

U.S. Environmental Protection Agency, Region 5
Minnesota Pollution Control Agency

State Review Report

A. Purpose and Overview of this Report

EPA and the Environmental Council of States designed the State Review Framework (SRF) to consistently assess state enforcement of the Clean Air, Clean Water, and Resource Conservation and Recovery Acts. Since 2004, EPA Region 5 has completed two SRF reviews in each of its six states. For Minnesota Pollution Control Agency's (MPCA's) third review, EPA Region 5 and the MPCA used an approach that applies SRF data and indicators, but also considers the most current data available to EPA and MPCA programs. Based on this information, we focused our review on areas that present the greatest opportunities to improve program operations and strengthen public health and environmental protection, looking at MPCA's Clean Air Act (CAA), Clean Water Act (CWA), and Resource Conservation and Recovery Act (RCRA) enforcement and compliance assurance programs.

Each program review summarized below relies upon information compiled from file reviews, data evaluations, and conversations between EPA Region 5 and MPCA staff and managers. This information was used to analyze performance and determine the best means to improve performance. Throughout, our shared intent was to ensure effective implementation of CAA, CWA, and RCRA programs, support public access to information, and more closely coordinate work and planning in order to maximize benefits to public health and the environment.

This report communicates findings and actions to the public, identifies commitments for the coming year, and sets the stage for more closely integrated annual planning and stronger ongoing coordination. EPA and MPCA will regularly review progress in meeting these commitments.

Section B provides an executive summary of the review. Section C describes MPCA's enforcement and compliance program. Section D and the Appendices document the review, its findings, and actions that have been or will be carried out.

B. Executive Summary of Review

This executive summary identifies the focus areas of program review, the main findings in each area, and the main actions completed or planned in each area. EPA selected the most important program areas for review based on information from past MPCA reviews and routine interaction between EPA Region 5 and MPCA. EPA also considered the FY 2013 and/or 2014 Data Metric Analyses (DMAs) from EPA's Enforcement and Compliance Online (ECHO) database

(Appendix A), in order to evaluate program performance against nationally-consistent indicators established under SRF.

Clean Air Act

Focus Areas: Violation Identification, Timeliness and Appropriateness of Enforcement Actions, and Data Management and Reporting

Findings and Actions: EPA Region 5 found issues with data reporting, the number of enforcement actions, content in FCEs/CMRs, the process of stack testing, and the adequacy of penalties. Details of these findings, and resolving actions, can be found in Section D below.

Clean Water Act

MPCA performance either meets or exceeds expectations in the majority of data and file metric areas used for this review.

Focus area 1: Data completeness and accuracy in ICIS for the entire NPDES universe

Findings: MPCA has not been consistently and accurately reporting required compliance and enforcement data to EPA's Integrated Compliance Information System (ICIS).

Actions: MPCA will take steps to enter required data into ICIS. This corresponds with the requirements of the E-Reporting Rule. EPA and MPCA are committed to ensure data for all NPDES facilities is complete and accurately reported in ICIS in the future.

Focus area 2: Compliance and Enforcement in the Metallic Mining program

Findings: MPCA is not consistently documenting compliance monitoring activities and addressing noncompliance.

Actions: EPA and MPCA have agreed on a number of specific measures to improve Metallic Mining sector performance. Details of these findings, and resolving actions, can be found in Section D below.

Resource Conservation and Recovery Act

Focus Areas: All areas of a traditional state review: Complete and Accurate Data, Inspections, Violations identification, Timely and Appropriate Enforcement, Penalties

Findings and Actions: EPA Region 5 found two issues that rose to the level of Area for State Improvement – an indicator used in a traditional state review: incomplete inspection reports and lack of documentation that gives reason(s) behind the differences between the initial and

final penalties. Details of these findings, and resolving actions, can be found in Section D below and Appendix B.

C. MPCA Enforcement and Compliance Programs

The severity of the enforcement action depends on the potential for harm, environmental impact of the violation, the extent of deviation from compliance, the history of the regulated party, the extent of economic benefit, and how quickly the problem is corrected, among other factors. The types of actions are described in MPCA's Enforcement Response Plan. (ERP).

As part of MPCA's compliance determination and enforcement response, a forum is convened. The MPCA uses the forum process to ensure consistency and promote group decision-making in a consensus-based approach to enforcement. A forum is an informal meeting held by MPCA staff and counsel to evaluate a noncompliance situation and select an appropriate enforcement response. The forum group consists of the inspector(s), experienced program staff and peers, supervisors, legal counsel, and others as pertinent to the case. Forums are generally used for cases where a Notice of Violation or other elevated enforcement actions are deemed appropriate. Forums are also used to conduct and determine appropriate penalty calculations. A Case Development Form (CDF) and a Penalty Calculation Worksheet (when appropriate) is generated for each forum and is transferred to the enforcement file to document information and decisions relevant to the case.

D. Findings and Actions

This section identifies information supporting the review, specific findings, and resolving actions that have been taken or are planned in response to the findings.

Clean Air Act

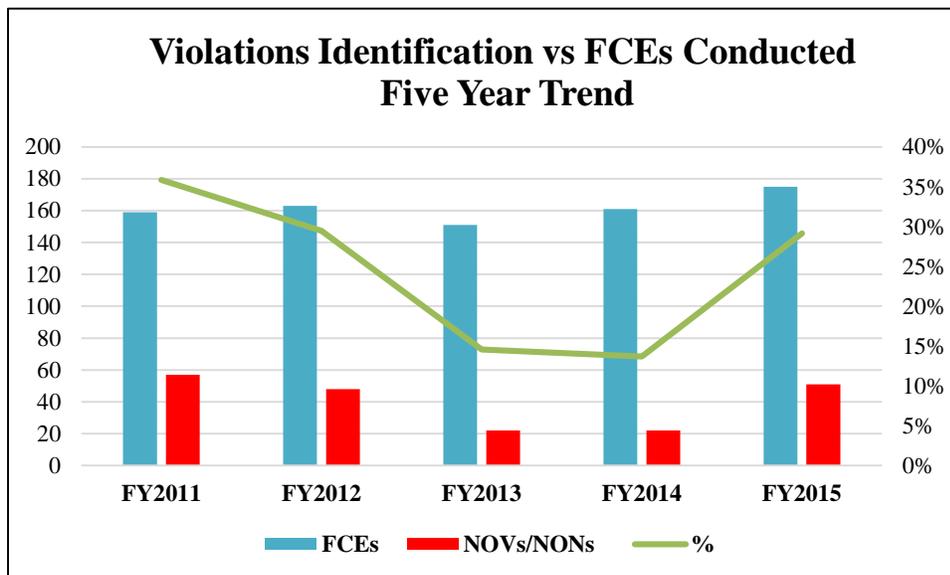
Priority Issue(s)/Action(s) from Round 2 SRF Review

- Data - Each of the reviewed programs had issues with providing complete, accurate, and/or timely data to EPA systems. This is largely due to the interpretation of a 2004 Minnesota state court decision that protects certain state enforcement data from public release. EPA and MPCA actively sought ways in which this issue could be resolved, and came to the conclusion that this was not possible. However, the R5 Air and Radiation Division (R5 ARD) has carried out monthly calls with MPCA to discuss case actions from which the data is derived.
- Compliance Monitoring Reports (CMRs) - CAA CMRs lacked details required by the Stationary Source Compliance Monitoring Strategy (CMS) guidance policy. After the findings in Round 2 SRF were discussed, MPCA management requested their staff provide a short enforcement action history in the narrative of the CMR, if applicable. If there was no enforcement action history for the facility, the CMR should state that fact. There were ongoing reminders to staff by MPCA management to ensure this action was completed. During Round 3 SRF, EPA verified the CMRs still lacked important

information required by the CMS guidance policy. As a result of our findings for Round 3, MPCA management held additional training for their inspectors on February 23, 2016. The training included preparing a better detailed CMR and the use of the appropriate codes. The CMRs should also note whether any visible emissions were present during the inspection using EPA Method 22 and include the facility’s previous enforcement action history. EPA will follow up on this action by requesting and reviewing CMRs in FY17 that were prepared in FY16.

- Violation Identification – Entry of violations into the EPA data system, including High Priority Violations (HPVs), were not done in a timely manner – in part because of the data privacy issue described in the first bullet above – which made it difficult to determine if timely and appropriate actions were occurring based on those violations. EPA continues to track, monitor and discuss with MPCA the Minimum Data Requirements (MDRs) reported on a monthly basis during the regularly scheduled conference calls. MPCA provides EPA with State lead case updates, including HPVs and Federally Reportable Violations (FRVs), verbally and informs EPA at that time which cases are still open. At this point, as a result of the Minnesota Supreme Court data privacy decision, the State cannot report to ICIS-Air any open enforcement case information until the case is resolved/closed.

Five-Year Data Trends – 2010 to 2014 – R5 ARD reviewed the number of Full Compliance Evaluations (FCEs) conducted versus the informal enforcement actions initiated and reported to ICIS-Air for FFYs 2011 through 2015. The violation identification percentage rate for each FFY was extremely low compared to the number of FCEs conducted. (See chart below). We also took a look at the number of stack tests conducted and failed for FFY13, one of the years used for a data metrics analysis. Only nine of 165 stack tests conducted was reported as failed; it is likely there were more given the amount of stack tests conducted.



Focus areas: R5 ARD focused its review on Violation Identification, Timeliness and Appropriateness of Enforcement Actions, and Data Management and Reporting as a result of the three issues noted above: a low number of violations identified compared to the number of FCEs conducted, the number of violations reported by MPCA where no Notices of Violation (NOV) were issued, and NOVs that were issued had no addressing action initiated to resolve the violation as needed. There were also incomplete or inadequate FCEs conducted, and in some instances enforcement cases were not handled properly (i.e., resolution with no penalty assessed, no injunctive relief, or compliance schedule for the facility to maintain compliance). Issues with the reporting of data may have contributed to these problems.

Review: R5 ARD retrieved reports of MPCA compliance monitoring and enforcement activities reported to AFS in FY 2013. Based on this data, ARD randomly selected FCEs at thirteen (13) Title V major and two synthetic minor facilities that emit or have the potential to emit at or above 80 percent of the Title V major source threshold, twelve (12) stack test reports and nineteen (19) enforcement case files to review. The findings of EPA’s review of the FCEs and stack test reports were provided to MPCA for their comments on November 30, 2015. Based on the discussion held between EPA and MPCA on December 3, 2015, MPCA agreed to some changes to their program as described below.

Finding and Action Tables

CAA 1: Partial Compliance Evaluations (PCEs) offsite reported to AFS
<i>Finding:</i> MPCA was reporting activities they conducted in AFS as offsite PCEs, but these activities were not part of a Full Compliance Evaluation (FCE) and therefore should not be reported to AFS (now ICIS-Air).
<i>Action:</i> Effective immediately, MPCA has agreed to discontinue reporting PCEs offsite unless the activity is part of the FCE conducted. R5 ARD will monitor and track the progress of this finding on the regularly scheduled conference calls held monthly.
CAA 2: Reporting of Data to AFS
<i>Finding:</i> In seventeen of thirty-eight activities reviewed, MPCA reported inaccurate data to AFS and/or did not report the required data at all (case files, stack tests, FCEs, etc.). Eight were compliance monitoring activities, while nine were case activities.
<i>Action:</i> On a monthly basis, MPCA will QA/QC the data reports retrieved from ICIS-Air for the conference calls between MPCA and R5 ARD. Any data issues identified will be discussed between MPCA and R5 ARD, and corrected immediately by MPCA.
CAA 3: Low Numbers of Notices of Violation (NOVs) and Notices of Non Compliance (NONs)
<i>Finding:</i> In looking at the results of FCEs/CMRs and stack tests reports, there should have been more violations identified than what was reported to AFS for FY2013. For example, there were two stack test that failed (5/9/2013 and 7/2/2013). A Notice of Noncompliance was issued on 8/20/2013 and Administrative Penalty Order on 7/7/2014 with a \$10,000 penalty assessed. The violations were not identified as HPVs or reported to AFS. MPCA also

issues Alleged Violation Letters (AVLs) and Letters of Warning (LOWs) to facilities where a violation was identified. R5 ARD considers these equivalent to NOV or NONs, and therefore they should be reported. However, no AVLs or LOWs were reported to AFS.

Action: MPCA agreed to report AVLs once the case is closed and considered public. MPCA will also report LOWs sooner, as those are public upon issuance. R5 will follow up with MPCA on regular conference calls in FY 17 to verify that AVLs and LOWs are being reported in the timeframes indicated.

CAA 4: FCE/CMR Content

Finding: Three of 15 CMRs that were reviewed showed that inspectors did not include important information in the CMRs.

For example, in one case, with the exception of recording YTD operating hours, the inspector recorded very few observation results and described few onsite observations, mostly stating that the permit conditions were “discussed” (although nobody from the facility was present, thus “a discussion” was not possible). Also, no compliance determination was made for the opacity limit and SO2 limitation applicable to the facility although the inspector noted “discussed.” This was an unmanned gas compressor station with no control equipment. MPCA learned that the facility was completing the required records through a post-inspection phone interview, but never noted the phone interview or any of the details in the CMR.

In addition, previous enforcement action history of the facilities is generally not included in the CMRs and the inspectors do not note whether any visible emissions are present. This is information that is essential to help determine whether there are violations of the CAA regulations.

Action: MPCA enforcement managers will discuss these findings with staff, and require better detailed CMRs be prepared by the inspectors and the use of appropriate codes. These CMRs will note whether any visible emissions were present during the inspection using EPA Method 22 and include the previous enforcement action history in the CMRs. Additional CMR training was provided to the inspectors on February 23, 2016. Within one year of the issuance of this report, R5 ARD will review CMRs to ensure proper information is included.

CAA 5: Emission Limits and Stack Testing

Finding: MPCA failed to follow a technical guidance relating to emission limits and stack testing. This failure resulted in MPCA’s determining a stack test was compliant when EPA contends the guidance dictates the test was not compliant. The error was caused by confusion over EPA’s policy on the number of significant figures and rounding, and a misunderstanding of some ambiguous language EPA had written in response to comments to a certain National Emission Standard for Hazardous Air Pollutants.

Action: EPA provided MPCA the link, <http://www3.epa.gov/ttn/emc/faqs/rounding.pdf>, to the policy on rounding and significant figures. The number of decimal places or digits in a

limit is unrelated to the number of significant figures. Policy states, “Consider all emission standards to have at least two significant figures, but no more than three significant figures.” After further discussions, MPCA now has a better understanding of the policy and will apply it accordingly. R5 will follow up with MPCS during regular conference calls in FY 17 to verify the policy is being applied appropriately.

CAA 6: Adequacy of Penalties

Finding: Five of 10 penalties assessed for MPCA cases were low for the type of violation identified and length of violation according to EPA’s CAA Stationary Source Civil Penalty Policy. In the Section 105 Work Plan/Performance Partnership Agreement between EPA and MPCA, MPCA agreed to use EPA’s policy to assess penalties.

For example, in one MPCA enforcement case, a large company allowed its control equipment to fall into disrepair over a period of many months, resulting in the emission of approximately 25 tons of excess pollution. The company ultimately failed the stack test. The penalty of \$2,500 for this case was inappropriately low.

In addition to the issue noted above, MPCA does not have a process that dictates a consistent assessment of a penalty when there is a violation of a Stipulation Agreement.

Action: MPCA’s believes that the method of calculating penalties must apply to all program media offices (Air, Water, Hazardous Waste, Feedlots, Stormwater, etc). To implement this, MPCA recently sought feedback on several calculation options and narrowed the list down. MPCA will develop its own penalty policy to accompany the penalty matrix, and will share with R5 ARD for comments by the end of February 2017. When this is completed, MPCA will follow the state policy instead of EPA’s CAA Stationary Source Civil Penalty Policy.

Also, effective immediately, MPCA will ensure that all Stipulation Agreements that are amended with additional penalties assessed will have a corresponding penalty calculation worksheet for documentation in the case file.

Clean Water Act

Priority Issue(s)/Action(s) from Round 2 SRF Review

- Data - Each of the reviewed programs had issues with providing complete, accurate, and/or timely data to EPA systems. This is largely due to the interpretation of a 2004 Minnesota state court decision that protects certain state enforcement data from public release. EPA and MPCA actively sought ways in which this issue could be resolved, and came to the conclusion that this was not possible. In FY 2017, EPA and MPCA will begin quarterly calls to regularly collaborate on many NPDES issues including data flows to ICIS. This is important for both EPA and MPCA because of the requirements of the E-Reporting Rule and the ongoing efforts at MPCA to modify the state’s data system to ensure accurate and timely data flows.
- Inspection Reports – CWA reports were not complete and/or did not provide enough information to support compliance determinations. MPCA is going to reexamine its current inspection report/documentation process with the intent of adding inspection checklists per the findings and actions listed in this report.
- Violation Identification – Single Event Violations were not being reported and/or identified as significant non-compliance. Violations that were entered into the EPA data system were not being entered in a timely manner. Both issues made it difficult to determine if timely and appropriate action was occurring based on those violations, although some of the problem may be attributed to the data issue described in the first bullet above. Per findings listed in this report, EPA Region 5 led a webinar on October 25, 2016 for MPCA managers and staff on the basics of identifying Single Event Violations. MPCA requested this webinar to inform MPCA’s compliance staff and data stewards of how to evaluate Single Event Violations and record them accurately in MPCA’s data system for eventual transfer to ICIS.

Five-Year Data Trends – 2011 to 2015 (see data issue above, which may affect trends below)

National averages in parentheses

<i>Trend</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>
Inspected Major facilities with violations	32% (24%)	15% (22%)	17% (23%)	29% (22%)	28% (24%)
Major facilities in SNC	4.0% (23%)	5.1% (18%)	5.0% (19%)	4.0% (21%)	2.9% (19%)
Major facilities in non-compliance with formal enforcement action	9% (4%)	8% (5%)	11% (5%)	4% (4%)	8% (3%)
Formal actions with penalties	11	13	13	19	12

Focus areas: The R5 Water Division decided to conduct an analysis of data across the NPDES universe to determine if the data were complete, accurate and timely; enforcement commitments in relevant agreements were met; and planned inspections were conducted.

The R5 Water Division also chose to review Minnesota’s metallic mining sector based on observations from EPA oversight inspections and citizen concerns relayed to EPA¹. For this review, the Water Division reviewed both data and enforcement files to determine the quality of inspection reports, the degree to which violations and significant non-compliance were identified, the degree to which enforcement actions included a return to compliance, and the timeliness and appropriateness of those actions.

Focus area 1: Data completeness and accuracy in ICIS for the entire NPDES universe

Findings: MPCA has not been consistently and accurately reporting required compliance and enforcement data to EPA’s Integrated Compliance Information System (ICIS) for the following areas: inspections, SEVs and SNC.

Actions: MPCA will take steps to enter required data into ICIS. This corresponds with the requirements of the E-Reporting Rule. EPA and MPCA are committed to ensure data is complete and accurate in the future. See details in Finding and Action tables below.

Focus area 2: Compliance and enforcement in the Metallic Mining Sector

Findings: MPCA is not consistently documenting compliance monitoring activities and addressing noncompliance. Identified areas for improvement include:

- Inspection documentation
- Documenting and tracking of SEVs
- Elevation of SEVs to SNC
- Tracking of milestones in Schedules of Compliance (formal enforcement actions) to ensure all interim and final milestones are achieved in a timely manner.

Actions: EPA and MPCA agree on a number of specific measures to improve Metallic Mining program performance. These include:

- Using inspection checklists to improve performance of comprehensive inspections;
- Reviewing current SEV guidance and developing appropriate mechanisms to input data in ICIS to better document and track SEVs;
- Revising/updating the State’s Enforcement Response Plan to identify and elevate resolution of SNC violations in a timely fashion.

¹ On July 2, 2015, U.S. EPA received a Petition to Withdraw Minnesota’s NPDES program from Water Legacy. The SRF process is an independent EPA evaluation tool. The findings of the SRF Report may inform and/or be incorporated into EPA’s response to the petition.

See details in Finding and Action tables below.

Review:

Focus area 1: Data completeness and accuracy in ICIS for the entire NPDES universe

EPA performed a multi-year data analysis to assess the overall quality of the CWA programs. The review analyzed data from 2010 thru 2014 from the ICIS/ ECHO databases regarding the performance of Minnesota's CWA inspection and compliance activities. Findings from this review are summarized as follows:

- For the review period, Minnesota met their approved state-specific Compliance Monitoring Strategy commitments.
- The number of informal enforcement actions appeared to trend downward, while the number of formal enforcement actions was stable.
- The number of penalties assessed (for the time period) appeared to trend upward while the amount of penalties appeared to decline.
- The number of SEVs appeared consistent across the time frame EPA evaluated; however, the percentage of inspected facilities with SEVs was significantly below the national average.
- The number of SNC violations across the review period was consistent; however, the apparent low reporting of SEVs suggests that SNC violations may be under-reported.

(2) Compliance and enforcement in the Metallic Mining sector

EPA reviewed 25 Metallic Mining facilities that include both NPDES as well as State Discharge System (SDS) permits (2 majors and 23 minor and/or SDS permits). This is Minnesota's entire universe of metallic mines. Inspection, compliance, and enforcement documentation from 2010 to present were reviewed for data completeness, accuracy, timeliness of data entry, completion of commitments, inspection coverage, quality of inspection reports, identification of alleged violations, identification of SNC enforcement actions that promote a return to compliance, and the

timeliness/appropriateness of actions.² ³Detailed findings are tabulated in Appendix B (CWA Metallic Mining Sector File Review), and are summarized as follows:

- 1) Data from 12 of 21 files were consistent with the data in ICIS.
- 2) In several instances, the number and type of inspections were inaccurate.
- 3) Schedules of compliance resulting from enforcement actions were not appropriately tracked.
- 4) Twenty of 21 inspection reports contained information sufficient to make compliance determinations; however, reviewers believe the reports would benefit from the inclusion of inspection checklists.
- 5) Nineteen of 21 inspections were completed in a timely fashion (i.e., within 30 days for non-sampling inspection, and within 60 days for sampling inspection).
- 6) Eighteen of 19 inspection reports led to accurate compliance determinations.
- 7) Zero of 1 file appropriately documented SNC.
- 8) Thirteen of 17 files included enforcement actions that returned facilities to compliance.
- 9) Eleven of 17 files included enforcement actions that returned facilities to compliance in a timely fashion
- 10) Nine of 10 penalties documented the considerations of gravity and economic benefit.
- 11) Six of 6 penalties documented the rationale between initial and final penalty amounts.
- 12) Eight of 9 penalties were documented as collected.

EPA also reviewed joint (EPA and MPCA) and oversight (EPA only) metallic mine inspections conducted during the time period. Observations are summarized as follows:

- 1) Releases such as spills, overflows and seepage were not reported consistently, or in a timely fashion.
- 2) The frequency of state inspection activities alone were not sufficient to ensure appropriate corrective action for these violations.
- 3) Precision and accuracy of facility flow determinations is often unknown.

² Note that not every file contained every type of documentation; for example, facilities with no violations did not include SNC or penalty documentation in their files.

³ At the time of the SRF file review, EPA evaluated U.S. Steel Minntac Tailing Basin Area as a major permit. MPCA tracked and permitted this facility as a Minor permit. Poor communication between the agencies concerning the Major classification of the facility caused this to occur. For purposes of this review, U.S. Steel is considered a Minor permit. Going forward, it will be considered a NPDES Major permit; as a result, the state will ensure that all data elements required of NPDES Majors are reported in ICIS in a timely manner; that inspection frequencies are consistent with Federal policy for majors; and that significant non-compliance is addressed in a timely and appropriate manner consistent with Federal policy.

- 4) Inspection reports did not include documentation of techniques used to evaluate flow measurement calibration; this could be because the evaluations didn't happen, or they happened but were not documented.
- 5) For the major facility reviewed, required data was not reported.

Specific findings and action items are included in the tables below.

Finding and Action Tables

<p>CWA 1: Accuracy of Data Entry to the system of record (ICIS or State Data System)</p>
<p><i>Finding:</i></p> <ol style="list-style-type: none"> a) Inspection activities are not accurately recorded; for example, multiple entries were made for the same inspection, and some inspections were not in the system at all. b) MPCA is not identifying and documenting all SEVs, resulting in failure to make or report SNC determinations. c) MPCA is not reporting the existence of enforcement Schedules of Compliance, or tracking interim or final milestones, for all majors in ICIS.
<p><i>State Response:</i></p> <ol style="list-style-type: none"> a) MPCA currently manages inspection data manually in ICIS on a quarterly to bi-annual basis. A single inspection may, in some cases, fulfill multiple inspection types (e.g. stormwater, pretreatment, wastewater, etc.). In these cases, duplicate entries appear in ICIS due to multiple inspection type coverage. In addition, some inspection data is missing due to delays in manual entry and staff resource shift to developing MPCA's new data system (Tempo). a-c) The MPCA is in the early design phase with a contractor to establish the necessary data flows to meet the requirements of EPA's new eReporting Rule. The MPCA continues to make progress and expects to meet the Phase 1 requirements in accordance with the rule. MPCA will work with the EPA through the development of the eReporting Rule Implementation Plan to meet all e-Reporting Rule requirements.
<p><i>Actions:</i></p> <ol style="list-style-type: none"> a) MPCA will review current data flow processes and revise to ensure required data points including inspections, SEVs, and schedules of compliance are being tracked and reported accurately in ICIS. All required data is to be entered by the time frames established in the E-Reporting Rule. The deadline for compliance and enforcement data entry was December 21, 2016; for permit data, the deadline was September 21, 2016. These deadlines have been met. (Note that since the SRF onsite review took place in 2015, MPCA has made progress in entering schedules of compliance into ICIS for majors.) b) MPCA will review EPA SEV guidance and incorporate the procedures outlined in this guidance into inspection/compliance activities. MPCA will train staff on SEV identification and reporting procedures, with particular emphasis on training for data stewards. Deadline: April 2017. (Note: On October 25, 2016, EPA managers and staff

led a webinar for MPCA on the basics of identifying SEVs. MPCA requested this webinar to inform both the Agency’s compliance staff and data stewards on how to evaluate SEVs so that this information is accurately recorded in the State’s data system for transfer to ICIS-NPDES.) EPA will continue to assist MPCA’s efforts to incorporate SEV guidance into inspection/compliance activities as needed, as well as follow up with MPCA during regular conference calls in FY 17.

CWA 2. METALLIC MINING SECTOR - Schedules of Compliance

Finding: In a case where MPCA issued a schedule of compliance in an enforcement action, milestones were not met and MPCA did not respond with escalated enforcement. This is inconsistent with MPCA’s NPDES enforcement response plan as well as federal regulations. For Major dischargers, violations of schedules of compliance are by definition SNC and must be resolved by escalated formal enforcement.⁴

Action: All enforcement action milestones must be monitored. Furthermore, enforcement escalation will be pursued if return to compliance is not met within prescribed timeframes. The State has agreed to assess any SOC’s that have not been appropriately tracked and resolved to date, and take steps to escalate enforcement response. Region 5 will monitor the entry, performance and progress of Enforcement Schedules of Compliance in the ICIS data system to ensure timely and final resolution of violations. Deadline for Review of SOC’s: March 2017

CWA 3: METALLIC MINING SECTOR– Enforcement

Finding: In 4 of 5 files reviewed, MPCA did not take action against facilities that failed to timely report spills (i.e., the facility documented a spill but failed to report it). Failure to report is a violation that undermines MPCA’s ability to implement the Clean Water Act, and warrants a timely and appropriate enforcement response.

State Response: MPCA disagrees with portions of the findings but concurs that procedures for characterizing seeps and reporting any associated wastewater discharges should be updated. MPCA notes that two of the four files reviewed were SDS-only permitted facilities, both of which are required to conduct annual tailings basin seep surveys. Permittees notified MPCA of seeps via submittal of the annual seep survey results, which were submitted in a timely manner. Based upon a review of those reports, there was insufficient information to determine that seepage was spilled wastewater that required immediate reporting. One of the facilities was under construction and not yet generating wastewater so a spill was not possible. Regarding the other two files, the MPCA conducted enforcement actions against permittees for failure to timely report releases.

⁴ MPCA’s Enforcement Response Plan defines a Schedule of Compliance (SOC) as “A negotiated settlement between the MPCA and the Regulated Party commonly used to resolve a noncompliance situation that does not require the upfront payment of a civil penalty for the initial noncompliance. For example, an SOC may be used to extend a Regulated Party’s performance testing schedule. While an SOC does not include upfront civil penalties, it does include stipulated penalties for failure to follow the SOC.”

Actions: MPCA will clarify, through correspondence with SDS-permitted facilities, procedures for investigating tailings basin seeps and reporting wastewater spills. When wastewater spills are identified, MPCA will follow applicable enforcement response plan recommendations, and report applicable compliance data to ICIS. Deadline: March 2017. EPA will follow up with MPCA on regular conference calls in FY 17.

CWA 4: METALLIC MINING SECTOR – Inspections

Findings:

- a) The inspection reports reviewed do not include documentation of techniques used to evaluate required flow measurement calibration. This could be because the evaluations didn't happen, or they happened but were not documented.
- b) Inspection reports do not routinely document that laboratory or field equipment has been checked for proper calibration. Specifically, files reviewed didn't document calibration for temperature or flow.
- c) In four inspection files reviewed, reports do not indicate the level of exceedance.

Action: MPCA will develop a comprehensive inspection checklist that includes laboratory requirements and observations such as calibration of flow measurements. Inspectors will use checklists for documenting whether equipment is being properly calibrated as well as evaluating the level of permit parameter exceedance. This checklist will also prompt the inclusion of all evidence (e.g. photographs, etc.). Staff will be trained on checklist implementation. Deadline: December 2017. EPA will follow up in early calendar year 2018 to ensure checklist and trainings have been completed.

CWA 5: METALLIC MINING SECTOR – Data accuracy for majors

Finding: For major facilities, required interim and final limits were not reported into ICIS. For example, the file review indicated temperature violations had occurred at a facility, but these had not been entered into ICIS. DMRs are also not entered into ICIS.

Action: All facility data for majors will be uploaded into ICIS. Note that one year after the effective date of the E-Reporting rule (which is September 24, 2016) all facility data for minors is required to be entered into ICIS. Deadline: September 2016 (Action has been completed).

Resource Conservation and Recovery Act

Priority Issue(s)/Action(s) from Round 2 SRF Review

- Data - Each of the reviewed programs had issues with providing complete, accurate, and/or timely data to EPA systems. This is largely due to the interpretation of a 2004 Minnesota state court decision that protects certain state enforcement data from public release. EPA and MPCA actively sought ways in which this issue could be resolved, and came to the conclusion that this was not possible. However, EPA has been able to discuss the non-public data with MPCA through monthly enforcement conference calls in order to get an accurate understanding of MPCA compliance and enforcement activities.

Five-Year Data Trends – 2011 to 2015 (see data issue above, which may affect trends below)

National averages in parentheses ().

<i>Trend</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>
Violations found during inspections (CEI, FCI)	60% (38%)	73% (38%)	60% (38%)	48% (39%)	38% (38%)
SNC identified after inspections (CEI, FCI)	9.6% (1.9%)	7% (1.9%)	13% (1.9%)	7.8% (2.1%)	8.8% (1.5%)
Timeliness of SNC determination (within 150 days)	25%	25%	20%	40%	0%
Timely enforcement to address SNC	50%	100%	56%	40%	0%
Formal actions with penalties	12	12	17	9	5

Focus areas: All areas of a traditional state review: Complete and Accurate Data, Inspections, Violations identification, Timely and Appropriate Enforcement, Penalties

Review:

EPA pulled FY 13 and FY 14 performance and informational data from its Enforcement and Compliance History Online (ECHO) system and RCRAInfo, which was later analyzed to determine if there were issues of note. On May 5 through May 7, 2014, a representative of the EPA conducted a Mid-Year Fiscal Year 2014 Hazardous Waste File Review of the MPCA’s files associated with its enforcement of RCRA, and on August 11 and 12, 2015, EPA conducted a file review on an additional files to increase the total number of files for the SRF review to 25. For both reviews, EPA compiled the file selection list from data in the EPA RCRAInfo database. The

file selection categories consisted of (1) those facilities with compliance evaluation inspections (CEIs), and (2) formal or informal enforcement actions. EPA then combined the data from the 25 files for evaluation.

The results of the data and file reviews are included in Appendix B of this review report as well as a summary of the traditional review categories of Areas that Meet Program Requirements, Areas for State Attention, and Areas for State Improvement. Findings and actions related to Areas for State Improvement are discussed in the tables below.

RCRA Finding and Action Tables – Below are findings in which Area for State Improvement was noted as part of the standard SRF review of the RCRA. Other findings can be found in Appendix B.

RCRA 1: Complete Inspection Reports
<i>Finding:</i> Twelve of the eighteen files which should have inspection reports, or 66.7%, had a report equivalent (the file itself) that was complete. The remaining six had reports or equivalents that did not always include inspector narratives or notes, or the checklists were not completely filled out.
<i>Action:</i> MPCA trained new staff on April 20 and October 25, 2016, on the composition of the inspection report file equivalent, the use of checklists, and encouraged the development of narratives for all inspections. EPA checked for the presence of narratives during the Midyear File Review in 2016, and found some improvement. EPA will continue to review, and discuss, annually.

RCRA 2: Penalty Documentation
<i>Finding:</i> Four out of the seven files where there was an initial and final penalty, or 57.1%, contained the rational for the difference between the initial penalty proposed and final penalty collected.
<i>Action:</i> On April 20 and October 25, 2016, MPCA emphasized with its staff the importance of the development of memos for the record to document the reasons behind the differences between the initial penalty calculations and the final penalty collected. EPA checked for the presence of such records during the mid-year file review in 2016, and found some improvement. EPA will continue to review, and discuss, annually.

Appendix A: Data Metric Reviews

MPCA FY 13 CAA Data Metrics Analysis

Element	Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	MN	Count	Universe	Not Counted	Analysis
Element 1 - Data											
	3a2	Untimely Entry of HPV Determinations	Goal	State	0		5				Area for State Improvement
				EPA	0		1				
	3b1	Timely Reporting of Compliance Monitoring Minimum Data Requirements	Goal	State	100%	80.90 %	89.50 %	375	419	44	Area for State Attention
				EPA	100%	78.80 %	0/0	0	0	0	
	3b2	Timely Reporting of Stack Test Minimum Data Requirements	Goal	State	100%	75.40 %	29.70 %	82	276	194	Area for State Improvement

				EPA	100%	53.30 %	0/0	0	0	0	
	3b3	Timely Reporting of Enforcement Minimum Data Requirements	Goal	State	100%	68.70 %	34.90 %	15	43	28	Area for State Attention
				EPA	100%	86.20 %	100%	5	5	0	
	7b1	Alleged Violations Reported Per Informal Enforcement Actions (Tier I only)	Goal	State	100%	59.50 %	13.30 %	2	15	13	Area for State Attention
				EPA	100%	41.80 %	0%	0	1	1	
	7b3	Alleged Violations Reported Per HPV Identified	Goal	State	100%	57.50 %	25%	1	4	3	Area for State Attention
				EPA	100%	52.80 %	0%	0	1	1	
Element 2 - Inspections											
	5a	FCE Coverage Major	Goal	State	100% of commitment	88.50 %	99.30 %	135	136	1	Meets or Exceeds Expectations

				EPA	100% of commitment	40%	0/0	0	0	0	
	5b	FCE Coverage SM-80	Goal	State	100% of commitment	93.30 %	100%	7	7	0	Meets or Exceeds Expectations
				EPA	100% of commitment	0%	0/0	0	0	0	
	5c	FCE Coverage Synthetic Minors (non SM-80)	Goal	State	100% of commitment	44.40 %	0/0	0	0	0	Meets or Exceeds Expectations
				EPA	100% of commitment	0%	0/0	0	0	0	
	5d	FCE Coverage Minors	Goal	State	100% of commitment	60%	0/0	0	0	0	Meets or Exceeds Expectations
				EPA	100% of commitment	0%	0/0	0	0	0	
	5e	Review of Title V Annual Compliance Certifications Completed	Goal	State	100%	81.30 %	92%	263	286	23	Meets or Exceeds Expectations
				EPA	100%	0.40%	0%	0	286	286	
Element 3 - Violations											

	8a	HPV Discovery Rate Per Major Facility Universe	Review Indicator	State		4%	1.40%	4	286	282	
				EPA		0.30%	0.30%	1	286	285	
Element 4 - Enforcement											
	10a	HPV cases which meet the timeliness goal of the HPV Policy	Review Indicator	State		67.50%	55.60%	5	9	4	
				EPA		34.80%	100%	2	2	0	

MPCA FY 13 CWA Data Metrics Analysis

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	MN	Count	Universe	Not Counted	Analysis
Element 1 - Data										
1b1	Permit Limits Rate for Major Facilities	Goal	State	>= 95%	98.40%	97%	97	100	3	Meets or Exceeds Expectations
			EPA	>= 95%	99.20%	0/0	0	0	0	
1b2	DMR Entry Rate for Major Facilities.	Goal	State	>= 95%	97.10%	97.60 %	3179	3257	78	Meets or Exceeds Expectations
			EPA	>= 95%	98.90%	0/0	0	0	0	
Element 2 - Inspections										
5a1	Inspection Coverage - NPDES Majors	Goal	State	100% of state CMS plan	53.10%	29%	29	100	71	Meets or exceeds expectations. Note that universe doesn't match the universe reported to the program in CMS reporting. Also are any of these On-site reviews instead of CEIs?

			EPA	100% of state CMS plan	3.70%	2%	2	100	98	
5b1	Inspection Coverage - NPDES Non-Majors	Goal	State	100% of state CMS plan	25.20%	18.70 %	116	620	504	Meets or exceeds expectations.
			EPA	100% of state CMS plan	0.80%	0%	0	641	641	
5b2	Inspection Coverage - NPDES Non-Majors with General Permits	Goal	State	100% of state CMS plan	6.80%	17%	81	477	396	Meets or exceeds expectations.
			EPA	100% of state CMS plan	0.20%	0%	0	478	478	
Element 3 - Violations										
7a1	Number of Major Facilities with Single Event Violations	Data Verification	State			5				
			EPA			1				

7d1	Major Facilities in Noncompliance	Review Indicator	State		63.10%	40%	40	100	60	
			EPA		62.30%	0/0	0	0	0	
7f1	Non-Major Facilities in Category 1 Noncompliance	Data Verification	State			8				
			EPA			6				
7g1	Non-Major Facilities in Category 2 Noncompliance	Data Verification	State			4				
			EPA			13				
8a2	Percent of Major Facilities in SNC	Review indicator	State		24.40%	4.90%	5	102	97	
			EPA		34.50%	0/0	0	0	0	
Element 4 - Enforcement										
10a1	Major facilities with Timely Action as Appropriate	Goal	State	>= 98%	8%	0%	0	1	1	Area for State Attention
			EPA	>= 98%	24.70%	0/0	0	0	0	

MPCA FY 13 RCRA Data Metrics Analysis

Element	Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	MN	Count	Universe	Not Counted	Analysis
Element 1 - Data											
	2a	Long-standing secondary violators	Review Indicator	State			1				
				EPA			15				
Element 2 - Inspections											
	5a	Two-year inspection coverage for operating TSDFs	Goal	State	100%	87.60 %	44.40 %	4	9	5	
				Combined	100%	93.90 %	100%	9	9	0	
	5b	Annual inspection coverage for LQGs	Goal	State	20%	21%	13.10 %	42	321	279	
				Combined	20%	23.20 %	17.80 %	57	321	264	

	5c	Five-year inspection coverage for LQGs	Goal	State	100%	66.60 %	44.90 %	144	321	177	
				Combined	100%	71.70 %	54.50 %	175	321	146	
	5d	Five-year inspection coverage for active SQGs	Informational Only	State		11%	3.80 %	52	1363	1311	
				Combined		11.60 %	5.60 %	77	1363	1286	
	5e1	Five-year inspection coverage at other sites (CESQGs)	Informational Only	State			204				
				Combined			220				
	5e2	Five-year inspection coverage at other sites (Transporters)	Informational Only	State			16				
				Combined			19				
	5e3	Five-year inspection coverage at	Informational Only	State			4				

		other sites (Non-notifiers)									
				Combined			5				
	5e4	Five-year inspection coverage at other sites (not covered by metrics 5a-5e3)	Informational Only	State			71				
				Combined			75				
Element 3 - Violations											
	7b	Violations found during inspections	Review Indicator	State		34.80 %	60.40 %	61	101	40	
				EPA		31.30 %	35.70 %	10	28	18	
	8a	SNC identification rate	Review Indicator	State		1.70%	12.90 %	13	101	88	
				EPA		2.30%	0%	0	28	28	
	8b	Timeliness of SNC determinations	Goal	State	100%	77.80 %	20%	3	15	12	

				EPA	100%	57.10 %	0/0	0	0	0	
Element 4 - Enforcement											
	10a	Timely enforcement taken to address SNC	Review Indicator	State	80%	77.30 %	55.60 %	5	9	4	
				EPA	80%	24.30 %	0/0	0	0	0	

MPCA FY 14 CAA Data Metrics Analysis

Element	Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	MN	Count	Univers	Not Counted	Analysis
Element 1 - Data											
	3a2	Untimely Entry of HPV Determinations	Goal	State	0		6				Area for State Improvement
				EPA	0		1				
	3b1	Timely Reporting of Compliance Monitoring Minimum Data Requirements	Goal	State	100%	83.30%	88.40%	349	395	46	Area for State Attention
				100%	79.50%	0/0	0	0	0		100%
	3b2	Timely Reporting of Stack Test Minimum Data Requirements	Goal	State	100%		41.50%	61	147	86	Area for State Improvement
				EPA	100%	67.30%	0/0	0	0	0	

	3b3	Timely Reporting of Enforcement Minimum Data Requirements	Goal	State	100%	77.90%	83.30%	25	30	5	Area for State Attention
				EPA	100%	85.10%	100%	10	10	0	
	7b1	Alleged Violations Reported Per Informal Enforcement Actions (Tier I only)	Goal	State	100%	65.60%	0%	0	7	7	Area for State Improvement
				EPA	100%	40.60%	50%	1	2	1	
	7b3	Alleged Violations Reported Per HPV Identified	Goal	State	100%	63.20%	0%	0	6	6	Area for State Improvement
				EPA	100%	63.60%	100%	1	1	0	
Element 2 - Inspections											
	5a	FCE Coverage Major	Goal	State	100% of commitment	85.70%	99.30%	140	141	1	Meets or Exceeds Expectations
				EPA	100% of commitment	14.90%	0/0	0	0	0	
	5b	FCE Coverage SM-80	Goal	State	100% of commitment	91.70%	100%	21	21	0	Meets or Exceeds Expectations

				EPA	100% of commitment	0%	0/0	0	0	0	
	5c	FCE Coverage Synthetic Minors (non SM-80)	Goal	State	100% of commitment	15.60%	0/0	0	0	0	Meets or Exceeds Expectations
				EPA	100% of commitment	0%	0/0	0	0	0	
	5d	FCE Coverage Minors	Goal	State	100% of commitment	4.40%	0/0	0	0	0	Meets or Exceeds Expectations
				EPA	100% of commitment	0%	0/0	0	0	0	
	5e	Review of Title V Annual Compliance Certifications Completed	Goal	State	100%	78.80%	81.50%	234	287	53	Meets or Exceeds Expectations
				EPA	100%	1.20%	0%	0	287	287	
Element 3 - Violations											
	8a	HPV Discovery Rate Per Major Facility Universe	Review Indicator	State		3.10%	2.10%	6	287	281	
				EPA		0.20%	0.30%	1	287	286	
Element 4 - Enforcement											

	10a	HPV cases which meet the timeliness goal of the HPV Policy	Review Indicator	State							
						73.20%	62.50%	5	8	3	
				EPA		19.40%	0%	0	4	4	

MPCA FY 14 CWA Data Metrics Analysis

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	MN	Count	Univers	Not Counted	Analysis
Element 1 - Data										
1b1	Permit Limits Rate for Major Facilities	Goal	State	>= 95%	91.10%	98%	99	101	2	Meets or Exceeds Expectations
			EPA	>= 95%	68.50%	0/0	0	0	0	
1b2	DMR Entry Rate for Major Facilities.	Goal	State	>= 95%	96.60%	98%	3319	3386	67	Meets or Exceeds Expectations
			EPA	>= 95%	98.90%	0/0	0	0	0	
Element 2 - Inspections										
5a1	Inspection Coverage - NPDES Majors	Goal	State	100% of state CMS plan	55.40%	27.70%	28	101	73	Meets or Exceeds Expectations. Note that the values reported here don't match the values reported to us by the State in the CMS final report.
			EPA	100% of state CMS plan	3.90%	0%	0	101	101	

5b1	Inspection Coverage - NPDES Non-Majors	Goal	State	100% of state CMS plan	26.50%	18.80%	119	634	515	Meets or Exceeds Expectations
			EPA	100% of state CMS plan	0.80%	0%	0	654	654	
5b2	Inspection Coverage - NPDES Non-Majors with General Permits	Goal	State	100% of state CMS plan	7.10%	16.80%	83	494	411	Meets or Exceeds Expectations
			EPA	100% of state CMS plan	0.20%	0%	0	495	495	
Element 3 - Violations										
7a1	Number of Major Facilities with Single Event Violations	Data Verification	State							
			EPA				8			
			EPA				1			
7d1	Major Facilities in Noncompliance	Review Indicator	State		78.70%	68.30%	69	101	32	Area for State Attention
			EPA		71%	0/0	0	0	0	

7f1	Non-Major Facilities in Category 1 Noncompliance	Data Verification	State								
			EPA								
7g1	Non-Major Facilities in Category 2 Noncompliance	Data Verification	State								
			EPA								
8a2	Percent of Major Facilities in SNC	Review indicator	State		20.70%	3.90%	4	103	99		
			EPA		34%	0/0	0	0	0		
Element 4 - Enforcement											
10a1	Major facilities with Timely Action as Appropriate	Goal	State		>= 98%	9%	100%	1	1	0	Meets or Exceeds Expectations
			EPA		>= 98%	29.10%	0/0	0	0	0	

MPCA FY 14 RCRA Data Metrics Analysis

Element	Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	MN	Count	Univers	Not Counted	Analysis
Element 1 - Data											
	2a	Long-standing secondary violators	Review Indicator	State			0				
				EPA			13				
Element 2 - Inspections											
	5a	Two-year inspection coverage for operating TSDFs	Goal	State	100%	88.40%	55.60%	5	9	4	Meets or Exceeds Expectations
				Combined	100%	93.70%	100%	9	9	0	
	5b	Annual inspection coverage for LQGs	Goal	State	20%	20.10%	12.50%	40	321	281	Meets or Exceeds Expectations
				Combined	20%	22.20%	16.80%	54	321	267	
	5c	Five-year inspection coverage for LQGs	Goal	State	100%	67.10%	46.10%	148	321	173	Meets or Exceeds Expectations

				Combine d	100%	72.50%	55.80 %	179	321	142	
	5d	Five-year inspection coverage for active SQGs	Information al Only	State		10.60%	3.90%	54	1385	1331	
				Combine d		11.20%	5.60%	77	1385	1308	
	5e1	Five-year inspection coverage at other sites (CESQGs)	Information al Only	State			168				
				Combine d			182				
	5e2	Five-year inspection coverage at other sites (Transporters)	Information al Only	State			14				
				Combine d			17				
	5e3	Five-year inspection coverage at other sites (Non-notifiers)	Information al Only	State			2				
				Combine d			3				

	5e4	Five-year inspection coverage at other sites (not covered by metrics 5a-5e3)	Informational Only	State			58				
				Combined			64				
Element 3 - Violations											
	7b	Violations found during inspections	Review Indicator	State		36.70%	48.20%	27	56	29	
				EPA		27.90%	38.10%	8	21	13	
	8a	SNC identification rate	Review Indicator	State		2%	1.80%	1	56	55	
				EPA		2.10%	0%	0	21	21	
	8b	Timeliness of SNC determinations	Goal	State	100%	85.20%	40%	2	5	3	Meets or Exceeds Expectations
				EPA	100%	47.60%	0/0	0	0	0	
Element 4 - Enforcement											
	10a	Timely enforcement taken to address SNC	Review Indicator	State	80%	84.30%	40%	2	5	3	
				EPA	80%	20.90%	0/0	0	0	0	

Appendix B: Supporting Program Information

Clean Water Act

METALLIC MINING SECTOR Review Information

The following tables detail specific findings and actions.

CWA METALLIC MINING SECTOR File Review

Metric	Result	Findings	Actions
2b. Was data accurately reflected in the national data system?	12 of 21 files showed accurate data reflected in ICIS, the national data system.	Inspection activities are not always appropriately tracked in ICIS. Schedules of Compliance are not appropriately tracked in ICIS.	Review current data flow processes and revise to ensure required data is being tracked and reported accordingly. All required data is to be entered by: September 21, 2016 and December 21, 2016.
6a. Did the report contain sufficient documentation to make a compliance determination?	20 of 21 files contained sufficient documentation to make a compliance determination.	Reports provided sufficient documentation; however, process would benefit from using a check list to ensure inspections are comprehensive.	Recommendation: MPCA will develop a comprehensive inspection checklist in Tempo for all NPDES sectors.
6b. Were inspection reports completed within a prescribed timeframe?	19 of 21 inspection reports were completed within the prescribed timeframe (30 days for a non-sampling inspection; 45 days for an inspection with sampling.)	Reports are generally completed within established timeframes.	Deadline: December 2017

<p>7e) Did the inspection report lead to an accurate compliance determination?</p>	<p>18 out of 19 inspection reports contained all the documentation necessary to support the compliance determination.</p>	<p>Meets or Exceeds Expectations</p>	
<p>8b) Were SEVs identified as SNC or Non-SNC?</p>	<p>0 out of 1 violations led to a SNC determination.</p>	<p>MPCA is not fully documenting or reporting all SEVs or making SNC determinations.</p>	<p>Review EPA SEV guidance and incorporate into inspection/compliance activities. Train staff on SEV identification and reporting procedures. Deadline: April 2017</p>
<p>9a) will the enforcement response return the source in violation to compliance?</p>	<p>13 of 17 files contained documentation to show the actions taken will/did return the source to compliance.</p>	<p>In the files reviewed, the State's use of Schedules of Compliance do not always bring facilities back into compliance</p>	<p>MPCA will ensure that the National and State ERPs are being followed. Enforcement action milestones will be monitored. Furthermore, enforcement escalation will be pursued if return to compliance is not met within prescribed timeframe. State will assess SOCs that have not been appropriately tracked and resolved, and take steps to escalate enforcement response. Deadline: June 2017</p>
<p>10b) Did the enforcement responses reviewed address violations in a timely and appropriate manner?</p>	<p>11 of 17 enforcement responses documented the application of enforcement responses in a manner consistent with program guidance</p>	<p>MPCA use of Schedules of Compliance (SOC) is not always consistent with MPCA's NPDES enforcement response plan, as well as EPA regulations.</p>	

11a) When calculating penalties, were gravity and economic benefit considered?	9 of 10 penalties document the consideration of gravity and economic benefit in their calculations.	Meets or Exceeds Expectations	No further action needed.
12a) Was there documentation explaining the rationale between the initial and final penalty amounts?	6 of 6 penalties reviewed documented rationale between initial and final penalty amounts.	Meets or Exceeds Expectations	No further action needed.
12b) Was there documentation that the penalty was collected?	8 out of 9 penalties had documentation of collection.	Meets or Exceeds Expectations	No further action needed.

METALLIC (IRON ORE) MINING Oversight Inspections

Category	Metric MPCA Permit Requirement	Result	Findings	Next Steps
Facility	Permittee shall properly operate and maintain the systems used to achieve permit compliance. Chapter 11 Section 13.1	Spills, releases, overflows and seepage were not consistently cited in inspection reports	Timely corrective actions for such occurrences do not occur.	MPCA will follow National and State ERPs, identify and report SEVs, and make SNC determinations. MPCA will review spill reporting requirements and revise as necessary to ensure timely reporting and appropriate follow up. Deadline: September 2017

				The required action listed under 2b, 8b and 9a, located in the above table, will contribute to resolving the findings associated with SEV identification, SNC determination and proper reporting.
Water Usage and Wastewater Treatment	Surface Water and Waste Stream Station Requirements Chapters 3 and 4	Various techniques are used to measure/ estimate flows	Minimum requirement for flow accuracy is needed.	
NPDES Permit Conditions	Samples and measurements required by permit. Chapter 11, Section 2	TDS intervention limits for groundwater monitoring and pH instantaneous maximums for surface water monitoring were cited	Magnitude of exceedances were not cited. Calibration of measurements were not evaluated or verified	MPCA will develop a comprehensive inspection checklist that includes laboratory requirements and observations. Inspectors will be trained on checklist implementation. Deadline: December 2017
Self-Monitoring	Permittee reporting of monitoring results Chapter 11, Section 3	Temperature data and interim limit data not included as part of the eDMR submittal	Temperature and other exceedances are not automatically uploaded into ICIS; these should be identified as SEVs.	The required actions listed under 2b, 8b and 9a, located in the

				above table, will resolve the findings associated with SEV identification, SNC determination and proper reporting.
Flow Measurement	Surface Discharge flow rate measurements Chapter 2, Section 1	Flow meter calibration not documented		
Laboratory	All compliance samples shall be analyzed by a Minnesota Department of Health Laboratory Chapter 11, Section 2	For the facilities and time period reviewed, there was no evaluation the adequacy of sampling and analysis program	Lab audits/ split sampling or sampling inspections were not conducted during the review period.	
Effluent/ Receiving waters	Intervention limits for surface receiving water quality Chapter 11, Section 5	Exceedances of these limits are not rigorously tracked	Discharge results are not evaluated beyond relative annual averages	

Resource Conservation and Recovery Act

As noted earlier in the report, a traditional SRF review was conducted for the RCRA program. The results of the review are shown below.

- *Areas that meet program requirements:*
 - Element 4, Enforcement that Returns Violators to Compliance: All enforcement actions returned violators to compliance.
 - Element 5, Penalty Collection: All penalties collected referenced in RCRAInfo were supported by documentation in the MPCA RCRA enforcement files.
- *Areas for state attention. These are areas in which minor issues were found, and EPA will rely upon the state to resolve on its own:*
 - Element 1, Complete and Accurate Entry of Mandatory Data: the data from twenty-one of the twenty-five reviewed, or 84%, was present in RCRAInfo, a marked improvement over the 64% of data that was *not* present in SRF 2.

- Element 2, Timeliness of Inspection Report Completion: While seventeen of the eighteen inspection report equivalents, or 94.4%, were timely, the inspection report equivalents were not normally signed and dated, causing the SRF evaluator to use the date of the inspection as the inspection report completion day. One file did not have a narrative or a checklist.
 - Element 4, Appropriate Enforcement Taken to Address Violations: In nineteen of the twenty files that included an enforcement action to address violations, or 95%, the enforcement actions were appropriate. One file had the potential to be a formal action.
 - Element 5: Gravity and Economic Benefit: Seven of the eight files that included a proposed penalty, or 87.5%, included documentation for gravity and economic benefit determinations; one file did not. MPCA does not normally include multiday components in their penalty determinations. EPA recommends adding a multiday component where appropriate.
- *Area for state improvement – These are areas in which EPA and MPCA have agreed upon follow-up actions for identified issues that will be tracked until they are completed:*

- Element 2, Inspection Reports Complete and Sufficient to Determine Compliance: Twelve of the eighteen files which should have inspection reports, or 66.7% had a report equivalent (the file itself) that was complete. The remaining six had reports or equivalents that did not always include inspector narratives or notes, or the checklists were not completely filled out. EPA recommends that inspectors sign and date narratives or checklists, and that MPCA continue to encourage the use of diagrams and photos.

ACTION: MPCA trained new staff on April 20 and October 25, 2016, on the composition of the inspection report file equivalent, the use of checklists, and encouraged the development of narratives for all inspections. EPA checked for the presence of narratives during the Midyear File Review in 2016, and found some improvement. EPA will continue to review, and discuss, annually.

- Element 5: Rational for Difference between Initial Penalty Calculation and Final Penalty: Four out of the seven files where there was an initial and final penalty, or 57.1%, contained the rational for the difference between the initial penalty proposed and final penalty collected. This is an area for improvement.
- ACTION: On April 20 and October 25, 2016, MPCA emphasized with its staff the importance of the development of memos for the record to document the reasons behind the differences between the initial penalty calculations and the final penalty collected. EPA checked for the presence of such records during the

mid-year file review in 2016, and found some improvement. EPA will continue to review, and discuss, annually.