

STATE REVIEW FRAMEWORK

Nebraska

Clean Water Act Implementation in Federal Fiscal Year 2017

**U.S. Environmental Protection Agency
Region 7**

**Final Report
July 30, 2019**

I. Introduction

A. Overview of the State Review Framework

The State Review Framework (SRF) is a key mechanism for EPA oversight, providing a nationally consistent process for reviewing the performance of state delegated compliance and enforcement programs under three core federal statutes: Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act. Through SRF, EPA periodically reviews such programs using a standardized set of metrics to evaluate their performance against performance standards laid out in federal statute, EPA regulations, policy, and guidance. When states do not achieve standards, the EPA will work with them to improve performance.

Established in 2004, the review was developed jointly by EPA and Environmental Council of the States (ECOS) in response to calls both inside and outside the agency for improved, more consistent oversight of state delegated programs. The goals of the review that were agreed upon at its formation remain relevant and unchanged today:

1. Ensure delegated and EPA-run programs meet federal policy and baseline performance standards
2. Promote fair and consistent enforcement necessary to protect human health and the environment
3. Promote equitable treatment and level interstate playing field for business
4. Provide transparency with publicly available data and reports

B. The Review Process

The review is conducted on a rolling five-year cycle such that all programs are reviewed approximately once every five years. The EPA evaluates programs on a one-year period of performance, typically the one-year prior to review, using a standard set of metrics to make findings on performance in five areas (elements) around which the report is organized: data, inspections, violations, enforcement, and penalties. Wherever program performance is found to deviate significantly from federal policy or standards, the EPA will issue recommendations for corrective action which are monitored by EPA until completed and program performance improves.

The SRF is currently in its 4th Round (FY2018-2022) of reviews, preceded by Round 3 (FY2012-2017), Round 2 (2008-2011), and Round 1 (FY2004-2007). Additional information and final reports can be found at the EPA website under [State Review Framework](#).

II. Navigating the Report

The final report contains the results and relevant information from the review including EPA and program contact information, metric values, performance findings and explanations, program responses, and EPA recommendations for corrective action where any significant deficiencies in performance were found.

A. Metrics

There are two general types of metrics used to assess program performance. The first are **data metrics**, which reflect verified inspection and enforcement data from the national data systems of each media, or statute. The second, and generally more significant, are **file metrics**, which are derived from the review of individual facility files in order to determine if the program is performing their compliance and enforcement responsibilities adequately.

Other information considered by EPA to make performance findings in addition to the metrics includes results from previous SRF reviews, data metrics from the years in-between reviews, multi-year metric trends.

B. Performance Findings

The EPA makes findings on performance in five program areas:

- **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, accuracy of compliance determinations, and determination of significant noncompliance (SNC) or high priority violators (HPV)
- **Enforcement** - timeliness and appropriateness of enforcement, returning facilities to compliance
- **Penalties** - calculation including gravity and economic benefit components, assessment, and collection

Though performance generally varies across a spectrum, for the purposes of conducting a standardized review, SRF categorizes performance into three findings levels:

Meets or Exceeds: No issues are found. Base standards of performance are met or exceeded.

Area for Attention: Minor issues are found. One or more metrics indicates performance issues related to quality, process, or policy. The implementing agency is considered able to correct the issue without additional EPA oversight.

Area for Improvement: Significant issues are found. One or more metrics indicates routine and/or widespread performance issues related to quality, process, or policy. A recommendation for corrective action is issued which contains specific actions and schedule for completion. The EPA monitors implementation until completion.

C. Recommendations for Corrective Action

Whenever the EPA makes a finding on performance of *Area for Improvement*, the EPA will include a recommendation for corrective action, or recommendation, in the report. The purpose of recommendations are to address significant performance issues and bring program performance back in line with federal policy and standards. All recommendations should include

specific actions and a schedule for completion, and their implementation is monitored by the EPA until completion.

Executive Summary

Areas of Strong Performance

The following are aspects of the program that, according to the review, are being implemented at a high level:

Clean Water Act (CWA)

- NDEQ accuracy and completeness of data entry related to major and non-major Discharge Monitoring Reports is above the national average and very close to the national goal.
- State enforcement actions document facility return to compliance.
- NDEQ files contain calculation sheets which define gravity and economic benefit.

Priority Issues to Address

The following are aspects of the program that, according to the review, are not meeting federal standards and should be prioritized for management attention:

Clean Water Act (CWA)

- The facility data information entered into the national database ICIS does not match the state activities, indicating the state is not reporting certain Minimum Data Requirements (MDRs).
- NDEQ did not perform MS4, SSO inspections, and NDEQ did not meet the Compliance Monitoring Strategy (CMS) Goal for Construction Stormwater inspections.
- Information reported in ECHO identified facility noncompliance and violations. NDEQ inspection reports did not evaluate facilities for SNC. NDEQ did not incorporate SNC violations from compliance schedule violations or DMR non-compliance into inspections or when making compliance determinations, therefore NDEQ did not adequately identify and address SNC violations.
- NDEQ compliance determinations are not communicated to the facility when noncompliance is found during inspections.
- The national database reported that there were no NDEQ responses to Majors that were in noncompliance. Based on the reported and available data, NDEQ did not respond appropriately to facilities listed as SNC.
- NDEQ files did not contain information which identified the difference or justification between the initial penalty and the final penalty.

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Area for Attention

Summary:

NDEQ completeness of data entry of major and non-major permit limits is above the national average yet is not meeting the national goal.

Explanation:

EPA Enforcement Compliance History Online (ECHO) pulls data from EPA Integrated Compliance Information System (ICIS). This data is attached to this report as an Excel spreadsheet 1b5. Out of 699 facilities that should have permit limit data entered, 74 facilities were missing permit limit data. EPA suggests that NDEQ review the attached spreadsheet and correct all missing data, such as, permit limits or any other missing Minimum Data Requirements. EPA also suggests that NDEQ develop a strategy to ensure MDRs are entered into ICIS in the future and that the missing data in ICIS corrected. Update: Since the EPA concluded its SRF review, the NDEQ has addressed the initial explanation as explained in the State Response section below.

State Response:

NDEQ currently has 100% of its permits that contain limits entered into ICIS. 73 of the 74 facilities listed are NPDES CAFO permits and do not have limits, therefore cannot be entered. The remaining discharge permit is the Nebraska Emergency management, ice dusting which also does not have permit limits.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
1b5 Completeness of data entry on major and non-major permit limits. [GOAL]	95%	88.1%	625	699	89.4%

CWA Element 1 - Data

Finding 1-2

Meets or Exceeds Expectations

Summary:

NDEQ accuracy and completeness of data entry related to major and non-major Discharge Monitoring Reports is above the national average and very close to the national goal.

Explanation:

EPA ECHO data pulled from ICIS is attached to this report as Excel spreadsheet 1b6. This metric evaluated the state DMR entry rate for majors and non-majors. The ECHO data pull identified that the state had 215 facilities that required discharge monitoring data to be entered. Given the universe of facilities, 2,412 DMRs were missing in ICIS from FY17.

NDEQ performed a complimentary data pull from the state data system using the same data elements that EPA used, resulted in the NDEQ data completeness meets the national goal. An EPA review of the FY 2018 frozen data shows NDEQ above the national goal at 95.56%. Based on the state response and the FY 2018 data, the EPA has adjusted the finding level and metric numbers.

State Response:

The Department reviewed the first 75 facilities listed on sheet 1b6_missing DMRs. 45 of the 75 reviewed for missing DMRs did not have any missing DMRs in ICIS. 21 of 75 did have missing DMRs but had less than what 1b6 is listing. After reviewing 75 facilities it was found that 88% are inaccurately listed on sheet 1b6. With the findings above the Department ran a current unsubmitted DMR report from ICIS and concluded the following as of 4/6/2019. Attached excel doc: Unsubmitted_Status_FY2017 153 Facilities with missing DMRs 612 total missing DMRs 11,006 total submitted DMRs 11,618 total expected DMRs 94.73% revised 1b6 metric, meets recommended metric of 90%

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
1b6 Completeness of data entry on major and non-major discharge monitoring reports. [GOAL]	95%	90.6%	11006	11618	94.7%

CWA Element 1 - Data

Finding 1-3

Area for Improvement

Summary:

The facility data information entered into the national database ICIS does not match the reported state activities, indicating the state is not reporting certain Minimum Data Requirements (MDRs) into ICIS.

Explanation:

The EPA reviewed 23 facility files where data should be entered into the National Database. ICIS was missing data for 13 of the 23 facilities. Majority of the missing data was associated with either a formal or informal enforcement action taken by NDEQ yet not identified as occurring in the database report. This is a similar finding that was eventually closed in the NDEQ SRF Round 3 Report after NDEQ signed the ICIS Rules of Behavior (ROB) agreement and therefore allowed the MDRs to be entered by the state. The review of Specific File Data identified formal and informal enforcement information that was not entered or captured into the national database including: Notices of Violation (NOV), Administrative Orders, and Consent Decrees.

The FY17 NDEQ Performance Partnership Grant (PPG) Annual Report reported that the agency conducted 52 major inspections, however, 10 of the inspections were not captured in ICIS. Because NDEQ does not sub-divide their 5b1 and 5b2 inspections, the EPA cannot differentiate which inspections were conducted of Minor individual or Minor general permitted facilities. NDEQ reported to EPA that 100 inspections were conducted at Minor facilities; while only 90 Minor inspections were captured in ICIS.

State Response:

The department has created an internal process to input informal enforcement actions into ICIS. Going forward informal enforcement will be entered. Nebraska RA users currently do not have access in ICIS to record formal enforcement.

Recommendation:

Rec #	Due Date	Recommendation
1	04/01/2020	NDEQ should ensure that their completed activities are accurately entered into and reflected in the national database. Please respond to EPA with the following: 1. Report to EPA quarterly on the actions taken to address this finding; and, 2. Provide a written explanation to improve data quality and describe why the information has not been entered; 3. Describe corrective actions taken to address the findings, including actions to address missing or inaccurate data and to ensure entry of the missing data is conducted in the future; 4. Complete the data entry by April 1, 2020. EPA will randomly pull 5 facilities in the 2nd quarter of FY 2020 in order to review the NDEQ data for FY 2019. If this random sampling indicates that data entry processes and accuracy has sufficiently improved (90% or greater) the recommendation will be deemed complete.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Files reviewed where data are accurately reflected in the national data system [GOAL]	100%	%	10	23	43.48%

CWA Element 2 - Inspections

Finding 2-1

Area for Improvement

Summary:

NDEQ did not perform MS4, SSO inspections, and NDEQ did not meet the Compliance Monitoring Strategy (CMS) Goal for Construction Stormwater inspections.

Explanation:

NDEQ did not perform MS4 and SSO inspections, while Construction Stormwater inspections are conducted infrequently. NDEQ did not define their activities to address the CMS goals of these sectors in an approved alternative CMS Plan.

State Response:

Since May 2018, the Department has conducted 5 MS4 inspections. The ability to perform these is largely attributed to the implementation of the online CSW NOI process. The online process frees more time for the coordinator to conduct these inspections. Based on this, the Department will be able to commit to a limited number in the CMS. SSO inspections are conducted on an as-needed basis. These are documented but are not specifically identified as a SSO inspection or reported as a CMS parameter. These can be documented and reported as SSO inspections in the future. The Department will consider how to approach this as part of the CMS. The CMS goal for completing CSW inspections would require additional full time effort that is not available to the Department. The Department can continue committing to a smaller number in the CMS.

Recommendation:

Rec #	Due Date	Recommendation
1	09/30/2019	NDEQ should develop an alternative CMS plan to EPA Region 7 to account for resource restrictions or other issues that the state may have in meeting the MS4, SSO, and construction stormwater sector CMS Goals. Complete the recommendation by September 30, 2019 for the FY20 CMS plan.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL]	-	-	-	-	-
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100%	-	480	841	57.07%
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL]	100%	-	13	14	92.86%
4a4 Number of CSO inspections. [GOAL]	100%	-	1	1	100%
4a5 Number of SSO inspections. [GOAL]	100%	-	0	315	0%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100%	-	0	21	0%
4a8 Number of industrial stormwater inspections. [GOAL]	100%	-	165	772	21.37%
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100%	-	14	31	45.16%
5a1 Inspection coverage of NPDES majors. [GOAL]	100%	54.2%	39	51	76.47%
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100%	22%	86	648	13.27%
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL]	100%	5.9%	0	1031	0%

CWA Element 2 - Inspections

Finding 2-2

Area for Attention

Summary:

NDEQ performed complaint, follow-up, and other informational inspections. These are not being entered into ICICS, the database, as completed inspections.

Explanation:

NDEQ performed inspections that were not being captured or accounted for either in ICIS, the CMS, or any other type of inspection accounting system. The inspections completed by NDEQ meet many of the requirements of an inspection. The NDEQ should consider making some changes to these inspections, for example, making a compliance determination, to receive credit for resources expended to perform these inspections. These inspections should be captured and entered into the national database.

State Response:

The Department will review its current process to record inspections / complaints in ICIS and revise accordingly. Consideration may be needed for complaint investigations not linked to an ICIS affiliated facility.

CWA Element 2 - Inspections

Finding 2-3

Area for Attention

Summary:

NDEQ inspection reports typically contained enough information to determine compliance. NDEQ inspection reports are typically completed within established timeframes.

Explanation:

The EPA selected 34 inspection reports to review. 28 of the 34 inspection reports contained enough information for the reader to understand the compliance status and noncompliant items of the facility. Eight of the inspection reports did not contain enough data to determine compliance. The summary from review of the Specific File Information revealed that: 1. An inspection report indicated that samples were collected at the time of the inspection. However, the inspection report did not contain a discussion of the sample results. 2. A facility inspection report discussed outfall discharges with flow data. However, DMRs stated no discharge. The report did not contain narrative descriptions to clarify the discrepancy. 3. A facility had DMR effluent violations in the previous quarters prior to the NDEQ inspection. Questions during an inspection should specifically ask for a compliance report or compliance history for DMRs. Inspection Reports should address and incorporate DMR noncompliance in the months, years, or designated time period prior to the inspections. 4. A facility inspection report identified that DMRs were satisfactory yet requested a

noncompliance report. Requests for noncompliance reports indicate facility non-compliance or violations. Inspections should include information and reasons for why the noncompliance reports are needed. The facility was identified to be in SNC the two quarters prior to the NDEQ inspection. The inspection report did not define or discuss the instance of SNC. 5. ECHO reported that a facility had been in SNC noncompliance for DMR-NR for the quarter before and the quarter that the inspection occurred. No discussion of the DMR non-receipt was in the inspection report. 6. A facility inspection report stated that past DMRs were reviewed, however it did not make an affirmative statement that the lab reports supporting the DMRs were reviewed. Without reviewing the lab sheets, permit and sampling reporting requirements were unable to be verified. 7. An inspection report did not address whether the facility's fact sheet or the permit stated affirmatively that the facility does not use the lead sheathing process; therefore, there was some difficulty in knowing the true compliance status of the industry with the 40 CFR 428 regulations. 8. ECHO listed a facility as being in SNC for compliance schedule violations. The facility inspection report did not mention the compliance schedule violations. Inspection Report Timeliness information: Based on the review of inspections and inspection reports, approximately 73.5% of the inspection reports were completed within timeframes established in NDEQ's Compliance Manual.

State Response:

1. Findings should take into account that sample results may not be available at the time the inspection report is completed and sent to the facility. 2. The discrepancy should be attributed to an oversight in preparing the inspection report. 3. Most inspections and reports do account for reporting history. The Department has updated the inspection template to be clearer about DMR compliance. 4. DMRs can be reported correctly yet a violation may still have occurred. Reporting noncompliance is a reporting issue, but not necessarily a DMR issue. SNC can be shown in ECHO even if the reporting violation has been addressed and resolved. The Department has yet to receive an answer from EPA that addresses the appearance of violations after resolution. SNC was also not a defining program priority in 2017. 5. The Department will clarify this in inspection reports. However, ECHO will continue to show noncompliance after the issue has been resolved. 6. Inspection reports include the line 'Laboratory'. At a minimum, this line included an affirmative yes or no, with a column designated for comment. This has been sufficient for making this determination. The Department has updated the inspection template to be clearer. 7. The fact sheet and permit are available in the records system. Fact sheets and permits go through a review process that includes the compliance inspector. 8. Inspection templates have been updated to include compliance schedule information.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%	%	26	34	76.47%
6b Timeliness of inspection report completion [GOAL]	100%	%	25	34	73.53%

CWA Element 3 - Violations

Finding 3-1

Area for Improvement

Summary:

Information reported in ECHO identified facility noncompliance and violations. NDEQ inspection reports did not evaluate facilities for SNC. NDEQ did not incorporate SNC violations from compliance schedule violations or DMR non-compliance into inspections or when making compliance determinations, therefore NDEQ did not adequately identify and address SNC violations.

Explanation:

EPA selected 11 files that were identified by ECHO to be in either SNC or Category 1 noncompliance. Seven of the 11 files did not identify or determine whether the facility was in still in SNC during the site inspection. The NDEQ inspection reports often neglected to review DMR compliance or non-compliance prior to conducting an inspection.

This is a similar finding to the NDEQ SRF Round 3 Report. This item was closed on October 31, 2014. At the time of closure, NDEQ reported that they would take the following actions: NDEQ has established a procedure for the quarterly reception of DMRs. Data from the DMRs is entered by the 28th of the following month. The compliance evaluation is made at the time of entry and if further action is needed the information is forwarded to an inspector to review during a site evaluation. Inspectors verify DMR compliance with file review prior to conducting an evaluation. The EPA has attached Metric 7k1 and 8a3 spreadsheets if NDEQ would like to review the National Database information.

The summary from review of the Specific File Information revealed that: 1. A facility had compliance schedule violations from a previous enforcement action. There was no discussion in the inspection report of compliance schedule noncompliance. 2. A facility was identified where non-compliance was Resolved and SNC resolved. 3. A Major facility with Resolved/DMR Non-receipt. The facility was reported to be in SNC two quarters prior to the NDEQ inspection. The inspection did not define or discuss the instance of SNC. 4. A Major facility with DMR Non-receipt violations. The inspection report only identified one WET test violation. Inspection report

checked the box for potential violation ~PV”. ECHO reported that the facility had been in SNC for DMR-NR for the quarter before and the quarter in which the inspection occurred. No discussion of the DMR non-receipt in the inspection report. 5. A Minor facility identified in ECHO as a facility in SNC for compliance schedule violations from an enforcement action. The inspection report did not mention the compliance schedule noncompliance. 6. A facility that ECHO listed to be in SNC for effluent violations. No NDEQ inspection in FY17. Two NOV’s were issued to the facility in 2017. One for numerous effluent violations and other for not having an industrial SW permit. The facility was under a compliance order in 2017. 7. A facility that ECHO identified as being in SNC for effluent violations. The facility had DMR noncompliance in the months prior to the inspection. The inspection did not identify this noncompliance. 8. A facility where an NOV stated that the facility was in SNC for TSS violations that occurred in the six-month period between October 2016 and March 2017. ICIS did not reflect SNC for this period. NDEQ data from the inspection was not entered into ICIS. 9. A facility with SNC for failing to sample and submit reports from October 2016 through April 2017. ICIS did not show SNC for this period. NDEQ data from the inspection was not entered into ICIS. 10. A facility that failed to submit multiple DMRs for nearly 3 years, and continued failure to submit DMRs in 2018. The NDEQ issued NOV. 11. A facility that ECHO listed in SNC for compliance schedule violations. NDEQ inspection report identified noncompliance. The past violations should have warranted at a minimum an informal action, i.e. warning letter. Based on the information in the file, the facility received nothing other than the inspection report.

State Response:

The Department will update the NPDES inspection manual to include these determinations. Updated inspection report templates already include these database reviews. Transmittal letters are issued from the main office in Lincoln. Examples from each field office are not necessary.

Recommendation:

Rec #	Due Date	Recommendation
1	04/01/2020	The EPA recommends that NDEQ review the facility’s compliance status in the national database prior to inspections and prior to creating the facility’s inspection report or transmittal letter. EPA recommends NDEQ: 1. Report to EPA quarterly on the actions taken to address this finding. 2. Revise the inspection manual to ensure this requirement is defined and memorialized. 3. Report to EPA when the inspection manual has been updated. 4. Provide an example inspection report template which identifies the review of database compliance when performing inspections by April 1, 2020. 5. Submit to EPA an example transmittal letter where a clear compliance determination has been made from inspections.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7k1 Major and non-major facilities in noncompliance.	%	18.6%	468	1744	26.83%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year.	%	7.5%	249	1737	14.34%

CWA Element 3 - Violations

Finding 3-2

Area for Improvement

Summary:

NDEQ compliance determinations are not communicated to the facility when noncompliance is found during inspections.

Explanation:

The EPA reviewed 34 NDEQ inspection reports, most of which contained adequate information to determine compliance. However, NDEQ does not follow their ERG requirements to issue Letters of Warnings or Notices of Violations when noncompliance is found. It is unclear how or when a compliance determination is made by NDEQ and how it is communicated to the facility.

State Response:

Inspection cover letters as of 2018 now include a clear determination statement. These letters either state compliance or request corrective actions for infrequent noncompliance. NOV's are used in place of a cover letter where informal enforcement is required, such as with SNC. Exit summaries are now used to close an inspection on site that gives the facility our initial observed concerns.

Recommendation:

Rec #	Due Date	Recommendation
1	12/31/2019	Based on the state process changes indicated in the response above, the recommendations below have been altered. The EPA recommends that NDEQ clearly define the compliance status of a facility within the inspection report transmittal letter when issuing the inspection report. 1. Submit to EPA an example transmittal letter where a clear compliance determination has been made from inspections. 2. Provide EPA an example exit summary to illustrate the process changes identified in the state response.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7e Accuracy of compliance determinations [GOAL]	100%	%	27	34	79.41%

CWA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Summary:

State enforcement actions document facility return to compliance.

Explanation:

90 % of NDEQ enforcement actions will result in a facility returning to compliance.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%	%	18	20	90.06%

CWA Element 4 - Enforcement

Finding 4-2

Area for Improvement

Summary:

The national database reported that there were no NDEQ responses to Majors that were in noncompliance. Based on the reported and available data, NDEQ did not respond appropriately to facilities listed in SNC.

Explanation:

For the review period, the national database reported that 9 Majors in Nebraska were in SNC. The database also reported that the NDEQ did not perform any follow-up responses to address the SNC. NDEQ submitted their data with their CMS annual report and PPG annual report. According to the 2017 PPG Annual Report, NDEQ took one enforcement action at a Major in SNC. This data is attached to this report as excel spreadsheet 10a1.

State Response:

The Department is reviewing procedures to enter this data into ICIS.

Recommendation:

Rec #	Due Date	Recommendation
1	09/30/2019	NDEQ should take appropriate action against facilities listed in SNC and ensure that their activities are accurately entered into the national database. EPA's recommendation: 1. Report to EPA quarterly on the actions taken to address these actions. 2. Describe corrective actions taken to develop a process for identifying and addressing SNC violations. 3. Begin tracking informal and formal enforcement data entry into ICIS for Majors by September 30, 2019.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations	%	14.3%	0	9	0%

CWA Element 4 - Enforcement

Finding 4-3

Area for Attention

Summary:

The majority of the NDEQ enforcement actions resulted in the facility coming back into compliance; however, a percentage of the enforcement actions did not result in a return to compliance.

Explanation:

The EPA selected 22 files where either a formal or informal enforcement action occurred. The EPA found that 18 of the 22 actions were expected to result in the facility returning to compliance. The summary from review of the Specific File Information revealed that: 1. A facility file with: No response to violations was found during a complaint inspection on May 8, 2017, the compliance inspection on June 27, 2017, or the chronic violations submitted in the DMRs. 2. A facility file where: An industry was allowed to certify compliance with its TTO limit because it had developed, and had approved, a Toxic Organics Management Plan. The Plan could not be located in the file; however, it may have been prior to the electronic format. The TTO certification statement is required to be submitted every six months but the Industry failed to certify for TTO compliance for the April through September 2017 period. 3. Facility with: Numerous O&M violations noted at the time of the inspection. The facility had not submitted DMRs in nearly 3 years, so compliance with effluent limits was unknown. A formal action would likely have increased the chance of the facility returning to compliance. 4. A facility file indicating: The facility's past violations should have warranted at a minimum an informal enforcement action, i.e. warning letter. Based on the information in the file, the facility received nothing other than the inspection report.

State Response:

The actions described in the above responses 2-1 through 3-2 address the finding in 4-3.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%	%	18	22	81.82%

CWA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Summary:

NDEQ files contain calculation sheets which define gravity and economic benefit.

Explanation:

EPA selected six files to review. Each penalty action included the documentation which provides the calculations made to determine gravity and economic benefit which were then referred to the State AGO for collection of penalties.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%	%	6	6	100%

CWA Element 5 - Penalties

Finding 5-2

Area for Improvement

Summary:

NDEQ files did not contain information which identified the difference or justification between the initial penalty and the final penalty.

Explanation:

The EPA reviewed six penalty actions by NDEQ. Each penalty action included a penalty calculation sheet which is completed either by the Attorney General attorneys or NDEQ. The file did not include any statements that show how the calculated penalty and the penalty contained in the formal penalty actions were completed. The summary from review of the Specific File Information revealed the following: 1. No documentation in a facility's file explaining the difference between the penalty amount calculated by NDEQ, the AG valuation of the case and the final penalty settlement. 2. AG first memo listed case value of \$20-37K. Next memo almost 3 years later says \$18,500: \$9,250 cash & \$9,250 SEP. No justification for difference between NDEQ calculation and AG valuation or for the difference between the 2 AG memos. 3. August 2014: NDEQ calculated a penalty. August 2015: The AG's office issued a consent decree, after negotiating new penalty with the facility for approximately 10% of the initial penalty calculation. The facility could also pay stipulated penalties for additional violations if the facility did not repair the system within the ordered timeframes. September 2017: The NDEQ calculated a second penalty amount that was less than the original penalty, but more than the AG penalty and stipulated penalty amount. June 2017: Demand letter sent to the facility for penalty amount approximately \$21,000 more than the 2nd calculated penalty noncompliance with an August 2015 Consent Decree. 4. July 2011: The NDEQ calculated a penalty. April 2014: NDEQ and the facility reached a settlement figure to settle the case. Facility to pay approximately 2%, of the initial calculated penalty, in penalties and approximately 1% in a SEP to a local Fire Department. 5. Initial penalty proposed was calculated by NDEQ and the final settlement amount was determined by the NE AG's office. No information was available for review that provided justification for the reductions given by the AG. 6. Initial penalty proposed was calculated by NDEQ and the final settlement amount was determined by the NE AG's office. No information was available for review that provided justification for the reductions given by the AG.

State Response:

The Department does not have direct authority to administer penalties or enforce penalty payment. Penalties are administered through the State Attorney General's Office. The ability to achieve this recommendation is outside the scope of the Department's ability.

Recommendation:

Rec #	Due Date	Recommendation
1	12/31/2019	Based on the state response above, the recommendation has been altered. NDEQ should encourage the NDEQ AG's office to include a memo to the file to track the final penalty determination.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%	%	0	6	0%

CWA Element 5 - Penalties

Finding 5-3

Area for Attention

Summary:

NDEQ files contain information which identifies that penalties were collected.

Explanation:

The majority of the penalties reviewed contained information which identified that penalties were collected. These are often in narrative statements within the documents of the file. EPA recommends that NDEQ also add a statement of payment from the account where penalties must be paid by the facility to ensure this occurred. In instances where a SEP was done, EPA recommends that NDEQ include a statement of payment from the facility to show the money allocated for SEPs was actually delivered.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
12b Penalties collected [GOAL]	100%	%	4	6	66.67%
