

STATE REVIEW FRAMEWORK

New York

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

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

**Final Report
December 20, 2017**

Executive Summary

Introduction

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

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

- NYSDEC meets its inspection commitments. For all major CWA, CAA, and RCRA inspection categories, NYSDEC met or exceeded its annual inspection commitments for FY'16. NYSDEC also met expectations for nearly all inspection types in its state-specific CWA Compliance Monitoring Strategy Plan.
- NYSDEC consistently makes accurate compliance determinations. All CAA and RCRA files reviews and all CWA files with sufficient documentation contained accurate compliance determinations.
- NYSDEC consistently documents collection of penalties. All CWA, CAA and RCRA files reviewed included documentation establishing that the assessed penalty had been paid.

Priority Issues to Address

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

- Some mandatory data requirements are not entered timely or accurately into the national data system. EPA has provided program-specific recommendations to address these issues.
- NYSDEC does not consistently document economic benefit or the rationale for the difference between initial penalty calculation and final penalty for all three statutory programs. It is recommended that EPA work with NYSDEC to develop or improve a template to be included as part of penalty documentation and that NYSDEC submit an updated SOP addressing the identified issues. EPA will provide training and will review a subset of files at the conclusion of FY'18.

Most Significant CWA-NPDES Program Issues¹

- Some data were not entered accurately into the national data system and two required elements were not reported at all. NYSDEC does not enter informal actions or application receipt dates into the national data system. It is recommended that NYSDEC evaluate their ability to modernize their computer systems used for data management and submit a plan to ensure all required data elements are entered into the national system in the future.
- NYSDEC does not identify and report single event violations (SEVs). It is recommended that NYSDEC implement their SEV pilot plan that was developed in response to Round 2. EPA Region 2 recommends that NYSDEC expand use of the pilot plan to include all SEVs beginning in FY'19.
- NYSDEC does not always respond to NPDES violations timely. It is recommended that NYSDEC submit a plan for improving timely responses to facilities that are in SNC and implement the plan immediately upon receiving comments from EPA Region 2.

Most Significant CAA Stationary Source Program Issues

- Minimum data requirements (MDRs), including compliance monitoring, stack tests, and enforcement MDRs are not entered timely, and Title V Annual Compliance Certification review dates and deviations are not accurately entered into the national data system. EPA Region 2 will work with NYSDEC to determine how data is being transferred from the state database to ICIS-Air. It is recommended that NYSDEC management issue a memorandum to staff reiterating the importance of timely and accurate data entry and that all discrepancies identified in the report be corrected.
- NYSDEC did not review all Title V annual compliance certifications for FY'16. This issue will be addressed through the recommendation for MDRs listed above. EPA will review this metric as part of annual data metrics. If progress is not apparent, EPA will work with NYSDEC to further address this issue.

Most Significant RCRA Subtitle C Program Issues

- MDR data is not accurately and completely reflected in the national data system (RCRAinfo). It is recommended that NYSDEC develop appropriate procedures for accurate MDR entry.
- NYSDEC did not consistently make timely SNC determinations. It is recommended that NYSDEC develop an SOP to address timely SNC determinations.

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."

Table of Contents

I. Background on the State Review Framework	1
II. SRF Review Process.....	2
III. SRF Findings	4
Clean Water Act Findings.....	5
Clean Air Act Findings	27
Resource Conservation and Recovery Act Findings.....	39
Appendix I – Clean Air Act.....	51
Appendix II – Clean Water Act.....	53
Appendix III – Resource Conservation and Recovery Act	55

I. Background on the State Review Framework

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

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

Reviews cover:

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

EPA conducts SRF reviews in three phases:

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

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

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

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

II. SRF Review Process

Review period: Fiscal Year 2016

Key dates:

- Kickoff letter sent to the state: February 18, 2017
- Kickoff meeting conducted: March 13, 2017
- Data metric analysis sent to state:
 - Clean Water Act (CWA): April 27, 2017
 - Clean Air Act (CAA): March 28, 2017
 - Resource Conservation and Recovery Act (RCRA): March 28, 2017
- File selection list sent to state:
 - CWA: April 27, 2017
 - CAA: April 24, 2017
 - RCRA: April 24, 2017
- Onsite file reviews conducted:
 - CWA: May 22 – 26, 2017
 - CAA: June 5 – 9, 2017
 - RCRA: May 23 – 25, 2017
- Exit meeting conducted: July 6, 2017
- Draft report sent to state:
- Report finalized:

State and EPA key contacts for review:

- Dore LaPosta, Director, EPA-DECA
- Barbara McGarry, Chief, EPA-DECA-CAPSB
- Daniel Teitelbaum, Data Management Team Leader, EPA-DECA-CAPSB
- Andrea Elizondo, SRF Coordinator, EPA-DECA-CAPSB
- Robert Buettner, Chief, EPA-DECA-ACB
- Nancy Rutherford, Air Data Steward, EPA-DECA-ACB
- Doug McKenna, Chief, EPA-DECA-WCB
- Christy Arvizu, Environmental Scientist, EPA-DECA-WCB
- Lenny Voo, Chief, EPA-DECA-RCB
- Derval Thomas, Section Chief, EPA-DECA-RCB
- Scott Crisafulli, Deputy Counsel, Office of General Counsel, NYSDEC
- Peter Casper, Deputy Counsel, Office of General Counsel, NYSDEC
- Dena Putnick, Division of Water, Office of General Counsel, NYSDEC
- Stephen Allinger, Division of Air, Office of General Counsel, NYSDEC
- Colleen McCarthy, Division of Air, Office of General Counsel, NYSDEC
- Benjamin Conlon, Division of Environmental Remediation, Office of General Counsel, NYSDEC
- Joseph DiMura, Division of Water, NYSDEC
- Edward Hampston, Division of Water, NYSDEC

- Meredith Streeter, Division of Water, NYSDEC
- Robert Stanton, Division of Air Resources, NYSDEC
- Eric Wade, Division of Air Resources, NYSDEC
- James Quinn, Division of Environmental Remediation, NYSDEC
- Kelly Lewandowski, Division of Environmental Remediation, NYSDEC

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	NYSDEC maintains complete discharge monitoring report (DMR) data in the national data system (ICIS-NPDES).					
Explanation	Data entered into ICIS for DMRs is generally complete. Metric 1b2 indicates that 99.7% of expected DMRs for major facilities were received and entered into ICIS- NPDES during the fiscal year. This is above the national goal of 95%.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	1b2 DMR entry rate for major facilities	>= 95%	96.8%	14,170	14,213	99.7%
State response	Noted.					
Recommendation	N/A.					

CWA Element 1 — Data

Finding 1-2	Area for State Improvement																							
Summary	Some data were not entered timely or accurately into the national data system and two required elements were not reported at all.																							
Explanation	<p>For metric 1b1, although NYSDEC maintains complete information on permit limits and discharge monitoring reports in ICIS-NPDES, the state is not entering application receipt dates into the data system. As a result, this causes permits to be classified as expired as opposed to being classified as administratively continued after their expiration date, even if an application for renewal was submitted. NPDES authorities are required to enter application receipt dates into the data system so that permit statuses can be accurately maintained.</p> <p>For metric 2b, 27 (67.5%) of 40 files reviewed had data that were accurately reflected in the national data system. The review found that, in many cases, NYSDEC does not enter informal actions such as Notices of Violations for major permittees into the national data system.</p> <p>During the data metric analysis, it was found that NYSDEC had not been loading inspections and enforcement actions into the national data system for a majority of FY’16. The data were subsequently loaded into the data system after the SRF data freeze date. EPA Region 2 reconstructed the data provided by NYSDEC and recalculated the relevant metrics in order to accurately represent program performance throughout FY’16.</p> <p>EPA Region 2 is aware via discussions with NYSDEC staff that part of the data management issue relates to NYSDEC’s computer system and the challenges of querying separate internal databases that are maintained by different departments.</p>																							
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>1b1 Permit limit rate for major facilities</td><td>>= 95%</td><td>91.1%</td><td>263</td><td>317</td><td>83.0%</td></tr><tr><td>2b Files reviewed where data are accurately reflected in the national data system</td><td>100%</td><td>-</td><td>27</td><td>40</td><td>67.5%</td></tr></table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	1b1 Permit limit rate for major facilities	>= 95%	91.1%	263	317	83.0%	2b Files reviewed where data are accurately reflected in the national data system	100%	-	27	40	67.5%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
1b1 Permit limit rate for major facilities	>= 95%	91.1%	263	317	83.0%																			
2b Files reviewed where data are accurately reflected in the national data system	100%	-	27	40	67.5%																			
State response	NYSDEC contends that a 100% permit limit rate for major facilities is achieved in ICIS and that permit application receipt dates is not relevant to tracking permit limit rates. NYSDEC maintains reporting and enforcement																							

	<p>on limit rates using ICIS-NPDES independent of application receipt information.</p> <p>For metric 2b, NYSDEC also notes that changes were required in 2016 to data entry schema by EPA-ICIS staff to allow transfer of inspection batch data during 2016 that delayed entry of some inspection data by NYSDEC. NYSDEC has updated plans for entry of the DOW inspection database to ICIS and is routinely uploading inspections to ICIS-NPDES on a monthly basis.</p> <p>In relation to computer resources and data management and transfer, NYSDEC is undertaking efforts with New York State Office of Information Technology Services (NYSITS) to update several data management and transfer systems and allow collection of inspection records electronically to meet the e-Reporting Rule requirements for submission of inspection data. NYSDEC has a preliminary goal to update this information as of 2020 to comply with e-Reporting Rule requirements. NYSDEC acknowledges that DOW Water Compliance System (WCS) for inspection data tracking is an antiquated system no longer fully supported by NYSITS and requiring significant updates to comply with e-Reporting Rules.</p> <p>Evaluation and modernization of NYSDEC computer systems requires involvement by other NYS agencies and sufficient funding. While projects are on-going to address the items discussed above, NYSDEC lacks control for projects and funds to commit to specific actions and timeframes.</p> <p>See State Response for Finding 3-3. DEC will include provisions for entry of NOV's in the SEV entry pilot subject to similar limitations.</p>
<p>Recommendation</p>	<ol style="list-style-type: none"> 1. EPA Region 2 recommends that NYSDEC evaluate and modernize its computer systems used for data management so that it is accessible by relevant departments/staff. Within 90 days of finalization of the report, NYSDEC shall inform EPA of any plans for modernizing its computer system if its evaluations support doing so. 2. NYSDEC shall begin reporting application receipt dates for Major facilities to the national data system (ICIS-NPDES) on a quarterly basis beginning in March 2018. 3. Within 180 days of finalization of this report, NYSDEC shall develop and submit a plan for the pilot program focused on the identification and reporting of a subset of informal actions

generated by the Central Office. NYSDEC shall begin implementation of the pilot program upon receiving EPA comment. Progress will be tracked on a quarterly basis as part of the SNAP process.

4. Within 30 days of completing Recommendations 2 and 3, NYSDEC management shall issue a directive to affected staff describing the new procedures, and share a copy of this directive with EPA Region 2.
 5. At the time of FY'18 data verification, NYSDEC's Director of the Division of Water shall submit a memo to EPA Region 2 certifying that the pilot program has been implemented, that subsequent data were entered in accordance with the plan, and that all verified data are complete. If deemed necessary, this certification process shall be repeated the subsequent year. In addition, EPA Region 2 shall review metric 2b and informal action counts as part of the annual data metrics for FY'18 to confirm completion of this recommendation. In the event that the data metrics do not show conclusive progress, EPA Region 2 shall request that NYSDEC submit a subset of files to EPA Region 2 for review.
-

CWA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations																																										
Summary	NYSDEC meets some inspection coverage commitments.																																										
Explanation	<p>Metrics 5a1 and 5b1 show that NYSDEC inspected 245 NPDES majors and 516 NPDES non-majors with individual permits. NYSDEC exceeded the national goal for each of these metrics, as only 168 NPDES majors and 254 NPDES non-majors with individual permits were scheduled for inspection in FY’16 under NYSDEC’s Compliance Monitoring Strategy (CMS) plan.</p> <p>Metrics 4a4, 4a5 and 4a10 show that NYSDEC inspected 38 major CSOs, at least 3 SSOs, and 183 medium and large NPDES CAFOs. NYSDEC exceeded the national goal for each of these metrics, as only 12 major CSOs, 3 SSOs and 105 medium and large NPDES CAFOs were scheduled for inspection in FY’16 under NYSDEC’s CMS plan.</p>																																										
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>5a1 Inspection coverage of NPDES majors*</td><td>100% of state CMS plan</td><td>51.9%</td><td>245</td><td>168</td><td>146.0%</td></tr><tr><td>5b1 Inspection coverage of NPDES non-majors with individual permits*</td><td>100% of state CMS plan</td><td>23.9%</td><td>516</td><td>254</td><td>203.0%</td></tr><tr><td>4a4 Major CSO inspections</td><td>100% of state CMS plan</td><td>-</td><td>38</td><td>12</td><td>316.7%</td></tr><tr><td>4a5 SSO inspections</td><td>100% of state CMS plan</td><td>-</td><td>3+</td><td>3</td><td>100%</td></tr><tr><td>4a10 Medium and large NPDES CAFO inspections</td><td>100% of state CMS plan</td><td>-</td><td>183</td><td>105</td><td>174.3%</td></tr></table> <p>*calculated using data updated after the SRF data freeze date</p>							Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5a1 Inspection coverage of NPDES majors*	100% of state CMS plan	51.9%	245	168	146.0%	5b1 Inspection coverage of NPDES non-majors with individual permits*	100% of state CMS plan	23.9%	516	254	203.0%	4a4 Major CSO inspections	100% of state CMS plan	-	38	12	316.7%	4a5 SSO inspections	100% of state CMS plan	-	3+	3	100%	4a10 Medium and large NPDES CAFO inspections	100% of state CMS plan	-	183	105	174.3%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																																						
5a1 Inspection coverage of NPDES majors*	100% of state CMS plan	51.9%	245	168	146.0%																																						
5b1 Inspection coverage of NPDES non-majors with individual permits*	100% of state CMS plan	23.9%	516	254	203.0%																																						
4a4 Major CSO inspections	100% of state CMS plan	-	38	12	316.7%																																						
4a5 SSO inspections	100% of state CMS plan	-	3+	3	100%																																						
4a10 Medium and large NPDES CAFO inspections	100% of state CMS plan	-	183	105	174.3%																																						
State response	Noted.																																										
Recommendation	N/A.																																										

CWA Element 2 — Inspections

Finding 2-2	Area for State Attention						
Summary	NYSDEC did not meet inspection coverage commitments for Phase I and II MS4 inspections, stormwater construction inspections or industrial stormwater inspections.						
Explanation	Metrics 4a7, 4a8 and 4a9 show that NYSDEC conducted 30 (37.5%) of 80 Phase I & II MS4 audits or inspections, 71 (42.8%) of 166 industrial stormwater inspections, and 214 (25.5%) of 839 Phase I and II stormwater construction inspections. NYSDEC did not meet the national goal for each of these metrics, as these metrics did not meet 100% of the CMS plan requirements for FY’16. Shortfalls are acknowledged on an annual basis as NYSDEC makes commitments to meet state priorities while making efforts to meeting CMS goal.						
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	
	4a7 Phase I & II MS4 audits or inspections	100% of state CMS plan	-	30	80	37.5%	
	4a8 Industrial stormwater inspections	100% of state CMS plan	-	71	166	42.8%	
	4a9 Phase I and II stormwater construction inspections	100% of state CMS plan	-	214	839	25.5%	
State response	<p>NYSDEC inspection work planning continues to prioritize municipal infrastructure, sewage discharge from wet weather events, and Major facilities. New York State has allocated record amounts of grants to deal with municipal infrastructure and wet weather issues that will leverage additional municipal funds in these areas. NYSDEC has the responsibility to monitor and carefully direct these funds in the core areas which will continue to require an emphasis on identified priorities over storm water facilities.</p> <p>As part of EPA/NYSDEC Performance Partnership Grants (PPG) planning, DEC will re-examine if CMS flexibilities can be utilized to address CMS goals and will further clarify details our CMS reporting to discuss and clarify differences in the state’s goals from CMS guidance. In addition, DEC will continue to work with EPA thru work sharing inspection planning to have EPA target areas that don’t fit DEC priorities and compliance CMS goals.</p>						

Recommendation	During the 2018 CMS process, NYSDEC shall propose a plan for meeting all of the goals of the 2018 CMS by December 31, 2017.

CWA Element 2 — Inspections

Finding 2-3	Area for State Attention																							
Summary	Inspection reports sometimes lack information sufficient to determine compliance and are not consistently completed in a timely manner.																							
Explanation	<p>Metric 6a shows that 54 (88.5%) of the 61 inspection reports reviewed were complete and sufficient to determine compliance. During the review it was found that some inspection reports contain only short narrative descriptions that lack sufficient detail to substantiate violations. Agencies are allowed to establish their own methods for completing inspection reports, but the quality and content of the written inspection reports must meet the requirements listed in the NPDES Compliance Inspection Manual. In Round 2, EPA Region 2 required that NYSDEC inspectors substantiate their inspection reports with justification for their ratings and follow the Technical & Operational Guidance Series 1.4.2. In order to improve inspection quality, NYSDEC should reference Chapter 2 Section G of the NPDES Compliance Inspection Manual, Interim Revised Version, January 2017.</p> <p>Metric 6b shows that 39 (84.8%) of the 46 inspection reports reviewed were finalized and transmitted within the prescribed 30-day timeframe. The timeframes for finalization and transmission of the reports reviewed by EPA ranged from 0 days to 585 days. Due to state policy, a number of reconnaissance inspection reports and site visit and/or complaint responses remain internal and are not transmitted to the facilities. The inspection reports that fell within this category were considered timely.</p>																							
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>6a Inspection reports complete and sufficient to determine compliance at the facility</td><td>100%</td><td>-</td><td>54</td><td>61</td><td>88.5%</td></tr><tr><td>6b Inspection reports completed within prescribed timeframe</td><td>100%</td><td>-</td><td>39</td><td>46</td><td>84.8%</td></tr></table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	6a Inspection reports complete and sufficient to determine compliance at the facility	100%	-	54	61	88.5%	6b Inspection reports completed within prescribed timeframe	100%	-	39	46	84.8%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
6a Inspection reports complete and sufficient to determine compliance at the facility	100%	-	54	61	88.5%																			
6b Inspection reports completed within prescribed timeframe	100%	-	39	46	84.8%																			
State response	<p>NYSDEC will review recommendations and guidance on completeness and timeliness with staff including issuance of a memo on the importance of timely inspection entry and response.</p> <p>NYSDEC has entered into a 5-year contract with SUNY Morrisville to provide inspector training with an emphasis on treatment technology and operations skills. Furthermore, the Certification of Compliance (CCF) was</p>																							

	<p>developed following the previous SRF and has improved completeness of inspection response and follow-up but has not been in use for entire SRF period. NYSDEC is expanding use of the CCF to address additional compliance items beyond inspections. These items coupled with an updated municipal inspection form will improve completeness and timeliness of inspection reporting.</p>
Recommendation	N/A.

CWA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations					
Summary	Compliance determinations made by NYSDEC are generally accurate in cases where there is sufficient documentation.					
Explanation	Metric 7e shows that 53 (86.9%) of 61 files reviewed had accurate compliance determinations. While this is below the national goal of 100%, EPA Region 2 determined that in cases where there was sufficient supporting documentation, NYSDEC's compliance determinations were generally accurate. Issues with documentation and descriptive information is covered by Finding 2-2. As such, this metric meets or exceeds expectations.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	7e Inspection reports reviewed that led to an accurate compliance determination	100%	-	53	61	86.9%
State response	Noted.					
Recommendation	N/A.					

CWA Element 3 — Violations

Finding 3-2	Area for State Attention																							
Summary	NYSDEC’s non-compliance and SNC rates are among the highest in the nation.																							
Explanation	<p>Metric 7d1 shows that 280 (88.3%) of 317 major facilities were reported to have DMR violations. This is above the national average of 73.3%.</p> <p>Metric 8a2 shows that 79 (24.0%) of 329 major NPDES facilities were in SNC during the review year. This is above the national average of 20.3%.</p> <p>NYSDEC falls in the top 30% of states with the highest non-compliance and SNC rates.</p>																							
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>7d1 Major facilities in noncompliance</td><td>-</td><td>73..3%</td><td>280</td><td>317</td><td>88.3%</td></tr><tr><td>8a2 Percentage of major facilities in SNC</td><td>-</td><td>20.3%</td><td>79</td><td>329</td><td>24.0%</td></tr></table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	7d1 Major facilities in noncompliance	-	73..3%	280	317	88.3%	8a2 Percentage of major facilities in SNC	-	20.3%	79	329	24.0%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
7d1 Major facilities in noncompliance	-	73..3%	280	317	88.3%																			
8a2 Percentage of major facilities in SNC	-	20.3%	79	329	24.0%																			
State response	<p>This metric strictly examines non-compliance and SNC instances while failing to account for response or weighting of significance for data points examined. NYSDEC is the leading or one of the leading users of ICIS for data entry and SPDES covered facilities in ICIS-NPDES which provides for increased data collection to register non-compliance. In addition, the metric does not reflect some of non-compliance resolution or subsequent error correction.</p> <p>As shown in the NYSDEC SPDES Compliance and Enforcement Annual Report (dated October 1, 2016) for SFY 2015/16 and documented annually in this report prepared under the PPG, NYSDEC collects over 500,000 data points on discharge monitoring reports (DMRs). This data often reflects multiple sampling events as only one data point so represents even more total measures of compliance. This report documents an overall compliance rate of this data around 97% which is similar to other recent years.</p> <p>Over the past 18 months, NYSDEC has aggressively implemented NetDMR for electronic data reporting and approximately 85% of individual SPDES facilities are now using NetDMR for data submittal. NYSDEC is continuing to push implementation and will expand reporting to general permit facilities as well. With use of NetDMR, NYSDEC has noted more timely reporting and a significant reduction in keypunch error.</p>																							

	<p>The tools of NetDMR that can flag errors for permittees during entry will also reduce false SNC as errors in reporting are immediately corrected. NYSDEC believes the transition from paper submittal, multiple handlers, and keypunch data entry to direct submittal reduced false noncompliance beginning at the end of 2016 and has since improved completeness and quality of DMR data significantly.</p> <p>NYSDEC agrees that identification of SNC and noncompliance is an important metric to allow for appropriate follow-up.</p>
Recommendation	N/A.

CWA Element 3 — Violations

Finding 3-3	Area for State Improvement																													
Summary	NYSDEC does not identify SEVs.																													
Explanation	<p>During the review, EPA Region 2 identified 8 SEVs in the files that should have been entered into ICIS-NPDES. Because NYSDEC does not identify and report SEVs, there are no data available to determine accuracy or timeliness of SNC identification and reporting at major facilities.</p> <p>EPA Region 2 recognizes that NYSDEC had a plan to start entering SEVs in response to Round 2, but was not able to implement the pilot due to implementation challenges with the Sewage Pollution Right to Know Act.</p>																													
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>8b Single-event violations accurately identified as SNC or non-SNC</td><td>100%</td><td>-</td><td>0</td><td>8</td><td>0%</td></tr><tr><td>8c Percentage of SEVs identified as SNC reported timely at major facilities</td><td>100%</td><td>-</td><td>0</td><td>0</td><td>0%</td></tr><tr><td>7a1 Number of major facilities with single event violations</td><td>-</td><td>-</td><td>1</td><td>-</td><td>-</td></tr></table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	8b Single-event violations accurately identified as SNC or non-SNC	100%	-	0	8	0%	8c Percentage of SEVs identified as SNC reported timely at major facilities	100%	-	0	0	0%	7a1 Number of major facilities with single event violations	-	-	1	-	-
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																									
8b Single-event violations accurately identified as SNC or non-SNC	100%	-	0	8	0%																									
8c Percentage of SEVs identified as SNC reported timely at major facilities	100%	-	0	0	0%																									
7a1 Number of major facilities with single event violations	-	-	1	-	-																									
State response	<p>The entry of SEV and NOV (Finding 1-2) information represents a significant increase of data entry and management resources that have not been included in program development. While accessibility of this data is a worthy goal for transparency, the re-direction of resources targeted for other compliance and enforcement activities to meet this goal will significantly impact other efforts. NYSDEC will include measures during PPG work plan development and reporting to begin to address this finding.</p> <p>DEC efforts to complete a pilot project for SEV entry has been impacted by the State’s implementation of our Sewage Pollution Right to Know Act (SPRTK) which requires expeditious reporting of sewage discharges to NYSDEC and the public and utilizes staff and skills necessary for SEV entry. Pending resolution of an update to SPRTK in 2018 and the PPG work planning process, DEC include efforts to advance a pilot for SEV entry.</p>																													

	<p>During implementation of a pilot SEV, NYSDEC will assess a finite number of appropriate SEVs to target but will limit overall pilot scope and full implementation to a limited, target set of SEVs. Any pilot will target identification and entry of some SEVs but will not include follow-up activities such as resolution and reporting while the resource impact of entry, follow-up, and reporting is considered.</p> <p>To address areas for improvement on NOV (Finding 1-2) and SEV entry, DEC proposes a meeting with EPA ICIS staff to determine if data entry schema can be developed to allow DEC to develop batch entry and updating of NOV and SEV information. Pending the ability to develop batch entry schema, the proposed meeting, and PPG work planning, DEC will develop a proposal to utilize batch entry to further a pilot project on NOV and SEV entry.</p>
Recommendation	<ol style="list-style-type: none"> 1) Within 180 days of finalization of the report, NYSDEC shall develop and submit a plan for a pilot program focused on the identification and timely reporting of SEVs that NYSDEC has identified as high priority into ICIS. NYSDEC shall begin implementation upon receiving EPA comment. 2) SEV data entry will be added as a discussion item during quarterly SNAP meetings and EPA Region 2 will provide SEV data management training if requested. 3) EPA shall work with NYSDEC following the conclusion of the pilot program to ensure that reporting is extended to include all SEVs in the future. 4) EPA Region 2 will verify data entry as part of the annual data metrics for FY'18 and FY'19 to confirm completion of this metric.

CWA Element 4 — Enforcement						
Finding 4-1	Meets or Exceeds Expectations					
Summary	Enforcement responses typically return violators to compliance.					
Explanation	Metric 9a shows that a significant majority (38 of 38, or 94.7%) of enforcement responses returned or will return facilities in violation to compliance.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	9a Percentage of enforcement responses that return or will return source in violation to compliance	100%	-	36	38	94.7%
State response	Noted.					
Recommendation	N/A.					

CWA Element 4 — Enforcement

Finding 4-2	Area for State Attention																	
Summary	Enforcement responses do not always address violations in an appropriate manner.																	
Explanation	<p>Metric 10b shows that 35 (87.5%) of the 40 enforcement responses reviewed addressed violations in an appropriate manner.</p> <p>During the review, EPA Region 2 identified several instances where informal responses were taken where a formal response was warranted.</p> <p>All SNC violations should be addressed in an appropriate manner with an enforcement response that reflects the nature and severity of the violation. Unless there is a supportable justification, enforcement responses should be formal actions which return permittees to compliance. When formal enforcement action is not taken, there should be a written record that clearly justifies why the alternative action is more appropriate.</p>																	
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>10b responses reviewed that address violations in an appropriate manner</td><td>100%</td><td>-</td><td>35</td><td>40</td><td>87.5%</td></tr></table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	10b responses reviewed that address violations in an appropriate manner	100%	-	35	40	87.5%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
10b responses reviewed that address violations in an appropriate manner	100%	-	35	40	87.5%													
State response	<p>New York, like the other Northeastern states has some of the oldest infrastructure in the country. The SNC rate can be dominated by municipal facilities reflecting this infrastructure. Addressing SNC through formal enforcement is a complex and time consuming process including identifying funding, obtaining municipal government approval, and entry into Orders on Consent in conjunction with project planning and design. While DEC strives to resolve SNC within EPA guidelines, this can often not be routinely done in a timely and appropriate manner when major municipal infrastructure is involved. Over the last few years, New York State and municipalities in the State have spent or designated billions of dollars for municipal projects to improve compliance and will continue to address this historical issue.</p> <p>NYSDEC will review TOGS 1.4.2 SPDES Compliance and Enforcement to emphasize violation and response guidance with DOW and OGC staff via an updated compliance/enforcement training. NYSDEC will develop a plan to update past Compliance Training Programs and will complete training for staff. During the PPG work planning and reporting process, NYSDEC will include details on these efforts.</p>																	

Recommendation	N/A.
-----------------------	------

CWA Element 4 — Enforcement

Finding 4-3

Area for State Attention

Summary

NYSDEC does not always respond to NPDES violations timely.

Explanation

For metric 10a1, ICIS-NPDES indicated that action was taken to address SNC in only 8 (50%) of 16 cases.

Per the *NPDES Enforcement Management System (EMS)*, formal enforcement should occur at facilities in SNC prior to the second official QNCR unless there is supportable justification for an alternative action.

EPA Region 2 recognizes that all of the facilities that did not have actions taken in a timely manner were facilities that have been discussed on the quarterly Significant Noncompliance Action Program (SNAP) meetings. All of the facilities have had a complex history which require local government review as well as identification of procurement and funding to allow the local government to enter into an enforcement agreement.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
10a1 Major facilities with timely action as appropriate*	>= 98%	12.6%	8	16	50.0%

* calculated using data updated after the SRF data freeze date

State response

See response to finding 4-2.

This continues to be a problem Nationally for timely action. NYSDEC and EPA have entered into a Memorandum of Understanding for the Significant Noncompliance Action Program (SNAP) meetings to address Major facilities in SNC. The SNAP process is successful in tracking status of SNC and assisting in timely action to address SNC. As part of the PPG planning and reporting, NYSDEC will continue to emphasize the use of SNAP to address Major facility SNC.

As a follow-up to quarterly SNAP meetings, NYSDEC routinely provides an update to DOW and OGC staff on required actions and timeframe via a summary memo. NYSDEC will expand the use of the enforcement summary memo to include direct contact with OGC and DOW staff as another follow-up to emphasize commitments to timely and appropriate action.

Recommendation	EPA Region 2 will continue to work with NYSDEC through the SNAP process to support and enhance timely responses to SNC at Major facilities.
-----------------------	---

CWA Element 5 — Penalties						
Finding 5-1	Meets or Exceeds Expectations					
Summary	NYSDEC documents payment of penalty in the case files.					
Explanation	In all 16 enforcement files reviewed, EPA Region 2 found verification of penalty collection. In almost all instances, evidence of penalty collection was available via cancelled check, receipt, and/or reference to payment of the check in the transmittal letter.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	12b Penalties collected	100%	-	16	16	100%
State response	Noted.					
Recommendation	N/A.					

CWA Element 5 — Penalties

Finding 5-2	Area for State Improvement																							
Summary	NYSDEC does not consistently document economic benefit or the rationale for the difference between initial penalty calculation and final penalty.																							
Explanation	<p>For metric 11a, only 2 (12.5%) of the 16 penalty calculations reviewed included economic benefit. Violators of the CWA are likely to have obtained an economic benefit as a result of delayed or avoided pollution control expenditures during the period of non-compliance. The objective of the economic benefit calculation is to deter non-compliance by placing violators in the same financial position as they would have been if they had complied on time. For metric 12a, the initial penalty differed from the final in 7 files, but only 2 (28.6%) included documentation of the rationale for the difference.</p> <p>After review of the penalty documentation, it does not appear that NYSDEC is implementing the March 2014 memo titled “Instructions: DEC Penalty Calculation and Adjustment Form for Delegated / Approved Federal Programs.”</p> <p>Typically, penalties were calculated in accordance with Technical and Operational Guidance Series (TOGS) 1.4.2 and documentation is available, except where expedited enforcement occurs (e.g. short form orders for DMR non-submittal, CAFO BMP Initiative, MSGPs).</p>																							
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>11a Penalty calculations reviewed that consider and include gravity and economic benefit</td><td>100%</td><td>-</td><td>2</td><td>16</td><td>12.5%</td></tr><tr><td>12a Documentation of the difference between initial and final penalty and rationale</td><td>100%</td><td>-</td><td>2</td><td>7</td><td>28.6%</td></tr></table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	11a Penalty calculations reviewed that consider and include gravity and economic benefit	100%	-	2	16	12.5%	12a Documentation of the difference between initial and final penalty and rationale	100%	-	2	7	28.6%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
11a Penalty calculations reviewed that consider and include gravity and economic benefit	100%	-	2	16	12.5%																			
12a Documentation of the difference between initial and final penalty and rationale	100%	-	2	7	28.6%																			
State response	<p>The Office of General Counsel has conducted additional training on penalty calculations and appropriate use of penalty calculation sheets. Trainings were conducted with an emphasis on the March 2014 memo from then General Counsel, Ed McTiernan. The Office of General Counsel is also training new attorneys, on the need to utilize the penalty calculation sheets and factors to use, including policies developed by DEC. With staff all over the state, it is hard to have a centralized</p>																							

	<p>location or person able to review all penalties to ensure compliance with all guidance, policies, facts and the law for all enforcement matters. The Office of General Counsel will continue with trainings and updating policies as needed.</p> <p>NYSDEC will review TOGS 1.4.2 penalty guidance with DOW staff to provide clarification on calculating a penalty for case referral and addressing economic benefit calculation requirements. NYSECL and TOGS guidance typically allow a sufficient penalty to deter noncompliance without inclusion of economic benefit calculations by DOW staff. In the interest of settling the case and considering ability to collect penalties, effort to calculate economic benefit is not always a worthwhile use of resources. DOW will provide guidance and language to utilize by DOW staff to address consideration of economic benefit in preparing a penalty calculation to accompany case referral.</p>
<p>Recommendation</p>	<ol style="list-style-type: none"> 1) Within 90 days of finalization of this report, EPA Region 2 will work with NYSDEC to improve the existing penalty calculation sheets to provide for documentation of the appropriate consideration of economic benefit. These penalty calculation sheets are to be included as a mandatory portion of the penalty documentation. 2) Within 120 days of the finalization of this report, NYSDEC shall submit an updated SOP to EPA Region 2 providing for (a) the appropriate documentation of economic benefit calculations (b) documentation of the rationale for excluding economic benefit where applicable and (c) appropriate documentation of the rationale for any difference between the initial and final penalty. NYSDEC will finalize and begin to implement the SOP within 30 days of receipt of Region 2's comments. 3) Following the conclusion of FY'19, EPA Region 2 shall select a random subset of penalty files to be submitted by NYSDEC for review. EPA Region 2 will review the files to ensure that the SOP has been implemented and that subsequent penalty actions have been completed in accordance with the SOP.

Clean Air Act Findings

CAA Element 1 — Data								
Finding 1-1	Area for State Improvement							
Summary	Minimum data requirements (MDRs) are not entered timely and MDRs for TVACCs are not entered accurately.							
Explanation	<p><i>Timeliness of MDR entry</i></p> <p>Metric 3a2 shows that just 2 (25%) of 8 HPV determinations were reported timely. Metric 3b1 shows that 362 (48%) of 754 compliance monitoring MDRs were reported timely in ICIS-Air. Metric 3b2 shows that 62 (57.9%) of the 107 stack tests reviewed were reported timely. Metric 3b3 shows that 16 (25.4%) of 63 enforcement MDRs were reported timely, compared to the national goal of 100%</p> <p><i>Accuracy of MDR entry</i></p> <p>Metric 2b shows that just 12 (32.4%) of the 37 files reviewed had accurate MDR data in ICIS-Air. These accuracy issues were largely related to Title V Annual Compliance Certification Reviews. EPA Region 2 found that the TVACC review dates entered into ICIS-Air matched the TVACC due date in the NYSDEC database rather than the day that the TVACC was reviewed by NYSDEC in 15 of 21 cases. Additionally, there were 12 cases in the selected files in which TVACCs were reported to have no deviations, although deviations were clearly marked on the reports. CAA section 503(b)(2) requires permittees to periodically (but no less than annually) certify that the facility is in compliance with applicable requirements of the permit, and to promptly report any deviations from permit requirements to the permitting authority. These deviations are then required to be reported in the national data system.</p>							
Relevant metrics	Metric ID Number and Description			Natl Goal	Natl Avg	State N	State D	State % or #
	2b Accurate MDR data in ICIS-Air			100%	-	12	37	32.4%
	3a2 Timely reporting of HPV determinations			100%	7.8%	2	8	25.0%

	<table><tr><td>3b1 Timely reporting of compliance monitoring MDRs</td><td>100%</td><td>80.9%</td><td>362</td><td>754</td><td>48.0%</td></tr><tr><td>3b2 Timely reporting of stack test dates and results</td><td>100%</td><td>77.1%</td><td>62</td><td>107</td><td>57.9%</td></tr><tr><td>3b3 Timely reporting of enforcement MDRs</td><td>100%</td><td>77.2%</td><td>16</td><td>63</td><td>25.4%</td></tr></table>	3b1 Timely reporting of compliance monitoring MDRs	100%	80.9%	362	754	48.0%	3b2 Timely reporting of stack test dates and results	100%	77.1%	62	107	57.9%	3b3 Timely reporting of enforcement MDRs	100%	77.2%	16	63	25.4%
3b1 Timely reporting of compliance monitoring MDRs	100%	80.9%	362	754	48.0%														
3b2 Timely reporting of stack test dates and results	100%	77.1%	62	107	57.9%														
3b3 Timely reporting of enforcement MDRs	100%	77.2%	16	63	25.4%														
State response	NYSDEC acknowledges the Title V Annual Compliance Certification ‘review date’ is a data reporting option that is currently unavailable to field staff in our AFS system. DAR will request programming changes be made to correct the issue.																		
Recommendation	<ol style="list-style-type: none">1) Within 30 days of finalization of this report, EPA Region 2 shall work with NYSDEC to clarify the MDRs, and determine how the MDR data flows from the NYSDEC database into ICIS-Air.2) Within 90 days of finalization of this report, NYSDEC will develop procedures to ensure that TVACC reviews and deviations are accurately entered into the national data system and share a copy with EPA Region 2. NYSDEC shall begin to implement these procedures immediately after receiving comment from EPA Region 2.3) Within 120 days of finalization of this report, NYSDEC shall issue a memorandum to staff reiterating the importance of timely and accurate data entry, citing the appropriate policies and procedures for the specific areas cited in this report and share a copy with EPA Region 2 to confirm resolution of the action item.4) Within 120 days of finalization of this report, NYSDEC will correct the MDR data discrepancies identified in the FY’16 data and shall inform EPA Region 2 when it has been completed.5) Following the conclusion of FY’18, EPA Region 2 will review a subset of files to assure that MDR data are accurately reflected in the national data system, with a focus on TVACC reviews.6) EPA Region 2 will review the data metrics for timely reporting as part of the annual data metrics for FY’18 to confirm completion of this recommendation and discuss additional remedies with NYSDEC if timeliness remains a concern.																		

CAA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations					
Summary	NYSDEC meets its Full Compliance Evaluation (FCE) commitments.					
Explanation	Metric 5a and 5b show that NYSDEC inspected 258 (99.6%) of 259 majors and mega-sites scheduled for inspection in FY'16 and 129 (97.0%) of 133 SM-80s. In all cases, these results are in line with the National Goals and far exceed the National Averages.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	5a FCE coverage: majors and mega-sites	100% of commitment	84.5%	258	259	99.6%
	5b FCE coverage: SM-80s	100% of commitment	91.3%	129	133	97.0%
State response	Development of our yearly CMS plan and continued commitment to meeting FCE goals remains a priority for NYSDEC.					
Recommendation	N/A.					

CAA Element 2 — Inspections

Finding 2-2	Meets or Exceeds Expectations					
Summary	Inspection report documentation is complete and sufficient to determine compliance.					
Explanation	Metrics 6a and 6b indicate FCE elements were documented and sufficient documentation was provided to determine compliance in all 33 (100%) files reviewed.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	6a Documentation of FCE elements	100%	-	33	33	100%
	6b Compliance monitoring reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility	100%	-	33	33	100%
State response	NYSDEC believes inspections and a consistent field presence is the best way to maintain compliance with Title V and SM80 sources.					
Recommendation	N/A.					

CAA Element 2 — Inspections

Finding 2-3	Area for State Improvement																	
Summary	Title V annual compliance certifications (TVACCs) are not always reviewed.																	
Explanation	<p>For metric 5e, 323 (82.34%) of 392 TVACCs were reported as reviewed by NYSDEC during FY’16, as compared to the national goal of 100%. However, the file review revealed that there is no data entry field available in the state data system for review dates, and file documentation does not indicate if and when TVACCs are reviewed.</p> <p>As indicated in Finding 1-1, EPA Region 2 determined that TVACC review dates are not being accurately entered into ICIS. Due to this discovery, it is not possible to confidently determine NYSDEC’s performance for metric 5e.</p>																	
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>5e Review of Title V annual compliance certifications</td><td>100%</td><td>69.6%</td><td>323</td><td>392</td><td>82.3%</td></tr></table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5e Review of Title V annual compliance certifications	100%	69.6%	323	392	82.3%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #													
5e Review of Title V annual compliance certifications	100%	69.6%	323	392	82.3%													
State response	NYSDEC has reviewed and made determinations for 100% of our TVACC’s. We agree that data entry and current system limitations need to be improved to reflect our compliance achievements.																	
Recommendation	Following the conclusion of FY’18 and implementation of the procedures recommended in Finding 1-1, EPA Region 2 will review the annual data metrics to verify that NYSDEC is following proper procedures for TVACC reviews. If corrected data do not indicate that TVACC reviews are being completed as required, EPA Region 2 and NYSDEC will discuss a resolution mechanism at that time.																	

CAA Element 3 — Violations							
Finding 3-1	Meets or Exceeds Expectations						
Summary	NYSDEC makes accurate compliance and HPV determinations						
Explanation	Metrics 7a and 8c show that NYSDEC made accurate compliance and HPV determinations in all cases reviewed.						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	7a Accuracy of compliance determinations		100%	-	36	36	100%
	8c Accuracy of HPV determinations		100%	-	13	13	100%
State response	NYSDEC continues to give priority to returning major sources to compliance.						
Recommendation	N/A.						

CAA Element 3 — Violations

Finding 3-2	Area for State Attention						
Summary	HPVs are not always identified timely						
Explanation	For metric 13, 6 (75%) of 8 HPVs were identified timely. The <i>Timely and Appropriate Enforcement Response to High Priority Violations Policy</i> revised in 2014 requires that HPVs be identified within 90 days of the compliance monitoring activity or discovery action that first provides reasonable information indicating a violation of federally-enforceable requirements.						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	13 Timeliness of HPV determinations		100%	83.6%	6	8	75.0%
State response	NYSDEC will continue to strive to report HPV’s to ICIS within the specified timeframe. We will also provide training for new staff in HPV policy implementation.						
Recommendation	Based on the recommendations set forth in Finding 1-1, EPA Region 2 will review this metric as part of the annual data metrics following the conclusion of FY’18.						

CAA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations																													
Summary	Enforcement responses are timely and appropriate																													
Explanation	<p>For metric 10a, EPA Region 2 found that all 9 formal enforcement responses reviewed were timely in addressing HPVs or having a case development and resolution timeline in place.</p> <p>For metric 10b, 7 (100%) of enforcement responses taken on HPVs reviewed were appropriate and consistent with HPV policy.</p>																													
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place.</td><td>100%</td><td>-</td><td>9</td><td>9</td><td>100%</td></tr><tr><td>10b Percent of HPVs that have been have been addressed or removed consistent with the HPV Policy.</td><td>100%</td><td>-</td><td>7</td><td>7</td><td>100%</td></tr><tr><td>14 HPV Case Development and Resolution Timeline In Place When Required that Contains Required Policy Elements</td><td>100%</td><td></td><td>6</td><td>6</td><td>100%</td></tr></table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place.	100%	-	9	9	100%	10b Percent of HPVs that have been have been addressed or removed consistent with the HPV Policy.	100%	-	7	7	100%	14 HPV Case Development and Resolution Timeline In Place When Required that Contains Required Policy Elements	100%		6	6	100%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																									
10a Timeliness of addressing HPVs or alternatively having a case development and resolution timeline in place.	100%	-	9	9	100%																									
10b Percent of HPVs that have been have been addressed or removed consistent with the HPV Policy.	100%	-	7	7	100%																									
14 HPV Case Development and Resolution Timeline In Place When Required that Contains Required Policy Elements	100%		6	6	100%																									
State response	NYSDEC understands the importance of addressing and resolving HPV violations in a timely manner.																													
Recommendation	N/A.																													

CAA Element 4 — Enforcement

Finding 4-2	Area for State Attention					
Summary	Enforcement responses generally return facilities to compliance.					
Explanation	For metric 9a, EPA Region 2 found that 13 (81.3%) of 16 formal enforcement responses reviewed included required corrective action that would return facilities to compliance in a specified time frame. This is below the national goal of 100%.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame or the facility fixed the problem without a compliance schedule.	100%	-	13	16	81.3%
State response	DEC takes appropriate corrective action with all facilities that have violations in NYS. We will continue to ensure compliance requirements are up to date in the future. We thank EPA for bringing this issue to our attention.					
Recommendation	N/A.					

CAA Element 5 — Penalties

Finding 5-1	Meets or Exceeds Expectations					
Summary	NYSDEC consistently documents collection of all penalties.					
Explanation	For metric 12b, all 9 files reviewed included documentation establishing that the assessed penalty had been paid.					
Relevant metrics						
	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	12b Penalties collected	100%	-	9	9	100%
State response	NYSDEC recognizes the importance of accurately recording penalties and resolutions for violations. We will continue training new staff in these areas					
Recommendation	N/A.					

CAA Element 5 — Penalties

Finding 5-2	Area for State Improvement																		
Summary	NYSDEC does not consistently document economic benefit or the rationale for the difference between initial penalty calculation and final penalty.																		
Explanation	<p>For metrics 11a and 12a, 2 (18.2%) of 11 penalty calculations reviewed included economic benefit and 4 (44.4%) of 9 documented the rationale for penalty reduction. Three of the 11 penalty calculations reviewed identified the economic benefit as “unknown.” Violators of the CAA are likely to have obtained an economic benefit as a result of delayed or avoided pollution control expenditures during the period of non-compliance. The objective of the economic benefit calculation is to deter non-compliance by placing violators in the same financial position as they would have been if they had complied on time.</p> <p>According to the <i>Revisions to the Policy Framework for State/EPA Enforcement Agreements (1993)</i>, agencies should document penalties sought, including the calculation of gravity and economic benefit where appropriate. The CAA Stationary Source Civil Penalty Policy (1991) also specified that to achieve deterrence, a penalty should not only recover any economic benefit of noncompliance, but also include an amount reflecting the seriousness of the violation, which is the gravity component.</p> <p>A number of penalty documents were missing during the file review, leaving EPA Region 2 unable to review the documents.</p> <p>This finding continues from Round 2 and was previously addressed with a memo to staff reaffirming the state penalty policy requirements, including gravity and economic benefit calculations, appropriate documentation of initial and final penalties and using the BEN model or other method that produces results consistent with national policy. This recommendation does not appear to have resolved the finding.</p>																		
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>11a Penalty calculations reviewed that document gravity and economic benefit</td><td>100%</td><td>-</td><td>2</td><td>11</td><td>18.2%</td></tr><tr><td>12a Documentation of rationale for difference between initial penalty calculation and final penalty</td><td>100%</td><td>-</td><td>4</td><td>9</td><td>44.4%</td></tr></table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	11a Penalty calculations reviewed that document gravity and economic benefit	100%	-	2	11	18.2%	12a Documentation of rationale for difference between initial penalty calculation and final penalty	100%	-	4	9	44.4%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #														
11a Penalty calculations reviewed that document gravity and economic benefit	100%	-	2	11	18.2%														
12a Documentation of rationale for difference between initial penalty calculation and final penalty	100%	-	4	9	44.4%														

State response	NYSDEC agrees that documentation of penalty calculations could be improved in our files. We will continue to do our best to instruct and train field staff to promote accurate documentation of enforcement determinations.
Recommendation	<ol style="list-style-type: none"> 1) Within 90 days of finalization of this report, EPA Region 2 will work with DEC to develop or improve a template to be included as part of the penalty documentation that will provide for the appropriate consideration of gravity and economic benefit. 2) Within 120 days of the finalization of this report, NYSDEC shall submit an updated SOP to EPA Region 2 providing for (a) the appropriate documentation of economic benefit calculations (b) documentation of the rationale for excluding economic benefit where applicable and (c) appropriate documentation of the rationale for any difference between the initial and final penalty. NYSDEC will finalize and begin to implement the SOP within 30 days of receipt of Region 2's comments. 3) EPA shall provide economic benefit training by September 30, 2018. NYSDEC shall ensure that all appropriate staff have been required to attend, and shall provide EPA Region 2 with a list of attendees following the conclusion of the training. 4) Following the conclusion of FY'19, EPA Region 2 shall select a random subset of penalty files to be submitted by NYSDEC for review. EPA Region 2 will review the files to ensure that the SOP has been implemented and that subsequent penalty actions have been completed in accordance with the SOP.

Resource Conservation and Recovery Act Findings

RCRA Element 1 — Data																								
Finding 1-1	Area for State Improvement																							
Summary	NYSDEC does not always maintain complete and accurate data in the national system (RCRAinfo).																							
Explanation	<p>Metric 2b shows that mandatory data were accurate and complete for 29 (82.9%) of 35 files reviewed. This is below the national goal of 100%. The review found that one (1) file was missing the SV, SNC, informal and formal enforcement action and penalty dates; three (3) facility names in the national system did not match the enforcement file names; one (1) NOV date was not entered; and one (1) NOV was entered as a letter notifying the facility of pending enforcement.</p> <p>118 long standing secondary violators were identified.</p> <p>This finding continues from Round 2 and had previously been addressed through a memo to staff reaffirming RCRAinfo data entry and quality control requirements and training on RCRAinfo.</p>																							
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>2b Complete and accurate entry of mandatory data</td><td>100%</td><td>-</td><td>29</td><td>35</td><td>82.9%</td></tr><tr><td>2a Long-standing secondary violators</td><td></td><td></td><td>118</td><td></td><td></td></tr></table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2b Complete and accurate entry of mandatory data	100%	-	29	35	82.9%	2a Long-standing secondary violators			118		
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
2b Complete and accurate entry of mandatory data	100%	-	29	35	82.9%																			
2a Long-standing secondary violators			118																					
State response	<p>NYSDEC acknowledges that continued attention in this area is needed. However, NYSDEC believes the existing procedures put in place statewide pursuant to SRF Round 2 were quite comprehensive and continue to be appropriate. NYSDEC will reaffirm these procedures with staff and provide enhancements to assure more accurate MDR data entry including a strategy for closing longstanding open violations.</p>																							
Recommendation	<p>1) Within 90 days of finalization of the report, NYSDEC shall update their existing SOP on MDR data entry to ensure accuracy of data entered. The updated SOP shall include a strategy for closing long-standing secondary violators. At this time, NYSDEC will provide a copy of these procedures to EPA Region 2 and will reissue and implement the updated procedures after receiving comments from EPA Region 2</p>																							

-
- | | |
|--|---|
| | <p>2) EPA Region 2 will send NYSDEC a list of long standing secondary violators from RCRAinfo and NYSDEC will close them out as appropriate by September 30, 2018. Following the conclusion of FY'18, EPA Region 2 will review the annual data metrics to determine resolution of this finding.</p> |
|--|---|
-

RCRA Element 2 — Inspections

Finding 2-1	Meets or Exceeds Expectations																														
Summary	NYSDEC meets two year TSDF and annual LQG inspection commitments and inspection reports are timely and sufficient to determine compliance.																														
Explanation	<p>For metric 5a, NYSDEC and EPA jointly inspected all 25 (100%) operating TSDFs within a two-year period as required.</p> <p>Metric 5b shows that NYSDEC also exceeded the 20% annual inspection coverage requirement for LQGs by conducting compliance evaluation inspections (CEIs) at 172 (21.29%) of 808 facilities identified as LQGs during the 2015 report cycle.</p> <p>Metrics 6a and 6b show that 32 (94.1%) of 34 inspection reports reviewed were complete and sufficient to determine compliance and were completed within the 150-day policy prescribed by the <i>Hazardous Waste Civil Enforcement Response Policy (2003)</i>.</p>																														
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>5a Two-year inspection coverage of operating TSDFs (combined with EPA)</td><td>100%</td><td>95.6%</td><td>25</td><td>25</td><td>100%</td></tr><tr><td>5b Annual inspection coverage of LQGs (with EPA)</td><td>20.0%</td><td>17.1%</td><td>172</td><td>808</td><td>21.3%</td></tr><tr><td>6a Inspection reports complete and sufficient to determine compliance</td><td>100%</td><td>-</td><td>32</td><td>34</td><td>94.1%</td></tr><tr><td>6b Timeliness of inspection report completion</td><td>100%</td><td>-</td><td>32</td><td>34</td><td>94.1%</td></tr></table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5a Two-year inspection coverage of operating TSDFs (combined with EPA)	100%	95.6%	25	25	100%	5b Annual inspection coverage of LQGs (with EPA)	20.0%	17.1%	172	808	21.3%	6a Inspection reports complete and sufficient to determine compliance	100%	-	32	34	94.1%	6b Timeliness of inspection report completion	100%	-	32	34	94.1%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																										
5a Two-year inspection coverage of operating TSDFs (combined with EPA)	100%	95.6%	25	25	100%																										
5b Annual inspection coverage of LQGs (with EPA)	20.0%	17.1%	172	808	21.3%																										
6a Inspection reports complete and sufficient to determine compliance	100%	-	32	34	94.1%																										
6b Timeliness of inspection report completion	100%	-	32	34	94.1%																										
State response	Finding noted.																														
Recommendation	N/A.																														

RCRA Element 2 — Inspections

Finding 2-2	Area for State Attention																														
Summary	NYSDEC has not inspected all LQGs in the past five years.																														
Explanation	<p>Metric 5c shows that NYSDEC conducted CEIs at 626 (77.5%) of 808 facilities identified as LQGs during the 2015 state report cycle.</p> <p>While the figure falls well short of the National Goal of 100% for this metric, a closer examination of the list of LQGs that were not inspected reveals that a large number of the LQGs were not consistently classified as LQGs over the five-year period. Given that the CMS requirement is to inspect each LQG once every five years, it is unreasonable to expect NYSDEC to have inspected all generators that have only been LQGs for a short time. Considering these fluctuations in the LQG universe, NYSDEC is still performing above the national average of 54.8%.</p> <p>While EPA understands that the LQG list is constantly changing, there were a number of LQGs that were consistently classified as such that were not inspected. To the extent that there are generators that remain LQGs over the long-term and are not inspected every five years, the issue can be addressed through close coordination between EPA Region 2 and NYSDEC. By reviewing the list of LQGs that have not been inspected in the past four years on an annual basis, the two agencies can ensure that each facility that should be inspected in the upcoming year is inspected by either EPA Region 2 or NYSDEC.</p> <p>Metrics 5d and 5e1-5e4 are not considered in this review because NYSDEC does not have an alternative CMS for RCRA. They are included below for informational purposes and demonstrate that NYSDEC conducts a substantial number of inspections beyond TSDFs and LQGs.</p>																														
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>5c Five-year inspection coverage of LQGs</td><td>100%</td><td>54.8%</td><td>626</td><td>808</td><td>77.5%</td></tr><tr><td>5d Five-year inspection coverage of active SQGs</td><td>-</td><td>9.9%</td><td>802</td><td>5,912</td><td>13.60%</td></tr><tr><td>5e1 Five-year inspection coverage of active conditionally exempt SQGs</td><td></td><td></td><td>912</td><td></td><td></td></tr><tr><td>5e2 Five-year inspection coverage of active transporters</td><td></td><td></td><td>53</td><td></td><td></td></tr></table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	5c Five-year inspection coverage of LQGs	100%	54.8%	626	808	77.5%	5d Five-year inspection coverage of active SQGs	-	9.9%	802	5,912	13.60%	5e1 Five-year inspection coverage of active conditionally exempt SQGs			912			5e2 Five-year inspection coverage of active transporters			53		
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																										
5c Five-year inspection coverage of LQGs	100%	54.8%	626	808	77.5%																										
5d Five-year inspection coverage of active SQGs	-	9.9%	802	5,912	13.60%																										
5e1 Five-year inspection coverage of active conditionally exempt SQGs			912																												
5e2 Five-year inspection coverage of active transporters			53																												

	5e3 Five-year inspection coverage of active non-notifiers		6
	5e4 Five-year inspection coverage of active sites not covered by metrics 2c through 2f3		867
State response	NYSDEC acknowledges the tracking difficulties presented by a fluctuating universe of LQGs. DEC looks forward to close coordination between EPA Region 2 to ensure that each facility that should be inspected in the upcoming year is inspected by either EPA Region 2 or NYSDEC.		
Recommendation	N/A.		

RCRA Element 3 — Violations																								
Finding 3-1	Meets or Exceeds Expectations																							
Summary	NYSDEC generally makes accurate compliance and SNC determinations.																							
Explanation	<p>Metric 7a shows that NYSDEC made accurate compliance determinations in 32 (94.1%) of the 34 files reviewed. EPA Region 2 found that there were two instances in which SNC determinations were warranted but not made.</p> <p>Metric 8c shows that all 15 SNC determinations reviewed were appropriate.</p>																							
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>7a Accurate compliance determinations</td><td>100%</td><td>-</td><td>32</td><td>34</td><td>94.1%</td></tr><tr><td>8c Appropriate SNC determinations</td><td>100%</td><td>-</td><td>15</td><td>15</td><td>100%</td></tr></table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	7a Accurate compliance determinations	100%	-	32	34	94.1%	8c Appropriate SNC determinations	100%	-	15	15	100%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																			
7a Accurate compliance determinations	100%	-	32	34	94.1%																			
8c Appropriate SNC determinations	100%	-	15	15	100%																			
State response	Finding noted.																							
Recommendation	N/A.																							

RCRA Element 3 — Violations

Finding 3-2	Area for State Improvement					
Summary	NYSDEC does not make SNC determinations timely.					
Explanation	<p>Metric 8b shows that 27 (67.5%) of 40 SNC determinations made by NYSDEC in FY’16 were timely. Per the <i>Hazardous Waste Civil Enforcement Response Policy</i>, state agencies should make and report SNC designations within 150 days of the first day of the inspection.</p> <p>While this metric has improved since the Round 2 SRF review, it continues to be well below both the National Goal and National Average.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	8b Timeliness of SNC determinations	100%	84.2%	27	40	67.5%
State response	<p>NYSDEC acknowledges this metric has improved since the Round 2 SRF review, yet accepts the review finding of timely SNC determinations below the National Goal. NYSDEC believes the cause is not systemic but the result of personnel challenges during the review period. NYSDEC believes the SOP defined in the April 26, 2013 memo to NYSDEC Regional RCRA Managers and RCRA Inspectors, shared with EPA, will be sufficient to achieve compliance with the National Goal for this metric over the next review period. NYSDEC will reaffirm these procedures with staff.</p>					
Recommendation	<p>1) Within 90 days of finalization of the report, NYSDEC shall submit a copy of the SOP defined in the April 2013 memo to NYSDEC Regional RCRA Managers and RCRA Inspectors for EPA review and comment. NYSDEC shall finalize, reissue and implement the SOP within 30 days of receipt of Region 2’s comments.</p> <p>2) Following the conclusion of FY’18, EPA Region 2 will review the annual data metrics to determine resolution of this finding. In the event that timeliness does not improve, EPA Region 2 will work with NYSDEC to identify additional steps that should be taken in order to meet this goal.</p>					

RCRA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations						
Summary	NYSDEC makes timely and appropriate enforcement actions and enforcement actions return violators to compliance.						
Explanation	<p>For metric 9a, EPA Region 2 reviewed 24 enforcement responses that addressed violations and found that all of them (100%) returned violators to compliance.</p> <p>For metric 10b, EPA Region 2 found 24 facilities with violations and NYSDEC took appropriate action to address violations in 95.8% (23) of all cases.</p> <p>Overall, the national data system indicated that NYSDEC took timely enforcement to address SNC in 22 (81.5%) of 27 cases in FY’16, exceeding the National Goal of 80% for metric 10a.</p>						
Relevant metrics	Metric ID Number and Description		Natl Goal	Natl Avg	State N	State D	State % or #
	9a Enforcement that returns violators to compliance		100%	-	24	24	100%
	10a Timely enforcement taken to address SNC		80%	86.4%	22	27	81.5%
	10b Appropriate enforcement taken to address violations		100%	-	23	24	95.8%
State response	Finding noted.						
Recommendation	N/A.						

RCRA Element 5 — Penalties						
Finding 5-1	Meets or Exceeds Expectations					
Summary	NYSDEC consistently documents collection of all penalties.					
Explanation	For metric 12b, all 13 files reviewed included documentation establishing that the assessed penalty had been paid.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	12b Penalties collected	100%	-	13	13	100%
State response	Finding noted.					
Recommendation	N/A.					

RCRA Element 5 — Penalties

Finding 5-2	Area for State Improvement																		
Summary	Penalty calculations do not always consider gravity and economic benefit, and provided rationales for differences between initial penalty calculation and final penalty do not always follow guidance.																		
Explanation	<p>For metric 11a, 7 (46.7%) of 15 penalty calculations reviewed included gravity and economic benefit. Violators of RCRA are likely to have obtained an economic benefit as a result of delayed or avoided pollution control expenditures during the period of non-compliance. The objective of the economic benefit calculation is to deter non-compliance by placing violators in the same financial position as they would have been if they had complied on time.</p> <p>For metric 12a, EPA Region 2 found that 12 (92.3%) of 13 penalties reviewed provided a rationale for difference between initial penalty calculation and final penalty. While the majority of penalty files included rationales, EPA Region 2 found that a number of the rationales were not within the guidelines established in the <i>RCRA Civil Penalty Policy</i>.</p> <p>Per the State Enforcement Agreement between EPA and NYSDEC, it is required that the state document any increase or decrease in penalty collected from the penalty assessed, and states that NYSDEC agrees to use the penalty policy as stated in the RCRA Civil Penalty Policy and the subsequent amendment.</p> <p>This finding continues from Round 2 and was previously addressed with a memo to staff reaffirming the RCRA Civil Penalty Policy requirements. This recommendation does not appear to have resolved the finding.</p>																		
Relevant metrics	<table><tr><th>Metric ID Number and Description</th><th>Natl Goal</th><th>Natl Avg</th><th>State N</th><th>State D</th><th>State % or #</th></tr><tr><td>11a Penalty calculations include gravity and economic benefit</td><td>100%</td><td>-</td><td>7</td><td>15</td><td>46.7%</td></tr><tr><td>12a Documentation on difference between initial and final penalty</td><td>100%</td><td>-</td><td>12</td><td>13</td><td>92.3%</td></tr></table>	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	11a Penalty calculations include gravity and economic benefit	100%	-	7	15	46.7%	12a Documentation on difference between initial and final penalty	100%	-	12	13	92.3%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #														
11a Penalty calculations include gravity and economic benefit	100%	-	7	15	46.7%														
12a Documentation on difference between initial and final penalty	100%	-	12	13	92.3%														
State response	For metric 11a, NYSDEC partially accepts this finding. Gravity is always considered. Economic benefit has not been included in some penalty calculations, for example, where relatively small penalty																		

	<p>amounts were sought, which would not indicate a need to include economic benefit. In addition, properly evaluating this factor is extremely complex, and it brings limited benefit for deterrence and bringing facilities into compliance. Given tight resources and overall prioritization, NYSDEC believes that calculating economic benefit is not warranted in most cases. Where economic benefit considerations would generate a significantly different result through the enforcement process, NYSDEC would be willing to undertake the process and assess the related penalties. EPA has offered to work with the DEC to develop a template which may allow the economic benefit calculation to be more efficiently performed, and DEC welcomes this assistance.</p> <p>For metric 12a, NYSDEC accepts this finding. Management had previously directed NYSDEC staff to complete a final penalty calculation worksheet in cases where there is any significant difference between initial and final penalties. As these cases relate to legal settlements, NYSDEC attorneys working on RCRA enforcement were again sent the prior issued memo on October 20, 2017, and the issue was also addressed in person by the General Counsel in a Fall 2017 Office of General Counsel training conference. NYSDEC Office of General Counsel will continue to review staff's compliance with this requirement.</p>
<p>Recommendation</p>	<ol style="list-style-type: none"> 1) Within 60 days of finalization of this report, EPA Region 2's RCRA program manager will set up a meeting with NYSDEC to provide examples of appropriate consideration of economic benefit, and documentation of rationales for any differences between initial and final penalty calculation. This will include examples applicable to the penalty files that were included in this review. 2) Within 90 days of finalization of this report, EPA Region 2 will work with DEC to create a template to be included as part of the penalty documentation and will provide for the appropriate consideration of gravity and economic benefit. 3) Within 120 days of the finalization of this report, NYSDEC shall submit an updated SOP to EPA Region 2 providing for the use of the template which will focus on (a) the appropriate documentation of economic benefit calculations (b) documentation of the rationale for excluding economic benefit where applicable and (c) appropriate documentation of the rationale for any difference between the initial and final penalty. NYSDEC will finalize and begin to implement the SOP within 30 days of receipt of Region 2's comments. 4) EPA shall provide economic benefit training by September 30, 2018. NYSDEC shall ensure that all appropriate staff have been

required to attend, and shall provide EPA Region 2 with a list of attendees following the conclusion of the training.

- 5) Following the conclusion of FY'19, EPA Region 2 shall select a random subset of penalty files to be submitted by NYSDEC for review. EPA Region 2 will review the files to ensure that the SOP has been implemented and that subsequent penalty actions have been completed in accordance with the SOP.
-

Appendix I – Clean Air Act

File Selection

File Selection Process

In order to assess whether FRVs and HPVs were being missed during FCEs, a majority of the selected files included at least one FCE. Steps were taken to ensure a mix of CMS classifications and NY Regions with a minimum number of stack tests, informal actions, formal actions, penalties and FCEs with no subsequent enforcement.

File Selection Table

ICIS-Air #	City	Universe	FCE	Stack Tests Failed	Stack Test Completed	FRV	HPV	Informal Enforcement Actions	Formal Enforcement Actions	Civil Penalties
NY0000005094200106	PLATTSBURGH	Major	X		X					
NY0000001472800185	RONKONKOMA	Major	X		X					
NY0000007315600030	WARNERS	Major	X							
NY0000002630100005	LONG ISLAND CITY	Major	X							
NY0000002610300158	BROOKLYN	Major	X		X					
NY0000006215600018	WEST WINFIELD	Major	X		X					
NY0000009291200059	NORTH TONAWANDA	Major	X							
NY0000006223000004	WEST CARTHAGE	Minor	X							
NY0000008261400205	ROCHESTER	Mega-Site	X							
NY0000007355800084	FULTON	Minor	X							
NY0000003334200271	MONTGOMERY	Minor	X							
NY0000007313600002	BALDWINVILLE	Major	X							
NY0000002630600067	JAMAICA	Major	X			X	X	X		
NY0000009143000122	CHEEKTOWAGA	Minor	X		X					
NY0000008462400159	BATH	Major	X		X					
NY0000005534400001	HUDSON FALLS	Major	X		X	X		X		
NY0000005414000235	BALLSTON SPA	Minor	X							
NY0000003334600011	NEWBURGH	Major	X			X		X	X	18,000.00
NY0000001282000553	ISLAND PARK	Major	X		X	X		X	X	200.00
NY0000002620401499	NEW YORK	Minor	X			X		X		
NY0000002620300047	NEW YORK	Major	X			X	X	X		
NY0000003551200041	PEEKSKILL	Major	X						X	5,000.00
NY0000001472600130	NORTHPORT	Major	X		X	X		X	X	100.00
NY0000001472200107	PORT JEFFERSON	Major	X			X		X	X	1,700.00
NY0000002630401496	LONG ISLAND CITY	Minor	X			X		X		
NY0000003392400173	ORANGEBURG	Major	X						X	5,000.00
NY0000003134600019	POUGHKEEPSIE	Major	X		X	X		X	X	5,000.00
NY0000002620300001	NEW YORK	Major	X			X	X	X		
NY0000002620400694	NEW YORK	Minor	X					X		

NY0000001472203647	YAPHANK	Minor	X							
NY0000009291100113	NIAGARA FALLS	Major	X							
NY0000001479900082	FARMINGDALE	Minor	X							
NY0000005169900003	CONSTABLE	Major	X							
NY0000005520500005	GLENS FALLS	Major	X		X				X	25,700.00
NY0000005533400006	CENTER FALLS	Major	X		X				X	18,000.00
NY0000002620200106	NEW YORK	Minor				X	X	X	X	7,500.00
NY0000002610100391	BROOKLYN	Minor				X		X		
NY0000004010100070	ALBANY	Major				X	X	X	X	30,000.00
NY0000006301600048	UTICA	Major			X	X	X			

Appendix II – Clean Water Act

File Selection

File Selection Process

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

File Selection Table

Permit ID	City	Universe	Inspections	Violation Identified	SEV	SNC	Informal Actions	Formal Actions	Penalties
NY0023523	ATLANTIC BEACH	Major	X	X					
NY0024449	AVON	Major		X		X			
NY0024414	VESTAL	Major	6	X		X		X	
NY0028410	BUFFALO	Major	X	X		X			
NY0029807	CANASTOTA	Major	X	X					
NY0020389	CATSKILL	Major		X		X		X	
NY0200867	STATEN ISLAND (SUBDIVISION)	Major	X	X		X			
NY0003344	FULTON	Major		X		X			
NY0005037	RAVENA	Major	X	X		X		X	118,000.00
NY0020354	LAWRENCE	Major	X						
NY0027766	LEWISTON	Major	X	X					
NY0008605	WATERFORD	Major	X	X	X	X			
NY0026174	STATEN ISLAND	Major	X	X				X	350,000.00
NY0021822	OYSTER BAY	Major	X	X				X	16,573.75
NY0001643	ROCHESTER	Major	X	X					
NY0007226	SOUTH GLENS FALLS	Major	X					X	1,000.00
NY0002330	WATKINS GLEN	Major	X	X				X	27,500.00
NY0025984	WATERTOWN	Major	X	X		X			
NY0261254	WATERVLIT	Minor			X				
NYAE00357	LANSING	Minor	X						
NYR10Z659	STATEN ISLAND (SUBDIVISION)	Minor						X	6,000.00
NY0007161	ROCK CITY FALLS	Minor	X	X					
NYA000290	SYRACUSE	Minor	X					X	9,000.00
NYR20A235	DEPEW	Minor	X						
NYA000626	FORT ANN	Minor						X	14,000.00
NYR00E840	GREENWOOD LAKE	Minor	X					X	2,000.00
NYU900473	CONCORD, TOWN OF	Minor						X	250.00
NY0247189	LEROY	Minor		X					
NY0030261	LIBERTY	Minor	X	X		X			
NY0004588	MOUNT VERNON	Minor		X					
NYR20A240	NEWBURGH	Minor						X	22,100.00

NY0002810	BATAVIA	Minor	X	X					
NYU200321	BRONX	Minor						X	10,000.00
NY0023922	PATCHOGUE	Minor	X	X					
NY0033588	SHARON SPRINGS	Minor	X	X				X	20,000.00
NY0022110	SHERRILL	Minor	X	X					
NYR10T509	MONROE	Minor						X	2,000.00
NYAE01563	LOWVILLE	Minor	X					X	1,250.00
NYR00F744	ALBANY	Minor						X	3,750.00
NY0000850	ROME	Minor	X	X		X			

Appendix III – Resource Conservation and Recovery Act

File Selection

File Selection Process

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

File Selection Table

RCRA ID	City	Universe	Inspections	Violations	SNC	Informal Actions	Formal Actions	Penalties Reported
NYD986893600	AMITYVILLE	Transporter			X		X	22,500
NYD012969796	CHESTER	LQG			X	X	X	10,000
NYD986872869	COHOES	TSDF LQG Transporter	X	X	X	X		
NYD002234003	MCCONNELLSVILLE	LQG	X	X	X	X	x	4,800
NYD059647412	ROCHESTER	SQG	X	X	X	X		
NYR000145672	JAMESTOWN	LQG	X	X	X	X	X	15,249
NYR000151613	WARWICK	LQG	X	X	X	X	X	12,000
NYD000379248	BUFFALO	Other	X	X	X	X	X	34,498
NYD002080034	WATERFORD	TSDF LQG	X	X	X	X	X	562,500
NYD095587655	SYRACUSE	CESQG	X					
NYD033800301	LIVERPOOL	CESQG	X					
NYR000202515	LARCHMONT	CESQG	X					
NY0214020281	FORT DRUM	LQG	X					
NYD981182215	BROOKLYN	LQG	X					
NYR000103093	EDGEWOOD	CESQG	X					
NYD063654271	SANBORN	LQG	X					
NYD987036290	PAINTED POST	LQG	X					
NYD987024213	ALBANY	LQG	X					
NYD980779540	WEST VALLEY	TSDF LQG	X					
NYD986899045	JOHNSTOWN	LQG	X					
NYN008008955	ROCHESTER	CESQG					X	17,679
NYD002083954	WATERVLIET	LQG					X	7,500
NYR000209361	ROCHESTER	LQG					X	18,000
NYD057381535	BROOKLYN	LQG					X	29,149
NYD075814202	WHITESBORO	LQG				X		
NYR000209387	BLAUVELT	Other				X		
NYR000012294	QUEENSBURY	SQG	X	X		X		
NYD986869675	AUBURN	SQG	X	X		X		
NYD986911998	ARCADE	SQG	X	X		X		
NYD981182223	WYANDANCH	Other	X	X		X		

NYR000105668	FLUSHING	LQG	X	X		X		
NYR000015974	FLUSHING	SQG	X	X		X		
NYN008028839	CHAMPLAIN	CESQG	X	X		X		
NYD068296839	BROOKLYN	LQG					X	20,000
NYD982535809	SUFFERN	CESQG			X		X	500