

STATE REVIEW FRAMEWORK

New Mexico

Clean Air Act Implementation in Federal Fiscal Year 2017

U.S. Environmental Protection Agency Region 6

**Final Report
July 11, 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.

III. Review Process Information

Clean Air Act (CAA)

Initial file selection sent to State July 6, 2018; revised list conveyed July 13, 2018. File review conducted onsite July 30 - August 1, 2018, by Toni Allen (retired), James Haynes (214-665-8546), and Lisa Schaub (214-665-8583). EPA Contacts Steve Thompson, Branch Chief (214-665-2769) and Margaret Osbourne, Section Chief (214-665-6508) NMED Contacts Elizabeth Bisbee-Kuehn, Bureau Chief (505-476-4305); Ralph Gruebel (505-476-4373), and Tom Fitzgerald, Data Steward (505-476-4370)

Executive Summary

Introduction

Clean Air Act (CAA)

The Round 4 SRF Review of the New Mexico Environment Department (NMED) CAA files revealed that the agency has continued to enter enforcement MDRs timely, while improving its timely reporting of HPV determinations and compliance monitoring MDRs, as indicated in the provided table comparing findings from Rounds 3 and 4. Accuracy of the facility and permit MDRs continues to require improvement, as does the coverage of compliance evaluations, review of Title V annual compliance certifications, and the expediency with which high priority violations are addressed. Since the Round 3 review, NMED's stack test program appears to have been neglected, with reporting of results no longer occurring.

Areas of Strong Performance

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

Clean Air Act (CAA)

- Reporting of HPV Determinations, compliance monitoring MDRs, and enforcement MDRs has been timely.
- The penalty aspect of the AQB's enforcement program is generally meeting expectations.
- The AQB has performed well at arriving at accurate determinations of violation types, continuing to meet expectations despite staffing challenges.

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 Air Act (CAA)

- During FY2017, inspection coverage at air facilities fell well below NMED's commitment levels, due in part to low staffing levels. Similarly, review of ACCs dwindled.

- There were issues identified with accurate reporting of MDRs, and data on stack tests have not been uploaded to ICIS-Air.
- Improvements in the timely identification and reporting of HPVs is needed, along with developing a CD&RT when warranted.

Metric	Round 3 Finding Level (FY 2013)	Round 4 Finding Level (FY 2018)
2b Timely and accurate reporting of MDRs	Area for State Improvement	Area for State Improvement
3a2 Timely reporting of HPV determinations	Area for State Improvement	Meets or Exceeds Expectation
3b1 Timely reporting of compliance monitoring MDRs	Area for State Improvement	Meets or Exceeds Expectation
3b2 Timely reporting of stack test dates and results	Meets Expectations	Area for State Improvement
3b3 Timely reporting of enforcement MDRs	Meets Expectations	Meets Expectations
5a FCE coverage: majors and mega-sites	Area for State Improvement	Area for State Improvement
5b FCE coverage: SM-80s	Area for State Improvement	Area for State Improvement
5e Review of Title V annual compliance certifications	Area for State Improvement	Area for State Improvement
10a Timely action taken to address HPVs	Area for State Improvement	Area for State Improvement

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Area for Improvement

Summary:

There were issues identified with accurate reporting of MDRs, and data on stack tests have not been uploaded to Integrated Compliance Information System for Air (ICIS-Air).

Explanation:

(2b) Discrepancies exist between the facility files reviewed and the data recorded in ICIS-Air. For the 27 facilities examined, five had Regulatory Subparts listed in their permits which were not recorded in ICIS. Additionally, Subparts which appear to be applicable but are not reflected in the Title V permit were identified for five facilities. CAA data issues with missing Subparts were cited in the previous two SRFs conducted of the NMED. Ongoing staff-retention difficulties likely contribute to the State's continuing data issues. Recent efforts to cross-train staff to assist with data management should result in improvements to data quality. (3b2) It appears that stack test data have not been transmitted to ICIS, only to its predecessor, AIRS Facility Subsystem (AFS), which was replaced by ICIS-Air in 2014. During the March 2018 Monthly Status call, NMED indicated that staff would be attending training on Compliance Testing, yet uploading of stack test data to EPA's database of record has not resumed. In March 2019, Allan Morris, a long-time NMED Air Quality Board employee assumed the position of Chief of the Enforcement and Compliance Section, his predecessor Ralph Gruebel having resigned in December 2018. When EPA inquired about the absence of stack test data in ICIS, Mr. Morris chronicled the history of the State's stack test program in detail. Over the past four years, increasing numbers of reports being submitted and inspections requiring completion, particularly of an ever-expanding number of synthetic minors (SM-80s) permitted in New Mexico, have exacerbated the issue of staying abreast of required compliance monitoring activities, made more challenging when struggling to fill vacant staff positions. Receiving authorization to increase the pay grades of some positions has improved the ability to attract qualified candidates and should improve retention, yet the volume of work seems to exceed staff capacity. Investing in previously explored software solutions to triage the electronically submitted stack tests so personnel can focus on those which appear to be problematic might help maximize the efforts of the available personnel resources.

State Response:

The New Mexico Environment Department (NMED) continues to experience challenges in two functional areas related to issues identified in Finding 1-1. These are: 1) apparent flaws in the electronic data transfer (EDT) application used to update regulatory subpart data recorded in ICIS-Air from NMED's Idea/Tempo database, and 2) inconsistent update of applicable regulatory subparts in the NMED Idea/Tempo database. To mitigate these challenges NMED is implementing the following: 1) A contract for enhancements to the NMED EDT application to facilitate identification and correction of data transfer defects is included in the State's 2020 FY budget. A statement of work for the contract is under development and EDT enhancements should be

completed by the end of the fiscal year. In the immediate future, all NMED - Air Quality Bureau compliance staff will be directed to evaluate and confirm regulatory subpart applicability as part of the on site / off site inspection and compliance report review processes. In addition, staff assigned monthly ICIS-Air reporting responsibilities will complete manual corrections as identified during facility compliance reviews. This requirement will be added to internal SOP's by August 30, 2019. Effective immediately, whenever regulatory subpart applicability corrections are implemented in ICIS-Air, Lisa Schaub at EPA R6 will be emailed notifications. 2) In collaboration with the NMED - Air Quality Bureau Permitting Section, a process / SOP for improvement of applicable regulatory subpart accuracy will be completed and implemented by August 30, 2019. As described in the Finding 1-1 "Explanation," NMED management has recently become aware of a significant deficiency in ICIS-Air reporting of compliance test document review/processing data. In fact, for several years prior to November 2018, only incidental, cursory compliance evaluation of air quality test document submittals was undertaken by NMED staff. In March 2019, NMED management completed a review of current practices and confirmed that no standard procedure existed for reporting of compliance test document review results to ICIS-Air. No feature had been included in the existing NMED EDT application to facilitate test document review data transfer; although, one NMED position has been dedicated to routine review of test documents since late fall, 2018. As a long-term solution to this data transfer issue, NMED will include components to implement test document review data transfer in the FY 2020 EDT enhancement contract. These components are expected to be functional by the end of the 2020 fiscal year. In the short term, immediate action will be initiated to manually enter test document review data in ICIS - Air to achieve monthly reporting requirements. A plan detailing these two actions will be prepared and submitted to EPA R6 by August 30, 2019. By December 31, 2019, NMED will submit to EPA R6 an ICIS report demonstrating that test document review data has been entered in ICIS-Air for the previous six-month period.

Recommendation:

Rec #	Due Date	Recommendation
1	08/30/2019	EPA suggests that NMED develops a Standard Operating Procedure (SOP) to compare the various permits with the permit data recorded in ICIS when reviewing a facility's compliance status, followed by completing any indicated corrections. Making review of these data part of routine compliance reviews may also ensure updates have been accurately made. The SOP for checking the permit requirements against those recorded in ICIS should be submitted and approved by EPA by the provided date.
2	10/31/2019	Documentation of truthing the air regulation subparts recorded in ICIS-Air against the facility's permit(s) (such as by emailing screen shots of the applicable subparts in ICIS along with the permit summaries) should be provided each month for two months after the approval of the SOP.
3	08/30/2019	The transmission of stack test results to EPA's current database of record, ICIS-Air, should resume as soon as possible. A plan to resume this function should be developed upon finalization of this report and submitted to EPA for review.
4	12/31/2019	The plan to provide stack test data in ICIS-Air should be fully implemented by the end of the calendar year, as confirmed by NMED's running an ICIS Stack Test Report to show that data from the latter half of the calendar year are present, and submitting the report to EPA.

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%		11	27	40.7%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	67.1%	0	0	0

CAA Element 1 - Data

Finding 1-2

Meets or Exceeds Expectations

Summary:

Reporting of HPV Determinations, compliance monitoring MDRs, and enforcement MDRs has been timely.

Explanation:

The reporting of air compliance and enforcement data in ICIS-Air has been promptly executed by the State since the last SRF. EPA commends the improvements in timely data reporting.

State Response:

NMED appreciates the timely and expert guidance provided by EPA R6 staff to assist in accurate HPV and MDR data reporting. Full implementation of the NMED electronic data transfer (EDT) application has also enabled the Air Quality Bureau to realize a substantial improvement in this element.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
3a2 Timely reporting of HPV determinations [GOAL]	100%	40.5%	1	1	100%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	82.3%	57	60	95%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	77.6%	44	44	100%

CAA Element 2 - Inspections**Finding 2-1**

Area for Improvement

Summary:

During FY2017, inspection coverage at air facilities fell well below NMED's commitment levels, due in part to low staffing levels. Similarly, review of ACCs dwindled.

Explanation:

(5a/5b) The State has not been completing the required number of FCEs for both majors/mega-majors and SM-80s. In Fiscal Year 2017, only 47.8% of majors received FCEs while inspection of SM-80s fell to 11.1%. (5e) ACC reviews dropped to 14.5%, with only 19 of 131 ACCs being reported as reviewed. During on-site discussions, it became apparent that those ACCs reviewed as part of an FCE have not been reported as reviewed in ICIS, further exacerbating the low coverage likely resulting from limited staffing. (6a/6b) Some inspection reports did not discuss all pertinent aspects of the semi-annual reports while others did not evaluate all applicable Subparts. In this limited file review, EPA found one instance where no report had been written, and two others where reports were not finalized. These occurrences are symptomatic of the trouble with retention that the AQB has been experiencing. The Air Quality Bureau has successfully reclassified several of their positions, improving the associated pay grade and concomitantly enticing a more qualified applicant pool. Improved compensation may also increase retention, ultimately benefiting the efficiency and quality of the enforcement and compliance work of the AQB.

State Response:

Despite noble efforts on the part of NMED - Air Quality Bureau Compliance and Enforcement (C&E) Section management, the section experienced continuing staff turnover in FFY 2017 with a corresponding loss of the knowledge and experience base that facilitates a successful compliance monitoring program. With several new compliance specialists and a new compliance supervisor coming on board during the FFY, the section struggled to meet CMS Plan and ACC review commitments. Unintended inconsistency in new staff training and implementation of standard procedures between three compliance managers led to substantial variance in work quality and productivity expectations for section compliance staff. An apparent misunderstanding on the part of one or more managers within the section led to a realignment of responsibilities of compliance staff and lower emphasis on commitments for ACC review to meet the September 30, 2017, deadlines. In the 1.5 years since the end of FFY 2017, the NMED - Air Quality Bureau Compliance and Enforcement Section has again experienced substantial staffing changes, including placement of a new section chief and three new staff managers. Several capable new line compliance staff members have been added to the section. A new compliance inspections staff manager is closely monitoring inspector CMS Plan achievements, providing consistent process training and guidance to direct reports and implementing an improved task completion tracking system. This tracking system incorporates an existing timeline for inspection report completion and area of concern referral. The compliance inspections staff manager is also collaborating with the C&E section chief to implement a process for completion of the 42 off site FCE inspections approved with the State's FFY 2019 CMS Plan. The process includes temporary integration of several compliance reports staff into the inspections team to complete off site CMS FCE's of natural gas compressor stations on the FFY 2019 Plan. In the course of FCE completion, all involved personnel will ensure that associated ACC's and other current compliance reporting documents are fully reviewed as part of the FCE process. If C&E Section staffing continues at anticipated levels for the rest of the 2019 FFY, a CMS inspection achievement rate near 75% should be realized and subsequently reported in the ADMA in early 2020. As of April 1, 2019, all compliance reports staff were directed by their staff manager to refocus their primary work activities to ACC review. In addition, all compliance personnel have been asked to enter data for all compliance report reviews into the State's Idea/Tempo database upon completion of these tasks. Report review and deviation data is currently transferred to ICIS - Air by the NMED EDT application. A new compliance reports staff manager, who is optimistically expected to be on board at NMED - AQB by June 30, 2019, will

be charged with development of a new instrument for tracking of compliance report reviews, including those completed by members of the compliance inspections group. This instrument will be available for review by Lisa Schaub of EPA R6 by August 30, 2019, along with a current FCE inspection / inspection report completion document. Additional actions under consideration by the NMED - Air Quality Bureau to ensure long-term achievement of metrics for CAA Element 2 include the following:

- Utilization of professional contracted services for compliance report review and selected components of the compliance inspections program.
- Depending on final results of the joint April 2019 EPA-NMED upstream oil and gas facility inspections project, development and submittal of an Alternative CMS Plan by the AQB C&E Section for review and approval action by EPA R6.

Recommendation:

Rec #	Due Date	Recommendation
1	08/30/2019	A procedure should be put in place to ensure that staff managers track the progress of reports, facilitating report completion in the event of staff departure.
2	03/31/2020	Completion of 71% of the annual commitment of FCEs (for FFY2019), as reflected in the Annual Data Metric Analysis (ADMA), by the recorded deadline is requested, after the data freeze for FY2019.
3	03/31/2020	To address the low percentage of ACCs showing as having been reviewed, it is recommended that all ACC reviews, both those done independently and as a component of an inspection, be documented in ICIS. The percentage, as determined by the ADMA, should rebound to 71% by the recorded deadline.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a FCE coverage: majors and mega-sites [GOAL]	100%	88.7%	22	46	47.8%
5b FCE coverage: SM-80s [GOAL]	100%	93.7%	3	27	11.1%
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%	85.8%	0	0	0
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	76.7%	19	131	14.5%
6a Documentation of FCE elements [GOAL]	100%		8	13	61.54%

CAA Element 3 - Violations

Finding 3-1

Area for Improvement

Summary:

Accurate reporting of case information in ICIS remains a challenge.

Explanation:

(7a) About 68% of the cases reviewed in this Round exhibited inaccurate or incomplete information: incorrect dates were recorded in ICIS-Air or improper compliance determinations made for several, while there was one FCE for which no report was written and two other instances where the reports were not finalized. These problems are likely associated with the high turnover and low staffing levels experienced by the Department over the last several years. Note that the tracking by managers recommended under Finding 2-1 should minimize the occurrence of reports which are not finalized (one third of the incidents in this metric). In contrast, the 2014 SRF Report showed 100% accuracy for this measure. SOPs developed to assure agreement in the Subparts between the permit, ICIS-Air, and what is reviewed for the evaluation of compliance, recommended for finding 1-1, should also improve the ability of the Department to reach accurate compliance determinations.

State Response:

NMED - Air Quality Bureau is undertaking an evaluation of the bureau's current enforcement program, including case data reporting in ICIS-Air. Inaccurate case data reporting in FFY 2017 may have been partially the result of inadequate training of enforcement personnel. NMED - Air

Quality Bureau management also agrees that development of a detailed SOP for ICIS reporting of enforcement data is essential to ensure consistency going forward. The enforcement staff manager will lead development of the new SOP and create a spreadsheet as described in Finding 3-1, Recommendation #1 of CAA Element 3 -Violations.

Recommendation:

Rec #	Due Date	Recommendation
1	08/30/2019	A table of the terms used in TEMPO, the corresponding fields in ICIS, and a description of each milestone (date) should be developed for use by staff completing the evaluations as well as those responsible for data entry and quality assurance. Review and approval of the SOPs by EPA are needed.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		19	28	67.9%

CAA Element 3 - Violations

Finding 3-2

Meets or Exceeds Expectations

Summary:

The AQB has performed well at arriving at accurate determinations of violation types, continuing to meet expectations despite staffing challenges.

Explanation:

(8c, 13) From the files reviewed, the accuracy rate of HPV determinations has been calculated at 86.7% based on a pool of 15 (multiple years reviewed, and includes both FRVs and HPVs), and the timeliness of reporting determinations to ICIS-Air at 100%, although only one HPV was reported during fiscal year 2017. The attention to accuracy in these high-priority violations despite other obstacles is appreciated. Note that cases from 2016 were included in the file review to have a large enough sampling with violations. (7a1, 8a) The low discovery rates of HPVs and FRVs during the reporting period, might seem to indicate good facility compliance in New Mexico.

However, because these are both calculated as a percentage of the total number of facilities rather than a percentage of inspections or reports completed, these low rates are likely due in part to the limited number of inspection reports completed in FY2017. The HPV discovery rate was higher in 2014 (6.5%) when a greater number of inspections were completed. Note that discovery rates are support metrics and as such do not have associated goals.

State Response:

Air Quality Bureau will evaluate current HPV and FRV identification procedures to ensure that accuracy in reporting is maintained.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
13 Timeliness of HPV Identification [GOAL]	100%	87.7%	1	1	100%
7a1 FRV “discovery rate” based on inspections at active CMS sources		6.2%	13	362	3.6%
8a HPV discovery rate at majors		2.3%	0	175	0%
8c Accuracy of HPV determinations [GOAL]	100%		13	15	86.67%

CAA Element 4 - Enforcement

Finding 4-1

Area for Improvement

Summary:

Improvements in the timely identification and reporting of HPVs are needed, along with developing a CD&RT when warranted.

Explanation:

(10a) Of the 7 HPV cases reviewed, only two were either timely addressed or a Case Development and Resolution Timeline (CD&RT) was in place. Contributing to this lack of timely handling of HPVs is the need to ensure that the Day Zero and Discovery Dates follow EPA's HPV Policy. If the Day Zero is set later than it should be according to the Policy, staff may believe they are not yet in need of a CD&RT when it is in fact required. The 2014 HPV states, "Day Zero will be deemed to have occurred on the earlier of either (1) the date the agency has sufficient information to determine that a violation occurred that appears to meet at least one HPV criterion or (2) 90

days after the compliance monitoring activity that first provides information reasonably indicating a violation of a federally enforceable requirement." For the Gissler and Jackson Tank Batteries, the Discovery Date should have been the date the permit staff determined the NSR permit was complete, and the notification of the permit violation occurred in December 2014, meaning a Day Zero of no later than March 2015. However, the Discovery Date was noted as May 15, 2015, and the Day Zero August 13, 2015. Violations at three of these facilities were addressed in a single settlement, with the owner's disputing some of the violations, which likely increased the time it took for the violations to be addressed. Additionally, self-reported violations need to be evaluated more promptly. For example, the Excess Emissions Reporting has been reviewed with a frequency of every four months. Violations may have occurred well before the time they were reported, so not only is the Date of Discovery (when the information was reported to the agency's website) possibly several months before the data is manually reviewed, the time remaining to get an enforcement action in place is short due to New Mexico's statute of limitations of one year after the violation. (14) Those 5 HPVs which were not addressed timely needed to have a CD&RT in place; this transpired in only one instance. In the case of Jal No. 3 Gas Plant, the violation was incorrectly identified as an FRV rather than an HPV. Therefore, while a penalty was assessed and collected, it was not tracked using the HPV schedule. Note that for the Gissler and Jackson Tank Battery cases, the addressing action was in place timely when using the Day Zero in August 2015, which was identified by NMED, yet a CD&RT should have been developed since the Day Zero should have been set 5 months earlier than it was.

State Response:

An apparent misinterpretation of HPV identification policy and procedures in 2016 - 2018 may have caused the failure of the NMED - Air Quality Bureau enforcement group to appropriately and consistently identify and pursue HPVs in compliance with EPA criteria and procedures for HPV identification. In addition, limited experience levels of critical, decision-making staff in the enforcement group likely caused increased errors in management of HPVs, including the incidents described in the "Explanation" above. By July 1, 2019, training on determination of violation discovery dates will be provided to all Compliance & Enforcement Section personnel. As of April 1, 2019, the Staff Manager, Enforcement at NMED - Air Quality Bureau has been instructed to immediately evaluate all referred cases for potential classification as HPV's and follow EPA's guidance and timelines for HPV task completion. Formal training in HPV identification and management that meets EPA standards will be provided to all enforcement group staff by October 31, 2019. NMED - AQB will submit a memo documenting completion of HPV training to Lisa Schaub or other appropriate official at the EPA R6 office by October 31, 2019.

Recommendation:

Rec #	Due Date	Recommendation
1	10/31/2019	Providing additional training to enforcement and compliance staff regarding the table of HPV timeline dates developed for Finding 3-1 and the need for a CD&RT, as documented by a memo to EPA indicating that the training has been administered, should be completed by the appropriate managers as early as practicable.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		2	7	28.57%
10a1 Rate of Addressing HPVs within 180 days		63.7%	1	1	100%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		1	5	20%

CAA Element 4 - Enforcement

Finding 4-2

Area for Attention

Summary:

In a few of the enforcement actions analyzed, instances of companies applying for relaxed permits rather than improving their processes or controls were identified.

Explanation:

Most of the enforcement cases reviewed did appear to result in the subject facilities coming into compliance. However, in 3 of the 15 enforcement actions examined, the AQB's typical approach of requiring the regulated entity to propose how they would come into compliance seemed to spur their application for a modified permit to allow them to continue their emissions rather than seeking a remedy which would reduce their emission risk. For example, the Targa - Monument Gas Plant indicated in their NOV response that they were submitting a permit application to

authorize "malfunction emissions." It is EPA's understanding that such permit modifications have been granted. The Board may wish to have an internal dialog as to whether this is a burgeoning issue as no such observations were made during the previous SRF.

State Response:

NMED - Air Quality Bureau management, including the Compliance & Enforcement Section Chief, will initiate an internal review to determine whether relaxation of permit requirements is a pervasive issue that results from improper settlement of NOVs. If this is the case, remedial action will be immediately initiated to avoid recurrence in on-going and future NOV settlements. The review and remediation process, as required, will be completed by July 31, 2019.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10b1 Rate of managing HPVs without formal enforcement action		12.9%	0	1	0%
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule [GOAL]	100%		12	15	80%

CAA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Summary:

The penalty aspect of the AQB's enforcement program is generally meeting expectations.

Explanation:

(12a and 12b) The examined files demonstrated that assessed penalties are being collected and differences between initial and final penalty are appropriately documented. Note that there was one instance (Burnett Oil) where the penalty was calculated and later withdrawn by the AQB.

State Response:

The NMED - Air Quality Bureau is conducting an evaluation of all enforcement procedures, including assessment and collection of fair and appropriate penalties as part of the NOV program. A thorough review of the current (2016 revision) Civil Penalty Policy (CPP) is underway. The

CPP will be revised if one or more components are found to be inadequate to meet current programmatic standards.

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%		4	4	100%
12b Penalties collected [GOAL]	100%		11	11	100%

CAA Element 5 - Penalties

Finding 5-2

Area for Attention

Summary:

Disparity between HPV and FRV cases in the inclusion of all appropriate calculations was found during the file review.

Explanation:

(11a) Review of the selected penalty orders revealed the State followed the HPV Policy and considered gravity of the violation as well as economic benefit in instances of HPVs. Gravity and economic benefit calculations are less consistently incorporated for Federally Reportable Violations, and were only found in half of the FRV files reviewed, even though the State's penalty policy requires their application for all assessed penalties.

State Response:

As part of the enforcement program evaluation described in the State's response to CAA Element 5 - Penalties, Finding 5-1, the NMED - Air Quality Bureau is completing an analysis of the validity of the C&E Section's current FRV identification procedures, including consistency of application of gravity and economic benefit components of the State's CPP. A trend toward exclusive utilization of the "Alternate Penalty Calculation" ("3-2-1") method in the 2016 CPP is causing further management concern about proper adherence to Policy provisions. As patterns of non-adherence are identified in the current program review process, remedial actions will be implemented by the Enforcement Staff Manager and/or revision of the CPP completed, as necessary to achieve full compliance with EPA civil penalty standards.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%		8	11	72.7%

STATE REVIEW FRAMEWORK

City of Albuquerque, New Mexico

Clean Air Act Implementation in Federal Fiscal Year 2017

U.S. Environmental Protection Agency Region 6

**Final Report
July 17, 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

Introduction

Clean Air Act (CAA)

Review of selected subset of the enforcement and compliance records of the City of Albuquerque's (COA) Air Quality Program by the Environmental Protection Agency (EPA) revealed improvement in their timely reporting of compliance monitoring minimum data requirements (MDRs) and stack test dates and results to the Integrated Compliance Information System (ICIS), as well as in the documentation of compliance evaluation elements. Opportunities for continued improvement were found in the recording of regulatory subparts applicable to the facilities under the purview, as well as in the timely reporting of enforcement MDRs.

Areas of Strong Performance

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

Clean Air Act (CAA)

- The COA exhibits continued excellence in arriving at appropriate compliance determinations.
- The city accomplished fulfillment of its compliance monitoring strategy (CMS) plan in FY2017.

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 Air Act (CAA)

- The City of Albuquerque (COA) continues to have some shortcomings in the areas of timely and accurate reporting of Minimum Data Requirements (MDRs).

Metric	Round 3 Finding Level (FY 2013)	Round 4 Finding Level (FY 2018)
2b Files reviewed where data are accurately reflected in the national data system	Area for Improvement	Area for Improvement
3b1 Timely reporting of compliance monitoring MDRs	Area for Improvement	Meets or Exceeds Expectation
3b2 Timely reporting of stack test dates and results	Area for Improvement	Meets or Exceeds Expectation
3b3 Timely reporting of enforcement MDRs	Area for Improvement	Area for Improvement
5e Reviews of Title V annual compliance certifications completed	Area for Improvement	Area for Attention
6a Documentation of FCE elements	Area for Improvement	Meets or Exceeds Expectation
7b1 Violations reported per informal actions	Area for Improvement	n/a

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Summary:

The City met expectations for prompt data entry with respect to High Priority Violation (HPV) identification, compliance monitoring MDRs, and stack test information.

Explanation:

(3a2) One HPV was identified during the fiscal year and was entered into ICIS timely. (3b1 and 3b2) EPA appreciates COA's progress in entering compliance monitoring MDRs and stack tests plus their results in a timely fashion. While the prior SRF found only 43.8% of these MDR data were entered timely, the FY2017 numbers indicate 87.5% were input to ICIS within the requested time frame. Similarly, the stack test date entry statistics improved from 58.8% to 88.9%.

State Response:

Although we have had challenges with turnover, both with our data steward, inspectors and permit writers, all of whom play a role in MDRs, we continue to make efforts to document and clearly define our data entry process through our ICIS QAPP and associated ICIS standard operating procedures.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
3a2 Timely reporting of HPV determinations [GOAL]	100%	40.5%	1	1	100%
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	82.3%	12	14	85.71%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	67.1%	8	9	88.89%

CAA Element 1 - Data

Finding 1-2Area for Improvement

Summary:

The City of Albuquerque (COA) continues to have some shortcomings in the area of timely and accurate reporting of Minimum Data Requirements (MDRs).

Explanation:

(2b) In the files reviewed from FY2017, there were omissions of some applicable Subparts in ICIS, EPA's database of record, for half of the facilities. Previous SRFs found similar discrepancies between the air program and/or Subpart data and the information reported AFS, the previous database of record. (3b3) Historically, timely entering of enforcement data has been somewhat problematic for the City. In the last SRF, 2/3 of the data were entered timely, while in both FY2016 and FY2017 none of the data were entered into ICIS timely. During FY2015, there was only one enforcement action reported, and it was entered in the system timely.

State Response:

(2b)- In 2018, the City created the ICIS Entry Tracking report for the purpose of assisting with timely and accurate entries into ICIS. We believe the continued use and supervisory oversight of the report will increase our entry timeliness and accuracy. The City agrees to Recommendation 1 below, and believes this will assist in meeting this goal. (3b3) - As previously stated, the ICIS Entry Tracking report has been created, and an ICIS Entry Summary report will be created. The summary report will show where in the process, from ICIS entry request to ICIS entry, any bottlenecks that may be occurring that could be impacting timeliness. The City believes the continued familiarity through the use of the tracking report and subsequent summary report by the data steward, inspectors and supervisors will help to increase the timelessness of data entry. The City agrees to the goal set out in Recommendation 2 below.

Recommendation:

Rec #	Due Date	Recommendation
1	10/31/2019	To address the issue of discrepancies between the air program and subparts in ICIS and those in the facility's permit (metric 2b), it is suggested that the City's new ICIS data steward begin providing inspectors with the list of programs and their subparts as recorded in ICIS for them to check for accuracy while they are reviewing the file for each inspection. EPA will work with the data steward to determine a procedure for providing this information. After the end of FY2019, the City is requested to provide documentation that the MDR data in ICIS for those facilities which have been inspected in the last quarter of the federal fiscal year are in agreement with the file information, such as providing pdfs of the permit subparts as they appear in ICIS along with documentation of the applicable subparts from the permit for each of the facilities inspected during the last quarter of FY2019.
2	10/31/2019	(3b3) EPA recognizes that the COA has recently experienced turnover in the position of ICIS-Air data steward. To improve performance with respect to this metric, it is recommended that the standard operating procedure (SOP) for inspectors' transmitting of the data to the steward for entry be reviewed for possible opportunities for increased efficiency. Progress toward meeting the 100% goal will be discussed during the monthly EPA/COA status calls, with monitoring of the Data Metric Analysis (DMA) available in the SRF section of Enforcement and Compliance History Online (ECHO). Meeting the 85% timely mark by the due date (10/31/2019) is requested.

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%		6	12	50%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	77.6%	0	6	0%

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

The city accomplished fulfillment of its compliance monitoring strategy (CMS) plan in FY2017.

Explanation:

(5a and 5b) EPA congratulates the COA on its continued successful completion of all FCEs - for majors, mega-majors, and synthetic minors - required to meet its CMS plan. Concomitantly, all FCE elements (element 6a) were documented and the reviewers found that the vast majority of the compliance monitoring reports (CMRs) or facility files contained sufficient documentation to support the compliance determinations made (86.7%, element 6b).

State Response:

(6b)- In an effort to improve on our compliance determinations, the City requests to know what was lacking/needed in the two CMRs that didn't have sufficient documentation.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a FCE coverage: majors and mega-sites [GOAL]	100%	88.7%	6	6	100%
5b FCE coverage: SM-80s [GOAL]	100%	93.7%	6	6	100%
6a Documentation of FCE elements [GOAL]	100%		13	13	100%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		13	15	86.67%

CAA Element 2 - Inspections**Finding 2-2**

Area for Attention

Summary:

Completion and reporting of ACC reviews appear to be a weakness in the City's enforcement program from the data metric, but further review reveals no issue.

Explanation:

EPA Response: (5e) Review of Title V annual compliance certifications (ACCs) appears to be problematic for the City at times over the past several years when simply considering metric 5e. 88.9% of reviews were completed per the metric in FY2015, while in both the previous SRF, at 33.3%, and the present SRF, at 25%, the number of reported reviews as documented by the metric fell below expectations. EPA Response to City's Comment: Upon more in-depth scrutiny of the ACCs marked as Not Reviewed in the Data Metric Analysis for FY2017, it appears that 3 of the 6 were reviewed in October, just after the close of the Federal Fiscal Year and two to three months after receipt of the ACC, similar to PNM Reeves which was received in July and reviewed in December. Another, the Southside Water Reclamation Facility, was reviewed timely but was entered into ICIS late due to pending litigation. However, the University of New Mexico, appears to have been reviewed on its regular cycle late in the year of both 2016 and 2017. Therefore, EPA finds that the required reviews have been completed. More rapid turnaround on review and reporting would improve the metric percentage.

State Response:

(5e) - Following the receipt of this draft SRF report, the City reviewed ICIS to view which and how many ACCs had been entered as reviewed in ICIS. For ACCs due in 2017, the City found that six (6) of the (8) ACCs had been entered into ICIS as "Reviewed" with the date of review included. One (1) of the ACCs, ABCWUA, had been reviewed as part of an ongoing enforcement action, but had not been entered into ICIS. This ACC will be entered into ICIS as reviewed with its review date. The last ACC, Bimbo Bakeries USA Inc., became a synthetic minor source in 2018. In ICIS, it appears that all the Title V records have been associated with its synthetic minor source records. Under the source's synthetic minor source records, ICIS shows that the 2017 ACC was reviewed and included the review date. The City would be interested in reviewing these entries with EPA to verify our findings.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	76.7%	2	8	25%

CAA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Summary:

The COA exhibits continued excellence in arriving at appropriate compliance determinations.

Explanation:

(7a) From the files reviewed, it appears that COA has made appropriate compliance determination, with the possible exception of GCC Rio Grande-Tijeras Plant. In this instance, there was one subpart which was not evaluated (NSPS F), so an area of noncompliance could have potentially been overlooked. The DMA numbers reveal discovery rates for HPVs and FRVs to be slightly below average at 4.20 % and zero, respectively. Because EPA's review found few instances of missed violations, it is evident that the discovery rate may be indicative of a good record of compliance among the facilities in the Albuquerque area.

State Response:

(7a) “ The City attributes the missed subpart to be part of an inspector pool with significantly less air quality experience we have enjoyed in the past and that the Title V Permit applicability table was the only area that cited the source as applicable to NSPS Subpart F. That is, the remaining sections of the permit did not have associated permit conditions for this subpart. The City will discuss this oversight with the team of inspectors and add a CFR source applicability review to our Inspection SOP. (7a1) - The City believes that its history of exceeding minimum CMS inspection frequency of its synthetic minor sources has continually resulted in a lower occurrence of HPVs and FRVs at regulated facilities.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a Accurate compliance determinations [GOAL]	100%		14	15	93.33%
7a1 FRV “discovery rate” based on inspections at active CMS sources		6.2%	1	24	4.17%
8a HPV discovery rate at majors		2.3%	0	8	0%

CAA Element 3 - Violations

Finding 3-2

Area for Attention

Summary:

The COA exhibits continued excellence in arriving at appropriate compliance determinations, however their accuracy rate is 83.3%, which is below the national goal.

Explanation:

Accurate determinations were reached in discriminating between HPVs and Federally Reportable Violations (FRVs)(metric 8c).

State Response:

(8c) In an effort to improve our HPV determinations, the City is requesting to know which facility the City did not classify as an HPV and what was the specific violation that was classified incorrectly.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
8c Accuracy of HPV determinations [GOAL]	100%		5	6	83.3%

CAA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Summary:

EPA commends the City on its handling of the identified HPV.

Explanation:

(10a1, 10a, 10b1, 10b, and 14) The single HPV identified in FY2017 was addressed within EPA's 2014 HPV Policy's stipulated 180-day time frame with an appropriate enforcement response. As a result, no cases required the implementation of a case development and resolution timeline (10a and 14).

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place	100%		0	0	0
10a1 Rate of Addressing HPVs within 180 days		63.7%	1	1	100%
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		1	1	100%
10b1 Rate of managing HPVs without formal enforcement action		12.9%	0	1	0%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		0	0	0

CAA Element 4 - Enforcement

Finding 4-2

Area for Attention

Summary:

Explanation:

(9a) The Settlement Agreement for GCC Rio Grande-Tijeras Plant references a prior agreement rather than making specific mention of requirements that would return the facility to compliance. Because this is one of only 5 formal enforcement actions for FY2017, the metric falls to 80%. In light of Albuquerque's record of consistently requiring corrective action with specified time frames (100% in the previous SRF), it is suggested that the City review the series of draft settlement agreements for GCC, but no formal recommendation and deadline are set. EPA Response to Albuquerque's Comment: Initial discussions have been conducted and the template agreement will be reviewed. The enforcement record, including the formal action, did not reference the corrective action or terms and conditions to return to compliance. Other records in the file, but not included in the Order, may provide such documentation.

State Response:

(9a) - To ensure the City completely and accurately understands EPA’s concern and makes the appropriate corrections to the City’s template agreements, the City requests to discuss the findings regarding GCC Rio Grande-Tijeras Plant’s compliance agreement.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule [GOAL]	100%		4	5	80%

CAA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Summary:

In all instance where penalties were assessed, they were found to be appropriately determined and documented.

Explanation:

Penalty calculations (2) had associated evaluations of gravity and economic benefit noted in the files, and resultant penalties were collected (metrics 11a and 12b). When the final penalty differed from the initial penalty calculation (1 instance), documentation of the rationale for the change in the penalty amount was duly noted.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document gravity and economic benefit [GOAL]	100%		2	2	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		1	1	100%
12b Penalties collected [GOAL]	100%		2	2	100%

STATE REVIEW FRAMEWORK

New Mexico

Resource Conservation and Recovery Act Implementation in Federal Fiscal Year 2018

U.S. Environmental Protection Agency Region 6

**Final Report
July 23, 2019**

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

III. Review Process Information

Resource Conservation and Recovery Act (RCRA)

Review Period: State FY18 (7/1/17 - 6/30/18)

Key Dates:

- Kick off Letter/Meeting - 4/11/18
- File Selection List sent: 8/24/18
- DMA sent: 10/9/18
- On-Site File Review conducted: 10/15-19/18

EPA contacts:

- Lou Roberts, 214-665-7579, roberts.lou@epa.gov
- Troy Stuckey, 214-665-6432, stuckey.troy@epa.gov
- Mark Potts, 214-665-2723, potts.mark@epa.gov

NMED contacts:

- John Kieling, 505-476-6035
- Janine Kraemer, 505-476-4372

Executive Summary

Introduction

Resource Conservation and Recovery Act (RCRA)

NMED continues to meet or exceed the goals and objectives of the authorized RCRA compliance and enforcement program. Further, the Hazardous Waste Bureau is commended for its participation in a pilot project for this SRF review that demonstrates how some inherent issues with the national SRF process can be addressed. Working with EPA's Office of Compliance, NMED and the Region piloted techniques for meeting national goals for consistency while allowing for nuances among states. Additionally, the pilot demonstrates how the SRF review can be integrated with the annual grant review for a timely and comprehensive review of NMED's RCRA program.

Pilot deemed a success by both EPA Region 6 and the NMED HWB. Review was on current data that was already being evaluated as part of the grant end-of-year evaluation. This allowed immediate feedback on State's data.

Doing this SRF review in conjunction with the grant end-of-year review allowed a focus on a couple of areas that probably would not have been identified in the normal SRF review done on year old date (i.e., FY17):

- The file for the Long-standing Secondary Violator may not have been reviewed in a total random File Selection process but with doing the SRF review in collaboration with the FY18 EOY the facility was targeted for on-site review.
- The same is true for the FRR issue, this may not have been discovered in a random File Selection process.

Areas of Strong Performance

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

Resource Conservation and Recovery Act (RCRA)

NMED has six inspectors of which three are located in Santa Fe and three are located in Albuquerque. Inspectors serve as enforcement officers. The NMED Hazardous Waste Bureau (HWB) has developed Standard Operating Procedures (SOPs) for conducting inspections: Compliance Evaluation Inspection (CEI) Procedure; Inspection Documentation File Procedure; Professional Conduct During Inspections; and Compliance Assistance Visits (CAV). NMED has

developed and implemented the use of a standardized inspection report and checklists for various universes: Large Quantity Generator (LQG); Small Quantity Generator (SQG); Conditionally Exempt Small Quantity Generator (CESQG); CESQG - Used Oil; and Transporter. This inspection report ensures the required information is always included and includes carbon copies so it can be provided to the facility at the time of the inspection. In addition, this inspection report includes other useful information such as the entry and exit conference dates/times. NMED continues every year to meet or exceed the inspection program goals identified in the RCRA Compliance Monitoring Strategy to do 100% of its Federal Treatment, Storage, Disposal (TSD) facilities every year; 100% of its operating TSD universe every two years; and 20% of its LQG universe every year. In addition, NMED responds to all hazardous waste complaints received usually with an on-site investigation/inspection which identifies a facility to be a SQG, CESQG, or Not Any Universe. NMED also continues to target facilities that are in universes (e.g., SQG, CESQG) for which EPA has not established program goals concerning the type, or minimum number, of inspections.

NMED has also developed and uses enforcement template letters: CEI in compliance; Notice of Violation (NOV); NOV RTC (Return to Compliance); NOV with penalty; RTC and no further action; Penalty; CAV with findings; and CAV without findings. NMED maintains documentation to support findings of violations, penalty calculations, and settlement negotiations. NMED continues to pursue those enforcement actions that result in significant protection to human health and the environment while involving complex negotiations.

The NMED RCRA hazardous waste program is championed by a strong cadre of HWB managers who are very experienced in targeting, inspection, and enforcement processes.

NMED HWB managers and EPA Region 6 have an excellent working relationship. NMED and EPA exchange feedback on issues and priorities of particular concern and work cooperatively to address them.

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:

Resource Conservation and Recovery Act (RCRA)

NMED depends upon EPA contractor support for Financial Record Reviews (FRR). NMED has a regulatory requirement for permitted facilities to submit annual financial assurance information, and all CEIs at non-Federal operating TSD facilities are to include a FRR. The FRR of the TSDF CEI is to be entered in RCRAInfo.

NMED operating non-Federal TSDF Universe is three. One of the two TSDF CEIs done in FY17 is still awaiting a FRR (i.e., FRR entered in RCRAInfo 4/21/17 as undetermined). The two TSDF

CEIs done in FY18 did not have, at the time of this review, a FRR entered in RCRAInfo.

Unfortunately, an EPA contract for reviewing financial records was not available for NMED for its FRRs. The EPA contract became available for NMED to use in November 2018.

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Summary:

NMED HWB personnel take RCRAInfo data entry seriously and make every effort to ensure data is entered and is correct. NMED has a written process for inspection and enforcement data to be entered into RCRAInfo. NMED has a dedicated position for RCRAInfo data entry within the Compliance and Technical Assistance Program. This position was vacant for a period of time during State's FY18. NMED has a Word document that is completed by inspectors and enforcement officers and routed electronically to the RCRAInfo data entry person. The responsibility for the data entry of penalty payments received is with the financial staff who are not in the Compliance and Technical Assistance Program. There was discussion during the on-site review including during the Exit Conference that perhaps this data entry should be with the RCRAInfo data entry person who is in the Compliance and Technical Assistance Program. NMED is not consistent in using the RCRAInfo penalty fields such as proposed penalty and final penalty collected. EPA compliments NMED on their use of the Violation Notes field of RCRAInfo. NMED enters the violation type (e.g., 265.D) and the regulatory citation (e.g., 265.54(d)) and a description of the violation is entered into the Violation Notes field (e.g., Failure to amend Contingency Plan with current ER Coordinator).

Explanation:

There were four facilities for which information was either missing or inaccurate. This information for all four facilities was addressed during the on-site review and data was entered and/or corrected. One facility had an incorrect date for when the informal enforcement action was issued. One facility was not identified as having a violation and the informal enforcement action that was issued was not in RCRAInfo. Two facilities did not have the final penalty amount collected.

State Response:

NMED is receiving emails from financial staff indicating payments have been entered into RCRAInfo.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2b Accurate entry of mandatory data [GOAL]	100%		27	31	87.1%

RCRA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

Twenty-five facilities were identified for this SRF review. A total of 28 inspection reports were reviewed. Three Federal TSDFs had two CEIs each. The 28 inspection reports were for compliance evaluation inspections (CEIs). NMED has developed templates and checklists for various inspection types and universes. NMED has also developed inspection report templates and checklists for individual TSDFs. NMED inspection reports include a detailed facility description that may include size of facility, number of employees, waste streams generated. The inspection report narrative also includes any permitted units and discussion regarding storage areas. The inspection report identifies if the facility had been inspected previously and if so the date. Inspector identifies the types of documents reviewed and areas observed. Each inspection report includes the inspector's observation of violations documented with photos and identifies if any compliance assistance was provided and any discussion regarding Best Management Practices. The inspection report includes the appropriate checklist for the universe inspected. TSDFs reviewed had their own unique checklist created for the year of inspection. Inspection reports included the date and time of arrival along with entry conference sign-in sheet of those in attendance. Inspection reports included the date and time of the exit conference along with the sign-in sheet of those in attendance. Several of the inspections involved conducting the exit conference at a later time and possibly by phone; these inspection reports documented such to include when the inspection report was sent to facility via email prior to the exit conference. The inspection reports reviewed were well written and detailed and provide sufficient documentation to determine compliance. EPA's reviewer suggested that at a minimum the initials of the person taking the photo be identified. The average time taken to prepare the 28 inspections reports reviewed was 12 days. The longest period of time was 38 days and the shortest period of time was 0 days (i.e., inspection report was completed and provided to facility during the exit conference).

Explanation:

NMED conducts a CEI annually of its seven operating Federal TSDF universe. NMED conducts annually a CEI at 50% of its operating non-Federal TSDF universe. NMED consistently conducts a CEI at 20% of its LQG universe identified by the latest National Biennial Reporting System at beginning of its FY, and usually conducts a higher percentage of around 30% or more. NMED also continues to target facilities that are in universes (e.g., SQG, CESQG) for which EPA has not established requirements concerning the type, or minimum number, of inspections. In addition,

NMED responds to all hazardous waste complaints received usually with an on-site investigation/inspection which identifies a facility to be a SQG, CESQG, or Not Any Universe.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5a Two-year inspection coverage of operating TSDFs [GOAL]	100%	88.1%	10	10	100%
5b Annual inspection of LQGs using BR universe [GOAL]	20%	16.1%	13	41	31.7%
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		28	28	100%
6b Timeliness of inspection report completion [GOAL]	100%		28	28	100%

RCRA Element 2 - Inspections

Finding 2-2

Area for Attention

Summary:

NMED depends upon EPA contractor support for Financial Record Reviews (FRR). NMED has a regulatory requirement for permitted facilities to submit annual financial assurance information, and the CEI at non-Federal operating TSD facilities are to include a FRR. The FRR of the TSDF CEI is to be entered in RCRAInfo.

Explanation:

NMED operating non-Federal TSDF Universe is three. One of the two TSDF CEIs done in FY17 is still awaiting a FRR (i.e., FRR entered in RCRAInfo 4/21/17 as undetermined). The two TSDF CEIs done in FY18 did not have at time of this review, a FRR entered in RCRAInfo. Unfortunately, an EPA contract for reviewing financial records was not available for NMED for its FRRs. The EPA contract became available for NMED to use in November 2018. EPA Region 6 intends to continue discussions with NMED so if EPA HQs contract lapses that there will be an alternative for these FRRs to be completed.

State Response:

As provided above, EPA was without a contractor to support financial record reviews; therefore, continued support from EPA and its' contractor is vital in maintaining current reviews and allow NMED to fulfill entries into RCRAInfo.

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Summary:

Compliance determinations are based on the inspection report which identifies violations (if exist). Inspection report includes information that is found during administrative review (pre-inspection, on-site, post-inspection) along with observations made during the on-site visit. EPA's review of the twenty-eight inspection reports and the two Non-Financial Records Review indicated that the appropriate determination was made in all twenty-five facility files.

Explanation:

EPA requested to review files for 25 facilities. A total of 28 inspection reports were reviewed. These 28 inspection reports were for CEIs. Three of the Federal TSDFs had two CEIs each. One of the Federal TSDF also had a NRR and a LQG with a post-closure permit had a NRR. Of these 28 CEIs, 6 facilities did not have any violations identified; 14 facilities had an informal enforcement action issued; and 8 facilities had a formal enforcement action issued. The Federal TSDF facility with a NRR had a formal enforcement action issued, and the LQG had an informal enforcement action issued. The LQG facility with NRR is a Long-Standing Secondary Violator as the informal enforcement action has not resulted in a return to compliance for the six violations. In addition, the informal enforcement action for this NRR was issued greater than 240 days and NMED has not identified facility as SNC.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2a Long-standing secondary violators					2
7a Accurate compliance determinations [GOAL]	100%		30	30	100%
7b Violations found during CEI and FCI inspections		34.9%	71	131	54.2%
8a SNC identification rate at sites with CEI and FCI		1.5%	4	246	1.6%
8c Appropriate SNC determinations [GOAL]	100%		20	21	95.24%

RCRA Element 3 - Violations

Finding 3-2

Area for Attention

Summary:

Explanation:

Below the National Goal and the National Average. State did not submit a request for Alternate Schedule as provided for in the RCRA ERP.

State Response:

A SNY was entered into RCRAInfo on day 163. NMED will ensure going forward a SNY will be entered into RCRAInfo for all facilities before day 150.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
8b Timeliness of SNC determinations [GOAL]	100%	84.9%	3	4	75%

RCRA Element 4 - Enforcement

Finding 4-1Meets or Exceeds Expectations

Summary:

Enforcement files are well organized to include inspection reports and correspondence. Enforcement actions are issued in a timely manner and based upon thorough and timely investigative work. All enforcement actions are reviewed by one or more NMED HWB managers. NMED continues to identify and address violations timely and appropriately. NMED requires corrective measures in their informal and formal enforcement actions to return facilities to compliance immediately or within thirty days. NMED follows up through required submittals and/or on-site visits. No further action closure letters are sent. Staff recommendation of closure letters are reviewed by one or more NMED HWB managers.

Explanation:

Enforcement files contained documentation identifying the facility had achieved compliance or was on a compliance schedule except for one. Of the 21 enforcement actions reviewed, only one had not resulted in a return to compliance. The informal enforcement action was appropriate. The facility responded that the alleged violations were not valid because the material was not hazardous waste. NMED has not closed the informal enforcement action. Since it has been open greater than 240 days without being identified as a SNC, it is identified as a Long-standing Secondary Violator

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10b Appropriate enforcement taken to address violations [GOAL]	100%		21	21	100%
9a Enforcement that returns sites to compliance [GOAL]	100%		20	21	95.24%

RCRA Element 5 - Penalties

Finding 5-1Meets or Exceeds Expectations

Summary:

Eleven penalty enforcement action files were reviewed. NMED issues a RCRAInfo Code 125, Written Informal Enforcement Action, NOV that includes a penalty. Penalty Calculation Sheets include Economic Benefit (EB) discussion for each violation. Documentation of the penalty calculations, adjustments, settlement, and compliance measures taken were maintained in the files. NMED will negotiate proposed penalties to expedite the settlement process. During the negotiating process, NMED takes into consideration the types of violations, the amount of time the facility took to come into compliance, and history of non-compliance. If a facility claims inability to pay, NMED will use EPA's ABEL software to review the facilities' financial status.

Explanation:

NMED includes both economic benefit and gravity components in their penalty calculations and documents adjustment of the initial penalty to the settled amount. Files reviewed had documentation of all considerations for the initial proposed penalty. The EB discussion on many of the Penalty Calculation Sheets were as follows:

- EB could not be determined for violation
- EB could not be determined because an unknown amount of waste was generated
- EB not considered because of statutory penalty maximum of \$10,000 per violation

Files reviewed had documentation of all considerations that resulted in the final penalty, SEP, ability to pay issues, payment schedule, and adjustments for such items as willingness to comply or history of non-compliance. NMED documents the collection of penalties to include date and check number or voucher number if paying electronically. Files documented collection of all final penalties including those on payment schedule. A copy of penalty payments received during this SRF review were seen and noted by EPA reviewer.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Gravity and economic benefit [GOAL]	100%		11	11	100%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		8	8	100%
12b Penalty collection [GOAL]	100%		8	8	100%

New Mexico

Clean Water Act Implementation in Federal Fiscal Year 2017

**U.S. Environmental Protection Agency,
Headquarters, Washington, DC**

**Final Report
July 23, 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.

Clean Water Act: Executive Summary

Area of Strong Performance

- Entry of data on permit limits and discharge monitoring report results is excellent and exceeds the national goal
 - Compliance determinations are clear and well documented in inspection and enforcement files
 - Enforcement actions promote return to compliance
 - Enforcement actions are generally appropriate to the severity of the violations
 - Penalty collection is well documented
-

Priority Areas to Address

- Few single event violations detected during EPA and state inspections are reported in the database of record
 - Non-major inspection coverage did not meet annual or long-term inspection coverage goals for individual and general permit facilities.
 - Inspection commitments for significant industrial users, municipal separate storm sewer systems (MS4s), concentrated animal feeding operations (CAFOs), biosolids, and stormwater industrial facilities did not meet the coverage goals in the NPDES CMS policy.
 - Inspection report timeliness is well below the national goal.
 - Timely enforcement in response to discharge monitoring report and single event violations is a continuing challenge since Round 3
 - Penalties lack justification for economic benefit values
 - The rationale for changes to initially calculated penalties is not well documented
-

Metric	Round 2 Finding Level (FY 2009)	Round 3 Finding Level (FY 2013)	Round 4 Finding Level (FY 2018)
2b: Files reviewed where data are accurately reflected in the national data system	Meets or Exceeds Expectations	Area for Improvement	Area for Improvement
4a2: Significant industrial user (SIU) inspections for SIUs discharging to non-authorized POTWs.	N/A	Area for Improvement	Area for Improvement
4a7: Number of Phase I and II MS4 audits or inspections.	N/A	Area for Improvement	Area for Improvement
4a8: Number of industrial stormwater inspections	N/A	Area for Improvement	Area for Improvement
4a10: Number of inspections of comprehensive large and medium NPDES-permitted CAFOs	N/A	Area for Improvement	Area for Improvement
4a11: Number of sludge/biosolids inspections at each major POTW.	N/A	Area for Improvement	Area for Improvement
5b1 Inspections coverage of NPDES non-majors with individual permits	Meets or Exceeds Expectations	Meets or Exceeds Expectations	Area for Improvement
5b2 Inspections coverage of NPDES non-majors with general permits	Meets or Exceeds Expectations	Meets or Exceeds Expectations	Area for Improvement
6a Inspection reports complete and sufficient to determine compliance at the facility.	Meets or Exceeds Expectations	Meets or Exceeds Expectations	Area for Attention
6b Timeliness of inspection report completion	Meets or Exceeds Expectations	Area for Attention	Area for Improvement

Area for Improvement
 Area for Attention
 Meets or Exceeds Expectations

Metric	Round 2 Finding Level (FY 2009)	Round 3 Finding Level (FY 2013)	Round 4 Finding Level (FY 2018)
7e Accuracy of compliance determinations	Meets or Exceeds Expectations	Area for Improvement	Meets or Exceeds Expectations
8b: Single event violations accurately identified as SNC or non-SNC	Meets or Exceeds Expectations	Area for Improvement	N/A*
8c: Percentage of SEVs identified as SNC reported timely at major facilities.	Area for Improvement	Area for Improvement	N/A*
9a: Enforcement responses that returned, or will return, sources in violation to compliance	Meets or Exceeds Expectations	Area for Improvement	Meets or Exceeds Expectations
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations	Area for Improvement	Area for Improvement	N/A
10b: Percentage of enforcement responses reviewed that address SNC that are taken in a timely manner.	Area for Attention	N/A	N/A
10b: Enforcement responses reviewed that address violations in an appropriate manner.	Meets or Exceeds Expectations	Area for Improvement	Area for Improvement

Area for Improvement
 Area for Attention
 Meets or Exceeds Expectations

*Analysis of SEV data entry is evaluated under Round 4 metric 2b

Metric	Round 2 Finding Level (FY 2009)	Round 3 Finding Level (FY 2013)	Round 4 Finding Level (FY 2018)
10c: Percentage of enforcement responses reviewed that address SNC that are appropriate to the violations	Meets or Exceeds Expectations	N/A	N/A
10d: Percentage of enforcement responses reviewed that appropriately address non-SNC violations.	Meets or Exceeds Expectations	N/A	N/A
10e: Percentage of response for non-SNC violations where a response was taken in a timely manner.	Area for Attention	N/A	N/A
11a: Penalty calculations that document and include gravity and economic benefit	Area for Attention	Area for Improvement	Area for Improvement
12a: Documentation of the rationale for the different between the initial penalty calculation and the final penalty.	Area for Attention	Area for Improvement	Area for Improvement

Area for Improvement
 Area for Attention
 Meets or Exceeds Expectations

III. Review Process Information

Clean Water Act (CWA)

File Review: November 2018

Draft Submitted for Comment: March 2019

Final Report: July 26, 2019

Clean Water Act: Findings (CWA)

CWA Element 1 - Data

Finding	Finding 1-1:
Finding Level	Meets or Exceeds Expectations
Summary	Data Completeness and Accuracy for Permit Limits and DMR: Data completeness for water permit limits and discharge monitoring reports (DMRs) exceeds the national goal of $\geq 95\%$.
Explanation	Permit limits are the maximum amount of a pollutant that the facility may release according to its permit and DMRs are the actual pollutant amounts released. These two pieces of information are minimum data requirements for both major and non-major facilities. Exceedance of permit limits indicates that a violation occurred on a discharge monitoring report. EPA enters permit limits on behalf of the state in this directly implemented program, while most regulated facilities transmit discharge monitoring report (DMR) data using the electronic discharge monitoring report data system Net Discharge Monitoring Reports (NetDMR). EPA entered 108 of 109 required permit limits into the Integrated Compliance Information System. Of the 4,405 discharge monitoring reports required, facilities submitted 4,270 DMRs. Seventy-four percent (118) of the missing 135 DMRs are for non-major facilities.
Regional Response	The Region recognizes that there are permittees that are not using net DMRs due to various factors (e.g. knowledge and/or access limitations). The Region is planning an on-site compliance assistance efforts during the summer of 2019 to help operators be compliant with DMR requirements and as part of that help ensure they are registered.
Repeat Recommendation	No
# of Recommendation	0
Relevant metrics:	

Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	State %
1b5: Permit limit data entry rate for major and non-major facilities	≥95%	98.8%	108	109	99.10%
1b6: DMR data entry rate for major and non-major facilities	≥95%	96.3%	4,270	4,405	96.94%

Finding	Finding 1-2:
Finding Level	Area for Improvement
Summary	Data Completeness for SEV Violations: Single event violations found during EPA and state inspections at major and non-major facilities are missing in the ICIS database. Ten of 27 files reviewed have missing or inaccurately entered minimum data requirements.
Explanation	Files reviewed had missing single event violations and one unreported inspection along with inaccurately entered dates for inspections, inspection report finalization, and enforcement actions in 62.96% of files reviewed. Six of the 10 files with incomplete or inaccurate information had missing single event violations. The review also found isolated, infrequent missing minimum data requirements on: an unreported inspection, an inaccurately entered enforcement action date, an inaccurately entered inspection report date, an inaccurately entered inspection report finalization date. The 1 unreported state inspection at one major facility and 20 non-major facilities is based upon regional review of the data metric analysis and inspection coverage table. This finding on single event violation data entry is a recurring finding from past SRF reviews.
Regional Response	The Region recognizes that there has been vast improvement since the SRF Round 3 due to revised data entry procedures.
Repeat Recommendation	Yes
# of Recommendation	1

Rec #	Due Date	Recommendation
1	3/30/2020	EPA HQ will review single event violations listed in 6 inspection reports (3 state, 3 EPA) and compare this information to ICIS SEV data entered. This recommendation will be considered to implemented when $\geq 71\%$ of inspection reports reviewed have SEVs entered in ICIS for major and non-major facilities. Progress will be monitored in 2020 and beyond if FY 2019 inspection report data is incomplete.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	EPA %
2b: Files reviewed where data are accurately reflected in the national data system.	100%		17	27	62.96%

CWA Element 2 - Inspections

Finding	Finding 2-1:
Finding Level	Meets or Exceeds Expectations
Summary	<p>Inspection Coverage: Inspection coverage in New Mexico meets national inspection coverage policy requirements for major facilities over a two year period. The region did not meet annual FY 2017 inspection coverage due to resource constraints.</p>
Explanation	<p>The National Pollutant Discharge Elimination System Compliance Monitoring Strategy (NPDES CMS) coverage goal for major facilities is 100% inspection coverage over a 2 year period of time. The region and state inspected 30 of the 31 major facilities (96.77%) in New Mexico over a two year time period in FY 2016-2017. The region and state conducted 13 inspections in FY 2017 resulting in 41.94% inspection coverage at major facilities. These results factor in FY 2016-2017 frozen data, End of Year reports on inspection coverage, information provided by the region, and those found during the on-site file review.</p> <p>There are separate NPDES CMS coverage goals for pretreatment, SSOs, and Phase I and II stormwater construction. Combined regional and state inspection coverage met, or is within ten percentage points, of the specific coverage goals for each of these inspection activities as indicated in the relevant metrics table below. No combined sewer systems exist in New Mexico, which is why performance is listed as 0% in the performance results shown below.</p>
Regional Response	
Repeat Recommendation	No
Completion Verification	
# of Recommendation	0

Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	EPA %
4a1: Pretreatment compliance inspections and audits at approved local pretreatment programs.	100% CMS		The 1 audit conducted; 5 pretreatment inspections	6	100%
4a4: Number of CSO inspections.	100% CMS		n/a	n/a	n/a
4a5: Number of SSO inspections	100% CMS		3	14	21.4%
4a9: Number of Phase I and Phase II construction stormwater inspections	100% CMS		3	5	60%
5a1 Inspection coverage of NPDES majors. [GOAL]	100% CMS	40.6%	13	31	41.94%

Finding	Finding 2-2:
Finding Level	Area for Attention
Summary	Inspection reports: Inspection report quality is below the national goal of 100%.
Explanation	Four of the fourteen inspection reports reviewed were not complete and sufficient to determine compliance at the facility. Four of the inspection reports reviewed were primarily checklist based and did not provide a strong narrative to document the inspector's observations or evidence of deficiencies found.
Regional Response	
Repeat Recommendation	
Completion Verification	
# of Recommendation	

Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	EPA %
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%		10	14	71.43%

Finding	Finding 2-3:
Finding Level	Area for Improvement
Summary	<p>Inspection Coverage at Non-Majors & inspection report timeliness: Non-major inspection coverage did not meet annual or long-term inspection coverage goals for individual and general permit facilities. Inspection commitments for significant industrial users, municipal separate storm sewer systems (MS4s), concentrated animal feeding operations (CAFOs), stormwater industrial, and biosolids facilities did not meet the coverage goals in the NPDES CMS policy. Inspection report timeliness is below the national goal.</p>
Explanation	<p>The NPDES CMS goal for traditional non-major facilities is 100% over a 5 year time period. Roughly 20% coverage is anticipated each year to achieve this goal. The region and state inspected 2% of the 2,048 non-major individual and general permit facilities in FY 2017. Over the last five years, the region and state's combined inspection coverage is $121/2048 = 5.9\%$. Inspection coverage for non-majors is 14.1% below the national 5 year target for inspection coverage.</p> <p>There are separate NPDES CMS coverage goals for significant industrial users (SIUs), municipal separate storm sewer systems, CAFOs, biosolids, and stormwater industrial facilities that were not met in FY 2017. The coverage goal for SIUs in the Clean Water Act is for one sampling inspection at each user annually. The region and state did not meet this commitment as no SIU inspections were conducted. The MS4 coverage goal is one on-site audit, on-site inspection, or off-site desk audit of each Phase I MS4 every five years and one inspection or on-site audit of each Phase II MS4 every seven years thereafter. There is one large/medium MS4 and 8 small MS4s in New Mexico with no inspections reported in FY 2017. Prior year MS4 results in End of Year reports indicate that there was one Phase I MS4 inspection reported in FY 2015 and no Phase II inspections reported for 11% coverage, which is 89% under the national</p>

coverage goal. The stormwater industrial inspection coverage goal is 10% of the universe each year; the region and state completed 3 inspections in a 979 facility universe for 0.3% coverage. The CAFO coverage goal is one comprehensive inspection of each large and medium NPDES permitted CAFO every five years. No CAFO inspections are reported in FY 2017. Past end of year reports indicate that the Region and State conducted 11 CAFO inspections in FY 2012-2015 and none in FY 2016. Long term CAFO coverage is $11/68=16.18\%$, which is 83.82% under the five year comprehensive inspection coverage goal. The biosolids inspection coverage goal is one inspection every 5 years. The annual coverage for biosolids inspections is 0% as there are no biosolids inspections reported in FY 2017. In prior years, one biosolids inspection occurred in 2014, with none reported in end of year reports in 2015-2016 for 2.5% coverage toward the national coverage goal of 100% coverage within a 5 year time period.

Inspection report timeliness results are below the national goal of 100%. The standard for inspection report timeliness in the National Pollutant Discharge Elimination System Enforcement Management System (NPDES EMS) is 30 days for non-sampling inspections and 45 days for sampling inspections. The Region finalized nine of the 14 inspection reports 89-570 days after the inspection. One state inspection report was finalized in 37 days. The average number of days to finalize an inspection report is 137 days.

The EPA Region 6 office and the state share inspection coverage responsibilities and results include both state and EPA conducted inspections. Given recent hiring of two federal CWA inspectors in the middle of 2017, the regional office anticipates that coverage will improve to at least 20% for traditional non-major facilities in FY 2018 and beyond for the non-major universe.

This finding on inspection coverage is a recurring finding from past SRF reviews.

Regional Response

Coverage: The Region is conducting an analysis to determine the true universe of minors. The majority of the minors universe is from stormwater general permits which may not be active and/or where the permittees are construction sites that operate for a short amount of time

The region would like for the FY19 alternative CMS plan to be approved which justifies a deviation from the policy's inspection

coverage for minors (e.g. permittee not located close to waters of the U.S.)

The Region would like for the SRF program to re-consider the 30 day timeline goal as it is not in line with the current Bowling Chart performance measure of 60 days for inspection report completeness

The Region has implemented various project management tools to help ensure timely inspections. They include 1. an e-management system which includes milestones and due dates for various tasks leading up to the final report. This helps management electronically track progress. In addition, we have 2. included huddle rooms which aim to also tracks progress for inspection report assigned to staff. On a weekly basis, the team discusses the status of the reports, any challenges they've encountered, and collectively identify solutions to overcome any delays.

Repeat Recommendation	Yes
Completion Verification	
# of Recommendation	2

Recommendation:

Rec #	Due Date	Recommendation
1	09/30/2020	Review six randomly selected FY 2019 state and regional inspection reports to assess inspection report quality and timeliness. EPA HQ will share findings from the review of inspection reports on inspection report quality and timeliness. This recommendation will meet or exceed expectations when $\geq 71\%$ of the inspection reports reviewed meet NPDES inspection manual standards for quality and inspection report timeliness standards of 30-45 days as required by the NPDES EMS.
2	04/30/2020	Conduct an annual data metric analysis using FY 2019 frozen data to examine inspection coverage for metrics 5b1, 5b2, and request FY 2018 inspection results for SIUs, CAFOs, stormwater industrial, biosolids, and MS4 facilities. This recommendation will be closed out when the region meets either 1.) NPDES CMS coverage goals, or 2.) region specific alternative compliance monitoring strategy plan commitments for FY 2019. Progress will be monitored on an annual basis using annual data metric analyses if FY 2019 inspection coverage does not meet national CMS policy or alternative region specific compliance monitoring strategy plan commitments.

Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	EPA %
4a2: Significant industrial user (SIU) inspections for SIUs discharging to non-authorized POTWs.	100% CMS		0	1	0%
4a7: Number of Phase I and II MS4 audits or inspections.	100% CMS		0	9	0%
4a8: Number of industrial stormwater inspections	100% CMS		3	979	0.31%
4a10: Number of inspections of comprehensive large and medium NPDES-permitted CAFOs	100% CMS		0	68	0%
4a11: Number of sludge/biosolids inspections at each major POTW.	100% CMS		0	39	0%
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100% CMS	48.9%	17	91	18.68%
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL]	100% CMS	3.7%	24	1,957	1.23%
6b Timeliness of inspection report completion [GOAL]	100%		5	14	35.71%

CWA Element 3 - Violations

Finding	Finding 3-1:
Finding Level	Meets or Exceeds Expectations
Summary	<p>Accuracy of Compliance Determinations: The majority of files reviewed show clear and accurate compliance determinations. Compliance rates for all types of violations are within 5 percentage points of the national average. Single event violation reporting continues to increase in number indicating better data quality for violation reporting since the last SRF review.</p> <p>EPA reviewed 14 inspection files and found accurate compliance determinations in 13 of the 14 files reviewed (92.86%).</p> <p>There 27 single event violations reported from 54 inspections at major and non-major facilities. The on-site file review identified several files with unreported single event violations at both major and non-major facilities; these findings and recommendations appear under Element 1.</p>
Explanation	<p>There are two compliance rate metrics, one for overall noncompliance and one that focuses on the most serious significant noncompliance (SNC) and Category I violations. Violations reported under CWA metric 7k1 on the percentage of major and non-major facilities in noncompliance include: effluent, single event, compliance schedule, and permit schedule violations. Three hundred sixty-five of the 2,087 facilities in New Mexico (17.49%) have one or more violations reported in FY 2017. The majority of these violations (91%) are violations at smaller, non-major facilities. There are 281 of 2,074 facilities in significant or Category I noncompliance (13.55%). Ninety-six percent of the 281 facilities in significant or Category I noncompliance are associated with non-major facilities.</p>
Regional Response	
Repeat Recommendation	No
Completion Verification	
# of Recommendation	0

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	EPA %
7e Accuracy of compliance determinations [GOAL]	100%		13	14	92.86%
7j1 Number of major and non-major facilities with single-event violations reported in the review year. [INDICATOR]					27
7k1 Major and non-major facilities in noncompliance. [INDICATOR]		18.1%	365	2087	17.49%
8a3 Percentage of major facilities in SNC and non-major facilities Category I noncompliance during the reporting year. [INDICATOR]		11.2%	281	2074	13.55%

CWA Element 4 - Enforcement

Finding	Finding 4-1
Finding Level	Meets or Exceeds Expectations
Summary	Enforcement Achieves Return to Compliance: Many of the enforcement actions reviewed returned, or will return, facilities to compliance.
Explanation	EPA reviewed 22 enforcement actions and found that 18 of the actions returned or will return facilities to compliance. Return to compliance is achieved through compliance schedules in formal enforcement, or documentation of facilities taking complying actions in response to formal or informal enforcement. Four of the reviewed actions for 2 major and 2 non-major facilities did not promote return to compliance due to: lack of a compliance schedule; informal enforcement response to chronic, recurring violations over a number years with no return to compliance; and failure to meet compliance schedule deadlines for several quarters with ongoing violations for 8 years with no enforcement escalation to promote return to compliance.
Regional Response	
Repeat Recommendation	No
Completion Verification	

of Recommendation 0

Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	EPA %
9a: Enforcement responses that returned, or will return, sources in violation to compliance	100%		18	22	81.82%

Finding	Finding 4-2
Finding Level	Area for Attention
Summary	Appropriate Enforcement Action: The appropriateness of enforcement response improved since the last on-site file review from 65% of FY 2012 actions to 73% of actions reviewed in FY 2017.
Explanation	Twenty-two actions reviewed (73.33%) have appropriate enforcement taken based on NPDES EMS violation response action criteria. Five files had a pattern of chronic violations with no enforcement in the review year. Three files reviewed had enforcement for some, but not all violations, or informal enforcement with no escalation for ongoing violations.
Regional Response	
Repeat Recommendation	No
Completion Verification	
# of Recommendation	0

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	EPA %
10b1: Enforcement responses reviewed that address violations in an appropriate manner.	100%		22	30	73.33%

Finding	Finding 4-3
Finding Level	Area for Improvement

Summary

Timely Enforcement Response: More than half of all files reviewed show enforcement occurring beyond the enforcement response guidelines set forth in the NPDES EMS.

One of 9 major facilities with significant noncompliance violations received formal enforcement in FY 2017 as indicated by the results for CWA Metric 10a1. Of those facilities with no formal enforcement, the violations are primarily discharge monitoring reporting violations or failure to submit discharge monitoring reports for 20 of the 26 quarterly violations reported for eight facilities. The remaining violations are effluent violations of monthly and non-monthly effluent limits.

Explanation

Past SRF reviews of FY 2012 enforcement and the current review of FY 2017 enforcement actions identified the timeliness of enforcement as a significant issue. Sixteen of 30 files reviewed (53.33%) in FY 2017 have timely enforcement response to violations. Lack of timely enforcement is the primary reason for the 53% result for CWA metric 10b2 in 14 actions reviewed, while 5 files had a pattern of chronic violations with no enforcement in the review year. Three files reviewed had enforcement for some, but not all violations.

Regional Response

Repeat Recommendation Yes

Completion Verification

of Recommendation 1

Rec #	Due Date	Recommendation
1	06/01/2020	HQ will send a list of 4 randomly selected enforcement actions to Region 6 that will be reviewed for timely enforcement based on FY 2019 frozen file selection tool information on formal actions taken. HQ will send the results of the timely and appropriate analysis of FY 2019 formal enforcement actions to Region 6. This recommendation will be completed when $\geq 71\%$ actions taken meet NPDES EMS violation response action criteria for timeliness which are within at least 12 months of violation discovery. Progress will continue to be monitored on an annual basis if the 71% result is not achieved in 2020.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	EPA %
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations [INDICATOR]		2.1%	1	9	11.11%
10b2: Enforcement responses reviewed that address violations in a timely manner.	100%		16	30	53.33%

CWA Element 5 - Penalties

Finding	Finding 5-1 :
Finding Level	Meets or Exceeds Expectations
Summary	Penalty Collection Documented: The Region documented penalty collection for all enforcement files reviewed.
Explanation	EPA reviewed all three penalty calculations completed in FY 2017, along with two prior year penalty calculations in FY 2016 and FY 2015. The regional office provided copies of financial documentation demonstrating full payment of the penalty assessed.
Regional Response	
Repeat Recommendation	No
Completion Verification	
# of Recommendation	0

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	EPA %
12b Penalties collected [GOAL]	100%		5	5	100%

Finding	Finding 5-2:
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Finding Level	Area for Improvement
Summary	Gravity and Economic Benefit Penalty Calculation Documented: Several penalty calculations lacked documentation of economic benefit calculations and the rationale for changes to penalty amounts during the settlement process.
Explanation	<p>EPA reviewed five economic benefit and gravity penalty calculations. Four of the five files reviewed did not document the \$0 value assessed for economic benefit. One file also had no economic benefit documentation, but it was for only one violation associated with failure to prepare discharge monitoring reports that has a very low cost, if any, to the facility as the only cost involved is the operator's time to prepare the spreadsheet. The regional office explained that the region's common practice is to assess \$0 for economic benefit for violations involving the preparation of paperwork.</p> <p>EPA reviewed five penalties for the rationale on changes to the initial penalty and found that three files lacked documentation for the changes. Much of the documentation is in email correspondence, which is difficult to track over time. Standardizing the way that the region documents changes to penalties and economic benefit would be beneficial and the existing penalty calculation template provides a structure for this information.</p> <p>These findings on penalty calculation and changes to penalties are recurring findings from past SRF reviews.</p>
Regional Response	The Region has a penalty checklist that includes an economic benefit component and will ensure that it's properly filled out with justification as to why economic benefit was not collected.
Repeat Recommendation	Yes
Completion Verification	
# of Recommendation	1

Recommendation:

Rec #	Due Date	Recommendation
1	4/30/2021	Review 5 randomly selected penalty files for review of economic benefit calculation and changes to initial penalties based on FY 2020 frozen file selection tool data. Supporting data including email traffic, BEN data, and any other information that substantiates penalty calculation and changes to penalties will be requested. If fewer than 5 penalties exist, HQ will review all penalties present in the file selection tool. HQ will send the results of the analysis to the Region and the recommendation will be closed when $\geq 71\%$ of the files reviewed document economic benefit and the rationale for changes to penalties.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	EPA N	EPA D	EPA %
11a: Penalty calculations that document and include gravity and economic benefit	100%		1	5	20%
12a: Documentation of the rationale for the different between the initial penalty calculation and the final penalty.	100%		2	5	40%