

# **STATE REVIEW FRAMEWORK**

## **Kansas**

### **Resource Conservation and Recovery Act Implementation in Federal Fiscal Year 2013**

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

**Final Report  
October 28, 2014**

# Executive Summary

## Introduction

The EPA Region 7 enforcement staff conducted a RCRA Subtitle C oversight review of the Kansas Department of Health and Environment, Bureau of Waste Management, Compliance/Enforcement Unit using the State Review Framework guidance on June 16–20, 2014.

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

## Areas of Strong Performance

- Kansas is effective at identifying violations of its RCRA regulations, bringing facilities back into compliance, and obtaining penalties from significant non-compliers through formal enforcement actions using a well written state penalty policy.
- Kansas is good at providing compliance assistance to the regulated community.

## Priority Issues to Address

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

- Element 5: Kansas follows its penalty policy very well, but when calculating penalties, the state does not calculate, document, or seek the economic benefit of non-compliance (EBN). Its policy assumes the gravity component of the penalty will address EBN.
- Element 3: Although Kansas took appropriate enforcement actions, it was somewhat lax in identifying significant non-compliers in the data system.

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

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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."

- The State does not calculate the economic benefit of noncompliance in penalty calculations nor document this in its files; this problem continues from Rounds 1 and 2.

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# I. Background on the State Review Framework

The State Review Framework (SRF) is designed to ensure that the 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

The 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

The EPA builds consultation into the SRF to ensure that the 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. The 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:** FY 2013

**Key dates:**

Data metric analysis and file selection list sent to KDHE: May 2, 2014

On-site and internet file review conducted: June 16-19, 2014

Draft report sent to headquarters: August 18, 2014

Draft report sent to KDHE: September 16, 2014

Final report issued: October 28, 2014

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

EPA Region 7 SRF Coordinator: Kevin Barthol

EPA Region 7 Kansas RCRA Coordinator: Edwin Buckner

EPA Region 7 Reviewer: Elizabeth Koesterer

KDHE/BWM Compliance/Enforcement Unit Chief: Rebecca Wenner

KDHE/BWM Data Manager: Phyllis Funk

### III. SRF Findings

Findings represent the 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. The 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 the EPA will monitor them for completion between SRF reviews in the SRF Tracker.

Whenever a metric indicates a major performance issue, the 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 Attention</b>					
<b>Summary</b>	KDHE was lacking in the entry of the mandatory data in the enforcement area.					
<b>Explanation</b>	Four SNCs were not recorded, one set of violations was not linked to the formal enforcement action, one penalty payment schedule was not entered, and one follow-up inspection was not recorded. The four SNC not recorded were appropriately addressed through formal enforcement. The other instances of missing data were minor oversights.					
<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>
	2b Complete and accurate entry of mandatory data	100%		23	29	79.3%
<b>State response</b>	KDHE will review established procedures with Compliance and Enforcement staff to try to improve our rate from 79.3% to 100% in the future.					
<b>Recommendation</b>	During monthly coordination calls, the EPA and KDHE enforcement staff will discuss current enforcement actions to assure SNC status and other pertinent information is recorded.					



## RCRA Element 2 — Inspections

<b>Finding 2-1</b>	<b>Area for State Attention</b>					
<b>Summary</b>	KDHE inspected less than the expected number of LQGs, but inspected many other facilities during the year. The EPA inspections raised the total to expected levels.					
<b>Explanation</b>	KDHE faced a staffing shortfall during 2013 and concentrated efforts in areas of greater potential environmental harm such as SQGs and facilities that had never been inspected. KDHE is very responsive to citizen complaints which typically do not occur at LQGs. To avoid unnecessary duplication of effort, KDHE did not inspect TSDFs and LQGs that were inspected by the EPA during the year. The EPA inspections are not counted toward the state totals below, but if included would raise levels to meet the national goals. The EPA does not plan to change its level of inspection activity because maintaining a federal inspection presence is an EPA priority. KDHE shouldn't expend additional resources to inspect facilities already inspected by the EPA. KDHE should still fill the three inspector positions that are vacant.					
<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 Two-year inspection coverage of operating TSDFs	100%	87.6%	9	12	75%
	5b Annual inspection coverage of LQGs	20%	21%	21	174	12.1%
	5c Five-year inspection coverage of LQGs	100%	66.6%	154	174	88.5%
	5d Five-year inspection coverage of active SQGs		11.0%	459	709	64.7%
	5e1 Five-year inspection coverage of active conditionally exempt SQGs			401		
	5e2 Five-year inspection coverage of active transporters			6		
	5e3 Five-year inspection coverage of active non-notifiers			0		
	5e4 Five-year inspection coverage of active sites not covered by metrics 2c through 2f3			336		
<b>State response</b>	When planning our inspection schedule, KDHE always considers inspections planned by EPA. This eliminates duplication of resources and frustration from the regulated community because of multiple inspections. If EPA's inspections were considered in the numbers, this					

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	would not be an area for state attention. KDHE will continue to fill vacant positions as long as funding allows.
<b>Recommendation</b>	KDHE should plan for and maintain adequate staffing levels to meet its inspection commitments.

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## RCRA Element 2 — Inspections

<b>Finding 2-2</b>	<b>Area for State Attention</b>					
<b>Summary</b>	Several inspection reports lack narrative or sufficient detail in the narrative to make a compliance determination. Inspection reports are not signed or dated affecting the credulity of the report.					
<b>Explanation</b>	<p>The narrative in the reports need to describe the waste generation process sufficiently to allow accurate hazardous waste determinations. The EPA reviewers observed eight of the 29 reports were lacking sufficient narrative or waste stream descriptions. The state recently started using electronic checklists on tablets to document inspection findings. The tablets can record narrative on the checklists as necessary; however, some inspectors have neglected the narrative in this electronic format. Undated reports allow those arguing against a report to suggest the information in the report was not recorded in a timely manner, thus casting suspicion on its accuracy. Signing and dating reports help verify the documentation of the inspector’s observations has not changed since it was observed. The metric 6b was determined by reviewing the narrative and attachments to reports and other documents. None of the 29 reports were dated, but the EPA reviewers were able to determine that 20 of 22 reports were timely written, by observing evidence such as the date of the facility’s response to the report or when KDHE issued a compliance letter or initiated enforcement.</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%		21	29	72.4%
	6b Timeliness of inspection report completion	100%		20	22	90.9%
<b>State response</b>	<p>KDHE has added to its inspection reports, next to the field listing the name of the inspector completing the report, a date field to record the date the inspection report is completed. This should suffice in lieu of a signature, which would be expensive to add to the reports because it would require a change to our electronic system. KDHE will also alter the waste stream table and/or other areas of the report to discuss or list processes generating wastes.</p>					
<b>Recommendation</b>	<p>The EPA recommends that KDHE provide refresher training to all inspectors to assure each inspector records complete narratives of their observations.</p>					

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The EPA concurs that adding fields for the name of the inspector completing the report and the date of report completion should suffice to authenticate each inspector's testimony regarding the inspection report. The EPA will verify this recommendation has been implemented within 180 days of this final report being issued.

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### RCRA Element 3 — Violations

<b>Finding 3-1</b>	<b>Meets or Exceeds Expectations</b>																												
<b>Summary</b>	The state excels at identifying violations and returning facilities to compliance.																												
<b>Explanation</b>	Kansas inspectors are meticulous in documenting all violations identified during inspections and are adept at discovering those violations. In the one case where the reviewers identified an inaccurate compliance determination, it was because the state did not cite violations of a previous administrative order in its actions. In one case, the EPA felt the identified violations should have been a SNC and formal enforcement initiated, but the state demonstrated that it was acting in concert with its written policies for enforcement in that case.																												
<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 Accurate compliance determinations</td> <td>100%</td> <td></td> <td>29</td> <td>30</td> <td>96.7%</td> </tr> <tr> <td>7b Violations found during inspections</td> <td></td> <td>34.8%</td> <td>126</td> <td>247</td> <td>51%</td> </tr> <tr> <td>8a SNC identification rate</td> <td></td> <td>1.7%</td> <td>1</td> <td>247</td> <td>0.40%</td> </tr> </tbody> </table>					Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	7a Accurate compliance determinations	100%		29	30	96.7%	7b Violations found during inspections		34.8%	126	247	51%	8a SNC identification rate		1.7%	1	247	0.40%
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<b>State response</b>	None																												
<b>Recommendation</b>	None																												

### RCRA Element 3 — Violations

<b>Finding 3-2</b>	<b>Area for State Improvement</b>					
<b>Summary</b>	The state excels at identifying violations but is lax in documenting relevant violations as SNCs in the database. Existing SNC determinations are timely.					
<b>Explanation</b>	The low value for 8c comes from the state not identifying the facilities as a SNC in the database, but the state took appropriate enforcement actions in spite of lacking the formal determination. So, the issue is lack of documenting SNCs, not lack of appropriate action.					
<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>
	2a Long-standing secondary violators			9		
	8b Timeliness of SNC determinations	100%	77.8%	8	9	88.9%
	8c Appropriate SNC determinations	100%		23	29	79.3%
<b>State response</b>	KDHE will review all established procedures with enforcement staff. This should help improve our entry to SNC and SNN evaluations in RCRAInfo.					
<b>Recommendation</b>	The state should institute a periodic database review process of violations and enforcement actions to make certain the appropriate SNC determination has been documented. This process will be discussed during KDHE/EPA enforcement coordination calls.					

## RCRA Element 4 — Enforcement

<b>Finding 4-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	The state closely follows its policies regarding enforcement and follows up on all inspections to assure facilities return to compliance.					
<b>Explanation</b>	For 9a, the state is still pursuing compliance in one case that received formal enforcement. This situation is atypical. For 10b, the EPA felt formal enforcement was appropriate for one case, but KDHE followed its own guidance appropriately using informal enforcement in that case.					
<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	100%		24	25	96.0%
	10b Appropriate enforcement taken to address violations	100%		25	26	96.2%
<b>State response</b>	None					
<b>Recommendation</b>	None					

## RCRA Element 4 — Enforcement

<b>Finding 4-2</b>	<b>Meets or Exceeds Expectations</b>												
<b>Summary</b>	The state takes expeditious enforcement actions and closely monitors the respondent to assure penalties are timely paid and compliance is achieved.												
<b>Explanation</b>	Field inspectors follow-up with the facility independent of enforcement staff to assure facility compliance with the regulations. Inspection reports are sent to enforcement staff in Topeka for review and potential SNCs are indicated. Enforcement staff review the cases and immediately initiate pre-filing negotiations with SNC facilities. Penalties are calculated using the state's penalty policy which is precise, simple, and thorough, except for the lack of an economic benefit of noncompliance (EBN) calculation. KDHE vigorously pursues negotiations with the aid of Attorney General staff specifically assigned to KDHE. This results in quick and appropriate resolution of enforcement actions.												
<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>10a Timely enforcement taken to address SNC</td> <td>80%</td> <td>77.3%</td> <td>6</td> <td>6</td> <td>100%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	10a Timely enforcement taken to address SNC	80%	77.3%	6	6	100%
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10a Timely enforcement taken to address SNC	80%	77.3%	6	6	100%								
<b>State response</b>	None												
<b>Recommendation</b>	None												



## RCRA Element 5 — Penalties

<b>Finding 5-1</b>	<b>Area for State Improvement</b>																													
<b>Summary</b>	The state closely follows its guidance documents for calculating penalties, but those documents do not address the economic benefit of noncompliance (EBN). It typically obtains the penalties issued and well documents its calculations and justifications for the amounts.																													
<b>Explanation</b>	<p>State penalty calculations for the gravity component are accurate and follow state guidance. Its penalty matrix is easy to use and produces unbiased, appropriate numbers, but the policy does not address EBN and the state does not calculate or seek it. State law directs the Department to consider EBN in its penalty calculations. Metric 12b includes an ongoing enforcement action.</p> <p>During the close-out meeting the state said it believes that EBN in RCRA cases is typically very small in comparison to the gravity component. It believes the amount calculated for the gravity component is adequate to address the EBN as well as the gravity. Often the cost of correcting the violations outweighs any benefit the facility might have gained through noncompliance. Further, KDHE RCRA management thinks EBN should be calculated consistently across the different enforcement programs and KDHE Air and Water apparently also do not calculate EBN.</p> <p>Although EBN in RCRA penalty calculations is often quite small in comparison to the gravity component, in some cases, especially illegal disposal or avoided actions such as training, it can be a comparatively large sum. The state should at least do a cursory calculation of EBN before entering negotiations so it will not fail to obtain EBN if it is significant. This is a longstanding issue that was identified during SRF Rounds 1 and 2 and will remain unresolved until state upper management decides to calculate EBN as part of the state’s penalty.</p>																													
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<b>State response</b>	KDHE believes that our penalty matrix takes into consideration economic benefit by penalizing more for violations that could have a																													

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	<p>direct economic benefit. Further, our statutes (Kansas Statutes Annotated (K.S.A.) 65-3446) authorizes us only to impose a penalty which “shall constitute an actual and substantial economic deterrent to the violation for which it is assessed.”</p>
<b>Recommendation</b>	<p>The KDHE needs to develop a standard procedure where EBN is consistently considered and calculated for each penalty action. Although K.S.A 65-3446 does not specify recovery of economic benefit in calculating penalties, it does require a penalty that is “an actual and substantial economic deterrent to the violation.” It does not forbid calculation of economic benefit. The EPA believes calculating and recovering the violator’s economic benefit of noncompliance in addition to a gravity component better meets the goal of actual and substantial economic deterrent. In K.S.A. 65-3444(b)(4), which addresses civil penalties as opposed to administrative penalties, the statute calls for the district court to consider “the economic savings realized by the person in not complying with the provisions for which a violation is charged. . . .” The statute’s intended result of seeking EBN in civil actions translates to administrative penalties.</p> <p>The KDHE BWM should coordinate with other KDHE media enforcement programs to develop an equitable policy for seeking EBN in each program’s penalties. Further discussions between upper management of the KDHE and the EPA will be necessary to make this change across all media enforcement programs.</p>

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# Appendix

## KDHE Bureau of Waste Management Response letter

Division of Environment  
Curtis State Office Building  
1000 SW Jackson St., Suite 400  
Topeka, KS 66612-1367



Phone: 785-296-1535  
Fax: 785-296-8464  
www.kdheks.gov

Robert Moser, MD, Secretary

Department of Health & Environment

Sam Brownback, Governor

October 28, 2014

Mr. Donald Toensing  
Chief, Waste Enforcement and Materials Management Branch  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

Dear Mr. Toensing:

The KDHE Bureau of Waste Management has reviewed EPA's Draft Report of the State Review Framework of the Kansas RCRA Enforcement Program dated September 2, 2014. We appreciate EPA's comments and guidance as we seek to continuously improve our program. I have attached our response to the draft report addressing the "Areas of Improvement" and findings that specify "Areas for State Attention."

Please let me know if you have any questions about our response. Thank you for conducting this review efficiently and professionally.

Sincerely,

A handwritten signature in blue ink that reads "William L. Bider".

William L. Bider  
Director  
Bureau of Waste Management

- C John Mitchell, Director, Division of Environment  
Rebecca Wenner, Chief, Compliance Assistance and Enforcement Unit  
Christine Mennicke, Chief, Regulations and Data Unit

## KDHE's Response/Comments on State Review Framework

October 27, 2014

### Areas of Improvement:

1. Penalty calculations should specifically recover the economic benefit of noncompliance. As previously discussed, KDHE believes that our penalty matrix takes into consideration economic benefit by penalizing more for violations that could have a direct economic benefit. Further, our statutes (Kansas Statutes Annotated (K.S.A.) 65-3446) authorizes us only to impose a penalty which "shall constitute an actual and substantial economic deterrent to the violation for which it is assessed."
2. Documentation of significant non-complying facilities in the database. KDHE will work to improve the timeliness of entering the SNN and SNY evaluations.
3. Complete inspection reports including sufficient narrative, dating, and inspector signature. KDHE has added a date field in our reports next to the field listing the name of the inspector completing the report. This should suffice in lieu of a signature, which would be expensive because it would require a change to our electronic system. We will also modify our waste stream table to include additional information regarding processes generating the waste.

### RCRA Findings:

- Finding 1-1 KDHE will review established procedures with Compliance and Enforcement staff to try to improve our rate from 79.3% to 100% in the future.
- Finding 2-1 When planning our inspection schedule, KDHE always considers inspections planned by EPA. This eliminates duplication of resources and frustration from the regulated community because of multiple inspections. If EPA's inspections were considered in the numbers, this would not be an area for state attention. KDHE will continue to fill vacant positions as long as funding allows.
- Finding 2-2 As stated above, KDHE has added a date field to its inspection reports to record the date the inspection report is completed. KDHE will also alter the waste stream table and/or other areas of the report to discuss or list processes generating waste.
- Finding 3-2 KDHE will review all established procedures with enforcement staff. This should help improve our entry to SNC and SNN evaluations in RCRA Info.
- Finding 5-1 As previously discussed, KDHE believes that our penalty matrix takes into consideration economic benefit by penalizing more for violations that could have a direct economic benefit. Further, our statutes (Kansas Statutes Annotated (K.S.A.) 65-3446) authorizes us only to impose a penalty which "shall constitute an actual and substantial economic deterrent to the violation for which it is assessed."

# **STATE REVIEW FRAMEWORK**

## **Kansas**

### **Clean Air Act Implementation in Federal Fiscal Year 2014**

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

**Final Report  
December 21, 2015**

# Executive Summary

## Introduction

EPA Region 7 enforcement staff conducted a Clean Air Act oversight review of the Kansas Department of Health and Environment enforcement and compliance program in June 2015 using the State Review Framework (SRF).

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 2-1.** KDHE is exceeding national averages for Full Compliance Evaluation (FCE) inspection targets and review of Title V Annual Compliance Certifications.
- **Finding 2-2.** KDHE's documentation of FCE elements in inspection reports was exemplary. KDHE review of compliance monitoring reports to ensure completeness was likewise noteworthy.
- **Finding 3-1.** Accuracy of compliance and High Priority Violator (HPV) determinations were at or near the national goal of 100%.
- **Finding 3-2.** The KDHE is properly identifying HPV violations.
- **Finding 4-1.** All formal enforcement responses reviewed included language requiring the facility return to compliance.
- **Finding 5-1.** KDHE files demonstrate the state's documentation of the consideration of economic benefit in the calculations has improved significantly.
- **Finding 5-2.** KDHE has a strong performance record for penalty collection. KDHE consistently documents rationale for reducing the initial penalty.

## Areas for State Attention

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

- **Finding 1-1.** The review revealed several inaccuracies in the CAA database as compared to the facility file.
- **Supplemental Finding.** EPA experienced several issues with the KDHE electronic file review system during the SRF review.

## Area for State Improvement - Significant CAA Stationary Source Program Issues<sup>1</sup>

- **Finding 1-2.** The review revealed issues with timely data entry, most notably the reporting of stack test data is substantially below the national average and goal.

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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 2014

**Key dates:**

- SRF Kickoff letter mailed to KDHE: March 9, 2015
- Data Metric Analysis sent to KDHE: April 14, 2015
- File selection list sent to KDHE: April 14, 2015
- Entrance interview conducted April 28, 2015
- File review conducted: May - June, 2015
- Exit interview conducted: August 26, 2015
- Draft report sent to headquarters: September 8, 2015
- Draft report sent to KDHE: November 10, 2015
- Final report issued: December 21, 2015

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

- Russ Brichacek, KDHE Air Compliance and Enforcement Section
- Javier Ahumada, KDHE Air Compliance and Enforcement Section
- Lisa Gotto, EPA Region 7, SRF Review Lead
- Joe Terriquez, EPA Region 7 Air Compliance and Enforcement Section
- Hugh McCullough, EPA Region 7 Air Compliance and Enforcement Section
- Kevin Barthol, EPA Region 7 SRF Coordinator

### III. SRF Findings

Findings represent the 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 Attention					
<b>Summary</b>	KDHE maintains the Clean Air Act data in the Air Facility System <sup>2</sup> (AFS). The review revealed several inaccuracies in the CAA database as compared to the facility file.					
<b>Explanation</b>	<p>Database accuracy was evaluated by comparing the KDHE electronic files with the Enforcement Compliance History Online (ECHO) detailed facility reports. 28 of 36 files reviewed had complete and accurate data entered into AFS. The remaining files revealed relatively minor discrepancies between AFS and the files. The common discrepancies between AFS and the facility files included inaccurate event dates typographical errors, inaccurate compliance status, and missing events. EPA also notes that alleged violations reported per informal enforcement actions were below the national average of 65.60%; indicating the state may have been issuing Notices Of Violations (NOVs) without reporting the minimum data requirements in AFS for compliance status.</p> <p>EPA notes KDHE has demonstrated a trajectory of improvement in database accuracy over time. EPA expects KDHE will continue the arc of improvement; EPA will continue to monitor this data element for improvement in the future.</p>					
<b>Relevant metrics</b>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2b Accurate MDR data in AFS	100%		28	36	77.8%
	3a2 Untimely entry of HPV determinations	0				0
	3b1 Timely reporting of compliance monitoring MDRs	100%	83%	667	863	77.3%
	3b3 Timely reporting of enforcement MDRs	100%	77.9%	51	56	91.1%
	7b1 Violations reported per informal actions	100%	65.60%	5	36	13.90%
	7b3 Violations reported per HPV identified	100%	63.2%	0	0	0

<sup>2</sup> The AFS data system has been retired and is now a part of the Integrated Compliance and Information System (ICIS-AIR).

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<b>State response</b>	The report noted BOA's improvement in this metric since the previous SRF and we intend to continue improving. With the introduction of ICISAir, there was a period of time where staff was learning the system and may have made some initial errors, but overall, the new system allows our staff the ability to directly enter data into the CAA database which will further reduce and discrepancies between our file and the CAA database. The report mentions a possibility that all notices of noncompliance (NONs) may have not been uploaded into AFS. BOA is not sure if that is the case, or if it was a statistical anomaly, but will put additional emphasis on entering NONs into the CAA database going forward.
<b>Recommendation</b>	

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## CAA Element 1 — Data

<b>Finding 1-2</b>	<b>Area for State Improvement</b>												
<b>Summary</b>	KDHE maintains CAA data in AFS. The review revealed issues with timely data entry; most notably the reporting of stack test data is substantially below the national average and goal. EPA is concerned with data flow and timeliness.												
<b>Explanation</b>	<p>Untimely stack test data reporting into AFS is a likely function of the size of the current KDHE universe; KDHE staffing resource challenges; and 2014 procedures for receiving, prioritizing, and entering data. During the review, EPA noted KDHE has challenges getting the file scanned into the facility file in a timely manner. The majority of inspections are conducted by the KDHE regional offices. Inspection reports are then submitted to the KDHE main office – which may result in data entry time-lag of 45 days or more. The delay in receiving inspection reports has potential impacts on the timely issuance of enforcement activities. During the time period under review, CAA data entry was accomplished by a single KDHE staff member. Physical copies of the documents (inspection reports, enforcement documents, stack test observations, etc.) were provided to the data entry staff member, who reviewed the documents and identified the information to be recorded in AFS. EPA notes KDHE only met the standard for timely reporting of stack test dates and results 2.8% of the time. KDHE averages 229 days to complete the reporting of stack test dates and results in the database; 109 days more than the required within 120 days of the stack test.</p>												
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th data-bbox="483 1407 997 1474">Metric ID Number and Description</th> <th data-bbox="1003 1407 1075 1474">Natl Goal</th> <th data-bbox="1081 1407 1172 1474">Natl Avg</th> <th data-bbox="1179 1407 1247 1474">State N</th> <th data-bbox="1253 1407 1321 1474">State D</th> <th data-bbox="1328 1407 1419 1474">State % or #</th> </tr> </thead> <tbody> <tr> <td data-bbox="483 1482 997 1558">3b2 Timely reporting of stack test dates and results</td> <td data-bbox="1003 1482 1075 1558">100%</td> <td data-bbox="1081 1482 1172 1558">80.80%</td> <td data-bbox="1179 1482 1247 1558">2</td> <td data-bbox="1253 1482 1321 1558">71</td> <td data-bbox="1328 1482 1419 1558">2.80%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	3b2 Timely reporting of stack test dates and results	100%	80.80%	2	71	2.80%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #								
3b2 Timely reporting of stack test dates and results	100%	80.80%	2	71	2.80%								
<b>State response</b>	<p>EPA metrics in this category specify that performance test results should be entered into the CAA database within 120 days of the end of the performance test. Currently, this information is entered into ICIS-Air but in FFY2014 the database was AFS. BOA strives to enter test data into the CAA database as quickly as possible but asks consideration of the fact that 120 days is actually reduced to 60 days when a federal regulation, such as a MACT or NESHAP, allows the facility to submit the final test report no later than 60 days after the end of testing. During</p>												

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FFY2014, Kansas had a very large number of reciprocating internal combustion engine performance tests conducted due to implementation of the new RICE MACT, 40 CFR Part 63, Subpart ZZZZ, regulation which happened to coincide with the oil exploration boom. Not only were the total number of performance tests conducted in that year between two to three times higher than average due to this new rule, but this regulation is one which allows 60 days for final report submittal. Not only was our program asked by EPA to absorb a huge increase in work, but we were then told it had to be completed within 60 days of our receipt. In addition, due to budgetary constraints at the time, there was only a single staff member tasked with running the entire performance testing program for the entire state. To further complicate this, in FFY2012, BOA did batch uploads into AFS from our internal database once a month. Therefore, performance tests that were reviewed the day after the upload would not be reflected in AFS for another month. BOA would like to note that although the arbitrary 120 day, effectively 60 day, deadline was not met on most stack test reports in FFY2014, 100% of stack test and RATA reports, including Acid Rain reports which we review out of courtesy to EPA, were thoroughly reviewed for scientific accuracy and compliance demonstration.

BOA believes this was a "perfect storm" event which has already been alleviated by a number of factors. BOA preemptively took action to solve this problem prior to it being called to our attention in the Data Metric Analysis, received in April 2015, by hiring additional staff in late 2014 to help process the increased workload created from this regulation. Input into AFS was also discontinued when ICIS-Air went live. Staff now inputs performance test results directly into ICISAir when review is complete, which has helped our timeliness. Finally, the number of newly subject engines dropped in the last federal fiscal year due in part to a decline in oil prices. BOA still contends that a deadline of 120 days after the stack test date, which is effectively reduced to 60 days after CAA regulation allowances, is not conducive to thorough and thoughtful review and we question whether other states are simply reporting the stack test data without proper review in order to meet this deadline.

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**Recommendation**

Region 7 recommends KDHE continue to evaluate current data entry procedures with the goal of improving speed by identifying opportunities to collect and enter data from the Regional Offices and Local Government Agencies more efficiently so data entry may occur in a timely manner. KDHE should consider the use of a data entry form which may be provided electronically to data entry staff upon completion of reportable activities. KDHE should provide Region 7 with a draft of the process improvements for review within 60 days of

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completion of this SRF Report. If review of KDHE data at the end of FY2016 shows that timeliness has sufficiently improved, the Recommendation will be deemed completed.

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## CAA Element 2 — Inspection

<b>Finding 2-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	KDHE is exceeding national average for FCE Inspection targets and review of Title V Annual Compliance Certifications.					
<b>Explanation</b>	<p>KDHE is above the national average for FCE coverage for Title V Major and Synthetic Minor (SM)-80 facilities, along with review of Title V Annual Compliance Certifications. FCE coverage of Major facilities was 95.50% (national average of 85.70%) and FCE coverage of SM-80s was 98.60% (national average of 91.70%). Kansas Title V facilities are inspected annually. The larger Title V facilities receive multiple Partial Compliance Evaluations (PCEs) in one year, which combine to meet the annual FCE requirement. KDHE inspectors accompany the EPA inspectors on inspections in Kansas whenever possible. Inspectors are also called upon to execute complaint investigations when necessary. The KDHE air program inspectors perform over 800 assigned facility inspections each year. The KDHE field inspectors perform 100 to 150 additional inspections/investigations beyond the assigned inspections. This substantial workload is accomplished with a high degree of communication and coordination with the six KDHE Regional Offices and local government offices on a frequent basis to ensure inspection targets are met.</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>
	5a FCE coverage: majors and mega-sites	100% of commitment	85.70%	212	222	95.50%
	5b FCE coverage: SM-80s	100% of commitment	91.70%	353	358	98.60%
	5e Review of Title V annual compliance certifications	100%	78.80%	262	280	93.60%
<b>State response</b>						
<b>Recommendation</b>						

## CAA Element 2 — Inspection

<b>Finding 2-2</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	KDHE’s documentation of FCE elements in inspection reports was exemplary. KDHE review of compliance monitoring reports to ensure completeness was likewise noteworthy.					
<b>Explanation</b>	KDHE performed well on the SRF inspection elements and inspection metrics 6a and 6b. In the subset of reports reviewed, 96.7% of the FCE’s reviewed effectively documented the full complement of FCE elements. During the review year, 33 of the 34 compliance monitoring reports reviewed provided sufficient documentation to determine facility compliance.					
<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 Documentation of FCE elements	100%		29	30	96.7%
	6b Compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance	100%		33	34	97.1%
<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>	Accuracy of compliance and HPV determinations were at or near the national goal of 100%.					
<b>Explanation</b>	30 of the 32 files reviewed appeared to have accurate compliance determinations. 13 of the 13 files reviewed appear to have accurate HPV determinations, indicating that among the violations reviewed, KDHE is accurately identifying the violations and interpreting the HPV policy. EPA reached beyond the scope of the 2014 review period to gain a broader picture of KDHE's HPV determinations and policy interpretation by reviewing enforcement files for a facility identified in a previous year as an HPV. EPA concluded KDHE is appropriately applying the HPV policy.					
<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 Accuracy of compliance determinations	100%		30	32	93.8%
	8c Accuracy of HPV determinations	100%		13	13	100%
<b>State response</b>						
<b>Recommendation</b>						

### CAA Element 3 — Violations

<b>Finding 3-2</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	The KDHE is properly identifying HPV violations.					
<b>Explanation</b>	KDHE management discusses HPV cases and HPV identification with Region 7 staff during their scheduled monthly conference calls. The data demonstrate proper application of the HPV policy. Although the KDHE HPV discovery rate is lower than the national average, KDHE is properly identifying HPV violations.					
<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>
	8a HPV discovery rate at majors		3.10%	0	0	0%
<b>State response</b>						
<b>Recommendation</b>						

## CAA Element 4 — Enforcement

<b>Finding 4-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	All formal enforcement responses reviewed included language requiring the facility return to compliance.					
<b>Explanation</b>	All formal enforcement settlement documents reviewed included a condition that required the facility to return to compliance. When practical, the return to compliance was required immediately. In situations where immediate compliance was not feasible, a compliance schedule was incorporated into the settlement document.					
<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 Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe	100%		16	16	100%
	10b Appropriate enforcement responses for HPVs	100%		4	4	100%
<b>State response</b>						
<b>Recommendation</b>						

**CAA Element 5 — Penalties**

<b>Finding 5-1</b>	<b>Meets or Exceeds Expectations</b>						
<b>Summary</b>	KDHE files demonstrate the state’s documentation of the consideration of economic benefit in the calculations has improved significantly.						
<b>Explanation</b>	<p>The 2010 SRF review indicated that a number of the enforcement actions taken by KDHE in the public files did not include a penalty calculation work sheet with a specific statement on consideration of economic benefit. The 2015 SRF review demonstrates KDHE has made significant progress in addressing this issue. As part of the 2010 review recommendation, KDHE instituted a requirement for a statement at the end of each Penalty Work Sheet pertaining to economic benefit that may have been gained by the facility for failure to comply. KDHE protocol for consideration and documentation of economic benefit has been included in the KDHE Air Program Enforcement Policy. The policy includes setting base penalties within the matrix at the end of the policy. The policy sets different base penalties for various violations – more serious violations have a higher base penalties. KDHE also sets a multiplier to the violation as appropriate for the situation – one instance; weeks, months, or years in violation. A history of compliance is noted for each facility, and degree of cooperation to return to a state of compliance is likewise evaluated. For the KDHE files reviewed in 2015, thirteen out of fourteen penalty calculation worksheets included documentation of the consideration of economic benefit.</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>
	11 a Penalty calculations include gravity and economic benefit		100%		13	14	92.9%
<b>State response</b>							
<b>Recommendation</b>							

## CAA Element 5 — Penalties

<b>Finding 5-2</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	KDHE consistently documents rationale for reducing the initial penalty. KDHE has a strong performance record for penalty collection.					
<b>Explanation</b>	KDHE is consistently and adequately documents rationale for reducing an initial penalty, 10 out of 11 files reviewed included the appropriate documentation. KDHE has a strong performance record for penalty collection; 12 of the 13 files reviewed demonstrated penalties were collected.					
<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%		10	11	90.9%
	12b Penalties collected	100%		12	13	92.3%
<b>State response</b>						
<b>Recommendation</b>						

# Appendix

**Supplemental Finding Summary:** EPA experienced several issues with the KDHE electronic file review system during the SRF review

**Explanation:** As a means of assessing the access, capabilities and potential public user experience of the KDHE's online electronic file system, EPA elected to conduct the file review remotely by accessing the KDHE's file system off-site. Due to software incompatibilities and limitations, EPA found it difficult for off-site users to access and navigate in the system. A portion of the file review was therefore conducted off-site, and a portion was conducted on-site. EPA encountered several issues with the electronic filing system, as follows:

1. KDHE files are organized chronologically, resulting in the occasional inability to follow the status and/or resolution of individual issues. Overall, EPA had a measure of difficulty following threads of information when all site-related issues were clustered together.
2. The electronic file system is cumbersome and difficult for users outside of KDHE to navigate. EPA encountered software incompatibilities, while attempting to review the files off site. Discussions with the KDHE district office revealed similar issues. Substantial amounts of time were required for the SRF reviewers to navigate the documents using the Webnow software outside the agency.
3. EPA had difficulties searching the electronic files for specific documents.
4. EPA encountered misfiled sets documents (i.e., the files for a facility were filed in the wrong facility file).
5. EPA is concerned about accessibility of the KDHE compliance and enforcement files to the general public, as well as other agencies (EPA included).

To address these issues, EPA recommends KDHE develop a Standard Operating Procedure (SOP) or guidance for outside users detailing how the search function works and KDHE pursue updating the Webnow software.

**State Response:** The SRF report contained an appendix which states several issues with the BOA electronic file review system. BOA believes the two main reasons for difficulty in using the system had to do with the EPA computers not being fully compatible with our software and the lack of user familiarity with the software. BOA receives numerous Kansas Open Records Act (KORA) requests every year and we have not been made aware of any problems accessing the requested files. After receiving these complaints, BOA invited the Region 7 SRF team to our office in order to use our computers and to receive some basic instruction in use of the software. We were told that the review went much faster at that point. It is not uncommon for an SRF team



to visit the state office in order to do their review, especially if paper files are still used. Therefore, BOA does not think this complaint warrants mention in this audit since our system, while it may have inconvenienced the SRF team by forcing them to travel to our office, did not prevent them from actually seeing the files they requested.

# KDHE Bureau of Air Response Letter

Bureau of Air  
Curtis State Office Building  
1000 SW Jackson, Suite 310  
Topeka, KS 66612-1366



Phone: 785-296-0243  
Fax: 785-296-7455  
JAhumada@kdheks.gov  
www.kdheks.gov/bar

Susan Mosier, MD, Secretary

Department of Health & Environment

Sam Brownback, Governor

November 17, 2015

Becky Weber  
Air and Waste Management Division  
U.S. EPA, Region 7  
11201 Renner Blvd.  
Lenexa, KS 66219

Dear Ms. Weber:

On November 16, 2015, the Kansas Department of Health and Environment (KDHE) received the draft report of the State Review Framework (SRF) of the KDHE Bureau of Air (BOA) Compliance and Enforcement Program conducted by EPA Region 7 staff. This SRF audited federal fiscal year 2014 activities. BOA would like to comment on portions of the draft report.

The SRF report identified one area for improvement relating to the lack of timely date entry of performance test results. EPA metrics in this category specify that performance test results should be entered into the CAA database within 120 days of the end of the performance test. Currently, this information is entered into ICIS-Air but in FFY2014 the database was AFS. BOA strives to enter test data into the CAA database as quickly as possible but asks consideration of the fact that 120 days is actually reduced to 60 days when a federal regulation, such as a MACT or NESHAP, allows the facility to submit the final test report no later than 60 days after the end of testing. During FFY2014, Kansas had a very large number of reciprocating internal combustion engine performance tests conducted due to implementation of the new RICE MACT, 40 CFR Part 63, Subpart ZZZZ, regulation which happened to coincide with the oil exploration boom. Not only were the total number of performance tests conducted in that year between two to three times higher than average due to this new rule, but this regulation is one which allows 60 days for final report submittal. Not only was our program asked by EPA to absorb a huge increase in work, but we were then told it had to be completed within 60 days of our receipt. In addition, due to budgetary constraints at the time, there was only a single staff member tasked with running the entire performance testing program for the entire state. To further complicate this, in FFY2012, BOA did batch uploads into AFS from our internal database once a month. Therefore, performance tests that were reviewed the day after the upload would not be reflected in AFS for another month. BOA would like to note that although the arbitrary 120 day, effectively 60 day, deadline was not met on most stack test reports in FFY2014, 100% of stack test and RATA reports, including Acid Rain reports which we review out of courtesy to EPA, were thoroughly reviewed for scientific accuracy and compliance demonstration.

BOA believes this was a "perfect storm" event which has already been alleviated by a number of factors. BOA preemptively took action to solve this problem prior to it being called to our attention in the Data Metric Analysis, received in April 2015, by hiring additional staff in late 2014 to help process the increased workload created from this regulation. Input into AFS was also discontinued when ICIS-Air went live. Staff now inputs performance test results directly into ICIS-Air when review is complete, which has helped our timeliness. Finally, the number of newly subject engines dropped in the last federal fiscal year due in part to a decline in oil prices. BOA still contends that a deadline of 120 days after the stack test date, which is effectively reduced to 60 days after CAA regulation allowances, is not conducive to thorough and thoughtful review and we question whether other states are simply reporting the stack test data without proper review in order to meet this deadline.

The SRF report identified one area for state attention; inaccuracies in the CAA database. The report noted BOA's improvement in this metric since the previous SRF and we intend to continue improving. With the introduction of ICIS-Air, there was a period of time where staff was learning the system and may have made some initial errors, but overall, the new system allows our staff the ability to directly enter data into the CAA database which will further reduce and discrepancies between our file and the CAA database. The report mentions a possibility that all notices of noncompliance

(NONs) may have not been uploaded into AFS. BOA is not sure if that is the case, or if it was a statistical anomaly, but will put additional emphasis on entering NONs into the CAA database going forward.

The SRF report contained an appendix which states several issues with the BOA electronic file review system. BOA believes the two main reasons for difficulty in using the system had to do with the EPA computers not being fully compatible with our software and the lack of user familiarity with the software. BOA receives numerous Kansas Open Records Act (KORA) requests every year and we have not been made aware of any problems accessing the requested files. After receiving these complaints, BOA invited the Region 7 SRF team to our office in order to use our computers and to receive some basic instruction in use of the software. We were told that the review went much faster at that point. It is not uncommon for an SRF team to visit the state office in order to do their review, especially if paper files are still used. Therefore, BOA does not think this complaint warrants mention in this audit since our system, while it may have inconvenienced the SRF team by forcing them to travel to our office, did not prevent them from actually seeing the files they requested.

We would like to thank the Region 7 SRF team for being courteous, patient and considerate of our time in this audit. If you have any questions concerning these comments please contact me at [JAhumada@kdheks.gov](mailto:JAhumada@kdheks.gov) or call at (785) 296-0243.

Sincerely,



Javier Ahumada  
Chief, Compliance and Enforcement Section  
Bureau of Air

c: Rick Brunetti, BOA Director

# **STATE REVIEW FRAMEWORK**

## **Kansas**

### **Clean Water Act Implementation in Federal Fiscal Year 2015**

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

**Final Report  
January 24, 2017**

# Executive Summary

## Introduction

EPA Region 7 enforcement and permit staff conducted a Clean Water Act oversight review of the Kansas Department of Health and Environment (KDHE) enforcement, compliance and permit program using the State Review Framework (SRF) guidance on April 4-8, 2016.

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 1-1.** Entry of data for permit limits, DMRs, and inspections meets national program expectations.
- **Finding 5-2.** KDHE documents rationale for reducing the initial penalty. KDHE has a strong performance record for penalty collection.

## Areas for Attention

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

- **Finding 1-2.** Kansas's data appeared to have minor differences compared to the ICIS-NPDES data.
- **Finding 2-4.** KDHE inspections occasionally do not meet the prescribed timeframes for transmittal from BEFs to the BOW.

## Most Significant CWA-NPDES Program Issues<sup>1</sup>

The following are the most significant issues affecting the state program's performance:

- **Finding 2-1.** KDHE does not meet the Compliance Monitoring Strategy (CMS) goals for stormwater inspections.
- **Finding 2-2.** KDHE inspection reports did not consistently identify pertinent facility information, compliance issues, and compliance determinations.

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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 2-3.** KDHE stormwater complaint/referral investigations do not follow the same format as all other inspections reviewed. It was difficult to determine if KDHE issued the reports to noncompliant facilities.
- **Finding 3-1.** KDHE Quarterly Non-Compliance Report (QNCR) significant noncompliance (SNC) statements are not added to facility files to define significant noncompliance information. Single Event Violations (SEV) codes are not used.
- **Finding 3-2.** Compliance inspection reports do not identify permit violations.
- **Finding 3-3.** Stormwater complaint investigations are not sent to the facility, therefore, no attempt to correct noncompliance can be made by the facility.
- **Finding 3-4.** KDHE official files do not document a facilities return to compliance.
- **Finding 4-1.** Informal enforcement appears to be issued from Bureau of Environmental Field Services (BEFS) rather than Bureau of Water (BOW).
- **Findings 4-2.** KDHE enforcement actions do not result in a return to compliance.
  - **Findings 4-2.1.** Kansas Rural Water Association (KRWA) referral process is unclear as it relates to BOW enforcement.
  - **Finding 4-2.2** KDHE enforcement escalation process is unclear.
- **Findings 5-1.** Kansas penalty calculations do not document 1997 Wastewater Enforcement Guidance (WEG) factors.

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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:** FFY2015

**Key dates:**

- Kickoff letter sent to KDHE: March 15, 2016
- Kickoff meeting conducted: April 4, 2016
- On-site file review conducted: April 4-8, 2016
- Draft report sent to headquarters: May 9, 2016
- Draft report sent to state: July 26, 2016
- Draft report response sent from KDHE to the EPA: September 29, 2016
- Report finalized: January 24, 2017

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

- EPA Region 7 PQR Lead Reviewer: Donna Porter
- EPA Region 7 SRF Clean Water Act Lead Reviewer: Seth Draper
- EPA Region 7 SRF Coordinator: Kevin Barthol
- KDHE Water Pollution Control Branch Lead Contact for the review: Shelly Shores-Miller

### 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 Water Act Findings

CWA Element 1 — Data						
<b>Finding 1-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	Entry of data for permit limits, DMRs, and inspections meets national program expectations.					
<b>Explanation</b>	Permit limits and DMRs are present in ICIS for nearly all major facilities, meeting the national data entry expectations for these metrics in FFY 2015.					
<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>
	1b1 Permit limit rate for major facilities	>=95%	90.9%	56	56	100%
	1b2 DMR entry rate for major facilities	>=95%	96.7%	1820	1867	97.5%
<b>State response</b>	No Response.					
<b>Recommendation</b>						

**CWA Element 1 — Data**

<b>Finding 1-2</b>	<b>Area for State Attention</b>																	
<b>Summary</b>	Kansas’s data had minor differences when compared to the information presented in ICIS-NPDES.																	
<b>Explanation</b>	<p>KDHE consistently batches data into ICIS-NPDES as required by the national program. There are five (5) instances where the data in ICIS-NPDES did not match the data found in KDHE files.</p> <ul style="list-style-type: none"> <li>- Topeka North-WWTP – Enforcement action and penalty are not listed in ICIS-NPDES.</li> <li>- Coffeyville WWTP – Address of the facility in inspection report is different than what is identified in ICIS-NPDES.</li> <li>- Garden City WWTP – August 9, 2014 inspection not in ICIS-NPDES.</li> <li>- Hill City WWTP - 2009 Order is missing in ICIS-NPDES</li> <li>- Green Acres Restaurant WWTP - Street of facility not in ICIS-NPDES.</li> </ul> <p>KDHE should review identified differences from the Kansas database and corresponding ICIS-NPDES system.</p> <p>*Update*</p> <p>KDHE reviewed the draft comments and made corrections to the ICIS-NPDES database prior to the report being finalized.</p>																	
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th data-bbox="483 1224 1027 1297">Metric ID Number and Description</th> <th data-bbox="1036 1224 1092 1297">Natl Goal</th> <th data-bbox="1101 1224 1157 1297">Natl Avg</th> <th data-bbox="1166 1224 1206 1297">State N</th> <th data-bbox="1214 1224 1255 1297">State D</th> <th data-bbox="1263 1224 1442 1297">State % or #</th> </tr> </thead> <tbody> <tr> <td data-bbox="483 1308 1027 1371">2b Files reviewed where data are accurately reflected in the national data system</td> <td data-bbox="1036 1308 1092 1371">100%</td> <td data-bbox="1101 1308 1157 1371"></td> <td data-bbox="1166 1308 1206 1371">16</td> <td data-bbox="1214 1308 1255 1371">21</td> <td data-bbox="1263 1308 1442 1371">76.2%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2b Files reviewed where data are accurately reflected in the national data system	100%		16	21	76.2%
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2b Files reviewed where data are accurately reflected in the national data system	100%		16	21	76.2%													
<b>State response</b>	<p>During this review, KDHE did not have security clearance to the ICISNPDES enforcement action and penalty module. All enforcement information was provided to the EPA Region 7 office to upload the data. Therefore, the above findings for Topeka North WWTP and Hill City WWTP are not correct.</p> <p>The new P.O. Box number for Coffeyville WWTP had not uploaded to ICIS NPDES, this has been corrected and resolved.</p> <p>Green Acres Restaurant WWTP street address has been added to ICISNPDES.</p>																	

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KDHE pursued and has recently obtained security clearance so this may be rectified in the future.

The Garden City August 9, 2014 inspection did not get loaded to the KDHE Oracle database system and therefore, did not get uploaded to ICIS. This oversight has been corrected.

EPA was responsible for loading all Kansas NPDES enforcement data into PCS which would include the Hill City order issued in 2009.

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**Recommendation**

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## CWA Element 2 — Inspections

<b>Finding 2-1</b>	<b>Area for State Improvement</b>																																																																													
<b>Summary</b>	KDHE does not meet the CMS goals for stormwater inspections.																																																																													
<b>Explanation</b>	<p>KDHE met many of their inspection goals during FY15 with the exception of stormwater, specifically industrial stormwater (4a8) and Phase I and II stormwater (4a9). KDHE consistently does not meet their stormwater CMS goals each year.</p> <p><b>*Update*</b></p> <ul style="list-style-type: none"> <li>- EPA recommendation and metrics revised based on state response.</li> <li>- Metric 5b1 and 5b2 do not accurately reflect state commitments. See KDHE note in State Response section.</li> </ul>																																																																													
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<b>State response</b>	<p>4a1 – Denominator matches CMS.</p> <p>4a2 - Denominator matches CMS.</p> <p>4a4 and 4a5 - No state commitments were included in the 2015 CMS plan. Kansas confirms the Numerator 4a4 to be correct but the Denominator should be 0. 4a5 Denominator should be 0, and the Numerator should be</p>																																																																													

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529 because the district inspections review I/I and report SSO “incidents” for the period since the previous inspection.

4a7 – Phase I and II MS4 – In the EPA approved CMS for 2015, KDHE did not commit to any MS4 inspections and therefore none were conducted. As agreed upon, KDHE is in the process of piloting inspections for Phase I and Phase II MS4 stormwater. Pursuant to the 2015 CMS and 2016 – KDHE has conducted 7 audits in the Summer of 2016. KDHE recommends this issue be resolved in the upcoming FY 2017 CMS negotiations.

4a8 – Industrial Stormwater – the 2015 CMS had 50 commitments with a notation that Kansas’ inspections are complaint driven due to lack of staff to schedule routine inspections. KDHE does not foresee attainment of a rigorous CMS goals due to continued staffing constraints and competing priorities. An alternative plan will be submitted for consideration in 2017.

Please note that KDHE conducted 120 inspections of industrial wastewater treatment systems. Of the 120, 87 inspections involved NPDES permits that also contained Storm Water Prevention Plan requirements. The 87 inspections included completing the Stormwater Activities section of the Kansas Water Pollution Control Inspection Report for Industrial Facilities.

As such, KDHE believes the numerator for 4a8 should be 137, or 50 complaint driven inspections and 87 routine inspections.

4a9 – Construction Stormwater - the 2015 CMS had 25 commitments with a notation that Kansas’ inspections are complaint driven due to lack of staff to schedule routine inspections. KDHE has hired a Senior Environmental Employee (SEE) with construction inspection experience to assist the state in developing a construction stormwater inspection protocol, pilot the protocol, and develop a matrix to identify high priority construction stormwater permits for inspection.

Despite such efforts, KDHE does not foresee attainment a CMS goal due to staffing constraints and competing priorities. An alternative plan will be submitted for consideration.

4a10 – Kansas commitment was 83.

5a1 – CMS commitment is 54.

5b1&2 – The universe of facilities for was 1036 in the CMS and the approved state commitment was 207. The CMS does not distinguish Individual Permits vs General, rather distinguishes non-major – impaired

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waters and non-major non-impaired waters. Even this point is rather moot, because the CMS universe and commitments combined these two distinguished rows into 1.

Please note: Metric 5b1: The denominator is inflated because of a problem within ICIS-NPDES. ICIS-NPDES has no way to designate a permit as being “Inactive”. The closest designation is to “Terminate” a permit. However, in Kansas, the term “Terminate” has a very specific legal process and is generally an adversarial action requiring public notice, hearings and opportunities for legal appeals whereas making a permit “Inactive” is normally an action indicating the permittee neither wants nor needs the permit and KDHE concurs. The term “inactive” is also used for unpaid construction storm water permit fees or returned invoices.

In Kansas, we have many facilities that go inactive for a period and then become active again as the result of new owners (mainly businesses and CAFOs) and/or new projects (rock quarries). The permit number stays with the facility site until permanent actions indicate that a permit will not be needed in the future. As a result, the only way KDHE can work within the ICIS-NPDES database is to turn the Compliance Monitoring status to OFF to keep these facilities from being in non-compliance for monitoring failures. However, the current EPA method of determining active permits counts these permits as being active and if the current date is beyond the permit’s expiration date, the permit is considered as being backlogged. This results in inflated numbers of active permits and backlogged permits shown for Kansas. KDHE has discussed this issue with EPA ICIS-NPDES personnel including a request that a permit status of “inactive” be added to the ICIS-NPDES options. The request was denied. KDHE is hereby requesting that EPA add this additional permit status option to ICIS-NPDES so that the federal database system accurately reflects the status of Kansas NPDES permits.

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**Recommendation**

KDHE should ensure that inspections are completed according to the CMS plan. If the state anticipates that it will have difficulty meeting the minimum CMS requirements, an alternative plan should be submitted. EPA encourages KDHE to exercise the flexibility provided by the CMS in directing inspection resources.

- Report to the EPA each quarter (January 15, April 15, July 15, October 15) the progress made perform to comprehensive inspections.

Once the EPA is satisfied that state actions have addressed each deficiency, the EPA will mark this recommendation complete.

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## CWA Element 2 — Inspections

Finding 2-2	Area for State Improvement
<b>Summary</b>	KDHE inspection reports did not consistently identify pertinent facility information, compliance issues, and compliance determinations.
<b>Explanation</b>	<p>The EPA NPDES Compliance Inspection Manual, created July 2004, identifies that the inspection report should ‘organize and coordinate all inspection information and evidence into a comprehensive, usable document.’ KDHE inspection reports reviewed do not provide a document that can be used as a comprehensive document.</p> <p>The EPA SRF selected 51 inspection reports to be reviewed. A few inspections are missing basic facility information or inspection information. 15 of the 51 inspections did not make clear compliance determinations. The inspection reports often contain little descriptive narrative information. Inspection reports point to reference documents not included in the inspection report package.</p> <p>The EPA found that some inspection reports did not contain facility information or had minor completeness issues:</p> <ul style="list-style-type: none"><li>- Coffeyville WWTP – time of inspection not included in inspection report</li><li>- Garden City WWTP – facility photos did not have captions</li><li>- Milford Fish Hatchery – inspector identified a compliance issue (eroded outfall) yet did not memorialize the finding with photographic evidence</li></ul> <p>The following inspection report did not define effluent violations as permit deficiencies and instead identified them as a ‘recommendation’:</p> <ul style="list-style-type: none"><li>- BNSF Railway Company Newton Yard</li></ul> <p>Inspection reports reviewed are not comprehensive standalone documents. The reader must review additional documents, such as the permit or the statement of basis, in order to understand the facility layout or processes. These additional documents are not included in the inspection report package as attachments. A description of the missing information is illustrated below:</p> <ul style="list-style-type: none"><li>- Innovia Films – No line drawing as required by checklist</li><li>- Topeka North WWTP – No narrative explanation of the treatment system</li><li>- Coffeyville WWTP – plant treatment not documented, inspector notes that the SBR was inoperable at the time of the inspection,</li></ul>

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inspector states it has been previously explained in past inspections therefore did not need to be repeated.

- Milford Fish Hatchery – inspector documents in the checklist that the outfall is eroded yet does not take photographic evidence of the deficiency
- Green Acres – checklist identifies that the outfall is ‘clear with no foam’ yet in the receiving stream quality is identified as ‘N/A’ as if the facility was not discharging
- BNSF Railway Company Newton Yard – inspection report contained limited narrative information to describe the facility.
- Weststar Energy Hutchison Center – no information on the industrial processes and the operation of the processes as it relates to the WWTP
- Henry Creek Farms, Inc. – facility was not described in the inspection as the narrative portion of the checklist contained very little information
- Haw Ranch Feedlot II, LLC – facility was not described in the inspection as the narrative portion of the checklist contained very little information
- Spring Creek Farm – facility was not described in the inspection as the narrative portion of the checklist contained very little information
- CJ Feeders – facility was not described in the inspection as the narrative portion of the checklist contained very little information

Unclear identification of noncompliance was cited for state improvement in the Round 2 SRF. The item was closed in March 2012 after a review of inspection reports that clearly identified noncompliance. The state process has not been implemented and/or become standard practice.

Note: The findings above are consistent to the findings described within the Summary of 2015 NPDES Oversight Inspections in Kansas report dated November 30, 2015.

Based on the overall inspection element review and findings, it appears that Kansas could benefit from inspector training, for both violation identification and report writing. Based on available resources and coordination Region 7 is willing to work with KDHE to provide inspector training. Alternatively, EPA Headquarters also offers free online training through the National Enforcement Training Institute (NETI) eLearning Center. Pete Bahor, OECA, OC, Water Branch is a good contact regarding online training. Additional information is located at <https://www.epa.gov/compliance/national-enforcement-training-institute-neti-elearning-center>.

\*Update\*

EPA explanation and metrics revised based on state response.

**Relevant metrics**

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
6a Inspection reports complete and sufficient to determine compliance at the facility	100%		37	51	72.5%

**State response**

The KDHE Bureau of Water and the District Offices are not structured into the separate areas of permitting, compliance, inspection and enforcement as is the EPA Regional office. The EPA NPDES Compliance Inspection Manual is based upon EPA’s structure. The KDHE District Office and Topeka Office personnel both have full access to the permit requirements, previous inspection information and enforcement actions on each facility. The district office personnel use this information in preparation to conducting inspections and providing written reports concerning the inspections. The inspections are complementary to the other documents and are not meant to repeat readily available information or to be fully stand-alone reports.

KDHE recognizes we do not have our own guidance document similar to EPA’s NPDES Compliance Inspection Manual. KDHE is in the process of developing an Inspection Report Guidance document to address many of the findings in this SRF. The Inspection Report Guidance document will provide greater clarity on facility descriptions (with the exception of CAFO), photographs and offer consistent guidance for compliance vs noncompliance.

The above findings for Goessel is not correct. The findings stated that the “inspection reports did not identify effluent violations in the quarters prior to the inspection”. The inspection report was completed August 20, 2014 and stated an effluent violation for May 2014 (3<sup>rd</sup> QFFY). The city of Goessel 4<sup>th</sup> QFFY would not be due until October 28, 2014. Therefore, the May 2014 data was the data in the quarter prior to the inspection.

The above findings for Hartford is not correct. The findings stated that the “inspection reports did not identify effluent violations in the quarters prior to the inspection”. The city of Hartford had been in compliance with their permit limits, therefore there was no effluent violations to identify.

The above findings for Innovia is not correct. The findings stated that the “inspection reports did not identify effluent violations in the quarters prior to the inspection”. The inspection report is dated April 13, 2015 and notes monthly exceedance of permit limits from November 2014 to February of 2015. The March 2015 DMR data is not due to KDHE until April 28,

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2015, after this inspection report was completed.

The above findings for CJ Feeders and Meier Dairy of Palmer, Inc. are incorrect.

CJ Feeders: The inspector noted in the 12/3/2015 inspection that it appeared runoff from an area was uncontrolled; however, no discharge was observed during the inspection.

Meier Dairy of Palmer, Inc.: The facility was identified as out of compliance on 1/28/2015 for the uncontrolled runoff and the inspection and transmittal letter clearly state this. KDHE required immediate mitigation of the uncontrolled runoff.

Note – The Inspection Reports reviewed by EPA for this SRF preceded the “Summary of 2015 NPDES Oversight Inspections in Kansas report dated November 30, 2015”.

KDHE welcomes the opportunity to discuss training from Region 7. With respect to NETI training, in the past 6 months KDHE is only aware of 1 training opportunity and space was extremely limited – 25 participants with priority for Region 7 inspectors. Kansas was notified of the training opportunity on August 22<sup>nd</sup>, and by August 24<sup>th</sup> only 2 seats were still available. KDHE would appreciate more frequent or more widely available training opportunities.

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**Recommendation**

KDHE should ensure the inspection reports contain all pertinent details regarding the facility, facility operation details, and compliance determinations. All documentation needed to understand the facility processes and compliance details should be included in the inspection report package. The inspector should make a clear compliance determination of the facility.

1. KDHE should develop and implement an inspection report standard operation procedure (SOP) with the BEFS. This SOP should clearly define the elements required to ensure the inspection report is a comprehensive source for the facility’s contact information, location manufacturing process/treatment systems present, the facility’s compliance with the permit, etc.
2. KDHE should submit to EPA a timeline of action items for the SOP. This timeline should be submitted with the first quarter response to the SRF.
3. Report to the EPA at each quarter (January 15, April 15, July 15, October 15) the progress made to create comprehensive inspections and example reports illustrating the progress.

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Once the EPA is satisfied that state actions have addressed each deficiency, the EPA will mark this recommendation complete.

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## CWA Element 2 — Inspections

Finding 2-3	Area for State Improvement
<b>Summary</b>	KDHE stormwater complaint/referral investigations do not follow the same format as all other inspections reviewed. It was difficult to determine if KDHE issued the reports to these facilities.
<b>Explanation</b>	<p>The complaint/referral investigations are identified by KDHE as completed compliance inspections.</p> <p>In two instances, KDHE referred the complaints to the governing city for follow-up. However, KDHE did not perform an on-site inspection nor was a response from KDHE sent to the facility. The file is unclear if the City's response returned the facility to compliance.</p> <ul style="list-style-type: none"><li>- Persimmon Pointe Subdivision</li><li>- Riverview Hills Subdivision</li></ul> <p>The complaint investigations viewed the facility's compliance from the public right-of-way and found compliance issues. KDHE did not return to perform a full compliance inspection such as reviewing SWPPP documentation, self-inspections, etc.</p> <ul style="list-style-type: none"><li>- Linn Valley Lakes WW System Improvements</li><li>- Southfork Commercial Addition, aka 47<sup>th</sup> St. South and KS Turnpike</li><li>- 23<sup>rd</sup> and Iowa Geometric Impv.</li></ul> <p>The EPA found 11 instances where the results of the investigation are not memorialized with an inspection report that follows that same format as the other 42 inspections reviewed. Additionally, EPA could not be determine if an official report was sent to these 11 facilities. EPA found that a portion of the subject facilities are notified of the investigations via phone or email but not in an official KDHE letter.</p> <ul style="list-style-type: none"><li>- 13609 Riverview<ul style="list-style-type: none"><li>o KDHE determined facility not subject to stormwater regulations</li><li>o Complaint/referral form completed</li><li>o Unknown if sent to facility</li><li>o KDHE contacted site via phone</li></ul></li><li>- 23<sup>rd</sup> and Iowa Geometric Impv.<ul style="list-style-type: none"><li>o Noncompliance found</li><li>o Complaint/referral form completed</li><li>o Unknown if sent to facility</li><li>o KDHE sent email to facility</li></ul></li></ul>

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- AG Auto Detailing
    - o KDHE determined facility not subject to industrial stormwater regulations
    - o Complaint/referral form completed
    - o Unknown if sent to facility
  - Coffeyville Nitrogen Resources Fertilizer
    - o Noncompliance found
    - o Complaint/referral form completed
    - o KDHE contacted facility via phone
  - Holton Elementary School
    - o Complaint/referral form not completed
    - o Respondent followed-up with email after the inspection
    - o No information to determine if KDHE issued any notice of compliance issues
  - Lawrence Sewer Expansion
    - o Complaint/referral form completed
    - o Unknown if sent to facility
    - o KDHE sent email to facility
  - Linn Valley Lakes WW System Improvements
    - o Complaint/referral form completed
    - o Unknown if sent to facility
  - Martin Schaal
    - o KDHE determined facility was in compliance
    - o Complaint/referral form completed
    - o Unknown if sent to facility
  - Oak Grove Elementary
    - o Noncompliance found
    - o Complaint/referral form completed
    - o Unknown if sent to facility
  - Southfork Commercial Addition
    - o Noncompliance found
    - o No complaint/referral form completed
    - o Unknown if sent to facility
  - Zeremba Property
    - o Noncompliance found
    - o Complaint/referral form completed
    - o Unknown if sent to facility

The 2014 EPA Compliance Monitoring Strategy (CMS) describes a reconnaissance inspection as an approved method to quickly identify if a facility is operating within permit requirements. The EPA SRF review found that the complaint/referral investigations did not follow a similar format as other facility inspections. If these types of compliance reviews are to be considered a wholly separate type of inspection, the EPA suggests KDHE clearly define these inspections within their guidance documents.

	<p>The EPA does believe that if a facility was considered to be in noncompliance, KDHE should, send an official letter to the facility notifying them of their noncompliance. However, if the reconnaissance inspection reveals compliance issues, a full compliance evaluation or a notice of noncompliance, plus a requirement to return to compliance and the submission of compliance documentation, should be issued to the facility following the complaint investigation.</p>
<b>Relevant metrics</b>	Metric general falls under 6a
<b>State response</b>	<p>KDHE concurs with this observation as stormwater inspections have been conducted primarily on a “complaint-driven basis” as is noted in the current “Work Plan”. KDHE has hired a Senior Environmental Employee (SEE) with construction and inspection experience to assist the state in developing a construction stormwater inspection protocol, pilot the protocol, and develop a matrix to identify high priority construction stormwater permits for inspection.</p> <p>As KDHE develops and tests its inspection protocol and matrix, KDHE will develop a process that will include notifying the facility, identifying when a full compliance inspection is warranted, a notice of noncompliance or compliance following a full evaluation and steps to return to compliance and provided to the facility. The inspection protocol could include the numerous minor problems such as specifically identifying violations as violations and making sure that each violation has a correction date or at least a date for them to report back to the district with a progress report.</p> <p>The protocol and procedures will be included in the Inspection Report Guidance document to be developed by KDHE.</p>
<b>Recommendation</b>	<p>KDHE should ensure that if complaint investigations are conducted, the process is clearly defined by protocols and guidance.</p> <ol style="list-style-type: none"> <li>1. KDHE should ensure that the SOP, developed for Finding 2-2, includes and clearly explains the complaint/referral requirements and process to transmit results to the facility.</li> <li>2. KDHE should submit to EPA a timeline of action items for the SOP. This timeline should be submitted with the first quarter response to the SRF.</li> <li>3. Report to the EPA at each quarter (January 15, April 15, July 15, October 15) the progress made to comprehensively evaluate facility’s that are the subject of complaints and example reports illustrating comprehensive inspections.</li> </ol> <p>Once the EPA is satisfied that state actions have addressed this deficiency, the EPA will mark this recommendation complete.</p>



## CWA Element 2 — Inspections

<b>Finding 2-4</b>	<b>Area for State Attention</b>																	
<b>Summary</b>	KDHE inspections occasionally do not meet the prescribed timeframes for transmittal from BEFs to the BOW.																	
<b>Explanation</b>	<p>The EPA found that the inspection reports reviewed do not meet the timeliness guidance as written on page 3 in the BOW-BEFS Work Plan for FFY 15 (Work Plan). The EPA reviewed 51 total inspection reports. 14 of the 51 inspection reports have dates that exceeded the 20-day deadline described in the work plan. It is unclear if BOW immediately mails the inspection reports once they are received from BEFS. The guidance does not describe this portion of the process. KDHE should update the work plan to clearly define the expectations for the BOW to transmit inspection reports received from BEFS. EPA suggests that this update is memorialized in the SOP that should be created to remedy Findings 2-2 and 2-3 above.</p> <p>The inspection reports that either, could not be determined to have been issued to the facility or did not meet the 20-day deadline are as follows:</p> <ul style="list-style-type: none"> <li>- Topeka North Wastewater Treatment Plant (29 days)</li> <li>- Innovia Films, Inc. (26 days)</li> <li>- City of Coffeyville (26 days)</li> <li>- Wichita #3 Wastewater Plant (36 days)</li> <li>- Bradford Built (28 days)</li> <li>- Salina (26 days)</li> <li>- 23rd &amp; Iowa Geometric Impv. (unknown)</li> <li>- Holton Elementary School (unknown)</li> <li>- New York Elementary School (35 days)</li> <li>- Riverview Hills Subdivision (unknown)</li> <li>- Oak Grove Elementary (unknown)</li> <li>- Zaremba property 31st &amp; Haskell (36 days)</li> <li>- Southfork Commercial Addition (unknown)</li> <li>- Green Energy (unknown)</li> </ul> <p>*Update*</p> <p>EPA explanation and metrics revised based on state response.</p>																	
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th data-bbox="477 1690 1024 1759">Metric ID Number and Description</th> <th data-bbox="1024 1690 1101 1759">Natl Goal</th> <th data-bbox="1101 1690 1203 1759">Natl Avg</th> <th data-bbox="1203 1690 1279 1759">State N</th> <th data-bbox="1279 1690 1356 1759">State D</th> <th data-bbox="1356 1690 1455 1759">State % or #</th> </tr> </thead> <tbody> <tr> <td data-bbox="477 1759 1024 1843">6b Inspection reports completed within prescribed timeframe</td> <td data-bbox="1024 1759 1101 1843">100%</td> <td data-bbox="1101 1759 1203 1843"></td> <td data-bbox="1203 1759 1279 1843">37</td> <td data-bbox="1279 1759 1356 1843">51</td> <td data-bbox="1356 1759 1455 1843">72.5%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	6b Inspection reports completed within prescribed timeframe	100%		37	51	72.5%					
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<b>State response</b>	The gravity of this issue escapes us; it would be helpful if EPA would document the time span of the 15 specific inspections between conducting the inspections to completing the report. This would allow BOW to identify if the issue is inspector-centric, geographic in nature or systemic over all six districts, as well as note whether the tardiness was one day, several days or a number of weeks. Even though it's essentially guidance, the 20 working day timeline has been reiterated with District Office staff during joint BOW-BEFS meetings and the 2017 Work Plan will emphasize the point as well as establish a notification and documentation process for inspection reports lagging past the deadline.
<b>Recommendation</b>	

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## CWA Element 3 — Violations

<b>Finding 3-1</b>	<b>Area for State Improvement</b>																																																
<b>Summary</b>	KDHE QNCR SNC statements are not added to facility files to define significant noncompliance information. SEV codes are not used.																																																
<b>Explanation</b>	<p>The review of the violations found in the KDHE inspection reports identified that KDHE does not consistently identify SNC. Inconsistent SNC determinations were found at Innovia Films, Parsons WWTF, and Wellington WWTF.</p> <ul style="list-style-type: none"> <li>- Innovia Films - Facility violated effluent limits in two consecutive quarters, yet the inspection report stated “No issues or deficiencies.” No information in file to how KDHE responded to SNC violation.</li> <li>- Wellington WWTF - SNC reported to ICIS for May 2015 ammonia violation, no information in file to how KDHE responded to SNC violation.</li> </ul> <p>The EPA did not find any uses of SEV codes in the official files.</p> <p>*Update*</p> <ul style="list-style-type: none"> <li>- EPA summary and recommendation revised based on state response.</li> <li>- KDHE’s comments below identify that SNC determinations are made by the Topeka BOW office. The inspection reports would not identify instances of SNC. The KDHE completes SNC determinations and submits them to EPA in the QNCR. KDHE has committed below to add all QNCRs to facility files where SNC occurs.</li> </ul>																																																
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<b>State response</b>	Kansas does identify facilities that are in Significant Noncompliance but																																																

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agrees, Kansas does not use the SEV code. Kansas defines SNC in our Water Enforcement Guidance. Kansas uses ongoing review of DMR data, the EPA QNCR process and the inspection process to identify, document and report SNC violations. All determinations of SNC and the agency's response to SNC violations are made by, and communicated to the permittee by the Topeka office.

Because SNC determinations are made from findings in the Topeka office, they are not necessarily part of inspection reports, thus the context of this issue is incomplete if EPA strictly relied on inspection reports to identify SNC facilities.

Single Event Violations (SEV) discovered during the inspection are documented by the district office inspectors as part of their inspection report. These are minor violations that are expected to be tracked by the district office and final reports are completed, typically by a letter to the permittee with a copy to the Topeka office. KDHE does not formally track these minor violations as most incidents are corrected immediately. If the permittee fails to correct the minor violations in a timely manner, the Topeka office is notified and additional action including formal enforcement action is considered. KDHE does not use SEV codes.

KDHE's response to SNC violations listed on the QNCR are reported on the quarterly QNCR sent to EPA. KDHE will send a copy of the appropriate section of the QNCR to the permit file for the identified facility to provide a clear explanation of what action the agency has or will take.

The explanation above for Innovia that stated "No information in file to how KDHE responded to SNC violation" is not believed to be accurate. There was documentation in the file of email correspondence between BOW staff and BEFS staff that had escalated our response to an administrative order status but it was after we had heard back from BEFS that the facility had addressed the issue by ordering and installing parts and the facility had already come back into compliance by meeting permit limits, we decided to not go forward with the administrative order. KDHE stated on the Quarterly Non-Compliance Report (QNCR) to EPA dated June 30, 2015 regarding Innovia Films, Inc., "The facility's main clarifier was down for repairs. The repairs have been completed and the facility has come back into compliance with their permit limits."

The Parsons enforcement order is an EPA issued order and KDHE cannot serve as proxy for EPA to enforce its own orders. Both Parsons and Pittsburg have shown up on the QNCR reports for several years because of EPA issued orders. In KDHE's responses to the QNCRs, KDHE has requested that EPA take such actions as are necessary to remove these facilities from the QNCR. KDHE cannot access the EPA enforcement

	<p>action in ICIS-NPDES and has no authority to enforce EPA’s orders.</p> <p>KDHE stated on the Quarterly Non-Compliance Report (QNCR) to EPA dated October 2, 2015, “Wellington experienced higher than average rainfall during May which have caused wash out of some of their biological mass that carried into June. They were back into compliance by the end of June.”</p> <p>KDHE does not agree with EPA’s recommendation based upon KDHE’s use of SNC and non-use of SEV coding in inspections. KDHE already uses EPA’s definition of SNC and responds to the QNCR as required by federal law. KDHE handles single event violations either through informal communications (letters, e-mails, inspection reports, technical assistance and training referrals) or formal enforcement actions. Both methods are already documented. The district personnel have no access to any ICIS-NPDES codes. The additional use of SEVs merely for EPA accounting purposes adds additional burdens on the inspection staff with no additional protection for the environment or improvement in human health. KDHE does not have the software or manpower to complete a task that does not promote its primary responsibility.</p>
<p><b>Recommendation</b></p>	<p>KDHE should ensure QNCR information is added to facility file. KDHE should report any SEV codes used for facilities that are in SNC. Report annually to EPA on or before October 15.</p> <p>Once the EPA is satisfied that state actions have addressed this deficiency, the EPA will mark this recommendation complete.</p>

**CWA Element 3 — Violations**

<b>Finding 3-2</b>	<b>Area for State Improvement</b>												
<b>Summary</b>	Compliance evaluation inspections do not identify permit violations.												
<b>Explanation</b>	<p>The EPA selected 51 reports to review. There are 14 instances where a compliance determination was not consistent to the report findings.</p> <p>KDHE inspection found noncompliance yet did not declare the facility to be noncompliant with their permit. Often deficiencies of the permit are identified as a lesser item to be completed rather than an item of noncompliance and violation of the permit terms. In some instances, the cover letter to the facility identifies that the corrective action is a ‘Recommendation’ rather than an ‘Issue/Violation.’ Examples are found in the following files:</p> <ul style="list-style-type: none"> <li>- Alden Wastewater Treatment Plant</li> <li>- BNSF Railway Company Newton Yard</li> <li>- Garden City WWTP</li> <li>- Innovia Films</li> <li>- Topeka North WWTP</li> </ul> <p>The KDHE Wastewater Enforcement Guidance, effective date December 9, 1997 (WEG), specifies that if a violation of the permit is found, a ‘Warning’ should be the minimum response from the Bureau of Water (BOW) to the facility. The WEG allows an escalated response, if warranted, such as an Order, Penalty, or AG Referral.</p> <p>*Update*</p> <ul style="list-style-type: none"> <li>- EPA explanation and metrics revised based on state response.</li> <li>- As explained in the KDHE comments below, the minimum response from KDHE would be a ‘Warning.’ EPA explanation revised based on state response.</li> </ul>												
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7e Inspection reports reviewed that led to an accurate compliance determination	100%		37	51	72.5%								
<b>State response</b>	The above explanation regarding the KDHE Wastewater Enforcement Guidance, effective date December 9, 1997 (WEG) is not believed to be accurate. A Letter of Warning not a Directive should be the minimum response from the Bureau of Water (BOW) to the facility. See the WEG direct statements below.												

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**“Warning:** Warning actions can consist of telephone contacts or letters. These are brief; politely worded contacts stating the problem and requesting correction within a definite time frame. Mention of more severe enforcement action is not necessarily made with warning actions.

**Directives:** Directives are firmly worded letters, sent via certified mail, stating the problem and directing correction of the problem. Directives can be used to respond quickly to problems, which in KDHE's opinion, will be corrected if the responsible party is made aware of the issue. Directives can be used to help correct continuing minor problems which do not appear to warrant an administrative order for correction. As with verbal and written communications, directives serve as a basis for orders if the problem is not corrected.”

KDHE routinely uses Letters of Warning in dealing with permit violations but has rarely utilized Directives. KDHE plans on applying the ‘Directive’ option in the future for facilities lagging in response.

KDHE is developing an Inspection Report Guidance Document which will serve the purpose of a SOP and address recommendation #1 below.

The above findings for CJ Feeders and Meier Dairy of Palmer, Inc. are inaccurate. Refer to the State Response in Finding 2-2.

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**Recommendation**

The KDHE inspections identify violations of the permit, however, the report writer does not call the deficiency of the permit a violation. If a facility does not meet the terms of the permit, the facility is out-of-compliance and should have each instance of noncompliance identified as a violation of the permit.

1. The SOP developed for Findings 2-2 and 2-3 should include guidance details for inspection report writers that clearly identifies the expectations for when a permit requirement is not being followed.
2. The KDHE should submit to EPA a timeline of action items for this SOP. This timeline should be submitted with the first quarter response to the SRF.
3. Report to the EPA at each quarter (January 15, April 15, July 15, October 15) the progress made to create comprehensive inspections and example reports illustrating the progress.

Once the EPA is satisfied that state actions have addressed this deficiency, the EPA will mark this recommendation complete.

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## CWA Element 3 — Violations

Finding 3-3	Area for State Improvement
<b>Summary</b>	Stormwater complaint investigations are not sent to the facility, therefore, no attempt to correct noncompliance can be made by the facility.
<b>Explanation</b>	<p>The EPA selected 51 inspection reports to review. There are 9 instances where a stormwater complaint investigation resulted in noncompliance being found. EPA could not determine if the complaints/referral results are sent to the facility nor did the files contain information that illustrated how or if the facility returned to compliance.</p> <p>Stormwater inspection reports identified compliance issues and it cannot be determined if the facility received a KDHE compliance determination and subsequently returned to compliance.</p> <ul style="list-style-type: none"><li>- 23<sup>rd</sup> and Iowa Geometric Impv.</li><li>- Coffeyville Nitrogen Resources Fertilizer</li><li>- Holton Elementary School</li><li>- Lawrence Sewer Expansion</li><li>- Oak Grove Elementary School</li><li>- Persimmon Pointe</li><li>- Riverview Hills Subdivision</li><li>- Southfork Commercial Addition</li><li>- Zeremba Property</li></ul> <p>The official file should contain all information regarding the facility's compliance with the regulations. The BOW-BEFS Work Plan for FFY 15 discusses on page 5, "Follow up correspondence regarding correction of deficiencies noted in the original inspection is to be forwarded when deficiencies are resolved." The Work Plan does not discuss a similar process for complaints. The official file did not contain information that illustrated the facilities returned to compliance. It is not known how the regional offices track this information, as there is no cataloging system to track missing required submittal documents.</p>
<b>Relevant metrics</b>	Generally falls under Metric 7e
<b>State response</b>	KDHE agrees that the status and distribution of documentation concerning stormwater complaint investigations needs to be improved. However, we disagree that the file being void of the investigation report being mailed to facility equates to the facility remaining out of compliance. In many



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cases, for these types of complaints, on-site direction, phone calls and/or e-mails are frequently provided and subsequently improvements are made and follow-up inspections conducted resulting in compliance being reestablished.

KDHE has hired a Senior Environmental Employee (SEE) with construction and inspection experience to assist the state in developing a construction stormwater inspection protocol, pilot the protocol, and develop a matrix to identify high priority construction stormwater permits for routine inspection. This employee will also work to develop a procedure for managing complaints, and this will be incorporated in the Inspection Report Guidance document being developed by KDHE.

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**Recommendation**

If a facility does not meet the terms of the permit, the facility is out-of-compliance and should have each instance of noncompliance identified as a violation of the permit. The facility should be notified of their noncompliance with the requirement to return to compliance:

1. KDHE should incorporate complaints/referrals process into the SOP being developed for Findings 2-2 and 2-3 should include guidance details for inspection report writers that clearly identifies the expectations for when a permit requirement is not being followed and process to transmit findings to the facility.
2. The KDHE should submit to EPA a timeline of action items for this SOP. This timeline should be submitted with the first quarter response to the SRF.
3. Report to the EPA at each quarter (January 15, April 15, July 15, October 15)
  - a. the progress made to create comprehensive inspections and example reports illustrating the progress;
  - b. list of complaint/referrals investigations that have been conducted;
  - c. the date the complaint/referral results are sent to the facility; and,
  - d. example investigations illustrating this change.

Once the EPA is satisfied that state actions have addressed this deficiency, the EPA will mark this recommendation complete.

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### CWA Element 3 — Violations

Finding 3-4	Area for State Improvement
<b>Summary</b>	KDHE official files do not document a facility's return to compliance.
<b>Explanation</b>	<p>The inspection reports documented where the inspector declared that the facility must make corrective actions to correct noncompliance yet the file did not contain any follow-up actions by the facility to illustrate that corrective actions occurred.</p> <ul style="list-style-type: none"><li>- 23<sup>rd</sup> and Iowa Geometric Impv.</li><li>- Great Bend Feeding, Inc.</li><li>- Landon Court Addition</li><li>- Oak Grove Elementary School</li><li>- Sunflower Pork, Inc.</li></ul> <p>The official file should contain all information regarding the facility's compliance with the regulations. The BOW-BEFS Work Plan discusses on page 5, "Follow up correspondence regarding correction of deficiencies noted in the original inspection is to be forwarded when deficiencies are resolved." The official file did not contain information that illustrated the facilities returned to compliance.</p>
<b>Relevant metrics</b>	Generally falls under metric 7e
<b>State response</b>	<p>KDHE does track facilities in non-compliance and monitors their progress to achieve compliance.</p> <p>KDHE agrees that improvement is warranted to document when a facility returns to compliance and placing the document in the proper files. The 2017 BOW-BEFS Work Plan will have provisions to assure documentation of facilities returning to compliance are provided to BOW and placed in the official files.</p>
<b>Recommendation</b>	<p>KDHE should ensure that if a facility is required to submit corrective actions, the items are submitted, reviewed, and ensure the facility is in compliance. If these documents are not submitted, KDHE should include information in the file that reflects the missing data and the agency's follow-up actions.</p> <ol style="list-style-type: none"><li>1. KDHE should implement the process described in the Work Plan. If this process needs updating, BOW and BEFS should create a clear process for this action. This process should be included in the SOP that should be developed for finding 2-2 and 2-3.</li></ol>

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2. The KDHE should submit to EPA a timeline of action items. This timeline should be submitted with the first quarter response to the SRF.
  3. Report to the EPA at each quarter (January 15, April 15, July 15, October 15) the progress made to catalog and track noncompliance and return to compliance reports.

Once the EPA is satisfied that state actions have addressed each deficiency, the EPA will mark this recommendation complete.

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**CWA Element 4 — Enforcement**

<b>Finding 4-1</b>	<b>Area for State Improvement</b>					
<b>Summary</b>	Informal enforcement appears to be issued from BEFS rather than BOW.					
<b>Explanation</b>	<p>It is unclear how Kansas determines when enforcement should be initiated. EPA found in a portion of the inspection reports that regional offices occasionally require facilities to respond within a specific time period. These responses are a result of non-effluent deficiencies found during the inspection. These appear to be informal actions.</p> <p>The EPA file review found instances where KDHE cover letter to the inspection performs the function of an informal or letter of warning type action.</p> <ul style="list-style-type: none"> <li>- Alden Wastewater Treatment Plant</li> <li>- Milford Fish Hatchery</li> </ul> <p>Additionally, the BEFS CAFO inspection cover letters use more direct terminology, “Out-of-Compliance” when describing deficiencies. These letters are not used by any other inspection sector.</p> <ul style="list-style-type: none"> <li>- Great Bend Feeding, Inc.</li> <li>- Haw Ranch Feedlot II, LLC.</li> <li>- Spring Creek Farm</li> <li>- Sunflower Pork, Inc.</li> </ul> <p>The KDHE WEG, effective date December 9, 1997, specifies that if a violation of the permit is found, a ‘Warning’ should be the minimum response from the Bureau of Water (BOW) to the facility. The WEG allows an escalated response, if warranted, such as an Order, Penalty, or AG Referral. However, the WEG was developed for the Bureau of Water, not the BEF group. The EPA found that the ‘Out-of-Compliance’ letters are originating from BEFS. The WEG only identifies the BOW as the department to issue any enforcement type actions. The WEG does not provide the BEF group the authority to issue enforcement actions.</p> <p><b>*Update*</b> As explained in the KDHE comments above (Finding 3-2), the minimum response from KDHE would be a ‘Warning.’</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>

	<p>9a Percentage of enforcement responses that return or will return source in violation to compliance</p> <p>100%      12    15    80%</p>
<p><b>State response</b></p>	<p>Historically, BEFS employees had been a part of BOW until 1993. At that time the district office inspectors became their own bureau. The WEG was not updated in 1997 to reflect this administrative change. Informal enforcement may be issued from either BEFS or BOW depending on the nature of the violations, how the violations are discovered and which bureau is best able to handle the follow up.</p> <p>The WEG has been updated to clearly authorize BEFS to issue Letters of Warning as well as non-compliance notice cover letters which accompany an inspection.</p> <p>BOW is drafting an Inspection Report Guidance Document which will offer guidance to BOW and BEFS on how the bureaus respond to effluent and non-effluent violations.</p> <p>Recommendation #1 below recommends that KDHE update existing training manuals for inspectors, but does not state what additional training is needed. Additional information is requested, as this particular finding was related to Enforcement – specifically informal enforcement.</p>
<p><b>Recommendation</b></p>	<p>KDHE inspections appear to have inconsistent follow-up actions when permit violations are found.</p> <ol style="list-style-type: none"> <li>1) Submit to the EPA in the 1<sup>st</sup> quarter response to EPA, an updated standard operation procedure or operation manual which will include guidance to inspectors performing compliance inspections. The manual should include requirements and/or descriptions of how the BEFS and BOW groups work to respond to both effluent and non-effluent violations.</li> <li>2) KDHE should report to the EPA on a quarterly basis (January 15, April 15, July 15, and October 15) the steps taken to increase consistent approaches to noncompliance when found by KDHE inspectors.</li> <li>3) The KDHE should submit to EPA a timeline of action items, including a statement of whether KDHE determines that additional training is needed to update personnel of revised guidance documentation. This timeline should be submitted with the first quarter response to the SRF.</li> <li>4) KDHE should report to the EPA on a quarterly basis (January 15, April 15, July 15, and October 15) the process to update the WEG.</li> </ol> <p>Once the EPA is satisfied that state actions have addressed this deficiency, the EPA will mark this recommendation complete.</p>

## CWA Element 4 — Enforcement

<b>Finding 4-2</b>	<b>Area for State Improvement</b>						
<b>Summary</b>	KDHE enforcement actions do not result in a return to compliance.						
<b>Explanation</b>	<p>The EPA reviewed 15 files where enforcement was taken by KDHE. The review found that 3 out of the 15 files did not result in a return to compliance.</p> <ul style="list-style-type: none"> <li>- Johnson County Timber Wolf Estates- See Finding 4-2.2</li> <li>- Great Bend Feeding - “Out-of-compliance” letter identified two items to be corrected, the facility only corrected one item. Additionally, no information on escalation of second item could be found within the facility file.</li> <li>- Haw Ranch Feedlot II - Facility is missing compliance schedule milestones</li> </ul> <p>*Update* EPA explanation revised based on state response.</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>
	10a1 Major facilities with timely action as appropriate			11.8%	0	0	0
	10b Enforcement responses reviewed that address violations in an appropriate manner				12	15	80%
<b>State response</b>	<p>See State Response Finding 4-2.2 to address Alden Wastewater Plant and Johnson County Timber Wolf Estates.</p> <p>KDHE concurs the enforcement actions for Great Bend Feeding and Haw Ranch Feedlot II did not return the facilities to full compliance.</p> <p>Great Bend Feeding was issued a Consent Order 07-E-0002 on July 10, 2007. At the time of the EPA’s review the facility had not been placed back into compliance by KDHE for the remaining outstanding compliance item, whole pond seepage test for waste storage pond 2. However, the other twenty-one actions required by the Consent Order had been completed. KDHE received the whole pond seepage test results for waste storage pond 2 on March 10, 2016, but did not review the results until August 24, 2016 to ensure they met KDHE’s requirements to minimize seepage. The results do meet KDHE’s requirements and the facility was placed in compliance. Whole pond seepage test results were previously submitted for waste storage pond 2 on July 1, 2007 and February 10, 2014;</p>						

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however, those results exceeded KDHE’s requirements to minimize seepage. Therefore, the facility was required to modify the structure, re-compact the liner and re-test the structure.

Haw Ranch Feedlot II has completed six of the ten actions required by the Consent Agreement 11-E-0003BOW issued September 9, 2011. KDHE concurs the outstanding required actions have missed the established compliance deadline and to date have not been completed; the facility remains out-of-compliance with their permit.

BOW is drafting an Inspection Report Guidance document which will offer guidance to BOW and BEFs on how the Bureau’s escalate violations associated with not complying with terms in a formal enforcement action.

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**Recommendation**

See Finding 4-2.1 and 4-2.2 on the next pages

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## CWA Element 4 — Enforcement

<b>Finding 4-2.1</b>	<b>Area for State Improvement</b>
<b>Summary</b>	Kansas Rural Water Association (KRWA) referral process is unclear as it relates to BOW enforcement.
<b>Explanation</b>	<p>The KDHE uses the referral process to require facilities to meet permit limits. The KDHE cannot refer facilities if a formal action is initiated. The EPA reviewed four referrals initiated by KDHE.</p> <ol style="list-style-type: none"> <li>1. City of Hartford <ul style="list-style-type: none"> <li>- City had issues with I&amp;I as reported by facility contact buried within the inspection checklist.</li> <li>- The inspection report does not specifically identify I&amp;I issues as an ‘Issue/Deficiency,’ yet the facility is referred to KRWA for assistance with I&amp;I.</li> </ul> </li> <li>2. Nickerson Wastewater Treatment Plant <ul style="list-style-type: none"> <li>- Facility was referred in November 2014 yet continued to experience effluent violations until December 2015 at which time the EPA inspected the facility.</li> </ul> </li> <li>3. Goessel Wastewater Treatment Plant <ul style="list-style-type: none"> <li>- Unknown what precipitated the facility being referred in January 21, 2015.</li> <li>- Facility identified compliance issues by December 2015.</li> <li>- Unknown if facility is now in compliance.</li> </ul> </li> </ol> <p>It is unknown how long a facility can be a part of the referral process. The WEG specifies that if a violation of the permit is found, a ‘Directive’ should be the minimum response from the BOW to the facility. The WEG allows an escalated response, if warranted, such as an Order, Penalty, or AG Referral. The referral process to KRWA is not described in the WEG.</p> <p>*Update*</p> <ul style="list-style-type: none"> <li>- EPA recommendation revised based on state response.</li> <li>- As explained in the KDHE comments above (Finding 3-2), the minimum response from KDHE would be a ‘Warning.’</li> </ul>
<b>Relevant metrics</b>	Continuation for review metrics 10a1 and 10b
<b>State response</b>	KRWA is not used in lieu of formal enforcement actions. KDHE – Bureau of Water uses the KRWA as a supplement to the BEFS inspectors to assess situations in which compliance can be readily achieved through technical assistance without the need for formal enforcement. This is consistent with our WEG. KRWA, under the direction of BOW, assists BOW-selected



	<p>facilities that need more help than what can be provided by BEFS staff. The KRWA personnel are able to spend more time assessing the situation and providing guidance to the facility. The KRWA personnel conduct inspections, write reports, identify violations and make recommendations for improvements the same as the BEFS inspectors. However, because they are not a regulatory agency, their reports are not considered informal enforcement documents unless the BOW provides regulator status normally via a cover letter or by a letter to the permittee containing the KRWA information. In cases where compliance has not been achieved or will not be timely achieved, BOW re-assumes control of the situation and issues the appropriate enforcement action to achieve timely compliance.</p> <p>KDHE made an effort to make this clearer in the updated WEG document submitted to EPA at the time of the SRF response.</p> <p>KDHE agrees that better explanations could have been provided to explain why certain formal or informal actions were taken and follow up indicating when the permittee has returned to compliance. KDHE and KRWA close a referral by email and track the process with an excel database that is not uploaded to ICIS-NPDES. Some of these documents did not reach the permit files. KDHE will review this process.</p>
<p><b>Recommendation</b></p>	<p>KDHE should escalate its enforcement response if a facility is not coming into compliance.</p> <ul style="list-style-type: none"> <li>• KDHE should formalize the description of the escalation policy for facilities on the KRWA referral list and update the WEG to include this process.</li> </ul> <p>Once the EPA is satisfied that state actions have addressed this deficiency, the EPA will mark this recommendation complete.</p>

## CWA Element 4 — Enforcement

<b>Finding 4-2.2</b>	<b>Area for State Improvement</b>
<b>Summary</b>	KDHE enforcement escalation process is unclear.
<b>Explanation</b>	<p>The EPA reviewed one file where KDHE action remedied the facility's noncompliance without the facility performing any actions to return to compliance.</p> <p>Johnson County Timber Creek Estates,</p> <ul style="list-style-type: none"><li>- KDHE changed the E. Coli limit from a permit limit to a monitoring requirement. NPDES permit limits cannot be modified by an enforcement action.</li></ul> <p>KDHE should ensure that the facility is responsible for their return to compliance.</p> <p>*Update* EPA explanation and recommendation revised based on state response.</p>
<b>Relevant metrics</b>	Continuation for review metrics 10a1 and 10b
<b>State response</b>	<p>EPA misinterpreted the enforcement actions at the city of Alden. The formal order was closed when the actions required by the order were completed and the City was in compliance with their NPDES permit limits for eleven months. When the City failed to remain in compliance, KDHE referred the facility to KRWA to do an evaluation determining why the previous actions did not keep the facility in compliance and what actions were necessary to do so.</p> <p>Johnson County Timber Creek Estates - Years ago EPA disapproved of KDHE allowing a facility to continue to occasionally go into noncompliance under its permit while it was upgrading its plant. At that time, EPA suggested KDHE issue an enforceable order relaxing the permittee's limit so it could remain in consistent compliance during the construction period. At that time according to EPA, NPDES permit limits can be modified by an enforcement action. NPDES permits cannot be modified with limits in violation of water quality standards or secondary standards. Johnson County Timber Creek Estates is a lagoon for which there is essentially nothing that can be done to change the level of e. coli discharges short of adding a chemical disinfection treatment process to the lagoon. Johnson County agreed to shorten the schedule for removing the lagoon system from service by connecting to a mechanical plant with</p>

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	<p>disinfection which is the better long term environmental and public health option favored by KDHE.</p> <p>KDHE will submit an updated WEG by January 15th, 2017.</p>
<b>Recommendation</b>	<p>KDHE should escalate its enforcement response if a facility is not coming into compliance.</p> <ul style="list-style-type: none"><li>• KDHE should submit to the EPA an updated WEG that describes the escalation policy for facilities that are not coming back into compliance. Submit the updated WEG in the first quarterly update (January 15, April 15, July 15, and October 15).</li></ul> <p>Once the EPA is satisfied that state actions have addressed this deficiency, the EPA will mark this recommendation complete.</p>

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**CWA Element 5 — Penalties**

<b>Finding 5-1</b>	<b>Area for State Improvement</b>																	
<b>Summary</b>	Kansas penalty calculations do not document 1997 WEG factors.																	
<b>Explanation</b>	<p>The EPA selected three actions where KDHE sought or will seek penalties. The three facilities are Topeka North Wastewater Treatment Plant, USD #288 Central Heights School, Phillips Dairy,</p> <ol style="list-style-type: none"> <li>1. Phillips Dairy: <ul style="list-style-type: none"> <li>- Economic benefit not considered in the penalty documentation.</li> <li>- The penalty memo does not use the factors identified in the 1997 WEG.</li> </ul> </li> <li>2. Topeka North WWTP: <ul style="list-style-type: none"> <li>- Economic benefit not considered in the penalty documentation.</li> <li>- Documentation of the penalty appeared to indicate that the violations incurred by the facility should have resulted in a larger penalty than the one that appeared in the documentation.</li> <li>- Guidance identifies that each violation should be assessed \$2,000 per day per violation. The calculation identified two violations resulting in a \$10,000 penalty.</li> </ul> </li> <li>3. USD #288 Central Heights School: <ul style="list-style-type: none"> <li>- Economic benefit not considered in the penalty documentation.</li> <li>- The penalty memo does not use the factors identified in the 1997 WEG.</li> </ul> </li> </ol> <p>Gravity and economic benefit is a persistent issue from Round 2 and Round 1. This was noted as an area for state improvement in the Round 2 program review, “it appears the State is not taking gravity and economic benefit into account when calculating penalties.” The item was closed in March 2012 after a review of penalty actions worksheets that identified economic benefit as a consideration. The state process has not been implemented and/or become standard practice.</p> <p>The EPA recommends reviewing the penalty model usage training available online: <a href="https://www.epa.gov/enforcement/penalty-and-financial-models">https://www.epa.gov/enforcement/penalty-and-financial-models</a></p> <p>*Update* EPA explanation and recommendation revised based on state response.</p>																	
<b>Relevant metrics</b>	<table border="1"> <thead> <tr> <th data-bbox="464 1738 1015 1852">Metric ID Number and Description</th> <th data-bbox="1015 1738 1096 1852">Natl Goal</th> <th data-bbox="1096 1738 1177 1852">Natl Avg</th> <th data-bbox="1177 1738 1258 1852">State N</th> <th data-bbox="1258 1738 1339 1852">State D</th> <th data-bbox="1339 1738 1432 1852">State % or #</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #							Natl Goal	Natl Avg	State N	State D	State % or #
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													

	11a Penalty calculations reviewed that consider and include gravity and economic benefit	100%	0	3	0
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**State response**

The explanation above stated:

*“A total of \$10,000 for each of the penalties was calculated. The total of \$10,000 appears to be common number regardless of violations that the facility incurred.”*

This is not believed to be accurate, although both Topeka North WWTP and Phillips Dairy did have penalties assessed for \$10,000, USD #288 Central Heights penalty was \$2,000.

The Wastewater Enforcement Guidance is a guidance document. Its purpose is to provide guidance to assure that penalties are appropriate for the violation(s), consistent for the same violations, and will lead to resolution of the problem as soon as possible.

KDHE does use the economic benefit in determining the penalties, however, in many cases, there is no economic benefit or even a negative economic benefit. KDHE can improve on documenting this consideration and proposes to do so in the worksheet recommended below.

KDHE does provide an explanation of the penalty calculation for each case. KDHE does agree that it needs to be more consistent in explaining the factors chosen to arrive at the assessed penalty.

KDHE will submit to EPA the Calculation Worksheet recommended and an updated WEG before January 15<sup>th</sup>, 2017.

**Recommendation**

KDHE should ensure that the WEG policy document is used. The KDHE should ensure that any deviation from the policy document should be memorialized in the penalty justification.

1. KDHE should submit to the EPA actions that will occur to address penalty calculations. KDHE should develop a penalty calculation worksheet with each penalty element listed, including gravity, economic benefit, and multiple violations. KDHE should incorporate the calculation worksheet into the WEG to be submitted to EPA for review. Submit the changes to the EPA with the first quarterly update (January 15, April 15, July 15, and October 15).
2. Report to the EPA at each quarter (January 15, April 15, July 15, October 15) the progress made to accurately document penalty determinations.

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3. Submit to EPA at each quarter (January 15, April 15, July 15, October 15) penalty calculation worksheets that define violations, gravity, economic benefit, etc.

Once the EPA is satisfied that state actions have addressed this deficiency, the EPA will mark this recommendation complete.

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**CWA Element 5 — Penalties**

<b>Finding 5-2</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	KDHE documents rationale for reducing the initial penalty.					
<b>Explanation</b>	KDHE adequately documents rationale for reducing an initial penalty and the files reviewed included the appropriate documentation. KDHE record penalty collection and the files reviewed demonstrated the penalty was collected.					
<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%		1	1	100%
	12b Penalties collected	100%		1	1	100%
<b>State response</b>	No Response.					
<b>Recommendation</b>						

# Appendix

## File Review Summaries for the SRF Review

### *Core Program-Majors*

#### **Innovia Films Inc. (KS0003204)**

Inspection date(s) and # days to report: March 17, 2016 (26)

Inspection notes: Time missing from inspection report. The inspector did not create a line drawing for the facility although did describe the processes. Inspector did not note the effluent exceedances that occurred prior to the inspection. Inspection did not define effluent exceedances as an 'Issue/Deficiency.' Identified these permit violation as a 'Recommendation.' The facility had a spill incident where caustic material was pumped to a manhole that discharged to the river. Facility was not notified in the inspection report of the permit violation.

Enforcement action date(s): N/A

Enforcement action notes: N/A

Other notes: Inspector performed an industrial stormwater inspection.

#### **Topeka North WWTP (KS0042714)**

Inspection date(s) and # days to report: 4/17/15 (29)

Inspection notes: The inspection report contained minimal narrative and no supporting documentation. An issue with high strength BOD being received at the WWTP causing sludge to go over the primary clarifier weirs was discussed in the report. The lift station check-list for the 4/17/15 inspection was not completely filled out, nor were comments present when an issue (not all pumps are operations) was identified. No compliance determination was made in the inspection report.

Enforcement action date(s): 11/6/15 (order); 11/27/15 (penalty)

Enforcement action notes: A major SSO (3 MG of untreated sewage discharged to the Kansas River) occurred on April 26-28, 2015 (9 days after the inspection) reportedly due to a power failure at the South Kansas River pump station. SCADA also failed, so notification was not received at the WWTP nor was the back-up power turned on. The administrative order required the city to update/upgrade SCADA and develop a downstream emergency contact plan. At least two major drinking water intakes are downstream that were impacted by this overflow. KDHE issued a penalty of \$10,000 for this violation. "K.S.A. 65-170d states in pertinent part: Any person who violates: (1) Any term or condition of any sewage discharge permit issued pursuant to K.S.A. 65-165 and amendments thereto; (2) any effluent standard or limitation or any water quality standard or other rule or regulation promulgated pursuant to K.S.A. 65-171 d and amendments thereto... shall incur, in addition to any other penalty provided by law, a civil penalty in an amount of up to \$10,000 for every such violation. In the case of a continuing violation, every day such violation continues shall, for the purpose of this act, be deemed a separate violation." In accordance with Kansas regulations, the penalty could have been at least \$30,000. KDHE cited two violations, "1) failing to properly operate and maintain all facilities and systems of treatment and control which resulted in a direct discharge event that polluted waters of the state; 2) failing to provide an alternative power source sufficient to operate the wastewater control facilities or control pollution and all discharges upon the loss of the primary source of power." KDHE combined the violations into one, failing to provide an alternative



power source. KDHE selected a penalty of \$5,000 per day, but reduced the penalty by 50% for “No loss of fish, habitat, or wildlife *nor creation of a human health hazard*, but potential for same,” then added \$2,500 for the “negligent discharge of sewage into waters of the state.” No economic benefit was calculated. KDHE “determined that a penalty of \$10,000 is appropriate and constitutes an actual and substantial economic deterrent”. EPA ordered the city to install backup power at the lift stations in 2010.

Other notes: The enforcement action and penalty are not in ICIS.

KDHE comments:

During this review, KDHE did not have security clearance to the ICIS-NPDES enforcement action and penalty module. All enforcement information was provided to the EPA Region 7 office to upload the data.

### **Tyson Fresh Meats, Emporia (KS0000817)**

Inspection date(s) and # days to report: 10/16/14 (11)

Inspection notes: The inspection contained narrative comments where necessary. Supporting information was in the file. The report contained information to make a compliance determination.

Enforcement action date(s):

Enforcement action notes:

Other notes:

### **Coffeyville Wastewater Plant (KS0050733)**

Inspection date(s) and # days to report: April 2, 2015 (26)

Inspection notes: Time of inspection not documented. Sequence of plant not identified by inspector and stated that they have been documented in past inspections so do not need to be repeated. Yet, the inspector notes that a SBR was down, no identification of which and where it lies in the process train.

Enforcement action date(s): N/A

Enforcement action notes: N/A

Other notes: Nutrient removal goals for the facility were not met. These were not identified as an Issue/Deficiency only as a Recommendation. The goals are not limits so recommendation seems appropriate.

### **Parsons Wastewater Plant (KS0097560)**

Inspection date(s) and # days to report: January 14, 2015 (14)

Inspection notes: Effluent meters noted for not being calibrated. Not identified as an item for correction on cover letter. City failing to meet their nutrient removal goals.

Enforcement action date(s): N/A

Enforcement action notes: N/A

Other notes: Facility is noted in ICIS as being in SNC due to noncompliance with EPA order. Inspector notes that the facility is under an order yet does not describe that the facility is in SNC due to missing EPA enforcement action deadlines.

### **Wellington WWTP (KS0099571)**

Inspection date(s) and # days to report: 9/17/14 (FY14)

Inspection notes:

Enforcement action date(s):

Enforcement action notes:

Other notes: During the 2014 inspection, the city was directed to get an ammonia probe so they could monitor effluent more closely. If elevated ammonia was detected with the probe, the city could pull additional samples to bring the average down. There was one SNC ammonia violation in May 2015. The compliance schedule in the permit and provided technical assistance were for compliance with total phosphorus. A new WWTP went into service in 2010.

KDHE comments:

KDHE stated on the Quarterly Non-Compliance Report (QNCR) to EPA dated October 2, 2015, "Wellington experienced higher than average rainfall during May which caused wash out of some of their biological mass that carried into June. They were back into compliance by the end of June."

### **Wichita #3 WWTP (KS0095681)**

Inspection date(s) and # days to report: 6/30/15 (36)

Inspection notes: Requirements to address deficiencies were noted in the transmittal letter, however no specific time frame was provided. The city did respond on Dec 2, 2015.

Enforcement action date(s):

Enforcement action notes:

Other notes: No DMR violations were noted in ICIS.

### **Garden City WWTP (KS0038962)**

Inspection date(s) and # days to report: 8/19/14 and 11/17/15 (1)

Inspection notes: The inspection report provided narrative descriptions throughout the inspection check-list. In addition, inspection photos were included with the file. However, not all of the photos were labeled. The inspection report did not identify any issues or discrepancies.

Enforcement action date(s):

Enforcement action notes:

Other notes: Note the 8/9/14 inspection report is not in ICIS, but a 2/18/15 report is. The Feb report was not in the file nor was it discussed in the Nov 2015 report. It appears there is a data entry error.

### *Core Program-Minors*

#### **Goessel (KS0081060)**

Inspection date(s) and # days to report: N/A

Inspection notes: N/A

Enforcement action date(s):

KRWA referral date: January 21, 2015

Enforcement action notes: KRWA performed inspections on February 2, 2015, June 3, 2015, July 8, 2015, February 22, 2016, and March 3, 2016. The KRWA inspections identify the facility has O&M concerns. Facility had many quarters on noncompliance. KRWA determined the lagoons were short-circuiting. Facility still violating effluent limits as of October 1, 2015-December 31, 2015.

Other notes: File did not contain notes which documented the KDHE determinations which lead to the facility being referred to KRWA. KDHE/KRWA contract does not identify time limits other than if the facility is completely ignoring the KRWA assistance which will then trigger enforcement.

KDHE comments:

The KRWA referral letter from KDHE to the city of Goessel dated January 21, 2015 stated that “A review of the City’s wastewater treatment plant Discharge Monitoring Report record indicated the City is not consistently meeting permit limits.”

**Milford Fish Hatchery (KS0083275)**

Inspection date(s) and # days to report: November 6, 2014 (1)

Inspection notes: Time of inspection not identified. Inspector does not identify that the facility must keep 3 years of records. Instead says N/A. Inspector notes that the outfall is eroded yet does not document with photos. The facility documentation indicates that the facility had previous effluent exceedances. These were not discussed in the inspection report. Cover letter directs the facility to respond to the inspection by December 22, 2014. The facility requested more time to complete the activities on November 24, 2014. The completion activities were sent to the North Central office on March 19, 2015.

Enforcement action date(s):

Enforcement action notes:

Other notes: SIC code may be incorrect as it is identified as Trailer Parks/Campsites. 0921 might be more accurate.

**Hartford (KS0025682)**

Inspection date(s) and # days to report: August 28, 2015 (20)

Inspection notes: Facility self-identifies I&I issues to the inspector. The inspector does not list the I&I issues on the cover letter identifying it is neither an Issue/Deficiency nor Recommendation. Inspector does not list any information regarding the facility’s DMRs or their compliance with the permit.

Enforcement action date(s): September 22, 2015

Enforcement action notes: Referral sent to the facility 4 days after the inspection report was mailed to the facility. The cover letter nor the inspection report list any concerning items at the facility.

Other notes:

**Green Acres (KS0097764)**

Inspection date(s) and # days to report: December 10, 2014 (9)

Inspection notes: Facility appeared to be discharging at the time of the inspection as a photo indicates the outfall is “Clear with no foam.” “N/A” marked as an answer to the quality of the receiving stream at the discharge point. N/A does not seem to be an appropriate answer if the facility is discharging.

Enforcement action date(s):

Enforcement action notes:

Other notes:

KDHE comments:

The city of Hartford had been in compliance with their permit limits at the time of this inspection.

**USD #288 Central Heights School (KS0078891)**

Inspection date(s) and # days to report: October 27, 2014  
January 14, 2016

Inspection notes: No time identified in the inspection report.

Enforcement action date(s): February 11, 2014  
January 21, 2016

Enforcement action notes: Penalty memorandum does not detail the factors used in the creation of the penalty, such as, no identified stream, no identified environmental effect, no willfulness or cooperation, no hardship. The penalty does not consider economic benefit.

Other notes: January 14, 2016 CAFO not entered in ICIS.

KDHE comments:

During this review, KDHE did not have security clearance to the ICIS-NPDES enforcement action and penalty module. All enforcement information was provided to the EPA Region 7 office to upload the data.

**Alden Wastewater Plant (KS0051641)**

Inspection date(s) and # days to report: 9/11/15 (3)

Inspection notes: BOD effluent violations were identified in the inspection report. No supporting documentation (DMR summaries, inspection photos, inspection notes) was included with the inspection file. The cover letter transmitting the report to the facility states “the wastewater treatment facility was operating satisfactorily during the inspection.” However, the letter went on to discuss recent effluent violations and the potential short-circuiting of the lagoon system. The Inspection report indicates follow-up is needed, “trees growing in the fence line” was the identified issue or deficiency that must be addressed. It is not clear what compliance determination was made by KDHE as a result of this inspection. It is not possible based on the information contained in the reviewed file, to make an independent compliance determination.

Enforcement action date(s): N/A

Enforcement action notes:

Other notes: The KDHE issued an administrative order in 2012 that was terminated in April 2015 despite ongoing effluent violations. KDHE contracted with KRWA to evaluate conditions at the Alden WWTP in June 2015. KDHE intends to add a compliance schedule to the reissued permit (2017) to require the facility to hire an engineer to rehab or expand the lagoon.

KDHE comments:

The city of Alden completed I&I work on their system in response to the 2012 order which resulted in the lagoon not discharging from April 2014 to February 2015. KDHE reviewed the case and close the administrative order in April 7, 2015. KDHE had not received the City’s March DMR at that time.

**APAC-Kansas Olathe Quarry (KS0092321)**

Inspection date(s) and # days to report: 11/25/14 (17)

Inspection notes: Issues with the SWPPP needing to be updated were noted in the inspection report. The report was not clear what compliance determination was made based on the site visit. There was no transmittal letter in the file indicating what follow-up was needed or by when. The facility provided a response January 12, 2015 that indicates the deficiencies noted in the Dec 12,

2014 letter have been corrected. KDHE followed-up that the deficiencies identified in the inspection report have been addressed.

Enforcement action date(s): N/A

Enforcement action notes:

Other notes:

### **BNSF Railway Company Newton Yard (KS0001082)**

Inspection date(s) and # days to report: 3/11/15 (6)

Inspection notes: There were limited narrative comments in the inspection report with no supporting documentation in the file. A compliance determination was not made in the report. No issues or deficiencies were identified.

Enforcement action date(s):

Enforcement action notes:

Other notes: At least two quarters had benzene effluent violations based on ECHO data pulls. These violations were not discussed in the inspection report nor was there any information provided on the potential source of benzene in the effluent.

### **Hill City WWTP (KS0116882 & KSJ000658)**

Inspection date(s) and # days to report: 8/1/14 (?)

Inspection notes: The 2014 inspection was of a facility that was under construction.

Enforcement action date(s): 10/9/09; 10/27/11(? – date listed in ICIS); 3/23/15

Enforcement action notes: The 2009 order required the facility to meet permit limits by 11/1/10. It is not clear if this order has been terminated. The facility is no longer using the WWTP that was the subject of this order. The city has since constructed a 3-cell lagoon system that is non-discharging (? – see KSJ000658) system. The permit for the lagoon system contained a compliance schedule to have the lagoon construction completed by 12/1/14. KDHE issued an order 3/23/15 that modified the completion requirement of the lagoons to 4/1/15 and begin operation by 7/1/15.

Other notes: Note the 2009 order is not in ICIS, but a 10/27/11 order is. It appears there is a data entry error. Also the KS0116882 permit has been inactivated on 1-13-16. ICIS will need to be updated. KSJ000658 was issued to the city 9-1-13 for the 3-cell lagoon system that is the new WWTP.

KDHE comments:

During this review, KDHE did not have security clearance to the ICIS-NPDES enforcement action and penalty module. All enforcement information was provided to the EPA Region 7 office to upload the data.

### **Johnson County Timber Creek Estates (KS-0082970)**

Inspection date(s) and # days to report: 8/18/15 (13)

Inspection notes: No issues were identified in the inspection report. “Better control of duck weed” was recommended. One photo was included with the file to support the inspection. Little narrative comments were included with the completed check list.

Enforcement action date(s): 4/8/15

Enforcement action notes: KDHE issued an order on consent that requires Johnson County to close the Timber Creek WWTP and transfer flow to another JOCO WWTP by 3/31/18. In 2014,

the reissued NPDES permit contained E. coli limits that the Timber Creek WWTP has not be able to consistently comply with. The enforcement action will ultimately result in compliance. Other notes: The order removed the E. coli limits from the NPDES permit, requiring monitoring instead. Based on the information in the file, it does not appear that the permit was amended to reflect this change. NPDES permit limits cannot be modified by an enforcement action.

**KDWP – Cross Timbers Honor Camp (KS0089788)**

Inspection date(s) and # days to report: 11/21/14 (4)

Inspection notes: The facility hasn't discharged since 2009 because it is not currently in use. The inspection report included narrative descriptions and photos. The lagoons are being maintained as necessary.

Enforcement action date(s):

Enforcement action notes:

Other notes:

**Nickerson WWTP (KS0098132)**

Inspection date(s) and # days to report: 8/22/11 (state); 12/17/15 (EPA)

Inspection notes:

Enforcement action date(s):

Enforcement action notes:

Other notes: In November 2014 KDHE referred Nickerson to KRWA for assistance in addressing repeat effluent violations. RWA investigated possible sources with little successful resolution. Issues were ongoing at the time of EPA's Dec 2015 inspection. RWA has continued to work with the facility. A cover was placed over the effluent weir in February 2016. February and March has seen an improvement in effluent quality and no reported violations. Summer will be the test.

**Westar Energy Hutchinson Energy Center (KS0079723)**

Inspection date(s) and # days to report: 12/6/14 (2)

Inspection notes: The inspection report contained little to no detail of the industrial process and how this process related to the WWTP. This information is in the permit, but would be helpful in the inspection report to ensure all related areas of the plant were inspected and any O&M issues that can only be address during an on-site inspection were addressed. No violations were found during the inspection as indicted by the inspection checklist and cover memo.

Enforcement action date(s): N/A

Enforcement action notes: N/A

Other notes: Providing more narrative information, or comments would be helpful to support findings, or lack of findings, such as DMRs or photos.

*CAFO Program*

**Sunflower Pork, Inc. (West Facility) (KS0115568)**

Inspection date(s) and # days to report: 11/19/14 (6)

Inspection notes: This is a Large swine facility with 8,400 head of swine greater than 55 pounds, 3,360 animal units per Kansas equivalent. A CAFO inspection checklist was used. The narrative

portion of the checklist, as well as the attached cover memo “Non-compliant report”, clearly identifies the facility is out of compliance. The Non-compliant report details the violation and gives a due date required fixes shall be addressed by.

Enforcement action date(s): No formal enforcement

Enforcement action notes: No formal enforcement

Other notes: It is not clear from the file if the facility came back into compliance or not. A discussion with CAFO program staff determined the facility is still out of compliance and this will be addressed at the next inspection of the facility. The violation appeared relatively minor relating to pond berm deterioration and operating without proper freeboard in one pond.

### **Great Bend Feeding, Inc. (KS0040576)**

Inspection date(s) and # days to report: 1/8/15 (4)

Inspection notes: This is a Large cattle facility with 35,000 head of beef cattle. A CAFO inspection checklist was used. The narrative portion of the checklist, as well as the attached cover memo clearly identifies the facility is out of compliance. The cover memo details the violations and gives a due date required fixes shall or should have been addressed by.

Enforcement action date(s): No formal enforcement

Enforcement action notes: No formal enforcement

Other notes: It is not clear from the file if the facility came back into compliance with both violations. One of the violations was addressed by the facility and provided photo evidence of staff gauges after pumping out ponds which were above required freeboard. A discussion with CAFO program staff determined the facility is still out of compliance with the remaining item (whole pond test) and this will be addressed at the next inspection of the facility.

#### KDHE comments:

An internal KDHE memo dated 1/19/2015 addresses the operating level violation as being resolved.

The whole pond test for waste storage pond 2 was received by KDHE on March 10, 2016.

### **Meier Dairy of Palmer, Inc. (KS0092681)**

Inspection date(s) and # days to report: 1/28/2015 (2)

Inspection notes: Inspection documented manure stockpile that was not completely contained. Inspector also documented evidence showing runoff was flowing into nearby stream. No formal or informal action taken by KDHE to address this and other deficiencies. Inspection was documented using a checklist. Very little if any narrative was provided in with the checklist.

Enforcement action date(s): No formal or informal actions taken

Enforcement action notes: Evidence documented by the inspector suggests that runoff from the manure stockpile was reaching a nearby stream. EPA found no documentation in the file showing that a formal or informal action was taken to address this and other deficiencies identified by the inspection. KDHE does not appear to have any escalation policy for violations documented at CAFOs.

Other notes: Large CAFO.

### **Henry Creek Farms, Inc. (KS0089451)**

Inspection date(s) and # days to report: 1/15/2015 (6)

Inspection notes: Inspection was documented using a checklist. Very little if any narrative was provided in with the checklist.

Enforcement action date(s): No formal or informal actions taken

Enforcement action notes: No formal or informal actions taken

Other notes: Large CAFO

**Phillips Dairy Farm (KSUS000001)**

Inspection date(s) and # days to report: 10/21/2014 (9); 11/17/2015 (1) and 12/2/2015 (5)

Inspection notes: 10/21/2014 – This inspection was a discharge investigation and focused solely on the discharge. Report was thorough and well documented.

11/17/2015 – Inspection referenced “operational report” violations but did provide any supporting documentation to support their conclusion

12/2/2015 – Focused inspection only looking at retention structures. Inspection report did include narrative descriptions

Enforcement action date(s): 3/3/2015 – Administrative Order; 12/2/2015 Consent

Agreement/Final Order

Enforcement action notes: Both actions contained compliance schedules. Final penalty number was \$10,000.00 minus the cost associated with activities in the compliance schedule. Costs are held in abeyance for two years pending compliance. Penalty calculation did not appear to consider gravity. Economic Benefit was considered to be \$0 with little or no rationale provided.

Other notes: Large CAFO

KDHE comments:

Medium AFO. This facility does not meet the CAFO Rule’s definition of a Large CAFO; 364 animal units of mature dairy cattle.

**HAW Ranch Feedlot II, LLC (KS0037567)**

Inspection date(s) and # days to report: 9/15/2015 (9)

Inspection notes: Inspection was documented using a checklist. No narrative was provided in with the checklist. Inspection report documented compliance schedule violations but the report does not specifically identify which compliance schedule items were not met. Compliance schedule was included in a previous Consent Agreement filed by KDHE.

Enforcement action date(s): 9/26/2015

Enforcement action notes: “Out of Compliance” letter issued. The compliance schedule violations identified appear to have been ongoing since 2010 & 2011 and involve substantial construction activities to increase storage capacity at the facility. KDHE does not appear to have any escalation policy for violations associated with not complying with terms in a formal enforcement action.

Other notes: Large CAFO.

KDHE comments:

The inspection report identified that Consent Agreement Required Action I and Required Action J had not been completed in the General Inspection Comments section of the inspection report.

**Spring Creek Farm (Parker Pork Farms, LLC) (KS0088463)**

Inspection date(s) and # days to report: 7/1/2015 (5)



Inspection notes: Inspection was documented using a checklist. Very little if any narrative was provided in with the checklist. Record keeping violations were identified on the checklist but there was no reference to what the specific violations were nor was it clear the extent of these violations. Inspection also identified a compost area with uncontrolled runoff but did not document the flow path.

Enforcement action date(s): 7/6/2015

Enforcement action notes: “Out of Compliance” letter issued.

Other notes: Large CAFO

KDHE comments:

The record keeping violations were identified in the Non-Compliance Explanation/Supplemental Information section of the inspection report: dewatering of the lagoon was not recorded, no explanation of type of application method provided, the number of maximum head each month is not recorded. Also, it was documented in this section of the inspection report that precipitation runoff from the compost area drained across a grass buffer and photo #1 included with the inspection report demonstrates runoff goes toward grass surrounding the compost area.

**CJ Feeders (KS0097781)**

Inspection date(s) and # days to report: 12/3/2015 (11)

Inspection notes: Inspection was documented using a checklist. No narrative was provided in with the checklist. Inspection noted that a portion of the facility was not properly capturing runoff but does not provide a clear description of entire flow path (i.e. distance to closest stream, etc.). Despite these observations inspector indicated on the checklist that the facility was being maintained as required by permit. Inspection transmittal letter concluded the facility was in compliance.

Enforcement action date(s): No formal or informal actions taken

Enforcement action notes: Permit violations with no formal or informal action taken by KDHE.

Other notes: Large CAFO

KDHE comments:

Inspector noted that Area 1 appeared to discharge, but at the time of the inspection a discharge was not observed.

*Construction Stormwater*

**23<sup>rd</sup> and Iowa Geometric Impv. (KS-R109726)**

Inspection date(s) and # days to report: 10/31/14 (?)

Inspection notes: During the 10/31/14 complaint investigation the site was found to have two areas of concern and one area of potential future concern. The central office sent an email to the facility on 11/5 informing them of the two items in need of correction and requesting action (no due date given in the KDHE email). The last item in the file is an email from NEDO to the central office stating an inspector drove by the site on 11/24 and one area being worked had some inlets with no controls and some inlets with controls in need of maintenance. It’s not possible to know if the areas of concern from the first inspection were addressed or if there was any follow-up on the findings of the 11/24 visit.

Enforcement action date(s): none

Enforcement action notes: none

Other notes: The report (completed complaint/referral form) is unsigned and undated, and it is not possible to know if it was transmitted to the facility. The facility did receive an email from the central office on 11/5 as discussed above.

**Holton Elementary School (KS-R110883)**

Inspection date(s) and # days to report: 7/29/15 (?)

Inspection notes: This inspection was not based on a complaint. The central office performed the inspection. The file contains directions to the site, a hand-written list of findings, and several photos with captions. Finally, the file contains an email from the facility to the inspector describing corrective actions taken at the site and includes photos and copies of self-site inspection reports. It is not possible to know if all deficiencies observed by the inspector were corrected.

Enforcement action date(s): none

Enforcement action notes: none

Other notes: There was no evidence in the file that a report was written and transmitted to the facility. The email from the facility references the inspector being on site and states the email is follow-up to the visit.

**New York Elementary School (KS-R110343)**

Inspection date(s) and # days to report: 9/11/15 (35)

Inspection notes: A complaint investigation was conducted by NEDO on 9/11/15. KDHE's central office transmitted a letter to the facility on 10/16/15 that described four deficiencies observed by the inspector and requests corrective action be completed by 10/23/15 and a report submitted to KDHE. The facility sent an email to KDHE documenting that all corrections were made. The email was accompanied by photos, site inspection reports, and an undated SWPPP.

Enforcement action date(s): none

Enforcement action notes: none

Other notes:

**Martin Schaal (N/A)**

Inspection date(s) and # days to report: 10/1/15 (6) FY16 but I decided to review it anyway.

Inspection notes: During the 10/1/15 complaint investigation the inspector determined less than one acre was disturbed for the home and that the additional 2.5 acres of disturbance were for "homeowner improvements" (the homeowner removed trees and was going to plant grass) and therefore the site was not subject to the stormwater regulations and did not need a construction stormwater permit.

Enforcement action date(s):

Enforcement action notes:

Other notes: The report (completed complaint/referral form) is signed and dated 10/7/15. It is not possible to know if it was transmitted to the facility.

**13609 Riverview (N/A)**

Inspection date(s) and # days to report: 9/29/15(8)

Inspection notes: During the 9/29/15 complaint investigation the inspector determined less than one acre was disturbed for the home and that the additional disturbance was for "homeowner

improvements” and therefore the site was not subject to the stormwater regulations and did not need a construction stormwater permit.

Enforcement action date(s):

Enforcement action notes:

Other notes: The report (completed complaint/referral form) is signed and dated 10/7/15. It is not possible to know if it was transmitted to the facility. There is evidence in the file that KDHE called the complainant after the inspection and told him the construction stormwater permitting requirements of the CWA did not apply to the site.

### **Persimmon Pointe Subdivision (KS-R109441)**

Inspection date(s) and # days to report: 6/26/15 (1)

Inspection notes: KDHE received a complaint about the subject site on 6/25/15. KDHE called the City of Olathe and asked the City to inspect the site. The City of Olathe sent an inspector to the site on 6/26/15. The City wrote a “ticket.” The ticket states the need for two BMP repairs and/or installations. The ticket further states the City will perform a follow-up inspection on 7/2/15. The complaint/referral form contains notes from conversations NEDO had with the facility; the first referring the complaint to the city for follow-up, and the second when the ticket was discussed. The last notation on the complaint/referral form is that “no further follow-up is needed by NEDO at this time.” Nothing in the file post-dates 6/26. It is not known if the ticket was given to the site, if Olathe performed a follow-up inspection or if corrective actions were taken to address the two deficiencies observed by the Olathe inspector on 6/26.

Enforcement action date(s):

Enforcement action notes:

Other notes: KDHE did not perform an inspection or visit the site. KDHE made a referral to the City of Olathe. The report (completed complaint/referral form) is signed and dated 6/26/15. It is not possible to know if it was transmitted to the facility.

### **Riverview Hills Subdivision (KS-R109102)**

Inspection date(s) and # days to report: 7/14/15 (?)

Inspection notes: KDHE received a complaint about the subject site. The complaint/referral form is the record of two conversations, one between two KDHE employees and one between KDHE and the City of St. George. Upon receipt of the complaint KDHE called the city and asked for information about the site. The City employee told NEDO about the site and said they would go to the site to determine the status of the construction. NEDO said they would follow-up with another call in a week to find out the status of the Riverview Hills site. No follow-up calls between the city and KDHE occurred after the initial call.

Enforcement action date(s):

Enforcement action notes:

Other notes: KDHE did not perform an inspection or visit the site. KDHE made a referral to the City of Olathe. The report (completed complaint/referral form) is not dated. This subdivision had problems in the past and had been inspected by KDHE in response to complaints in 2013 and 2014.

### **Landon Court Addition (KS-R109016)**

Inspection date(s) and # days to report: 5/27/15 (20)

Inspection notes: A complaint investigation was conducted by NEDO on 5/27/15. KDHE's central office transmitted a Notice of Noncompliance to the facility on 6/16/15 that described findings at two adjacent sites. The inspector observed a lack of BMPs in some area(s) and BMPS in need of maintenance in other area(s) at the Landon court site. In addition, nearly two acres of disturbance was observed at an adjacent site (Dole Subdivision) operated by the same operator. A construction stormwater permit had not yet been issued for this site and the inspector observed a lack of adequate controls on the site. The letter advises appropriate controls must be in place at all times and that no further activity should occur at the unpermitted site until coverage under a construction stormwater permit has been authorized by KDHE. The letter does not require a response. The file does not contain documentation that post-dates the inspection. It is not possible to know if the BMP deficiencies observed by the inspector were addressed or if permit coverage was sought for the Dole site.

Enforcement action date(s): none

Enforcement action notes: none

Other notes: The complaint/referral form is complete and dated 6/2/15. It is not known if it was sent to the site owner along with the Notice of Noncompliance.

### **Oak Grove Elementary School (KS-R109948)**

Inspection date(s) and # days to report: 10/14/14 (?)

Inspection notes: During the 10/14/14 complaint investigation the site was found to lack BMPs, sediment was seen discharging over and around BMPs and sediment was in a neighbor's pond. The checklist is not signed and dated. The date of inspection and the inspector's name are typed on the form so that may be the date of completion. It is not known if the completed checklist and/or complaint/referral form was sent to the site. The last item in the file is an email from NEDO to the operator dated 10/17/14 asking for additional information including a few months of self-site inspection reports. It is not possible to know from the documentation in the file if the deficiencies observed at the time of the inspection were addressed or if the facility sent NEDO the self-site inspection reports that had been requested.

Enforcement action date(s): none

Enforcement action notes: none

Other notes: NEDO used a construction stormwater checklist to perform this complaint investigation. It was the only time I saw the form used for a construction stormwater inspection. It's not possible to know if it was sent to the facility.

### **Zaremba Property (KS-R109480)**

Inspection date(s) and # days to report: 12/23/14 (36?) and 1/28/15 (1)

Inspection notes: This complaint investigation involves a complaint to KDHE from KDOT regarding the Zaremba property. Activities at the site frequently result in track-out onto the KDOT right-of-way and KDOT fears action by EPA. On 12/23/14 NEDO visited the site with KDOT so KDOT could describe the problems. On 1/28/15 NEDO visited the site again and saw the operator. The main issue is ongoing problems with track-out. The notes and emails in the file convey confusion about whether the site needs a permit, it is assumed for construction. The facility was issued a construction permit in 2013 and it is assumed it is still active since there was no evidence of termination in the file. There is no evidence in the file indicating that the operator came into compliance.

Enforcement action date(s): none

Enforcement action notes: none

Other notes: The report (completed complaint/referral form) is dated 1/28/15. It is not possible to know if it was transmitted to the facility.

**Lawrence Sewer Expansion (KS-R110297)**

Inspection date(s) and # days to report: 3/12/15 (1)

Inspection notes: This complaint investigation involves a complaint to KDHE from KDOT regarding a spill in the KDOT right-of-way. The City of Lawrence was responsible for the spill of bentonite clay, soap, and water that occurred while replacing/expanding a sewer line (an email from Lawrence states the spill on 3/10/15 was about 3,700 gallons). The file contains emails after the inspection date regarding the need for a construction permit. The permit number assigned to this inspection (above) leads one to believe a permit was issued. There are also emails in the file that discuss ongoing clean-up efforts and a 4/1/15 report from the city to KDHE describing the clean-up efforts and their completion.

Enforcement action date(s): none

Enforcement action notes: none

Other notes: The report (completed complaint/referral form) is dated 3/13/15. It is not possible to know if it was transmitted to the facility.

**Linn Valley Lakes WW System Improvements (KS-R109914)**

Inspection date(s) and # days to report: 9/16/15 (15)

Inspection notes: During the 9/16/15 complaint investigation, SEDO reviewed site maps then did a drive-by inspection in which it was determined that silt fence was down. It is unclear if the entire site was able to be viewed from the car. There is a statement in the completed complaint/referral form that the inspector called the site contact after the inspection and was informed that the silt fence had been replaced/repared. The file does not contain photos of the repaired silt fence.

Enforcement action date(s): none

Enforcement action notes: none

Other notes: The report (completed complaint/referral form) is dated 10/1/15. It is not possible to know if it was transmitted to the facility.

**Southfork Commercial Addition, aka 47<sup>th</sup> St. South and KS Turnpike (KS-R108516)**

Inspection date(s) and # days to report: 10/3/14 and 10/6/14 (no report)

Inspection notes: SCDO employees drove by the site on 10/3 and took photos of what appeared to be a large area of the project with no controls. SCDO sent the photos and an email to the City of Wichita asking for follow-up. The City of Wichita visited the site on 10/6/14 and then sent an email to SCDO informing them that the area did have controls. No photos from this visit were observed in the file.

Enforcement action date(s):

Enforcement action notes:

Other notes: The file consists of the emails between SCDO and the City of Wichita and the pictures taken by SCDO. There is no inspection report. It is not possible to know from the documents in the file if KDOT (assuming it's a KDOT site) was aware the site had been visited.

*Industrial Stormwater*

**AG Auto Detail, Allan Guatemala (N/A)**

Inspection date(s) and # days to report: 6/11/15 (same day, 6/11/15)

Inspection notes: During the 6/11/15 complaint investigation, NCDO determined that all potential discharge from the auto detail activity goes to the sanitary sewer. SCDO did dye testing to make sure there was no discharge to the storm sewer. It was determined the facility does not require an industrial stormwater permit.

Enforcement action date(s): none

Enforcement action notes: none

Other notes: The report (completed complaint/referral form) is dated 6/11/15. It is not possible to know if it was transmitted to the facility.

**Green Energy (KS-R000829)**

Inspection date(s) and # days to report: 11/20/14 (no report – not an inspection)

Inspection notes: On 11/20/14 SCDO toured the facility's recent expansion. KDHE sent an email to the facility on 2/24/15 thanking them for the tour and asking for a copy of the updated SWPPP that includes the new facilities and operations. The email asked that the SWPPP be updated to reflect the expansion if it hadn't been already and that a copy of the updated SWPPP be sent to KDHE by 6/1/15. The file contains a copy of the updated SWPPP which was sent to KDHE on 6/4/15.

Enforcement action date(s): none

Enforcement action notes: none

Other notes: KDHE did not perform an inspection of this facility; the emails reflect that they were given a tour on 11/20/14. There is no inspection report.

**Coffeyville Nitrogen Resources Fertilizer (KS-R000238)**

Inspection date(s) and # days to report: 9/15/15 (15)

Inspection notes: During the 9/15/15 complaint investigation, SEDO observed a compromised berm around the coke fines storage area and it was apparent that coke fines were broadcast onto the roadways from this location. The inspector concluded that the complaint of black water in the Verdigris River was likely valid and that the coke fines was the source. There is a note on the complaint/referral form that the inspector had a conversation with a facility representative on 9/28/15 and was informed that repairs and build-up of the berm had commenced. It cannot be determined if the work was completed.

Enforcement action date(s):

Enforcement action notes:

Other notes: The report (completed complaint/referral form) is dated 9/30/15. It is not possible to know if it was transmitted to the facility.

*MS4*

**Coffeyville Nitrogen Resources Fertilizer**

Inspection date(s) and # days to report: N/A

Inspection notes: The 9/15/15 industrial stormwater inspection was originally presented as a MS4 inspection. The Coffeyville MS4 file contains a copy of the complaint/referral form and a 3/30/16 memo to file recording a KDHE call to the City of Coffeyville informing them of a few

coke piles in/around town that may need attention. This is a referral to the city or a call providing pertinent information but is not an inspection.

Enforcement action date(s): none

Enforcement action notes: none

Other notes:

## **PRETREATMENT PROGRAM EVALUATION**

### **Introduction**

The Pretreatment SRF evaluation consisted of reviewing 12 files covering six inspections conducted of Categorical industries located outside cities having approved Pretreatment programs, five enforcement actions, and one Pretreatment Compliance Inspection of a moderately sized Pretreatment program city. The files were chosen from the list of activities conducted in FFY 2015, of which there were 13 inspections, 13 enforcement actions, and three Pretreatment audits or PCIs.

These files were all reviewed using the Clean Water Act File Review Checklist – State Review Framework Round 3, which are attached to this document for reference. Below is a discussion and summary of each of the files reviewed.

### **INDUSTRIAL INSPECTIONS**

#### **Alexander Manufacturing, Parsons**

Alexander Manufacturing manufactures firewood racks (firewood storage systems), garden accessories, and other metal items on contract. As part of their manufacturing operation, they perform phosphate conversion coating, a process regulated by the 40 CFR Part 433 Metal Finishing Categorical Pretreatment Standard. Because the phosphating system was installed after August 1982, they are subject to the New Source standards.

Under normal operating conditions, Alexander does not discharge any process wastestreams to the city sewer, but rather ships the phosphating process tank contents off site for disposal. As such the industry signs and submits after each six-month reporting period, a No Discharge Certification Statement. Consequently, the purpose of the inspection was to determine the current condition of the facility and to assure that the certification statements are true and accurate.

On December 9, 2014 an announced inspection was conducted. Among the findings was that the industry had taken one of its two phosphating lines off-line, made minor changes to its phosphating chemistry, but continued to be a “no discharge” operation. The industry is aware that if it ever needs to discharge to the city, they are to contact KDHE and meet the limits contained in their permit. The inspection also evaluated for the need of a Spill Control Plan and determined that one was not necessary. The inspection was documented in a narrative report and transmitted to the industry six days later on December 15, 2014.

#### **Bradford Built, Washington**

Bradford Built manufactures truck beds, boxes, and trailers out of mild steel that is phosphatized during the manufacturing process. Some aluminum trailers are also manufactured but the aluminum components do not undergo any chemical treatment. One of the reasons for the inspection was because there had been a recent change in personnel responsible for environmental compliance duties and KDHE believed it would be productive to meet with the new individual to ensure a smooth transition.



The inspection, which occurred on May 7, 2015 was documented in a narrative report which was transmitted to the facility on June 4, 2015. The report was found to be comprehensive as it discussed records management, compliance sampling procedures (including sampling location), laboratory certification, wastewater treatment, reporting, and compliance history with discharge standards. In addition, the inspection evaluated the need for a spill control plan and found that one was not necessary. At the time of the inspection, the facility was found to be in compliance although some suggestions were made to facilitate sampling activities and records management.

#### **Carlstar/Carlisle, Fort Scott**

The inspection at Carlstar/Carlisle was not a routine compliance inspection of an industry permitted under the Pretreatment program but one to determine if the facility is covered by a Categorical Pretreatment standard. The inspection, which was conducted on July 14, 2015 was followed the next day by transmittal, via email, of an Industrial Survey Questionnaire. Following its completion, KDHE was able to determine that the facility was subject to the 40 CFR Part 428 Rubber Manufacturing Categorical standard, however, because it does not manufacture hoses using the lead sheathing process, it would not be subject to lead limits. A Baseline Monitoring Report was submitted on January 28, 2016 and a 90 Compliance report requested on March 24, 2016. KDHE is presently working on drafting a permit for Carlstar/Carlisle.

#### **Cashco Inc., Ellsworth**

Cashco Inc. manufactures several types of control valves, pressure reducing regulators, and back pressure regulators of various sizes from steel, brass, and stainless steel. The purpose of the inspection on April 7, 2015 was to determine if the facility performs any surface preparations that are regulated under the 40 CFR Part 433 Metal Finishing Regulations. A narrative report documenting the findings of the inspection was written and transmitted on April 13, 2015, 6 days later.

The principle observation of the inspection was that the facility was using a citrus-based chemical to perform what the facility called passivating. But because the citrus chemistry was not extant when the metal finishing regulations were developed, it was not clear whether passivating, as defined by the regulations was being performed or if the operation was one more of cleaning. Following the inspection, KDHE contacted EPA Region 7 seeking an opinion on the condition. EPA responded that if the contact time was sufficient enough the less aggressive citric acid could remove sufficient metals to passivate the base metal and requested information on the rinse rates, samples of the rinse waters, and contact time for the citric acid. After reviewing this information, Region 7 determined the facility was indeed passivating. Once the facility was informed of the decision, Cashco submitted a permit application, and KDHE has issued them a permit.

#### **GBW Railcar Services, Neodesha**

GBW Railcar Services cleans railcars that have transported various chemicals, petroleum products, and food grade products. As such, it is subject to the 40 CFR Part 422 Transportation Equipment Cleaning Pretreatment standards. On October 17, 2014 KDHE inspected GBW and documented their findings in a narrative report that was transmitted to the facility on October 22,

five days later. The inspection report contained a thorough description of the wastewaters generated, including contaminated stormwater runoff, wastewater storage and treatment, and permit and compliance history.

No samples were taken during the inspection, however, the industry's most recent six-month compliance status was discussed. For the six-month period ending June 30, 2014 sample results supplied showed compliance, however, the first quarter sampling requirements were not achieved and KDHE had sent an NOV informing the company that it was in Significant Noncompliance with reporting requirements. The NOV also required the industry develop a Plan of Action to ensure that sampling and reporting requirements were met in the future. The Plan was submitted by the industry on August 11, 2014. This was documented in the inspection report.

In addition, the inspection report noted significant improvements to the facilities wastewater treatment system.

### **New Age Industrial Corp, Inc., Norton**

This is another new facility that KDHE reviewed for permitting in FFY 2015. This facility had come to KDHE's attention when the City of Norton was evaluated for influent sources of phosphorous. A consultant for the Kansas Rural Water Association had identified New Age as using phosphoric acid to clean aluminum. As a result, KDHE sent New Age Industrial Corp. a Metal Finishing Questionnaire and an Industrial Survey Questionnaire. However, the response from New Age indicted the facility was either an aluminum forming facility or an aluminum casting operation. Consequently, the industry was asked to submit an Aluminum Forming Questionnaire, which it did on November 18, 2014. Following receipt of the questionnaire, there were numerous exchanges of information on chemicals and manufacturing processes in preparation of an inspection by KDHE to make a category determination.

On April 16, 2015, KDHE conducted its initial inspection of New Age to confirm that the facility was subject to the Aluminum Forming standards at 40 CFR Part 467, to identify an appropriate sampling location for reference in the permit that would need to be issued, and to determine if New Age was a significant source for phosphorous at the Norton POTW. On May 5, 2015, 19 days later, the inspection report was sent to the industry. Included in the findings was confirmation that New Age was subject to the Part 467 standards, that it must submit a permit application, and that a Baseline Monitoring Report was required. The inspection report also documented three outfalls that would need to be permitted.

### **PRETREATMENT ENFORCEMENT**

Generally, there are three principle opportunities for enforcement actions under the Pretreatment program: discovery of a violation during an industrial inspection; following a Pretreatment audit or Pretreatment Compliance Inspection of an approved Pretreatment program, or in response to violations documented by periodic compliance reports.

### **Bradford Built, Washington**

KDHE responded to the periodic compliance report received from Bradford Built on July 28, 2015 with a Notice of Violation dated the same day. The industry had failed to take a quarterly

wastewater sample during the second half of the six-month reporting period ending June 30, 2015 and consequently was considered to be in Significant Noncompliance with reporting requirements. As stated in the NOV, the industry was required to “submit a written procedure you will follow to prevent these reporting deficiencies from occurring again.” The industry was given one month from the date of the letter to submit the procedure to KDHE.

The NOV noted that the first quarter of sampling for zinc had resulted in one of three samples being above the monthly average limit of 1.48 at 1.8 mg/l. Since this is above the Technical Review Criteria adjusted level of 1.2 times the limit ( $1.2 \times 1.48 = 1.78$ ) the facility was also in SNC for zinc. In the NOV, KDHE required the industry to sample monthly for zinc for the next six-month reporting period. With the increased sampling and the written sampling protocol, the industry returned to full compliance for the second six-month reporting period of 2015.

### **GBW Railcar, Junction City**

GBW Railcar is required to sample quarterly for the pollutants regulated by its permit. However, in the transmittal letter of its semiannual report dated January 12, 2015, GBW reported its failure to take a quarterly report due to equipment failure. This written notification followed a verbal notification. In response, KDHE issued GBW a Notice of Violation on January 13, 2015. No further action was required as the industry returned to full compliance the next reporting period.

### **Heatron Inc., Leavenworth**

In the manufacturing of flexible electrical heating devices and LED lighting devices, Heatron performs a chemical etching operation. Etching wastes are treated with a chemical precipitation system prior to discharge to the City of Leavenworth on a batch basis.

On March 24, 2015 Heatron notified KDHE that their March 13<sup>th</sup> sample for copper had come back at 4.22 mg/l, a level above both their daily maximum and monthly average limits. KDHE instructed the industry to begin sampling copper at least monthly for the remainder of the six-month reporting period and to submit the results once obtained. All subsequent samples were well below 1 mg/l. On June 30, Heatron compiled the sampling data and submitted it to KDHE. Since only one monthly average had been exceeded, the facility was considered to be in Infrequent Noncompliance. In response, KDHE issued Heatron a Notice of Violation on July 31, 2015, indicating that the problem appeared to be solved but also extended the requirement to continue to sample monthly for copper. Samples taken July through early December were all well under the monthly average limit and the industry appeared to have returned to compliance. However, on December 10, the night maintenance crew inadvertently left a valve open that allowed approximately 1000 gallons of untreated wastewater to be discharged to the city. The industry immediately reports this to KDHE and took a sample of the tank from which the discharge occurred. The results showed a copper level of 14.2 mg/l and a nickel level of 7.3 mg/l. per the industry’s letter to KDHE, protocols have been developed to prevent accidental discharges from recurring.

It appears that the cause of the copper violation of December 2015 is unrelated to the cause of the copper violation of March 2015. However, the industry will be still being considered to be in Infrequent Noncompliance for the second half of 2015.

### **Peerless Products, Fort Scott**

This facility extrudes aluminum shapes from billets and then performs conversion coating operations on the various parts to either prepare them for painting or to provide corrosion resistance. As such, Peerless Products is subject to the 40 CFR Part 467 Aluminum Forming standards, which is a production-based standard.

KDHE received the semiannual compliance report covering January 1 through June 30, 2015 from Peerless Products on July 21, 2015. Following review, the facility was determined to be in infrequent noncompliance because of a monthly average chromium violation in March 2015. On August 3, 13 days later, KDHE issued a Notice of Violation, which, while it noted that subsequent samples indicated compliance, the industry was required to sample monthly for chromium for the next six-month reporting period, to ensure that compliance had been achieved. In addition, the sample results were to be submitted to KDHE when received so that KDHE could monitor the industries progress. During the accelerated sampling period, no additional chrome violations were observed and the industry returned to full compliance for the six month reporting period.

### **SVPI, Elwood**

SVPI or Strategic Veterinary Pharmaceuticals, Inc. is subject to the Pharmaceutical Manufacturing point source category, 40 CFR Part 439. Consequently, it is regulated on five toxic organics, one of which is acetone. While sampling in August to satisfy its once-per-quarter permit requirement, SVPI experienced an acetone violation. KDHE was notified by email once the violation was known. Through email exchanges, the industry simultaneously resampled and pursued research into the cause of the violation since they do not use acetone in any of their operations. Because the violation occurred early on in the six-month reporting period, KDHE required the industry to perform monthly sampling through the rest of the reporting period. At the end of the reporting period, when all of the data had been submitted and certified, the industry's compliance status, Infrequent Noncompliance, was cited in a Notice of Violation issued on January 13, 2015, thirteen days following receipt of the periodic report on continued compliance. Because SVPI does not use acetone, and because all samples September through December were below detection limit, the NOV did not require additional acetone monitoring.

## **PRETREATMENT COMPLIANCE INSPECTION**

### **Salina Approved Pretreatment Program**

The City of Salina regulates 13 Significant Industrial Users, 9 of which are subject to Categorical standards. On May 14, 2015, KDHE performed a Pretreatment Compliance Inspection of the City's program. The purpose of the PCI was to "determine whether the City was properly administering their pretreatment program and to focus on any SIU's in Significant Non-Compliance." To accomplish this end, KDHE used the Region's PCI checklist to direct its inspection and lay the foundation for a narrative report on the state's findings.

The PCI report evaluated every significant element of the City's Pretreatment program including SIUs, permitting, data management, inspections and sampling (including self-monitoring), Slug Plans, and the enforcement under the city's Enforcement Response Plan. In all, the city was found to only have minor deficiencies.

The narrative report discussed findings in each of the areas listed above and made recommendations where warranted. As part of the report package, the completed checklist was included as an attachment. Since the checklist covers every required element of a Pretreatment program, determining the compliance status of the City's program was easy. This includes being able to review a table of SIUs, their regulated process, the type of treatment they use to meet standards, flow rates (both regulated and total), and a 2 year running compliance status history.

One of the more important elements of the PCI was the discussion on the city's enforcement activities over the past year. Of the 13 industries, three had violations and all three received NOVs "usually within a few days of the violation." None of the violations rose to the level of SNC so no industry needed to be put on a compliance schedule or needed to be published in the newspaper.

On June 9, 2015, 26 days following the inspection, KDHE sent the PCI report to the City with a copy to Region 7. Included in the package to Region 7 was a table of WENDB data elements covering the PCI.

**KDHE Response**

# **STATE REVIEW FRAMEWORK**

**Kansas**

**Clean Water Act Implementation in Federal Fiscal  
Year 2015**

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

**KDHE Response  
September 28, 2017**

# Executive Summary

## Introduction

EPA Region 7 enforcement and permit staff conducted a Clean Water Act oversight review of the Kansas Department of Health and Environment (KDHE) enforcement, compliance and permit program using the State Review Framework (SRF) guidance on April 4-8, 2016.

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 1-1.** Entry of data for permit limits, DMRs, and inspections meets national program expectations.
- **Finding 5-2.** KDHE documents rationale for reducing the initial penalty. KDHE has a strong performance record for penalty collection.

## Areas for Attention

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

- **Finding 1-2.** Kansas's data appeared to have minor differences compared to the ICIS-NPDES data.
- **Finding 2-4.** KDHE inspections occasionally do not meet the prescribed timeframes for transmittal from BEFs to the BOW.

## Most Significant CWA-NPDES Program Issues<sup>1</sup>

The following are the most significant issues affecting the state program's performance:

- **Finding 2-1.** KDHE does not meet the CMS goals for stormwater inspections.
- **Finding 2-2.** KDHE inspection reports did not consistently identify pertinent facility information, compliance issues, and compliance determinations.

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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 2-3.** KDHE stormwater complaint/referral investigations do not follow the same format as all other inspections reviewed. It was difficult to determine if KDHE issued the reports to noncompliant facilities.
- **Finding 3-1.** KDHE does not identify facilities that are in significant noncompliance nor are SEV codes used.
- **Finding 3-2.** Compliance inspection reports do not identify permit violations.
- **Finding 3-3.** Stormwater complaint investigations are not sent to the facility, therefore, no attempt to correct noncompliance can be made by the facility.
- **Finding 3-4.** KDHE official files do not document a facilities return to compliance.
- **Finding 4-1.** Informal enforcement appears to be issued from Bureau of Environmental Field Services (BEFS) rather than Bureau of Water (BOW).
- **Findings 4-2.** KDHE enforcement actions do not result in a return to compliance.
  - **Findings 4-2.1.** KDHE uses the Kansas Rural Water Association referral process in lieu of formal enforcement actions.
  - **Finding 4-2.2** KDHE actions circumvented the process for a facility to return to compliance.
- **Findings 5-1.** Kansas penalty calculations do not document 1997 Wastewater Enforcement Guidance (WEG) factors.



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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:** FFY2015

**Key dates:**

- Kickoff letter sent to KDHE: March 15, 2016
- Kickoff meeting conducted: April 4, 2016
- On-site file review conducted: April 4-8, 2016
- Draft report sent to headquarters: May 9, 2016
- Draft report sent to state:
- Draft report response sent from state to the EPA:
- Report finalized:

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

- EPA Region 7 PQR Lead Reviewer: Donna Porter
- EPA Region 7 SRF Clean Water Act Lead Reviewer: Seth Draper
- EPA Region 7 SRF Coordinator: Kevin Barthol
- KDHE Water Pollution Control Branch Lead Contact for the review: Shelly Shores-Miller

### 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 Water Act Findings

CWA Element 1 — Data						
<b>Finding 1-1</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	Entry of data for permit limits, DMRs, and inspections meets national program expectations.					
<b>Explanation</b>	Permit limits and DMRs are present in ICIS for nearly all major facilities, meeting the national data entry expectations for these metrics in FFY 2015.					
<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>
	1b1 Permit limit rate for major facilities	>=95 %	90.9%	56	56	100%
	1b2 DMR entry rate for major facilities	>=95 %	96.7%	1820	1867	97.5%
<b>State response</b>	No Response.					
<b>Recommendation</b>						

## CWA Element 1 — Data

<b>Finding 1-2</b>	<b>Area for State Attention</b>												
<b>Summary</b>	Kansas’s data had minor differences when compared to the information presented in ICIS-NPDES.												
<b>Explanation</b>	<p>KDHE consistently batches data into ICIS-NPDES as required by the national program. There are five (5) instances where the data in ICIS-NPDES did not match the data found in KDHE files.</p> <ul style="list-style-type: none"> <li>- Topeka North-WWTP – Enforcement action and penalty are not listed in ICIS-NPDES.</li> <li>- Coffeyville WWTP – Address of the facility in inspection report is different than what is identified in ICIS-NPDES.</li> <li>- Garden City WWTP – August 9, 2014 inspection not in ICIS-NPDES.</li> <li>- Hill City WWTP - 2009 Order is missing in ICIS-NPDES</li> <li>- Green Acres Restaurant WWTP - Street of facility not in ICIS-NPDES.</li> </ul> <p>KDHE should review identified differences from the Kansas database and corresponding ICIS-NPDES system.</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 Files reviewed where data are accurately reflected in the national data system</td> <td>100%</td> <td></td> <td>16</td> <td>21</td> <td>76.2%</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2b Files reviewed where data are accurately reflected in the national data system	100%		16	21	76.2%
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2b Files reviewed where data are accurately reflected in the national data system	100%		16	21	76.2%								
<b>State response</b>	<p>During this review, KDHE did not have security clearance to the ICIS-NPDES enforcement action and penalty module. All enforcement information was provided to the EPA Region 7 office to upload the data. Therefore, the above findings for Topeka North WWTP and Hill City WWTP are not correct.</p> <p>The new P.O. Box number for Coffeyville WWTP had not uploaded to ICIS NPDES, this has been corrected and resolved.</p> <p>Green Acres Restaurant WWTP street address has been added to ICIS-NPDES.</p> <p>KDHE pursued and has recently obtained security clearance so this may be rectified in the future.</p>												

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The Garden City August 9, 2014 inspection did not get loaded to the KDHE Oracle database system and therefore, did not get uploaded to ICIS. This oversight has been corrected.

EPA was responsible for loading all Kansas NPDES enforcement data into PCS which would include the Hill City order issued in 2009.

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**Recommendation**

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## CWA Element 2 — Inspections

<b>Finding 2-1</b>	<b>Area for State Improvement</b>					
<b>Summary</b>	KDHE does not meet the CMS goals for stormwater inspections.					
<b>Explanation</b>	<p>KDHE met many of their inspection goals during FY15 with the exception of stormwater, specifically industrial stormwater (4a8) and Phase I and II stormwater (4a9). KDHE consistently does not meet their stormwater CMS goals each year.</p> <p><i>** The EPA is working with KDHE to identify if the state performed any inspections for 4a5 and 5b2.</i></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>
	4a1 Pretreatment compliance inspections and audits	100%		6	6	100%
	4a2 Significant Industrial User inspections for SIUs discharging to non-authorized POTWs	100%		12	12	100%
	4a4 Major CSO inspections	100%		3	3	100%
	4a5 SSO inspections	100%				
	4a7 Phase I & II MS4 audits or inspections	100%		0	0	
	4a8 Industrial stormwater inspections	100%		50	117	46.2%
	4a9 Phase I and II stormwater construction inspections	100%		25	210	11.9%
	4a10 Medium and large NPDES CAFO inspections	100%		87	90	103%
	5a1 Inspection coverage of NPDES majors	100%	55.3	29	29	100%
	5b1 Inspection coverage of NPDES non-majors with individual permits	100%	26.6	529	1908	27.7%
	5b2 Inspection coverage of NPDES non-majors with general permits	100%	6.8	0	0	0
<b>State response</b>	<p>4a1 – Denominator matches CMS.</p> <p>4a2 - Denominator matches CMS.</p> <p>4a4 and 4a5 - No state commitments were included in the 2015 CMS plan. Kansas confirms the Numerator 4a4 to be correct but the Denominator should be 0. 4a5 Denominator should be 0, and the Numerator should be 529 because the district inspections review I/I and report SSO “incidents” for the period since the previous inspection.</p>					



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4a7 – Phase I and II MS4 – In the EPA approved CMS for 2015, KDHE did not commit to any MS4 inspections and therefore none were conducted. As agreed upon, KDHE is in the process of piloting inspections for Phase I and Phase II MS4 stormwater. Pursuant to the 2015 CMS and 2016 – KDHE has conducted 7 audits in the Summer of 2016. KDHE recommends this issue be resolved in the upcoming FY 2017 CMS negotiations.

4a8 – Industrial Stormwater – the 2015 CMS had 50 commitments with a notation that Kansas’ inspections are complaint driven due to lack of staff to schedule routine inspections. KDHE does not foresee attainment of a rigorous CMS goals due to continued staffing constraints and competing priorities. An alternative plan will be submitted for consideration in 2017.

Please note that KDHE conducted 120 inspections of industrial wastewater treatment systems. Of the 120, 87 inspections involved NPDES permits that also contained Storm Water Prevention Plan requirements. The 87 inspections included completing the Stormwater Activities section of the Kansas Water Pollution Control Inspection Report for Industrial Facilities.

As such, KDHE believes the numerator for 4a8 should be 137, or 50 complaint driven inspections and 87 routine inspections.

4a9 – Construction Stormwater - the 2015 CMS had 25 commitments with a notation that Kansas’ inspections are complaint driven due to lack of staff to schedule routine inspections. KDHE has hired a Senior Environmental Employee (SEE) with construction inspection experience to assist the state in developing a construction stormwater inspection protocol, pilot the protocol, and develop a matrix to identify high priority construction stormwater permits for inspection.

Despite such efforts, KDHE does not foresee attainment a CMS goal due to staffing constraints and competing priorities. An alternative plan will be submitted for consideration.

4a10 – Kansas commitment was 83.

5a1 – CMS commitment is 54.

5b1&2 – The universe of facilities for was 1036 in the CMS and the approved state commitment was 207. The CMS does not distinguish Individual Permits vs General, rather distinguishes non-major – impaired waters and non-major non-impaired waters. Even this point is rather moot,

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because the CMS universe and commitments combined these two distinguished rows into 1.

Please note: Metric 5b1: The denominator is inflated because of a problem within ICIS-NPDES. ICIS-NPDES has no way to designate a permit as being “Inactive”. The closest designation is to “Terminate” a permit. However, in Kansas, the term “Terminate” has a very specific legal process and is generally an adversarial action requiring public notice, hearings and opportunities for legal appeals whereas making a permit “Inactive” is normally an action indicating the permittee neither wants nor needs the permit and KDHE concurs. The term “inactive” is also used for unpaid construction storm water permit fees or returned invoices.

In Kansas, we have many facilities that go inactive for a period and then become active again as the result of new owners (mainly businesses and CAFOs) and/or new projects (rock quarries). The permit number stays with the facility site until permanent actions indicate that a permit will not be needed in the future. As a result, the only way KDHE can work within the ICIS-NPDES database is to turn the Compliance Monitoring status to OFF to keep these facilities from being in non-compliance for monitoring failures. However, the current EPA method of determining active permits counts these permits as being active and if the current date is beyond the permit’s expiration date, the permit is considered as being backlogged. This results in inflated numbers of active permits and backlogged permits shown for Kansas. KDHE has discussed this issue with EPA ICIS-NPDES personnel including a request that a permit status of “inactive” be added to the ICIS-NPDES options. The request was denied. KDHE is hereby requesting that EPA add this additional permit status option to ICIS-NPDES so that the federal database system accurately reflects the status of Kansas NPDES permits.

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**Recommendation**

KDHE should ensure that inspections are completed according to the CMS plan. If the state anticipates that it will have difficulty meeting the minimum CMS requirements, an alternative plan should be submitted. EPA encourages KDHE to exercise the flexibility provided by the CMS in directing inspection resources.

1. KDHE should submit to the EPA an action plan that addresses industrial stormwater and Phase I and II stormwater inspections. Submit the timeline to the EPA with the first quarterly update (January 15, April 15, July 15, and October 15).
2. Report to the EPA each quarter (January 15, April 15, July 15, October 15) the progress made perform to comprehensive inspections.

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Once the EPA is satisfied that state actions have addressed each deficiency, the EPA will mark this recommendation complete.

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## CWA Element 2 — Inspections

Finding 2-2	Area for State Improvement
<b>Summary</b>	KDHE inspection reports did not consistently identify pertinent facility information, compliance issues, and compliance determinations.
<b>Explanation</b>	<p>The EPA NPDES Compliance Inspection Manual, created July 2004, identifies that the inspection report should ‘organize and coordinate all inspection information and evidence into a comprehensive, usable document.’ KDHE inspection reports reviewed do not provide a document that can be used as a comprehensive document.</p> <p>The EPA SRF selected 51 inspection reports to be reviewed. A few inspections are missing basic facility information or inspection information. 19 of the 51 inspections did not make clear compliance determinations. The inspection reports often contain little descriptive narrative information. Inspection reports point to reference documents not included in the inspection report package.</p> <p>The EPA found that some inspection reports did not contain facility information or had minor completeness issues:</p> <ul style="list-style-type: none"><li>- Coffeyville WWTP – time of inspection not included in inspection report</li><li>- Garden City WWTP – facility photos did not have captions</li><li>- Milford Fish Hatchery – inspector identified a compliance issue (eroded outfall) yet did not memorialize the finding with photographic evidence</li></ul> <p>The following inspection reports did not identify effluent violations in the quarters prior to the inspection:</p> <ul style="list-style-type: none"><li>- BNSF Railway Company Newton Yard</li><li>- Goessel</li><li>- Hartford</li><li>- Innovia Films</li></ul> <p>The following CAFO inspection reports identified noncompliance, (areas of uncontrolled runoff and permit violations) however, did not identify the facility as out of compliance:</p> <ul style="list-style-type: none"><li>- CJ Feeders</li><li>- Meier Dairy of Palmer, Inc.</li></ul> <p>Inspection reports reviewed are not comprehensive standalone documents. The reader must review additional documents, such as the permit or the</p>

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statement of basis, in order to understand the facility layout or processes. These additional documents are not included in the inspection report package as attachments. A description of the missing information is illustrated below:

- Innovia Films
  - o No line drawing as required by checklist
- Topeka North WWTP
  - o No narrative explanation of the treatment system
- Coffeyville WWTP
  - o plant treatment not documented,
  - o inspector notes that the SBR was inoperable at the time of the inspection
  - o inspector states it has been previously explained in past inspections therefore did not need to be repeated.
- Milford Fish Hatchery
  - o inspector documents in the checklist that the outfall is eroded yet does not take photographic evidence of the deficiency
- Green Acres
  - o checklist identifies that the outfall is 'clear with no foam' yet in the receiving stream quality is identified as 'N/A' as if the facility was not discharging
- BNSF Railway Company Newton Yard
  - o inspection report contained limited narrative information to describe the facility.
- Weststar Energy Hutchison Center
  - o no information on the industrial processes and the operation of the processes as it relates to the WWTP
- Henry Creek Farms, Inc.
  - o facility was not described in the inspection as the narrative portion of the checklist contained very little information
- Haw Ranch Feedlot II, LLC
  - o facility was not described in the inspection as the narrative portion of the checklist contained very little information
- Spring Creek Farm
  - o facility was not described in the inspection as the narrative portion of the checklist contained very little information
- CJ Feeders
  - o facility was not described in the inspection as the narrative portion of the checklist contained very little information

Unclear identification of noncompliance was cited for state improvement in the Round 2 SRF. The item was closed in March 2012 after a review of inspection reports that clearly identified noncompliance. The state process has not been implemented and/or become standard practice.

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Note: The findings above are consistent to the findings described within the Summary of 2015 NPDES Oversight Inspections in Kansas report dated November 30, 2015.

Based on the overall inspection element review and findings, it appears that Kansas could benefit from inspector training, for both violation identification and report writing. Based on available resources and coordination Region 7 is willing to work with KDHE to provide inspector training. Alternatively, EPA Headquarters also offers free online training through the National Enforcement Training Institute (NETI) eLearning Center. Pete Bahor, OECA, OC, Water Branch is a good contact regarding online training. Additional information is located at <https://www.epa.gov/compliance/national-enforcement-training-institute-neti-elearning-center>.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	6a Inspection reports complete and sufficient to determine compliance at the facility	100%		32	51	62.7%

**State response**

The KDHE Bureau of Water and the District Offices are not structured into the separate areas of permitting, compliance, inspection and enforcement as is the EPA Regional office. The EPA NPDES Compliance Inspection Manual is based upon EPA’s structure. The KDHE District Office and Topeka Office personnel both have full access to the permit requirements, previous inspection information and enforcement actions on each facility. The district office personnel use this information in preparation to conducting inspections and providing written reports concerning the inspections. The inspections are complementary to the other documents and are not meant to repeat readily available information or to be fully stand-alone reports.

KDHE recognizes we do not have our own guidance document similar to EPA’s NPDES Compliance Inspection Manual. KDHE is in the process of developing an Inspection Report Guidance document to address many of the findings in this SRF. The Inspection Report Guidance document will provide greater clarity on facility descriptions (with the exception of CAFO), photographs and offer consistent guidance for compliance vs non-compliance.

The above findings for Goessel is not correct. The findings stated that the “inspection reports did not identify effluent violations in the quarters prior to the inspection”. The inspection report was completed August 20, 2014

and stated an effluent violation for May 2014 (3<sup>rd</sup> QFFY). The city of Goessel 4<sup>th</sup> QFFY would not be due until October 28, 2014. Therefore, the May 2014 data was the data in the quarter prior to the inspection.

The above findings for Hartford is not correct. The findings stated that the “inspection reports did not identify effluent violations in the quarters prior to the inspection”. The city of Hartford had been in compliance with their permit limits, therefore there was no effluent violations to identify.

The above findings for Innovia is not correct. The findings stated that the “inspection reports did not identify effluent violations in the quarters prior to the inspection”. The inspection report is dated April 13, 2015 and notes monthly exceedance of permit limits from November 2014 to February of 2015. The March 2015 DMR data is not due to KDHE until April 28, 2015, after this inspection report was completed.

The above findings for CJ Feeders and Meier Dairy of Palmer, Inc. are incorrect.

CJ Feeders: The inspector noted in the 12/3/2015 inspection that it appeared runoff from an area was uncontrolled; however, no discharge was observed during the inspection.

Meier Dairy of Palmer, Inc.: The facility was identified as out of compliance on 1/28/2015 for the uncontrolled runoff and the inspection and transmittal letter clearly state this. KDHE required immediate mitigation of the uncontrolled runoff.

Note – The Inspection Reports reviewed by EPA for this SRF preceded the “Summary of 2015 NPDES Oversight Inspections in Kansas report dated November 30, 2015”.

KDHE welcomes the opportunity to discuss training from Region 7. With respect to NETI training, in the past 6 months KDHE is only aware of 1 training opportunity and space was extremely limited – 25 participants with priority for Region 7 inspectors. Kansas was notified of the training opportunity on August 22<sup>nd</sup>, and by August 24<sup>th</sup> only 2 seats were still available. KDHE would appreciate more frequent or more widely available training opportunities.

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**Recommendation**

KDHE should ensure the inspection reports are comprehensive documents that contain all pertinent details regarding the facility, facility operation details, and compliance determinations. All documentation needed to understand the facility processes and compliance details should be included

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in the inspection report package. The inspector should make a clear compliance determination of the facility.

1. KDHE should develop and implement an inspection report standard operation procedure (SOP) with the BEFS. This SOP should clearly define the elements required to ensure the inspection report is a comprehensive source for the facility’s contact information, location manufacturing process/treatment systems present, the facility’s compliance with the permit, etc.
2. KDHE should submit to EPA a timeline of action items for the SOP. This timeline should be submitted with the first quarter response to the SRF.
3. Report to the EPA at each quarter (January 15, April 15, July 15, October 15) the progress made to create comprehensive inspections and example reports illustrating the progress.

Once the EPA is satisfied that state actions have addressed each deficiency, the EPA will mark this recommendation complete.

**CWA Element 2 — Inspections**

<b>Finding 2-3</b>	<b>Area for State Improvement</b>
<b>Summary</b>	KDHE stormwater complaint/referral investigations do not follow the same format as all other inspections reviewed. It was difficult to determine if KDHE issued the reports to these facilities.
<b>Explanation</b>	<p>The complaint/referral investigations are identified by KDHE as completed compliance inspections.</p> <p>In two instances, KDHE referred the complaints to the governing city for follow-up. However, KDHE did not perform an on-site inspection nor was a response from KDHE sent to the facility. The file is unclear if the City’s response returned the facility to compliance.</p> <ul style="list-style-type: none"> <li>- Persimmon Pointe Subdivision</li> <li>- Riverview Hills Subdivision</li> </ul> <p>The complaint investigations viewed the facility’s compliance from the public right-of-way and found compliance issues. KDHE did not return to perform a full compliance inspection such as reviewing SWPPP documentation, self-inspections, etc.</p> <ul style="list-style-type: none"> <li>- Linn Valley Lakes WW System Improvements</li> <li>- Southfork Commercial Addition, aka 47<sup>th</sup> St. South and KS Turnpike</li> </ul>



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- 23<sup>rd</sup> and Iowa Geometric Impv.

The EPA found 11 instances where the results of the investigation are not memorialized with an inspection report that follows that same format as the other 42 inspections reviewed. Additionally, EPA could not determine if an official report was sent to these 11 facilities. EPA found that a portion of the subject facilities are notified of the investigations via phone or email but not in an official KDHE letter.

- 13609 Riverview
    - o KDHE determined facility not subject to stormwater regulations
    - o Complaint/referral form completed
      - o Unknown if sent to facility
    - o KDHE contacted site via phone
  - 23<sup>rd</sup> and Iowa Geometric Impv.
    - o Noncompliance found
    - o Complaint/referral form completed
      - o Unknown if sent to facility
      - o KDHE sent email to facility
  - AG Auto Detailing
    - o KDHE determined facility not subject to industrial stormwater regulations
    - o Complaint/referral form completed
      - o Unknown if sent to facility
        - Coffeyville Nitrogen Resources Fertilizer
    - o Noncompliance found
    - o Complaint/referral form completed
    - o KDHE contacted facility via phone
  - Holton Elementary School
    - o Complaint/referral form not completed
    - o Respondent followed-up with email after the inspection
    - o No information to determine if KDHE issued any notice of compliance issues
  - Lawrence Sewer Expansion
    - o Complaint/referral form completed
      - o Unknown if sent to facility
      - o KDHE sent email to facility
  - Linn Valley Lakes WW System Improvements
    - o Complaint/referral form completed
      - o Unknown if sent to facility
  - Martin Schaal
    - o KDHE determined facility was in compliance
    - o Complaint/referral form completed
      - o Unknown if sent to facility
  - Oak Grove Elementary
-

- Noncompliance found
- Complaint/referral form completed
- Unknown if sent to facility
- Southfork Commercial Addition
  - Noncompliance found
  - No complaint/referral form completed
  - Unknown if sent to facility
- Zeremba Property
  - Noncompliance found
  - Complaint/referral form completed
  - Unknown if sent to facility

The 2014 EPA Compliance Monitoring Strategy (CMS) describes a reconnaissance inspection as an approved method to quickly identify if a facility is operating within permit requirements. The EPA SRF review found that the complaint/referral investigations did not follow a similar format as other facility inspections. If these types of compliance reviews are to be considered a wholly separate type of inspection, the EPA suggests KDHE clearly define these inspections within their guidance documents. The EPA does believe that if a facility was considered to be in noncompliance, KDHE should, send an official letter to the facility notifying them of their noncompliance. However, if the reconnaissance inspection reveals compliance issues, a full compliance evaluation or a notice of noncompliance, plus a requirement to return to compliance and the submission of compliance documentation, should be issued to the facility following the complaint investigation.

<b>Relevant metrics</b>	Metric general falls under 6a
<b>State response</b>	<p>KDHE concurs with this observation as stormwater inspections have been conducted primarily on a “complaint-driven basis” as is noted in the current “Work Plan”. KDHE has hired a Senior Environmental Employee (SEE) with construction and inspection experience to assist the state in developing a construction stormwater inspection protocol, pilot the protocol, and develop a matrix to identify high priority construction stormwater permits for inspection.</p> <p>As KDHE develops and tests its inspection protocol and matrix, KDHE will develop a process that will include notifying the facility, identifying when a full compliance inspection is warranted, a notice of noncompliance or compliance following a full evaluation and steps to return to compliance and provided to the facility. The inspection protocol could include the numerous minor problems such as specifically identifying violations as violations and making sure that each violation has a correction date or at least a date for them to report back to the district with a progress report.</p>

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	<p>The protocol and procedures will be included in the Inspection Report Guidance document to be developed by KDHE.</p>
<b>Recommendation</b>	<p>KDHE should ensure that if complaint investigations are conducted, the process is clearly defined by protocols and guidance.</p> <ol style="list-style-type: none"><li>1. KDHE should ensure that the SOP, developed for Finding 2-2, includes and clearly explains the complaint/referral requirements and process to transmit results to the facility.</li><li>2. KDHE should submit to EPA a timeline of action items for the SOP. This timeline should be submitted with the first quarter response to the SRF.</li><li>3. Report to the EPA at each quarter (January 15, April 15, July 15, October 15) the progress made to comprehensively evaluate facility's that are the subject of complaints and example reports illustrating comprehensive inspections.</li></ol> <p>Once the EPA is satisfied that state actions have addressed this deficiency, the EPA will mark this recommendation complete.</p>

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## CWA Element 2 — Inspections

<b>Finding 2-4</b>	<b>Area for State Attention</b>					
<b>Summary</b>	KDHE inspections occasionally do not meet the prescribed timeframes for transmittal from BEFs to the BOW.					
<b>Explanation</b>	<p>The EPA found that the inspection reports reviewed do not meet the timeliness guidance as written on page 3 in the BOW-BEFS Work Plan for FFY 15 (Work Plan). The EPA reviewed 51 total inspection reports. 15 of the 51 inspection reports have dates that exceeded the 20 day deadline described in the work plan. It is unclear if BOW immediately mails the inspection reports once they are received from BEFS. The guidance does not describe this portion of the process. KDHE should update the work plan to clearly define the expectations for the BOW to transmit inspection reports received from BEFS. EPA suggests that this update is memorialized in the SOP that should be created to remedy Findings 2-2 and 2-3 above.</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>
	6b Inspection reports completed within prescribed timeframe	100%		36	51	70.6%
<b>State response</b>	<p>The gravity of this issue escapes us; it would be helpful if EPA would document the time span of the 15 specific inspections between conducting the inspections to completing the report. This would allow BOW to identify if the issue is inspector-centric, geographic in nature or systemic over all six districts, as well as note whether the tardiness was one day, several days or a number of weeks. Even though it's essentially guidance, the 20 working day timeline has been reiterated with District Office staff during joint BOW-BEFS meetings and the 2017 Work Plan will emphasize the point as well as establish a notification and documentation process for inspection reports lagging past the deadline.</p>					
<b>Recommendation</b>						

## CWA Element 3 — Violations

Finding 3-1	Area for State Improvement																																																
<b>Summary</b>	KDHE does not identify facilities that are in significant noncompliance nor are SEV codes used.																																																
<b>Explanation</b>	<p>The review of the violations found in the KDHE inspection reports identified that KDHE does not consistently identify SNC. Inconsistent SNC determinations were found at Innovia Films, Parsons WWTF, and Wellington WWTF.</p> <ul style="list-style-type: none"> <li>- Innovia Films –               <ul style="list-style-type: none"> <li>o Facility violated effluent limits in two consecutive quarters, yet the inspection report stated “No issues or deficiencies.”</li> <li>o No information in file to how KDHE responded to SNC violation.</li> </ul> </li> <li>- Parsons WWTF               <ul style="list-style-type: none"> <li>o Facility missed several EPA reporting deadlines for an enforcement order, not identified in inspection report.</li> </ul> </li> <li>- Wellington WWTF               <ul style="list-style-type: none"> <li>o SNC reported to ICIS for May 2015 ammonia violation,</li> <li>o no information in file to how KDHE responded to SNC violation.</li> </ul> </li> </ul> <p>The EPA did not find any uses of SEV codes in the official files.</p>																																																
<b>Relevant metrics</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Metric ID Number and Description</th> <th style="text-align: center;">Natl Goal</th> <th style="text-align: center;">Natl Avg</th> <th style="text-align: center;">State N</th> <th style="text-align: center;">State D</th> <th style="text-align: center;">State % or #</th> </tr> </thead> <tbody> <tr> <td>7a1 Number of major facilities with single event violations</td> <td></td> <td></td> <td style="text-align: center;">0</td> <td style="text-align: center;">0</td> <td style="text-align: center;">0</td> </tr> <tr> <td>7d1 Major facilities in noncompliance</td> <td></td> <td style="text-align: center;">74.2%</td> <td style="text-align: center;">28</td> <td style="text-align: center;">56</td> <td style="text-align: center;">50%</td> </tr> <tr> <td>7f1 Non-major facilities in Category 1 noncompliance</td> <td></td> <td></td> <td style="text-align: center;">350</td> <td></td> <td></td> </tr> <tr> <td>7g1 Non-major facilities in Category 2 noncompliance</td> <td></td> <td></td> <td style="text-align: center;">113</td> <td></td> <td></td> </tr> <tr> <td>8a2 Percentage of major facilities in SNC</td> <td></td> <td style="text-align: center;">19.2%</td> <td style="text-align: center;">3</td> <td style="text-align: center;">56</td> <td style="text-align: center;">5.4%</td> </tr> <tr> <td>8b Single-event violations accurately identified as SNC or non-SNC</td> <td></td> <td></td> <td style="text-align: center;">0</td> <td style="text-align: center;">3</td> <td style="text-align: center;">0</td> </tr> <tr> <td>8c Percentage of SEVs identified as SNC reported timely at major facilities</td> <td></td> <td></td> <td style="text-align: center;">0</td> <td style="text-align: center;">3</td> <td style="text-align: center;">0</td> </tr> </tbody> </table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	7a1 Number of major facilities with single event violations			0	0	0	7d1 Major facilities in noncompliance		74.2%	28	56	50%	7f1 Non-major facilities in Category 1 noncompliance			350			7g1 Non-major facilities in Category 2 noncompliance			113			8a2 Percentage of major facilities in SNC		19.2%	3	56	5.4%	8b Single-event violations accurately identified as SNC or non-SNC			0	3	0	8c Percentage of SEVs identified as SNC reported timely at major facilities			0	3	0
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																																												
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<b>State response</b>	Kansas does identify facilities that are in Significant Noncompliance but agrees, Kansas does not use the SEV code. Kansas defines SNC in our Water Enforcement Guidance. Kansas uses ongoing review of DMR data,																																																

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the EPA QNCR process and the inspection process to identify, document and report SNC violations. All determinations of SNC and the agency's response to SNC violations are made by, and communicated to the permittee by the Topeka office.

Because SNC determinations are made from findings in the Topeka office, they are not necessarily part of inspection reports, thus the context of this issue is incomplete if EPA strictly relied on inspection reports to identify SNC facilities.

Single Event Violations (SEV) discovered during the inspection are documented by the district office inspectors as part of their inspection report. These are minor violations that are expected to be tracked by the district office and final reports are completed, typically by a letter to the permittee with a copy to the Topeka office. KDHE does not formally track these minor violations as most incidents are corrected immediately. If the permittee fails to correct the minor violations in a timely manner, the Topeka office is notified and additional action including formal enforcement action is considered. KDHE does not use SEV codes.

KDHE's response to SNC violations listed on the QNCR are reported on the quarterly QNCR sent to EPA. KDHE will send a copy of the appropriate section of the QNCR to the permit file for the identified facility to provide a clear explanation of what action the agency has or will take.

The explanation above for Innovia that stated "No information in file to how KDHE responded to SNC violation" is not believed to be accurate. There was documentation in the file of email correspondence between BOW staff and BEFS staff that had escalated our response to an administrative order status but it was after we had heard back from BEFS that the facility had addressed the issue by ordering and installing parts and the facility had already come back into compliance by meeting permit limits, we decided to not go forward with the administrative order. KDHE stated on the Quarterly Non-Compliance Report (QNCR) to EPA dated June 30, 2015 regarding Innovia Films, Inc., "The facility's main clarifier was down for repairs. The repairs have been completed and the facility has come back into compliance with their permit limits."

The Parsons enforcement order is an EPA issued order and KDHE cannot serve as proxy for EPA to enforce its own orders. Both Parsons and Pittsburg have shown up on the QNCR reports for several years because of EPA issued orders. In KDHE's responses to the QNCRs, KDHE has requested that EPA take such actions as are necessary to remove these facilities from the QNCR. . KDHE cannot access the EPA enforcement action in ICIS-NPDES and has no authority to enforce EPA's orders.

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KDHE stated on the Quarterly Non-Compliance Report (QNCR) to EPA dated October 2, 2015, “Wellington experienced higher than average rainfall during May which caused wash out of some of their biological mass that carried into June. They were back into compliance by the end of June.”

KDHE does not agree with EPA’s recommendation based upon KDHE’s use of SNC and non-use of SEV coding in inspections. KDHE already uses EPA’s definition of SNC and responds to the QNCR as required by federal law. KDHE handles single event violations either through informal communications (letters, e-mails, inspection reports, technical assistance and training referrals) or formal enforcement actions. Both methods are already documented. The district personnel have no access to any ICIS-NPDES codes. The additional use of SEVs merely for EPA accounting purposes adds additional burdens on the inspection staff with no additional protection for the environment or improvement in human health. KDHE does not have the software or manpower to complete a task that does not promote its primary responsibility.

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**Recommendation**

KDHE should ensure that if a facility is in SNC, an SEV code should be used to identify the SNC, and KDHE should conduct a follow-up action to be documented in the official files.

1. Report to the EPA at each quarter (January 15, April 15, July 15, October 15) the progress made to respond to instances of SNC.
2. Report to the EPA at each quarter (January 15, April 15, July 15, October 15) how KDHE will use SEV codes in future inspections.

Once the EPA is satisfied that state actions have addressed this deficiency, the EPA will mark this recommendation complete.

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## CWA Element 3 — Violations

<b>Finding 3-2</b>	<b>Area for State Improvement</b>					
<b>Summary</b>	Compliance evaluation inspections do not identify permit violations.					
<b>Explanation</b>	<p>The EPA selected 51 reports to review. There are 17 instances where a compliance determination was not consistent to the report findings.</p> <p>KDHE inspection found noncompliance yet did not declare the facility to be noncompliant with their permit. Often deficiencies of the permit are identified as a lesser item to be completed rather than an item of noncompliance and violation of the permit terms. In some instances, the cover letter to the facility identifies that the corrective action is a ‘Recommendation’ rather than an ‘Issue/Violation.’ Examples are found in the following files:</p> <ul style="list-style-type: none"> <li>- Alden Wastewater Treatment Plant</li> <li>- BNSF Railway Company Newton Yard</li> <li>- Garden City WWTP</li> <li>- Hartford</li> <li>- Innovia Films</li> <li>- Parsons Wastewater Plant</li> <li>- Topeka North WWTP</li> </ul> <p>CAFO inspection reports for the following two facilities identified areas of uncontrolled runoff and permit violations but did not declare them to be noncompliant.</p> <ul style="list-style-type: none"> <li>- CJ Feeders</li> <li>- Meier Dairy of Palmer, Inc.</li> </ul> <p>The KDHE Wastewater Enforcement Guidance, effective date December 9, 1997 (WEG), specifies that if a violation of the permit is found, a ‘Directive’ should be the minimum response from the Bureau of Water (BOW) to the facility. The WEG allows an escalated response, if warranted, such as an Order, Penalty, or AG Referral. The EPA did not find any instances where a ‘Directive’ was used in response to permit violations.</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>
	7e Inspection reports reviewed that led to an accurate compliance determination	100%		34	51	70.6%



<p><b>State response</b></p>	<p>The above explanation regarding the KDHE Wastewater Enforcement Guidance, effective date December 9, 1997 (WEG) is not believed to be accurate. A Letter of Warning not a Directive should be the minimum response from the Bureau of Water (BOW) to the facility. See the WEG direct statements below.</p> <p><b>“Warning:</b> Warning actions can consist of telephone contacts or letters. These are brief; politely worded contacts stating the problem and requesting correction within a definite time frame. Mention of more severe enforcement action is not necessarily made with warning actions.</p> <p><b>Directives:</b> Directives are firmly worded letters, sent via certified mail, stating the problem and directing correction of the problem. Directives can be used to respond quickly to problems, which in KDHE's opinion, will be corrected if the responsible party is made aware of the issue. Directives can be used to help correct continuing minor problems which do not appear to warrant an administrative order for correction. As with verbal and written communications, directives Serve as a basis for orders if the problem is not corrected.”</p> <p>KDHE routinely uses Letters of Warning in dealing with permit violations but has rarely utilized Directives. KDHE plans on applying the ‘Directive’ option in the future for facilities lagging in response.</p> <p>KDHE is developing an Inspection Report Guidance Document which will serve the purpose of a SOP and address recommendation #1 below.</p> <p>The above findings for CJ Feeders and Meier Dairy of Palmer, Inc. are inaccurate. Refer to the State Response in Finding 2-2.</p>
<p><b>Recommendation</b></p>	<p>The KDHE inspections identify violations of the permit, however, the report writer does not call the deficiency of the permit a violation. If a facility does not meet the terms of the permit, the facility is out-of-compliance and should have each instance of noncompliance identified as a violation of the permit.</p> <ol style="list-style-type: none"> <li>1. The SOP developed for Findings 2-2 and 2-3 should include guidance details for inspection report writers that clearly identifies the expectations for when a permit requirement is not being followed.</li> <li>2. The KDHE should submit to EPA a timeline of action items for this SOP. This timeline should be submitted with the first quarter response to the SRF.</li> <li>3. Report to the EPA at each quarter (January 15, April 15, July 15, October 15) the progress made to create comprehensive inspections and example reports illustrating the progress.</li> </ol>

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Once the EPA is satisfied that state actions have addressed this deficiency, the EPA will mark this recommendation complete.

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## CWA Element 3 — Violations

Finding 3-3	Area for State Improvement
<b>Summary</b>	Stormwater complaint investigations are not sent to the facility, therefore, no attempt to correct noncompliance can be made by the facility.
<b>Explanation</b>	<p>The EPA selected 51 inspection reports to review. There are 9 instances where a stormwater complaint investigation resulted in noncompliance being found. EPA could not determine if the complaints/referral results are sent to the facility nor did the files contain information that illustrated how or if the facility returned to compliance.</p> <p>Stormwater inspection reports identified compliance issues and it cannot be determined if the facility received a KDHE compliance determination and subsequently returned to compliance.</p> <ul style="list-style-type: none"><li>- 23<sup>rd</sup> and Iowa Geometric Impv.</li><li>- Coffeyville Nitrogen Resources Fertilizer</li><li>- Holton Elementary School</li><li>- Lawrence Sewer Expansion</li><li>- Oak Grove Elementary School</li><li>- Persimmon Pointe</li><li>- Riverview Hills Subdivision</li><li>- Southfork Commercial Addition</li><li>- Zeremba Property</li></ul> <p>The official file should contain all information regarding the facility's compliance with the regulations. The BOW-BEFS Work Plan for FFY 15 discusses on page 5, "Follow up correspondence regarding correction of deficiencies noted in the original inspection is to be forwarded when deficiencies are resolved." The Work Plan does not discuss a similar process for complaints. The official file did not contain information that illustrated the facilities returned to compliance. It is not known how the regional offices track this information, as there is no cataloging system to track missing required submittal documents.</p>
<b>Relevant metrics</b>	Generally falls under Metric 7e
<b>State response</b>	KDHE agrees that the status and distribution of documentation concerning stormwater complaint investigations needs to be improved. However, we disagree that the file being void of the investigation report being mailed to facility equates to the facility remaining out of compliance. In many cases, for these types of complaints, on-site direction, phone calls and/or e-

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mails are frequently provided and subsequently improvements are made and follow-up inspections conducted resulting in compliance being re-established.

KDHE has hired a Senior Environmental Employee (SEE) with construction and inspection experience to assist the state in developing a construction stormwater inspection protocol, pilot the protocol, and develop a matrix to identify high priority construction stormwater permits for routine inspection. This employee will also work to develop a procedure for managing complaints, and this will be incorporated in the Inspection Report Guidance document being developed by KDHE.

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**Recommendation**

If a facility does not meet the terms of the permit, the facility is out-of-compliance and should have each instance of noncompliance identified as a violation of the permit. The facility should be notified of their noncompliance with the requirement to return to compliance:

1. KDHE should incorporate complaints/referrals process into the SOP being developed for Findings 2-2 and 2-3 should include guidance details for inspection report writers that clearly identifies the expectations for when a permit requirement is not being followed and process to transmit findings to the facility.
2. The KDHE should submit to EPA a timeline of action items for this SOP. This timeline should be submitted with the first quarter response to the SRF.
3. Report to the EPA at each quarter (January 15, April 15, July 15, October 15)
  - a. the progress made to create comprehensive inspections and example reports illustrating the progress;
  - b. list of complaint/referrals investigations that have been conducted;
  - c. the date the complaint/referral results are sent to the facility; and,
  - d. example investigations illustrating this change.

Once the EPA is satisfied that state actions have addressed this deficiency, the EPA will mark this recommendation complete.

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### CWA Element 3 — Violations

Finding 3-4	Area for State Improvement
<b>Summary</b>	KDHE official files do not document a facility's return to compliance.
<b>Explanation</b>	<p>The inspection reports documented where the inspector declared that the facility must make corrective actions to correct noncompliance yet the file did not contain any follow-up actions by the facility to illustrate that corrective actions occurred.</p> <ul style="list-style-type: none"><li>- 23<sup>rd</sup> and Iowa Geometric Impv.</li><li>- Great Bend Feeding, Inc.</li><li>- Landon Court Addition</li><li>- Oak Grove Elementary School</li><li>- Sunflower Pork, Inc.</li></ul> <p>The official file should contain all information regarding the facility's compliance with the regulations. The BOW-BEFS Work Plan discusses on page 5, "Follow up correspondence regarding correction of deficiencies noted in the original inspection is to be forwarded when deficiencies are resolved." The official file did not contain information that illustrated the facilities returned to compliance.</p>
<b>Relevant metrics</b>	Generally falls under metric 7e
<b>State response</b>	<p>KDHE does track facilities in non-compliance and monitors their progress to achieve compliance.</p> <p>KDHE agrees that improvement is warranted to document when a facility returns to compliance and placing the document in the proper files. The 2017 BOW-BEFS Work Plan will have provisions to assure documentation of facilities returning to compliance are provided to BOW and placed in the official files.</p>
<b>Recommendation</b>	<p>KDHE should ensure that if a facility is required to submit corrective actions, the items are submitted, reviewed, and ensure the facility is in compliance. If these documents are not submitted, KDHE should include information in the file that reflects the missing data and the agency's follow-up actions.</p> <ol style="list-style-type: none"><li>1. KDHE should implement the process described in the Work Plan. If this process needs updating, BOW and BEFS should create a clear</li></ol>

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process for this action. This process should be included in the SOP that should be developed for finding 2-2 and 2-3.

2. The KDHE should submit to EPA a timeline of action items. This timeline should be submitted with the first quarter response to the SRF.
3. Report to the EPA at each quarter (January 15, April 15, July 15, October 15) the progress made to catalog and track noncompliance and return to compliance reports.

Once the EPA is satisfied that state actions have addressed each deficiency, the EPA will mark this recommendation complete.

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## CWA Element 4 — Enforcement

<b>Finding 4-1</b>	<b>Area for State Improvement</b>					
<b>Summary</b>	Informal enforcement appears to be issued from BEFS rather than BOW.					
<b>Explanation</b>	<p>It is unclear how Kansas determines when enforcement should be initiated. EPA found in a portion of the inspection reports that regional offices occasionally require facilities to respond within a specific time period. These responses are a result of non-effluent deficiencies found during the inspection. These appear to be informal actions.</p> <p>The EPA file review found instances where KDHE cover letter to the inspection performs the function of an informal or letter of warning type action.</p> <ul style="list-style-type: none"> <li>- Alden Wastewater Treatment Plant</li> <li>- Milford Fish Hatchery</li> </ul> <p>Additionally, the BEFS CAFO inspection cover letters use more direct terminology, “Out-of-Compliance” when describing deficiencies. These letters are not used by any other inspection sector.</p> <ul style="list-style-type: none"> <li>- Great Bend Feeding, Inc.</li> <li>- Haw Ranch Feedlot II, LLC.</li> <li>- Spring Creek Farm</li> <li>- Sunflower Pork, Inc.</li> </ul> <p>The KDHE WEG specifies that if a violation of the permit is found, a ‘Directive’ should be the minimum response from the BOW to the facility. The WEG allows an escalated response, if warranted, such as an Order, Penalty, or AG Referral. These actions fit the description of either a Warning or Directive as described by the WEG. However, the WEG was developed for the Bureau of Water, not the BEF group. The EPA found that the ‘Out-of-Compliance’ letters are originating from BEFS. The WEG only identifies the BOW as the department to issue any enforcement type actions. The WEG does not provide the BEF group the authority to issue enforcement actions.</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>
	9a Percentage of enforcement responses that return or will return source in violation to compliance	100%		12	15	80%

<p><b>State response</b></p>	<p>Historically, BEFS employees had been a part of BOW until 1993. At that time the district office inspectors became their own bureau. The WEG was not updated in 1997 to reflect this administrative change. Informal enforcement may be issued from either BEFS or BOW depending on the nature of the violations, how the violations are discovered and which bureau is best able to handle the follow up.</p> <p>The WEG has been updated to clearly authorize BEFS to issue Letters of Warning as well as non-compliance notice cover letters which accompany an inspection.</p> <p>BOW is drafting an Inspection Report Guidance Document which will offer guidance to BOW and BEFS on how the bureaus respond to effluent and non-effluent violations.</p> <p>Recommendation #1 below recommends that KDHE update existing training manuals for inspectors, but does not state what additional training is needed. Additional information is requested, as this particular finding was related to Enforcement – specifically informal enforcement.</p>
<p><b>Recommendation</b></p>	<p>KDHE inspections appear to have inconsistent follow-up actions when permit violations are found.</p> <ol style="list-style-type: none"> <li>1) Submit to the EPA by <b>TBD XX, 2016</b>, an updated standard operation procedure or operation manual which will include guidance to inspectors performing compliance inspections. The manual should include requirements and/or descriptions of how the BEFS and BOW groups work to respond to both effluent and non-effluent violations.</li> <li>2) KDHE should report to the EPA on a quarterly basis (January 15, April 15, July 15, and October 15) the steps taken to increase consistent approaches to noncompliance when found by KDHE inspectors.</li> <li>3) The KDHE should submit to EPA a timeline of action items. This timeline should be submitted with the first quarter response to the SRF.</li> <li>4) KDHE should report to the EPA on a quarterly basis (January 15, April 15, July 15, and October 15) the process to update the WEG.</li> </ol> <p>Once the EPA is satisfied that state actions have addressed this deficiency, the EPA will mark this recommendation complete.</p>



## CWA Element 4 — Enforcement

<b>Finding 4-2</b>	<b>Area for State Improvement</b>																							
<b>Summary</b>	KDHE enforcement actions do not result in a return to compliance.																							
<b>Explanation</b>	<p>The EPA reviewed 15 files where enforcement was taken by KDHE. The review found that 3 out of the 15 files did not result in a return to compliance.</p> <ul style="list-style-type: none"> <li>- Alden Wastewater Plant <ul style="list-style-type: none"> <li>o See Finding 4-2.2</li> </ul> </li> <li>- Johnson County Timber Wolf Estates <ul style="list-style-type: none"> <li>o See Finding 4-2.2</li> </ul> </li> <li>- Great Bend Feeding <ul style="list-style-type: none"> <li>o “Out-of-compliance” letter identified two items to be corrected, the facility only corrected one item.</li> <li>o Additionally, no information on escalation of second item could be found within the facility file.</li> </ul> </li> <li>- Haw Ranch Feedlot II <ul style="list-style-type: none"> <li>o Facility is missing compliance schedule milestones</li> </ul> </li> </ul>																							
<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>10a1 Major facilities with timely action as appropriate</td> <td></td> <td>11.8%</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>10b Enforcement responses reviewed that address violations in an appropriate manner</td> <td></td> <td></td> <td>12</td> <td>15</td> <td>80%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	10a1 Major facilities with timely action as appropriate		11.8%	0	0	0	10b Enforcement responses reviewed that address violations in an appropriate manner			12	15	80%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
10a1 Major facilities with timely action as appropriate		11.8%	0	0	0																			
10b Enforcement responses reviewed that address violations in an appropriate manner			12	15	80%																			
<b>State response</b>	<p>See State Response Finding 4-2.2 to address Alden Wastewater Plant and Johnson County Timber Wolf Estates.</p> <p>KDHE concurs the enforcement actions for Great Bend Feeding and Haw Ranch Feedlot II did not return the facilities to full compliance.</p> <p>Great Bend Feeding was issued a Consent Order 07-E-0002 on July 10, 2007. At the time of the EPA’s review the facility had not been placed back into compliance by KDHE for the remaining outstanding compliance item, whole pond seepage test for waste storage pond 2. However, the other twenty-one actions required by the Consent Order had been completed. KDHE received the whole pond seepage test results for waste storage pond 2 on March 10, 2016, but did not review the results until August 24, 2016 to ensure they met KDHE’s requirements to minimize seepage. The results do meet KDHE’s requirements and the facility was placed in compliance. Whole pond seepage test results were previously</p>																							

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submitted for waste storage pond 2 on July 1, 2007 and February 10, 2014; however, those results exceeded KDHE’s requirements to minimize seepage. Therefore, the facility was required to modify the structure, re-compact the liner and re-test the structure.

Haw Ranch Feedlot II has completed six of the ten actions required by the Consent Agreement 11-E-0003BOW issued September 9, 2011. KDHE concurs the outstanding required actions have missed the established compliance deadline and to date have not been completed; the facility remains out-of-compliance with their permit.

BOW is drafting an Inspection Report Guidance document which will offer guidance to BOW and BEFs on how the Bureau’s escalate violations associated with not complying with terms in a formal enforcement action.

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**Recommendation**

See Finding 4-2.1 and 4-2.2 on the next pages

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## CWA Element 4 — Enforcement

Finding 4-2.1	Area for State Improvement
<b>Summary</b>	KDHE uses the Kansas Rural Water Association (KRWA) referral process in lieu of formal enforcement actions.
<b>Explanation</b>	<p>The KDHE often uses the referral process to require facilities to meet permit limits. The KDHE cannot refer facilities if a formal action is initiated. The EPA reviewed four referrals initiated by KDHE.</p> <ul style="list-style-type: none"><li>- City of Hartford<ul style="list-style-type: none"><li>o City had issues with I&amp;I as reported by facility contact buried within the inspection checklist.</li><li>o The inspection report does not specifically identify I&amp;I issues as an ‘Issue/Deficiency,’ yet the facility is referred to KRWA for assistance with I&amp;I.</li></ul></li><li>- Nickerson Wastewater Treatment Plant<ul style="list-style-type: none"><li>o Facility was referred in November 2014 yet continued to experience effluent violations until December 2015 at which time the EPA inspected the facility.</li></ul></li><li>- Goessel Wastewater Treatment Plant<ul style="list-style-type: none"><li>o Unknown what precipitated the facility being referred in January 21, 2015.</li><li>o Facility identified compliance issues by December 2015.</li><li>o Unknown if facility is now in compliance.</li></ul></li></ul> <p>It is unknown how long a facility can be a part of the referral process. The WEG specifies that if a violation of the permit is found, a ‘Directive’ should be the minimum response from the BOW to the facility. The WEG allows an escalated response, if warranted, such as an Order, Penalty, or AG Referral. The referral process to KRWA is not described in the WEG.</p>
<b>Relevant metrics</b>	Continuation for review metrics 10a1 and 10b
<b>State response</b>	KRWA is not used in lieu of formal enforcement actions. KDHE – Bureau of Water uses the KRWA as a supplement to the BEFS inspectors to assess situations in which compliance can be readily achieved through technical assistance without the need for formal enforcement. This is consistent with our WEG. KRWA, under the direction of BOW, assists BOW-selected facilities that need more help than what can be provided by BEFS staff. The KRWA personnel are able to spend more time assessing the situation and providing guidance to the facility. The KRWA personnel conduct inspections, write reports, identify violations and make recommendations for improvements the same as the BEFS inspectors. However, because

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they are not a regulatory agency, their reports are not considered informal enforcement documents unless the BOW provides regulator status normally via a cover letter or by a letter to the permittee containing the KRWA information. In cases where compliance has not been achieved or will not be timely achieved, BOW re-assumes control of the situation and issues the appropriate enforcement action to achieve timely compliance.

KDHE made an effort to make this clearer in the updated WEG document submitted to EPA at the time of the SRF response.

KDHE agrees that better explanations could have been provided to explain why certain formal or informal actions were taken and follow up indicating when the permittee has returned to compliance. KDHE and KRWA close a referral by email and track the process with an excel database that is not uploaded to ICIS-NPDES. Some of these documents did not reach the permit files. KDHE will review this process.

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**Recommendation**

KDHE should escalate its enforcement response if a facility is not coming into compliance.

1. KDHE should submit to the EPA actions that will describe the escalation policy for facilities on the KRWA referral list and update the WEG to include this process.
2. The KDHE should submit to EPA a timeline of action items. This timeline should be submitted with the first quarter response to the SRF.
3. KDHE should report to the EPA on a quarterly basis (January 15, April 15, July 15, and October 15)
  - a. The steps taken to update the WEG; and,
  - b. Facilities that have been determined to be in noncompliance and will be addressed with a KRWA referral.

Once the EPA is satisfied that state actions have addressed this deficiency, the EPA will mark this recommendation complete.

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## CWA Element 4 — Enforcement

Finding 4-2.2	Area for State Improvement
<b>Summary</b>	KDHE actions circumvented the process for a facility to return to compliance.
<b>Explanation</b>	<p>The EPA reviewed two files where KDHE action remedied the facility’s noncompliance without the facility performing any actions to return to compliance.</p> <ul style="list-style-type: none"><li>- City of Alden<ul style="list-style-type: none"><li>o A formal order was terminated, even though the facility was in noncompliance, to refer the facility to KRWA.</li></ul></li><li>- Johnson County Timber Creek Estates,<ul style="list-style-type: none"><li>o KDHE changed the E. Coli limit from a permit limit to a monitoring requirement. NPDES permit limits cannot be modified by an enforcement action.</li></ul></li></ul> <p>KDHE should ensure that the facility is responsible for their return to compliance.</p>
<b>Relevant metrics</b>	Continuation for review metrics 10a1 and 10b
<b>State response</b>	<p>EPA misinterpreted the enforcement actions at the city of Alden. The formal order was closed when the actions required by the order were completed and the City was in compliance with their NPDES permit limits for eleven months. When the City failed to remain in compliance, KDHE referred the facility to KRWA to do an evaluation determining why the previous actions did not keep the facility in compliance and what actions were necessary to do so.</p> <p>Johnson County Timber Creek Estates - Years ago EPA disapproved of KDHE allowing a facility to continue to occasionally go into noncompliance under its permit while it was upgrading its plant. At that time, EPA suggested KDHE issue an enforceable order relaxing the permittee’s limit so it could remain in consistent compliance during the construction period. At that time according to EPA, NPDES permit limits can be modified by an enforcement action. NPDES permits cannot be modified with limits in violation of water quality standards or secondary standards. Johnson County Timber Creek Estates is a lagoon for which there is essentially nothing that can be done to change the level of e. coli discharges short of adding a chemical disinfection treatment process to the lagoon. Johnson County agreed to shorten the schedule for removing the</p>

	<p>lagoon system from service by connecting to a mechanical plant with disinfection which is the better long term environmental and public health option favored by KDHE.</p> <p>KDHE will submit an updated WEG by January 15<sup>th</sup>, 2017.</p>
<p><b>Recommendation</b></p>	<p>KDHE should escalate its enforcement response if a facility is not coming into compliance.</p> <ol style="list-style-type: none"> <li>1. KDHE should submit to the EPA an updated WEG that describes the escalation policy for facilities that are not coming back into compliance. Submit the updated WEG in the first quarterly update (January 15, April 15, July 15, and October 15).</li> <li>2. The KDHE should submit to EPA a timeline of action items. This timeline should be submitted with the first quarter response to the SRF.</li> <li>3. KDHE should report to the EPA on a quarterly basis (January 15, April 15, July 15, and October 15) the steps taken to update the WEG.</li> </ol> <p>Once the EPA is satisfied that state actions have addressed this deficiency, the EPA will mark this recommendation complete.</p>

## CWA Element 5 — Penalties

Finding 5-1	Area for State Improvement
<b>Summary</b>	Kansas penalty calculations do not document 1997 WEG factors.
Explanation	<p>The EPA selected three actions where KDHE sought or will seek penalties. The three facilities are Topeka North Wastewater Treatment Plant, USD #288 Central Heights School, Phillips Dairy,</p> <ul style="list-style-type: none"><li>- Phillips Dairy:<ul style="list-style-type: none"><li>o Economic benefit not considered in the penalty documentation.</li><li>o The penalty memo does not use the factors identified in the 1997 WEG.</li></ul></li><li>- Topeka North WWTP:<ul style="list-style-type: none"><li>o Economic benefit not considered in the penalty documentation.</li><li>o Documentation of the penalty appeared to indicate that the violations incurred by the facility should have resulted in a larger penalty than the one that appeared in the documentation.</li><li>o Guidance identifies that each violation should be assessed \$2,000 per day per violation. The calculation identified two violations resulting in a \$10,000 penalty.</li></ul></li><li>- USD #288 Central Heights School:<ul style="list-style-type: none"><li>o Economic benefit not considered in the penalty documentation.</li><li>o The penalty memo does not use the factors identified in the 1997 WEG.</li></ul></li></ul> <p>A total of \$10,000 for each of the penalties was calculated. The total of \$10,000 appears to be common number regardless of violations that the facility incurred.</p> <p>Gravity and economic benefit is a persistent issue from Round 2 and Round 1. This was noted as an area for state improvement in the Round 2 program review, “it appears the State is not taking gravity and economic benefit into account when calculating penalties.” The item was closed in March 2012 after a review of penalty actions worksheets that identified economic benefit as a consideration. The state process has not been implemented and/or become standard practice.</p>

The EPA recommends reviewing the penalty model usage training available online: <https://www.epa.gov/enforcement/penalty-and-financial-models>

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	11a Penalty calculations reviewed that consider and include gravity and economic benefit	100%		0	3	0

**State response**

The explanation above stated:

*“A total of \$10,000 for each of the penalties was calculated. The total of \$10,000 appears to be common number regardless of violations that the facility incurred.”*

This is not believed to be accurate, although both Topeka North WWTP and Phillips Dairy did have penalties assessed for \$10,000, USD #288 Central Heights penalty was \$2,000.

The Wastewater Enforcement Guidance is a guidance document. Its purpose is to provide guidance to assure that penalties are appropriate for the violation(s), consistent for the same violations, and will lead to resolution of the problem as soon as possible.

KDHE does use the economic benefit in determining the penalties, however in many cases, there is no economic benefit or even a negative economic benefit. KDHE can improve on documenting this consideration and proposes to do so in the worksheet recommended below.

KDHE does provide an explanation of the penalty calculation for each case. KDHE does agree that it needs to be more consistent in explaining the factors chosen to arrive at the assessed penalty.

KDHE will submit to EPA the Calculation Worksheet recommended and an updated WEG before January 15<sup>th</sup>, 2017.

**Recommendation**

KDHE should ensure that the WEG policy document is used. The KDHE should ensure that any deviation from the policy document should be memorialized in the penalty justification.

1. KDHE should submit to the EPA actions that will occur to address penalty calculations. KDHE should develop a penalty calculation worksheet with each penalty element listed, including



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gravity, economic benefit, and multiple violations. KDHE should incorporate the calculation worksheet into the WEG to be submitted to EPA for review. Submit the changes to the EPA with the first quarterly update (January 15, April 15, July 15, and October 15).

2. The KDHE should submit to EPA a timeline of action items. This timeline should be submitted with the first quarter response to the SRF.
3. Report to the EPA at each quarter (January 15, April 15, July 15, October 15) the progress made to accurately document penalty determinations.
4. Submit to EPA at each quarter (January 15, April 15, July 15, October 15) penalty calculation worksheets that define violations, gravity, economic benefit, etc.

Once the EPA is satisfied that state actions have addressed this deficiency, the EPA will mark this recommendation complete.

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**CWA Element 5 — Penalties**

<b>Finding 5-2</b>	<b>Meets or Exceeds Expectations</b>					
<b>Summary</b>	KDHE documents rationale for reducing the initial penalty.					
<b>Explanation</b>	KDHE adequately documents rationale for reducing an initial penalty and the files reviewed included the appropriate documentation. KDHE record penalty collection and the files reviewed demonstrated the penalty was collected.					
<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%		1	1	100%
	12b Penalties collected	100%		1	1	100%
<b>State response</b>	No Response.					
<b>Recommendation</b>						

# Appendix

## File Review Summaries for the SRF Review

### *Core Program-Majors*

#### **Innovia Films Inc. (KS0003204)**

Inspection date(s) and # days to report: March 17, 2016 (26)

Inspection notes: Time missing from inspection report. The inspector did not create a line drawing for the facility although did describe the processes. Inspector did not note the effluent exceedances that occurred prior to the inspection. Inspection did not define effluent exceedances as an 'Issue/Deficiency.' Identified these permit violation as a 'Recommendation.' The facility had a spill incident where caustic material was pumped to a manhole that discharged to the river. Facility was not notified in the inspection report of the permit violation.

Enforcement action date(s): N/A

Enforcement action notes: N/A

Other notes: Inspector performed an industrial stormwater inspection.

#### **Topeka North WWTP (KS0042714)**

Inspection date(s) and # days to report: 4/17/15 (29)

Inspection notes: The inspection report contained minimal narrative and no supporting documentation. An issue with high strength BOD being received at the WWTP causing sludge to go over the primary clarifier weirs was discussed in the report. The lift station check-list for the 4/17/15 inspection was not completely filled out, nor were comments present when an issue (not all pumps are operations) was identified. No compliance determination was made in the inspection report.

Enforcement action date(s): 11/6/15 (order); 11/27/15 (penalty)

Enforcement action notes: A major SSO (3 MG of untreated sewage discharged to the Kansas River) occurred on April 26-28, 2015 (9 days after the inspection) reportedly due to a power failure at the South Kansas River pump station. SCADA also failed, so notification was not received at the WWTP nor was the back-up power turned on. The administrative order required the city to update/upgrade SCADA and develop a downstream emergency contact plan. At least two major drinking water intakes are downstream that were impacted by this overflow. KDHE issued a penalty of \$10,000 for this violation. "K.S.A. 65-170d states in pertinent part: Any person who violates: (1) Any term or condition of any sewage discharge permit issued pursuant to K.S.A. 65-165 and amendments thereto; (2) any effluent standard or limitation or any water quality standard or other rule or regulation promulgated pursuant to K.S.A. 65-171 d and amendments thereto... shall incur, in addition to any other penalty provided by law, a civil penalty In an amount of up to \$10,000 for every such violation. In the case of a continuing violation, every day such violation continues shall, for the purpose of this act, be deemed a separate violation." In accordance with Kansas regulations, the penalty could have been at least \$30,000. KDHE cited two violations, "1) failing to properly operate and maintain all facilities and systems of treatment and control which resulted in a direct discharge event that polluted waters of the state; 2) failing to provide an alternative power source sufficient to operate the wastewater control facilities or control pollution and all discharges upon the loss of the primary

source of power.” KDHE combined the violations into one, failing to provide an alternative power source. KDHE selected a penalty of \$5,000 per day, but reduced the penalty by 50% for “No loss of fish, habitat, or wildlife *nor creation of a human health hazard*, but potential for same,” then added \$2,500 for the “negligent discharge of sewage into waters of the state.” No economic benefit was calculated. KDHE “determined that a penalty of \$10,000 is appropriate and constitutes an actual and substantial economic deterrent”. EPA ordered the city to install backup power at the lift stations in 2010.

Other notes: The enforcement action and penalty are not in ICIS.

During this review, KDHE did not have security clearance to the ICIS-NPDES enforcement action and penalty module. All enforcement information was provided to the EPA Region 7 office to upload the data.

### **Tyson Fresh Meats, Emporia (KS0000817)**

Inspection date(s) and # days to report: 10/16/14 (11)

Inspection notes: The inspection contained narrative comments where necessary. Supporting information was in the file. The report contained information to make a compliance determination.

Enforcement action date(s):

Enforcement action notes:

Other notes:

### **Coffeyville Wastewater Plant (KS0050733)**

Inspection date(s) and # days to report: April 2, 2015 (26)

Inspection notes: Time of inspection not documented. Sequence of plant not identified by inspector and stated that they have been documented in past inspections so do not need to be repeated. Yet, the inspector notes that a SBR was down, no identification of which and where it lies in the process train.

Enforcement action date(s): N/A

Enforcement action notes: N/A

Other notes: Nutrient removal goals for the facility were not met. These were not identified as an Issue/Deficiency only as a Recommendation. The goals are not limits so recommendation seems appropriate.

### **Parsons Wastewater Plant (KS0097560)**

Inspection date(s) and # days to report: January 14, 2015 (14)

Inspection notes: Effluent meters noted for not being calibrated. Not identified as an item for correction on cover letter. City failing to meet their nutrient removal goals.

Enforcement action date(s): N/A

Enforcement action notes: N/A

Other notes: Facility is noted in ICIS as being in SNC due to noncompliance with EPA order. Inspector notes that the facility is under an order yet does not describe that the facility is in SNC due to missing EPA enforcement action deadlines.

### **Wellington WWTP (KS0099571)**

Inspection date(s) and # days to report: 9/17/14 (FY14)

Inspection notes:

Enforcement action date(s):

Enforcement action notes:

Other notes: During the 2014 inspection, the city was directed to get an ammonia probe so they could monitor effluent more closely. If elevated ammonia was detected with the probe, the city could pull additional samples to bring the average down. There was one SNC ammonia violation in May 2015. The compliance schedule in the permit and provided technical assistance were for compliance with total phosphorus. A new WWTP went into service in 2010.

KDHE stated on the Quarterly Non-Compliance Report (QNCR) to EPA dated October 2, 2015, "Wellington experienced higher than average rainfall during May which caused wash out of some of their biological mass that carried into June. They were back into compliance by the end of June."

### **Wichita #3 WWTP (KS0095681)**

Inspection date(s) and # days to report: 6/30/15 (36)

Inspection notes: Requirements to address deficiencies were noted in the transmittal letter, however no specific time frame was provided. The city did respond on Dec 2, 2015.

Enforcement action date(s):

Enforcement action notes:

Other notes: No DMR violations were noted in ICIS.

### **Garden City WWTP (KS0038962)**

Inspection date(s) and # days to report: 8/19/14 and 11/17/15 (1)

Inspection notes: The inspection report provided narrative descriptions throughout the inspection check-list. In addition inspection photos were included with the file. However, not all of the photos were labeled. The inspection report did not identify any issues or discrepancies.

Enforcement action date(s):

Enforcement action notes:

Other notes: Note the 8/9/14 inspection report is not in ICIS, but a 2/18/15 report is. The Feb report was not in the file nor was it discussed in the Nov 2015 report. It appears there is a data entry error.

### *Core Program-Minors*

#### **Goessel (KS0081060)**

Inspection date(s) and # days to report: N/A

Inspection notes: N/A

Enforcement action date(s):

KRWA referral date: January 21, 2015

Enforcement action notes: KRWA performed inspections on February 2, 2015, June 3, 2015, July 8, 2015, February 22, 2016, and March 3, 2016. The KRWA inspections identify the facility has O&M concerns. Facility had many quarters on noncompliance. KRWA determined the lagoons were short-circuiting. Facility still violating effluent limits as of October 1, 2015-December 31, 2015.

Other notes: File did not contain notes which documented the KDHE determinations which lead to the facility being referred to KRWA. KDHE/KRWA contract does not identify time limits

other than if the facility is completely ignoring the KRWA assistance which will then trigger enforcement.

The KRWA referral letter from KDHE to the city of Goessel dated January 21, 2015 stated that “A review of the City’s wastewater treatment plant Discharge Monitoring Report record indicated the City is not consistently meeting permit limits.”

**Milford Fish Hatchery (KS0083275)**

Inspection date(s) and # days to report: November 6, 2014 (1)

Inspection notes: Time of inspection not identified. Inspector does not identify that the facility must keep 3 years of records. Instead says N/A. Inspector notes that the outfall is eroded yet does not document with photos. The facility documentation indicates that the facility had previous effluent exceedances. These were not discussed in the inspection report. Cover letter directs the facility to respond to the inspection by December 22, 2014. The facility requested more time to complete the activities on November 24, 2014. The completion activities were sent to the North Central office on March 19, 2015.

Enforcement action date(s):

Enforcement action notes:

Other notes: SIC code may be incorrect as it is identified as Trailer Parks/Campsites. 0921 might be more accurate.

**Hartford (KS0025682)**

Inspection date(s) and # days to report: August 28, 2015 (20)

Inspection notes: Facility self-identifies I&I issues to the inspector. The inspector does not list the I&I issues on the cover letter identifying it is neither an Issue/Deficiency nor Recommendation. Inspector does not list any information regarding the facility’s DMRs or their compliance with the permit.

Enforcement action date(s): September 22, 2015

Enforcement action notes: Referral sent to the facility 4 days after the inspection report was mailed to the facility. The cover letter nor the inspection report list any concerning items at the facility.

Other notes:

The city of Hartford had been in compliance with their permit limits at the time of this inspection.

**Green Acres (KS0097764)**

Inspection date(s) and # days to report: December 10, 2014 (9)

Inspection notes: Facility appeared to be discharging at the time of the inspection as a photo indicates the outfall is “Clear with no foam.” “N/A” marked as an answer to the quality of the receiving stream at the discharge point. N/A does not seem to be an appropriate answer if the facility is discharging.

Enforcement action date(s):

Enforcement action notes:

Other notes:

**USD #288 Central Heights School (KS0078891)**

Inspection date(s) and # days to report: October 27, 2014

January 14, 2016 Inspection notes: No time identified in the inspection report. Enforcement action date(s): February 11, 2014  
January 21, 2016

Enforcement action notes: Penalty memorandum does not detail the factors used in the creation of the penalty, such as, no identified stream, no identified environmental effect, no willfulness or cooperation, no hardship. The penalty does not consider economic benefit.

Other notes: January 14, 2016 CAFO not entered in ICIS.

During this review, KDHE did not have security clearance to the ICIS-NPDES enforcement action and penalty module. All enforcement information was provided to the EPA Region 7 office to upload the data.

**Alden Wastewater Plant (KS0051641)**

Inspection date(s) and # days to report: 9/11/15 (3)

Inspection notes: BOD effluent violations were identified in the inspection report. No supporting documentation (DMR summaries, inspection photos, inspection notes) was included with the inspection file. The cover letter transmitting the report to the facility states “the wastewater treatment facility was operating satisfactorily during the inspection.” However, the letter went on to discuss recent effluent violations and the potential short-circuiting of the lagoon system. The Inspection report indicates follow-up is needed, “trees growing in the fence line” was the identified issue or deficiency that must be addressed. It is not clear what compliance determination was made by KDHE as a result of this inspection. It is not possible based on the information contained in the reviewed file, to make an independent compliance determination.

Enforcement action date(s): N/A Enforcement action notes:

Other notes: The KDHE issued an administrative order in 2012 that was terminated in April 2015 despite ongoing effluent violations. KDHE contracted with KRWA to evaluate conditions at the Alden WWTP in June 2015. KDHE intends to add a compliance schedule to the reissued permit (2017) to require the facility to hire an engineer to rehab or expand the lagoon.

The city of Alden completed I&I work on their system in response to the 2012 order which resulted in the lagoon not discharging from April 2014 to February 2015. KDHE reviewed the case and close the administrative order in April 7, 2015. KDHE had not received the City’s March DMR at that time.

**APAC-Kansas Olathe Quarry (KS0092321)**

Inspection date(s) and # days to report: 11/25/14 (17)

Inspection notes: Issues with the SWPPP needing to be updated were noted in the inspection report. The report was not clear what compliance determination was made based on the site visit. There was no transmittal letter in the file indicating what follow-up was needed or by when. The facility provided a response January 12, 2015 that indicates the deficiencies noted in the Dec 12,

2014 letter have been corrected. KDHE followed-up that the deficiencies identified in the inspection report have been addressed.

Enforcement action date(s): N/A Enforcement action notes:

Other notes:

**BNSF Railway Company Newton Yard (KS0001082)**

Inspection date(s) and # days to report: 3/11/15 (6)

Inspection notes: There were limited narrative comments in the inspection report with no supporting documentation in the file. A compliance determination was not made in the report. No issues or deficiencies were identified.

Enforcement action date(s):

Enforcement action notes:

Other notes: At least two quarters had benzene effluent violations based on ECHO data pulls. These violations were not discussed in the inspection report nor was there any information provided on the potential source of benzene in the effluent.

**Hill City WWTP (KS0116882 & KSJ000658)**

Inspection date(s) and # days to report: 8/1/14 (?)

Inspection notes: The 2014 inspection was of a facility that was under construction.

Enforcement action date(s): 10/9/09; 10/27/11(? – date listed in ICIS); 3/23/15

Enforcement action notes: The 2009 order required the facility to meet permit limits by 11/1/10. It is not clear if this order has been terminated. The facility is no longer using the WWTP that was the subject of this order. The city has since constructed a 3-cell lagoon system that is non-discharging (? – see KSJ000658) system. The permit for the lagoon system contained a compliance schedule to have the lagoon construction completed by 12/1/14. KDHE issued an order 3/23/15 that modified the completion requirement of the lagoons to 4/1/15 and begin operation by 7/1/15.

Other notes: Note the 2009 order is not in ICIS, but a 10/27/11 order is. It appears there is a data entry error. Also the KS0116882 permit has been inactivated on 1-13-16. ICIS will need to be updated. KSJ000658 was issued to the city 9-1-13 for the 3-cell lagoon system that is the new WWTP.

During this review, KDHE did not have security clearance to the ICIS-NPDES enforcement action and penalty module. All enforcement information was provided to the EPA Region 7 office to upload the data.

**Johnson County Timber Creek Estates (KS-0082970)**

Inspection date(s) and # days to report: 8/18/15 (13)

Inspection notes: No issues were identified in the inspection report. “Better control of duck weed” was recommended. One photo was included with the file to support the inspection. Little narrative comments were included with the completed check list.

Enforcement action date(s): 4/8/15

Enforcement action notes: KDHE issued an order on consent that requires Johnson County to close the Timber Creek WWTP and transfer flow to another JOCO WWTP by 3/31/18. In 2014,



the reissued NPDES permit contained E. coli limits that the Timber Creek WWTP has not be able to consistently comply with. The enforcement action will ultimately result in compliance. Other notes: The order removed the E. coli limits from the NPDES permit, requiring monitoring instead. Based on the information in the file, it does not appear that the permit was amended to reflect this change. NPDES permit limits cannot be modified by an enforcement action.

**KDWP – Cross Timbers Honor Camp (KS0089788)**

Inspection date(s) and # days to report: 11/21/14 (4)

Inspection notes: The facility hasn't discharged since 2009 because it is not currently in use. The inspection report included narrative descriptions and photos. The lagoons are being maintained as necessary.

Enforcement action date(s):

Enforcement action notes:

Other notes:

**Nickerson WWTP (KS0098132)**

Inspection date(s) and # days to report: 8/22/11 (state); 12/17/15 (EPA)

Inspection notes:

Enforcement action date(s):

Enforcement action notes:

Other notes: In November 2014 KDHE referred Nickerson to KRWA for assistance in addressing repeat effluent violations. RWA investigated possible sources with little successful resolution. Issues were ongoing at the time of EPA's Dec 2015 inspection. RWA has continued to work with the facility. A cover was placed over the effluent weir in February 2016. February and March has seen an improvement in effluent quality and no reported violations. Summer will be the test.

**Westar Energy Hutchinson Energy Center (KS0079723)**

Inspection date(s) and # days to report: 12/6/14 (2)

Inspection notes: The inspection report contained little to no detail of the industrial process and how this process related to the WWTP. This information is in the permit, but would be helpful in the inspection report to ensure all related areas of the plant were inspected and any O&M issues that can only be address during an on-site inspection were addressed. No violations were found during the inspection as indicted by the inspection checklist and cover memo.

Enforcement action date(s): N/A

Enforcement action notes: N/A

Other notes: Providing more narrative information, or comments would be helpful to support findings, or lack of findings, such as DMRs or photos.

*CAFO Program*

**Sunflower Pork, Inc. (West Facility) (KS0115568)**

Inspection date(s) and # days to report: 11/19/14 (6)

Inspection notes: This is a Large swine facility with 8,400 head of swine greater than 55 pounds, 3,360 animal units per Kansas equivalent. A CAFO inspection checklist was used. The narrative portion of the checklist, as well as the attached cover memo “Non-compliant report”, clearly identifies the facility is out of compliance. The Non-compliant report details the violation and gives a due date required fixes shall be addressed by.

Enforcement action date(s): No formal enforcement

Enforcement action notes: No formal enforcement

Other notes: It is not clear from the file if the facility came back into compliance or not. A discussion with CAFO program staff determined the facility is still out of compliance and this will be addressed at the next inspection of the facility. The violation appeared relatively minor relating to pond berm deterioration and operating without proper freeboard in one pond.

### **Great Bend Feeding, Inc. (KS0040576)**

Inspection date(s) and # days to report: 1/8/15 (4)

Inspection notes: This is a Large cattle facility with 35,000 head of beef cattle. A CAFO inspection checklist was used. The narrative portion of the checklist, as well as the attached cover memo clearly identifies the facility is out of compliance. The cover memo details the violations and gives a due date required fixes shall or should have been addressed by.

Enforcement action date(s): No formal enforcement

Enforcement action notes: No formal enforcement

Other notes: It is not clear from the file if the facility came back into compliance with both violations. One of the violations was addressed by the facility and provided photo evidence of staff gauges after pumping out ponds which were above required freeboard. A discussion with CAFO program staff determined the facility is still out of compliance with the remaining item (whole pond test) and this will be addressed at the next inspection of the facility.

An internal KDHE memo dated 1/19/2015 addresses the operating level violation as being resolved.

The whole pond test for waste storage pond 2 was received by KDHE on March 10, 2016.

### **Meier Dairy of Palmer, Inc. (KS0092681)**

Inspection date(s) and # days to report: 1/28/2015 (2)

Inspection notes: Inspection documented manure stockpile that was not completely contained. Inspector also documented evidence showing runoff was flowing into nearby stream. No formal or informal action taken by KDHE to address this and other deficiencies. Inspection was documented using a checklist. Very little if any narrative was provided in with the checklist.

Enforcement action date(s): No formal or informal actions taken

Enforcement action notes: Evidence documented by the inspector suggests that runoff from the manure stockpile was reaching a nearby stream. EPA found no documentation in the file showing that a formal or informal action was taken to address this and other deficiencies identified by the inspection. KDHE does not appear to have any escalation policy for violations documented at CAFOs.

Other notes: Large CAFO.

### **Henry Creek Farms, Inc. (KS0089451)**

Inspection date(s) and # days to report: 1/15/2015 (6)

Inspection notes: Inspection was documented using a checklist. Very little if any narrative was provided in with the checklist.

Enforcement action date(s): No formal or informal actions taken

Enforcement action notes: No formal or informal actions taken

Other notes: Large CAFO

**Phillips Dairy Farm (KSUS000001)**

Inspection date(s) and # days to report: 10/21/2014 (9); 11/17/2015 (1) and 12/2/2015 (5)

Inspection notes: 10/21/2014 – This inspection was a discharge investigation and focused solely on the discharge. Report was thorough and well documented.

11/17/2015 – Inspection referenced “operational report” violations but did provide any supporting documentation to support their conclusion

12/2/2015 – Focused inspection only looking at retention structures. Inspection report did included narrative descriptions

Enforcement action date(s): 3/3/2015 – Administrative Order; 12/2/2015 Consent

Agreement/Final Order

Enforcement action notes: Both actions contained compliance schedules. Final penalty number was \$10,000.00 minus the cost associated with activities in the compliance schedule. Costs are held in abeyance for two years pending compliance. Penalty calculation did not appear to consider gravity. Economic Benefit was considered to be \$0 with little or no rationale provided.

Other notes: Medium AFO. This facility does not meet the CAFO Rule’s definition of a Large CAFO; 364 animal units of mature dairy cattle.

**HAW Ranch Feedlot II, LLC (KS0037567)**

Inspection date(s) and # days to report: 9/15/2015 (9)

Inspection notes: Inspection was documented using a checklist. No narrative was provided in with the checklist. Inspection report documented compliance schedule violations but the report does not specifically identify which compliance schedule items were not met. Compliance schedule was included in a previous Consent Agreement filed by KDHE.

The inspection report identified that Consent Agreement Required Action I and Required Action J had not been completed in the General Inspection Comments section of the inspection report.

Enforcement action date(s): 9/24/2015

Enforcement action notes: “Out of Compliance” letter issued. The compliance schedule violations identified appear to have been ongoing since 2010 & 2011 and involve substantial construction activities to increase storage capacity at the facility. KDHE does not appear to have any escalation policy for violations associated with not complying with terms in a formal enforcement action.

Other notes: Large CAFO.

**Spring Creek Farm (Parker Pork Farms, LLC) (KS0088463)**

Inspection date(s) and # days to report: 7/1/2015 (5)

Inspection notes: Inspection was documented using a checklist. Very little if any narrative was provided in with the checklist. Record keeping violations were identified on the checklist but there was no reference to what the specific violations were nor was it clear the extent of these violations. Inspection also identified a compost area with uncontrolled runoff but did not document the flow path.

The record keeping violations were identified in the Non-Compliance Explanation/Supplemental Information section of the inspection report: dewatering of the lagoon was not recorded, no explanation of type of application method provided, the number of maximum head each month is not recorded. Also, it was documented in this section of the inspection report that precipitation runoff from the compost area drained across a grass buffer and photo #1 included with the inspection report demonstrates runoff goes toward grass surrounding the compost area.

Enforcement action date(s): 7/6/2015

Enforcement action notes: “Out of Compliance” letter issued.

Other notes: Large CAFO

### **CJ Feeders (KS0097781)**

Inspection date(s) and # days to report: 12/3/2015 (11)

Inspection notes: Inspection was documented using a checklist. No narrative was provided in with the checklist. Inspection noted that a portion of the facility was not properly capturing runoff but does not provide a clear description of entire flow path (i.e. distance to closest stream, etc.). Despite these observations inspector indicated on the checklist that the facility was being maintained as required by permit. Inspection transmittal letter concluded the facility was in compliance.

Inspector noted that Area 1 appeared to discharge, but at the time of the inspection a discharge was not observed.

Enforcement action date(s): No formal or informal actions taken

Enforcement action notes: Permit violations with no formal or informal action taken by KDHE.

Other notes: Large CAFO

### *Construction Stormwater*

#### **23<sup>rd</sup> and Iowa Geometric Impv. (KS-R109726)**

Inspection date(s) and # days to report: 10/31/14 (?)

Inspection notes: During the 10/31/14 complaint investigation the site was found to have two areas of concern and one area of potential future concern. The central office sent an email to the facility on 11/5 informing them of the two items in need of correction and requesting action (no due date given in the KDHE email). The last item in the file is an email from NEDO to the central office stating an inspector drove by the site on 11/24 and one area being worked had some inlets with no controls and some inlets with controls in need of maintenance. It’s not possible to know if the areas of concern from the first inspection were addressed or if there was any follow-up on the findings of the 11/24 visit.

Enforcement action date(s): none

Enforcement action notes: none

Other notes: The report (completed complaint/referral form) is unsigned and undated, and it is not possible to know if it was transmitted to the facility. The facility did receive an email from the central office on 11/5 as discussed above.

**Holton Elementary School (KS-R110883)**

Inspection date(s) and # days to report: 7/29/15 (?)

Inspection notes: This inspection was not based on a complaint. The central office performed the inspection. The file contains directions to the site, a hand-written list of findings, and several photos with captions. Finally, the file contains an email from the facility to the inspector describing corrective actions taken at the site and includes photos and copies of self-site inspection reports. It is not possible to know if all deficiencies observed by the inspector were corrected.

Enforcement action date(s): none

Enforcement action notes: none

Other notes: There was no evidence in the file that a report was written and transmitted to the facility. The email from the facility references the inspector being on site and states the email is follow-up to the visit.

**New York Elementary School (KS-R110343)**

Inspection date(s) and # days to report: 9/11/15 (35)

Inspection notes: A complaint investigation was conducted by NEDO on 9/11/15. KDHE's central office transmitted a letter to the facility on 10/16/15 that described four deficiencies observed by the inspector and requests corrective action be completed by 10/23/15 and a report submitted to KDHE. The facility sent an email to KDHE documenting that all corrections were made. The email was accompanied by photos, site inspection reports, and an undated SWPPP.

Enforcement action date(s): none

Enforcement action notes: none

Other notes:

**Martin Schaal (N/A)**

Inspection date(s) and # days to report: 10/1/15 (6) FY16 but I decided to review it anyway.

Inspection notes: During the 10/1/15 complaint investigation the inspector determined less than one acre was disturbed for the home and that the additional 2.5 acres of disturbance were for "homeowner improvements" (the homeowner removed trees and was going to plant grass) and therefore the site was not subject to the stormwater regulations and did not need a construction stormwater permit.

Enforcement action date(s):

Enforcement action notes:

Other notes: The report (completed complaint/referral form) is signed and dated 10/7/15. It is not possible to know if it was transmitted to the facility.

**13609 Riverview (N/A)**

Inspection date(s) and # days to report: 9/29/15(8)

Inspection notes: During the 9/29/15 complaint investigation the inspector determined less than one acre was disturbed for the home and that the additional disturbance was for "homeowner

improvements” and therefore the site was not subject to the stormwater regulations and did not need a construction stormwater permit.

Enforcement action date(s):

Enforcement action notes:

Other notes: The report (completed complaint/referral form) is signed and dated 10/7/15. It is not possible to know if it was transmitted to the facility. There is evidence in the file that KDHE called the complainant after the inspection and told him the construction stormwater permitting requirements of the CWA did not apply to the site.

#### **Persimmon Pointe Subdivision (KS-R109441)**

Inspection date(s) and # days to report: 6/26/15 (1)

Inspection notes: KDHE received a complaint about the subject site on 6/25/15. KDHE called the City of Olathe and asked the City to inspect the site. The City of Olathe sent an inspector to the site on 6/26/15. The City wrote a “ticket.” The ticket states the need for two BMP repairs and/or installations. The ticket further states the City will perform a follow-up inspection on 7/2/15. The complaint/referral form contains notes from conversations NEDO had with the facility; the first referring the complaint to the city for follow-up, and the second when the ticket was discussed. The last notation on the complaint/referral form is that “no further follow-up is needed by NEDO at this time.” Nothing in the file post-dates 6/26. It is not known if the ticket was given to the site, if Olathe performed a follow-up inspection or if corrective actions were taken to address the two deficiencies observed by the Olathe inspector on 6/26.

Enforcement action date(s):

Enforcement action notes:

Other notes: KDHE did not perform an inspection or visit the site. KDHE made a referral to the City of Olathe. The report (completed complaint/referral form) is signed and dated 6/26/15. It is not possible to know if it was transmitted to the facility.

#### **Riverview Hills Subdivision (KS-R109102)**

Inspection date(s) and # days to report: 7/14/15 (?)

Inspection notes: KDHE received a complaint about the subject site. The complaint/referral form is the record of two conversations, one between two KDHE employees and one between KDHE and the City of St. George. Upon receipt of the complaint KDHE called the city and asked for information about the site. The City employee told NEDO about the site and said they would go to the site to determine the status of the construction. NEDO said they would follow-up with another call in a week to find out the status of the Riverview Hills site. No follow-up calls between the city and KDHE occurred after the initial call.

Enforcement action date(s):

Enforcement action notes:

Other notes: KDHE did not perform an inspection or visit the site. KDHE made a referral to the City of Olathe. The report (completed complaint/referral form) is not dated. This subdivision had problems in the past and had been inspected by KDHE in response to complaints in 2013 and 2014.

#### **Landon Court Addition (KS-R109016)**

Inspection date(s) and # days to report: 5/27/15 (20)

Inspection notes: A complaint investigation was conducted by NEDO on 5/27/15. KDHE's central office transmitted a Notice of Noncompliance to the facility on 6/16/15 that described findings at two adjacent sites. The inspector observed a lack of BMPs in some area(s) and BMPS in need of maintenance in other area(s) at the Landon court site. In addition, nearly two acres of disturbance was observed at an adjacent site (Dole Subdivision) operated by the same operator. A construction stormwater permit had not yet been issued for this site and the inspector observed a lack of adequate controls on the site. The letter advises appropriate controls must be in place at all times and that no further activity should occur at the unpermitted site until coverage under a construction stormwater permit has been authorized by KDHE. The letter does not require a response. The file does not contain documentation that post-dates the inspection. It is not possible to know if the BMP deficiencies observed by the inspector were addressed or if permit coverage was sought for the Dole site.

Enforcement action date(s): none

Enforcement action notes: none

Other notes: The complaint/referral form is complete and dated 6/2/15. It is not known if it was sent to the site owner along with the Notice of Noncompliance.

### **Oak Grove Elementary School (KS-R109948)**

Inspection date(s) and # days to report: 10/14/14 (?)

Inspection notes: During the 10/14/14 complaint investigation the site was found to lack BMPs, sediment was seen discharging over and around BMPs and sediment was in a neighbor's pond. The checklist is not signed and dated. The date of inspection and the inspector's name are typed on the form so that may be the date of completion. It is not known if the completed checklist and/or complaint/referral form was sent to the site. The last item in the file is an email from NEDO to the operator dated 10/17/14 asking for additional information including a few months of self-site inspection reports. It is not possible to know from the documentation in the file if the deficiencies observed at the time of the inspection were addressed or if the facility sent NEDO the self-site inspection reports that had been requested.

Enforcement action date(s): none

Enforcement action notes: none

Other notes: NEDO used a construction stormwater checklist to perform this complaint investigation. It was the only time I saw the form used for a construction stormwater inspection. It's not possible to know if it was sent to the facility.

### **Zaremba Property (KS-R109480)**

Inspection date(s) and # days to report: 12/23/14 (36?) and 1/28/15 (1)

Inspection notes: This complaint investigation involves a complaint to KDHE from KDOT regarding the Zaremba property. Activities at the site frequently result in track-out onto the KDOT right-of-way and KDOT fears action by EPA. On 12/23/14 NEDO visited the site with KDOT so KDOT could describe the problems. On 1/28/15 NEDO visited the site again and saw the operator. The main issue is ongoing problems with track-out. The notes and emails in the file convey confusion about whether the site needs a permit, it is assumed for construction. The facility was issued a construction permit in 2013 and it is assumed it is still active since there was no evidence of termination in the file. There is no evidence in the file indicating that the operator came into compliance.

Enforcement action date(s): none

Enforcement action notes: none

Other notes: The report (completed complaint/referral form) is dated 1/28/15. It is not possible to know if it was transmitted to the facility.

### **Lawrence Sewer Expansion (KS-R110297)**

Inspection date(s) and # days to report: 3/12/15 (1)

Inspection notes: This complaint investigation involves a complaint to KDHE from KDOT regarding a spill in the KDOT right-of-way. The City of Lawrence was responsible for the spill of bentonite clay, soap, and water that occurred while replacing/expanding a sewer line (an email from Lawrence states the spill on 3/10/15 was about 3,700 gallons). The file contains emails after the inspection date regarding the need for a construction permit. The permit number assigned to this inspection (above) leads one to believe a permit was issued. There are also emails in the file that discuss ongoing clean-up efforts and a 4/1/15 report from the city to KDHE describing the clean-up efforts and their completion.

Enforcement action date(s): none

Enforcement action notes: none

Other notes: The report (completed complaint/referral form) is dated 3/13/15. It is not possible to know if it was transmitted to the facility.

### **Linn Valley Lakes WW System Improvements (KS-R109914)**

Inspection date(s) and # days to report: 9/16/15 (15)

Inspection notes: During the 9/16/15 complaint investigation, SEDO reviewed site maps then did a drive-by inspection in which it was determined that silt fence was down. It is unclear if the entire site was able to be viewed from the car. There is a statement in the completed complaint/referral form that the inspector called the site contact after the inspection and was informed that the silt fence had been replaced/repared. The file does not contain photos of the repaired silt fence.

Enforcement action date(s): none

Enforcement action notes: none

Other notes: The report (completed complaint/referral form) is dated 10/1/15. It is not possible to know if it was transmitted to the facility.

### **Southfork Commercial Addition, aka 47<sup>th</sup> St. South and KS Turnpike (KS-R108516)**

Inspection date(s) and # days to report: 10/3/14 and 10/6/14 (no report)

Inspection notes: SCDO employees drove by the site on 10/3 and took photos of what appeared to be a large area of the project with no controls. SCDO sent the photos and an email to the City of Wichita asking for follow-up. The City of Wichita visited the site on 10/6/14 and then sent an email to SCDO informing them that the area did have controls. No photos from this visit were observed in the file.

Enforcement action date(s):

Enforcement action notes:

Other notes: The file consists of the emails between SCDO and the City of Wichita and the pictures taken by SCDO. There is no inspection report. It is not possible to know from the documents in the file if KDOT (assuming it's a KDOT site) was aware the site had been visited.

*Industrial Stormwater*



**AG Auto Detail, Allan Guatemala (N/A)**

Inspection date(s) and # days to report: 6/11/15 (same day, 6/11/15)

Inspection notes: During the 6/11/15 complaint investigation, NCDO determined that all potential discharge from the auto detail activity goes to the sanitary sewer. SCDO did dye testing to make sure there was no discharge to the storm sewer. It was determined the facility does not require an industrial stormwater permit.

Enforcement action date(s): none

Enforcement action notes: none

Other notes: The report (completed complaint/referral form) is dated 6/11/15. It is not possible to know if it was transmitted to the facility.

**Green Energy (KS-R000829)**

Inspection date(s) and # days to report: 11//20/14 (no report – not an inspection)

Inspection notes: On 11/20/14 SCDO toured the facility's recent expansion. KDHE sent an email to the facility on 2/24/15 thanking them for the tour and asking for a copy of the updated SWPPP that includes the new facilities and operations. The email asked that the SWPPP be updated to reflect the expansion if it hadn't been already and that a copy of the updated SWPPP be sent to KDHE by 6/1/15. The file contains a copy of the updated SWPPP which was sent to KDHE on 6/4/15.

Enforcement action date(s): none

Enforcement action notes: none

Other notes: KDHE did not perform an inspection of this facility; the emails reflect that they were given a tour on 11/20/14. There is no inspection report.

**Coffeyville Nitrogen Resources Fertilizer (KS-R000238)**

Inspection date(s) and # days to report: 9/15/15 (15)

Inspection notes: During the 9/15/15 complaint investigation, SEDO observed a compromised berm around the coke fines storage area and it was apparent that coke fines were broadcast onto the roadways from this location. The inspector concluded that the complaint of black water in the Verdigris River was likely valid and that the coke fines was the source. There is a note on the complaint/referral form that the inspector had a conversation with a facility representative on 9/28/15 and was informed that repairs and build-up of the berm had commenced. It cannot be determined if the work was completed.

Enforcement action date(s):

Enforcement action notes:

Other notes: The report (completed complaint/referral form) is dated 9/30/15. It is not possible to know if it was transmitted to the facility.

*MS4*

**Coffeyville Nitrogen Resources Fertilizer**

Inspection date(s) and # days to report: N/A

Inspection notes: The 9/15/15 industrial stormwater inspection was originally presented as a MS4 inspection. The Coffeyville MS4 file contains a copy of the complaint/referral form and a 3/30/16 memo to file recording a KDHE call to the City of Coffeyville informing them of a few

coke piles in/around town that may need attention. This is a referral to the city or a call providing pertinent information but is not an inspection.

Enforcement action date(s): none

Enforcement action notes: none

Other notes:

## **PRETREATMENT PROGRAM EVALUATION**

### **Introduction**

The Pretreatment SRF evaluation consisted of reviewing 12 files covering six inspections conducted of Categorical industries located outside cities having approved Pretreatment programs, five enforcement actions, and one Pretreatment Compliance Inspection of a moderately sized Pretreatment program city. The files were chosen from the list of activities conducted in FFY 2015, of which there were 13 inspections, 13 enforcement actions, and three Pretreatment audits or PCIs.

These files were all reviewed using the Clean Water Act File Review Checklist – State Review Framework Round 3, which are attached to this document for reference. Below is a discussion and summary of each of the files reviewed.

### **INDUSTRIAL INSPECTIONS**

#### **Alexander Manufacturing, Parsons**

Alexander Manufacturing manufactures firewood racks (firewood storage systems), garden accessories, and other metal items on contract. As part of their manufacturing operation, they perform phosphate conversion coating, a process regulated by the 40 CFR Part 433 Metal Finishing Categorical Pretreatment Standard. Because the phosphating system was installed after August 1982, they are subject to the New Source standards.

Under normal operating conditions, Alexander does not discharge any process wastestreams to the city sewer, but rather ships the phosphating process tank contents off site for disposal. As such the industry signs and submits after each six-month reporting period, a No Discharge Certification Statement. Consequently, the purpose of the inspection was to determine the current condition of the facility and to assure that the certification statements are true and accurate.

On December 9, 2014 an announced inspection was conducted. Among the findings was that the industry had taken one of its two phosphating lines off-line, made minor changes to its phosphating chemistry, but continued to be a “no discharge” operation. The industry is aware that if it ever needs to discharge to the city, they are to contact KDHE and meet the limits contained in their permit. The inspection also evaluated for the need of a Spill Control Plan and determined that one was not necessary. The inspection was documented in a narrative report and transmitted to the industry six days later on December 15, 2014.

#### **Bradford Built, Washington**

Bradford Built manufactures truck beds, boxes, and trailers out of mild steel that is phosphatized during the manufacturing process. Some aluminum trailers are also manufactured but the aluminum components do not undergo any chemical treatment. One of the reasons for the inspection was because there had been a recent change in personnel responsible for environmental compliance duties and KDHE believed it would be productive to meet with the new individual to ensure a smooth transition.

The inspection, which occurred on May 7, 2015 was documented in a narrative report which was transmitted to the facility on June 4, 2015. The report was found to be comprehensive as it discussed records management, compliance sampling procedures (including sampling location), laboratory certification, wastewater treatment, reporting, and compliance history with discharge standards. In addition, the inspection evaluated the need for a spill control plan and found that one was not necessary. At the time of the inspection, the facility was found to be in compliance although some suggestions were made to facilitate sampling activities and records management.

### **Carlstar/Carlisle, Fort Scott**

The inspection at Carlstar/Carlisle was not a routine compliance inspection of an industry permitted under the Pretreatment program but one to determine if the facility is covered by a Categorical Pretreatment standard. The inspection, which was conducted on July 14, 2015 was followed the next day by transmittal, via email, of an Industrial Survey Questionnaire. Following its completion, KDHE was able to determine that the facility was subject to the 40 CFR Part 428 Rubber Manufacturing Categorical standard, however, because it does not manufacture hoses using the lead sheathing process, it would not be subject to lead limits. A Baseline Monitoring Report was submitted on January 28, 2016 and a 90 Compliance report requested on March 24, 2016. KDHE is presently working on drafting a permit for Carlstar/Carlisle.

### **Cashco Inc., Ellsworth**

Cashco Inc. manufactures several types of control valves, pressure reducing regulators, and back pressure regulators of various sizes from steel, brass, and stainless steel. The purpose of the inspection on April 7, 2015 was to determine if the facility performs any surface preparations that are regulated under the 40 CFR Part 433 Metal Finishing Regulations. A narrative report documenting the findings of the inspection was written and transmitted on April 13, 2015, 6 days later.

The principle observation of the inspection was that the facility was using a citrus-based chemical to perform what the facility called passivating. But because the citrus chemistry was not extant when the metal finishing regulations were developed, it was not clear whether passivating, as defined by the regulations was being performed or if the operation was one more of cleaning. Following the inspection, KDHE contacted EPA Region 7 seeking an opinion on the condition. EPA responded that if the contact time was sufficient enough the less aggressive citric acid could remove sufficient metals to passivate the base metal and requested information on the rinse rates, samples of the rinse waters, and contact time for the citric acid. After reviewing this information, Region 7 determined the facility was indeed passivating. Once the facility was informed of the decision, Cashco submitted a permit application, and KDHE has issued them a permit.

### **GBW Railcar Services, Neodesha**

GBW Railcar Services cleans railcars that have transported various chemicals, petroleum products, and food grade products. As such, it is subject to the 40 CFR Part 422 Transportation Equipment Cleaning Pretreatment standards. On October 17, 2014 KDHE inspected GBW and documented their findings in a narrative report that was transmitted to the facility on October 22, five days later. The inspection report contained a thorough description of the wastewaters

generated, including contaminated stormwater runoff, wastewater storage and treatment, and permit and compliance history.

No samples were taken during the inspection, however, the industry's most recent six-month compliance status was discussed. For the six month period ending June 30, 2014 sample results supplied showed compliance, however, the first quarter sampling requirements were not achieved and KDHE had sent an NOV informing the company that it was in Significant Noncompliance with reporting requirements. The NOV also required the industry develop a Plan of Action to ensure that sampling and reporting requirements were met in the future. The Plan was submitted by the industry on August 11, 2014. This was documented in the inspection report.

In addition, the inspection report noted significant improvements to the facilities wastewater treatment system.

### **New Age Industrial Corp, Inc., Norton**

This is another new facility that KDHE reviewed for permitting in FFY 2015. This facility had come to KDHE's attention when the City of Norton was evaluated for influent sources of phosphorous. A consultant for the Kansas Rural Water Association had identified New Age as using phosphoric acid to clean aluminum. As a result, KDHE sent New Age Industrial Corp. a Metal Finishing Questionnaire and an Industrial Survey Questionnaire. However, the response from New Age indicted the facility was either an aluminum forming facility or an aluminum casting operation. Consequently, the industry was asked to submit an Aluminum Forming Questionnaire, which it did on November 18, 2014. Following receipt of the questionnaire, there were numerous exchanges of information on chemicals and manufacturing processes in preparation of an inspection by KDHE to make a category determination.

On April 16, 2015, KDHE conducted its initial inspection of New Age to confirm that the facility was subject to the Aluminum Forming standards at 40 CFR Part 467, to identify an appropriate sampling location for reference in the permit that would need to be issued, and to determine if New Age was a significant source for phosphorous at the Norton POTW. On May 5, 2015, 19 days later, the inspection report was sent to the industry. Included in the findings was confirmation that New Age was subject to the Part 467 standards, that it must submit a permit application, and that a Baseline Monitoring Report was required. The inspection report also documented three outfalls that would need to be permitted.

### **PRETREATMENT ENFORCEMENT**

Generally, there are three principle opportunities for enforcement actions under the Pretreatment program: discovery of a violation during an industrial inspection; following a Pretreatment audit or Pretreatment Compliance Inspection of an approved Pretreatment program, or in response to violations documented by periodic compliance reports.

### **Bradford Built, Washington**

KDHE responded to the periodic compliance report received from Bradford Built on July 28, 2015 with a Notice of Violation dated the same day. The industry had failed to take a quarterly wastewater sample during the second half of the six-month reporting period ending June 30,

2015 and consequently was considered to be in Significant Noncompliance with reporting requirements. As stated in the NOV, the industry was required to “submit a written procedure you will follow to prevent these reporting deficiencies from occurring again.” The industry was given one month from the date of the letter to submit the procedure to KDHE.

The NOV noted that the first quarter of sampling for zinc had resulted in one of three samples being above the monthly average limit of 1.48 at 1.8 mg/l. Since this is above the Technical Review Criteria adjusted level of 1.2 times the limit ( $1.2 \times 1.48 = 1.78$ ) the facility was also in SNC for zinc. In the NOV, KDHE required the industry to sample monthly for zinc for the next six-month reporting period. With the increased sampling and the written sampling protocol, the industry returned to full compliance for the second six-month reporting period of 2015.

### **GBW Railcar, Junction City**

GBW Railcar is required to sample quarterly for the pollutants regulated by its permit. However, in the transmittal letter of its semiannual report dated January 12, 2015, GBW reported its failure to take a quarterly report due to equipment failure. This written notification followed a verbal notification. In response, KDHE issued GBW a Notice of Violation on January 13, 2015. No further action was required as the industry returned to full compliance the next reporting period.

### **Heatron Inc., Leavenworth**

In the manufacturing of flexible electrical heating devices and LED lighting devices, Heatron performs a chemical etching operation. Etching wastes are treated with a chemical precipitation system prior to discharge to the City of Leavenworth on a batch basis.

On March 24, 2015 Heatron notified KDHE that their March 13<sup>th</sup> sample for copper had come back at 4.22 mg/l, a level above both their daily maximum and monthly average limits. KDHE instructed the industry to begin sampling copper at least monthly for the remainder of the six-month reporting period and to submit the results once obtained. All subsequent samples were well below 1 mg/l. On June 30, Heatron compiled the sampling data and submitted it to KDHE. Since only one monthly average had been exceeded, the facility was considered to be in Infrequent Noncompliance. In response, KDHE issued Heatron a Notice of Violation on July 31, 2015, indicating that the problem appeared to be solved but also extended the requirement to continue to sample monthly for copper. Samples taken July through early December were all well under the monthly average limit and the industry appeared to have returned to compliance. However, on December 10, the night maintenance crew inadvertently left a valve open that allowed approximately 1000 gallons of untreated wastewater to be discharged to the city. The industry immediately report this to KDHE and took a sample of the tank from which the discharge occurred. The results showed a copper level of 14.2 mg/l and a nickel level of 7.3 mg/l. per the industry’s letter to KDHE, protocols have been developed to prevent accidental discharges from recurring.

It appears that the cause of the copper violation of December 2015 is unrelated to the cause of the copper violation of March 2015. However, the industry will be still be considered to be in Infrequent Noncompliance for the second half of 2015.

**Peerless Products, Fort Scott**

This facility extrudes aluminum shapes from billets and then performs conversion coating operations on the various parts to either prepare them for painting or to provide corrosion resistance. As such, Peerless Products is subject to the 40 CFR Part 467 Aluminum Forming standards, which is a production-based standard.

KDHE received the semiannual compliance report covering January 1 through June 30, 2015 from Peerless Products on July 21, 2015. Following review, the facility was determined to be in infrequent noncompliance because of a monthly average chromium violation in March 2015. On August 3, 13 days later, KDHE issued a Notice of Violation, which, while it noted that subsequent samples indicated compliance, the industry was required to sample monthly for chromium for the next six-month reporting period, to ensure that compliance had been achieved. In addition, the sample results were to be submitted to KDHE when received so that KDHE could monitor the industries progress. During the accelerated sampling period, no additional chrome violations were observed and the industry returned to full compliance for the six month reporting period.

**SVPI, Elwood**

SVPI or Strategic Veterinary Pharmaceuticals, Inc. is subject to the Pharmaceutical Manufacturing point source category, 40 CFR Part 439. Consequently, it is regulated on five toxic organics, one of which is acetone. While sampling in August to satisfy its once-per-quarter permit requirement, SVPI experienced an acetone violation. KDHE was notified by email once the violation was known. Through email exchanges, the industry simultaneously resampled and pursued research into the cause of the violation since they do not use acetone in any of their operations. Because the violation occurred early on in the six-month reporting period, KDHE required the industry to perform monthly sampling through the rest of the reporting period. At the end of the reporting period, when all of the data had been submitted and certified, the industry's compliance status, Infrequent Noncompliance, was cited in a Notice of Violation issued on January 13, 2015, thirteen days following receipt of the periodic report on continued compliance. Because SVPI does not use acetone, and because all samples September through December were below detection limit, the NOV did not require additional acetone monitoring.

## **PRETREATMENT COMPLIANCE INSPECTION**

### **Salina Approved Pretreatment Program**

The City of Salina regulates 13 Significant Industrial Users, 9 of which are subject to Categorical standards. On May 14, 2015, KDHE performed a Pretreatment Compliance Inspection of the City's program. The purpose of the PCI was to "determine whether the City was properly administering their pretreatment program and to focus on any SIU's in Significant Non-Compliance." To accomplish this end, KDHE used the Region's PCI checklist to direct its inspection and lay the foundation for a narrative report on the state's findings.

The PCI report evaluated every significant element of the City's Pretreatment program including SIUs, permitting, data management, inspections and sampling (including self-monitoring), Slug Plans, and the enforcement under the city's Enforcement Response Plan. In all, the city was found to only have minor deficiencies.

The narrative report discussed findings in each of the areas listed above and made recommendations where warranted. As part of the report package, the completed checklist was included as an attachment. Since the checklist covers every required element of a Pretreatment program, determining the compliance status of the City's program was easy. This includes being able to review a table of SIUs, their regulated process, their type of treatment they use to meet standards, flow rates (both regulated and total), and a 2 year running compliance status history.

One of the more important elements of the PCI was the discussion on the city's enforcement activities over the past year. Of the 13 industries, three had violations and all three received NOVs "usually within a few days of the violation." None of the violations rose to the level of SNC so no industry needed to be put on a compliance schedule or needed to be published in the newspaper.

On June 9, 2015, 26 days following the inspection, KDHE sent the PCI report to the City with a copy to Region 7. Included in the package to Region 7 was a table of WENDB data elements covering the PCI.