

# **STATE REVIEW FRAMEWORK AND INTEGRATED CLEAN WATER ACT PERMIT QUALITY REVIEW**

**Nebraska**

**Clean Water Act  
Implementation in Federal Fiscal Year 2011**

**U.S. Environmental Protection Agency  
Region 7, Kansas City**

**Final Report  
April 15, 2013**

## **Note to Users**

This report is structured in four parts, with one integrated review section, separate Permit Quality Review (PQR) and State Review Framework (SRF) sections, and one overarching Executive Summary. The intent of this structure is to allow the user to choose to look exclusively at just PQR or SRF information individually, or to look at issues across both permits and enforcement.

If you are interested in reviewing the CWA PQR information only, see the section titled “CWA-NPDES Permit Quality Review.”

If you are interested in reviewing the CWA SRF information only, look to the section titled “State Review Framework.”

Information in this report related to the CWA National Pollutant Discharge Elimination System (NPDES) permit reviews under the PQR and NPDES enforcement under the SRF have been integrated as part of the EPA’s 2009 Clean Water Act Action Plan.

The NPDES integrated oversight effort is a way to provide EPA with a comprehensive review of a state’s implementation of the permitting and compliance components of the NPDES program. Integrated reviews reduce the burden on states by having one joint visit and integrated report. The integrated reviews provide EPA and the public with a greater understanding of the challenges of a state NPDES program, and increases transparency through making PQR and SRF results publicly available on EPA’s website.

# **Integrated SRF and PQR Executive Summary**

## **Introduction**

Permit Quality Review (PQR) and State Review Framework (SRF) oversight reviews of the Nebraska Department of Environmental Quality (NDEQ) were conducted on April 16-19, 2012, by EPA Region 7 permitting and enforcement staff.

The Clean Water Act National Pollutant Discharge Elimination System (CWA-NPDES) program was reviewed under both PQR and SRF. The state's Clean Air Act (CAA) Stationary Source and Resource Conservation and Recovery Act (RCRA) Subtitle C programs were not included in this review.

PQR findings are based on reviews of permits, fact sheets, and interviews. SRF findings are based on file metrics derived from file reviews, data metrics, and conversations with program staff.

## **Priority Issues to Address**

The following are the top priority issues affecting the state's program performance:

- Inspection reports do not consistently provide information necessary to support an accurate compliance determination. Report narratives should make a connection between observations and regulatory requirements, describe field activities conducted, and collect information that supports the regulatory and compliance status of facilities.
- Formal enforcement actions and referrals to the state Attorney General, as well as some informal enforcement letters, are not consistently issued in a timely and appropriate manner.
- Permit applications do not require the necessary pollutant monitoring consistent with federal regulations. This was also a 2008 and 2011 PQR finding.
- Pretreatment regulations do not include the required provisions of the 2005 Streamlining revisions. This was a 2008 and 2011 PQR finding.

## **CWA-NPDES Integrated Findings**

The following issues are affecting performance of both the permitting and enforcement program:

- Permit schedule violations appearing in the national database Integrated Compliance Information System (ICIS) include legitimate noncompliance needing a state response as well as violation flags that need to be updated and "turned off" with milestone achieved dates.
- Nebraska Pretreatment Program permits lack the requirement for resampling and resubmission of results following the discovery of a violation, which impacts follow-up and correction of serious discharge violations.

- Nebraska's application forms are not consistent with 40 CFR 122.21 in ensuring data submittal requirements that request discharge monitoring data to evaluate reasonable potential to cause or contribute to a violation of water quality standards (WQS).

## **Major PQR CWA-NPDES Findings**

The PQR found the following issues to be most significant:

- Permit applications do not require applicants to submit required pollutant scans necessary to perform complete reasonable potential analysis for all potential pollutants of concern.
- Some of Nebraska's Standard and Special Conditions are less stringent than federal regulations at 40 CFR 122.41.
- Fact sheet documentation is not always complete, consistent with 40 CFR 124.8, and 124.56.
- Pretreatment regulations do not include the required provisions of the 2005 Streamlining revisions.
- Non-Categorical pretreatment permits lack either limits for BOD, TSS, and ammonia, or a justification for why local limits for these pollutants are not needed.

## **Major SRF CWA-NPDES Findings**

The SRF review found the following issues to be most significant:

- Inspection reports do not consistently provide information necessary to support an accurate compliance determination. Report narratives should make a connection between observations and regulatory requirements, describe field activities conducted, and collect information that supports the regulatory and compliance status of facilities.
- Compliance determinations are not consistently made as a follow-up to inspection evidence. State records should clearly articulate a compliance determination, and the determination should accurately represent all evidence gathered from inspections.
- Formal enforcement actions and referrals to the state Attorney General, and some informal enforcement letters, are not consistently issued in a timely and appropriate manner. The state should follow its internal guidance for timely and appropriate use of informal and formal enforcement actions.
- Large portions, and sometimes all, of assessed penalties are frequently waived in consent orders issued by the state Attorney General for violators who demonstrate a prompt return to compliance, resulting in a reduced deterrent value of monetary penalties.

## **Major Follow-Up Actions**

Actions to address the findings found during the PQR will be implemented and tracked in an Office of Water database. Recommendations and actions identified from the SRF review will be tracked in the SRF Tracker.

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# CWA-NPDES Integrated SRF and PQR Review

## I. Introduction

EPA reviews regional and state National Pollutant Discharge Elimination System (NPDES) programs every four years. During these reviews, EPA staff review topics related to NPDES program implementation, including permit backlog, priority permits, action items, withdrawal petitions, and enforcement. A large component of each review is the Permit Quality Review (PQR), which assesses whether a state adequately implements the requirements of the NPDES program as reflected in the permit and other supporting documents (e.g., fact sheet, calculations). A second primary component of these reviews is the State Review Framework, which evaluates 12 elements of state enforcement programs.

Through this review, EPA promotes national consistency, identifies successes in implementation of the base NPDES program, and identifies opportunities for improvement in the development of NPDES permits and enforcement. The findings of the review may be used by EPA headquarters to identify areas for training or guidance, and by the EPA region to help identify or assist states in determining action items to improve their NPDES programs.

EPA conducted an integrated oversight review of the State NPDES permitting and enforcement and compliance program by combining a PQR and a State Review Framework (SRF) review on April 16-19, 2012. The PQR was designed to assess how well the State implements the requirements of the NPDES program as reflected in NPDES permits and other supporting documents. The PQR looked at four core topic areas of national importance (nutrients, pesticide general permit, pretreatment, stormwater) and one special focus area of regional importance (Concentrated Animal Feeding Operations, or CAFOs). The SRF review is designed to ensure a minimum baseline of consistent performance across states, and that EPA conducts oversight of state enforcement and compliance programs in a nationally consistent and efficient manner. The SRF review looks 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).

The integrated review examined data and files generated and kept by the state's Department of Environmental Quality, Water Quality Division. This report focuses only on the integrated PQR and SRF NPDES program findings.

The integrated review was 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 was 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 issues.

The report is designed to capture the information and agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in integrated review reports to draw a "national picture" of the NPDES program, to develop comparable state performance dashboards, and to identify any issues that require a national response.

## II. Coordination Between Permitting and Enforcement

The following discussion of Nebraska's NPDES permitting, compliance, and enforcement program is the product of verbal and written exchanges between EPA Region 7 and NDEQ during the week of the on-site review and outside of this review process over the course of several years. All of this information has been verified for accuracy by NDEQ during the review of the draft report. More details about how the state runs the compliance and enforcement program for specific NPDES program areas appear in Appendix E.

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

NPDES permitting and compliance monitoring responsibilities 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 Wastewater Section manages those same activities at facilities having all other NPDES permits (e.g. wastewater, pretreatment, and stormwater). The Wastewater and Agriculture Sections have their compliance monitoring (inspection) resources spread among the central office in Lincoln and five field offices in Norfolk, Omaha, North Platte, Holdrege, and Scottsbluff.

The Wastewater and Agriculture Sections of NDEQ both include a permitting and compliance unit with the dual responsibilities of writing permits and monitoring compliance. Staff responsibilities are arranged such that the permit writer and inspector for a given facility are different individuals. Field office inspectors' coverage of facilities by county differs between the Wastewater and Agriculture sections to reflect different demographics for municipal, agricultural, and industrial dischargers.

Within the Wastewater Section are two individuals responsible for all permitting, compliance assistance, and enforcement escalation for all of Nebraska's construction and industrial stormwater sites and oversight of the state's Municipal Separate Storm Sewer Systems (MS4s). Monitoring compliance and responding to complaints regarding stormwater pollution is handled by compliance staff assigned to the various field offices.

When the Water Quality Division decides to escalate a case of non-compliance for formal enforcement, the division sends an enforcement recommendation to the Legal Services Division, which takes the lead in issuing administrative compliance orders for all cases except those deemed worthy of a penalty action. The state's authority to collect penalties in NPDES cases rests exclusively on the Attorney General, whose office issues any and all penalty orders within the judicial arena. Further details of NDEQ's interaction with the AG, the enforcement escalation process, and NDEQ's Enforcement Manual are discussed in Appendix E. There is no state authority for administrative penalties for NPDES violations.

For more background information on the permitting and enforcement programs, please refer to the PQR and SRF sections of this report.

### **III. Integrated Review Background**

EPA's integrated review of Nebraska's NPDES permitting and enforcement programs consisted of an independent PQR conducted by EPA Region 7 and the EPA Office of Water in April 2011, followed by an integrated SRF and PQR on-site visit in April 2012. Most of the PQR findings that contribute to this integrated review were made in 2011, whereas the role of EPA's permitting staff in the 2012 on-site integrated review was to focus on core topics and special focus areas. As a result, most of the files examined for the permitting and enforcement reviews were selected independently of one another, and the processes for making those independent selections are described in successive parts of this report.

Of all the Nebraska files reviewed under the PQR and SRF, 8 core program facilities selected for the 2011 PQR were also reviewed under the SRF in 2012. All 8 of those core facilities were major dischargers. In addition, 4 CAFO files were selected by the permitting and enforcement teams working in concert in 2012. This review of 12 total common files fostered a more robust identification of findings that cut across the permitting and enforcement programs.

EPA conducted the Region 7 PQR during the 3<sup>rd</sup> quarter of FY2011. One EPA HQ Water Permits Division staff and an EPA contractor collected NPDES program information and permits from regional and state staff. Along with one EPA regional staff member, they conducted an on-site visit to NDEQ on April 4 and 5, 2011.

For the integrated PQR-SRF review conducted April 16-19, 2012, an EPA Region 7 team consisting of 5 enforcement staff, 3 permitting staff, and 2 attorneys traveled to Lincoln, Nebraska, to review files and engage NDEQ staff and managers in dialog regarding the NPDES program. A joint introductory meeting was held on the first day of the on-site review, and an exit meeting was held on the final day to highlight preliminary findings of both the permitting and enforcement reviews. Senior managers from NDEQ were present for both meetings.

Following the on-site state visit, EPA Region 7 permitting and enforcement staff worked together to formalize the findings identified during the on-site joint review, to craft recommendations for improvement, and to draft this integrated report.

### **IV. How Report Findings Are Made**

The findings in this report were made by EPA Region 7's permitting and enforcement staff after analyzing data in the national data systems and reviewing facility files at the state. Permitting and enforcement staff consulted with state staff and each other while determining findings. Findings cover both highlights of state performance and opportunities for improvement. Where the state program was doing particularly well or was meeting all of its requirements, EPA identified such areas in this report. Where EPA found the state had opportunities to improve both permitting and enforcement, EPA suggested an appropriate course of action.

### **V. Common Findings**

#### Permit Compliance Schedules

**Finding:** Permit schedule violations appearing in the national database include legitimate noncompliance needing a state response as well as violation flags that need to be updated and

“turned off” with milestone achieved dates. This finding was made as part of the SRF review and appears as Finding 7-1 in the “State Review Framework” part of this report, but it affects the permitting program as well as the compliance and enforcement program. Legitimate violations of permit compliance schedules are not only an enforcement concern, but they can also aggravate the state’s efforts to reissue an environmentally protective permit if the facility has not completed all required treatment process changes within the five-year term of the expiring permit.

**State Response:** Please see our response in Element 7-1 of the SRF review.

**Recommendation:** NDEQ should submit to EPA a plan with timeframe for implementing a process to remedy overdue compliance schedule violations. The process should include a mix of working with the facilities where deliverables have not been received—either informally or with enforcement actions, as appropriate—and entering achieved dates for received deliverables that have triggered overdue violations. By October 31, 2013, EPA will verify that compliance schedule violations in ICIS are being addressed consistently and appropriately. EPA and NDEQ will discuss progress on a semi-annual basis. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

#### Pretreatment Permit Requirements

**Finding:** One weakness found in all Nebraska Pretreatment Program (NPP) permits was the absence of the requirement for resampling and resubmission of results following the discovery of a violation. General Pretreatment Regulations at §403.12(g)(2) require any industrial user who experiences a violation while sampling, to notify its control authority within 24 hours and resample and resubmit the results within 30 days (there are some exceptions, however). Not only is this requirement not in any permits, but no permit holders were executing it. Primarily a permitting issue, this matter also impacts the state’s and facilities’ ability to correct violations and is a detriment to any formal enforcement that might need to be taken as a follow-up to serious discharge violations.

**State Response:** Nebraska has added this to all new NPP permits being issued since October 1, 2012 (Attachment B, Part I. H.). In addition, the permit tool will include the required language.

#### “H. Effluent Violation Repeat Sampling

The permittee shall conduct or repeat sampling and analysis and submit the results of the Repeat analysis to the Department within 30 days of becoming aware of the violation.

The results of the repeat analysis must be submitted with a copy of the previously submitted noncompliance form.”

**Recommendation:** NDEQ should expeditiously modify the NPP Standard Conditions to include the resampling and resubmission requirement for all future permits. NDEQ should submit to EPA a plan with timeframe for making this modification. EPA and NDEQ will discuss progress on a quarterly basis. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

#### Non-Categorical Local Limits

**Finding:** A serious deficiency common to non-Categorical permits is the lack of limits for BOD, TSS, and when appropriate, ammonia, or a justification in the fact sheet stating why limits

for these pollutants are not needed. The EPA's Local Limits guidance manual establishes criteria for when local limits for conventional pollutants are warranted and when they are not necessary. However, no non-Categorical permits that did not contain limits had any calculations or objective demonstrations justifying the absence of limits. Consequently, it was impossible to determine if those permits were protective against interference and/or pass through.

**State Response:** We evaluate new and reissued permits for these requirements. Most of these facilities have compatible food processing waste and we continue to place BOD, TSS and ammonia in their permits. Regulations are planned for a revision this year and we have replaced the former pretreatment coordinate so we can continue to move forward on headworks calculations and evaluation of loadings from industry on facilities.

**Recommendation:** The EPA's guidance manual specifies that all POTWs that are loaded, on average, at 80% or higher for conventional pollutants must have local limits controlling those pollutants and the limits written into the permits. Therefore, if a permit does not contain limits for conventional pollutants, the fact sheet should contain calculations showing that the POTW receiving the industry's discharge is less than 80% loaded for the missing pollutants. NDEQ should submit to EPA a plan with timeframe for implementing this guidance. EPA and NDEQ will discuss progress on a quarterly basis. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

#### Sanitary Sewer Overflow Discharges

**Finding:** Sanitary Sewer Overflow (SSO) discharges are discharges of raw sewage from municipal sanitary sewer systems at locations upstream of a treatment plant headworks. Discharges, such as SSOs, that are not explicitly authorized by a permit are prohibited. As a form of noncompliance, SSOs should be reported by the permittee; however, Nebraska NPDES permits do not define what constitutes a reportable SSO.

**State Response:** The reason we have not further defined reportable SSOs in permits is that EPA has not finalized their rule. NDEQ has dealt with SSO as a bypass for many years and has required their reporting, and does track these events.

**Recommendation:** NDEQ should develop language for newly issued and reissued municipal wastewater permits that articulates what constitutes a reportable SSO. The state should submit to EPA a plan with timeframe for beginning to incorporate this language into permits thereafter. EPA and NDEQ will discuss progress on a quarterly basis.

#### CAFO Expired General Permit Authorizations

**Finding:** 8 CAFO facilities maintain permit coverage under a permit that expired in 2008. It is unclear why these facilities were not reissued coverage under the current permit, or if permit applications were received to administratively extend coverage under the old permit.

**State Response:** NDEQ is diligently working to move permits to the new general permit.

**Recommendation:** NDEQ should make it a priority to move all permits authorized for coverage under the expired permit to the new permit or to individual permits. NDEQ should submit to EPA a timeframe for making this transition. EPA and NDEQ will discuss progress on a

quarterly basis. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

#### Permit Applications

**Finding:** NDEQ permit applications, which are codified in the state's regulations, are not consistent with federal requirements at 40 CFR 122.21. Permit applications do not require submittal of discharge data necessary to evaluate reasonable potential for a discharge to cause or contribute to a violation of WQS.

**State Response:** When application forms are revised they will be consistent with 40 CFR 122.21. Regulations update priorities are application forms and pretreatment requirements. We anticipate taking regulation changes to the Environmental Quality Council (EQC) in late 2013.

**Recommendation:** NDEQ should ensure municipal and non-municipal application forms are moving forward expeditiously in the state's regulatory process to be revised, and specifically, must require data consistent with federal regulations at 40 CFR 122.21. Alternatively, NDEQ has the option of removing municipal and non-municipal application forms from state regulations to provide greater flexibility to revise forms when necessary. NDEQ should submit to EPA a plan with timeframe specifying how the state will accomplish this. EPA and NDEQ will discuss progress on a quarterly basis. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

#### Standard Conditions

**Finding:** Nebraska's Standard Conditions for NPDES permits have language in several paragraphs that is paraphrased, altered, or omitted relative to the standard conditions that are required for all state and federally issued NPDES permits pursuant to 40 CFR 122.41.

**State Response:** NDEQ disagrees with portions of this finding. 40 CFR 122.41 references different requirements for State Programs. We have evaluated the conditions in the permit and made appropriate changes to comply with the requirements of 122.41 for state programs listed in 123.25. These requirements are 122.41 a(1) and b-n. Title 119 is consistent with 40 CFR except for the penalty amount which matches 40 CFR 122.41 (j)(5), maximum of \$10,000 for the first offense but does not match the \$20,000 for repeat offense. Our statutory limitation is \$10,000.

**Recommendation:** NDEQ submitted revised standard conditions for EPA review. EPA reviewed the draft standard conditions and found them to comply with 40 CFR 123.25. EPA has determined that NDEQ has satisfactorily completed this action and no further tracking is required.

#### Memorandum of Agreement

**Finding:** Nebraska's MOA is outdated and does not represent the CWA NPDES program as it is currently expected to be implemented.

**State Response:** NDEQ has submitted a proposed Draft MOA for EPA review.

**Recommendation:** NDEQ and EPA Region 7 should review Nebraska's program authorization documents and, as necessary, revise the Nebraska Memorandum of Agreement according to the final approved Guidance for NPDES MOAs Between States and EPA. EPA and NDEQ will include a commitment in the FFY 2013 Performance Partnership Grant (PPG) workplan to complete a review of Nebraska's MOA against the MOA Checklist and to commence negotiations on any necessary revisions to the MOA during the FFY 2013 performance period. Once EPA is satisfied that state and EPA actions have addressed the underlying finding, this recommendation will be considered complete. At that time, EPA Region 7 will add the completed MOA review as an addendum to the report.

# CWA-NPDES Permit Quality Review

## I. PQR Background

National Pollutant Discharge Elimination System (NPDES) Permit Quality Reviews (PQRs) are an evaluation of a select set of NPDES permits to determine whether permits are developed in a manner consistent with applicable requirements established in the Clean Water Act (CWA) and NPDES regulations. Through this review mechanism, EPA promotes national consistency, identifies successes in implementation of the NPDES program as well as opportunities for improvement in the development of NPDES permits.

EPA's Nebraska PQR consisted of two components, permit reviews and special focus area reviews. The permit reviews focused on core permit quality and included a review of the permit application, permit, fact sheet, correspondence, documentation, administrative process, and select core topic areas, as well as other factors.

The core permit review process involves evaluating selected permits and supporting materials using basic NPDES program criteria. Reviewers complete the core review by examining selected permits and supporting documentation, assessing these materials using standard PQR tools, and talking with permit writers regarding technical questions related to the permit development process. The core review focuses on evaluation of the aspects identified in the Central Tenets of the NPDES Permitting program. In addition, discussions between Region 7 and state staff addressed a range of topics including program status, the permitting process, relative responsibilities, organization, and staffing. Core topic area permit reviews are conducted to evaluate specific issues or types of permits in all states. The core topics reviewed in Nebraska were CAFOs, Pretreatment and the Pesticide General Permit.

EPA Reviewers selected two major municipal facilities (Tecumseh WWTF and Fremont WWTF) and two industrial facilities (Nestle Purina Petcare Company and Sheldon Station) to review because they were recently issued and reflect Nebraska's latest permitting practices.

Special focus area reviews target specific types or aspects of permits. These include special focus areas selected by EPA Regions on a state-by-state basis. Region 7 chose to address the following areas: water treatment plants, a discussion of the HQ initiative to revise Memorandum of Agreements (MOAs) and existing Action Items.

EPA Headquarters (HQ) Water Permits Division conducted a comprehensive PQR of the Nebraska NPDES Program on April 4 and 5, 2011. Due to the extensive nature of the HQ review, just one year ago and the recent receipt of the final report (May 12, 2012), EPA Region 7 decided to conduct a limited core review that included an on-site visit in Lincoln, Nebraska. The PQR review team consisted of Kimberly Hill, Donna Porter, John Dunn, and Paul Marshall. The site visit occurred April 17-19, 2012.

## **II. State Permitting Program Overview**

### **A. Program Structure**

The Nebraska Department of Environmental Quality (NDEQ) operates a main office located at 1200 “N” Street, Suite 400, P.O. Box 98922, Lincoln, Nebraska, 68509. The main office receives permit applications and notices of intent, generates draft permits, and fact sheets, conducts the internal review of drafts, initiates the draft permit public notice periods, and issues final permits. Some inspections of permitted facilities are also conducted from the Lincoln office.

NDEQ operates six regional field offices. The NPDES program carries out facility inspections from four of the six field offices. Compliance inspectors from the four offices also provide technical reviews of draft permits for their respective areas.

NDEQ currently has seven full time positions that write NPDES and Nebraska Pretreatment Program (NPP) permits. Only two of the positions write permits full time. Two writers share NPDES permit writing with compliance, one writer shares permit writing with compliance and enforcement, one writer shares permit writing with stormwater coordination and compliance, and one currently vacant position shares NPP writing with Industrial Stormwater (ISW) coordination. NDEQ also has draft permits prepared by an independent EPA contractor. Four permit writers are trained using the steady-state modeling technique, and one permit writer uses CorMix. Each permit writer has completed the USEPA Permit Writers Course. The more experienced staff mentors newer personnel.

The NDEQ Water Planning Unit develops total maximum daily loads (TMDLs). This unit has up to three individuals that may contribute some of their time to the TMDL process, but one is the primary TMDL coordinator.

The Planning Unit provides TMDL information, prepares the list of impaired waters, data management, develops water quality criteria and provides technical reviews of draft permits. The Water Quality Assessment Surface Water Unit and the Planning Unit collect, analyze, sort and interpret surface water data providing information for determining impairments and developing wasteload allocations. The Water Quality Assessment Groundwater Unit provides consultation on potential groundwater impacts. The Technical Assistance Unit provides technical review of draft permits and consultation involving treatment capability. The NPDES Permits Unit is further supported by one and one half staff assistants, one Records Management Section staff, one Unit Supervisor, and parts of an Environmental Engineer Section Supervisor and Acting Water Quality Division Administrator’s time.

For CAFO operations, similar activities are conducted by the main office. Applications for NPDES permit coverage are received and reviewed. The main office coordinates the permit with existing state construction and operating permits, including drafting the permit and fact sheet, completes the public notice process, and issues the final permit or issues coverage under the general permit. Inspectors are designated counties for which they are responsible for compliance inspections, annual report review, and complaint investigations. The main office also initiates and tracks enforcement activities.

The CAFO program operates from four field offices plus the Lincoln office. Inspectors are assigned specific counties and are responsible for conducting inspections and investigations, review applications for permits, review annual reports, initiate requests for enforcement, and general communications with the CAFOs in their areas.

NDEQ has two positions in the main office that draft permits for CAFOs located in the field offices' areas of coverage. In addition, there are five positions in the main office that conduct inspections and draft permits for CAFOs in other areas of the state. The draft permits follow a template permit and are based on conditions and elements of the state construction and operating permit. One position has been responsible for drafting the general permit that cover 317 authorizations. One full time staff assistant is available for CAFO permitting, including the public noticing process and the data entry.

The CAFO permit writers follow a template that has been reviewed by EPA and requires little need for changes when preparing a site-specific permit. The contents are based on the state construction and operating permit. Training for CAFO staff is met by in-house training and mentoring from experienced staff.

## B. Universe and Permit Issuance

As of March 31, 2012, NDEQ is responsible for administering approximately 662 individual permits. Within this permitting universe, there are 51 major facilities and 611 minor facilities. Of the total NPDES universe, 323 of those facilities are POTWs and 339 are industrials. The NDEQ currently has twelve general NPDES permits, with 3,047 authorizations. These authorizations are included in Table 1.

**Table 1**

<b>General Permit</b>	<b>Authorizations</b>
Dewatering	37
Dewatering in Omaha	2
Hydrostatic Testing	7
Construction Stormwater	2107
Industrial Stormwater	491
Discharges from Remediation Sites	51
Discharges from sMS4s in Douglas, Sarpy, Washington	9
Discharges from sMS4s (statewide)	10
CAFO	317
CAFO – expired March 31, 2008	8
Concrete Grooving and Grinding Slurry	No NOI Required
Pesticide General Permit	8
<b>Total</b>	<b>3047</b>

The NDEQ continues to make great strides in addressing the State's permit backlog through implementation of its internal prioritization strategy. Its first priority is to draft permits for 1) majors; 2) 303(d) listed waters; 3) new facilities or troubled facilities; 4) expiring permits, and 5) oldest administratively extended permits. This strategy has been in effect since October 2003

and has effectively reduced the overall backlog from 48% to 12 % and the major backlog from 38% to 6%.

In the 2011 PQR, it was observed that NDEQ does not generally require major municipal applicants to provide three full priority pollutant scans, as required by 40 CFR 122.21 (j), as part of its state applications; instead, NDEQ requires data for only a basic subset of pollutants. Industrial applicants, by comparison, indicate pollutants expected to be in the discharge according to the industry. After receiving this information for new facilities, NDEQ requires permittees to report only those pollutants during the first permit term. The permit writers initially download discharge data from the previous permit term from ICIS, for review and analysis. Permit writers will review the application package to identify changes since the last permit, relevant to facility operations or treatment processes. Permit writers appear to have strong familiarity with their permittees, and are aware of when facility changes occur or new industries are introduced to a community. Fact sheets reviewed currently include a general discussion of “potential pollutants” based on the industry type and historical knowledge of the facility (in cases when it is an existing discharger). It is important to note that NDEQ has produced a draft permit attachment requiring pollutant scans for new and reissued POTWs with a design flow greater than 1 MGD but has not begun to include them into permits. NDEQ has not addressed sampling requirements for all POTWs, or the subset of POTWs with a design flow greater than or equal to 0.1 MGD as required in 40 CFR 122.21(j).

Permit writers review applicable WQS for the receiving water body and identify pollutants of concern in the discharge. NDEQ stated that typical pollutants of concern at POTWs are ammonia and total residual chlorine. Other pollutants of concern typically identified include chloride, conductivity, metals, and bacteria. Following identification of pollutants of concern, permit writers check the 303(d) list for impaired waters, identify pollutants listed, and collect basic information from the permittee regarding pollutants of concern common to the impairing pollutants. Permit writers develop WLAs for their facilities, consult staff from the Water Quality Planning Unit to verify WLAs developed are appropriate, and identify additional potential pollutants of concern. WLAs are based on water quality criteria (e.g., acute, chronic, human health); WLAs and WQBELs are calculated using the methodology presented in the TSD. In addition to establishing numeric effluent limits in permits, permit writers also include narrative requirements. In addition, permits may also include whole effluent toxicity (WET) requirements, most of which address acute toxicity, but in some cases, permit limits may be established for chronic toxicity. Permit writers are including monitoring for total nitrogen and total phosphorus in new and reissued permits.

Antibacksliding is discussed when applicable; most often in regard to ammonia. Permit writers review stream data to develop the WLA and WQBELs, compare it to existing WQBELs for that pollutant, and apply the more stringent effluent limit.

Draft NPDES permits are provided to the permittee for review and all major permits are sent to EPA during the public review period. Public notices for permits are published in the newspaper for 30 days and NDEQ lists on its website permits that are currently available for public notice. Comments are generally submitted by the permittee with few comments received from the general public. The final administrative record is maintained in the main office via the Enterprise Content Management system (ECM) where all staff has access to it. The permittee receives the original version of the final permit.

The ECM system allows direct electronic access of facility files to NDEQ employees. The system can be used directly or documents are emailed or printed. Information is shared or distributed using Microsoft Office. The State IIS system, ICIS, and outside sources are used to obtain information on streams and generate draft permits.

### **C. State-Specific Challenges**

Nebraska consists of many small communities with aging wastewater infrastructures that are experiencing budget cuts due to losing populations. As these communities decrease in size and municipal budgets, the NDEQ continues to struggle with how to address these communities with looming infrastructure needs in a down turned economy.

### **D. Current State Initiatives**

Nebraska is currently including monitoring for total nitrogen and total phosphorus in new and reissued permits to determine if nutrient limits should be included in permitted facilities. It has also included the review of Fish Advisories and the 303(d) list to include monitoring of legacy pollutants.

## **III. Core Review Findings**

### **Basic Facility Information and Permit Application**

#### 1. Facility Information

Basic facility information is necessary to establish proper permit conditions for a facility. For example, information regarding facility type, location, processes and other factors is required by NPDES permit application regulations (40 CFR 122.21) because such information is essential for developing technically sound, complete, clear and enforceable permits. Similarly, fact sheets must include a description of the type of facility or activity subject to a draft permit.

#### Tecumseh WWTF (NE-0030911)

Tecumseh WWTF is a major POTW serving a population of 1677. The permit contains specific authorization to discharge information on the first page. The outfall location is not in the permit but is included in the inspection report. The fact sheet had a complete description of the plant and its processes.

The permit included secondary treatment limits for CBOD and TSS in terms of concentration. Mass limits were not included in the permit. There were WQBLs for ammonia and E. Coli and monitoring for WET was included in the permit.

#### Fremont WWTF (NE-0031381)

Fremont WWTF is a major POTW serving a population of about 25,000. The city has several large industrial users including Hormel Foods, Fremont Beef, and Mid-America Truck wash. Although average flows (4.27 MGD) are lower than design flows (12 MGD), the organic loading to the plant is high with an influent BOD of about 1000 mg/L. The fact sheet had a complete description of the plant and its processes, along with detailed description of the outfall location.

The permit included secondary treatment limits for CBOD and TSS in terms of concentration. Mass limits were not included in the permit. There were WQBLs for ammonia, E. Coli, Total Residual Chlorine, and WET. Calculated WET limits were below 1.0 TUa, but 1.0 TUa was used as the permit limit. For calculated limits below the detection limit of the acute test, the permit limit should be no statistically significant toxicity in the WET test as explained in the Technical Support Document for Water Quality-based Toxics Control.

#### Nestle Purina Petcare Company (NE-0000116)

The Nestle Company produces meat based cat food and dog food. The company has about 350 employees and discharges about 0.345 MGD to the Big Blue River.

The fact sheet had complete information with a description of the facility and the treatment process. There were flow diagrams and descriptions of the outfall location and receiving stream. Technology-based limits were set using Best Professional Judgment (BPJ) using the effluent guidelines for the meat industry for guidance. These included controls on BOD, TSS, and Ammonia. The permit included WQBLs for E. coli and Total Residual Chlorine.

#### NPPD Sheldon Power Station (NE-0111490)

The Sheldon Power Station fact sheet has a detailed facility description with a good description of discharge location and discharge conditions. Technology based limits were properly derived based on the steam electric ELG.

The facility has undergone significant changes during the previous permit cycle through construction and process changes. Since original construction of the facility, it had used a dammed stream as part of the treatment for the facility wastewaters, and had an ash pond. In the last 5 years, the stream has been re-routed around the plant and all discharges have been diverted to the Big Blue River through a ten mile pipe. This action has eliminated the heavy impact from the facility on the smaller stream, and through the facility has gained additional effluent discharge allowances for total dissolved solids due to the mixing capacity of the Big Blue River.

## 2. Permit Application Requirements

Federal regulations at 40 CFR 122.21 and 122.22 specify application requirements for facilities seeking NPDES permits. Federal forms are available, but authorized states are also permitted to use their own forms provided they include all information required by the federal regulations. This portion of the review assesses whether appropriate, complete, and timely application information was received by the state and used in permit development.

NDEQ's application forms have several omissions. Applications for major POTWs do not include priority pollutant scans to identify pollutants of concern. Pollutants of concern are based on permit history or pollutant contributions expected from known industrial users. For industrial permittees, the applications do not include the sets of monitoring requirements as required in the Federal 2C industrial permit applications. Similar to POTWs, the pollutants of concern are based on permitting history and applicable effluent guidelines.

NDEQ has agreed to put the monitoring requirements into permits as they are reissued. However, EPA is concerned that this does not address the permit application requirement in 40 CFR 122.21(j). The regulation states that applicants must provide data from a minimum of three

samples taken within four and one-half years prior to the date of the permit application and must include the data in the pollutant data summary of the application. NDEQ must continue to include the monitoring requirement as permits are reissued and expeditiously change the permit application to meet the federal requirement. This was a 2008 program review finding and should be addressed by NDEQ as soon as possible.

Other parts of the applications are complete, and require details of location, flow maps and descriptions of treatment processes, and complete descriptions of discharge locations.

**State Response:** When application forms are revised they will be consistent with 40 CFR 122.21. Regulations update priorities are application forms and pretreatment requirements. We anticipate taking regulation changes to the Environmental Quality Council in late 2013.

NDEQ has started requiring pollutant scans in new permits or by letter (Attachment C and D) if not included with permits issued October 1, 2012. Until application forms are revised NDEQ will include a pollutant scan reminder in the letter sent to existing facilities reminding them to submit their permit application 180 days before the permit expires. This letter is sent 270 days before permit expiration.

### **Technology-Based Effluent Limitations**

NPDES regulations at section 125.3(a) require that permitting authorities impose technology-based treatment requirements in the permits they issue. A sampling of Nebraska's permits, fact sheets and other supporting documentation for POTWs and non-POTWs were reviewed to assess whether the "technology based effluent limitations" (TBEL) contained in them represent the minimum level of control that must be imposed in a permit.

#### 1. TBELs for POTWs

POTWs must meet secondary or equivalent to secondary standards in accordance with the Secondary Treatment Regulations at 40 CFR Part 133 (including limits for BOD, TSS, pH, and percent removal). Thus, permits issued to POTWs, must contain limits for all of these parameters (or authorized alternatives) in accordance with the Secondary Treatment Regulations.

Nebraska's fact sheets contain detailed descriptions of plant location, treatment processes within the plant, and the handling of all waste streams including sludge production. Industrial users are listed.

TBELs for secondary treatment or equivalent to secondary treatment are properly derived in NDEQ permits and include limits for BOD (or CBOD), TSS, pH, and percent removal. Fact sheets state which limits apply, but do not include lengthy discussions of applicability.

Permits do not include mass limits for BOD and TSS. This is not required by the regulations, but the EPA urges use of both mass and concentration limits in permits when possible.

**State Response:** NDEQ uses design flows for mechanical WWTF to calculate mass limits in permits. NDEQ has established mass limits for secondary standards and water quality based permits since approximately 2009.

## 2. TBELs for Non-Municipal Dischargers

Permits issued to non-municipal dischargers must require compliance with a level of treatment performance equivalent to “Best Available Technology Economically Achievable (BAT)” or “Best Conventional Pollutant Control Technology (BCT) for existing sources, and consistent with “New Source Performance Standards (NSPS)” for new sources. Where effluent limitations guidelines (ELG) have been developed for a category of dischargers, the TBELs in a permit must be based on the application of these guidelines. If ELGs are not available, a permit must include requirements at least as stringent as BAT/BCT developed on a case-by-case basis using BPJ in accordance with the criteria outlined at 40 CFR 125.3(d).

Nebraska’s fact sheets contain detailed descriptions of plant location, treatment processes, and waste streams. The SIC code(s) for the facility are identified and permit limits are derived based on the applicable ELG. Where an ELG does not apply, the state derives permit limit using BPJ.

### **Water Quality-Based Effluent Limitations**

The NPDES regulations at 40 CFR 122.44(d) require permits to include any requirements in addition to or more stringent than technology-based requirements where necessary to achieve state WQS, including narrative criteria for water quality. To establish such “water quality-based effluent limits” (WQBEL), the permitting authority must evaluate the proposed discharge and determine whether technology-based requirements are sufficiently stringent, and whether any pollutants or pollutant parameters could cause or contribute to an excursion above any applicable WQS.

The PQR for Nebraska assessed the processes employed by permit writers and water quality modelers to implement these requirements. Specifically, the PQR reviewed permits, fact sheets, and other documents in the administrative record to evaluate how permit writers and water quality modelers determined the appropriate WQS applicable to receiving waters, evaluated and characterized the effluent and receiving water including identifying pollutants of concern, determining critical conditions, incorporating information on ambient pollutant concentrations, and assessing any dilution considerations, determined whether limits were necessary for pollutants of concern and, where necessary, calculated such limits or other permit conditions. For impaired waters with EPA-approved TMDLs, the PQR also assessed whether and how permit writers consulted and developed limits consistent with the assumptions of those TMDLs.

For POTWs, NDEQ assumes reasonable potential for criteria for Ammonia, E. coli, WET, and pollutants limited in past permit cycles. For those pollutants, Wasteload Allocations are calculated and permit limits are derived using the methods in the Technical Support Document (TSD). For all other pollutants (WQBELs and industrial facilities), it is not clear how a Reasonable Potential Analysis (RPA) is conducted. The fact sheets reviewed state that RPAs had been conducted but lacked detail and clarity in the specifics of the RPA process (e.g., pollutant selection for evaluation). In reissued permits, RP is typically calculated on the basis of effluent limits in the current permit. Permit writers are familiar with permitted facilities. Unless processes or industrial users (e.g., pretreatment permits) have changed significantly, the permit writer would not propose additional pollutant-specific effluent limits. All permits and associated fact sheets reviewed lack a detailed discussion of pollutants of concern. The fact sheets include brief statements identifying potential pollutants in the discharge according to the activity, but

they do not discuss data available from the permit application forms or other effluent characterization data. Reviewing pollutant scans required during the permit application process would be useful in identifying pollutants of concern to alert permit writers of changes in effluent quality.

NDEQ's RPA procedure is specified in the TSD, as are its procedures for calculating WQBELs. A review of the permits, fact sheets, and permit files on-site indicated that WQBEL calculations followed the TSD procedures. However, after a review of the state's files, the procedure for conducting the RPA was not always clear.

The receiving waterbody is carefully identified and uses are identified in the fact sheet. Impaired waters are identified in the fact sheet, and permit writers assess whether the pollutant or pollutants causing the impairment will be present in the discharge.

WQBLs tend to be data driven with calculations for seasonal low flows and data sets used to set seasonal background levels for ammonia.

### **Monitoring and Reporting**

The NPDES regulations require permittees to periodically evaluate compliance with the effluent limitations established in their permits and provide the results to the permitting authority. Monitoring and reporting conditions require the permittee to conduct routine or episodic self-monitoring of permitted discharges and where applicable, internal processes, and report the analytical results to the permitting authority with information necessary to evaluate discharge characteristics and compliance status.

Specifically, the regulations at 40 CFR 122.44(i) require NPDES permits to contain monitoring requirements sufficient to assure compliance with permit limitations, including specific requirements for the types of information to be provided and the methods for the collection and analysis of such samples. The regulations at 40 CFR 122.48, also require that permits specify the type, intervals, and frequency of monitoring sufficient to yield data which are representative of the monitored activity. The regulations at 40 CFR 122.44(i) also require reporting of monitoring results with a frequency dependent on the nature and effect of the discharge.

The fact sheet should include the basis for requiring monitoring frequency and how this frequency is representative and protective of the respective State WQS. The monitoring frequency rationale should include an explanation for when the samples are to be taken during the year, taking into account seasonal or production considerations, and where the samples are taken.

The permit application for POTWs with design flow greater than 1 MGD requires monitoring for the priority pollutants (three sets of monitoring in the permit cycle) that are still not being included in the application, (see 40 CFR 122.21(j)). The major permits reviewed by EPA were missing this information. NDEQ provided a draft copy of the pollutant scans that will be attached to new and reissued permits. However, NDEQ has not decided how it will address sampling requirements for all POTWs, and the subset of POTWs with design flows greater than or equal to 0.1 MGD as required in 40 CFR 122.21(j).

**State Response:** NDEQ is currently addressing pollutant scans for all facilities. NDEQ has started requiring pollutant scans in new permits or by letter (Appendix F, Attachments C and D) if not included with permits issued October 1, 2012. Until application forms are revised NDEQ will include a pollutant scan reminder in the letter sent to existing facilities reminding them to submit their permit application 180 days before the permit expires. This letter is sent 270 days before permit expiration.

### **Special and Standard Conditions**

The regulations at 40 CFR 122.41 require that all NPDES permits, including NPDES general permits, contain an enumerated list of “standard” permit conditions. Further, the regulations at 40 CFR 122.42 require that NPDES permits for certain categories of dischargers must contain certain additional standard conditions. Permitting authorities must include these conditions in NPDES permits and may not alter or omit any standard condition, unless such alteration or omission results in a requirement more stringent than required by the Federal regulations. In addition to these required standard permit conditions, permits may also contain additional narrative requirements that are unique to a particular permittee. These case-specific narrative requirements are generally referred to as “special conditions.” Special conditions might include requirements such as: additional monitoring or special studies, best management practices (see 40 CFR 122.44(k)), and/or permit compliance schedules (see 40 CFR 122.47). Where a permit contains special conditions, such conditions must be consistent with applicable regulations.

For the most part, the NDEQ standard conditions are verbatim quotations of the Federal regulations at 40 CFR 122.41. The exceptions are as follows:

- Duty to Comply – The section is abridged and does not list the Federal penalties listed in 40 CFR 122.41(a)(2-3).

**State Response:** As per 40 CFR 123.25(a)(12), Section 122.41 (a)(1) and (b) through (n) – Applicable permit conditions are required. This is referenced in the beginning of 40 CFR 122.41. “§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).” Nebraska has revised the standard conditions which are attached (Attachment A) for your review. While as a practice, we do not include information in permit requirements, we reference enforcement for federal action as subject to the Clean Water Act.

- Duty to Reapply – Paraphrases the duty to reapply, but is as stringent as the Federal rule.
- Monitoring and Records – These requirements are broken into two separate sections in the permit, with references to state rules for test procedures. The state rules reference the 40 CFR Part 136 methods.
- Planned Changes – Paraphrased referring to state rules.

**State Response:** “The following conditions apply to all NPDES permits. Additional conditions applicable to NPDES permits are in § 122.42. All conditions applicable to NPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.”

- Monitoring Reports – Some omissions.

**State Response:** Without Specifics NDEQ cannot comment.

- Twenty-four Hour Reporting - Allows the director to waive written reports if there has been oral report within the 24 hour time frame. Federal rules do not allow this.

**State Response:** 40 CFR 122.41(l)(6)(iii) allows this. “(6) *Twenty-four hour reporting.* (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See § 122.41(g). {This appears to be an error in the 40 CFR that references “*Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.*” the correct reference is 40 CFR 122.41 (m)(ii) or other reference}.

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. (See § 122.44(g).)

(iii) The Director may waive the written report on a case-by-case basis for reports under paragraph (l)(6)(ii) of this section if the oral report has been received within 24 hours.”

- Other Non-Compliance – Paraphrases. Refers to state requirements.

**State Response:** The following conditions apply to all NPDES permits. Additional conditions applicable to NPDES permits are in § 122.42. “All conditions applicable to NPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.”

We have revised our Standard Conditions, (Appendix F, Attachment A), to this report for review.

Sanitary Sewer Overflow (SSO) discharges are discharges of raw sewage from municipal sanitary sewer systems at locations upstream of a treatment plant headworks. Discharges, such as SSOs, that are not explicitly authorized by a permit are prohibited. As a form of noncompliance, SSOs should be reported by the permittee; however, Nebraska NPDES permits do not define what constitutes a reportable SSO. NDEQ should develop language for newly issued and reissued municipal wastewater permits that articulates what constitutes a reportable SSO.

**State Response:** The reason we have not further defined reportable SSOs in permits is that EPA has not finalized their rule. NDEQ has dealt with SSO as a bypass for many years and has required their reporting, and does track these events.

### **Administrative Process & Documentation**

The administrative process includes documenting all permit decisions, coordinating EPA and state review of the draft (or proposed) permit, providing public notice, conduct hearings (if appropriate), and responding to public comments, and defending the permit and modifying it (if necessary) after issuance. The PQR team discussed each element of the administrative process with the Nebraska permitting staff, and reviewed materials from the administrative process as they related to permits reviewed for the core permit review.

The federal NPDES regulations and NDEQ's NPDES regulations require that permittees must submit NPDES applications 180 days before permits expire. If complete applications are not submitted within the 180-day deadline, then permits cannot be administratively continued and permit coverage will terminate.

To assist permittees in submitting timely and complete permit renewal applications, NDEQ sends out a reminder letter nine months (270 days) before permit expiration. NDEQ then uses an in-house spreadsheet to track the arrival of applications.

When the applications are received, NDEQ staff does a preliminary review to determine whether the applications are complete. This first review checks for an authorized signature, complete addresses, and submission of all pages of the application. In general, these first checks are easier for municipal facilities and more difficult for industrial facilities. If a plant operator signs an application, NDEQ will return the application to ensure a signature is obtained from a "cognizant official".

After the preliminary review, applications are assigned to a permit writer for technical review and later drafting. Each permit writer is assigned to a set of counties so the permit writer can become knowledgeable about an area of the state. (This also encourages watershed-based decision making.) Permit writers review the technical aspects of the permit for completeness and work with the permittee to collect any additional pertinent and/or required information. When the application is complete, the permit writer documents the completion date and the tracking spreadsheet is updated.

NDEQ prioritizes permit issuance. New dischargers are given priority over re-issued permits and NDEQ indicates it makes every effort to be prompt in permit coverage so new facilities can begin operations as quickly as possible. Permits for new facilities are tracked on a separate, dedicated spreadsheet.

Backlogged permits are defined as permits that have been administratively extended. When permits expire before a draft is completed, NDEQ tracks the status of the backlogged permits and works to resolve issues. NDEQ also keeps separate tracking lists for EPA Priority Permits and facilities located on 303(d) listed streams.

When the permit writer creates a draft permit and fact sheet or statement of basis, the drafts are routed for internal review by specialists in compliance, Water Quality Standards (WQS) in the

Planning Unit, Technical Assistance Unit and the Groundwater Unit. The permit writer takes the comments from these individuals and updates the draft permit and fact sheet/statement of basis. Then NDEQ sends the draft permit and fact sheet/statement of basis to the permittee for review and comment. Once the last set of comments is considered, a final draft is reviewed by the Permits Unit Supervisor and, after final corrections, the permit is placed on public notice. EPA's review is concurrent with the 30 day public review period.

In the summer of 2008, the Region 7 states and EPA held a "Kaizen" event. The Kaizen process is used to find efficiency and prevent problems in production processes or administrative processes. As one of the improvements discussed in the Kaizen process, NDEQ will share with EPA earlier drafts of permits that involve difficult issues earlier in the development process.

**State Response:** The State supports the 2008 Region 7 Kaizen results and look forward to implementing all phases of the process improvements.

After the public notice and response to comments, the permit is reviewed one last time by the Permits Unit Supervisor and then by the Wastewater Section Environmental Engineer Section Supervisor or for CAFO the Agricultural Section Supervisor before the final permit is sent to be signed by the appropriate Director and issued.

The administrative record is the foundation that supports the NPDES permit. If EPA issues the permit, 40 CFR 124.9 identifies the required content of the administrative record for a draft permit, and 40 CFR 124.18 identifies the requirements for final permits. Authorized states are required to follow 40 CFR 123.25 and should have equally strong documentation. The record allows personnel from the permitting agency to reconstruct the justification for a given permit and defend the permit during any legal proceedings regarding the permit. The administrative record for a draft permit consists, at a minimum, of the permit application and supporting data, draft permit, fact sheet or statement of basis, all items cited in the statement of basis or fact sheet, including calculations used to derive the permit limitations, meeting reports, correspondence with the applicant and regulatory personnel, all other items supporting the file and, for new sources where EPA issues the permit, any Environmental Assessment, Environmental Impact Statement, or Finding of No Significant Impact.

NDEQ has written procedures outlining wasteload allocation, permit limit generation and NPDES permitting procedures. NPDES permits and fact sheets are generated using Microsoft Word. Formatting of the Word documents is shared among the permit writers. NDEQ is designing a permitting tool (*Tools for Environmental Permitting*) it anticipates implementing in September 2012. This permitting tool is designed to house data (e.g., discharger, surface water, and standard language) and through an Adobe-based, wizard-like tool, develops a standardized format for the permit document, and calculates WLAs and effluent limits. NDEQ indicated that eventually the permitting tool would upload effluent limits to ICIS upon the permit becoming effective. The permitting tool also tracks changes in the document, to allow for greater ease and efficiency during the review (peer and management) process. EPA's e-NPDES provide the basis for NDEQ's system; however, the project scope expanded when NDEQ realized the potential for use in developing permits in addition to managing discharger data. NDEQ has implemented Enterprise Content Management (ECM), a document and file scanning/imaging system, to allow for easier accessibility of permit documents by permit staff, EPA, and the general public. NDEQ has always had well organized and maintained files. Files are complete and bound into folders with complete indexes. Paper files were organized into three sets of folders for each

facility: General (G), Permit (P), Reports and Data (R). Sequential folders are marked as 0001 (Oldest), 0002, 0003, etc. Bar codes on each file can be used to access all the information on the file, such as a complete index of the documents in the file, check out history, etc.

Files are organized by facility and the files for a facility may cover several programs (NPDES, RCRA, LUST, etc.). Each of those programs can have multiple components. For instance, NPDES could be broken down into discharge permits, construction storm water, MS4, etc.

Within the last year or so, NDEQ has switched completely to electronic record keeping. NDEQ used the index methodology from the old records systems, but added other fields to further define the documents such as sender and recipient.

The new database is an Integrated Information System (IIS) AS 400. Incoming paper documents are scanned on a table top scanner and the processing person enters a fairly lengthy list of indexing information. This detailed indexing is the key time investment in the filing procedure, and is essential to the organizational structure and routing of the files.

The indexing is done through ECM software. The ECM software is an umbrella for all the programs that might keep records on a facility, and it has been used successfully in other branches of state government.

In the ECM system, no paper copies are produced and no paper records are kept. Incoming documents are scanned on table top scanners (or a large format scanner for maps, plans, or other large documents), indexed, and then routed by electronic means. For convenience, documents over 100 pages are scanned, but routed in hard copy form. Most documents are scanned in black and white, and colors scans (much slower and more data intensive) are only used when needed.

Scanned documents are not filed per se, but collected into boxes based on the date received and the processor. Boxes are stored, but not further indexed. NDEQ is working on a retention schedule for the boxed records.

Routing is built into the indexing, so a given employee gets a daily email listing the documents routed to them. This routing has been one of the difficult aspects of the system: if a manager is out of the office, information may not be forwarded, in the same way that a paper document can become delayed. Some employees have struggled with the email load.

A big potential success is in the streamlined response to public requests for information. At some point, all responsive records will be easily accessible electronically.

NDEQ is working on the fine points of adjusting to the new system. One of the main difficulties has been covering the full breadth of subject matter that can be covered by correspondence. This can include information from holders of general permits, individual correspondence, or records on a general subject such as storm water, general policy, etc.

NDEQ is operating the entire record keeping system with a manager, 5 full time employees, and 2 temporary employees.

## 1. Fact Sheet or Statement of Basis

Under 40 CFR 123.25 (a)(27) and (a)(32), 40 CFR 124.8 and 124.56, fact sheets are required for major NPDES permits, general permits, permits that incorporate a variance or warrant an explanation of certain conditions, and permits subject to widespread public interest. Current regulations require that fact sheets include:

- General facility information
  - Description of the facility or activity
  - Sketches or a detailed description of the discharge location
  - Type and quantity of waste/ pollutants discharged
- Summary rationale of permit conditions
  - Summary of the basis for draft permit conditions
  - References to the applicable statutory or regulatory provisions
  - References to the administrative record
- Detailed rationale of permit conditions
  - Explanation and calculations of effluent limitations and conditions
  - Specific explanations of:
    - Toxic pollutant limitations
    - Limitations on internal wastestreams
    - Limitations on indicator pollutants
    - Case-by-case requirements
    - Decisions to regulate non-publically owned treatment works under a separate permit
  - For EPA-issued permits, the requirements for any state certification
  - For permits with a sewage sludge land application plan, a description of how all required elements of the land application plan are addressed in the permit
  - Reasons why any requested variances do not appear justified, if applicable
- Administrative requirements
  - A description of the procedures for reaching a final decision on the draft permit, including:
    - Public comment period beginning and ending dates
    - Procedures for requesting a hearing
    - Other procedures for public participation
  - Name and telephone number of the person to contact for additional information.

The fact sheet and supporting documentation were reviewed with the administrative record of the permit file as part of the PQR to assess whether the basis or rationale for limitations and other permit decisions were documented in the development of the final permit.

Fact sheets are basically complete. Base line information is very complete with good descriptions of facilities, processes, and discharge locations. Calculations for all limits are shown. Spreadsheets and other background information are included in the files.

Better labeling of spreadsheets and more discussion and explanation of the logic behind decision-making in the calculations could help make the fact sheets more understandable by the general public.

## Core Topic Areas

Core topic areas are specific aspects of the NPDES permit program that warrant review based on the specific requirements applicable to the selected topic areas. These topic areas have been determined to be important on a national level. Core topic areas are reviewed for all state PQRs.

### Pesticide General Permits

NDEQ issued the Nebraska Pesticide General Permit (PGP) on November 1, 2011. The Nebraska Department of Agriculture collaborates with NDEQ to control discharges from pesticide applications by issuing restricted use licenses. NDEQ identifies waters for which permit coverage is required for these discharges in three groups. Group III waters are required to submit a Notice of Intent (NOI) and are defined as state resource waters, impaired waters, waters with endangered species, and waters within 250 feet of a public drinking water intake. Group II waters are defined as flowing or discharging water bodies but must have none of the Group III conditions. Group I waters are defined as having no flow for at least 24 hours after application, have no discharge, or have a discharge that can be controlled for a period of 24 hours after an application. The NDEQ Director has determined that Group I and Group II waters do not require a NOI.

NDEQ has issued 8 authorizations to discharge and has 6 authorizations pending. Nebraska does not anticipate it will issue an individual permit for pesticide discharges and estimates 30 authorizations issued under the PGP. NDEQ does not use an electronic NOI system and NOI data is not currently available online. NDEQ has 7 days to deny or delay NOI authorization of an NOI for Group III waters in Part I B(1)(a)(iv) and (v) of the permit. If they do not respond within 7 days, the applicator has authority to proceed with the application. The remaining Group III waters are not authorized without notice from NDEQ.

Pesticide Management Plans are reviewed by NDEQ staff and are submitted with the NOI. The Nebraska Pesticide Management Plan is named a Pesticide Use Management Plan (PUMP) and is kept on site by the applicant. Reports are required if there is a violation.

Permitting requirements for discharges associated with pest emergency situations such as mosquito applications in 303(d) waters are allowed without a NOI. If there are any endangered species issues present, NDEQ collaborates with the Nebraska Game and Parks and Commission.

### Pretreatment

To obtain a reasonable understanding of the quality of Nebraska Pretreatment Program Permits, a random sampling of 10 Non-categorical NPP permits and 10 Categorical NPP permits was chosen and evaluated using the requirements for individual control mechanisms found at 40 CFR 403.8(f)(1)(iii), “(iii) Control through Permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users identified as significant under § 403.3(v), this control shall be achieved through individual permits or equivalent individual control mechanisms issued to each such User except as follows.” In addition, for Categorical industries, analysis was conducted on the adequacy of the permit for addressing Categorical Pretreatment requirements.

## **Categorical Industrial Nebraska Pretreatment Program Permits Reviewed**

### Nebraska AL Castings- Hastings: NE013337

This facility is subject to the 40 CFR 464 Metal Molding and Casting Standards, Aluminum Casting Subcategory. The facility evaporates all process water and therefore certifies no discharge on its monitoring reports. This Categorical Standard contains limits for Total Toxic Organics and lists the constituents of the covered TTO in the standard, along with an alternative monitoring indicator (oil and grease) for demonstrating compliance. However, the permit contains the list of TTOs that apply to metal finishers (40 CFR Part 433) and the certification option available to metal finishers. The permit needs to be modified to contain the correct TTO limits.

### Chief Custom Products- Grand Island: NE0129771

This facility performs phosphatizing in the process of manufacturing farm products and is therefore subject to the Metal Finishing Categorical Standards 40 CFR Part 433. Overall the permit is well written, however the identification of the sampling location is somewhat general and could be strengthened by being more specific in its description.

### Industrial Plating, Omaha: NE 0114642

This facility is classified as a job shop electroplater discharging less than 10,000 gallons per day and is subject to the 40 CFR Part 413 Electroplating Categorical Standards. With discharges less than 10,000 gallons per day it qualifies for a reduced list of regulated pollutants; one not containing zinc. However, this facility performs both rack and barrel zinc electroplating so it is not testing for the most probable pollutant it could be discharging. Moreover, a review of the discharge monitoring reports submitted by the industry shows that it routinely discharges above 10,000 gallons per day. NDEQ needs to monitor this industry's water usage to ensure that it is properly classified. In addition, pursuant to the definition of "new source" if this industry has completely replaced its plating lines over the years (a possibility as it has been in business prior to August 1984) it would no longer be an Electroplating industry but one subject to the Metal Finishing Categorical Standards.

### Hoover- Beatrice: NE0114464

Permit terminated, not reviewed

### Molex- Lincoln: NE0131776

This facility electroplates copper, nickel, tin, and sometimes lead and gold, in the manufacture of electrical connectors. As such, it is subject to the 40 CFR Part 433 Metal Finishing Standards. Its permit is well written and provides the ability to certify compliance with its TTO limits, however, the facility elects to sample semiannually instead.

### Chief Transportation Products, Omaha: NE0132250

This facility is subject to the 40 CFR Part 433 Metal Finishing Standards which has a requirement to comply with a TTO limit. The Standard allows for certification in lieu of sampling if the facility has submitted, and been approved for, a solvent management plan. At Section H of the permit, this option is explained. There is no solvent management plan in the state's files (it could have been submitted years ago) and no record of one being approved; however, the industry certifies compliance with TTOs routinely. Rather than the permit stating that the holder *can* certify TTO compliance *if* it submits a solvent management plan, the permit

should state that the facility *has* submitted a solvent plan, give the approval date, and then cite the option for certification.

Radio Engineering, Omaha: NE0123374

Radio Engineering is classified as subject to the new source requirements of the 40 CFR Part 433 Metal Finishing Standards. Overall its permit is well written, however, the same comment for TTO certification as for Chief Transportation applies.

Lester Electric, Lincoln: NE0060127

Lester Electric performs phosphate conversion coating in the process of manufacturing battery chargers. It is therefore subject to the Metal Finishing Standards and must comply with a TTO limit or certify compliance. Like the two permits reviewed above, there is no statement in the permit that a solvent management plan has been submitted and approved yet the facility routinely certifies compliance with TTO limits.

Exmark, Beatrice: NE014451

This Exmark facility, at 2101 Ashland Dr. has had its permit terminated; therefore, it was not reviewed.

Vishay-Dale Plant 6, Columbus: NE0114391

This facility manufactures electrical components and in the process performs copper and silver plating. Cyanide is used in the plating operation and is treated in a destruction unit prior to discharge. The permit properly has the cyanide sampling location requirement after the destruction unit but prior to mixing with other regulated wastestreams.

**NonCategorical Nebraska Pretreatment Program  
Permits Reviewed**

Henningsen Foods- David City: NE0133108

The facility has 2 outfalls, both of which discharge to the city: Outfall 001 covers egg cleaning and breaking, while Outfall 002 is the discharge from egg processing. Neither outfall contains limits; the facility is required to monitor only. A review of the fact sheet shows no reference to city's plant capacity so it cannot be determined if the facility should have limits. A review of the fact sheets for earlier permits from 2003 and 2008 also do not contain an analysis on the city's plant capacity. Moreover, the fact sheet from 2003 documents lower flows from the industry, hence, the industry has been growing over the years making it an even larger proportion of the city's loadings. More recently, a letter from the industry dated July 29, 2009 identifies that it is going to enter into an agreement with the city to provide funds for the city's plant expansion, clearly indicating the significance of its discharge to the city.

Green Plains Renewable Energy, Central City: NE0134261

The permit for Great Plains expires on September 30, 2012; however, EPA's Online Tracking Information System, OTIS, says the permit is to expire on March 31, 2015. EPA erroneously identified this facility as a Pretreatment industry during the selection process. Because it is a direct discharger, its permit was not reviewed.

Cornhusker Energy, Lexington: NE0134279

Cornhusker Energy has a permit that authorizes both a direct discharge (Outfall 001) and a discharge to the City of Lexington (Outfall 002). The portion of the permit dedicated to Outfall

001 was not reviewed as part of this analysis. Outfall 002 authorizes the industry to discharge COD, TSS, and NH<sub>3</sub> but does not place numerical limitations on any of them. Moreover, the fact sheet states that conventional pollutants are not being discharged in loadings that exceed the wastewater treatment plant's capacity to treat, yet provides no mathematical demonstration that this is true. BOD, which provides a direct comparison to the city's plant capacity, is not being measured or regulated by the permit. However, to justify the measurement of COD rather than BOD, the fact sheet states that a positive correlation exists between COD and BOD but does not identify what that relationship is.

An interesting element of the permit is that the industry has been authorized to discharge to the city at a pH less than 5 standard units. This is permissible by the General Pretreatment Regulations if the collection system has been designed to accept wastes of a lower pH. Contained in the file and fact sheet are letters and engineering studies showing that the permitted pH of 3.2 s.u. will not harm pipes or pumps. Hence, the fact sheet properly provides the necessary information to justify this lower limit. The sampling requirements for pH are confusing: The permit states that the sampling frequency is quarterly but specifies that the sample type as "continuous."

#### Tyson Foods, Omaha: NE0133868

This permit identifies three outfalls, two of which discharge to the City of Omaha. There are no limited pollutants other than pH. The fact sheet provides good details on the pretreatment units treating the industry's wastes (001 has pH adjustment, 002 is treated with a DAF unit), however, there is no discussion on the city's treatment plant capacity and whether not including BOD and TSS limits is justified.

#### McCain Snack Foods, Grand Island: NE0137511

The fact sheet for McCain Snack Foods properly provides calculations analyzing the City of Grand Island's plant capacity and determining the portion of the city's load that is given to McCain through the permit. This fact sheet can be used as the model for those permits that are deficient in this area.

#### ADM, Lincoln: NE0035157

The permit for ADM contains no numeric limits for BOD and TSS, the two pollutants discharged in quantity from this industry. There is no analysis in the fact sheet based on the receiving wastewater treatment plant's capacity so it is impossible to determine if not regulating BOD and TSS is warranted. Moreover, the fact sheet doesn't state which of the two Lincoln plants receives ADM's waste. The permit does contain limits for H<sub>2</sub>S and dissolved sulfide limits and was recently modified to remove the Oil and Grease limit of 100 mg/l. Flows can be diverted between these facilities.

#### Nebraska Turkey Growers, Gibbon: NE0111791

This permit has been terminated so therefore it was not reviewed.

#### Swift Beef, Grand Island: NE0113891

The permit for Swift contains limits for both a direct discharge of cooling water and process discharge to the City of Grand Island. Like McCain Snack Foods (reviewed above) the numeric limits in the permit are properly based on the city's plant capacity.

#### Feaster Foods, Fairbury: NE0114081

Feaster Foods manufactures bacon bits and discharges about 22,000 gallons per day of wastewater. Its permit contains no BOD or TSS sampling requirements or permit limits. Moreover, there is no discussion in the fact sheet why BOD or TSS is not monitored or regulated. The General Pretreatment Regulations require all Significant Industrial Users to have a control mechanism, but there is no record provided in the fact sheet that Feaster Foods is an SIU. By definition, a non-Categorical SIU is one that discharges 25,000 gallons per day of process water, constitutes 5% of the receiving plant's flow, or has the ability to cause adverse problems to the plant. Since the city discharges about 0.5 million gallons per day, 5% of the flow load is 25,000 gallons per day, and because Feaster discharges 22,000 gpd, its flow does not qualify it as an SIU. There are no calculations showing that Feaster constitutes 5% of the BOD or TSS loads, and no discussion of any adverse affects Feaster could cause to the city's wastewater treatment plant.

#### Iams, Aurora: NE0133868

The Iams permit contains limits for BOD and TSS but the fact sheet does not tell how they were derived. The fact sheet does say that the limits protect the city from over loading but it does not provide any calculations as proof. Unlike the fact sheet for Feaster Foods, the Iams fact sheet discusses that Iams is an SIU as it discharges in excess of 25,000 gpd process water.

#### General Observations

Nebraska NPP permits are excellently composed and formatted. Tables are extremely easy to read because of the use of shaded headers. In addition, NDEQ is a regional leader in its drive for making all records available on-line. Consequently all permits are scanned and stored for retrieval as either pdf files or tiff files. However, scanning oftentimes darkens the shaded formatting making the heading unreadable. It is recommended NDEQ experiment with either lighter shading that will survive scanning or use a contrasting font that allows for proper data retention.

One weakness found in all NPP permits was the requirement for resampling and resubmission of results following the discovery of a violation. The General Pretreatment Regulations at §403.12(g)(2) require any industrial user who experiences a violation while sampling, to notify its control authority within 24 hours and resample and resubmit the results within 30 days (there are some exceptions, however). Not only is this requirement not in the permit, but no permit holders were executing it. It is highly recommended the NPP Standard Conditions be modified to include this requirement.

**State Response:** NDEQ has added this to our latest permits issued October 1, 2012 (Appendix F, Attachment B, Part I. H.). Also, the permit tool will include the required language.

#### “H. Effluent Violation Repeat Sampling

The permittee shall conduct or repeat sampling and analysis and submit the results of the repeat analysis to the Department within 30 days of becoming aware of the violation. The results of the repeat analysis must be submitted with a copy of the previously submitted noncompliance form.” See (Attachment B), Part I. H.

Another area that could be strengthened is the Pretreatment requirement at 40 CFR 403.12(f) to immediately notify the POTW of any discharge that could cause problems to the POTW, including slug loadings. The NPP permits contain requirements for immediate notification of a permit violation; however, this can be interpreted as a numeric violation and would not be timely enough to provide adequate notice for plant operators.

**State Response:** NDEQ has added this slug language to our latest permits issued October 1, 2012 (Appendix F, Attachment B, Part I. I.). Also, the permit tool will include the required language.

**I. Notice of Potential Problems**

All categorical and non-categorical Industrial Users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings.”

A serious deficiency common to non-Categorical permits is the lack of limits for BOD, TSS, and when appropriate, ammonia, or a justification in the fact sheet stating why limits for these pollutants are not needed. The EPA’s Local Limits guidance manual establishes criteria for when local limits for conventional pollutants are warranted and when they are not necessary. However, no non-Categorical permits that did not contain limits had any calculations or objective demonstrations justifying the absence of limits. Consequently, it was impossible to determine if those permits were protective against interference and/or pass through. The EPA’s guidance manual specifies that all POTWs that are loaded, on average, at 80% or higher for conventional pollutants must have local limits controlling those pollutants and the limits written into the permits. Therefore, if a permit does not contain limits for conventional pollutants, the fact sheet should contain calculations showing that the POTW receiving the industry’s discharge is less than 80% loaded for the missing pollutants.

## **Concentrated Animal Feeding Operations**

### **Background**

The Agriculture Section provides oversight and direction of the Livestock Waste Management Act, which includes the NPDES program for CAFOs along with inspections for all aspects of construction and operation, application reviews, and state and federal permit issuance. The Ag Section is divided into 2 units; an engineering services unit (4 FTEs) and compliance and permits unit (7 FTEs). There are 4 field offices that handle CAFOs with 2 FTEs and 3 that are essentially half-time.

As of Dec 31, 2011, 862 CAFO facilities were defined as CAFOs with 389 of those facilities covered under an NPDES permit (45%). With a few exceptions, NDEQ does not require NPDES permits for confinement facilities. All facilities are required to have a construction approval and state operating permit. The current NPDES General Permit coverage for CAFOs for open cattle feedlots expires March 31, 2013. NDEQ is in the process of revising the individual and general permit to incorporate the revisions to Title 130. An application for renewal of permit coverage will need to be received prior to October 1, 2012. It should be noted that there are still 8 facilities currently covered under the 2003 - 2008 General Permit.

## **Revision of statutes and regulations**

Nebraska was the first state in Region 7 to revise its regulations to include the 2008 Federal CAFO Rule. On December 1, 2010, amendments to Title 130 were approved by the Environmental Quality Council (EQC). The Governor signed his approval and Title 130 became effective on June 25, 2011. Amendments to Chapter 5 (NPDES duty to apply) were approved by EQC, Attorney General and Governor and became effective on October 4, 2011.

## **Nutrient Management Plans**

In 2010, EPA Region 7 sent out an information request under the CWA Section 308 in order to obtain and review the NMP and land application records at ten facilities in Nebraska. Results of the review indicated that the majority of facilities assessed were managing and land applying manure litter and process wastewater adequately. However, EPA did identify deficiencies at a handful of facilities.

Many facilities submitted the NMP chapter from their engineering plan. Since many of these plans were written prior to the 2003 CAFO Rule, they did not contain all of the nine minimum standards required under 40 CFR 122.42 (e)(1)(i-ix) or in their NPDES Permit. In some cases the information had not been updated over the last ten years leading to inconsistencies concerning the application fields, application agreements, and their associated maps, and soil samples taken from fields not listed in the NMP.

Many of the operation logs and NMPs lacked the relevant data needed to calculate or determine if the facility was over-applying nitrogen or phosphorus. As an example, the facility recorded the time it started and stopped pumping, but did not record the gallons pumped or what the flow rate was for the pump. Two facilities did not indicate what fields received the wastewater. At least two of the feedlots had discharged according to their operation logs. Facilities need to comply with the required “start pumping” operating levels. Not pumping because fields are being prepared to plant or to avoid crop damage is not a defensible reason to discharge under an NPDES permit.

NDEQ has hired an NMP specialist to address many of these issues. During the last year, NDEQ has made significant progress in dealing with previous NMP deficiencies. As part of an outreach effort, NDEQ held 8 meetings around the state in March 2012 to inform producers of the revisions to Title 130 that are now required in all NMPs and renewal applications by October 2012. The University of Nebraska Extension (with input from other sources) also developed a Nutrient Management Record Keeping Calendar to assist the producer in keeping the required records while NRCS has held training sessions related to the phosphorus index.

## **NMP Technical Standard**

The basis for crop yields, crop soil test recommendations/removal rates, N mineralization rates, methods for collecting manure samples, manure analysis, N credit for legumes, and soil sampling needs to be provided in the technical standard and NMP ( i.e.: Neb Guide G1450) or other similar references or methods approved by the Director.

## **CAFO Permit Review**

EPA reviewed 4 CAFOs covered under the NE CAFO General Permit (Winner Circle Feedyard, Beer Creek Ranch, LLC, Darr Feedlot, Inc., and Bar K Cattle, LLC) to determine if the facilities and their recently submitted NMPs complied with the applicable requirements of 40 CFR 122

and 412. Only one facility, Bar K Cattle, was found to have difficulties with manure management.

**Bar K Cattle:**

Bar K Cattle has approximately 16,000 head of cattle with 6,404 total acres in its NMP. According to its 2010 CAFO Annual Report, the facility had zero land application acres under its control (all waste transferred). Chronic rainfall, wet fields, and a lack of control over effluent application acres led to four discharges from June to August 2010 and one in June 2011. The facility has added an application field for effluent that is now under its control. This situation would seem to indicate that a facility needs to have some acreage under its control for the application of process wastewater.

## **IV. Special Focus Area Findings**

### **A. Water Treatment Plants**

EPA issued a letter last year with concerns about permits issued with schedules to do technology and water quality studies at several water treatment plants. As we stated in that letter, EPA urges NDEQ to better define the requirements of the studies to assure that those studies create the necessary information needed to issue permits in the next cycle. A copy of the letter is included in Appendix F.

**State Response:** EPA needs to finalize its rule for water treatment plants before this can be accomplished. In anticipation of the rule, NDEQ is using BPJ to establish appropriate permit conditions. NDEQ's studies are adequate to provide the information needed to evaluate Best Professional Judgment (BPJ) to issue the next permit. NDEQ issued these permits to gather information and to remove a potential impact to an endangered species. For these reasons, NDEQ disagrees that this is a (category 1) for the State and this item should not be placed as a State requirement in the tracker.

### **B. Memorandum of Agreements**

EPA Regional Office staff met with NDEQ management to discuss EPA's effort to review existing Memorandum of Agreements (MOAs) between the EPA and states governing the NPDES permit program. This effort is part of the Agency's activities under the October 15, 2009, Clean Water Act Action Plan, and the Interim Guidance to Strengthen Performance in the NPDES Program (June 22, 2010).

EPA HQ submitted a transmittal letter and attachments containing a Criteria for MOA Requirement, State Review Draft Checklist, and Model NPDES MOA State Review Draft to all State Environmental Directors on April 14, 2012. The transmittal letter requested states to review and comment on the documents by May 14, 2012.

The regional office staff reviewed the process outlined in the HQ transmittal letter with the NDEQ management and responded to their immediate questions and concerns. The management team was encouraged to review the documents and provide any comments to the HQ contact by the desired date.

**State Response:** NDEQ agrees the MOA should be amended to better reflect the interests of the parties given current program and budget issues. NDEQ submitted a proposed MOA for EPA review.

### C. Existing Action Items

The Action Items consists of commitments the Region and State made during the PPA, PPG, and 106 Grant two-year work planning process in FY 2005 to improve State and Regional NPDES Programs. NDEQ has successfully completed all but two of these Action Items. The remaining Action Items are listed below:

- **Permit Issuance:** The State had 10 minor permits that had been expired longer than 10 years. To date, NDEQ has issued all but two of these permits. The remaining permits are Lindsay WWTF and Northrop Grumman Systems.

**State Response:** The State has issued all of these permits as of October 1, 2012.

- **Pretreatment:** An area of concern is the lack of the development and implementation of local limits for cities with IUs pursuant to 40 CFR 403(10)(e). The State has committed to work with Region 7 to develop local limits for these cities. However, initial data collection has not yet been implemented. EPA conducted the analyses and submitted in draft to NDEQ for comment but no further work was done to finalize them. NDEQ staff are slowly beginning to work on this issue. The lack of dedicated staff has put NDEQ behind schedule in completing this task.

**State Response:** NDEQ has hired a staff person to work on pretreatment who is currently involved in the regulatory changes and inspections of pretreatment facilities. We have been working with our communities on pretreatment issues and will work on local limits as time allows. Currently most of the issues with pretreatment in Nebraska are compatible wastes and not metals which the local limit guidance from EPA focus.

EPA Headquarters submitted a new list of Action Items in FY2008 that it believed would improve State and Regional NPDES Programs. The Regional Office negotiated this list with NDEQ to implement in FY2009. The remaining Action Items from this list are as follows:

- **Stormwater:** The State should issue permits to the four remaining small phase II MS4s. The four facilities are Lancaster County, University of Nebraska, City of Terrytown and City of Gering. NDEQ has not completed Lancaster County, University of Nebraska or Terrytown. It is determining if Gering will become part of the Scottsbluff permit. Two other permittees, Union Pacific Railroad, and Burlington Northern-Santa Fe Railroad are not designated as MS4s, but will become non-traditional MS4s. Washington County has been designated as an MS4 and has submitted an NOI, but is not authorized to discharge at this time.

**State Response:** Currently Gering and Terrytown are operating under a wavier because they are under the 10,000 population threshold and not located in an urbanized area as designated by the 2010 census. We have a new application for University of Nebraska Lincoln but have not received an application for University of Nebraska Omaha (UNO). We are contacting UNO. We do not believe the Union Pacific Railroad, and Burlington Northern-Santa Fe Railroad meet the qualification for an MS4 and therefore are not required to obtain an MS4 permit.

- Applications: NDEQ should ensure that all NPDES permit application forms contain all federal requirements stated in 40 CFR Part 122. NDEQ began drafting changes to its regulations which have been reviewed internally and revised but remain in draft at this time.

**State Response:** When application forms are revised they will be consistent with 40 CFR 122.21. Regulations update priorities are application forms and pretreatment requirements. We anticipate taking regulation changes to the EQC in late 2013.

- Permit Quality: NDEQ's permit documentation shall be complete and consistent with 40 CFR Part 124.8 – Fact Sheet. NDEQ continues to work on getting the database for its permit writing tool configured. All permit requirements and applications will be stored as electronic files in the database allowing for more complete permit documentation.

**Stated Response:** NDEQ continues to enhance our documentation and we have information available on the web from files scanned into the system for the last several years. We have generated a permit from our permit writing tool and will continue to work on enhancements as we continue to implement this tool.

- Monitoring: NDEQ should revise the National Pretreatment Program application to ensure it meets the requirements of the baseline monitoring report. This Action Item has not been addressed by NDEQ.

**State Response:** When application forms are revised they will be consistent with 40 CFR 122.21. Regulations update priorities are application forms and pretreatment requirements. We anticipate taking regulation changes to the EQC in late 2013.

During the 2011 HQ conducted PQR, the following list of Category 1 Action Items was developed and negotiated with Nebraska for inclusion into the 2011 Action Item list. The 2011 list of Action Items is as follows:

- 316: States should include section 316(b) cooling water intake structure permit conditions and a determination of Best Technology Available for existing facilities on a BPJ basis, and the basis for the determination of Best Technology Available should be documented in the fact sheet. NDEQ is evaluating 316 (b) issues and is waiting until EPA comes out with guidance.

**State Response:** EPA needs to finalize its rule for 316(b) before this can be accomplished. In anticipation of the rule, NDEQ is using Best Professional Judgment (BPJ) to establish appropriate permit conditions. For these reasons, NDEQ disagrees that this is a (category 1) for the State and this item should not be placed as a State requirement in the tracker.

- Core Program: NDEQ should ensure its application forms are moving forward in the regulatory process to be revised and specifically include data submittal requirements. The core review indicates NDEQ is not requesting pollutant scans and therefore, not evaluating current discharge data for reasonable potential to cause or contribute to an excursion of WQS. NDEQ indicated the forthcoming permitting tool will include requirements for data submittals in the permit documents; however, in the meantime,

NDEQ should ensure staff are evaluating the discharge for pollutants of concern and the need for WQBELs. NDEQ is beginning to attach pollutant scans into its reissued major permits.

**State Response:** NDEQ has started requiring pollutant scans in new permits or by letter (Attachment C and D) if not included with permits issued October 1, 2012. Until application forms are revised NDEQ will include a pollutant scan reminder in the letter sent to existing facilities reminding them to submit their permit application 180 days before the permit expires. This letter is sent 270 days before permit expiration. NDEQ is requiring a pollutant scan in our new permits or by letter (Attachment C and D) to improve data for reasonable potential and has prioritized updating our application forms with regulatory changes planned for late 2013.

- Core Program: NDEQ should improve its approach for identifying pollutants of concern and ensure the evaluation of reasonable potential is current to the facility's operations and discharge, and provide a thorough discussion in the fact sheets and supporting documentation. NDEQ acknowledges that once the pollutant scans are fully implemented they will assist in this determination.

**State Response:** NDEQ has used historic information reported in Discharge Monitoring Reports (DMR) to evaluate reasonable potential since the majority of the discharges in our state are very small with limited industry. We are now requiring a pollutant scan in our permits to improve data for reasonable potential even for our small communities. Many of these small communities have consistent discharges, limited or no industry. Additional data collection would impose a burden on these communities without providing additional benefit or reducing the risk of unpermitted pollutants being discharged.

- Core Program: NDEQ should expand discussions in the fact sheets regarding the status of receiving waters with respect to impairments and TMDLs, development of effluent limits (e.g., decision to express effluent limits for metals as dissolved or total), application of the mixing zone policy, and rationale for monitoring requirements (i.e., location and minimum frequency). NDEQ has agreed to include additional language in permits and fact sheets.

**State Response:** The new permit writers tool will assist NDEQ with proper documentation and the permit writers have been notified of this item.

- Nutrients: The State should confirm and demonstrate consideration of WQBELs for permit limit derivation and present the selection of the more stringent effluent limitation (40 CFR 122.44(d)). NDEQ is beginning to add nitrogen and phosphorus monitoring only into its permits.

**State Response:** NDEQ includes WQBELs in our permits. This relates back to pollutant scans which have been addressed by including the requirement in new permits or by sending notice of the requirement to permit applicants 270 days in advance of permit issuance. The State is gathering data on nutrients. Currently Nebraska has nutrient standards for lakes.

- **Nutrients:** The State should ensure that it documents its reasonable potential determinations in factsheets or administrative record where factsheets are not required (40 CFR 124.56).

**State Response:** The new permit writers tool will assist NDEQ with proper documentation and the permit writers have been notified of this item.

- **Pretreatment:** Nebraska needs to update its Pretreatment regulations to include the required provisions of the 2005 Streamlining revisions. NDEQ has developed some drafts but has not finalized these regulations.

**State Response:** When application forms are revised they will be consistent with 40 CFR 122.21. Regulations update priorities are application forms and pretreatment requirements. We anticipate taking regulation changes to the EQC in late 2013.

- **Pretreatment:** Nebraska Industrial User (IU) permits need to contain all required provisions. Specifically noted as missing are slug notification requirements at 40 CFR 403.12(f).

**State Response:** NDEQ has included slug notification requirements in permits issued October 2012.

- **316a:** Region 7 States should more explicitly address and document the basis for any Section 316(a) thermal variances in their permits and fact sheets.

**State Response:** NDEQ does have one remaining variance for Gerald Gentleman. At permit issuance we will evaluate the variance to ensure it is still valid. Current annual reports do not indicate that the variance is invalid. 316(a) but has established a permit limit.

## V. Action Items

This section provides a summary of the main findings of the review and provides proposed Action Items to improve Nebraska NPDES permit programs. This list of proposed Action Items will serve as the basis for ongoing discussions between Region 7 and Nebraska as well as between Region 7 and EPA HQ. These discussions should focus on eliminating program deficiencies to improve performance by enabling good quality, defensible permits issued in a timely fashion.

The proposed Action Items are divided into three categories to identify the priority that should be placed on each Item and facilitate discussions between Regions and states.

- **Critical Findings (Category One) - Most Significant:** Proposed Action Items will address a current deficiency or noncompliance with respect to a federal regulation.
- **Recommended Actions (Category Two) - Recommended:** Proposed Action Items will address a current deficiency with respect to EPA guidance or policy.

- **Suggested Practices (Category Three)** - Suggested: Proposed Action Items are listed as recommendations to increase the effectiveness of the State or Region's NPDES permit program.

The Critical Findings and Recommended Action proposed Action Items should be used to augment the existing list of "follow up actions" currently established as an indicator performance measure and tracked under EPA's Strategic Plan Water Quality Goals and/or may serve as a roadmap for modifications to the Region's program management.

### **A. Basic Facility Information and Permit Application**

Nebraska has developed consistent permits and fact sheets, and the forthcoming *Tools for Environmental Permitting* system suggests consistency will continue. However, NDEQ still needs to ensure discharge data are requested and evaluated during the permit application process in order to comply with requirements to evaluate the reasonable potential for a discharge to cause or contribute to a violation of a WQS. Proposed action items to help the state strengthen its NPDES permit program are the following:

- Ensure that municipal and non-municipal application forms are moving forward in the regulatory process to be revised and, specifically, must require data consistent with federal regulations at 40 CFR 122.21. (Category 1) - Milestone: NDEQ will propose regulation changes to the Environmental Quality Council (EQC) for their December 2013 council meeting. A draft of the proposed regulatory changes will be submitted to EPA for their review by July 1, 2013. If the EQC approves the regulatory changes it must be approved by the Attorney General and the Governor and registered with the Secretary of State before it becomes final. This could take up to an additional six months.
- Begin to include draft permit attachment requiring pollutant scans for new or reissued POTWs with a design flow greater than 1 MGD with applications. (Category 1) – Milestone: NDEQ began submitting letters to facilities informing them of this requirement in October 2012. However, this will remain an Action Item until facilities are submitting the information with their applications. EPA will evaluate in 6 months, or End of Year FY13, for evidence of consistent implementation.

### **B. Technology-Based Effluent Limitations**

Proposed action items to improve implementation of technology-based effluent limitations in Nebraska's permits are the following:

- Include section 316(b) cooling water intake structure permit conditions and a determination of BAT for existing facilities on a BPJ basis. The basis for the determination of BAT should be documented in the fact sheet. The Final 316(b) rule will be published by July 25, 2013. Until that time BPJ should be used to determine BAT. (Category 2) – Milestone: Complete. NDEQ does use Best Professional Judgement (BPJ) currently and will wait until EPA actually implements the final rule before we make any changes. No further action required until EPA releases the federal rule. EPA will re-evaluate this action at that time.
- Permit materials should reevaluate any 316(a) thermal variances and 316(b) requirements at each permit renewal and document the basis in the permit fact sheet. Prior

determinations should also be documented in the fact sheet and reflected in the current permit, as appropriate. NDEQ has set limits for four open-cycle power plants on the Missouri River based on instream studies. Those limits are based on applicable state water quality standards, so a variance is not needed. The Gerald Gentleman facility has heat limits based on a 316(a) variance. NDEQ needs to document the renewal of the variance when the permit is reissued. (Category 1) - Milestone: NDEQ has one remaining variance for Gerald Gentleman. At permit issuance, NDEQ will evaluate the variance to ensure it is still valid.

- Permits do not include mass limits for BOD and TSS. This is not required by the regulations, but EPA encourages use of both mass and concentration limits in permits. (Category 3). – Complete; NDEQ does use mass and concentration limits in their permits. EPA is satisfied that NDEQ’s action has addressed the underlying finding and considers this action is complete.

### **C. Water Quality-Based Effluent Limitations**

Nebraska does not appear to be doing reasonable potential analysis in accordance with its state’s standards for nutrients or putting WQBELs in permits. Where reasonable potential analyses for WQBELs are present in permits, NDEQ must do a better job documenting its decision about whether to include limits in permits. Proposed action items to improve implementation of WQBELs in Nebraska’s permits are the following:

- Confirm and demonstrate consideration of WQBELs for permit limit derivation and apply the more stringent effluent limitation. [40 CFR 122.44(d)] (Category 1) – Milestone: NDEQ will work to ensure that permits consistently implement this language (see response in Appendix F, PQR-C1). EPA will re-evaluate for evidence of consistent implementation in 6 months.
- Ensure that reasonable potential determinations are properly documented in fact sheets or administrative record where fact sheets are not required. (40 CFR 124.56) (Category 1) – Milestone: NDEQ will work to ensure that permits consistently implement this language (see response in Appendix F, PQR-C2). EPA will re-evaluate for evidence of consistent implementation in 6 months.
- Include ambient monitoring to assess overall nutrient-related effects on receiving waterbody quality. (Category 3) - EPA is satisfied that NDEQ’s action has addressed the underlying finding and considers this action is complete.
- Ensure that adequate documentation is provided in the fact sheet when a limit that implements an ELG is included. (Category 3) - NDEQ will work to ensure that permits consistently implement this language (Appendix F, PQR-C4). EPA will re-evaluate for evidence of consistent implementation in 6 months.
- Ensure that permits include the requirement to monitor more frequently than annually, in order to capture toxicity, consistent with the *free from* toxics WQS. (Category 3) – EPA is satisfied that NDEQ’s action has addressed the underlying finding and considers this action is complete.

## **D. Monitoring and Reporting**

- The core review indicates NDEQ does not have an adequate data set (consistent with regulatory requirements) and, thus, is not able to perform a complete reasonable potential analysis for all potential pollutants of concern [40 CFR 122.44(d)]. (Category 1) – Milestone: NDEQ began requesting pollutant scans via a letter to all applicants in October 2012. This action item is directly related to the regulatory changes required in the permit application and will remain an action item until the regulatory revision has been approved. NDEQ will propose regulation changes to the Environmental Quality Council (EQC) for their December council meeting. A draft of the proposed regulatory changes will be submitted to EPA for their review by July 1, 2013. If the EQC approves the regulatory changes it must be approved by the Attorney general and the Governor and registered with the Secretary of State before it becomes final. This could take up to an additional six months. EPA will consider this Action Item complete at the time the regulation is in effect.
- NDEQ must address sampling requirements for all POTWs, and those with design flows greater than or equal to 0.1 MGD as required in 40 CFR 122.21(j). (Category 1) – Milestone: NDEQ began requesting pollutant scans via a letter to all applicants in October 2012. This action is directly related to NDEQ's regulatory revision of their permit applications and will remain an action item until the regulatory revision has been approved and implemented. NDEQ will propose regulation changes to the Environmental Quality Council (EQC) for their December council meeting. A draft of the proposed regulatory changes will be submitted to EPA for their review by July 1, 2013. If the EQC approves the regulatory changes it must be approved by the Attorney general and the Governor and registered with the Secretary of State before it becomes final. This could take up to an additional six months. EPA will consider this Action Item complete at the time the regulation is in effect.
- The state application for industrial permittees does not include the monitoring requirements as required in the Federal 2C industrial permit application. (Category 1) – Milestone: NDEQ will propose regulation changes to the Environmental Quality Council (EQC) for their December council meeting. A draft of the proposed regulatory changes will be submitted to EPA for their review by July 1, 2013. If the EQC approves the regulatory changes it must be approved by the Attorney general and the Governor and registered with the Secretary of State before it becomes final. This could take up to an additional six months. EPA will consider this Action Item complete at the time the regulation is in effect.

## **E. Special and Standard Conditions**

Federal regulations do not allow permitting authorities to have standard conditions that are less stringent than federal regulations at 40 CFR 122.41. Proposed action items to improve implementation of standard and special conditions in Nebraska's permits are the following:

- Ensure that no Standard and/or Special Conditions include omissions and paraphrasing that create conditions that are less stringent than federal regulations. (Category 1) - Milestone: NDEQ has revised their Standard and Special Conditions and will begin using them in all new and reissued permits beginning April 1, 2013. EPA is satisfied that

NDEQ's action has addressed the underlying finding and considers this action is complete (Appendix F, Attachment A).

#### **F. Administrative Process (including public notice)**

Nebraska's administrative process is very efficient with the proper amount of quality control/quality assurance. The recent implementation of ECM has been beneficial and it is expected that the additional implementation of its permit writing tool will only increase efficiencies and reduce the time to draft a permit. Proposed Action Items to help Nebraska strengthen the administration process in its NPDES permit program include the following:

- It would be helpful to Nebraska constituents and for efficient exchange of information between the EPA and state if NDEQ permits were accessible online. (Category 3) - Complete; NDEQ's website has a location with the last two years of information available and future information will be available as well. EPA is satisfied that NDEQ's action has addressed the underlying finding and considers this action complete.

#### **G. Documentation (including fact sheet)**

Proposed Action Items to help Nebraska strengthen documentation in its NPDES permit program include the following:

- Expand discussions in the fact sheets to meet the minimum requirements at 40 CFR 124.8 and 124.56, to include the following:
  - Status of receiving waters with respect to impairments and TMDLs. NDEQ staff has been instructed to include a statement in the fact sheet for the July 2013 permits. NDEQ will work to ensure that permits consistently implement this language (see Appendix F, PQR-G1a). EPA will re-evaluate for evidence of consistent implementation in 6 months.
  - Development of effluent limits (e.g., decision to express effluent limits for metals as dissolved or total). NDEQ properly uses the correct limit for metals and has referenced Title 117 in the fact sheet. NDEQ will work to ensure that permits consistently implement this language (see Appendix F, PQR-G1b). EPA will re-evaluate for evidence of consistent implementation in 6 months.
  - Application of the mixing zone policy. This is not a policy but a regulation requirement in Nebraska Title 117. We are properly referencing this regulation in the fact sheet. Standard language will be included in the fact sheet for permits issued in July 2013. NDEQ will work to ensure that permits consistently implement this language (see Appendix F, PQR-G1c).
  - Rationale for monitoring requirements (i.e., location and minimum frequency). (All Category 1) – NDEQ follows its standard procedures and has instructed permit writers to add additional language to the fact sheet in the July 2013 permits. NDEQ will work to ensure that permits consistently implement this language (see Appendix F, PQR-G1d). EPA will re-evaluate for evidence of consistent implementation in 6 months.

- Improve the approach to identifying pollutants of concern and ensure the evaluation of reasonable potential is current to the facility's operations and discharge. Provide a thorough discussion in the fact sheets and supporting documentation. (Category 2) – NDEQ is requesting pollutants of concern be sampled and submitted with the applications. We have strengthened our reasonable potential analysis discussions. EPA will re-evaluate for evidence of consistent implementation in 6 months.

## **H. Core Topic Areas**

### 1. Pesticide General Permit

Nebraska has done an exceptional job in implementing the Pesticide General Permit. It has collaborated with other states agencies in providing outreach and garnered assistance from other state agencies to control pesticide discharges to waters of the state. Nebraska should consider implementing an electronic NOI system for the Pesticide General Permit and other general permit NOI tracking. (Category 3)

### 2. Pretreatment

Nebraska's NPP permits are well composed. Proposed Action Items to help Nebraska strengthen implementation of its NPP program include the following:

- Nebraska needs to update its pretreatment regulations to include at a minimum, the required provisions of the 2005 Streamlining revisions. (Category 1) – Milestone: NDEQ will propose regulation changes to the Environmental Quality Council (EQC) for their December council meeting. A draft of the proposed regulatory changes will be submitted to EPA for their review by August 15, 2013. If the EQC approves the regulatory changes it must be approved by the Attorney General and the Governor and registered with the Secretary of State before it becomes final. This could take up to an additional 6 months. EPA will consider this Action Item complete at the time the regulation is in effect.
- Nebraska Industrial User (IU) permits need to contain all required provisions. Specifically noted as missing are slug notification requirements at 40 CFR 403.12(f). (Category 1) – Milestone: NDEQ has submitted language to include in permits for EPA review. NDEQ will work to ensure that permits consistently implement this language (see Appendix F, Attachment B). EPA will re-evaluate for evidence of consistent implementation in 6 months.
- Nebraska pretreatment permits do not include a requirement for resampling and resubmission of results following the discovery of a violation as required in 40 CFR 403.12(g)(2). (Category 1) – Milestone: NDEQ has submitted language to include in permits for EPA review. NDEQ will work to ensure that permits consistently implement this language (see Appendix F, Attachment B). EPA will re-evaluate for evidence of consistent implementation in 6 months.

### 3. CAFOs

Nebraska was the first state in Region 7 to revise its regulations to include the 2008 Federal CAFO Rule. NDEQ has hired a program specialist with experience and training in Nutrient Management Plans (NMP) and has engineering staff, as part of permit approval, evaluating NMP to address proper livestock waste reuse and management.

- NDEQ should make it a priority to move all permits authorized coverage under the expired permit to the current permit as soon as possible. (Category 1) – Milestone: Currently there are 5 CAFO facilities left to permit or revoke. Three application are in process. NDEQ will complete this Action Item by issuing or revoking permits by July 1, 2013. NDEQ shall report progress on this Action Item at mid-year and in their annual report.

## **I. Special Focus Areas**

### 1. Water Treatment Plants

Proposed Action Item to help Nebraska strengthen its NPDES permit program includes the following:

- NDEQ should better define the requirement of the water treatment studies to assure the studies create the necessary information needed to issue permits in the next permit cycle. (Category 1) – Milestone: NDEQ will review the information requested from the Water Treatment Plants for the next permit and make the appropriate determination based on BPJ and Water Quality. The EPA will re-evaluate this Action Item as the permits are reissued.

### 2. Memorandum of Agreements

Proposed Action Item to help Nebraska strengthen its NPDES permit program includes the following:

- NDEQ and EPA Region 7 should review Nebraska's program authorization documents and, as necessary, revise the Nebraska Memorandum of Agreement according to the final approved Guidance for NPDES MOAs Between States and EPA. EPA and NDEQ will include a commitment in the FFY 2013 Performance Partnership Grant (PPG) workplan to complete a review of Nebraska's MOA against the MOA Checklist and to commence negotiations on any necessary revisions to the MOA during the FFY 2013 performance period. (Category 1) – Milestone: NDEQ has submitted a draft MOA for EPA review. This Action Item will be complete when the document is signed and has an effective date.

### 3. Existing Action Items

Proposed Action Items to help Nebraska strengthen its NPDES permit program includes the following:

- The existing Action Items shall be included in the Nebraska 2013 PPA/PPG. Nebraska should continue to address all existing Action Items to maximize its NPDES program efficiency. (Category 1) – NDEQ shall continue to report progress on these Action Items at mid-year and in their annual report.

# State Review Framework

## I. Background on the State Review Framework

The State Review Framework (SRF) is designed to ensure that EPA conducts nationally consistent oversight. It reviews the following local, state, and EPA compliance and enforcement programs:

- Clean Air Act Stationary Source
- Clean Water Act National Pollutant Discharge Elimination System
- Resource Conservation and Recovery Act Subtitle C

Reviews cover these program areas:

- Data — completeness, timeliness, and quality
- Compliance monitoring — inspection coverage, inspection quality, identification of violations, meeting commitments
- Enforcement actions — appropriateness and timeliness, returning facilities to compliance
- 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
- Development of findings and recommendations

Consultation is also built into the process. This ensures that EPA and the state understand the causes of issues and seek agreement on actions needed to address them.

SRF reports are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify any issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state programs.

Each state's programs are reviewed once every four years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FFY 2012 and will continue through FFY 2016.

## II. SRF Review Process

**Review period:** FFY 2011

**Key dates:**

- Kickoff letter sent to state: February 27, 2012
- Kickoff meeting conducted: December 8, 2012
- Data metric analysis and file selection list sent to state: March 23, 2012
- On-site file review conducted: April 16-19, 2012
- Draft report sent to state: August 10, 2012
- Report finalized: April 15, 2013

**Communication with the state:**

EPA and NDEQ held a kick-off meeting via teleconference to discuss the general process for conducting an integrated Round 3 SRF/PQR review and how that differs from the Round 2 process. Other topics of the meeting included selection of dates for the on-site review, outstanding issues from the Round 2 review, and NDEQ's concerns about data quality and how that affects the program review. EPA agreed to send NDEQ a workplan outlining all major and intermediate milestones in the process of conducting the SRF review.

During the on-site review, EPA reviewers met with NDEQ staff, managers, and attorneys throughout the week to discuss various aspects of each NPDES program area. These conversations covered the state's internal processes for administering the NPDES enforcement program, recent and upcoming changes to those processes, and challenges facing NDEQ now and into the future. EPA has described these various aspects of the state's program in Appendix D to this report.

An exit meeting was held on the final day of the on-site review. EPA Region 7 enforcement and permitting staff presented the preliminary findings from the SRF and PQR components of the review during a single one-hour briefing. NDEQ management in attendance included the deputy directors of administration and programs and several Water Quality Division managers. EPA Region 7's program review team was joined by the permitting and enforcement branch chiefs.

Upon review of a draft of this report, NDEQ submitted a response to EPA dated November 28, 2012, that included comments addressing individual EPA findings, comments on other parts of the report, and feedback on the SRF process. EPA then engaged NDEQ in further conversation and met in person with state personnel regarding specific findings, recommendations, and target dates for completion of action items. A second round of state comments was then incorporated into the revised draft. Negotiated action items and target dates appear in the final report as well as the SRF Tracker.

The final Integrated SRF and PQR Report was transmitted via mail to NDEQ's Water Quality Division on April 30, 2013. Mike Linder, Director of NDEQ, received a copy as well.

See Appendix F for copies of key correspondence between EPA and NDEQ.

**State and EPA regional lead contacts for review:**

- EPA Region 7 PQR lead reviewer: Kimberly Hill
- EPA Region 7 SRF Clean Water Act lead reviewer: Michael Boeglin
- EPA Region 7 SRF coordinator: Kevin Barthol
- NDEQ Water Quality Division lead contact for the review: Steve Goans

**On-site review process:**

During the on-site review, EPA reviewed all compliance monitoring and enforcement information present in NDEQ's records for the 109 facilities selected by EPA. The scope of records covered only the Federal Fiscal Year (FFY) 2011 period, in addition to compliance and enforcement records with dates before and after the FFY 2011 period if those records were related to state activities in FFY 2011. For example, if an inspection file in FFY 2011 had an enforcement action associated with it, both activities will be reviewed regardless of when the enforcement action occurred. Similarly, if a facility was selected for an enforcement action dated FFY 2011, EPA reviewed not only the enforcement records but also any associated inspection records that supported the decision to take enforcement, regardless of the date of the inspections.

EPA also held conversations with NDEQ managers and staff responsible for particular NPDES program areas. EPA consulted with NDEQ throughout the week to discuss questions and concerns regarding the content of facility files.

### III. SRF Findings

Findings represent EPA's conclusions regarding the issue or issues identified. They are based on:

- Initial findings made during the data and/or file reviews;
- Annual data metric reviews conducted since the state's Round 2 SRF review;
- Follow-up conversations with state agency personnel;
- Additional information collected to determine an issue's severity and root causes; and
- Review of previous SRF reports, MOAs, and other data sources.

There are four types of findings:

**Good Practice:** Activities, processes, or policies that the SRF metrics show are being implemented at the level of Meets Expectations, **and** are innovative and noteworthy, **and** can serve as models for other states. The explanation must discuss these innovative and noteworthy activities in detail. Furthermore, the state should be able to maintain high performance.

**Meets Expectations:** Describes a situation where either: a) no performance deficiencies are identified, or b) single or infrequent deficiencies are identified that do not constitute a pattern **or** problem. Generally, states are meeting expectations when falling between 91 to 100 percent of a national goal. The state is expected to maintain high performance.

**Area for State Attention:** The state has single or infrequent deficiencies that constitute a minor pattern or problem that does not pose a risk to human health or the environment. Generally, performance requires state attention when the state falls between 85 to 90 percent of a national goal. The state should correct these issues without additional EPA oversight. The state is expected to improve and achieve high performance. EPA may make recommendations to improve performance but they will not be monitored for completion.

**Area for State Improvement:** Activities, processes, or policies that SRF data and/or file metrics show as major problems requiring EPA oversight. These will generally be significant recurrent issues. However, there may be instances where single or infrequent cases reflect a major problem, particularly in instances where the total number of facilities under consideration is small. Generally, performance requires state improvement when the state falls below 85 percent of a national goal. Recommendations are required to address the root causes of these problems, and they must have well-defined timelines and milestones for completion. Recommendations will be monitored in the SRF Tracker.

## Clean Water Act Findings

### Element 1 — Data Completeness: Completeness of Minimum Data Requirements.

<b>Finding 1-1</b>	<b>Area for State Improvement</b>
<b>Description</b>	The state has not entered any formal enforcement action or penalty records into ICIS.
<b>Explanation</b>	<p>Nebraska issued formal enforcement actions to 18 facilities in FFY 2011, including unilateral administrative and consent orders, judicial referrals, and consent decrees. One of these actions was taken against a P.L. 92-500 non-major facility (Bruning WWTF), and another 6 actions included penalties collected judicially. Both categories are enforcement actions required to be tracked in ICIS; however, the state did not enter any of these 7 required actions into ICIS.</p> <p>NDEQ staff and managers, as well as all personnel who use ICIS-NPDES, must sign an ICIS-NPDES User Agreement and Sensitive Access Rules of Behavior in order to create new enforcement action records in ICIS-NPDES. NDEQ, which has never signed the agreement, can currently enter enforcement action details into an existing record but cannot create new enforcement records.</p> <p>This finding is a carry-over from SRF Rounds 1 and 2. During the SRF Round 2 review of Nebraska in FFY 2007, the state and EPA agreed to work toward negotiating an acceptable ICIS-NPDES User Agreement and Sensitive Access Rules of Behavior. NDEQ's Legal Section has been resistant to signing the User Agreement based on language in the Rules of Behavior regarding expectations and potential liabilities levied upon supervisors. After at least 9 years of negotiating with EPA Region 7 and Headquarters offices, Nebraska remains the only state in the country that still refuses to sign the User Agreement. By the time of the current Round 3 review, EPA had made substantial concessions to placate NDEQ's concerns, but negotiations have nevertheless stalled.</p> <p>On a related matter, the review found that NDEQ entered most, but not all, of its inspection records for major facilities in ICIS. The national database shows that 33 majors were inspected in FFY 2011, whereas NDEQ has inspection records for 36 majors. The 3 major facility inspections not yet appearing in ICIS need to be added to the database, as they constitute Water Enforcement National Database (WENDB) data.</p>
<b>Relevant metrics</b>	<p>1f1 – Facilities with formal actions: 4 identified during Data Metrics Analysis, but the accurate number was found to be 18.</p> <p>1f2 – Total number of formal actions at CWA NPDES facilities: 5 identified during Data Metrics Analysis, but the accurate number was found to be 19.</p>

1g1 – Number of enforcement actions with penalties: 0 identified during Data Metrics Analysis, but the accurate number was found to be 6.

**State response**

NDEQ disagrees with EPA’s explanation. The proposed ICIS User Agreement and Sensitive Access Rules of Behavior is unacceptable to NDEQ. We submitted a revised draft to headquarters that was rejected without specific comments or counter proposal. The use of “stalled in the active negotiation and signature” is inaccurate. NDEQ is interested in finalizing a User Agreement which is acceptable.

Follow-up to the January 2013 meeting with EPA: NDEQ received a revised ICIS proposal on February 11, 2013. We are in the process of working through this agreement even though there is no federal regulation or statute requiring that ICIS must be used.

**Recommendation**

EPA Headquarters, Region 7, and NDEQ need to reach agreement on acceptable language in the ICIS-NPDES User Agreement so that NDEQ can sign the Agreement and begin to create complete enforcement records in ICIS. If agreement cannot be reached by June 1, 2013, the issue will be elevated to the Region 7 WWPD Director and NDEQ Associate Director for resolution within 30 days thereafter. EPA and NDEQ will discuss progress on a quarterly basis. Once EPA is satisfied that these actions have addressed the underlying finding, this recommendation will be considered complete.

**Element 1 — Data Completeness: Completeness of Minimum Data Requirements.**

<b>Finding 1-2</b>	<b>Meets Expectations</b>
<b>Description</b>	Permit limits and DMR data for the vast majority of major and minor facilities are present in ICIS.
<b>Explanation</b>	Based on an analysis of data metrics for FFY 2011, Nebraska’s ICIS data for permit limits and DMR data meet or exceed the national goal and/or national average for all metrics. EPA notes that this performance represents a significant improvement relative to the findings during the Round 2 SRF review in FFY 2007.
<b>Relevant metrics</b>	1b1 – Permit limits rate for major facilities: 100%. <ul style="list-style-type: none"><li>• National goal: &gt;=95% entry of permit limits.</li><li>• National average: 99%.</li></ul> 1b2 – DMR entry rate for major facilities: 99%. <ul style="list-style-type: none"><li>• National goal: &gt;=95% entry of DMR data.</li><li>• National average: 97%</li></ul> 1c1 – Permit limits rate for non-major facilities: 91%. <ul style="list-style-type: none"><li>• National average: 66%</li></ul> 1c2 – DMR entry rate for non-major facilities: 91%. <ul style="list-style-type: none"><li>• National average: 73%.</li></ul>
<b>State response</b>	NDEQ response not required.
<b>Recommendation</b>	None required.

## Element 2 — Data Accuracy: Accuracy of Minimum Data Requirements.

<b>Finding 2-1</b>	<b>Area for State Attention</b>
<b>Description</b>	Most required data for major and minor facilities is accurately entered into ICIS, with some exceptions.
<b>Explanation</b>	<p>NDEQ accurately enters most Water Enforcement National Database Elements into ICIS for its major and non-major facilities, with some isolated exceptions. 3 of the 43 files reviewed under this metric did not have all required data accurately present in ICIS due to an inaccurate Notice of Violation (NOV) date (TMCO Powder Coating), a missing NOV (Nemaha WWTF), and a missing inspection (B.S. Wash, Inc.). Note that evaluation of this metric did not consider entry and accuracy of formal enforcement action records, which is discussed in Finding 1-1.</p> <p>Enforcement violation type codes are accurate and complete in ICIS only because NDEQ did not take any formal actions involving majors in FFY 2011. To date, NDEQ has never entered enforcement violation type codes for actions taken at majors prior to FFY 2011. To begin doing so, NDEQ would first need to enter the underlying formal enforcement actions, and that scenario is addressed in Finding 1-1 above.</p>
<b>Relevant metrics</b>	<p>2a – Number of formal enforcement actions taken against major facilities with enforcement violation type codes entered: 0</p> <ul style="list-style-type: none"><li>• Goal: <math>\geq 95\%</math> completion of required information.</li></ul> <p>2b – Files reviewed where data are accurately reflected in the national data system: <math>40/43 = 93\%</math>.</p> <ul style="list-style-type: none"><li>• Goal: <math>\geq 95\%</math> of data accurately reflected.</li></ul>
<b>State response</b>	NDEQ has addressed this element.
<b>Recommendation</b>	None required.

**Element 3 — Timeliness of Data Entry: Timely entry of Minimum Data Requirements.**

<b>Finding 3-1</b>	<b>Meets Expectations</b>
<b>Description</b>	Required data for major and minor facilities is entered into ICIS in a timely manner.
<b>Explanation</b>	Based on the files reviewed, NDEQ enters WENDB data elements into ICIS in a timely manner.
<b>Relevant metrics</b>	3a – Timeliness of mandatory data entered in the national data system: 41/43 = 95%. <ul style="list-style-type: none"><li>• Goal: 100% of data entered timely.</li></ul>
<b>State response</b>	NDEQ response not required.
<b>Recommendation</b>	None required.

**Element 4 — Completion of Commitments: Meeting all enforcement and compliance commitments made in state/EPA agreements.**

<b>Finding 4-1</b>	<b>Meets Expectations</b>
<b>Description</b>	All inspection commitments for FFY 2011 were completed.
<b>Explanation</b>	<p>NDEQ exceeded all inspection commitments made in the FFY 2011 Compliance Monitoring Strategy. Appendix H presents a tabular analysis of NDEQ’s performance for each of the 11 CMS inspection categories.</p> <p>Refer to metric 5 for CMS commitments aligned with inspection coverage goals that are tracked in ICIS.</p>
<b>Relevant metrics</b>	<p>4a – Percent of planned inspections completed: 100%</p> <ul style="list-style-type: none"><li>• Goal: 100% of commitments.</li></ul>
<b>State response</b>	NDEQ response not required.
<b>Recommendation</b>	None required.

**Element 4 — Completion of Commitments: Meeting all enforcement and compliance commitments made in state/EPA agreements.**

<b>Finding 4-2</b>	<b>Area for State Attention</b>
<b>Description</b>	The state completed most of its commitments from the PPG workplan for FFY 2011, with two minor but notable exceptions.
<b>Explanation</b>	<p>The Wastewater and Agriculture Sections of NDEQ made 22 measurable commitments – not related to compliance inspections – in the state’s PPG workplan for FFY 2011. NDEQ completed all of these commitments with the exception of the following 2 activities that were partially completed:</p> <ol style="list-style-type: none"><li>1. NDEQ agreed to send copies of sludge reports to EPA as they are received from facilities. NDEQ provided biosolids reports upon request from EPA but did not automatically forward the reports to EPA. EPA continues to encourage Nebraska NPDES permit holders to submit biosolids reports directly to EPA.</li><li>2. NDEQ agreed to complete action items in the Round 2 SRF final report, as negotiated and approved by NDEQ and EPA. NDEQ has made satisfactory progress toward completion of most action items but stalled in the active negotiation and signature of an acceptable ICIS User Agreement and Sensitive Access Rules of Behavior. The role of this document is discussed in Finding 1-1.</li></ol> <p>See Appendix I for a complete analysis of NDEQ’s performance in the completion of PPG workplan tasks.</p>
<b>Relevant metrics</b>	4b – Planned commitments completed: 20/22 = 90%. <ul style="list-style-type: none"><li>• Goal: 100% of commitments.</li></ul>
<b>State response</b>	<p>This should not be an “Area for State Attention” since we are not delegated the Federal sludge program. The NDEQ, in the future, will be reconsidering our commitment to include sludge requirements in State NPDES permits if it leads to a negative finding in the SRF.</p> <p>Regarding item #2 above see State response for Element 1-1.</p>
<b>Recommendation</b>	None required.

**Element 5 — Inspection Coverage: Completion of planned inspections.**

<b>Finding 5-1</b>	<b>Meets Expectations</b>
<b>Description</b>	Inspection goals for major and non-major traditional dischargers were satisfied in FFY 2011.
<b>Explanation</b>	In the FFY 2011 CMS, NDEQ negotiated an inspection coverage goal for majors of 46%, or 24 of 52 facilities, and agreed to inspect 101 of 409, or 24.7%, of its traditional minors universe. NDEQ satisfied and, in the case of its minors universe, exceeded these goals.
<b>Relevant metrics</b>	5a – Inspection coverage--NPDES majors: $36/52 = 69\%$ . 5b – Inspection coverage--NPDES non-majors: $123/409 = 30\%$ .
<b>State response</b>	NDEQ response not required.
<b>Recommendation</b>	None required.

**Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.**

**Finding 6-1**

**Area for State Improvement**

**Description**

Inspection reports did not consistently provide information necessary to support an accurate compliance determination.

**Explanation**

41 of the 125 inspection reports reviewed lacked sufficient information to support a compliance determination and to inform an accurate compliance determination. Most of these 41 inspection reports relied heavily on checklists in which items are marked as unsatisfactory, marginal, or satisfactory; however, they contained very little narrative inside or outside the checklists to substantiate why marginal or unsatisfactory items were classified as such and what that classification means for the facility's compliance status. The narrative sections of reports frequently discuss recommendations for improvement but not the presence or absence of deficiencies.

Many of the 41 reports did not make a clear connection between observations in the checklists/narrative and regulatory requirements. Without a clear connection, the reviewer cannot ascertain whether the listed item is a deficiency needing correction versus only a recommendation for improved performance.

Some of the 41 instances cited above were due to insufficient preparation by the inspector before conducting the inspection. For example, a reading of the ADM Columbus and PC West-Tarnov inspection reports alongside the entire facility file suggests that the inspector did not review previous inspection reports and self-monitoring records such as DMRs prior to the inspection. Doing so is essential to account for all potential areas of noncompliance in order to produce an accurate compliance determination, and these two examples show that ongoing NPDES noncompliance documented prior to the inspection was not captured in the inspection report. This particular issue was also raised during EPA's oversight inspections in FFY 2011. Inspections at Beatrice and North Platte were oversight inspections reviewed during this program review, and in both cases the report did not account for the facility's recent compliance history. Likewise, all CAFO inspections that EPA oversaw in FFY 2011 lacked any indication that the inspector considered the facility's noncompliance history.

The 41 inspection reports without sufficient information to support a compliance determination were distributed across the NPDES program areas as follows:

	# reports lacking sufficient info	# reports reviewed	% reports lacking sufficient info
CAFOs	30	73	41%
Stormwater	1	18	6%
Pretreatment	2	10	20%
Wastewater	8	24	33%
Total	41	125	33%

EPA also identified this finding during the Round 2 SRF review of Nebraska in FFY 2007. In response, NDEQ agreed to modify its inspection checklists and reports to clearly indicate deficiencies. The finding under this metric has improved since the earlier SRF review, as reflected by checklists with more discrete options for the inspector to characterize observations. However, the use of narrative combined with checklists still stands to improve how the state communicates deficiencies at facilities.

EPA addendum in follow-up to the January 2013 meeting with NDEQ noted in the state response below: EPA acknowledges that NDEQ inspectors look for items that were noted previously as compliance problems and consider effluent violations as part of the current compliance status, as noted on the Inspection Data Sheet. If a past issue remains a compliance problem, NDEQ clarified that they note the deficiency in the inspection report; otherwise, the inspectors have no need to mention past problems.

**Relevant metrics**

6a – Inspection reports reviewed that provide sufficient documentation to determine compliance at the facility: 84/125 = 67%.

**State response**

The NDEQ uses inspection reports to document observations. A separate Notice of Violation (NOV), if necessary, accompany inspection reports and are used to notify individuals of compliance issues and previous violations of limits. Inspectors receive a printout of ICIS compliance issues or IIS event tracking and use this information along with inspection observations to complete NOVs which is where past noncompliance is addressed. NDEQ does not agree that past noncompliance issues need to be identified in the inspection report. Inspectors have ready access to file information for review when preparing for inspections. The lack of listing previous noncompliance issues does not indicate the inspector was not properly prepared. NDEQ continues to enhance its inspection tools and inspector skills. We ask EPA to recognize that NDEQ has a different but effective procedure for addressing violations.

NDEQ has discussed potential improvements to the inspection checklist and documentation of violations. Inspectors have been sent the SRF review to make them aware of potential improvements. The annual field office retreat held October 4, 2012, had a short session on how the SRF

review impacts their inspection activities. Documentation was expressed as the main area for enhancement. Past noncompliance issues will continue to be an issue for the Notice of Violation (NOV).

NDEQ proposes that EPA R7 come to NDEQ by March 2013 to specifically discuss potential modifications to the inspection reports and the use of NOVs for compliance notification. Furthermore, NDEQ requests EPA send examples and guidance that would be compatible with NDEQ process of using NOVs for official notice by December 31, 2012. We will consider adding regulatory citations to the inspection report where the information would be helpful to understand the regulatory or permit requirement in question.

Follow-up to the January 2013 meeting with EPA: NDEQ has included draft language in Attachment R1 Section SRF 6-1. NDEQ will work to ensure that Inspection Reports consistently implement this or similar language.

**Recommendation**

NDEQ needs to add sufficient narrative to inspection reports, either within checklists or outside of checklists, to describe whether an observation is a deficiency needing correction relative to regulatory or statutory requirements. NDEQ should modify its inspection report checklist for wastewater and CAFOs to use more precise nomenclature on observations, such as “potential violation” versus “in compliance.” NDEQ should provide copies of the modified checklists to EPA. By June 1, 2013, NDEQ should implement these changes, and EPA will consider this recommendation complete upon satisfactory implementation.

**Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.**

<b>Finding 6-2</b>	<b>Area for State Improvement</b>
<b>Description</b>	CAFO inspections do not consistently collect sufficient information to answer questions pertaining to the regulatory and compliance status of the facilities.
<b>Explanation</b>	<p>EPA reviewed 73 inspection reports associated with CAFOs and determined that in 30 instances (41%) the inspection reports did not provide sufficient information to determine the compliance status of the facility. The review found that the short form checklist, in contrast to the long form, does not collect adequate information to document whether there is any evidence that a discharge to a waterbody has occurred and what the regulatory status of the facility is and/or should be.</p> <p>NDEQ stated that during FY 2011 approximately 51% of large CAFO inspections and 100% of inspections at medium-sized facilities were documented using the short form checklist. Given that the majority of NDEQ's inspections at CAFOs utilize this short form, it is imperative that it accurately document the compliance status of these facilities.</p>
<b>Relevant metrics</b>	6a – Inspection reports reviewed that provide sufficient documentation to determine compliance at the facility: $84/125 = 67\%$ ; for CAFOs, this metric is $43/73 = 59\%$ .
<b>State response</b>	<p>NDEQ reminds EPA that non-discharging CAFOs without NPDES permits are not under the jurisdiction of EPA and should not be used in this evaluation.</p> <p>NDEQ understands the limits of the short form and will upgrade the form to better identify compliance status by March 2013. EPA has in the past agreed that the long form would be used at least once during the term of the permit. Because of the resources required in completing the long form, the short form will continue to be a necessary alternative. The narrative portion of the short form is still available for indications of noncompliance issues.</p>
<b>Recommendation</b>	NDEQ should modify its approach for collecting information during inspections at medium unpermitted CAFOs to ensure that sufficient information is obtained to make determinations of discharge and regulatory status, as described in the first paragraph of the Explanation block. By June 1, 2013, NDEQ has agreed to modify appropriate checklists for medium unpermitted AFOs to determine whether they are CAFOs and need to be permitted. NDEQ will share this document with EPA by the target date. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

**Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.**

**Finding 6-3**

**Area for State Improvement**

**Description**

Inspection reports do not describe which field activities were conducted or capture observations of all important facility features.

**Explanation**

Approximately half of the inspection reports reviewed did not include a description of field activities conducted, either in narrative or tabular form. Without a clear indication of what the inspector did during the facility visit, the reader cannot confidently determine the scope of the inspection and fully understand whether particular features of the site, facility, or operation were evaluated. The distribution across NPDES program areas of inspection reports lacking a description of field activities was as follows:

	# reports without field activity info	# reports reviewed	% reports without field activity info
CAFOs	37	82	45%
Stormwater	2	18	11%
Pretreatment	0	10	0%
Wastewater	9	24	38%

Several features of facilities are particularly important in compliance inspections for certain types of facilities or for all facilities; however, those features either were not evaluated consistently or were not consistently documented as having been evaluated. First, and most commonplace, inspection reports did not indicate whether, or how much of, the facility was walked by the inspector. Second, most reports did not document any observation of receiving waters at the point of discharge. Third, some CAFO discharge investigation reports lacked any description or photography of the discharge conveyance or receiving waters. 8 CAFO inspection reports documented unpermitted facility discharges, 2 of which failed to document whether the discharge entered a water of the state. Fourth, many stormwater inspection reports did not document any observation of stormwater BMPs. NDEQ should consider modifying the inspection checklist to include statements that would make it evident that the exterior of the facility, including BMPs, was evaluated during the inspection.

**Relevant metrics**

6a – Inspection reports reviewed that provide sufficient documentation to determine compliance at the facility:  $84/125 = 66\%$ .

**State response**

*Wastewater Treatment facilities:*

NDEQ will evaluate modification of inspection procedures and tools. For Wastewater Treatment Facilities, the current procedure is observation of the entire facility. We would have documented if the entire facility was not

observed. We are considering adding a checkbox for entire facility walkthrough or partial with description. Many facilities in Nebraska can be viewed from one location because of their small size. NDEQ wastewater facility inspection procedures are to observe the receiving stream at the outfall or if inaccessible, the receiving stream downstream of the outfall or the discharge location after treatment.

The EPA State meeting timeframe proposed in item 6-1 (March 2103) should be applied here as well. A fundamental discussion on procedures for inspections and on the need to repeat those procedures in the text of an inspection report needs to occur before we can make effective changes to our Inspection reports.

Follow-up to the January 2013 meeting with EPA: NDEQ has included draft language in Attachment R1 Section SRF 6-3. NDEQ will work to ensure that Inspection Reports consistently implement this or similar language.

*CAFO:*

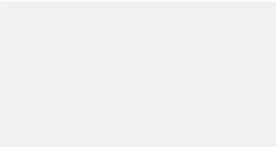
NDEQ reminds EPA that non-discharging CAFOs without NPDES permits are not under the jurisdiction of EPA and should not be used in this evaluation.

The normal process is to observe the entire facility at the time of a routine inspection, unless weather conditions prevent access to specific areas. We would normally document if an area was not observed. For example, at CAFO facilities the depth of each holding pond is recorded on the inspection form on the day of the inspection. The lack of any depth readings would indicate that part of the facility was not observed.

Also, if a CAFO discharge is being investigated, a complete facility compliance inspection may or may not be conducted. A separate Discharge Investigation Report form is available and was amended last year with language added that requires the inspector to document where the discharge originates and terminates and provide a map of such locations. We have a copy of the amended Discharge Investigation Report form is (Attachment E).

**Recommendation**

NDEQ should modify its inspection checklist for stormwater to account for the inspector's observation of BMPs and evaluation of the SWPPP. For wastewater inspections, NDEQ should add a checkbox or similar modification to the wastewater inspection form to indicate whether all regulated components of the facility have been observed. Observation of receiving waters should be clarified on the report forms. CAFO discharge investigation reports should include a map or other visual aid showing discharge path and whether flow from the facility would reach receiving waters. NDEQ has agreed to make these changes and should share these



documents with EPA by June 1, 2013. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

**Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.**

**Finding 6-4**

**Area for State Attention**

**Description**

Discharge investigations at CAFOs are not consistently conducted in a timely manner following receipt of the discharge notice.

**Explanation**

There is a performance issue that falls generally under Element 6. 36 of the 73 CAFO inspections reviewed were discharge investigations prompted by a self-reported discharge or a complaint. Most of the investigations were conducted within a few days of receipt of the discharge notice or complaint, but 5 investigations were not conducted until 5, 7, 9, 30, and 60 days following receipt of notice. Because wet weather conditions at a facility can be ephemeral and the circumstances under which an isolated discharge occurs can change, inspectors need to investigate alleged discharges within a few days of the occurrence in order to accurately characterize any noncompliance that might have occurred and capture any evidence of discharge that would lead to an accurate compliance determination.

Upon further discussion with NDEQ following the on-site file review, EPA understands that NDEQ's normal procedure for conducting discharge investigations at AFOs is to visit the site as soon as possible following receipt of the discharge allegation. EPA acknowledges that most, if not all, of the investigations in FFY 2011 completed outside the three-day recommended window following the alleged discharge were concentrated during an intense period of heavy rainfall throughout the state, thereby spreading inspectors thinly across the state and making timely response very challenging. Barring circumstances such as this, EPA is satisfied that NDEQ has procedures in place to promptly investigate alleged discharges from AFOs.

**Relevant metrics**

**State response**

NDEQ reminds EPA that non-discharging CAFOs without NPDES permits are not under the jurisdiction of EPA and should not be used in this evaluation.

NDEQ conducts discharge investigations as soon as possible, usually the same day or the day following a report unless there are significant widespread precipitation events. NDEQ prioritizes investigations based on potential impacts to the environment, knowledge of the facility, and location. Under normal conditions NDEQ performs inspections within a day or two of receipt of the report. As the explanation states, most of the investigations reviewed were conducted within a few days of the notice. The investigation timeframe is subject to ongoing conditions. For example, there were 114 discharges reported to NDEQ in a 5 week period

in 2010. Abnormal rainfall amounts in large areas of the state created discharge conditions for most CAFO operators and thus limited our ability to conduct all discharge inspections timely. NDEQ acknowledges the importance of a quick response to discharge reports. The NDEQ will work to ensure documentation of these wet weather observations and determinations is made and placed in the file.

**Recommendation** None required.

**Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.**

**Finding 6-5**

**Area for State Attention**

**Description**

A small portion of inspection reports are not completed in a timely manner.

**Explanation**

124 inspection reports were evaluated under this metric, 109 of which were completed within 45 days of the inspection. In the absence of a goal for inspection report timeliness in NDEQ's Enforcement Manual, a nationally consistent benchmark of 45 days is used for this metric. For 91 of the 124 inspection reports, EPA recorded the number of days from inspection to report completion and found the average to be 24 days.

The 15 inspection reports not completed in a timely manner were distributed across all of NDEQ's central and field offices and represent all NPDES program areas except pretreatment. Because the value for this metric deviates notably from the 100% goal, this finding is brought to the state's attention as needing improved consistency.

**Relevant metrics**

6b – Inspection reports completed within the prescribed timeframe:  
 $109/124 = 88\%$ .

- Goal: 100% of reports completed in timely manner.

**State response**

Wastewater Facilities:

The NDEQ has had a policy of requiring wastewater facilities inspection reports completed in three weeks and sent for internal review. With review, a 24 day turnaround is normal. NDEQ will clarify its enforcement manual on this issue. The NDEQ respectfully requests a report on EPA's average time of report completion on inspections it conducts in Nebraska.

CAFO:

The SOP for conducting routine compliance inspections at CAFOs is to complete the inspection report and a draft response letter within three weeks of the inspection. NDEQ will clarify its enforcement manual on this issue. The NDEQ respectfully requests a report on EPA's average time of report completion on inspections it conducts in Nebraska.

**Recommendation**

None required.

**Element 7 — Identification of Alleged Violations: Compliance determinations accurately made and promptly reported in national database based on inspection reports and other compliance monitoring information.**

<b>Finding 7-1</b>	<b>Area for State Improvement</b>
<b>Description</b>	Permit schedule violations appearing in the national database include legitimate noncompliance needing a state response as well as violation flags that need to be updated and “turned off” with milestone achieved dates.
<b>Explanation</b>	<p>38 facilities, including 4 majors and 34 non-majors, had permit compliance schedule violations appearing in OTIS during one or more quarters of FFY 2011. EPA reviewed 3 of these facilities. In the cases of Lewiston and Madrid, the schedule violations appearing in OTIS were found to be legitimate, and NDEQ needs to continue working with those facilities until they achieve their scheduled milestones and NDEQ receives the corresponding deliverables required by the permit. Once the deliverables are received, NDEQ needs to enter the achieved dates into ICIS so that violation flags do not appear in future quarters on the facility’s compliance record. In the case of Plattsmouth, the scheduled milestones have been achieved, and the deliverables received, but NDEQ has not entered achieved dates in ICIS to clear the record of noncompliance. Even if deliverables are received late, entry of achieved dates will limit the appearance of noncompliance flags to only those quarters in which the deliverable was overdue but not yet received.</p> <p>As a related matter, EPA reviewed 1 of the 15 facilities flagged for having compliance schedule violations in FFY 2011. Western Sugar Cooperative is a major with a compliance schedule driven by an EPA administrative order, but EPA had not entered a final achieved date in ICIS, which triggered the violation. EPA identified several major and minor facilities with similar compliance schedules in ICIS that needed to be updated and has made procedural changes to regularly update those schedule dates in the database.</p> <p>Note that this finding has been included as a common finding in the “CWA-NPDES Integrated SRF and PQR Review” part of this report.</p>
<b>Relevant metrics</b>	7c – Permit schedule violations: 38. 7b – Compliance schedule violations: 15.
<b>State response</b>	NDEQ does not presently have authority to enter schedules into ICIS. In addition, ICIS did not have an acceptable resolution code for the State to use during the periods that were reviewed. NDEQ has exerted considerable effort to update ICIS and maintain this data base. Currently, NDEQ is in the process of replacing the Compliance Specialist that entered the ICIS data. Discussions after December 31, 2012 would allow time for

the new individual to get familiar with the ICIS system.

Many of these compliance issues are in small communities with elderly, poor populations and the solution and costs of the project makes compliance complicated. We actively work with these communities. The Wastewater Section has an individual who tracks compliance issues and we have periodic meetings to discuss progress. Management meets to discuss compliance issues. NDEQ has procedure in place but would like to discuss this in more detail by March 2013 with EPA R7. EPA's experience with Tilden and Winnebago Nebraska may help provide a common issue to develop more effective strategies.

**Recommendation**

NDEQ should submit to EPA a plan with timeframe for implementing a process to remedy overdue compliance schedule violations. The process should include a mix of working with the facilities where deliverables have not been received—either informally or with enforcement actions, as appropriate—and entering achieved dates for received deliverables that have triggered overdue violations. By October 31, 2013, EPA will verify that compliance schedule violations in ICIS are being addressed consistently and appropriately. EPA and NDEQ will discuss progress on a semi-annual basis. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

**Element 7 — Identification of Alleged Violations: Compliance determinations accurately made and promptly reported in national database based on inspection reports and other compliance monitoring information.**

**Finding 7-2**

**Area for State Improvement**

**Description**

Compliance determinations are not consistently made as a follow-up to evidence gathered during inspections.

**Explanation**

91 of the 125 inspection reports reviewed led to an accurate compliance determination; however, 34 inspection reports either did not lead to a compliance determination or resulted in a compliance determination that appears inaccurate because it did not reflect all information gathered during the inspection. This finding applies to all NPDES program areas. The distribution across NPDES program areas of inspection reports not leading to a clear and accurate compliance determination (complDet) is as follows:

	# reports not leading to a complDet	# reports reviewed	% reports not leading to a complDet
CAFOs	21	73	29%
Stormwater	3	18	17%
Pretreatment	1	10	10%
Wastewater	9	24	38%

In the case of inspection reports not leading to a compliance determination, the report and other associated documents in the file (e.g. cover letters, memos to file, etc.) did not clearly indicate whether NDEQ determined that any violations had been observed as part of the inspection. Lack of a clear compliance determination accounts for most of the 34 instances cited above.

In other instances, information in an inspection report strongly suggests that a particular observation constitutes a deficiency or violation, without explicitly saying as much, but the compliance determination ultimately made by NDEQ either indicated that violations were not found or was silent regarding the observation in question. Examples include Barneston, Behlen Manufacturing, Bruning, and CVS Pharmacy.

Finally, many wastewater inspection files included an inspection data sheet that is routed with the inspection report for use by data entry staff responsible for entering summary information about the inspection into ICIS. The inspection data sheet asks whether noncompliance was found at the facility. For many inspection files, the answer to this question was the only indication that NDEQ made a compliance determination. Reliance on the inspection data sheet is not inherently a problem but does require that NDEQ answer the question carefully. In one instance, Crofton WWTF, the inspection data sheet said the facility was in compliance, but the inspection report contradicted this assertion with evidence strongly suggesting that

violations had in fact been found.

EPA addendum in follow-up to the January 2013 meeting with NDEQ noted in the state response below: During the meeting, NDEQ better articulated its process for making determinations of compliance, including recent enhancements. NDEQ also shared an example of its improved process for using inspection reports and cover letters to identify potential violations that are under evaluation by the Department prior to making a decision about issuance of an NOV.

**Relevant metrics**

7e – Inspection reports reviewed that led to an accurate compliance determination:  $93/125 = 74\%$ .

**State response**

Previous violations are addressed in LOWs or NOVs not the inspection report. The inspection report is for factual observations to be used for compliance determinations. This section is similar to Element 6, therefore we request that EPA R7 come to NDEQ by March 2013 to specifically discuss potential modifications to the inspection reports and the use of NOVs for compliance notification. Furthermore, NDEQ requests EPA send examples and guidance that would be compatible with NDEQ process of using NOVs for official notice by December 31, 2012.

Obviously, EPA has a different procedure for the timing of violation determinations. Element 7 itself does not deal with the timing issue and provides flexibility in methodology.

Follow-up to the January 2013 meeting with EPA: See follow-up responses for Elements 6-1, 6-3 and 8-1.

**Recommendation**

By June 1, 2013, NDEQ should submit a summary of its various compliance determination mechanisms, including those that do and do not involve an NOV and under what circumstances each option is expected to be used. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

**Element 7 — Identification of Alleged Violations: Compliance determinations accurately made and promptly reported in national database based on inspection reports and other compliance monitoring information.**

**Finding 7-3**

**Area for State Improvement**

**Description**

The state does not make prompt determinations of noncompliance based on DMR data.

**Explanation**

There is a performance issue that falls generally under Element 7. The NDEQ central office in Lincoln receives Discharge Monitoring Reports (DMRs) from facilities within one month following the end of each monitoring period, enters the DMR data into ICIS, and forwards a copy of DMRs to the field office or central office compliance staff responsible for monitoring each facility's compliance status. Many files reviewed by EPA included a compliance determination concerning DMR effluent violations or DMR non-receipt. Though appropriate and accurate, five of those determinations were not made until two to seven months following NDEQ's receipt of the DMRs. Those five instances include Crofton, Lodgepole, Nemaha, North Platte, and TMCO Powder Coating, representing three different field offices and the central office.

**Relevant metrics**

**State response**

NDEQ will look into the issues surrounding timeliness of those facilities noted. NDEQ has made considerable effort on training communities to properly submit DMRs and has sent letters to communities for resubmittal for omissions. Most DMR non-receipts are for non-discharging facilities or after investigation the information from the lab was found but the DMR was not submitted. We print off non-compliance reports from ICIS and distribute them to inspectors. We are addressing DMR issues. We are willing to discuss this issue with EPA and how this will change once permittees submit directly to EPA with e-DMR.

NDEQ requests a meeting with EPA separate from the meeting proposed in Element 6-1 to further discuss DMR review, timely review and expected actions including the new e-reporting rule. This meeting should occur before March 2013 at NDEQ offices.

NDEQ follow-up: The meeting with EPA occurred in January 2013.

**Recommendation**

NDEQ should enhance and implement procedures that can be applied consistently among all compliance staff for reviewing and responding to DMR violations. EPA recommends that such procedures cover the spectrum of written and non-written responses that are appropriate to different types of DMR violations and record-keeping protocols for non-written responses. NDEQ should submit a report to EPA on enhancements that have been implemented by October 31, 2013. Once EPA is satisfied



that state action has addressed the underlying finding, this recommendation will be considered complete.

**Element 8 — Identification of SNC and HPV: Accurate identification of significant noncompliance and high-priority violations, and timely entry into the national database.**

**Finding 8-1**

**Area for State Improvement**

**Description**

Instances of Significant Noncompliance (SNC) present in the file or alluded to in inspection reports are not brought to the facility’s attention as SNC, High Priority Violations (HPV), or otherwise serious violations needing correction.

**Explanation**

10 facilities had legitimate SNC violations present in the file across the categories of facilities for which SNC determinations should be made. These categories include major, non-major P.L. 92-500 (federal grant awardees), and pretreatment facilities. For major and P.L. 92-500 facilities, SNC criteria in the national program guidance closely relate to HPV criteria in the state’s Enforcement Manual. For pretreatment facilities, SNC criteria and the state’s obligation to respond accordingly are codified in federal regulation.

SNC violations for 8 of the 10 facilities were not identified to the facility as significant deficiencies needing the facility’s attention. Those facilities include Blair, Nucor Steel, Plattsmouth, Novartis Consumer Health, CJ Foods, Iams Co., Tasty Toppings, and Gibbon Packing. The first four are wastewater facilities, and violation types included effluent exceedances, SSOs, and bypasses. In the case of Blair and Plattsmouth, violations were due to flooding. While a facility cannot control this cause of violations, progress toward repair in both instances followed a protracted timeline extending beyond receding of floodwaters. NDEQ should emphasize in writing the importance of expeditiously repairing a facility in SNC to restore proper wastewater treatment. The latter four facilities are pretreatment permittees, for which 40 CFR 403.8 establishes SNC criteria and requires the control authority to take appropriate enforcement and comply with public participation requirements of 40 CFR Part 25. NDEQ’s Enforcement Manual categorizes HPVs at pretreatment facilities in accordance with the federal regulation on SNC.

**Relevant metrics**

8a1 – Major facilities in SNC during the reporting year: 21.

8a2 – Percent of major facilities in SNC during the reporting year:  $21/54 = 39\%$ .

- National average: 22%.

8b – Percentage of Single Event Violations that are accurately identified as SNC or non-SNC:  $2/6 = 33\%$ .

- Goal: 100% of files with appropriate determination of SNC or non-SNC.

8c – Percentage of Single Event Violations identified as SNC reported timely:  $1/2 = 50\%$  (Note that not all SEVs evaluated under 8b could be evaluated under 8c).

- Goal: 100%.

7a1 – Number of major NPDES facilities with single event violations (reported to ICIS): 2.

7a2 – Number of non-major facilities with single event violations (reported to ICIS): 2.

**State response**

NDEQ worked with Blair and Plattsmouth during and after the flood to get or stay in compliance. NDEQ encouraged the facilities to work as quickly as possible to return to compliance. This flood was an extreme event and the river and ground water levels remained high for some time even after flood waters receded.

Sanitary Sewer Overflows (SSO) are investigated. If the SSO is actually caused by the community, the issue is addressed and documented.

We have not consistently used the terms Significant Non-Compliance (SNC) or Single Event Violations (SEV) in our discussions with communities. That may be because these terms are not defined in the Clean Water Act (CWA) or Code of Federal Regulations (CFR) but by EPA guidance or policy. NDEQ will evaluate procedures to identify and make an enforcement determination for SNC and SEV. Violation notification would be in NOVs, not the inspection report.

NDEQ request that this issue be discussed in the same meeting to address Section 7-3.

Follow-up to the January 2013 meeting with EPA: NDEQ will work to ensure reports or checklists consistently implement notification to facilities. Example of an NOV in Attachment R section SRF 8-1 and proposed checklist additions in Section SRF 6-1.

**Recommendation**

NDEQ should better identify SNC at pretreatment facilities as well as SNC at majors, including Single Event Violations (SEVs). NDEQ should follow its Enforcement Manual guidelines for issuing NOVs to facilities with HPVs. For pretreatment industries, NDEQ should adhere to the requirements of 40 CFR 403.8. By October 31, 2013, NDEQ should send to EPA a sample of recent pretreatment NOVs sent to facilities in SNC and an example NOV sent to a major in SNC, showing the improvements made. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

**Element 8 — Identification of SNC and HPV: Accurate identification of significant noncompliance and high-priority violations, and timely entry into the national database.**

<b>Finding 8-2</b>	<b>Meets Expectations</b>
<b>Description</b>	NDEQ uses Reportable Noncompliance resolution codes to appropriately end strings of faulty DMR non-receipt and other reporting violations in ICIS.
<b>Explanation</b>	A large number of major and non-major traditional NPDES permittees in Nebraska have had years of continuous DMR non-receipt or other reporting violation codes dictating the compliance status in ICIS and OTIS. While such codes are usually legitimate for the initial quarter when the reporting violation occurred, ICIS continues to show the violation in subsequent quarters until the missing data is satisfied or the state overrides the RNC code with an appropriate resolution code. The result is that many major facilities appear to be in SNC long after the initial reporting violation occurred, and many of the 21 majors in SNC in FFY 2011 were on the list due to such missing data. In late FFY 2011, NDEQ began to use an appropriate RNC resolution code to end the string of unwarranted non-receipt and reporting violation codes, which results in more accurate compliance data in the national databases. Starting in FFY 2012, EPA expects fewer majors to appear on the SNC list for this reason. Facilities reviewed by EPA that received an RNC resolution code in FFY 2011 include Beatrice, Fremont, McCook, MG Waldbaum, Tyson Fresh Meats, and Western Sugar Cooperative. NDEQ should continue this practice where appropriate for both major and non-major facilities.
<b>Relevant metrics</b>	<p>7d – Major facilities in noncompliance: <math>40/51 = 78\%</math>.</p> <p>7g – Non-major facilities in Category 2 noncompliance: 88.</p> <p>8a1 – Major facilities in SNC during the reporting year: 21.</p> <p>8a2 – Percent of major facilities in SNC during the reporting year: <math>21/54 = 39\%</math>.</p> <ul style="list-style-type: none"> <li>• National average: 22%.</li> </ul>
<b>State response</b>	NDEQ response not required.
<b>Recommendation</b>	None required.

**Element 9 — Enforcement Actions Promote Return to Compliance: Enforcement actions include required corrective action that will return facilities to compliance in specified timeframe.**

<b>Finding 9-1</b>	<b>Area for State Attention</b>
<b>Description</b>	Informal enforcement actions do not consistently result in violators returning to compliance.
<b>Explanation</b>	<p>57 of the 64 informal enforcement actions reviewed by EPA either succeeded in getting a return to compliance or ultimately led to a formal enforcement action that legally required a return to compliance. The 7 informal actions that did not accomplish one or the other consists of Letters of Warning (LOWs) and NOVs that required actions and/or a facility response by a specified date but did not result in the facility returning to compliance, as indicated by subsequent documents in the file showing unresolved noncompliance. The 7 facilities are Nemaha, Industrial Powder Coating, Novartis Consumer Health, Tasty Toppings, 37 Land &amp; Cattle, Sioux County Feeders, and St. George Ranch. These facilities were also not required by a subsequent state action (formal or informal) to take actions that would return the facility to compliance. In such cases, the state needs to ensure that appropriate voluntary or binding actions are required of the violator and that additional follow-up measures are taken when the required actions are not completed.</p> <p>All 11 formal enforcement actions reviewed by EPA required corrective actions by the violator by a date certain.</p> <p>Because this finding concerns a deficiency for a small fraction of informal actions and none of the formal actions, the finding is categorized as an Area for State Attention not requiring a trackable recommendation.</p>
<b>Relevant metrics</b>	<p>9a – Percentage of enforcement responses that return or will return a source in SNC to compliance: <math>68/75 = 91\%</math>.</p> <ul style="list-style-type: none"> <li>• Goal: 100% of enforcement actions return a source in SNC to compliance.</li> </ul>
<b>State response</b>	NDEQ actions are appropriate and we work to bring facilities back into compliance. NDEQ also attempts to make uniform determinations and apply requirements consistently. NDEQ continues to work on procedures to make sure enforcement actions are addressed. In some cases the informal enforcement action is based on a violation where there is no action required to return to compliance, except to not repeat the violation. Thus, there is no compliance timeframe.
<b>Recommendation</b>	None required.

**Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.**

**Finding 10-1**

**Area for State Improvement**

**Description**

Formal enforcement actions and referrals to the state Attorney General, as well as some informal enforcement letters, are not issued in a timely manner.

**Explanation**

The 76 enforcement actions reviewed under this metric included 11 formal actions (i.e. administrative orders, consent orders, AG referrals, and consent decrees) and 65 informal actions (i.e. NOVs, LOWs, and Corrective Action Required letters). Altogether, 27 actions were not timely, representing formal and informal enforcement actions at traditional dischargers, stormwater sites, and CAFOs.

7 of the 11 formal actions were not issued or referred within 180 days of discovery of the underlying violations. 180 days is the benchmark for timely action according to the Water Quality Division’s Enforcement Manual as well as federal guidance. The time from violation discovery to formal action or AG referral for the formal actions not timely ranged from 240 to more than 400 days. In all 7 cases, informal enforcement and voluntary tools were first used to move the facility toward compliance, and in 5 of those 7 cases the preceding informal actions were themselves not issued timely, i.e. within 90 days of discovery according to state guidance. In the majority of the 7 cases, however, the initial use of informal tools did not consume the bulk of time leading up to formal enforcement; rather, the lag times from use of informal tools to the initial enforcement request, and from enforcement request to issuance of an administrative order or AG referral, were responsible for most of the duration.

45 of the 65 informal enforcement actions reviewed were issued within 90 days of violation discovery, leaving 20 (31%) that were not issued timely. 90 days is the timeframe in the Water Quality Division’s Enforcement Manual for escalating noncompliance to formal enforcement if voluntary measures fail. These 20 informal actions originated from a broad cross section of NDEQ’s field offices.

The distribution across NPDES program areas of formal and informal enforcement actions that were not timely is captured in the following two tables.

Formal actions not timely:

	# actions not timely	# actions reviewed	% actions not timely
CAFOs	2	4	50%
Stormwater	1	2	50%
Pretreatment	0	0	-
Wastewater	4	5	80%

Informal actions not timely:

	# actions not timely	# actions reviewed	% actions not timely
CAFOs	11	39	28%
Stormwater	3	7	43%
Pretreatment	2	6	33%
Wastewater	4	13	31%

For majors only, NDEQ did not take any formal enforcement action in FFY 2011. Metric 10a, noted below as a relevant metric, is a data and goal metric that combines state and EPA actions. EPA took formal action at one major discharger (Fairbury WWTF) to address SNC, which explains why the numerator for metric 10a is 1 and not 0.

**Relevant metrics**

10a – Percent of major NPDES facilities with enforcement action taken in a timely manner:

1/14 = 7%

- Goal: 100% timely action

10b – Enforcement responses reviewed that address violations in a timely manner: 49/76 = 64%.

- Goal: 100% appropriate enforcement actions.

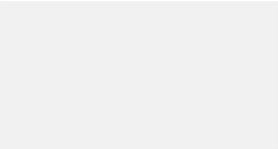
**State response**

The Department is reviewing its process regarding formal and informal enforcement on facilities. The Department has implemented a monthly meeting to identify and address enforcement actions. This issue will be identified for discussion at a monthly review.

NDEQ request that this issue be discussed in the same meeting to address Element 7-3.

**Recommendation**

NDEQ should conduct informal and formal enforcement according to state and federal guidelines for timeliness. NDEQ should review its Enforcement Manual and notify EPA of any modifications by June 1, 2013. By October 31, 2013, NDEQ should report to EPA on process enhancements it has implemented to ensure that field and central office personnel consistently escalate noncompliance, make enforcement referrals to the Legal Section, and issue formal administrative actions within timeframes established by the Enforcement Manual. NDEQ has agreed to



take these actions, and once EPA is satisfied that state actions have addressed the underlying finding, this recommendation will be considered complete.

**Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.**

**Finding 10-2**

**Area for State Improvement**

**Description**

NDEQ does not take appropriate enforcement actions to address violations at CAFOs.

**Explanation**

There is a performance issue that falls generally under Element 10. Through a review of NDEQ’s Enforcement Manual and discussions with personnel from the Agriculture Section, EPA has determined that NDEQ has no formal enforcement escalation policy for NPDES violations at CAFOs. In the absence of state guidance on priority violations and appropriate responses, EPA reviews state enforcement actions based on national program management guidance documents.

EPA reviewed 39 enforcement actions issued by NDEQ for violations associated with CAFOs. 15 of these 39 (38%) actions were informal enforcement action letters (e.g. LOWs, NOVs, and Correction Action Required letters) taken by the Agriculture Section that were not commensurate with the nature of violations, and under national guidance they should have been addressed through a formal enforcement action. 13 of the 15 informal actions were sent in response to illegal discharges of pollutants that arguably reached waters of the state. 3 of these facilities (Timmerman Feeding Corporation, RDO Ind. Feedlot, and S&A Feedlot) received two informal attempts to return them to compliance. Notwithstanding NDEQ’s statutory requirement to use voluntary means to return violators to compliance (see Appendix E), these 3 facilities, as well as several others that received only one informal letter following a long history of noncompliance, were granted generous opportunities to voluntarily change their operations to avoid escalated enforcement. None of the 15 informal actions ultimately led to formal enforcement. Because illegal discharge can be one of the most serious CWA violations, the threshold for escalating informal actions to formal enforcement to ensure a return to compliance should be lower than that for less serious violations.

**Relevant metrics**

**State response**

NDEQ reminds EPA that non-discharging CAFOs without NPDES permits are not under the jurisdiction of EPA and should not be used in this evaluation.

EPA has been consistently stating in this review that the CAFO inspection reports lack the detail to determine whether or not the CAFO was in compliance with the CWA. Yet, in this Finding EPA has made a determination that 13 of the 15 informal actions were illegal discharges EPA should explain this inconsistency.

NDEQ evaluates each non-compliance event discovered during inspections or investigations at all AFOs, not only NPDES permitted CAFOs, to determine the appropriate enforcement tool. During wet weather period discharges, the NDEQ determines whether the discharge was legal or illegal. Discharges are considered legal if rainfall exceeded the 25-year, 24-hour storm event and the livestock waste control facility was being properly managed prior to the start of the rainfall. Informal actions are used extensively to obtain compliance. However, formal actions are also used when necessary and appropriate to return the facility to compliance and to seek penalties for violations. For example, each illegal discharge into waters of the state is referred for formal enforcement.

The current decision-making on the enforcement tool of choice may not be well documented in the file. NDEQ will implement steps to make sure the file reflects the decision in each alleged discharge or other violation. NDEQ requests a meeting with EPA to discuss enforcement response policy for CAFO violations by March 2013.

**Recommendation**

NDEQ has agreed to develop an enforcement response policy for NPDES violations at CAFOs and should submit it to EPA for review by June 1, 2013. Once EPA is satisfied that the state has developed and begun to implement an acceptable policy, this recommendation will be considered complete.

**Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.**

**Finding 10-3**

**Meets Expectations**

**Description**

NOVs and informal notices of DMR non-receipt are appropriately used to return facilities with isolated reporting violations back to compliance.

**Explanation**

There is a performance issue that falls generally under Element 10. NDEQ sent NOVs and notices of DMR non-receipt to 8 facilities reviewed by EPA. These informal letters notified the facilities of their deficient DMRs and requested a response with the corrected or missing data. Facilities receiving these letters represent the major, non-major, and pretreatment universes and include the following: Barneston, Beatrice, Behlen Manufacturing, Grand Island, Iams Company, Nemaha, North Platte, and Valmont Industries. This use of informal enforcement is appropriate to the type of violation and should continue to be used. Also, EPA notes that this performance is an improvement over what was found during the FFY 2007 SRF Round 2 review.

**Relevant metrics**

**State response**

NDEQ response not required.

**Recommendation**

None required.

**Element 11 — Penalty Calculation Method: Documentation of gravity and economic benefit in initial penalty calculations using BEN model or other method to produce results consistent with national policy.**

**Finding 11-1**

**Area for State Improvement**

**Description**

Economic benefit and gravity are consistently included in penalty calculations, but a rationale for how BEN is calculated is missing from some penalty worksheets.

**Explanation**

6 of the 7 penalty actions reviewed accounted for the economic benefit gained by the violator, and 7 of 7 included a gravity component. For the one instance in which economic benefit was not considered (Timm Soil Mining), NDEQ did not provide a rationale for its exclusion from the penalty calculation. While the state may use discretion to exclude economic benefit in exceptional circumstances, the file must indicate why that decision was made, as it represents a departure from the national expectation for consistency.

For 3 of the 6 cases that did account for economic benefit, NDEQ’s penalty calculation worksheet described the types of delayed and avoided costs included in the calculation, while the other 3 cases lacked such description.

EPA credits NDEQ for making notable improvement to its use of the penalty calculation worksheet, including descriptions of economic benefit and gravity, since the Round 2 review covering FFY 2007. As a follow-up to the Round 2 review, NDEQ agreed to ensure that penalty calculation information included in judicial referrals is useful to the Nebraska AG.

**Relevant metrics**

11a – Penalty calculations that include gravity and economic benefit: 6/7 = 86%.

- Goal: 100% of penalty calculations include gravity and BEN as appropriate.

**State response**

The Department recognizes the importance of ensuring a level playing field and will work to ensure that penalty calculations and settlements achieve this goal. We believe we have made gains with our penalty calculation worksheet which we share with the Attorney General in our enforcement referrals. We understand that our files do not typically include information or documentation as to the rationale for final settlements. The Department will address this concern with the Attorney General and provide a response by March 2013.

**Recommendation**

NDEQ referrals to the state AG should consistently include a well documented economic benefit component of penalty calculations, including specific categories of delayed and avoided costs, and should provide a rationale for any cases in which economic benefit is being excluded from the penalty. NDEQ should discuss these concerns with the

state Attorney General and provide a report of improvements to EPA by March 31, 2013. EPA and NDEQ will discuss progress on a quarterly basis. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

**Element 12 — Final Penalty Assessment and Collection: Differences between initial and final penalty and collection of final penalty documented in file.**

<b>Finding 12-1</b>	<b>Area for State Attention</b>
<b>Description</b>	Nebraska files for penalty actions generally account for the difference between proposed and final assessed penalties and contain proof that assessed penalties are collected.
<b>Explanation</b>	3 of the 4 penalty action files reviewed for documentation of the difference between initial and final assessed penalties contained information on how any reduction in penalty was derived. 2 of the 3 penalty action cases reviewed for verification that penalties were collected contained the required documentation. Although these proportions do not measure up to the 100% goal, only one case from a small sample size was not counted under each metric (BS Wash, Inc., and Classic Dairy, respectively), which leads EPA to conclude that NDEQ and the Nebraska AG are generally successful in their documentation under metric 12a. EPA brings the two aberrations to the state's attention to encourage greater consistency.
<b>Relevant metrics</b>	12a – Documentation on difference between initial and final penalty: 3/4 = 75%. <ul style="list-style-type: none"><li>• Goal: 100% of penalties document difference between initial and final assessed penalty.</li></ul> 12b – Penalties collected: 2/3 = 67%. <ul style="list-style-type: none"><li>• Goal: 100% of penalties collected.</li></ul>
<b>State response</b>	The Department will continue to work with the Attorney General to achieve appropriate and consistent penalties for violations referred for enforcement.
<b>Recommendation</b>	None required.

**Element 12 — Final Penalty Assessment and Collection: Differences between initial and final penalty and collection of final penalty documented in file.**

<b>Finding 12-2</b>	<b>Area for State Improvement</b>
<b>Description</b>	Large portions of assessed penalties are frequently waived for violators who demonstrate a prompt return to compliance, resulting in a reduced deterrent value of monetary penalties.
<b>Explanation</b>	<p>There is a performance issue that falls generally under Element 12. 3 of the 4 settled penalty actions reviewed by EPA had a provision to assess a much smaller penalty than what NDEQ recommended to the Nebraska AG, due to the AG practice of waiving half or more of the monetary penalty contingent on a prompt return to compliance by the violator. Specifically, the entire \$10,000 and 7,500 penalties for B.S. Wash and Dinsdale Brothers, respectively, were slated to be waived on this condition. Likewise, \$5,000 of the penalty for Blue River Pork could be waived contingent on a prompt return to compliance.</p> <p>This practice of including a provision in final orders to waive a significant portion of the settled penalty significantly reduces the deterrent value of these actions.</p>
<b>Relevant metrics</b>	
<b>State response</b>	The Department will discuss this concern with the Attorney General and provide a report by March 2013. We would note that the Attorney General has filed follow-up actions to collect waiveable penalties where the facility fails to meet the specified compliance requirement in the consent decree.
<b>Recommendation</b>	EPA recognizes NDEQ may not have direct control over the conditions for penalty assessment that are placed in orders by the state AG; however, NDEQ and the state AG should discuss appropriate uses of waivers to discontinue or at least minimize their use. EPA will be available to assist NDEQ in these discussions upon request. NDEQ and the state AG should reach agreement on how to address this concern and provide a report to EPA on the path forward by March 31, 2013. EPA will check with the state on a quarterly basis to determine progress in this area. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

# **STATE REVIEW FRAMEWORK**

## **Nebraska**

### **Resource Conservation and Recovery Act Implementation in Federal Fiscal Year 2015**

**U.S. Environmental Protection Agency  
Region 7, Kansas City**

**Final Report  
April 19, 2017**

# Executive Summary

## Introduction

EPA Region 7 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Nebraska Department of Environmental Quality, Waste Management Section.

EPA bases SRF findings on data and file review metrics, and conversations with program management and staff. EPA will track recommended actions from the review in the SRF Tracker and publish reports and recommendations on EPA's ECHO web site.

## Areas of Strong Performance

- Finding 2-2: NDEQ's inspection reports are complete and sufficient to determine compliance.
- Finding 3-1: Violations noted in the inspection report and/or its attachments (checklists) resulted in accurate and appropriate determination and enforcement follow-up.
- Finding 3-2: NDEQ exceeds the national average at identifying violations at inspections.
- Finding 4-1: NDEQ's enforcement response to violations is timely and appropriate. It is effective at returning the facility to compliance with the regulatory requirements.

## Most Significant RCRA Subtitle C Program Issues<sup>1</sup>

- Finding 1-1: NDEQ needs to ensure that all mandatory data for inspection and enforcement activities are entered into RCRAInfo.
- Finding 2-1: NDEQ should ensure that inspection coverage of Large Quantity Generators, Small Quantity Generators and operating Treatment Storage Disposal Facilities meet the minimum expectation levels.

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<sup>1</sup> EPA's "National Strategy for Improving Oversight of State Enforcement Performance" identifies the following as significant recurrent issues: "Widespread and persistent data inaccuracy and incompleteness, which make it hard to identify when serious problems exist or to track state actions; routine failure of states to identify and report significant noncompliance; routine failure of states to take timely or appropriate enforcement actions to return violating facilities to compliance, potentially allowing pollution to continue unabated; failure of states to take appropriate penalty actions, which results in ineffective deterrence for noncompliance and an unlevel playing field for companies that do comply; use of enforcement orders to circumvent standards or to extend permits without appropriate notice and comment; and failure to inspect and enforce in some regulated sectors."

- Finding 5-1: The documentation for developing penalty calculations, including gravity and economic benefit, and demonstrating penalties collected could not be found in NDEQ's files.
- Finding 5-2: No documentation of rationale for difference between initial penalty calculation and final penalty could be located in the files reviewed.

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# I. Background on the State Review Framework

The State Review Framework (SRF) is designed to ensure that EPA conducts nationally consistent oversight. It reviews the following local, state, and EPA compliance and enforcement programs:

- Clean Water Act National Pollutant Discharge Elimination System
- Clean Air Act Stationary Sources (Title V)
- Resource Conservation and Recovery Act Subtitle C

Reviews cover:

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

EPA conducts SRF reviews in three phases:

- Analyzing information from the national data systems in the form of data metrics
- Reviewing facility files and compiling file metrics
- Development of findings and recommendations

EPA builds consultation into the SRF to ensure that EPA and the state understand the causes of issues and agree, to the degree possible, on actions needed to address them. SRF reports capture the agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state programs.

Each state's programs are reviewed once every five years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2013 and will continue through FY 2017.

## **II. SRF Review Process**

**Review period:** Federal Fiscal Year 2015

**Key dates:**

- SRF Kickoff letter mailed to NDEQ: June 16, 2016
- Data metric analysis and file selection list sent to NDEQ: June 14, 2016
- E-File review conducted: July 18, 20-21, 25-28 and August 1-2, 2016
- On-site visit and Exit interview occurred: August 3, 2016
- Draft report sent to headquarters: September 30, 2016
- Draft report sent to NDEQ: January 17, 2017
- Final report issued: April 19, 2017

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

- EPA Region 7 SRF Coordinator: Kevin Barthol
- EPA Region 7 Nebraska RCRA Coordinator: Marc Matthews
- EPA Region 7 Reviewer: Rebecca Wenner
- NDEQ Waste Management Section Chief: Bill Gidley
- NDEQ Compliance Unit Supervisor: Jeffery Edwards

### III. SRF Findings

Findings represent EPA's conclusions regarding state performance and are based on findings made during the data and/or file reviews and may also be informed by:

- Annual data metric reviews conducted since the state's last SRF review
- Follow-up conversations with state agency personnel
- Review of previous SRF reports, Memoranda of Agreement, or other data sources
- Additional information collected to determine an issue's severity and root causes

There are three categories of findings:

**Meets or Exceeds Expectations:** The SRF was established to define a base level or floor for enforcement program performance. This rating describes a situation where the base level is met and no performance deficiency is identified, or a state performs above national program expectations.

**Area for State Attention:** An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, the state should correct the issue without additional EPA oversight. EPA may make recommendations to improve performance, but it will not monitor these recommendations for completion between SRF reviews. These areas are not highlighted as significant in an executive summary.

**Area for State Improvement:** An activity, process, or policy that one or more SRF metrics show as a significant problem that the agency is required to address. Recommendations should address root causes. These recommendations must have well-defined timelines and milestones for completion, and EPA will monitor them for completion between SRF reviews in the SRF Tracker.

Whenever a metric indicates a major performance issue, EPA will write up a finding of Area for State Improvement, regardless of other metric values pertaining to a particular element.

The relevant SRF metrics are listed within each finding. The following information is provided for each metric:

- **Metric ID Number and Description:** The metric's SRF identification number and a description of what the metric measures.
- **Natl Goal:** The national goal, if applicable, of the metric, or the CMS commitment that the state has made.
- **Natl Avg:** The national average across all states, territories, and the District of Columbia.
- **State N:** For metrics expressed as percentages, the numerator.
- **State D:** The denominator.
- **State % or #:** The percentage, or if the metric is expressed as a whole number, the count.

## Resource Conservation and Recovery Act Findings

RCRA Element 1 — Data													
<b>Finding 1-1</b>	<b>Area for State Improvement</b>												
<b>Summary</b>	NDEQ needs to ensure that all mandatory data for inspection and enforcement activities are entered into RCRAInfo.												
<b>Explanation</b>	<p>Of the 25 facility files reviewed, 11 were noted as having some data missing when comparing the file information to RCRAInfo data. None of the facilities were missing SNC determinations, and appropriate enforcement was taken in all cases. Penalty information was missing from the file for one formal enforcement action, but return to compliance data was properly entered for all facilities.</p> <p>NDEQ stated that six of the files containing deficiencies were due to typographical errors due to personnel transitions whereas five were missing data elements for inspection and enforcement activities. This was identified as an area for state improvement in the Round 2 program review.</p>												
	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>State N</th> <th>State D</th> <th></th> </tr> </thead> <tbody> <tr> <td>2b Complete and accurate entry of mandatory data</td> <td>18</td> <td>29</td> <td>62.1%</td> </tr> <tr> <td>2a Long-standing secondary violators</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Metric ID Number and Description	State N	State D		2b Complete and accurate entry of mandatory data	18	29	62.1%	2a Long-standing secondary violators			
Metric ID Number and Description	State N	State D											
2b Complete and accurate entry of mandatory data	18	29	62.1%										
2a Long-standing secondary violators													
<b>State response</b>	<p>The Waste Management Division has reviewed and corrected the list of data metrics that was noted as missing or was input in error that was provided at the time of the program review. After completing the updates the data was again checked for accuracy prior to it being frozen in RCRAInfo for 2015. The Waste Management Division has reviewed its ongoing data entry practices. Staff, where necessary, who provide the data (inspectors) and those who are entering the data (Administrative Staff and Waste Compliance Unit Supervisor) have been retrained. Additional discussions between Waste Management Division staff and Region 7 staff have been held so that those who enter data can improve accuracy when data is entered the first time into RCRAInfo, and that it is entered timely in accordance with the NDEQ/EPA Performance Partnership Agreement.</p>												

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**Recommendation**

EPA discussed this issue with NDEQ during the review and NDEQ staff indicated that they would take appropriate action to ensure proper data entry.

EPA recommends NDEQ evaluate current data entry procedures and facility file management with the goal of improving accuracy. NDEQ should provide EPA with a draft of the NDEQ's and AG's data entry and file management process improvements for review within 60 days of completion of this SRF Report. EPA will randomly pull ten facilities in the 1<sup>st</sup> quarter of FY 2018 in order to review the NDEQ data for FY 2017. If this random sampling indicates that data entry processes and accuracy has sufficiently improved (90% or greater) the recommendation will be deemed complete.

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## RCRA Element 2 — Inspections

Finding 2-1	Area for State Improvement																														
<p><b>Summary</b></p>	<p>NDEQ should ensure that inspection coverage of Large Quantity Generators, Small Quantity Generators and operating Treatment Storage Disposal Facilities meet the minimum expectation levels.</p>																														
<p><b>Explanation</b></p>	<p>The state coordinated its inspection coverage with EPA R7 within its negotiated PPA work plan in order to maximize inspection resources. NDEQ’s FY2015 work plan included commitments for inspection of LQGs, SQGs, and operating TSDFs; as well as commitments for timely and appropriate enforcement response.</p> <p>NDEQ inspected less than the expected number of operating TSDFs in the two-year inspection cycle, however EPA conducted one of the three expected inspections. The other was completed on December 10, 2015. The LQG inspection coverage over the five-year inspection coverage cycle is slightly less than expected along with the annual inspection coverage.</p> <p>The RCRA statute mandates a minimum biennial inspection frequency for non-government TSDFs, which can be accomplished by the combined efforts of the EPA and NDEQ. Inspection frequency of other categories of RCRA facilities are set by the Office of Enforcement and Compliance Assurance in the: “Compliance Monitoring Strategy for the Resource Conservation and Recovery Act (RCRA) Subtitle C Program” [September 2015]. This guidance provides states with flexibility to plan and implement an alternative approach to RCRA program inspection coverage by developing a written plan describing it’s proposed alternative. NDEQ should consider developing an alternative plan to address the RCRA Compliance Monitoring Strategy for non-TSDF RCRA facilities.</p>																														
<p><b>Relevant metrics</b></p>	<table border="1"> <thead> <tr> <th data-bbox="482 1503 1008 1577">Metric ID Number and Description</th> <th data-bbox="1016 1503 1089 1577">Natl Goal</th> <th data-bbox="1097 1503 1170 1577">Natl Avg</th> <th data-bbox="1179 1503 1219 1577">State N</th> <th data-bbox="1227 1503 1268 1577">State D</th> <th data-bbox="1276 1503 1414 1577">State % or #</th> </tr> </thead> <tbody> <tr> <td data-bbox="482 1587 1008 1650">5a Two-year inspection coverage of operating TSDFs</td> <td data-bbox="1016 1587 1089 1650"></td> <td data-bbox="1097 1587 1170 1650"></td> <td data-bbox="1179 1587 1219 1650">1</td> <td data-bbox="1227 1587 1268 1650">3</td> <td data-bbox="1276 1587 1414 1650">33.30%</td> </tr> <tr> <td data-bbox="482 1661 1008 1703">5b Annual inspection coverage of LQGs</td> <td data-bbox="1016 1661 1089 1703"></td> <td data-bbox="1097 1661 1170 1703"></td> <td data-bbox="1179 1661 1219 1703">11</td> <td data-bbox="1227 1661 1268 1703">70</td> <td data-bbox="1276 1661 1414 1703">15.70%</td> </tr> <tr> <td data-bbox="482 1713 1008 1755">5c Five-year inspection coverage of LQGs</td> <td data-bbox="1016 1713 1089 1755"></td> <td data-bbox="1097 1713 1170 1755"></td> <td data-bbox="1179 1713 1219 1755">40</td> <td data-bbox="1227 1713 1268 1755">70</td> <td data-bbox="1276 1713 1414 1755">57.10%</td> </tr> <tr> <td data-bbox="482 1766 1008 1818">5d Five-year inspection coverage of active SQGs</td> <td data-bbox="1016 1766 1089 1818"></td> <td data-bbox="1097 1766 1170 1818"></td> <td data-bbox="1179 1766 1219 1818"></td> <td data-bbox="1227 1766 1268 1818">368</td> <td data-bbox="1276 1766 1414 1818">12.20%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5a Two-year inspection coverage of operating TSDFs			1	3	33.30%	5b Annual inspection coverage of LQGs			11	70	15.70%	5c Five-year inspection coverage of LQGs			40	70	57.10%	5d Five-year inspection coverage of active SQGs				368	12.20%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																										
5a Two-year inspection coverage of operating TSDFs			1	3	33.30%																										
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5c Five-year inspection coverage of LQGs			40	70	57.10%																										
5d Five-year inspection coverage of active SQGs				368	12.20%																										

	5e1 Five-year inspection coverage of active conditionally exempt SQGs		
	5e2 Five-year inspection coverage of active transporters		1
	5e3 Five-year inspection coverage of active non-notifiers		2
	5e4 Five-year inspection coverage of active sites not covered by metrics 2c through 2f3		
<b>State response</b>	<p>The Waste Management Division has reviewed the State/EPA Performance Partnership Agreement to confirm that the inspections of LQGs, SQG's, CESQG's and TSDF's meet the minimum inspection expectation levels. Based on the Department's understanding of the counts of inspections conducted and coupled with the inspections EPA conducts in the State of Nebraska we believe the metric percentages calculated by EPA didn't accurately reflect the combined percentages of the EPA inspections with the Department's, nor for the fact that if a TSDF didn't have violations it need not be inspected (Only true for the Safety Kleen facilities of which there are two in Nebraska).</p>		
<b>Recommendation</b>	<p>EPA recommends an increase in the level of inspection coordination between EPA and NDEQ during the planning phase for the FY 2018 PPA cycle/submission, including a review of the inspection status of the operating TSDF and LQG facilities in the State, to evaluate which of these facilities should be included in any given inspection schedule.</p>		

## RCRA Element 2 — Inspections

<b>Finding 2-2</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	NDEQ’s inspection reports are complete and sufficient to determine compliance.					
<b>Explanation</b>	<p>For the 24 facilities reviewed, all of the inspection reports had sufficient detail and documentation to determine compliance status of the facility. In only one instance did an inspection report take an inordinate amount of time to complete which has been addressed by NDEQ management.</p> <p>All of the inspection reports reviewed appeared to have all the information necessary to determine compliance status. This information included a description of the facility’s overall operations and waste management activities, verification of the generator status of the facility, citing specific violations noted on the attached checklists, and photographic documentation of the violations cited where applicable. The inspection reports are signed by the inspector and dated upon completion. The timeliness of report completion was calculated based upon the date that the report was signed by the inspector. On average, the NDEQ inspectors completed the reports within 30 days of the inspection.</p>					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	6a Inspection reports complete and sufficient to determine compliance	100%		24	24	100%
	6b Timeliness of inspection report completion	100%		23	24	95.8%
<b>State response</b>	The Waste Management Division appreciates the finding that the inspection reports are complete and sufficient to determine compliance, and that the timeliness just short of the goal at 95.8%. The Department has and continues to strive to meet the completion of the report prior to or within 30 days of the inspection.					
<b>Recommendation</b>						

### RCRA Element 3 — Violations

<b>Finding 3-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	Violations noted in the inspection report and/or its attachments (checklists) resulted in accurate and appropriate determination and enforcement follow-up.					
<b>Explanation</b>	In reviewing the inspection reports, violations noted on checklists attached to the inspection reports or within the narrative of the reports were brought forward for accurate and appropriate determination and enforcement follow-up (notice of violation, letter of warning), or otherwise made known to the facility.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	7a Accurate compliance determinations	100%		29	29	100%
	8c Appropriate SNC determinations	100%		29	29	100%
	8a SNC identification rate		2.20%	0	32	0.0%
<b>State response</b>	The Waste Management Division appreciates the acknowledgement that the program meets and/or exceeds these elements.					
<b>Recommendation</b>						

### RCRA Element 3 — Violations

<b>Finding 3-2</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	NDEQ exceeds the national average at identifying violations at inspections.					
<b>Explanation</b>	<p>NDEQ identifies a violation(s) during an inspection 59.4% of the time. For the review period, no SNC's were identified.</p> <p>EPA identified a facility from a previous year (FY 2012) to determine if NDEQ's SNC determinations and policy interpretation meet timeliness. NDEQ interpreted the policy correctly in the past.</p>					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	7b Violations found during inspections		36.5%	19	32	59.4%
	8b Timeliness of SNC determinations	100%	79%	0	0	0.0%
<b>State response</b>	The Waste Management Division appreciates the acknowledgement that the program meets and/or exceeds these elements.					
<b>Recommendation</b>						

## RCRA Element 4 — Enforcement

<b>Finding 4-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	NDEQ’s enforcement response to violations is timely and appropriate. It is effective at returning the facility to compliance with the regulatory requirements.					
<b>Explanation</b>	In all instances reviewed where enforcement actions were taken, the actions taken were adequate to return the facility to compliance. NDEQ exceeds the National Goal with regard to timely enforcement at significant non-compliers.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	9a Enforcement that returns violators to compliance			24	24	100%
	10a Timely enforcement taken to address SNC			1	1	100%
	10b Appropriate enforcement taken to address violations	100%		24	24	100%
<b>State response</b>	The Waste Management Division appreciates the acknowledgement that the program meets and/or exceeds these elements.					
<b>Recommendation</b>						

**RCRA Element 5 — Penalties**

<b>Finding 5-1</b>	<b>Area for State Improvement</b>															
<b>Summary</b>	The documentation for developing penalty calculations, including gravity and economic benefit, and demonstrating penalties collected could not be found in NDEQ's files.															
<b>Explanation</b>	<p>There was no file documentation to review, as the files were not present in the NDEQ file structure so the documentation for developing penalty calculations including gravity and economic benefit were not available for review. However, while reviewing the Becton, Dickinson and Company file, reporting forms indicate that \$23,000 was to be paid within 15 days of the consent decree and \$15,000 was waived if the facility remains in compliance for 180 days. The May 2014 inspection includes 5 violations, but no indication that the waived \$15,000 was collected. Additionally, two \$7,500 Supplemental Environmental Projects (SEP's) were included in the consent decree, but there is no information on the scope of or nexus for the SEP's nor information concerning the penalty reduction or the implementation for the SEP's.</p> <p>During discussion with EPA Region 7's Senior Regional Counsel and the Bureau Chief of the Natural Resources Section in the Attorney General's Office (AG's office), it was discovered that the AG's office determines a penalty calculation independently of the penalty calculation provided in the case referral from NDEQ and historically has not discussed its independent calculation with NDEQ. Although a group from the AG's office periodically meets with NDEQ legal staff to discuss cases, the AG's office does not generally consult with NDEQ in making the final determination on the settlement.</p> <p>This was identified as an area for improvement in both Round 1 and Round 2 SRF reviews.</p>															
<b>State response</b>	<table border="1"> <thead> <tr> <th data-bbox="467 1470 1003 1543">Metric ID Number and Description</th> <th colspan="3" data-bbox="1003 1470 1429 1543">State N</th> </tr> </thead> <tbody> <tr> <td data-bbox="467 1543 1003 1617">11a Penalty calculations include gravity and economic benefit</td> <td data-bbox="1003 1543 1177 1617">0</td> <td data-bbox="1177 1543 1323 1617">1</td> <td data-bbox="1323 1543 1429 1617">0.0%</td> </tr> <tr> <td data-bbox="467 1617 1003 1669">12b Penalties collected</td> <td colspan="3" data-bbox="1003 1617 1429 1669">1</td> </tr> </tbody> </table>				Metric ID Number and Description	State N			11a Penalty calculations include gravity and economic benefit	0	1	0.0%	12b Penalties collected	1		
	Metric ID Number and Description	State N														
	11a Penalty calculations include gravity and economic benefit	0	1	0.0%												
12b Penalties collected	1															
NDEQ will continue to communicate and coordinate with the Nebraska Attorney General's office on agency cases. To the extent the Attorney General is willing to share information regarding penalties with the																

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agency; we will include documentation in the agency legal case file. NDEQ would like to note for the record, however, that the agency does, (and did in referenced Becton Dickinson), develop an initial penalty calculation worksheet which the agency includes when it refers an enforcement case to the Attorney General. A copy of this litigation package and penalty calculation worksheet is filed in the designated legal case file for a given facility. NDEQ can only conclude that EPA did not review the NDEQ legal case file which contains the initial NDEQ-generated penalty calculation worksheet. It is the NDEQ's understanding - as was EPA's - that the Attorney General independently develops a proposed penalty calculation based on the NDEQ referral information. It is our understanding that the Attorney General considers factors similar to the NDEQ calculation, but the Attorney General has never shared their penalty calculation documentation with the agency. On occasion, the Attorney General may share the proposed penalty range it is considering. In the future - as in the past - NDEQ will discuss EPA's recommendation with the Attorney General and if his office will provide their rationale for any difference between NDEQ's initial penalty calculation and the final penalty imposed, NDEQ will include documentation in the agency legal case file.

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**Recommendation**

EPA recommends that NDEQ and the AG's Office work together to develop better coordination, participation, and communication between the two offices for penalty calculations that include gravity and economic benefit and for justification when penalties are waived when a company maintains compliance status. For the total penalty calculation, including gravity and economic benefit, NDEQ should ensure the referral to the AG's Office is included in the NDEQ facility files.

EPA will monitor this on the joint EPA - NDEQ bi-monthly conference calls to assess progress and oversight. After 1 year, EPA will document any process improvement and/or concerns to determine the next steps.

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## RCRA Element 5 — Penalties

<b>Finding 5-2</b>	<b>Area for State Improvement</b>					
<b>Summary</b>	No documentation of rationale for difference between initial penalty calculation and final penalty could be located in the files reviewed.					
<b>Explanation</b>	<p>There was no file documentation to review, as the files were not present in the NDEQ file structure so the initial penalty was not available for comparison. However, while reviewing the Becton, Dickinson and Company file, reporting forms indicate that \$23,000 was to be paid within 15 days of the consent decree and \$15,000 was waived if the facility remains in compliance for 180 days. The May 2014 inspection includes 5 violations, but no indication that the waived \$15,000 was collected.</p> <p>Additionally, the Attorney General’s Office (AG’s office) determines a penalty calculation independently of the penalty calculation provided in the case referral from NDEQ and historically has not discussed its independent calculation with NDEQ. Although a group from the AG’s office periodically meets with NDEQ legal staff to discuss cases, the AG’s office does not generally consult with NDEQ in making the final determination on the settlement.</p>					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	12a Documentation on difference between initial and final penalty	100%		0	1	0.0%
<b>State response</b>	See State Response to Element 5-1 above.					
<b>Recommendation</b>	<p>EPA recommends that NDEQ and the AG’s Office work together to develop better coordination, participation, and communication between the two offices in order to clearly document the differences between the initial penalty calculations presented by NDEQ and the final penalty negotiated by the AG’s Office.</p> <p>EPA will monitor this on the joint EPA - NDEQ bi-monthly conference calls to assess progress and oversight. After 1 year, EPA will document any process improvement and/or concerns to determine the next steps.</p>					

# Appendix

## NDEQ Response

**NEBRASKA**

Good Life. Great Environment.

DEPT. OF ENVIRONMENTAL QUALITY

**MAR 30 2017**

Department Response



Pete Ricketts, Governor

U.S. EPA Region 7  
Becky Weber, Director  
Air and Waste Management Division  
11201 Renner Boulevard  
Lenexa, Kansas 66219

RE: Nebraska Department of Environmental Quality response to U.S EPA Region 7 draft State Review Framework Nebraska RCRA Subtitle C Implementation in Federal Fiscal Year 2015

Dear Ms. Weber:

This letter is submitted in response to the EPA Region 7's draft State Review Framework (SRF) Nebraska RCRA Subtitle C Implementation in Federal Fiscal Year 2015 program review report. The Department's Waste Management Division has reviewed the draft report and is providing comments related to the report below and has included a general statement in the State Response comment box in the report, except for Element 5 where the Department's Legal Services Division has reviewed the draft report and has included its comments in that section addressing enforcement.

The Waste Management Division will first cover general concerns that it wishes EPA Region 7 to update, change or modify, and second will be the Department responses to each Element of the RCRA SRF draft final report.

### RCRA Element 1 – Data

1. The Waste Management Division has reviewed and corrected the list of data metrics that was noted as missing or was input in error that was provided at the time of the program review. After completing the updates the data was again checked for accuracy prior to it being frozen in RCRAinfo for 2015. The Waste Management Division has reviewed its ongoing data entry practices. Staff, where necessary, who provide the data (inspectors) and those who are entering the data (Administrative Staff and Waste Compliance Unit Supervisor) have been retrained. Additional discussions between Waste Management Division staff and Region 7 staff have been held so that those who enter data can improve accuracy when data is entered the first time into RCRAinfo, and that it is entered timely in accordance with the NDEQ/EPA Performance Partnership Agreement.

Jim Macy, Director

Department of Environmental Quality

P.O. Box 98022  
1200 N Street, Suite 400  
Lincoln, Nebraska 68509-8922

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ndeq.moreinfo@nebraska.gov

[deq.ne.gov](http://deq.ne.gov)

**RCRA Element II – Finding 2-1 Inspections**

2. The Waste Management Division has reviewed the State/EPA Performance Partnership Agreement to confirm that the inspections of LQG's, SQG's, CESQG's and TSDF's meet the minimum inspection expectation levels. Based on the Department's understanding of the counts of inspections conducted and coupled with the inspections EPA conducts in the State of Nebraska we believe the metric percentages calculated by EPA didn't accurately reflect the combined percentages of the EPA inspections with the Department's, nor for the fact that if a TSDF didn't have violations it need not be inspected (Only true for the Safety Kleen facilities of which there are two in Nebraska).

**RCRA Element II – Finding 2-2 Inspections**

3. The Waste Management Division appreciates the finding that the inspection reports are complete and sufficient to determine compliance, and that the timeliness just short of the goal at 95.8%. The Department has and continues to strive to meet the completion of the report prior to or within 30 days of the inspection.

**RCRA Element III and Element IV**

4. The Waste Management Division appreciates the acknowledgement that the program meets and/or exceeds these elements.

**RCRA Element V**

5. The Legal Services Division response to Element 5 is included in the SRF Report on the State response line.

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 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,



David B. Haldeman, Administrator  
Land Management Division

# **STATE REVIEW FRAMEWORK**

## **Nebraska**

### **Clean Air Act Implementation in Federal Fiscal Year 2016**

**U.S. Environmental Protection Agency  
Region 7, Kansas City**

**Final Report  
February 12, 2018**

# Executive Summary

## Introduction

The Environmental Protection Agency (EPA) Region 7 Clean Air Act (CAA) enforcement staff conducted a State Review Framework (SRF) oversight review of the Nebraska Department of Environmental Quality (NDEQ) Air Quality Division enforcement program.

EPA bases SRF findings on data, file review metrics, information contained in the file, and conversations with program management and staff. EPA will track recommended actions from the review in the SRF Tracker and publish reports and recommendations on EPA's Enforcement and Compliance History Online (ECHO) web site.

## Areas of Strong Performance

- **Finding 1-2.** NDEQ's reporting of minimum data requirements (MDRs), stack test results and enforcement data is overall timely and above national averages.
- **Finding 2-1.** NDEQ's full compliance evaluation (FCE) coverage of major facilities, mega-sites and synthetic minor-80s (SM-80s) facilities is meeting expectations.
- **Finding 2-2.** NDEQ's documentation of Full Compliance Evaluation (FCE) elements in inspection reports is exemplary. Compliance issues are described clearly in the narrative portion.
- **Finding 3-1.** The state demonstrates excellence in accuracy of compliance and high priority violator (HPV) determinations.
- **Finding 4-1.** The state implements an excellent enforcement program with respect to HPV case development, and timeliness; as well as formal responses to return facilities to compliance.
- **Finding 5-1.** NDEQ does a model job documenting gravity and economic benefit calculations. This was identified as a significant issue in the previous SRF Report.
- NDEQ's filing systems (public-access electronic, and hard-copy legal) are transparent, well organized, and easy to use.
- NDEQ's inspection reports are consistently detailed, succinct, well organized and clearly state the steps necessary for return to compliance.
- The high technical skill of the inspectors and enforcement staff is consistently evident in the file documents, particularly inspection reports and case referral memos.
- NDEQ/EPA cross-agency communication is excellent.

## Most Significant CAA Stationary Source Program Issues<sup>1</sup>

- **Finding 1-1.** The review revealed inaccuracies and discrepancies in the CAA database as compared to the NDEQ facility files. The review also revealed missing minimum data elements.
- **Finding 5-2.** The NDEQ files do not include documentation of the rationale for reductions of penalty amount from initial value to final value assessed. NDEQ does not consistently include documentation of penalties collected in the legal files.

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<sup>1</sup> EPA's "National Strategy for Improving Oversight of State Enforcement Performance" identifies the following as significant recurrent issues: "Widespread and persistent data inaccuracy and incompleteness, which make it hard to identify when serious problems exist or to track state actions; routine failure of states to identify and report significant noncompliance; routine failure of states to take timely or appropriate enforcement actions to return violating facilities to compliance, potentially allowing pollution to continue unabated; failure of states to take appropriate penalty actions, which results in ineffective deterrence for noncompliance and an unlevel playing field for companies that do comply; use of enforcement orders to circumvent standards or to extend permits without appropriate notice and comment; and failure to inspect and enforce in some regulated sectors."

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# I. Background on the State Review Framework

The State Review Framework (SRF) is designed to ensure that EPA conducts nationally consistent oversight. It reviews the following local, state, and EPA compliance and enforcement programs:

- Clean Water Act National Pollutant Discharge Elimination System
- Clean Air Act Stationary Sources (Title V)
- Resource Conservation and Recovery Act Subtitle C

Reviews cover:

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

EPA conducts SRF reviews in three phases:

- Analyzing information from the national data systems in the form of data metrics
- Reviewing facility files and compiling file metrics
- Development of findings and recommendations

EPA builds consultation into the SRF to ensure that EPA and the state understand the causes of issues and agree, to the degree possible, on actions needed to address them. SRF reports capture the agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state programs.

Each state's programs are reviewed once every five years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2013 and will continue through FY 2017.

## **II. SRF Review Process**

**Review period:** Federal Fiscal Year 2016

**Key dates:**

- SRF Kickoff letter mailed to NDEQ: February 14, 2017
- Data Metric Analysis sent to NDEQ: April 6, 2017
- File selection list sent to NDEQ: April 27, 2017
- Entrance interview conducted: May 3, 2017
- File review conducted: June 2017
- Exit interview conducted: August 4, 2017
- Draft report sent to NDEQ: November 8, 2017
- Final report issued: February 12, 2018

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

- Kevin Stoner, NDEQ Air Quality Division, Compliance and Enforcement Section Chief
- Todd Ellis, NDEQ Air Quality Division, Compliance and Enforcement Section Supervisor
- Lisa Gotto, EPA Region 7 CAA SRF Review Lead
- Joe Terriquez, EPA Region 7 Air Compliance and Enforcement Section
- Keith Johnson, EPA Region 7 Air Compliance and Enforcement Section
- Kevin Barthol, EPA Region 7 SRF Coordinator

### III. SRF Findings

Findings represent EPA’s conclusions regarding state performance and are based on findings made during the data and/or file reviews and may also be informed by:

- Annual data metric reviews conducted since the state’s last SRF review
- Follow-up conversations with state agency personnel
- Review of previous SRF reports, Memoranda of Agreement, or other data sources
- Additional information collected to determine an issue’s severity and root causes

There are three categories of findings:

**Meets or Exceeds Expectations:** The SRF was established to define a base level or floor for enforcement program performance. This rating describes a situation where the base level is met and no performance deficiency is identified, or a state performs above national program expectations.

**Area for State Attention:** An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, the state should correct the issue without additional EPA oversight. EPA may make recommendations to improve performance, but it will not monitor these recommendations for completion between SRF reviews. These areas are not highlighted as significant in an executive summary.

**Area for State Improvement:** An activity, process, or policy that one or more SRF metrics show as a significant problem that the agency is required to address. Recommendations should address root causes. These recommendations must have well-defined timelines and milestones for completion, and EPA will monitor them for completion between SRF reviews in the SRF Tracker.

Whenever a metric indicates a major performance issue, EPA will write up a finding of Area for State Improvement, regardless of other metric values pertaining to a particular element.

The relevant SRF metrics are listed within each finding. The following information is provided for each metric:

- **Metric ID Number and Description:** The metric’s SRF identification number and a description of what the metric measures.
- **Natl Goal:** The national goal, if applicable, of the metric, or the CMS commitment that the state has made.
- **Natl Avg:** The national average across all states, territories, and the District of Columbia.
- **State N:** For metrics expressed as percentages, the numerator.
- **State D:** The denominator.
- **State % or #:** The percentage, or if the metric is expressed as a whole number, the count.

## Clean Air Act Findings

CAA Element 1 — Data																		
Finding 1-1	Area for State Improvement																	
<b>Summary</b>	The review revealed inaccuracies and discrepancies in the CAA database as compared to the NDEQ facility files. The review also revealed missing minimum data elements.																	
<b>Explanation</b>	<p>NDEQ maintains the Integrated Information System (IIS) for CAA data, and batches data to the EPA national system, ICIS-Air. The EPA’s ECHO website displays CAA stationary source data pulled from ICIS-Air. Prior to establishing the ICIS-Air database, states utilized the Air Facility System (AFS). AFS was retired in October 2014. EPA understands some states are still establishing data transfer connections to ICIS-Air and that this data transfer process may have resulted in issues with the database contents.</p> <p>Database accuracy was evaluated by comparing the NDEQ compliance and enforcement files with the ECHO detailed facility reports (metric 2b). The review found 37.9% of files demonstrated complete and accurate data entry. The remaining files revealed discrepancies between the ECHO database and the state files. The review also revealed missing minimum data elements.</p> <p>Through our discussions with the state, we conclude that a portion of the inconsistencies are a function of data system communication and data batching timing issues (i.e., there may be some residual system communications issues that are the likely result of AFS/ICIS Air switch over, and there are issues with the timing of the State’s data batching of information which is uploaded on a monthly basis.)</p> <p>Common file/database inconsistencies include discrepancies for dates of events such as stack tests and compliance certification submission. The files/database were also not consistent between the date the document was sent vs. received. EPA also discovered that for several MDRs, there were no events recorded in the national database (i.e., Title V certifications, (TV certs) and Federal Reportable Violations (FRVs).</p>																	
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>2b Accurate MDR data in AFS</td> <td>100%</td> <td></td> <td>11</td> <td>29</td> <td>37.9%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2b Accurate MDR data in AFS	100%		11	29	37.9%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
2b Accurate MDR data in AFS	100%		11	29	37.9%													

<b>State response</b>	<p>With the deployment of ICIS-NPDES(AIR), there were changes made in the data elements included in the reporting schema. DEQ was not prepared for the additional information to be included in the schema. Modifying the state Air compliance application was not a priority at the time of our deployment to the new exchange process. We are finishing up existing projects and anticipate working on the modifications to the Air application to include the missing elements as well as update some of the existing fields and associated look up tables to improve the operational efficiencies inside the agency and also reporting to ICIS-NPDES(AIR). These enhancements/improvements will be prioritized with other agency projects for completion.</p> <p>See EPA Response in Appendix 2.</p>
<b>Recommendation</b>	<p>EPA recommends:</p> <ol style="list-style-type: none"> <li>1. NDEQ work with Region 7 and EPA headquarters to identify and resolve mapping and other issues between the state and federal databases.</li> <li>2. Region 7 and NDEQ will work together to enter key information and set up a temporary protocol for ICIS-Air direct entry in the interim to address data accuracy issues.</li> <li>3. Region 7 and EPA Headquarters will conduct monthly data pulls to ensure progress.</li> <li>4. If by June 15, 2019 the data in the national system reflects NDEQ compliance and enforcement activities, the recommendation will be closed out. If not, the recommendation will be extended.</li> </ol>

## CAA Element 1 — Data

<b>Finding 1-2</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	NDEQ’s reporting of MDRs, stack test results and enforcement data is overall timely and above national averages.					
<b>Explanation</b>	<p>EPA noted during the SRF preliminary data analysis that the timely reporting of HPV determinations (metric 3a2) cannot be evaluated for the review period due to the lack of HPV facilities for the subject review period. This is an anomalous situation which EPA addresses by reviewing HPVs from previous reporting periods to account for this metric. This review is meaningful in a qualitative sense; however, it is not included as a quantitative metric herein because EPA cannot calculate percentages to be compared nationally (i.e., percentage achievements calculated over a two-year time period (2014-2015) cannot be meaningfully compared to percentage achievements for the 2016 review period).</p> <p>EPA notes that NDEQ’s timely reporting of enforcement minimum data requirements was 84.3%, above the national average of 80.9%.</p> <p>EPA noted the timely reporting of stack tests and stack test results (metric 3b2) was 99.2%, well above the national average.</p>					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	3a2 Timely reporting of HPV determinations	100%	99.9%	NA	NA	NA
	3b1 Timely reporting of compliance monitoring MDRs	100%	80.9%	86	102	84.3%
	3b2 Timely reporting of stack test dates and results	100%	77.1%	123	126	99.2%
	3b3 Timely reporting of enforcement MDRs	100%	77.2%	20	23	87%
<b>State response</b>						
<b>Recommendation</b>						

## CAA Element 2 — Inspections

<b>Finding 2-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	NDEQ’s FCE coverage of major facilities, mega-sites and SM-80s facilities is meeting expectations.					
<b>Explanation</b>	EPA notes that NDEQ’s FCE coverage for CAA major facilities and mega-sites was 89.4%. NDEQ’s FCE coverage for CAA synthetic minor facilities was 90%. EPA will continue to coordinate our inspections with the state to ensure full coverage.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	5a FCE coverage: majors and mega-sites	100%	84.5%	59	66	89.4%
	5b FCE coverage: SM-80s	100%	91.3%	27	30	90%
	5c FCE coverage: minors and synthetic minors (non-SM-80s) that are part of CMS plan or alternative CMS Plan.	100%	79.9%	N/A	N/A	N/A
<b>State response</b>						
<b>Recommendation</b>						

## CAA Element 2 — Inspections

<b>Finding 2-2</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	NDEQ’s documentation of FCE elements in inspection reports is exemplary. Compliance issues are described clearly in the narrative portion.					
<b>Explanation</b>	NDEQ’s documentation of FCE elements in inspection reports (100%) is exemplary. Compliance issues are described clearly in the narrative portion. The reports are clear about the steps necessary for return to compliance. The inclusion of the maximum achievable control technology (MACT) conditions checklists is valuable. Review of Title V annual compliance certifications is above national averages. NDEQ’s review of Compliance Monitoring Reports (CMRs) and files that provide sufficient documentation to determine compliance is excellent.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	5e Review of Title V annual compliance certifications	100%	69.6%	70	77	91%
	6a Documentation of FCE elements	100%	NA	17	17	100%
	6b CMRs or facility files reviewed that provide sufficient documentation to determine compliance of the facility	100%	NA	17	18	94.4%
<b>State response</b>						
<b>Recommendation</b>						

### CAA Element 3 — Violations

<b>Finding 3-1</b>	<b>Meets or Exceeds Expectations</b>																								
<b>Summary</b>	The state demonstrates excellence in their accuracy of compliance and HPV determinations.																								
<b>Explanation</b>	<p>EPA and the state convene conference calls on a frequent and regular basis to discuss facility specific issues and coordinate program implementation. As discussed above, there were no HPVs in the state in FY16. One potential lens of interpretation is that the states compliance assistance is robust and effective.</p> <p>Because there were no HPVs identified during the review period, EPA cannot evaluate the timeliness of HPV determinations for the review period. As such, EPA reached beyond the scope of the 2016 review period to gain a broader picture of NDEQ’s HPV determinations and policy interpretation by reviewing enforcement files for facilities identified in previous years as HPVs. EPA found that NDEQ has demonstrated a history of timely HPV determinations.</p> <p>In terms of the accuracy of HPV determinations (metric 8c), EPA reviewed the state’s formal and informal enforcement actions.</p> <p>NDEQ and EPA maintain an excellent working relationship with solid communication practices.</p>																								
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>7a Accuracy of compliance determinations</td> <td>100%</td> <td></td> <td>28</td> <td>32</td> <td>87.5%</td> </tr> <tr> <td>8c Accuracy of HPV determinations</td> <td>100%</td> <td></td> <td>22</td> <td>23</td> <td>95.7%</td> </tr> <tr> <td>13 Timeliness of HPV determinations</td> <td>100%</td> <td></td> <td>NA</td> <td>NA</td> <td>NA</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	7a Accuracy of compliance determinations	100%		28	32	87.5%	8c Accuracy of HPV determinations	100%		22	23	95.7%	13 Timeliness of HPV determinations	100%		NA	NA	NA
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																				
7a Accuracy of compliance determinations	100%		28	32	87.5%																				
8c Accuracy of HPV determinations	100%		22	23	95.7%																				
13 Timeliness of HPV determinations	100%		NA	NA	NA																				
<b>State response</b>																									
<b>Recommendation</b>																									

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**CAA Element 4 — Enforcement**

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**Finding 4-1**      **Meets or Exceeds Expectations**

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**Summary**      The state implements an excellent enforcement program with respect to HPV case development, and timeliness; as well as formal responses to return facilities to compliance.

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**Explanation**      With respect to the state’s formal enforcement responses (Metric 9a), NDEQs achievement of this component is excellent as demonstrated in the files, database, and through our discussions with the state.

Regarding the state’s performance addressing and/or removing HPVs consistent with the HPV policy (Metric 10a), EPA finds through file review and discussions with management and staff, the state applies the policy correctly. The below listed ‘state percentage’ as compared to the ‘national goal’ does not, in Region 7’s view provide a valuable picture of the state’s performance or achievement in this area. In a small sample population, there is a single outlier facility that does not meet this metric; however, the state files accurately reflect the application of the policy. The discrepancy is potentially the result of the systems communication issues discussed above. EPA concludes that for this metric, the percentage does not provide a complete picture of NDEQ’s program for addressing/removing HPVs.

Regarding metrics 10b and 14, (i.e., case development and resolution timeline in place when required that contains required policy elements), EPA concludes the low sample population size of the three HPV facilities reviewed from multiple previous years do not offer a reliable picture (and percentage) of the state’s performance and success in these areas. As with all metrics, sample size must be considered in interpreting the results listed below. When conducting research, quality sampling may be characterized by the number and selection of subjects or observations. Obtaining a sample size that is appropriate in both regards is critical for many reasons. Most importantly, a large sample size is more representative of the population, limiting the influence of outliers or extreme observations. Regarding these two metrics, the relatively small sample size diminishes the confidence in these results. Region 7 also recognizes that an average over several years of the state’s performance in these areas may dilute the conclusions that can be drawn from the percentages.

As a result of the issues with the data and averages used to produce the metrics, EPA convened several discussions with the state to provide a better picture for analysis and discussion. EPA’s finds from this holistic

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approach to review of the state’s performance in these areas that the state has a solid history of proactively developing and resolving HPV cases within acceptable timeframes.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule.	100%		5	5	100%
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place.	100%		3	4	75%	
10b Percent of HPVs that have been have been addressed or removed consistent with the HPV Policy.	100%		2	3	66.7	
14 HPV Case Development and Resolution Timeline In Place When Required that Contains Required Policy Elements	100%		2	3	66.7	

**State response**

**Recommendation**

## CAA Element 5 — Penalties

<b>Finding 5-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	NDEQ does a model job documenting gravity and economic benefit calculations.					
<b>Explanation</b>	NDEQ has addressed the issues identified in the previous SRF Report. Particularly notable, NDEQ has drastically improved the documentation of economic benefit. For 100% of the files reviewed, NDEQ met the necessary requirements of the program for penalty calculations that document gravity and economic benefit.					
<b>Relevant metrics</b>	<b>Metric ID Number and Description</b>	<b>Natl Goal</b>	<b>Natl Avg</b>	<b>State N</b>	<b>State D</b>	<b>State % or #</b>
	11a Penalty calculations reviewed that document gravity and economic benefit	100%		5	5	100%
<b>State response</b>						
<b>Recommendation</b>						

## CAA Element 5 — Penalties

<b>Finding 5-2</b>	<b>Area for State Improvement</b>																		
<b>Summary</b>	<p>The NDEQ files do not include documentation of the rationale for reductions of penalty amount from initial value to final value assessed.</p> <p>NDEQ does not consistently include documentation of penalties collected in their legal files.</p>																		
<b>Explanation</b>	<p>An important element of the state’s implementation of the compliance and enforcements elements of the CAA program in Nebraska is maintenance of documentation for public access.</p> <p>With respect to penalty collection, for the four NDEQ 2016 files reviewed, EPA found one of four facility files which included documentation of penalty collection.</p> <p>EPA understands that information shared between NDEQ and the Attorney General relating to penalty calculations is considered confidential under the attorney-client privilege. EPA also understands that, upon completion of cases, including penalty payment, the Attorney General files a Satisfaction of Judgement which is available for public access in the NDEQ online (ECM) public records system and available for public inspection; however, documentation of penalty collection is not included in the NDEQ comprehensive hard-copy case files.</p>																		
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>12a Documentation of rationale for difference between initial penalty calculation and final penalty</td> <td>100%</td> <td></td> <td>0</td> <td>4</td> <td>0</td> </tr> <tr> <td>12b Penalties collected</td> <td>100%</td> <td></td> <td>1</td> <td>4</td> <td>25%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	12a Documentation of rationale for difference between initial penalty calculation and final penalty	100%		0	4	0	12b Penalties collected	100%		1	4	25%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #														
12a Documentation of rationale for difference between initial penalty calculation and final penalty	100%		0	4	0														
12b Penalties collected	100%		1	4	25%														
<b>State response</b>	<p>NDEQ appreciates that documentation of penalties in state enforcement actions is an important element of Nebraska’s delegated program and acknowledges that this is not just an issue for the air program, but for all out delegated federal programs as well.</p> <p>Public access to information on penalties imposed in NDEQ enforcement actions is provided through court-approved consent decrees of judicial awards. These documents are made available to the public on the NDEQ website. However, in accordance with the Neb. Rev. Stat. §84-712.05(4), information shared between NDEQ and the Attorney General relating to penalty calculations is considered confidential under</p>																		

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the attorney-client privilege. Neb. Rev. Stat. §81-1526(2) authorizes the NDEQ director to allow EPA to inspect the confidential records of the agency concerning a given source, which the agency has done through the SRF process.

With respect to the finding on rationale for final penalty calculation. NDEQ agrees that the three enforcement cases seeking penalties which were reviewed do not include an analysis of the difference between the initial penalty calculation and the final penalty. We would note there appears to be a discrepancy in the metric 12(a) for this element, however which indicates 5 cases reviewed, while only three cases involved penalties.

The Attorney General's office provides confidential case status reports to NDEQ on a periodic basis, with the understanding that NDEQ keep the information confidential. The Attorney General may also share correspondence sent to, and received from, the violator. Penalty negotiation is a significant component of settlement discussions with a violator but what has been more difficult to document are the various factors which result in adjustment to the initial penalty demand and the final penalty imposed in individual cases. NDEQ realizes that having a shared understanding of these adjustments can provide valuable learning opportunities for future case referrals.

Regarding the second finding on collection of penalty. NDEQ disagrees with the conclusion that NDEQ files do not include documentation of penalty collection. The Attorney General filed a Satisfaction of Judgement in all three penalty cases reviewed (BD Medical Systems IIS38719, AGP Soy Processing IIS 72698, and Cornhusker Energy Lexington IIS 77755) indicating that the defendant had fully complied with the terms of the consent decree, including payment of all penalties. These Satisfaction of Judgement documents are public records and are kept in the NDEQ online (ECM) public records system and available for public inspection. The Satisfaction of Judgements should be sufficient documentation that civil penalties have been paid in full by the defendants.

It also appears there may be a discrepancy in the metrics for 12b of this element. Our Records Management Section indicated that only 4 legal case files, not 5, were reviewed and only 3 of those were penalty actions; the other was an administrative case with no penalty. Consequently, NDEQ believes this metric should indicate 100% compliance.

Typically, the Attorney General will file a consent decree together with payment of the penalty, although there may be exceptions. NDEQ is also

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able to access information about the status of payment through the respective court's electronic database or may request confirmation of payment from the Attorney General. Follow up confirmation of potentially waivable penalties that are subsequently collected will require more diligence in confirming collection, but is usually initiated with either communication from NDEQ that a facility has satisfied the necessary condition for waiver of penalty, or the Attorney General will send a demand letter seeking payment of the remaining penalty. When all of the terms of the consent decree have been met, the Attorney General files a Satisfaction of Judgment in the case.

NDEQ seeks to maintain a good working relationship with the Attorney General's office and will advise them of these findings and recommendations as we develop a process to better document penalties.

See EPA Response in Appendix 2.

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**Recommendation**

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## **Appendix 1 – NDEQ Response Letter**



DEC 6 - 2017

Becky Weber  
Director  
Air and Waste Management Division  
US EPA Region VII  
11201 Renner Boulevard  
Lenexa, Kansas 66219

RECEIVED  
DEC 13 2017  
AWMD/APCO

Dear Ms. Weber:

We have reviewed the draft State Review Framework report for the Air Quality Division Compliance and Enforcement program. We've always enjoyed our open communication with Region VII and appreciate the opportunity to comment and provide clarification on the draft. Our comments will focus on those areas identified as needing improvement and the information for Title V certifications, Federally Reportable Violations (FRV) and data accuracy.

#### Finding 1-1

The review revealed inaccuracies and discrepancies in the CAA database as compared to the NDEQ facility files and missing minimum data elements. With the deployment of ICIS-NPDES(AIR), there were changes made in the data elements included in the reporting schema. DEQ was not prepared for the additional information to be included in the schema. Modifying the state Air compliance application was not a priority at the time of our deployment to the new exchange process. We are finishing up existing projects and anticipate working on the modifications to the Air application to include the missing elements as well as update some of the existing fields and associated look up tables to improve the operational efficiencies inside the agency and also reporting to ICIS-NPDES(AIR). These enhancements/improvements will be prioritized with other agency projects for completion.

#### Finding 5-2 - PENALTIES

NDEQ appreciates that documentation of penalties in state enforcement actions is an important element of Nebraska's delegated program and acknowledges that this is not just an issue for the air program, but for all our delegated federal programs as well.

Public access to information on penalties imposed in NDEQ enforcement actions is provided through court-approved consent decrees or judicial awards. These documents are made available to the public on the NDEQ website. However, in accordance with Neb. Rev. Stat. §84-712.05(4), information shared between NDEQ and the Attorney General relating to penalty calculations is considered confidential under the attorney-client privilege. Neb. Rev. Stat. §81-1526(2) authorizes the NDEQ director to allow EPA to inspect the confidential records of the agency concerning a given source, which the agency has done through the SRF process.

With respect to the finding on rationale for final penalty calculation. NDEQ agrees that the three enforcement cases seeking penalties which were reviewed do not include an analysis of the difference between the initial penalty calculation and the final penalty. We would note there appears to be a discrepancy in the metric (12a) for this element, however, which indicates 5 cases reviewed, while only three cases involved penalties.

The Attorney General's office provides confidential case status reports to NDEQ on a periodic basis, with the understanding that NDEQ keep the information confidential. The Attorney General may also share correspondence sent to, and received from, the violator. Penalty negotiation is a significant component of settlement discussions with a violator but what has been more difficult to document are the various factors which result in adjustments to the initial penalty demand and the final penalty imposed in individual cases. NDEQ realizes that having a shared understanding of these adjustments can provide valuable learning opportunities for future case referrals.

Regarding the second finding on collection of penalty. NDEQ disagrees with the conclusion that NDEQ files do not include documentation of penalty collection. The Attorney General filed a Satisfaction of Judgment in all three penalty cases reviewed (BD Medical Systems IIS 38719, AGP Soy Processing IIS 72698, and Cornhusker Energy Lexington IIS 77755) indicating that the defendant had fully complied with the terms of the consent decree, including payment of all penalties. These Satisfaction of Judgment documents are public records and are kept in the NDEQ online (ECM) public records system and available for public inspection. The Satisfaction of Judgments should be sufficient documentation that civil penalties have been paid in full by the defendants.

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Typically, the Attorney General will file a consent decree together with payment of the penalty, although there may be exceptions. NDEQ is also able to access information about the status of payment through the respective court's electronic database or may request confirmation of payment from the Attorney General. Follow up confirmation of potentially waiveable penalties that are subsequently collected will requires more diligence in confirming collection, but is usually initiated with either communication from NDEQ that a facility has satisfied the necessary condition for waiver of penalty, or the Attorney General will send a demand letter seeking payment of the remaining penalty. When all of the terms of the consent decree have been met, the Attorney General files a Satisfaction of Judgment in the case.

NDEQ seeks to maintain a good working relationship with the Attorney General's office and will advise them of these findings and recommendations as we develop a process to better document penalties.

#### Metrics reporting

In reviewing the data metric drilldown information, we identified that the metrics included information from the City of Omaha and Lincoln Lancaster County Health Department. While we do have oversight of these two programs, both are direct delegated programs from EPA. In some cases, deficiencies in the local programs had significant impact on the data metric. For example, under metric 5a, of the 7 major sources identified as not being inspected within the CMS timeframe, 6 were within the city limits of Omaha while only 1 was within NDEQ's jurisdiction. Of the 6 Omaha sources, 2 were closed before this SRF timeframe. This process has identified areas where we can improve communication with our local programs to provide better data to EPA.

The information in our database shows we have 90 Major sources subject to the CMS. Of those, 77 had Title V permits for FFY 2016. We reviewed 70 of those facilities' certification of compliance and, of those, 11 reported deviations. Attached to this letter is a report from our IIS system of those FRV that were of significance. As Region VII already knows, 100% of all non-confidential facility correspondence is accessible to the public on line.

I would like to thank your staff for the professionalism shown during this process and we look forward to continuing our good working relationship.

Sincerely

A handwritten signature in black ink, appearing to read "Kevin Stoner", with a long horizontal flourish extending to the right.

Kevin Stoner  
Administrator  
Air Quality Division

11/27/17  
13:11:02

NDEQ Integrated Information System  
Event Query Results

IISIIR85

Type option below, then press Enter.

1=Select      4=Delete      9=Change Staff

Opt	Prog	ID	Event	Date	Staff
—	AIR	34651	Sent Notice of Violation <i>MRE</i>	A 08-11-2016	
—	AIR	35677	Sent Notice of Violation <i>Nucor Steel</i>	A 08-11-2016	
—	AIR	85825	Sent Notice of Violation <i>Vontz Paving</i>	A 06-23-2016	
—	AIR	86000	Sent Notice of Violation <i>Green Plains</i>	A 04-28-2016	
—	AIR	35677	Sent Notice of Violation <i>Nucor</i>	A 01-26-2016	
—	AIR	55363	Sent Notice of Violation <i>Modern Cleaners</i>	A 12-07-2015	
—	AIR	86000	Sent Notice of Violation <i>Green Plains</i>	A 12-07-2015	
—	AIR	58343	Sent Notice of Violation <i>OPPO</i>	A 11-24-2015	
—	AIR	84069	Sent Notice of Violation <i>AKT En</i>	A 10-06-2015	
—	AIR	78323	Sent Notice of Violation <i>Trenton Agri Products</i>	A 10-05-2015	

F3=Exit      F5=PC File      F11=Show Additional Facility Info      F12=Cancel  
F15=Change Staff      F21=Print

11/27/17  
13:09:17

NDEQ Integrated Information System  
Event Query Results

IISIIR85

Type option below, then press Enter.  
1=Select 4=Delete

9=Change Staff

Opt	Prog	ID	Event	Date	Staff
—	AIR	<del>40565</del>	<del>Sent Letter of Warning</del>	A 02-09-2016	
—	AIR	43328	Sent Letter of Warning <i>Wahoo Power plant</i>	A 01-20-2016	
—	AIR	58903	Sent Letter of Warning <i>Frenchman Valley Farmers corp</i>	A 01-04-2016	
—	AIR	22282	Sent Letter of Warning <i>Geneva Terminal</i>	A 11-25-2015	DEQ234
—	AIR	714	Sent Letter of Warning <i>Spitz Foundry</i>	A 11-24-2015	
—	AIR	63191	Sent Letter of Warning <i>Slepicka Brothers landfill</i>	A 11-19-2015	
—	AIR	53804	Sent Letter of Warning <i>Global equipment company</i>	A 11-12-2015	
—	AIR	85861	Sent Letter of Warning <i>Green Plains Ord</i>	A 11-10-2015	
—	AIR	58562	Sent Letter of Warning <i>Clean Harbors</i>	A 11-02-2015	
—	AIR	59060	Sent Letter of Warning <i>Colleyway municipal power plant</i>	A 10-08-2015	

F3=Exit

F5=PC File

F11=Show Additional Facility Info  
F15=Change Staff

F12=Cancel  
F21=Print

11/27/17  
13:09:00

NDEQ Integrated Information System  
Event Query Results

IISIIR85

Type option below, then press Enter.

1=Select      4=Delete      9=Change Staff

Opt	Prog	ID	Event	Date	Staff
—	AIR	87072	Sent Letter of Warning Pacific ethanol west	A 08-22-2016	
—	AIR	58048	Sent Letter of Warning wholea Energy center	A 08-02-2016	
—	AIR	40343	Sent Letter of Warning Ames Five Temper	A 06-29-2016	
—	AIR	63191	Sent Letter of Warning Slepicka Brothers Indfll	A 06-24-2016	
—	AIR	57783	Sent Letter of Warning N. Platte Wastewater	S 06-14-2016	
—	AIR	38719	Sent Letter of Warning BD medical	A 05-26-2016	
—	AIR	83871	Sent Letter of Warning city of Cambridge	A 05-12-2016	
—	AIR	2374	Sent Letter of Warning Estun Corporation	A 03-28-2016	
—	AIR	9225	Sent Letter of Warning L+M Young	A 03-02-2016	
—	AIR	87464	Sent Letter of Warning Bridgeport ethanol	A 03-01-2016	
—	AIR	57780	Sent Letter of Warning Norfolk Wastewater treatment	A 02-23-2016	
—	AIR	86001	Sent Letter of Warning Kaufman Trailers	A 02-18-2016	
—	AIR	40565	Sent Letter of Warning Fullcity Power plant	A 02-09-2016	

More...

F3=Exit      F5=PC File      F11=Show Additional Facility Info      F12=Cancel  
F15=Change Staff      F21=Print

## Appendix 2 – EPA Response to NDEQ Comments

### SRF Final Report/Response to Comments on Draft

#### Finding 1-1

**NDEQ COMMENT:** *The review revealed inaccuracies and discrepancies in the CAA database as compared to the NDEQ facility files and missing data elements. With the deployment of ICIS-NPDES(AIR), there were changes made in the data elements included in the reporting schema. DEQ was not prepared for the additional information to be included in the schema. Modifying the state Air compliance application was not a priority at the time of our deployment to the new exchange process. We are finishing up existing projects and anticipate working on the modifications to the Air application to include the missing elements as well as update some of the existing fields and associated look up tables to improve the operational efficiencies inside the agency and also reporting to ICIS-NPDES(AIR). These enhancements/improvements will be prioritized with other agency projects for completion.*

**EPA RESPONSE:** EPA appreciates NDEQ’s commitment to address the data reporting issues identified in the draft report. Based on this commitment and the existence of the state’s existing projects, EPA has amended the deadline to June 2019 to ensure the state has the time necessary to address the issue successfully.

#### Finding 5-2

**NDEQ COMMENT:** *NDEQ appreciates that documentation of penalties in state enforcement actions is an important element of Nebraska’s delegated program and acknowledges that this is not just an issue for the air program, but for all out delegated federal programs as well.*

*Public access to information on penalties imposed in NDEQ enforcement actions is provided through court-approved consent decrees of judicial awards. These documents are made available to the public on the NDEQ website. However, in accordance with the Neb. Rev. Stat. §84-712.05(4), information shared between NDEQ and the Attorney General relating to penalty calculations is considered confidential under the attorney-client privilege. Neb. Rev. Stat. §81-1526(2) authorizes the NDEQ director to allow EPA to inspect the confidential records of the agency concerning a given source, which the agency has done through the SRF process.*

*With respect to the finding on rationale for final penalty calculation, NDEQ agrees that the three enforcement cases seeking penalties which were reviewed do not include an analysis of the difference between the initial penalty calculation and the final penalty.*

**EPA RESPONSE:** EPA recognizes the state’s statutory requirement for confidentiality of penalty calculations documents.

EPA recognizes the state has a working protocol for public access to penalty information that is not accounted for in the SRF protocol.

**NDEQ COMMENT:** *We would note there appears to be a discrepancy in the metric (12a) for this element, however, which indicates 5 cases reviewed, while only three cases involved penalties.*

**EPA RESPONSE:** EPA reviewed the following 4 cases for documentation of rationale for difference between initial penalty calculation and final penalty:

BD Medical Systems	NE0000003114100006
AGP Soy Processing	NE0000003100100062
Tyson Fresh Meats	NE0000003104300001
Cornhusker Energy Lexington	NE0000003104700034

The denominator in metric 12a has been amended to four.

**NDEQ COMMENT:** *The Attorney General's office provides confidential case status reports to NDEQ on a periodic basis with the understanding that NDEQ keep the information confidential. The Attorney General may also share correspondence sent to, and received from, the violator. Penalty negotiation is a significant component of settlement discussions with a violator but what has been more difficult to document are the various factors which result in adjustment to the initial penalty demand and the final penalty imposed in individual cases. NDEQ realizes that having a shared understanding of these adjustments can provide valuable learning opportunities for future case referrals.*

**EPA RESPONSE:** Acknowledged.

**NDEQ COMMENT:** *Regarding the second finding on collection of penalty. NDEQ disagrees with the conclusion that NDEQ files do not include documentation of penalty collection. The Attorney General filed a Satisfaction of Judgement in all three penalty cases reviewed (BD Medical Systems IIS 38719, AGP Soy Processing IIS 72698, and Cornhusker Energy Lexington IIS 77755) indicating that the defendant had fully complied with the terms of the consent decree, including payment of all penalties. These Satisfaction of Judgement documents are public records and are kept in the NDEQ online (ECM) public records system and available for public inspection. The Satisfaction of Judgements should be sufficient documentation that civil penalties have been paid in full by the defendants.*

**EPA RESPONSE:** EPA understands the Attorney General’s Satisfaction of Judgement is available to the public online.

**NDEQ COMMENT:** *It also appears there may be a discrepancy in the metrics for 12b of this element. Our Records Management Section indicated that only 4 legal case files, not 5, were reviewed and only 3 of those were penalty actions; the other was an administrative case with no penalty. Consequently, NDEQ believes this metric should indicate 100% compliance.*

**EPA RESPONSE:** EPA originally requested five files be made available for review for the on-site review portion of the SRF, as follows:

Omaha Steel Casting Co	NE0000003115500070
BD Medical Systems	NE0000003114100006
AGP Soy Processing	NE0000003100100062
Modern Cleaners	NE0000003101900083
Cornhusker Energy Lexington	NE0000003104700034

During the on-site file review, EPA determined Modern Cleaners was not a viable facility because it did not meet the metric criteria. EPA also determined that the Omaha Steel Casting Company was not a viable file review candidate for this metric because the case was withdrawn. While on-site, EPA requested access to an additional file to review which met the metric criteria (Tyson Fresh Meats NE0000003104300001). As confirmed with NDEQ staff following receipt of the state’s comments on the draft SRF report, the EPA ultimately evaluated the following four facilities for metric 12b:

Cornhusker Energy Lexington	NE0000003104700034
BD Medical Systems	NE0000003114100006
AGP Soy Processing	NE0000003100100062
Tyson Fresh Meats	NE0000003104300001

The denominator for metric 12b has been amended to four.

**NDEQ COMMENT:** *Typically, the Attorney General will file a consent decree together with payment of the penalty, although there may be exceptions. NDEQ is also able to access information about the status of payment through the respective court’s electronic database or may request confirmation of payment from the Attorney General. Follow up confirmation of potentially waivable penalties that are subsequently collected will requires more diligence in confirming collection, but is usually initiated with either communication from NDEQ that a facility has satisfied the necessary condition for waiver of penalty, or the Attorney General will send a demand letter seeking payment of the remaining penalty. When all of the terms of the consent decree have been met, the Attorney General files a Satisfaction of Judgement in the case.*

*NDEQ seeks to maintain a good working relationship with the Attorney General's office and will advise them of these findings and recommendations as we develop a process to better document penalties.*

**EPA RESPONSE:** Acknowledged

## **Metrics Reporting**

**NDEQ COMMENT:** *In reviewing the data metric drilldown information, we identified that the metrics included information from the City of Omaha and Lincoln Lancaster County Health Department. While we do have oversight of these two programs, both are direct delegated programs from EPA. In some cases, deficiencies in the local programs had significant impact on the data metric. For example, under metric 5a, of the 7 major sources identified as not being inspected within the CMS timeframe, 6 were within the city limits of Omaha while only 1 was within NDEQs jurisdiction. Of the 6 Omaha sources, 2 were closed before the SRF timeframe. This process has identified area where we can improve communication with our local programs to provide better data to EPA.*

*The information in our database shows we have 90 major sources subject to the CMS. Of those, 77 had Title V permits for FFY 2016. We reviewed 70 of those facilities' certification of compliance and, of those, 11 reported deviations. Attached to this letter is a report from our IIS system of those FRV that were of significance. As Region VII already knows 100% of all non-confidential facility correspondence is accessible to the public online.*

**EPA RESPONSE:** The numerator and denominator for metric 5e has been amended to NDEQ response data numbers of 70/77.