

# **STATE REVIEW FRAMEWORK**

**New York State**

**Clean Water Act, Clean Air Act, and  
Resource Conservation and Recovery Act  
Implementation in Federal Fiscal Year 2011**

**U.S. Environmental Protection Agency  
Region 2**

**April 30, 2014**

## Note to Users

This report is structured in four parts, with three media sections and one overarching Executive Summary. The intent of this structure is to allow the user to choose to look exclusively at one media-specific set of information, to look at just State Review Framework (SRF) information individually, or to look at how the Permit Quality Review (PQR) and SRF were integrated.

This report contains SRF information across all programs. If you are interested in reviewing the CWA PQR information only, see the report titled “Region 2 NPDES Permit Quality Review New York State.”

To review Clean Water Act (CWA) information only, see the sections of this report titled CWA-NPDES Integrated PQR & SRF Review, and the section titled Clean Water Act.

If you are interested in reviewing information related to the Resource Conservation and Recovery Act (RCRA) only, look to the section titled Resource Conservation and Recovery Act.

If you are interested in reviewing information related to the Clean Air Act (CAA), look to the section titled Clean Air Act.

Information in this report related to the CWA National Pollutant Discharge Elimination System (NPDES) permit reviews under the PQR and NPDES enforcement under the SRF have been integrated as part of the EPA’s 2009 Clean Water Act Action Plan. Information is not integrated in this report for reviews of the state’s CAA and RCRA programs because the SRF only examines enforcement information, and permit oversight under the CAA and RCRA programs are conducted through different mechanisms not associated with this review process.

The NPDES integrated oversight effort is a way provide EPA with a comprehensive understanding of permitting and compliance elements of the NPDES program. Integrated reviews reduce the burden on states by having one joint visit and integrated report. The integrated reviews provide EPA and the public with a greater understanding of the challenges of a state NPDES program, and increases transparency through making PQR and SRF results publicly available on EPA’s website. In the future, information from the PQR and SRF reviews will be available in a single, integrated report.

# **SRF and Integrated CWA PQR Executive Summary**

## **Introduction**

State Review Framework (SRF) and Permit Quality Review (PQR) oversight reviews of the New York State Department of Environmental Conservation (NYSDEC) were conducted on February 29 - March 1, 2012, October 22 - 26, 2012, and October 31 - November 1, 2012, respectively, by EPA Region 2 permitting and enforcement staff.

The Clean Water Act National Pollutant Discharge Elimination System (CWA-NPDES) program was reviewed under both SRF and PQR. The Clean Air Act (CAA) Stationary Source and Resource Conservation and Recovery Act (RCRA) Subtitle C programs were reviewed only under SRF.

SRF findings are based on file metrics derived from file reviews, data metrics, and conversations with program staff. PQR findings are based on reviews of permits, fact sheets, and interviews.

## **Priority Issues to Address**

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

- Penalty Assessment and Documentation - The state is not including economic benefit and gravity in its penalty calculations, nor does the state document the difference between initial and final assessed penalties.
- Timely and Appropriate Action (CWA) – The majority of state enforcement responses do not address violations in a timely manner.

## **CWA-NPDES Integrated Findings**

There were no common findings affecting performance of both the permitting and enforcement program.

## **Major PQR CWA-NPDES Findings**

The PQR found the following issues to be most significant:

- Quality of Factsheets for Permits - The state must improve the quality of fact sheets for permits. Fact sheets do not consistently provide the basis, appropriate regulatory citations, or calculations supporting technology- and water quality-based effluent limitations (including the basis of dilution ratios) as required by EPA regulations at 40 CFR 124.8 and 124.56. NYSDEC must also include a detailed discussion of the federal anti-backsliding requirements at CWA section 402(o) and 40 CFR 122.44(l) when effluent limitations established in a permit are less stringent than the previous permit. When necessary, fact sheets must also address all information consistent with the 1994 Combined Sewer Overflow Control Policy.

- Need to Update State Regulations – The state must update the state regulations to be consistent with the current federal regulations. Specifically, the pretreatment regulations at 6 NYCRR Part 750-1.24(c) must be updated to reflect the more current revision to 40 CFR Part 403. NYSDEC must also revise 6 NYCRR Part 750 to reflect the changes in the federal confined animal feeding operation regulations at 40 CFR Parts 122 and 412. There are other areas (which may not have been directly addressed during the PQR) that may require updating.
- Water Quality-Based Effluent Limitations – The state must ensure that all water quality-based effluent limitations are expressed as both average monthly and maximum daily limitations in order to be consistent with 40 CFR 122.45(d).

## **Major SRF CWA-NPDES Program Findings**

- Accurate and Timely Entry of Data - Mandatory data is not consistently reflected accurately or entered in ICIS.
  - NYSDEC senior management should issue a memo to staff reaffirming data entry and quality control requirements (including data entry for inspections), in accordance with the WENDB elements, by 9/15/14. EPA will receive a copy of the memo, and monitor the state’s progress through quarterly meetings, annual data metrics, and the watch list.
- Identification of Violations (including SNC and HPV) –The state is not entering SEVs into ICIS.
  - NYSDEC senior management should issue a memo to staff by 9/15/14 reaffirming that SEVs, which are required WENDB/ ICIS-NPDES data elements, must be entered into ICIS. EPA will receive a copy of the memo, and monitor the state’s progress through quarterly meetings, annual data metrics, and the watch list.
- Penalty Assessment and Documentation - The state is not including economic benefit and gravity in its penalty calculations, nor does the state document the difference between initial and final assessed penalties.
  - NYSDEC senior management should send a memo to its staff reaffirming the state penalty policy requirements, including gravity and economic benefit calculations, appropriate documentation of initial and final penalties, and using the BEN model or other method that produces results consistent with national policy, by 9/15/14. EPA will receive a copy of the memo, and monitor the state’s progress through quarterly meetings, annual data metrics, and the watch list.
- Timely and Appropriate Action – The state appears to have a high rate of noncompliance, and the majority of state enforcement responses do not address violations in a timely manner.
  - NYSDEC senior management shall issue a memo to its staff reaffirming all TOGS 1.4.2 requirements by 9/15/14. EPA will receive a copy of the memo, and monitor the state’s progress through quarterly meetings, annual data metrics, and the watch list.

## **Major SRF CAA Stationary Source Program Findings**

- **Timely and Appropriate Enforcement Actions** - The state does not consistently take timely and appropriate enforcement action.
  - NYSDEC senior management should send a memo to its staff by 9/15/14 reaffirming the guidelines for addressing HPVs as outlined in the HPV Policy. EPA will receive a copy of the memo, and monitor the state's progress through the existing monthly oversight calls between NYSDEC and Region 2 and through a formal consultation on or around day 150.
- **Penalty Assessment and Documentation** - The state is not including economic benefit and gravity in its penalty calculations, nor does the state document the difference between initial and final assessed penalties.
  - NYSDEC senior management should send a memo to its staff reaffirming the state penalty policy requirements, including gravity and economic benefit calculations, appropriate documentation of initial and final penalties, and using the BEN model or other method that produces results consistent with national policy, by 9/15/14. EPA will receive a copy of the memo, and monitor the state's progress through quarterly meetings, annual data metrics, and the watch list.

## **Major SRF RCRA Subtitle C Program Findings**

- **Enforcement Actions Promote a Return to Compliance** - The state enforcement responses did not consistently return SV sites to compliance.
  - NYSDEC senior management should send a memo to its staff reaffirming SV and SNC enforcement response requirements in accordance with the ERP by 9/15/14. EPA will receive a copy of the memo, and monitor the state's progress through quarterly meetings, annual data metrics, and the watch list.
- **Penalty Assessment and Documentation** - The state is not including economic benefit and gravity in its penalty calculations, does not document the difference between initial and final assessed penalties, and does not document collection of penalties.
  - NYSDEC senior management should send a memo to its staff reaffirming the RCRA Civil Penalty Policy requirements, including gravity and economic benefit calculations, appropriate documentation of initial and final penalties and penalty collection, by 9/15/14. EPA will receive a copy of the memo, and monitor the state's progress through quarterly meetings, annual data metrics, and the watch list.

## **Major Follow-Up Actions**

Actions to address the findings found during the PQR will be implemented and tracked in an Office of Water database. Recommendations and actions identified from the SRF review will be tracked in the SRF Tracker. EPA will also monitor the progress of the state in implementing recommendations through quarterly meetings, annual data metric analysis, and the watch list.

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# CWA-NPDES Integrated SRF and PQR Review

## I. Introduction

EPA reviews regional and state Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permitting and enforcement programs every four years. During these reviews, EPA staff review topics related to NPDES program implementation and enforcement. A large component of each review is the Permit Quality Review (PQR), which assesses whether a state adequately implements the requirements of the NPDES program as reflected in the permit and other supporting documents (e.g., fact sheet, calculations). A second primary component of these reviews is the State Review Framework (SRF), which evaluates 12 elements of state enforcement programs.

Through this review, EPA promotes national consistency, identifies successes in implementation of the base NPDES program, and identifies opportunities for improvement in the development of NPDES permits and enforcement. The findings of the review may be used by EPA headquarters to identify areas for training or guidance, and by the EPA region to help identify or assist states in determining action items to improve their NPDES programs.

EPA conducted an integrated oversight review of the State NPDES permitting and enforcement and compliance program by combining a PQR and a SRF review on February 29-March 1, 2012, and October 22-26, 2012 and October 31-November 1, 2012, respectively. The PQR was designed to assess how well the State implements the requirements of the NPDES program as reflected in NPDES permits and other supporting documents. The PQR looked at four core topic areas of national importance (nutrients, pesticides, pretreatment, stormwater) and four (4) special focus areas of regional importance (shale gas, concentrated animal feeding operations, flue gas desulphurization/coal combustion residue, and combined sewer overflows). The SRF review is designed to ensure a minimum baseline of consistent performance across states, and that EPA conducts oversight of state enforcement and compliance programs in a nationally consistent and efficient manner. The SRF review looks at 12 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).

The integrated review examined data and files generated and kept by the New York State Department of Environmental Conservation (NYSDEC), Division of Water Bureau of Water Permits and Bureau of Water Compliance. This section focuses only on the integrated PQR and Clean Water Act (CWA) SRF NPDES program findings.

The integrated review was conducted in three phases: analyzing information from the national data systems, reviewing a limited set of state files, and development of findings and recommendations. Considerable consultation was 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 issues.

The report is designed to capture the information and agreements developed during the review process in order to facilitate program improvements. The report is designed to provide factual information. EPA also uses the information from the integrated reviews to draw a “national picture” of the NPDES program, to develop comparable state performance dashboards, and to identify any issues that require a national response.

## **II. Coordination Between Permitting and Enforcement**

The federal Clean Water Act (CWA) authorized the development of the National Pollutant Discharge Elimination System (NPDES) for implementing the requirements for all discharges to surface waters of the United States. In 1975, the EPA and the NYSDEC entered into a Memorandum of Agreement which delegated the NPDES program to New York State. New York State subsequently established regulations in the New York State Environmental Conservation Law (ECL) to administer the state’s program for meeting the federal NPDES requirements. This program, which is authorized by the Environmental Protection Agency (EPA), is referred to as the State Pollutant Discharge Elimination System (SPDES).

Regulation of discharges of pollutants to waters of the state, both surface and groundwater is authorized by Article 17 of the ECL. Specific controls on point source discharges are authorized by Article 17, Title 8 of the ECL. New York’s SPDES program is more stringent than the federal NPDES program in that the SPDES program also regulates discharges to groundwater. The minimum threshold for applicability of SPDES to groundwater discharges is 1,000 gallons per day for sanitary wastewater, while discharges which include any industrial wastewater have no minimum threshold. The New York State Department of Health regulates discharges of less than 1,000 gallons per day consisting of only sanitary wastewater. The NYSDEC is authorized to issue SPDES permits for groundwater discharges for a maximum period of 10 years; permits for discharges to surface waters are issued for a maximum of 5 years. The PQR and SRF reviews included only discharges to surface water as the NPDES program has no regulatory authority for groundwater dischargers.

The NYSDEC Division of Water (DOW), Bureau of Water Permits administers the SPDES program through the issuance of wastewater discharge permits, including both individual permits and general permits. Individual SPDES permits are issued to cover a single point source discharge, whereas general SPDES permits are issued to cover a category of discharges involving the same or similar types of operations; discharge the same types of pollutants; require the same effluent limitations or operating conditions; require the same or similar monitoring; and are not projected to have a significant impact on the environment, either individually or cumulatively, when carried out in conformance with permit provisions.

The DOW Bureau of Water Compliance (BWC), with support from and the NYSDEC Office of General Council and Division of Law Enforcement, manages the compliance and enforcement elements of the SPDES Permit Program. Once a SPDES permit is issued, BWC codes the permit monitoring requirements and compliance deliverables into the EPA Integrated Compliance Integration System (ICIS) database. To ensure compliance with SPDES permits, the DOW maintains an active field presence through nine regional offices. The Water Program in each regional office is managed by a Regional Water Engineer (RWE). BWC works with the RWEs to

develop annual inspection workplans and ensure that the compliance and enforcement activities conducted by the regional offices are consistent with DOW guidance and policies. BWC enters all SPDES inspections and enforcement actions into the EPA ICIS database.

The NYSDEC policies and procedures for administration and implementation of the SPDES permit program are established in Division of Water Technical and Operational Guidance Series ([TOGS](#)). These guidance documents were developed to assure statewide consistency in the implementation of the SPDES program. For example, [TOGS 1.2.2: Administrative Procedures and the Environmental Benefit Strategy](#) for Individual SPDES Permits establishes procedures for developing new SPDES permits, and renewing, modifying, priority ranking and tracking SPDES permits; TOGS 1.4.2: [Compliance and Enforcement of SPDES Permits](#) provides DOW staff with enforcement options and operating guidelines to implement the compliance component of the SPDES program. The Compliance and Enforcement Response Guide contained in TOGS 1.4.2 specifies the actions that are required to address violations of reporting requirements, failure to meet permit requirements and water quality standards violations.

### **III. Integrated Review Background**

EPA Region 2 conducted reviews of both permitting and enforcement components of fifteen facilities permitted by the state. Ten facilities were identified using the PQR core review criteria and without input from enforcement staff. Five additional facilities were selected for review by enforcement staff utilizing the SRF file selection protocol in the PQR special focus area. The PQR process reviewed 24 permits; the SRF process reviewed 52 facility files, including 10 core PQR files and 5 Special Focus Area files.

Permits and supporting documentation were reviewed by EPA NPDES staff on February 29, 2012 and March 1, 2012. Compliance monitoring and enforcement files were reviewed by EPA enforcement staff in October 2012. The PQR and SRF reviews for New York State are part of a pilot program and were integrated only partially. For example, a joint state visit did not occur for the integrated portion of New York State's review.

Both the PQR and SRF processes held a kick-off meeting with the state prior to conducting their respective reviews. The PQR kick-off meeting was on the first day of the on-site visit whereas the SRF kick-off was a phone call prior to the on-site visit. At the close of each review/meeting, initial findings were presented to the state by PQR and SRF staff, respectively.

Due to the timing of the PQR review, the PQR report was finalized before the SRF report; Region 2 staff was unable to coordinate on the report findings.

### **IV. How Report Findings Are Made**

The findings in this report were made by EPA Region 2's permitting and enforcement staff after analyzing data in the national data systems and reviewing facility files at the state. Permitting and enforcement staff consulted with state staff and each other before determining findings. Findings cover both positive and negative aspects of the state's performance. Where the state program was doing particularly well or was meeting all of its requirements, EPA identified these

areas in the reports below. Where EPA found the state had opportunities to improve both permitting and enforcement, EPA suggested an appropriate course of action.

## **V. Common Findings**

There are no common findings. Please refer to the PQR and SRF Reports for findings specific to each review.

# State Review Framework

## I. Background on the State Review Framework

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

- Clean Air Act Stationary Source
- Clean Water Act National Pollutant Discharge Elimination System
- Resource Conservation and Recovery Act Subtitle C

Reviews cover these program areas:

- Data — completeness, timeliness, and quality
- Compliance monitoring — inspection coverage, inspection quality, identification of violations, meeting commitments
- Enforcement actions — appropriateness and timeliness, returning facilities to compliance
- Penalties — calculation, assessment, and collection

Reviews are conducted in three phases:

- Analyzing information from the national data systems
- Reviewing a limited set of state files
- Development of findings and recommendations

Consultation is also built into the process. This ensures that EPA and the state understand the causes of issues and seek agreement on actions needed to address them.

SRF reports are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify any issues that require a national response.

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

Each state's programs are reviewed once every four years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2012 and will continue through FY 2016.

## II. SRF Review Process

**Review period:** 2011

### **Key dates:**

- Kickoff letter sent to state: August 13, 2012
- Kickoff meeting conducted: September 13, 2012
- File selection list sent to state: September 18, 2012
- Data metric analysis sent to state: September 19, 2012
- On-site file reviews conducted:
  - Clean Water Act (CWA): October 22-26 and October 31-November 1, 2012
  - Clean Air Act (CAA): October 15-19, 2012
  - Resource Conservation and Recovery Act (RCRA): October 15-18, 2012
- Draft report sent to state: August 15, 2013
- Report finalized: February 20, 2014

### **Communication with the state:**

The New York SRF Round 2 was initiated with an August 13, 2012 kick-off letter from EPA Region 2 to Edward McTiernan, Esq., Deputy Counsel, NYSDEC Office of General Counsel. The kick-off letter was followed by a teleconference call with EPA and the NYSDEC on September 13, 2012. During this teleconference, the expectations and procedures of the SRF were reviewed and a tentative schedule for the SRF process was discussed. The kick-off letter and agenda from the teleconference call are available in Appendix F. The on-site file reviews took place at the NYSDEC office in Albany, NY from October 22-26 and October 31-November 1, 2012, October 15-19, 2012 and October 15-18, 2012 for CWA, CAA and RCRA, respectively. For the CWA review, 52 files were reviewed, 18 majors and 34 non-majors. For the CAA review, 35 files were reviewed, 20 majors, 10 SM 80s and 5 minors. For the RCRA review, 35 files and 10 supplemental files were reviewed.

EPA began each on-site review with a discussion with NYSDEC staff, inspectors and managers. The discussion included reviewing the data metric analysis, metrics that were concerns, how the facility files for review were selected, and the purpose and process of the SRF. EPA prepared for the on-site file review using the SRF data metrics. During the on-site reviews, NYSDEC inspectors were available to provide assistance and answer questions. They were contacted if a facility file appeared to be or was missing a document(s). Based on the assessment of files during the on-site review and the subsequent document review, EPA compiled initial findings describing which aspects of the NYSDEC's Division of Water – Bureau of Water Compliance (DOW-BWC), Division of Air Resources – Bureau of Stationary Sources (DAR-BSS) and Division of Environmental Remediation – Bureau of Technical Support (DER-BTS) appeared to be in good condition and which appeared to be potential concerns.

EPA Region 2 discussed the initial SRF findings with the NYSDEC staff, inspectors and managers in detail during the exit meetings, in Albany, NY on November 1, 2012, October 19, 2012 and October 18, 2012 for CWA, CAA and RCRA, respectively. EPA Region 2 also held a formal exit conference call with the NYSDEC-DOW-BWC for the CWA findings on December 12, 2012. Closing meetings are an important step in the SRF review process; it gives the state an opportunity to respond to the EPA's initial findings and clarify or explain aspects of their

programs that are or appear to be potential concerns. During the closing meeting with the NYSDEC, the SRF initial findings were discussed metric by metric. The SRF initial findings were updated based on the information provided by the NYSDEC during the closing meeting; the final SRF findings are described in Section III.

The process for resolving significant issues will be discussed with the NYSDEC and EPA following their review of this report and its recommendations.

**State and EPA regional lead contacts for review:**

- Patrick Durack, Deputy Director, EPA-DECA
- Joe DiMura, P.E., Director, NYSDEC-DOW-BWC
- Robert Stanton, Director, NYSDEC-DAR-BSS
- Andrew English, Director, NYSDEC-DER-BTS

### III. SRF Findings

Findings represent EPA's conclusions regarding state performance, and may be based on:

- Initial findings made during the data and/or file reviews
- Annual data metric reviews conducted since the state's Round 2 SRF review
- Follow-up conversations with state agency personnel
- Additional information collected to determine an issue's severity and root causes
- Review of previous SRF reports, MOAs, and other data sources

There are three types of findings:

**Meets Expectations:** Describes a situation where either: a) no performance deficiencies are identified, or b) single or infrequent deficiencies are identified that do not constitute a pattern or problem. Generally, states are meeting expectations when falling between 91 to 100 percent of a national goal. The state is expected to maintain high performance.

**Area for State Attention:** The state has single or infrequent deficiencies that constitute a minor pattern or problem that does not pose a risk to human health or the environment. Generally, performance requires state attention when the state falls between 85 to 90 percent of a national goal. The state should correct these issues without additional EPA oversight. The state is expected to improve and achieve high performance. EPA may make recommendations to improve performance but they will not be monitored for completion.

**Area for State Improvement:** Activities, processes, or policies that SRF data and/or file metrics show as major problems requiring EPA oversight. These will generally be significant recurrent issues. However, there may be instances where single or infrequent cases reflect a major problem, particularly in instances where the total number of facilities under consideration is small. Generally, performance requires state improvement when the state falls below 85 percent of a national goal. Recommendations are required to address the root causes of these problems, and they must have well-defined timelines and milestones for completion. Recommendations will be monitored in the SRF Tracker.

# Clean Water Act Findings

## Element 1 — Data Completeness: Completeness of Minimum Data Requirements.

### Finding 1-1 Meets Expectations

**Description** These state data metrics are above the national average and/or met the national goal.

**Explanation** For metric 1b1, the state entered all permits data (335 of 335) for major facilities.

For metric 1b2, the state entered nearly all DMR data (14,510 of 14,533) for major facilities.

For metric 1c1, the state entered nearly all permits data (1077 of 1194) for non-major facilities.

For metric 1c2, the state entered nearly all DMR data (22,580 of 22,632) for non-major facilities.

**Relevant metrics**

- 1b1 – Permit Limits Rate for Major Facilities: 100%
  - National Goal:  $\geq 95\%$
  - National Average: 98.6%
- 1b2 – DMR Entry Rate for Major Facilities: 99.8%
  - National Goal:  $\geq 95\%$
  - National Average: 96.5%
- 1c1 – Permit Limits Rate for Non-Major Facilities: 90.2%
  - National Average: 66.1%
- 1c2 – DMR Entry Rate for Non-Major Facilities: 99.8%
  - National Average: 72.6%

**State response** NYSDEC has staff dedicated to the entering of permit limits and DMR data timely into ICIS. NYSDEC hires temporary staff to ensure that DMR data is entered into ICIS within 10 days of receipt.

**Recommendation** N/A

## Element 1 — Data Completeness: Completeness of Minimum Data Requirements.

### Finding 1-2 Area for State Improvement

**Description** Data for inspections and informal actions, such as NOVs, do not appear to be entered into the national data system (ICIS).

**Explanation** According to the SRF data for the state, no informal actions were issued to major facilities in New York in FY 2011.

If the state's Technical and Operational Guidance Series (TOGS 1.4.2) requires informal actions, such as a Notice of Violation (NOV), be issued to facilities, data for these informal actions for majors and minors (as appropriate) should be entered.

Data entry for inspections was incomplete under metrics 5a1, 5b1 and 5b2. Refer to Finding 5-1 for more information.

**Relevant metrics** 1e1 – Facilities with Informal Actions: 0  
1e2 – Total Number of Informal Actions at CWA NPDES Facilities: 0

**State response** NYSDEC will evaluate this recommendation for integration into the e-Reporting Rule requirements and NYSDEC's e-Business Plan.

**Recommendation** NYSDEC senior management should issue a memo to staff reaffirming data entry and quality control requirements (including data entry for inspections), in accordance with the WENDB elements, by 9/15/14. EPA will receive a copy of the memo, and monitor the state's progress through quarterly meetings, annual data metrics, and the watch list.

## Element 2 — Data Accuracy: Accuracy of Minimum Data Requirements.

### Finding 2-1 Area for State Improvement

**Description** Mandatory data is not consistently reflected accurately in ICIS. The state is below the national goal for this metric.

**Explanation** Metric 2a1 indicates that 14 formal enforcement actions were taken against major facilities with enforcement violation type codes entered. The state did not enter enforcement violation type codes for many of the actions against majors into ICIS.

For metric 2b, Minimum Data Requirements (MDRs) in 22 of the 52 files reviewed on-site were accurately reflected in ICIS.

The majority of inspections are not being entered into ICIS. In several cases the inspection reports in a file were not listed on the detailed facility reports (DFRs). Inspections are a required Water Enforcement National Database (WENDB) element; therefore the data is not being entered into ICIS.

**Relevant metrics** 2a1 – Number of Formal Enforcement actions, Taken Against Major Facilities, with Enforcement Violation Type Codes Entered: 14

2b – Files Reviewed Where Data are Accurately Reflected in the National Data System: 42.3%

- National Goal: 95%

1f2 – Total Number of Formal Actions at CWA NPDES Facilities: 263

**State response** Metric 2a1 – NYSDEC will evaluate this recommendation for integration into the e-Reporting Rule requirements and NYSDEC’s e-Business Plan as some of the Formal Orders entered in ICIS were against facilities that have single event violations which are not currently being entered into ICIS due to limited resources. However, the number of Formal Enforcement Actions with no Enforcement Violation Type Codes entered in ICIS is also due to the enforcement action data fields, screens, and definitions in ICIS being set up for EPA-type enforcement actions. For some state actions, NYSDEC is required to “adapt” the data to enter the enforcement action into ICIS. For example, some Final Orders are duplicative of another in order for the state to enter in Environmental Benefit Projects (similar to EPA’s SEP). NYSDEC issues only one order that covers the resolution of violations and the issuance of EBPs. To enable violations to auto resolve they must be linked to the Order and a compliance schedule. This type of Final Order does not allow for the entering of EPBs, therefore, a second final order is

entered to account for the EBPs. Also, some Final Orders entered into ICIS are Order modifications with no new violations.

Metric 2b – Resources for transferring inspections from NYSDEC’s data system into ICIS declined. EPA did not complete the upgrades to ICIS Batch until December 2012. NYSDEC is working to develop batch capability as part of its e-Business Plan to transfer the information inspection information from NYSDEC’s inspection data system into ICIS.

**Recommendation**

This finding is addressed by Finding 1-2.

### Element 3 — Timeliness of Data Entry: Timely entry of Minimum Data Requirements.

#### Finding 3-1 Area for State Improvement

**Description** Data is not being entered into ICIS in a timely fashion. The state is below the national goal for this metric.

**Explanation** Data in 33 of the 52 files reviewed on-site review was entered into ICIS in a timely fashion. The state is below the national average.

In several cases the inspection reports in the file were not listed on the DFRs. Inspections are a required WENDB element; therefore the data is not being entered into ICIS. Due to the lack of inspection data being entered into ICIS, as well as the related single-event violations (SEVs) and significant noncompliance (SNC), data is not being entered into ICIS in a timely fashion.

**Relevant metrics** 3a – Timeliness of Mandatory Data Entered in the National Data System: 63.5%

- National Goal: 100%

**State response** Resources for transferring inspections from NYSDEC’s data system into ICIS declined. EPA did not complete the upgrades to ICIS Batch until December 2012. NYSDEC is working to develop batch capability as part of its e-Business Plan to transfer the information inspection information from NYSDEC’s inspection data system into ICIS.

**Recommendation** This finding is addressed by Finding 1-2.

**Element 4 — Completion of Commitments: Meeting all enforcement and compliance commitments made in state/EPA agreements.**

**Finding 4-1 Meets Expectations**

**Description** The state exceeded a subset of its Compliance Monitoring Strategy (CMS) inspection commitments. New York is above the national goal for these data metrics.

**Explanation** For metric 4a6, the state conducted 41 Phase I and/or Phase II (the state does not distinguish between Phase I and Phase II) MS4 audits or inspections. New York’s CMS commitment was 40.

For metric 4a8, the state more than doubled its CMS commitment, conducting 26 industrial stormwater inspections. New York’s CMS commitment was 11.

For metric 4a12, the state conducted 259 inspections at NPDES major facilities (CEI or CSI). New York’s CMS commitment was 226.

For metric 4a13, the state conducted 680 inspections at NPDES minor facilities (CEI or CSI). New York’s CMS commitment was 595.

**Relevant metrics**

- 4a6 – Phase I MS4 Audits or Inspections: 102.5%
  - National Goal: 100%
- 4a8 – Industrial Stormwater Inspections: 236.4%
  - National Goal: 100%
- 4a12 – NPDES – Major – CEI or CSI: 114.6%
  - National Goal: 100%
- 4a13 – NPDES – Minor – CEI or CSI: 114.3%
  - National Goal: 100%

**State response** NYSDEC evaluates inspection numbers and inspection resources annually and implements an effective targeting practice to ensure that priority areas are addressed.

**Recommendation** N/A

**Element 4 — Completion of Commitments: Meeting all enforcement and compliance commitments made in state/EPA agreements.**

**Finding 4-2 Area for State Attention**

**Description** The state did not meet their Compliance Monitoring Strategy (CMS) inspection commitments. New York is below the national goal for these metrics.

**Explanation** For metric 4a4, the state conducted 67 inspections of major combined-sewer overflows (CSOs). The state’s CMS commitment was 76. The CMS goal requires an inspection of all majors once every 3 years, making the CMS goal at least 25 inspections annually. Therefore with 67 major CSO inspections completed in FY 2011, the state exceeded the annual goal but it did not meet the commitment of 76 inspections.

For FY 2013, the state revised its CMS commitment for CSOs to 30.

**Relevant metrics** 4a4 – Major CSO Inspections: 88.2%  
• National Goal: 100%

**State response** NYSDEC CSO inspections have decreased as NYC completed abatement projects. The 2013 PPG shows that EPA and NYSDEC agreed to the redirection of resources to other areas of need. Specifically, NYSDEC improved inspection quality by implementing a new CSO inspection form.

**Recommendation** N/A

**Element 4 — Completion of Commitments: Meeting all enforcement and compliance commitments made in state/EPA agreements.**

**Finding 4-3 Area for State Improvement**

**Description** Data is not being entered into ICIS per PPG commitments. The state is also failing to meet inspection commitments. The state is below the national goal for these metrics.

**Explanation** For metric 4a9, the state conducted 313 Phase I and II stormwater construction inspections. The state’s CMS commitment was 373.

For metric 4a10, the state conducted 90 inspections of large and medium NPDES-permitted CAFOs. The state’s CMS commitment was 114.

Metric 4b describes the number of completed CWA compliance and enforcement commitments other than CMS commitments, including work products/commitments in PPAs, PPGs, grant agreements, MOAs, MOUs or other relevant agreements. New York completed 9 of its 11 commitments.

Also, as described in Metric 3a, required WENDB or required NPDES-ICIS data elements are not being entered into ICIS.

**Relevant metrics** 4a9 – Phase I and II Stormwater Construction Inspections: 83.9%

- National Goal: 100%

4a10 – Inspections of Large and Medium NPDES-Permitted CAFOs: 78.9%

- National Goal: 100%

4b – Planned Commitments Completed: 81.8%

- National Goal: 100%

**State response** NYSDEC routinely communicates the requirements and commitments in the CMS guidance to Division of Water staff through the work plan process. The NYSDEC inspection work plan is reevaluated annually with regional staff to ensure that the CMS goals for each permit category and region can be met with the available resources. NYSDEC will continue to submit the draft workplan to EPA for review. EPA should continue to work with NYSDEC to deploy EPA inspectors to complement NYSDEC’s inspection workplan to address priority areas.

**Recommendation** NYSDEC senior management should issue a memo to staff reaffirming requirements and commitments in the CMS guidance document by 9/15/14. As stated in the CMS guidance document, goals are a starting point for negotiations, and flexibility allows adaptation to particular

situations as necessary. An effort should be made by NYSDEC to ensure that CMS commitments for Phase I & II construction stormwater and CAFOs are addressed as part of its workplan process and negotiations with its regional offices. NYSDEC's current priorities and resources require that they reevaluate their CMS goals in order to ensure that the most important work in their state is completed. The CMS allows states to utilize flexibility to alter inspection frequency goals. Through the FY 2014 CMS process, EPA and the NYSDEC shall discuss and negotiate any areas where the state's goals may differ from those laid out in the CMS guidance memo. Furthermore, EPA will monitor the state's progress toward meeting the FY14 CMS goals through the annual data metrics and the CMS process; if the state needs to utilize flexibility during the fiscal year that affects their ability to meet their CMS goals, an explanation will be included in the corresponding end of year CMS report.

This finding is also addressed by Finding 1-2.

## Element 5 — Inspection Coverage: Completion of planned inspections.

### Finding 5-1 Area for State Improvement

**Description** The state is entering only a small fraction of its inspections into ICIS, which makes it appear that it is not meeting its inspection commitments for major and non-major facilities. According to the state, it is actually exceeding its inspection commitments. New York is below the national goal for these metrics.

**Explanation** Based on the updated data from the state response (see below), the state inspected 77% (metric 5a1) of its majors and 78.3% (metric 5b1) of its non-majors in the FY 2011 timeframe; therefore the state exceeded its CMS commitments. However, accurate data needs to be entered into ICIS.

For metric 5a1, the state inspected 43 of 335 major NPDES sources. The CMS commitment is 100% (number of majors inspected divided by the total number of majors). The goal is a minimum of one comprehensive inspection every two years, or 50% annually. New York falls considerably below 50%, or 33% if using the Inspection Targeting Model. It appears that the state underreported its inspections, as the state contends that they did in fact meet their inspection commitments.

For metric 5b1, the state inspected 131 of 1194 non-major NPDES sources. The CMS commitment is 100% (number of non-majors inspected divided by the total number of non-majors), and the goal is an inspection at least once in each five year permit term, or 20% annually. New York falls considerably below the 20% goal. It appears that the state underreported its inspections, as the state contends that they did in fact meet their inspection commitments.

For metric 5b2, the state inspected 4 of 4435 non-major NPDES sources with general permits (GPs). Note that the universe does not include wet weather such as CSO, SSO, and stormwater inspections. New York falls considerably below the CMS commitment. It appears that the state underreported its inspections, as the state contends that they did in fact meet their inspection commitments.

**Relevant metrics**

- 5a1 – Inspection Coverage – NPDES Majors: 12.8%
  - National Average: 54.4%
- 5b1 – Inspection Coverage – NPDES Non-Majors: 11%
  - National Average: 23.7%
- 5b2 – Inspection Coverage – NPDES Non-Majors with General Permits: 0.1%
  - National Average: 19.2%

**State response**

The number of inspections the state conducted is in fact much higher for all three metrics. According to the NYSDEC, for metrics 5a1, 5b1 and 5b2 the state inspected 258 NPDES majors, 935 NPDES non-majors and 102 NPDES non-majors with general permits, respectively. (The denominators for metrics 5a1, 5b1 and 5b2 are 335, 1194 and 4435, respectively, as identified above.)

Resources for transferring inspections from NYSDEC's data system into ICIS declined. EPA did not complete the upgrades to ICIS Batch until December 2012. NYSDEC is working to develop batch capability as part of its e-Business Plan to transfer the information inspection information from NYSDEC's inspection data system into ICIS.

**Recommendation**

This finding is addressed by Finding 1-2.

**Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.**

**Finding 6-1 Area for State Improvement**

**Description** Some state inspection reports lack sufficient documentation to determine compliance and are not completed within the prescribed timeframe. New York is below the national goal for these metrics.

**Explanation** For metric 6a, 47 of the 59 inspection reports in files reviewed on-site provided sufficient documentation to determine compliance at the facility. The majority of inspection reports did not provide justification for ratings (if assigned) and there was no supporting documentation (e.g. photographs) for deficiencies or potential violations observed during an inspection. Inspection reports did not relate findings to specific permit requirements or regulatory citations (with the exception of construction stormwater).

For metric 6b, 47 of the 59 inspection reports in files reviewed on-site were completed within the prescribed timeframe. Inspection reports were generally completed within 30 days with a few outliers. The majority were completed within one day of the inspection. However, not all of the inspection reports (e.g. reconnaissance inspections) were transmitted to the facility. The state uses reconnaissance inspections to obtain a preliminary overview of a permittee's compliance program.

The state should ensure staff is following inspection report requirements that provide guidance on content, relating observations to findings and permit requirements, documentation of compliance and non-compliance and transmittal of inspection reports.

**Relevant metrics** Metric 6a – Inspection Reports Reviewed that Provide Sufficient Documentation to Determine Compliance at the Facility: 79.7%

- National Goal: 100%

Metric 6b – Inspection Reports Completed Within Prescribed Timeframe: 79.7%

- National Goal: 100%

**State response** For metric 6b, New York stated that reconnaissance inspections are not required to be sent to the facility. NYSDEC will review recommendations with region staff and review inspection procedures for completeness and timeliness.

**Recommendation** NYSDEC senior management should revise its SPDES Inspector Guidance Manual (Vol. One) by 9/15/14 to include a section on

inspection report content. When revising the manual, the state should ensure that inspectors are aware that inspection reports must contain sufficient detail to clearly document violations at a facility, the regulatory requirements and specific observations at the facility identifying the violations. EPA will receive a copy of the draft guidance before finalization, and monitor the state's progress through quarterly meetings, annual data metrics, and the watch list.

**Element 7 — Identification of Alleged Violations: Compliance determinations accurately made and promptly reported in national database based on inspection reports and other compliance monitoring information.**

**Finding 7-1 Area for State Improvement**

**Description** This metric indicates that that state is not entering single-event violations (SEVs) into ICIS.

**Explanation** For metric 7a1, the number of SEVs seems low compared to the number of majors inspected (43; state corrected number is 258) and the percent of facilities in noncompliance (82.4%).

Metric 3a indicates that there is a lack of inspection data being entered into ICIS, as well as the related SEVs and significant noncompliance (SNC).

In Finding 8-2, metrics 8b and 8c indicate that the majority of SEVs in ICIS were entered by EPA, not the state.

SEVs were previously addressed during NY’s Round 1 SRF where it was determined that SEVs were not being entered into ICIS. As a corrective action item, EPA ensured the state had the Final SEV Data Entry Guide for PCS sent in June 2006. The corrective action plan also stated SEVs were required to be entered for major permittees.

**Relevant metrics** 7a1 – Number of Major Facilities with SEVs: 3

3a – Timeliness of Mandatory Data Entered in the National Data System: 63.5%

- National Goal: 100%

5a1 – Inspection Coverage – NPDES Majors: 12.8%

- National Average: 54.4%

8b – SEVs Accurately Identified as SNC or Non-SNC: 0

8c – Percentage of SEVs Identified as SNC Reported Timely: 0

**State response** NYSDEC will evaluate this recommendation for integration into the e-Reporting Rule requirements and NYSDEC’s e-Business Plan.

**Recommendation** NYSDEC senior management should issue a memo to staff by 9/15/14 reaffirming that SEVs, which are required WENDB/ ICIS-NPDES data elements, must be entered into ICIS. EPA will receive a copy of the memo, and monitor the state’s progress through quarterly meetings, annual data metrics, and the watch list.

**Element 7 — Identification of Alleged Violations: Compliance determinations accurately made and promptly reported in national database based on inspection reports and other compliance monitoring information.**

**Finding 7-2**

**Area for State Improvement**

**Description**

Inspection reports do not consistently lead to accurate compliance determinations. These metrics indicate a high rate of noncompliance, and/or that appropriate follow-up action is not being taken. The state is below the national goal for this metric.

**Explanation**

The state should immediately address noncompliance in accordance with applicable TOGS (1.4.2 & 1.4.1) requirements.

For metric 7d1, 276 of 335 major facilities are in noncompliance. This is above the national average.

For metric 7e, 46 of the 59 inspection reports reviewed onsite led to accurate compliance determinations. Some inspection reports rated facilities as satisfactory even though elements of the respective checklists were marked marginal or unsatisfactory.

For metric 7f1, 239 of 1194 non-major facilities are in non-compliance.

For metric 7g1, 536 of 1194 non-major facilities are in non-compliance.

During SRF Round 1, EPA recommended that NYSDEC and its Regional offices evaluate their inspection rating scheme. In addition, EPA recommended that where violations or deficiencies are identified during an inspection, the State should not assign an overall rating of satisfactory unless immediate corrections were made and identified in the inspection report for future reference. As part of the Round 1 SRF Report, NYSDEC acknowledged EPA’s findings and both EPA and the State agreed to implement the recommendation via the work plan negotiation process.

State inspectors should substantiate inspection reports with justification for their ratings. The state should ensure staff is following TOGS 1.4.2 and inspection report requirements that provide guidance on content, relating observations to findings and permit requirements, documentation of compliance and non-compliance and transmittal of inspection reports.

**Relevant metrics**

- 7d1 – Major Facilities in Noncompliance: 82.4%
  - National Average: 71.2%

7e – Inspection Reports Reviewed that Led to an Accurate Compliance Determination: 78%

- National Goal: 100%

7f1 – Non-Major Facilities in Category 1 Noncompliance: 20%

7g1 – Non-Major Facilities in Category 2 Noncompliance: 44.9%

**State response**

NYSDEC will review recommendations with regional staff and review inspection procedures for completeness and timeliness. NYSDEC will also evaluate this recommendation for integration into the e-Reporting Rule requirements and NYSDEC’s e-Business Plan.

**Recommendation**

NYSDEC senior management should issue a memo to its staff reaffirming all TOGS 1.4.2 requirements by 9/15/14. EPA will receive a copy of the memo, and monitor the state’s progress through quarterly meetings, annual data metrics, and the watch list.

**Element 8 — Identification of SNC and HPV: Accurate identification of significant noncompliance and high-priority violations, and timely entry into the national database.**

**Finding 8-1** Meets Expectations

**Description** The state is above the national average for this data metric.

**Explanation** 78 of 345 major facilities are in significant noncompliance (SNC) in New York.

**Relevant metrics** 8a2 – Percent of Major Facilities in SNC: 22.6%  
• National Average: 22.3%

**State response** NYSDEC will continue to strive to meet the standards for this metric.

**Recommendation** N/A

**Element 8 — Identification of SNC and HPV: Accurate identification of significant noncompliance and high-priority violations, and timely entry into the national database.**

**Finding 8-2**      **Area for State Improvement**

**Description**      The state is not entering single-event violations (SEVs) into ICIS.

**Explanation**      New York does not enter SEVs into ICIS, with the exception of one facility that had SEV violations as a permit condition. The SEVs that were reported in four detailed facility reports (DFRs) in files reviewed on-site were entered by EPA, not the state. There is a need to address data reporting and differentiation between EPA and state entered data.

The state should immediately begin entering SEVs, which are required WENDB/required ICIS-NPDES data elements.

**Relevant metrics**      8b – SEVs Accurately Identified as SNC or Non-SNC: 0  
8c – Percentage of SEVs Identified as SNC Reported Timely: 0

**State response**      NYSDEC will evaluate this recommendation for integration into the e-Reporting Rule requirements and NYSDEC’s e-Business Plan.

**Recommendation**      This finding is addressed by Finding 7-1.

**Element 9 — Enforcement Actions Promote Return to Compliance: Enforcement actions include required corrective action that will return facilities to compliance in specified timeframe.**

**Finding 9-1**

**Area for State Attention**

**Description**

Some state enforcement responses did not return sources to compliance. New York is below the national goal for this metric.

**Explanation**

18 of the 23 enforcement responses in files reviewed on-site returned or will return a source in violation to compliance.

The majority of enforcement responses returned a facility to compliance via compliance schedules in Orders on Consent. Some Orders did not have compliance schedules so it was not possible to determine whether or not the facility would return to compliance. SNC facilities all returned to compliance.

**Relevant metrics**

9a – Percentage of Enforcement Responses that Return or Will Return Source to Compliance: 78.3%

- National Goal: 100%

**State response**

This metric does not address the facilities that voluntarily return to compliance. NYSDEC will review processes, and request that enforcement actions include required corrective action to return to compliance in a specified time frame.

**Recommendation**

N/A

**Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.**

**Finding 10-1 Area of State Attention**

**Description** The state is not taking timely and appropriate action and therefore, did not meet the goal for this metric

**Explanation** The state had 13 of 20 timely actions as appropriate against major facilities.

The majority of actions taken were timely and appropriate. However, there were some actions that were not taken timely in accordance with the State’s policies and procedures due to the size and complexity of some facilities as it took several years to negotiate a satisfactory resolution.

The state should ensure staff are aware of the need for timely and appropriate action in accordance with TOGS 1.4.2 and that actions are initiated within 30 days as stated in Appendix A.

**Relevant metrics** 10a1 – Major Facilities with Timely Action as Appropriate: 65%  
• National Goal: 98%

**State response** NYSDEC agrees that the size and complexity of some of these facilities impact NYSDEC’s ability to meet EPA’s definitions of timely and completeness. The majority of these facilities are municipal facilities which require local government review and approval as well as the identification of procurement and funding to allow the municipality to enter into an enforcement agreement. NYSDEC will continue to strive to meet the standards of timely and appropriate action as agreed to with EPA through the SNAP process.

**Recommendation** N/A

**Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.**

**Finding 10-2 Area of State Improvement**

**Description** Most state enforcement responses do not address violations in a timely manner. New York is below the national goal for this metric.

**Explanation** 6 of the 23 state enforcement responses in files reviewed on-site addressed violations in a timely manner.

The majority of the state’s enforcement responses are not taken in a timely manner to address violations. Some facilities had several years of violations before enforcement was taken or enforcement response exceeded the state's policy of 30 days (per TOGS 1.4.2). It is important to note that some enforcement actions took several years to resolve due to complex issues (e.g. financial, municipal government, etc.).

The state should ensure staff addresses violations in a timely manner and takes appropriate follow-up action in accordance with TOGS 1.4.2.

**Relevant metrics** 10b – Enforcement Responses Reviewed that Address Violations in a Timely Manner: 26.1%

- National Goal: 100%

**State response** NYSDEC agrees that the size and complexity of some of these facilities make it difficult to meet EPA’s definitions of timely and completeness. The majority of these facilities are municipal facilities which require local government review and approval as well as the identification of procurement and funding to allow the municipality to enter into an enforcement agreement. NYSDEC will continue to strive to meet the standards of timely and appropriate action as agreed to with EPA through the SNAP process.

**Recommendation** This finding is addressed by Finding 7-2.

**Element 11 — Penalty Calculation Method: Documentation of gravity and economic benefit in initial penalty calculations using BEN model or other method to produce results consistent with national policy and guidance.**

**Finding 11-1 Area for State Improvement**

**Description** The state is not including economic benefit and gravity in its penalty calculations. New York is below the national goal for this metric.

**Explanation** 1 of the 22 penalties in files reviewed on-site included gravity and economic benefit.

The state does not calculate economic benefit in its penalty calculations. Gravity is documented utilizing the state's TOGS (1.4.2); however, economic benefit is not calculated. In one case where it was calculated, the rationale for economic benefit was not documented. When expedited enforcement is utilized (e.g. for failing to submit DMRs, annual reports, etc), New York uses a flat assessment per the TOGS to determine the penalty. The state's expedited enforcement tool is a highly efficient and streamlined method which allows the state to take prompt and immediate action for specific violations. However, the rationale for the flat assessment of penalties calculated as part of expedited enforcement was not documented in the respective files.

During SRF Round 1, EPA also identified that the State was not calculating economic benefit as part of its penalty calculations. In response to EPA's findings, the State revised TOGS 1.4.2 which now includes a section on calculating economic benefit.

The state should ensure that the NYSDEC regions are fully implementing TOGS 1.4.2, which includes instructions for determining economic benefit.

**Relevant metrics** 11a: Penalty Calculations that Include Gravity and Economic Benefit: 4.5%

- National Goal: 100%

**State response** NYSDEC will develop and implement a process for determining economic benefit. NYSDEC penalty calculation work sheets already contain a section for an economic benefit calculation. Management will advise staff to note the calculated economic benefit in the penalty calculation work sheet, or indicate if some other factor, such as a de-minimis benefit, makes it non-applicable.

**Recommendation** NYSDEC senior management should send a memo to its staff reaffirming the state penalty policy requirements, including gravity and economic

benefit calculations, appropriate documentation of initial and final penalties, and using the BEN model or other method that produces results consistent with national policy, by 9/15/14. EPA will receive a copy of the memo, and monitor the state's progress through quarterly meetings, annual data metrics, and the watch list.

**Element 12 — Final Penalty Assessment and Collection: Differences between initial and final penalty and collection of final penalty documented in file.**

**Finding 12-1**      **Area for State Improvement**

**Description**      The state does not document the difference between initial and final assessed penalties. New York is below the national goal for this metric.

**Explanation**      None of the 17 penalties in files reviewed on-site documented the difference between initial and final penalties. Generally, once the penalty is developed as part of a case referral to state legal staff, the final penalty is adjusted via negotiations.

The state should ensure staff document differences between initial and final assessed penalties.

**Relevant metrics**      12a – Documentation on Difference Between Initial and Final Penalty: 0%

- National Goal: 100%

**State response**      Management will direct NYSDEC staff to document the rationale for any significant difference between initial and final penalties on the final penalty calculation worksheet.

**Recommendation**      This finding is addressed by Finding 11-1.

**Element 12 — Final Penalty Assessment and Collection: Differences between initial and final penalty and collection of final penalty documented in file.**

<b>Finding 12-2</b>	<b>Meets Expectations</b>
<b>Description</b>	The state documents the collection of penalties.
<b>Explanation</b>	20 of the 22 penalties in files reviewed on-site included documentation, such as copies of checks, that the penalty was collected.
<b>Relevant metrics</b>	12b – Penalties Collected: 90.9% <ul style="list-style-type: none"><li>• National Goal: 100%</li></ul>
<b>State response</b>	NYSDEC will continue to document the collection of penalties.
<b>Recommendation</b>	N/A

## Clean Air Act Findings

### Element 1 — Data Completeness: Completeness of Minimum Data Requirements.

**Finding 1-1** Meets Expectations

**Description** According to AFS, both the facility count and activity count for the number of FCEs at Tier II facilities is 0.

**Explanation** A “Tier II” facility refers to a minor source subject to formal enforcement action. While minor source violations must be reported in AFS, FCEs at Tier II sources are not required to be entered into AFS per the Federally Reportable Violations (FRV) Clarification Memo. Thus, New York is not required to report Tier II facility FCEs into AFS. A zero count is acceptable for this metric.

**Relevant metrics** 1c3 – Number of Tier II Facilities with FCE (Facility Count): 0  
1c4 – Number of FCEs at Tier II Facilities (Activity Count): 0

**State response** NYSDEC agrees with EPA’s explanation and suggests an evaluation of this element as to its usefulness in a state review.

**Recommendation** N/A

## Element 2 — Data Accuracy: Accuracy of Minimum Data Requirements.

### Finding 2-1 Area for State Improvement

**Description** Mandatory data are not consistently reflected accurately in the national data system (AFS). Specifically, the facility name often does not include the corporate name or current name of the facility. The state is below the national goal for this data metric.

**Explanation** Minimum data requirements (MDRs) in 30 of the 37 files reviewed on-site were accurately reflected in AFS.

EPA Region 2’s Air Compliance Branch (ACB) will monitor the improvement of the accuracy of NYSDEC’s MDR data entry through the existing oversight calls and other periodic data reviews conducted by EPA. ACB will discuss guidelines for naming facilities with NYSDEC.

**Relevant metrics** 2b – Accurate MDR data in AFS: 81.1%

- National Goal: 100%

**State response** The state believes that their AFS data is accurate in most instances. That being said, New York does not group their data in a manner that allows direct correlation of AFS data to the EPA metrics in many cases, so it is difficult to determine if a metric is 100% accurate.

**Recommendation** The state should establish guidelines for naming facilities consistent with EPA national guidance plant name guidance found in “AFS Business Rules Compendium, Revision 6.0, November 2011.”

<http://www.epa.gov/compliance/resources/policies/data/systems/air/afsbusinessrulescompendium.pdf>

### Element 3 — Timeliness of Data Entry: Timely entry of Minimum Data Requirements.

#### Finding 3-1 Area for State Improvement

**Description** The state is not consistently entering data in a timely manner. New York is below the national goal and/or national average for these data metrics.

**Explanation** For metric 3a2, 13 HPVs were not entered timely.

For metric 3b1, 536 of 828 compliance monitoring MDRs were timely reported.

For metric 3b2, 74 of 93 stack test MDRs were timely reported. The state was above the national average for this data metric, but below the national goal.

For metric 3b3, 162 of 210 enforcement MDRs were timely reported. The state was above the national average for this data metric, but below the national goal.

The state may have an issue with late entry of HPVs into AFS. Reporting may not be timely because of delays from managerial review and syncing the state's database with EPA's AFS system.

ACB will monitor data uploads from NYSDEC to determine the need for additional measures via quarterly data calls, which are attended by NYSDEC and ACB staff and management from Region 2. NYSDEC can increase data syncing with AFS from once per month to twice per month to reduce data delays.

#### Relevant metrics

3a2 – Untimely Entry of HPV Determinations: 13

- National Goal: 0

3b1 – Timely Reporting of Compliance Monitoring MDRs: 64.7%

- National Goal: 100%
- National Average: 78.6%

3b2 – Timely Reporting of Stack Test MDRs: 79.6%

- National Goal: 100%
- National Average: 75.5%

3b3 – Timely Reporting of Enforcement MDRs: 77.1%

- National Goal: 100%
- National Average: 76.1%

#### State response

The state believes that their AFS data is accurate in most instances. That being said, New York does not group their data in a manner that allows direct correlation of AFS data to the EPA metrics in many cases, so it is

difficult to determine if a metric is 100% accurate.

**Recommendation**

NYSDEC senior management should send a memo to its staff reaffirming the MDR guidance requirements by 9/15/14 to ensure that data is entered in a timely manner. EPA will receive a copy of the memo, and monitor the state's progress through quarterly meetings, annual data metrics, and the watch list.

**Element 4 — Completion of Commitments: Meeting all enforcement and compliance commitments made in state/EPA agreements.**

**Finding 4-1 Meets Expectations**

**Description** The state met or exceeded its enforcement and compliance commitments. New York is above the national goal for these data metrics.

**Explanation** New York exceeded their planned number of FCEs at Title V majors and SM-80s. The state conducted 256 and 120 FCEs at Title V majors and SM-80s, respectively.

The state completed both of their planned Compliance Monitoring Strategy (CMS) commitments.

**Relevant metrics** 4a1 – Planned evaluations completed (Title V Major FCEs): 115.3%  
• National Goal: 100%  
4a2 – Planned evaluations completed (SM-80 FCEs): 114.8%  
• National Goal: 100%  
4b – Planned commitments completed: 100%  
• National Goal: 100%

**State response** NYSDEC continues to give a high priority to meeting our FCE commitments.

**Recommendation** N/A

## Element 5 — Inspection Coverage: Completion of planned inspections.

### Finding 5-1 Meets Expectations

**Description** The state is above the national average and in most cases met the national goal for completion of planned inspections.

**Explanation**

For metric 5a, the state conducted FCEs at 256 of the 256 major facilities that were due for an FCE that year.

For metric 5b, the state conducted FCEs at 120 of the 120 SM-80 facilities that were due for an FCE that year.

Per the New York State CMS Plan, the state is not required to enter data for inspections at synthetic minors and minors into AFS. Therefore, a metric value of zero is acceptable for metrics 5c and 5d.

For metric 5e, the state reviewed 387 of 460 Title V annual compliance certifications.

**Relevant metrics**

5a – FCE Coverage Major: 100%

- National Goal: 100%
- National Average: 90%

5b – FCE Coverage SM-80: 100%

- National Goal: 100%
- National Average: 90.6%

5c – FCE Coverage Synthetic Minors (non-SM-80): 0

5d – FCE Coverage Minors: 0

5e – Review of Title V Annual Compliance Certifications Completed: 84.1%

- National Goal: 100%
- National Average: 72.5%

**State response** NYSDEC continues to give a high priority to meeting our FCE commitments.

**Recommendation** N/A

**Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.**

**Finding 6-1** Meets Expectations

**Description** State inspection reports include sufficient documentation to determine compliance and are completed within the prescribed timeframe. New York met the national goal for these metrics.

**Explanation** For metric 6a, documentation of FCE elements in 28 of the 29 files reviewed on-site met the definition of a FCE per the CMS policy.

For metric 6b, Compliance Monitoring Reports (CMRs) or facility files of 29 of the 30 files reviewed on-site provided sufficient documentation to determine if the facility was in compliance.

**Relevant metrics** 6a – Documentation of FCE Elements: 96.6%

- National Goal: 100%

6b – CMRs or Facility Files Reviewed that Provide Sufficient Documentation to Determine Compliance of the Facility: 96.7%

- National Goal: 100%

**State response** Thank you – DAR takes pride in the quality and professionalism of its staff.

**Recommendation** N/A

**Element 7 — Identification of Alleged Violations: Compliance determinations accurately made and promptly reported in national database based on inspection reports and other compliance monitoring information.**

**Finding 7-1** Meets Expectations

**Description** The state made accurate compliance determinations. New York was above the national average and/or met the national goal for these data metrics.

**Explanation** For metric 7a, accurate compliance determinations were made for 29 of the 30 alleged violations in files reviewed on-site.

For metric 7b1, the state reported 62 of 66 alleged violations (informal actions).

For metric 7b2, the state reported 9 of 11 alleged violations for failed stack states per failed stack tests were reported.

For metric 7b3, the state reported 16 of 16 alleged HPV violations.

**Relevant metrics** 7a – Accuracy of Compliance Determinations: 96.7%

- National Goal: 100%

7b1 – Alleged Violations Reported Per Informal Enforcements Actions (Tier I only): 93.9%

- National Goal: 100%
- National Average: 62.2%

7b2 – Alleged Violations Reported Per Failed Stack Tests: 81.8%

- National Goal: 100%
- National Average: 54%

7b3 – Alleged Violations Reported HPV Identified: 100%

- National Goal: 100%
- National average 69.6%

**State response** Thank you – DAR takes pride in the quality and professionalism of its staff.

**Recommendation** N/A

**Element 8 — Identification of SNC and HPV: Accurate identification of significant noncompliance and high-priority violations, and timely entry into the national database.**

**Finding 8-1** Meets Expectations

**Description** The state is accurately identifying high priority violations (HPVs). New York met the national average or the national goal for these metrics.

**Explanation** For metric 8a, the state HPV discovery rate per major facility universe was 16 of 431 facilities.

For metric 8b, the state identified 5 of 10 facilities with failed stack tests as HPVs. Note that a failed stack test is not necessarily an HPV indicator.

For metric 8c, the state accurately identified 20 of the 21 HPV violations in files reviewed on-site.

Note that these metrics are not indicators of the states

**Relevant metrics** 8a – HPV Discovery Rate Per Major Facility Universe: 3.7%  
• National Average: 3.9%  
8b – HPV Reporting Indicators at Majors with Failed Stack Tests: 50%  
• National Average: 20.5%  
8c – Accuracy of HPV Determinations: 95.2%  
• National Goal: 100%

**State response** Thank you – DAR takes pride in the quality and professionalism of its staff.

**Recommendation** N/A

**Element 9 — Enforcement Actions Promote Return to Compliance: Enforcement actions include required corrective action that will return facilities to compliance in specified timeframe.**

**Finding 9-1** Meets Expectations

**Description** State enforcement responses return sources to compliance. New York met the national goal for this metric.

**Explanation** All of the formal enforcement responses (17 of 17) in files reviewed on-site included the required corrective actions to return the facility to compliance in a specified timeframe.

**Relevant metrics** 9a – Formal Enforcement Responses that Include Required Corrective Action that will Return the Facility to Compliance in a Specified Timeframe: 100%

- National Goal: 100%

**State response** NYSDEC continues to give utmost priority to having sources return to compliance.

**Recommendation** N/A

**Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.**

**Finding 10-1 Area for State Improvement**

**Description** Although above the national average for this metric, the state does not consistently meet the timeliness goals of the CAA High-Priority Violator (HPV) Policy.

**Explanation** For metric 10a, only 20 of 29 HPV addressing actions met the timeliness goals of the HPV Policy. HPVs must be addressed within 270 days (300 days if a lead change occurs) from the date of the HPV designation.

**Relevant metrics** 10a – HPV Cases which Met the Timeliness Goal of the HPV Policy: 69%

- National Average: 63.7%

**State response**

**Recommendation** NYSDEC senior management should send a memo to its staff by 9/15/14 reaffirming the timeliness guidelines for addressing HPVs as outlined in the HPV Policy. EPA will receive a copy of the memo, and monitor the state’s progress through the existing monthly oversight calls between NYSDEC and Region 2 and through a formal consultation on or around day 150.

**Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.**

**Finding 10-2** Meets Expectations

**Description** The state appropriately addresses violations. New York met the national goal for this metric.

**Explanation** All 4 of the state’s enforcement responses for HPVs in files reviewed on-site appropriately addressed the violations.

**Relevant metrics** 10b – Appropriate Enforcement Responses for HPVs: 100%

- National Goal: 100%

**State response** Thank you – NYSDEC recognizes the importance in appropriately addressing violations, especially HPV’s

**Recommendation** N/A

**Element 11 — Penalty Calculation Method: Documentation of gravity and economic benefit in initial penalty calculations using BEN model or other method to produce results consistent with national policy and guidance.**

**Finding 11-1 Area for State Improvement**

**Description** The state is not documenting its penalty calculations, which must include economic benefit and gravity. New York is below the national goal for this metric.

**Explanation** 1 of the 16 penalties in files reviewed on-site considered and included, where appropriate, gravity and economic benefit.

**Relevant metrics** 11a – Penalty Calculations Reviewed that Consider and Include Gravity and Economic Benefit: 6.3%

- National Goal: 100%

**State response** NYSDEC Air Resources staff currently utilize the existing penalty calculation work sheets found in EPA penalty policies, which include economic benefit and gravity calculations, to determine their initial penalty assessment. NYSDEC senior management agrees to send a memo to its staff reaffirming existing state and federal penalty policy requirements, including documenting their gravity and economic benefit calculations, and the need for appropriate documentation of their rationale for the initial and final penalties.

**Recommendation** NYSDEC senior management should send a memo to its staff reaffirming the state penalty policy requirements, including gravity and economic benefit calculations, appropriate documentation of initial and final penalties, and using the BEN model or other method that produces results consistent with national policy, by 9/15/14. EPA will receive a copy of the memo, and monitor the state’s progress through quarterly meetings, annual data metrics, and the watch list.

**Element 12 — Final Penalty Assessment and Collection: Differences between initial and final penalty and collection of final penalty documented in file.**

**Finding 12-1**      **Area for State Improvement**

**Description**      The state is not documenting the rationale between initial and final penalties. New York is below the national goal for this metric.

**Explanation**      1 of the 14 penalties in files reviewed on-site documented the difference between the initial and final assessed penalty, and the rationale for that difference. The state has a penalty policy that correctly references EPA’s penalty policy.

**Relevant metrics**      12a – Documentation on the Difference Between Initial and Final Penalty and Rationale: 7.1%  
• National Goal: 100%

**State response**      Management will issue a new directive to NYSDEC staff to include the rationale for any significant difference between initial and final penalties on the final penalty calculation worksheet.

**Recommendation**      This finding is addressed by Finding 11-1.

**Element 12 — Final Penalty Assessment and Collection: Differences between initial and final penalty and collection of final penalty documented in file.**

**Finding 12-2** Meets Expectations

**Description** The state is documenting the collection of penalties. New York met the national goal for this metric.

**Explanation** 13 of the 14 penalties in files reviewed on-site included documentation that the penalty was collected. The payment is documented as received in the NYSDEC’s database.

**Relevant metrics** 12b – Penalties Collected: 92.9%  
• National Goal: 100%

**State response** NYSDEC agrees it is important to document the collection of penalties.

**Recommendation** N/A

# Resource Conservation and Recovery Act Findings

## Element 1 — Data Completeness: Completeness of Minimum Data Requirements.

**Finding 1-1** Meets Expectations

**Description** Minimum data requirements are being completed by the state.

**Explanation** The state entered data for each metric of Element 1.

**Relevant metrics**

- 1a1 – Number of operating TSDFs: 30
- 1a2 – Number of active LQGs: 4543
- 1a3 – Number of active SQGs: 5093
- 1a4 – All other active sites: 12335
- 1a5 – Number of BR LQGs: 2163
- 1b1 – Number of sites inspected: 862
- 1b2 – Number of inspections: 876
- 1c1 – Number of sites with new violations during review year: 385
- 1c2 – Number of sites in violation at any time during the review year regardless of determination date: 516
- 1d1 – Number of sites with informal enforcement actions: 388
- 1d2 – Number of informal enforcement actions: 391
- 1e1 – Number of sites with new SNC during year: 9
- 1e2 – Number of sites in SNC regardless of determination date: 28
- 1f1 – Number of sites with formal enforcement actions: 22
- 1f2 – Number of formal enforcement actions: 26
- 1g – Total dollar amount of final penalties: \$393,696
- 1h – Number of final formal actions with penalty in last 1 FY: 17

**State response** NYSDEC agrees with the finding with the following caveats to the data:

RCRAInfo contains 12 SNY records (not 9, see metric 1e1) to indicate new SNCs in FFY11. NYSDEC does not use the federal generator status field in RCRAInfo to track a site's RCRA hazardous waste generation status (e.g., LQG, SQG) and this field is inaccurate for NY sites. Therefore, the numbers of generators given above is not accurate. NYSDEC uses an internal database of manifest and Hazardous Waste Report data of HW shipments and generation instead. New York also does not use the active site field in RCRAInfo. Any other calculations using these numbers would also be inaccurate. This also results in the data at ECHO's Search Compliance Data (Hazardous Waste Program), Enforcement Performance Dashboards and Comparative Maps, and Envirofacts public web pages not displaying a New York site's generator status correctly.

**Recommendation** N/A

## Element 2 — Data Accuracy: Accuracy of Minimum Data Requirements.

### Finding 2-1 Area for State Improvement

**Description** Mandatory data is not consistently reflected accurately in the national data system (RCRAInfo). New York is below the national goal for this metric.

**Explanation** Minimum Data Requirements (MDRs) in 48 of the 53 files reviewed on-site were accurately reflected in RCRAInfo.

RCRAInfo indicates that the state had 26 formal enforcement actions. However, the state claims 31 formal enforcement actions in its semi-annual reports. Formal enforcement actions must be accurately recorded.

116 long standing violators were identified, mainly in three Regional Offices, which state agrees may be the result of a possible failure to enter return to compliance data.

The state should endeavor to ensure accurate data entry into RCRAInfo.

- Review data on a quarterly basis to ensure that all formal enforcement actions and secondary violator that have returned to compliance are properly documented in RCRAInfo.
- Provide training to staff in Regions where SV return to compliance is not being recorded.

**Relevant metrics** 2a – Long Standing Secondary Violators: 116  
2b – Accurate Entry of Mandatory Data: 90.6%

- National Goal: 100%

**State response** NYSDEC agrees with the finding and is taking steps to ensure that data is accurate and complete. A memo to staff from the Division Director was sent on 12/21/12 addressing this issue and others raised during the exit interview after EPA completed the file review portion of the audit. A copy was provided to EPA on July 25, 2013. NYSDEC completed a major effort to develop and deliver guidance and training for RCRA inspectors. Statewide training was held July 8-10, 2013. The guidance and training materials were provided to EPA on July 25, 2013. An additional memo from the Division Director to staff was issued on April 26, 2013 adjusting requirements for timeliness, completeness, and consistency (also provided to EPA on July 25). Recently, 20% of open violations have been returned to compliance/closed in RCRAInfo. Additional review of open violations will occur. RCRAInfo compliance data entry training was provided to all inspectors in all regions from Sept. – Nov. 2011, and training is provided to new staff as needed. Instructions are posted on NYSDEC's internal website in inspection, violation and enforcement (for SVs) data entry. In

addition, NYSDEC is now conducting quarterly work plan progress conference calls with each region individually and will make this issue part of the standard agenda for each call.

**Recommendation** NYSDEC senior management should issue a memo to staff reaffirming RCRAInfo data entry and quality control requirements, such as reviewing data on a quarterly basis to ensure that all formal enforcement actions and secondary violators (SVs) that have returned to compliance are properly documented. The state should also train staff on RCRAInfo in NYSDEC Regions where SV return to compliance is not recorded. By 8/31/14 the NYSDEC should submit a report to EPA verifying that both training and the quarterly review of data entry were completed.

### Element 3 — Timeliness of Data Entry: Timely entry of Minimum Data Requirements.

**Finding 3-1** Meets Expectations

**Description** The state is entering mandatory data in a timely manner. New York met the national goal for this metric.

**Explanation** Minimum data requirements (MDRs) in 50 of the 53 files reviewed on-site were entered into the national data system in a timely manner.

**Relevant metrics** 3a – Timely Entry of Mandatory Data: 94.3%  
• National Goal: 100%

**State response** NYSDEC agrees with the finding.

**Recommendation** N/A

**Element 4 — Completion of Commitments: Meeting all enforcement and compliance commitments made in state/EPA agreements.**

**Finding 4-1 Area for State Attention**

**Description** The state did not meet its non-inspection commitments in the review year. New York is below the national goal for this metric.

**Explanation** The state committed to 45 formal enforcement actions, but only completed 26 according to RCRAInfo. While the state claims 31 formal enforcement actions in its semi-annual reports as noted in Finding 2-2 that is still below the state’s commitment.

The state exceeded its commitment for sending warning letters. New York committed to 256 warning letters but sent a total of 416.

The state should identify the possible reasons for why formal enforcement action commitments are not being met (e.g., inadequate legal resources, poor inspection targeting, inadequate training for identifying and classifying SNC appropriately, etc.) and identify steps to be taken to address the reasons.

**Relevant metrics** 4a – Planned Non-Inspection Commitments Completed: 55.6%  
• National Goal: 100%

**State response** NYSDEC disagrees with the concept that a defined number of enforcement actions should occur independent of actual compliance found. The goal of the program is compliance so a higher compliance rate and lower enforcement rate should be good news. NYSDEC acknowledges that this is predicated on the need for accurate compliance determinations and continues to emphasize this as shown in the recently provided guidance and training (see also the response to Finding 2-1).

**Recommendation** N/A

**Element 4 — Completion of Commitments: Meeting all enforcement and compliance commitments made in state/EPA agreements.**

**Finding 4-2** Meets Expectations

**Description** The state exceeded its number of planned inspections.

**Explanation** The state committed to inspecting 189 large quantity generators (LQGs) but inspected 196.

The state committed to inspecting 292 “other generators and non-notifiers” but inspected 602 (including 110 non-notifiers).

**Relevant metrics** 4b1 – Planned Inspections Completed LQGs: 196  
4b2 – Planned Inspections Completed SQGs: 250  
4b3 – Planned Inspections Completed CESQGs: 238  
4b4 – Planned Inspections Completed Transporters: 4

**State response** NYSDEC accepts the finding.

**Recommendation** N/A

## Element 5 — Inspection Coverage: Completion of planned inspections.

### Finding 5-1 Meets Expectations

**Description** New York either met or was above the national average and/or the national goal for inspecting TSDFs every two years and all LQGs every 5 years.

**Explanation** For metric 5a, the state inspected 29 of 30 operating treatment, storage and disposal facilities (TSDFs). New York met the national goal and is above that national average for this metric.

For metric 5b, the state's annual inspection coverage for LQGs was 206 of 2163 according to the SRF data. However, based on the EPA and the state's determination of actual LQG inspection numbers, the state exceeded the national goal and the national average for this metric, inspecting 162 of 585 sites.

2163 is the number of LQGs based on a single Biennial Report (BR) year. This includes onetime generators. Region 2 has had a standing agreement with the NYSDEC for many years that allows them to use hazardous waste manifests to determine if a facility is a LQG. The state evaluates manifests for the last 3 years; if a facility is a LQG in 2 of the last 3 years then that facility is considered to be a LQG. This process results in 730 LQGs for SFY '12 and 585 for SFY '11. This is a true representation of the alternate LQG universe.

**Relevant metrics** 5a – Two-Year Inspection Coverage for Operating TSDFs: 96.7%

- National Goal: 100%
- National Average: 89.4%

5b – Annual Inspection Coverage for LQGs: 9.5% (27.7% corrected)

- National Goal: 20%
- National Average: 22.6%

**State response** For metric 5a, inclusion of EPA inspections results in a 100% coverage of TSDFs over two years. For metric 5b, New York's long-term 2011 LQG universe includes 585 sites, 162 of which were inspected by the state in FY 2011. This results in a 27.7% annual inspection coverage for LQGs.

**Recommendation** N/A

## Element 5 — Inspection Coverage: Completion of planned inspections.

### Finding 5-2 Area for State Attention

**Description** The state did not complete its 5-year inspection coverage. New York is below the national average and the national goal for this metric.

**Explanation** For metric 5c, the state's 5-year inspection coverage for LQGs was 611 of 2163 according to the SRF data. However, based on the EPA and state's determination of actual LQG inspection numbers, the state is above the national average but below the national goal for this metric, inspecting 448 of 585 sites for a coverage rate of 77%. See the Explanation for Finding 5-1 for information regarding New York's LQG universe.

For the purposes of determining if the Region as a whole has met the coverage goal, EPA Region 2's inspections may be added. Doing so increases the total number of LQGs inspected to 519, for an LQG inspection coverage rate of 89%.

Each year, the state should identify LQGs that need to be inspected and devote the appropriate resources to ensure appropriate inspection coverage for all LQGs over 5 years.

**Relevant metrics** 5c – Five-Year Inspection Coverage for LQGs: 28.2% (76.6% corrected)

- National Goal: 100%
- National Average: 62.9%

**State response** For metric 5c, New York's long-term 2011 LQG universe includes 585 sites, 448 of which were inspected by the state in five years (FY 2007 to FY 2011). This results in 76.6% five-year inspection coverage for LQGs. The percent of New York LQGs and SQGs inspected, or inspection coverage, is greater than calculated in the metrics. These numbers are based on universe counts for LQGs and SQGs when the data is frozen, but since these universes change on a daily basis, some of the LQG/SQG inspections conducted are not credited in EPA's SRF reports because the site moved out of the universe, and their generator status field in RCRAInfo was not revised. EPA Region 2 has not updated the generator status field in RCRAInfo since 2007. Obviously, New York should not be judged on the basis of outdated data that has not been corrected by EPA Region 2.

**Recommendation** N/A

**Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.**

**Finding 6-1 Area for State Improvement**

**Description** Some state inspection reports lack sufficient documentation to determine compliance.

**Explanation** 43 of the 53 inspection reports reviewed on-site were complete and provided sufficient documentation to determine compliance.

Many of the state’s secondary violator (SV) inspection reports and Notices of Violation (NOVs) lacked adequate description of the facility’s operations, types and quantities of hazardous waste generated, and the degree of deviation from the cited violations. For example, some NOVs only cited “you [the facility] have not met this requirement,” without describing or quantifying the violation. In another case, the inspection report listed that the facility stored hazardous waste for more than one year, but this violation was not included in the NOV.

**Relevant metrics** 6a – Inspection Reports Complete and Sufficient to Determine Compliance: 81.1%

**State response** NYSDEC partially accepts this finding. In some cases, NYSDEC concludes that the finding of incomplete documentation is correct and in others we conclude that the information requested (e.g., number of employees) was not necessary for making the relevant compliance determinations. NYSDEC commits to enhancing the completeness of documentation (see also the response to Finding 2-1).

**Recommendation** NYSDEC senior management should send a memo to its staff reaffirming inspection report detail and documentation requirements by 9/15/14 to ensure that inspection reports contain sufficient detail to clearly document violations at a facility, and that NOVs contain sufficient detail describing the regulatory requirements and specific observations at the facility identifying the violations. EPA will receive a copy of the memo, and monitor the state’s progress through quarterly meetings, annual data metrics, and the watch list.

**Element 6 — Quality of Inspection Reports: Proper and accurate documentation of observations and timely report completion.**

**Finding 6-2** Meets Expectations

**Description** The state’s inspection reports were completed within the prescribed timeframe. New York met the national goal for this metric.

**Explanation** 52 of the 53 inspection reports reviewed on-site were completed in a timely manner.

**Relevant metrics** 6b – Timeliness of Inspection Report Completion: 98.1%

- National Goal: 100%

**State response** NYSDEC accepts the finding.

**Recommendation** N/A

**Element 7 — Identification of Alleged Violations: Compliance determinations accurately made and promptly reported in national database based on inspection reports and other compliance monitoring information.**

**Finding 7-1** Meets Expectations

**Description** The state made accurate compliance determinations. The state met the national goal or was above the national average for this metric.

**Explanation** For metric 7a, 50 of the 53 inspection reports reviewed on-site led to accurate compliance determinations for alleged violations.

For metric 7b, the state found 384 violations in 860 inspections.

**Relevant metrics** 7a – Accurate Compliance Determinations: 94.3%  
• National Goal: 100%  
7b – Violations Found During Inspections: 44.7%  
• National Average: 32.5%

**State response** NYSDEC accepts this finding.

**Recommendation** N/A

**Element 8 — Identification of SNC and HPV: Accurate identification of significant noncompliance and high-priority violations, and timely entry into the national database.**

**Finding 8-1 Area for State Improvement**

**Description** The state’s SNC identification rate is below the national average. In addition, the state did not consistently make timely SNC determinations.

**Explanation** For metric 8a, the significant noncompliance (SNC) identification rate was 4 of 860. The low SNC identification rate is not a data entry issue; it is because the timing of state data entry and the SRF data pull do not coincide. The state has the opportunity to correct data during the data verification process. A corrected metric of 1.2% is 75% of the national average of 1.6%.

For metric 8b, 3 of 9 SNC determinations were timely made.

**Relevant metrics**

8a – SNC Identification Rate: 0.5%

- National Average: 1.6%

8b – Timeliness of SNC Determinations: 33.3%

- National Goal: 100%
- National Average: 81.7%

**State response** The calculation of the numerator of Metric 8a SNC identification rate is incorrect. The number of SNC determination's in FY 2011 should be 12, not 4. This would result in the metric being 1.4% (12/860) instead of 0.5%, in comparison to the national average of 1.6% (see also the response to Finding 2-1). Also, NYSDEC disagrees with RCRA Metric 8a. There are other inspections besides CEI and FCI that produce SNC violators that will not be counted. There is also a timing issue for sites that have inspections and SNC determinations in different fiscal years. We argue that the measure should use existing data verification metrics, the numerator to be all new SNC (1e1) and the denominator to be number of sites inspected (1b1). In separate discussions with EPA (OECA) on the Plain Language Guide, EPA responded that “We cannot change this metric at this time due to lack of resources to change select logic for data metrics. However, these concerns are noted for further discussion. We have also revised the PLG to emphasize that this is a Review Indicator metric and will not be used to create a finding in the SRF report.”

**Recommendation** The state should notify EPA in writing when the Summer 2013 inspector training class is completed.

**Element 8 — Identification of SNC and HPV: Accurate identification of significant noncompliance and high-priority violations, and timely entry into the national database.**

**Finding 8-2** Meets Expectations

**Description** The state made appropriate SNC determinations. New York met the national goal for this metric.

**Explanation** For metric 8c, SNC status was appropriately determined in 51 of the 53 files reviewed on-site in the review year.

**Relevant metrics** 8c – Appropriate SNC Determinations: 96.2%

- National Goal: 100%

**State response** NYSDEC accepts this finding.

**Recommendation** N/A

**Element 9 — Enforcement Actions Promote Return to Compliance: Enforcement actions include required corrective action that will return facilities to compliance in specified timeframe.**

**Finding 9-1**

**Area for State Attention**

**Description**

The state enforcement responses did not consistently return a site in SNC to compliance. New York is below the national goal for this metric.

**Explanation**

10 of the 11 state enforcement responses reviewed on-site had or will return a site in SNC to compliance. One SNC from 2007 had no enforcement action due to an on-going criminal investigation.

**Relevant metrics**

9a – Enforcement that Returns SNC Sites to Compliance: 90.9%

- National Goal: 100%

**State response**

NYSDEC accepts this finding (see also the response to Finding 2-1) and notes that NYSDEC is working to bring and keep the facility with the on-going criminal investigation into full compliance while the investigation unfolds.

**Recommendation**

N/A

**Element 9 — Enforcement Actions Promote Return to Compliance: Enforcement actions include required corrective action that will return facilities to compliance in specified timeframe.**

**Finding 9-2**      **Area for State Improvement**

**Description**      The state enforcement responses did not consistently return SV sites to compliance. New York is below the national goal for this metric.

**Explanation**      37 of the 41 enforcement responses reviewed on-site have returned or will return a secondary violator to compliance.

Although the metric is high, one particular SV was recalcitrant and not returned to compliance. Therefore, the facility should have been re-designated as a SNC. Also, while not part of the file review, RCRAInfo indicated that 116 SVs in three of the state’s regions had not been returned to compliance in 240 days. This may be due to the state’s failure to enter data.

**Relevant metrics**      9b – Enforcement that Returns SV Sites to Compliance – 90.2%  
    • National Goal: 100%

**State response**      NYSDEC accepts this finding (see also the response to Finding 2-1) and emphasizes that steps have been taken to correct the data shortfall.

**Recommendation**      NYSDEC senior management should send a memo to its staff reaffirming SV and SNC enforcement response requirements in accordance with the ERP by 9/15/14. EPA will receive a copy of the memo, and monitor the state’s progress through quarterly meetings, annual data metrics, and the watch list.

**Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.**

**Finding 10-1 Area for State Improvement**

**Description** The state is not consistently taking timely enforcement action. New York is below the national goal and the national average for this metric.

**Explanation** The state took timely enforcement to address 7 of 10 SNC violations. EPA decided to select additional files to review on-site based on this metric.

**Relevant metrics** 10a – Timely Enforcement Taken to Address SNC: 70%

- National Goal: 80%
- National Average: 81.8%

**State response** The state recognizes the delay in some enforcement actions and has begun the process to ensure more timely actions which includes training, quarterly calls with the NYSDEC Regions, and monthly docket meetings to discuss case status.

**Recommendation** This finding is addressed by Finding 9-2. The state should also include in its copy of the memo to EPA updates on the status of the training, quarterly calls and monthly docket meetings.

**Element 10 — Timely and Appropriate Action: Timely and appropriate enforcement action in accordance with policy relating to specific media.**

**Finding 10-2** Meets Expectations

**Description** The state is taking timely and appropriate enforcement action. New York met the national goal for this metric.

**Explanation** 49 of the 53 state enforcement actions reviewed on-site were appropriate to and properly addressed the violations.

**Relevant metrics** 10b – Appropriate Enforcement Taken to Address Violations: 92.5%

- National Goal: 100%

**State response** NYSDEC accepts this finding.

**Recommendation** N/A

**Element 11 — Penalty Calculation Method: Documentation of gravity and economic benefit in initial penalty calculations using BEN model or other method to produce results consistent with national policy and guidance.**

**Finding 11-1 Area for State Improvement**

**Description** The state does not consistently include gravity and economic benefit in penalty calculations. New York is below the national goal for this metric.

**Explanation** 9 of the 11 penalty calculations reviewed on-site considered and included, where appropriate, both gravity and economic benefit.

Although gravity was considered of all 4 cases, economic benefit was not considered for one case.

**Relevant metrics** 11a – Penalty Calculations Include Gravity and Economic Benefit: 81.8%

- National Goal: 100%

**State response** NYSDEC partially accepts this finding. Gravity is always considered. Economic benefit has not been included in some penalty calculations, for example, where relatively small penalty amounts were sought, which would not indicate a need to include economic benefit. In addition, properly evaluating this factor is extremely complex, and it brings limited benefit for deterrence and bringing facilities into compliance. Given tight resources and overall prioritization, NYSDEC believes that calculating economic benefit is not warranted in most cases. Where economic benefit considerations would generate a significantly different result through the enforcement process, NYSDEC would be willing to undertake the process and assess the related penalties.

**Recommendation** NYSDEC senior management should send a memo to its staff reaffirming the RCRA Civil Penalty Policy requirements, including gravity and economic benefit calculations, appropriate documentation of initial and final penalties and penalty collection, by 9/15/14. EPA will receive a copy of the memo, and monitor the state’s progress through quarterly meetings, annual data metrics, and the watch list.

**Element 12 — Final Penalty Assessment and Collection: Differences between initial and final penalty and collection of final penalty documented in file.**

**Finding 12-1 Area for State Improvement**

**Description** The state is not properly documenting penalties. New York is below the national goal for these data metrics.

**Explanation** For metric 12a, 6 of the 11 penalties reviewed on-site documented the difference between the initial and final assessed penalty and the rationale for that difference. Four of the penalties had no documentation, one of which had proposed an Environmentally Beneficial Project. Three of the penalties were documented long after the case was settled. Also, in three cases, penalties were suspended simply because the facilities returned to and/or agreed to remain in compliance.

For metric 12b, 8 of the 11 files with penalties reviewed on-site included documentation of the collection of the penalty. Three had no documentation. In one multimedia case, the entire penalty amount was entered into RCRAInfo as the RCRA penalty.

**Relevant metrics** 12a – Documentation on the Difference Between Initial and Final Penalty: 54.5%

- National Goal: 100%

12b – Penalties Collected 72.7%

- National Goal: 100%

**State response** NYSDEC accepts this finding (see also the response to Finding 2-1). Management will direct NYSDEC staff to include the rationale for any significant difference between initial and final penalties on the final penalty calculation worksheet. New York is planning to document penalty payment collection in eDocs.

**Recommendation** This finding is addressed by Finding 11-1.

## **Appendix A: Data Metric Analysis**

Attached below are the results of the SRF data metric analyses. All data metrics are analyzed prior to the on-site file review. This provides reviewers with essential advance knowledge of potential problems. It also guides the file selection process as these potential problems highlight areas for supplemental file review.

The initial findings are preliminary observations. They are used as a basis for further investigation during the file review and through dialogue with the state. Where applicable, this analysis evaluates state performance against the national goal and average. Final findings are developed only after evaluating the data alongside file review results and details from conversations with the state. Through this process, initial findings may be confirmed or modified. Final findings are presented in Section III of this report.

## Clean Water Act

Metric	Metric Name	Metric Type	Agency	Nat'l Goal	Nat'l Avg	New York	Count	Universe	Not Counted	Initial Finding	Explanation
1a1	Number of Active NPDES Majors with Individual Permits	Data Verification	State			335				Meets Expectations	
1a2	Number of Active NPDES Majors with General Permits	Data Verification	State			0				Meets Expectations	
1a3	Number of Active NPDES Non-Majors with Individual Permits	Data Verification	State			1194				Meets Expectations	
1a4	Number of Active NPDES Non-Majors with General Permits	Data Verification	State			4435				Meets Expectations	
1b1	Permit Limits Rate for Major Facilities	Goal	State	>= 95%	98.60%	100%	335	335	0	Meets Expectations	
1b2	DMR Entry Rate for Major Facilities	Goal	State	>= 95%	96.50%	99.80%	14510	14533	23	Meets Expectations	
1b3	Number of Major Facilities with a Manual Override of RNC/SNC to a Compliant Status	Data Verification	State			0				Meets Expectations	
1c1	Permit Limits Rate for Non-Major Facilities	Informational only	State		66.10%	90.20%	1077	1194	117	Meets Expectations	
1c2	DMR Entry Rate for Non-Major Facilities.	Informational only	State		72.60%	99.80%	22580	22632	52	Meets Expectations	
1e1	Facilities with Informal Actions	Data Verification	State			0				Area for State Attention	Evaluate state's TOGS to determine if informal actions, such as NOV's, are issued to major facilities. If so, this data needs to be entered.
1e2	Total Number of Informal Actions at CWA NPDES Facilities	Data Verification	State			0				Area for State Attention	Evaluate state's TOGS to determine if informal actions, such as NOV's, are issued to major facilities. If so, this data needs to be entered.

Metric	Metric Name	Metric Type	Agency	Nat'l Goal	Nat'l Avg	New York	Count	Universe	Not Counted	Initial Finding	Explanation
1f1	Facilities with Formal Actions	Data Verification	State			277				Meets Expectations	
1f2	Total Number of Formal Actions at CWA NPDES Facilities	Data Verification	State			263				Meets Expectations	
1g1	Number of Enforcement Actions with Penalties	Data Verification	State			244				Meets Expectations	
1g2	Total Penalties Assessed	Data Verification	State			\$5,154,100				Meets Expectations	
2a1	Number of formal enforcement actions, taken against major facilities, with enforcement violation type codes entered.	Data Verification	State			14				Area for State Improvement	Number of formal enforcement actions seems low in comparison to total number of formal actions (1f2).
5a1	Inspection Coverage - NPDES Majors	Goal metric	State		54.40%	12.80%	43	335	292	Area for State Improvement	100% of the CMS commitment (# of majors inspected / total # of majors). Goal is minimum of 1 comprehensive inspection every two years, or 50% annually. 12.5% falls considerably below 50% or 33% if using the Inspection Targeting Model.
5b1	Inspection Coverage - NPDES Non-Majors	Goal metric	State		23.70%	11%	131	1194	1063	Area for State Improvement	100% of the CMS commitment (# of non-majors inspected / total # of non-majors). Goal is inspection at least once in each five year permit term, or 20% annually. 11% falls considerably below 20% goal.

Metric	Metric Name	Metric Type	Agency	Nat'l Goal	Nat'l Avg	New York	Count	Universe	Not Counted	Initial Finding	Explanation
5b2	Inspection Coverage - NPDES Non-Majors with General Permits	Goal metric	State		19.20%	0.10%	4	4435	4431	Area for State Improvement	100% of the CMS commitment (# of non-major facilities with GPs inspected / total # of non-major facilities with GPs).
7a1	Number of Major Facilities with Single Event Violations	Data Verification	State			3				Area for State Improvement	Number of SEVs seems to be low compared to the number of majors inspected and % of facilities in noncompliance.
7a2	Number of Non-Major Facilities with Single Event Violations	Informational only	State			23				Supplemental Review	
7b1	Compliance schedule violations	Data Verification	State			55				Meets Expectations	
7c1	Permit schedule violations	Data Verification	State			443				Meets Expectations	
7d1	Major Facilities in Noncompliance	Review Indicator	State		71.20%	82.40%	276	335	59	Area for State Improvement	High rate of noncompliance
7f1	Non-Major Facilities in Category 1 Noncompliance	Data Verification	State			239				Area for State Improvement	21% rate of noncompliance
7g1	Non-Major Facilities in Category 2 Noncompliance	Data Verification	State			536				Area for State Improvement	47% rate of noncompliance
7h1	Non-Major Facilities in Noncompliance	Informational only	State			68.20%	814	1194	380	Supplemental Review	
8a1	Major Facilities in SNC	Review indicator metric	State			78				Meets Expectations	
8a2	Percent of Major Facilities in SNC	Review indicator metric	State		22.30%	22.60%	78	345	267	Meets Expectations	
10a1	Major facilities with Timely Action as Appropriate	Goal metric	State			65%	13	20	7	Area for State Attention	

## Clean Air Act

Metric	Metric Name	Metric Type	Agency	Nat'l Goal	Nat'l Avg	New York	Count	Universe	Not Counted	Initial Finding	Explanation
1a1	Number of Active Major Facilities (Tier I)	Data Verification	State			431				-	
1a2	Number of Active Synthetic Minors (Tier I)	Data Verification	State			2672				-	
1a3	Number of Active NESHAP Part 61 Minors (Tier I)	Data Verification	State			73				-	
1a4	Number of Active CMS Minors and Facilities with Unknown Classification (Not counted in metric 1a3) that are Federally-Reportable (Tier I)	Data Verification	State			2				-	
1a5	Number of Active HPV Minors and Facilities with Unknown Classification (Not counted in metrics 1a3 or 1a4) that are Federally-Reportable (Tier I)	Data Verification	State			11				-	
1a6	Number of Active Minors and Facilities with Unknown Classification Subject to a Formal Enforcement Action (Not counted in metrics 1a3, 1a4 or 1a5) that are Federally-Reportable (Tier II)	Data Verification	State			145				-	
1b1	Number of Active Federally-Reportable NSPS (40 C.F.R. Part 60) Facilities	Data Verification	State			794				-	
1b2	Number of Active Federally-Reportable NESHAP (40 C.F.R. Part 61) Facilities	Data Verification	State			168				-	
1b3	Number of Active Federally-Reportable MACT (40 C.F.R. Part 63) Facilities	Data Verification	State			822				-	
1b4	Number of Active Federally-Reportable Title V Facilities	Data Verification	State			459				-	
1c1	Number of Tier I Facilities with an FCE (Facility Count)	Data Verification	State			394				-	
1c2	Number of FCEs at Tier I Facilities (Activity Count)	Data Verification	State			394				-	

Metric	Metric Name	Metric Type	Agency	Nat'l Goal	Nat'l Avg	New York	Count	Universe	Not Counted	Initial Finding	Explanation
1c3	Number of Tier II Facilities with FCE (Facility Count)	Data Verification	State			0				-	
1c4	Number of FCEs at Tier II Facilities (Activity Count)	Data Verification	State			0				-	
1d1	Number of Tier I Facilities with Noncompliance Identified (Facility Count)	Data Verification	State			295				-	
1d2	Number of Tier II Facilities with Noncompliance Identified (Facility Count)	Data Verification	State			59				-	
1e1	Number of Informal Enforcement Actions Issued to Tier I Facilities (Activity Count)	Data Verification	State			104				-	
1e2	Number of Tier I Facilities Subject to an Informal Enforcement Action (Facility Count)	Data Verification	State			66				-	
1f1	Number of HPVs Identified (Activity Count)	Data Verification	State			30				-	
1f2	Number of Facilities with an HPV Identified (Facility Count)	Data Verification	State			28				-	
1g1	Number of Formal Enforcement Actions Issued to Tier I Facilities (Activity Count)	Data Verification	State			56				-	
1g2	Number of Tier I Facilities Subject to a Formal Enforcement Action (Facility Count)	Data Verification	State			55				-	
1g3	Number of Formal Enforcement Actions Issued to Tier II Facilities (Activity Count)	Data Verification	State			35				-	
1g4	Number of Tier II Facilities Subject to a Formal Enforcement Action (Facility Count)	Data Verification	State			35				-	
1h1	Total Amount of Assessed Penalties	Data Verification	State			\$886,320				-	
1h2	Number of Formal Enforcement Actions with an Assessed Penalty	Data Verification	State			91				-	

Metric	Metric Name	Metric Type	Agency	Nat'l Goal	Nat'l Avg	New York	Count	Universe	Not Counted	Initial Finding	Explanation
1i1	Number of Stack Tests with Passing Results	Data Verification	State			77				-	
1i2	Number of Stack Tests with Failing Results	Data Verification	State			12				-	
1i3	Number of Stack Tests with Pending Results	Data Verification	State			4				-	
1i4	Number of Stack Tests with No Results Reported	Data Verification	State			0				-	
1i5	Number of Stack Tests Observed & Reviewed	Data Verification	State			58				-	
1i6	Number of Stack Tests Reviewed Only	Data Verification	State			35				-	
1j	Number of Title V Annual Compliance Certifications Reviewed	Data Verification	State			434				-	
2a	Major Sources Missing CMS Source Category Code	Review Indicator	State			2				-	
3a1	Timely Entry of HPV Determinations	Review Indicator	State			17				-	
3a2	Untimely Entry of HPV Determinations	Goal	State	0		13				State Attention	NY may have an issue with late HPV entry, with possible delays in AFS entry
3b1	Timely Reporting of Compliance Monitoring Minimum Data Requirements	Goal	State	100%	78.60%	64.70%	536	828	292	State Attention	NY below goal and national average. Possible delays when syncing the NY database with EPA's AFS system
3b2	Timely Reporting of Stack Test Minimum Data Requirements	Goal	State	100%	75.50%	79.60%	74	93	19	State Attention	NY below goal and national average. Possible delays when syncing the NY database with EPA's AFS system
3b3	Timely Reporting of Enforcement Minimum Data Requirements	Goal	State	100%	76.10%	77.10%	162	210	48	State Attention	NY below goal and national average. Possible delays when syncing the NY database with EPA's AFS system

Metric	Metric Name	Metric Type	Agency	Nat'l Goal	Nat'l Avg	New York	Count	Universe	Not Counted	Initial Finding	Explanation
5a	FCE Coverage Major	Goal	State	100%	90%	98.50%	256	260	4	Meets Expectations	
5b	FCE Coverage SM-80	Goal	State	100%	90.60%	96.80%	120	124	4	Meets Expectations	
5c	FCE Coverage Synthetic Minors (non SM-80)	Goal	State	100%	66.70%	0/0	0	0	0	State Attention	SM80's are not an MDR, and are not required to be entered into the AFS database.
5d	FCE Coverage Minors	Goal	State	100%	11.70%	0/0	0	0	0	State Attention	With 0 entries, NY may not be syncing Minor source data from their database with AFS. Is it an MDR? What are the roadblocks to entering this in AFS?
5e	Review of Title V Annual Compliance Certifications Completed	Goal	State	100%	72.50%	84.10%	387	460	73	State Attention	NY below goal, but above national average. See what could be holding back 100% completion of the reviews.
7b1	Alleged Violations Reported Per Informal Enforcement Actions (Tier I only)	Goal	State	100%	62.20%	93.90%	62	66	4	Meets Expectations	
7b2	Alleged Violations Reported Per Failed Stack Tests	Review Indicator	State		54%	81.80%	9	11	2	-	
7b3	Alleged Violations Reported Per HPV Identified	Goal	State	100%	69.60%	100%	16	16	0	Meets Expectations	
8a	HPV Discovery Rate Per Major Facility Universe	Review Indicator	State		3.90%	3.70%	16	431	415	-	
8b	HPV Reporting Indicator at Majors with Failed Stack Tests	Review Indicator	State		20.50%	50%	5	10	5	-	
10a	HPV cases which meet the timeliness goal of the HPV Policy	Review Indicator	State		63.70%	69%	20	29	9	State Attention	The state is not meeting the timeliness goal

## Resource Conservation and Recovery Act

Metric	Metric Name	Metric Type	Agency	Nat'l Goal	Nat'l Avg	New York	Count	Universe	Not Counted	Initial Finding	Explanation
1a1	Number of operating TSDFs	Data Verification	State			30					
1a2	Number of active LQGs	Data Verification	State			4543					Based on BRS data for the last two cycles and manifest data for the past three years, the LQG universe was determined to be 730.
1a3	Number of active SQGs	Data Verification	State			5093					
1a4	All other active sites	Data Verification	State			12335					
1a5	Number of BR LQGs	Data Verification	State			2163					
1b1	Number of sites inspected	Data Verification	State			862					
1b2	Number of inspections	Data Verification	State			876					
1c1	Number of sites with new violations during review year	Data Verification	State			385					
1c2	Number of sites in violation at any time during the review year regardless of determination date	Data Verification	State			516					
1d1	Number of sites with informal enforcement actions	Data Verification	State			388					
1d2	Number of informal enforcement actions	Data Verification	State			391					
1e1	Number of sites with new SNC during year	Data Verification	State			9					
1e2	Number of sites in SNC regardless of determination date	Data Verification	State			28					

Metric	Metric Name	Metric Type	Agency	Nat'l Goal	Nat'l Avg	New York	Count	Universe	Not Counted	Initial Finding	Explanation
1f1	Number of sites with formal enforcement actions	Data Verification	State			22					
1f2	Number of formal enforcement actions	Data Verification	State			26					
1g	Total dollar amount of final penalties	Data Verification	State			\$393,696					
1h	Number of final formal actions with penalty in last 1 FY	Data Verification	State			17					
2a	Long-standing secondary violators	Review Indicator	State			116					Indicates need for supplemental file review.
5a	Two-year inspection coverage for operating TSDFs	Goal	State	100%	89.40%	96.70%	29	30	1	Meets Expectations	
5b	Annual inspection coverage for LQGs	Goal	State	20%	22.60%	9.50%	206	2163	1957	Meets Expectations	Based on EPA/State determination of actual LQG numbers, State metric is about 28%.
5c	Five-year inspection coverage for LQGs	Goal	State	100%	62.90%	28.20%	611	2163	1552	Area for State Improvement	Based on EPA/State determination of actual LQG numbers, State metric is about 84%.
5d	Five-year inspection coverage for active SQGs	Informational Only	State		11%	27.50%	1401	5093	3692		
5e1	Five-year inspection coverage at other sites (CESQGs)	Informational Only	State			1060					
5e2	Five-year inspection coverage at other sites (Transporters)	Informational Only	State			43					
5e3	Five-year inspection coverage at other sites (Non-notifiers)	Informational Only	State			10					
5e4	Five-year inspection coverage at other sites (not covered by metrics 5a-5e3)	Informational Only	State			780					
7b	Violations found during inspections	Review Indicator	State		32.50%	44.70%	384	860	476		

Metric	Metric Name	Metric Type	Agency	Nat'l Goal	Nat'l Avg	New York	Count	Universe	Not Counted	Initial Finding	Explanation
8a	SNC identification rate	Review Indicator	State		1.60%	0.50%	4	860	856		Indicates need for supplemental file review.
8b	Timeliness of SNC determinations	Goal	State	100%	81.70%	33.30%	3	9	6	Area for State Improvement	Indicates need for supplemental file review.
10a	Timely enforcement taken to address SNC	Review Indicator	State	80%	81.80%	70%	7	10	3		Indicates need for supplemental file review.

## Appendix B: File Metric Analysis

This section presents file metric values with EPA’s initial observations on program performance. Initial findings are developed by EPA at the conclusion of the file review.

Initial findings are statements of fact about observed performance. They should indicate whether there is a potential issue and the nature of the issue. They are developed after comparing the data metrics to the file metrics and talking to the state.

Final findings are presented above in the CWA, CAA and RCRA Findings section.

Because of limited sample size, statistical comparisons among programs or across states cannot be made.

### CWA

State: New York

Review Year: FY 2011

CWA Metric #	Description	Numerator	Denominator	Metric Value	Goal	Initial Findings	Details
2b	Percentage of files reviewed where data in the file are accurately reflected in the national data systems	22	52	42.3%	95%	State Improvement	Majority of inspections are not entered into ICIS.
3a	Timeliness of mandatory data entered in the national data system	33	52	63.5%	100%	State Improvement	Relates to previous finding; due to lack of inspection data being entered into ICIS (and related SEV and RNC/SNC determinations), data is not entered in a timely fashion.
4a1	Pretreatment compliance inspections and audits	0	58	0	100%		No state commitment.
4a2	Significant industrial user (SIU) inspections for SIUs discharging to non-authorized POTWs	0	48	0	100%		No state commitment.
4a3	EPA and state oversight of SIU inspections by approved POTWs	0	0		100%		No state commitment.

CWA Metric #	Description	Numerator	Denominator	Metric Value	Goal	Initial Findings	Details
4a4	Major CSO inspections	67	46	88.2%	100%	State Attention	NYSDEC exceeded the CMS goal which requires an inspection of all majors once every 3 years. Therefore, the CMS goal is at least 25 inspections annually. With 67 inspections done in FY2011, NYSDEC exceeded the goal, but did not meet its stated commitment of 76.
4a5	SSO inspections	0	0		100%		Not tracked and not part of CMS
4a6	Phase I MS4 audits or inspections	41	40	102.5%	100%	Meets Requirements	
4a7	Phase II MS4 audits or inspections	0	See above		100%		State does not distinguish between Phase I and Phase II when counting
4a8	Industrial stormwater inspections	26	11	236.4%	100%	Meets Requirements	
4a9	Phase I and II stormwater construction inspections	313	373	83.9%	100%	State Attention	Did not inspect CMS commitment of 373
4a10	Inspections of large and medium NPDES-permitted CAFOs	90	114	78.9%	100%	State Improvement	Did not inspect CMS commitment of 114
4a11	Inspections of non-permitted CAFOs	0	0		100%		Not tracked and not part of CMS
4a12	NPDES – Major – CEI or CSI	259	226	114.6%	100%	Meets Requirements	
4a13	NPDES – Minor – CEI or CSI	680	595	114.3%	100%	Meets Requirements	

CWA Metric #	Description	Numerator	Denominator	Metric Value	Goal	Initial Findings	Details
4a14	Biosolids	0	0		100%		No state commitment
4b	CWA compliance and enforcement commitments other than CMS commitments, including work products/commitments in PPAs, PPGs, grant agreements, MOAs, MOUs or other relevant agreements	9	11	81.8%	100%	State Attention	See Metric 3a - required WENDB (or RIDE) elements are not being entered into ICIS-NPDES
6a	Percentage of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance	47	59	79.7%	100%	State Attention	Majority of inspection reports do not provide justification for ratings (if assigned) and there is no supporting documentation (e.g. photographs) for deficiencies or potential violations observed during an inspection. Inspection reports do not relate findings to specific permit requirements or regulatory citations (with the exception of construction stormwater).
6b	Inspection reports completed within the prescribed time frame: Percentage of inspection reports reviewed that are timely	47	59	79.7%	100%	State Attention	Inspection reports are generally completed within 30 days with a few outliers. Majority are completed within one day of the inspection. However, not all inspection reports (e.g. reconnaissance inspections) are transmitted to the facility. NYSDEC stated that reconnaissance inspections are not required to be sent to the facility; however, NYSDEC uses reconnaissance inspections to obtain a preliminary overview of a permittee's compliance program.
7e	Inspection reports reviewed that led to an accurate compliance determination	25	32	78.1%	100%	State Improvement	Majority of inspection reports reviewed lead to accurate compliance determination; however, some reports rated facilities as satisfactory even though elements of the respective checklists were marked marginal or unsatisfactory. It is recommended that NYSDEC inspectors substantiate inspection reports with justification for ratings.
8b	Percentage of single event violation(s) that are accurately identified as SNC or Non-SNC	0	0		100%	State Improvement	State does not enter SEVs, with exception of one facility that has SEV violations as a permit condition.

CWA Metric #	Description	Numerator	Denominator	Metric Value	Goal	Initial Findings	Details
8c	Percentage of SEVs Identified as SNC reported timely	0	0		100%	State Improvement	State does not enter SEVs; SEVs reported on four (4) DFRs reviewed were entered by EPA, not state. Need to address data reporting and differentiating between EPA and state entered data.
9a	Percentage of enforcement responses that return or will return source in SNC to compliance	18	23	78.3%	100%	State Attention	Majority of enforcement responses return a facility to compliance via compliance schedules in Orders on Consent. Some Orders did not have compliance schedules and it was not possible to determine whether or not the facility would return to compliance. SNC facilities all returned to compliance.
10b	Enforcement responses reviewed that address violations in a timely manner	6	23	26.1%	100%	State Improvement	Majority of enforcement responses are not taken in a timely manner to address violations. Some facilities had several years of violations before enforcement was taken or enforcement response exceeded the state's policy of 30 days (per TOGS 1.4.2). It is important to note that some enforcement actions took several years to resolve due to complex issues (e.g. financial, municipal government, etc.).
11a	Percentage of penalty calculations reviewed that consider and include, where appropriate, gravity and economic benefit	1	22	4.5%	100%	State Improvement	State does not calculate economic benefit. Gravity is documented utilizing the state's TOGS (1.4.2); however, economic benefit is not calculated. In one case where it was calculated, the rationale for economic benefit was not documented. When expedited enforcement is utilized (e.g. for failing to submit DMRs, annual reports, etc), NYSDEC uses a flat assessment per the TOGS to determine the penalty. The state's expedited enforcement tool is a highly efficient and streamlined method which allows the state to take prompt and immediate action for specific violations. However, the rationale for the flat assessment of penalties calculated as part of expedited enforcement was not documented in the respective files.
12a	Percentage of penalties reviewed that document the difference between the initial and final assessed penalty, and the rationale for that difference	0	17	0%	100%	State Improvement	The state does not document the difference between initial and final assessed penalties. Generally, once the penalty is developed as part of a case referral to NYSDEC legal staff, the final penalty is adjusted via negotiations.

CWA Metric #	Description	Numerator	Denominator	Metric Value	Goal	Initial Findings	Details
12b	Percentage of penalty files reviewed that document collection of penalty	20	22	90.9%	100%	Meets Expectations	Majority of files reviewed contained documentation that penalty was collected and one file showed that 100% of the penalty was suspended, thus it was never collected.

## CAA

State: New York

Review Year: FY 2011

CAA Metric #	Description	Numerator	Denominator	Metric Value	Goal	Initial Findings	Details
2b	Percentage of files reviewed where data in the file are accurately reflected in AFS	30	37	81.1%	100%	State Attention	
4a1	Title V Major FCEs	249	216	115.3%	100%	Meets Expectations	
4a2	SM-80 FCEs	124	108	114.8%	100%	Meets Expectations	
4a3	Synthetic Minor FCEs	0	0	N/A	100%		No state commitment.
4a4	Other Minor FCEs	0	0	N/A	100%		No state commitment.
4a5	Title V Major PCEs	0	0	N/A	100%		No state commitment.
4a6	SM-80 PCEs	0	0	N/A	100%		No state commitment.
4a7	Synthetic Minor PCEs	0	0	N/A	100%		No state commitment.

CAA Metric #	Description	Numerator	Denominator	Metric Value	Goal	Initial Findings	Details
4a8	Other Minor PCEs	0	0	N/A	100%		No state commitment.
4b	CAA compliance and enforcement commitments other than CMS commitments	2	2	100%	100%	Meets Expectations	Most of these commitments do not deal with enforcement.
6a	Percentage of FCEs in the files reviewed that meet the definition of a FCE per the CMS policy	28	29	96.6%	100%	Meets Expectations	
6b	Percentage of CMRs or facility files reviewed that provide sufficient documentation to determine facility compliance	29	30	96.7%	100%	Meets Expectations	
7a	Percentage of CMRs or facility files reviewed that led to accurate compliance determinations	29	30	96.7%	100%	Meets Expectations	
8c	Percentage of violations in files reviewed that were accurately determined to be HPVs	20	21	95.2%	100%	Meets Expectations	
9a	Percentage of formal enforcement responses reviewed that include required corrective actions that will return the source to compliance in a specified time frame.	17	17	100%	100%	Meets Expectations	
10b	Percentage of enforcement responses for HPVs that appropriately address the violations	4	4	100%	100%	Meets Expectations	

CAA Metric #	Description	Numerator	Denominator	Metric Value	Goal	Initial Findings	Details
11a	Percentage of penalty calculations reviewed that consider and include, where appropriate, gravity and economic benefit	1	16	6.3%	100%	State Improvement	
12a	Percentage of penalties reviewed that document the difference between the initial and final assessed penalty, and the rationale for that difference	1	14	7.1%	100%	State Improvement	
12b	Percentage of penalty files reviewed that document collection of penalty	13	14	92.9%	100%	State Improvement	

## RCRA

State: New York

Review Year: FY 2011

RCRA Metric #	Description	Numerator	Denominator	Metric Value	Goal	Initial Findings	Details
2b	Percentage of files reviewed where data in the file are accurately reflected in the national data system	48	53	90.6%	100%	State Attention	Although the metric is 93.2%, RCRAInfo shows 25 formal enforcement actions while NYSDEC claims 31 formal enforcement actions in its semiannual reports. Formal enforcement actions must be properly recorded; hence the finding of Area for Attention.
3a	Percentage of files reviewed where mandatory data are entered in the national data system in a timely manner	50	53	94.3%	100%	Meets Expectations	
4a	Percentage of non-inspection commitments completed in the review year	25	45	55.6%	100%	State Improvement	The State had committed to 45 formal enforcement action but had only completed 25 according to RCRAInfo. NYSDEC did commit to 256 warning letters which it exceeded with a total report of 308 warning letters.
4b1	LQGs	196				Meets Expectations	NYSDEC committed to inspect 189 LQGs but inspected 196.
4b2	SQGs	250				Meets Expectations	NYSDEC committed to inspect 292 "other generators and non-notifiers", and inspected 605 facilities.
4b3	CESQGs	238				Meets Expectations	NYSDEC committed to inspect 292 "other generators and non-notifiers", and inspected 605 facilities.

RCRA Metric #	Description	Numerator	Denominator	Metric Value	Goal	Initial Findings	Details
4b4	Transporters	4				Meets Expectations	NYSDEC committed to inspect 292 "other generators and non-notifiers", and inspected 605 facilities.
6a	Percentage of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance	43	53	81.1%	N/A	State Improvement	Many SV reports and Notices of Violations lacked adequate description of facility operations, types and quantities of hazardous waste generated, and the degree of deviation from cited violations. For example, NOVs merely cited "you have not met this requirement" without quantifying the violation. In another case, the inspection report stated that the facility stored hazardous waste for more than one year, yet this violation was not cited in the NOV.
6b	Percentage of inspection reports reviewed that are timely	52	53	98.1%	100%	Meets Expectations	
7a	Inspection reports reviewed that led to an accurate compliance determinations	50	53	94.3%	100%	Meets Expectations	
8c	Percentage of files reviewed in which significant noncompliance (SNC) status was appropriately determined during the review year	51	53	96.2%	100%	Meets Expectations	
9a	Percentage of enforcement responses that return or will return source in SNC to compliance	10	11	90.9%	100%	State Improvement	One 2007 SNC with no enforcement action due to ongoing criminal investigation. One SV failed to RTC and should be designated SNC. Although the metric% is 90.7%, one particular SV was recalcitrant and not brought into compliance; therefore, it should have been redesignated SNC. Also, while not part of the file review, RCRAInfo indicated 116 SVs had not been returned to compliance in 240 days. This may be due to failure to enter data. Because of these two issues, this is being designated an area for improvement.
9b	Percentage of enforcement responses that have returned or will return a secondary violator to compliance	37	41	90.2%	100%	State Improvement	
10b	Percentage of files with enforcement responses that are appropriate to the violations	49	53	92.5%	100%	Meets Expectations	

RCRA Metric #	Description	Numerator	Denominator	Metric Value	Goal	Initial Findings	Details
11a	Percentage of penalty calculations reviewed that consider and include, where appropriate, gravity and economic benefit	9	11	81.8%	100%	State Improvement	Although gravity was considered, economic benefit was not considered for two cases. Two other SNCs did not have penalty calculations available for review.
12a	Percentage of penalties reviewed that document the difference between the initial and final assessed penalty, and the rationale for that difference	6	11	54.5%	100%	State Improvement	Four had no documentation, one of which had proposed an Environmentally Beneficial Project but no documentation existed regarding the project or penalty. Two were appropriate. Three had documentation but it was put into the file long after the case was settled. Also, in three cases penalties were suspended simply because the facilities returned to and/or agreed to remain in compliance.
12b	Percentage of penalty files reviewed that document collection of penalty	8	11	72.7%	100%	State Improvement	No documentation of penalty collection in file for two cases. Also, in one multimedia case, the entire penalty amount was entered into RCRAInfo as the RCRA penalty.

## **Appendix C: File Selection**

Files are selected according to a standard protocol using a web-based file selection tool. These are designed to provide consistency and transparency to the process. Based on the description of the file selection process below, states should be able to recreate the results in the table.

### **Clean Water Act**

#### **File Selection Process**

Based on the number of records returned via the File Selection Tool (1,359), the universe of files selected was 35 to 40, plus Permit Quality Review files (10 Core Permits + 5 Special Focus Area Permits). Therefore, EPA requested a total of fifty-two (52) files. The representative file selection method was conducted using the methodology described in the File Selection Protocol. Thirty-four (34) files were selected as representative files. Of the thirty-four files, EPA selected nine (9) major facilities and twenty-four (24) non-major facilities because the facility had at least one compliance evaluation or compliance monitoring activity conducted or at least one enforcement action (e.g. formal action and/or penalty) taken during the review year. EPA also selected one major facility with a SEV, but no compliance monitoring or enforcement activity taken during the review year. The mix of files reviewed included (according to OTIS) 16 POTWs, 9 POTW and pretreatment, 2 stormwater construction, 3 stormwater industrial, 6 CAFOs, and 1 stormwater small MS4, and 15 uncategorized/unclassified. All 52 of the requested files were received and reviewed.

EPA also selected six (6) supplemental files to review SEV data entry and non-compliance rate for non-majors. Supplemental files are used to ensure that the region has enough files to look at to understand whether a potential problem pointed out by data analysis, is in fact, a problem.

The remaining twelve (12) files are Permit Quality Review files that are required to be integrated into the SRF review. Ten (10) files are core permit review files and three (3) are additional Special Focus Area files (CAFOs). The Region reviewed a total of six (6) CAFO files which exceeds the minimum requirement for the Special Focus Area review as two facility files were captured as part of the Region's representative file review and an additional two (2) facility files were captured as part of the Region's supplemental file review.

## File Selection Table

	City	Permit	Inspections	Violation	SEVs	SNC	Informal Actions	Formal Actions	Penalties	Universe	Selection
Facility 1	Beaver Falls		0	Yes	0	No	0	1	1000	Major	R
Facility 2	Upton		1	Yes	0	SNC	0	0	0	Major	R
Facility 3	Glenmont		1	Yes	0	No	0	0	0	Major	R
Facility 4	Waterford		0	Yes	14	SNC	0	1	60000	Major	R
Facility 5	Hamilton	POTW	1	Yes	0	No	0	0	0	Major	R
Facility 6	Auburn	POTW, Pretreatment	1	Yes	2	No	0	0	0	Major	R
Facility 7	Brooklyn	POTW, Pretreatment	0	Yes	0	SNC	0	3	542000	Major	R
Facility 8	Rockaway	POTW, Pretreatment	0	Yes	0	No	0	2	240000	Major	R
Facility 9	Brooklyn	POTW, Pretreatment	1	Yes	0	No	0	1	240000	Major	R
Facility 10	Seneca Falls	POTW	0	Yes	1	No	0	0	0	Major	R
Facility 11	Watkins Glen		1	Yes	0	No	0	0	0	Non-Major	R
Facility 12	Valatie	POTW	0	Yes	0	No	0	1	6000	Non-Major	R
Facility 13	Lyons	POTW, Pretreatment	1	Yes	0	No	0	0	0	Non-Major	R
Facility 14	Madrid	POTW	3	Yes	0	Category 1	0	0	0	Non-Major	R
Facility 15	Ripley	POTW	1	Yes	0	No	0	0	0	Non-Major	R
Facility 16	Sag Harbor	POTW	4	Yes	0	No	0	0	0	Non-Major	R
Facility 17	Kirkland	POTW	1	No	0	No	0	1	1500	Non-Major	R
Facility 18	Brasher Falls	POTW	1	Yes	0	No	0	0	0	Non-Major	R
Facility 19	Cortland		1	No	0	No	0	0	0	Non-Major	R
Facility 20	Brooklyn		1	Yes	0	No	0	0	0	Non-Major	R
Facility 21	Astoria		2	No	0	No	0	0	0	Non-Major	R
Facility 22	Florida		0	No	0	No	0	1	60000	Non-Major	R
Facility 23	Model City		1	No	0	No	0	0	0	Non-Major	R
Facility 24	Kirkwood		0	Yes	0	Category 1	0	1	75000	Non-Major	R
Facility 25	Lyons Falls	POTW	1	Yes	0	No	0	0	0	Non-Major	R
Facility 26	Shelter Island Heights		1	Yes	0	Category 1	0	0	0	Non-Major	R
Facility 27	Oakdale	Stormwater Industrial	0	No	0	No	0	1	500	Non-Major	R
Facility 28	Brooklyn	Stormwater Industrial	0	No	0	No	0	1	0	Non-Major	R
Facility 29	Shawangunk	Stormwater Industrial	0	No	0	No	0	1	0	Non-Major	R
Facility 30	Beekmantown	Stormwater Construction	0	No	0	No	0	1	37500	Non-Major	R
Facility 31	Kiryas Joel	Stormwater Small MS4s	0	No	0	No	0	2	78000	Non-Major	R

	City	Permit	Inspections	Violation	SEVs	SNC	Informal Actions	Formal Actions	Penalties	Universe	Selection
Facility 32	Salina		0	No	0	No	0	1	0	Non-Major	R
Facility 33	Aurora	CAFO	0	No	0	No	0	1	3000	Non-Major	R
Facility 34	Buskirk	CAFO	0	No	0	No	0	1	20000	Non-Major	R
Facility 35	Amityville	Stormwater Industrial	0	No	1	No	0	0	0	Non-Major	S
Facility 36	Clifton Springs	POTW	0	Yes	0	No	0	0	0	Non-Major	S
Facility 37	Binghamton	POTW	2	Yes	0	No	0	0	0	Non-Major	S
Facility 38	Mellenville		0	Yes	0	No	0	0	0	Non-Major	S
Facility 39	Prattsburg	CAFO	0	No	2	No	0	0	0	Non-Major	S
Facility 40	Winfield	CAFO	0	No	3	No	0	0	0	Non-Major	S
Facility 41	Dunkirk		0	Yes	0	No	0	0	0	Major	PQR
Facility 42	Amsterdam	POTW, Pretreatment	0	Yes	0	SNC	0	0	0	Major	PQR
Facility 43	Little Falls	POTW, Pretreatment	0	Yes	0	No	0	0	0	Major	PQR
Facility 44	Victor	POTW	0	Yes	0	No	0	0	0	Major	PQR
Facility 45	Middletown	POTW, Pretreatment	1	Yes	0	SNC	0	0	0	Major	PQR
Facility 46	Port Washington	POTW	0	Yes	0	No	0	0	0	Major	PQR
Facility 47	Endicott	POTW, Pretreatment	1	Yes	0	No	0	0	0	Major	PQR
Facility 48	Albion	POTW	0	Yes	0	No	0	0	0	Major	PQR
Facility 49	Warwick	POTW	0	Yes	0	No	0	0	0	Non-Major	PQR
Facility 50	Coxsackie	POTW	0	Yes	0	No	0	0	0	Non-Major	PQR
Facility 51	Clifton Springs	CAFO	0	No	0	No	0	1	8500	Non-Major	PQR
Facility 52	Perry	CAFO	0	No	0	No	0	1	2000	Non-Major	PQR

## Clean Air Act

### File Selection Process

Based on the number of records returned via the File Selection Tool (680), the universe of files selected was 35 to 40. Therefore, EPA requested a total of thirty-five (35) files. The representative file selection method was conducted using the methodology described in the File Selection Protocol. Five files from each of five areas (Informal Actions, Formal Actions, Penalties, Violations with No Enforcement, and Multiple Inspections with No Enforcement) and ten full compliance evaluations (FCEs) were selected. The 35 files included 20 majors, 10 SM80s and 5 minors, and a mix of facilities with and without violations, as well as inspections with and without enforcement. More than half of the facilities selected had some type of enforcement activity. No supplemental files were selected. All 35 of the requested files were received and reviewed.

### File Selection Table

	City	FCEs	Violations	Stack Test Failed	HPVs	Informal Actions	Formal Actions	Penalties	Violations No Enforcement	Multiple Inspections No Enforcement	Universe
Facility 1	Buffalo	0	1	0	0	1	0	0	0	0	Major
Facility 2	Oswego	1	0	0	0	1	0	0	0	0	Major
Facility 3	New York	1	1	0	0	3	0	0	0	0	Major
Facility 4	Middletown	1	1	0	0	1	1	37500	0	0	Major
Facility 5	Jamestown	0	1	0	0	6	1	35775	0	0	Major
Facility 6	New York	0	1	0	0	0	1	1750	0	0	SM 80
Facility 7	Lowville	1	1	2	1	2	1	5600	0	0	Major
Facility 8	Stormville	0	1	0	0	0	1	1500	0	0	SM 80
Facility 9	New York	0	1	0	0	0	1	15000	0	0	SM 80
Facility 10	East Patcuogue	0	1	0	0	1	1	2250	0	0	SM 80
Facility 11	Croton	0	1	0	0	0	1	650	0	0	Minor
Facility 12	Bronx	0	1	0	1	1	1	5000	0	0	Minor
Facility 13	Saugerties	0	0	0	0	0	1	750	0	0	Minor
Facility 14	Plattsburgh	1	1	0	0	0	1	10000	0	0	Major
Facility 15	Neversink	0	1	0	0	0	1	1000	0	0	Minor
Facility 16	Rensselaer	1	0	0	0	0	0	0	0	0	Major
Facility 17	Schuyler Falls	1	1	4	0	1	1	750	0	0	SM 80
Facility 18	Woodstock	1	0	0	0	0	0	0	0	0	SM 80
Facility 19	Granville	1	0	0	0	0	0	0	0	0	Major
Facility 20	Riders Mills	1	0	0	0	0	0	0	0	0	Major
Facility 21	Canastota	1	0	0	0	0	0	0	0	0	Major

	City	FCEs	Violations	Stack Test Failed	HPVs	Informal Actions	Formal Actions	Penalties	Violations No Enforcement	Multiple Inspections No Enforcement	Universe
Facility 22	Chemung	1	0	0	0	0	0	0	0	0	Major
Facility 23	Greenwich	1	0	2	0	0	0	0	0	0	Major
Facility 24	Astoria	1	0	0	0	0	0	0	0	0	Major
Facility 25	Albany	1	1	2	1	0	0	0	0	0	Major
Facility 26	Bronx	0	1	0	0	0	0	0	1	0	SM 80
Facility 27	St Johnsville	1	1	0	0	0	0	0	1	0	SM 80
Facility 28	Medina	1	1	0	0	0	0	0	1	0	SM 80
Facility 29	Riverhead	0	1	0	0	0	0	0	1	0	Minor
Facility 30	Peerskill	1	1	0	0	0	0	0	1	0	Major
Facility 31	Andover	2	0	0	0	0	0	0	0	1	Major
Facility 32	Woodhull	2	0	0	0	0	0	0	0	1	Major
Facility 33	Tonawanda	2	0	0	0	0	0	0	0	1	Major
Facility 34	Syracuse	2	0	0	0	0	0	0	0	1	Major
Facility 35	Fulton	2	0	0	0	0	0	0	0	1	SM 80

## Resource Conservation and Recovery Act

### File Selection Process

Based on the number of records returned via the File Selection Tool (902), the universe of files selected was 30 to 35. EPA requested a total of thirty-five (35) files. At the time of the file selection, the automated tool was not working, so the Advanced Sort functions were used to sort the facility list and random selection was performed following the protocol laid out in the File Selection Protocol. Region 2 was informed that NYSDEC has shifted RCRA hazardous waste compliance and enforcement responsibilities from its Central Office to its nine Regional Offices; therefore, the file selection included facilities from all nine NYSDEC Regions. Five files with Informal Actions (one of every 78 out of 391 selected), five files with Formal Actions (one of every 4 out of 22 selected), five files with penalties (one of every 3 out of 17 selected), fifteen files with inspections (one of every 60 out of 874 selected), two files with multiple inspections but no violations found, and three files with multiple violations found but no enforcement taken, were selected for review. The preliminary data metric analysis indicated a supplemental file selection may be warranted for the NYSDEC's SNC Identification Rate. Region 2 selected ten facilities where informal action was taken but formal action was not, with at least one file from each NYSDEC Region. All 45 of the requested files were received and reviewed.

## File Selection Table

	County	Inspections	Violations	SNC	Informal Actions	Formal Actions	Penalties	Universe	Selection
Facility 1	Steuben	1	0	0	0	0	0	TSDf LQG	R
Facility 2	Suffolk	1	5	0	1	1	6900	TSDf SQG	R
Facility 3	Warren	2	0	0	0	0	0	TSDf CESQG	R
Facility 4	Saratoga	2	3	1	1	1	0	TSDf LQG	R
Facility 5	Chautauqua	1	1	0	1	0	0	TSDf LQG	R
Facility 6	Monroe	0	0	0	0	1	4500	TSDf CESQG	R
Facility 7	Jefferson	1	8	0	1	0	0	TSDf LQG	R
Facility 8	Erie	1	0	0	0	0	0	TSDf SQG	R
Facility 9	Orange	2	10	0	0	1	150000	TSDf LQG	R
Facility 10	Monroe	1	4	0	0	0	0	TSDf	R
Facility 11	Orange	1	9	0	0	0	0	TSDf LQG	R
Facility 12	Suffolk	1	5	0	1	0	0	TSDf LQG	R
Facility 13	Greene	1	0	0	0	0	0	TSDf LQG	R
Facility 14	Schenectady	1	1	0	1	0	0	TSDf	R
Facility 15	Westchester	1	2	1	1	2	9496	TSDf LQG	R
Facility 16	Erie	2	0	0	0	0	0	TSDf LQG	R
Facility 17	New York	1	17	0	1	0	0	TSDf LQG	R
Facility 18	Orange	1	6	0	1	0	0	TSDf SQG	R
Facility 19	Oneida	1	0	0	0	0	0	TSDf	R
Facility 20	Albany	3	8	1	0	2	56000	TSDf LQG	R
Facility 21	New York	1	1	0	1	0	0	TSDf CESQG	R
Facility 22	Schenectady	1	0	0	0	0	0	TSDf CESQG	R
Facility 23	Montgomery	1	1	0	1	0	0	TSDf CESQG	R
Facility 24	Erie	1	0	0	0	0	0	TSDf SQG	R
Facility 25	Montgomery	2	0	0	0	2	7500	TSDf LQG	R
Facility 26	Albany	2	0	0	1	0	0	TSDf	R
Facility 27	Franklin	1	11	1	1	0	0	TSDf	R
Facility 28	Suffolk	1	0	0	0	0	0	TSDf	R
Facility 29	Queens	1	13	0	0	0	0	TSDf SQG	R
Facility 30	Nassau	0	0	1	0	1	0	TSDf LQG	R
Facility 31	Suffolk	0	5	1	0	2	14900	TSDf SQG	R
Facility 32	Albany	1	0	0	0	0	0	TSDf CESQG	R
Facility 33	Queens	1	2	0	1	0	0	TSDf CESQG	R

	County	Inspections	Violations	SNC	Informal Actions	Formal Actions	Penalties	Universe	Selection
Facility 34	Suffolk	0	0	0	0	1	30000	TSDf SQG	R
Facility 35	Chautauqua	1	1	0	1	0	0	TSDf	R
Facility 36	Suffolk	1	19	0	1	0	0	TSDf SQG	S
Facility 37	Queens	1	22	0	1	0	0	TSDf SQG	S
Facility 38	Orange	1	17	0	1	0	0	TSDf LQG	S
Facility 39	Westchester	1	15	0	1	0	0	TSDf LQG	S
Facility 40	Rensselaer	1	13	0	1	0	0	TSDf LQG	S
Facility 41	Flinton	1	1	0	1	0	0	TSDf LQG	S
Facility 42	Oneida	1	1	0	1	0	0	TSDf CESQG	S
Facility 43	Onondaga	2	2	0	2	0	0	TSDf	S
Facility 44	Monroe	1	3	0	2	0	0	TSDf LQG	S
Facility 45	Niagara	1	6	0	1	0	0	TSDf CESQG	S

## Appendix D: Status of Past SRF Recommendations

During the Round 1 SRF review of New York State’s compliance and enforcement programs, Region 2 recommended actions to address issues found during the review. The following table contains all completed recommendations for Round 1; there are no outstanding recommendations. The statuses in this table are current as of March 4, 2013.

For a complete and up-to-date list of recommendations from Rounds 1 and 2, visit the [SRF website](#).

Round	Status	Completion Date	Media	E#	Element Number	Year	Finding	Recommendation Narrative
1	Completed	02/05/2009	CAA	E7	Violations IDed Appropriately	2004	There are no Department-wide Standard Operating Procedures (SOPs) for contents of an inspection report. Some regions have their own policies; the NYSDEC Region 6 SOP that contains an inspection report template was provided to us for review. While we were told that the Region 6 SOP is similar to SOPs used in other Regions, we did not review SOPs from Regions other than Region 6. For the inspection reports that were reviewed (35 reports), 24 reports were deemed to be incomplete, as they failed to include some of the basic elements of a compliance monitoring report set forth in the Compliance Monitoring Strategy. These elements include: accurate inventory and description of regulated emission units and processes, and an enforcement history. The inspection reports did not provide clear documentation that a comprehensive on-site inspection was conducted and one could not determine what was inspected and how the inspector determined compliance.	To ensure all permit conditions, applicable regulations and current enforcement actions are evaluated, create an option/field within the NYS AFS to automatically create an inspection checklist from the information contained in NYS AFS including the sources permit or registration. Region 2 recommends the development of an inspection report template similar to the one developed by NYSDEC Region 6. Elements of the Region 6 template that were lacking in other reports include: date of report; an indication of all applicable rules; space for recommendations, emission point breakdown, a description of stationary combustion installations, a description of particulate and HAP sources, and a description of other process sources; a table for a facility-wide emissions summary (actual and potential); and a form for field inspection observations. Hard copies of these documents or an electronic version should be maintained in the source file or NYS AFS database. A combination of the NYS AFS derived checklist and the Region 6 template facilitates more thorough inspection reports. NYSDEC should ensure that all inspection reports contain the basic elements for a compliance monitoring report that are specified in the Compliance Monitoring Strategy.

Round	Status	Completion Date	Media	E#	Element Number	Year	Finding	Recommendation Narrative
1	Completed	03/17/2007	CAA	E8	SNC Accuracy	2004	In New York, HPV cases are batch uploaded to AIRS periodically (monthly), meaning there is an immediate delay to when HPVs are reported to EPA. Also, NYSDEC does not assign a violation a day zero and upload the data to AIRS until a case is created. They do this as part of their quality assurance process. Region 2 evaluated 30 HPVs that were identified at facilities for which we reviewed either an inspection or an enforcement file during the file review process. Of the 30 HPVs (dating back to 2000), 16 of them (53%) were not reported to EPA within 90 days. During the file and data review, we found three (3) violations that should have been identified as HPVs and possibly two (2) more, but additional information is needed for a final determination.	Comply with the HPV policy and identify HPVs discovered during separate compliance activities conducted greater than 30 days apart at a single source as separate HPVs. Ensure that HPVs are being reported to the EPA within the timeframes specified by the HPV policy (a maximum of 90 days). Implement a protocol for consultation with the EPA.
1	Completed	11/06/2007	CAA	E11;E12	Penalty Calculations; Penalties Collected	2004	EPA identified several issues related to penalty calculation and collection across all programs.	Specifically, NYSDEC should, in all cases, factor into their civil penalty calculations the economic benefit accrued by the facility due to noncompliance. EPA shall provide training.
1	Completed	01/31/2008	CAA; CWA; RCRA			2004	The decentralized organizational structure of NYSDEC, while having an advantage of assuring a more localized response, may contribute to inconsistent implementation of policies and programs state-wide.	EPA recommends that NYSDEC Central Office work with the nine NYSDEC regional offices to ensure that the States policies and standard operating procedures (SOPs) are being fully and consistently implemented on a Statewide basis. EPA Region 2 also recommends that NYSDEC develop department-wide SOPs with regard to file maintenance, inspection documentation and penalty calculations. More specific suggestions are identified in the body of the report.
1	Completed	04/01/2009	CAA			2004	NYSDEC has raised the concern that some of the information in their inspection and enforcement files must be deemed confidential with respect to all third parties.	NYSDEC has offered solutions to this issue and EPA agrees with them, specifically, 1) establish a standard inspection report containing only the inspectors factual observations, with no opinions; and 2) include an initial penalty calculation in the file, per the CAA civil penalty policy, and upon the conclusion of the case, the attorney would include a final justification memo that explains the reasons for any deviations from staff calculations in a FOIL-able manner which does not violate any privileges.

Round	Status	Completion Date	Media	E#	Element Number	Year	Finding	Recommendation Narrative
1	Completed	11/20/2007	CAA	E10	Timely & Appropriate Actions	2004	In FY 2004, out of 104 HPVs characterized as unaddressed, 77 HPVs exceeded the 270 day timeliness threshold for receiving an addressing action. Therefore, 74.0 % of HPVs characterized as unaddressed in FY 2004 were not addressed within 270 days, which is above the national average of 58.6%. NYSDEC does not have the authority to issue unilateral administrative orders, therefore, all orders must be negotiated, which may require additional time. Generally, NYSDEC has issued the source a NOV and a proposed Order on Consent, however, this is not considered an addressing action by EPA. If the facility is not cooperative they will then issue a Notice of Hearing and Complaint. NYSDEC has stated that additional reasons for the extended time frames for addressing HPVs are the types of violations (PSD cases at electric utilities), the type of source (facilities owned by a government agency) and some cases required the negotiation of an Environmentally Beneficial Project (EBP).	The state should prioritize its enforcement actions so that HPVs are addressed within 270 days. Also, the State should more frequently use their authority to issue Notices of Hearing and Complaint or refer cases to the State Attorney Generals office and not allow cases to remain unaddressed for extended periods of negotiation.
1	Completed	02/05/2009	RCRA	E5	Insp Universe	2004	The NYSDEC and EPA combined only inspected about 80 percent of LQGs during the FY 2000-2004 period (This 80% level is based on the number of LQGs that reported under the Biennial Reporting System for each of the years 1999, 2001, and 2003; these LQGs were considered to represent the permanent LQG universe that needs to be inspected over the five year period.)	EPA and the State need to continue to work together during the planning process to ensure that all the above LQGs are inspected over the five year period.
1	Completed	09/28/2007	CWA	E11	Penalty Calculations	2004	For the majority of the files EPA reviewed, no gravity or economic benefit calculations were completed. Nor were TOGS penalty assessment guidance used in the majority of the files reviewed.	EPA recommends that NYSDEC Central Office oversee more closely the nine NYSDEC regional offices to ensure that the states TOGS are being followed and implemented including stipulated penalties, for delays in attaining compliance with milestones established in Orders and will work to ensure consistency in the 9 Regions.
1	Completed	09/28/2007	CWA	E12	Penalties Collected	2004	None of the enforcement actions reviewed included economic benefit and gravity. The documentation for final penalties assessed was not present in the files. However, it was clear that the penalties were not consistent with the TOGS. In addition, most of the enforcement actions issued contained suspended penalties (100% suspended with a few partial suspensions). Minimal documentation was found in the files indicating whether or not penalties were collected, when they were assessed and not suspended. No documentation in majority of files indicating whether or not stipulated penalties were assessed and collected for facilities missing compliance schedules or milestones in consent orders.	EPA recommends that NYSDEC Central Office oversee more closely the nine NYSDEC regional offices to ensure that the states TOGS are being followed and implemented.

Round	Status	Completion Date	Media	E#	Element Number	Year	Finding	Recommendation Narrative
1	Completed	10/11/2007	RCRA	E11; E12	Penalty Calculations; Penalties Collected	2004	In all but one of the SNC cases, the gravity portion of the penalty was appropriately calculated according to EPA's 2003 RCRA penalty policy. In one case, multi-day penalties should have been assessed for the violation of storage in excess of 180 days, but this was not done. In general, the State does not assess multi-day penalties nor do they evaluate economic benefit. All but one final order of 25 such actions reviewed, included a specific penalty.	NYSDEC should calculate multi-day penalties and the economic benefit accrued by the facility due to noncompliance immediately following formal training by EPA on these issues and, if necessary, the development of any internal NYSDEC penalty guidance toward such penalty calculations.
1	Completed	09/28/2007	CWA	E2	Data Accurate	2004	NYSDEC is not linking actions to violations.	NYSDEC should begin linking actions to violations.
1	Completed	02/05/2009	CAA	E1	Data Complete	2004	Discrepancies between the NYSAFS and the federal AIRS were discovered.	The data in AIRS needs to be maintained in a manner consistent with that which is maintained in NYS AFS for federally reportable compliance and enforcement activities. Efforts should be made to reconcile the data in the two databases to the greatest extent possible. Additionally, EPA and NYSDEC should continue to support the modernization of both databases to establish mechanisms for a more efficient and comprehensive interface between the two databases. Upon modification of the NYS AFS, NYSDEC should accept the authority to update the CMS Indicator and Frequency Code in AIRS.
1	Completed	09/28/2007	CWA	E5	Insp Universe	2004	According to PCS, NYSDEC inspected 69.1% of all the majors, which is greater than the national average of 64.2% of all majors inspected. Yet, the percentage of majors inspected is lower than NYSDEC's policy. According to NYSDEC's Inspection of Major and Significant Minor Wastewater Facilities Technical and Operational Guidance Series (TOGS), it is the policy to conduct at least one comprehensive inspection of each major and significant minor facility each year.	EPA recommends that NYSDEC continue to implement and strengthen its inspection policy which requires at least one comprehensive inspection to be conducted at each major and significant minor annually so that 100% of all facilities are inspected each year.

Round	Status	Completion Date	Media	E#	Element Number	Year	Finding	Recommendation Narrative
1	Completed	04/01/2009	CAA	E11	Penalty Calculations	2004	Economic benefit is not universally considered throughout the NYSDEC. NYSDEC does not always use the NYSDEC penalty policy or the EPA Civil Penalty Policy in its entirety. Many enforcement files did not contain penalty calculation sheets.	All enforcement cases where a penalty is assessed must have a penalty calculation worksheet in the file. The first calculation should be a computation of the potential statutory maximum for all provable violations as stated in the NYSDEC Penalty Policy. The worksheet should include the justification for how a penalty was calculated and what factor(s) were considered in mitigating the penalty. When using the CAA Penalty Policy, NYSDEC should use all factors to calculate the gravity component of a penalty allowable by the NYSDEC Penalty Policy. Also, when warranted, NYSDEC should factor into their penalty the economic benefit accrued by the facility due to noncompliance
1	Completed	02/05/2009	CAA	E2	Data Accurate	2004	Not all MDRs are accurately entered into AIRS.	Provide an updated CMS Plan to EPA on a yearly basis. Modify NYS AFS so that the Title V air program code is not added to AIRS inaccurately. Also, NYSDEC should report HPVs to EPA in accordance with the HPV policy.
1	Completed	02/05/2009	CAA	E12	Penalties Collected	2004	Four of the five Notices of Hearing and Complaint that were identified as not having a penalty assessed were followed by the issuance of ACOs which assessed penalties (three of which were issued in FY 2005). Out of 53 HPVs, 52 included a penalty (98%), which is well above the national average of 84.4%. According to NYSDEC, no economic benefit was recovered by many of the sources; the majority of the HPVs were recordkeeping/reporting violations. Therefore, few of the violations warranted inclusion of an economic benefit component.	Modify how Notices of Hearing and Complaint are mapped to AIRS; possibly map the issuance of a Notice of Hearing and Complaint to the action type OT, other addressing action.

Round	Status	Completion Date	Media	E#	Element Number	Year	Finding	Recommendation Narrative
1	Completed	09/28/2007	CWA	E7	Violations IDed Appropriately	2004	According to NYSDEC's Inspection of Major and Significant Minor Wastewater Facilities Technical and Operational Guidance Series (TOGS), specific inspection forms are to be filled out for each type of inspection. The inspection form offers three ratings: satisfactory, unsatisfactory, or marginal. During EPAs file review, we observed that the large majority of inspections received satisfactory ratings and very few received unsatisfactory ratings. However, some inspection reports received overall satisfactory ratings even though some portions of the inspection were rated marginal or deficiencies were identified.	Where violations or deficiencies are identified during an inspection, the State should not assign an overall rating of satisfactory to the facility unless immediate corrections are made and identified in the inspection report for future reference.
1	Completed	09/28/2007	CWA	E9	Return to Compliance	2004	Of the 20 files that were reviewed for enforcement actions, EPA noted that compliance schedules were established in consent orders. However, most of the enforcement files EPA reviewed showed that the compliance schedules were routinely modified at the facilities request as they were not going to be able to meet the dates established in the consent order. However, when these consent orders were modified, no stipulated penalties were collected or assessed.	The state should impose appropriate sanctions, in the form of stipulated penalties, for delays in attaining compliance with milestones established in Orders.
1	Completed	09/28/2007	CWA	E7	Violations IDed Appropriately	2004	Not all inspection reports were completed and transmitted to facility within timeframes specified in TOGS. Some inspection reports received overall satisfactory ratings even though some portions of the inspection were rated marginal or deficiencies were identified.	EPA recommends that NYSDEC and its Regional offices evaluate their inspection rating scheme and ensure timely and appropriate follow-up, e.g. Notice of Violation. In addition, EPA recommends that, where violations or deficiencies are identified during an inspection, the State should not assign an overall rating of satisfactory to the facility unless immediate corrections are made and identified in the inspection report for future reference.
1	Completed	04/01/2009	CAA	E5	Insp Universe	2004	The level of inspection activities undertaken by NYSDEC is indicative of a strong compliance/enforcement program. This finding is supported by data contained in NYS AFS, as well as, the federal AIRS system. NYSDEC does not currently have the ability to batch update the CMS code or frequency indicator in AIRS. But, in 2005 they received a STAG grant to modify their database to include these data elements and to provide them the ability to update CMS codes and frequency indicators in AIRS. When the NYS AFS modification is complete, the EPA anticipates granting them the authority to batch update this data requirement, making the universe of major sources and SM-80s in AIRS more reliable.	We recommend NYS establish a minimum state-wide training curriculum (class room and on-the-job) for their inspectors and establish a manual for compliance related activities. This will help ensure that there is a common basis among regional offices for handling inspections and Title V annual certification reviews. We also recommend further investigation into the possible duplication of Title V annual certification reviews and the mis-classification of major sources in AIRS.

## **Appendix E: Program Overview**

The New York State Department of Environmental Conservation (NYSDEC) was created on July 1, 1970 to combine in a single agency all state programs designed to protect and enhance the environment.

The NYSDEC's goal is to achieve this mission through the simultaneous pursuit of environmental quality, public health, economic prosperity and social well-being, including environmental justice and the empowerment of individuals to participate in environmental decisions that affect their lives.

### **Agency Structure**

The NYSDEC is headed by a commissioner, who is assisted by executive managers. The department has 24 divisions and offices and is further organized into bureaus to fulfill the functions and regulations established by the New York State Environmental Conservation Law Article 17 and Title 6 of New York Codes, Rules and Regulations (6NYCRR). Some programs are also governed by federal law or other state laws, such as the Navigation Law.

The NYSDEC is divided into nine regions, each with an office that serves the communities within that region. Regional offices are responsible for permitting and enforcement, while Central Office carries out support and research efforts. The NYSDEC's Central Office, where most offices of the divisions and special programs are located, is in Albany, NY. A total of approximately 2800 NYSDEC staff work in the Central Office and the regional offices.

### **Compliance and Enforcement Program Structure**

The NYSDEC compliance and enforcement program is divided by media.

The water compliance and enforcement program is under the Office of Water Resources – Division of Water (DOW). The DOW conducts a wide variety of programs to protect and conserve New York's waters, including enforcement. Within the DOW is the Bureau of Water Compliance (BWC), where the SRF review is conducted. The BWC oversees the SPDES information section, the compliance assurance section, and the New York City municipal compliance section. BWC works in conjunction with the nine regional offices and the Office of General Counsel to deliver the program elements that were the subject of the NPDES portion of this SRF review. NYSDEC/DOW commitments regarding SPDES compliance assurance and enforcement work plan are specified in the annual Performance Partnership Grant which is negotiated with EPA Region 2 on an annual basis. DOW also has water related enforcement commitments that are outside of the PPG/SRF review including but not limited to dam safety, coastal erosion, flood control, water withdrawal, and well driller registration programs. A more complete description of NYSDEC's SPDES compliance assurance program is attached, and can be found in the Annual SPDES Compliance and Enforcement Report at: <http://www.dec.ny.gov/chemical/62557.html>

The air compliance and enforcement program is under the Office of Air Resource, Climate Change and Energy, Division of Air Resources (DAR). The DAR works closely with the US EPA and agencies from other states, as well as local and tribal governments within the State, to fulfill its task of protecting the health and welfare of all citizens in New York by improving and maintaining air quality. Within the DAR is the Bureau of Stationary Sources (BoSS), where the SRF review is conducted. The BoSS, among other functions, coordinates air permitting and enforcement activities, develops and modifies air quality regulations, and provides assistance to the regional offices and the public on permitting and general air pollution related issues.

The hazardous waste management program is under the Office of Remediation and Materials Management, Division of Environmental Remediation (DER). The NYSDEC is authorized to implement hazardous waste regulatory programs in lieu of the USEPA. The DER issues RCRA-C TSDf permits, oversees corrective action, conducts inspections, signs consent orders, and gathers and processes data. DER works with the NYSDEC Office of General Counsel to undertake enforcement actions when inspections reveal violations at facilities. Within the DER is the Bureau of Technical Support (BTS) which oversees and coordinates the completion of facility compliance inspections and related enforcement actions. Remedial Bureau E manages the issuance of TSDf permits. Oversight of corrective action projects is spread among Project Managers in the various remedial bureaus. DER's Bureau of Program Management is responsible for managing NYSDEC's hazardous waste manifest program, grant management, and for compiling various progress reports on the RCRA-C program to USEPA.

## **Roles and Responsibilities**

Generally speaking, legal and technical staff in NYSDEC's regional offices are responsible for performing permitting and enforcement activities. Legal and technical staff in NYSDEC's Central Office provides assistance to the regional offices, and handle permitting and enforcement for certain facilities, typically those of higher profile, or with multiple facilities around the state.

## **Staffing and Training**

The Department continues to devote the majority of its staff resources to support its core programs, such as those related to ensuring compliance with the CWA, CAA and RCRA. Training is provided within the specific programs, often with assistance from EPA. The Department also provides some limited training to municipalities and industry regarding compliance, although that capability has been severely limited by decreases in funding.

## **Data Reporting Systems and Architecture**

Program responses within the SRF provide more detail regarding the efforts underway to support and improve NYSDEC's data reporting systems. There is a strong overall commitment by agency management to secure and spend funds on information technology improvements for agency permitting systems.

## **Major State Priorities and Accomplishments**

The Major State Priority over the past two years has been responding to the impacts of Hurricanes Irene and Lee and Superstorm Sandy. All NYSDEC programs have been affected by the critical need to respond to storm damage and support the recovery of New York communities.

The 2012 Compliance and Enforcement Federal Fiscal Report for the Division of Air Resources and the SPDES Compliance and Enforcement Annual Report for State Fiscal Year 2012/13 are attached to provide more detail on the enforcement and other accomplishments for the Divisions of Air and Water. The latest semi-annual report from the Division of Environmental Remediation for the RCRA-C program is attached for the same purpose.

Accomplishments worth noting include the Division of Air's enforcement of enhanced inspection and maintenance program requirements which resulted in multiple settlements and five Commissioner Orders after administrative hearing for penalties totaling \$1,175,205.

Another major accomplishment was the New York City Combined Sewer Overflow (CSO) Order on Consent. This Order required the City to spend several billion dollars to upgrade its CSO facilities to comply with water quality standards. The Order required the City to pay \$6 million dollars in penalties and environmental benefit projects, and implement green infrastructure as an environmentally friendly method of treating CSOs.

Staff continues to implement the expedited enforcement process for non-reporting and other straightforward violations. This process has resulted in issuance of hundreds of Orders on Consent and multiple Commissioner Orders. The NYDEC Staff have charted an upward trend in compliance with reporting obligations required by statute and permit since utilizing this process.

For RCRA, a recent significant accomplishment was the development and rollout of a statewide RCRA-C Inspector training program. This program includes a guidance manual for inspectors and a three-day training program for all inspectors which was completed in July 2013.