

**Final Report**  
**February 3, 2010**

**State Review Framework Report – Round 2**  
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## I. EXECUTIVE SUMMARY

In November 2008, the Environmental Protection Agency (EPA) initiated the second State Review Framework (SRF) evaluation of the New Jersey Department of Environmental Protection (NJDEP). The SRF is a program designed to ensure EPA conducts oversight of state compliance and enforcement programs for the Resource Conservation & Recovery Act (RCRA) Subtitle C program, the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) program and the Clean Air Act (CAA) Stationary Source program in a nationally consistent and efficient manner. The first SRF evaluation at NJDEP took place in 2004. The second SRF evaluation is based on fiscal year 2007 compliance and enforcement activities.

SRF evaluations look at twelve program elements covering: data (completeness, timeliness, and quality); inspections (coverage and quality); identification of violations, enforcement actions (appropriateness and timeliness); and, penalties (calculation, assessment and collection). Reviews are conducted in three phases, including (1) analyzing information from the national data systems, (2) reviewing a limited set of state files, and (3) development of findings and recommendations. Considerable consultation is built into the process, to ensure EPA and the state understand the causes of issues, and to seek agreement on identifying the actions needed to address problems. The SRF Reports generated by the reviews are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. The reports are designed to provide factual information and do not make determinations of program adequacy. EPA also uses the information in the reports to draw a “national picture” of enforcement and compliance, and to identify any issues that require a national response. SRF Reports are not used to compare or rank state programs.

### A. Major State Priorities and Accomplishments (Provided by NJDEP)

- ◆ **Priorities:** New Jersey supports National priorities but seeks more clarity about the expectations of EPA in trade offs of National priorities with core program activities. Continuously shrinking resources may limit New Jersey’s ability to address either National Priorities or core activities. In the face of shrinking resources New Jersey is driving priorities significantly by its internally-focused strategic planning goals including: Continuous improvement in efficiency and effectiveness; a desire to balance the tools of enforcement with education and incentive programs; greater use of data to drive decision making; a focus on well-trained and empowered staff; and strong participation in overall Departmental policy and rule formulation. Specific National and state-level targeting and focus areas are identified and approached within this context of ongoing improvements. The full Compliance and Enforcement strategic plan can be found at <http://www.state.nj.us/dep/enforcement/strategicplan6-25-2007.pdf>
- ◆ **Accomplishments:** For the last five years the Department has focused on enhancing and strengthening its Compliance & Enforcement programs through the development and implementation of its strategic plan. This has resulted in a number of accomplishments. Among these are:
  1. Greater multi-media operations and awareness through focused sweeps.

2. Improved standardization and accountability through development of a peer-involved inspector core skills evaluation and training framework.
3. Improved efficiency through expansion of online tools like the electronic submission of Excess Emission data and Annual CAA Title V certifications
4. Improved transparency and accountability through online information such as our blotter, Dataminer and annual reports.
5. Innovation and advancement of environmental goals through our Stewardship Initiative.

See more information at these links:

<http://www.nj.gov/dep/enforcement/EnforcementInAction.html#highlights>

<http://www.state.nj.us/dep/enforcement/compliancecertsair.htm>

<http://www.nj.gov/dep/online/>

<http://www.stewardship.nj.gov>

- ◆ **Element 13:** New Jersey is very much interested in innovation and opportunities to advance the ability of government to efficiently deliver better environmental protection and enhancement. The spirit of element 13 aims for the same goals, however we feel that its implementation within the framework, specifically the trade-off credit scheme, is not an appealing or efficient opportunity to pursue the desired innovation. We therefore continue to pursue innovations and will express them in this context to ensure sharing among states and the EPA but have no plans to submit for trade-off credit.

### **Stewardship Initiative:**

The NJDEP is in its second year of a recognition program administered entirely through enforcement elements of the Department. It is much like other incentive programs in that it seeks to highlight and reward good behavior in order to encourage more proactive and environmentally beneficial actions. However this program is innovative in several ways that we don't believe have been attempted before within a state-run program:

1. **The only reward is Recognition.** There is no advantage of priority in desired permits or in enforcement targeting; and no reductions of penalties related to the stewardship program. This spares the program from criticisms by citizen or environmental groups which plagued programs like Performance Track.
2. **An Enforcement-run project.** The entire program, although voluntary, is administered through enforcement personnel, during each inspection, ensuring regulated sites know about the program and see it as important. Our audience is captive and informed by the very people they must engage with, our compliance inspectors. This overcomes a major hurdle to other incentive programs which, like Performance Track have otherwise high promotional costs. Two years into the program we have a 5% participation rate with 349 sites in the program. This was achieved with ZERO funding for outreach and promotion.
3. **Everybody's job.** Conversely, the entire organization becomes versed in the next-generation of environmental concerns and approaches which must seek sustainability and move beyond command and control limitations. The Stewardship program also ensures each inspector is always attuned to site-wide issues since everything beyond compliance is automatically beyond any single media silo. Green Building for instance, does not belong to the Air or Water or Waste program alone but serves the goals of the CAA, CWA and RCRA in equal measure.

4. **Extending the achievements of command and control.** In considering the program at inception, NJDEP examined compliance rates and found in 2006 that its inspectors had visited 9,949 sites and found 7,757 (or 78%) to be in FULL compliance. The question was, having invested the time and effort to be at the 7,757 compliant sites, what could we do to improve environmental performance there? If we focused only on compliance, the answer was nothing. Stewardship opens the door to continual improvement even where compliance was already achieved and at minimal additional resource investment thereby extending the benefits of classic oversight, enforcement or “command and control” practices.

## B. Summary of Results

- ◆ **Recommendations from Round 1** – There are no open recommendations from the Round 1 State Review Framework Review.
  
- ◆ **Summary of Round 2 Results** - The findings for the NJDEP Round 2 SRF evaluation are listed below, by media, for Elements 1 through 12. For each Element, a finding is made in one of the four following categories:
  - “Good Practice” – The SRF data metrics and/or the file reviews indicate that activities, processes, or policies are being implemented exceptionally well and which the state is expected to maintain at a high level of performance. This may include specific innovative and noteworthy activities, process, or policies that have the potential to be replicated by other states and that can be highlighted as a practice for other states to emulate. No further action is required by either EPA or the State.
  - “Meets SRF Program Requirements” – This indicates that no issues were identified for that element.
  - “Area for State Attention” – The SRF data metrics and/or the file reviews indicate that activities, processes, or policies are being implemented with minor deficiencies that the state needs to pay attention to strengthen its performance, but are not significant enough to require the region to identify and track state actions to correct. This can describe a situation where a state is implementing either EPA or state policy in a manner that requires self-correction to resolve concerns identified during the review. These are single or infrequent instances that do not constitute a pattern of deficiencies or a significant problem. These are minor issues that the State should self-correct without additional EPA oversight. However, the state is expected to improve and maintain a high level of performance.
  - “Area for State Improvement” – The SRF data metrics and/or the file reviews indicate that activities, processes, or policies that are being implemented by the state that have significant problems that need to be addressed and that require follow-up EPA oversight. This can describe a situation where a state is implementing either EPA or state policy in a manner requiring EPA attention. For example, these would be areas where the metrics indicate that the State is not meeting its commitments, there is a pattern of incorrect implementation in updating compliance data in the data systems, there are incomplete or incorrect inspection reports, and/or there is ineffective enforcement response. These would be significant issues and not merely random occurrences. Recommendations are required for these problems, and should have well defined timelines and milestones for completion. The recommendations will be monitored in the SRF Tracker.

### CAA Results

- Good Practice – None.
- Meets SRF Program Requirements – **Completion of Commitments, Identification of SNC and HPV, Enforcement Actions Promote Return to Compliance, Inspection Coverage, Identification of Alleged Violations**
- Area for State Attention – **Data Completeness, Timeliness of Data Entry, Quality of Inspection or Compliance Evaluation Reports**
- Area for State Improvement - **Data Accuracy, Penalty Calculation Method, Timely and Appropriate Action, Final Penalty Assessment and Collection**

### CWA Results

- Good Practice – **Enforcement Actions Promote Return to Compliance**
- Meets SRF Program Requirements – **Final Penalty Assessment and Collection, Completion of Commitments, Inspection Coverage, Timely and Appropriate Action**
- Area for State Attention - **Quality of Inspection or Compliance Evaluation Reports, Identification of Alleged Violators, Identification of SNC and HPV**
- Area for State Improvement - **Data Completeness, Data Accuracy, Penalty Calculation Method,**

### RCRA Results

- Good Practice – **Inspection Coverage, Completion of Commitments, Quality of Inspection or Compliance Evaluation Reports**
- Meets SRF Program Requirements – **Enforcement Actions Promote Return to Compliance, Timely and Appropriate Action, Identification of SNC and HPV, Identification of Alleged Violations**
- Area for State Attention – **Data Accuracy, Timeliness of Data Entry**
- Area for State Improvement - **Penalty Calculation Method, Final Penalty Assessment and Collection, Data Completeness**

### **C. Major Cross-Media Findings and Recommendations (Provided by NJDEP)**

NJDEP's program has demonstrated good practices in several RCRA and Water Elements. For RCRA, the review documented good practices for the Inspection Coverage, Completion of Commitments, and Quality of Inspection or Compliance Evaluation Reports Elements. For water, the review documented good practices for Timely and Appropriate Action, Completion of Commitments, and the Enforcement Actions Promote Return to Compliance Elements. A total of 16 Elements met or exceeded the SRF program requirements.

The report also includes recommendations for improvement in several areas, the most significant of which are data entry into EPA's data systems and penalty documentation. These areas for improvement were noted in all three programs. NJDEP maintains its own department-wide business enterprise software, the New Jersey Environmental Management System (NJEMS). In many instances, we found the data in NJEMS to be more complete and reflective of NJ's efforts than the data in the EPA's databases. EPA is concerned about the extent to which the data in the NJEMS system did not match the data in EPA's databases. This finding was also noted in the Round 1 SRF report for NJDEP. NJDEP and EPA have agreed that by April 30, 2010, NJDEP and EPA will develop a Standard Operating Procedure to reconcile data for Air, Water and RCRA on a quarterly basis. NJDEP and EPA will reconcile all data for Air, Water and RCRA by August 30, 2010.

The report also includes specific recommendations for the development of a department-wide Standard Operating Procedure (SOP) requiring economic benefit determinations be included in its files by January 1, 2010. In the air enforcement program, 68% of the penalty calculations reviewed considered and included where appropriate gravity and economic benefit. In the water enforcement program, 6% of the penalty calculations considered and included where appropriate gravity and economic benefit. In the RCRA enforcement program, EPA reviewed 3 files with State actions and none of the actions indicated whether economic benefit was considered. As a result of the Round 1 SRF review, EPA provided training on economic benefit.

Also recommended is a SOP requiring documentation for penalty reductions by January 1, 2010. In the air enforcement program, 76% of penalties reviewed document the difference and rationale between the initial and final assessed penalty and in the RCRA enforcement program, 33% of penalties reviewed documented the difference and rationale between the initial and final assessed penalty. In the water program, 100% of penalties reviewed document the difference and rationale between the initial and final assessed penalty.

EPA and NJDEP look forward to working together on these items.

## **II. BACKGROUND INFORMATION ON STATE PROGRAM AND REVIEW PROCESS**

### **A. General Program Overview (Provided by NJDEP)**

#### **Agency Structure**

The New Jersey Department of Environmental Protection is organizationally divided into six environmental areas: Natural Resource Management, Environmental Policy, Planning and Science, Land Use Management, Site Remediation and Waste Management, Environmental Regulation, and Compliance and Enforcement. The Management and Administration program provides department-wide administrative support to the programs. The Department also includes several in-but-not-of agencies that receive State appropriations. Among them are the Palisades Interstate Park Commission, the Highlands Water Protection and Planning Council, and the Pinelands Commission.

#### **Compliance/Enforcement Program Structure**

The Compliance and Enforcement Program implements the Department's overall compliance and enforcement policies and provides support and guidance to all enforcement operations regardless of their chain of command or specific organizational structure. The formal Compliance and Enforcement Program directly supervises the enforcement of water pollution; hazardous waste management; solid waste management; coastal and land use; pesticides; local environmental management; and air pollution. The Assistant Commissioner for Compliance and Enforcement also supervises the Bureau of Enforcement and Compliance Services.

#### **Roles and Responsibilities**

**Air Pollution Control** - Conducts investigations to determine compliance with the Air Pollution Control Act at regulated facilities. Issues enforcement documents and tracks, records and reports on associated administrative activities to ensure compliance. Develops enforcement cases, processes violations, assesses penalties and negotiates compliance schedules for these programs. Educates through inquiry and promotes incentives to go beyond compliance by implementing the Stewardship recognition program.

**Water Pollution Control** - Responsible for providing compliance assistance, conducting monitoring and investigations and issuance of enforcement actions in support of the water programs. The focus is particularly on inspections of wastewater dischargers and community drinking water supply facilities; prevention and correction of situations of non-compliance through a multifaceted compliance assistance program including outreach, education, and a Discharge Monitoring Report guidance manual; issuance of administrative and judicial enforcement actions for chronic or significant violations; and investigation of complaints relating to water resources. Monitors compliance with all permits issued under the New Jersey Pollutant



Discharge Elimination System (NJPDES) for surface water, ground water and indirect discharges to Publicly-Owned Treatment Works (POTW's). Formal enforcement actions are also issued for violations in the Water Allocation Program and against State certified laboratories which fail to comply with the laboratory certification program requirements. Educates through inquiry and promotes incentives to go beyond compliance by implementing the Stewardship recognition program.

**Hazardous Waste Management** - Manages and conducts compliance and enforcement activities directed at ensuring that hazardous waste and used oil are collected, stored, transported, recycled and disposed of in an environmentally acceptable manner. Assures compliance with federal Resource Conservation and Recovery Act (RCRA) regulations. Activities include such compliance assistance functions as environmental audits, grace periods and supplemental environmental projects as well as conventional inspections and investigations, and when necessary, formal enforcement actions. Educates through inquiry and promotes incentives to go beyond compliance by implementing the Stewardship recognition program.

### **Local Agencies Included/Excluded from Review**

No local agencies were included in the review

### **Resources**

CAA Resources (Stationary Sources):

- FTE – Main office (current) – The main office for Air Enforcement at NJDEP consists of a Program Administrator, two supervisory personnel, three field inspectors and two support personnel.
- FTE - Regional Offices (current) – There are three regional offices. Central, located in Robbinsville has a manager, two supervisors, thirteen inspectors and one administrative support person. Northern located in Cedar Knolls has an Acting manager, two supervisors, eighteen inspectors and one support personnel. Southern in Camden has a manager, two supervisors, eight inspectors and an administrative support person.
- Resource Constraints – There is a large regulated universe that because of its size and complexity of the program prevents more frequent inspection by the program. Inspector staffing has shrunk by 9% in the last five years and by 16% over the last seven years.

CWA Resources (NPDES):

- FTE – Main office (current) – The main office for Water Enforcement at NJDEP consists of a Program Administrator and one supervisor.
- FTE - Regional Offices (current) - There are three regional offices. Central, located in Robbinsville has a manager, three supervisors, seventeen inspectors and two administrative support personnel. Northern located in Cedar Knolls has two section chiefs, four supervisors, twenty-four inspectors. Southern in Camden has a manager, three supervisors, sixteen inspectors and two administrative support personnel.
- Resource Constraints - There is a large regulated universe that because of its size and complexity of the program prevents more frequent inspection by the program. Inspector staffing has shrunk by 7% in the last five years.

RCRA Resources (Subtitle C):

- FTE – Main office (current) – The main office for RCRA Enforcement at NJDEP consists of a bureau chief located in Robbinsville who reports to a Program Director in Trenton, besides the chief, this office has an inspector and an administrative support person.
- FTE - Regional Offices (current) - There are three regional offices. Central, located in Robbinsville has a supervisor and seven inspectors. Northern located in Cedar Knolls has a supervisor, six inspectors and one support personnel. Southern in Camden has a supervisor, four inspectors and administrative support personnel.
- Resource Constraints - There is a large regulated universe that because of its size and complexity of the program prevents more frequent inspection by the program. Inspector staffing has shrunk by 13% in the last five years and by 19% over the last seven years.

## **Staffing / Training**

The New Jersey Department of Environmental Protection has been losing staff consistently through attrition in the face of a state-wide hiring freeze demanded by challenging budgetary limitations. Hiring has not been an issue as no new hires have occurred in the last five years. Inspection staff for the programs evaluated (those enforcing CCA, CWA and RCRA provisions) in total has been reduced by 8% over the last 5 years and 12% over the last seven years. Hiring proficiently has not been an important issue for program integrity. The critical issue has been to ensure ongoing efficiency and effectiveness gains through a focus on internal operations embodied in our strategic plan. Part of the plan has been the development of a comprehensive training program.

New Jersey utilizes a holistic approach to training and development of its program inspector workforce. Our training efforts in NJDEP- C&E are focused on achievement of the program's vision to build a nationally recognized organization that empowers trained and dedicated professionals ensuring that New Jersey's businesses, communities and individuals are models of environmental stewardship and compliance.

To this end a NJDEP-C&E Training Plan document influenced by dialogue and communication from all sectors of our program has been developed. The Training Plan is designed to be a multifaceted document which addresses the needs of the NJDEP-C&E workforce from the perspective of both varying realms of enforcement (Air, Water, Solid & Hazardous Waste, Coastal and Land Use, as well as, Pesticides) and professional levels (Inspector: Trainee, Senior, Principal and Support Staff).

The functionality of the Training Plan affords NJDEP-C&E an opportunity to track inspector training history and progress, provide supervisory verification of training, and to schedule needed training to meet structured qualifications that have been identified as core skill competencies necessary for inspectors.

## **Data Reporting Systems/Architecture**

As EPA identified in the Cross Media Findings, New Jersey employs a department-wide business enterprise software platform known as the New Jersey Environmental Management System (NJEMS). This system is a robust tool that is much more than the Department's repository of data. The NJEMS platform is the daily workspace, communication, collaboration, tracking and management tool for the entire organization. Its enables information sharing and collaboration not just internally, but with customers and the general public through online submission modules and web-based, real-time reporting. Because NJEMS is the only tool most staff use, data is a by-product of the work process itself which does not require extra attention or effort. Not only can New Jersey and EPA rely on the quality and completeness of the data in NJEMS, there is an ongoing effort that is more than seven years old driven by New Jersey's Open Public Records Act, to ensure a maximum amount of transparency through public access to this data. This is achieved largely through the web-based reporting tool known as Dataminer. <http://www.nj.gov/dep/opra/online.html>

In contrast, to the ease of data management with NJEMS, population of EPA data systems, particularly AFS and ICIS remains a labor-intensive and duplicative endeavor. This is a further strain on DEP resources which are stretched further every year. Options for automated data entry remain tangled in a significant disagreement between several states (including New Jersey) and EPA. The main objection by New Jersey is that EPA is holding fast to an outdated ownership or possession model of data management. This requires states to place data within EPA systems rather than allow for network-based open sharing and virtual warehouses which have been employed elsewhere. Even more challenging is the requirement by EPA that data meet not just the data elements as might be defined in a data standard, but that these follow transactional rules inherent in EPA's own data systems. New Jersey continues to object to such an approach, especially as alternatives exist and have been proven.

Further, New Jersey cannot commit unconditionally to addressing current data concerns through either increased costly manual data entry or the pursuit of overly complex and restrictive data transfer schemes. New Jersey is committed to complete sharing of any data requested and has demonstrated a ready willingness and ability to deliver any outputs according the jointly developed data standards. This has been consistently demonstrated in two successive rounds of the SRF where initial EPA concerns have been largely remedied when data easily extracted from NJEMS is examined.

## **B. Process for SRF Review**

The NJDEP SRF Round 2 was initiated with a September 2008 kick-off letter to the Assistant Commissioner for Enforcement, Wolf Skacel, from the EPA, Director, Division of Enforcement and Compliance Assistance. The kick-off letter was followed up with a face-to-face meeting at Trenton in November 2008. During this meeting, the expectations and procedures of the SRF were reviewed and a tentative schedule for the SRF process was discussed. The EPA SRF review team was also present at this meeting. The Preliminary Data Analysis and File Selections for all three media were sent to the state. During January 2009, the onsite file reviews for each media took place at the individual Field Offices and Trenton. The fiscal year of the NJDEP SRF review was 2009 which was based on FY2007 data.

State and EPA Contacts:

	<b>State</b>	<b>EPA Region</b>
SRF Coordinators	Knute Jensen	Barbara McGarry
CAA	John Walsh	Ken Eng
CWA	John Olko	Douglas McKenna
RCRA	Mike Hastry	Lenny Voo

### III. OUTSTANDING STATUS OF RECOMMENDATIONS FROM PREVIOUS REVIEWS

There are no outstanding recommendations from EPA’s Round 1 review.

### IV. FINDINGS

The Findings for the NJDEP Round 2 SRF evaluation are listed below, by media, for Elements 1 through 12.

#### CAA Program

<b>CAA Element 1 – Data Completeness</b>	
<b>Degree to which the Minimum Data Requirements are complete.</b>	
<b>Finding:</b>	Data completeness is an area of concern.
<b>Is this finding a(n) (select one):</b>	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
<b>Explanation:</b>	<p>EPA has identified 3 of the 12 data metric for data completeness as potential concerns.</p> <p>NJDEP’s data metric for HPV Day Zero Pathway Violating Pollutants: Percent DZs reported after 10/01/2005 is 65.8% which is 34.2% below the national goal of 100%. However, NJDEP’s metric of 65.8% is just below the national average of 67.2%.</p> <p>For Data Metric 1J - Assessed Penalties: Total Dollar Amount (1 FY), NJDEP reported \$11,868,925 in penalties. NJDEP enters preliminary assessment, and for HPVs frequently enters final/settlement amounts. NJDEP indicated that there appears to be double counting in some instances. This is caused because NJDEP enters enforcement actions within 60 days to meet MDR requirements and the amounts are considered final unless contested by the respondent. NJDEP has indicated that they will update penalty amount if contested.</p> <p>For data metric 1K - Major Sources Missing CMS Policy Applicability (Current), there were 29 sources missing data. NJDEP submits all CMS data to EPA annually. EPA and NJDEP must update CMS data in AIRS.</p> <p>The state has indicated that it will increase its effort to meet all MDR requirements within 60 days of occurrence. Additionally, NJDEP will update penalty information for contested actions. Therefore, it appears that this is not an area of significant concern.</p>
<b>Metric(s) and Quantitative Value:</b>	Data metric 1H2 - HPV Day Zero Pathway Violating Pollutants: Percent DZs reported after 10/01/2005 Data Metric 1J - Assessed Penalties: Total Dollar Amount (1 FY) Data Metric 1K - Major Sources Missing CMS Policy Applicability (Current)
<b>State Response:</b>	NJDEP cannot commit unconditionally to addressing current data concerns as they have been expressed. NJDEP cannot commit to either increased costly manual data entry or the pursuit of overly complex and restrictive data transfer schemes. Budgetary and resource limitations demand a priority be given to ensuring effective levels of oversight and enforcement which may result in similar or diminished attention to correcting the currently identified data concerns. NJDEP will commit to the timely supply or publication of any

	data in an open format, free of transactional rules that EPA may request and which NJDEP has shown it effectively maintains and shares with others.
Action(s):	Minimum data requirements are required per the Federal Register and must be entered by States. However, EPA anticipates that this Element will be further improved by the development of the SOP and training cited under Element #2. No further action required.

<b>CAA Element 2 – Data Accuracy</b>	
<b>Degree to which data reported into the national system is accurately entered and maintained (example, correct codes used, dates are correct, etc.).</b>	
Finding	Data Accuracy with respect to Air Program/ Pollutant/ Compliance Status has not been accurately maintained. Both the file review and data metric support this finding.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>While much of NJDEP's data is being input in NJEMS, it is not reflected in AFS completely. The Air Program/ Pollutant/ Compliance Status has not been accurately maintained, therefore this Metric (Data metric 2a) is not accurate. The national goal is less than 50% while the national average is 71.1%. NJDEP's metric is 350%. The percentage is abnormally high and as such, it was identified as a potential concern to be examined during the file review.</p> <p>During the file review it was noted that only 57% files reviewed indicated that MDR data was accurately reflected in AFS. For example, stack tests are not always flagged in AFS, and the date conducted does not match the files. A total of 55 out of 181 stack tests were failures. Therefore, there is the possibility that some HPVs are not being reported to AFS since failed tests are possibly not being reported or flagged. Data must be entered completely and timely in AFS.</p> <p>Furthermore, NJDEP explained the high ratio of HPVs to noncompliant sources due to inaccurate reporting of facility compliance status (facilities are remaining listed as in-compliance, even when violations are found and they are listed as HPVs, giving a skewed ratio of HPVs to noncompliant sources). The failure to input all updated data into AFS lead to this inaccurate reporting of metric 2A.</p>
Metric(s) and Quantitative Value:	Data Metric 2a - Number of HPVs/Number of NC Sources (1 FY) File Review Metric 2C - % of files reviewed where MDR data are accurately reflected in AFS.
State Response:	NJDEP is open to additional EPA training on the AFS system where this may improve the current condition of AFS data it is able to enter. However, NJDEP refers also to its response to CAA Element 1.
Action(s):	<p>Minimum data requirements are required per the Federal Register and must be entered by States. NJDEP should consider devoting additional resources to ensure data quality.</p> <p>1) By April 30, 2010 NJDEP and EPA will develop a Standard Operating Procedure to reconcile data for Air, Water and RCRA on a quarterly basis. Each Agency will designate a lead to coordinate the effort by December 30, 2009.</p> <p>2) NJDEP and EPA will reconcile all data for Air, Water and RCRA by August 30, 2010.</p>

	<p>3) EPA Region 2 will conduct training on AFS batch uploading for NJDEP no later than April 1, 2010.</p> <p>4) Region 2 and NJDEP will confirm that all stack test failures have resulted in HPVs as appropriate. This will be completed by April 1, 2010.</p>
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<b>CAA Element 3 - Timeliness of Data Entry</b>	
<b>Degree to which the Minimum Data Requirements are timely.</b>	
<b>Finding:</b>	NJDEP is below the national goal of 100% for the three data timeliness metrics. There is no file review metric for this Element.
<b>Is this finding a(n) (select one):</b>	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
<b>Explanation:</b>	<p>NJDEP is below the national goal of 100% for the three data timeliness metrics. However, NJDEP is above the national average for all three metrics. For metric 3a, Percent HPVs Entered &lt;= 60 Days After Designation, NJDEP's metric is at 45.2% while the national average is 24.8%. For metric B1, Percent compliance monitoring related to MDR actions reported &lt;= 60 Days After Designation, NJDEP's metric is 58.1% while the national average is 52.6%. For metric B2, Percent enforcement related MDR actions reported &lt;= 60 Days after designation, NJDEP's metric is 89.5% while the national average is 67.3%.</p> <p>The state is substantially above the national average for the data metric, therefore, it appears that this is not an area of significant concern. Nevertheless, this is a situation that the states should continue to monitor.</p>
<b>Metric(s) and Quantitative Value:</b>	<p>3a - Percent HPVs Entered &lt;= 60 Days After Designation, Timely Entry (1 FY)</p> <p>B1 - Percent Compliance Monitoring related MDR actions reported &lt;= 60 Days After Designation, Timely Entry (1 FY)</p> <p>B2 - Percent Enforcement related MDR actions reported &lt;= 60 Days After Designation, Timely Entry (1 FY)</p>
<b>State Response:</b>	NJDEP refers to its response to CAA Element 1
<b>Action(s):</b>	Minimum data requirements are required per the Federal Register and must be entered by States. However, EPA anticipates that this Element will be further improved by the development of the SOP and training cited under Element #2. No further action required.

<b>CAA Element 4 - Completion of Commitments.</b>	
<b>Degree to which all enforcement/compliance commitments in relevant agreements (i.e., PPAs, PPGs, categorical grants, CMS plans, authorization agreements, etc.) are met and any products or projects are completed.</b>	
<b>Finding:</b>	NJDEP meets SRF Program Requirements for Completion of Commitments.
<b>Is this finding a(n) (select one):</b>	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required

Explanation:	<p>NDJEP file review metric for 4a, Confirm whether all commitments pursuant to a traditional CMS plan (FCE every 2 yrs at Title V majors; 3 yrs at mega-sites; 5 yrs at SM80s) or an alternative CMS plan were completed, was 86%. However, according to NJDEP the major facility data does not take into account mega sites, which would increase the metric value. Considering this, and the number of overall facilities in NJ, it was found that the state has only minor issues in meeting the CMS commitments.</p> <p>Additionally, file review metric 4b indicated that the state completed 30 of 96 PPG items, and 60 require ongoing work, leaving only 6 items with No Action for a metric value of 93%.</p>
Metric(s) and Quantitative Value:	<p>File Review Metrics</p> <p>4a- Confirm whether all commitments pursuant to a traditional CMS plan (FCE every 2 yrs at Title V majors; 3 yrs at mega-sites; 5 yrs at SM80s) or an alternative CMS plan were completed. Did the state/local agency complete all planned evaluations negotiated in a CMS plan?</p> <p>4b - Confirm the air compliance and enforcement commitments for the FY under review. This should include commitments in PPAs, PPGs, grant agreements, MOAs, or other relevant agreements.</p>
State Response:	NJDEP agrees with findings
Action(s):	No further action required.

<b>CAA Element 5 – Inspection Coverage</b>	
<b>Degree to which state completed the universe of planned inspections/compliance evaluations (addressing core requirements and federal, state and regional priorities).</b>	
Finding:	Data relating to inspection of megasites is not accurately entered into the database which has the effect of NJDEP's inspection coverage number being lower than expected.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>The two data metrics (5A1 and 5A2) for CMS major full compliance evaluation coverage indicated that NJDEP was below the national goal of 100% and also below the national averages for these metrics. NJDEP's data metric for 5A1 was 86.7% which is below the national average of 90.5% while NJDEP's data metric for 5A2 was 84% which is below the national average of 84.4%.</p> <p>However, according to NJDEP the major facility data does not take into account mega sites, which would increase the metric value. Considering this, and the number of overall facilities in NJ, it was found that the state has only minor issues in meeting the CMS commitments. However, the state should ensure data on mega sites is entered into appropriately. It is expected this will be addressed in the data reconciliation effort identified under Element #2.</p>
Metric(s) and Quantitative Value:	<p>Data Metrics</p> <p>5A1 - CMS Major Full Compliance Evaluation (FCE) Coverage (2 FY CMS Cycle)</p> <p>5A2 -CAA Major Full Compliance Evaluation (FCE) Coverage (most recent 2 FY)</p>



State Response:	NJDEP acknowledges that its coverage of major facilities is marginally below the national goal and average. However element 5 is not a data element and NJDEP cannot ensure it will have resources sufficient to improve data entry into the AFS system as per the response to CAA element 1.
Action(s):	No further action required for this element, however it is expected that the data entry for megasites will be addressed during the reconciliation effort identified under Element #2.

<b>CAA Element 6 – Quality of Inspection or Compliance Evaluation Reports</b>	
<b>Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.</b>	
Finding:	Tracking FCEs in AFS is an area of concern
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>While there is documentation for most of the FCE requirements and the file review metric is at 90% FCE are properly documented, the dates of the various pieces that make up an FCE are not consistently entered into AFS. PCE dates are not entered, and the date of the FCE entered into AFS is the date that the supervisor does the review, and is often months from the last inspection/review, making it difficult to track the independent FCE items.</p> <p>The supervisor should ensure that the review is conducted in a timely manner.</p>
Metric(s) and Quantitative Value:	File Review Metric 6b – Documentation of FCE Elements
State Response	PCEs not an MDR. Supervisor review needed to ensure a full FCE was completed. NJDEP will improve FCE tracking procedures. However, NJDEP refers also to its response to CAA Element 1
Action(s):	NJDEP will improve the timeliness of its supervisory review and tracking procedures and submit to EPA by April 1, 2010.

<b>CAA Element 7 - Identification of Alleged Violations.</b>	
<b>Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information (e.g., facility-reported information).</b>	
Finding:	Data entry of the Air Program/ Pollutant/ Compliance Status is an area of concern.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>NJDEP is below the national average for data metric 7C1 and 7C2. NJDEP's data metric for 7C1, Percent facilities in noncompliance that have had an FCE, stack test, or enforcement, is 5.2% which is below the national average of 18.7% and below the national goal of half the national average. Similarly NJDEP's data metric for 7C2, Percent facilities that have had a failed stack test and have noncompliance status, is 2.7% which is below the national average of 33% and below the national goal of half the national average. Because of the low reporting, this was an area of focus during the file review.</p>

	<p>NJDEP's data metric was 91% of facility files reviewed that led to accurate compliance determinations and 94% of non-HPVs reviewed where the compliance determination was timely reported to AFS. As such, the file reviews indicated that while enforcement actions are reported with high accuracy, the Air Program/ Pollutant/ Compliance Status has not been accurately maintained, therefore the data metrics for this element are not accurate</p> <p>The state is below the national average for the data metric but the files reviewed demonstrate that NJDEP is making accurate compliance determinations. Therefore, it appears that this is not an area of significant concern. Nevertheless, the data entry situation is one that the state needs to address.</p>
Metric(s) and Quantitative Value:	<p>Data Metric 7C1 - Percent facilities in noncompliance that have had an FCE, stack test, or enforcement (1 FY) 7C2 - Percent facilities that have had a failed stack test and have noncompliance status (1 FY)</p> <p>File Review Metric 7a -% of facility files reviewed that led to accurate compliance determinations. 7b - % of non-HPVs reviewed where the compliance determination was timely reported to AFS.</p>
State Response:	NJDEP emphasizes the focus of this element is on the accuracy of determinations and refers to its response to CAA Element 1 regarding the data concerns.
Action(s):	No further action required. However, EPA expects that the data entry situation will be addressed as per recommendations in Element 2.

<b>CAA Element 8 - Identification of SNC and HPV</b>	
<b>Degree to which the state accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner.</b>	
Finding:	NJDEP accurately identifies significant noncompliance/high priority violations
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>The national average for this data metric 8D is 39.7% information enforcement action without prior HPV while the national goal is half the national average. NJDEP's data metric is 74.7%. As such, this area was identified as a potential concern and was further examined during the file review to determine if any of the in informal actions should be HPVs.</p> <p>During the file review it was determined that 94% of violations in files reviewed were accurately determined to be HPV. Only minor issues were identified.</p> <p>NJDEP has indicated that they issue informal actions (NOV) for even the slightest violation. As such, many facilities comply promptly to avoid a more serious action. Such prompt action frequently results on violation not becoming an HPV</p>

Metric(s) and Quantitative Value:	Data Metric 8D - Percent Informal Enforcement Actions Without Prior HPV - Majors (1 FY) File Review 8F- % of violations in files reviewed that were accurately determined to be HPV.
State Response:	NJDEP agrees with the finding
Action(s):	No further action required.

### CAA Element 9 - Enforcement Actions Promote Return to Compliance

#### Degree to which state enforcement actions include required corrective action (i.e., injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.

Finding:	NJDEP's actions include corrective action.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	EPA reviewed 29 formal enforcement responses reviewed. In all instances, NJDEP's data metric for 9b is 100%. All enforcement responses reviewed included required corrective action (i.e., injunctive relief or other complying actions) that will return the facility to compliance in a specified time frame.
Metric(s) and Quantitative Value:	File Review Metric 9a - # of formal enforcement responses reviewed. 9b - % of formal enforcement responses that include required corrective action (i.e., injunctive relief or other complying actions) that will return the facility to compliance in a specified time frame.
State Response:	NJDEP agrees with the finding
Action(s):	No further action required.

### CAA Element 10 - Timely and Appropriate Action

#### Degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.

Finding:	Timeliness of taking enforcement is not a concern based in the metrics.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>The national average for data metric 10a is 40.8% of HPVs not meeting timeliness goals. NJDEP's metric is 13.1% of HPVs do not meet timeliness goals.</p> <p>The file review metric (10b and 10c) indicated that 91% of formal enforcement responses for HPVs reviewed that are addressed in a timely manner (i.e., within 270 days) and 91% of enforcement responses for HPVs are appropriately addressed.</p> <p>The data metric and file review metric support NJDEP's successful efforts in ensuring that it takes timely and appropriate action. However, Region 2 has concerns about NJDEP's tracking of HPVs in the files. This made it difficult for the reviewers to confirm dates for identification, day zero, addressing actions, and other HPV tracking items. NJDEP has indicated that all HPV identification should be consistent and in accordance with EPA</p>

	guidance. NJDEP will look into improving HPV tracking procedures.
Metric(s) and Quantitative Value:	Data Metric 10a -Percent HPVs not meeting timeliness goals (2 FY)  File Review Metric 10b - % of formal enforcement responses for HPVs reviewed that are addressed in a timely manner (i.e., within 270 days). 10c - % of enforcement responses for HPVs appropriately addressed.
State Response:	NJDEP agrees with the finding and will address necessary improvements in tracking. However, NJDEP cannot ensure it will have resources sufficient to improve data entry into the AFS system if this is deemed part of the tracking improvements
Action(s):	EPA will provide training to NJDEP on HPV data entry by April 1, 2010.

### CAA Element 11 - Penalty Calculation Method

**Degree to which state documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.**

Finding:	Documentation of economic benefit calculations and consideration is an area for state improvement.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	68% of the penalty calculations reviewed considered and included where appropriate gravity and economic benefit. Of the 29 files reviewed that had penalties, 9 did not consider economic benefit when it should have been considered. As a result of the Round 1 SRF review, EPA provided training on economic benefit.  NJDEP's air program has indicated that it considers economic benefit for all violations but noted that although considered, many cases did not document the rationale why the economic benefit was not included.
Metric(s) and Quantitative Value:	File Review Metric 11a- % of reviewed penalty calculations that consider and include where appropriate gravity and economic benefit.
State Response:	NJDEP Air program will document the economic benefit determinations, where warranted, in its penalty calculation sheets and in NJEMS going forward.
Action(s):	EPA recommends that NJDEP issue a department-wide SOP requiring economic benefit determinations be included in its files by April 1, 2010.

### CAA Element 12 - Final Penalty Assessment and Collection

**Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.**

Finding:	Documentation of penalty reductions is an area of concern.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required

Explanation:	<p>The national average for percent of actions at HPVs with penalties is 81.6% and the national goal is greater than 80%. NJDEP's data metric is at 98.5 which is well above the national average.</p> <p>The file review indicated that 76% of penalties reviewed document the difference and rationale between the initial and final assessed penalty (metric 12c). Additionally, 88% of files reviewed document collection of penalty (metric 12d).</p> <p>NJDEP has agreed to document the penalty reduction determinations and justifications in NJEMS going forward.</p> <p>Since the state is well above the national average for HPVs with penalties and is committed to documenting penalty reductions in the future, it appears that this is not a significant concern. Nevertheless, the penalty reduction justification situation is one that the states should continue to monitor</p>
Metric(s) and Quantitative Value:	<p>Date Review Metrics 12b - Percent Actions at HPVs With Penalty (1 FY)</p> <p>File Review Metrics 12c – % of penalties reviewed that document the difference and rationale between the initial and final assessed penalty. 12d - % of files that document collection of penalty.</p>
State Response:	NJDEP will document the penalty reduction determinations and justifications in NJEMS going forward.
Action(s):	EPA recommends that NJDEP issue a department-wide SOP requiring documentation is included in the files which indicates how penalty reductions are justified by April 1, 2010.

## **CWA Program**

<b>CWA Element 1 – Data Completeness</b>	
<b>Degree to which the Minimum Data Requirements are complete.</b>	
Finding:	Data Completeness is an area for state improvement.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>The data metric 1A3 is showing 3,647 NPDES non-major individual permits. NJDEP has indicated the correct number is 462. NJDEP contends that the report generated by EPA includes the general permit universe. PCS is pulling the general permits that are in PCS and is not separating the general permits. The data metric 1A4 is showing 1 NPDES general permit. NJDEP has indicated the correct number is 3721.</p> <p>The data metric 1D1 and 1D2 both measure violations at non-majors. The non-compliance rate is 6.8% and the noncompliance rate in the annual noncompliance report is 81.5%. NJDEP has indicated that there are 71 facilities out of 462 that meet the definition for 1D1. This equals =14% in non compliance. PCS is pulling the entire general permit universe, this problem has happened during past ANCR's, When NJ has submitted this information in the past they have expressed concern that EPA's report is including the entire non minor universe.</p> <p>There are also data discrepancies for the informal action metrics, formal actions, and</p>

	penalties. The wide range of data discrepancies indicates that this is an area for state improvement.
Metric(s) and Quantitative Value:	1A3 - Active facility universe: NPDES non-major individual permits (Current) 1A4 - Active facility universe: NPDES non-major general permits (Current) 1D1 - Violations at non-majors: noncompliance rate (1 FY) 1D2 - Violations at non-majors: noncompliance rate in the annual noncompliance report (ANCR)(1 FY) 1E3 - Informal actions: number of non-major facilities (1 FY) 1E4 - Informal actions: number of actions at non-major facilities (1 FY) 1F1 - Formal actions: number of major facilities (1 FY) 1F2- Formal actions: number of actions at major facilities (1 FY) 1F3- Formal actions: number of non-major facilities (1 FY) 1G1 - Penalties: total number of penalties (1 FY) 1G2- Penalties: total penalties (1 FY)
State Response:	NJDEP will continue to work with EPA to sort out the basis for discrepancies that are rooted in misunderstandings of the metric definition or in the use of, or retrieval of data from either the state or EPA data system. However, NJDEP cannot commit to either increased costly manual data entry or the pursuit of overly complex and restrictive data transfer schemes. Budgetary and resource limitations demand a priority be given to ensuring effective levels of oversight and enforcement which may result in similar or diminished attention to correcting the currently identified data concerns. NJDEP will commit to the timely supply or publication of any data in an open format, free of transactional rules that EPA may request and which NJDEP has shown it effectively maintains and shares with others.
Action(s):	EPA recommends:  1) By April 30, 2010 NJDEP and EPA will develop a Standard Operating Procedure to reconcile data for Air, Water and RCRA on a quarterly basis.  2) NJDEP and EPA will reconcile all data for Air, Water and RCRA by August 30, 2010.

<b>CWA Element 2 – Data Accuracy</b>	
<b>Degree to which data reported into the national system is accurately entered and maintained (example, correct codes used, dates are correct, etc.).</b>	
Finding:	Data accuracy is an area for state improvement.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required

Explanation:	<p>NJDEP's data metric for 2a, actions linked to violations: major facilities, is 100%. This is above the national goal of 80%.</p> <p>NJDEP's file review metric for 2b, % of files reviewed where data is accurately reflected in the national data system was 30%. 11 of 37 files reviewed contained accurate data that was reflected in OTIS. However, there were 26 files that did not match what was reported in EPA's OTIS pull. For example, dates of inspections in OTIS are not consistent with the records that were reviewed; formal enforcement actions reviewed are missing in OTIS; incorrect dates of actions; multiple enforcement actions issued when only one was actually issued; missing penalty data when penalties are issued in a formal enforcement action</p> <p>While the data metric demonstrates that NJDEP is linking actions to violations, the file review indicates that there is a serious data discrepancy between what is maintained by NJEMS and what is reported by NJDEP into PCS.</p>
Metric(s) and Quantitative Value:	<p>Data Metrics 2a - Actions linked to violations: major facilities (1 FY)</p> <p>File Review Metrics % of files reviewed where data is accurately reflected in the national data system.</p>
State Response:	NJDEP refers to the response to CWA element 1.
Action(s):	EPA recommends that data entry into PCS be evaluated and updated to ensure that data is accurately entered into PCS. This will be addressed under the Strategy required in CWA Element 1.

<b>CWA Element 3 - Timeliness of Data Entry</b>	
<b>Degree to which the Minimum Data Requirements are timely.</b>	
Finding	Unavailable for FY'07 which was the period of review for NJ's Water Metrics. Frozen data sets are unavailable for reviews prior to FY'08 (per Allison Donohue's 7.22.09 e-mail).
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	
Metric(s) and Quantitative Value	
State Response	
Action(s):	

<b>CWA Element 4 - Completion of Commitments.</b>	
<b>Degree to which all enforcement/compliance commitments in relevant agreements (i.e.,</b>	

<b>PPAs, PPGs, categorical grants, CMS plans, authorization agreements, etc.) are met and any products or projects are completed.</b>	
<b>Finding:</b>	NJDEP meets SRF program requirements for completion of commitments.
<b>Is this finding a(n) (select one):</b>	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
<b>Explanation:</b>	<p>NJDEP’s file review metric for % of planned inspections completed is 100%.</p> <p>Additionally, all of NJDEP’s PPA commitments under 4b appear acceptable with the exception of Database Maintenance: NJEMS/ PCS. Not all required WENDB data for all major inspections and enforcement actions are entered into PCS</p> <p>The file review indicates that NJDEPs meets or exceeds commitment requirements. The data quality issues will be addressed under Element #1.</p>
<b>Metric(s) and Quantitative Value:</b>	<p>File Review Metrics</p> <p>4a - % of planned inspections completed.</p> <p>4b - Other Commitments. Delineate the commitments for the FY under review and describe what was accomplished. This should include commitments in PPAs, PPGs, grant agreements, MOAs, or other relevant agreements.</p>
<b>State Response:</b>	NJDEP agrees with the finding.
<b>Action(s):</b>	No further action required. Data issue will be addressed in recommendation for Element #1.

<b>CWA Element 5 – Inspection Coverage</b>	
<b>Degree to which state completed the universe of planned inspections/compliance evaluations (addressing core requirements and federal, state and regional priorities).</b>	
<b>Finding:</b>	NJDEP is meeting SRF program requirements for inspection coverage
<b>Is this finding a(n) (select one):</b>	<input checked="" type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
<b>Explanation:</b>	<p>NJDEP’s data metric for 5A1, inspection coverage, NPDES majors is 82.7% which is above the national average of 63.8% but below the national goal of 100%. However, NJDEP has indicated that they inspect all 150 majors every year. It appears the discrepancy is due to the difference in fiscal years that the data is being pulled. Several facilities were identified as being inspected outside the Federal FY and some several were done near the end of the Federal FY and were not counted.</p> <p>Data supporting metrics 5B1, 5B2, and 5B3 is not required to be entered into national databases. However NJDEP has indicated that they are kept in their database.</p> <p>The file review indicates that NJDEP meets the SRF program requirements for inspection coverage.</p>



Metric(s) and Quantitative Value:	Data Metric 5A1- Inspection coverage: NPDES majors (1 FY) 5B1 - Inspection coverage: NPDES non-major individual permits (1 FY) 5B2 - Inspection coverage: NPDES non-major general permits (1 FY) 5B3- Inspection coverage: NPDES other (not 5a or 5b) (1 FY)
State Response	NJDEP agrees with the finding.
Action(s):	No additional action required.

<b>CWA Element 6 – Quality of Inspection or Compliance Evaluation Reports</b>	
<b>Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.</b>	
Finding	Quality of Inspection or Compliance Evaluation Reports is an area for state attention.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>EPA reviewed 39 inspection reports under file review metric 6a.</p> <p>15% of inspections reports reviewed were deemed complete. EPA’s review indicated that not all required information in the EPA inspection form checklist is maintained in the NJ inspection forms. Only 6 of 39 transmitted inspection reports met all of the criteria in the EPA inspection checklist. Information such as inspection start and end time along with physical description of facility and NPDES regulated activities are missing. However, the information that is missing is not critical to determining compliance as it is descriptive information about the facility or the facility’s processes. NJDEP agrees with the comment that this information is not critical and therefore not included in their reports.</p> <p>100% of inspection reports reviewed under file metric 6c, did provide sufficient documentation to lead to an accurate compliance determination.</p> <p>59% of the inspection reports reviewed were timely. 23 of 39 inspection reports reviewed were completed within 30 days. There were 9 reports that were submitted after 30 days but less than 55 days. However, there were a few (7) that were in excess of 55 days. The state explained that additional time may have been needed due to additional information being requested from the facility to determine compliance.</p> <p>Generally, NJDEP’s inspection reports contain information necessary for compliance determinations and are completed in a timely manner. However, this is an area for further attention for the state to ensure appropriate information is included in inspection reports.</p>

Metric(s) and Quantitative Value:	6a-# of inspection reports reviewed. 6b-% of inspection reports reviewed that are complete. 6c-% of inspection reports reviewed that provide sufficient documentation to lead to an accurate compliance determination. 6d -% of inspection reports reviewed that are timely
State Response:	NJDEP agrees that there is no action required.
Action(s):	No further action required.

<b>CWA Element 7 – Identification of Alleged Violations.</b>	
<b>Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information (e.g., facility-reported information).</b>	
Finding:	State needs to identify Single Event Violations (SEV) during inspections and enter SEVs into PCS as it is part of the WENDB elements.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>Data metric 7A1 and 7A2 indicated that NJDEP reported 0 SEVs. A data pull from NJEMS revealed 16 single event violations at majors and 31 at minors. NJ enters all NJPDES DMR data into NJEMS which we use to identify all DMR violations. NJEMS automatically identifies serious and SNC effluent violations.</p> <p>Under data metric 7b, 68.2% of facilities had unresolved compliance schedule violations at the end of the fiscal year. The national average is 31.5%. NJDEP has indicated that the number of facilities with unresolved compliance schedule violations is 20, 16 of which have ACO's. That leaves 4 facilities or 20%.</p> <p>The data metric indicated 81 major facilities with DMR violations. NJDEP has indicated that violations that are not serious may be issued a Notice of Violation and request an explanation from the facility. NJ will continue to monitor the status of non serious violations.</p> <p>100% of inspection reports reviewed (39) led to accurate compliance determinations (7e)</p> <p>SEV data is not input into PCS. SEVs should be identified during inspections and promptly entered into PCS for tracking and resolution of violations identified through inspections.</p>
Metric(s) and Quantitative Value:	<p>Data Metrics</p> <p>7A1 – Single-event violations at majors (1 FY)</p> <p>7A2 - Single-event violations at non-majors (1 FY)</p> <p>7B- Facilities with unresolved compliance schedule violations (at end of FY)</p> <p>7C- Facilities with unresolved permit schedule violations (at end of FY)</p> <p>7D- Major facilities with DMR violations (1 FY)</p> <p>File Review Metrics</p> <p>7e - % of inspection reports or facility files reviewed that led to accurate compliance determinations.</p>

State Response:	NJDEP does currently identify SEVs and can provide a variety of breakdowns of violation types from NJEMS. But NJDEP does not commit to refining procedures to ensure data entry of SEVcodes into PCS/ICIS.
Action(s):	No further action required for this element, however it is expected that the data entry for SEVs will be addressed during the reconciliation effort identified under CWA Element #1.

<b>CWA Element 8 – Identification of SNC and HPV</b>	
<b>Degree to which the state accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner.</b>	
Finding	NJDEP does not identify SNC from SEVs. SNC for effluent violations is automatically generated from the state's NJEMS database.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>NJDEP's SNC rate for majors was 11.3% which is below the national average of 22.4%.</p> <p>EPA's file review identified 0% of single event violation(s) that are accurately identified as SNC or Non-SNC. Additionally, EPA's file review identified 0% of single event violation(s) identified as SNC that are reported timely. The State does not report SEVs in PCS. Of 21 inspection reports that noted violations, the review team noted that there were 52 SEVs. Of the 52 SEVs, there were 50 non-SNC SEVs and 2 SNC SEV's. The SNC SEV's (both at one facility) were not identified as being in SNC by the state. NJ enters all NJPDES DMR data into NJEMS which they use to identify all DMR violations. NJEMS automatically identifies serious and SNC effluent violations.</p>
Metric(s) and Quantitative Value:	<p>Data Metrics</p> <p>8A1 Major facilities in SNC (1 FY)</p> <p>8A2 SNC rate: percent majors in SNC (1 FY)</p> <p>File Review Metric</p> <p>8b – % of single event violation(s) that are accurately identified as SNC or Non-SNC.</p> <p>8c - % of single event violation(s) identified as SNC that are reported timely.</p>
State Response:	NJDEP believes it can make clear any SNC violations outside of effluent violations including those derived from consent orders, by reporting on NJEMS data. We do not anticipate any new SOPs.
Action(s):	No further action required for this element, however it is expected that the data entry for SEVs will be addressed during the reconciliation effort identified under CWA Element #1

<b>CWA Element 9 – Enforcement Actions Promote Return to Compliance</b>	
<b>Degree to which state enforcement actions include required corrective action (i.e., injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.</b>	
Finding	NJDEP meets SRF program requirements for enforcement actions that return facilities to compliance.

Is this finding a(n) (select one):	<input checked="" type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>EPA reviewed 36 enforcement files (9a).</p> <p>100% of enforcement responses that have returned or will return a source in SNC to compliance (9b). There were 6 enforcement responses reviewed that addressed SNC sources and all 6 responses returned or will return a facility to compliance.</p> <p>94% of enforcement responses that have returned or will returned a source with non-SNC violations to compliance (9c). Of 34 enforcement actions issued to non-SNC sources, 32 returned or will return a facility to compliance. One facility required three actions (2 NOV's and 1 Settlement Agreement which also addressed SNC violations) to bring non-SNC violations to compliance.</p>
Metric(s) and Quantitative Value:	<p>File Review Metric</p> <p>9a – # of enforcement files reviewed</p> <p>9b –% of enforcement responses that have returned or will return a source in SNC to compliance.</p> <p>9c - % of enforcement responses that have returned or will returned a source with non-SNC violations to compliance.</p>
State Response:	NJDEP agrees with the finding.
Action(s):	No further action required.

<b>CWA Element 10 - Timely and Appropriate Action</b>	
<b>Degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.</b>	
Finding	NJDEP meets SRF program requirements for timely and appropriate action.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>EPA's review of the data metric 10A indicated that 3.3% of majors did not have timely action which is below the national average of 11.7%. The national goal is less than 2%. All 5 of the facilities were on last quarters SNAP list as Item of Concern, they have either been addressed or will be addressed. EPA is lead on one facility and that has been settled.</p> <p>67% of enforcement responses reviewed that address SNC that are taken in a taken in a timely manner. Generally, the state addresses SNC in a timely manner (4 of 6 SNC enforcement responses). In some instances, additional time was taken which may be due to the complexity &amp; severity of the violations.</p> <p>100% of enforcement responses reviewed that address SNC that are appropriate to the violations.</p>

	94%- of enforcement responses reviewed that appropriately address non-SNC violations
Metric(s) and Quantitative Value:	Data Metric 10A - Major facilities without timely action (1 FY)  File Review Metric 10b -% of enforcement responses reviewed that address SNC that are taken in a taken in a timely manner. 10c-% of enforcement responses reviewed that address SNC that are appropriate to the violations. 10d- % of enforcement responses reviewed that appropriately address non-SNC violations. 10e - % enforcement responses for non-SNC violations where a response was taken in a timely manner.
State Response:	NJDEP agrees with the finding.
Action(s):	No additional action required.

<b>CWA Element 11 - Penalty Calculation Method</b>	
<b>Degree to which state documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.</b>	
Finding	Penalty documentation and economic benefit calculation is an area for state improvement.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>6% of penalty calculations considered and included where appropriate gravity and economic benefit.</p> <p>The State assesses penalties in accordance with its Civil Administrative Penalty Determination regulation which is a penalty matrix. The matrix is based on the conduct of the violator and the severity of the violation. The matrix only appears to consider gravity and not economic benefit. Of the 16 penalty actions the review team looked at, there was only 1 action that took economic benefit into account. Gravity was never specifically mentioned but the penalty rationales referred to the state's Civil Administrative Penalty Determination regulation.</p>
Metric(s) and Quantitative Value	11a-% of penalty calculations that consider and include where appropriate gravity and economic benefit.
State Response	NJDEP agrees with the finding.
Action(s):	EPA recommends that NJDEP issue a department-wide SOP requiring economic benefit determinations in its penalty calculation sheets and also in NJEMS by March 1, 2010.

<b>CWA Element 12 - Final Penalty Assessment and Collection</b>	
<b>Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.</b>	
<b>Finding</b>	NJDEP meets SRF program requirements for final penalty assessment and collection.
<b>Is this finding a(n) (select one):</b>	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
<b>Explanation:</b>	<p>100% of penalties reviewed that document the difference and rationale between the initial and final assessed penalty. All penalty actions that had a difference between the initial and final assessed penalty (8) provided a rationale for why the final penalty assessed was different than initially assessed.</p> <p>100% of enforcement actions with penalties provided documentation that the penalty was collected.</p>
<b>Metric(s) and Quantitative Value:</b>	<p>File Review Metric</p> <p>12a - % of penalties reviewed that document the difference and rationale between the initial and final assessed penalty.</p> <p>12b- % of enforcement actions with penalties that document collection of penalty.</p>
<b>State Response:</b>	NJDEP agrees with the finding.
<b>Action(s):</b>	No further action required.

**RCRA Program:**

<b>RCRA Element 1 – Data Completeness</b>	
<b>Degree to which the Minimum Data Requirements are complete.</b>	
<b>Finding</b>	Data Completeness is an Area for State Improvement.
<b>This finding (select one):</b>	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
<b>Explanation:</b>	<p>Metric 1A4 indicates that NJDEP has 4,106 active sites in RCRAInfo. The number in NJDEP's database is 10,544. NJDEP has indicated that its database includes NJX and NRG (state only) sites, as well as, a large contingent of active CESQG's (non-notifiers) in NJEMS. In addition, RCRAINFO auto-updated generators to "not in a universe" status (made inactive) due to no manifest activity while some of these entities are active in NJEMS as the generators are paying an annual compliance monitoring fee to the state. While NJDEP's response accounts for some of the discrepancy, EPA believes any direct analysis between NJEMS and RCRAInfo data would indicate a discrepancy even given the explanation from NJDEP.</p> <p>Metric 1C1 indicates that 215 sites with violations determined at any time are listed in RCRAInfo. The number in NJDEP's database is 358. NJDEP has indicated that its database includes NJX and NRG (state only) sites.</p>

	<p>Metric 1E1 indicates that NJDEP has 43 sites with new SNCs. The number in NJDEP's database is 72. NJDEP has indicated that its database includes NJX and NRG (state only) sites.</p> <p>Metric 1G indicates that NJDEP assessed \$420,333 in penalties. The number in NJDEP's database is \$1,434,678. NJDEP has indicated that its database includes NJX and NRG (state only) sites. RCRAInfo does not track these entities. In addition, according to NJDEP the extent of discrepancy regarding penalties is not as large as initially indicated as the program re-ran NJ's data report and determined that double counting had occurred in certain situations regarding initial assessments and final assessments. However the final disposition (final penalty settlement amounts) of some cases were not recorded into RCRAINFO as required. These have been updated and the information entered into RCRAINFO.</p> <p>NJDEP has acknowledged that the SRF review determined some information was not updated to RCRAINFO. NJ will be including CMEL forms/records in NJEMS to help ensure data capture and provide easy access to these records in the event of discrepancies.</p> <p>Since the SRF review, Region 2 and NJDEP have agreed to work together to solve the data issues associated with the RCRA program. Region 2 is willing to provide training and technical assistance so that NJDEP can perform quarterly data pulls from RCRAInfo for comparison with NJDEP's database to ensure completeness of RCRAInfo data.</p>
<b>Metric(s) and Quantitative Value</b>	<p>Date Metrics</p> <p>1A4 - Number of all other active sites in RCRAInfo</p> <p>1C1-Number of sites with violations determined at any time (1 FY)</p> <p>1E1-SNC: number of sites with new SNC (1 FY)</p> <p>1G- Total amount of assessed penalties (1 FY)</p>
<b>State Response</b>	<p>NJDEP will continue to work with EPA to sort out the basis for discrepancies that are rooted in misunderstandings of the metric definition or in the use of, or retrieval of data from either the state or EPA data system. Currently this includes the periodic reconciliation for which an SOP will be provided. However, NJDEP cannot guarantee either increases in manual data entry or the pursuit of overly complex and restrictive data transfer schemes. Budgetary and resource limitations demand a priority be given to ensuring effective levels of oversight and enforcement which may result in similar or diminished attention to correcting the currently identified data concerns. Limitations in the future may include an inability to dedicate resources to periodic reconciliation of state and Federal databases. NJDEP will commit to the timely supply or publication of any data in an open format, free of transactional rules that EPA may request and which NJDEP has shown it effectively maintains and shares with others.</p>
<b>Action(s):</b>	<p>1) By April 30, 2010 NJDEP and EPA will develop a Standard Operating Procedure to reconcile data for Air, Water and RCRA on a quarterly basis.</p> <p>2) NJDEP and EPA will reconcile all data for Air, Water and RCRA by August 30, 2010.</p> <p>3) Region 2 is willing to provide training (by April 1, 2010) and technical assistance (as needed) in pulling the data from RCRAInfo for comparison with NJDEP's data.</p>

<b>RCRA Element 2 – Data Accuracy</b>	
<b>Degree to which data reported into the national system is accurately entered and maintained (example, correct codes used, dates are correct, etc.).</b>	
<b>Finding:</b>	Data Accuracy is an area for state attention.
<b>This finding</b>	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements

(select one):	<input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>NJDEP's data metric for number of sites in violation for over 240 days as 75 while the number in NJDEP's data system was 33.</p> <p>NJDEP's file review metric for % of files reviewed where mandatory data are accurately reflected in the national data system, was 100%.</p> <p>NJDEP should correct the data and it is a situation that the state should continue to monitor.</p>
Metric(s) and Quantitative Value:	<p>Data Metric 2b- Number of sites in violation for greater than 240 days</p> <p>File Review Metric 2c - % of files reviewed where mandatory data are accurately reflected in the national data system.</p>
State Response:	NJDEP refers to the response to RCRA element 1.
Action(s):	No further action required.

<b>RCRA Element 3 - Timeliness of Data Entry</b>	
<b>Degree to which the Minimum Data Requirements are timely.</b>	
Finding	Timely data entry is an area for state attention.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>NJDEP's data metric for percent SNC entered 60 days after designation is 46.7%. More timely data entry appears needed. NJDEP could not duplicate EPA's timeliness metric and cannot comment on the timeframe.</p> <p>Timeliness is an important data metric and NJDEP should closely monitor to ensure the SNC's are entered within appropriate timeframes.</p>
Metric(s) and Quantitative Value:	<p>Data Metric 3-A Percent SNCs entered; 60 days after designation (1Y)</p>
State Response:	NJDEP refers to the response to RCRA element 1.
Action(s):	No further action required.

<b>RCRA Element 4 - Completion of Commitments.</b>
<b>Degree to which all enforcement/compliance commitments in relevant agreements (i.e., PPAs, PPGs, categorical grants, CMS plans, authorization agreements,</b>



<b>etc.) are met and any products or projects are completed.</b>	
<b>Finding</b>	NJDEP Meets All Commitments
<b>Is this finding a(n) (select one):</b>	<input checked="" type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
<b>Explanation:</b>	NJDEP completed 100% of its planned inspections and 100% of its planned commitments (3 of 3 commitments, met) under the PPA. NJDEP meets or exceeds this metric.
<b>Metric(s) and Quantitative Value:</b>	File Review Metric 4-a Planned inspections completed 4-b Planned commitments completed
<b>State Response:</b>	NJDEP agrees with the findings.
<b>Action(s):</b>	No further action required.

<b>RCRA Element 5 – Inspection Coverage</b>	
<b>Degree to which state completed the universe of planned inspections/compliance evaluations (addressing core requirements and federal, state and regional priorities).</b>	
<b>Finding</b>	NJDEP meets or exceeds inspection coverage requirements
<b>Is this finding a(n) (select one):</b>	<input checked="" type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
<b>Explanation:</b>	<p>NJDEP has indicated that for all the inspection coverage metric except for 5A, NJDEP’s data is different than what is in EPA’s database. The data discrepancy will be covered by the recommendation under Element #1 –Data Completeness.</p> <p>With regard to NJDEP’s performance regarding inspection coverage, NJDEP is at or above national averages.</p> <p>NJDEP’s data metric for 5A, Inspection coverage for operating TSDFs (2 FYs), is 100% which is above the national average of 89% and meets the national goal of 100%.</p> <p>NJDEP’s data metric for 5B, Inspection coverage for LQGs (1 FY), is 30.2% which is above the national average of 23% and above the national goal of 20%. However, NJ’s data indicates that the number for the metric should be 34.6% instead of 30.2%.</p> <p>NJDEP’s data metric for 5C, inspection coverage LQGs (5FYs), is 71.3% which is above the national average of 64.7% and below the national goal of 100%. However, NJ’s data indicates that the number for the metric should be 110%, well above the national goal.</p> <p>The remainder of the metrics 5D, 5E1, 5E2, 5E3, and 5E4, do not contain national goals or averages. EPA noted however that the numbers in NJDEP’s database differ from the numbers in EPA’s database.</p> <p>5D – EPA’s database is 55.1 Inspection coverage for active SQGs (5 FYs) versus NJDEP’s 60.4%.</p>

	<p>5E1 – EPA’s database is 1787 Inspections at active CESQGs versus NJDEP’s 2075.  5E2 – EPA’s database is 1283 Inspections at active transporters (5 FYs) versus NJDEP’s 2564.  5E3 – EPA’s database is 16 Inspections at non-notifiers (5 FYs) versus NJDEP’s 1394.  5E4 – EPA’s database is 61 Inspections at active sites other than those listed in 5a-d and 5e1-5e3 (5 FYs) versus NJDEP’s 0.</p> <p>The corrected data indicates that NJDEP meets or exceeds all coverage requirements. The data quality issues will be addressed under Element #1.</p>
Metric(s) and Quantitative Value	<p>5A- Inspection coverage for operating TSDFs (2 FYs)  5B- Inspection coverage for LQGs (1 FY)  5C- Inspection coverage for LQGs (5 FYs)  5D- Inspection coverage for active SQGs (5 FYs)  5E1- Inspections at active CESQGs (5 FYs)  5E2 -Inspections at active transporters (5 FYs)  5E3- Inspections at non-notifiers (5 FYs)  5E4- Inspections at active sites other than those listed in 5a-d and 5e1-5e3 (5 FYs)</p>
State Response	NJDEP agrees with the findings.
Action(s):	No further action required. Data issue will be addressed under recommendation for Element #1.

<b>RCRA Element 6 – Quality of Inspection or Compliance Evaluation Reports</b>	
<b>Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner, and include accurate description of observations.</b>	
Finding	NJDEP meets or exceeds quality of inspection requirements.
Is this finding a(n) (select one):	<input checked="" type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>EPA reviewed a total of 44 inspection reports (metric 6a).</p> <p>NJDEP’s metric for 6b was 100%, of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance at the facility. Additionally 97% of the inspection reports were completed within a determined timeframe.</p> <p>NJDEP met or exceeded the metric for this Element.</p>
Metric(s) and Quantitative Value:	<p>File Review Metric  6a – # of inspection reports reviewed.  6b – % of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance at the facility.  6c - Inspections reports completed within a determined time frame.</p>
State Response:	NJDEP agrees with the findings.
Action(s):	No further action required.

<b>RCRA Element 7 - Identification of Alleged Violations.</b>	
<b>Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information (e.g., facility-reported information).</b>	
Finding	NJDEP meets SRF program requirements for identification of violations.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>The data analysis indicated a 15.9% violation identification rate at sites with inspections (7c). NJDEP's data includes NJX and NRG (state only) sites. RCRAInfo does not track these entities. NJDEP will exclude NJX and NRG (state only) sites to identify any sites which should have been manually updated to RCRAInfo. NJDEP's corrected violation identification rate is 16.5%.</p> <p>EPA also reviewed 44 inspection reports. 100% of the reports included accurate compliance determinations based on inspection reports. File review metric 7b also indicated that 100% of the violations determinations in the files reviewed were reported timely to the national database (within 150 days).</p> <p>While NJDEP's violation identification rate at sites with inspection was 15.9%, NJDEP correctly identified and reported violations in all instances in the files reviewed by EPA.</p>
Metric(s) and Quantitative Value:	<p>Data Review Metric 7c - Violation identification rate at sites with inspections (1 FY)</p> <p>File Review Metric 7a - % of accurate compliance determinations based on inspection reports. 7b - % of violation determinations in the files reviewed that are reported timely to the national database (within 150 days).</p>
State Response:	NJDEP agrees with the findings.
Action(s):	No further action required. Data issue will be addressed under recommendation for Element #1.

<b>RCRA Element 8 - Identification of SNC and HPV</b>	
<b>Degree to which the state accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner.</b>	
Finding	NJDEP meets SRF program requirements for identification of SNC and HPV
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>EPA reviewed three data metrics for SNC and HPV identification. NJDEP's data metric for (8A) SNC identification rate at sites with inspections (1 FY) was 5.3% which exceeds the national average of 3.8% and also the national goal of half the national average.</p> <p>NJDEP's data metric for 8(b) was 95.6% of SNC determinations made within 150 days (1</p>

	<p>FY) which is above the national average of 82.0% but below the national goal of 100%. However, NJDEP has indicated that its data indicates 100%.</p> <p>NJDEP's data metric for 8C was 56.9% of formal actions taken that received a prior SNC listing (1 FY) which is above the national average of 53.8% and also above the national goal of half the national average. However, NJDEP has indicated that its data is 82.9%.</p> <p>NJDEP file review metric for 8d was 100% of violations in files reviewed that were accurately determined to be SNC.</p> <p>Based on EPA review of the data and file metrics, NJDEP meets SRF program requirements for identification of SNC and HPV.</p>
Metric(s) and Quantitative Value:	<p>Data Metrics</p> <p>8A SNC identification rate at sites with inspections (1 FY)</p> <p>8B - Percent of SNC determinations made within 150 days (1 FY)</p> <p>8C - Percent of formal actions taken that received a prior SNC listing (1 FY)</p> <p>File Review Metric 8d - % of violations in files reviewed that were accurately determined to be SNC.</p>
State Response:	NJDEP agrees with the findings.
Action(s):	No further action required.

<b>RCRA Element 9 - Enforcement Actions Promote Return to Compliance</b>	
<b>Degree to which state enforcement actions include required corrective action (i.e., injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.</b>	
Finding	NJDEP's meets SRF program requirements for enforcement actions to promote return to compliance.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>EPA reviewed 24 enforcement responses under metric 9a. Of these 21 were SVs with or without penalties and 3 were SNCs.</p> <p>File review metric 9b, indicated that 100% of enforcement responses have returned or will return a source in SNC to compliance.</p> <p>File review metric 7c also indicated that 100% of enforcement responses have returned or will return Secondary Violators (SV's) to compliance.</p> <p>Based on EPA's file review, NJDEP's RCRA program meets SRF program requirements for enforcement actions to promote return to compliance.</p>
Metric(s) and Quantitative Value:	<p>File Review Metric</p> <p>9a – # of enforcement responses reviewed.</p> <p>9b – % of enforcement responses that have returned or will return a source in SNC to compliance.</p> <p>9c - % of enforcement responses that have returned or will return Secondary Violators (SV's) to compliance.</p>

State Response:	NJDEP agrees with the findings.
Action(s):	No further action required.

<b>RCRA Element 10 - Timely and Appropriate Action</b>	
<b>Degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.</b>	
Finding	NJDEP meets SRF program Requirements for Timely and Appropriate Action
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>EPA’s review of NJDEP’s data metric (10a) indicated 0% of enforcement actions/referrals taken within 360 days (1 FY). The National Average is 24.2% while the National Goal is 80%. However, NJDEP’s data in its database indicates that 93% of enforcement actions/referrals are taken within 360 days which is above the national average and the national goal.</p> <p>EPA’s file review indicated that 100% of enforcement responses reviewed were taken in a timely manner and 100% of the enforcement responses reviewed were appropriate to the violations.</p> <p>Based on NJDEP’s corrected data and EPA’s file review, NJDEP’s RCRA program meets SRF program requirements for timely and appropriate action.</p>
Metric(s) and Quantitative Value:	<p>Data Metric            10A - Percent of enforcement actions/referrals taken within 360 days (1 FY)            10B - No activity indicator - number of formal actions (1 FY)</p> <p>File Review            Metric 10e - % of enforcement responses reviewed that are taken in a timely manner            Metric 10d - % of enforcement Responses reviewed that are appropriate to the violations.</p>
State Response:	NJDEP agrees with the findings.
Action(s):	No further action required. Data issue will be addressed under recommendation for Element #1.

<b>RCRA Element 11 - Penalty Calculation Method</b>	
<b>Degree to which state documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.</b>	
Finding	NJDEP’s documentation of economic benefit should be included in the files.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required

Explanation:	EPA reviewed 3 files with State actions and none of the actions indicated whether economic benefit was considered (3 of 3 SNC's).  NJDEP should ensure that files document that economic benefit was considered.
Metric(s) and Quantitative Value:	File Review Metric 11a - % of reviewed penalty calculations that consider and include where appropriate gravity and economic benefit.
State Response:	NJDEP agrees with the findings and the RCRA program already includes an economic benefit penalty calculation sheet with all actions.
Action(s):	EPA recommends that NJDEP issue a department-wide SOP requiring economic benefit determinations be included in its files by April 1, 2010.

<b>RCRA Element 12 - Final Penalty Assessment and Collection</b>	
<b>Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.</b>	
Finding	NJDEP's documentation of penalty reductions should be included in the files.
Is this finding a(n) (select one):	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
Explanation:	<p>EPA's review of NJDEP's penalties indicated that NJDEP assessed \$420,333 in penalties. In addition, 86.3% of NJDEP formal actions included a penalty which is above the national average and above the national goal of half the national average.</p> <p>NJDEP's database indicated that they had assessed 1,434,678 in penalties and that 100% of formal actions included penalties.</p> <p>EPA's file review indicated that 33% (12a) of penalties reviewed documented the difference and rationale between the initial and final assessed penalty. For 2 of 3 SNCs more information is needed detailing justification in significant reductions in proposed penalties in NJ's database.</p> <p>EPA's file review indicated that 100% of files document collection of penalty.</p> <p>EPA's review of the data and file review metric indicate that while NJDEP is assessing penalties at or above the national average, issue exist with regard to how NJDEP is documentation penalty reductions in the file.</p>
Metric(s) and Quantitative Value:	Data Metric 12A - No activity indicator - penalties (1 FY) 12B - Percent of final formal actions with penalty (1 FY) File Review Metric 12a - % of penalties reviewed that document the difference and rationale between the initial and final assessed penalty. 12b - % of files that document collection of penalty.
State Response:	NJDEP agrees with the findings.
Action(s):	EPA recommends that NJDEP issue department-wide SOP requiring documentation is included in the files which indicates how penalty reductions are justified by April 1, 2010.

**V. ELEMENT 13** – See note and summary of Stewardship in Section I. A.