

STATE REVIEW FRAMEWORK

South Dakota

**Clean Water Act, Clean Air Act, and
Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2016**

**U.S. Environmental Protection Agency
Region 8**

**Final Report
July 25, 2019**

Executive Summary

Introduction

EPA Region 8 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the South Dakota Department of Environment and Natural Resources.

EPA bases SRF findings on data and file review metrics, and conversations with program management and staff. EPA will track recommended actions from the review in the SRF Tracker and publish reports and recommendations on EPA's ECHO web site.

Areas of Strong Performance

CWA

- The state's Discharge Monitoring Report (DMR) entry rate for major facilities exceeded the national goal.
- The state's penalty calculations consider and include, as appropriate, both gravity and economic benefit components. The state files contain documentation of penalty payment.
- The state satisfied its inspection commitments for NPDES majors, combined sewer overflow (CSO) communities, pretreatment compliance inspections (PCIs), stormwater, and pretreatment audits in FY 2016.
- State penalty actions accounted for the difference between initial and final penalty assessment, and penalties were collected.

CAA

- The state conducts inspections at Title V major and SM-80 sources at frequencies greater than specified by the CAA Stationary Source Compliance Monitoring Strategy (CAA CMS).
- The state's penalty calculations consider and include, as appropriate, both gravity and economic benefit components. The state files contain documentation of penalty payment.

RCRA

- The state meets the national goal of 100% entry of data that is complete and accurate based on file reviews.
- The state takes timely and appropriate action to address violations identified during inspections.
- The state inspections are thorough and detailed. The inspection reports allow appropriate violation determinations, none of which resulted in formal or informal enforcement actions during FY 2016.
- There were no penalties assessed or collected during the review timeframe. Based upon inspection findings and violation determination, no formal actions, including penalty assessment were warranted.

Priority Issues to Address

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

CWA

- ICIS did not contain complete and accurate data for all facilities.
- The state did not satisfy inspection commitments in the pretreatment and municipal separate storm sewer (MS4) universes for FY 2016 and appears to lack adequate inspection resources for pretreatment and stormwater.

CAA

- Widespread and persistent issues with data inaccuracy and incompleteness exist in ICIS-Air, which make it hard to identify when serious problems exist or to track state actions. Compliance monitoring activities are not entered into ICIS-Air according to prescribed timelines, and if data is entered, minimum data requirements (MDRs) are typically incomplete or incorrect. EPA recommends that the state revise its procedures and training requirements to ensure MDRs for all compliance and enforcement data are entered into ICIS-Air on a routine and timely basis. EPA will continue to offer data-entry training and guidance documents to the state, as needed.

RCRA

- There were no priority areas to address in the RCRA Subtitle C Program.

Most Significant CWA-NPDES Program Issues¹

- Enforcement was not appropriate and/or timely in response to some violations.

Most Significant CAA Stationary Source Program Issues

- Compliance monitoring reports (CMRs) are often lacking information on whether all required full compliance evaluation (FCE) elements were reviewed, and CMRs frequently lack the detail necessary to determine the compliance status of the facility. EPA recommends that the state revise its CMR template or issue supplemental guidance to ensure that CMRs clearly and consistently capture all required FCE elements.
- Federally-reportable violations (FRVs) are not identified and reported to ICIS-Air according to the FRV policy.
- High priority violation (HPV) determinations are not made in a timely manner, and HPVs are not addressed within the timeframes outlined in the HPV policy. EPA recommends that the state compare all violations to the criteria in the HPV policy to determine whether violations rise to HPV status and discuss any uncertainties in HPV determinations with EPA. The state should

¹ EPA's "National Strategy for Improving Oversight of State Enforcement Performance" identifies the following as significant recurrent issues: "Widespread and persistent data inaccuracy and incompleteness, which make it hard to identify when serious problems exist or to track state actions; routine failure of states to identify and report significant noncompliance; routine failure of states to take timely or appropriate enforcement actions to return violating facilities to compliance, potentially allowing pollution to continue unabated; failure of states to take appropriate penalty actions, which results in ineffective deterrence for noncompliance and an unlevel playing field for companies that do comply; use of enforcement orders to circumvent standards or to extend permits without appropriate notice and comment; and failure to inspect and enforce in some regulated sectors."

place priority on HPVs to ensure that all attempts are made to address HPVs according to prescribed timelines.

Most Significant RCRA Subtitle C Program Issues

- There were no findings that fell into the ‘Area for State Improvement’ category and therefore, there are no significant RCRA issues that require state improvement.

I. Background on the State Review Framework

The State Review Framework (SRF) is designed to ensure that EPA conducts nationally consistent oversight. It reviews the following local, state, and EPA compliance and enforcement programs:

- Clean Water Act National Pollutant Discharge Elimination System
- Clean Air Act Stationary Sources (Title V)
- Resource Conservation and Recovery Act Subtitle C

Reviews cover:

- **Data** — completeness, accuracy, and timeliness of data entry into national data systems
- **Inspections** — meeting inspection and coverage commitments, inspection report quality, and report timeliness
- **Violations** — identification of violations, determination of significant noncompliance (SNC) for the CWA and RCRA programs and high priority violators (HPV) for the CAA program, and accuracy of compliance determinations
- **Enforcement** — timeliness and appropriateness, returning facilities to compliance
- **Penalties** — calculation including gravity and economic benefit components, assessment, and collection

EPA conducts SRF reviews in three phases:

- Analyzing information from the national data systems in the form of data metrics
- Reviewing facility files and compiling file metrics
- Development of findings and recommendations

EPA builds consultation into the SRF to ensure that EPA and the state understand the causes of issues and agree, to the degree possible, on actions needed to address them. SRF reports capture the agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state programs.

Each state's programs are reviewed once every five years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2013 and will continue through FY 2017.

II. SRF Review Process

Review period: FY 2016

Key dates:

- SRF Kick-Off Letter: February 6, 2017 (See Appendix)
- CWA NPDES File Review: April 2-4, 2017
- CAA File Review: May 15-19, 2017
- RCRA File Review: April 24-29, 2017

State and EPA key contacts for review:

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III. SRF Findings

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

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

There are three categories of findings:

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

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

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

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

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

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

Clean Water Act Findings

CWA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Summary:

The State's DMR entry rate for major facilities exceeded the national goal.

Explanation:

Based on an analysis of data in the Integrated Compliance Information System (ICIS) at the time of the review, 884 of 884 expected discharge monitoring reports (DMRs) for major facilities were present in the database for FY 2016. The state's performance for this metric is above the national goal and national average.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
1b2 DMR data entry rate for major facilities [GOAL]	≥95%	96.8%	884	884	100%

CWA Element 1 - Data

Finding 1-2

Meets or Exceeds Expectations

Summary:

The State's permit limit rate for major facilities was above the national goal when accounting for major permits without numeric limits.

Explanation:

Based on an analysis of ICIS data at the time of the review, 27 of the State's 27 major facilities had permit limits coded into ICIS. The State's performance for this metric was above the national goal and national average. Permit limits for majors are required to be entered per the EPA's 2007 memorandum "ICIS Addendum to the Appendix of the 1985 Permit Compliance System Policy Statement."

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
1b1 Permit limit data entry rates for major facilities [GOAL]	≥95%	91.1%	27	27	100%

CWA Element 1 - Data

Finding 1-3

Area for Improvement

Summary:

ICIS did not contain complete and accurate data for all facilities.

Explanation:

Four of the 17 files reviewed did not have complete and/or accurate data reported to ICIS for one or more of the minimum data requirements (MDRs) listed in the EPA’s 2007 memorandum “ICIS Addendum to the Appendix of the 1985 Permit Compliance System Policy Statement” and its attachment “Addendum to Appendix C of the PCS Polity Statement Minimum ICIS-NPDES Data Elements Comparable to PCS WENDB and other System- Required ICIS-NPDES Data Elements.”

Concentrated animal feeding operation (CAFO), industrial stormwater, and construction stormwater facilities were not included in this metric. No facility data for CAFO or stormwater facilities were entered into ICIS during FY 2016. It is recognized that the FY16-17 PPA stated these types of inspections would be manually reported to EPA and not entered in ICIS. The FY18-19 has been updated to reflect the E-Reporting Rule, which requires that inspection and enforcement action data be entered into ICIS beginning December 21, 2016. Under 40 CFR 123.26(b) and (c), authorized NPDES programs are required to conduct inspections, including of unpermitted facilities, to determine whether there are facilities that are discharging without a permit. Under 40 CFR 123.41(a), authorized states are required to share all information obtained in the administration of their NPDES program with EPA. EPA maintains this information in its national NPDES data system ICIS-NPDES. EPA also makes inspection data publicly available via Enforcement and Compliance History Online (ECHO), which is publicly available. This information is important for public transparency.

Missing data included two single event violations (SEVs) for wastewater violations identified during two major facility inspections (a significant non-compliance (SNC) and a non-SNC). Warning letters seeking corrective actions are considered informal enforcement and, along with SEVs, are part of the MDRs for majors. One of five major files reviewed was missing one warning letter. Since the audit, DENR has

corrected this finding. The fourth facility had an address in ICIS that was different from the address in the paper file.

State Response:

For the facilities that had missing or incorrect data requirements in ICIS:

- 2 of these facilities were missing single event violations (SEVs). We have reviewed the requirements for inputting SEVs into ICIS and believe this will be a significant increase in workload with no corresponding benefit to the state in administering the program. This appears to be a requirement to better aid EPA in its oversight of South Dakota. Therefore, we will commit to this increased workload on EPA’s behalf once EPA provides the necessary funding to the state.
- 2 of these facilities were municipal permits.
 - The SIC and NAICS codes for one of the cities have now been entered in ICIS
 - For the remaining city, the PO Box address listed in our database, the 2016 inspection report, the permit and statement of basis, and in ICIS are all “PO Box 298.” There is not discrepancy or data entry error. We did have a typographical error on a couple of letters sent to the city, indicating an address of “PO Box 295.” DENR certainly strives to be accurate at all times, but we do not agree this represents a failure or deficiency in our overall program.

As we have noted in our Performance Partnership Agreement, stormwater and CAFO permits are not routinely entered into ICIS; this information is manually reported to EPA. This information will be batch uploaded to ICIS once our existing databases have been converted. At that point, DENR has committed to using ICIS for stormwater and CAFO permits. DENR entered the minimal amount of information on these 8 facilities to aid in tracking enforcement activities and share information with EPA. At this point, it is not necessary to fully enter all of the required data elements into ICIS as our databases are the primary mechanisms to track the permitting activities. Our existing federal funding has been flat and even declining. Our information and technology staff have assured us they would be able to make better progress on the database conversions if more funding were provided.

DENR currently has a quarterly conference call with EPA. We would ask the recommendation below to be changed to simply ask for periodic reports on South Dakota’s progress in updating its databases during our quarterly conference calls, rather than requiring a formal written report by a specific due date.

DENR has a strong history of inputting high quality data into ICIS. This will continue once we begin inputting stormwater and CAFO information into ICIS. Therefore, DENR would ask that EPA change this finding to an “Area for State Attention” as the errors or inaccuracies with the existing data in ICIS are quite minor.

Recommendation:

Rec #	Due Date	Recommendation
1	10/31/2019	<p>It is recognized that 40 CFR 127 requires certain data to be entered in ICIS, but current resources do not allow for this. DENR should submit periodic progress reports to the Regional Office due on October 31 of 2019 and quarterly progress reports due on January 31, April 30, July 31 and October 31 thereafter with information on progress towards coming into compliance with 40 CFR 127 until the conversion is complete and EPA confirms it. These reports will serve to document the progress. Once compliance with 40 CFR 127 is achieved, this recommendation will be considered complete. The Regional Office would like to see progress toward meeting the 40 CFR 127 goal of full migration to ICIS by December 2020. The minimum data requirements (MDRs) listed in the EPA's 2007 memorandum "ICIS Addendum to the Appendix of the 1985 Permit Compliance System Policy Statement" and its attachment "Addendum to Appendix C of the PCS Polity Statement Minimum ICIS-NPDES Data Elements Comparable to PCS WENDB and other System- Required ICIS-NPDES Data Elements" will be entered in ICIS for each CAFO inspected along with data required by the NPDES Electronic Reporting regulation (40 CFR 127) once DENR's databases are capable of uploading data to the ICIS system.</p>

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%		13	17	76.5%
7a1 Number of major facilities with single event violations.					0

CWA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

The State satisfied its inspection commitments for NPDES majors, combined sewer overflow (CSO) communities, pretreatment compliance inspections (PCIs), pretreatment audits, and stormwater (industrial and construction) inspections for FY 2016.

Explanation:

The state's NPDES majors' universe is 27 facilities. During FY 2016, 14 were inspected onsite and 13 were inspected offsite. The negotiated commitment in the state's approved NPDES Compliance Inspection and Monitoring Plan (Inspection Plan) was fully satisfied.

The State's Inspection Plan for FY 2016 contained inspection commitments covering all categories of NPDES-regulated facilities. The state satisfied the commitments for PCIs and pretreatment audits (metric 4a1), and major CSO inspections (metric 4a4).

The state conducted 185 Phase I and II stormwater construction inspections (metric 4a9) and 19 stormwater industrial inspections (metric 4a8). A total of 113 inspections, representing 88% of the total completed in FY 2016, were conducted by the state and 72 by the City of Sioux Falls. Sioux Falls has a qualified local program and conducted all of its own inspections, follow-up, and enforcement.

The stormwater inspection count was based on information provided by the state. Industrial stormwater inspection data was not available in ICIS.

The State's Inspection Plan commitment for FY2016 included a minimum of 160 construction and industrial stormwater inspections. This commitment did not distinguish between industrial and construction inspection and for this reason metric there is no unique denominator for metrics 4a8 and 4a9.

The stormwater construction data reflected in the metrics below is based on the state's database, as no stormwater inspection data were entered into ICIS in FY 2016.

The state appears to lack adequate construction stormwater inspection resources. See Finding 2-2 for additional details.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a1 Number of pretreatment compliance inspections and audits at approved local pretreatment programs. [GOAL]	100% of commitments		4	3	133.3%
4a4 Number of CSO inspections. [GOAL]	100% of commitment		1	1	100%
4a8 Number of industrial stormwater inspections. [GOAL]	100% of commitments		19		19
4a9 Number of Phase I and Phase II construction stormwater inspections. [GOAL]	100% of commitments		197		197
5a1 Inspection coverage of NPDES majors. [GOAL]	100% of commitments	51.9%	27	27	100%

CWA Element 2 - Inspections

Finding 2-2

Area for Improvement

Summary:

The State did not satisfy inspection commitments in the pretreatment, municipal separate storm sewer (MS4), and CAFOs universes for FY 2016 and lacks adequate inspection resources for pretreatment and stormwater.

Explanation:

During 2016, six significant industrial user (SIU) inspections did not include any sampling components, a regulatory requirement. Additionally, the state is not inspecting all SIUs annually, which is also a regulatory requirement. Eleven of 32 SIUs were inspected. The General Pretreatment Regulations require SIUs to be inspected and sampled at least once each year by the state in the absence of an approved pretreatment program (40 CFR 403.10(f)(i) and 40 CFR 403.8(f)(2)(v)). The state has 1.0 full-time equivalent (FTE) staff member dedicated to pretreatment work with seven approved pretreatment programs and 32 SIUs outside of approved pretreatment programs where the state is the Control Authority. Although there is an attempt to increase SIU inspections in the state, the state does not appear to have adequate pretreatment resources to meet its regulatory requirements.

The Pretreatment Streamlining Rule published in the Federal Register on October 14, 2005 (70 Fed. Reg. 60134) was designed to reduce the overall regulatory burden on both industrial users and controls authorities, such as the state in this instance, without adversely affecting environmental protection. The state submitted its updated pretreatment rules to include Streamlining Rule provision in August 2018, and as of the drafting of this report, EPA is reviewing the updated rules for approval. EPA has provided the following options and flexibilities from EPA guidance, the Streamlining Rule, and other practices observed by Region 8 for the state to consider in the implementation of its pretreatment program, which could reduce the regulatory burden on the industries and state while ensuring environmental protection:

1. Add internal monitoring points in publicly owned treatment works' (POTW's) NPDES permits that require the POTW to sample the SIUs.

A May 18, 2007 EPA memo, "Oversight of SIUs Discharging to POTWs without Approved Pretreatment Programs," addresses the requirement to oversee these SIUs. The memo allows for states to require internal monitoring points in the POTW's NPDES permit. The NPDES permit could require the POTW to sample the discharge from the SIU at least once a year for the required pollutants.

2. Utilize the flexibilities in the pretreatment Streamlining Rule.

The Streamlining Rule revised several provisions of the General Pretreatment Regulations, including added flexibilities for small SIUs with consistent compliance. It introduced two new ways to classify SIUs that discharge categorical waste, also referred to as categorical industrial users (CIUs):

a. Non-significant categorical Industrial User (NSCIU).

The state may classify the CIU as a NSCIU if the CIU:

- discharges no more than 100 gallons per day;
- Has consistently complied;
- Annually submits a certification statement on compliance; and
- Never discharge any untreated concentrated wastewater.

This classification reduces the regulatory burden on both the industry and the state. NSCIUs would not be required to be sampled or inspected annually by the state.

b. Middle Tier CIU

The state may classify the CIU as a Middle Tier CIU if the CIU has not been in significant noncompliance (SNC) in the last two years and discharges no more than:

- 0.01% of the design dry weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller;
- 0.01% of the design dry weather organic treatment capacity of the POTW; and
- 0.01 percent of the maximum allowable headworks loading for any pollutant for which approved local limits were developed by a POTW.

This classification reduces the regulatory burden on both the industry and the state. Under this classification, the state could reduce its own obligation to inspect and sample Middle Tier CIUs from once per year to once every two years.

If compliant SIUs understood the option to become an NSCIU, they may opt to change their discharge practices to fit the reclassification.

3. Update SIU permits to ensure sampling can occur during inspections.

Similar to SDDENR, some POTWs with approved pretreatment programs find it challenging to sample SIUs that only discharge on a periodic basis.

To help ensure unannounced sampling at SIUs may occur, the state could consider SIU permit provisions that indicate when discharges are permitted or require notification prior to discharge. These provisions could be worked out with the SIU to ensure they do not interfere with business operations.

Sanitary sewer overflow (SSO) inspections were recorded as part of the publicly owned treatment works' wastewater treatment compliance inspections. Not all SSOs inspections included a records review, whether appropriate personnel were interviewed as part of the inspection, number of past SSOs at the same site or documentation regarding whether follow-ups had been or not completed and sampling data results received and reviewed. The data included in the relevant 4a5 metric is based on the onsite inspection data provided by the state and were not entered into ICIS as SSO inspections. Since the audit, the state has informed the EPA that it will target more sites with known previous SSOs, will use their SSO inventory and include specific questions from the 2017 NPDES Compliance Manual when applicable.

During FY 2016, the state conducted one joint municipal separate storm sewer system (MS4) inspection with the EPA, not fulfilling the Inspection Plan commitment for FY 2016 of two inspections.

In FY 2016, the state had 4.0 FTEs for stormwater. The state recently lost additional stormwater staff and has had up to three vacancies in the stormwater group during the last twelve months. The state could not meet its MS4 inspection commitment in FY 2016, because according to the state, they lack enough stormwater inspector resources. Additionally, the state has indicated it will not be able to conduct future MS4, construction stormwater, or industrial stormwater inspections given current resource levels. SDENR's FY2016 Inspection Plan committed to doing 160 stormwater inspections not distinguishing between industrial, construction, general or individual permits. Nineteen industrial, 112 construction and 95 construction under the Qualifying Local Program inspections were conducted during FY2016. In the 2018 legislative session, SDENR was able to pass a fee for stormwater, and the fee went into effect July 1, 2018. SDENR has since made progress by hiring two stormwater inspectors. In the summer of 2018, SDENR also hired an experienced part time seasonal

SDENR's FY 2016 Inspection Plan committed to doing 280 CAFO inspections and 207 were conducted. However, this is less of a concern, since SDENR is far exceeding the goal of the national Compliance Monitoring Strategy to complete inspections in 86 facilities. ICIS data did not include CAFO data for FY 2016. The data reflected in the relevant metrics table below for those two metrics is based on the state's database.

The inspection count for NPDES non-majors provided by metrics 5b1 and 5b2 did not reflect the state's performance across all non-majors, because the query logic for these two metrics does not include the sum of all non-major inspections in the case of South Dakota.

There is no differentiation between non-majors with individual and general permits in South Dakota's annual commitment. South Dakota committed to conducting a total of 80 on-site minor inspections (individual and general permits) and 40 off-site evaluation of minor facilities. The End of Year (EOY) Report to EPA stated they had conducted 74 on-site inspections and 40 off-site evaluation of minor facilities. According to this data, South Dakota met 92.5% percent of its on-site minor inspection commitment. According to ECHO, 34 inspections of non-majors with individual permits were conducted. According to ECHO, 42 inspections of non-majors with general permits were conducted. The discrepancy between the 74 on-site inspections stated on the EOY report and the 76 on-site inspections in ECHO is due to two inspections that should have been included under metrics in 4a1 through 4a10.

State Response:

Significant Industrial User Inspections/Sampling

It is not an effective use of resources to conduct sampling inspections of every SIU regulated by the state every year. Many of our SIUs are small metal finishing facilities that pose little to no threat of causing upset or pass through at the POTW. For example, we have a metal finisher located in a city of 800 people that is 270 miles from Pierre. This metal finisher has three outfalls that are each batch discharges. At one outfall, around 700 gallons of wastewater is discharged two or three times per week. At another outfall, 300 to 400 gallons is discharged once a month. The third outfall discharges around 15 gallons once a month. The second and third outfalls only discharge testing wastewater, which is generally clean water but still regulated by 40 CFR 433. The facility is laid out in a way that makes running the processes that generate the wastewater discharged from these outfalls at the same time difficult. Because of this, it would be difficult to discharge from both of these outfalls on the same day, so they could both be sampled. The building this facility is in is nearly 100 years old and it would be very difficult to modify the processes, so they could all be sampled at the same time. This facility does not qualify as a non-significant categorical industrial user. This is the only industry in this community and the community does not have the technical expertise to run an approved pretreatment program. If DENR were to make the two to three trips needed each year to conduct the required sampling, we would see significant backlash from the general public for wasting taxpayer money. This does not mean the state does not have the resources to implement the program; it means we are making wise use of the resources we have.

South Dakota already does more to regulate these SIUs than other states and does not understand why we are being singled out on this issue. We have discussed this issue with several other states that do less to regulate their SIUs. None of them have had this issue brought up by EPA.

Sanitary Sewer Overflows

DENR will record SSO inspections in ICIS by entering the inspection date in the date field and a comment on whether there was an actual SSO or not. This response is our written commitment to Recommendation #1 below, indicating that SSO inspections will be entered in ICIS as described in this recommendation. EPA has accurately characterized the changes DENR has made to address the findings from the audit.

DENR cannot, in good conscience, commit to the waste of resources EPA is requesting to meet unrealistic pretreatment oversight requirements. DENR has already made changes to its program to ensure adequate oversight of these industries. We ask that EPA work with us on a commonsense approach based on the size and true significance of the industries in the state.

Recommendation:

Rec #	Due Date	Recommendation
1	03/08/2018	<p>1. The state should record SSO inspections in ICIS by entering the date of the inspection in the SSO date field and then add a comment indicating there was or not an SSO. In a March 8, 2018 response to the draft SRF report, DENR stated, “DENR will record SSO inspections in ICIS by entering the inspection date in the date field and a comment on whether there was an actual inspection or not.” EPA considers this recommendation complete.</p>
2	10/31/2019	<p>2. The state’s inability to fulfill its Inspection Plan commitments for MS4s and regulatory inspection requirements for SIUs was a result of inadequate resources. The state had also lost stormwater FTEs. In a March 8, 2018 response to the draft SRF report, DENR provided a plan for stormwater FTEs and stated, “To address this funding shortfall, the SD Legislature passed Senate Bill 25, which authorizes DENR to begin collecting fees for its stormwater program. This will address South Dakota’s resource needs and allow us to fill the current vacancies.” The stormwater portion of this recommendation is considered complete.</p> <p>By October 31, 2019, submit a resource assessment for pretreatment FTEs and a plan for providing adequate resources. Include in the pretreatment plan adequate resources such that all SIUs receive annual inspections that include sampling to meet the state’s regulatory requirements in 40 CFR 403.10(f)(i) and 40 CFR 403.8(f)(2)(v).</p>
3	10/31/2020	<p>3. Implement the plans in recommendation 2, above. This recommendation will be considered complete when the State submits a notification that it has fully implemented these plans to the EPA Regional Office. This report will serve to document completion of this recommendation. We request that the state complete this recommendation by October 31, 2020.</p>

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
4a2 Number of inspections at EPA or state Significant Industrial Users that are discharging to non-authorized POTWs. [GOAL]	100% of commitments		11	32	34.4%
4a5 Number of SSO inspections. [GOAL]	100% of commitments		51	53	96.2%
4a7 Number of Phase I and II MS4 audits or inspections. [GOAL]	100% of commitments		1	2	50%
4a10 Number of comprehensive inspections of large and medium concentrated animal feeding operations (CAFOs) [GOAL]	100% of commitments		207	280	73.9%
5b1 Inspections coverage of NPDES non-majors with individual permits [GOAL]	100% of commitments	22.6%	34	40	85%
5b2 Inspections coverage of NPDES non-majors with general permits [GOAL]	100% of commitments	6.2%	42	40	105%

CWA Element 2 - Inspections

Finding 2-3

Area for Improvement

Summary:

Inspection reports were not consistently completed and signed within the goal time frame.

Explanation:

The state completed, signed, and transmitted 21 of 28 inspection reports to facilities within the state's goal time frame of 45 days. Although the state's ERG requires a 30-day goal time frame, the state explained that they use the national goal of 45 days.

Although the overall average amount of time to complete an inspection report was 34 days, the time to completion for seven inspections reports was greater than 45 days and of those, five were greater than 59 days.

The seven inspection reports that did not meet the state’s goal included four minors, one major and two construction stormwater inspections.

Timeliness of inspection report is a repeat finding from the FY 2011 SRF review as indicated on page 84 of that document.

State Response:

DENR agrees that timely issuance of inspection reports is very important to the effectiveness of the inspections. When fully staffed, inspection reports are normally issued within 45 days of the inspection. For example, 97% of wastewater inspection reports were issued within 45 days in FY13. DENR will provide the EPA Regional Office with the percentage of inspection reports that have been issued within 45 days as part of the End of Year report.

The primary issue with the inspection report timeliness is with DENR’s stormwater inspections, which was a direct result of the vacancies. Once these positions are filled, DENR will place a high priority on completing inspections and issuing reports in a timely manner.

Recommendation:

Rec #	Due Date	Recommendation
1	12/31/2019	This is a repeat finding from the FY 2011 SRF. The state should consider revising their ERG to establish a goal of 45 days to complete an inspection report. Until more than 90% of all inspection reports in a federal fiscal year are completed within 45 days, SDDENR will provide the EPA Regional Office with the percentage of inspection reports that have been issued within 45 days by December 31 each year for the inspections conducted the previous federal fiscal year (October through September). The first report shall be provided on December 31, 2019. Once the 90% milestone is met, this recommendation will be considered complete.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6b Timeliness of inspection report completion [GOAL]	100%		21	28	75%

CWA Element 2 - Inspections

Finding 2-4

Area for Attention

Summary:

An inspection report did not clearly describe the full scope of inspection.

Explanation:

One of the 28 inspection reports reviewed lacked one or more critical pieces of information to describe and support the findings of the inspection.

A construction stormwater inspection file had no documentation whether the stormwater pollution prevention plan (SWPPP) for the site had been reviewed.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6a Inspection reports complete and sufficient to determine compliance at the facility. [GOAL]	100%		27	28	96.4%

CWA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Summary:

Single event violations (SEVs) were accurately identified as SNC or as non-SNC, and there were no SEVs at major facilities identified as SNC. There were two major facilities in SNC status during FY 2016 and six major facilities in noncompliance.

Explanation:

Five of five SEVs were accurately identified as SNC or non-SNC, and there were no SEV SNCs.

According to ECHO, which contains data made publicly available from ICIS, two of 28 majors were in SNC, which is 7.1%. This is below the national average of 20.3%.

Of the eight major facilities in noncompliance, two were SNC. Based on ECHO trend data, the state has consistently had between eight and ten major facilities in noncompliance over the previous six years and had between one and three major facilities in SNC.

According to ECHO and the South Dakota Water Dashboard, during the previous six years, the state has had between 51 and 83 non-major facilities that fall within the most serious violations area (Category 1) with a total universe of 469 facilities in FY 2016. Category 2 violations, ranged between 56 and 113 during the same period of time with the three most recent years being almost identical (57, 58, 62).

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7d1 Major facilities in noncompliance		73.3%	8	27	29.6%
7f1 Non-Major Facilities in Category 1 Noncompliance (data verification)					61
7g1 Non-Major Facilities in Category 2 Non-compliance (data verification)					57
8a2 (SA) Percentage of Major Facilities in SNC.		20.3%	2	28	7.1%
8b1 Single-event violation(s) accurately identified as SNC or non-SNC at major facilities (Goal)	100%		5	5	100%
8c Percentage of SEVs identified as SNC reported timely at major facilities (GOAL)	100%		0	0	0

CWA Element 3 - Violations

Finding 3-2

Area for Attention

Summary:

Violations were not consistently identified by inspectors and were not included in the inspection reports, although in most instances, attached records showed violations.

Explanation:

Twenty-five of 28 inspection files had reports that led to an accurate compliance determination, and three did not. This included one minor, one major, and one CAFO file.

- Violations were not identified clearly in the report and/or correspondence for the CAFO and minor; and
- Deficiencies flagged were not identified as violations in reports/letters for one pretreatment program inspection.

State Response:**Violations Were Not Identified**

This comment appears to be in regard to one minor permit for a town of 42 people. DENR's 2012 inspection properly documented significant permit violations. To address the violations, DENR placed a construction schedule into the facility's permit. Since that time, the town has made substantial progress and addressed the root causes of the earlier problems. As a result, DENR removed the construction schedule. The most recent inspection did not find serious violations.

Deficiencies Flagged Were Not Identified as Violations

This comment appears to be in regard to one major permit.

For this city, the FY 2016 pretreatment compliance inspection did not identify any deficiencies with the pretreatment program. The report did identify several deficiencies or violations with the city's significant industrial users. The city had properly identified and addressed these violations through its enforcement activities.

In summary, DENR does not agree these situations indicate deficiencies in our inspection program. However, we do strive to improve our inspection process whenever possible. Therefore, we are committing to the following steps:

1. Additional peer review will only slow our efforts to issue inspection reports on-time, as the peers reviewing the reports are also inspectors themselves. DENR will evaluate whether there are any other practices that need to be implemented to ensure a complete data evaluation to determine compliance.
2. DENR will continue to provide regular inspector training emphasizing compliance determination accuracy evaluation; violation identification, report completeness, and existence of correspondence informing permittees about their non-compliance status. This constitutes our written response to this finding.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
7a1 Number of major facilities with single event violations.					0
7e Accuracy of compliance determinations [GOAL]	100%		25	28	89.3%

CWA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Summary:

Enforcement actions achieved a return to compliance or contained a schedule for achieving a return to compliance.

Explanation:

The EPA recognizes that the state has limited control over facilities' responses to warning letters, and in many instances the absence of an adequate response resulted in escalated enforcement. To improve the effectiveness of informal enforcement, EPA suggests that the state consistently include language in warning letters that urges the facility to take action "immediately" to return to compliance and to submit documentation within a defined timeframe showing what actions have been taken to return to compliance.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
9a Percentage of enforcement responses that returned, or will return, a source in violation to compliance [GOAL]	100%		28	28	100%

CWA Element 4 - Enforcement

Finding 4-2

Area for Improvement

Summary:

Enforcement was not appropriate and/or timely in response to all violations.

Explanation:

This finding is based on a review of formal and informal enforcement actions found in ten facility files.

Five of the ten files lacking appropriate enforcement had an absent or late warning letter based on the state's ERG. These instances included the following:

- The cover letter and report for one facility, sent 59 days after the inspection, had violations for six consecutive quarters. The letter did not clearly indicate it was a warning letter or the language used indicate the gravity of the violations. Another facility received its warning late, three months after late DMRs and never received any other notification even when DMRs continued being late. A third facility did not receive a warning letter as a result of its violations identified during an inspection. Page 5 of the ERG Guidance Tables requires an inspection report with a warning letter with a time goal of 30 days for minor permit violations discovered by an inspection;
- A warning letter should have been sent seven months earlier to address the same violations discovered earlier at another facility. Page 5 of the ERG Guidance Tables requires an inspection report with a warning letter with a time goal of 30 days for minor permit violations discovered by an inspection; and
- There was no use of a phone call or warning letter to address the first two of four instances of late or missing DMRs at a major facility. Page 1 of the ERG Guidance Tables requires a phone call within a time goal of seven days for delinquent DMRs; and warning letter within a time goal of 14 days for failing to report DMRs two consecutive times.

Seven files involved the use of continuing or escalated informal and/or formal enforcement that did not follow the regimen of the state ERG and was therefore not timely or appropriate in addressing the noncompliance. Ten informal and two formal actions were counted across these seven files. These instances included the following:

- Multiple process water discharges were discovered during inspections culminating in May 2015 at one CAFO. No formal or informal enforcement responses were used to address these discharges until the state executed a compliance order more than three months later in September 2015. In such cases where the state has a delay in proceeding to formal enforcement, page 5 of the ERG Response Tables prescribes an escalation sequence with corresponding time control goals of a warning letter (30 days) followed by an information request letter (45 days) and then an order within 15 days of the facility's response to the request letter.
- An NOV/order was issued 6 months after the inspection at a CAFO in which underlying violations were identified, which is not consistent with the timeframe outlined in the state ERG (page 5);
- A second warning letter should have taken the form of an information request letter under the state ERG (page 5) for inspection follow-up of a stormwater inspection; and
- Subsequent warning letters following a first warning letter for the same repeated violations were not appropriate according to the EPA's Enforcement Management System for NPDES and federal timeliness guidance for responding to SNC effluent limit violations at two majors.

Federal guidance is invoked here because the state ERG has no guidelines for escalating repeated or frequent DMR violations. Therefore, the state should have proceeded to escalate the noncompliance and do so more promptly.

Two of the above facilities were majors in SNC in FY 2016, one of which was the one facility counted under metric 10a1 for lacking timely action as appropriate. In that case, the state resolved the violation with a warning letter but should have initiated its response with an earlier warning letter during the first of two consecutive quarters of noncompliance. The other major was in SNC during three consecutive quarters of the previous fiscal year and in lieu of timely and appropriate action received a prolonged string of warning letters. The federal guidance for timely response to SNC at majors is to escalate ongoing SNC to formal enforcement by the time the violation appears on the second consecutive Quarterly Noncompliance Report.

State Response:

EPA's comments seem to be conflicting. In some cases, we are criticized for using warning letters first, saying they were not successful in returning a facility to compliance, even if we then escalated to formal enforcement in response. However, in the 4th bullet above, EPA is criticizing the fact we took formal enforcement action right away, rather than first issuing warning letters. EPA's own FY 2016-2017 Office of Enforcement and Compliance Assurance National Program Manager Guidance contains a National Enforcement Initiative for Keeping Raw Sewage and Contaminated Stormwater Out of our Nation's Waters specifically addressing discharge from CAFOs.

We do agree a dairy NOV was not timely. However, unlike EPA, the Feedlot Permit Program staff has a variety of duties including enforcement, inspections, and permitting. During times when workloads are high, we must prioritize work items. In this case, since there was no environmental damage, completing the enforcement action against this Dairy was not our highest priority.

Recommendation:

Rec #	Due Date	Recommendation
1	12/31/2019	1. The state should revise its ERG Enforcement Response Guidance Table for responses to DMR violations (page 1) to address the scenario of repeated effluent limit exceedances that do not appear on the QNCR (e.g. non-major facilities). The state should share a copy of the revised ERG table with the EPA by December 31, 2019.
2	10/31/2019	2. The state should continue using warning letters when appropriate but should promptly escalate lingering noncompliance to address it with other tools according to the state ERG, including information request letters and formal orders. During each FY, the state should track warning letters and any subsequent correspondence or escalating actions, including the dates warning letters and subsequent actions were sent. By October 31 of each FY, the state should send the EPA a summary list of instances addressed by this enforcement during the FY and indicate whether a warning letter was sent in response to violations found during inspections; whether a matter required escalation, how was this done and whether these responses were completed appropriately and in a timely manner. The EPA will review the state's response and close this recommendation once the EPA determines that the state's actions have addressed the underlying finding. The first report is due October 31, 2019.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a1 Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations	98%	12.6%	0	1	0%
10b Enforcement responses reviewed that address violations in an appropriate manner [GOAL]	100%		18	32	56.3%

CWA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Summary:

State penalty actions accounted for the difference between initial and final penalty assessment, and penalties were collected.

Explanation:

A total of eight penalty actions were reviewed. For two penalty calculations where there was a difference between initial and final penalty, the rationale for the discrepancy was documented appropriately. For the remaining six penalty calculations, there was no difference between initial and final penalty collected.

State Response:

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%		2	2	100%
12b Penalties collected [GOAL]	100%		6	6	100%

CWA Element 5 - Penalties

Finding 5-2

Area for Attention

Summary:

Most State penalty actions accounted for gravity and economic benefit.

Explanation:

Eight penalty actions were reviewed. The state documented its determination of gravity and economic benefit for all except one. The penalty where the determination of gravity and economic benefit were not considered was an unpermitted facility that has a discharge of liquid fertilizer. This file did not contain any information on economic benefit. Even if the economic benefit was zero, such information should be documented in the file. The state’s Groundwater program had the control over this case and the Surface Water program, with a vested interest in the case, should have weighed in on whether the enforcement was appropriate.

The state should ensure that when assessing state penalty actions, gravity and economic benefit are documented for each one.

State Response:

The action in question was in response to a facility that released approximately 2,700 gallons of a 28-0-0 fertilizer mixture into right of way drainages (i.e. - a road ditch), which resulted in visible death of vegetation, even two months after the release. This fertilizer had economic value and the facility paid a substantial sum of money to complete the clean-up and disposal of the impacted material. This facility did not receive an economic benefit from its actions. The penalty was appropriately based on the gravity and willfulness of the action.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
11a Penalty calculations reviewed that document and include gravity and economic benefit [GOAL]	100%		7	8	87.5%

Clean Air Act Findings

CAA Element 1 - Data

Finding 1-1

Area for Improvement

Summary:

The state routinely fails to enter minimum data requirements (MDRs) into ICIS-Air. When data is entered, MDRs are incomplete or incorrect. Compliance monitoring activities are not entered into ICIS according to prescribed timelines.

Explanation:

Complete and/or accurate MDRs were not reported to ICIS-Air by the state for any of the 26 files reviewed. Of those 26 files:

- 11 contained unreported violations;
- 6 contained unreported or incorrectly reported enforcement actions;
- 6 contained unreported or incorrectly reported penalties;
- 6 contained unreported stack test results; and
- 4 contained a facility address that did not match the information on the detailed facility report in ECHO.

It should be noted that of the six files containing unreported enforcement actions and penalties, the enforcement actions and penalties in four of the files predated the 2014 AFS to ICIS-Air data migration. Enforcement action and penalty data for one of these files was not entered into AFS; therefore, no data was available for the migration to ICIS-Air. For the remaining three files, enforcement and penalty data was entered into AFS; however, the state assigned a code to the data that did not allow the data to be mapped to a data field in ICIS-Air. All states using this code were asked to provide feedback to EPA regarding how they would like actions assigned this code to be treated for the transfer to ICIS-Air. SDDENR did not provide this information so the data was unable to be migrated from AFS to ICIS-Air.

Title V Annual Compliance Certification (TVACC) dates were not accurately reported for the majority of the files reviewed. Upon discussion with the state, EPA discovered that state inspectors have been entering TVACC “actual end” dates as the date the report was due (March 1st) instead of as the date the TVACC was received. This results in the public interface (ECHO) reporting a TVACC Receipt/Review date of March 1st, inadvertently causing the appearance that all TVACC reports were received on the due date, when in fact, most were received either earlier or later than that date.

According to the data metrics and files analyzed, when actions are entered by the state into ICIS-Air, they are not consistently entered in a timely manner. Of the 206 compliance monitoring activities reported to ICIS-Air in federal fiscal year (FY) 2016, only 65% were reported within the specified 60-day time frame. According to the FY 2016 frozen data, all untimely reporting of compliance monitoring activities was related to late reporting of FCEs (100% of TVACC reporting was timely).

The state reported no HPVs or enforcement actions in FY 2016, so Metrics 3a2 and 3b3, which are related to timeliness of reporting those items, could not be evaluated.

Of the eleven files reviewed that contained unreported violations, one contained an unreported HPV, which was subsequently entered into ICIS by SDDENR after the date of the file review (see Finding 3-1 Explanation). Although the reporting of this HPV was corrected, it was not reported in a timely manner as required by the HPV Policy. The remaining unreported violations discovered during the file review were federally-reportable violations (FRVs). The state does not report FRVs to ICIS-Air as required by the FRV policy.

It should be noted that although Metric 3b2 indicated that the state reported 100% of its stack test results within the specified 120-day timeline, during the file review, EPA learned that the state has a backlog of stack tests that have yet to be reviewed and reported to ICIS-Air, thus the 100% reported under Metric 3b2 is incorrect.

Previous oversight activities indicate that the state has historical issues with widespread and persistent data inaccuracy. Issues with data entry were identified in the FY 2006 and FY 2011 SRF Evaluations as well as the FY 2010 and FY 2012 - FY 2015 End of Year (EOY) Reports.

SDDENR has indicated that it is working on electronic data transfer (EDT) to reduce the time burden that results from state inspectors having to manually enter data into both the state database and ICIS-Air. EPA recommends that the state apply for grants that provide monetary and/or technical assistance for EDT if/when grants become available.

State Response:

DENR is taking the appropriate steps to enter the Title V Annual Compliance Certification (TVACC) reporting in ICIS-Air in a timely manner. DENR is also going through the process to make sure the minimum data requirements that DENR has agreed to enter in the old AFS database has been transferred to ICIS-Air correctly and fixing incorrect or missing data for both existing and new data in ICIS-Air.

DENR has developed the following plan to update the ICIS-Air for stack tests. Once a stack test report for a facility is submitted, the stack test report is assigned to an Engineer for review. The Engineer will review the stack test report and enter the appropriate information in ICIS-Air within 60 days after receiving the stack test report. As such, the Air Quality Program has already taken care of the backlog of stack test results by entering them in ICIS-Air.

EPA is correct that DENR does not enter Federally Reportable Violations (FRVs) in ICIS-Air. However, what the report does not identify and was discussed during EPA's audit is DENR has not agreed to implement EPA's Federally Reportable Violation policy. During the negotiations with our partnership agreement, the compliance policy DENR agreed to follow previously and currently is EPA's High Priority Violation (HPV) policy. Due to federal funding either staying stagnant or decreasing at the same time EPA increased DENR's workload by implementing more federal regulations, DENR does not plan to agree or implement EPA's Federally Reportable Violation policy for the foreseeable future.

EPA's Federally Reportable Violation policy covers items such as late reports or improper recordkeeping. Most of these types of violations do not have a direct impact to human health and the environment. As

such the Air Quality Program would rather spend its limited resources conducting inspections and having a routine presence at the regulated facility making sure the facility is complying than data entry involving violations that do not have a direct impact and/or significant threat to public health and the environment.

Recommendation:

Rec #	Due Date	Recommendation
1	10/10/2017	EPA held ICIS-Air training for SDDENR inspectors on May 18, 2017. EPA has offered data entry assistance to inspectors on a case-by-case basis, and state inspectors should contact EPA when questions arise regarding data entry and MDRs. The state should inform EPA of any additional data-entry training or guidance document needs, and EPA recommends that SDDENR conduct internal training on ICIS-Air data entry for new inspectors. In order to clarify what information is required for entry into ICIS-Air, EPA Region 8 shared a list of ICIS-Air MDRs with SDDENR on October 10, 2017.
2	06/03/2019	The state has been helpful in reconciling the compliance monitoring strategy (CMS) universe in ICIS and has already begun the process of adding/removing facilities from the CMS, as appropriate. EPA will continue to work with the state to correct data in ICIS-Air and ensure that the FY 2017 CMS universe in ICIS-Air matches the facility universe in the state's written CMS Plan. The state should make any relevant changes to the ICIS-Air universe in subsequent federal fiscal years. The state will confirm that the source universe is updated and correctly reported in ICIS-Air by no later than November 1st of each calendar year (which corresponds to one month after the start of each FY).
3	09/30/2020	EPA recommends that SDDENR develop a streamlined procedure to remove the backlog of stack tests. This procedure should also be designed to ensure that stack test MDRs are entered into ICIS-Air within 120 days of the testing date. SDDENR should develop for EPA Region 8 review a draft revised procedure (SOP) for stack test review and reporting that will eliminate the report backlog and meet the MDR timelines for entry into ICIS-Air. EPA requests that these actions be taken by September 30, 2020.
4	09/30/2020	Similarly, EPA requests that the state enter compliance and enforcement data in ICIS-Air on a routine basis by September 30, 2020. The state should report FRVs to ICIS-Air in accordance with the FRV policy and the Clean Air Act Stationary Source Compliance Monitoring Strategy. All data, with the exception of stack tests (as noted above), should be entered into ICIS-Air within 60 days in accordance with the Source Compliance and State Action Reporting Information Collection Request (ICR). FRVs should be reported to ICIS-Air within 60 days of discovery, even if the violation is addressed without enforcement. State inspectors should not wait until entry of the enforcement action to create a case file for the FRV in ICIS-Air. Quarterly calls between EPA and SDDENR will include a review of data reporting to ensure data is being timely and accurately reported pursuant to the ICR and underlying policies.

5	02/01/2019	TVACC dates received and reviewed should be reported to ICIS-Air. As noted in the Explanation section, above, the “actual date” for the TVACC entry should be entered as the date the report was received, not the date the report was due. Beginning with the receipt of TVACCs covering the 2017 reporting period, the state will correctly enter TVACC MDRs. EPA will verify accurate entry of TVACC MDRs during the subsequent quarterly call with DENR. As of the date of this report, EPA has reviewed TVACC MDRs in ICIS-Air for FY 2018 production data. Results of the review indicate that 95% of TVACC MDRs were entered in a timely manner (within 60 days of TVACC receipt). Results of the review were discussed with SDDENR during a February 2019 quarterly call.
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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%		0	26	0%
3a2 Timely reporting of HPV determinations [GOAL]	100%	16.8%	0	0	0
3b1 Timely reporting of compliance monitoring MDRs [GOAL]	100%	80.9%	134	206	65%
3b2 Timely reporting of stack test dates and results [GOAL]	100%	77.1%	7	7	100%
3b3 Timely reporting of enforcement MDRs [GOAL]	100%	77.2%	0	0	0

CAA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

SDDENR meets or exceeds the minimum evaluation frequencies specified in the CAA CMS for Title V Major Sources and SM-80s.

Explanation:

Based on frozen FY 2016 data, the data metric analysis (DMA) for metrics 5a, 5b, and 5c indicated state inspection coverage of 87.5% (84/96) of Title V major sources, 68.4% (13/19) of SM-80s, and 0% (0/1) of minors and synthetic minors (non SM-80s) that are part of a CMS plan. However, these numbers are incorrect due to state issues with inaccurate and untimely data reporting, as addressed in Element 1. After consultation with the state and comparison of the facility universe in ICIS-Air to the universe identified on the state's FY 2016 CMS Plan, EPA determined that the state's inspection coverage was higher than indicated by the DMA. The data in the table below indicates the corrected inspection coverage.

SDDENR's full compliance evaluation (FCE) coverage at Title V major sources was 96.6%, which is above the national average and close to the national goal. The state aims to conduct an FCE at each of its Title V major sources annually, which is above the minimum evaluation frequency of once every two years specified in the CAA CMS. There were no mega-sites included as part of the CMS plan.

The state does not differentiate between 80% synthetic minor sources (SM-80s) and other synthetic minors on its CMS plan. Therefore, all synthetic minor sources are treated in the ICIS-Air CMS universe as SM-80s. In FY 2016, the state's CMS plan contained 43 SM-80 sources, with 21 scheduled for inspection during the federal fiscal year. The state conducted FCEs at all 21 SM-80 facilities scheduled for inspection.

No non SM-80s were included in the FY 2016 CMS plan, so Metric 5c could not be assessed.

Prior correcting for ICIS-Air data entry issues, the DMA of Metric 5e indicated that Title V Annual Compliance Certifications (TVACCs) were reviewed in FY 2016 for 89% of active Title V sources. However, after adjusting for the facility universe issues in ICIS-Air, a revised DMA indicated that the state reviewed TVACCs for 93.3% (83/89) of the active Title V facilities in FY 2016.

State Response:

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%	84.5%	86	89	96.6%
5b FCE coverage: SM-80s [GOAL]	100%	91.3%	21	21	100%
5c FCE coverage: minors and synthetic minors (non-SM 80s) that are part of CMS plan or alternative CMS Plan [GOAL]	100%	79.9%	0	0	0
5e Reviews of Title V annual compliance certifications completed [GOAL]	100%	69.9%	83	89	93.3%

CAA Element 2 - Inspections

Finding 2-2

Area for Improvement

Summary:

Compliance monitoring reports (CMRs) generally cover all required FCE elements but are often lacking information on whether elements are reviewed by the inspector. Several CMRs reviewed lacked the detail necessary to determine the compliance status of the facility.

Explanation:

SDDENR utilizes a consistent format for all inspection reports, which aids the reader in locating information within each individual CMR.

Overall, CMRs reviewed included documentation of most required FCE elements, such as assessment of control device and process operating equipment conditions and performance parameters as well as documentation of visible emissions observations, when necessary. However, of the 18 files reviewed for Metric 6a, only five contained documentation of all required FCE elements. In the remaining thirteen CMRs, the most common deficiency was a lack of clear indication in the report of whether all required reports, records, and operating parameters were actually reviewed by the inspector. It is possible that, in many cases, required reports, records, and operating parameters were reviewed by state inspectors, but the review was just not documented in the CMR. However, it is important to note that Metric 6a assesses whether all required FCE elements were thoroughly documented in the CMR. In three instances, the state inspector did not note in the CMR the results of required stack tests, which is an element of FCEs required by the CAA CMS.

Six of the 18 files reviewed did not contain a level of detail necessary to determine the compliance status of the facility. In two files, information about control and process equipment maintenance logs or operating parameters was not reviewed as required to determine compliance. Results of stack tests were excluded from three of the files reviewed, which prohibited determination of the facility's compliance status.

State inspectors should clearly document in CMRs whether all required reports, facility records, process/performance parameters and other data are actually reviewed. Stating that a document was received does not provide sufficient data to determine that a document was reviewed.

CMRs should contain enough detail to determine whether facilities are in compliance. Results of stack tests and report reviews should be clearly stated in the CMR.

Although not directly related to assessment of the state's performance, EPA reviewers noted that when no violations were identified, the Compliance History and Conclusions section of the CMR contained a statement indicating that the facility is "in compliance." As other information that could indicate noncompliance may exist outside of the documents reviewed by the state at that time, EPA recommends that, going forward, SDDENR revises the language in the Compliance History and Conclusions section to state instead only whether violations have been identified based on the information reviewed, rather than issuing a definitive compliance status.

State Response:

DENR worked with EPA in the past to develop compliance monitoring reports (i.e., inspection reports) for air quality inspections that provide the information necessary for EPA or the public to determine if a facility is complying with its air quality permit. Based on previous EPA reviews, DENR thought its inspection reports satisfied EPA’s policies on writing inspection reports. For example, in EPA’s “Enforcement Program End of Year Report FY2015,” it stated that “Overall, the reports are well organized and provide a clear compliance determination.”

DENR will continue to work with EPA on improving its inspection reports but will not revise its template or issue supplemental guidance.

Recommendation:

Rec #	Due Date	Recommendation
1	06/30/2018	EPA recommends that the state revise its CMR template or issue supplemental guidance to ensure that inspection reports clearly and consistently capture all required FCE elements. SDDENR should provide guidance to inspectors and/or revise its CMR template by June 30, 2018. Based on the review that was conducted in March 2019, SDDENR has been proactive in addressing this issue. Guidance that was required has been provided to inspectors. This recommendation has been addressed.
2	03/22/2019	EPA will verify that appropriate changes to the CMR have been implemented by reviewing a random sample of CMRs from FY 2018.
3	03/22/2019	EPA conducted this review in March 2019. As part of a targeted-level of oversight, the EPA conducted a review of a random sample of CMRs from FY 2018. Results of the review indicate that appropriate changes have been made by the SD DENR to ensure that CMRs clearly and consistently capture all required FCE elements. Overall, it appears as if the SD DENR has resolved the issues that were identified for this element during the FY 2016 SRF. CMRs now clearly document which reports, records, and parameters were reviewed and indicate the results of the reviews. Overall, CMRs contain documentation of the required FCE elements and contain sufficient documentation for making a compliance determination.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
6a Documentation of FCE elements [GOAL]	100%		5	18	27.8%
6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility [GOAL]	100%		12	18	66.7%

CAA Element 3 - Violations

Finding 3-1

Area for Attention

Summary:

Compliance determinations made by the state are generally accurate. HPV determinations appear to be correct, but are not made in a timely manner.

Explanation:

Based on the information available in the files reviewed, compliance determinations by the state are overall accurately made, as addressed in Metric 7a. However, in two of the files reviewed, violations were noted in the CMR but the Conclusions and Recommendations section of the CMR stated that the facility was "in compliance." EPA also noted that when the state inspector noted deficiencies in the CMR that were technically violations, violations were not entered into ICIS-Air as federally reportable violations, consistent with the FRV policy. (This reporting issue was addressed in Metric 2b.)

Eight of the nine violations reviewed by EPA had appropriate HPV determinations, satisfying Metric 8c. In the remaining file, a violation was identified but it was not correctly identified as an HPV. In follow-up discussions, the state and EPA agreed that the violation should be classified as an HPV, and the state entered the HPV into ICIS-Air on July 21, 2017.

No case files with HPVs were reported into ICIS-Air by the state in FY 2016, so no DMA was calculated for timeliness of HPV determinations.

State inspectors should note any violations discovered during the FCE in the Compliance History and Conclusions section of the CMR, regardless of whether the violations will be addressed with formal enforcement. SDDENR should follow the FRV policy when identifying and reporting violations. T

The state should compare all violations to the criteria in the HPV policy to determine whether violations should be classified as HPVs. As a best practice, state inspectors should discuss each FRV with SDDENR management to determine whether the violation rises to HPV status. Any uncertainties when determining HPVs should be discussed with EPA as soon as possible, but no later than the next quarterly consultation. HPVs should be reported to ICIS-Air within 60 days of HPV determination.

EPA will provide FRV and HPV Policy guidance documents and/or training to SDDENR if requested by the state or determined to be necessary by EPA.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
13 Timeliness of HPV Identification [GOAL]	100%	83.6%	0	0	0
7a Accurate compliance determinations [GOAL]	100%		24	26	92.3%
8c Accuracy of HPV determinations [GOAL]	100%		8	9	88.9%

CAA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Summary:

Formal enforcement responses include schedules for returning facilities to compliance, and HPVs are addressed with appropriate enforcement responses.

Explanation:

SDDENR issues Notices of Violation (NOVs) and Settlement Agreements concurrently. All NOVs and Settlement Agreements reviewed contained a compliance schedule, satisfying Metric 9a. Of the six files reviewed, five Settlement Agreements contained compliance schedules that allowed between 20-60 days for the violator to submit a plan of corrective actions and propose a plan to minimize future issues. One of the files reviewed contained a Settlement Agreement that preemptively prescribed corrective actions. Data on the completion status of corrective actions was not included in the files reviewed. EPA recommends that the state include this information in case files to facilitate determination of whether the facility has returned to compliance.

As no HPVs were identified by the state in FY 2016, for Metric 10b, EPA reviewed a file containing an HPV that was identified in FY 2012. Based on the information reviewed, EPA determined that the 2012 HPV was addressed with an appropriate enforcement response; however, outstanding unidentified and unaddressed HPV(s) exist for the facility (see Finding 3-1, Explanation).

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10b Percent of HPVs that have been addressed or removed consistent with the HPV Policy [GOAL]	100%		1	1	100%
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%		6	6	100%

CAA Element 4 - Enforcement

Finding 4-2

Area for Improvement

Summary:

HPVs are not addressed in a timely manner according to the HPV policy.

Explanation:

Only one file was available for review for Metric 10a. The HPV identified in the file reviewed had a Day Zero of February 10, 2012 and was addressed with a formal enforcement action on December 9, 2013. Consequently, the HPV was not addressed within 180 days of Day Zero, and no case development and resolution timeline were in place within 225 days, as required by the HPV policy.

No files were available for review against Metric 14; however, a case development and resolution timeline should have been in place for the HPV described above.

The state should place priority on HPVs to ensure that all attempts are made to address HPVs within 180 days of Day Zero. In accordance with the HPV policy, the source must be notified with 45 days of Day Zero that a violation has been identified. As soon as the state discovers that the HPV is not or will not be addressed within 180 days, the state should develop a case development and resolution timeline that includes (1) the pollutant(s) at issue; (2) an estimate of the type and amount of emissions in excess of the standard; and (3) milestones for case resolution. Initial case-specific consultations with EPA should be held no later than the next quarterly consultation for HPVs that will not be addressed within the specified 180-day timeframe. Subsequent case-specific consultations should occur quarterly or more frequently until the HPV is addressed.

State Response:

EPA's evaluation of an HPV that occurred in 2012, that has already been brought to DENR's attention in previous reviews, is not a true evaluation of DENR's enforcement program. Rehashing old issues does not reflect the progress that has been made since this issue was identified back in 2012.

DENR also considers this issue as a little ingenious and the perceived issue does not consider the broad concept of EPA's high priority violation policy.

- The policy states "the enforcement agency should attempt to address an HPV within 180 days..."
- The policy states "EPA acknowledges the legitimate observation that a single target of 180 days from Day Zero is not the only way to evaluate an enforcement agency's response to a violation. This policy, therefore, includes the option for enforcement agencies to provide their own assessment of appropriate benchmarks for addressing and resolving individual HPV that are not addressed within 180 days..."
- The policy states "all efforts should be made to resolve the enforcement action addressing the violations as soon as possible; however, there are no timelines for resolving a matter."

The high priority violation reviewed by EPA was identified by EPA in previous reviews as not being completed with 180 days of identifying a potential violation. DENR does not agree that by not meeting this timeline the high priority violation was not resolved in a timely manner. EPA's high priority violation policy provides for a robust and broad methodology with broad timelines for addressing a high priority violation. As noted above with the generalized statements, the timelines in the policy are not absolute requirements.

The intent of the policy is to make sure high priority violations are addressed and resolved and the high priority violations are not left reoccurring indefinitely. DENR issued the facility a notice of violation and order. DENR issued and the facility signed a settlement agreement for the violation. The facility paid the penalty, completed the requirements of the settlement agreement, and demonstrated compliance as determine by re-testing the operations. During this period, South Dakota was in contact with EPA discussing the violation and provided EPA with the opportunity to review and comment on the notice of violation and settlement agreement. The resolution of the issue may not have occurred within 180 days, but the violation was resolved.

Recommendation:

Rec #	Due Date	Recommendation
1	07/17/2018	<p>EPA Region 8 will discuss all FRVs with SDDENR during the quarterly meetings to determine which violations should be classified as HPVs. Outstanding HPVs will be discussed at quarterly meetings, and EPA will frequently track the progress of all HPVs for which the state has developed a case development and resolution timeline. EPA will conduct case-specific consultations with SDDENR at a minimum frequency of every three months until HPVs are addressed. As of April 2nd, 2019, EPA has used FY 2018 data to verify that outstanding HPVs have been addressed, and EPA continues to discuss new HPVs with the state to ensure that they are dealt with in a timely manner. EPA will raise on quarterly calls going forward - “ July 2019, September 2019, and December 2019.</p> <p>EPA will provide FRV and HPV training to SDDENR if requested by the state or determined to be necessary by EPA.</p>

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	1	0%
14 HPV case development and resolution timeline in place when required that contains required policy elements [GOAL]	100%		0	0	

CAA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Summary:

Penalties document gravity and economic benefit, consistent with the penalty policy. Documentation of collected penalties was provided for all penalties assessed.

Explanation:

The state uses a spreadsheet template to calculate penalties, which facilitates consistency in penalty calculations. All requested penalty calculations were shared with EPA.

Economic benefit and gravity were included in all penalty calculations reviewed. In one file reviewed, it was noted in the calculation that there was no economic benefit to noncompliance when an economic benefit existed and, therefore, should have been included. Since: (1) this was an isolated incident; (2) economic benefit is only half of the criteria for Metric 11a; (3) the state successfully included and documented a gravity component for this penalty calculation; and (4) a limited number of files were available for review, EPA is identifying Metric 11a as an area for state attention, not improvement, although the calculated data metric percentage is 83.3%.

All penalties assessed were collected, and documentation of receipt of payment was contained in files, satisfying Metric 12b. In all files reviewed, the initial penalty calculated was equal to the final penalty, so Metric 12a could not be assessed.

Although not factored into the calculation of these metrics, it should be noted that South Dakota has a statutory limit of \$10,000 per day per violation, which may potentially not allow for the full gravity and/or economic benefit to be captured in the penalty assessed.

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%		5	6	83.3%
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		0	0	0
12b Penalties collected [GOAL]	100%		6	6	100%

Resource Conservation and Recovery Act Findings

RCRA Element 1 - Data

Finding 1-1

Meets or Exceeds Expectations

Summary:

All of the data elements required to be entered into RCRAInfo had been entered in a timely and accurate fashion for the 27 files reviewed by EPA.

Explanation:

The mandatory data was complete and accurate.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2a Long-standing secondary violators	100%				0
2b Complete and accurate entry of mandatory data			27	27	100%
5a Two-year inspection coverage for operating TSDFs	100%	90.3%	2	2	100%
5b Annual inspection coverage for LQGs	20%	17.1%	8	31	25.8%
5c Five-year inspection coverage for LQGs	100%	54.8%	29	31	93.5%
5d Five-year inspection coverage for active SQGs		9.9%	61	561	10.9%
5e1 Five year inspection coverage at CESQGs			138		138
5e2 Five year inspection coverage at other sites (Transporters)			2		2
5e3 Five year inspection coverage at other sites (Non-Notifiers)			16		16

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
5e4 Five year inspection coverage at other sites (not covered by metrics 5a-5e3)			15		15
7b Violations found during inspections		35.9%	1	78	1.3%
8a SNC identification rate		2.1%	0	78	0%
10a Timely enforcement taken to address SNC	80%	86.4%	0	0	

RCRA Element 2 - Inspections

Finding 2-1

Meets or Exceeds Expectations

Summary:

The state meets or exceeds the national goals for all inspection coverage areas with the exception of the 5-year inspection coverage for LQGs. Unfortunately, this SRF metric is based on the biennial report system values which may include one-time generators or episodic LQGs. Including one-time and episodic generators in the metric inflates the LQG count beyond those generators which are consistently in the largest handler category and may skew a simple comparison to indicate that a lower percentage of “static” LQGs were inspected. One-time and episodic handlers can move quickly in and out of the LQG category and can be very difficult to inspect within a year.

Explanation:

The state does an excellent job of LQG inspections, with an annual coverage of 25.8%. The state also met the TSDf requirement by inspecting the 2 operating TSDfS in the state.

Metric 5c indicates the state had a 5-year inspection coverage for LQG inspections of 93.5% which significantly exceeds the national average of 54.8% but fails to achieve the national goal of 100% LQG coverage on a 5-year basis.

The universe for the inspection coverage metrics is based on the Biennial Reporting System (BRS). Episodic generators, one-time generators, and one-time LQGs submitting one-time BRS notifications may not justify inspection targeting for these one-time events.

5-year LQG Inspection Coverage:

Year	%	# Inspected/Universe	Number Not Inspected
2011	80	20/25	5 Daktronics Gehl Power Products SAPA Extrusions Star Circuits Midwest Coop
2012	84	21/25	4 Daktronics Smith Equipment Star Circuits Midwest Coop
2013	93.9	31/33	2 Nustar Yankton Love's Travel Stops
2014	93.9	31/33	2 3M Brookings Health Love's Travel Stops
2015	93.5	29/31	2 US COE Ft. Randall Amerex SD
2016	93.5	29/31	2 US COE Ft. Randall Amerex SD

The state inspections are thorough and detailed. The inspection reports allow appropriate violation determinations, none of which resulted in formal or informal enforcement actions during FY 2016.

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%	90.3%	2	2	100%
5b Annual inspection coverage for LQGs.	20%	17.1%	8	31	25.8%
5c Five-year inspection coverage of LQGs [GOAL]	100%	54.8%	29	31	93.5%
5d Five year inspection coverage for active SQGs.		9.9%	61	561	10.9%
5e1 Five year inspection coverage of active conditionally exempt SQGs.					138
5e2 Five year inspection coverage of active transporters.					2
5e3 Five year inspection coverage at active non-notifiers.					16
5e4 Five year inspection coverage of active sites (not covered by metrics 5a-5e3).					15
6a Inspection reports complete and sufficient to determine compliance [GOAL]	100%		20	20	100%
6b Timeliness of inspection report completion [GOAL]	100%		20	20	100%

RCRA Element 3 - Violations

Finding 3-1

Meets or Exceeds Expectations

Summary:

The state accurately identifies violations in their inspection reports and enters these in the national database. There were no SNCs identified during this review period which included prior years.

Explanation:

The state accurately identifies violations. Inspection reports documented violations, allowing accurate compliance determinations. Based on the number of inspections completed for which a determination of no violations was found, EPA concluded that the SNC identification rate was appropriate though lower than half the national average.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
2a Long-standing secondary violators					0
7a Accurate compliance determinations [GOAL]	100%		20	20	100%
7b Violations found during inspections		35.9%	1	78	1.3%
8a SNC identification rate.		2.1%	0	78	0%
8b Timeliness of SNC determinations [GOAL]	100%	84.2%	0	0	0
8c Appropriate SNC determinations [GOAL]	100%		0	0	0

RCRA Element 4 - Enforcement

Finding 4-1

Meets or Exceeds Expectations

Summary:

The state takes timely and appropriate enforcement action to address identified violations. The state requires corrective measures in their informal actions to return facilities to compliance and follows up through required submittals or onsite inspections to verify return to compliance has occurred.

Explanation:

Seven informal actions from prior fiscal years were reviewed. The enforcement actions returned violators to compliance. The enforcement actions were timely and appropriate for the violations identified.

State Response:

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State %
10a Timely enforcement taken to address SNC.	80%	86.4%	0	0	
10b Appropriate enforcement taken to address violations [GOAL]	100%		7	7	100%
9a Enforcement that returns sites to compliance [GOAL]	100%		7	7	100%

RCRA Element 5 - Penalties

Finding 5-1

Meets or Exceeds Expectations

Summary:

The state did not collect any penalties in FY 2016. At HQ's request, EPA Region 8 expanded our review to include prior years since the last state SRF review. There were 7 informal actions reviewed for FY 2011, FY 2012, and FY 2013. There were no penalties assessed or collected during this timeframe.

Explanation:

Based upon inspection findings and violation determination, no formal actions, including penalty assessment, were warranted.

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%		0	0	
12a Documentation of rationale for difference between initial penalty calculation and final penalty [GOAL]	100%		0	0	
12b Penalty collection [GOAL]	100%		0	0	

Appendix – South Dakota SRF Kick-Off Letter- February 6, 2017

Ref: 8ENF-PJ

Mr. Steve M. Pirner, P.E.
Department Secretary
South Dakota Department of Environment
and Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, South Dakota 57501

Re: 2017 State Review Framework Inspection of Fiscal Year 2016

Dear Mr. Pirner:

As an integral part of our U.S. Environmental Protection Agency – State of South Dakota partnership, Region 8 will be conducting a State Review Framework (SRF) review of the South Dakota Department of Environment and Natural Resources (SDDENR) this year. Specifically, the EPA will be looking at the Resource Conservation and Recovery Act (RCRA) Subtitle C, Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) and Clean Air Act (CAA) Stationary Source enforcement programs in 2017. We will review inspection and enforcement activity from fiscal year 2016.

An important part of the review process is the visit to your state agency office. Through this visit, the EPA can have face-to-face discussions with enforcement staff and review their respective files to better understand the overall enforcement program. State visits for these reviews will include:

- discussions between Region 8 and SDDENR program managers and staff;
- examination of data in EPA and SDDENR data systems; and,
- review of selected SDDENR inspection and enforcement files and policies.

Following our visit to your office, the EPA will summarize findings and recommendations in a draft report. Your management and staff will be provided with an opportunity to review and comment on this draft. The EPA expects to complete the SDDENR review, including the final report, by December 31, 2017. If any areas for improvement are identified in the SRF, we will work with you to address them in the most constructive manner possible. Region 8 and SDDENR are partners in carrying out the review, and we intend to assist you in meeting both federal standards and goals agreed to in SDDENR's Performance Partnership Agreement.

Region 8 has established a cross-program team of managers and senior staff to implement the SDDENR review. David Piantanida, SRF Coordinator at (303) 312-6200, will be your primary contact at Region 8 and will coordinate overall logistics for the EPA. I am Region 8's senior manager with overall responsibility for the review. We request that you also identify a primary contact person for the EPA to work with and provide that name to Mr. Piantanida. The Region 8 program leads on the 2017 SRF review team are:

Linda Jacobson	RCRA	(303) 312-6503	jacobson.linda@epa.gov
Mike Boeglin	NPDES (Lead)	(303) 312-6250	boeglin.michael@epa.gov

Christina Carballal	NPDES	(303) 312-6046	carballal-broome.christina@epa.gov
Laurie Ostrand	CAA	(303) 312-6437	ostrand.laurie@epa.gov
Sara Loiacono	CAA	(303) 312-6437	loiacono.sara@epa.gov

These program leads will be contacting SDDENR enforcement managers and staff to schedule a meeting to discuss expectations, procedures and scheduling for the review. The EPA will also send its analysis of the SRF data metrics and list of selected facility files prior to the on-site visit. General SRF review planning and logistics steps can be found in the attachment. Other documents used to evaluate the state's programs can be found on the EPA's ECHO website at <https://echo.epa.gov/>. Links to past SRF reports and recommendations can be found at the EPA's State Review Framework web page at <http://www.epa.gov/compliance/state/srf/>.

Please do not hesitate to contact me at (303) 312-6352, or have your staff contact David Piantanida at (303) 312-6200 with any questions about this review process. We look forward to working with you on the 2017 SRF review, and furthering our critical EPA-State partnership.

Sincerely,

/S/

Kimberly S. Opekar
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

cc: Via email
Elizabeth Walsh, Headquarters SRF Liaison
Office of Compliance, OECA

Debra Thomas, Acting Regional Administrator
Region 8

Suzanne Bohan, Acting Deputy Regional Administrator
Region 8

Kim S. Opekar, Acting Assistant Regional Administrator,
Enforcement, Compliance and Environmental Justice – Region 8

Mark Chalfant, Acting Deputy Assistant Regional Administrator
Enforcement, Compliance and Environmental Justice – Region 8

David Piantanida, SRF Coordinator
Enforcement, Compliance and Environmental Justice – Region 8

Attachment

SD SRF Review Planning & Logistics

As the EPA begins this review process, SDDENR can expect the following:

- The EPA will contact SDDENR enforcement managers and staff to schedule a meeting or conference call to discuss expectations, procedures and scheduling for the review if this has not already occurred.
- The EPA may ask for preliminary information that is readily available such as descriptions of agency and program structures, agency enforcement policies, staffing numbers and other organizational information.
- The EPA will send SDDENR a list of data metrics and conduct a data metric analysis.
- The EPA will send SDDENR a list of requested files for review at least two weeks in advance of onsite file reviews.
- The EPA will set up a call with SDDENR to verify that files in the EPA's requested file list will be available; where the files will be located; and to confirm review dates, arrival times, and logistics.
- The EPA will conduct an entrance conference for the review upon arrival at the SDDENR offices and an exit meeting for SDDENR managers and staff prior to the EPA's departure.
- The EPA will draft a report of its review findings, share the draft report with SDDENR, and request comments.
- Once the report is final, the EPA will add the report, and any recommendations in the report, to the SRF Tracker.
- Once the report is final, the EPA will consult with the state and add agreed-upon action items in the report to the Action Item database.

The EPA will initiate periodic follow-up discussions with SDDENR to monitor progress on report recommendations.