

STATE REVIEW FRAMEWORK

New Hampshire

Clean Air Act, and Resource Conservation and Recovery Act Implementation in Federal Fiscal Year 2015

**U.S. Environmental Protection Agency
Region 1, Boston**

**Final Report
September 13, 2017**

Executive Summary

Introduction

EPA Region 1 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the New Hampshire Department of Environmental Services (NHDES).

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

- For CAA Program implementation, NHDES was a Regional and National leader in identifying and troubleshooting EDT/ICIS-Air implementation issues, and did an excellent job of working closely with EPA to ensure accurate and consistent implementation of the new federal HPV Policy released during FY15.
- NHDES has developed an effective RCRA Program that is efficiently and successfully implemented by very few staff and that encompasses the full suite of compliance monitoring, all aspects of administrative and civil enforcement programs, permitting and regulated community training functions.

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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 – N/A in NH)
- 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
- Developing 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:

Fiscal Year 2015

Key dates:

Kickoff Meeting at NHDES

April 4, 2016

File Review Dates – Clean Air Act Program

April 26, 2016

May 3, 2016

June 14, 2016

June 15, 2016

File Review Dates – Resource Conservation and Recovery Act Program

April 20-22, 2016

April 27, 2016

June 1, 2016

State and EPA key contacts for review:

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State Review Framework

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III. SRF Findings

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

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

There are three categories of findings:

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

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

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

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

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

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

Clean Air Act Findings

CAA Element 1 — Data	
Finding 1-1	Area for State Attention
Summary	NHDES did a good job maintaining Minimum Data Requirements (MDRs) completeness and accuracy
Explanation	<p>Although the data was compiled for the timeliness metrics, EPA did not measure NHDES’s performance against the timeliness goals due to the transition timeline from AFS to ICIS-Air. SRF evaluates the degree to which the state entered MDRs into ICIS-Air in a timely manner. To evaluate this metric, states must either transmit their data via electronic data transfer (EDT) or manually enter their data into the national data system. Although neither data system was available for data entry during a 9-day period early in FY15, this downtime should have had minimal impact on timely data entry. However, once ICIS-Air did become available, many EDT states were still working on flowing their data electronically and were not able to report in a timely fashion.</p> <p>Pursuant to NHDES’s commitment to support E-Enterprise, NHDES agreed early on to transmit its compliance data to EPA’s new ICIS-Air via EDT. New Hampshire is currently the only state in Region I to transmit its data through EDT. Changes to NHDES’s in-house database began shortly after the data migration from AFS into ICIS-Air. Since the NHDES in-house database was originally set up to mirror AFS, the transition to ICIS-Air required structural database changes in order to allow the electronic data transfer. These structural changes (and other needed changes) included:</p> <ul style="list-style-type: none"> • the mapping of data from the in-house database to ICIS-Air, • a significant QA/QC effort (for over 1000 sources) of the Facility, CMS, Air Program, and Pollutant data elements, and • the creation of an extraction routine to move data from the in-house database to populate the staging tables. <p>This work took quite a long time to accomplish due to limited staffing resources at the state level, and caused the delays in data reporting noted in the data metrics.</p> <p>During the transition from AFS to ICIS-Air in FY15, NHDES prioritized efforts to update and maintain data to ensure that MDRs reported to ICIS-Air were complete and accurate. NHDES has proven to be a</p>

leader, working with EPA and other stakeholders, to identify and troubleshoot EDT problems and ultimately improve CAA data reporting and quality.

Although the file review revealed a few data accuracy inconsistencies, these were all very minor problems. Most often the inconsistencies were minor typos in the facility name or address. One file contained an incorrect facility name, however the facility received an enforcement action in part because the facility changed its name without timely notifying NHDES.

Despite technical challenges with EDT and ICIS-Air, NHDES’s FY15 universe data appears complete and accurate. Going forward, NHDES has committed to send data via EDT within the 60 day MDR. NHDES has further committed to continue efforts to update and maintain CAA data.

In 2015, DES had a number of changes in personnel, including the loss of the Air Resources Division Compliance Bureau Administrator. Now that DES has filled the positions, EPA looks forward to working closely with the new NHDES CAA leadership.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2b Accurate MDR data in AFS	100%		16	24	66.7%
	3a2 Timely reporting of HPV determinations	100%	99.6%	3	3	100%
	3b1 Timely reporting of compliance monitoring MDRs	100%	64.2%	7	70	10%
	3b2 Timely reporting of stack test dates and results	100%	64.5%	27	85	31.8%
	3b3 Timely reporting of enforcement MDRs	100%	56.4%	1	20	5%
State response	NHDES likewise looks forward to working with EPA to make sure data is accurately submitted to ICIS-Air and that ECHO accurately reflects the data.					
Recommendation	See Explanation Section Above.					

CAA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations																																															
Summary	Inspection Coverage and Report Quality																																															
Explanation	<p>NHDES has met or exceeded all enforcement and compliance commitments made in state/EPA agreements. Each year NHDES discusses a plan for meeting Compliance Monitoring Strategy (CMS) commitments with EPA. NHDES does an excellent job of updating EPA throughout the year on the progress of achieving CMS commitments. At the end of each fiscal year, NHDES and EPA discuss the work completed and evaluate any changes to the CMS plan for the following year.</p> <p>During FY2012 NHDES started a LEAN effort to streamline the inspection report writing process. Prior to this effort, inspection reports were completed an average of 53 days after the inspection date and were lacking in consistency. NHDES worked with several groups across the organization and consulted with EPA to ensure that the new inspection report format included all the required elements of a full compliance evaluation report. The new report format is easier for inspectors to complete, contains all required elements, and is finalized in less time. In fact, in FY15, inspection reports were filed an average of just 20 days after the inspection date. The file review revealed that all of the inspection reports were well organized, easy to read, and contained the required elements.</p>																																															
Relevant metrics	<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>5a FCE coverage: majors and mega-sites</td> <td>100%</td> <td>63.2%</td> <td>16</td> <td>16</td> <td>100%</td> </tr> <tr> <td>5b FCE coverage: SM-80s</td> <td>100%</td> <td>79.5%</td> <td>12</td> <td>12</td> <td>100%</td> </tr> <tr> <td>5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan.</td> <td>100%</td> <td>42.6%</td> <td>0</td> <td>0</td> <td>NA</td> </tr> <tr> <td>5e Review of Title V annual compliance certifications</td> <td>100%</td> <td>39.1%</td> <td>34</td> <td>36</td> <td>94.4%</td> </tr> <tr> <td>6a Documentation of FCE elements</td> <td>100%</td> <td>NA</td> <td>14</td> <td>14</td> <td>100%</td> </tr> <tr> <td>6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility</td> <td>100%</td> <td>NA</td> <td>14</td> <td>14</td> <td>100%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5a FCE coverage: majors and mega-sites	100%	63.2%	16	16	100%	5b FCE coverage: SM-80s	100%	79.5%	12	12	100%	5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan.	100%	42.6%	0	0	NA	5e Review of Title V annual compliance certifications	100%	39.1%	34	36	94.4%	6a Documentation of FCE elements	100%	NA	14	14	100%	6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility	100%	NA	14	14	100%
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State response																																																

Recommendation	None.																													
CAA Element 3 — Violations																														
Finding 3-1	Meets or Exceeds Expectations																													
Summary	Identification of Violations																													
Explanation	<p>The file review revealed that NHDES is accurately determining compliance based on inspection findings and other compliance information. NHDES has done an excellent job in documenting the information that is reviewed to evaluate compliance in the inspection reports and case files.</p> <p>During FY2015 a new federal HPV Policy was implemented. Despite the changes to the policy, NHDES has done an excellent job of identifying HPVs and implementing the new policy. NHDES has worked closely with EPA to ensure accurate and consistent implementation of the new HPV Policy.</p> <p>To the extent possible, NHDES prioritizes a return to compliance for HPV violations. As revealed in the file review, NHDES met the HPV Policy timeliness guidelines for all HPV cases. The timeliness of data reporting of the HPV determinations was affected by the transition from AFS to ICIS-Air and was not evaluated for FY2015 data.</p> <p>The FRV Policy was revised around the same time as the HPV Policy. Despite the policy changes, NHDES continues to consistently implement the new FRV Policy.</p>																													
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8c Accuracy of HPV determinations	100%	NA	17	17	100%																									
13 Timeliness of HPV determinations					N/A for FY 15																									
State response																														
Recommendation	None.																													

CAA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations																																		
Summary	Timely and Appropriate Enforcement Actions Promote Return to Compliance																																		
Explanation	<p>All of NHDES’s CAA enforcement actions, including those actions that deal with a High Priority Violation (HPV), contain the necessary corrective action to return a facility to compliance. When necessary, the enforcement actions specify a timeframe for compliance. Most often, however, NHDES communicates with the facility to stop the violation before the enforcement action is issued.</p> <p>NHDES has demonstrated significant efforts to meet HPV timeliness goals. Although one of the four HPV formal enforcement actions took more than 270 days, DES had issued a permit and facility was in compliance before final enforcement action was finalized. Furthermore, this particular HPV was discovered prior to implementation of the new HPV policy, which includes new and different goals for notification and addressing actions.</p> <p>NHDES has an effective enforcement program that promptly identifies violations and promotes compliance. NHDES should continue its efforts to prioritize HPVs and issue timely and appropriate enforcement actions.</p>																																		
Relevant metrics	<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>9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule.</td> <td>100%</td> <td></td> <td>8</td> <td>8</td> <td>100%</td> </tr> <tr> <td>10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place.</td> <td>100%</td> <td></td> <td>3</td> <td>4</td> <td>75%</td> </tr> <tr> <td>10b Percent of HPVs that have been have been addressed or removed consistent with the HPV Policy.</td> <td>100%</td> <td></td> <td>2</td> <td>2</td> <td>100%</td> </tr> <tr> <td>14 HPV Case Development and Resolution Timeline In Place When Required that Contains Required Policy Elements</td> <td>100%</td> <td></td> <td>1</td> <td>1</td> <td>100%</td> </tr> </tbody> </table>					Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule.	100%		8	8	100%	10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place.	100%		3	4	75%	10b Percent of HPVs that have been have been addressed or removed consistent with the HPV Policy.	100%		2	2	100%	14 HPV Case Development and Resolution Timeline In Place When Required that Contains Required Policy Elements	100%		1	1	100%
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14 HPV Case Development and Resolution Timeline In Place When Required that Contains Required Policy Elements	100%		1	1	100%																														
State response																																			
Recommendation	None.																																		

CAA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations					
Summary	Penalty Calculation					
Explanation	<p>NHDES continues to maintain excellent penalty records in the case file. The penalty records document both gravity and economic benefit components of the penalty calculation. When a reduction in penalty is justified for settlement purposes, NHDES includes a description of the penalty adjustment as well as a justification for the adjustment in the case file. NHDES also keeps a record in the case file documenting that the penalty payment has been received.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	11a Penalty calculations reviewed that document gravity and economic benefit	100%		7	7	100%
	12a Documentation of rationale for difference between initial penalty calculation and final penalty	100%		4	4	100%
	12b Penalties collected	100%		6	6	100%
State response						
Recommendation	None.					

Resource Conservation and Recovery Act Findings

RCRA Element 1 — Data

Finding 1-1	Area for State Attention												
Summary	<p>The information reflected in state databases, RCRAInfo and ECHO were generally complete, accurate, and in many cases in agreement. However, while conducting the review, EPA found that the state’s databases contained more accurate information regarding the compliance and enforcement accomplishments during FY15. EPA often used state data during this review.</p>												
Explanation	<p>NHDES staff work diligently to ensure that all data elements pertaining to inspections and follow-up enforcement work are up-to-date within its own databases, which are then used to download the quality controlled data directly into EPA’s RCRAInfo system. Staff also work continuously to ensure that RCRAInfo data accurately captured the information in the state databases. NHDES updates all data pertaining to handlers, inspections and enforcement on a regular basis and has annually participated in the SRF Data Validation procedure. Furthermore, NHDES had worked extremely diligently to ensure that the frozen data to be used in this SRF3 process is up-to-date and accurate. Nevertheless, several data inconsistencies occurred in the frozen data and in other information contained in ECHO SRF3 retrievals. Because Region I is aware of the level of effort NHDES takes to ensure that its own compliance data is complete and accurate, it is assumed that some sort of data system integration issue exists between the state and federal systems. As a result, EPA used the state values, where appropriate, to make decisions regarding NHDES’s true FY15 performance. For example, the number of active LQGs, active SQGs, and all other active sites were found to be more accurate in the state database, as shown below:</p> <table border="1" data-bbox="475 1512 1425 1669"> <thead> <tr> <th>Description</th> <th>ECHO</th> <th>NHDES Data</th> </tr> </thead> <tbody> <tr> <td>Active LQGs</td> <td>164</td> <td>156</td> </tr> <tr> <td>Active SQGs</td> <td>182</td> <td>171</td> </tr> <tr> <td>All other active sites</td> <td>2211</td> <td>2043</td> </tr> </tbody> </table> <p>As seen in metric 2b, the expectation is for states to achieve 100% complete and accurate entry of mandatory data. During the file review, EPA only uncovered two instances of minor data entry discrepancies in RCRAInfo (i.e., a missing unilateral order for one case, and a conflicting violation description for another case). Otherwise, all other data found in</p>	Description	ECHO	NHDES Data	Active LQGs	164	156	Active SQGs	182	171	All other active sites	2211	2043
Description	ECHO	NHDES Data											
Active LQGs	164	156											
Active SQGs	182	171											
All other active sites	2211	2043											

the files were correctly reflected in RCRAInfo. This again leads to the belief that there may be some sort of data issue which has not yet been identified.

When issuing Notices of Past Violation (NPV) informal actions, NHDES uses the RCRAInfo code of 111, as a means to differentiate them from other types of informal enforcement actions that address unresolved violations (i.e., RCRAInfo code 120). As a result, none of the FY15 NPVs were captured in the ECHO metrics. This caused the recording of an artificially low tally of FY15 informal actions in the metrics (i.e., 9) when the true total was 16 (7 additional NPVs).

Finally, NHDES does not consider Notices of Finding (NOF) as an enforcement tool despite being listed as informal enforcement under the Enforcement Response Policy (ERP). The NOFs are generally used to clarify violations or to get additional information from a facility that may lower or increase the total number of violations to be addressed in informal or formal enforcement actions. The NOFs primarily serve as information gathering tool. EPA suggests NHDES consider giving itself credit for conducting this important enforcement step by somehow recording NOFs in RCRAInfo.

NHDES and Regional RCRA and RCRAInfo data management staff should work to identify and address any possible data integration issues between the state databases and RCRAInfo and/or ECHO. NHDES and Region I will work to identify and correct any data issues between federal and state systems.

NHDES should not record Notices of Past Violation (NPVs) as code 111 in RCRAInfo, since this code is not recognized during the SRF process and undermines the true number of informal actions taken during a fiscal year.

Relevant metrics
(Also, see Element 2 regarding the following statistics for metrics 5b, 5c, 5d, 5e1 and 5e4)

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
2b Complete and accurate entry of mandatory data	100%		25	27	92.6%
5b Annual inspection coverage for LQGs	20%	18.3%	13	110	12.0%
5d One-year inspection coverage for active SQGs			2		
5e1 Number of inspections at conditionally exempt SQGs			6		
5e2 Number of inspections at transporters			0		
5e4 Number of inspections at facilities not covered by metrics 2c through 2f3			1		

	7b Violations found during inspections	review indicator	36.5	10	20	50%
State response						
Recommendation	See Explanation Section Above.					

RCRA Element 2 — Inspections

Finding 2-1	Area for State Attention
Summary	<p>During FY15, a majority of the inspections were conducted by an experienced staff member. All the inspection reports reviewed were well documented, and sufficiently described the violations and all other information necessary to describe the given facility, the processes that generated the hazardous and non-hazardous wastes, and the violations. However, staffing shortfalls impacted the number of non-LQG inspection achieved during FY15. Given that NHDES achieved its LQG commitments with primarily only one experienced staff member, and is now actively advertising to fill the two retained staff inspector positions, the finding for this element is considered “area for state attention,” rather than “area for state improvement.”</p>
Explanation	<p>NHDES’s RCRA Compliance Assurance Response Policy (CARP) does not specify an inspection report completion time frame, however, the 10/3/12 NHDES Hazardous Waste Civil and Administrative Enforcement Response Policy specifies that informal enforcement should take place 150 days after the evaluation date. NHDES generally finalizes the report at or near the date of informal enforcement actions, both of which are mailed to the Facility as a single package. [Note: Some types of informal enforcement actions may lead to proposed administrative fines or referrals to the AG’s Office, while other inspections culminate at the informal level.]</p> <p>The format of the inspection reports consists of an inspection checklist that, in most cases, allows the inspection reports to be written in a timely fashion. For instances where inspection reports were completed in greater than 150 days, the files usually contained documentation of ongoing research into specific topic(s) that needed clarification to fully understand the processes that generated the wastes, the nature of a given waste, and/or the extent of a given violation prior to finalizing the report.</p>

In one instance, where the report took 506 days to complete, the inspector dove-tailed two complicated inspections of sister facilities which resulted in a joint referral to the AG's Office. The files also contained clear documentation of ongoing interactions between the inspector and facility representatives as reports and follow-up enforcement were being finalized.

EPA's file review revealed that 100% of the inspection reports were complete and sufficient to determine compliance; that the timeliness of inspection report completion exceeded 75% (for reasons described above); that the average number of days it takes to complete a report is 120 days (i.e., less than 150 days); and that the reports documented 100% accurate compliance determinations.

Since NHDES was working under two approved Compliance Monitoring Strategy (CMS) LQG flexibility plans (one traditional and another for retail pharmacy LQGs), the FY 15 LQG inspection numbers in ECHO were not truly representative of NHDES's performance under its approved flexibility plans (i.e., the expectation in ECHO still reflects the 20% LQG inspection rate per year).

It must be understood that the lower numbers contained in ECHO reflect the state's true accomplishments under the approved LQG flexibility plans. Specifically, for metric 5b, the ECHO value for the LQG universe (134) corresponds to the 2013 biennial report. For FY15, NHDES used the 7/15/2014 LQG universe of 147 (from its HZWMS database) when setting its inspection commitments for FY15. Included in this universe of 147 were 37 retail pharmacy LQGs. The traditional 20% of this universe of 147 would be 29, with NHDES conducting 26 inspections and Region 1 conducting 3 inspections. Prior to the application of the LQG flexibility plans, NHDES committed to conduct 14 "other" non-LQG inspections, as staff resources allowed.

NHDES received approval for a traditional LQG flexibility plan to inspect only 10% (i.e., 15) LQGs, flexing away from 11 LQGs that would be then applied to additional non-LQG targets (increasing the "other" inspection count from 14 to 25, as staff resources allowed).

A second approved CMS LQG flexibility plan dealt with LQG retail pharmacies. This approved flexibility plan allowed participating New England states to segregate retail pharmacy LQGs from the total LQG universe (i.e., subtracting 37 retail pharmacy LQGs from 147 LQGs), providing that 5% of the retail pharmacy LQG universe are inspected (i.e., 2 for New Hampshire).

The following represents NHDES's LQG inspection commitments after application of both CMS flexibility plans: 11 traditional LQG CEIs; 2 retail pharmacy LQGs; and 25 "other" inspections as staff resources allowed. During FY15, NHDES completed 13 LQG inspections (including two retail pharmacy LQGs), but only completed 9 "other" non-LQG inspections. EPA recognizes that the "other" facility commitment was tempered with the statement "as staffing resources allow."

EPA also recognizes that during FY15, NHDES operated under two approved CMS flexibility plans and that the Hazardous Waste Compliance Section only had one experienced inspector to do the work, since two inspectors left in FY15. Other Hazardous Waste Management Bureau staff assisted on occasion, but the majority of the inspection and follow-up report writing, enforcement work and penalty calculations fell to one inspector. This staffing shortfall impacted NHDES's FY15 commitment to conduct 25 "other" non-LQG facility inspections (i.e., only completed 9).

During FY16, NHDES was able to hire more inspectors, but there was still only one experienced inspector for the majority of FY16. Then, near the end of FY 16, NHDES lost the new inspector hires to different programs within the agency. At the time this report was written, NHDES again only had one remaining inspector. Fortunately, NHDES has been able to retain the vacated positions and has posted them (internally and externally).

Relevant metrics
(Also see FY15 annual metrics 5d, 5e1 and 5e4 listed in Element 1)

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
5b Annual inspection coverage of LQGs (in light of two approved LQG flexibility Plans committing NHDES to 10%)	20%	18.3%	13	110	12%
5c Five-year inspection coverage of LQGs (in light of three years of approved LQG flexibility Plans)	100%	52.5%	72	115	62.61%
5d Five-year inspection coverage of active SQGs		10.2%	16	171	9.4%
5e1 Five-year inspection coverage of active conditionally exempt SQGs	informational		39		
5e2 Five-year inspection coverage of active transporters	informational		3		
5e3 Five-year inspection coverage of active non-notifiers	informational		0		

	5e4 Five-year inspection coverage of active sites not covered by metrics 5a through 5e3	informational	38
	6a Inspection reports complete and sufficient to determine compliance		100%
	6b Timeliness of inspection report completion		76%
State response			
Recommendation	See Explanation Section Above.		

RCRA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations
Summary	<p>NHDES conducts inspections and processes the resultant information to consistently and precisely understand a facility’s hazardous waste generating processes, the nature of the wastes generated, a facility’s violations, and (in most cases) to accurately identify the violations as either secondary violation (SV) or significant non-compliance (SNC) violations.</p> <p>In a majority of the files reviewed, EPA concurred with the designation of individual violations, and overall facility status, as either SV violators or SNC violators. Of the 27 files reviewed, only 4 cases were classified as SVs that EPA would have considered SNC.</p>
Explanation	<p>The enforcement and confidential files for each inspection and informal/formal enforcement actions (whether administrative or civil) were extremely well organized and clearly document NHDES’s reasoning behind each classification as SV or SNC, and selection of the particular enforcement response.</p> <p>The manner in which the designation of SNC is turned on and off (i.e., SNY and SNN in RCRAInfo) is unusual, often causing a facility to be in and out of SNC prior to initiation of formal enforcement to collect an appropriate penalty. As a result, a given fiscal year may be suspiciously devoid of SNC, since the SNY/SNN flags may have come and gone in the previous year. Therefore, SNC violators/violations, discussed in this review, correspond to those coded on and off (i.e., SNY and SNN) prior to FY15, or to those facilities that EPA would have classified as SNC.</p>

According to NHDES's 10/3/12 Civil and Administrative Enforcement Response Policy, Section IV, Classification Non-Compliance: SNC is for those facilities with violations which have caused actual exposure or a substantial likelihood of exposure, are chronic or recalcitrant violators, and/or deviate substantially from the terms of a permit, order, agreement or from statutory/regulatory requirements. All other violators are considered SV violators, which are typically first time violators, violations that pose no or low potential actual threat, and/or are of a nature to permit prompt return to compliance.

With regard to FY15, NHDES informed EPA that none of the 20 inspections listed under metric 7b (i.e., FY15 CEI or FCI inspections) yielded violations warranting the SNC designation, per the above definition. But NHDES takes an aggressive stance against SV violators by frequently issuing them formal administrative fines (see Element 4). The number and severity of the SVs uncovered in 11 of the 20 FY15 inspections (55%) will be/are sufficiently addressed by informal enforcement (several of which were pending at the time of the review). However, seven of the inspections uncovered secondary violations that will be addressed by formal enforcement in the form of a proposed administrative fine. Finally, two of the facility inspections yielded SVs that will eventually be referred to the State Attorney General for issuance of a civil action with penalty. Therefore, 9 out of 20 FY15 inspections (45%) yielded violations that were classified as SVs that will receive formal enforcement assessing proposed penalties.

For a majority of SV and SNC violations, issuance of an informal action [such as a Letter of Deficiency (LOD)] along with the final inspection report, documented interactions/communications between NHDES and the facility, and the facility responses to the report and informal action returned the violations to compliance in RCRAInfo well before formal penalty action is undertaken. NHDES uses facility responses to code the individual violations with their actual return to compliance dates. Once the violations are all returned to compliance, NHDES will turn the SNC flag off in RCRAInfo (i.e., SNN). The formal actions, such as administrative fines or proposed civil actions (RCRAInfo codes 210/310 and 410/610) serve to primarily assess and collect appropriate fines (based on NHDES's Schedule of Fines or penalty policy for civil actions by the AG's Office). When this happens, SNC may be recorded and resolved in a previous fiscal year, while penalty assessments (via administrative fines or civil actions) occur in the following year. This makes it somewhat confusing during a SRF review that only focuses on one given fiscal year, to understand which facility was or was not in SNC.

EPA’s approach to SNC is to leave the SNY flag on until the final formal enforcement action is signed, certifying that the facility has achieved compliance. NHDES’s unique approach is to turn off the SNC flag as soon as all the violations are addressed, independent of the formal penalty action. Nevertheless, NHDES generally makes appropriate SNC violation determinations when they are uncovered during inspections, and usually makes appropriate SV determinations.

Additionally, during the file review, EPA looked at pre-FY15 violation designations (SV and SNC) for cases still undergoing enforcement work in FY15. There was one facility in RCRAInfo that NHDES had flagged as SNC in FY14, and remained as an active SNC during FY15. This SNC facility received an initial civil action (410) in FY14, with the final civil action (610) pending at the time of the review. Given that metric 8a is only looking at FY15 inspections, this case of SNC was not captured in the metric.

EPA concludes that, from FY12 through FY15, NHDES’s annual rate of SNC identification is approximately 2 cases per year. Also, EPA’s review of supplemental files highlighted how the existing NHDES staff addressed significant human health and environmental violations with non-traditional inspection and corrective action approaches which expeditiously resolved the violations without applying the SNC designation.

Finally, given that NHDES takes both informal and formal enforcement against SVs, metric 2a identified 6 long-standing SVs. EPA has confirmed with NHDES that 5 of them are involved in ongoing penalty negotiations due to case specific complications, while one case has two outstanding violations that should have been coded as returned to compliance. NHDES has agreed to update RCRAInfo for this one resolved case.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2a Long-standing secondary violators				6	
7a Accurate compliance determinations						100%
7b Violations found during inspections			36.5%	20	20	100%
8a SNC identification rate			2.2%	0	20	0%
8c Appropriate SNC determinations				17	22	77.3

State response

Recommendation None.

RCRA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations
Summary	<p>NHDES implements a vigorous informal enforcement program, where almost every violating facility will receive an informal enforcement response/final inspection report package. As seen in Element 5, below, NHDES has an equally strong formal enforcement program that will issue either administrative fines or civil action penalties. The actual tools used to return individual violations, and overall facility status, to compliance occurs during the issuance of informal enforcement actions mailed to the facility with final inspection reports.</p>
Explanation	<p>NHDES takes a more aggressive approach in applying formal enforcement. Formal enforcement, in terms of proposed and collected administrative or civil fines, are issued to Facilities deemed as SV violators as well as to SNC facilities. Accordingly, NHDES does not make the distinction that SV violators only need informal enforcement, while only SNC violators need to be addressed with formal enforcement.</p> <p>NHDES implements a vigorous informal enforcement program, where almost every violating facility will receive an informal enforcement response, or an initial informal enforcement response followed by a formal penalty action. Informal actions types are outlined and defined in the NHDES Hazardous Waste Civil and Administrative Enforcement Response Policy, dated 10/3/2012 (ERP). Informal actions are Notices of Past Violation (NPV), Notices of Findings (NOF), Letters of Deficiency (LOD), Administrative Orders (AO), and Imminent Hazard Orders (IHO).</p> <p>As seen in Element 5, below, NHDES has an equally strong formal enforcement program that will issue either administrative fines or civil action penalties. Of the files reviewed by EPA, 56 percent of the violating facilities received proposed and/or final penalty actions. Formal actions outline and defined in the ERP include Administrative Fines by Consent (AFC), Notices of Proposed Fine (NPF), Motion to Accept Settlement Agreements (MASA), and referrals to the New Hampshire Department of Justice for civil penalties or criminal penalties.</p> <p>The tool used to guide decisions regarding the level of inspection, inspection conduct, enforcement route, type of action, and penalty calculations and documentation is the NHDES Compliance Assurance Response Policy (CARP), dated 9/27/2000, which is complemented by the ERP described above.</p>

As seen in a majority of the facility files reviewed, issuance of informal actions, along with final inspection reports, and documented interactions/communications between NHDES and the Facility, returned the violations to compliance well before formal action is undertaken.

In our review of administrative fine (AF) actions, most facilities are returned to compliance well before AF actions are undertaken. The subsequent initial AF action (RCRAInfo code 210) and the final AF action (310) primarily served to assess and collect an appropriate fine for the corrected violations.

Although EPA is satisfied that NHDES generally correctly identifies SNC facilities, the state’s method of turning the SNC flag on and off in RCRAInfo can give the false impression that it fails to designate facilities as SNCs in any given fiscal year (refer to the discussion in Element 3). However, Region I does not recommend any change in NHDES’s SNC approach.

EPA also reviewed two case files, as supplement file reviews, to highlight some non-traditional inspection approaches and important human health and environmental impacts. These inspections were possible because of NHDES’s participation in two CMS LQG flexibility plans. The same staff that undertake detailed LQG CEI site visits and enforcement responses (along with other duties, such as conducting the NHDES Hazardous Waste Coordinator Training and Certification Program) were able to conduct detailed, timely and well documented site investigations, resulting in at least one potential EPA emergency response site investigation and, at the request of the NH Attorney General’s Office, a significant NHDES site clean-up of an auctioned and sold facility that could adversely impact drinking water wells. NHDES was able to orchestrate this significant waste site clean-up in just under a year.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	9a Enforcement that returns violators to compliance				20	20
10a Timely enforcement taken to address SNC				0	0	0%
10b Appropriate enforcement taken to address violations				21	22	95.5

State response	EPA’s use of “informal” and “formal” enforcement actions is inconsistent with NHDES’s. AOs and IHOs are formal non-penalty enforcement actions, not informal enforcement actions.
Recommendation	None.

RCRA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations
Summary	NHDES has a strong administrative and civil enforcement program that assesses and collects monetary penalties [and where appropriate, supplemental environmental projects (SEPs)] from both SV violators and SNC violators.
Explanation	<p>In every instance where NHDES pursued either an administrative fine or a fine assessed in a civil action, the files (i.e., confidential files) had detailed documentation and justification as to how each violation’s penalty was calculated, how each penalty may have been modified or dropped as a result of the negotiation process, records of what the final settlement penalty was, and (if applicable) details on supplemental environmental projects (SEPs) used to offset a penalty.</p> <p>A majority of the penalty cases pursued by NHDES are done under the State’s Schedule of Administrative Fines using Administrative Fines by Consent (AFC). NHDES relies on its statutory authority to impose fines and uses the expired rules contained in Env-C 612 as guidance for appropriate amounts. (See CARP and Fines Relating to Hazardous Waste Management contained in Env-C 612).</p> <p>AFCs notify violators that a fine is being proposed, detail the amount of the proposed fine, and provides the details on the violations and which NHDES hazardous waste regulations were violated. The NHDES Hazardous Waste Civil and Administrative Enforcement Response Policy (ERP) dated 10/3/2012 indicates that the respondent has the option of paying the proposed fine or meeting with the Hazardous Waste Management Bureau (HWMB) to negotiate a penalty. Typically, NHDES will seek fines for those violations that have been determined to be Class I violations. Class II violations are typically waived for settlement purposes. If no settlement is reached on the AFC, a “Notice of Proposed Fine” (NPF) may be issued. An NPF serves to notify a facility that an administrative fine is being proposed and indicates that the respondent has an opportunity for a hearing before a fine is imposed.</p>

Per the ERP, Class I violations are those that pose a real or potential threat to human health or the environment, or the violations has deviated from the provisions of a compliance order, consent agreement, permit condition or regulatory requirement. Class II violations may still be considered significant, but there is little to no actual threat or potential harm to the public health, safety or welfare to the environment. EPA’s review of the files confirmed that, in most cases, the Class II violations were waived for settlement purposes.

For all settled actions against SV and SNC violator cases, the files contained evidence of payment (e.g., copies of paid checks or a series of paid checks, if a payment plan was involved). If a supplemental environmental project (SEP) was involved to offset a monetary penalty, the files also contained documentation regarding the suitability of the SEP, how much of the penalty would be offset by the SEP, how much funding was expended on the completed SEP, and how much more the monetary penalty would be if the SEP came in under the offset amount.

The files also document, where applicable, how much of an economic benefit was enjoyed by the violator. NHDES's statutory penalty authorities “do not distinguish between economic benefit and gravity components, but rather specify a per-violation maximum for administrative fines....” [CARP, VI.B. introduction] “The total overall penalty is the sum of the total fine for each type of violation.” [CARP, VI.B.2.] Once the total of the proposed administrative fine is calculated, and how much the total economic benefit is (using EPA’s BEN model), enforcement staff consider if the total administrative fine is enough to cover the economic benefit, leaving a significant remainder to address the gravity of the violations. If it is determined that the fine calculated by the Schedule of Administrative Fines is not sufficient to cover both the economic benefit and gravity of the violations, the penalty will be adjusted or the case will be referred to the AG’s office for civil action and penalty calculation using EPA’s RCRA penalty policy. Furthermore, the ERP states that in a referral to the New Hampshire Department of Justice, state law authorizes the AG’s Office to seek civil penalties of up to \$50,000 per day for each day of occurrence.

During FY15, NHDES and the AG’s Office collected a total of \$1,016,600 from violators. Of the 27 facility files reviewed, 10 received proposed and/or final administrative fines; 2 were going to receive administrative fines; and 4 were referred to the AG’s Office for civil action. Therefore, 15 of 27 (56%) facilities received either administrative or civil fines.

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	11a Penalty calculations include gravity and economic benefit			15	15	100%
	12a Documentation on difference between initial and final penalty			13	13	100%
	12b Penalties collected			13	13	100%
State response						
Recommendation	None.					

STATE REVIEW FRAMEWORK

New Hampshire

Clean Water Act Implementation in Federal Fiscal Year 2014

**U.S. Environmental Protection Agency
Headquarters, Washington, D.C.**

**Final Report
May 25, 2016**

Executive Summary

Introduction

EPA Headquarters enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the EPA Region 1 New Hampshire CWA NPDES Program.

EPA bases SRF findings on data and file review metrics, and conversations with program management and staff. EPA tracks recommended actions from the review in its own internal tracking database, the SRF Tracker and publish reports and recommendations on EPA's ECHO web site (<http://www2.epa.gov/compliance/state-review-framework-compliance-and-enforcement-performance>).

Areas of Strong Performance

- Permit, effluent limit and other non-compliance events data are consistently entered in the Integrated Compliance Information System (ICIS).
- Inspection coverage at major and non-major facilities meets and exceeds inspection commitments in FY2014. Inspection reports are generally sufficient to determine compliance at the facility and completed in a timely manner.
- Region 1 staff make accurate NPDES compliance determinations through inspections of NH facilities.
- Region 1 is generally documenting penalty calculations and collections.

Priority Issues to Address

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

- Many single-event violations (SEVs) are not accurately identified as SNC or non-SNC
- Most single-event violations (SEVs) identified as SNC are not being reported timely at major facilities.

CWA-NPDES Integrated SRF-PQR Findings

- This section will be updated upon completion of the 2014 Permit Quality Review report

Most Significant PQR CWA-NPDES Findings

- This section will be updated upon completion of the 2014 Permit Quality Review report

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I. CWA-NPDES Integrated SRF and PQR Review

[This section will be updated upon completion of the 2015 Permit Quality Review report]

II. CWA-NPDES Permit Quality Review

[This section will be updated upon completion of the 2015 Permit Quality Review report]

III. 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 the reviewers and the state or Region under review 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.

Region and state relationship for enforcement

The New Hampshire Department of Environmental Services (DES, NH DES) does not have delegation of the Clean Water Act (CWA) NPDES Enforcement Program. However, DES implements a state authorized water enforcement program that is similar to the CWA NPDES enforcement program.

The DES conducts facility inspections and complaint investigations for traditional NPDES facilities in New Hampshire each year (in 94% of the files reviewed by SRF reviewers, DES completed the inspection), giving equal attention to major and minor facilities based on prior performance. Within 30 days of completing each inspection, DES sends EPA Region 1 a completed federal inspection 3560 form for ICIS data entry together with a copy of the correspondence sent to the Permittee. The DES also actively reviews NPDES discharge data. The state inspectors review each DMR submitted by major and minor facilities, contact Permittees when reporting errors are discovered, require data report correction and resubmittal, and document the problem in the DMR issues spreadsheet.

Additionally, DES occasionally initiates and tracks formal and informal enforcement actions. The majority of enforcement in New Hampshire is taken by EPA. A copy of each state-initiated enforcement document is provided to EPA Region 1 for its records. The DES reviews and provides comments on all deliverables submitted in response to state enforcement actions, and reviews and provides written comments on significant deliverables (e.g., long-term combined sewer overflow abatement plans, facility designs and specifications, etc.) submitted by facilities under EPA-initiated actions.

Regional organizational structure and responsibilities

Region 1 directly implements the NPDES program for New Hampshire. The NPDES responsibilities are handled by four offices at Region 1. Permits are issued by the Office of Environmental Protection (OEP) with legal support from the Office of Regional Counsel. The Office of Environmental Stewardship (OES) handles inspections with some support from OEP for pre-treatment inspections and from the Office of Environmental Measurement and Evaluation (OEME) for sampling inspections. OES employs both technical and legal experts, who develop and settle enforcement cases. OES data staff code New Hampshire permits into ICIS-NPDES and enter New Hampshire discharge monitoring report data, enforcement milestones and report receipt dates, as well as any inspections or enforcement actions conducted by NH DES.

The Office of Environmental Stewardship (OES) is an enforcement and assistance office with both attorneys and technical staff. Within OES, Technical Enforcement is split into four groups: air, water, RCRA/EPCRA, and Toxics/Pesticides. OES has a regulatory legal group which takes cases developed by the technical groups.

IV. SRF Review Process

Review period: FY2014

Key dates:

- Data Metric Analysis (DMA) and File Selection list sent to the region:
 - CWA: April 9, 2015 (DMA); April 21, 2015 (File Selection).
 - CWA: April 9, 2015 (Metric 4a Table)
- Remote file review conducted
 - CWA: April 24, 2015 – June 30, 2015
- Technical Draft Report sent to region
 - CWA: July 29, 2015
- Final Draft Report
 - CWA: March 25, 2016
- Report finalized
 - CWA: May 25, 2016

State and EPA key contacts for review:

- Denny Dart: Region 1 Chief, Water Technical Enforcement Unit
- Lucy Casella: Region 1 Coordinator
- Elizabeth Walsh: SRF Reviewer
- Martha Segall: SRF Reviewer
- Michael Mason: SRF Reviewer
- Cassandra Rice: SRF Reviewer
- Jonathan Pettit: SRF Reviewer

V. SRF Findings

Findings represent EPA's conclusions regarding the state or Region's 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 or Region's last SRF review;
- Follow-up conversations with state agency or EPA regional personnel;
- Review of previous SRF reports, Memoranda of Agreement, or other data sources; and
- 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 or implementing EPA region 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 or EPA region should correct the issue without additional oversight. SRF reviewers may make recommendations to improve performance, but they 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 reviewers will monitor them for completion between SRF reviews in the SRF Tracker.

Whenever a metric indicates a major performance issue, the EPA reviewers will write up a finding of Area for 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 and/or EPA region 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																														
Finding 1-1	Meets or Exceeds Expectations																													
Summary	Region 1 consistently enters permit, effluent limit and other non-compliance events data in the Integrated Compliance Information System (ICIS).																													
Explanation	<p>Region 1 entered 96% of permit limits for major facilities (metric 1b1). The region entered 99% of discharge monitoring reports (metric 1b2) for major facilities. Given the national goal of $\geq 95\%$, these results exceed the national performance expectation.</p> <p>Information in 31 of 34 files reviewed (91%) accurately reflected information in the ICIS database.</p> <p>In one file, the complete file was unable to be reviewed. The permit was not electronically available.</p> <p>In one file, minor issues were found when comparing permit to information listed on the DFR that added up to a “no” for metric 2b during the file review. Such minor discrepancies included zip code, SIC, phone number, latitude/longitude information, and permit expiration date.</p>																													
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>Region N</th> <th>Region D</th> <th>Region % or #</th> </tr> </thead> <tbody> <tr> <td>1b1 Permit limit rate for major facilities</td> <td>95%</td> <td>69%</td> <td>47</td> <td>49</td> <td>96%</td> </tr> <tr> <td>1b2 DMR entry rate for major facilities</td> <td>95%</td> <td>99%</td> <td>1322</td> <td>1323</td> <td>99%</td> </tr> <tr> <td>2b Files reviewed where data are accurately reflected in the national data system</td> <td>100%</td> <td></td> <td>31</td> <td>34</td> <td>91%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	Region N	Region D	Region % or #	1b1 Permit limit rate for major facilities	95%	69%	47	49	96%	1b2 DMR entry rate for major facilities	95%	99%	1322	1323	99%	2b Files reviewed where data are accurately reflected in the national data system	100%		31	34	91%
Metric ID Number and Description	Natl Goal	Natl Avg	Region N	Region D	Region % or #																									
1b1 Permit limit rate for major facilities	95%	69%	47	49	96%																									
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Region response																														
Recommendation																														

CWA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations																																															
Summary	Inspection coverage at major and non-major facilities meets and exceeds inspection commitments in FY2014.																																															
Explanation	<p>Region 1 directly implements the NPDES program in New Hampshire and inspection coverage is accomplished utilizing both EPA and state inspectors. NH-DES completed nearly half (47%) of the inspections.</p> <p>New Hampshire and Region 1 together conducted 109 inspections, nine more inspections than the 100 they committed to in their CMS plan (see Table 1).</p> <p>Table 1: Inspections by category</p> <table border="1"> <thead> <tr> <th></th> <th colspan="2">Region 1</th> <th colspan="2">NHDES</th> <th></th> <th></th> </tr> <tr> <th></th> <th>Activity Count</th> <th>CMS Commitment</th> <th>Activity Count</th> <th>CMS Commitment</th> <th></th> <th></th> </tr> </thead> <tbody> <tr> <td>Majors</td> <td>3</td> <td>0</td> <td>48</td> <td>49</td> <td></td> <td></td> </tr> <tr> <td>Minors</td> <td>0</td> <td>0</td> <td>16</td> <td>19</td> <td></td> <td></td> </tr> <tr> <td>General</td> <td>0</td> <td>0</td> <td>42</td> <td>32</td> <td></td> <td></td> </tr> <tr> <td></td> <td>3</td> <td>0</td> <td>106</td> <td>100</td> <td></td> <td></td> </tr> </tbody> </table> <p>According to the NPDES Enforcement Management System, non-sampling inspection reports should be completed within 30 days and sampling reports within 45 days. While only one of the 30 files reviewed was not timely, the region took on average 11 days to complete its reports, with none taking longer than 49 days.</p> <p>While Region 1 met its CMS commitment, the region did not commit to CMS goals in accordance with CMS policy in 2014, especially in the area of stormwater. According to the ICIS, the state and EPA conducted six industrial stormwater inspections in FY14, meeting their CMS commitment. However, the NPDES CMS sets a goal for annual inspections of 10% (30 of 300) of the Phase I and 5% (15 of 300) for Phase II stormwater construction universe. Region 1 committed to less than 1% (2 of 300) of the Phase I and II construction universe.</p>							Region 1		NHDES					Activity Count	CMS Commitment	Activity Count	CMS Commitment			Majors	3	0	48	49			Minors	0	0	16	19			General	0	0	42	32				3	0	106	100		
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4a2 Significant Industrial User inspections for SIUs discharging to non-authorized POTWs	100% of CMS Commitment	N/A	0	N/A
4a4 Major CSO inspections	100% of CMS Commitment	N/A	0	N/A
4a5 SSO inspections	100% of CMS Commitment	N/A	0	N/A
4a7 Phase I & II MS4 audits or inspections	100% of CMS Commitment	N/A	0	N/A
4a8 Industrial stormwater inspections	100% of CMS Commitment	6	0	600%
4a9 Phase I and II stormwater construction inspections	100% of CMS Commitment	2	2	100%
4a10 Medium and large NPDES CAFO inspections	100% of CMS Commitment	0	0	-
5a1 Inspection coverage of NPDES majors	100% of CMS Commitment	51	49	104%
5b1 Inspection coverage of NPDES non-majors with individual permits	100% of CMS Commitment	16	19	84%
5b2 Inspection coverage of NPDES non-majors with general permits	100% of CMS Commitment	42	32	131%
6b Timeliness of inspection report completion	100%	29	30	97%
Region response				
Recommendation				

CWA Element 2 — Inspections

Finding 2-2	Area for Regional Attention					
Summary	Inspection reports provided sufficient documentation to support a compliance determination in a most cases.					
Explanation	Based on a review of enforcement files, twenty-four of 30 inspection reports in the New Hampshire DES files contained sufficient documentation to determine compliance status. Inspection reports completed by EPA Region 1 provided adequate documentation to support compliance determinations. Inspection reports completed by New Hampshire, generally provided sufficient documentation to support compliance determination. Six inspection files completed by the state did not contain sufficient documentation, three had an incomplete checklist, two files had insufficient observational detail from the inspector, and in one file DMR violations were not discussed and should have been in a letter to the facility. In one NH-DES file, the memo to the facility noted deficiencies but the recommendation should have been required instead of optional.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	Region N	Region D	Region % or #
	6a Inspection reports complete and sufficient to determine compliance at facility.	100%		24	30	80%
Region response	Region 1 is able to devote about 1.5 technical FTE and one data FTE to New Hampshire CWA implementation, which does not allow for full inspection coverage under the CMS. NH-DES has an “Alteration of Terrain” permit program, which accomplishes the goals of the NPDES Construction Stormwater permit program, but is not an approved NPDES permit. http://des.nh.gov/organization/divisions/water/lrm/summary.htm					
Recommendation						

CWA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations					
Summary	Region 1 and New Hampshire make accurate NPDES compliance determinations through inspections of facilities.					
Explanation	<p>In 93% of the case files reviewed, Region 1 and the state of New Hampshire made an accurate determination of compliance.</p> <p>In several files reviewed, where accurate compliance determinations were made, the state identified deficiencies in the cover letters to the Permittee. These would include: Operation and Maintenance (O&M) and safety issues, sampling procedure issues, and Best Management Practice (BMP) plan documentation. These included Single Event Violations (SEVs) and, in some instances, significant non-compliance (SEV-SNC) that were not listed in the DFR.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	Region N	Region D	Region % or #
	7e Inspection reports reviewed that led to an accurate compliance determination	100%		28	30	93%
Region response						
Recommendation						

CWA Element 3 — Violations

Finding 3-2	Area for Regional Improvement																								
Summary	<p>Many single-event violations (SEVs) are not accurately identified as SNC or non-SNC</p> <p>Most single-event violations (SEVs) identified as SNC are not being reported timely at major facilities.</p>																								
Explanation	<p>Single event violations (SEVs) are violations of the CWA NPDES requirements documented during a compliance inspection, reported by the facility, determined through other compliance monitoring methods by regulatory authority, or unauthorized bypasses or discharges. SEVs do not include violations generated automatically, e.g., effluent violations from a discharge monitoring report (DMR), or compliance schedule violations, by ICIS-NPDES.</p> <p>Metric 7a1 indicates that no SEVs were reported for majors, however, EPA found 7 SEVs in the files reviewed. In 5 of these 7 the SEV was accurately identified in the file, but not on the 3560-3 data entry form. In 1 of the 2 files where the 3560-3 was correct, the SEV should have been coded as an SNC in ICIS.</p> <p>Reviewers found 2 of 7 SEVs that should have been identified as SNC violations.</p> <p>Metric 8c, measures timeliness of reporting to ICIS. Two of the three SEVs identified as SNC reported timely at major facilities had SEVs identified by NH DES that were not reported in ICIS in a timely manner as required. As stated in the Regional Guidance for Tracking Clean Water Act (CWA) NPDES Inspection Related Violations and Wet Weather Significant Noncompliance, October 15, 2008, “All single event violations and associated RNC detection codes should be reported in the data system before the QNCR reporting deadlines in 40 CFR 123.45(d),” which are generally 60 days after the end of a quarterly period.</p>																								
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Region response	Region 1 is committed to improving entry into ICIS of Single Event Violations identified by NH-DES and Region 1. We may use a process other than the 3560 inspection form.					
Recommendation	<p>By 120 days from the completion of this report, Region 1 will provide the Office of Compliance a plan, negotiated with the State of New Hampshire, that describes a process for identifying SEVs as SNC and how the Region will report SEVs identified in state inspections into ICIS-NPDES.</p> <p>By December 31, 2016, Region 1 will provide the Office of Compliance (OC) proof that SEVs in New Hampshire are accurately being identified as SNC or non-SNC. If OC determines that the SEVs are reported accurately and timely, OC will close out the recommendation.</p>					

CWA Element 4 — Enforcement

Finding 4-1	Area for Regional Attention																													
Summary	<p>When the region did take enforcement, the actions were generally appropriate; some (34%) did not return the source to compliance.</p> <p>Region 1 did not take timely enforcement on any of the 4 major facilities with SNC violations.</p>																													
Explanation	<p>Enforcement responses did not consistently reflect a return to compliance (File Metric 9a). Based on the files reviewed, 34% (4 of 11 files) of enforcement responses did not return or were expected to return a facility to compliance. In several instance, reviewers identified issues where facilities did not return to compliance despite the enforcement response taken by the region indicating the enforcement response of the region did not or would not return the source in violation to compliance. These instances were identified by the detailed facility reports (DFRs) as being in noncompliance despite the enforcement response taken by the region as discussed in the file. Because we are referring to only 4 files of 11, we believe this is an area for attention considering the universe is small for this metric.</p> <p>Data Metric 10a1 reports the percentage of major facilities with formal enforcement actions within 1 year after consecutive quarters of SNC effluent violations, QNCR DMR non-receipt, or QNCR compliance schedule violations. This metric shows that Region 1 did not take timely enforcement on any of the 4 major facilities with SNC violations.</p> <p>OECA reviewed 30 facilities files with 129 violations under metric 10b, which evaluates whether appropriate enforcement action was taken in response to violations. Region 1 generally addressed violations in an appropriate manner in 107 of the 129 instances.</p>																													
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Region response	<p>An enforcement action will resolve past violations in ICIS, but it will not resolve violations which occur after enforcement action issuance. In some cases, the order or consent decree requires significant planning and capital investment before the facility can achieve compliance.</p> <p>Because of limited resources, Region 1 must pursue the cases with environmental impact, leaving many non-reporting violations unaddressed. In 2014, Region 1 referred an industrial stormwater discharger for judicial action, collected penalty on an industrial stormwater facility, and issued an order to an industrial facility in New Hampshire.</p>
Recommendation	

CWA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations																													
Summary	Region 1 is documenting penalty calculations, reductions and collections.																													
Explanation	In all cases, the region is documenting essential information with regard to its penalties. Of the penalties reviewed, the region had documentation showing payment. (This was typically in the form of a copy of the check.) Penalties included detailed documentation of gravity and economic benefit calculations. No penalties were reduced from their initial amounts.																													
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