

STATE REVIEW FRAMEWORK

New Jersey

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

**U.S. Environmental Protection Agency
Region 2, New York**

**Final Report
December 30, 2016**

Executive Summary

Introduction

EPA Region 2 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the New Jersey Department of Environmental Protection.

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

- NJDEP meets its inspection commitments. For all major CWA, CAA, and RCRA inspection categories, NJDEP met or exceeded its annual inspection commitments for FY' 15. NJDEP also met expectations for nearly all inspection types in its state-specific CWA Compliance Monitoring Strategy Plan.
- NJDEP enforcement responses return facilities to compliance. All CAA and RCRA enforcement responses reviewed required corrective action that would return the facility to compliance in a specified time frame as necessary, and documented the return to compliance as appropriate. A significant majority of CWA enforcement responses returned, or will return, the facility to compliance as well.
- NJDEP consistently documents collection of penalties. All CAA and RCRA files reviewed, and all but one CWA file, included documentation establishing that the assessed penalty had been paid.

Priority Issues to Address

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

- Some mandatory data requirements are not entered timely or accurately. EPA has provided program-specific recommendations to address these issues.
- Inspection reports lack sufficient documentation or are not submitted timely. It is recommended that NJDEP develop plans to address these issues.
- NJDEP does not consistently document economic benefit or the rationale for the difference between initial penalty calculation and final penalty. It is recommended that NJDEP develop SOPs to ensure appropriate documentation of these elements in all penalty files. EPA will provide economic benefits training if requested.

Data and penalties were also cited as areas for improvement in Round 2, but the CAA and CWA data issues cited in this report are somewhat different because EPA has since transitioned to a new database. Penalty documentation is a priority issue for all programs so it is not included in the summary of program-specific issues below.

Most Significant CWA-NPDES Program Issues¹

- Data are not entered in the national data system. NJDEP is working with EPA to migrate historic data to ICIS-NPDES and begin maintenance of required data. EPA applauds NJDEP's efforts in this area and is committed to working with NJDEP to complete the process.
- NJDEP does not accurately identify single event violations (SEVs). Violations identified during an inspection that are SEVs are not being reported if they are not associated with an enforcement action. It is recommended that NJDEP develop and implement an SOP for making and recording SEV determinations following inspections.
- Most inspection reports reviewed were not completed within the prescribed timeframe. It is recommended that NJDEP develop and implement a plan to assure timely submission.

Most Significant CAA Stationary Source Program Issues

- Minimum data requirements (MDRs), including compliance monitoring, Title V annual compliance certification reviews, stack tests, and enforcement MDRs, are not entered timely or accurately. It is recommended that NJDEP management submit a memorandum to staff detailing appropriate data entry procedures for all areas cited in this report.
- Some inspection reports did not cover all applicable regulations or indicated "ND" for "compliance not determined" in place of a proper determination. It is recommended that NJDEP implement management controls to ensure that inspection reports include proper documentation.
- NJDEP did not identify or report Federally Reportable Violations (FRVs). It is recommended that EPA provide training to NJDEP on the new FRV policy and that NJDEP take steps to implement the policy and begin recording FRVs.

Most Significant RCRA Subtitle C Program Issues

- Inspection reports lack sufficient detail to describe the facility's activities or substantiate violations. It is recommended that NJDEP submit a memorandum to staff describing the narrative detail that should be included in inspection reports and update SOPs as needed.
- Many inspection reports reviewed were not completed within the timeframe prescribed by NJDEP policy. It is recommended that NJDEP develop and implement a plan to assure timely submission.

¹ 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."

As appropriate, EPA may utilize the annual data metric analysis and/or supplemental file reviews to ensure action items are completed.

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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: Fiscal Year 2015

Key dates:

- Kickoff letter sent to state: February 2, 2016
- Kickoff meeting conducted: February 29, 2016
- File selection list sent to state: May 3, 2016
- Data metric analysis sent to state: May 11, 2016
- Onsite file reviews conducted:
 - Clean Air Act (CAA): June 6 - 10, 2016
 - Clean Water Act (CWA): June 6 - 13, 2016
 - Resource Conservation and Recovery Act (RCRA): June 9 - 10, 2016
- Draft report sent to state: September 29, 2016
- Report finalized: December 30, 2016

State and EPA key contacts for review:

- Dore LaPosta, Director, EPA-DECA
- Kate Anderson, Deputy Director, EPA-DECA
- Barbara McGarry, Chief, EPA-DECA-CAPSB
- Daniel Teitelbaum, SRF Coordinator, EPA-DECA-CAPSB
- Andrea Elizondo, Life Scientist, EPA-DECA-CAPSB
- Robert Buettner, Chief, EPA-DECA-ACB
- Nancy Rutherford, Air Data Steward, EPA-DECA-ACB
- Doug McKenna, Chief, EPA-DECA-WCB
- Christy Arvizu, Environmental Scientist, EPA-DECA-WCB
- Lenny Voo, Chief, EPA-DECA-RCB
- Derval Thomas, Section Chief, EPA-DECA-RCB
- Ray Bukowski, Assistant Commissioner, NJDEP
- Arthur Zanfini, AC Assistant, NJDEP
- Richelle Wormley, Director, Division of Air Enforcement, NJDEP
- Marcedius Jameson, Director, Division of Water & Land Use Enforcement, NJDEP
- Michael Hastry, Bureau Chief, Bureau of Hazardous Waste & UST Compliance and Enforcement, NJDEP

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																														
Finding 1-1	Area for State Improvement																													
Summary	Data are not entered in the national data system.																													
Explanation	<p>During FY' 15, NJDEP did not populate the ICIS-NPDES (Integrated Compliance Information System – National Pollutant Discharge Elimination System) database. Thus, none of the metrics for this finding contain meaningful information at this time.</p> <p>Data was also cited as an area for improvement in Round 2 and NJDEP subsequently worked with EPA Region 2 to develop procedures for reconciling data. EPA has since transitioned to a new database, however, which requires a different approach from the one outlined in Round 2.</p> <p>Since October 2015, NJDEP has been working with EPA to migrate historic data to ICIS-NPDES and begin maintenance of required data going forward. EPA and NJDEP are working together on this critical project and conduct weekly check-ins on its status. The project is expected to be completed in FY' 17.</p> <p>For purposes of this review, NJDEP provided data from the New Jersey Environmental Management System (NJEMS) to be used in lieu of ICIS-NPDES data for all data metrics. NJEMS is an effective tool utilized by NJDEP for tracking all actions that pertain to a facility, including permitting, inspections, enforcement, and violations.</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>1b1 Permit limit rate for major facilities</td> <td>>= 95%</td> <td>90.90%</td> <td>46</td> <td>126</td> <td>36.50%</td> </tr> <tr> <td>1b2 DMR entry rate for major facilities</td> <td>>= 95%</td> <td>96.70%</td> <td>0</td> <td>2206</td> <td>0%</td> </tr> <tr> <td>2b Files reviewed where data are accurately reflected in the national data system</td> <td>100%</td> <td>-</td> <td>0</td> <td>0</td> <td>NA</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	1b1 Permit limit rate for major facilities	>= 95%	90.90%	46	126	36.50%	1b2 DMR entry rate for major facilities	>= 95%	96.70%	0	2206	0%	2b Files reviewed where data are accurately reflected in the national data system	100%	-	0	0	NA
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2b Files reviewed where data are accurately reflected in the national data system	100%	-	0	0	NA																									
State response	DEP will continue to work with EPA regarding ICIS migration of data. The recommended dates as noted below will be used as milestone achievement markers.																													
Recommendation	1) By April 30, 2017, NJDEP will complete a successful production data load of all relevant NPDES data families from NJEMS into ICIS-NPDES																													

production and initiate data maintenance of ICIS-NPDES production through continued data entry of non-DMR data.

2) By April 30, 2017, NJDEP will develop an ICIS-NPDES DMR data flow, use it to migrate existing DMR data in NJEMS to ICIS-NPDES; and initiate data maintenance of DMR data in ICIS-NPDES production through DMR data flow from NJEMS to ICIS-NPDES production via the Exchange Network.

3) Upon completion of recommendations (1) and (2), EPA Region 2 will confirm that the load of MDR data into ICIS has been satisfactorily completed. EPA Region 2 will also check the permit limit and DMR entry rates as part of the annual data metrics for FY'17 to confirm completion of this recommendation.

CWA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations																																																																	
Summary	NJDEP meets its inspection coverage commitments.																																																																	
Explanation	<p>Metrics 5a1, 5b1, and 5b2 show that NJDEP inspected 137 NPDES majors, 298 NPDES non-majors with individual permits, and 211 NPDES non-majors with general permits. NJDEP exceeded the national goal for each of these metrics, as only 104 NPDES majors, 207 NPDES non-majors with individual permits, and 207 NPDES non-majors with general permits were scheduled for inspection in FY' 15 under NJDEP's Compliance Monitoring Strategy (CMS) Plan.</p> <p>NJ also completed all planned inspections for most of the inspection categories covered by Metric 4a. This includes pretreatment compliance inspections and audits (Metric 4a1), major CSO inspections (Metric 4a4), SSO inspections (Metric 4a5), Phase I & II MS4 audits or inspections (Metric 4a7), industrial stormwater inspections (Metric 4a8), and medium and large NPDES CAFO inspections (Metric 4a10).</p> <p>Note that these metrics are based on data from NJEMS provided by NJDEP and not on information in ICIS.</p>																																																																	
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State response	No comments.
Recommendation	N/A.

CWA Element 2 — Inspections

Finding 2-2	Area for State Attention					
Summary	NJDEP did not complete all planned significant industrial user (SIU) inspections.					
Explanation	For Metric 4a2, NJDEP’s CMS commitment was 100% tracking of annual report submittals by non-local IUs and annual sampling inspection of all SIUs. NJDEP reported that its universe contained 81 SIUs, of which 67 (83%) were inspected in FY’15.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	4a2 Significant Industrial User inspections for SIUs discharging to non-authorized POTWs	100% of state CMS plan	-	67	81	82.7%
State response	NJDEP will ensure inspection of the remaining 14 inspections in FY 2017 and work towards 100% inspection of the SIU universe on a fiscal year basis.					
Recommendation	N/A.					

CWA Element 2 — Inspections

Finding 2-3	Area for State Attention												
Summary	Inspection reports sometimes lack information sufficient to determine compliance at the facility.												
Explanation	<p>Metric 6a shows that 46 (86.8%) of the 53 inspection reports reviewed were complete and sufficient to determine compliance. Reports included a checklist that NJDEP utilizes to assess compliance, but it is difficult for an outside reviewer to read the reports and make a compliance determination on their own.</p> <p>Inspection checklist are site-specific and are generated by the inspector prior to visiting the facility. The checklist identifies the regulatory / permit requirements that must be reviewed / assessed. During the inspection, inspectors check off items as in compliance, not in compliance, not evaluated or used for data collection.</p> <p>The file review indicated that inspection reports/checklists are generally completed and identified with compliance determinations. Narrative information, if provided, however, is usually brief. Therefore, it is difficult for an outside reviewer to adequately ascertain compliance or get a true picture of what is happening at the facility.</p> <p>When non-compliance is identified, especially as it pertains to site conditions, photographs or a detailed site narrative do not accompany the inspection report. Two inspection reports reviewed referred to photographs, but the photographs were not included with the report as they were stored elsewhere.</p> <p>EPA believes this issue can be addressed through management reviews of inspection reports to confirm that information is complete in facility files and that all documentation necessary to support and substantiate findings is present.</p>												
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State response	NJDEP will work towards more stringent management review of reports to confirm completeness, including accompanying noted photographs or additional documentation prior to locking/approval of inspection report.
Recommendation	N/A.

CWA Element 2 — Inspections

Finding 2-4	Area for State Improvement												
Summary	Inspection reports are not completed in a timely manner.												
Explanation	<p>Metric 6b shows that 23 (46.9%) of 49 inspection reports reviewed were completed within the prescribed timeframe. On average, reports took 61 days to be completed, well above the goal of 30. This average is skewed by an outlier that took over a year to finalize, but it is still the case that most inspection reports were not finalized and transmitted within 30 days.</p> <p>According to the NPDES <i>Enforcement Management System</i>,² inspection reports should be distributed within 30 days of the inspection for non-sampling inspections or 45 days for sampling inspections. Timeliness of inspection reports was cited as an area for attention in Round 2 but no specific action was recommended at that time.</p>												
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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #								
6b Inspection reports completed within prescribed timeframe	100%	-	23	49	46.9%								
State response	NJDEP will continue to work to improve timeliness in finalization of inspection reports. Trends will be analyzed and discussed, and where improvements can be made strategic processes will begin to be developed to improve upon the trends.												
Recommendation	Within 90 days of finalization of this report, NJDEP shall submit to EPA Region 2 for review a plan to improve and assure the timely submission of inspection reports. Within 30 days of receipt of EPA Region 2's comments, NJDEP will finalize and begin to implement the plan and EPA will consider this recommendation complete if the comments have been satisfactorily addressed.												

² Available at <https://www.epa.gov/enforcement/enforcement-management-system-national-pollutant-discharge-elimination-system-clean>

CWA Element 2 — Inspections

Finding 2-5	Area for State Improvement																	
Summary	Construction stormwater inspections conducted by Soil Conservation Districts (SCDs) may not satisfy NJDEP’s CMS commitment.																	
Explanation	For Metric 4a9, the CMS Plan calls for inspections of 10% of Phase I and 5% of Phase II construction stormwater universes each year. NJDEP only conducted 18 such inspections because the vast majority of construction stormwater inspections are conducted by the local Soil Conservation Districts (SCDs). Inspections conducted by the local SCDs are reported to the New Jersey Department of Agriculture, but reports are not provided to NJDEP and may not meet CMS Plan requirements.																	
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4a9 Phase I and II stormwater construction inspections	100% of state CMS plan	-	18	369	4.9%													
State response	DEP will work with the region to fully explain SCD inspections and will also look to justify the work completed by the local SCD.																	
Recommendation	By December 31, 2016, NJDEP will work with the Region to reach agreement on appropriate language that fully explains the limitations of the SCD inspections and the rationale for NJDEPS’s disinvestment from construction stormwater inspections. This language will serve as a footnote to NJDEP’s CMS Plan.																	

CWA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations																																		
Summary	Compliance determinations assessed by inspectors are generally accurate.																																		
Explanation	<p>Metric 7e shows that 45 (86.5%) of 52 inspection reports reviewed led to an accurate determination. Several inaccurate compliance determinations were identified based on inspector observations (of DMR exceedances or operation and management, for example) or incomplete inspection reports as described in Finding 2-3. One inspection report cited violations in the cover page, but the inspection report itself noted that the item of concern was “in compliance.”</p> <p>This finding is based on the inspection checklists in the files reviewed. As noted under Finding 2-3, these checklists often do not provide sufficient basis for an outside reviewer to make an independent compliance determination.</p>																																		
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7f1 Non-major facilities in Category 1 noncompliance	-	-	62	-	-																														
7g1 Non-major facilities in Category 2 noncompliance	-	-	84	-	-																														
State response	DMR exceedances are pre-populated violations added during the nightly cycle to the violation list. Marking these DMR exceedances out of compliance within the inspection report would contribute to duplication of violations on the violation list. This is not always the case, but could have contributed to the explanation noted above. For the most part those violations are noted in subsequent enforcement documents.																																		
Recommendation	N/A.																																		

CWA Element 3 — Violations

Finding 3-2	Area for State Improvement																																			
Summary	NJDEP does not accurately identify SEVs.																																			
Explanation	<p>SEVs are recorded in NJEMS only when a corresponding enforcement action is taken. There may be violations identified during an inspection that may be SEVs, but are not being reported because they are not associated with an enforcement action.</p> <p>Metric 8b shows that three (37.5%) of eight files contained SEVs that all were accurately identified as either SNC or non-SNC. The other five files included descriptions of SEVs in either the inspection report or the notice of violation that were not flagged as such by the inspector or NJEMS.</p> <p>Metric 8c shows that the one SEV that was SNC was not identified as SNC or reported timely as such.</p> <p>SEV reporting was cited as an area for attention in Round 2 but no specific action was recommended at that time.</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>8b Single-event violations accurately identified as SNC or non-SNC</td> <td>100%</td> <td>-</td> <td>3</td> <td>8</td> <td>37.5%</td> </tr> <tr> <td>8c Percentage of SEVs identified as SNC reported timely at major facilities</td> <td>100%</td> <td>-</td> <td>0</td> <td>1</td> <td>0.0%</td> </tr> <tr> <td>7a1 Number of major facilities with single event violations</td> <td>-</td> <td>-</td> <td>7</td> <td>-</td> <td>-</td> </tr> <tr> <td>8a2 Percentage of major facilities in SNC</td> <td>-</td> <td>19.2%</td> <td>4</td> <td>150</td> <td>2.67%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	8b Single-event violations accurately identified as SNC or non-SNC	100%	-	3	8	37.5%	8c Percentage of SEVs identified as SNC reported timely at major facilities	100%	-	0	1	0.0%	7a1 Number of major facilities with single event violations	-	-	7	-	-	8a2 Percentage of major facilities in SNC	-	19.2%	4	150	2.67%
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8c Percentage of SEVs identified as SNC reported timely at major facilities	100%	-	0	1	0.0%																															
7a1 Number of major facilities with single event violations	-	-	7	-	-																															
8a2 Percentage of major facilities in SNC	-	19.2%	4	150	2.67%																															
State response	Internal discussion will commence regarding SOP development and identification of SEVs in accordance with the recommendation below.																																			
Recommendation	1) Within 60 days of finalization of this report, NJDEP shall submit an SOP to EPA Region 2 for review describing how the State will make and record SEV's and SNC status determinations resulting from NPDES inspections in New Jersey. Within 30 days of receipt of Region 2's comments, NJDEP will finalize and begin to implement the SOP and train its inspectors on how to identify and report SEVs instead of relying on NJEMS to do so.																																			

2) Following the conclusion of FY' 17, NJDEP's Director of the Division of Water & Land Use Enforcement shall submit a memo to EPA Region 2 certifying that the SOP has been implemented and that subsequent SEVs have been identified and reported in accordance with the SOP.

CWA Element 4 — Enforcement

Finding 4-1	Area for State Attention					
Summary	Enforcement responses typically return violators to compliance.					
Explanation	Metric 9a shows that a significant majority (20 of 25, or 80%) of enforcement responses returned or will return the facility to compliance. Some actions for DMR exceedances did not have a schedule for compliance but EPA does not consider this a significant issue because these actions were penalty actions.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	9a Percentage of enforcement responses that return or will return source in violation to compliance	100%	-	20	25	80%
State response	DMR exceedances are usually sporadic violations unless a part of a SNC issue which is handled under different pretenses.					
Recommendation	N/A.					

CWA Element 4 — Enforcement

Finding 4-2	Area for State Attention																
Summary	Some enforcement responses do not address violations appropriately.																
Explanation	<p>Metric 10b shows that 21 (77.8%) of enforcement responses reviewed addressed violations in an appropriate manner. Several facilities were identified as having an ongoing pattern of non-compliance, characterized by the repeated issuance of NOVs citing similar violations, but there was no enforcement elevation indicated in the file.</p> <p>EPA believes this issue can be addressed by providing guidance to inspectors and management on the proper procedures for addressing non-compliance (e.g. use of Notice of Violations, Administrative Orders, etc.) and escalating responses to violations where there is a pattern of repeating non-compliance.</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>10b Enforcement responses reviewed that address violations in an appropriate manner</td> <td>100%</td> <td>-</td> <td>21</td> <td>27</td> <td>77.8%</td> </tr> </tbody> </table>					Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	10b Enforcement responses reviewed that address violations in an appropriate manner	100%	-	21	27	77.8%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #												
10b Enforcement responses reviewed that address violations in an appropriate manner	100%	-	21	27	77.8%												
State response	No comments.																
Recommendation	N/A.																

CWA Element 4 — Enforcement

Finding 4-3	Area for State Improvement					
Summary	NJDEP does not always respond to NPDES violations timely.					
Explanation	For Metric 10a1, NJEMS indicated that four facilities met the criteria for being in SNC, but no action was taken to address these violations.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	10a1 Major facilities with timely action as appropriate	98%	11.80%	0	4	0%
State response	NJDEP will work towards quicker resolution of SNCs to address them within the timeframes noted in NPDES enforcement guidance.					
Recommendation	For SNC at facilities in New Jersey identified through DMR reporting, NJDEP needs to resolve these SNC's timely and appropriately, in accordance with NPDES enforcement guidance (EMS). NJDEP shall send EPA a list of steps taken to address this issue within 90 days of completion of this report. EPA Region 2 will then review this data metric as part of the annual data metrics for FY' 17 to confirm completion of this recommendation.					

CWA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations					
Summary	NJDEP generally documents payment of penalty in the case file.					
Explanation	In eight (88.9%) of nine enforcement case files reviewed, EPA found verification of penalty collection. Just one file lacked evidence of penalty collection.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	12b Penalties collected	100%	-	8	9	88.9%
State response	No comments.					
Recommendation	N/A.					

CWA Element 5 — Penalties

Finding 5-2	Area for State Improvement																							
Summary	NJDEP does not consistently document economic benefit or the rationale for the difference between initial penalty calculation and final penalty.																							
Explanation	<p>For metric 11a, none of the eight penalty calculations reviewed included economic benefit. For metric 12a, the initial penalty differed from the final in one file, but neither included documentation of the rationale for the difference. Typically, penalties were calculated in accordance with the state penalty policy, although a few files lacked documentation of the calculation or of the fact that the settlement amount had been negotiated.</p> <p>This finding continues from Round 2 and had previously been addressed through the development of a department-wide SOP.</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>11a Penalty calculations reviewed that consider and include gravity and economic benefit</td> <td>100%</td> <td>-</td> <td>0</td> <td>8</td> <td>0%</td> </tr> <tr> <td>12a Documentation of the difference between initial and final penalty and rationale</td> <td>100%</td> <td>-</td> <td>0</td> <td>1</td> <td>0%</td> </tr> </tbody> </table>						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	8	0%	12a Documentation of the difference between initial and final penalty and rationale	100%	-	0	1	0%
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	8	0%																			
12a Documentation of the difference between initial and final penalty and rationale	100%	-	0	1	0%																			
State response	NJDEP will continue internal discussions regarding development of SOPs to account for appropriate documentation of economic benefit calculations, documentations for the rationale for excluding economic benefit where applicable and appropriate documentation of the rationale for any difference between the initial and final penalty.																							
Recommendation	<p>1) Within 45 days of finalization of this report, EPA Region 2's NPDES program manager will set up a meeting with NJDEP to provide the information NJDEP requested on appropriate documentation of rationales for the differences between initial and final penalty calculation and inclusion of economic benefit.</p> <p>2) Within 90 days of finalization of this report, NJDEP shall submit an SOP to EPA Region 2 providing for (a) the appropriate documentation of economic benefit calculations; (b) documentation of the rationale for excluding economic benefit where applicable; and (c) appropriate documentation of the rationale for any difference between the initial and final penalty. Within 30 days of receipt of Region 2's comments, NJDEP will finalize and begin to implement the SOP.</p>																							

3) EPA shall provide economic benefits training by September 30, 2017. This training will cover EPA's BEN model available at <https://www.epa.gov/enforcement/penalty-and-financial-models>

4) Following the conclusion of FY' 17, NJDEP's Assistant Commissioner for Compliance and Enforcement shall submit a memo to EPA Region 2 certifying that the SOP has been implemented and that subsequent penalty actions have been completed in accordance with the SOP.

Clean Air Act Findings

CAA Element 1 — Data	
Finding 1-1	Area for State Improvement
Summary	Minimum data requirements (MDRs) are not entered timely or accurately.
Explanation	<p>Metric 2b show that just seven (20%) of the 35 files reviewed had accurate MDR data in ICIS-Air. Specific issues are detailed below.</p> <p><i>Compliance Monitoring MDRs</i> Of 35 Full Compliance Evaluations (FCEs) reviewed, the date entered into NJEMS differed from the date entered in ICIS-Air in five cases. In addition, 10 of the FCE dates entered were the date of the on-site visit, while 17 were the date of the supervisor review; either is fine but the practice should be consistent. Of 17 major files reviewed, just one had air program/subparts entered correctly in ICIS-Air.</p> <p>Ten files reviewed had inaccurate zip codes, street addresses, or municipalities, and nine had data entered into ICIS-Air more than 60 days from FCE date. For metric 3b1, 61% of compliance monitoring MDRs were reported timely in ICIS-Air, compared to a national goal of 100%.</p> <p><i>Title V Annual Compliance Certification (TVACC) Reviews</i> Of the 17 TVACC reviews in the selected files, thirteen had inaccurate data in ICIS-Air. The date received was inaccurate in ten cases, and date reviewed was not entered in ten cases. In addition, five of the TVACCs were not entered within 60 days of the date received.</p> <p><i>Stack Tests</i> Of eighteen stack tests reviewed, five were not entered into ICIS-AIR and an additional twelve were entered but with a different test date from NJEMS. In seven cases, data was entered into ICIS-AIR more than 60 days from test date. Metric 3b2 suggests that stack tests were reported timely in a large majority of cases (82%), but this result is questionable given the suspect quality of the stack test date field in the files reviewed.</p> <p><i>Enforcement MDRs</i> The nine federally reportable violations (FRVs) identified by EPA in the files were not identified or reported by DEP as FRVs. For metric 3b3, 72% of enforcement MDRs were reported timely, compared to a national goal of 100%.</p>

Data was also cited as an area for improvement in Round 2, but EPA has since transitioned to a new database (ICIS-Air). The transition occurred early in FY'15 and may have contributed to this finding.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
2b Accurate MDR data in ICIS-Air	100%	-	7	35	20.0%
3a2 Timely reporting of HPV determinations	100%	99.6%	0	0	NA
3b1 Timely reporting of compliance monitoring MDRs	100%	64.2%	367	598	61.4%
3b2 Timely reporting of stack test dates and results	100%	64.5%	70	85	82.4%
3b3 Timely reporting of enforcement MDRs	100%	56.4%	202	281	71.9%

State response

No comments.

Recommendation

- 1) EPA Region 2 will conduct training on how to report to ICIS-Air in accordance with EPA policies and procedures within 90 days of finalization of this report, with a focus on MDRs.
- 2) Within 90 days of the finalization of this report, NJDEP shall update the inaccurate facility information that EPA Region 2 identified and send a memorandum to EPA Region 2 confirming that errors have been resolved.
- 3) Within 90 days of the finalization of this report, NJDEP shall issue a memorandum to staff reiterating importance of accurate data entry and citing the appropriate policies and procedures for the specific areas cited in this report and share a copy with EPA Region 2 to confirm resolution of this action item.
- 4) Following the conclusion of FY'17, NJDEP's Director of the Division of Air Enforcement shall submit a memo to EPA Region 2 certifying that each of the specific MDRs cited in this report have been entered accurately in accordance with the appropriate procedures.
- 5) EPA Region 2 will also review this data metrics for timely reporting as part of the annual data metrics for FY'17 to confirm completion of this recommendation.

CAA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations					
Summary	NJDEP meets its Full Compliance Evaluation (FCE) commitments.					
Explanation	Metrics 5a and 5b show that NJDEP inspected 133 (96%) of 138 majors and mega-sites scheduled for inspection in FY'15 and 47 (96%) of 49 SM-80s. NJDEP also committed to inspect 265 minors and non-SM-80 synthetic minors under its alternative CMS Plan for FY'15, and Metric 5c shows that it completed 264 (100%). In all cases, these results are in line with the National Goals and far exceed the National Averages.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	5a FCE coverage: majors and mega-sites	100% of commitment	63.2%	133	138	95.9%
	5b FCE coverage: SM-80s	100% of commitment	79.5%	47	49	95.9%
	5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan	100% of commitment	42.6%	264	265	99.6%
State response	No comments.					
Recommendation	N/A.					

CAA Element 2 — Inspections

Finding 2-2	Area for State Improvement																							
Summary	Inspection report documentation is sometimes incomplete.																							
Explanation	<p>Metrics 6a and 6b indicate FCE elements were documented and sufficient documentation was provided to determine compliance in the large majority of files reviewed (86% and 83% respectively). In six of 35 files reviewed the evaluation did not cover all applicable regulations of the facility and thus did not qualify as an FCE.</p> <p>While a large majority of files reviewed met requirements, it is of significant concern if the state is entering inspections as FCEs that are actually missing key FCE elements. If inspections that are not FCEs are entered as such, it calls into question whether the state is in fact meeting its FCE commitments as described in Finding 2-1.</p>																							
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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
6a Documentation of FCE elements	100%	-	30	35	85.7%																			
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility	100%	-	29	35	82.9%																			
State response	No comments.																							
Recommendation	<p>Within 90 days of finalization of this report, NJDEP shall implement management controls to ensure that all inspections that are counted as FCEs cover all applicable regulations and provide EPA with a description of the controls that have been implemented.</p> <p>When EPA Region 2 reviews MDR data entry for selected facility files from the second half of FY' 17 under Finding 1-1, it will also determine whether FCEs cover all applicable regulations. This recommendation will be considered complete if they do.</p>																							

CAA Element 2 — Inspections

Finding 2-3	Area for State Improvement					
Summary	ICIS-Air indicates that a majority of Title V annual compliance certifications (TVACCs) are not reviewed.					
Explanation	Metric 5e shows that only 106 (38%) of 276 TVACCs were reviewed by NJDEP in FY'15. As noted in Finding 1-1, the file review suggests that the underlying cause of this finding may be that TVACCs are reviewed but are not entered or entered correctly in ICIS-Air.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	5e Review of Title V annual compliance certifications	100.0%	39.1%	106	276	38.4%
State response	No comments.					
Recommendation	<p>Within 90 day of finalization of the report, NJDEP will develop appropriate procedures for entering TVACC reviews in ICIS-Air. At this time, NJDEP will provide a description of these procedures to EPA Region 2 and will implement the new procedures after receiving comments from EPA Region 2.</p> <p>This recommendation will be considered complete when the annual data metrics indicate that NJDEP is following proper procedures for TVACC reviews.</p>					

CAA Element 3 — Violations

Finding 3-1	Area for State Attention						
Summary	NJDEP did not identify any HPVs in FY'15.						
Explanation	<p>Metric 8a shows that 0 HPVs were discovered at 291 majors in FY'15 meaning there is no basis on which to make a finding for Metric 13, timeliness of HPV determinations. While this result is unusual, Metric 8c shows that all 20 (100%) of the files reviewed that included violations did not have HPVs. Thus, EPA Region 2 found no evidence to indicate that NJDEP had failed to properly identify HPVs, but there is also no indication that NJDEP does identify HPVs when appropriate.</p> <p>EPA Region 2 provided training to NJDEP on the new HPV policy June 28, 2016 and will continue to work with the state as needed to ensure that the policy is properly implemented and to address any issues with HPVs identified in future annual data metric analyses.</p>						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	13 Timeliness of HPV determinations		100%	82.6%	0	0	NA
	8a HPV discovery rate at majors		N/A	1.0%	0	291	0.0%
	8c Accuracy of HPV determinations		100%	-	20	20	100%
State response	No comments.						
Recommendation	N/A.						

CAA Element 3 — Violations

Finding 3-2	Area for State Improvement																		
Summary	NJDEP does not always determine compliance and does not properly identify FRVs.																		
Explanation	<p>For Metric 7a, NJDEP made accurate compliance determinations in 25 (71%) of 35 files reviewed. Where a compliance determination was indicated and documented in the file, EPA Region 2 found that NJDEP had made accurate compliance determinations. In six cases, however, NJDEP indicated “ND” for “compliance not determined” in place of a proper determination.</p> <p>Additionally, as noted in Finding 1-1, none of the nine identified violations that qualified as FRVs were designated as such by NJDEP.</p>																		
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Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #														
7a Accuracy of compliance determinations	100%	-	25	35	71.4%														
7a1 FRV ‘discovery rate’ based on inspections at active CMS sources	N/A	2.6%	0	781	0.0%														
State response	No comments.																		
Recommendation	<p>1) EPA Region 2 will provide training to NJDEP on the new FRV policy within 90 days of the finalization of this report.</p> <p>2) Within 180 days of the finalization of this report, NJDEP shall issue a memorandum instructing staff to follow the FRV policy and reiterating the importance of identifying and entering FRVs. NJDEP shall share a copy of this memorandum with EPA Region 2.</p> <p>3) Within 180 days of the finalization of this report, NJDEP shall enter into ICIS-air the FRVs that EPA Region 2 identified as part of this review and send a memorandum to EPA Region 2 confirming that they have been entered.</p> <p>4) Following the conclusion of FY’ 17, NJDEP’s Director of the Division of Air Enforcement shall submit a memo to EPA Region 2 certifying that FRVs were identified and entered in accordance with the FRV policy.</p>																		

CAA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations																																		
Summary	Enforcement responses return facilities to compliance.																																		
Explanation	<p>For metric 9a, EPA Region 2 found that all eight formal enforcement responses reviewed included required corrective action that would return the facility to compliance in a specified time frame, or found that the facility had fixed the problem without a compliance schedule. This meets the National Goal of 100% for this metric.</p> <p>The other metrics under this element concern HPVs. As noted under Finding 3-2, NJDEP did not identify any HPVs in FY'16 so no determination can be made for these metrics. Going forward, EPA Region 2 will continue to work with NJDEP as needed to ensure that any HPVs identified under the new HPV policy are addressed appropriately.</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>0</td> <td>0</td> <td>NA</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>0</td> <td>0</td> <td>NA</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>0</td> <td>0</td> <td>NA</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%	-	0	0	NA	10b Percent of HPVs that have been have been addressed or removed consistent with the HPV Policy.	100%	-	0	0	NA	14 HPV Case Development and Resolution Timeline In Place When Required that Contains Required Policy Elements	100%	-	0	0	NA
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%	-	0	0	NA																														
10b Percent of HPVs that have been have been addressed or removed consistent with the HPV Policy.	100%	-	0	0	NA																														
14 HPV Case Development and Resolution Timeline In Place When Required that Contains Required Policy Elements	100%	-	0	0	NA																														
State response	No comments.																																		
Recommendation	N/A.																																		

CAA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations					
Summary	NJDEP consistently documents collection of all penalties.					
Explanation	For metric 12b, all 10 files reviewed included documentation establishing that the assessed penalty had been paid.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	12b Penalties collected	100%	-	10	10	100%
State response	No comments.					
Recommendation	N/A.					

CAA Element 5 — Penalties

Finding 5-2	Area for State Improvement																							
Summary	NJDEP does not consistently document economic benefit or the rationale for the difference between initial penalty calculation and final penalty.																							
Explanation	<p>For metrics 11a and 12a, five (50%) of 10 penalty calculations reviewed included economic benefit and six (60%) documented the rationale for penalty reduction. Two Case Management Documents were missing from the files; in all other cases gravity was documented.</p> <p>This finding continues from Round 2 and had previously been addressed through the development of a department-wide SOP.</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>11a Penalty calculations reviewed that document gravity and economic benefit</td> <td>100%</td> <td>-</td> <td>5</td> <td>10</td> <td>50%</td> </tr> <tr> <td>12a Documentation of rationale for difference between initial penalty calculation and final penalty</td> <td>100%</td> <td>-</td> <td>6</td> <td>10</td> <td>60%</td> </tr> </tbody> </table>						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%	-	5	10	50%	12a Documentation of rationale for difference between initial penalty calculation and final penalty	100%	-	6	10	60%
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%	-	5	10	50%																			
12a Documentation of rationale for difference between initial penalty calculation and final penalty	100%	-	6	10	60%																			
State response	NJDEP will continue internal discussions regarding development of SOPs to account for appropriate documentation of economic benefit calculations, documentations for the rationale for excluding economic benefit where applicable and appropriate documentation of the rationale for any difference between the initial and final penalty.																							
Recommendation	<p>1) Within 45 days of finalization of this report, EPA Region 2's NPDES program manager will set up a meeting with NJDEP to provide the information NJDEP requested on appropriate documentation of rationales for the differences between initial and final penalty calculation and inclusion of economic benefit.</p> <p>2) Within 90 days of finalization of this report, NJDEP shall submit an SOP to EPA Region 2 providing for (a) the appropriate documentation of economic benefit calculations; (b) documentation of the rationale for excluding economic benefit where applicable; and (c) appropriate documentation of the rationale for any difference between the initial and final penalty. Within 30 days of receipt of Region 2's comments, NJDEP will finalize and begin to implement the SOP.</p> <p>3) EPA shall provide economic benefits training by September 30, 2017.</p>																							

4) Following the conclusion of FY' 17, NJDEP's Assistant Commissioner for Compliance and Enforcement will submit a memo to EPA Region 2 certifying that the SOP has been implemented and that subsequent penalty actions have been completed in accordance with the SOP.

Resource Conservation and Recovery Act Findings

RCRA Element 1 — Data

Finding 1-1	Area for State Attention					
Summary	NJDEP generally maintains complete and accurate data in the national system, but there are some inconsistencies with NJEMS.					
Explanation	<p>Metric 2b shows that mandatory data were accurate and complete for all 35 files reviewed (100%). This represents a significant improvement over Round 2 resulting from the successful implementation of a nightly translation process for flowing data from NJEMS to RCRAinfo.</p> <p>The data metric analysis revealed several inconsistencies between RCRAinfo and NJEMS, however. For metric 2a, NJEMS indicated that there were only 29 long-standing secondary violations, but another 140 violations that have been closed out in NJEMS remain open in RCRAinfo. The majority of these closeouts occurred prior to nightly translation when NJDEP was manually entering data into RCRAinfo, and they still have not been entered.</p> <p>Additionally, NJDEP’s five-year inspection and universe counts derived from NJEMS differed substantially from the frozen RCRAinfo dataset. A total of 323 FY’11-15 inspections were not in RCRAinfo, including 19 in FY’15 and 41 in the three full fiscal years since nightly translation replaced manual entry. NJDEP’s universe counts also differ considerably from EPA’s because they are determined using manifest data instead of RCRAinfo generator status. For example, RCRAinfo showed 1,878 active SQGs in NJ, while the list from NJEMS included 849, only 367 of which overlapped with the RCRAinfo list.</p> <p>Metrics where counts from NJEMS did not match RCRAinfo counts extracted from ECHO are listed below.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2b Complete and accurate entry of mandatory data	100%	-	35	35	100%
	2a Long-standing secondary violators [ECHO]			169		
	2a Long-standing secondary violators [NJEMS]			29		
	5d Five-year inspection coverage for active SQGs [ECHO]	-	10.2%	600	1878	31.9%

	5d Five-year inspection coverage for active SQGs [NJEMS]	-	10.2%	418	698	59.9%
	5e1 Five-year inspection coverage at other sites (CESQGs) [ECHO]			698		
	5e1 Five-year inspection coverage at other sites (CESQGs) [NJEMS]			1256		
	5e4 Five-year inspection coverage at other sites (not covered by metrics 5a-5e3) [ECHO]			1273		
	5e4 Five-year inspection coverage at other sites (not covered by metrics 5a-5e3) [NJEMS]			1181		
State response	DEP will await list from EPA and respond accordingly.					
Recommendation	<p>1) EPA Region 2 will send NJDEP a list of longstanding secondary violators from RCRAinfo, and NJDEP will close them out as appropriate by September 30, 2017.</p> <p>2) Within 180 days of finalization of report, EPA Region 2 will work with NJDEP to develop a strategy to ensure that generator statuses are kept up-to-date in RCRAinfo.</p>					

RCRA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations					
Summary	NJDEP meets TSDF and annual inspection commitments, and inspection reports are complete and sufficient to determine compliance.					
Explanation	For Metric 5a, NJDEP inspected 17 (100%) of 17 operating TSDFs within a two-year period as required. Metric 5b shows that NJDEP also exceeded the 20% annual inspection coverage requirement for LQGs, by conducting a compliance evaluation inspection (CEI) at 177 (24.4%) of 726 facilities identified as LQGs during the 2013 Biennial Report cycle. This figure rises to 188 inspected generators, or 24.6%, when EPA inspections are included as permitted by the RCRA <i>Compliance Monitoring Strategy</i> (CMS).					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	5a Two-year inspection coverage of operating TSDFs	100%	90.6%	17	17	100%
	5b Annual inspection coverage of LQGs [NJDEP only]	20%	18.3%	177	726	23%
	5b Annual inspection coverage of LQGs [with EPA]	20%	18.3%	188	726	24.6%
State response	No comments.					
Recommendation	N/A.					

RCRA Element 2 — Inspections

Finding 2-2	Area for State Attention																													
Summary	NJDEP has not inspected all LQGs in the past five years.																													
Explanation	<p>Metric 5c shows that NJDEP conducted CEIs at 489 (67.4%) of 726 facilities identified as LQGs during the 2013 Biennial Report cycle. This figure rises to 501 inspected generators, or 69%, when EPA inspections are included as permitted by the RCRA CMS.</p> <p>While this figure falls well short of the National Goal of 100% for this metric, a closer examination of the list of LQGs that were not inspected reveals that the vast majority were not consistently classified as LQGs over the five-year period. Given that the CMS requirement is to inspect each LQG once every five years, it is unreasonable to expect NJDEP to have inspected all generators that have only been LQGs for a short time. Additionally, more than two-thirds of the LQGs not inspected were retail pharmacies, whose generator status is likely to be reclassified by forthcoming regulation and are thus a lower priority for inspection. Rather than inspect all LQGs in this industry, NJDEP considers it a higher priority to re-inspect LQGs previously found to be in violation in order to prevent recurring noncompliance.</p> <p>To the extent that there are generators that remain LQGs over the long-term and are not inspected every five years, the issue can be addressed through close coordination between EPA Region 2 and NJDEP. By reviewing the list of LQGs that have not been inspected in the past four years on an annual basis, the two agencies can ensure that each facility that should be inspected in the upcoming year is inspected by either EPA Region 2 or NJDEP.</p> <p>Metrics 5d and 5e1-5e4 are not considered in this review because NJDEP does not have an alternative CMS for RCRA. They are included below for informational purposes and demonstrate that NJDEP conducts a substantial number of inspections beyond TSDFs and LQGs.</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>5c Five-year inspection coverage of LQGs [NJDEP only]</td> <td>100%</td> <td>52.5%</td> <td>489</td> <td>726</td> <td>67.4%</td> </tr> <tr> <td>5c Annual inspection coverage of LQGs [with EPA]</td> <td>100%</td> <td>52.5%</td> <td>501</td> <td>726</td> <td>69%</td> </tr> <tr> <td>5d Five-year inspection coverage for active SQGs</td> <td>-</td> <td>10.2%</td> <td>418</td> <td>698</td> <td>59.9%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5c Five-year inspection coverage of LQGs [NJDEP only]	100%	52.5%	489	726	67.4%	5c Annual inspection coverage of LQGs [with EPA]	100%	52.5%	501	726	69%	5d Five-year inspection coverage for active SQGs	-	10.2%	418	698	59.9%
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5d Five-year inspection coverage for active SQGs	-	10.2%	418	698	59.9%																									

	5e1 Five-year inspection coverage at other sites (CESQGs)	1256
	5e2 Five-year inspection coverage at other sites (Transporters)	63
	5e3 Five-year inspection coverage at other sites (Non-notifiers)	27
	5e4 Five-year inspection coverage at other sites (not covered by metrics 5a-5e3)	1181
State response	No comments.	
Recommendation	N/A.	

RCRA Element 2 — Inspections

Finding 2-3	Area for State Improvement																							
Summary	Inspection reports lack sufficient detail and are not completed in a timely manner.																							
Explanation	<p>Metric 6a shows that none of the 35 inspection reports reviewed were complete and sufficient to determine compliance. NJDEP does use a checklist to ensure that basic data are collected and to determine compliance, but inspection reports contain only short narrative descriptions that do not describe the overall nature of the facility’s activities or its waste generation and handling practices. They also lack sufficient detail to substantiate violations.</p> <p>Metric 6b shows that 22 (62.9%) of 35 inspection reports reviewed were completed within the 30-day timeframe prescribed by NJDEP policy.³ On average, reports took 39 days to be completed, a figure skewed by one outlier that took nearly a year.</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>6a Inspection reports complete and sufficient to determine compliance</td> <td>100%</td> <td>-</td> <td>0</td> <td>35</td> <td>0%</td> </tr> <tr> <td>6b Timeliness of inspection report completion</td> <td>100%</td> <td>-</td> <td>22</td> <td>35</td> <td>62.9%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	6a Inspection reports complete and sufficient to determine compliance	100%	-	0	35	0%	6b Timeliness of inspection report completion	100%	-	22	35	62.9%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
6a Inspection reports complete and sufficient to determine compliance	100%	-	0	35	0%																			
6b Timeliness of inspection report completion	100%	-	22	35	62.9%																			
State response	NJDEP will continue to work to improve timeliness in finalization of inspection reports. Trends will be analyzed and discussed, and where improvements can be made strategic processes will begin to be developed to improve upon the trends.																							
Recommendation	<p>1) Within 90 days of finalization of this report, NJDEP shall submit to EPA Region 2 a plan to improve and assure the timely submission of inspection reports.</p> <p>2) Within 90 days of finalization of this report, NJDEP shall submit a memorandum to staff describing the narrative detail that should be included in all inspection reports going forward. If NJDEP’s current SOP for inspection reports do not require the inclusion of such detail,</p>																							

³ EPA's policy for evaluating this element under the SRF is that, “The agency should have its own timeliness guidelines stated in policy...EPA should use this standard to determine whether the agency is completing reports in a timely manner.”

then NJDEP shall update its SOP as necessary and share the updated SOP along with the memo. In developing the memo and/or SOP, NJDEP may wish to reference Appendix F of EPA's RCRA CMS, available at <https://www.epa.gov/compliance/compliance-monitoring-strategy-resource-conservation-and-recovery-act>.

RCRA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations						
Summary	NJDEP makes timely and appropriate SNC determinations.						
Explanation	<p>Metric 8a shows that NJDEP’s SNC identification rate is more than four times the national average, with SNCs identified for 57 (9.8%) of the 583 inspections. This is because NJDEP’s definition of SNC is broader than EPA’s, which is permissible. Metric 8c shows that all 19 SNC determinations reviewed were appropriate. Several violations that NJDEP classified as SNC would not have been counted as such by EPA, but NJDEP’s SNC determinations were made in accordance with NJDEP policy and also captured all violations that EPA would consider SNC.</p> <p>Metric 8b shows that all 79 SNC determinations made by NJDEP in FY’ 15 were timely. NJDEP’s practice is to make SNC determinations immediately following the conclusion of each inspection.</p>						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	8a SNC identification rate		-	2.2%	57	583	9.8%
	8b Timeliness of SNC determinations		100%	79%	79	79	100%
	8c Appropriate SNC determinations		100%	-	19	19	100%
State response	No comments.						
Recommendation	N/A.						

RCRA Element 3 — Violations

Finding 3-2	Area for State Attention						
Summary	NJDEP makes timely and appropriate compliance and SNC determinations.						
Explanation	Metric 7b shows that NJDEP’s violation discovery rate of 18.5% is only about half of the national average; NJDEP found violations on 108 of its 583 inspections in FY’15. Metric 7a, however, shows that NJDEP made accurate compliance determinations for 34 (97.1%) of 35 inspections reviewed. Thus, it is possible that the low violation discovery rate in NJ is a function of high overall compliance rates, but it is also possible that violations are being missed by inspectors and not recorded in the inspection reports that EPA reviewed.						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	7b Violations found during inspections		-	36.5%	108	583	18.5%
	7a Accurate compliance determinations		100%	-	34	35	97.1%
State response	DEP will await EPAs response.						
Recommendation	EPA Region 2 will work with NJDEP to further investigate why there is a low violation identification rate in NJ.						

RCRA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations						
Summary	NJDEP takes timely and appropriate enforcement to return violators to compliance.						
Explanation	For Metrics 9a, EPA Region 2 reviewed 19 enforcement responses that addressed violations and found that all of them (100%) returned violators to compliance. For Metric 10b, EPA Region 2 found 19 facilities with violations and NJDEP took appropriate action to address violations in all cases (100%). Overall, the national data system indicates that NJDEP took timely enforcement to address SNC in 51 (94.4%) of 54 cases in FY'15, exceeding the National Goal of 80% for Metric 10a.						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	9a Enforcement that returns violators to compliance		100%	-	19	19	100%
	10a Timely enforcement taken to address SNC		80%	81.4%	51	54	94.4%
	10b Appropriate enforcement taken to address violations		100%	-	19	19	100%
State response	No comments.						
Recommendation	N/A.						

RCRA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations					
Summary	NJDEP consistently documents collection of all penalties.					
Explanation	For metric 12b, all 10 files reviewed included documentation establishing that the assessed penalty had been paid.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	12b Penalties collected	100%	-	10	10	100%
State response	No comments.					
Recommendation	N/A.					

RCRA Element 5 — Penalties

Finding 5-2	Area for State Improvement																							
Summary	NJDEP does not consistently document economic benefit or the rationale for the difference between initial penalty calculation and final penalty.																							
Explanation	<p>For metric 11a, seven (63.6%) of 11 penalty calculations reviewed provided sufficient documentation of gravity and economic benefit. All penalties included a gravity component but stated, “No civil administrative penalty assessed for Economic Benefit.” In most cases this was justified, but there were four cases where economic benefit should have been calculated and included as appropriate.</p> <p>For metric 12a, there were nine penalties where the final penalty differed from the initial penalty calculation, for which two (22.2%) included sufficient documentation of the rationale for the difference. The other nine included reductions of greater than 20% without a documented rationale.</p> <p>This finding continues from Round 2 and had previously been addressed through the development of a department-wide SOP.</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>11a Penalty calculations reviewed that document gravity and economic benefit</td> <td>100%</td> <td>-</td> <td>7</td> <td>11</td> <td>63.6%</td> </tr> <tr> <td>12a Documentation of rationale for difference between initial penalty calculation and final penalty</td> <td>100%</td> <td>-</td> <td>2</td> <td>9</td> <td>22.2%</td> </tr> </tbody> </table>						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	11	63.6%	12a Documentation of rationale for difference between initial penalty calculation and final penalty	100%	-	2	9	22.2%
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	11	63.6%																			
12a Documentation of rationale for difference between initial penalty calculation and final penalty	100%	-	2	9	22.2%																			
State response	NJDEP will continue internal discussions regarding development of SOPs to account for appropriate documentation of economic benefit calculations, documentations for the rationale for excluding economic benefit where applicable and appropriate documentation of the rationale for any difference between the initial and final penalty.																							
Recommendation	<p>1) Within 45 days of finalization of this report, EPA Region 2’s RCRA program manager will set up a meeting with NJDEP to provide the information NJDEP requested on appropriate documentation of rationales for the differences between initial and final penalty calculation and inclusion of economic benefit.</p> <p>2) Within 90 days of finalization of this report, NJDEP shall submit an SOP to EPA Region 2 providing for (a) the appropriate documentation</p>																							

of economic benefit calculations; (b) documentation of the rationale for excluding economic benefit where applicable; and (c) appropriate documentation of the rationale for any difference between the initial and final penalty. Within 30 days of receipt of Region 2's comments, NJDEP will finalize and begin to implement the SOP.

3) EPA shall provide economic benefits training by September 30, 2017.

4) Following the conclusion of FY'17, NJDEP's Assistant Commissioner for Compliance and Enforcement will submit a memo to EPA Region 2 certifying that the SOP has been implemented and that subsequent penalty actions have been completed in accordance with the SOP.

Appendix I – Clean Air Act

File Selection

File Selection Process

Because NJDEP reported no violations for FY’ 15, all files selected included an FCE in order best assess whether FRVs and HPVs were being missed during FCEs. Steps were taken to ensure a mix of CMS classifications and NJ Regions and a minimum number of failed stack tests, informal actions, formal actions, penalties, and FCEs with no subsequent enforcement.

File Selection Table

ICIS-Air #	City	Universe	FCE	Violation Identified	Failed Stack Tests	Informal Enforcement Actions	Formal Enforcement Actions	HPV	Penalties Reported
NJ0000003400100154	HAMMONTON	Minor	X						
NJ0000003400170510	HAMMONTON	Minor	X						
NJ0000003400170670	NEW JERSEY	Minor	X						
NJ0000003400300489	RIDGEWOOD	Minor	X			X			
NJ0000003400500016	NEW JERSEY	Major	X						
NJ0000003401100089	MILLVILLE	Major	X		X	X			
NJ0000003401306327	NEWARK	Minor	X				X		8,000
NJ0000003401306782	NEWARK	Minor	X			X	X		3,000
NJ0000003401307524	MONTCLAIR DEPTFORD,	Major	X						
NJ0000003401501005	TOWNSHIP OF	Major	X				X		2,250
NJ0000003401556078	NEW JERSEY	Major	X		X		X		25,400
NJ0000003401712517	BAYONNE	Minor	X			X	X		9,000
NJ0000003402160499	NEW JERSEY	Minor	X			X			
NJ0000003402316399	KEASBEY	Minor	X						
NJ0000003402318080	CARTERET	Minor	X			X			
NJ0000003402520597	TINTON FALLS	Major	X			X	X		1,000
NJ0000003402725238	HANOVER PICATINNY	Minor	X			X			
NJ0000003402726177	ARSENAL	Major	X		X	X			
NJ0000003402978162	BAYVILLE	Major	X						
NJ0000003403130005	HALEDON	Minor	X						
NJ0000003403300004	SALEM	Major	X						
NJ0000003403300071	CARNEYS POINT	Major	X			X	X		6,750
NJ0000003403535882	HILLSBOROUGH	Major	X			X			
NJ0000003403535886	SOMERVILLE	Major	X		X	X			
NJ0000003403941735	NEW JERSEY	Major	X			X	X		5,000
NJ0000003403941780	LINDEN	Major	X			X			
NJ0000003403941805	LINDEN	Major	X			X	X		200

NJ0000003403942182	LINDEN	Minor	X				
NJ0000003404185441	PHILLIPSBURG	Major	X	X	X		
NJ0000003404185452	BELVIDERE	Major	X		X		
NJ00009071	EAST ORANGE	Minor	X		X	X	4,000
NJ00026948	PARSIPPANY	Minor	X				
NJ00052251	CAMDEN	Minor	X				
NJ00052254	PENNSAUKEN WATERFORD	Minor	X				
NJ00052280	TWP	Minor	X		X		

Appendix II – Clean Water Act

File Selection

File Selection Process

Files were randomly selected using procedures that ensure a minimum number of inspections, violations, SEV, SNC, informal actions, formal actions, penalties, and inspections with no subsequent action. Steps were taken to ensure a mix of facility and permit types and NJ Regions. Additional supplemental files were selected to more closely examine metric 7d1 (major facilities in non-compliance).

File Selection Table

Permit ID	County	Universe	Inspections	Violation Identified	SEV	SNC	Informal Enforcement Actions	Formal Enforcement Actions	Penalties Reported
NJ0020141	Middlesex	Major	X	X		X	X		1,000
NJ0021636	Union	Major	X	X					
NJ0026735	Monmouth	Major	X	X					
NJG0083933	Monmouth	Major	X				X		1,000
NJG0165832	Middlesex	Major	X				X		1,000
NJG0198404	Monmouth	Major	X	X			X		1,000
NJ0107956	Middlesex	Minor		X	X	X	X		108,000
NJ0180840	Monmouth	Minor		X		X			
NJG0125482	Middlesex	Minor	X						
NJG0127566	Middlesex	Minor	X	X	X		X		43,450
NJG0148873	Monmouth	Minor	X	X	X			X	
NJG0156191	Union	Minor	X						
NJG0167215	Ocean	Minor	X	X	X			X	
NJG0171263	Mercer	Minor	X						
NJG0203548	Monmouth	Minor	X						
NJ0022845	Somerset	Major	X	X			X	X	2,000
NJ0026085	Hudson	Major	X	X		X			
NJ0029084	Hudson	Major	X	X		X			
NJG0165956	Somerset	Major	X				X	X	2,000
NJ0020290	Morris	Minor	X	X		X			
NJG0117986	Essex	Minor	X	X			X		37,500
NJG0120804	Somerset	Minor		X				X	
NJG0143561	Hunterdon	Minor	X	X	X			X	
NJG0151335	Morris	Minor	X	X	X			X	
NJG0200824	Hunterdon	Minor	X	X					
NJG0223816	Passaic	Minor	X				X		
NJG0235679	Hunterdon	Minor	X					X	
NJG0237132	Warren	Minor	X						

NJG0155187	Sussex	Minor	X	X				
NJ0001155	Morris	Minor	X					
NJ0026832	Burlington	Major	X	X	X			X
NJ0109568	Cumberland	Major	X	X				
NJ0111490	Cape May	Major	X					
NJG0198366	Cape May	Major	X	X				
NJG0200409	Burlington	Major	X	X	X			X
NJ0055204	Cumberland	Minor	X				X	X 18,500
NJ0062944	Cape May	Minor		X	X		X	X 6,072
NJ0076881	Cumberland	Minor	X	X		X	X	16,000
NJG0129585	Salem	Minor						X
NJG0171948	Salem	Minor	X					
NJG0143740	Burlington	Minor	X					
NJG0154652	Camden	Minor	X	X	X			X
NJG0204056	Gloucester	Minor					X	15,000
NJG0235377	Burlington	Minor	X				X	1,000
NJ0004103	Gloucester	Major		X				
NJ0004952	Warren	Major	X	X				
NJ0005185	Gloucester	Major	X	X				
NJ0021601	Salem	Major	X	X	X			X
NJ0022586	Monmouth	Major	X	X	X		X	1,000
NJ0024759	Mercer	Major	X	X				

Appendix III – Resource Conservation and Recovery Act

File Selection

File Selection Process

Files were randomly selected using procedures that ensure a minimum number of inspections, violations, SNC, informal actions, formal actions, penalties, and inspections with no subsequent action. Steps were taken to ensure a mix of facility types and NJ Regions.

File Selection Table

RCRA ID	City	Universe	Inspections	Violation Identified	SNC	Informal Enforcement Actions	Formal Enforcement Actions	Penalties Reported
NJD986624625	HACKENSACK	Other	X					
NJD980785737	CLARK TWP EAST	LQG	X					
NJD986631638	RUTHERFORD PORT REPUBLIC	LQG	X	X		X		
NJR000022723	CITY	SQG	X					
NJR000040618	FORT DIX	CESQG	X					
NJD981184591	LINDEN	SQG	X			X		
NJR000002527	EDISON	SQG	X	X	X	X	X	10,125
NJD981564529	PENNINGTON	SQG	X					
NJD002454544	MIDDLESEX	TSDF LQG	X				X	3,375
NJN986636603	GLENDORA	Other					X	70,000
NJN986646941	WEST BERLIN	Other	X	X	X	X		
NJR000025544	MOONACHIE	CESQG					X	9,000
NJ4213720275	FORT DIX	TSDF LQG	X					
NJD002373819	GIBBSTOWN	LQG	X					
NJR986637403	TOTOWA BORO	SQG	X	X		X		
NJD982270555	HACKENSACK	CESQG	X	X		X		
NJD002011294	MAYWOOD	LQG					X	4,000
NJD002010932	CARLSTADT NORTH	CESQG	X	X		X	X	14,000
NJD002452167	BRUNSWICK	LQG	X					
NJD986581866	LINDEN	LQG	X					
NJR000053017	FLANDERS	CESQG	X	X		X		
NJR000055764	MILLTOWN	LQG	X					
NJD060792918	JERSEY CITY	LQG	X					
NJD077542033	PATERSON	LQG	X	X		X		
NJD986644623	FAIRFIELD	SQG	X					
NJR986628360	NEWARK	LQG	X					
NJR000076810	BRIDGEWATER	SQG	X					
NJD982789745	HARRISON	LQG					X	
NJN986624542	WAYNE	SQG	X					

NJ0000997908	SAYREVILLE	LQG	X	X		X		
NJD986575538	EWING	LQG	X	X		X		
NJR986631943	EAST WINDSOR NEW	SQG	X	X	X		X	3,600
NJD045790045	BRUNSWICK	LQG	X	X	X	X		
NJD001389352	RIDGEFIELD	SQG	X	X	X	X	X	4,504
NJD002385730	DEEPWATER	TSDf LQG Transporter	X	X		X	X	48,125