data Quality	State			\$233,363	NA	NA	NA				appears acceptable	
1K-S	Major Sources Missing CMS Policy Applicability (Current)	Review Indicator	State			3	NA	NA	NA				potential concern	
2A-S	Number of HPVs/Number of NC Sources (1 FY)	Data Quality	State	less than 50%	45%	116%	7	7	0				potential concern	The state does not appear to be reporting many sub-program compliance status or pollutant-level violations, while the state issued NOVs to major facilities that appear to be fully compliant (see 1f1).
2B1-S	Stack Test Results at Federally-Reportable Sources - % Without Pass/Fail Results (1 FY)	Goal	State	0%	1.30%	0.0%	0	69	69				appears acceptable	
2B2-S	Stack Test Results at Federally-Reportable Sources - Number of Failures (1 FY)	Data Quality	State			15	NA	NA	NA				appears acceptable	

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5B2-S	CAA Synthetic Minor 80% Sources (SM-80) FCE Coverage (last full 5 FY)	Informational Only	State	20-100%	89.1%	96.6%	142	147	6					appears acceptable
5C-S	CAA Synthetic Minor FCE and reported PCE Coverage (last 5 FY)	Informational Only	State		81.40%	91.2%	165	181	16					appears acceptable
5D-S	CAA Minor FCE and Reported PCE Coverage (last 5 FY)	Informational Only	State		28.60%	6.9%	244	3,533	3,286					potential concern
5E-S	Number of Sources with Unknown Compliance Status (Current)	Review Indicator	State				13	NA	NA	NA				potential concern
5F-S	CAA Stationary Source Investigations (last 5 FY)	Informational Only	State				0	NA	NA	NA				appears acceptable
5G-S	Review of Self-Certifications Completed (1 FY)	Goal	State	100%	94%	100.0%	100	100	0					appears acceptable
7C1-S	Percent facilities in noncompliance that have had an FCE, stack test, or enforcement (1 FY)	Review Indicator	State	> 1/2 National Avg	22.60%	6.5%	10	165	146					potential concern
7C2-S	Percent facilities that have had a failed stack test and have noncompliance status (1 FY)	Review Indicator	State	> 1/2 National Avg	46.00%	0.0%	0	9	9					potential concern

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8A-S	High Priority Violation Discovery Rate - Per Major Source (1 FY)	Review Indicator	State	> 1/2 National Avg	6.50%	2.6%	3	116	113					potential concern	The state is below half of the national average for HPV identification. These metrics indicate a possible problem in applying the HPV definition to violations the state has discovered.
8B-S	High Priority Violation Discovery Rate - Per Synthetic Minor Source (1 FY)	Review Indicator	State	> 1/2 National Avg	0.4	0.6%	1	158	157					appears acceptable	
8C-S	Percent Formal Actions With Prior HPV - Majors (1 FY)	Review Indicator	State	> 1/2 National Avg	69.10%	80.0%	4	5	1					appears acceptable	
8D-S	Percent Informal Enforcement Actions Without Prior HPV - Majors (1 FY)	Review Indicator	State	< 1/2 National Avg	50%	50.0%	5	10	5					appears acceptable	The state is equal to the national average for informal actions without prior HPV status.
8E-S	Percent Failed Stack Test Actions that received HPV listing - Majors and Synthetic Minors (2 FY)	Review Indicator	State	> 1/2 National Avg	40.7	50.0%	5	10	5					appears acceptable	
10A-S	Percent HPVs not meeting timeliness goals (2 FY)	Review Indicator	State		35.9	26.7%	4	15	11					appears acceptable	

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12A-S	No Activity Indicator - Actions with Penalties (1 FY)	Review Indicator	State			6	NA	NA	NA					appears acceptable
12B-S	Percent Actions at HPVs With Penalty (1 FY)	Review Indicator	State	80%	88.7	100.0%	3	3	0					appears acceptable

APPENDIX F: FILE SELECTION

Files to be reviewed are selected according to a standard protocol (available here: http://www.epa-otis.gov/srf/docs/fileselectionprotocol_10.pdf) and using a web-based file selection tool (available here: http://www.epa-otis.gov/cgi-bin/test/srf/srf_fileselection.cgi). The protocol and tool are designed to provide consistency and transparency in the process. Based on the description of the file selection process in section A below, states should be able to recreate the results in the table in section B.

A. File Selection Process

EPA followed the SRF File Selection Protocol when selecting the files. This includes a representative sample of files, and may include supplemental file review. Under the SRF protocol, EPA is required to review additional files to help better understand whether any areas of concern identified via the data review are substantiated. EPA requested 25 files for the CAA portion of the SRF review. The representative file selection method was conducted using the methodology described in the File Section Protocol (using the OTIS website). Of the files, ten will be examined because the facility had a compliance evaluation or compliance monitoring report noted in the base review year, and ten will be examined because an enforcement action was taken. The evaluation files include a mix of facilities which include various compliance histories in the national system. If an evaluation file had an enforcement action associated with it, both activities will be reviewed (and vice-versa when a selected action has an evaluation file). An additional two supplemental files will be examined to assess Nebraska's HPV designation and reporting process that is noted in the Preliminary Data Analysis table, with two supplemental files to assess informal actions with no violation designation. Supplemental file reviews are used to ensure that the region has enough files to look at to understand whether a potential problem pointed out by data analysis is in fact a problem.

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A. File Selection Table

Name	Program ID	City	State	FCE	PCE	Violation	Stack Test Failure	Title V Deviation	HPV	Informal Action	Formal Action	Penalty	Universe	Select
ABE FAIRMONT LLC	3105900030	FAIRMONT	NE	1	2	0	1	0	1	3	0	0	MAJR	accepted_representative
ABENGOA BIOENERGY CORP.	3118500030	YORK	NE	1	0	0	0	0	0	0	1	40,000	MAJR	accepted_representative
ABENGOA BIOENERGY OF NEB	3101900095	RAVENNA	NE	0	0	0	2	0	1	1	1	98,000	SM80	accepted_representative
AGP CORN PROCESSING INC	3100100064	HASTINGS	NE	1	0	8	0	0	0	0	0	0	MAJR	accepted_representative
AGP SOY PROCESSING	3100100062	HASTINGS	NE	0	0	0	2	0	1	3	0	0	MAJR	accepted_representative
APACHE MANUFACTURING	3111900078	NORFOLK	NE	0	0	4	0	0	0	0	0	0	SM80	accepted_representative
BD MEDICAL SYSTEMS	3114100006	COLUMBUS	NE	1	0	8	0	0	1	1	0	0	MAJR	accepted_representative
DAVID CITY MUNICIPAL POWER	3102300019	DAVID CITY	NE	1	0	0	0	0	0	0	0	0	MAJR	accepted_representative
EARTHGRAINS BAKING COMPANIES	3115300041	BELLEVUE	NE	1	0	0	0	0	0	0	0	0	MAJR	accepted_representative
EILERS MACHINE & WELDING INC	3104700115	LEXINGTON	NE	1	0	0	0	0	0	0	0	0	SM80	accepted_representative
EVEN TEMP INC	3118500042	WACO	NE	1	0	0	0	0	0	1	0	0	SM80	accepted_representative
FLOWSERVE	3100100001	HASTINGS	NE	1	0	0	0	0	1	1	0	0	SM80	accepted_representative
KMIGT HOLDREGE COMPRESSOR	3113700017	HOLDREGE	NE	1	0	0	0	0	0	0	0	0	MAJR	accepted_representative
LINDSAY MANUFACTURING CO	3114100025	LINDSAY	NE	1	0	0	0	0	0	1	0	0	SM80	accepted_representative
LON D WRIGHT POWER PLANT	3105300001	FREMONT	NE	1	0	0	0	0	0	0	0	0	MAJR	accepted_representative
MIDWEST RENEWABLE ENERGY LLC	3111100027	SUTHERLAND	NE	1	0	0	0	0	0	1	0	0	SM80	accepted_representative
NATUREWORKS LLC	3117700052	BLAIR	NE	1	0	4	0	0	0	0	1	80,000	MAJR	accepted_representative
NEBRASKA CORN PROCESSING LLC	3106500021	CAMBRIDGE	NE	0	0	0	1	0	0	1	0	0	SM80	accepted_representative
NEDAK ETHANOL LLC	3108900044	ATKINSON	NE	1	1	0	1	0	0	2	0	0	SM80	accepted_representative
NPPD MC COOK PEAKING UNIT	3114500013	MC COOK	NE	1	0	0	0	0	0	0	0	0	MAJR	accepted_representative
NU-TEIN LLC	3104700050	COZAD	NE	1	0	0	0	0	0	0	0	0	SM80	accepted_representative
PLATTE GENERATING STATION	3107900606	GRAND ISL	NE	1	0	0	0	0	0	0	0	0	MAJR	accepted_representative
STEELE CITY COMPRESSOR STATIO	3106700086	ODELL	NE	1	0	0	0	0	0	0	0	0	SM80	accepted_representative
UNION PACIFIC RAILROAD	3111100081	NORHT PLAT	NE	1	0	0	0	0	0	0	0	0	MAJR	accepted_representative

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APPENDIX G: FILE REVIEW ANALYSIS

This section presents the initial observations of the Region 7 regarding program performance against file metrics. Initial Findings are developed by the region at the conclusion of the File Review process. The Initial Finding is a statement of fact about the observed performance, and should indicate whether the performance indicates a practice to be highlighted or a potential issue, along with some explanation about the nature of good practice or the potential issue.

Initial Findings indicate the observed results. Initial Findings are preliminary observations and are used as a basis for further investigation. Findings are developed only after evaluating them against the PDA results where appropriate, and dialogue with the state has occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section VI of this report.

The quantitative metrics developed from the file reviews are initial indicators of performance based on available information and are used by the reviewers to identify areas for further investigation. Because of the limited sample size, statistical comparisons among programs or across states cannot be made.

Name of State: NEBRASKA

Review Period: 2010

CAA Metric #	CAA File Review Metric Description:	Metric Value	Initial Findings
Metric 2c	% of files reviewed where MDR data are accurately reflected in AFS.	75%	18 of the 24 files reviewed contained documentation to confirm that the MDRs were reported accurately into AFS (20 FCEs, 8 PCEs, and 10 enforcement responses were reviewed while 15 of the FCEs, 8 of the PCEs, and 8 of the enforcement responses were accurate).
Metric 4a	Confirm whether all commitments pursuant to a traditional CMS plan (FCE every 2 yrs at Title V majors; 3 yrs at mega-sites; 5 yrs at SM80s) or an alternative CMS plan was completed. Did the state/local agency complete all planned evaluations negotiated in a CMS plan? Yes or no? If a state/local agency implemented CMS by following a traditional CMS plan, details concerning evaluation coverage are to be discussed pursuant to the metrics under Element 5. If a state/local agency had negotiated and received approval for conducting its compliance monitoring program pursuant to an alternative plan, details concerning the alternative plan and the S/L agency's implementation (including evaluation coverage) are to be discussed under this Metric.	100%	NDEQ committed to conducting a traditional CMS plan that includes FCEs at 100% of the major sources over 2 years and 100% of SM-80s over 5 years. During the review period (FY 2010), the state committed to conducting FCEs at 74 majors and 84 SM-80s. The state completed all of these FCEs based on the data provided in Metrics 5a1 and 5b1.

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Metric 4b	Delineate the air compliance and enforcement commitments for the FY under review. This should include commitments in PPAs, PPGs, grant agreements, MOAs, or other relevant agreements. The compliance and enforcement commitments should be delineated.	NA	The state made commitments in the PPG to enter all CAA MDRs into AFS accurately and in a timely manner. Based on the data metrics and review of files, the state maintained an accuracy rate of over 80% and a timeliness rate of nearly 90%. Nebraska committed to updating data screens to reflect MDRs for TV compliance deviations. This will be completed by 12/21/11
Metric 6a	# of files reviewed with FCEs.		19 FCEs were reviewed.
Metric 6b	% of FCEs that meet the definition of an FCE per the CMS policy.	100%	ALL FCEs reviewed had documentation in the files to show that they contained all of the elements of the FCE, per the CMS.
Metric 6c	% of CMRs or facility files reviewed that provide sufficient documentation to determine compliance at the facility.	100%	CMRs reviewed contained all of the CMR requirements listed in the CMS and they contain sufficient documentation to determine compliance at the facility.
Metric 7a	% of CMRs or facility files reviewed that led to accurate compliance determinations.	100%	CMRs reviewed led to an accurate compliance determination.
Metric 7b	% of non-HPVs reviewed where the compliance determination was timely reported to AFS.	100%	3 non HPV's were reported timely (Less than 30 days) to AFS.
Metric 8f	% of violations in files reviewed that were accurately determined to be HPV.	100%	2 AG referrals and 2 administrative orders were reviewed. A total of 10 NOV's were documented at 7 facilities. Of these 10 NOV's, 10 were accurately determined to HPV.
Metric 9a	# of formal enforcement responses reviewed.	3	3 formal enforcement responses were reviewed.
Metric 9b	% of formal enforcement responses that include required corrective action (i.e., injunctive relief or other complying actions) that will return the facility to compliance in a specified time frame.	60%	Formal enforcement responses contained the documentation that required the facilities to return to compliance. A settlement agreement had not been reached for one facility.
Metric 10b	% of formal enforcement responses for HPV's reviewed that are addressed in a timely manner (i.e., within 270 days).	80%	12 of the 15 HPV's were addressed in a timely manner. No lead changes were made to EPA.. Therefore 12 out of 15 HPV's were addressed in a timely manner by the state. The average time to address HPV's was 110 days.
Metric 10c	% of enforcement responses for HPV's appropriately addressed.	100%	4 of the HPV's were addressed with a formal enforcement response. 8 of the HPV's were addressed with informal responses. 3 of those orders were penalty. 5 HPV's were referred to the AG's office. While informal responses to HPV's are not considered appropriate, these responses had the effect of bringing the facilities into compliance. Therefore, 20 of the 20 HPV's were appropriately addressed.

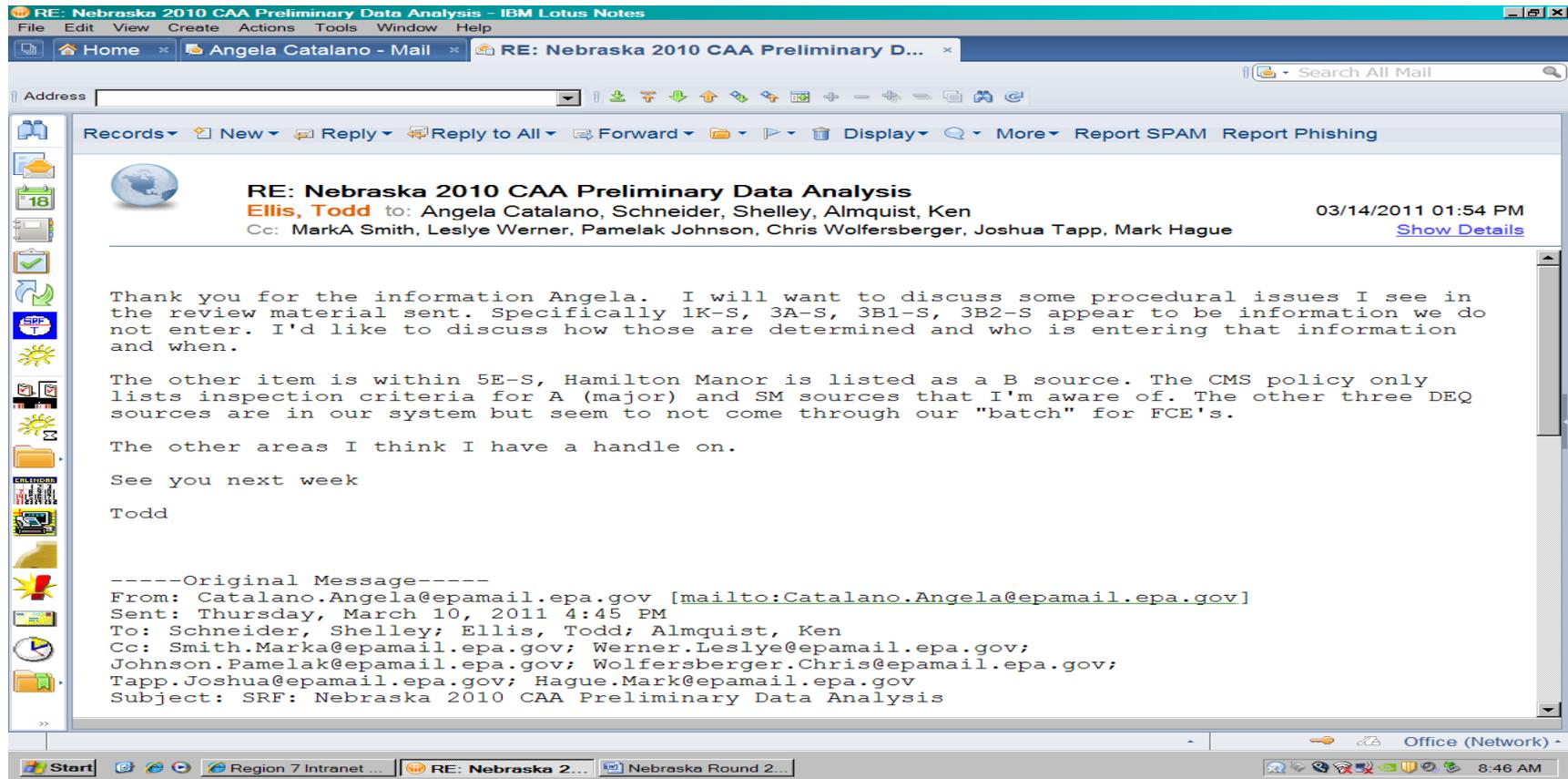
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Metric 11a	% of reviewed penalty calculations that consider and include where appropriate gravity and economic benefit.	0%	3 of the formal enforcement responses reviewed considered only gravity and not the economic benefit of not complying
Metric 12c	% of penalties reviewed that document the difference and rationale between the initial and final assessed penalty.	100%	The files for enforcement responses reviewed contained documentation for the rationale between the initial and the final assess penalty. In general, the state does not keep records of initial vs. final penalties. The penalty assessed is the only penalty that is documented in the file.
Metric 12d	% of files that document collection of penalty.	0%	No files contained documentation that the penalty was collected.

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APPENDIX H: CORRESPONDENCE

E-mail of 3/14/11 from Todd Ellis to Angela Catalano.





Dave Heineman
Governor

STATE OF NEBRASKA

DEPARTMENT OF ENVIRONMENTAL QUALITY
Michael J. Linder

Director

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November 9, 2011

REC'D

NOV 16 2011

APCC

Becky Weber
Director, Air and Waste Management Division
EPA Region VII
901 North 5th Street
Kansas City, KS 66101

RE: State Review Framework response

Dear Ms. Weber:

The Nebraska Department of Environmental Quality, Air Quality Compliance Section (AQCS) has reviewed the draft State Review Framework (SRF) report. Enclosed is our response to the report and attachment with editorial comments and clarifications.

The AQCS has always enjoyed a good working relationship with the staff at Region VII and we look forward to continued cooperation as we implement the improvements to our program. Please extend my appreciation to your staff for the professionalism and courtesy they exhibited during our review. Please feel free to call me or Todd Ellis at (402) 471-2189, with questions or clarification of our response.

Sincerely,

Shelley Schneider
Administrator
Air Quality Division

Enclosure:

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IV. FINDINGS

NEBRASKA 2011 SRF FINDINGS AND RECOMMENDATIONS

CAA Element 1	
Degree to which the Minimum Data Requirements are Complete	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	Although MDR data are complete overall, Nebraska including the local agencies need to review and properly classify NSPS data.
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.)	<p>The NDEQ has placed an emphasis on data management and data accuracy and spend time ensuring the minimum data elements have been properly entered into the data system. NDEQ's effort has resulted in achieving the National Goal of 100% for four of the six metrics identified below. The metric 1c4 – 81% requires that not only NDEQ, but LLCHE and the City of Omaha review the NSPS data and clean up sources that are incorrectly classified or do not contain a subpart code(s). The metric 1c6 – 91% is above the National Average and just below the National Goal.</p> <p>NDEQ, LLCHD and the City of Omaha need to review their facilities and reclassify facilities or provide the proper subpart codes as needed.</p>
Metric(s) and Quantitative Value	<p>1c4 – CAA subprogram designation: % NSPS Facilities with FCE conducted after 10/1/05 NE – 81.4%; National Goal – 100%; National Average – 87.6%</p> <p>1c5 – CAA subprogram designation: %NESHAP Facilities with FCE conducted after 10/1/05 NE – 100%; National Goal – 100%; National Average – 45%</p> <p>1c6 – CAA subprogram designation: %MACT Facilities with FCE conducted after 10/1/05 NE – 91%; National Goal – 100%; National Average – 84.7%</p> <p>1h1 – HPV Day Zero Pathway Discovery date: Percent DZs with discovery NE – 100%; National Goal – 100%; National Average – 58%</p> <p>1h2 – HPV Day Zero Pathway Violating Pollutants: Percent DZs NE – 100%; National Goal – 100%; National Average – 91. %</p> <p>1h3 – HPV Day Zero Pathway Violation Type Code(s): Percent DZs with HPV Violation Type Code(s) NE <input type="checkbox"/> – 100%; National Goal – 100%; National Average – 91.35%</p>
State Response	
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	No recommendations necessary

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CAA Element 2 – Data Accuracy	
Degree to which data reported into the national system is accurately entered and maintained	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	Nebraska is not coding sources out of compliance when an NOV is issued or stack test failures. This results in incorrect and missing data. Data accuracy is a continuing issue from Round 1
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.	<p>Nebraska has placed an emphasis on data management and data accuracy. The file review identified a number of situations where data was entered incorrectly into AFS or may have been missing. The following describes discrepancies noted during the file review</p> <p>Source – 067-00008: Two PCEs one in file, not in AFS; one in AFS, but not in file. Source – 059-00030: FCE conducted on 10/20/10 not found in file. Of the 22 source files reviewed, specific AFS data were entered into AFS for 20 out of 22. Nebraska inspects each of its synthetic minor sources on a four year schedule, which is more frequent than the CMS requirements.</p> <p>Nebraska is not coding sources “out of compliance” when an NOV is issued.</p> <p>The discrepancies appear to be incidents of input error or inadvertent omission. As such, EPA is bringing its concerns to Nebraska’s attention so that they can address them.</p>
Metric(s) and Quantitative Value	<p>2a - # of HPVs/# of noncompliant sources NE – 116.7%; National Goal - ≤ 50%; National Average – 45.5%</p> <p>2b1 - % stack tests without pass/fail result NE – 0%; National Goal – 0%; National Average – 1.3%</p>
State Response	<p>On a NACAA enforcement call on November 2, 2011, Betsy Metcalf (EPA) discussed AFS modernization. In her discussion, she stated EPA is going to eliminate the “compliance status” from future MDR requirements. As such, it is proposed that the following response to tabled . If EPA changes it’s mind on this requirement, the following proposal could be enacted. The NDEQ proposes that when a determination is made that a violation is an HPV, upon EPA concurrence, EPA will change the facility status to “out of compliance”. When the violation is closed, an HB (returned to compliance) code will be entered by the NDEQ. Upon receipt of the HB code, with EPA concurrence, EPA will change the facility status back to compliance. This approach seems logical since it is EPA who elevates a facility violation to the HPV status. Resolution of violations are typically discussed during the bi-monthly calls and it seems reasonable that once agreement is reached, EPA would “resolve” the violation by changing the facility status back to compliance. This approach ensures discussion and agreement between both agencies before changes to a facility status are made.</p>

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	<p>In addition, the two PCEs identified are not required data elements. They are voluntary and as such, should not appear in a report as needing attention. The FCE mentioned above was an EPA lead inspection. There was no inspection report because we had yet to receive the report from EPA even though the inspection was conducted six months prior to their on-site evaluation.</p>
<p>Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)</p>	<p>Nebraska should correct the input errors and inadvertent omissions noted by December 31, 2011.</p> <p>For all federally reportable violations, HPVs and Non-HPVs the compliance status code should be maintained. When a source is elevated to HPV status, or is in violation, the facility status needs to be changed to "out of compliance," and the facility status code also needs to be changed when the facility returns to compliance. EPA can assist Nebraska in this effort with training or by providing data entry assistance. Future input of "out of compliance" status should be entered on facilities listed as HPVs. Nebraska may need to revisit the mapping of the IIS system with the UCI and work with EPA to determine that the compliance status is being captured correctly in AFS.</p>

DRAFT

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CAA Element 3 – Timeliness of Data Entry	
Degree to which the Minimum Data Requirements are timely	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	Nebraska has not entered any HPVs into AFS within 60 days. Entry of both compliance monitoring and enforcement MDRs are entered above the national average.
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.)	Approximately two-thirds of both compliance monitoring and enforcement MDRs are entered into AFS in a timely manner. EPA will continue to work with Nebraska ensure the timeliness of entering HPV data actions into AFS. There is a lag of at least 30, if not 60 days before HPV actions are uploaded from the IIS to AFS. To assist in decreasing this lag, compliance calls should be increased.
Metric(s) and Quantitative Value	3a - % HPVs entered in less than/equal 60 days NE – 0%; National Goal – 100%; National Average – 34.7% 3b1 - % compliance monitoring MDRs entered more than 60 days NE – 64.6%; National Goal – 100%; National Average – 59% 3b2 - % enforcement MDRs entered more than/equal 60 days NE– 69.8%; National Goal – 100%; National Average – 70.3%
State Response	The NDEQ proposes that instead of increasing the frequency of calls, which will not completely address the lag time between the issuance of an NOV and a call, we will contact EPA through e-mail declaring our interpretation of the HPV status of a violation. If in EPA’s review of the NOV and HPV declaration, a disagreement exists, a call can be initiated as soon as possible to resolve the issue. If EPA is in agreement with NDEQ’s interpretation, EPA will elevate the violation to HPV status. The bi monthly calls can still address the ongoing status of the agreed upon HPV sources
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	Beginning January 1, 2012, EPA and Nebraska will implement monthly compliance calls rather than bimonthly calls. This will shorten the time to discuss HPVs and enter data actions related to HPVs in a timely fashion. Nebraska and EPA will review enforcement actions and coordinate HPV identification/interpretation on monthly State-EPA conference calls rather than bimonthly.

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CAA Element 4 – Completion of Commitments	
Degree to which all enforcement/compliance commitments in relevant agreements are met and any products or projects are completed	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	Nebraska needs to meet the requirements of all enforcement and compliance agreements with EPA. (See 2011-2012 CAA 105 Work Plan: Item 6.3)
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.)	Work plan item 6.3 requires Nebraska to update the IIS data system for Title V certification data entry, including the reviewed date, due/received date, result code, and deviation data. Deviations are not currently being entered in the data system.
Metric(s) and Quantitative Value	
State Response	We are committed to making these changes but other IT priorities have delayed progress. We will try and initiate these changes as soon as possible.
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	By December 31, Nebraska will update data screen to reflect MDRs for TV compliance deviations.

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CAA Element 5 – Inspection Coverage	
Degree to which local program completed the universe of planned inspections/compliance evaluations	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	Nebraska meets the requirements for inspection coverage
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.)	<p>Nebraska met the national goal for self certification review. Nebraska was well above the national average for FCE at Major, Sm80 facilities, and PCE coverage.</p> <p>Nebraska inspects each of its synthetic minor sources on a four year schedule, which is more frequent than the CMS minimum requirement.</p> <p>While Nebraska's inspection of other minor sources was below the national average, but there is no national goal.</p> <p>A typical Nebraska FCE observes emission points, evaluates rule and/or permit requirements, interviews employees and reviews records. FCEs conducted by Nebraska met the EPA definition of FCE.</p>
Metric(s) and Quantitative Value	<p>5a1 – FCE coverage – Majors NE – 97.5%; National Goal – 100%; National Average – 88.7%</p> <p>5a2 – FCE coverage – All Majors NE – 97.5%; National Goal – 100%; National Average – 88.9%</p> <p>5b1 – FCE coverage – SM80 NE 92.7%; National Goal – 100%; National Average – 85%</p> <p>5b2 – FCE coverage – CMS SM80 NE – 96.6%; National Goal – 100%; National Average – 89.1%</p> <p>5c – FCE/PCE coverage – All SMs NE – 91.2%; National Average – 81.4%</p> <p>5d – FCE/PCE coverage – other minors NE – 6.9%; National Average – 26%</p> <p>5E- Sources with unknown compliance status NE – 13; No National Average or goal.</p> <p>5g – Review of Self Certifications completed NE – 100%; National Goal – 100%; National Average – 94%</p>
State Response	
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round	No recommendations are necessary.

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1 that address this issue.)	
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CAA Element 6 – Quality of Inspection or Compliance Evaluation Reports

Degrees to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.

<p>Is this finding a(n) (select one):</p>	<p><input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required</p>
<p>Finding</p>	<p>The Nebraska inspection reports are accurate and properly document observations.</p>
<p>Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.)</p>	<p>Nebraska has made improvements to the inspection process since SRF Round 1. A format has been developed in which the rule and permit requirements are incorporated into the report and the inspector documents findings in detail. In general, the inspection reports appear to be accurate, detailed and complete. The following were observed during the file review:</p> <p>Source - 067-00008: Two PCEs one in file, not in AFS; one in AFS, but not in file. Source - 047-00050: Inspection entered as FCE, but facility not constructed. Source - 145-000113: PCE (10/27/10) not entered into AFS Source - 141-00025: File index is not correct date range or documents in the file. Source – Abengoa, York and Ravenna files had comingling of documents.</p> <p>In general, files were well organized and documents were easy to find.</p>
<p>Metric(s) and Quantitative Value</p>	
<p>State Response Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)</p>	<p>No recommendations are necessary.</p>

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CAA Element 7 – Identification of Alleged Violations

Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information

<p>Is this finding a(n) (select one):</p>	<p><input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required</p>
<p>Finding</p>	<p>Nebraska does not report noncompliance status for failed stack tests. Nebraska compliance determinations appear to be accurate and prompt; however, Nebraska falls far below the national guideline as it relates to discovery of facilities in noncompliance with FCE, stack, or enforcement.</p>
<p>Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.)</p>	<p>Nebraska utilizes a number of tools to determine compliance with the CAA requirements. In addition to FCEs and PCEs, Nebraska reviews submitted reports and certifications, and received/reviewed voluntary disclosure of violations from some facilities. Utilizing these approaches, Nebraska has been able to identify violations that may not be evident during an on-site inspection.</p> <p>Nebraska falls below the national average for facilities in noncompliance with FCE, stack test or enforcement. Nebraska management should try to understand and address this situation, if necessary. The Nebraska annual inspection rate, which is more frequent than the CMS inspection requirement, provides a greater regulator presence at the facilities. Such frequency may result in most facilities not only understanding their regulatory requirements under the CAA, but also the awareness that an inspector will be visiting them annually instead of once every five years. For these reasons, an increased inspection frequency should result in a lower noncompliance rate.</p>
<p>Metric(s) and Quantitative Value</p>	<p>7c1 - % facilities in noncompliance with FCE, stack test, or enforcement NE – 6.3%; National Goal - >1/2 National Average; National Average – 22.3% 7c2 - % facilities with failed stack test and have noncompliance status NE– 0%; National Goal - >1/2 National Average; National Average – 46.4%</p>
<p>State Response</p>	<p>See response to element # 2</p>
<p>Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)</p>	<p>By December 31, 2011, Nebraska needs to enter out of compliance codes when facilities are out of compliance due to violations or stack tests failure. Nebraska will review the results code of the nine failed stack tests and confirm that the pollutant compliance status reflected the same compliance outcome. Nebraska should incorporate a process to confirm that both data elements (results code and compliance status) reflect the same outcome.</p>

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CAA Element 8 – Identification of SNC and HPV	
Degree to which the state program accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	Nebraska’s HPV discovery rate of 2.6% is below the national goal and just below the national average.
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.	<p>Nebraska’s HPV discovery rate of 2.6% is below the national goal and the national average</p> <p>The Nebraska annual inspection rate for major sources, which is more frequent than the CMS inspection requirement, provides a greater regulator presence at the facilities. Such frequency may result in most facilities not only understanding their regulatory requirements under the CAA, but also the awareness that an inspector will be visiting them annually instead of once every five years. For these reasons, an increased inspection frequency should result in a lower noncompliance rate.</p> <p>Nebraska also reviews facility submitted semi-annual and annual reports in an effort to identify violations and HPVs.</p> <p>Nebraska has also been able to reduce HPVs with up front compliance assistance activities. For example, Title V facilities are notified prior to their renewal application deadline. These metrics indicate a possible problem in applying the HPV definition to violations the state has discovered.</p> <p>HPV training/refreshers with enforcement staff is encouraged.</p> <p>Nebraska and EPA will review enforcement actions and coordinate HPV identification/interpretation on monthly State-EPA conference calls rather than bimonthly.</p> <p>Although Nebraska appears to be deficient in Element 7c2, Element 8e shows that Nebraska is elevating failed stack test to HPV status above the National Average.</p>
Metric(s) and Quantitative Value	8a – HPV discovery rate – Major sources NE – 2.6%; National Goal - >1/2 National Average; National Average – 6.4% 8b – HPV discovery rate – SM sources NE – .6%; National Goal - >1/2 National Average; National Average – 0.4% 8c - % formal actions with prior HPV – Majors NE – 80%; National Goal - >1/2 National Average; National Average – 67% 8d - % informal enforcement actions without prior HPV – Majors NE – 50%; National Goal - <1/2 National Average; National Average – 49% 8e - % sources with failed stack test actions that received HPV listing – Majors and Synthetic Minors

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	NE – 50%; National Goal - >1/2 National Average; National Average – 40.57%
State Response	The EPA file-review did not identify a single instance where DEQ failed to accurately identify a violation as an HPV. Training on HPV identification is unwarranted when EPA has not shown that a problem exists. EPA inspections in NE have not shown inconsistent non-compliance rates compared to those identified by NDEQ. Unless EPA can document an issue with HPV identification, NDEQ is not compelled to take action on unfounded assumptions.
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	By April 1, 2012, an HPV training/refresher for enforcement staff should be conducted.

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CAA Element 9 – Enforcement Actions Promote Return to Compliance

Degree to which local enforcement actions include required corrective action that will return facilities to compliance in a specific time frame

<p>Is this finding a(n) (select one):</p>	<p><input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required</p>
<p>Finding</p>	<p>The Nebraska formal enforcement process include actions to bring facilities into compliance however Nebraska's administrative penalty authority is deferred to the Attorney General's (AG) office to bring sources back into compliance with penalties.</p>
<p>Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.</p>	<p>Nebraska formal enforcement actions focus on bringing the facility back into compliance. 3 files were reviewed with penalty actions. One of the three enforcement actions reviewed is pending a AG's office.</p> <p>Source - 019-00095: Consent Decree not found in file. No documentation of payment found. The penalty calculation did not take into consideration economic benefit. Source - 089-00044: Economic benefit not calculated even though letter from Linder to AG (10/21/09) states that controls were required. Source - 185-00030: No documentation of payment.</p> <p>NDEQ should review and resolve the reason for the 3-4 year delays in the AG's office, including:</p> <p>Source - 119-00078 (referral 12/21/07) Source - 141-00032 (referral 5/1/08) Source - 139-00023 (referral 9/9/09) Source - 119-00044 (referral 5/28/09) Source - 043-00029 (referral 5/1/09)</p>
<p>Metric(s) and Quantitative Value</p>	<p>File Review 9a – number of files with enforcement actions reviewed 3 9b - % enforcement actions returning source to compliance 60%</p>
<p>State Response</p>	<p>We agree with this recommendation. EPA correctly notes that NDEQ does not have the authority to assess administrative penalties against violators. The NDEQ must refer cases to the AG to seek judicial civil or criminal penalties. NDEQ has developed and uses a penalty calculation worksheet to calculate the gravity and economic benefit for actions referred to the AG. The AG will typically file a Satisfaction of Judgment in a case when the penalty has been paid and all required compliance has been achieved. This usually occurs approximately 6 months after the consent decree has been signed by the judge. We will work to ensure that we consistently use and</p>

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	document the proposed penalty and enhance the description of economic benefit in future enforcement referrals. We agree that better communication with the AG is desirable to ensure timely and appropriate penalties are achieved in negotiated settlements.
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	NDEQ air program along with legal counsel should develop a plan to coordinate and communicate with the Attorney General's office. Nebraska needs to communicate with the AG to identify information about a case that would be helpful for the AG when calculating a penalty. The plan should include discussions of the proposed penalty versus final penalty and how it was calculated. Also, the plan should address how to eliminate delays in the AG's office. A draft plan should be submitted by December 31, 2011.

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CAA Element 10 – Timely and Appropriate Action	
Degree to which a local program takes timely and appropriate enforcement actions in accordance with policy relating to specific media	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	80% of Nebraska’s HPV Enforcement actions meet timeliness goals.
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.)	<p>The AFS data pull shows that only 20% of the state HPVs did not meet timeliness goals for the previous two year period. This is above the national average of 35%.</p> <p>Nebraska makes effort to conduct timely and appropriate enforcement actions and settle cases quickly. However, each enforcement case is unique in its own way. Nebraska’s approach is to refer cases to the State AG. EPA understands that enforcement cases may take more time to bring to resolution, and encourages ongoing dialogue between EPA and Nebraska where individual case considerations require additional time to resolve the case. Data shows that the majority of Nebraska’s cases in 2010 were “addressed” in a timely manner, by sending these cases to the AG. The following cases were identified in the AG office:</p> <p>Source - 119-00078 (referral 12/21/07) Source - 141-00032 (referral 5/1/08) Source - 139-00023 (referral 9/9/09) Source - 119-00044 (referral 5/28/09) Source - 043-00029 (referral 5/1/09) See recommendation from Element 9.</p>
Metric(s) and Quantitative Value	10a - % HPVs not timely NE - 20%; National Average - 35.9%
State Response	We agree that timely and appropriate enforcement is a major goal. We will continue to work with the AG to meet our enforcement goals.
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	No recommendations are necessary.

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CAA Element 11 – Penalty Calculation Method	
<p>Degree to which local program documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy</p>	
<p>Is this finding a(n) (select one):</p>	<p><input type="checkbox"/> Good Practice</p> <p><input type="checkbox"/> Meets SRF Program Requirements</p> <p>Area for State Attention</p> <p><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required</p>
<p>Finding</p>	<p>Penalty calculation documentation in the file did not include economic benefit calculations.</p>
<p>Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.)</p>	<p>Nebraska’s penalty policy does provide for consideration of economic benefit in addition to gravity calculation of the penalty to be assessed. Documentation was not found in files to indicate an economic benefit was determined when calculating penalties. The Nebraska Legal Staff calculates a “base” penalty. The file review discovered penalties for three cases (185-00030, 019-00095, and 177-00052) , however, there was no evidence in the file that showed whether penalties were calculated considering economic benefit.</p> <p>Nebraska did not calculate the economic benefit gained through noncompliance. In some cases, such as smaller facilities in which the current economic downturn would make it difficult to pay a penalty, the state may have a legitimate reason to lower an assessed penalty. However, the file does not document justification for not including an economic benefit component. Nebraska should be documenting calculation, or rationale for not calculating economic benefit as part of each penalty calculation.</p> <p>Legal staff should communicate penalty calculations with air staff. Since Air Program staff enters final penalty assessment in their data system, Legal needs to provide that information. (Currently, staff retrieves the penalty information from the public web site). It is suggested that the Legal staff share final penalty assessments with air staff for input into the IIS at the same time it is posted on the Nebraska public site.</p> <p>Nebraska files need to include documentation in the file how economic benefit was or was not assessed.</p>
<p>Metric(s) and Quantitative Value</p>	<p>11a - % penalty calculations that consider & include gravity and economic benefit 0%</p>
<p>State Response</p>	<p>The Legal Division provides a copy of the filed consent decree or judgment in a case to a designated individual in the Air Division at the same time it is placed on the public webpage. In the future, the Legal Division will send a notice to the entire Air Division notifying them of the filing. We understand that Air staff may possess or could obtain information that would assist in calculation of a proposed penalty and economic benefit. We will work to enhance our penalty calculations and improve communication between the Legal and Air staff in this regard. We will work to develop appropriate enforcement training to assist staff.</p>

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Recommendation(s)
(Include each of the
Actions and any
uncompleted
actions from Round
1 that address this
issue.)

By December 31, 2011, Nebraska needs to document the calculation of economic benefit and, if needed, staff should be trained on calculating economic benefit. Final penalty payment needs to be documented in the file

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CAA Element 12 – Final Penalty Assessment and Collection	
Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected	
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Finding	Differences between initial and final penalty, as well as the final penalty collected are not documented in the files.
Explanation. (If Area for State Attention, describe why action not required, if Area for Improvement, provide recommendation narrative.)	Proposed and final penalties sent forward to the AG should be justified. Penalties were drastically reduced by Legal staff. Reasons for such reductions need justification and documentation in the file.
Metric(s) and Quantitative Value	12a – Actions with penalties NE - 6 12b - % HPV actions with penalty NE- 100%; National Goal - ≥ 80%; National Average – 88%
State Response	We believe the difference between the NDEQ proposed penalty to the AG and the final penalty are adequately documented in the file. As noted above, the AG will typically file a Satisfaction of Judgment in a case when the penalty has been paid and all required compliance has been achieved. This usually occurs approximately 6 months after the consent decree has been signed by the judge. However, we acknowledge that what is missing is an explanation of the reasons for this difference. The AG is an independent constitutional office with final decision-making on cases. We agree that feedback regarding final penalty amounts would assist the agency in evaluating the result of our enforcement actions and in pursuing appropriate enforcement cases in the future. We agree that better communication with the AG is desirable to ensure timely and appropriate penalties are achieved in negotiated settlements and we will work to improve those communications.
Recommendation(s) (Include each of the Actions and any uncompleted actions from Round 1 that address this issue.)	By December 31, 2011, Nebraska should documentation receipt of a final payment in the facility file. Nebraska needs to include copy of receipt of payment in the file.

State Review Framework

**Review of Nebraska's
National Pollutant Discharge Elimination System
Compliance and Enforcement Program
In Federal Fiscal Year 2007**

U.S. Environmental Protection Agency, Region 7

Final Report
February 1, 2010

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I. EXECUTIVE SUMMARY

The State Review Framework (SRF) is a program designed to ensure the Environmental Protection Agency (EPA) conducts oversight of state compliance and enforcement programs in a nationally consistent and efficient manner. Reviews look at 12 program elements covering: data (completeness, timeliness, and quality); inspections (coverage and quality); identification of violations; enforcement actions (appropriateness and timeliness); and, penalties (calculation, assessment and collection). Reviews are conducted in three phases: analyzing information from the national data systems; reviewing a limited set of state files; and development of findings and recommendations. Considerable consultation is built into the process, to ensure EPA and the state understand the causes of issues, and to seek agreement on identifying the actions needed to address problems. Reports generated by the reviews are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. The reports are designed to provide factual information and do not make determinations of program adequacy. EPA also uses the information in the reports to draw a “national picture” of enforcement and compliance, and to identify any issues that require a national response. Reports are not used to compare or rank state programs.

A. MAJOR STATE PRIORITIES AND ACCOMPLISHMENTS

Nebraska’s National Pollutant Discharge Elimination System (NPDES) compliance and enforcement program is administered by the Nebraska Department of Environmental Quality (NDEQ). Following is a summary of priorities, operating principles, and accomplishments within the state’s NPDES program areas for Federal Fiscal Year (FFY) 2007.

Wastewater

- Nebraska maintains a strong compliance monitoring presence among wastewater dischargers. The state targets all major dischargers annually for a comprehensive, non-sampling inspection and inspects approximately one-fifth of non-major dischargers each year.
- The state reviews all incoming Discharge Monitoring Reports (DMRs) against permitted effluent limits. If a DMR is significantly overdue or has been submitted with missing information, NDEQ frequently sends the facility a ‘notice of DMR omission/missing information’ in an attempt to promptly obtain missing data. Facilities typically respond promptly.
- Shortly after the end of FFY 2007, the state implemented a best practice whereby each new permit or permit renewal is accompanied by a CD-ROM containing pre-formatted custom DMRs for a complete permit cycle (i.e. five years). This proactive service to facilities has prevented many monitoring and reporting violations that might have otherwise occurred.

Stormwater

- The state visits permitted construction sites only in response to complaints. Fifteen complaint-driven construction stormwater investigations were conducted in FFY 2007.
- When the state receives complaints from within the geographic jurisdiction of permitted Municipal Separate Storm Sewer Systems (MS4s), the complaint is forwarded to the MS4 for follow-up.
- The state does not currently conduct inspections or audits at MS4s.

Concentrated Animal Feeding Operations (CAFOs)

- Nebraska has 313 CAFOs with NPDES permits. During FFY 2007, the Agriculture Section completed 232 initial inspections, 184 routine inspections, 121 construction inspections, 97 follow-up visits, 47 Compliance Status visits, 37 discharge inspections and 12 on-site compliance assistance visits.

Best Practices

- *Records Management*: The state places a high priority on maintaining a records management system that is well organized, easily accessible, and responsive to internal and external inquiries. NDEQ's Records Management Unit provides an outstanding service to the state and is exemplary of first-rate customer service. See Finding 12-2 in Part VII.
- *Custom DMRs*: As discussed above for wastewater accomplishments, the state's practice of providing custom pre-formatted DMRs to new or renewed permittees is a proactive service to facilities that has prevented many monitoring and reporting violations that might have otherwise occurred. See Finding 1-2 in Part VII.

B. SUMMARY OF RESULTS

The review of Nebraska's NPDES program for FFY 2004 led to 8 recommendations for improvement, 7 of which have been addressed in some fashion. One recommendation remains open in the form of a long-term resolution. The state and EPA agreed to develop a mechanism for reporting Significant Non-Compliance (SNC) at pretreatment facilities and identifying when interference and pass-through is the cause of SNC violations. A solution to this challenge was near completion at the time this report was written.

For FFY 2007, EPA reviewed Nebraska's NPDES program against 11 national metrics. EPA made 15 findings that address 8 of the 11 metrics, broken out as follows: 2 findings were best practices to highlight areas of exemplary performance; 3 findings were areas of concern that suggest how the state should investigate a problem and/or continue ongoing efforts to correct a shortcoming in performance; and 10 findings were recommendations for improvement whereby EPA and the state need to agree on

deliverables for improving certain aspects of the program. Following is a summary of the findings grouped by element. Note that EPA did not evaluate Element 3 in FFY 2007.

- 1) Elements for which the state's performance did not lead to any findings. For these elements, the state's performance is satisfactory:
 - Element 4—Completion of Commitments
 - Element 9—Enforcement Actions Promote Return to Compliance
 - Element 10— Enforcement Actions Taken: Timely and Appropriate
- 2) Element having a Best Practice and an Area of Concern, but no Recommendation for Improvement:
 - Element 12—Final Penalty Assessment and Collection. EPA did not make a recommendation here because NDEQ has no control over penalty collection.
- 3) Elements having Recommendations for Improvement with or without Best Practices or Areas of Concern:
 - Element 1—Data Completeness
 - a. Finding 1-1: ICIS-NPDES is missing facility records for a small fraction of the state's non-major facilities, which at the time of the program review consisted of new or reissued permits that had not yet become effective.
 - b. Finding 1-2: The state exhibits exemplary performance with its use of pre-formatted DMR packages given to all facilities, as described under wastewater accomplishments above.
 - c. Finding 1-3: DMR violations for multiple major facilities are due to inaccurate facility data in ICIS-NPDES.
Recommendations 1-3: The state needs to run limit summary reports to identify incorrectly coded data and promptly correct any errors.
 - d. Finding 1-4: A portion of the 25 major facilities in SNC in FFY 2007 had legitimate DMR violations, while others had false violations.
 - e. Finding 1-5: Minor facilities in violation for not submitting DMRs were not consistently notified that submission is required.
Recommendation 1-5: The state needs to run and examine the DMR Non-Receipt report at the end of each quarter after the state has entered all received DMRs and respond to consistent non-reporters in a timely fashion.
 - f. Finding 1-6: The state did not enter in ICIS-NPDES any formal or informal enforcement actions for major or P.L. 92-500 minor facilities in FFY 2007, as required. The state also did not enter any penalty information for civil judicial settlements involving majors.
Recommendation 1-6: The state needs to begin entering formal actions for majors and P.L. 92-500 minors, begin entering penalties for majors, and continue entering NOV's as it began to do in FFY 2008.
 - Element 2—Data Accuracy
 - a. Finding 2-1: With no formal enforcement actions entered in ICIS-NPDES in FFY 2007, the state did not link those actions to the corresponding violations.

Recommendation 2-1: The state needs to begin linking violations to formal actions against majors as those actions begin to be entered into ICIS-NPDES.

- Element 5—Inspection Coverage
 - a. Finding 5-1: The state does not have a record for conducting inspections at 6 of 51 majors in FFY 2007.
Recommendation 5-1: The state and EPA need to develop a mechanism for communicating the state’s planned major inspections and, at least semi-annually, a tally of major facilities that have been inspected.
- Element 6—Quality of Inspection Reports
 - a. Finding 6-1: Inspection reports for facilities that have an industrial stormwater permit did not discuss compliance with industrial stormwater permit requirements.
Recommendation 6-1: The state needs to develop a modified WWTF inspection checklist that includes critical questions for facilities that also have an industrial stormwater permit.
 - b. Finding 6-2: 19 of 44 inspection reports reviewed by EPA did not contain a clear identification of violations or a finding of compliance.
Recommendation 6-2: Inspection reports need to include definitive documentation of any violations present at the facility or document compliance status. CAFO inspections should utilize the 4 page checklist rather than the one-page checklist.
- Element 7—Identification of Alleged Violations
 - a. Finding 7-1: The state did not enter single-event violations (SEVs) in ICIS-NPDES in FFY 2007 and has not yet begun doing so.
Recommendation 7-1: EPA requests that the state provide a timeline as to when the state will begin entering SEVs in ICIS-NPDES for major facilities.
- Element 8—Identification of SNC and high-priority violations (HPV)
 - a. Finding 8-1: The state has not consistently responded to SNC/HPV through an enforcement mechanism, particularly for communities that do not meet permit requirements for reporting sanitary sewer overflows (SSOs).
Recommendation 8-1: The state needs to take responsibility for following up with communities not meeting their reporting requirements and, when appropriate, take some form of enforcement action.
- Element 11—Penalty Calculation Method
 - a. Finding 11-1: Enforcement files lacked sufficient information to explain how the state calculated recommended penalties for gravity and economic benefit or to demonstrate that gravity and economic benefit were incorporated into the final pleading penalty
Recommendation 11-1: NDEQ needs to ensure that the information it provides to the Attorney General (AG) to recommend penalties is useful. Also, NDEQ needs to communicate with the AG to identify any additional information about a case that would be helpful for the AG when calculating a pleading penalty.

EPA did not identify any cross-media findings or recommendations during this review. The SRF review of Nebraska for FFY 2007 focused only on the state's NPDES program.

II. BACKGROUND ON NEBRASKA'S PROGRAM AND THE REVIEW PROCESS

The following discussion of Nebraska's NPDES compliance and enforcement program is the product of verbal exchanges that occurred between EPA Region 7 and NDEQ during and outside the week of November 17, 2008, and also reflects other information shared by NDEQ prior to the drafting of this report. Also included in this part of the report is a description of the review process.

The background information in this report pertains to Nebraska's program as it currently operates. In cases where the program operated differently during the year under review—FFY 2007—EPA notes those changes accordingly.

A. Overview of Nebraska's Program

A1. Organization and Responsibilities

All of Nebraska's NPDES permitting and compliance monitoring responsibilities belong to the NDEQ Water Quality Division, while enforcement work is handled between the agency's Water Quality Division and Legal Services Division. Any NPDES judicial enforcement activities in Nebraska, including all penalty actions, also involve the Attorney General's Office, as explained below. Local agencies do not assume any NPDES program administration responsibilities in Nebraska.

The compliance monitoring activities of the Water Quality Division are divided between the Agriculture Section and the Wastewater Section. The Agriculture Section manages permitting and compliance at CAFOs, whereas the same activities at facilities having all other NPDES permits (e.g. wastewater and stormwater) are handled by the Wastewater Section. Both sections include a permitting and compliance unit with staff having the dual responsibilities of writing permits and monitoring compliance, with the caveat that a permit writer and inspector for a given facility will be different individuals. The Wastewater Section has divided the state into seven regions for the purpose of permitting and compliance, whereby compliance staff for four of those regions is deployed in separate field offices. Wastewater Section compliance staff for the other three regions resides in NDEQ's central office. For the Agriculture Section, compliance staff is similarly divided between the central and regional offices, although regions are defined somewhat differently to reflect different demographics for CAFO facilities.

When the Water Quality Division decides to escalate a case of non-compliance to formal enforcement, the division sends an enforcement recommendation to the Legal Services Division, which issues administrative compliance orders for all cases except those deemed worthy of a penalty action. The state's constitution gives authority to collect penalties in NPDES cases to the state Attorney General, which issues all penalty orders within the judicial arena. Further details of NDEQ's relationship to the Attorney General are discussed in Subsection A4 below.

A2. Staffing, Resources, and Training

The Wastewater and Agriculture Sections, combined, have approximately twenty-nine full-time staff in the central Lincoln office, in addition to two section chiefs and five unit supervisors. The two sections also have staff in the state's regional offices, with at least one compliance worker responsible for wastewater and CAFO inspections in each of four regional offices. Water Quality Division inspectors perform, on average, approximately 60 inspections per year per person. Inspectors have dual responsibilities in that they also write permits, although the permit writer and inspector for any given facility are different individuals.

In mid-2008, the state filled a short-term vacancy in the Wastewater Section for storm water coordination. This vacancy had been open for several months during FFY 2008 but did not impact the program's stormwater activities during FFY 2007. This full-time individual is responsible for all permitting, compliance assistance, compliance monitoring, and enforcement escalation for all of Nebraska's construction and industrial stormwater sites and oversight of the state's MS4s.

The Legal Services Division consists of four full-time attorneys. This number includes the director of the division. The four attorneys are responsible for pursuing formal enforcement for all of NDEQ's environmental programs.

To train new employees, the Water Quality Division provides a training manual containing instructions on work flow, information tracking, and other agency requirements. New inspectors take the EPA Permit Writer's Course and shadow seasoned inspectors for a short period after joining the staff. The Legal Services Division provides occasional presentations on matters germane to the enforcement process, such as record-keeping, photo documentation, and witness preparation. All wastewater inspectors take the operator's certification course for treatment plant operation.

A3. Data Reporting and Tracking Systems

The Water Quality Division uses four databases to report and track compliance and enforcement information. ICIS-NPDES is the database used to report all required NPDES data to the national program, although EPA found during the review that not all required data is being entered into this database. Conversely, the state exceeds program expectations by tracking permit limits and Discharge Monitoring Reports (DMR) data for nearly all non-major dischargers, which are not required data elements for the national database. The state uses ICIS-NPDES as its sole tracking mechanism for DMRs. Nebraska became a direct user of ICIS-NPDES in August 2006.

The second database, the Integrated Information System (IIS), is an in-house system that the division uses to track all correspondence with facilities as well as all compliance monitoring activities, including dates and inspection reports. IIS also serves as the division's interface with the agency's Records Management Section, providing a

catalog to identify documents in facility files. To track formal and informal enforcement actions, the state relies on a Microsoft Access database. Items tracked include Notices of Violation (NOVs), responses to NOVs as requested by the state and actually received from facilities, administrative compliance orders, penalty referrals, and milestones associated with the issuance of formal orders and any required injunctive relief. The final data system is a series of spreadsheets that the state uses to track general permit authorizations issued to industrial and construction stormwater permittees. This system also tracks complaint investigations associated with stormwater permittees.

A4. Enforcement Escalation Process

The guidance that NDEQ follows to obtain compliance and conduct enforcement is described in the agency's Enforcement Manual, which was last revised January 2002. To better understand the state's protocol for escalating non-compliance to enforcement, EPA discussed this matter with the Water Quality Division and Legal Services Division. Any discussion of state enforcement mechanisms must also consider EPA's definitions of formal and informal enforcement. Within the context of this program review, informal enforcement includes NOVs or similar warning letters, while formal enforcement includes administrative compliance orders and judicial compliance and/or penalty actions and consent decrees.

Nebraska state law requires, when violations of the state's Environmental Protection Act or the Livestock Waste Management Act are discovered, that NDEQ "make every effort to obtain voluntary compliance through warning, conference, or any other appropriate means prior to initiating enforcement proceedings" unless an emergency exists. In the case of reporting violations, for example, the state sends the facility a notice of missing information, as described in Section B1 below. If the attempt to voluntarily return the facility to compliance does not succeed, or if the need for formal enforcement is anticipated upon discovery of the violation, the state sends the facility a written NOV—or occasionally a less formal Letter of Warning. Most of the NOVs that EPA reviewed from FFY 2007 asked the violator to respond to the agency in writing within a specified period to address how the cited violation will be corrected.

NDEQ has changed its policy for writing NOVs since the year of review. In FFY 2007 the state NPDES program sent twelve NOVs. Starting in 2008, NDEQ management instructed NPDES inspectors to write an NOV for all violations discovered during inspections. During FFY 2008, the number of NOVs issued had increased to approximately 50.

NDEQ's Enforcement Manual suggests a time limit of ninety days following discovery of a violation before which escalation to enforcement should begin if voluntary compliance is not successful. For matters rising to formal enforcement, the manual suggests that an administrative order or civil referral be made within 180 days of discovery. Beyond these guidelines, the state had no standard protocol in FFY 2007 for how decisions should be made and what criteria should be used to escalate a case of non-compliance beyond an NOV or other unsuccessful voluntary effort. NDEQ is currently

contemplating how to accomplish enforcement escalation without relying only on case-by-case judgments to address violations.

The Wastewater Section makes a distinction between high-priority and low-priority violations that closely resembles the federal distinction between violations constituting SNC and those that are non-SNC. Violations that belong in these two categories are described in the Enforcement Manual separately for major facilities, minor facilities, and exempt facilities. The state should consider how this prioritization of violations might guide its development of a protocol with criteria for making enforcement escalation decisions.

When the Water Quality Division determines that a case merits formal enforcement, an enforcement recommendation is forwarded to the Legal Services Division. This constitutes the earliest point in the escalation process at which the Legal Services Division becomes involved in a case ultimately leading to formal enforcement. A staff attorney is then assigned to develop the case and, if no penalty will be sought, to prepare an administrative order. If NDEQ determines that a penalty is appropriate, the staff attorney prepares a proposed complaint and litigation report, which includes a recommended penalty. These documents are then forwarded to the office of the state Attorney General (AG), which determines an appropriate penalty amount and prosecutes the case in the judicial arena. As noted in Section A1 above, NDEQ does not have legal authority to assess administrative penalties. All penalties must be assessed in the context of a civil or criminal judicial action taken by the AG. The AG has authority to issue a judicial compliance order and/or assess penalties. If penalties are deemed appropriate, the amount of any negotiated penalty is left to the discretion of the AG. NDEQ senior management is informed of the status of actions referred to the AG's office, but staff in the Legal Services Division and the Water Quality Division apparently gets little feedback regarding the basis for a final penalty assessment by the AG's office.

According to EPA's discussion with NDEQ, the Legal Services Division formulates recommended penalties using practical experience regarding the nature of the violation and what magnitude of penalty is likely to be palatable to the courts, based on past experience. Until some time prior to FFY 2007, NDEQ developed recommended penalties using the Civil Penalty Policy and Guidance currently found in the Enforcement Manual. The policy provides guidance on the magnitude of penalty to be considered for each of four statutory factors and three mitigating factors, and it articulates this guidance on a penalty computation worksheet. According to the Enforcement Manual, the NPDES program should complete this worksheet and submit it to the Legal Services Division with the enforcement recommendation. The Legal Services Division staff indicated that because of the disparity between penalties developed using the guidance and the penalties actually assessed by the courts and negotiated by the AG's office, the Legal Services Division now provides penalty recommendations based on experience rather than use of the guidance and worksheets.

EPA reviewed four enforcement cases that involved civil penalties and noted two findings regarding the calculation and collection of penalties as conducted by NDEQ in FFY 2007. Refer to Parts VI and VII for details.

B. State Priorities, Activities, and Accomplishments for NPDES Program Components

B1. Wastewater

The core element of Nebraska's NPDES compliance and enforcement program is the state's annual inspections of wastewater dischargers. NDEQ's inspection goal reflects federal regulatory requirements. The state targets all major dischargers for a comprehensive, non-sampling inspection annually, although NDEQ has faced challenges since the FFY 2004 review in verifying through the national database that all inspections of majors are conducted. For non-major dischargers, the state conducts a comprehensive, non-sampling inspection at approximately one-fifth of facilities each year, such that most if not all non-majors receive an inspection every five years in accordance with requirements.

To document inspections, NDEQ's inspectors across all regions of the state use some variation of the wastewater treatment inspection form that NDEQ implemented prior to FFY 2007. This form contains a list of entries for information to characterize the facility and various aspects of permit compliance, and it sometimes includes narrative to describe the overall compliance status of the facility.

A critical component in the state's process of screening NPDES permit violations is the review of DMRs. According to the state, NDEQ reviews all incoming DMRs against what is expected to be populated on the DMRs. If a DMR is significantly overdue or has been submitted with missing information, NDEQ frequently sends the facility a 'notice of DMR omission/missing information' in an attempt to promptly obtain missing data that is sometimes the result of a facility oversight. Facilities typically respond promptly.

To facilitate more consistent and accurate use of DMRs by the state's facilities, the Wastewater Section implemented a best practice shortly after the end of FFY 2007 whereby each new permit or permit renewal is accompanied by a CD-ROM containing pre-formatted custom DMRs for a complete permit cycle (i.e. five years). By providing each facility all of the DMR forms it needs in advance, with each DMR reflecting the facility's monitoring requirements, the state has prevented many monitoring and reporting violations that might have otherwise occurred.

B2. Pretreatment

The State of Nebraska was authorized to implement the Pretreatment program as a "403.10(e)" state. This means that the state has elected to implement the entire program as both the approval authority and the control authority, as it does not delegate Approved

Pretreatment Programs to municipalities. Under the General Pretreatment Regulations all cities with publicly owned treatment works (POTWs) of greater than 5 million gallons per day (mgd) are required to develop a Pretreatment program that controls industrial discharges to its system. The state has waived this requirement and shouldered the entire burden of implementation. Analogous to the 5 mgd requirement, the state has entered into 12 Memorandums of Understanding (MOUs) with its larger cities. Responsibilities by these cities range from submitting annual reports with summaries of industrial discharger's activities, to inspecting and sampling and sharing the results with NDEQ. All permitting and enforcement activities are retained by the state.

As a 403.10(e) state, NDEQ is required to annually inspect, and independently determine compliance through annual sampling, each of its Significant Industrial Users (SIUs). NDEQ inspects each industry once per year and documents the inspection using the standard inspection checklist used for NPDES inspections. Grab sampling is performed at each SIU by NDEQ except for those SIUs in Omaha; through the MOU, the City of Omaha performs the sampling and provides the data to NDEQ. All permitted SIUs were inspected and sampled in FY 2007.

Because the state replaces the city for essentially all implementation responsibilities, the measure of its effectiveness can be gauged by evaluating state activities as the Region would a city when performing a Pretreatment audit. To guide this program review a Pretreatment program city's audit checklist was roughly followed, with the questions altered to apply to the state's point of view. A narrative discussion of all required components of the state's pretreatment program, based on the checklist findings, can be found in Appendix B. Findings and recommendations pertaining to compliance and enforcement can be found in Part VII, Section A.

B3. Sanitary Sewer Overflows (SSOs)

Nebraska's standard permit conditions for direct NPDES dischargers include requirements for reporting violations, including SSOs, within a specified period of time. NDEQ does not actively screen facilities to ensure that they report SSOs in a timely fashion. At the request of EPA, NDEQ in June 2005 sent a letter to six communities prioritized as a high concern for SSOs. In the letter NDEQ requested that these communities take the additional reporting step of submitting to the state a semi-annual log of all SSOs. During the review, EPA considered how well some of these communities have complied with NDEQ's request. See Parts VI and VII for detailed findings.

B4. Stormwater

As noted previously, the state's stormwater coordinator in the Wastewater Section is responsible for all compliance monitoring and enforcement escalation for all of Nebraska's construction and industrial stormwater sites and oversight of the state's MS4s. Nebraska's compliance monitoring for construction stormwater consists solely of investigations in response to complaints. NDEQ does not actively target construction

sites for compliance monitoring inspections, nor do complaint investigations follow the format of a compliance monitoring inspection. According to NDEQ, more than half of all construction complaints are in fact civil matters that do not involve noncompliance with NPDES permit provisions.

Aside from construction sites, the focus of stormwater complaints also includes industrial sites subject to authorization under a stormwater general permit, although this latter category is a small fraction of the whole. If the focus of a stormwater complaint lies within the geographic jurisdiction of a permitted MS4, NDEQ forwards the complaint to the MS4 for follow-up. The compliance staff assigned to each region of the state investigates complaints, not associated with an MS4, as they are received.

Regarding industrial stormwater permittees, NDEQ maintains that its inspectors evaluate an industrial facility's compliance with its stormwater permit during wastewater inspections of industrial sites that also have an NPDES permit for wastewater. The primary purpose of such inspections, however, is to evaluate compliance with the wastewater permit, which is the basis upon which the state targets industrial facilities. The state does not actively target industrial facilities for stormwater inspections. During the state review, EPA had an opportunity to review reports from several inspections conducted in this manner. See Parts VI and VII for detailed findings.

In FFY 2007 Nebraska did not have a mechanism for monitoring compliance of permitted MS4s. Nebraska does not currently conduct inspections or audits of MS4s.

B5. Concentrated Animal Feeding Operations (CAFOs)

The Agriculture Section of the Water Quality Division has responsibility for assuring NPDES compliance at all permitted CAFOs in the state. EPA estimates that there are approximately 1,000 facilities (both permitted and unpermitted) that meet the definition of a CAFO, with 313 of these having NPDES permits. During FFY 2007, the Agriculture Section completed 232 initial inspections, 184 routine inspections, 121 construction inspections, 97 follow-up visits, 47 Compliance Status visits, 37 discharge inspections and 12 on-site compliance assistance visits. During the program review EPA noticed 2 inspection write-up formats. One format titled "Compliance Inspection Data Sheet" was used in three of the six inspection files reviewed. This format is a one-page checklist with a section at the bottom available for remarks/comments. The other format used in the remaining three inspections is titled "Routine Inspection Checklist for Animal Feeding Operations". This is a 4-page checklist with a section at the end available for comments. NDEQ management indicated that the one-page checklist is still used for smaller facilities or for frequent inspections, with the 4 page format being completed once every 5 years at these facilities. For strengths and weaknesses of these formats please refer to Parts VI and VII of this report.

EPA did not review any formats other than the two listed above even though NDEQ listed other types of inspections (construction, discharge) as being completed. NDEQ is also in the process of developing/revising a Standard Operating Procedure

(SOP) for both the Routine Site Inspections and for Initial Site Inspections, which should help standardize the activities related to CAFO inspections.

C. Process for SRF Review

The following is a summary of the key inputs, milestones, and channels of communication that characterize what occurred between EPA and Nebraska during the SRF review. The Water Enforcement Branch at EPA Region 7 was responsible for conducting the review. Michael Boeglin, under the direction of Diane Huffman, was the coordinator and lead reviewer of Nebraska's NPDES program. The SRF Coordinator for EPA Region 7 is Pam Johnson.

Throughout the preparation, execution, and follow-up for the SRF review, all communication was channeled between the Water Enforcement Branch and NDEQ's Wastewater Section. Steve Goans, supervisor of the Wastewater Section, and Donna Garden, supervisor of the Permits and Compliance Unit within the Wastewater Section, were the primary points of contact within NDEQ.

EPA reviewed Nebraska's NPDES compliance and enforcement program for FFY 2007. Following are the major milestones in the process:

- 9/26/08—EPA sent an opening letter to NDEQ to initiate the SRF review and transmit the Official Data Set (ODS). The ODS formed the basis of the Preliminary Data Analysis (PDA) of the state's compliance and enforcement data and activities in FFY 2007, as contained in ICIS-NPDES.
- 10/3/08—NDEQ responded to the ODS via several telephone conversations with EPA. The state provided comments and discrepancies with the data. These can be found in Appendix A.
- 10/31/08—EPA sent the final file selection list to NDEQ via email, with enough advance notice to give NDEQ ample time to pull the files prior to on-site review.
- 11/10/08—EPA sent a letter to NDEQ transmitting the initial findings from the PDA and the file selection list. This letter also set the expectations for what would occur during the on-site review. The PDA is discussed in Section IV of this report, while the file selection process is discussed in Section V.
- 11/17-20/08—EPA's teams for the SRF review and permits program review conducted a joint on-site review in Lincoln, Nebraska, at NDEQ's central office. During the on-site review, EPA reviewed facility files, discussed programmatic matters with NDEQ staff and management, and held an exit conference to report preliminary findings.

EPA's process for reviewing files during the on-site review began with identifying the documents from FFY 2007 that were expected to be present in the file. Any additional documents from other fiscal years that related to the inspection and enforcement documents of primary interest were also identified. EPA then reviewed the

documents, creating a complete chronology showing how the state handled any compliance concerns at the facility.

Programmatic discussions during the on-site review involved management and staff of the NDEQ Water Quality Division. Discussions enabled EPA to answer questions about the content of facility files and to gain a thorough understanding of how the agency processes information and makes decisions regarding compliance and enforcement. An exit briefing on preliminary findings was held on the final day of the on-site review, which involved most members of the EPA review team as well as NDEQ's director and Water Quality Division management.

Issuance of this report is the culmination of the on-site review and the entire SRF process. The state's response to the report will be incorporated here after it is received by EPA. A final draft of the report will contain the state's response and EPA's recommendations for improvement.

III. STATUS OF RECOMMENDATIONS FROM PREVIOUS REVIEWS

During the SRF Review of Nebraska's NPDES compliance and enforcement program for FFY 2004, EPA and Nebraska identified a number of actions to be taken to address issues found during the review. The table below shows the status of progress toward completing those actions. Actions with a status of "completed" are those for which EPA determined, at approximately the time of the due date, that the state satisfied the recommended action. This information was extracted from the SRF Tracker on 12/17/2008.

Element	Status	Due Date	Title/Description	Finding
Insp Universe	Completed	12/4/2005	Enter data into PCS.	Inspections are being done but records of some of the inspections are not getting into PCS.
Return to Compliance	Completed	12/8/2005	Shorten time of violations identified and issuance of enforcement actions	During the file review, five wastewater enforcement actions issued by the NDEQ were reviewed. Three of the facilities had violations for approximately 3 years prior to a formal enforcement action being issued. Two of the facilities took between 8 and 10 years before the NDEQ issued a formal enforcement order. Each of the formal enforcement orders for these wastewater cases required construction or modification of the treatment facilities. However, the files lacked documentation supporting whether substantive follow-up has been taken by NDEQ. Formal enforcement orders were issued to four CAFO facilities. Although one facility has had violations for approximately 6 years, documentation in the file shows that timely and appropriate enforcement actions have taken place during this time. All four CAFO facilities have remained unpermitted for approx. 3 to 5 years. In addition, formal enforcement actions were issued for two of the storm water cases that were reviewed. One of the facilities had ongoing violations for approx. 3 years and the other had documentation in the file that shows timely and appropriate enforcement action had been taken. Although most of the cases reviewed had a considerable length of time between the identification of violations and the issuance of a formal enforcement order, it appeared that most of the orders have a reasonable time period for activities to return the facilities to compliance.
SNC Accuracy	Long Term Resolution	12/30/2008	EPA needs status reports in format agreed to in MOU.	As for pretreatment facilities, NDEQ's PCS printouts do not identify SNC with respect to reporting nor does it show what municipal facilities in SNC were the result of interference or pass through. Violations at storm water & CAFO facilities are not reported to EPA.
Timely & Appropriate Actions	Completed	12/4/2005	Evaluate violations for appropriate enforcement response, and respond in timely and appropriate manner.	It takes years, under NDEQ's enforcement process, to return a facility to compliance.
Penalty Calculations	Completed	12/4/2005	Additional documentation for determining penalties.	Files failed to state the basis for the gravity portion of the penalty and failed to demonstrate that economic benefit was collected.

Element	Status	Due Date	Title/Description	Finding
Penalties Collected	Completed	12/4/2005	Additional documentation needed for follow-up to final enforcement actions & collection of penalties.	Although documentation is not available in the files concerning the collection of economic benefit & gravity portion of a penalty, the NDEQ's NPDES Enforcement Manual provides the process for figuring these portions of the penalty. Also, in reviewing past enforcement actions over a three year period, the NDEQ's Enforcement Reports for 2001,2002,&2003, enforcement was sought on NPDES cases & injunctive relief & economic benefit wwere collected in some cases. Penalties also increased significantly over the three year period.
Grant Commitments	Completed	12/4/2005	Enter enforcement data into PCS & SSOs need to be tracked.	No enforcement data being entered into PCS. In addition, NDEQ tracks when SSO reports were submitted, but has no system for tracking the SSOs themselves.
Data Timely	Completed	12/30/2007		The NDEQ relies on four databases for program implementation. The first, PCS, is used to provide programmatic information to the EPA. The state's own database, IIS is more comprehensive, user friendly, & powerful & eventually the state would like to use it exclusively for all NPDES activities. Until IIS can be expanded & upgraded, the state is also using two desktop databases to track enforcement actions & permitting activities. The NDEQ focuses its resources on IIS & not PCS. The result is that not all of the required PCS data fields are being put into PCS. The EPA is particularly concerned that there is no enforcement data entered into PCS. This occurs in part because the NDEQ refers all of their enforcement cases to the AG, & in part because they are focusing their resources on maintaining IIS. It appears that IIS has the data fields that are required by PCS. The NDEQ anticipates IIS to be able to upload into PCS, but does not have a definite time frame for this to occur.

IV. PRELIMINARY DATA ANALYSIS

This section provides the results of the Preliminary Data Analysis (PDA). The PDA forms the initial structure for the SRF report, and helps ensure that the data metrics are adequately analyzed prior to the on-site review. This is a critical component of the SRF process, because it allows the reviewers to be prepared and knowledgeable about potential problem areas before initiating the on-site portion of the review. In addition, potential concerns raised during the PDA are the basis for EPA to request any supplemental files that may be necessary to review. The full PDA is available in Appendix A of this report.

The PDA reviews each data metric and evaluates state performance against the national goal or average, if appropriate. The PDA table in this section of the SRF report only includes metrics where potential concerns or potential areas of exemplary performance were identified. The full PDA contains every metric—positive, neutral or negative. Initial Findings indicate the observed results. Initial Findings are preliminary observations and are used as a basis for further investigation. Findings are developed only after evaluating them against the file review results where appropriate and after dialogue with the state has occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section VII of this report.

Original Data Pulled from Online Tracking Information System (OTIS)							EPA Preliminary Analysis
Metric	Metric Description	Metric Type	Agency	National Goal	National Average	Nebraska Metric	Initial Findings
P01A3C	Active facility universe: NPDES non-major individual permits (Current)	Data Quality	Combined			609	EPA and NDEQ need to identify the 23 facilities that make up the difference between the Nebraska metric and the state-corrected number. NDEQ needs to enter permit records for these facilities in ICIS-NPDES.

Original Data Pulled from Online Tracking Information System (OTIS)							EPA Preliminary Analysis
Metric	Metric Description	Metric Type	Agency	National Goal	National Average	Nebraska Metric	Initial Findings
P01A4C	Active facility universe: NPDES non-major general permits (Current)	Data Quality	Combined			152	The state is not required to populate the national program database with general permit authorizations for stormwater, hydrostatic testing, or remediation.
C01B2C	Major individual permits: DMR entry rate based on DMRs expected (1 Qtr)	Goal	Combined	95%	89.6%	85.1%	16 facilities had one or more DMRs not received and/or entered into the national program database.
P01B4C	Major individual permits: manual RNC/SNC override rate (1 FY)	Data Quality	Combined			15.3%	Files for a portion of the permittees with manual override need to be reviewed to determine why the override was executed.
C01C2C	Non-major individual permits: DMR entry rate based on DMRs expected (1 Qtr)	Informational Only	Combined			68.5%	EPA and the state need to discuss what mechanism the state is using to screen for violations given that many DMRs appear to not be entered and tracked in ICIS-NPDES.

Original Data Pulled from Online Tracking Information System (OTIS)							EPA Preliminary Analysis
Metric	Metric Description	Metric Type	Agency	National Goal	National Average	Nebraska Metric	Initial Findings
C01C3C	Non-major individual permits: percent with permit limits and DMR data (1 FY)	Informational Only	Combined			63.4%	EPA and the state need to discuss what mechanism the state is using to screen for violations given that a number of permit limits and DMRs appear to be absent from the national program database.
P01D3C	Violations at non-majors: DMR non-receipt (3 FY)	Informational Only	Combined			56	Files for a portion of the permittees with DMR non-receipt need to be reviewed to determine if non-receipt is impacting the state's ability to screen the facilities for violations.
P01E1S	Informal actions: number of major facilities (1 FY)	Data Quality	State			0	The state tracked and has manually provided an accurate inventory of enforcement actions for FY2007. Beginning in FY2008, the state started entering all informal actions into ICIS-NPDES. The absence of any informal actions at non-majors is also a potential concern given the high number of DMR violations and SNC rate at majors (see metric 7D and 8A1)
P01E3S	Informal actions: number of non-major facilities (1 FY)	Data Quality	State			0	The state tracked and has manually provided an accurate inventory of enforcement actions for FY2007. Beginning in FY2008, the state started entering all informal enforcement actions into ICIS-NPDES. The small number of non-majors against which informal action was taken is also a concern when compared to the high non-compliance rate (see metrics 1D1 and 1D2).
P01F1S	Formal actions: number of major facilities (1 FY)	Data Quality	State			0	The fact that only one formal enforcement action was taken against a facility from a universe of 54 needs to be considered in conjunction with the high number of DMR violations and SNC rate at majors (see metrics 7D and 8A1).

Original Data Pulled from Online Tracking Information System (OTIS)							EPA Preliminary Analysis
Metric	Metric Description	Metric Type	Agency	National Goal	National Average	Nebraska Metric	Initial Findings
P01F3S	Formal actions: number of non-major facilities (1 FY)	Data Quality	State			0	The state tracked and has manually provided an accurate inventory of enforcement actions for FY2007 but has not been entering this data in ICIS-NPDES. The small number of non-majors against which formal actions were taken is also a potential concern when compared to the high non-compliance rate (see metrics 1D1 and 1D2).
P01G1S	Penalties: total number of penalties (1 FY)	Data Quality	State			0	The state tracked and has manually provided an accurate inventory of penalties for FY2007 but has not been entering this data in ICIS-NPDES.
P01G2S	Penalties: total penalties (1 FY)	Data Quality	State			\$0	The state tracked and has manually provided an accurate inventory of penalties for FY2007 but has not been entering this data in ICIS-NPDES.
P02A0S	Actions linked to violations: major facilities (1 FY)	Data Quality	State			0 / 0	With no formal actions in ICIS-NPDES, the state has not linked violations to those actions.
P05A0S	Inspection coverage: NPDES majors (1 FY)	Goal	State	100%	63.8%	86.3%	EPA and the state need to discuss why 7 facilities either were not inspected or did not have their inspections entered into the national program database.
P07A1C	Single-event violations at majors (1 FY)	Review Indicator	Combined			0	EPA and the state need to discuss whether the state tracks SEVs internally. Whether or not that is the case, file review needs to examine whether SEVs are being adequately identified.
P07A2C	Single-event violations at non-majors (1 FY)	Informational Only	Combined			0	The state does not need to report this information, but it does need to track SEVs internally.

Original Data Pulled from Online Tracking Information System (OTIS)							EPA Preliminary Analysis
Metric	Metric Description	Metric Type	Agency	National Goal	National Average	Nebraska Metric	Initial Findings
P07B0C	Facilities with unresolved compliance schedule violations (at end of FY)	Data Quality	Combined			0 / 0	Any compliance schedules in the state's 9 formal enforcement actions were not entered in ICIS-NPDES.
P07C0C	Facilities with unresolved permit schedule violations (at end of FY)	Data Quality	Combined			100.0%	A portion of the 5 facilities with permit schedules should be reviewed to investigate issues surrounding the resolution of those schedule violations.
P07D0C	Major facilities with DMR violations (1 FY)	Data Quality	Combined			32	File review will enable EPA to determine how the state is addressing these violations.
P08A1C	Major facilities in SNC (1 FY)	Review Indicator	Combined			25	File review will enable EPA to determine how the state is addressing these cases of SNC.
P08A2C	SNC rate: percent majors in SNC (1 FY)	Goal	Combined		22.4%	49.0%	This rate is higher than the national average. File review and discussion with the state are needed to investigate why so many major facilities have been in SNC.
P10A0C	Major facilities without timely action (1 FY)	Goal	Combined	< 2%	11.7%	9.8%	Although the state is below the national average, this rate is still much higher than the national goal. EPA and the state should discuss why timely action has not been taken against the 5 facilities at issue.

V. FILE SELECTION

The files that EPA reviewed were selected according to the SRF File Selection Protocol, which employs a web-based file selection tool that is available to EPA and state users at the following web address: http://www.epa-otis.gov/cgi-bin/test/srf/srf_fileselection.cgi. The protocol and tool are designed to provide consistency and transparency in the process. Based on the description of the file selection process in section A, states should be able to recreate the results in the table in section B.

A. File Selection Process

Using the SRF File Selection Protocol, EPA selected 50 facility files for the on-site review. This includes 40 files chosen to be representative of the universe of NPDES facilities in Nebraska that were the subject of compliance monitoring or enforcement activity in FFY 2007. The remaining 10 files were chosen as supplemental files to help EPA better understand whether any potential areas of concern identified via the data metrics review are substantiated.

The 40 representative files were chosen to provide a cross-section of permit types and, within each permit type, to represent facilities that were the subject of an inspection as well as those that were subject to an enforcement action. Altogether, 28 files were selected as representative inspections and 9 as representative enforcement actions. The disparity between these two numbers reflects the fact that NDEQ's inspections vastly outnumbered the enforcement actions in FFY 2007. The remaining 3 files were chosen as representative SSO communities. Facilities were also chosen to represent the variety of compliance history information in ICIS-NPDES and to represent the relative proportions of facilities from the state's seven regions.

The choice of particular facilities within each representative category was random and made using the Online Tracking Information System (OTIS) SRF File Selection Tool when possible. Core program majors and minors and pretreatment facilities were selected using the OTIS tool. The national program database did not have records for CAFOs, industrial stormwater sites, and construction stormwater sites; therefore, EPA had to randomly select files from facility and activity lists provided by NDEQ. For representative SSO communities, EPA randomly selected three of the six high-priority SSO communities identified in the 2006-2007 NDEQ 106 Workplan.

The 10 supplemental files were selected to help EPA better understand the nature of three potential concerns identified in the preliminary data analysis. The three potential concerns, preceded by their associated metric and followed by the number of supplemental files, are as follows:

- 1b4: Major individual permits—manual RNC/SNC override rate (1);
- 1d3: Violations at non-majors—DMR non-receipt (7); and
- 7c: Facilities with unresolved permit schedule violations (2).

EPA feels that additional facility files, beyond those chosen through the representative selection process, were necessary to determine whether each potential concern will require follow-up action by NDEQ and/or EPA.

B. File Selection Table

The following table presents the output from EPA’s use of the web-based selection tool on the SRF website and displays compliance and enforcement data for 29 facilities. The absence of facility names in the table mirrors the absence of names during the selection process, which supported randomness.

As discussed above, several facilities did not have permit information in the database, including 4 supplemental files, and those selections are not included in this table. In addition, EPA and the state agreed to two substitutions during and immediately prior to the week of file review, due to different inspection and enforcement activities for the facilities from what EPA had anticipated. The full list of facilities reviewed by EPA can be found in Appendix C.

<u>Program ID</u>	<u>f_city</u>	<u>State Region</u>	<u>f_state</u>	<u>f_zip</u>	<u>Permit Com-ponent</u>	<u>Inspection</u>	<u>Violation</u>	<u>Single Event Violation</u>	<u>SNC</u>	<u>Informal Action</u>	<u>Formal Action</u>	<u>Penalty</u>	<u>Universe</u>	<u>Selection Rationale</u>
NE0029238	ALEXANDRIA	3	NE	68303	POT	yes	yes	no	no	no	no	no	Minor	accepted_supplemental
NE0028088	BANCROFT	7	NE	68004	POT	yes	no	no	no	no	no	no	Minor	accepted_representative
NE0123200	BEE	3	NE	68314	POT	no	yes	no	no	no	no	no	Minor	accepted_supplemental
NE0000647	COLUMBUS	7	NE	68601		yes	yes	no	yes	no	no	no	Major	accepted_representative
NE0046124	CERESCO	7	NE	68017	POT	no	yes	no	no	no	no	no	Minor	accepted_supplemental
NE0034304	CRETE	3	NE	68333	POT	yes	no	no	no	no	no	no	Major	accepted_representative
NE0021199	DAVID CITY	5	NE	68632	POT	yes	yes	no	no	no	no	no	Minor	accepted_representative
NE0046175	DWIGHT	5	NE	68635	POT	yes	no	no	no	no	no	no	Minor	accepted_representative
NE0132594	BLAIR	7	NE	68008		yes	no	no	no	no	no	no	Minor	accepted_representative
NE0124451	BEATRICE	3	NE	68310	PRE	yes	no	no	no	no	no	no	Minor	accepted_representative
NE0112241	FIRTH GRAND	2	NE	68358	POT	yes	no	no	no	no	no	no	Minor	accepted_representative
NE0043702	ISLAND	5	NE	68801	POT	no	yes	no	yes	no	no	no	Major	accepted_representative
NE0024252	HEBRON	3	NE	68370	POT	yes	yes	no	no	no	no	No	Minor	accepted_representative

<u>Program ID</u>	<u>f_city</u>	<u>State Region</u>	<u>f_state</u>	<u>f_zip</u>	<u>Permit Com- ponent</u>	<u>Inspection</u>	<u>Violation</u>	<u>Single Event Violation</u>	<u>SNC</u>	<u>Informal Action</u>	<u>Formal Action</u>	<u>Penalty</u>	<u>Universe</u>	<u>Selection Rationale</u>
NE0134112	RAVENNA	1	NE	68869	PRE	yes	yes	no	no	no	no	no	Minor	accepted_representative
NE0052647	KEARNEY	1	NE	68847	POT	yes	yes	no	yes	no	no	no	Major	accepted_representative
NE0133213	YORK	5	NE	68467	PRE	yes	no	no	no	no	no	no	Minor	accepted_supplemental
NE0131172	RAVENNA	1	NE	68869		no	yes	no	no	no	no	no	Minor	accepted_representative
NE0024261	MALCOLM	2	NE	68402	POT	yes	no	no	no	no	no	no	Minor	accepted_representative
NE0133337	HASTINGS NEBRASKA	1	NE	68901	PRE	yes	no	no	no	no	no	no	Minor	accepted_representative
NE0021245	CITY	2	NE	68410	POT	yes	yes	no	yes	no	no	no	Major	accepted_representative
NE0000116	CRETE	3	NE	68333		yes	yes	no	yes	no	no	no	Major	accepted_supplemental
NE0112810	BELLEVUE	7	NE	68005	POT	yes	yes	no	yes	no	no	no	Major	accepted_representative
NE0041289	PAXTON	1	NE	69155		yes	yes	no	no	no	no	no	Minor	accepted_representative
NE0124311	PHILLIPS	5	NE	68865	POT	yes	no	no	no	no	no	no	Minor	accepted_representative
NE0023884	SIDNEY	6	NE	69162	POT	yes	yes	no	no	no	no	no	Major	accepted_representative
NE0113930	OMAHA	7	NE	68107	PRE	yes	no	no	no	no	no	no	Minor	accepted_representative
NE0028363	MADISON	4	NE	68748		yes	yes	no	no	no	no	no	Major	accepted_representative
NE0023779	UEHLING	7	NE	68063	POT	no	yes	no	no	no	no	no	Minor	accepted_representative
NE0137600	COLUMBUS		NE	68601		yes	yes	no	no	no	no	no	Minor	accepted_supplemental

VI. FILE REVIEW ANALYSIS

The table in this section presents the initial observations of EPA regarding Nebraska's program performance against file metrics. Initial Findings are developed by EPA at the conclusion of the file review process. Narrative summaries of what EPA found in each of the 50 facility files can be found in Appendix C. An Initial Finding is a statement of fact about the observed performance against file metrics and states whether the performance indicates a practice to be highlighted or a potential issue, along with some explanation about the nature of the good practice or potential issue. Initial Findings are preliminary observations; the quantitative metrics in the table are based on available information and are used by the reviewer to identify areas for further investigation. Due to the limited sample size, statistical comparisons among programs or across states cannot be made.

Using the results of the preliminary data analysis and dialogue with the state, EPA developed the Initial Findings below into Findings, which are presented in Section VII of the report.

CWA Metric #	CWA File Review Metric Description	Metric Value	Initial Findings
2. Data Accuracy. Degree to which the Minimum Data Requirements are accurate. (example, correct codes used, dates are correct, etc.)			
2b	% of files reviewed where data is accurately reflected in the national data system.	88%	44 of the 50 files that EPA reviewed had required data correctly entered in ICIS-NPDES. All 6 facilities that did not have accurate data were majors.
4. Completion of Commitments. Degree to which all enforcement/compliance commitments in relevant agreements (i.e., PPAs, PPGs, categorical grants, CMS plans, authorization agreements, etc.) are met and any products or projects are completed.			
4a	% of planned inspections completed.	N/A	The state committed to conducting an annual inspection at all National Pretreatment Program facilities, which was 90 facilities in FFY 2007. The state satisfied this commitment. All other inspection commitments are evaluated under metrics 5a through 5c.

CWA Metric #	CWA File Review Metric Description	Metric Value	Initial Findings
4b	Delineate the commitments for the FY under review and describe what was accomplished. This should include commitments in PPAs, PPGs, grant agreements, MOAs, or other relevant agreements. The commitments should be broken out and identified. The types of commitments to include would be for inspections, pretreatment reviews, DMR entry, compliance data entry, follow-up on SRF recommendations, etc.	N/A	The state satisfied all except one of the compliance and enforcement commitments, not inspection-related, that were made for FFY 2007 and for which the state was held accountable. The commitments contained in the PPG Workplan that the state satisfied include the following: 1) Quarterly Non-Compliance Reports for major dischargers; 2) Storm Water Annual Report of compliance and enforcement activities; 3) identify all high-priority SSO communities; 4) annual report with number of CAFO inspections; and 5) work with EPA to develop a satisfactory format for the semi-annual reports identifying the compliance status of Significant Industrial Users. The one commitment that NDEQ did not meet was to place all CSO communities on enforceable schedules to implement LTCPs by the end of FY07. At the end of the fiscal year, Plattsmouth was not yet under an enforceable schedule to implement its LTCP. At the time of review, the state was preparing to place Plattsmouth under an enforceable schedule that would meet this commitment.
6. Quality of Inspection or Compliance Evaluation Reports. Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.			
6a	# of inspection reports reviewed.	44	EPA reviewed 44 inspection reports during the file review process.
6b	% of inspection reports reviewed that are complete.	0%	None of the inspection reports that EPA reviewed contained all of the components on EPA's inspection report checklist. The most important component frequently missing pertains to documentation of compliance, which is covered by metric 6c below. A particularly important finding was that inspections counted by the state as covering industrial stormwater did not have reports that discussed compliance with industrial stormwater permit requirements.
6c	% of inspection reports reviewed that provide sufficient documentation to lead to an accurate compliance determination.	57%	25 of 44 inspection reports reviewed by EPA provided sufficient documentation to lead to an accurate compliance determination. The numbers for program components are as follows: 17 of 26 wastewater inspections; 3 of 6 CAFO inspections; and 5 of 12 stormwater inspections.

CWA Metric #	CWA File Review Metric Description	Metric Value	Initial Findings
6d	% of inspection reports reviewed that are timely.	86%	EPA found sufficient information in the file to evaluate this metric for 37 inspection reports. 32 of 37 reports were completed within 30 days of the inspection.
7. Identification of Alleged Violations. Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information (e.g., facility-reported information).			
7e	% of inspection reports or facility files reviewed that led to accurate compliance determinations.	73%	EPA found sufficient information in the file to evaluate this metric for 40 inspection reports. 29 of 40 reports led to an accurate compliance determination. The numbers for program components are as follows: 14 of 22 wastewater inspections; 6 of 6 CAFO inspections; and 9 of 12 stormwater inspections.
8. Identification of SNC and HPV. Degree to which the state accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner.			
8b	% of single event violation(s) that are SNC according to OTIS facility reports. EPA compares the # of SEVs that are SNC according to OTIS facility reports to the # of SEVs that are SNC determined by reviewing the inspection reports.	0%	The state did not enter SEVs in ICIS-NPDES in FFY 2007. With regard to the occurrence of SEVs, EPA reviewed 3 high-priority SSO communities and found that 2 of the 3 violated their requirements for SSO reporting; however, the state has not been holding these communities to their requirements or identifying the violations as high-priority violations needing a response. Including the SSO non-reporting violations, EPA identified 4 out of 12 instances of SNC/HPV to which the state did not respond using some type of enforcement mechanism.
8c	% of single event violation(s) identified as SNC that are reported timely.	0%	The state did not enter SEVs in ICIS-NPDES in FFY 2007. Regarding timely identification of and response to SNC/HPV, EPA identified 4 out of 12 instances of SNC/HPV to which the state did not respond using some type of enforcement mechanism.

CWA Metric #	CWA File Review Metric Description	Metric Value	Initial Findings
9. Enforcement Actions Promote Return to Compliance. Degree to which state enforcement actions include required corrective action (i.e., injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.			
9a	# of formal/informal enforcement responses reviewed	11	EPA reviewed 5 NOVs, 1 administrative compliance order, and 5 judicial consent decrees with penalties.
9b	% of enforcement responses that have returned or will return a source in SNC to compliance.	0%	EPA reviewed only 1 enforcement response that addressed SNC, and this was for a facility whose violations were caused by a pretreatment facility in violation of its discharge limitations. The state ultimately began working directly with the pre-treatment facility to address its violations, which is anticipated to bring both facilities back into compliance.
9c	% of enforcement responses that have returned or will return a source with non-SNC violations to compliance.	100%	All 10 enforcement responses pertaining to non-SNC violations that EPA reviewed achieved a commitment to corrective actions by the facility that have or will return the facility to compliance.
10. Timely and Appropriate Action. Degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.			
10b	% of reviewed enforcement responses to address SNC that are taken in a timely manner.	100%	EPA reviewed 1 enforcement response for a major facility in SNC, and this NOV was issued in a timely manner according to state and EPA guidance.
10c	% of enforcement-responses reviewed that address SNC that are appropriate to the violations.	100%	EPA reviewed 1 enforcement response for a major facility in SNC, and this NOV was appropriate to the facility's violations.
10d	% of enforcement responses reviewed that appropriately address non-SNC violations.	100%	All 10 enforcement responses pertaining to non-SNC violations that EPA reviewed were an appropriate course of action given the nature of the violations.
10e	% enforcement responses for non-SNC violations where a response was taken in a timely manner.	70%	7 of 10 enforcement responses pertaining to non-SNC violations that EPA reviewed were taken in a timely manner according to state and EPA guidance.

CWA Metric #	CWA File Review Metric Description	Metric Value	Initial Findings
11. Penalty Calculation Method. Degree to which state documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.			
11a	% of penalty calculations that consider and include where appropriate gravity and economic benefit.	40%	The files for 2 of 5 judicial penalty settlements reviewed by EPA included evidence that gravity and economic benefit had been calculated in the recommended penalty or considered in the state's final pleading penalty.
12. Final Penalty Assessment and Collection. Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.			
12a	% of penalties reviewed that document the difference and rationale between the initial and final assessed penalty.	0%	None of the 5 judicial penalty files reviewed by EPA included information to explain the rationale between initial and final assessed penalties.
12 b	% of enforcement actions with penalties that document collection of penalties.	80%	4 of 5 judicial settlements with penalties provided proof that the penalty was collected.

VII. FINDINGS AND RECOMMENDATIONS

The findings and recommendations from EPA's review of Nebraska's compliance and enforcement program are divided into two components. The first component includes findings and recommendations that pertain solely to the state's pretreatment program. Because the twelve SRF metrics do not provide a thorough review of pretreatment program requirements, the report discusses this component separately in the narrative below. The second component is a table presenting the findings and recommendations under the twelve metrics, which apply to all NPDES program components.

A. Pretreatment Program Findings and Recommendations

Legal Authority

In September 2005, EPA promulgated the Pretreatment Streamlining Regulations. While most of the streamlining provisions are voluntary, there is a handful where implementation is mandatory. The state has not yet modified its state regulations to incorporate any mandatory or voluntary changes. The Region agreed to provide the state with a summary of the Pretreatment Streamlining Regulations that identifies the mandatory changes.

- Recommendation: Modify state regulations to incorporate mandatory provisions of the federal Pretreatment Streamlining Regulations.
- State Response: The Department is working on a regulation update of Title 119, but we expect this to take at least one or more years to implement.

Data Management and Enforcement

Pretreatment industries report compliance using DMR forms identical to NPDES facilities. DMR values are submitted to the Lincoln office where they are input into ICIS-NPDES. Once the data are available by computer, the appropriate field office is responsible for the review and evaluation of it. It appears that there is no coordination by a central individual to ensure that the each field office has adequately evaluated the data.

All approved Pretreatment program cities are required to develop an Enforcement Response Plan, which then becomes a part of its program, implementation of which is required by the city's NPDES permit. The Enforcement Response Plan is required to contain enforcement type and time frames for any type of SIU noncompliance. The most important element of the

Plan is the requirement to address Significant Noncompliance (SNC) in a timely manner. If a city fails to follow its Enforcement Response Plan, EPA considers the city itself to be in SNC.

Because the definition of SNC requires the evaluation of all sampling data that occurred during a six-month time period, it follows that all approved Pretreatment program cities must determine the compliance status of each of its industries at the end of a six month reporting period. This compliance determination is then used to determine which industries need enforcement, and the type, as specified by the Plan. For NDEQ to be operating its Pretreatment program at the level of an approved city from another state in the Region, a compliance status determination using the regulatory definition of SNC, must first be performed for each industry at the end of six month reporting period. This is not being done. Consequently, there is no way to confirm if any industries are in SNC, who these industries are, and what steps are being taken to return the facility to compliance. While it is possible that for some six-month reporting periods no industries are in SNC, this is not known, either. EPA has requested copies of the compliance status determinations made every six months by the state but none have been submitted. The Region, working with NDEQ, has coded all Nebraska Pretreatment Program (NPP) permit holders in ICIS-NPDES so that a database report can be run at the end of each six month reporting period to determine the compliance status of the NPP universe. However, this will likely be incomplete because those industries that have caused interference or pass through will have to be manually identified as SNC.

- Recommendation: The state needs to be more diligent about making compliance status determinations and taking enforcement actions to return any industry in SNC back to compliance.
- State Response: The Department continues to look for efficient methods of determining SNC and returning industries to compliance with out limited resources. As the Integrated Compliance Information System (ICIS) evolves we believe it will be able to assist us. We send noncompliance reports to inspectors from ICIS for their review. Evaluation of communities for delegation of the pretreatment program will be occurring during the next two years.

B. Findings and Recommendations Under the SRF Metrics

Element 1: Data Completeness. Degree to which the Minimum Data Requirements are complete.		
1-1	Finding	ICIS-NPDES does not contain any permit information for a small fraction of the state's non-major facilities. At the time of reconciling data in the Official Data Set in September 2008, the state indicated having 23 more individual non-major permittees than what is reflected in ICIS-NPDES. Information for facilities with active permits is required in the database.
	Is this finding a(n) (select one):	<input type="checkbox"/> Best Practice or other Exemplary Performance <input checked="" type="checkbox"/> Area of Concern <input type="checkbox"/> Recommendation for Improvement
	Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.)	EPA and the state determined that the facilities present on the state list of permittees but not on the ICIS-NPDES list at the time of the program review consisted entirely of new or reissued permits that have been not yet become effective. Although no corrective action is required at this time, the state should ensure that new and newly reissued permits are entered into ICIS-NPDES so that they become present in the national database no later than their effective dates.
	Metric(s) and Quantitative Value	1a3 -- # of active NPDES non-major individual permits (current as of 9/8/08 data pull); Value: 609; State-corrected number: 632
	State Response	The Department believes that the 23 facilities are new facilities and are not entered in ICIS until the permit becomes effective. We don not believe these facilities should be entered into ICIS until their permit is issued. The Department's NPDES program is in a KAIZEN effort and one of the action items is to reconcile the databases.
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	No further action required.
1-2	Finding	The state sends a 5-year package of pre-formatted DMRs on CD-ROM to each facility receiving a new or re-issued permit, such that all facilities have DMRs appropriate to their reporting requirements at any given point in time. This practice was implemented in late 2007, and it will likely reduce the number of incorrectly populated DMRs that the state receives, thereby improving timely, accurate, and complete entry of data into ICIS-NPDES.
	Is this finding a(n) (select one):	<input checked="" type="checkbox"/> Best Practice or other Exemplary Performance <input type="checkbox"/> Area of Concern <input type="checkbox"/> Recommendation for Improvement

	Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.)	
	Metric(s) and Quantitative Value	1b – Major permits and DMR entry 1c – Non-major permits and DMR entry 1d – Quality of violation data at non-major NPDES facilities with individual permits
	State Response	We find this to be a beneficial method of distributing DMRs. We are still waiting on electronic direct input of DMRs by the facility.
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	None required.
1-3	Finding	DMR violations for multiple major facilities are due to inaccurate permit data in ICIS-NPDES. EPA reviewed 4 of 18 majors that were flagged for missing DMRs under metric 1b2, and all 4 of them had inaccurate permit limit set data or DMR due dates in ICIS-NPDES. These inaccuracies create the following data quality problems: 1) false DMR non-receipt violations in the database when in fact no required DMR data is missing; 2) DMR forms produced by the database that do not match permit expectations. Any missing or inaccurately requested parameters on the DMRs provided by NDEQ will lead the facility to report data in a manner that does not match what is expected in the database. The state response is to request additional data from facilities, thereby delaying complete submission of DMR data beyond the due date, triggering non-receipt violations; and 3) RNC overrides taken by the state because reportable noncompliance was the result of non-receipt as explained immediately above.
	Is this finding a(n) (select one):	<input type="checkbox"/> Best Practice or other Exemplary Performance <input type="checkbox"/> Area of Concern <input checked="" type="checkbox"/> Recommendation for Improvement
	Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.)	For each new or reissued permit, the state needs to run a limit summary report after entering the permit data into ICIS-NPDES and compare the limit summary report with the permit to ensure all data is coded correctly. Incorrectly coded data needs to be corrected.

	Metric(s) and Quantitative Value	1b2 – DMR entry rate based on DMRs expected for major individual permits during the 4th quarter of FFY 2007; Value: 83.9% 1b4 – Manual RNC/SNC override rate for major individual permits; Value: 15.3% 2a – % of files reviewed where data is accurately reflected in the national data system; Value: 88% 7d – # major facilities with DMR violations; Value: 32 8a – # major facilities in SNC; Value: 25
	State Response	We continue to find conflicts between the DMR and the permit for a facility. There are many different reasons for this including PCS migration, different staff entering permits, difficulty of ICIS, and other issues. The Department is making an effort to correct these errors when discovered or when the permit is reissued. We plan to reissue all the remaining permits in the next three years. The limit summary report that is referenced is organized in a way that is not very beneficial to us. We believe that this is not an action item.
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	1. The state and EPA will jointly investigate the reasons why facilities are on the Quarterly Non-Compliance Report (QNCR) for the second and third quarters of FFY 2009, with a focus on whether erroneous permit data in ICIS-NPDES is the underlying reason for any QNCR violations. Note that there were approximately 30 majors with QNCR violations in the third quarter of FFY 2009. To be complete by April 30, 2010. 2. If the effort from Step 1 reveals that 10% or more of the majors on the QNCR (i.e. 3 or more on the FFY 2009 third quarter QNCR) are on the report due to violations triggered by erroneous permit data, the state will implement a method for conducting quality assurance on permit data upon entry into ICIS-NPDES. EPA's recommended method is to run limit summary reports. If applicable, the quality assurance method is to be in place by December 31, 2010.
1-4	Finding	32 major facilities had DMR violations and 25 were in SNC in FFY 2007. 2 of the 6 facilities that EPA reviewed from these categories had violations spanning at least 2 quarters in FFY 2007 due to late or missing DMR data. In addition, the state executed RNC overrides in FFY 2007 exclusively for late DMR receipt or missing DMR data.
	Is this finding a(n) (select one):	<input type="checkbox"/> Best Practice or other Exemplary Performance <input checked="" type="checkbox"/> Area of Concern <input type="checkbox"/> Recommendation for Improvement

	Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.)	<p>Finding 1-4 pertains to late or missing DMR data that is the fault of the facility and that is committed on a repeated basis, while Finding 1-3 addresses DMR violations due to incorrectly coded permit data. EPA's observations suggest that the Recommendation for Finding 1-3 will remove a large portion of majors from the current SNC list and resolve the associated DMR problems. The classification of Finding 1-4 as an area of concern rather than a recommendation is premised on this assessment.</p> <p>For cases where the state determines that late or missing DMR data is indeed the fault of the facility and occurs repeatedly, the state needs to ensure that such violations are followed with a timely and appropriate response. The state should provide compliance assistance if it appears that the facility is incorrectly interpreting its monitoring or reporting requirements. Alternatively, enforcement (e.g. notice of violation, administrative order, etc.) might be more appropriate depending on the nature and duration of the violation.</p> <p>The state has shown progress since the FFY 2004 review in working with facilities that commit DMR violations, by sending many notices of missing and/or incomplete information. Since FFY 2007, EPA has also observed the issuance of NOV's by the state for such violations. The state should build on this approach. This is especially important given that the number of majors with DMR violations and in SNC did not change significantly in FFY 2008.</p>
	Metric(s) and Quantitative Value	<p>7d – # major facilities with DMR violations; Value: 32</p> <p>1b4 – Manual RNC/SNC override rate for major individual permits; Value: 15.3%</p> <p>2a – % of files reviewed where data is accurately reflected in the national data system; Value: 88%</p> <p>8a – # major facilities in SNC; Value: 25</p>
	State Response	The Department did use an override code for some late DMRs. As we learn more about the ICIS system we are able to use the correct codes. Many of the violations could be for receipt of a DMR a day late and the Department does not intend to take action on these. The Department has asked for a new Reportable Non-Compliance (RNC) code “no further action by the state at this time” from the ICIS administrator. We have also requested the ability to resolve an entire DMR at one time.
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	No further action required.
1-5	Finding	Minor facilities in violation for not submitting DMRs were not consistently sent violation notices or otherwise notified in a timely manner that submission is required. 56 facilities were flagged for non-receipt over 3 continuous years. EPA reviewed files for 8 of them, 4 of which had either DMRs missing from the files or, when DMRs were present in the file, they had not been entered in ICIS. When the state did respond to non-reporting violations, as it did with 2 NOV's in the 8 files reviewed by EPA, the enforcement response was not timely according to state and EPA definitions. A large portion of the 56 facilities flagged for DMR non-receipt are lagoon systems with intermittent discharge that did not submit required DMRs when no discharge occurred.
	Is this finding a(n) (select one):	<input type="checkbox"/> Best Practice or other Exemplary Performance <input type="checkbox"/> Area of Concern <input checked="" type="checkbox"/> Recommendation for Improvement

	Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.)	The state needs to run and examine the DMR Non-Receipt report at the end of each quarter after the state has entered all received DMRs. This report can be run for the entire state and will show NDEQ which facilities do not have DMR data in ICIS-NPDES. If a facility is routinely appearing on this report it could be because something has not been coded correctly into ICIS-NPDES. Alternately, it is probable that all of the data has been coded correctly and a facility on the non-receipt report may have a problem for some unknown reason and did not submit data for a particular parameter. Until this is a proven fact, however, the state needs to investigate the matter to find the actual cause of non-receipt violations. When the facility is at fault for non-receipt violations, the state needs to issue a timely enforcement response.
	Metric(s) and Quantitative Value	1d3 – # non-major facilities with DMR non-receipt violations over 3 continuous years; Value: 56 7d – # major facilities with DMR violations; Value: 32 10e – % enforcement responses for non-SNC violations where a response was taken in a timely manner; Value: 70%
	State Response	The Department was sending letters to facilities for DMR non-receipt through our ICIS coordinator. Unfortunately, the ICIS system has slowed to a point that it impacts staff time and we were unable to devote effort to DMR issues. DMR non-receipt resolution involves file checks with considerable work and resources that the Department now has devoted to the ICIS system. When resources allow we will evaluate the ability to review our files and send letters again. We are also exploring the ability to run a report of missing DMRs versus late DMRs and send letters or notices of violation to those facilities. State is evaluating if DMRs are getting to the entry person and if ICIS is accepting entries. Expect this to take several quarters to find the causes of DMR data problems.
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	1. State will implement procedures or routines viewed as productive uses of resources, such as those identified in the state response, to streamline the accounting and review of incoming DMRs. To be in place by April 30, 2010. 2. After the conclusion of FFY 2010, EPA and the state will evaluate the status of DMR non-receipts to assess whether sufficient progress has been made by steps 1 and 2. If the value of metrics 1d3 (3-year rolling average of non-receipts at non-majors) and 7d (DMR violations at majors) have not both declined by at least 50% relative to the FFY 2007 levels, the state will begin to run DMR non-receipt reports at the end of each quarter, as described in the Explanation for this finding. To be complete by December 31, 2010.
1-6	Finding	The state did not enter in ICIS-NPDES any formal or informal enforcement actions for major or P.L. 92-500 minor facilities in FFY 2007, as required. The state also did not enter any penalty information for civil judicial settlements involving majors.
	Is this finding a(n) (select one):	<input type="checkbox"/> Best Practice or other Exemplary Performance <input type="checkbox"/> Area of Concern <input checked="" type="checkbox"/> Recommendation for Improvement
	Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.)	The state began entering informal enforcement actions in FFY 2008, as demonstrated by the presence of more than 50 NOV records in ICIS-NPDES. However, formal actions are still not being entered. In addition, penalty information for civil judicial referrals involving majors is not being entered. The state needs to begin entering formal actions for majors and P.L. 92-500 minors, begin entering penalties for majors, and continue entering NOV's.

	Metric(s) and Quantitative Value	1e – # informal actions at major and non-major facilities; Value: 0 1f – # formal actions at major and non-major facilities; Value: 0 1g – # and \$ of penalties collected; Value: 0 2a – % of files reviewed where data is accurately reflected in the national data system; Value: 88%
	State Response	Correct, we did not enter the enforcement data. We have now started to enter NOV's but we are having trouble linking them properly to violation. Formal enforcement actions are not entered because of ICIS restrictions since we cannot sign the ICIS agreement. The ICIS agreement would need to be modified for the Department to meet this recommendation.
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	1. State and EPA will negotiate an acceptable ICIS user agreement by June 30, 2010. 2. EPA will assist the state with entry of formal enforcement actions as long as necessary until an acceptable ICIS user agreement is signed by the state. Once the state has signed an ICIS user agreement, EPA will provide training and any other assistance to help the state with entry of formal enforcement actions until the state can independently enter these actions. Also, the state will continue entering NOV's into ICIS-NPDES. To be fully implemented by December 31, 2010.
Element 2: Data Accuracy. Degree to which the Minimum Data Requirements are accurate. (example, correct codes used, dates are correct, etc.)		
2-1	Finding	With no formal enforcement actions entered in ICIS-NPDES in FFY 2007, the state did not link those actions to the corresponding violations.
	Is this finding a(n) (select one):	<input type="checkbox"/> Best Practice or other Exemplary Performance <input type="checkbox"/> Area of Concern <input checked="" type="checkbox"/> Recommendation for Improvement
	Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.)	The state needs to begin linking violations to formal actions against majors as those actions begin to be entered into ICIS-NPDES.
	Metric(s) and Quantitative Value	2a – # actions linked to violations for majors; Value: 0
	State Response	Formal enforcement actions are not entered since we cannot sign the ICIS agreement. The ICIS agreement would need to be modified for the Department to meet this recommendation.

	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	1. State will send final enforcement documents to EPA electronically as PDFs so that EPA can enter them into ICIS-NPDES and properly link them to the corresponding violations. To be in place by February 28, 2010. 2. Once an acceptable ICIS-NPDES user agreement is signed by the state, EPA will provide training and any other assistance to help the state with entry of formal enforcement actions and linkage of actions to the corresponding violations. The state should be able to independently enter and link formal actions in ICIS-NPDES by December 31, 2010.
Element 5: Inspection Coverage. Degree to which state completed the universe of planned inspections/compliance evaluations (addressing core requirements and federal, state, and regional priorities.)		
5-1	Finding	The state does not have a record for conducting inspections at 6 of 51 majors in FFY 2007. 44 major inspections had been entered into ICIS-NPDES at the time of the data analysis, and one additional inspection not in ICIS-NPDES was uncovered during EPA's file reviews.
	Is this finding a(n) (select one):	<input type="checkbox"/> Best Practice or other Exemplary Performance <input type="checkbox"/> Area of Concern <input checked="" type="checkbox"/> Recommendation for Improvement
	Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.)	17 of 51 major facilities did not have inspection records in ICIS-NPDES for FFY 2008 as of December 2008, which is a higher number than what was observed in FFY 2007. The cause of the 2008 shortfall is partially a miscoding of inspection type, which affected 8 inspection records that had been entered into ICIS-NPDES but were mistakenly assigned a code of something other than "Comprehensive." The other 9 of 17 missing majors did not have inspection records in ICIS-NPDES for FFY 2008 for various reasons, including missing inspection reports and incomplete inspections, which may or may not also explain the 6 of 51 majors lacking inspection records in FFY 2007. The state showed much improvement in tracking and entering data for inspections in FFY 2009. As of October 2009, only one major inspection had been miscoded, and the state was on track to having all of its inspections entered before the end-of-year deadline.
	Metric(s) and Quantitative Value	5a -- % NPDES majors inspected in FFY 2007; Value: 88.2% (includes the additional inspection found during file reviews)
	State Response	The Department has reconciled the data in ICIS. The Department has a protocol for inspection reports which is three weeks for the report to be submitted from the time of the inspection. The Department acknowledges that six inspection reports are missing and is taking steps to address this issue.
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	State will continue following its protocol for ensuring timely entry of inspection data into ICIS-NPDES, with a goal of entry within 30 days following the inspection. Effectiveness of this protocol is to be demonstrated through FFY 2010, with success determined by December 31, 2010.

Element 6: Quality of Inspection or Compliance Evaluation Reports. Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.

6-1	Finding	Inspection reports for facilities that have an industrial stormwater permit did not discuss compliance with industrial stormwater permit requirements. EPA reviewed files for 4 such facilities and found that no inspection report discussed stormwater compliance.
	Is this finding a(n) (select one):	<input type="checkbox"/> Best Practice or other Exemplary Performance <input type="checkbox"/> Area of Concern <input checked="" type="checkbox"/> Recommendation for Improvement
	Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.)	The state needs to develop a modified WWTF inspection checklist that includes critical questions for facilities that also have an industrial stormwater permit. The state needs to use the modified checklist when inspecting such facilities and needs to train its wastewater inspectors on what to observe when using the modified form. EPA will provide input for a modified checklist and assist the state in training inspectors, if requested.
	Metric(s) and Quantitative Value	6b – % of inspection reports reviewed that are complete; Value: 0% (Note: As indicated in the File Review Analysis table in Part VI of the report, inspection reports generally included most of the elements on EPA’s checklist, even though none of them included all the elements.)
	State Response	The Department is modifying the inspection reports to clearly identify industrial storm water. Also, the EPA inspection checklist/report referenced by EPA and used to compare the Department inspection checklist/report was not available to the Department. The 0% in metric 6b indicates that the Department inspection report is completely inefficient when in fact the Department’s reports were mostly complete when compared to an example measurement unavailable to us. The recommendations need to clearly indicate that only minor items were not the same while the majority of the information was available and included in the Department inspection report.
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	State will begin using modified inspection checklists, with items for evaluating industrial stormwater and Stormwater Pollution Prevention Plan requirements, by April 30, 2010.

6-2	Finding	<p>19 of 44 inspection reports reviewed by EPA did not contain a clear identification of violations, despite that many of those reports included an indication that the facility could make improvements in some areas. Alternatively, if no violations were identified, the reports did not contain a statement of compliance. With the exception of complaint investigations, most inspection reports utilized a checklist format in which the inspector used very limited narrative to describe aspects and areas of the facility. In some cases, "yes" and "no" were used in the checklist table, but the absence of contextual or supporting information leaves the reviewer unable to determine whether the yes/no is an indication of satisfactory versus unsatisfactory condition or rather only an indication that the aspect or area of the facility was evaluated. More importantly, many inspection reports did not make a connection between satisfactory versus unsatisfactory performance--when indicated--and whether that performance was in compliance with the permit. With respect to CAFOs, the state documents a portion of its inspections using a one-page checklist. Subsequent reviewers might find it difficult to make a determination regarding facility compliance based on just the information in this CAFO checklist. With respect to complaint investigations, particularly those for stormwater, the state documents its investigations using a narrative-only format that did not always indicate clearly whether the facility was in compliance with the subject matter alleged in the complaint.</p>
	Is this finding a(n) (select one):	<input type="checkbox"/> Best Practice or other Exemplary Performance <input type="checkbox"/> Area of Concern <input checked="" type="checkbox"/> Recommendation for Improvement
	Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.)	<p>Inspection reports need to include definitive documentation of any violations present at the facility, which enables the state to make an accurate compliance determination and identify any necessary follow-up action. In reports for both compliance inspections and complaint investigations, EPA recommends the use of brief summary narrative that indicates any violations discovered. When no violations are present, a short statement indicating such would be sufficient. For CAFO inspections, EPA recommends using the 4 page checklist rather than the one-page checklist. In addition, EPA suggests including a recent aerial photograph to supplement the information in the checklist. Photographs are recommended to help the reviewer understand site conditions and the nature of the operation.</p>
	Metric(s) and Quantitative Value	6c – % of inspection reports reviewed that provide sufficient documentation to lead to an accurate compliance determination; Value: 57%
	State Response	<p>The Department will work to modify our inspection checklists/reports to clearly indicate deficiencies. NDEQ will review the inspection reports to determine violations and use Notice of Violation letters and other mechanisms for violation notice. We will consider including an aerial photograph as part of the report.</p>
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	<p>State will modify inspection checklists and reports to clearly indicate deficiencies and will continue using NOV letters and other mechanisms to notify entities of violations. To be implemented by December 31, 2010.</p>

Element 7: Identification of Alleged Violations. Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information (e.g. facility-reported information).

7-1	Finding	The state did not enter single-event violations (SEVs) in ICIS-NPDES in FFY 2007 and has not yet begun doing so.
	Is this finding a(n) (select one):	<input type="checkbox"/> Best Practice or other Exemplary Performance <input type="checkbox"/> Area of Concern <input checked="" type="checkbox"/> Recommendation for Improvement
	Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.)	EPA requests that the state provide a timeline as to when the state will begin entering SEVs in ICIS-NPDES for major facilities. EPA Region 7 will enter SEVs in the database effective October 1, 2008. EPA will offer guidance and/or training for the process of SEV entry, if requested.
	Metric(s) and Quantitative Value	7a – # of single-event violations in ICIS-NPDES; Value: 0 8b – % of single event violations that are SNC, by comparing the # according to OTIS facility reports to the # determined by reviewing inspection reports; Value: 0% 8c – % of single event violations identified as SNC that are reported timely; Value: 0%
	State Response	The Department continues to enter the data that we entered into PCS. Resources do not allow us to enter SEVs at this time.
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	1. EPA will develop best practices for the entry of SEVs after completing the region’s first full year of SEV tracking. To be completed by June 30, 2010. 2. EPA will share the best practices with the state, at which time EPA and the state will reconsider what the state can do to begin tracking SEVs for majors in ICIS-NPDES. EPA will offer training if necessary. Information sharing and reassessment to be conducted by December 31, 2010.

Element 8: Identification of SNC and HPV. Degree to which the state accurately identifies significant noncompliance/ high-priority violations and enters information into the national system in a timely manner.

8-1	Finding	EPA identified 4 distinct instances of SNC/HPV to which the state did not respond through some type of enforcement mechanism. Chief among those was non-reporting of SSOs by 3 high-priority SSO communities. EPA found that all 3 communities are out of compliance with their permit requirements for reporting SSOs. 2 of the 3 communities also did not comply with the state’s request to report SSOs semi-annually.
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	Is this finding a(n) (select one):	<input type="checkbox"/> Best Practice or other Exemplary Performance <input type="checkbox"/> Area of Concern <input checked="" type="checkbox"/> Recommendation for Improvement
	Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.)	Even the less serious of the two reporting violations—i.e. failure to report semi-annually in response to the state’s request—is categorized as a high-priority violation in the state Enforcement Manual. Both SSO reporting mechanisms, particularly the permit requirement for timely reporting of SSOs, are important because they raise community awareness about the environmental threat posed by SSOs and can be used as a tool to mobilize community action to reduce the number of SSOs. The state needs to take responsibility for following up with communities not meeting their reporting requirements and, when appropriate, take some form of enforcement action.
	Metric(s) and Quantitative Value	8b – % of single event violations that are SNC, by comparing the # according to OTIS facility reports to the # determined by reviewing inspection reports; Value: 0% 8c – % of single event violations identified as SNC that are reported timely; Value: 0%
	State Response	The reports were a “request” from the Department to the communities, not a requirement. There is not a condition in the permit for SSO reporting. The Department has been reluctant to include EPA SSO policy in permits because of questions on EPA’s authority if waters of the state are not impacted. The Department is considering the inclusion of a modified SSO condition in NPDES permits but has not completed the language at this time. The Department does work to address chronic SSO issues.
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	The state will report to EPA on the status of its efforts to modify the standard language in NPDES permits for SSO violations. Status report due June 30, 2010.
Element 11: Penalty Calculation Method. Degree to which state documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.		
11-1	Finding	The state did not have sufficient information in its files for 3 of the 5 judicial referrals that EPA reviewed to explain how the state calculated recommended penalties for gravity and economic benefit or to demonstrate that gravity and economic benefit were incorporated into the final pleading penalty.
	Is this finding a(n) (select one):	<input type="checkbox"/> Best Practice or other Exemplary Performance <input type="checkbox"/> Area of Concern <input checked="" type="checkbox"/> Recommendation for Improvement

	Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.)	EPA acknowledges that NDEQ has no control over the penalties that the Nebraska Attorney General (AG) seeks from violators. However, NDEQ needs to ensure that the information it provides to the AG to recommend appropriate penalties is useful. At some point prior to FFY 2007, NDEQ decided to stop using its penalty computation worksheet to calculate gravity and economic benefit. NDEQ needs to revisit the worksheet or adopt some other methodology for calculating gravity and economic benefit in a manner that is both useful to the AG and consistent with national policy for calculating economic benefit. In addition, NDEQ needs to communicate with the AG to identify any additional information about a case that would be helpful for the AG when calculating a pleading penalty.
	Metric(s) and Quantitative Value	11a -- % of penalty calculations that consider and include where appropriate gravity and economic benefit; Value: 40%
	State Response	We agree with this recommendation. The Department has developed and uses a penalty calculation worksheet to calculate the gravity and economic benefit for actions referred to the Nebraska AG for prosecution. This penalty calculation is shared with the Nebraska AG when the case is referred. We will work to ensure that we consistently use and document the penalty calculation worksheet or other methods if appropriate as we communicate with the Nebraska AG on cases in the future.
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	State will continue using its penalty calculation worksheet, for actions referred to the Nebraska AG, to calculate gravity and economic benefit in a manner that is consistent with national policy for economic benefit calculations. State will have a dialog with its AG on the usefulness of the penalty worksheet and will report to EPA on the status of sharing information with the AG on this matter. Status report due June 30, 2010.
Element 12: Final Penalty Assessment and Collection. Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.		
12-1	Finding	EPA reviewed files for 5 judicial settlements but found no information to document the difference between initial and final penalties.
	Is this finding a(n) (select one):	<input type="checkbox"/> Best Practice or other Exemplary Performance <input checked="" type="checkbox"/> Area of Concern <input type="checkbox"/> Recommendation for Improvement
	Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.)	EPA acknowledges that NDEQ has no control over the penalties that the Nebraska Attorney General (AG) obtains from violators. However, for the sake of closing out enforcement cases and tracking their outcomes, NDEQ should request that the AG provide feedback to the agency regarding what penalty amount was finally settled.
	Metric(s) and Quantitative Value	12a -- % of penalties reviewed that document the difference and rationale between the initial and final assessed penalty; Value: 0%

	State Response	We agree with this recommendation. As you have noted, the Nebraska AG is an independent constitutional office with final decision-making on prosecutions. We agree that feedback regarding final penalty amounts would assist the Department in evaluating the results of our enforcement process and in pursuing appropriate enforcement cases in the future. We plan to share EPA's finding and recommendation with the Nebraska AG's office.
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	State should report to EPA on the status of sharing information with the AG on this matter.
12-2	Finding	This finding pertains to NDEQ's filing system for inspection and enforcement documents, DMR correspondence, and all other documents relating to compliance and enforcement in the state. EPA found that NDEQ's Records Management Section provides an outstanding service to the state. Records are well organized, EPA's requests for information have always received prompt responses, and the state uses a very thorough and searchable database to catalog its records. The Records Management Section is exemplary of first-rate customer service.
	Is this finding a(n) (select one):	<input checked="" type="checkbox"/> Best Practice or other Exemplary Performance <input type="checkbox"/> Area of Concern <input type="checkbox"/> Recommendation for Improvement
	Explanation. (If Area of Concern, describe why action not required, if Recommendation, provide recommended action.)	
	Metric(s) and Quantitative Value	
	State Response	Thank You.
	Action(s) (Include any uncompleted actions from Round 1 that address this issue.)	

VIII. ELEMENT 13

Nebraska did not submit any information to EPA for consideration under Element 13 of the SRF Process. Element 13 is an optional opportunity for the state to give EPA information about achievements in compliance assistance, pollution prevention, innovation, self disclosure programs, outcome measures, etc. to educate EPA about the scope of the state's program.

APPENDIX A

Preliminary Data Analysis (PDA) with State Corrections

This appendix to the report contains the complete PDA for all metrics reviewed under the SRF. The table also includes the state’s discrepancies with the data used by EPA to conduct the PDA. EPA’s analysis of state discrepancies is included within the final column for Initial Findings.

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Nebras-ka Metric	Count	Uni-verse	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation	Evalu-ation	Initial Findings
P01A1C	Active facility universe: NPDES major individual permits (Current)	Data Quality	Com-bined			54	NA	NA	NA	Yes	51	State Intergrated Information System and Spreadsheets	The State had requested that X, Y, And Z be reclassified from Majors to Minors and Had received a letter from EPA Region VII on ??? granting request. State operated under such approval. EPA Headquarters did not allow removal from Major status because of previous violation. State, Regions and Headquarters are trying to resolve violations and remove from list.	Appears acceptable	At the time of this report, the state has resolved violations in ICIS-NPDES for the 3 facilities in question. EPA Region 7 and HQ/OECA acknowledge the state’s argument that these facilities no longer operate as majors and have agreed to reclassify them as minors.
P01A2C	Active facility universe: NPDES major general permits (Current)	Data Quality	Com-bined			0	NA	NA	NA	No				Not reviewed	

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Nebras-ka Metric	Count	Uni-verse	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation	Evalu-ation	Initial Findings
P01A3C	Active facility universe: NPDES non-major individual permits (Current)	Data Quality	Com-bined			609	NA	NA	NA	yes	632	State Intergrated Information System and Spreadsheets	29 major muni, 22 industrial Major, 313 minor muni, 214 minor industrial, 19 NPDES NPP industrial, 86 NPP industrial	Potential concern	EPA and the state need to identify the 23 facilities that make up the difference between the Nebraska metric and the state-corrected number. The state needs to enter permit records for these facilities in the national program database.

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Nebras-ka Metric	Count	Uni-verse	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation	Evalu-ation	Initial Findings
P01A4C	Active facility universe: NPDES non-major general permits (Current)	Data Quality	Com-bined			152	NA	NA	NA	yes	4000		CAFO General Permit NEG100000 was issued April 1, 2008 and expires on March 31, 2013. Currently has 176 authorizations. Dewatering General Permit NEG671000 was issued February 1, 2007 and expires on December 31, 2011. Currently has 35 authorizations. Hydrostatic Testing General Permit NEG667200 was issued February 1, 2007 and expires December 31, 2011. Currently has 28 authorizations. Remediation General Permit	Potential concern	The state is not required to populate the national program database with general permit authorizations for stormwater, hydrostating testing, or remediation.

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Nebras-ka Metric	Count	Uni-verse	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation	Evalu-ation	Initial Findings
													NEG70000 was issued May 1, 2007 and expires April 30, 2012. Currently has 24 authorizations. Storm water construction and Industrial Storm Water		
P01B1C	Major individual permits: correctly coded limits (Current)	Goal	Com-bined	Not Evaluated at this Time											

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Nebras-ka Metric	Count	Uni-verse	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation	Evalu-ation	Initial Findings
C01B2C	Major individual permits: DMR entry rate based on DMRs expected (1 Qtr)	Goal	Com-bined	95%	89.6%	85.1%	212	249	37	?				Potential concern	16 facilities had one or more DMRs not received and/or entered into the national program database. Metric reflects corrected universe of 51 majors.
C01B3C	Major individual permits: percent with permit limits and DMR data (1 FY)	Goal	Com-bined	95%	85.9%	98.0%	50	51	1	yes	51		See 1A1 in ICIS	Appears acceptable	State is above the national average and national goal. Metric reflects corrected universe of 51 majors.
P01B4C	Major individual permits: manual RNC/SNC override rate (1 FY)	Data Quality	Com-bined			15.3%	4	26	22	no?			Not sure how to verify since we use ICIS	Potential concern; suppl file review	Files for a portion of the permittees with manual override need to be reviewed to determine why the override was executed. Metric reflects corrected universe of 51 majors.
P01C1C	Non-major individual permits: correctly coded limits (Current)	Infor-mational Only	Com-bined	Not Evaluated at this Time											

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Nebras-ka Metric	Count	Uni-verse	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation	Evalu-ation	Initial Findings
C01C2C	Non-major individual permits: DMR entry rate based on DMRs expected (1 Qtr)	Infor-mational Only	Com-bined			68.5%	710	1,036	326	NO?			Not sure how to verify since we use ICIS	Potential concern	EPA and the state need to discuss what mechanism the state is using to screen for violations given that many DMRs are not entered and tracked in the national program database.
C01C3C	Non-major individual permits: percent with permit limits and DMR data (1 FY)	Infor-mational Only	Com-bined			63.4%	387	610	223	yes	632			Potential concern	EPA and the state need to discuss what mechanism the state is using to screen for violations given that a number of permit limits and DMRs appear to be absent from the national program database.
P01D1C	Violations at non-majors: noncompliance rate (1 FY)	Infor-mational Only	Com-bined			67.5%	411	609	198	NO?			Not sure how to verify since we use ICIS	Minor issue	It will be important to understand the nature of this large number of violations and how the state identified and entered these violations, given that a large portion of non-majors do not have correctly coded limits or DMRs entered into the national program database.
C01D2C	Violations at non-majors: noncompliance rate in the annual noncompliance report (ANCR)(1 FY)	Infor-mational Only	Com-bined			57.0%	342	600	258	yes			No info ANCR was not given to states last two years	Minor issue	EPA and the state need to discuss why 69 non-majors with violations were not documented on the ANCR (see metric 1D2 above).

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Nebras-ka Metric	Count	Uni-verse	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation	Evalu-ation	Initial Findings
P01D3C	Violations at non-majors: DMR non-receipt (3 FY)	Infor-mational Only	Com-bined			56	NA	NA	NA	NO?				Potential concern: suppl file review	Files for a portion of the permittees with DMR non-receipt need to be reviewed to determine if non-receipt is impacting the state's ability to screen the facilities for violations.
P01E1S	Informal actions: number of major facilities (1 FY)	Data Quality	State			0	NA	NA	NA	yes	2	NDEQ spreadsheet	not entered in ICIS	Potential concern	The state tracked and has manually provided an accurate inventory of enforcement actions for FY2007. Beginning in FY2008, the state started entering all informal enforcement actions into ICIS-NPDES. The small number of informal actions at majors is also a potential concern given the high number of DMR violations and SNC rate at majors (see metric 7D and 8A1)

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Nebras-ka Metric	Count	Uni-verse	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation	Evalu-ation	Initial Findings
P01E2S	Informal actions: number of actions at major facilities (1 FY)	Data Quality	State			0	NA	NA	NA	yes	2	NDEQ spreadsheet	not entered in ICIS	Potential concern	The state tracked and has manually provided an accurate inventory of enforcement actions for FY2007. Beginning in FY2008, the state started entering all informal enforcement actions into ICIS-NPDES. The small number of informal actions at majors is also a potential concern given the high number of DMR violations and SNC rate at majors (see metric 7D and 8A1)
P01E3S	Informal actions: number of non-major facilities (1 FY)	Data Quality	State			0	NA	NA	NA	yes	6	NDEQ spreadsheet	not entered in ICIS	Potential concern	The state tracked and has manually provided an accurate inventory of enforcement actions for FY2007. Beginning in FY2008, the state started entering all informal enforcement actions into ICIS-NPDES. The small number of non-majors against which informal action was taken is also a concern when compared to the high non-compliance rate (see metrics 1D1 and 1D2).

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Nebras-ka Metric	Count	Uni-verse	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation	Evalu-ation	Initial Findings
P01E4S	Informal actions: number of actions at non-major facilities (1 FY)	Data Quality	State			0	NA	NA	NA	yes	6		not entered in ICIS	Potential concern	The state tracked and has manually provided an accurate inventory of enforcement actions for FY2007. Beginning in FY2008, the state started entering all informal enforcement actions into ICIS-NPDES. The small number of non-majors against which informal action was taken is also a concern when compared to the high non-compliance rate (see metrics 1D1 and 1D2).
P01F1S	Formal actions: number of major facilities (1 FY)	Data Quality	State			0	NA	NA	NA	yes	1		not entered in ICIS	Potential concern	The fact that only one formal enforcement action was taken against a facility from a universe of 54 needs to be considered in conjunction with the high number of DMR violations and SNC rate at majors (see metrics 7D and 8A1).
P01F2S	Formal actions: number of actions at major facilities (1 FY)	Data Quality	State			0	NA	NA	NA	yes	1			Potential concern	The fact that only one formal enforcement action was taken against a facility from a universe of 54 needs to be considered in conjunction with the high number of DMR violations and SNC rate at majors (see metrics 7D and 8A1).

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Nebras-ka Metric	Count	Uni-verse	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation	Evalu-ation	Initial Findings
P01F3S	Formal actions: number of non-major facilities (1 FY)	Data Quality	State			0	NA	NA	NA	yes	6		not entered in ICIS	Potential concern	The state tracked and has manually provided an accurate inventory of enforcement actions for FY2007 but has not been entering this data in ICIS-NPDES. The small number of non-majors against which formal actions were taken is also a potential concern when compared to the high non-compliance rate (see metrics 1D1 and 1D2).
P01F4S	Formal actions: number of actions at non-major facilities (1 FY)	Data Quality	State			0	NA	NA	NA	YES?	6		Believe there are some permit and AO not listed that may be in Technical Assistance unit	Potential concern	The state tracked and has manually provided an accurate inventory of enforcement actions for FY2007 but has not been entering this data in ICIS-NPDES. The small number of non-majors against which formal actions were taken is also a potential concern when compared to the high non-compliance rate (see metrics 1D1 and 1D2).
P01G1S	Penalties: total number of penalties (1 FY)	Data Quality	State			0	NA	NA	NA	yes	6		Legal, Program and IIS Data - not entered in ICIS	Potential concern	The state tracked and has manually provided an accurate inventory of penalties for FY2007 but has not been entering this data in ICIS-NPDES.

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Nebras-ka Metric	Count	Uni-verse	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation	Evalu-ation	Initial Findings
P01G2S	Penalties: total penalties (1 FY)	Data Quality	State			\$0	NA	NA	NA	yes	653,000		Legal, Program and IIS Data - not entered in ICIS	Potential concern	The state tracked and has manually provided an accurate inventory of penalties for FY2007 but has not been entering this data in ICIS-NPDES.
P01G3S	Penalties: total collected pursuant to civil judicial actions (3 FY)	Data Quality	State			\$0	NA	NA	NA	yes	653,000		Legal, Program and IIS Data - not entered in ICIS	Potenetial concern	The state tracked and has manually provided an accurate inventory of penalties for FY2007 but has not been entering this data in ICIS-NPDES.
P01G4S	Penalties: total collected pursuant to administrative actions (3 FY)	Infor-mational Only	State			\$0	NA	NA	NA	NO				Appears acceptable	The state issues formal enforcement actions with penalties through its Attorney General, which is in the judicial arena.
P01G5S	No activity indicator - total number of penalties (1 FY)	Data Quality	State			0	NA	NA	NA	yes	6		Legal, Program and IIS Data - not entered in ICIS	Potential concern	The state tracked and has manually provided an accurate inventory of penalties for FY2007 but has not been entering this data in ICIS-NPDES.
P02A0S	Actions linked to violations: major facilities (1 FY)	Data Quality	State			0 / 0	0	0	0	yes	1		Legal, Program and IIS Data - not entered in ICIS All of our actions are linked to a violation	Potential concern	With no formal actions in ICIS-NPDES, the state has not linked violations to those actions.
P05A0S	Inspection coverage: NPDES majors (1 FY)	Goal	State	100%	63.8%	86.3%	44	51	7	yes				Potential concern	EPA and the state need to discuss why 7 facilities either were not inspected or did not have their inspections entered into the national program database.

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Nebras-ka Metric	Count	Uni-verse	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation	Evalu-ation	Initial Findings
P05B1S	Inspection coverage: NPDES non-major individual permits (1 FY)	Goal	State			21.1%	101	478	377	yes	225 inspection plus 105 industrial		Not including Industrial and Majors - Can come up with your 478 number.	Appears acceptable	The accepted number of non-majors in this category that have been inspected is 204, which excludes the 105 pretreatment industrial facilities that the state adjustment incorrectly included in this category rather than in metric 5C. The corrected percentage is 43%, and even the original metric of 21% is above the state commitment to inspect 20% of minors annually.
P05B2S	Inspection coverage: NPDES non-major general permits (1 FY)	Goal	State			0 / 0	0	0	0	no				Appears acceptable	
P05C0S	Inspection coverage: NPDES other (not 5a or 5b) (1 FY)	Infor-mational Only	State			8.8%	25	284	259	yes	389			Minor issue	The state made no commitment to inspect facilities in this category; however, the state performed inspections associated with as many as 5 enforcement actions at wet weather facilities that were required to be entered in ICIS-NPDES. Note: the 25 inspections in the database were conducted at pretreatment facilities.

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Nebras-ka Metric	Count	Uni-verse	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation	Evalu-ation	Initial Findings
P07A1C	Single-event violations at majors (1 FY)	Review Indicator	Com-bined			0	NA	NA	NA	NA				Potential concern	EPA and the state need to discuss whether the state tracks SEVs internally. Whether or not that is the case, file review needs to examine whether SEVs are being adequately identified.
P07A2C	Single-event violations at non-majors (1 FY)	Infor-mational Only	Com-bined			0	NA	NA	NA	NA				Potential concern	The state does not need to report this information, but it does need to track SEVs internally.
P07B0C	Facilities with unresolved compliance schedule violations (at end of FY)	Data Quality	Com-bined			0 / 0	0	0	0	YES	Working on		None entered at this time but started in Fall of 2008	Potential concern	Any compliance schedules in the state's 9 formal enforcement actions were not entered in ICIS-NPDES.
P07C0C	Facilities with unresolved permit schedule violations (at end of FY)	Data Quality	Com-bined			100.0%	5	5	0	YES	?		ICIS was not maintained so GI and Some of these should not be on this list	Potential concern; suppl file review	A portion of the 5 facilities with permit schedules should be reviewed to investigate issues surrounding the resolution of those schedule violations.
P07D0C	Major facilities with DMR violations (1 FY)	Data Quality	Com-bined			32	NA	NA	NA	NA				Potential concern	File review will enable EPA to determine how the state is addressing these violations. Metric reflects corrected universe of 51 majors.

Metric	Metric Description	Measure Type	Metric Type	National Goal	National Average	Nebras-ka Metric	Count	Uni-verse	Not Counted	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation	Evalu-ation	Initial Findings
P08A1C	Major facilities in SNC (1 FY)	Review Indicator	Com-bined			25	NA	NA	NA	NA				Potential concern	File review will enable EPA to determine how the state is addressing these cases of SNC. Metric reflects corrected universe of 51 majors.
P08A2C	SNC rate: percent majors in SNC (1 FY)	Goal	Com-bined		22.4%	49.0%	25	51	26	yes			See 1A1 in ICIS	Potential concern	This rate is higher than the national average. File review and discussion with the state are needed to investigate why so many major facilities have been in SNC. Metric reflects corrected universe of 51 majors.
P10A0C	Major facilities without timely action (1 FY)	Goal	Com-bined	< 2%	11.7%	9.8%	5	51	46	yes			See 1A1 in ICIS. Based on whose interpretation.	Potential concern	Although the state is below the national average, this rate is still much higher than the national goal. EPA and the state should discuss why timely action has not been taken against the 5 facilities at issue. Metric reflects corrected universe of 51 majors.

APPENDIX B

Pretreatment Program Review

Introduction

The State of Nebraska was authorized to implement the Pretreatment program as a “403.10(e)” state. This means that the state has elected to implement the entire program as both the approval authority and the control authority, as it does not delegate Approved Pretreatment Programs to municipalities. Under the General Pretreatment Regulations all cities with POTWs of greater than 5 mgd are required to develop a Pretreatment program that controls industrial discharges to its system. The state has waived this requirement and shouldered the entire burden of implementation. Analogous to the 5 mgd requirement, the state has entered into 12 Memorandums of Understanding (MOUs) with its larger cities. Responsibilities by these cities range from submitting annual reports with summaries of industrial discharger’s activities, to inspecting and sampling and sharing the results with NDEQ. All permitting and enforcement activities are retained by the state.

Because the state replaces the city for essentially all implementation responsibilities, the measure of its effectiveness can be gauged by evaluating state activities as the Region would a city when performing a Pretreatment audit. To guide this program review a Pretreatment program city’s audit checklist was roughly followed, with the questions altered to apply to the state’s point of view. This narrative discussion comes from the checklist findings.

Legal Authority

In September 2005, EPA promulgated the Pretreatment Streamlining Regulations. While most of the streamlining provisions are voluntary, there is a handful where implementation is mandatory. The state has not yet modified its state regulations to incorporate any mandatory or voluntary changes. The Region agreed to provide the state with a summary of the Pretreatment Streamlining Regulations that identifies the mandatory changes.

Local Limits

The General Pretreatment Regulations require all cities developing Pretreatment programs (those 5 mgd and larger) to develop local limits, or demonstrate that they are needed. Since the state has relieved these cities of developing approvable programs, the responsibility falls to the state to perform this local limits analysis. Moreover, the NPDES regulations require that any existing local limits be demonstrated to remain adequate following the re-issuance of the NPDES permit, which translates into a re-evaluation every five years. The development of local limits is also required for any other city that has experienced interference and/or pass through which could possibly recur.

NDEQ has not met the requirement of evaluating for the need for local limits at its MOU cities or for those other cities that have experienced interference and/or pass through. In fact, the PER exercise conducted by EPA Headquarters and the Region a few years back identified the

lack of local limits as a significant deficiency of the Nebraska program and requires the Region to report on progress toward correction. From this came an agreement between NDEQ and the Region for the Region to perform the headworks analysis for three treatment plants in Nebraska by the end of FY 2007. These analyses were submitted in draft to NDEQ for comment but no further work was done to finalize them. The Region worked directly with the cities (Lincoln and Columbus) who did not know their 7Q10, a critical element for the evaluation. These three calculations can be finalized without much additional effort. The purpose of the exercise was to demonstrate the feasibility of local limits development and to identify areas where the necessary information might be lacking. However, except as noted above, the cities had all the information needed for local limits analysis.

During this review, the Region agreed to create a data collection sheet that could be distributed to the MOU cities. This sheet would consolidate, in a simple form, all data needed to perform the local limits analysis for each city. Because of the state's limited resources, the Region agreed to perform the headworks analysis if the state would collect the data. The data collection sheet will be provided under separate cover.

Sampling and Inspections

As a 403.10(e) state, NDEQ is required to annually inspect, and independently determine compliance through annual sampling, each of its Significant Industrial Users (SIUs). NDEQ inspects each industry once per year and documents the inspection using the standard inspection checklist used for NPDES inspections. Grab sampling is performed at each SIU by NDEQ except for those SIUs in Omaha; through the MOU, the City of Omaha performs the sampling and provides the data to NDEQ. All permitted SIUs were inspected and sampled in FY 2007.

Permitting

All Nebraska Pretreatment Program (NPP) permits are issued from the Lincoln office. These permits are treated identically to NPDES permits. The universe of Pretreatment permits constitutes about 1/6th of the permitting workload.

All prospective permit holders are required to apply for a permit using the state's permit application form. Categorical industries, who are required by 40 C.F.R. 403.12(b) to submit a baseline report (commonly called a baseline monitoring report, or BMR) submit the state's form in lieu of a BMR. However, the state has not reviewed its permit application to ensure that it fulfills the requirement of the BMR. This needs to be done and any information required by a BMR must be added to the state's permit application form to ensure that its Categorical industries are in compliance with the General Pretreatment Regulations. Moreover, Categorical industries are also required to submit what is commonly called a "90 day compliance report," which the state has not been requiring. This one-time report, which is required 90 days following the commencement of a new discharge, is of particular value in that it requires the new facility to submit sampling data and declare whether or not they are able to maintain compliance with its Categorical standard. If the facility determines that it can not maintain compliance, it is required to submit a compliance schedule with its report.

Sampling frequencies are variable depending on the facility size, the pollutants present, and compliance history. Larger facilities may be required to sample and report monthly or quarterly; smaller, less significant facilities may have semi-annual sampling and reporting requirements. It appears the state has done a good job tailoring sampling frequency to facility size and risk. All required self monitoring is specified as composite sampling, unless grab sampling is required by regulation or the facility is a batch discharger.

Two permits were chosen for review – one Categorical industry (Valmont Industries, McCook) and one non-Categorical (Henningsen Foods, Ravenna). There were some weaknesses in the Henningsen Foods permit. This facility's pollutants of concern would be conventional pollutants, however, no permit limits exist for BOD and TSS. The fact sheet does not evaluate the Ravenna POTW to determine its capacity nor does it discuss the load anticipated from the industry. For the industry to be considered a Significant Industrial User, it has to contribute 25,000 gallons per day of process flow, 5% of the hydraulic or organic load, or determined to have the potential to adversely impact the municipal plant. There was no discussion in the fact sheet that supports such a determination, or a justification why it is acceptable to have no limits for BOD and TSS. In the past, NDEQ had not been including BOD and TSS limits in many of its non-Categorical SIU permits. However, NDEQ stated during the program review that all future permits will have numeric limits.

Both permits were well organized and expertly presented. A strong set of standard conditions is an integral part of each permit. One minor, but important change should be made to the Narrative Limits of Part II, A, however. While the narrative limits correctly prohibit any discharge that could cause interference or process upset, there is no corresponding statement that prohibits pollutants from passing through the treatment plant. Petroleum oils, cutting oils, and mineral oils are prohibited from causing pass through, however, a broader statement needs to be included that prohibits any pollutant from causing pass through.

Data Management and Enforcement

Pretreatment industries report compliance using DMR forms identical to NPDES facilities. DMR values are submitted to the NDEQ Lincoln central office where they are input into ICIS. Once the data are available by computer, the appropriate field office is responsible for the review and evaluation of it. It appears that there is no coordination by a central individual to ensure that each field office has adequately evaluated the data.

All approved Pretreatment program cities are required to develop an Enforcement Response Plan, which then becomes a part of its program, implementation of which is required by the city's NPDES permit. The Enforcement Response Plan is required to contain enforcement type and time frames for any type of SIU noncompliance. The most important element of the Plan is the requirement to address Significant Noncompliance (SNC) in a timely manner. If a city fails to follow its Enforcement Response Plan, EPA considers the city itself to be in SNC.

Because the definition of SNC requires the evaluation of all sampling data that occurred during a six-month time period, it follows that all approved Pretreatment program cities must

determine the compliance status of each of its industries at the end of a six month reporting period. This compliance determination is then used to determine which industries need enforcement, and the type, as specified by the Plan. For NDEQ to be operating their Pretreatment program at the level of an approved city from another state in the Region, a compliance status determination using the regulatory definition of SNC, must first be performed for each industry at the end of the six month reporting period. This is not being done. Consequently, there is no way to confirm if any industries are in SNC, who these industries are, and what steps are being taken to return the facility to compliance. While it is possible that for some six-month reporting periods no industries are in SNC, this is not known, either. EPA has requested copies of the compliance status determinations made every six months by the state but none have been submitted. The Region, working with NDEQ, has coded all NPP permit holders in ICIS so that an ICIS report can be run at the end of each six month reporting period to determine the compliance status of the NPP universe. However, this will likely be incomplete because those industries that have caused interference or pass through will have to be manually identified as SNC. The state needs to be more diligent about making compliance status determinations and taking enforcement actions to return any industry in SNC back to compliance.

Although the state has not been properly determining the compliance status of its NPP industries, it has significantly increased its enforcement activities over the past year. In 2007, 18 NOVs were issued to NPDES or NPP facilities; in calendar year 2008, more than 50 NOVs had been issued at the time of the program review.

Conclusion

NDEQ tends to treat its Pretreatment industries similar to its NPDES industries but in so doing overlooks some Pretreatment regulatory requirements. The state has not reviewed its permit application to ensure that it fulfills the requirement of the BMR and has not evaluated the need for local limits at its MOU cities or cities that have experienced interference and/or pass through. The state has also not been requiring 90-day compliance reports from its Categorical industries and needs to more consistently make compliance status determinations for its NPP industries. EPA Headquarters, in conjunction with the Water Environment Federation (WEF), conducts three-day Pretreatment courses a couple of times per year. It is strongly recommended that NDEQ staff attend one of these courses due to the loss of staff with pretreatment experience.

APPENDIX C

File Review Summaries for Facilities

This appendix to the report includes a summary of findings for each of the fifty facility files reviewed by EPA. Each summary discusses the following: 1) why the facility was selected, including the state's compliance monitoring and/or enforcement activities at the facility that were the reason for the review; 2) the documents in the file that EPA reviewed; and 3) EPA's findings from the review. The summaries are organized by NPDES permit type. The summaries in the final section of the appendix—Section 4—describe facilities that were reviewed for potential concerns associated with particular metrics. Nine of the facilities in Section 4 are also discussed elsewhere in this appendix.

1. Wastewater Permittees

Direct Dischargers—Majors

Behlen Manufacturing (NE0000647)

This facility file was selected as a representative inspection. Behlen holds a major industrial NPDES permit. The NDEQ performed what appears to be a routine compliance evaluation inspection on 3/27/07, with the report being completed and dated 4/17/07 (21 day turn around). The report included basic facility information, including size of the facility, number of employees, NPDES permit and date of issuance, and description of the treatment processes. There was some narrative description of the observations, but the report mostly consisted of checklist type information (presence/absence) of operations and practices. While no finding of noncompliance or violations was made, there was also no definitive statement of compliance with the NPDES permit.

EPA reviewed the report from the 3/27/07 inspection and documentation in the permits file. The inspection report did not contain all of the components on the EPA CWA Inspection Report Evaluation Guide (i.e. EPA Evaluation Guide). Assuming no specific finding of noncompliance equates a finding of compliance, it may provide sufficient information to enable a subsequent compliance determination. The report was also timely, as it was completed twenty-one days after inspection.

EPA noted that there was correspondence in the permit file indicating the company had requested a permit modification in August 2003, and a permit modification was public noticed in August 2004. There was no additional information in the permit file to demonstrate whether or not the permit modification was finalized.

Nebraska City WWTF (NE0021245)

This facility file was selected as a representative inspection. The City holds a major POTW NPDES permit. The NDEQ performed what appears to be a routine compliance evaluation inspection on 4/4/07, with the report being completed and dated 4/13/07 (9 day turn around). The report included basic facility information, including size of the facility, City population, NPDES permit, industrial users, and description of

the treatment processes. There was some narrative description of the observations, but the report mostly consisted of checklist type information (presence/absence) of operations and practices. While no finding of noncompliance or violations was made, there was some discussion of improvements that had been made since the last inspection. There was, however, no definitive statement of compliance with the NPDES permit.

EPA reviewed the report from the 4/4/07 inspection and documentation in the DMR and permits files. The inspection report did not contain all of the components on the EPA Evaluation Guide. Assuming no specific finding of noncompliance equates a finding of compliance, it may provide sufficient information to enable a subsequent compliance determination. The report was also timely, as it was completed nine days after inspection.

EPA noted that the facility is identified as in significant noncompliance based on repeat and extensive bacteria violations. Upon closer scrutiny, the bacteria limit identified in the DMRs and in ICIS was incorrect (incorrectly identified as 2.8 colonies per 100 mL instead of 200 colonies per 100 mL). When the correct bacteria limitation was used, there were no violations of the bacteria limit. The state was informed of the error and immediately sought to correct it.

Sidney WWTF (NE0023884)

This facility file was selected as a representative inspection. The state conducted a municipal mechanical inspection on 9/20/07. The inspection report did not contain all of the components on the EPA Evaluation Guide. The report provided sufficient information to enable a compliance determination and stated that the facility is meeting the terms of its NPDES permit. The state completed the report thirty-six days following the inspection.

This facility had a DMR violation in FFY 2007 due to missing information on one DMR for the fourth quarter. The state responded by requesting the facility to re-send the DMR with the missing data for metals. Five days later, the state received the facility's response and entered the data into ICIS-NPDES, which at that point was beyond the DMR data entry deadline. The state responded appropriately to the facility's DMR violation.

Crete WWTF (NE0034304)

This facility file was selected as a representative inspection. The state conducted a municipal mechanical inspection on 3/30/07. The inspection report contained fewer than half of the components on the EPA Evaluation Guide. The report did not provide sufficient information to enable a compliance determination and included no narrative observations outside of the standard checklist. There was not enough information in the file to determine whether the state made a subsequent compliance determination. The report did not indicate the date it was completed, although a reference to the document elsewhere in the file suggests that the state finished the report fewer than twenty-one days following the inspection.

Tyson Fresh Meats, Inc., Madison (NE0028363)

Tyson was chosen to review an inspection conducted on 9/17/07. Tyson is a pork producer that processes about 7800 hogs per day. Tyson operates a two-lagoon anaerobic

treatment process followed by five facultative/holding lagoons. The system is designed to have an NPDES regulated discharge only during periods of high rainfall. Under normal operations, the effluent from the treatment lagoons is discharged through a system of 14.5 irrigation pivots.

The inspection report was not completed and transmitted to the facility for over ninety days. A review of the report shows that the facility was in compliance with its permit requirements. However, the Online Tracking Information System (OTIS) facility report showed DMR non-receipt for the quarter January through March, 2007. See Section 4 for EPA's analysis of this issue.

Direct Dischargers—Non-majors

Sanitary and Improvement District (SID) No. 1 (Cheyenne County and Collateral Finance Partners, LLC)

SID No. 1 was selected as a representative enforcement action. The state filed an administrative compliance order on 3/15/07 to address absence of a permit and operation and maintenance violations. The violations were discovered during state inspections on 1/13/03 and 6/24/04 and further investigated during a subsequent inspection on 2/20/07. The 1/13/03 inspection was followed by an NOV on 7/10/03. All inspections found that the facility was poorly operated and maintained. SID No. 1 is a minor facility serving approximately sixty people.

EPA reviewed the reports from the 6/24/04 and 2/20/07 inspections as well as the administrative compliance order. The two visits by the state were documented as investigations, whereby the purpose of the 6/24/04 investigation was to review the operations at the WWTF and check on progress in meeting the request in the 1/13/03 NOV. The 2/20/07 investigation was made at the request of NDEQ's wastewater section and legal services division to observe and document the current operational status of the facility. Both reports contained mostly narrative but did not contain all of the components on the EPA Evaluation Guide. The narrative reports did provide sufficient information to enable subsequent compliance determinations.

The administrative order was an appropriate response to the violations, which are classified as High Priority Violations in the state's Enforcement Manual. The order required appropriate injunctive relief to return the facility to compliance. The file did not provide sufficient information to determine if the facility executed all of the required injunctive relief, including obtaining an NPDES permit. Regarding timeliness, the state used the order as a formal enforcement response because the NOV did not achieve a return to compliance. The duration between issuing the NOV and the order was more than three years. This did not meet the state's goal of issuing a needed enforcement response within 180 days of the violation.

David City WWTF (NE0021199)

This facility was selected as a representative inspection. The state conducted a municipal mechanical inspection on 4/23/07, which was followed by completion of the inspection report on 5/2/07. The report did not include all of the components on the EPA Evaluation Guide, but it did provide enough information to enable a compliance

determination. The report itself did not indicate a determination of compliance. Due to time constraints, EPA was unable to review other documents in the file for evidence of a subsequent compliance determination.

Dwight WWTF, NE0046175

This facility file was selected as a representative inspection file. The state responded to a complaint that was received on 7/17/07. The complainant reported an SSO back-up into their basement. On 7/18/07 an NDEQ inspector performed an inspection of the Dwight lagoon system. On 8/22/07 the report was transmitted to Dwight which slightly exceeds thirty days.

EPA reviewed the permit and general files. The current permit was issued on 11/30/04 and expires 11/30/09. The general file contained two letters from 2004 dated January 26 and April 9 stating that the City must submit their sampling and analytical data and results in DMRs on the schedule required in the permit. NDEQ stated that the duty to submit DMRs is in place even if the lagoon does not discharge. The DMRs covering such a timeframe should state “no discharge” and be submitted to the state on the required schedule. Furthermore, the letters stated that influent monitoring must still be completed on the required schedule even if there is no discharge from the lagoon. The file revealed that Dwight has not been submitting DMRs since 2005 (no DMRs in the R file are dated after 2005). The letter transmitting the inspection report from the 7/18/07 inspection states, “Enclosed is a copy of the report for your information and action where necessary.” The letter does not direct any specific action. The inspection report from the 7/18/07 inspection notes that DMRs are not being transmitted to NDEQ. The cover letter that transmitted the inspection report suggested the facility pay attention to the findings but did not reiterate the need to collect all necessary data and timely submit DMRs. Furthermore, it was unclear from the inspection report if the inspector addressed the basement backup/collection system in the course of the inspection.

An inspection of this facility was conducted in April 2003. Woody vegetation in the lagoon which can lead to destabilization was noted in that report and in the 2007 inspection.

A compliance determination should have been made regarding the failure to submit DMRs over a long period of time. NDEQ’s enforcement manual cites “Failure to monitor as required by NPDES permit” by a minor facility as a low priority violation and a warning letter or NOV would have been an appropriate response. Aside from the fact that there are no DMRs after 2005 in the R file, the file contained no additional information from which to determine if the facility is currently in compliance.

Evonik Degussa Corp. (NE0132594)

This facility file was selected as a representative inspection. The state conducted an industrial/commercial NPDES compliance inspection on 9/5/07. The inspection report did not contain all of the components on the EPA Evaluation Guide and did not provide sufficient information to enable a compliance determination. Moreover, there was not enough information in the file to determine whether the state made a subsequent compliance determination. The state completed the report seven days following the inspection.

Firth WWTF (NE0112241)

Firth was chosen for review for an inspection conducted on 3/13/07. The WWTF serves a population of 564 people and is a three-cell controlled discharge lagoon. The report presents the design loading criteria and identifies the current loadings. From this, the reviewer can calculate that the lagoon system is about 28% loaded for CBOD and 32% loaded for TSS.

The inspection was timely in that the facility was issued a new permit on 6/4/07. The inspection report discussed compliance with operation and maintenance requirements but had no narrative discussion of compliance with numeric limits. An OTIS facility report shows that there had been effluent violations within the April through June 2006 timeframe, or less than one year before the inspection. However, there was no discussion in the inspection report about these violations.

Hebron WWTF (NE0024252)

An inspection was conducted at this facility in FFY 2007 on April 24, which is the reason for selection. The inspection report was completed and transmitted to the facility in seventeen days. The checklist-based report indicated that the facility was in compliance. However, both OTIS and DMRs in the Hebron file show that the facility had CBOD violations in the January through March time frame preceding the inspection. There was no mention in the report of these violations.

The report documented other concerns at that plant that need correction. The plant's comminutor was out of commission, a fuel tank improvement was needed for the standby generator, and the city's backup plant operator was not certified. A 5/23/07 memo indicated that the state was following up on having these deficiencies corrected. On 9/28/07 the state sent a letter documenting a meeting with the city held on 9/5/07 where it is required that the comminutor be replaced per state regulations. The letter also favorably commented on the city's plan to use a certified operator under contract from a neighboring city as its back-up operator.

Leprino Foods Co. (NE0131172)

This facility file was selected as a representative enforcement action. Leprino Foods Co. operates a cheese manufacturing plant in Buffalo County, Nebraska, and a wastewater lagoon and land application system in Sherman County, Nebraska. The state issued a series of three Notices of Violation (NOVs) on 3/1/05, 4/8/05 and 6/20/05 regarding various Pretreatment violations and unauthorized discharges. The NDEQ referred five violations to the Attorney General's (AG's) office in December 2005. The AG issued a Complaint (date not certain) and a Consent Decree on 5/8/07, to address unauthorized discharges of wastewater from its land application area into waters of the state on 9/4/04, 4/6-7/05, and 5/17/05 (three of the five counts referred by NDEQ). A penalty of \$9,000 was assessed in the CD, but half of that amount (\$4,500) was to be forgiven if certain conditions were met; specifically defendant was required to maintain compliance for 180 days and receive no additional NOVs within that time frame. In addition, the defendant was to pay a sum of \$9,000 to the AG's Environmental Protection Fund as a Supplemental Environmental Project.

NDEQ conducted three inspections (4/8/05, 9/12/06, and 11/7/07) and an investigation based on a complaint (6/12/07). EPA reviewed the reports from the

inspections and investigations. The inspection reports did not contain all of the components on the EPA Evaluation Guide; most of the reports only indicated minimal operation status of the system based on a checklist format. One inspection (4/8/05) resulted in an NOV and a count in the Complaint. The investigation report did not follow a checklist format, and was more narrative in nature. The investigation report identified an illegal discharge, but did not provide any information regarding whether the discharge was eliminated or corrected. The reports were timely issued after the inspections, with a lag time of only three to seventeen days.

Leprino holds a minor NPDES permit, for which discharges without a permit are a High Priority Violation under the NDEQ Enforcement Response policy. The NOV's and subsequent escalation to a Complaint and CD were appropriate enforcement actions. The NOV's were issued in a timely manner, but the lag time between the referral and the action by the AG was fairly long, which is outside the control of NDEQ. No information is in the NDEQ's files regarding the AG's deliberations or negotiations with the defendant. No additional noncompliance has been documented following issuance of the Complaint and entry of the CD. The nature of the violations (unauthorized discharges) is such, however, that without an inspection, any recurrence would not be discovered through routine DMR reporting.

Phillips WWTF (NE0124311)

This facility file was selected as a representative enforcement action. The state issued a Notice of Violation (NOV) on 3/13/07 to address DMR non-receipt and to request a sampling plan. The violations were discovered during an inspection conducted 1/25/07. Phillips WWTF is a minor facility that discharges infrequently. The state inspection documented consistent non-submittal of DMRs from 2002 through 2006 and referred to a notice of missing DMRs that the state sent to the facility on 4/18/06.

EPA reviewed the report from the 1/25/07 inspection and the subsequent NOV. The inspection report did not contain all of the components on the EPA Evaluation Guide; however, it did provide sufficient information to enable a subsequent compliance determination and clearly documented the sampling and reporting deficiencies. The report was also timely, as it was completed eight days after inspection.

The NOV was an appropriate enforcement action, considering that sampling and reporting violations are classified as Low Priority Violations in the state's Enforcement Manual. The state did not respond initially to chronic DMR non-receipt until more than three years after non-receipt became a problem in 2002. Furthermore, after the missing DMR notice of 4/18/06 was unsuccessful, the state did not escalate the matter to the subject of an NOV until 329 days later. This duration lies outside the state's window of ninety days during which voluntary compliance is first attempted. The NOV was successful at correcting the reporting violations, as demonstrated by a more consistent submission of DMRs since the state's action.

Paxton WWTF (NE0041289)

Paxton was chosen for review for an inspection conducted in FFY 2007. The WWTF is a three-cell controlled discharge lagoon that serves a population of 600 people. The inspection was documented using the standard checklist; all elements on the state checklist were found to be complete. The inspection report did not provide any details

regarding DMR review although it indicates they were reviewed. The inspection occurred during a period of no discharge. Therefore, there was no opportunity to take samples. The inspection report documented the design loadings for the lagoon and compared it to the current loading, which is about 10% of capacity for BOD and 15% of capacity for TSS. This discussion helps the reviewer conclude that the facility is in compliance with discharge limits.

The inspection was documented with the standard inspection checklist that Nebraska uses. As stated before, checking various boxes yes or no for various conditions that describe the inspected facility is how the record is established. While narrative can be added to increase the reviewer's understanding of what was observed, little was provided. The inspection report was transmitted to the facility in sixteen days.

Uehling WWTF (NE0023779)

This facility file was selected as a representative enforcement action. The state issued a Notice of Violation (NOV) on 1/11/07 to address absence of reporting non-compliance and for operation and maintenance (O&M) violations. The former was discovered during the state's review of the facility file on 12/27/06, while the latter violations were discovered during a state inspection conducted 4/3/06. Uehling WWTF is a minor facility with a very small service population and was in its original operating configuration at the time of the state inspection. Due to the advanced age of the treatment infrastructure, the facility had not been meeting fecal coliform limits placed in its most recently reissued permit.

EPA reviewed the report from the 4/3/06 inspection and the subsequent NOV. The inspection report did not contain all of the components on the EPA Evaluation Guide; however, it did provide sufficient information to enable a subsequent compliance determination and stated that the facility needs an upgrade to meet its permit limits. The report was also timely, as it was completed twenty-nine days after inspection.

The NOV was an appropriate enforcement action, considering that both types of violations meet the criteria for Low Priority Violations in the state's Enforcement Manual. The state sent the NOV fifteen days following discovery of the non-compliance reporting violations, which is a timely response. The facility's compliance record since receiving the NOV shows that the NOV was successful at correcting the reporting violations. With respect to the operation and maintenance violations, however, the state did not execute its enforcement response until 284 days after discovery. Other correspondence in the file suggests that the state encouraged Uehling to apply for federal loan money for an upgrade before issuing the NOV, but EPA did not find any evidence prior to the NOV to suggest that Uehling made a good-faith effort to plan the upgrade. Therefore, the NOV was not a timely response to the latter violations, which the facility did not begin to address voluntarily within ninety days.

Pretreatment Dischargers

Exmark Manufacturing, Beatrice (NE0124451)

Exmark was chosen for evaluation due to an inspection that occurred in FFY 2007. Exmark performs conversion coating so it is subject to the 40 C.F.R Part 433

Metal Finishing regulations. The report for the inspection of 9/5/07 was for adequacy and to determine if the inspection found the facility in compliance. NDEQ inspections are guided by a checklist that addresses those areas the state believes warrant review. Overall, the bulk of the information is conveyed by checking the relevant box. Very little narrative is provided. However, the checklist shows that the compliance status of the facility was verified during the inspection.

Earlier in the year, on 5/18/07, NDEQ had sampled Exmark. The sampling was performed by taking grab samples, even though the permit requires composite samples for self-monitoring. NDEQ stated that if a grab sample would exceed a permit limit, it would be considered an indicator and not a permit violation and would lead to increased monitoring to determine if non-compliance was indeed an issue.

Because the inspection report is checklist-based, there is always opportunity to provide more information through additional narrative. However, by reviewing the inspection report and DMR data a sufficiently valid determination of compliance can be achieved. The inspection report was completed and transmitted twenty days following the inspection.

Nebraska Aluminum Casting, Hastings (NE0133337)

This facility was selected because it received both an inspection and an enforcement action in FFY 2007.

Nebraska Aluminum Castings is a Pretreatment industry that discharges to the Hastings POTW. This facility is a custom die-caster that casts numerous aluminum products for various industrial sectors. What little process wastewater it generates is evaporated; under normal operations only domestic wastewater is discharged to the city. However, on 4/24/07, NDEQ issued the industry a Notice of Violation (NOV) for a discharge to the City of Hastings that caused “upset, pass through or otherwise interfere[d]” with the operations of the POTW. Also cited as a violation was the failure to measure the discharge to the city. The NOV required Nebraska Aluminum Castings within thirty days to submit a report on its use and disposal of process water. The NOV did not provide evidence of the interference or pass through at the city’s plant nor did it state that the industry was in Significant Noncompliance as defined by the General Pretreatment Regulations.

From the file, the following information documents the events leading to the NOV. In a 3/9/07 letter to NDEQ, the industry admits to a discharge on March 6 that consisted of a white fluid “similar to water-soluble coolants” used by them. The letter went on to say that the industry had checked all floor drains and determined that all of them drain to a recycle sump, which precedes the evaporator.

Following receipt of the letter, NDEQ phoned the industry on 3/15/07 and informed them that they had had conversations with the city on both March 7, and March 9, and that the industry’s discharge possibly caused the city to have non-compliant discharges. The industry was (erroneously) told that their discharge itself was not a violation, but not measuring the flow consisted of a violation of the industry’s permit. This statement was corrected by the time the NOV was issued, as interference and pass through were added as a violation.

The NOV was issued on 4/24/07, which was forty-nine days after the interference and/or pass through occurred. However, prior to the written NOV, NDEQ did initiate a

verbal NOV with their phone call of March 15. Since this was not an ongoing state of violating numeric discharge limits, the enforcement actions appear to be appropriate. Given the nature of the discharge—i.e. that the industry caused interference and/or pass through of the city’s POTW—more serious enforcement would have also been warranted. From the record, there appears to have been no timely inspection of the industry to determine if this had been an accidental discharge or a deliberate act by the facility to dispose of exhausted cutting fluids because they felt they would not be caught.

Because this facility is located in one of NDEQ’s Pretreatment MOU cities, it should have been posted in the local newspaper for being in Significant Noncompliance by the state.

On 6/20/07 NDEQ performed an inspection which was documented using the standard NDEQ inspection form. The report was completed and mailed to the facility twenty-eight days later on 7/18/07 in a timely manner. The inspection verified that the facility has an evaporation system and that the floor drains discharge to a sump that feeds the evaporator. The checklist documented that the facility had recently caused interference and/or pass through at the Hastings POTW three months earlier. However, no details were provided in the report regarding exactly what had occurred at the POTW.

Henningsen Foods, Inc. Ravenna (NE0134112)

Henningsen Foods is a Pretreatment facility that discharges to the Ravenna POTW. It was chosen for review because of an inspection that occurred on 6/12/07, which falls in the period evaluated by the program review. Henningsen Foods produces dehydrated food products including chicken broth, shrimp, and eggs.

The report for Henningsen Foods consisted of the standard field checklist with some narrative additions. Unlike many reports reviewed, this one had historic sampling data attached, allowing for an independent compliance determination. No real areas of concern were noted, however, an OTIS facility report covering the time period between this inspection and the previous fiscal year’s inspection (6/13/06), showed that the facility had violated its numeric limits for oil and grease on occasion. These violations did not constitute Significant Noncompliance, however.

The report was finalized and transmitted to the facility in a timely twenty-eight days.

Malcolm Public School District (NE0024261)

This facility was chosen because of the enforcement action taken to address a discharge from the Malcolm Public School that passed through the city’s WWTF causing a fish kill. While the violation occurred in July, 2005, the enforcement actions were not completed until April 2007, hence its reason for review for the FFY 2007 program review. On 7/1/05, in response to a report from the city the previous day, NDEQ inspected the Malcolm WWTF and receiving stream to determine that a discharge of propylene glycol had passed through the municipal plant. Workers at the Malcolm public school had drained the contents of the air conditioning system into the sewer without permission. State files show that enforcement had been contemplated as early as mid July 2005. On 10/18/05, a Request for Enforcement was submitted by the program to the Legal Services Division. The Request recommended a penalty in addition to recovery of

the value of the fish killed, which was determined by Game and Parks to be about \$63,500.

Following the Request for Enforcement, a case assignment memo was drafted on 11/22/05, assigning a staff attorney to draft a litigation report to be submitted to the Nebraska AG. Meanwhile, the Program sent a series of NOVs to various parties associated with the discharge. On 11/16/05, an NOV was sent to Engineering Technologies Inc. who had contracted NIFCO to perform the service on the air conditioning system. On 12/12/05, the city was issued an NOV for the NPDES permit violation, and on 2/28/06, the Malcolm Public School District was issued an NOV as the owner of the property from which the interfering discharge originated.

On 4/19/06, the AG initiated enforcement against Malcolm Public School District, NIFCO, and Engineering Technologies, Inc., the settlement of which was approved by the court on April 12, 2007. A total fine of \$20,000 was paid by the above three parties, with NIFCO and Engineering each paying \$8000 and the school district paying \$4000. All parties paid their fines.

While the time period over which the enforcement actions transpired was somewhat lengthy, EPA believes the enforcement to be adequate since this was a penalties-only case. Since the discharge of the cooling system fluids was a one-time event, there was no need for an enforcement action intended to return the permit holder to compliance.

Syngenta Crop Protection, Inc., Omaha (NE0113930)

Syngenta was chosen for review because it was inspected in FFY 2007 on 12/15/06. The inspection was well written and unlike others reviewed, it contained a lengthy narrative and attachments supporting the observations made. Syngenta is a pretreatment industry subject to the pesticide chemicals Categorical standard and has elected to comply with the regulation by implementing the pollution prevention (P2) alternative provided in the standard. As such, there was no need to sample this industry.

There were no compliance concerns identified by the inspection. Moreover, the report contained extensive detail on the activities and status of the plant. Details were provided on the manufacturing processes, the implementation of P2 activities, and final wastewater treatment using granular activated carbon. This inspection report was comprehensive, detailed, and finalized in only six days.

Sanitary Sewer Overflow Communities

Grand Island WWTF (NE0043702)

This facility file was selected as a representative SSO community. EPA searched through the file for correspondence between the city and the state regarding SSOs. In addition, the state conducted a municipal mechanical inspection of the facility on 7/12/07, which had not been entered into ICIS-NPDES. Following the inspection, the state issued an NOV on 8/24/07. EPA reviewed the inspection report and NOV in addition to SSO correspondence.

Grand Island reported SSOs occurring in FFY 2007 on semi-annual SSO summaries sent to the state, whereas the permit requires SSOs to be reported as they

occur. The state reminded the city of its SSO reporting requirements in a letter sent 6/27/05. EPA did not find any correspondence in the file, subsequent to that letter, whereby the state would have reprimanded the city for not meeting its reporting requirements. Furthermore, the inspection report and NOV reviewed by EPA did not mention the city's SSO reporting deficiency.

The report for the 7/12/07 inspection did not contain all of the components on the EPA Evaluation Guide. The report provided sufficient information to enable a compliance determination and was followed by an NOV to address effluent limit violations identified in the report. The state completed the report thirty-six days following the inspection. The state's NOV issued 8/24/07 was an appropriate initial response to the effluent limit violations of July 2007. It was also a timely response, as the state sent the NOV letter less than one month following discovery of the violations. Effluent exceedances of three parameters have continued unabated through at least June 2008, however, which demonstrates that the state's NOV and parallel attempts to achieve voluntary compliance were insufficient. The state subsequently began working directly with the Swift Beef Company, the pretreatment discharger responsible for the city's non-compliance.

Kearney WWTF (NE0052647)

This facility file was selected as a representative SSO community. EPA searched through the file for correspondence between the city and the state regarding SSOs. Kearney did not report any SSOs to the state during FFY 2007 or thereafter, through November 2008. The state reminded the city of its SSO reporting requirements in a letter sent 6/27/05. EPA did not find any correspondence in the file between the city and the state, subsequent to that letter, regarding reporting of SSOs. If the city has identified SSOs since FFY 2007, it has not been reporting them to the state as required by the permit.

In addition, the state conducted a mechanical compliance inspection of the facility on 4/4/07, which EPA reviewed. The inspection report did not contain all of the components on the EPA Evaluation Guide, but it did provide sufficient information to enable a compliance determination. The report stated that the facility was out of compliance for not reporting ammonia monitoring on a recent DMR. The state completed the inspection report in twelve days.

Omaha Papillion Creek WWTF (NE0112810)

This facility file was selected as a representative SSO community. EPA searched through the file for correspondence between the city and the state regarding SSOs. The state reminded the city of its SSO reporting requirements in a letter sent 6/27/05. The only other correspondence EPA identified regarding SSOs was a semi-annual report from the city dated 2/12/07 that contained, among other items, a summary of dry weather overflows during the period from July through December 2006. In that summary the city reported ten overflows within the Papillion Creek treatment plant collection system. The absence of other correspondence suggests that the city does not submit written notification to the state for overflows as they occur. The city also has not been consistently submitting semi-annual reports, given that the report dated 2/12/07 was the only such report found in the file.

In addition, the state conducted a municipal mechanical compliance inspection of the facility on 12/19/06, which EPA reviewed. The inspection report did not contain all of the components on the EPA Evaluation Guide, but it did provide sufficient information to enable a compliance determination. The report stated that the facility did not have any violations of its permit. The state completed the inspection report in three days.

2. Concentrated Animal Feeding Operation Permittees

Dahlgren Cattle Company, Inc. (NE0106054)

This file was selected as a representative enforcement action for a consent decree ordering penalty payment, dated 8/24/07. The penalty was sought by the state AG in response to non-compliance that occurred between 2002 and August 2004. NDEQ filed a complaint and issued a compliance order against the facility on 2/12/04. Because the 2007 order did not pertain to the injunctive actions required by the 2004 order, EPA evaluated only the 2007 penalty order from this enforcement sequence and omitted consideration of the enforcement activities occurring three years prior to the year of review. Review of the file found that both gravity and economic benefit were included in the final penalty amount.

Further examination of the Dahlgren file found a second sequence of violations and enforcement response from the state, which EPA also reviewed. On 7/3/07 NDEQ received a discharge complaint regarding this facility. Also on 7/3/07, NDEQ conducted an on site investigation regarding this discharge. On 7/10/07 NDEQ completed an inspection at this facility. On 8/23/07 NDEQ issued an NOV to the facility for discharging and record keeping issues. On 9/20/07, defendant submitted response to the NOV. This response (received by NDEQ on 9/21/07) from the defendant in reply to the NOV indicated that violations have been or will be corrected. On 2/22/08 NDEQ referred the matter to the AG and summarized findings. Dahlgren had discharged waste, denied NDEQ access and modified their disposal system without getting NDEQ approval.

NDEQ took appropriate follow-up in a timely manner during the second enforcement sequence. The complaint was investigated on the same day received. An inspection was completed at the facility within seven days of the complaint. An NOV was issued to the facility within approximately fifty days after the incident occurred. According to information in the file, NDEQ received a response from the facility on 9/21/07 indicating that the violations have been or will be corrected. This notification from the facility came approximately seventy-seven days after the complaint. The facility was ultimately referred to the AG for follow-up. EPA could not locate information in the file that described the ultimate disposition of this case after it was referred to the AG, although EPA has learned that the case was settled with a consent decree dated 7/18/08.

Louis Dinklage Inc. (NE0101699)

This file was selected as a representative inspection. An inspection was completed by NDEQ on 9/27/07. The inspection utilized a five-page checklist format

("Routine Inspection Checklist for Animal Feeding Operations"). The report was also completed on 9/27/07.

The inspection report did not contain all the components on the EPA Evaluation Guide; however it did provide sufficient information to make a compliance determination. This inspection did have four comments which were helpful in determining the compliance status of the facility. The inspection and report were completed in a timely manner. The inspection transmittal letter was sent out on 12/6/07. The letter lists corrective actions the facility needs to complete and is signed by a supervisor.

Hackel Feedlot (NE0135062)

This file was selected as a representative inspection. An inspection was completed by NDEQ on 5/31/07. The inspection utilized the one-page inspection checklist format ("Compliance Inspection Data Sheet"). An inspection transmittal letter was sent to the facility on 6/13/07.

The inspection report did not have a report date. The inspection report did not contain all the components on the EPA Evaluation Guide. A compliance determination was made by the inspector; however, subsequent reviewers that are not as familiar with the facility may have difficulty making this determination or understanding the conditions at this facility based on the limited amount of information provided in the one-page checklist. Very little narrative was provided. The inspection report was completed and sent out to the facility in a timely manner.

Lonnie Roth Home/Timber (NE0136131)

This file was selected as a representative inspection. An inspection was completed by NDEQ on 7/25/07. The inspection utilized the one-page inspection checklist format ("Compliance Inspection Data Sheet"). An inspection transmittal letter was sent to the facility on 8/2/07.

The inspection report did not have a report date. The inspection report did not contain all the components on the EPA Evaluation Guide. A compliance determination was made by the inspector; however, subsequent reviewers that are not as familiar with the facility may have difficulty making this determination or understanding the conditions at this facility based on the limited amount of information provided in the one-page checklist. Very little narrative was provided. The inspection report was completed and sent out in a timely manner.

37 Land & Cattle (NEG010032)

This file was selected as a representative inspection. A review was not completed as EPA was not able to locate an inspection report in this file.

Rasmussen Brothers Livestock (NEG010072)

This file was selected as a representative inspection. An inspection was completed by NDEQ on 2/27/07. The inspection utilized the longer (four-page) format ("Routine Inspection Checklist for Animal Feeding Operations"). The report was completed on 3/7/07.

The inspection report did not contain all the components on the EPA Evaluation Guide; however, it did provide sufficient information to make a compliance determination. The inspection report was completed in a timely manner and an inspection transmittal letter was sent to the producer in a timely manner and detailed six items that needed to be corrected. No narrative was provided in this particular inspection report. Three digital photographs were included in this report.

Burwell Feeders, LLC. (NEG010115)

This file was selected as a representative inspection. An inspection was completed on 7/19/07. The inspection utilized the one-page format (“Compliance Inspection Data Sheet”). An inspection transmittal letter was sent to the facility on 8/7/07.

The inspection report did not contain all the components on the EPA Evaluation Guide. A compliance determination was made by the inspector; however, subsequent reviewers that are not as familiar with the facility may have difficulty making this determination or understanding the conditions at this facility based on the limited amount of information provided in the one-page checklist. Very little narrative was provided.

Krabel Land & Cattle Co. (NEG010210)

This file was selected as a representative inspection. An inspection was completed on 12/5/06. The inspection utilized the five-page format (“Routine Inspection Checklist for Animal Feeding Operations”). The inspection report was also completed on 12/5/06.

The inspection report did not contain all the components on the EPA Evaluation Guide; however, it did provide sufficient information to make a compliance determination. The inspection and report were completed in a timely manner and the report was transmitted to the facility in a timely manner (12/22/06).

3. Stormwater Permittees

Industrial Non-construction

AGP Processing (NER000623)

This industrial stormwater file was selected as a representative inspection. The facility also has an NPDES permit for a WWTF authorized under permit NE0131679. NDEQ performed an inspection of the facility on 5/30/07. The inspection report is a three-page report and covers only the discharges associated with permit number NE1031679. There is a question on the inspection checklist that asks if the facility has other permits. The response states that the facility is subject to Air Title V. The inspection report does not mention the stormwater permit, the SWPPP, or the state of any best management practices (BMPs), flow pathways to surface waters, etc. A flow diagram of the facility stated there was stormwater from a process area.

Connectivity Solutions Manufacturing, Inc. (NER000146)

This industrial stormwater file was selected as a representative inspection. The facility also has an NPDES permit for a WWTF authorized under permit NE0000507. NDEQ performed an inspection of the facility on 2/28/07. The inspection report is a three-page report and covers only the discharges associated with permit number NE0000507. There is a question on the inspection checklist that asks if the facility has other permits. The response states that the facility is regulated under an air permit from the City of Omaha and also as a large quantity hazardous waste generator by NDEQ. The inspection report does not mention the stormwater permit, the SWPPP, or the state of any BMPs, flow pathways to surface waters, etc.

IPSCO Tubulars, Inc. (NER000013)

This industrial stormwater file was selected as a representative inspection. The facility also has an NPDES permit for a WWTF authorized under permit NE0132357. NDEQ performed an inspection of the facility on 4/19/07. The inspection report is a three-page report and covers only the discharges associated with permit number NE1031679. There is a question on the inspection checklist that asks if the facility has other permits. The response states that the facility also has an industrial stormwater permit. The inspection report does not make further mention of stormwater, the SWPPP, or the state of any BMPs, flow pathways to surface waters, etc.

Tetra Micronutrients (NER000703)

This file was selected by NDEQ while EPA was conducting the on-site reviews in Lincoln, in order to supplement the industrial stormwater file selections. NDEQ scanned the G file and provided it to EPA for review. The review of the scanned documents was performed in Kansas City. The file states that an NOV was issued on 6/2/06. The NOV is not part of the G file provided to EPA. The NOV likely covered stormwater deficiencies at the site but as stated above, it was not reviewed. The scanned documents also mention an Administrative Compliance Order on Consent that was likely issued in 2006 but since it would be part of the legal file it was not available for review. EPA is not aware if any penalty was collected for this case. This site is also of concern to the hazardous waste program. Corrective action has been ongoing at the site for a considerable period of time.

NDEQ performed an inspection of the site on 10/26/06. Mary Schroer, NDEQ's stormwater coordinator and Daniel King performed the inspection. The focus of the inspection was to investigate an exposed drain tile, the stormwater basin, and to determine the locations of the stormwater monitoring points. Several photos were taken. The report is a narrative report and includes the photos and a description of each photo. The report was written one day after the inspection. It appears the inspection report was transmitted to the facility. The inspection report is not signed.

Construction

Clear Water Creek Subdivision (NER104210)

This construction stormwater file was selected as a representative inspection. On 4/26/07 NDEQ performed an inspection of the site that did not include pictures. There was no evidence in the file to indicate that the inspection report was transmitted to the site owner. A neighboring landowner had complained about construction activity at the site. A permit had been issued in June 2005 and was terminated 4/15/06. The original site owner improved the land and installed roads and utilities, then stabilized the land, sold the lots and terminated his permit coverage. The complaint received by NDEQ was about work being done on individual lots.

In October 2007 there is a memo to file stating that the original owner's obligations terminated but the new lot owners require individual permit coverage. A 10/25/07 memo to the file states that four NOV's were ready to be sent to the individual builders that each required permit coverage.

Quail Ridge Subdivision (NER104668)

This construction stormwater file was selected as a representative inspection. The site was inspected on 10/19/06 and ten photos were taken. An inspection checklist noting BMP deficiencies was completed for this inspection although there was no indication in the file that this inspection report was transmitted to the site owner. An inspection was also conducted on 3/8/07. The inspection was documented on an inspection checklist. Photos and a photo log accompanied this inspection. An NOV citing BMP failures was transmitted to the site owner on 5/25/07 along with the inspection report, photos and a photo log. The site owner responded to NDEQ on 6/7/07 explaining actions taken to come into compliance. Photos of the enhance BMPs were sent with the response. A second response from the site owner was received by NDEQ on 8/28/07 documenting an additional improvement made to BMPs at the site.

The facility returned to compliance within fifteen days of NDEQ's NOV. The NOV was sent to the site owner seventy-seven days after the 3/8/07 inspection. There is insufficient information in the inspection reports to determine if the deficiencies noted during the 10/19/06 and 3/8/07 inspections were the same.

Willow Brook (NER105513)

This construction stormwater file was selected as a representative inspection. On 5/1/07 NDEQ conducted an inspection of the site as the result of a complaint (The complaint dealt with standing water at the site due to land disturbance). The inspection is documented on NDEQ's complaint inspection form. Photos and a photo log accompany the complaint inspection form. The inspection report was completed on 5/10/07, well within the thirty-day timeframe. The inspection report was transmitted to the site owner on 5/21/07. The cover letter states that the Respondent must obtain a construction stormwater permit for the construction activity at the site; thus a compliance determination was made.

The permit file contains a Construction Stormwater NOI dated 6/19/07, and a permit authorization was transmitted to the site owner on 6/22/07. The site came into

compliance with the governing regulations within thirty-two days of receiving the inspection report and cover letter.

The Hamptons (NER015040)

This construction stormwater file was selected as a representative enforcement action. A neighboring property owner complained to the state and EPA on numerous occasions about this site and its effects on her property. Both entities have visited the site. The legal file contained an undated Complaint that cited the failure to obtain a permit to construct a utility and the failure to stabilize disturbed land, and failure to install and maintain BMPs. The Complaint suggests that there should be a penalty but no amount is offered. A Consent Decree signed 12/6/06 cites the same violations and demands a penalty in the amount of \$45,000. \$22,500 of the penalty was collected as a fine and the other \$22,500 was considered a SEP and paid to the Nebraska Housing Resource. The Consent Decree requires compliance with the construction stormwater permit. The file also contained a Satisfaction of Judgment dated 10/3/08. The AG sent a letter to NDEQ on 10/31/08 closing the case.

The site has a long history of state involvement, including several site visits, a few inspections and an NOV dated 9/30/05 for failure to obtain a permit to construct a utility and failure to install and maintain BMPs. The file contained a 9/27/05 inspection report called a "field investigation" by the inspector. This inspection was focused on the unpermitted sewer construction, although there is mention of unmaintained silt fences. The report consists of one and one-half pages of narrative, photos and Google maps of the location. It was not evident from the file if this report was included with the NOV when that document was sent to the site owner. On 10/17/05 a different inspector visited the site. The one-half page narrative report states that the inspector had been instructed to visit an area of the site that was previously photographed by Mr. Hoopes on 9/27/05. The report states that no corrective action had been taken since the September inspection. The site was again visited by NDEQ on 11/1/05 at the request of Steve Moeller. The inspector noted the same problems with the silt fences as had been noted in the previous two site visits. Photos were taken. There was no documentation in the file indicating that the 10/17/05 and 11/1/05 site visit reports were transmitted to the site owner. Also on 9/30/05 NDEQ submitted a request for enforcement to the AG's office requesting a unilateral or consent order, a penalty and injunctive relief. NDEQ inspected the site on 8/21/07 and noted sediment movement toward the west of the property via a filled swale and stating that the swale requires long-term maintenance to be effective in preventing offsite migration of sediment on the west of the property. A 6/12/08 memo to the file and photos documenting a 6/12/08 visit to the site described erosion and lack of BMPs at the northern site boundary.

The case file does not indicate how the penalty amount was determined in this case. There were no documents available that described how the penalty was calculated. Furthermore, although the Satisfaction of Judgment closed the case there was no documentation post-dating the 8/21/07 and 6/12/08 site visits to verify that the site was in compliance when the case was closed by the AG.

Sweetgrass Prairie, LLC

This construction stormwater file was selected as a representative enforcement action. An undated complaint cites failure to obtain a permit to build a utility (sewer), failure to stabilize the site and failure to install BMPs. In total, the complaint states there are forty-seven violations, each with a state statutory maximum penalty of \$10,000 per day. A Consent Decree filed 11/30/06 demanded a \$20,000 penalty of which \$5,000 would be paid over three installments, \$5,000 would be waived if the facility remained in compliance for twelve months and \$10,000 would be in the form of a SEP. There was no documentation in the file illustrating how the penalty was calculated. A 12/14/07 document titled "Showing" demonstrated that the facility remained in compliance. A 12/14/07 Satisfaction of Judgment stated that all responsibilities under the CD were met. A letter from the AG to NDEQ dated 12/19/07 closed out the file.

A window inspection was performed on 10/22/04. Photos were taken to document the lack of BMPs. NDEQ sent the site owners an NOV on 2/4/05 for failure to install and maintain BMPs and failure to comply with permit terms and conditions. This timeframe slightly exceeds the goal to address noncompliance within ninety days. A response and SWPPP were required within ten days. NDEQ also sent the owner an NOV on 12/17/04 for failing to obtain a permit prior to constructing a sanitary sewer system. On 9/30/05 NDEQ sent a Request for Enforcement to the AG requesting formal action because the site owner failed to obtain a permit prior to the construction of the sanitary sewer. The Request for Enforcement does not include the construction stormwater violations cited in the 2/4/05 NOV although those violations are contained in the Complaint and the Consent Decree.

4. Facilities Reviewed for Potential Concerns Associated with Particular Metrics

Metric 1B2: Major individual permits: DMR entry rate based on DMRs expected (4th Qtr FFY 2007)

Behlen Manufacturing Company (NE0000647)

This facility was selected as a representative major inspection, but it was also reviewed for missing DMRs for a specific limit set. OTIS indicated that four limit sets with DMRs were due; ICIS-NPDES showed receipt of DMRs for three limit sets. One limit set (003Y) had an incorrect due date. NDEQ corrected this upon discovery during EPA's on-site review.

Sidney WWTF (NE0023884)

This facility was selected as a representative major inspection, but it was also reviewed for missing DMRs for a specific limit set. OTIS indicated that five limit sets with DMRs were due; ICIS-NPDES showed receipt of DMRs for four limit sets. One limit set (INFR) had an incorrect due date. NDEQ corrected this upon discovery during EPA's on-site review.

Kearney WWTF (NE0052647)

This facility was selected as a representative SSO community, but it was also reviewed for missing DMRs for a specific limit set. OTIS indicated that five limit sets with DMRs were due; ICIS-NPDES showed receipt of DMRs for four limit sets. The correct number of required DMRs is four. The disconnect was the result of a limit set coding error in ICIS-NPDES, such that the database had been expecting one more DMR than what the previous permit had required. NDEQ corrected this error when the most recent permit became effective on 4/1/08, which occurred after the year under review.

Nestle Purina Petcare Company (NE0000116)

This facility was selected as a supplemental file, as it was missing DMRs for a specific limit set. OTIS indicated that three limit sets with DMRs were due; ICIS-NPDES showed receipt of DMRs for two limit sets. One limit set (001L) had an incorrect due date. NDEQ corrected this upon discovery during EPA's on-site review.

Metric 1B4: Major individual permits: Manual RNC/SNC Override Rate (1 FFY)

Behlen Manufacturing Company (NE0000647)

This facility was selected as a representative major inspection, but it was also reviewed for manual override of RNC/SNC to a compliant status. The facility failed to submit a complete DMR, with missing data for TSS and oil and grease for the third quarter of FFY 2007. The facility may have omitted this data because there was no discharge corresponding to these two parameters. The DMR was due 4/28/07 and the partial DMR was received on 4/26/07; however, by the time NDEQ communicated the deficiency to the facility and received a response regarding the two missing parameters, the data was overdue. NDEQ did not take an enforcement action against the facility for submitting an incomplete DMR and corrected the violation at the time of occurrence.

Crete WWTF (NE0034304)

This facility was selected as a representative major inspection, but it was also reviewed for manual override of RNC/SNC to a compliant status. The monitoring end date of 6/30/07 had a Limit Set of 001Q containing one parameter, Dissolved Copper. The DMR was due on 7/28/07, and the facility submitted it on 7/10/07. The DMR was incomplete, however, as it did not include data for Quantity Two. The state ultimately received data for this measurement on 10/24/07 and did not take an enforcement action against the facility for this violation.

Omaha Papillion Creek WWTF (NE0112810)

This facility was selected as a representative sanitary sewer overflow community, but it was also reviewed for manual override of RNC/SNC to a compliant status. The monitoring end dates of 4/30/07, 5/31/07, and 6/30/07 had a DMR limit set of 001B with a due date of 7/28/07. One parameter, Total Residual Chlorine, was not received until 9/27/07 for quantity measurements of 1 and 2 for all three monitoring end dates. For the third quarter of FFY 2007, NDEQ did not take an enforcement action against the facility for submitting an incomplete DMR.

Nestle Purina Petcare Company (NE0000116)

This facility was selected as a supplemental file, as it had a manual override of RNC/SNC to a compliant status. DMRs with a monitoring end date of 10/31/06, 11/30/06, and 12/31/06 were all due in ICIS-NPDES on 1/28/07, but they were not entered in ICIS-NPDES until 1/30/07. The cause of tardy data entry was receipt from the facility two days late. NDEQ did not take an enforcement action against the facility for this violation.

Metric IC3: Non-major individual permits: percent with permit limits and DMR data (4th Qtr FFY 2007)

Ceresco WWTF (NE0046124)

This facility was selected as a supplemental file with regard to missing DMR data. For DMR Limit Set 001, there was no data in the file or ICIS-NPDES for the monitoring period end dates 1/31/07, 2/28/07, and 3/31/07. NDEQ did not take an enforcement action against the facility for not submitting a DMR for these monitoring periods.

Bee WWTF (NE0123200)

This facility was selected as a supplemental file with regard to missing DMR data. All DMRs for the prior three years had been entered in ICIS-NPDES except for the fourth quarter of FFY 2007, and they appear to have been submitted on time. Most DMRs indicated no discharge. Nebraska issued a Notice to the facility in January 2007 for incomplete DMRs.

DMR data for July, August, and September 2007 is missing from ICIS-NPDES. DMR Limit Set 001A shows the July DMR data was received on 8/8/07 and there was no discharge. The DMR submitted only lists two parameters (50050 and 81381), whereas eight parameters were required. There is a second DMR in the file for DMR Limit Set 001B for July – September 2007, again with no discharge. This DMR was also received on 8/8/07. The state did not take an enforcement action for missing DMR data associated with no discharge.

William M. Lehr (T-Bone Truck Wash) (NE0137600)

This facility was selected as a supplemental file with regard to missing DMR data. There were no DMRs in the file for any part of 2007, and EPA confirmed with NDEQ's Records Management Section that this was an accurate representation. At the time of file review, the Nebraska Attorney General was pursuing a civil suit against the facility for unrelated violations regarding failure to meet a compliance schedule and to complete construction of the wastewater operation. Prior to referral to the AG, NDEQ took an administrative action for the same matter that did not address DMR non-reporting.

Metric 1D3: Violations at non-majors: DMR non-receipt (3 FFYs)

Holstein WWTF (NE0026484)

This facility was selected as a supplemental file with regard to DMR non-receipt violations for three continuous years. No DMRs had been entered into ICIS-NPDES, nor were there any DMRs in the file. EPA confirmed with NDEQ's Records Management Section that this was an accurate representation. This is a facility that likely discharges only intermittently. NDEQ has not taken enforcement for these violations.

Alexandria WWTF (NE0029238)

This facility was selected as a supplemental file with regard to DMR non-receipt violations for three continuous years. There are two DMR Limit Sets – 001B and 001M. A DMR was in the file for limit set 001A from 10/01/06 through 10/31/06; however, it falls outside the current permit effective and expiration dates and is not in ICIS-NPDES. There are DMRs in the file for INFR from 9/1/06 through 8/31/07; however, they likewise fall outside the current permit effective and expiration dates and are not in ICIS-NPDES.

Limit Set 001B for monitoring end dates 12/31/06, 3/31/07, and 6/30/07 are in the file and ICIS-NPDES; however, the same Limit Set 001B has DMRs in the file from 7/1/07 thru 9/30/07 that are not in ICIS-NPDES. Limit Set 001M for monitoring end dates 7/31/07, 8/31/07, and 9/30/07 were in the file but not ICIS-NPDES.

Douglas WWTF (NE0046159)

This facility was selected as a supplemental file with regard to DMR non-receipt violations for three continuous years. There are three limit sets in ICIS-NPDES: 001-D, 001-I, and 001-M. There were no DMRs in ICIS-NPDES for 001-D or 001-I, but the state had entered DMRs for 001-M for all twelve months of FFY 2007.

Bosselman Truck Plaza (NE0112861)

This facility was selected as a supplemental file with regard to DMR non-receipt violations for three continuous years. The current permit in ICIS-NPDES shows an expiration date of 2/3/96. No DMRs have been entered into ICIS-NPDES; however, there were DMRs in the file for the following Limit Sets and monitoring periods:

Limit Set	Received Date	Monitoring End Date
INFA	04/26/2007	January 31, 2007
INFA	04/26/2007	February 28, 2007
INFA	04/26/2007	March 31, 2007
INFA	10/30/2007	July 31, 2007
INFA	10/30/2007	August 31, 2007
INFA	10/30/2007	September 30, 2007
001M	04/26/2007	January 31, 2007
001M	04/26/2007	February 28, 2007

001M	04/26/2007	March 31, 2007
001M	02/06/2007	October 31, 2006
001M	02/06/2007	November 30, 2006
001M	02/06/2007	December 31, 2006
INFA	02/06/2007	October 31, 2006
INFA	02/06/2007	November 30, 2006
INFA	02/06/2007	December 31, 2006

There was no DMR data in the file for April, May, or June 2007; nor was there any communication from NDEQ requesting DMRs for those months.

Bee WWTF (NE0123200)

This facility was selected as a supplemental file with regard to DMR non-receipt violations for three continuous years. ICIS-NPDES shows that three years worth of DMR data—corresponding to FFYs 2005, 2006, and 2007—had been entered by the state. Therefore, there was no substantive concern with this facility under this metric.

Phillips WWTF (NE0124311)

This facility was selected as a representative enforcement action and was also reviewed under this metric for DMR non-receipt violations for three continuous years. Refer to the wastewater section of this appendix for a description of the facility’s violations and the state’s response.

Redhook, LLC (NE0131822)

This facility was selected as a supplemental file with regard to DMR non-receipt violations for three continuous years. DMR data has been entered into ICIS-NPDES for all months from October 2004 through March 2006. EPA’s review of the file found that this facility’s permit was deactivated (e.g. not continued) on 9/30/06. The OTIS facility report shows that the state has turned off compliance tracking, which was the appropriate course of action in this instance.

Kroy Building Products, Inc. (NE0133213)

This facility was selected as a supplemental file with regard to DMR non-receipt violations for three continuous years. ICIS-NPDES shows three years of DMR data had been entered for Limit Sets 002M and 003M; however, no DMR data was in the file or ICIS-NPDES for Limit Sets 002A or 003A.

Metric 7C: Facilities with unresolved permit schedule violations at the end of FFY 2007

Grand Island WWTF (NE0043702)

OTIS showed that this facility was in violation of its permit schedule for the quarter January to March 2007. EPA did not find any correspondence in the file to shed

light on the nature of this violation or the state's response. Upon discussing the matter with NDEQ staff, EPA determined that the facility had in fact satisfied its compliance schedule by installing disinfection according to plan. Something about the state's entry of data into ICIS-NPDES to verify the facility's deliverables did not match the database's expectations for the quarter in question.

Ceresco WWTF (NE0046124)

Ceresco violated its compliance schedule by not sending the state design specifications for meeting fecal coliform limits before the 4/1/07 due date. The state responded with a compliance schedule reminder notice dated 9/19/07, which was 171 days following the due date. In contrast, the state's enforcement manual classifies tardiness of compliance schedule milestones or reports as a High Priority Violation when it exceeds ninety days past due. Therefore, the state did not respond to this violation in a timely fashion.

William M. Lehr (T-Bone Truck Wash) (NE0137600)

The permit for this facility became effective 7/1/07. At the time of file review, the Nebraska Attorney General was pursuing a civil judicial suit against the facility for failure to meet the permit compliance schedule and to complete construction of the wastewater operation.

Metric 7D: Major facilities with DMR violations (at any time in FFY 2007)

Nestle Purina Petcare Company (NE0000116)

This facility was selected as a supplemental file for DMR violations. The facility had an E90 violation (i.e. the reported DMR value is outside the limit value range) in the fourth quarter of FFY 2007. The effluent limit for toxicity-*ceriodaphnia* is 3.33, but the value submitted on the DMR was 7.04, giving an exceedance of 202%. It was not clear from the file if the state responded to this violation.

Grand Island WWTF (NE0043702)

This facility was selected as a representative sanitary sewer overflow community and was also reviewed under this metric for DMR violations in FFY 2007. EPA's review of the file and what had been entered into ICIS-NPDES by the state revealed that the state did in fact receive the DMR in question within the thirty-day submission period and that the state promptly entered the DMR data into the database. A discrepancy appears to exist between OTIS and ICIS-NPDES on this matter, and EPA concludes that there is no substantive concern for this facility under this metric.

Nebraska City WWTF (NE0021245)

EPA found that the cause of the DMR violations in ICIS-NPDES was an incorrectly coded limit for bacteria. Refer to the description of this facility's violations and the state's response in the wastewater section of this appendix.

Sidney WWTF (NE0023884)

This facility had a DMR violation in FFY 2007 due to missing information on one DMR for the fourth quarter. The state responded by requesting the facility to re-send the DMR with the missing data for metals. Five days later, the state received the facility's response and entered the data into ICIS-NPDES, which at that point was beyond the DMR data entry deadline. The state responded appropriately to the facility's DMR violation.

Tyson Fresh Meats, Inc., Madison (NE0028363)

The OTIS facility report showed DMR non-receipt for the quarter January through March, 2007. DMRs for this time period were found in the file and all three months reported no discharge of effluent. EPA speculates that because the no-discharge condition is the prevalent condition at this facility, something about ICIS-NPDES acceptance of the DMR or the timing of DMR entry is responsible for the violation flag. EPA could not ascertain whether a legitimate violation occurred.

Omaha Papillion Creek WWTF (NE0112810)

Review of the facility file and the limit set in ICIS-NPDES revealed that one parameter, total residual chlorine, was missing from the facility's DMR submission for each of the three months during the third quarter of FFY 2007. The facility ultimately sent the missing data within two months after the DMR due date. The state did not take any enforcement action against the facility.

State Review Framework

Nebraska RCRA Subtitle C
Round 2 Report
for Federal Fiscal Year 2010

FINAL 12/12/2012

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I. EXECUTIVE SUMMARY

Major Issues

The SRF review of the Nebraska Resource Conservation and Recovery Act (RCRA) Subtitle C (RCRA Hazardous Waste) program identified the following major issues:

- Lack of Administrative penalty authority at the Nebraska Department of Environmental Quality (NDEQ) delays the issuance of formal enforcement actions that can return the facility to compliance;
- Lack of documentation in NDEQ files that penalty calculations include consideration of Economic Benefit; and
- Lack of documentation in NDEQ's facility files of how the State arrived at the Final Penalty, as well as whether the final penalty was collected.
- In cases referred to NDEQ Legal Services Division for formal enforcement action, there appears to be little opportunity for the RCRA program staff to review or provide input to the Legal staff on the calculation of the penalty or the preparation of the referral package to the Nebraska Attorney General's Office (AG's Office).

Summary of Programs Reviewed

Resource Conservation and Recovery Act (RCRA) Program

The problems which necessitate state improvement and require recommendations and actions include:

- NDEQ continues to need better coordination, participation, and communication with the State Attorney General's Office (AG's Office or AG) in the timely resolution of formal enforcement actions. This was a finding in the previous program review.
- NDEQ needs a plan to track facilities' compliance during formal enforcement actions, including enforcement penalties assessed by the AG, penalties paid in a formal enforcement action, and the return to compliance following the resolution of formal enforcement actions.
- NDEQ RCRA program files do not document the penalty calculation method, nor the economic benefit component of the final penalty. NDEQ documentation on final Supplemental Environmental Projects (SEPs) also appears to be lacking.
- NDEQ RCRA program staff appear to have little opportunity to review or provide input to the NDEQ Legal Services Division or to the AG's Office, once a referral package has been sent to the AG's Office. Closer consultation during this process, utilizing the program expertise of the RCRA program staff, might address evidentiary or regulatory determination questions that could arise later.

Areas meeting SRF program requirements or with minor issues for correction include:

- NDEQ inspectors produce quality inspection reports, that generally appear accurate; however the reports could use better, more detailed descriptions of the wastes generated at the facility;
- NDEQ's SNC discovery rate of 5.7% is above the national goal, and it's nearly twice the national average; and

- NDEQ supervisors review and approve the inspection report before it can be finalized and mailed. While this process provides for a consistent level of review, this requirement sometimes delayed the inspection report from being issued within the 30 day timeframe.
- NDEQ meets minimum data requirements for data completeness for data entered into RCRAInfo; and
- NDEQ met its negotiated inspection coverage goal for FY2010

II. BACKGROUND INFORMATION **ON STATE PROGRAM AND REVIEW PROCESS**

The State Review Framework (SRF) is a program designed to ensure EPA conducts oversight of state and EPA direct implementation compliance and enforcement programs in a nationally consistent and efficient manner. Reviews look at 12 program elements covering data (completeness, timeliness, and quality); inspections (coverage and quality); identification of violations; enforcement actions (appropriateness and timeliness); and penalties (calculation, assessment, and collection).

Reviews are conducted in three phases: analyzing information from the national data systems; reviewing a limited set of state files; and development of findings and recommendations. Considerable consultation is built into the process to ensure EPA and the state understand the causes of issues, and to seek agreement on identifying the actions needed to address problems.

The reports generated by the reviews are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. The reports are designed to provide factual information and do not make determinations of program adequacy. EPA also uses the information in the reports to draw a “national picture” of enforcement and compliance, and to identify any issues that require a national response. Reports are not used to compare or rank state programs.

A. GENERAL PROGRAM OVERVIEW

- **Agency structure:** The structure of the Nebraska Department of Environmental Quality (NDEQ) consists of program offices, a separate legal department and 5 regional field offices, located throughout the state. The NDEQ program staff conduct hazardous waste compliance evaluation inspections (CEIs), and recommend the necessary enforcement follow up on each inspection. Formal enforcement is managed through NDEQ’s legal department and the Attorney General’s (AG’s) office.
- **Compliance/enforcement program structure:** Each NDEQ program (Water, Air, and Waste) has its own division, management and staff for compliance and enforcement. The NDEQ Legal Services Division is separate from the program offices, and it serves all of the program offices.
- **Roles and responsibilities:** The NDEQ program staff, located within the Waste Management Division, are responsible for conducting inspections and recommending appropriate enforcement follow up. Actions requiring formal enforcement are referred to the NDEQ Legal Services Division. Penalty actions are subsequently referred to the AG’s office for resolution, since NDEQ lacks administrative penalty authority. Coordination and communication between the NDEQ RCRA program staff and NDEQ Legal Services Division staff, and between NDEQ and the AG’s Office is minimal.

- **Resources:** Resources do not appear to be a contributing factor to the program review findings. The Compliance Section of the Waste Management Division is responsible for conducting compliance inspections of RCRA Subtitle C (hazardous waste) regulated facilities, responding to citizen complaints, as well as solid waste program management. The Compliance Section consists of 9 Full Time Equivalent (FTE) employees working in the RCRA program, including administrative support and data entry for RCRAInfo. The Compliance Section staff coordinate with NDEQ's Legal Services Division, in which 2 attorneys work primarily on RCRA program cases.
- **Staffing/training:** NDEQ Waste Management Division, Compliance Section is fully staffed, and there is no expectation to hire additional staff in the near future.
- **Data reporting systems/architecture:** Nebraska enters the minimum data requirements (MDRs) into RCRAInfo on a daily basis.

B. MAJOR STATE PRIORITIES AND ACCOMPLISHMENTS

- **Priorities:** NDEQ has been continuing the same RCRA priority for inspections at HW generator facilities since the FY2006 program review. NDEQ's priority is to verify the compliance status of hazardous waste generators through on-site inspection, including those facilities that are suspected of presenting an imminent threat to human health or the environment. Large quantity generators (LQGs), small quantity generators (SQGs), and operating treatment/storage/disposal facilities (TSDFs) were targeted for inspection, with the goal of maintaining high quality management of hazardous waste within the state.
- **Accomplishments:** For FY2010 (October 1, 2009 through September 30, 2010), NDEQ accomplished the following:
 - 35 Inspections for compliance monitoring;
 - 35 NOVs were issued for violations observed on-site;
 - 33 informal enforcement actions were taken against 30 RCRA sites;
 - 2 new sites were determined to be RCRA significant noncompliers (SNCs);
 - 1 formal enforcement action was taken by the AG's Office on behalf of NDEQ;
 - Penalties were collected in the amount of \$15,000;
 - 4 Compliance Assistance visits (CAVs);
 - NDEQ RCRA program staff documented return to compliance at the 1 RCRA facility that received formal enforcement in FY2010.
 - NDEQ RCRA program staff documented each facility's actions taken to return to compliance for the 30 facilities that received informal enforcement actions in FY2010. Some of the facilities returned to compliance through clear steps identified in correspondence with NDEQ RCRA program staff. Some of the facilities returned to compliance, partly due to clear and timely SNC determinations and NDEQ staff efforts to address repeat violations.
 - Between FY2006 and FY2010, NDEQ initiated a new approach for issuing letters of warning (LOWs) to smaller or less sophisticated (with regard to regulatory knowledge) facilities in the state. Through file reviews, EPA observed that NDEQ includes more customized, prescriptive language in the informal enforcement letters, notices of violation (NOVs), and the LOWs that direct smaller or less sophisticated facilities to return to compliance.
 - NDEQ's prescriptive NOV and LOW approach improves the state's ability to monitor and ensure RCRA compliance. NDEQ's process for issuing prescriptive NOVs and LOWs to smaller or less sophisticated

facilities is a best management practice, because it significantly improves NDEQ’s ability to monitor facilities and ensure compliance with RCRA regulations.

- NDEQ’s prescriptive NOV and LOW process can be used by other enforcement programs within NDEQ, as well as translated to other states’ enforcement programs. For example, rather than issuing a template NOV or LOW that simply instructs a facility how to generally conduct a hazardous waste determination on a waste stream, NDEQ’s NOV’s and LOW’s provide prescriptive instructions to the small or unsophisticated facility how to conduct a hazardous waste determination on a particular waste stream, which achieves a more effective return to compliance with RCRA regulations, and an understanding of the on-going RCRA compliance requirements by the RCRA regulated facility.

C. PROCESS FOR SRF REVIEW

- **Review period:** Federal Fiscal Year 2010 was evaluated in this review.
- **Key dates:** The NDEQ was initially notified of the enforcement program review on June 21, 2011. The initial data review of the SRF data metrics was conducted in EPA R7’s office on June 13, 2011. The on-site review was conducted at NDEQ’s offices in Lincoln, Nebraska, from July 18 through July 20, 2011.
- **Communication with the state:** On June 21, 2011, a letter to NDEQ confirmed that a review of the RCRA program would occur in July 2011. A RCRA SRF kickoff meeting was held by conference call on June 13, 2011 to discuss program review procedures. On June 17, 2011, a list of facility files to be reviewed was provided to Nebraska via email, along with the official NDEQ production data set pulled from OECA’s OTIS website. The RCRA SRF kickoff meeting was held on July 18, 2011 at the beginning of the on-site file review. The kickoff meeting held in Lincoln, NE included the following attendees:

NDEQ Representatives	EPA Region 7 Representatives
Tom Lamberson, Deputy Director for Administration	Ed Buckner, RCRA Compliance Officer
David Haldeman, Administrator, Waste Management Division	Beth Koesterer, RCRA Compliance Officer
Bill Gidley, Waste Management Section Chief	Demetra Salisbury, RCRA Counsel
Jeffery Edwards, Compliance Unit Supervisor	Stacie Tucker, RCRA Compliance Officer
Stephanie Vap-Morrow, Grants Coordinator, Administration office	Jeannette Kerr, RCRA Grants (via telephone)

At the close of the on-site review, an Exit briefing was held with EPA and NDEQ personnel in attendance on July 20, 2011. The preliminary findings of the program review were discussed with NDEQ at that time. NDEQ management present at the briefing included Bill Gidley, Jeffery Edwards, and Stephanie Vap-Morrow. EPA staff included Donald Toensing, EPA R7 Waste Enforcement and Materials Management Branch Chief (via telephone), with Ed Buckner, Beth Koesterer, Demetra Salisbury, and Stacie Tucker.

- **List state and regional lead contacts for review.** Jeffery Edwards, Compliance Unit

Supervisor served as the state lead contact for this review. Stacie Tucker, Compliance Officer, EPA R7, AWMD/WEMM, served as EPA Region 7's lead contact for this RCRA SRF program review.

III. STATUS OF OUTSTANDING RECOMMENDATIONS FROM PREVIOUS REVIEWS

During Round 1 (FY2006) of the SRF review of NDEQ's RCRA compliance and enforcement programs, EPA Region 7 and NDEQ identified 3 actions to be taken to address issues found during the review. The table below (and in Appendix A) shows the status of progress toward completing those recommended actions.

State	Status	Due Date	Media	Element	Title	Finding
NE - Round 1	Completed, as of 12/30/2007	12/30/2007	RCRA	E7 – Penalty Calculations	Application of penalty policy	<p>Finding: Inconsistent application of state penalty policy</p> <p>Action Item: Develop SOP for application of state penalty policy; include AG in use of policy</p> <p>12/30/2007 Entry: R7 and NDEQ have discussed NDEQ's statutory penalty process during routinely held meetings. NDEQ raised the civil enforcement penalty assessment with the Nebraska AG. Subsequently, the Nebraska AG issued a civil and criminal enforcement process statement to R7. R7 will continue to evaluate NDEQ's penalties during future program reviews, according to the national penalty policy requirements.</p>
NE - Round 1	Completed, as of 12/30/2007	12/30/2007	RCRA	E8 – Penalties Collected	Application of penalty policy in case settlement	<p>Finding: settlement penalties are not consistent with state penalty policy</p> <p>Action Item: State program and AG offices should develop enforcement procedures to ensure state penalty policies are followed with regard to SEPs, economic benefit and penalty justification.</p> <p>12/30/2007 Entry: R7 and NDEQ have discussed NDEQ's statutory penalty process during routinely held meetings. NDEQ raised the civil enforcement penalty assessment with the Nebraska AG. Subsequently, the Nebraska AG issued a civil and criminal enforcement process statement to R7. R7 will continue to evaluate NDEQ's penalties during future program reviews, according to the national penalty policy requirements.</p>
NE - Round 1	Completed, as of 12/30/2007	12/30/2007	RCRA	E11 – Data Accurate	Penalty info in RCRAInfo	<p>Finding: Incomplete penalty information recorded in RCRAInfo</p> <p>Action Item: Obtain information from AG on case settlements and enter penalty info into RCRAInfo</p> <p>12/30/2007 Entry: Subsequent conference calls with the state ensured the data was entered.</p>

IV. FINDINGS

Resource Conservation and Recovery Act Program NDEQ 2011 SRF Findings and Recommendations

Element 1 — Data Completeness: Degree to which the Minimum Data Requirements are complete.																																				
1-1	This finding is a(n)	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required																																		
	Finding	NDEQ's data was complete overall, including minimum data requirements (MDRs) entered into RCRAInfo.																																		
	Explanation	<p>The NDEQ has placed an emphasis on data management and data accuracy, and the Compliance Section staff spend time ensuring that the minimum data required (MDRs) for RCRAInfo has been properly entered into the database.</p> <p>Only 1 file out of the 26 reviewed had data that was not entered by NDEQ for inspection-related data at the facility.</p> <p>The discrepancy appears to be an incident of input error or inadvertent omission. As such, EPA is bringing its concerns to NDEQ's attention so that NDEQ can address it.</p>																																		
	Metric(s) and Quantitative Value(s)	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>Data Metrics</u></th> <th style="text-align: right;"><u>Frozen RCRAInfo Data(in total numbers)</u></th> </tr> </thead> <tbody> <tr><td>1a1 – Operating TSDFs</td><td style="text-align: right;">3</td></tr> <tr><td>1a2 – Active LQGs</td><td style="text-align: right;">53</td></tr> <tr><td>1a3 – Active SQGs</td><td style="text-align: right;">387</td></tr> <tr><td>1a4 – All other sites in RCRAInfo</td><td style="text-align: right;">1,238</td></tr> <tr><td>1a5 – LQGs per latest official biennial report</td><td style="text-align: right;">52</td></tr> <tr><td>1b1 – Compliance monitoring (inspection types: CAC, CDL, CEI, CSE, FCI, GMI, and OAM) , (1 FY)</td><td style="text-align: right;">35</td></tr> <tr><td>1b2 – Compliance monitoring – sites inspected (1 FY)</td><td style="text-align: right;">35</td></tr> <tr><td>1c1 – Sites with violations determined at any time (1 FY)</td><td style="text-align: right;">35</td></tr> <tr><td>1c2 – Sites with violations determined during the FY</td><td style="text-align: right;">30</td></tr> <tr><td>1d1 – Informal actions – number of sites (1 FY)</td><td style="text-align: right;">30</td></tr> <tr><td>1d2 – Informal actions – number of actions (1 FY)</td><td style="text-align: right;">33</td></tr> <tr><td>1e1 – SNC – number of sites with new SNC (1 FY)</td><td style="text-align: right;">2</td></tr> <tr><td>1e2 – SNC – number of sites in SNC (1 FY)</td><td style="text-align: right;">4</td></tr> <tr><td>1f1 – Formal action - number of sites (1 FY)</td><td style="text-align: right;">1</td></tr> <tr><td>1f2 – Formal action - number taken (1 FY)</td><td style="text-align: right;">1</td></tr> <tr><td>1g – Total amount of final penalties (1 FY)</td><td style="text-align: right;">\$15,000</td></tr> </tbody> </table>	<u>Data Metrics</u>	<u>Frozen RCRAInfo Data(in total numbers)</u>	1a1 – Operating TSDFs	3	1a2 – Active LQGs	53	1a3 – Active SQGs	387	1a4 – All other sites in RCRAInfo	1,238	1a5 – LQGs per latest official biennial report	52	1b1 – Compliance monitoring (inspection types: CAC, CDL, CEI, CSE, FCI, GMI, and OAM) , (1 FY)	35	1b2 – Compliance monitoring – sites inspected (1 FY)	35	1c1 – Sites with violations determined at any time (1 FY)	35	1c2 – Sites with violations determined during the FY	30	1d1 – Informal actions – number of sites (1 FY)	30	1d2 – Informal actions – number of actions (1 FY)	33	1e1 – SNC – number of sites with new SNC (1 FY)	2	1e2 – SNC – number of sites in SNC (1 FY)	4	1f1 – Formal action - number of sites (1 FY)	1	1f2 – Formal action - number taken (1 FY)	1	1g – Total amount of final penalties (1 FY)	\$15,000
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	State Response	See Nebraska Department of Environmental Quality (NDEQ) response dated August 18, 2012 in Appendix H.																																		
	Recommendation(s)	No recommendations necessary																																		

Element 2 — Data Accuracy: Degree to which data reported in the national system is accurately entered and maintained.

2-1	This finding is a(n)	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required												
	Finding	NDEQ file records indicate that RCRA data is entered into RCRAInfo accurately.												
	Explanation	<p>NDEQ has data entry checks and balances in place. Records in the file indicate data accuracy, and short turnaround times for data entry.</p> <p>Only 1 file out of the 26 reviewed had data that lacked accurate entries for the NDEQ for inspection-related data at the facility.</p> <p>The data discrepancy that EPA observed in 1 file appeared to be an incident of input error or inadvertent omission. As such, EPA R7 discussed this concern with NDEQ during the Exit conference for the RCRA SRF program review on July 20, 2011. EPA R7 brought its concerns regarding this instance of RCRA data error to NDEQ’s attention at the time of the on-site file review so that NDEQ could address it.</p>												
	Metric(s) and Quantitative Value(s)	<table border="0"> <thead> <tr> <th style="text-align: left;"><u>Data Metrics</u></th> <th style="text-align: right;"><u>State (number of sites)</u></th> </tr> </thead> <tbody> <tr> <td>2a1 – SNC-determined on day of formal action (1 FY)</td> <td style="text-align: right;">0</td> </tr> <tr> <td>2a2 – SNC-determined on day of formal action (1 FY)</td> <td style="text-align: right;">0</td> </tr> <tr> <td>2b – SV sites in violation for greater than 240 days</td> <td style="text-align: right;">3</td> </tr> <tr> <td colspan="2"><u>File Review Metrics</u></td> </tr> <tr> <td>2c – Files with accurate data elements in RCRAInfo (percentage)</td> <td style="text-align: right;">25/26 = 96%</td> </tr> </tbody> </table>	<u>Data Metrics</u>	<u>State (number of sites)</u>	2a1 – SNC-determined on day of formal action (1 FY)	0	2a2 – SNC-determined on day of formal action (1 FY)	0	2b – SV sites in violation for greater than 240 days	3	<u>File Review Metrics</u>		2c – Files with accurate data elements in RCRAInfo (percentage)	25/26 = 96%
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<u>File Review Metrics</u>														
2c – Files with accurate data elements in RCRAInfo (percentage)	25/26 = 96%													
	State Response	See NDEQ response dated August 18, 2012 in Appendix H.												
	Recommendation(s)	No recommendations necessary												

Element 3 — Timeliness of Data Entry: Degree to which the Minimum Data Requirements are timely.

3-1	This finding is a(n)	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	NDEQ entered most of its Minimum Data Requirements (MDRs) into RCRAInfo within 60 days.
	Explanation	<p>EPA noted that the NDEQ SRF program review data from RCRAInfo did not change appreciably based on an analysis of the production metrics and frozen data sets. Data comparison indicated that 3 additional facilities were entered into RCRAInfo for Element 1a3 and 5 additional facilities were entered for Element 1a4.</p> <p>EPA R7 will continue to work with NDEQ to ensure the continued timeliness of data</p>

		entry into RCRAInfo, in light of the data entry cutoff that occurs at EPA at the end of each fiscal year on September 30 th .								
	Metric(s) and Quantitative Value(s)	<p>Data Metrics</p> <p>3a – SNCs that were entered into RCRAInfo < or = 60 days</p> <table border="1"> <thead> <tr> <th><u>National Goal</u></th> <th><u>National Average</u></th> <th><u>State</u></th> <th><u>EPA</u></th> </tr> </thead> <tbody> <tr> <td>N/A</td> <td>N/A</td> <td>66.7% (4 out of 6)</td> <td>100% (3 out of 3)</td> </tr> </tbody> </table> <p>3b – Percent change in each of the Element 1 data metrics between the frozen data set and the current data metrics results. (1 FY) 100%</p>	<u>National Goal</u>	<u>National Average</u>	<u>State</u>	<u>EPA</u>	N/A	N/A	66.7% (4 out of 6)	100% (3 out of 3)
<u>National Goal</u>	<u>National Average</u>	<u>State</u>	<u>EPA</u>							
N/A	N/A	66.7% (4 out of 6)	100% (3 out of 3)							
	State Response	See NDEQ response dated August 18, 2012 in Appendix H.								
	Recommendation(s)	No recommendations are necessary.								

Element 4 — Completion of Commitments: Degree to which all enforcement/compliance commitments in relevant agreements are met and any products or projects are completed.		
4-1	This finding is a(n)	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	NDEQ meets the requirements of all enforcement and compliance agreements with EPA, including those enforcement / compliance commitments in the PPA for FY2010.
	Explanation	<p>The state coordinated its inspection coverage with EPA R7 within its negotiated PPA work plan. NDEQ's FY2010 work plan included commitments for inspection of LQGs, SQGs, and operating TSDFs; as well as commitments for timely and appropriate enforcement response. During the review period (FY 2010), the state committed to conducting CEIs at 1 TSDF (Metric 5a1), 13 LQGs (Metric 5b1), and prioritized SQG sites (some facilities are represented in Metric 5d1).</p> <p>NDEQ made commitments in its PPG to enter all RCRA MDRs into RCRAInfo accurately and in a timely manner. Based on the data metrics and review of files (Elements 1 & 2), NDEQ maintained an accuracy and timeliness rate of over 95%.</p> <p>Among several others, NDEQ met the following commitments in its FY2010 workplan negotiated with EPA Region 7:</p> <ul style="list-style-type: none"> • Semi-annually performed focused CEIs and inspected all commercial TSDFs which received CERCLA waste. • Inspected all closing TSDFs as part of oversight of closure activities. • Inspected all active TSDFs biennially (every 2 years). • Inspected all active Federal TSDFs annually. • Inspected at least 10 LQGs annually. • Inspected 12 SQGs annually. • Performed RCRA screening inspections when appropriate, and entered required data on those inspections into the IIS (if ready) or directly into RCRAInfo within 30 days.

		<ul style="list-style-type: none"> Investigated all hazardous waste handlers found or suspected to be presenting an imminent threat to human health or the environment. Measured by the number of complaints received and resolved each year. Identified and responded to accidental and intentional hazardous substance releases. Eligible activities included receipt of notifications, data input of Biennial Reporting information into RCRAInfo, and State assignment of provisional RCRA identification numbers as necessary with acknowledgment letters of registration sent to generators. 	
	Metric(s) and Quantitative Value(s)	<u>File Review Metrics</u> 4a - Planned inspections completed 4b- Planned commitments completed	<u>Finding</u> 100% 95%
	State Response	See NDEQ response dated August 18, 2012 in Appendix H.	
	Recommendation(s)	No recommendations are necessary.	

Element 5 — Inspection Coverage: Degree to which state completed the universe of planned inspections/compliance evaluations.

5-1	This finding is a(n)	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required	
	Finding	NDEQ exceeded the national goals for LQG inspection coverage (1 FY) and the national average for LQG inspection coverage (5 FYs). However, NDEQ and EPA combined are below the National Goal of 100% for combined coverage of LQG inspection coverage (5 FY); combined NDEQ and EPA inspected 94.2% of the state's LQGs for a 5-year cycle.	
	Explanation	<p>NDEQ inspects each of its LQGs on a 5-year schedule, and continues to follow the SQG compliance initiative to conduct compliance evaluation inspections (CEIs) and compliance site visits at active SQGs to maintain a regulatory presence.</p> <p>NDEQ's inspection coverage for operating TSDFs (2 FYs) was below the national goal and average, but this is a small universe of facilities within the state. Combined NDEQ and EPA conducted 100% inspection coverage of the state's TSDFs for a 2-year cycle.</p> <p>A typical NDEQ CEI observes waste streams generated, evaluates rule and/or RCRA permit requirements, interviews employees, and reviews records. CEIs conducted by NDEQ met the EPA definition of CEI.</p> <p>Of the 3 LQG facilities not inspected in FY2010:</p> <ul style="list-style-type: none"> 1 facility's status changed to LQG in February 2010; 1 LQG received a CAV as a member of Performance Track in FY2010, despite the termination of the Performance Track Program a few months earlier; and <p>1 LQG changed status to an SQG in July 2009, and again in April 2010.</p>	
	Metric(s) and Quantitative Value(s)	<u>Data Metrics</u> 5a – Two-year TSD inspection coverage	<u>National Goal</u> <u>State</u> <u>State/EPA Combined</u> 100% 33% 100%

		5b – One-year LQG inspection coverage	20%	(1/3) 25.0%	(3/3) 28.8%
		5c – Five-year LQG inspection coverage	100%	(13/52) 78.8%	(15/52) 94.2%
		5d- Five-year active SQGs coverage	N/A	(41/52) 9.8%	(49/52) 16.3%
		5e1 – Five-year active CESQGs coverage	N/A	(38/387) 80	(63/387) 108
		5e2 – Five-year active transporters coverage	N/A	5	8
		5e3 – Five-year non-notifiers coverage	N/A	4	6
		5e4 –Inspections at other active sites	N/A	4	4
	State Response	See NDEQ response dated August 18, 2012 in Appendix H.			
	Recommendation(s)	No recommendations are necessary.			

Element 6 — Quality of Inspection or Compliance Evaluation Reports: Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.

6-1	This finding is a(n)	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	NDEQ inspection reports are accurate and properly document observations. However, only about half of the inspection reports reviewed were completed in a timely manner.
	Explanation	<p>NDEQ has made improvements to the inspection process since SRF Round 1. In general, the CEI reports have developed into mostly thorough reports that incorporate detailed observational narratives, compliance checklists, facility photographs, and supporting documentation for the records reviewed.</p> <p>In general, the NDEQ inspectors produce quality inspection reports that appear to be accurate and well organized, based on the 26 files reviewed on-site by EPA R7 during the RCRA SRF program review. Each of the inspection reports reviewed contained sufficient information for NDEQ compliance staff to make a RCRA compliance determination. Additional detail on facility processes and wastes generated would contribute to a more thorough report, in a few minor instances.</p> <p>Almost all of the files reviewed that had inspection reports (20 out of 21) had sufficient information in the inspection report or in the supporting correspondence to meet the minimum requirements for the inspection reports. 4 of the 21 inspection reports reviewed could have been better if they had included more detailed information on facility processes and wastes generated.</p> <p>Percentage of the inspection reports found to be timely during the EPA R7 review, 11 of the 21 CEI reports reviewed were completed within the determined timeframe of 30 days, and contained all of the CEI requirements listed in the <i>Enforcement Manual</i>, such that the inspection reports contained sufficient documentation to determine compliance at the facility. 10 of the CEI reports were delayed as final (10 out of 21 is 48%), while the supervisor reviewed and signed the documents to transmit the</p>

		<p>inspection report to the RCRA facility.</p> <p>EPA R7 review staff determined that a delay of 4-5 days in some instances is reasonable, considering the nature of the RCRA inspection field work, any additional follow-up work necessary, coordination for an inspection report to be peer reviewed, and getting the inspection report signed by a supervisor within 30 days.</p> <p>During the Exit interview, EPA R7 staff discussed the timely transmittal of the completed inspection report to the RCRA facility with NDEQ management. Generally, NDEQ's RCRA inspection reports are peer reviewed for completeness, and the supervisor signs the inspection report for transmittal to the RCRA facility within 30 days of the inspection being conducted.</p> <p>EPA R7 review staff and NDEQ management discussed the inspection report peer review process, and the time it took the supervisor to review and sign the report, so that the inspection could be timely transmitted to the RCRA facility. NDEQ conducted 35 CEI inspections in FY2010, of which EPA R7 staff reviewed 21 CEI inspection reports.</p> <p>In most instances where the reviewed inspection reports were not transmitted within the 30 day timeframe to the RCRA facility, there was a reasonable explanation for a delay of 4-5 days between having the drafted inspection report peer reviewed, finalized, and signed by the supervisor, such as a holiday, coordinating work or field schedules with a colleague or supervisor, and occasionally a medical absence. EPA R7 review staff observed one notable exception (1 out of 21 is 5%) beyond the 30 day timeframe, in which the inspection report was transmitted to the RCRA facility approximately 45 days late due to an inspector's extenuating medical circumstance.</p>
	<p>Metric(s) and Quantitative Value(s)</p>	<p>File Review Metrics</p> <p>6a – Number of inspection reports reviewed. 21</p> <p>6b – Percentage of inspection reports found to be complete 20/21 = 95%</p> <p>6c – Percentage of inspection reports found to be timely 11/21 = 52%</p> <p>Finding</p>
	<p>State Response</p>	<p>NDEQ commented that the Department disagrees that the waste descriptions are not detailed. The Department holds that the waste descriptions are accurate and specifically describe the wastes generated by the facilities inspected. See NDEQ response dated August 18, 2012 in Appendix H.</p>
	<p>Recommendation(s)</p>	<p>No recommendations are necessary.</p>

Element 7 — Identification of Alleged Violations: Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information.

7-1	<p>This finding is a(n)</p>	<p><input type="checkbox"/> Good Practice</p> <p><input checked="" type="checkbox"/> Meets SRF Program Requirements</p> <p><input type="checkbox"/> Area for State Attention</p> <p><input type="checkbox"/> Area for State Improvement – Recommendations Required</p>
	<p>Finding</p>	<p>NDEQ compliance determinations appear to be accurate and prompt. NDEQ continues to follow the inspection findings and compliance determination procedures established in its <i>NDEQ Enforcement Manual</i> (January 2002).</p>

	<p>Explanation</p>	<p>NDEQ utilizes a number of tools to determine compliance with RCRA requirements. In addition to CEIs, focused CEIs, and compliance assistance visits (CAVs), NDEQ provides clear return to compliance steps to facilities within state correspondence.</p> <p>NDEQ inspection staff conduct on-site inspections and draft the inspection reports. NDEQ compliance staff review the inspection reports, identify violations observed, and coordinate return to compliance with the facility. Since NDEQ compliance staff have utilized the compliance review approach, NDEQ has been able to identify RCRA violations that may not be evident during an on-site inspection.</p> <p>NDEQ includes prescriptive language in letters of warning (LOWs) or notices of violation (NOVs) that direct the violating facilities to return to compliance. For example, rather than issuing a template NOV or LOW that simply instructs a facility how to generally conduct a hazardous waste determination on a waste stream, NDEQ's NOVs and LOWs provide prescriptive instructions to the small or unsophisticated facility how to conduct a hazardous waste determination on a particular waste stream, which achieves a more effective return to compliance with RCRA regulations, and an understanding of the on-going RCRA compliance requirements by the RCRA regulated facility.</p> <p>The NDEQ annual inspection rate, which continues the SQG initiative to verify the compliance status of hazardous waste generators through on-site inspection, provides a greater regulator presence at the facilities in such a large universe (387 facilities). Such frequency may result in facilities not only understanding their regulatory requirements for RCRA compliance, but also the awareness that an inspector will be visiting them on a somewhat regular basis. For these reasons, an increased inspection frequency should result in a lower noncompliance rate within this larger universe of generators.</p> <p>EPA R7 review staff determined that for the Element 7 overall finding, NDEQ "Meets SRF Program Requirements;" because the majority of the data files reviewed in Metric 7c (30 of 35), as well as the 26 files reviewed on-site, showed that NDEQ's inspection process, peer review process, supervisor review, and concurrence generally identifies violations accurately at sites with inspections within a short turn-around time. For the 5 files that exceeded the 30 day timeframe in RCRAInfo, there was reasonable causes for each delay, such as coordinating peer and supervisor reviews of documents around NDEQ staffs' schedules, vacation or sick leave days, holidays, and the need for requesting additional information from the facilities inspecting, and coordinating information with other agencies.</p>										
	<p>Metric(s) and Quantitative Value(s)</p>	<table border="1"> <thead> <tr> <th data-bbox="516 1333 1234 1375"><u>File Review Metrics</u></th> <th data-bbox="1234 1333 1448 1375"><u>Finding</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="516 1375 1234 1438">7a – Percent of inspection reports reviewed that led to accurate compliance determinations.</td> <td data-bbox="1234 1375 1448 1438">95%</td> </tr> <tr> <td data-bbox="516 1438 1234 1501">7b –Percent of violation determinations reported within 150 days.</td> <td data-bbox="1234 1438 1448 1501">100%</td> </tr> <tr> <td colspan="2" data-bbox="516 1501 1448 1543"><u>Data Metrics</u></td> </tr> <tr> <td data-bbox="516 1543 1234 1596">7c –Violation identification rate at sites with inspection (1 FY)</td> <td data-bbox="1234 1543 1448 1596">85%</td> </tr> </tbody> </table>	<u>File Review Metrics</u>	<u>Finding</u>	7a – Percent of inspection reports reviewed that led to accurate compliance determinations.	95%	7b –Percent of violation determinations reported within 150 days.	100%	<u>Data Metrics</u>		7c –Violation identification rate at sites with inspection (1 FY)	85%
<u>File Review Metrics</u>	<u>Finding</u>											
7a – Percent of inspection reports reviewed that led to accurate compliance determinations.	95%											
7b –Percent of violation determinations reported within 150 days.	100%											
<u>Data Metrics</u>												
7c –Violation identification rate at sites with inspection (1 FY)	85%											
	<p>State Response</p>	<p>NDEQ commented that the Department believes it meets the 30 day timeframe for entering steps taken related to inspections and the included letters (LOWs, NOVs, or general compliance letters). See NDEQ response dated August 18, 2012 in Appendix H.</p>										
	<p>Recommendation(s)</p>	<p>No recommendations are necessary.</p>										

Element 8 — Identification of SNC and HPV: Degree to which the state accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner.

8-1	This finding is a(n)	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required								
	Finding	NDEQ's SNC discovery rate of 5.7% is above the national goal, and it's nearly twice the national average.								
	Explanation	<p>NDEQ's SNC discovery rate and file review indicates that NDEQ identifies SNC violations consistently and enters the information into RCRAInfo in a timely manner.</p> <p>EPA R7 discussed the SNC determination process with NDEQ during the Exit conference for the RCRA SRF program review on July 20, 2011. NDEQ and EPA R7 will continue to discuss and review enforcement actions, and coordinate SNC identification/interpretation during our bimonthly State-EPA conference calls.</p>								
	Metric(s) and Quantitative Value(s)	<p>Data Metrics</p> <table border="0"> <tr> <td>8a –SNC identification rate at sites with inspections (1 FY)</td> <td style="text-align: right;"><u>State</u> 2/35 =5.7%</td> </tr> <tr> <td>8b – Percent of SNC determinations made within 150 days (1 FY)</td> <td style="text-align: right;">2/2 = 100%</td> </tr> <tr> <td>8c – Percent of formal actions taken that received a prior SNC listing (1 FY)</td> <td style="text-align: right;">1/1 =100%</td> </tr> </table> <p>File Review Metrics</p> <table border="0"> <tr> <td>8d – Percent of violations accurately determined to be SNC.</td> <td style="text-align: right;">100%</td> </tr> </table>	8a –SNC identification rate at sites with inspections (1 FY)	<u>State</u> 2/35 =5.7%	8b – Percent of SNC determinations made within 150 days (1 FY)	2/2 = 100%	8c – Percent of formal actions taken that received a prior SNC listing (1 FY)	1/1 =100%	8d – Percent of violations accurately determined to be SNC.	100%
8a –SNC identification rate at sites with inspections (1 FY)	<u>State</u> 2/35 =5.7%									
8b – Percent of SNC determinations made within 150 days (1 FY)	2/2 = 100%									
8c – Percent of formal actions taken that received a prior SNC listing (1 FY)	1/1 =100%									
8d – Percent of violations accurately determined to be SNC.	100%									
	State Response	See NDEQ response dated August 18, 2012 in Appendix H.								
	Recommendation(s)	No recommendations are necessary.								

Element 9 — Enforcement Actions Promote Return to Compliance: Degree to which enforcement actions include required corrective action (i.e., injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.

9-1	This finding is a(n)	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	NDEQ's formal enforcement process include actions to bring facilities into compliance, however Nebraska's lack of administrative penalty authority requires that all formal enforcement actions that include penalties to be referred to the Nebraska Attorney General's Office (AG's Office) for judicial action.
	Explanation	<p>NDEQ formal enforcement actions focus on bringing the facility back into compliance. Three files were reviewed with penalty actions. One of the three enforcement actions reviewed is pending at the Nebraska AG's office.</p> <p>The NDEQ enforcement process is straightforward, but does not closely follow the <i>NDEQ Enforcement Manual</i> (2002). If a case needs formal compliance action, or will require a penalty, the NDEQ RCRA program staff prepares an enforcement referral to the NDEQ Legal Services Division. The NDEQ Legal Services Division has the</p>

		<p>authority to issue compliance orders if that is determined as the best course of action. If a penalty action is warranted, the NDEQ Legal Services Division develops the evidence necessary to refer an enforcement case to the Nebraska AG's office. Once the RCRA case is referred to the AG's office, NDEQ has little further input in the development and resolution of the case including: the ability to track enforcement progress; how final penalties are calculated (gravity and economic benefit); penalties collected; injunctive relief selected; possible SEPs; and any return to compliance milestones established in an enforcement action.</p> <ul style="list-style-type: none"> • According to the Nebraska's AG's Office, each RCRA enforcement case referral from NDEQ is reviewed on a case-by-case basis. NDEQ has a written penalty policy to assess RCRA penalties, but the AG's Office does not. The AG's Office stated that it assesses each enforcement referral on a case-by-case basis using the RCRA statutory factors to determine its proposed penalty. When settling a case, the AG's Office looks at how similar cases have historically been settled. • When the AG's Office attempts to reach settlement with a RCRA regulated facility, the AG's Office reviews how similar cases have been settled in the past. In 1 case, the AG's Office stated that the Respondent's counsel pointed out numerous issues with NDEQ's reasoning in the case, but there was no indication that NDEQ staff were given an opportunity by the AG's Office to respond to those issues. • The AG's Office has the option of two supplemental environmental project (SEP) avenues for violators to settle cases, by offsetting a penalty. The violator can put money into the Attorney General's Environment Protection Fund, or propose a project. The AG's office does not have a SEP policy. <p>NDEQ should coordinate closely with the AG's office to review and resolve the reason for the 2-3 year delays in the AG's office, including three case files reviewed for this report.</p> <p><i>See related recommendation in Elements 10, 11, and 12.</i></p>								
	<p>Metric(s) and Quantitative Value(s)</p>	<table border="1"> <thead> <tr> <th data-bbox="522 1083 1266 1113"><u>File Review Metrics</u></th> <th data-bbox="1266 1083 1442 1113"><u>State</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="522 1113 1266 1142">9a – Number of enforcement responses reviewed.</td> <td data-bbox="1266 1113 1442 1142">2</td> </tr> <tr> <td data-bbox="522 1142 1266 1201">9b – Percent of enforcement responses that have returned or will return a source in SNC to compliance.</td> <td data-bbox="1266 1142 1442 1201">1/3 = 33%</td> </tr> <tr> <td data-bbox="522 1201 1266 1260">9c – Percent of enforcement responses that have or will return Secondary Violators (SV's) to compliance.</td> <td data-bbox="1266 1201 1442 1260">1/3 = 33%</td> </tr> </tbody> </table>	<u>File Review Metrics</u>	<u>State</u>	9a – Number of enforcement responses reviewed.	2	9b – Percent of enforcement responses that have returned or will return a source in SNC to compliance.	1/3 = 33%	9c – Percent of enforcement responses that have or will return Secondary Violators (SV's) to compliance.	1/3 = 33%
<u>File Review Metrics</u>	<u>State</u>									
9a – Number of enforcement responses reviewed.	2									
9b – Percent of enforcement responses that have returned or will return a source in SNC to compliance.	1/3 = 33%									
9c – Percent of enforcement responses that have or will return Secondary Violators (SV's) to compliance.	1/3 = 33%									
	<p>State Response</p>	<p>See NDEQ response dated August 18, 2012 in Appendix H.</p>								
	<p>Recommendation(s)</p>	<p>By March 31, 2013, NDEQ's RCRA program, along with NDEQ Legal Services Division counsel, should develop a proposal to better coordinate with the AG's Office for returning facilities to compliance in a timely manner. The plan should include how to address the enforcement process outside of NDEQ, so that the extensive delays in the AG's Office do not continue. The discussion needs to include a plan to improve the outcome of the enforcement cases, as they are affected by the current enforcement process, and for the AG's Office to provide documentation for the NDEQ files as to how a case was ultimately resolved. NDEQ needs to provide a copy of the proposal with a timeframe for implementation to EPA R7 by March 31, 2013.</p>								

Element 10 — Timely and Appropriate Action: Degree to which state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.

10-1	This finding is a(n)	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required												
	Finding	50% of NDEQ’s SNC Enforcement actions meet timeliness goals.												
	Explanation	<p>The OTIS data pull shows that only 50% of the state SNCs met timeliness goals for the previous fiscal year. This is below the national goal of 80%, but above the national average of 45.6%.</p> <p>Please see the discussion of the NDEQ enforcement program in element #9.</p> <p><i>See related recommendation in Elements 9, 11, and 12.</i></p>												
	Metric(s) and Quantitative Value(s)	<table border="0"> <tr> <td><u>Data Metrics</u></td> <td style="text-align: right;"><u>State</u></td> </tr> <tr> <td>10a- Timely action taken to address SNC</td> <td style="text-align: right;">1/2 = 50%</td> </tr> <tr> <td>10b –number of formal actions taken by state in fiscal year (1 FY)</td> <td style="text-align: right;">1</td> </tr> <tr> <td colspan="2"><u>File Review Metrics</u></td> </tr> <tr> <td>10c – Percent of enforcement responses taken in a timely manner.</td> <td style="text-align: right;">1/3 = 33%</td> </tr> <tr> <td>10d – Percent of enforcement responses appropriate to the violations.</td> <td style="text-align: right;">1/3 = 33%</td> </tr> </table>	<u>Data Metrics</u>	<u>State</u>	10a- Timely action taken to address SNC	1/2 = 50%	10b –number of formal actions taken by state in fiscal year (1 FY)	1	<u>File Review Metrics</u>		10c – Percent of enforcement responses taken in a timely manner.	1/3 = 33%	10d – Percent of enforcement responses appropriate to the violations.	1/3 = 33%
<u>Data Metrics</u>	<u>State</u>													
10a- Timely action taken to address SNC	1/2 = 50%													
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<u>File Review Metrics</u>														
10c – Percent of enforcement responses taken in a timely manner.	1/3 = 33%													
10d – Percent of enforcement responses appropriate to the violations.	1/3 = 33%													
	State Response	See NDEQ response dated August 18, 2012 in Appendix H.												
	Recommendation(s)	By March 31, 2013, NDEQ’s RCRA program, along with NDEQ Legal Services Division counsel, should develop a proposal to better coordinate with the AG’s Office in taking timely and appropriate enforcement actions. The proposal should include provisions that allow NDEQ meaningful participation with the AG’s Office in initiating and resolving enforcement cases that are referred to the AG. NDEQ needs to provide a copy of the proposal with a timeframe for implementation to EPA R7 by March 31, 2013.												

Element 11 — Penalty Calculation Method: Degree to which state documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.

11-1	This finding is a(n)	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
	Finding	Penalty calculation documentation in the file did not include economic benefit calculations.
	Explanation	<p>NDEQ’s penalty policy does provide for consideration of economic benefit in addition to a gravity portion of a proposed penalty. However, NDEQ program files reviewed did not contain documentation of proposed penalties, revised penalties, or that economic benefit was considered or calculated when determining proposed penalties.</p> <p>According to the NDEQ enforcement process, the NDEQ Legal Services Division calculates a “base” penalty, prior to sending the enforcement referral to the AG’s Office; however, there was no evidence in the 3 enforcement files reviewed that showed the following calculations for each facility: (1) a proposed penalty, (2) a revised penalty, (3) a gravity component, or (4) economic benefit for the final</p>

		<p>penalties assessed.</p> <p>Penalty calculation documentation is a recurring issue for NDEQ enforcement actions. According to the NDEQ program review report from the FY2006 review, “The legal department does not consistently apply the [enforcement] policy when calculating civil penalties, which are part of the referral documentation that is provided to the AG’s Office. Program staff are not routinely consulted regarding the calculation of civil penalties in the hazardous waste program.” This same comment holds true for this program review.</p> <p>In cases referred to NDEQ Legal Services Division staff for formal enforcement action, there appears to be little opportunity for the RCRA program staff to review or provide input to the Legal staff on the calculation of the penalty or the preparation of the referral package to the AG’s Office. Closer consultation during this process, utilizing the program expertise of the RCRA program staff, might address evidentiary or regulatory determination questions that could arise later.</p> <p>Based on the 3 enforcement files reviewed, the lack of documentation in the file indicated that the NDEQ did not calculate the economic benefit gained through noncompliance, nor was there justification for a lack of the economic benefit component in the initial penalty.</p> <p>NDEQ files need to include documentation within the file regarding whether, and how, penalties, gravity, and economic benefit are assessed, regardless of which NDEQ staff (program staff or Legal department) calculates or assesses the penalty for the enforcement action. NDEQ files need to include documentation, such as copies, of the same information from the AG’s office.</p> <p><i>See related recommendation in Elements 9, 10, and 12.</i></p>
	<p>Metric(s) and Quantitative Value(s)</p>	<p><u>File Review Metrics</u> <u>State</u></p> <p>11a – Percent of penalty calculations reviewed that consider and include where appropriate gravity and economic benefit. 0/3 = 0%</p>
	<p>State Response</p>	<p>See NDEQ response dated August 18, 2012 in Appendix H.</p>
	<p>Recommendation(s)</p>	<p>By March 31, 2013, NDEQ’s RCRA program, along with NDEQ Legal Services Division counsel, should develop a proposal to better coordinate with the AG’s Office in documenting the penalty calculated in enforcement actions, and State needs to add gravity and Economic Benefit in the files. The proposal should include provisions that allow NDEQ meaningful participation with the AG’s Office in initiating and resolving enforcement cases that are referred to the AG. NDEQ needs to provide a copy of the proposal with a timeframe for implementation to EPA R7 by March 31, 2013.</p>

<p>Element 12 — Final Penalty Assessment and Collection: Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.</p>		
		<p><input type="checkbox"/> Good Practice</p> <p><input type="checkbox"/> Meets SRF Program Requirements</p> <p><input type="checkbox"/> Area for State Attention</p> <p><input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required</p>
<p>12-1</p>	<p>This finding is a(n)</p>	
	<p>Finding</p>	<p>Differences between initial and final penalty, as well as the final penalty collected are not documented in the NDEQ files.</p>

	Explanation	<p>NDEQ RCRA program staff prepares enforcement referrals to the NDEQ Legal Services Division when a case will require formal compliance and/or a penalty action. If a penalty action is warranted, the NDEQ Legal Services Division analyzes the evidence and prepares a referral (including the calculation for a “base” penalty) to an enforcement case to the AG’s office.</p> <p>Once the RCRA enforcement case is referred to the AG’s office, NDEQ program and legal staff have little input in the development and resolution of the case including: the ability to track enforcement progress; how final penalties are calculated (gravity and economic benefit); when or how much penalties are collected; injunctive relief selected; possible SEPs; and any return to compliance milestones established in an enforcement action.</p> <p>Based on the 3 enforcement files reviewed, the NDEQ Legal Services Division’s proposed penalties sent forward to the AG should be justified. In many cases, penalties proposed by NDEQ program staff were reduced by Legal staff during case development without NDEQ program staff being consulted further. Reasons for such reductions need justification and documentation in the enforcement files.</p> <p>In 1 of the 3 enforcement files reviewed, the full penalty was held in abeyance for the facility to return to compliance. There was little justification provided by the AG’s office for this enforcement strategy in the NDEQ files, other than a copy of the enforcement order, which did not provide any reasons for penalty reduction. There was no documentation of the initial penalty, any revised penalties, nor documentation whether economic benefit was considered prior to the abeyance.</p> <p><i>See related recommendation in Elements 9, 10, and 11.</i></p>														
	Metric(s) and Quantitative Value(s)	<table border="0"> <tr> <td><u>Data Metrics</u></td> <td style="text-align: right;"><u>State</u></td> </tr> <tr> <td colspan="2"><u>12a: No activity indicator – penalties</u></td> </tr> <tr> <td>12a – No penalties taken by state in fiscal year (1 FY)</td> <td style="text-align: right;">\$15,000</td> </tr> <tr> <td>12b – Percent of final formal enforcement actions that carry any penalty in last fiscal year (1 FY)</td> <td style="text-align: right;">1/1 = 100%</td> </tr> <tr> <td colspan="2"><u>File Review Metrics</u></td> </tr> <tr> <td>12a – Percent of formal enforcement responses that document the difference and rationale between for the initial and final assessed penalty.</td> <td style="text-align: right;">0/3 = 0%</td> </tr> <tr> <td>12b – Percent of enforcement files that document collection of penalty.</td> <td style="text-align: right;">0/3 = 0%</td> </tr> </table>	<u>Data Metrics</u>	<u>State</u>	<u>12a: No activity indicator – penalties</u>		12a – No penalties taken by state in fiscal year (1 FY)	\$15,000	12b – Percent of final formal enforcement actions that carry any penalty in last fiscal year (1 FY)	1/1 = 100%	<u>File Review Metrics</u>		12a – Percent of formal enforcement responses that document the difference and rationale between for the initial and final assessed penalty.	0/3 = 0%	12b – Percent of enforcement files that document collection of penalty.	0/3 = 0%
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12b – Percent of enforcement files that document collection of penalty.	0/3 = 0%															
	State Response	See NDEQ response dated August 18, 2012 in Appendix H.														
	Recommendation(s)	By March 31, 2013, NDEQ’s RCRA program, along with NDEQ Legal Services Division counsel, should develop a proposal to better coordinate with the AG’s Office in taking enforcement that provides NDEQ with documentation on the assessed and collected penalty of each enforcement action. The proposal should include provisions that allow NDEQ meaningful participation with the AG’s Office in initiating and resolving enforcement cases that are referred to the AG. NDEQ needs to provide a copy of the proposal with a timeframe for implementation to EPA R7 by March 31, 2013.														

V. APPENDICES

APPENDIX A: STATUS OF RECOMMENDATIONS FROM PREVIOUS REVIEWS

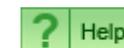
During the first SRF review of Nebraska’s compliance and enforcement programs, Region 7 and Nebraska identified a number of actions to be taken to address issues found during the review. The table below shows the status of progress toward completing those actions.

State	Status	Due Date	Media	Element	Title	Finding
NE - Round 1	Completed, as of 12/30/2007	12/30/2007	RCRA	E7 – Penalty Calculations	Application of penalty policy	<p>Finding: Inconsistent application of state penalty policy</p> <p>Action Item: Develop SOP for application of state penalty policy; include AG in use of policy</p> <p>12/30/2007: R7 and NDEQ have discussed NDEQ’s statutory penalty process during routinely held meetings. NDEQ raised the civil enforcement penalty assessment with the Nebraska AG. Subsequently, the Nebraska AG issued a civil and criminal enforcement process statement to R7. R7 will continue to evaluate NDEQ’s penalties during future program reviews, according to the national penalty policy requirements.</p>
NE - Round 1	Completed, as of 12/30/2007	12/30/2007	RCRA	E8 – Penalties Collected	Application of penalty policy in case settlement	<p>Finding: settlement penalties are not consistent with state penalty policy</p> <p>Action Item: State program and AG offices should develop enforcement procedures to ensure state penalty policies are followed with regard to SEPs, economic benefit and penalty justification.</p> <p>12/30/2007: R7 and NDEQ have discussed NDEQ’s statutory penalty process during routinely held meetings. NDEQ raised the civil enforcement penalty assessment with the Nebraska AG. Subsequently, the Nebraska AG issued a civil and criminal enforcement process statement to R7. R7 will continue to evaluate NDEQ’s penalties during future program reviews, according to the national penalty policy requirements.</p>
NE - Round 1	Completed, as of 12/30/2007	12/30/2007	RCRA	E11 – Data Accurate	Penalty info in RCRAInfo	<p>Finding: Incomplete penalty information recorded in RCRAInfo</p> <p>Action Item: Obtain information from AG on case settlements and enter penalty info into RCRAInfo</p> <p>12/30/2007: Subsequent conference calls with the state ensured the data was entered.</p>

APPENDIX B: OFFICIAL DATA PULL

OTIS State Review Framework Results

RCRA Data for Nebraska (Review Period Ending: FY10)



Metrics Information

Please note: For display purposes, some important explanatory details about the data metrics are not included on the metrics results screen. To see detailed information about each data metric, refer to the data metrics informational spreadsheet or data metrics plain language guide when reviewing the data - all SRF guidance is available on the [OTIS SRF documents page](#). The [data problems page](#) indicates any known data metrics issues.

Metric	Metric Type	Agency	National Goal	National Average	Production FY 2010 Data (Data Refresh Dates)				Frozen FY 2010 Data (Frozen Refresh Dates)			
					Nebraska (Metric=x/y) ⁰	Count (x)	Universe (y)	Not Counted (y-x)	Nebraska (Metric=x/y) ⁰	Count (x)	Universe (y)	Not Counted (y-x)
1. Data completeness. degree to which the minimum data requirements are complete.												
0 Recommendations												
A	Number of operating TSDFs in RCRAInfo	Data Quality	State		3	NA	NA	NA	3	NA	NA	NA
	Number of active LQGs in RCRAInfo	Data Quality	State		53	NA	NA	NA	53	NA	NA	NA
	Number of active SQGs in RCRAInfo	Data Quality	State		390	NA	NA	NA	387	NA	NA	NA
	Number of all other active sites in RCRAInfo	Data Quality	State		1,243	NA	NA	NA	1,238	NA	NA	NA
	Number of LQGs per latest official biennial report	Data Quality	State		52	NA	NA	NA	52	NA	NA	NA
B	Compliance monitoring: number of inspections (1 FY)	Data Quality	State		35	NA	NA	NA	35	NA	NA	NA
			EPA		20	NA	NA	NA	20	NA	NA	NA
	Compliance monitoring: sites inspected (1 FY)	Data Quality	State		35	NA	NA	NA	35	NA	NA	NA
			EPA		20	NA	NA	NA	20	NA	NA	NA
C	Number of sites with violations determined at any time (1 FY)	Data Quality	State		35	NA	NA	NA	35	NA	NA	NA
			EPA		26	NA	NA	NA	27	NA	NA	NA
	Number of sites with violations determined during the FY	Data Quality	State		30	NA	NA	NA	30	NA	NA	NA
			EPA		16	NA	NA	NA	16	NA	NA	NA
D	Informal actions: number of sites (1 FY)	Data Quality	State		30	NA	NA	NA	30	NA	NA	NA
			EPA		16	NA	NA	NA	16	NA	NA	NA
	Informal actions: number of actions (1 FY)	Data Quality	State		33	NA	NA	NA	33	NA	NA	NA
			EPA		16	NA	NA	NA	16	NA	NA	NA
E	SNC: number of sites with new SNC (1 FY)	Data Quality	State		2	NA	NA	NA	2	NA	NA	NA
			EPA		0	NA	NA	NA	0	NA	NA	NA
	SNC: Number of sites in SNC (1 FY)	Data Quality	State		4	NA	NA	NA	4	NA	NA	NA
			EPA		6	NA	NA	NA	6	NA	NA	NA

F	Formal action: number of sites (1 FY)	Data Quality	State			<u>1</u>	NA	NA	NA	<u>1</u>	NA	NA	NA
			EPA			<u>2</u>	NA	NA	NA	<u>2</u>	NA	NA	NA
	Formal action: number taken (1 FY)	Data Quality	State			<u>1</u>	NA	NA	NA	<u>1</u>	NA	NA	NA
			EPA			<u>2</u>	NA	NA	NA	<u>2</u>	NA	NA	NA
G	Total amount of final penalties (1 FY)	Data Quality	State			<u>\$15,000</u>	NA	NA	NA	<u>\$15,000</u>	NA	NA	NA
			EPA			<u>\$150,000</u>	NA	NA	NA	<u>\$150,000</u>	NA	NA	NA
2. Data accuracy, degree to which the minimum data requirements are accurate. 1 Recommendation(s)													
A	Number of sites SNC-determined on day of formal action (1 FY)	Data Quality	State			0	NA	NA	NA	0	NA	NA	NA
			State			0	NA	NA	NA	0	NA	NA	NA
B	Number of sites in violation for greater than 240 days	Data Quality	State			<u>3</u>	NA	NA	NA	<u>3</u>	NA	NA	NA
			EPA			<u>12</u>	NA	NA	NA	<u>13</u>	NA	NA	NA
3. Timeliness of data entry, degree to which the minimum data requirements are complete. 0 Recommendations													
A	Percent SNCs entered ≥ 60 days after designation (1 FY) ¹	Review Indicator	State			66.7%	<u>4</u>	6	<u>2</u>	66.7%	<u>4</u>	6	<u>2</u>
			EPA			100.0%	<u>3</u>	3	0	100.0%	<u>3</u>	3	0
B	Comparison of Frozen Data Set	Compare the production data results under Element 1 to the frozen data. Please see Plain Language Guide for details.											
5. Inspection coverage, degree to which state completed the universe of planned inspections/compliance evaluations. 0 Recommendations													
A	Inspection coverage for operating TSDFs (2 FYs)	Goal	State	100%	87.8%	33.3%	<u>1</u>	3	<u>2</u>	33.3%	<u>1</u>	3	<u>2</u>
			Combined	100%	92.9%	100.0%	<u>3</u>	3	0	100.0%	<u>3</u>	3	0
B	Inspection coverage for LQGs (1 FY)	Goal	State	20%	24.3%	25.0%	<u>13</u>	52	<u>39</u>	25.0%	<u>13</u>	52	<u>39</u>
			Combined	20%	26.1%	28.8%	<u>15</u>	52	<u>37</u>	28.8%	<u>15</u>	52	<u>37</u>
C	Inspection coverage for LQGs (5 FYs)	Goal	State	100%	61.8%	78.8%	<u>41</u>	52	<u>11</u>	78.8%	<u>41</u>	52	<u>11</u>
			Combined	100%	66.5%	94.2%	<u>49</u>	52	<u>3</u>	94.2%	<u>49</u>	52	<u>3</u>
D	Inspection coverage for active SQGs (5 FYs)	Informational Only	State			10.0%	<u>39</u>	390	<u>351</u>	9.8%	<u>38</u>	387	<u>349</u>
			Combined			16.4%	<u>64</u>	390	<u>326</u>	16.3%	<u>63</u>	387	<u>324</u>
E	Inspections at active CESQGs (5 FYs)	Informational Only	State			<u>81</u>	NA	NA	NA	<u>80</u>	NA	NA	NA
			Combined			<u>109</u>	NA	NA	NA	<u>108</u>	NA	NA	NA
	Inspections at active transporters (5 FYs)	Informational Only	State			<u>5</u>	NA	NA	NA	<u>5</u>	NA	NA	NA
			Combined			<u>8</u>	NA	NA	NA	<u>8</u>	NA	NA	NA
	Inspections at non-notifiers (5 FYs)	Informational Only	State			<u>4</u>	NA	NA	NA	<u>4</u>	NA	NA	NA
			Combined			<u>6</u>	NA	NA	NA	<u>6</u>	NA	NA	NA
	Inspections at active sites other than those listed in 5a-d and 5e1-5e3 (5 FYs)	Informational Only	State			<u>4</u>	NA	NA	NA	<u>4</u>	NA	NA	NA
			Combined			<u>4</u>	NA	NA	NA	<u>4</u>	NA	NA	NA

7. Identification of alleged violations. degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information. 0 Recommendations													
C	Violation identification rate at sites with inspections (1 FY)	Review Indicator	State			85.7%	30	35	5	85.7%	30	35	5
			EPA			80.0%	16	20	4	80.0%	16	20	4
8. Identification of SNC and HPV. degree to which the state accurately identifies significant noncompliance & high priority violations and enters information into the national system in a timely manner. 0 Recommendations													
A	SNC identification rate at sites with inspections (1 FY)	Review Indicator	State	1/2 National Avg	2.7%	5.7%	2	35	33	5.7%	2	35	33
			Combined	1/2 National Avg	2.9%	3.7%	2	54	52	3.7%	2	54	52
B	Percent of SNC determinations made within 150 days (1 FY)	Goal	State	100%	83.0%	100.0%	2	2	0	100.0%	2	2	0
			EPA	100%	71.4%	0 / 0	0	0	0	0 / 0	0	0	0
C	Percent of formal actions taken that received a prior SNC listing (1 FY)	Review Indicator	State	1/2 National Avg	62.1%	100.0%	1	1	0	100.0%	1	1	0
			EPA	1/2 National Avg	72.7%	100.0%	1	1	0	100.0%	1	1	0
10. Timely and appropriate action. degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media. 0 Recommendations													
A	Percent of SNCs with formal action/referral taken within 360 days (1 FY)	Review Indicator	State	80%	45.6%	50.0%	1	2	1	50.0%	1	2	1
			Combined	80%	41.5%	50.0%	1	2	1	50.0%	1	2	1
B	No activity indicator - number of formal actions (1 FY)	Review Indicator	State			1	NA	NA	NA	1	NA	NA	NA
12. Final penalty assessment and collection. degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected. 1 Recommendation(s)													
A	No activity indicator - penalties (1 FY)	Review Indicator	State			\$15,000	NA	NA	NA	\$15,000	NA	NA	NA
B	Percent of final formal actions with penalty (1 FY)	Review Indicator	State	1/2 National Avg	80.5%	100.0%	1	1	0	100.0%	1	1	0
			Combined	1/2 National Avg	78.6%	66.7%	2	3	1	66.7%	2	3	1

[Save Results \(a comma delimited text file\)](#)

[Save Results \(Excel file\)](#)

Report Generated on 6/13/2011
[Data Refresh Dates](#)

Note: EPA Regions must archive the state official data set (first results screen) used for a state review, as these data cannot be reproduced at a later date. SRF data metrics results may change as data are updated in AFS, ICIS, PCS, and RCRAInfo. The above data set may be saved in Excel or comma delimited text format by clicking on the appropriate Save Results link above. Drilldown tables that are linked from this page also cannot be exactly reproduced after a new data refresh occurs if the state has entered or changed data. OECA does not require regions to save the drilldown facility lists in order to document their review; however, if potential problem areas are identified through regional analysis or via state dialogue, the region may want to save selected drilldown lists.

General Notes:

* Blue-shaded rows denote that the metric was pulled manually.

APPENDIX C: PDA TRANSMITTAL LETTER

Appendices C, D, and E provide the results of the Preliminary Data Analysis (PDA). The Preliminary Data Analysis forms the initial structure for the SRF report, and helps ensure that the data metrics are adequately analyzed prior to the on-site review.

This is a critical component of the SRF process because it allows the reviewers to be prepared and knowledgeable about potential problem areas before the on-site review. In addition, it gives the region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metric results.

This section, Appendix C, contains the letter transmitting the results of the Preliminary Data Analysis to the state. This letter identifies areas that the data review suggests the need for further examination and discussion during the review process.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

Mr. David Haldeman, Administrator
Waste Management Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922

JUN 21 2011

Subject: Performance Partnership Agreement #BG99732506 Program Review

Dear Mr. Haldeman:

The purpose of this letter is to confirm that the annual program evaluation of the Resource Conservation and Recovery Act (RCRA) Hazardous Waste Management Program will be performed by the U.S. Environmental Protection Agency (EPA), Region 7. As discussed, the review will take place July 18-20, 2011; with an emphasis on activities in FFY and Calendar year 2010.

This year's enforcement review will be performed at your office by Stacie Tucker, Beth Koesterer, Ed Buckner, and Demetra Salisbury. We would like to schedule an opening briefing with you and your staff for 1:30 p.m. on July 18, 2011. The file review will begin on Monday, July 18th and continue through the afternoon of July 20th.

An exit briefing is planned for Wednesday July 20, from 2:00 - 4:00 p.m., in which Don Toensing will join by telephone conference. We request that the hazardous waste inspection and enforcement files for the enclosed list of facilities be available during the program review visit.

The Program Review Checklists for inspection and enforcement are attached. EPA requests that you designate a staff person to serve as the point of contact for issues relating to our program review. If you or your staff have successes or matters of concern that you would like EPA to specifically address or recognize in this part of the program review, please provide this information to EPA during the program visit.

We will issue a draft report within 30 days after the review components have been completed, and request that you provide a written response to the report within 30 days of receipt. After resolution of any issues, we will issue a final report within 60 days of receipt of your final response. If you have any questions or comments regarding this program review, please contact Jeannette Kerr of my staff at (913) 551-7245.

Thank you for your assistance.

Sincerely,

Don Toensing, Chief
Waste Enforcement and Materials Management Branch
Air and Waste Management Division

Enclosures: State Review Framework Preliminary Data Analysis
List of facilities
Inspection and enforcement review checklists (2)

cc: Mr. Mike Linder, Director, Nebraska Department of Environmental Quality



APPENDIX D: PRELIMINARY DATA ANALYSIS CHART

This section provides the results of the Preliminary Data Analysis (PDA). The Preliminary Data Analysis forms the initial structure for the SRF report and helps ensure that the data metrics are adequately analyzed prior to the on-site review. This is a critical component of the SRF process because it allows the reviewers to be prepared and knowledgeable about potential problem areas before initiating the on-site portion of the review. In addition, it gives the region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metrics results.

The PDA reviews each data metric and evaluates state performance against the national goal or average, if appropriate. The PDA chart in this section of the SRF report only includes metrics where potential concerns or areas of exemplary performance are identified. (The full PDA worksheet in Appendix E contains every metric: positive, neutral, or negative.) Initial Findings indicate the observed results. Initial Findings are preliminary observations. They are used as a basis for further investigation that takes place during the file review and through dialogue with the state. Final Findings are developed only after evaluating them against the file review results where appropriate, and dialogue with the state have occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

RCRA

Original Data Pulled from Online Tracking Information System (OTIS)							EPA Preliminary Analysis
Metric	Metric Description	Metric Type	Agency	National Goal	National Average	State Metric	Initial Findings
2a1-S	Number of sites SNC-determined on day of formal action (1 FY)	Data Quality	State	-	-	0	N/A
2a2-S	Number of sites SNC-determined within one week of formal action (1 FY)	Data Quality	State	-	-	0	N/A
2b0-S	Number of sites in violation for greater than 240 days	Data Quality	State	-	-	3	N/A
3a0-S	Percent SNCs entered \geq 60 days after designation (1 FY)	Review Indicator	State	-	-	66.7%	The data indicates that SNCs are generally reported in a timely manner (SNC policy requires SNCs be reported within 60 days of Day Zero).
5a0-S	Inspection coverage for operating TSDFs (2 FYs)	Goal	State	100%	87.8%	33.3%	See 5a0-C explanation.
5a0-C	Inspection coverage for operating TSDFs (2 FYs)	Goal	Combined	100%	92.9%	100.0%	EPA R7 coordinated inspection coverage with Nebraska for full coverage of TSDFs within FY2010.
5b0-S	Inspection coverage for LQGs (1 FY)	Goal	State	20%	24.3%	25.0%	Nebraska met its inspection commitments for FY2010. The results indicate that Nebraska has exceeded the national goal, and it's LQG inspection coverage is above the national average.

5c0-S	Inspection coverage for LQGs (5 FYs)	Goal	State	100%	61.8%	78.8%	See 5c0-C explanation.
5c0-C	Inspection coverage for LQGs (5 FYs)	Goal	Combined	100%	66.5%	94.2%	EPA R7 and Nebraska coordinate inspection coverage with Nebraska for full coverage of LQGs within a 5 FY cycle. Priority is given to recurring violators, or facilities that affect human health and the environment.
5d0-S	Inspection coverage for active SQGs (5 FYs)	Informational Only	State	-	-	9.8%	38 CEIs out of 387 SQGs were entered in RCRAInfo across the past 5 FYs. This reported value seems low for a 5 FY cycle, compared to other data, and NDEQ's SQG inspection initiative. EPA R7 and Nebraska coordinate inspection coverage with Nebraska for representative coverage of SQGs within a 5 FY cycle. Priority is given to recurring violators, or facilities that affect human health and the environment.
5e1-S	Inspections at active CESQGs (5 FYs)	Informational Only	State	-	-	80	80 CEIs at CESQGs within a 5 FY cycle indicates that Nebraska maintains a strong compliance presence among even the smallest hazardous waste generating facilities.
5e2-S	Inspections at active transporters (5 FYs)	Informational Only	State	-	-	5	N/A
5e3-S	Inspections at non-notifiers (5 FYs)	Informational Only	State	-	-	4	N/A
5e4-S	Inspections at active sites other than those listed in 5a-d and 5e1-5e3 (5 FYs)	Informational Only	State	-	-	4	N/A
7c0-S	Violation identification rate at sites with inspections (1 FY)	Review Indicator	State	-	-	85.7%	30 out of 35 Nebraska's internal process works well. Compliance Section staff identify violations using the inspection report documents, the CEI report observations, photos, inspector's comments, and any concerns noted in the report. The Compliance Section lists steps required to return the facility to compliance, when they issue the LOWs with the inspection report to the facility.
7c0-E	Violation identification rate at sites with inspections (1 FY)	Review Indicator	EPA	-	-	80.0%	16 out of 20
8a0-S	SNC identification rate at sites with inspections (1 FY)	Review Indicator	State	> 1/2 National Average	2.7%	5.7%	2 out of 35 Nebraska identifies SNCs at over twice the national average for SNC identification.
8a0-C	SNC identification rate at sites with inspections (1 FY)	Review Indicator	Combined	> 1/2 National Average	2.9%	3.7%	2 out of 54 EPA R7 and Nebraska discuss SNC facilities and upcoming enforcement actions during bimonthly calls.
8b0-S	Percent of SNC determinations made within 150 days (1 FY)	Goal	State	100%	83.0%	100.0%	2 out of 2 Nebraska met the national goal for SNC determinations within 150 days.

8b0-E	Percent of SNC determinations made within 150 days (1 FY)	Goal	EPA	100%	71.4%	0/0	0 out of 0
8c0-S	Percent of formal actions taken that received a prior SNC listing (1 FY)	Review Indicator	State	> 1/2 National Average	62.1%	100.0%	1 out of 1 Nebraska takes formal actions at facilities with a prior SNC listing more frequently than the national average. Additional files at non-SNC facilities with enforcement actions will be randomly selected to examine whether Nebraska is applying the national SNC policy appropriately.
8c0-E	Percent of formal actions taken that received a prior SNC listing (1 FY)	Review Indicator	EPA	> 1/2 National Average	72.7%	100.0%	1 out of 1
10a0-S	Percent of SNCs with formal action/referral taken within 360 days (1 FY)	Review Indicator	State	80%	45.6%	50.0%	1 out of 2 This metric indicates that formal enforcement actions at SNC facilities don't generally occur within one year of the violation date. This metric indicates the timeline issue related to the enforcement process between NDEQ and the Nebraska AG's Office.
10a0-C	Percent of SNCs with formal action/referral taken within 360 days (1 FY)	Review Indicator	Combined	80%	41.5%	50.0%	1 out of 2
10b0-S	No activity indicator - number of formal actions (1 FY)	Review Indicator	State	-	-	1	N/A
12a0-S	No activity indicator - penalties (1 FY)	Review Indicator	State	-	-	\$15,000	It appears that this penalty was calculated for 1 case. Need to see if the enforcement action has initial and final penalty calculations in the file. Need to review for the following penalty supporting documentation: -Were penalty justifications documented? -Was Economic Benefit considered? -Did AG coordinate with NDEQ? -Was there communication between AG & NDEQ on violations & penalty calculation? -Did AG loop back to update NDEQ about enforcement action or penalty collected?
12b0-S	Percent of final formal actions with penalty (1 FY)	Review Indicator	State	> 1/2 National Average	80.5%	100.0%	1 out of 1
12b0-C	Percent of final formal actions with penalty (1 FY)	Review Indicator	Combined	> 1/2 National Average	78.6%	66.7%	2 out of 3

APPENDIX E: PDA WORKSHEET (with State and EPA Comments)

The PDA reviews each data metric and evaluates state performance against the national goal or average, if appropriate. EPA R7 has reviewed the SRF data metrics in relation to national goals and averages, based on the data that was available during the June 13, 2011 data pull.

Preliminary data analyzed by EPA R7 is provided in the Appendices B and D. EPA's preliminary findings were discussed with NDEQ during the kick-off meeting held on July 18, 2011, in Lincoln, NE. Further information has been noted throughout this report of any additional findings, including analyses and findings provided in Appendices D and G.

APPENDIX F: FILE SELECTION

Files to be reviewed are selected according to a standard protocol (available here: http://www.epa-otis.gov/srf/docs/fileselectionprotocol_10.pdf) and using a web-based file selection tool (available here: http://www.epa-otis.gov/cgi-bin/test/srf/srf_fileselection.cgi). The protocol and tool are designed to provide consistency and transparency in the process. Based on the description of the file selection process in section A below, states should be able to recreate the results in the table in section B.

A. File Selection Process

EPA followed the SRF File Selection Protocol when selecting the files. This included a representative sample of files, and may sometimes include supplemental file review. Under the SRF protocol, EPA was required to review additional files to help better understand whether any areas of concern identified via the data review needed to be substantiated.

Nebraska has a total facility universe of about 1,689 facilities. Out of these facilities, EPA Region 7 selected 28 files to review, including facilities that represent TSDFs, LQGs, SQGs, CESQGs, transporters, and other active facilities. EPA R7 also tried to select representative files from all geographic locations within Nebraska.

EPA requested 28 files for the RCRA portion of the SRF review; however only 26 of the files selected were reviewed while EPA R7 staff were at NDEQ in Lincoln, NE. The two RCRA facility files selected that were not reviewed on-site by EPA R7 fell outside of the scope of the SRF program review for RCRA compliance and enforcement. One of the two facilities' file required a RCRA financial review, and the other facility file required a hydrogeology review of its operations and maintenance. The representative file selection method was conducted using the methodology described in the File Section Protocol (using the OTIS website). Of the 26 files selected for review, 21 files were examined because the facility had a compliance evaluation or compliance monitoring report noted in the base review year, and 2 were examined because an enforcement action was taken or completed in FY2010. The evaluation files included a mix of facilities which included various compliance histories in the RCRAInfo database. If an evaluation file had an enforcement action associated with it, both activities were reviewed (and vice-versa when a selected action had an evaluation file). An additional 2 supplemental files were selected for examination to assess Nebraska's SNC designation and reporting process that is noted in the Preliminary Data Analysis table, with 6 supplemental files selected to assess informal actions with no violation designation. Supplemental file reviews were used to ensure that the region had enough files to look at to understand whether a potential problem pointed out by data analysis is in fact a problem.

B. File Selection Table

#	Program ID	f_city	f_state	f_zip	Evaluation	Violation	SNC	Informal Action	Formal Action	Penalty	Universe	Select
1	NED068655968	SIDNEY	NE	69162	1	9	0	1	0	0	LQG	accepted_ representative
2	NED007263197	COLUMBUS	NE	68601	1	12	0	1	0	0	LQG	accepted_ representative
3	NED047047543	HOLDREGE	NE	68949	1	11	1	2	0	0	LQG	accepted_ representative
4	NED089569024	LINCOLN	NE	68507	0	6	0	1	0	0	TSD(LDF)	accepted_ supplemental
5	NER000506386	OMAHA	NE	68118	1	5	0	1	0	0	SQG	accepted_ supplemental
6	NED035067297	LINCOLN	NE	68502	1	7	0	1	0	0	LQG	accepted_ representative
7	NED007258338	BLAIR	NE	68008	1	7	0	1	0	0	LQG	accepted_ representative
8	NED007259054	OMAHA	NE	68137	1	0	0	0	0	0	LQG	accepted_ representative
9	NED007286198	OMAHA	NE	68122	1	3	0	1	0	0	TSD(LDF)	accepted_ representative
10	NER000008128	OMAHA	NE	68138	0	1	0	1	0	0	TRA	accepted_ representative
11	NED986370187	OMAHA	NE	68105	1	0	0	0	0	0	SQG	accepted_ supplemental
12	NED986387850	COLUMBUS	NE	68601	0	4	0	1	0	0	LQG	accepted_ representative
13	NER000507442	OMAHA	NE	68142	1	4	0	1	0	0	SQG	accepted_ representative
14	NED068652981	LINCOLN	NE	68524	0	0	0	0	1	15,000	LQG	accepted_ representative
15	NED007257363	LINCOLN	NE	68504	1	9	0	1	0	0	CES	accepted_ representative
16	NE0000316646	LINCOLN	NE	68521	1	3	0	1	0	0	LQG	accepted_ representative
17	NER000507632	GRAND ISLAND	NE	68801	1	1	0	2	0	0	SQG	accepted_ representative
18	NED986381655	LINCOLN	NE	68528	1	3	0	1	0	0	CES	accepted_ representative
19	NED005070065	LINCOLN	NE	68517	0	6	0	1	0	0	LQG	accepted_ supplemental
20	NER000507392	LINCOLN	NE	68528	1	0	0	0	0	0	CES	accepted_ representative
21	NED087069050	NORFOLK	NE	68701	1	3	0	1	0	0	LQG	accepted_ representative
22	NER000003038	NORFOLK	NE	68701	1	1	0	1	0	0	SQG	accepted_ supplemental
23	NER000503052	GRAND ISLAND	NE	68803	1	0	1	0	0	0	TSD(TSF)	accepted_ representative
24	NER000003145	BLAIR	NE	68008	1	10	0	1	0	0	CES	accepted_ representative

25	NED000766816	LINCOLN	NE	68583	1	0	0	0	0	0	LQG	accepted_representative
26	NEX000507756	OMAHA	NE	68110	1	1	0	1	0	0	CES	accepted_supplemental
27	NER000006213	MCCOOK	NE	69001	1	2	0	1	0	0	LQG	accepted_representative
28	NED007265382	COLUMBUS	NE	68601	1	0	0	0	0	0	LQG	accepted_representative

APPENDIX G: FILE REVIEW ANALYSIS

This section presents the initial observations of the region regarding program performance against file metrics. Initial findings are developed by the region at the conclusion of the file review process. The initial finding is a statement of fact about the observed performance, and should indicate whether the performance indicates a practice to be highlighted or a potential issue, along with some explanation about the nature of good practice or the potential issue. The File Review Metrics Analysis Form in the report only includes metrics where potential concerns or areas of exemplary performance are identified.

Initial findings indicate the observed results. They are preliminary observations and are used as a basis for further investigation. These findings are developed only after evaluating them against the PDA results where appropriate, and talking to the state. Through this process, initial findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

The quantitative metrics developed from the file reviews are initial indicators of performance based on available information and are used by the reviewers to identify areas for further investigation. Because of the limited sample size, statistical comparisons among programs or across states cannot be made.

RCRA Program

Name of State: Nebraska

Review Period: FY2010

RCRA Metric #	RCRA File Review Metric Description:	Metric Value	Initial Findings
Metric 2c	% of files reviewed where mandatory data are accurately reflected in the national data system.	96%	25 out of the 26 files reviewed contained documentation to confirm that the minimum data requirements (MDRs) were reported accurately into RCRAInfo. 25 / 26 x 100 = 96.153846% rounded to whole numbers = 96%.
Metric 4a	Regions can track yearly commitments or multi-year plans. Reserved for inspection plan targets negotiated between the region and state. There are no goals for SQGs, but they may be substituted for LQGs per the OECA national program guidance (Guidance for FY08 RCRA Core LQG Pilot Projects). Trade offs using this flexibility should be explained by the state (and plans should have been submitted to the region).	100%	The state coordinated its inspection coverage with EPA R7 within its negotiated PPA work plan. During the review period (FY 2010), the state committed to conducting CEIs at 1 TSDF, 13 LQGs, and prioritized SQG sites. The state completed all of these CEIs based on the data provided in Metrics 5a1 and 5b1. 100% of the EPA R7 – NDEQ workplan commitments = 100%.
Metric 4b	Delineate the non-inspection commitments for the FY under review. This should include commitments in PPAs, PPGs, grant agreements, authorization MOAs, or other relevant agreements. State whether these commitments were met.	NA	The state made commitments in the PPG to enter all RCRA MDRs into RCRAInfo accurately and in a timely manner. Based on the data metrics and review of files, the state maintained an accuracy rate of over 95% and a timeliness rate of over 95%. The file review metric evaluation of greater than 95% accuracy and timeliness is based on information currently provided by NDEQ, and the EPA R7 grant staff to OECA through annual ACS commitments and semi-annual updates. This evaluation is part of EPA's on-going 2-year work plan cycle, through which EPA R7 and NDEQ already report progress of commitments to OECA.

Metric 6a	# of inspection reports reviewed.	21	21 CEIs were reviewed.
Metric 6b	% of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance at the facility.	95%	20 of the 21 CEIs reviewed had documentation in the files to show that they contained all of the elements of the CEI. 1 of the files was missing some minor CEI elements, although none of which were critical to making a compliance determination. $20 / 21 \times 100 = 95.238095\%$ rounded to whole numbers = 95%.
Metric 6c	% of timely inspection reports reviewed.	52%	11 of the 21 CEI reports reviewed contained all of the CEI requirements listed in the <i>Enforcement Manual</i> , and they contained sufficient documentation to determine compliance at the facility. 10 of the CEI reports were delayed as final, while the supervisor reviewed and signed the documents to transmit the inspection report to the RCRA facility. $11 / 21 \times 100 = 52.380953\%$ rounded to whole numbers = 52%.
Metric 7a	% of inspection reports reviewed that led to accurate compliance determinations.	95%	20 of the 21 CEIs reviewed led to an accurate compliance determination. In other words, compliance determinations were inaccurately made, or not made at all, in only one instance. $20 / 21 \times 100 = 95.238095\%$ rounded to whole numbers = 95%.
Metric 7b	% of violation determinations in the files reviewed that are reported timely to the national database (within 150 days).	100%	All 26 of the files reviewed had determinations and date entered into RCRAInfo within 150 days. $26 / 26 \times 100 = 100\%$.
Metric 8d	% of violations in files reviewed that were accurately determined to be SNC.	100%	All 26 of the files reviewed had accurate SNC determinations, based on the findings identified in the inspection reports. $26 / 26 \times 100 = 100\%$.
Metric 9a	# of enforcement responses reviewed.	2	2 formal enforcement responses were reviewed. Further enforcement information was not available in a 3 rd file, due to lack of information from the Nebraska AG's office.
Metric 9b	% of enforcement responses that have returned or will return a source in SNC to compliance.	33%	1 of the 3 formal enforcement responses contained the documentation that required the facilities to return to compliance. This response was an administrative order that contained a compliance schedule. There was documentation to confirm that the schedules are being met. $1 / 3 \times 100 = 33.333333\%$ rounded to whole numbers = 33%.
Metric 9c	% of enforcement responses that have or will return Secondary Violators (SV's) to compliance.	33%	1 of the 3 formal enforcement responses contained the documentation that required the facilities to return to compliance. This response was an administrative order that contained a compliance schedule. There was documentation to confirm that the schedules are being met. $1 / 3 \times 100 = 33.333333\%$ rounded to whole numbers = 33%.
Metric 10c	% of enforcement responses reviewed that are taken in a timely manner.	33%	1 of the 3 formal enforcement responses contained the documentation that indicated that enforcement was taken by the Nebraska AG's office within 360 days of the NDEQ inspection. $1 / 3 \times 100 = 33.333333\%$ rounded to whole numbers = 33%.
Metric 10d	% of enforcement responses reviewed that are appropriate to the violations.	33%	1 of the 3 formal enforcement responses contained the documentation; however another enforcement file did not include a clear explanation of the enforcement response to specific violations. The 3 rd enforcement action is still pending at the Nebraska AG's office.

			1 / 3 x 100 = 33.333333% rounded to whole numbers = 33%.
Metric 11a	% of penalty calculations reviewed that consider and include where appropriate gravity and economic benefit.	0%	None of the 3 enforcement files reviewed contained penalty calculations or justifications from the AG's office to indicate how the penalties were calculated, including a lack of gravity and economic benefit consideration. 0 / 3 x 100 = 0.000000% rounded to whole numbers = 0%.
Metric 12a	% of formal enforcement responses reviewed that document the difference and rationale between for the initial and final assessed penalty	0%	None of the 3 enforcement files reviewed contained penalty calculations, initial assessments for settlement purposes, or the rationale for the difference from the Nebraska AG's office to indicate how the penalties were calculated, including a lack of gravity and economic benefit consideration. 0 / 3 x 100 = 0.000000% rounded to whole numbers = 0%.
Metric 12b	% of enforcement files reviewed that document collection of penalty.	0%	None of the 3 enforcement files reviewed contained penalty calculations or collection information that the Nebraska AG's office shared with NDEQ. 0 / 3 x 100 = 0.000000% rounded to whole numbers = 0%.

APPENDIX H: CORRESPONDENCE

This section, Appendix H, contains the response letter from the Nebraska Department of Environmental Quality(NDEQ) sent on August 18, 2012, including its attachment from the Nebraska Attorney General regarding the AG's statement on civil and criminal enforcement. This correspondence identifies comments and action plans discussed during the SRF review process.



Dave Heineman
Governor

STATE OF NEBRASKA

DEPARTMENT OF ENVIRONMENTAL QUALITY
Michael J. Linder
Director

Department Response

AUG 13 2012

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U.S. EPA Region 7
Don Toensing, Branch Chief
Waste Enforcement and Materials Management Branch
Air and Waste Management Division
901 N. 5th Street
Kansas City, KS 66101

RE: Nebraska Department of Environmental Quality response to U.S EPA Region 7 draft
State Review Framework Nebraska RCRA Subtitle C Round 2 Report for Federal Fiscal
Year 2010

Dear Mr. Toensing:

This letter is submitted in response to EPA Region 7's draft State Review Framework Nebraska RCRA Subtitle C Round 2 Report for Federal Fiscal Year 2010. The Department's Waste Management Division has reviewed the draft report and is providing the following comments related to the report and is referencing EPA to review two related pieces of correspondence included with this letter that were previously provided on the coordination between the Nebraska Attorney General's office and the Nebraska Department of Environmental Quality related to formal enforcement.

The Waste Management Division will first cover the comments/concerns that it wishes EPA Region 7 to update/change/modify related to the draft report. We will highlight these based on the flow of the report.

- Throughout the report EPA refers to NDEQ Legal Department, we request that EPA change this to NDEQ Legal Services Division. There are various other times when it is referred to as Legal department that should be changed to Legal Services Division.
- Page 3, second to last bullet discussing waste descriptions. The department disagrees with the issue that the waste descriptions are not detailed. NDEQ holds that the waste descriptions are accurate and specifically describe the wastes generated by the facilities inspected.
- Page 4, first bullet discussing supervisory review. The department believes that it meets the 30 day time frame for entering steps taken related to inspections and the included letters (LOW's, NOV's, or general compliance letters).
- Page 5, first bullet, fourth line should state solid waste program management. Also in this bullet seventh line should state "...Compliance Unit staff coordinate with NDEQ's Legal Services Division,..."



The Department's Waste Management Division thanks EPA Region 7 for the ability to review the draft report and comment on the accuracy and is committed to working with EPA to work through any of the parts of the Program Review where there is an ability to discuss the findings.

Should you wish to go over these comments and the included letters related to the formal enforcement action process between the NDEQ and the Nebraska Attorney General's office the NDEQ's Waste Management Division would be willing to help facilitate those discussions. If you have any other questions you can contact Bill Gidley or Jeffery Edwards of my staff at (402) 471-4210.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. B. Haldeman', with a long horizontal flourish extending to the right.

David B. Haldeman, Administrator
Waste Management Division



Dave Heineman
Governor

DEC 15 2011

STATE OF NEBRASKA

DEPARTMENT OF ENVIRONMENTAL QUALITY
Michael J. Linder

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Becky Weber
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Region 7
901 North 5th St.
Kansas City, KS 66101

REC'D
DEC 20 2011

APCC

Dear Ms. Weber:

This letter is submitted in response to your letter of October 28, 2011 concerning coordination and communication between the Nebraska Department of Environmental Quality (NDEQ) and the Nebraska Attorney General's office. I have met with representatives of the Attorney General regarding these concerns and we thought the following description of our Attorney General referral process and additional information would provide some useful insight for you.

We would also like to emphasize that the Attorney General and NDEQ consider proposed penalty calculations, settlement authority, and reasons justifying settlement to be strictly confidential under Neb. Rev. Stat. §84-712.05(4). The Director of NDEQ has been given the authority under Neb. Rev. Stat. §81-1527(2) to permit the Regional Administrator of the US EPA or his or her delegates to inspect the confidential records of the department concerning a given source provided that the confidentiality of this information is preserved.

Description of Attorney General Referral Process

Whenever the NDEQ seeks civil or criminal penalties and/or injunctive relief against a violator, the director refers the matter to the Nebraska Attorney General for prosecution. The referral includes a Litigation Report prepared by the department's Legal Division.

The Litigation Report and referral package include specific information related to:

- The violator, such as legal name, legal status, address and facility contact, representing attorney, and relevant permits or licenses;
- A description of the facts and alleged violations;
- An analysis of applicable law, citing statutes, regulations and case law as appropriate;
- Enforcement and compliance history;
- Evidence;

- Penalty considerations relating to the gravity of the violation, economic benefit, and multiday violations; and
- Other mitigating factors, such as the degree of cooperation, whether the violation was self-reported, ability to pay, prompt return to compliance, first-time violations and other unique factors.

The Litigation Report will typically include a proposed penalty based on a consideration of the identified statutory factors: size of the operation, economic benefit derived from noncompliance and degree and extent of the violation in accordance with Neb. Rev. Stat. §81-1508.02.

The Attorney General is a State Constitutional officer independent of the Governor and the NDEQ. Upon receipt of a Litigation Report and referral from the NDEQ, the Assistant Attorney General (AAG) assigned the case will independently review the submitted information and merits of the case to determine if there is sufficient legal merit to justify the proceeding (Neb. Rev. Stat. 84-205). Unless there is an imminent statute of limitations issue or emergency situation, the Attorney General will notify the violator that he or she has received a request for enforcement from the department and invite the violator to contact the AAG to discuss the matter and negotiate a settlement.

In determining the range of settlement authority appropriate for a particular case, the AAG reviews the NDEQ proposal and independently considers the identified statutory factors: size of the operation, economic benefit derived from noncompliance and degree and extent of the violation. The settlement authority is reviewed and either revised or approved by the Agriculture, Environment, and Natural Resources Section Chief, the Special Counsel to the Attorney General, and for significant cases, the Chief Deputy Attorney General.

Typically, the AAG will then follow up with a formal demand letter which proposes a settlement offer open for 30 days from mailing of the letter that is consistent with his/her analysis of the statutory factors for civil penalties. These settlement proposals often result in demand for a penalty consistent with the NDEQ's recommended penalty and appropriate injunctive relief. Following the sending of a demand letter, there is typically an exchange of information with the environmental violator regarding the legitimacy of the violations alleged by the NDEQ as well as each of the statutory factors and the amount of civil penalty to be paid. A defendant may bring information to the attention of the AAG, which will necessitate a revision of the settlement authority subject to the approval of the supervisors identified above. The AAG will typically offer to consider a supplemental environmental project (SEP) as part of a settlement in addition to any civil penalties which might be assessed. If a satisfactory settlement cannot be achieved, the case is filed in the district court.

The AAG contacts the appropriate NDEQ attorney and staff for additional information and follow-up, as he or she deems appropriate and consults with NDEQ senior management on case disposition. The AAG also provides periodic updates of activity relating to the case progression.

During my meeting with the Attorney General's office, we discussed your concerns regarding documenting our communication and the basis for proposed penalties and settlements. While both of our agencies' legal teams already meet regularly to discuss all of our pending enforcement cases, we agreed that a meeting initially on each case referral would probably be more useful to the attorneys and department staff directly involved in order to discuss facts, proposed penalty calculations, and areas where additional investigation would be helpful.

We believe these individual meetings would be easier to schedule and would involve periodic follow up discussions concerning the violator's version of events, potential defenses raised, serious settlement offers, copies of pleadings filed, notification of scheduled hearings, pertinent correspondence and other important information pertaining to the case. While the Attorney General's Office already notifies NDEQ when a number of these action items take place, both agencies agreed to better ensure that all relevant personnel are kept up to date on these matters. We further agreed that documentation of these discussions would be kept confidential as privileged communications.

We appreciate your feedback and hope this explanation of our plan allays your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Linder". The signature is fluid and cursive, with a large initial "M" and "J".

Michael J. Linder
Director

xc: Katherine J. Spohn
Special Assistant to the Attorney General



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JON BRUNING
ATTORNEY GENERAL

KATHERINE J. SPOHN
ASSISTANT ATTORNEY GENERAL

January 2, 2008

John B. Askew
Regional Administrator
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, KS 66101

RE: ATTORNEY GENERAL'S STATEMENT REGARDING CIVIL AND CRIMINAL ENFORCEMENT

Dear Mr. Askew:

Whenever the Department of Environmental Quality (DEQ) seeks civil or criminal penalties and/or injunctive relief against a violator, the director refers the matter to the Nebraska Attorney General for prosecution. The referral includes a Litigation Report prepared by the department's Legal Division, following the guidelines in the DEQ Enforcement Manual.

The Litigation Report and referral package include specific information and documents related to:

- The violator, such as legal name, legal status, address and facility contact, representing attorney, and relevant permits or licenses;
- A description of the facts and alleged violations;
- An analysis of applicable law, citing statutes, regulations and case law as appropriate;
- Enforcement and compliance history;
- Evidence;
- Penalty considerations relating to the gravity of the violation, economic benefit, and multiday violations; and

- Other mitigating factors, such as the degree of cooperation, whether the violation was self-reported, ability to pay, prompt return to compliance, first-time violations and other unique factors.

The Litigation Report will typically include a Penalty Computation Worksheet and a draft complaint.

The Attorney General is a Constitutional officer independent of the Governor and the department. Upon receipt of a Litigation Report and referral package from the department, the Assistant Attorney General assigned the case will independently review the submitted information and merits of the case to determine if there is sufficient legal merit to justify the proceeding. Neb. Rev. Stat. 84-205. Unless there is an imminent statute of limitations issue, the Attorney General will notify the violator that he or she has received a request for enforcement from the department and invite the violator to contact the Attorney General to discuss the matter and negotiate a settlement. In most cases, the Attorney General will propose a settlement that would result in payment of a penalty that meets the department's recommended penalty and appropriate injunctive relief as necessary. If a satisfactory settlement cannot be achieved, the case is filed in the district court. In very rare cases, the Attorney General may decline to prosecute and provide the department with the reasons for such decision.

The Assistant Attorney General will contact the appropriate department attorney and staff for additional information and follow-up, as he or she deems appropriate and consult with DEQ senior management on case disposition. The Assistant Attorney General will also provide periodic updates of activity relating to the case progression.

The Attorney General will typically offer to consider a supplemental environmental project (SEP) as part of a settlement in addition to any civil penalties which might be assessed. If a violator does not have a specific SEP to propose, the Attorney General has agreed to consider a contribution to the Attorney General's Environmental Protection Fund, which funds a wide variety of environmental projects.


Katherine J. Spohn
Assistant Attorney General
Agriculture, Environment &
Natural Resources Section