

# **STATE REVIEW FRAMEWORK**

## **NEVADA DEPARTMENT OF ENVIRONMENTAL QUALITY**

Round 2 Report for Fiscal Year 2010

**Final  
February, 2014**

Conducted by the U.S. Environmental Protection Agency, Region 9

## **EXECUTIVE SUMMARY**

### **Major Issues**

The State Review Framework (SRF) Round 2 review of the Nevada Division of Environmental Protection identified no major issues.

### **Summary of Programs Reviewed**

#### **I. Resource Conservation and Recovery Act Program**

**Problems which necessitate state improvement and require recommendations and actions include:**

None

**Areas meeting SRF program requirements or with minor issues for correction include:**

Data completeness

Data Accuracy

Timeliness of Data Entry

Quality of Inspection or Compliance Evaluation Reports

Identification of Alleged Violations

Identification of SNC and HPV

Enforcement Actions Promote Return to Compliance

Timely and Appropriate Action

Penalty Calculation

Final Penalty Assessment

#### **II. Clean Water Act NPDES Program**

**Problems which necessitate state improvement and require recommendations and actions include:**

NDEP did not enter single event violations (SEVs) at major facilities into EPA's ICIS-NPDES database as required by EPA's data management policies.

**Good Practices include:**

NDEP exceeded EPA's NPDES inspection goals and national averages for inspection coverage in all categories of NPDES regulated facilities in FY 2010. NDEP inspected 100 percent of major

facilities, 24 percent of minor facilities and more than 20 percent of stormwater dischargers.

**Areas meeting SRF program requirements or with minor issues for correction include:**

NDEP routinely enters required data into EPA's ICIS-NPDES that is complete, timely, and accurate.

NDEP's inspection reports properly document and accurately describe inspection observations, however, some of NDEP's report formats do not include all of EPA's recommended elements.

NDEP accurately and timely identifies facility effluent limit violations by tracking major facility discharge monitoring (DMR) results in EPA's ICIS-NPDES database

None of Nevada's 14 major facilities were in significant noncompliance (SNC) during FY10.

NDEP's enforcement actions reviewed by EPA were timely and appropriate, and promote return to compliance.

Two of the three penalty actions reviewed included appropriate gravity and economic benefit calculations. All penalties were collected in cash payments as assessed with no offsets for supplemental environmental projects.

# **State Review Framework**

## Nevada Division of Environmental Quality Resource Conservation and Recovery Act Round 2 Report for Federal Fiscal Year 2010

**February, 2014**

Conducted by the U. S. Environmental Protection Agency  
Region IX

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## **I. EXECUTIVE SUMMARY**

### **Major Issues**

**The SRF review of Nevada identified the following major issues:**

- None

### **Summary of Programs Reviewed**

#### **III. Resource Conservation and Recovery Act Program**

**The problems which necessitate state improvement and require recommendations and actions include:**

- None

**Areas meeting SRF program requirements or with minor issues for correction include:**

- Element 1 - Data completeness
- Element 2 – Data Accuracy
- Element 3 – Timeliness of Data Entry
- Element 4 - Completion of Commitments
- Element 5 – Inspection Coverage
- Element 6 – Quality of Inspection or Compliance Evaluation Reports
- Element 7 – Identification of Alleged Violations
- Element 8 – Identification of SNC and HPV
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- Element 10 – Timely and Appropriate Action
- Element 11 – Penalty Calculation
- Element 12 – Final Penalty Assessment and Collection

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

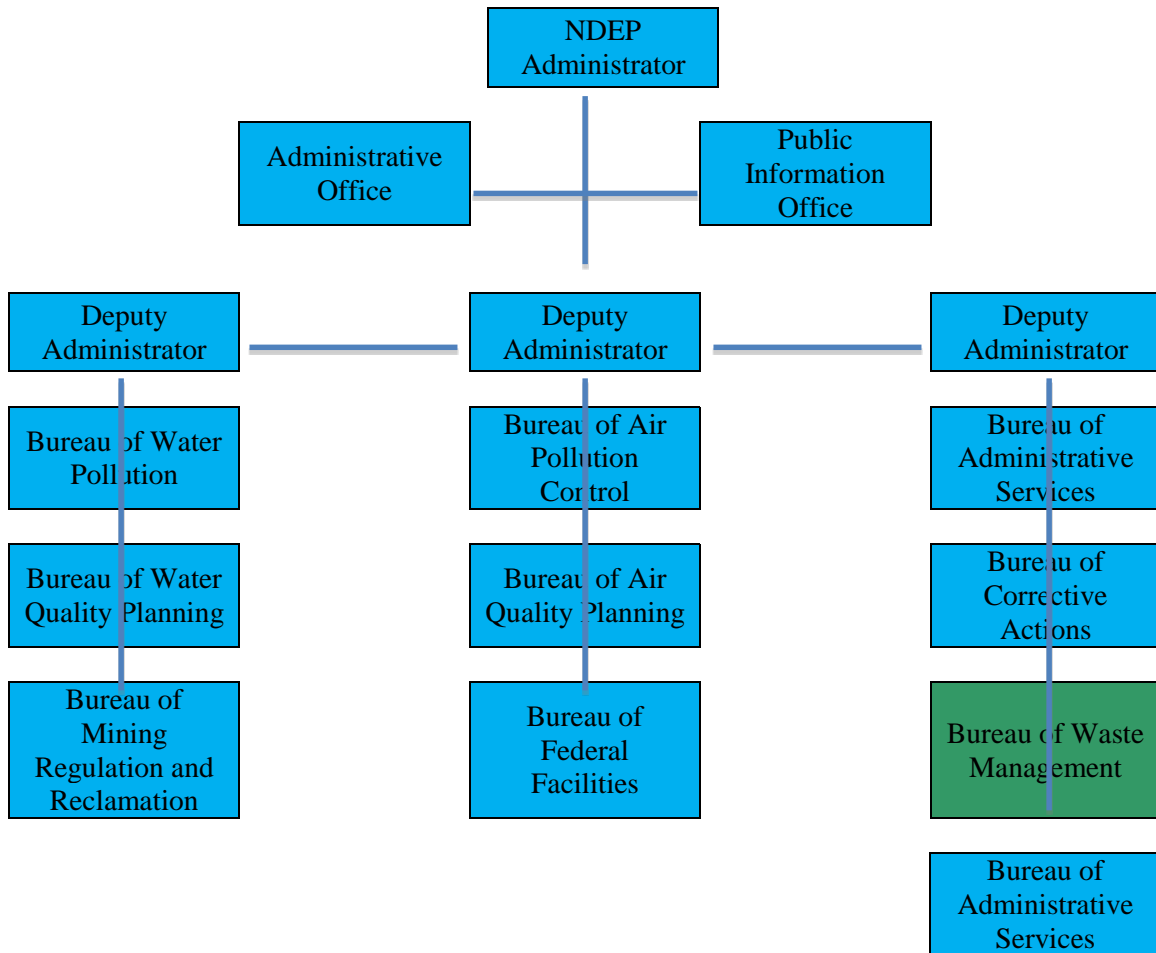
The State Review Framework (SRF) is a program designed to ensure EPA conducts oversight of state and EPA direct implementation compliance and enforcement programs in a nationally consistent and efficient manner. Reviews look at 12 program elements covering data (completeness, timeliness, and quality); inspections (coverage and quality); identification of violations; enforcement actions (appropriateness and timeliness); and penalties (calculation, assessment, and collection).

Reviews are 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 is built into the process to ensure EPA and the state understand the causes of issues, and to seek agreement on identifying the actions needed to address problems.

The reports generated by the reviews are designed to capture the information and agreements developed during the review process in order to facilitate program improvements. The reports are designed to provide factual information and do not make determinations of program adequacy. EPA also uses the information in the reports to draw a “national picture” of enforcement and compliance, and to identify any issues that require a national response. Reports are not used to compare or rank state programs.

### **A. GENERAL PROGRAM OVERVIEW**

- **Agency structure:** The organization structure of the NDEP is shown below. The RCRA compliance and enforcement program is managed within the Bureau of Waste Management (see green highlighted box):



The mission of the Bureau of Waste Management (BWM) is to protect human health, public safety and the environment, conserve natural resources by ensuring safe management of solid and hazardous waste, and promoting waste reduction, reuse, and recycling. BWM is composed of two regulatory programs: the hazardous waste management programs (HW Program) and the solid waste management program (SW Program). Hazardous waste compliance assistance, inspection, enforcement, permitting, and data management are tasks performed within the HW Program. RCRA corrective action is performed by the NDEP's Bureau of Corrective Action (BCA). However, corrective actions at permitted RCRA facilities are coordinated between BCA and BWM's HW Program.

The main NDEP offices are located in Carson City. There is a NDEP office located in Las Vegas, Nevada which houses the following bureaus: Air Quality, Corrective Actions, Federal Facilities, Waste Management, Safe Drinking, Water and Water Pollution Control. The Las Vegas office serves the southern Nevada area, including Clark County. The BWM Las Vegas branch office performs compliance inspections and investigates tips/complaints. Limited RCRA permitting activities are performed by the Las Vegas office.

- **Compliance/enforcement program structure:** The RCRA compliance and enforcement program is divided between the Carson City and Las Vegas offices based on which office performed the inspection.



- **Roles and responsibilities:** BWM manages RCRA compliance, enforcement, and tasks for all areas of Nevada except Tribal areas. The inspectors respond to all tips and complaints located within the agency’s jurisdiction in addition to their scheduled inspections.

NDEP has the authority to pursue both informal and formal administrative actions, as well as assess penalties in violation of state hazardous waste management regulations. The policy governing enforcement procedures for NDEP’s hazardous waste management program is established in the “Hazardous Waste Policy and Procedure, Staff Guide” dated October 20, 2008. BWM typically addresses violations administratively through informal and/or formal enforcement actions. For formal enforcement actions this process is through the issuance of a Finding of Alleged Violation(s) (FOAV) and Order. The Order requires the alleged violator to contact BWM to schedule an enforcement conference. The purposed of the enforcement conference is to allow the alleged violator the opportunity to provide information to the agency as to why the matter should not be referred to the District Court. After presenting the information provided by the alleged violator, BWM will evaluate the information and in most cases offer the alleged violator to enter into a Settlement Agreement, providing all the violations have been corrected. If there are outstanding compliance tasks, BWM will issue a Settlement Agreement and Order. The alleged violator may appeal the Order to the State Environmental Commission. If the alleged violator fails to comply with the Order, the formal enforcement action can be referred to the Nevada Attorney General.

- **Local agencies included/excluded from review:** NDEP has contracted with the Washoe County Health District (Washoe County) and the Southern Nevada Health District (SNHD), Clark County to perform RCRA compliance evaluation inspections of small quantity generators (SQGs), Conditionally Exempt Small Quantity Generators (CESQGs), and of facilities that failed to submit required biennial reports to BWM. The SQG, CESQG, and non-reporting facilities to be inspected by the county agencies are determined by BWM. Under their respective contracts, the agencies are authorized to perform informal enforcement actions (e.g., verbal warning) as described in BWM’s “Hazardous Waste Policy and Procedure, Staff Guide” dated October 20, 2008. Any alleged violations identified by the agencies which warrant a formal enforcement action are referred to BWM to be addressed in accordance with BWM’s enforcement policies and procedures.

Both Washoe County and the SNHD were included in this SRF review.

- **Resources:**
  - The resources below represent the Full Time Equivalent (FTE) positions at NDEP for implementation of the state’s RCRA compliance monitoring and enforcement program:
    - Carson City Office – BWM has 7 FTE staff assigned to hazardous waste regulatory compliance and enforcement activities. The FTEs are funded by the RCRA portion of the Performance Partnership Grant (PPG). These activities include, but are not limited to, inspections of CESQGs, SQGs, large quantity generators (LQGs), treatment, storage, disposal facilities (TSDFs) and non-notifiers; complaint investigations; compliance assistance and outreach; database management (i.e., RCRAInfo); review and/or preparation of reports, informal and formal enforcement actions (including issuances of FOAVs and Orders, enforcement conferences, and penalty assessment and negotiations), and financial assurance record monitoring.

- Las Vegas Office – BWM has 2 FTE and 2 partially funded FTEs under the RCRA portion of the PPG. RCRA compliance and enforcement activities performed by the Las Office include, but are not limited to, inspections of CESQGs, SQGs, LQGs, TSDFs and non-notifiers; complaint investigations; compliance assistance and outreach; database management (i.e., RCRAInfo), and review and/or preparation of reports, informal and formal enforcement actions (including issuances of FOAVs and Orders, enforcement conferences, and penalty assessment and negotiations).
- **Resource Constraints:**
  - The State of Nevada is experiencing severe budget shortfalls that have resulted in mandatory monthly furlough days. However, the budget problems have not yet significantly affected BWM programs or staffing.
  - NDEP field equipment is limited to cameras and GPS hand held units. Inspectors do not have field laptops or tablets to acquire information in field.
- **Staffing/training:**
  - Currently the BWM inspection and enforcement program is fully staffed with experienced personnel.
  - BWM inspectors are required to receive the 40 hour OSHA health and safety training and 8-hour annual OSHA health and safety training. Additionally, BWM personnel that are required to inspect mines also receive MSHA mine safety and health training.
- **Data reporting systems/architecture:**
  - BWN inspectors enter inspection and enforcement information directly into RCRAInfo. NDEP assigns U. S. EPA identification numbers and enters hazardous waste generator notifications directly into RCRAInfo.
  - SNHD and Washoe County directly enter inspection and enforcement information into RCRAInfo.

## **B. MAJOR STATE PRIORITIES AND ACCOMPLISHMENTS**

- **Priorities:**
  - The priority of the Nevada inspection and enforcement program regardless of media is protection of human health and environment, in particular the waters of the State.
- **Accomplishments:**
  - BWM inspects nearly 100% of the RCRA LQG universe on an annual basis and the SQGs universe on a biennial basis.
  - BWM attempts to inspect each TSDF at least 4 times per year.
- **Best practices:**
  - Through the University of Nevada’s Business Environmental Program, NDEP has set up a free and confidential counseling program for primarily Nevada small businesses (e.g., dry cleaners) with environmental compliance and technical assistance issues.
- **Element 13:** Nevada has submitted comments, which are attached as an appendix to this report.

## **C. PROCESS FOR SRF REVIEW**

Describe key steps in the reviews of each media program, including:

- **Review period:** The RCRA Hazardous Waste Inspection and Compliance unit was reviewed in 2011, utilizing data from FY2010. Fiscal Year 2010, October 1, 2009 through September 30, 2010.

- **Key dates:** Preliminary list of RCRA data files to be reviewed were submitted to BWM on January 7, 2011. BWN input on the pull-list was obtained during a conference call on January 10, 2011. The on-site reviews were performed on January 24 and 25, 2011 (BWM Carson City), January 26, 2011 (Washoe County), and on January 27, 2011 (BWM Las Vegas and SNHD). During the file review, U. S. EPA met with the BWM manager, supervisors, and inspectors, as well as with the primary SNHD and Washoe representatives responsible for managing the RCRA inspection program contracted with NDEP to implement.
- **Communication with the state:** Communications with NDEP during the SRF review consisted of phone conversations, e-mails, and face-to-face meetings.
- **List state and regional lead contacts for review.**

**Lead State Contact for Review:**

Evan Chambers  
Bureau of Waste Management  
Nevada Division of Environmental Protection  
775-687-9473  
[echamber@ndep.nv.gov](mailto:echamber@ndep.nv.gov)

**Lead Regional Contact for Review**

John Schofield  
RCRA Enforcement Office  
US EPA, Region 9, WST-3  
415-972-3386  
[schofield.john@epa.gov](mailto:schofield.john@epa.gov)

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

During the Round 1 SRF review of Nevada's compliance and enforcement programs, U. S. EPA Region 9 and Nevada identified a number of actions to be taken to address issues found during the review. The table in Appendix A shows all of the recommendations from the Round 1 SRF Review.

## IV. FINDINGS

Findings represent the region’s conclusions regarding the issue identified. Findings are based on the initial findings identified during the data or file review, as well as from follow-up conversations or additional information collected to determine the severity and root causes of the issue. There are four types of findings:

<b>Finding</b>	<b>Description</b>
<b>Good Practices</b>	This describes activities, processes, or policies that the SRF data metrics and/or the file reviews show are being implemented exceptionally well and which the state is expected to maintain at a high level of performance. Additionally, the report may single out specific innovative and noteworthy activities, processes, or policies that have the potential to be replicated by other states and can be highlighted as a practice for other states to emulate. No further action is required by either EPA or the state.
<b>Meets SRF Program Requirements</b>	This indicates that no issues were identified under this element.
<b>Areas for State* Attention</b>  <b>*Or, EPA Region’s attention where program is directly implemented.</b>	<p>This describes activities, processes, or policies that the SRF data metrics and/or file reviews show are being implemented with minor deficiencies. The state needs to pay attention to these issues in order to strengthen performance, but they are not significant enough to require the region to identify and track state actions to correct.</p> <p>This can describe a situation where a state is implementing either EPA or state policy in a manner that requires self-correction to resolve concerns identified during the review. These are single or infrequent instances that do not constitute a pattern of deficiencies or a significant problem. These are minor issues that the state should self correct without additional EPA oversight. However, the state is expected to improve and maintain a high level of performance.</p>

<p><b>Areas for State * Improvement – Recommendations Required</b></p> <p><b>*Or, EPA Region’s attention where program is directly implemented.</b></p>	<p>This describes activities, processes, or policies that the metrics and/or the file reviews show are being implemented by the state that have significant problems that need to be addressed and that require follow-up EPA oversight. This can describe a situation where a state is implementing either EPA or state policy in a manner requiring EPA attention. For example, these would be areas where the metrics indicate that the state is not meeting its commitments, there is a pattern of incorrect implementation in updating compliance data in the data systems, there are incomplete or incorrect inspection reports, and/or there is ineffective enforcement response. These would be significant issues and not merely random occurrences. Recommendations are required for these problems, and they must have well-defined timelines and milestones for completion. Recommendations will be monitored in the SRF Tracker.</p>
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**Resource Conservation and Recovery Act Program**

Element 1 — Data Completeness: Degree to which the Minimum Data Requirements are complete.																				
NDEP has entered the Minimum Data Requirements into RCRA for regulated universes, compliance monitoring, and enforcement information.																				
1-1	This finding is a(n)	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required																		
	Finding	NDEP has entered the Minimum Data Requirements into RCRA for regulated universes, compliance monitoring, and enforcement information.																		
	Explanation	<p>Element 1 is supported by SRF Data Metrics 1a through 1g, and measures the completeness of the data in RCRAInfo.</p> <p>The number of actions is different due to data entry issues with Washoe County and the Southern Nevada Health District (SNHD) CESQG inspections. Any generator, including CESQGs and SQGs, is required by the State to submit biennial reports. Washoe County and SNHD were contracted by the NDEP to perform inspections of CESQGs to determine if filed state only BRS requirement. The NDEP has eliminated this program, and has corrected most, if not all of the data entry issues associated with State required program. No data entry issues with NDEP delegated program.</p>																		
	Metric(s) and Quantitative Value(s)	<table border="0"> <thead> <tr> <th style="text-align: left;"><u>Data Metrics</u></th> <th style="text-align: right;"><u>State</u></th> </tr> </thead> <tbody> <tr> <td>1a1 - # of operating TSDFs in RCRAInfo</td> <td style="text-align: right;">6</td> </tr> <tr> <td>1a2 - # of active LQGs in RCRAInfo</td> <td style="text-align: right;">87</td> </tr> <tr> <td>1a3 - # of active SQGs in RCRAInfo</td> <td style="text-align: right;">365</td> </tr> <tr> <td>1b1 - # of inspections</td> <td style="text-align: right;">741</td> </tr> <tr> <td>1c1 - #of sites with violations</td> <td style="text-align: right;">200</td> </tr> <tr> <td>1d2 - # Informal Actions; number of actions</td> <td style="text-align: right;">67</td> </tr> <tr> <td>1f2 - # Formal Actions; number of actions</td> <td style="text-align: right;">7</td> </tr> <tr> <td>1g – Total amount of assessed penalties</td> <td style="text-align: right;">\$42,868</td> </tr> </tbody> </table>	<u>Data Metrics</u>	<u>State</u>	1a1 - # of operating TSDFs in RCRAInfo	6	1a2 - # of active LQGs in RCRAInfo	87	1a3 - # of active SQGs in RCRAInfo	365	1b1 - # of inspections	741	1c1 - #of sites with violations	200	1d2 - # Informal Actions; number of actions	67	1f2 - # Formal Actions; number of actions	7	1g – Total amount of assessed penalties	\$42,868
<u>Data Metrics</u>	<u>State</u>																			
1a1 - # of operating TSDFs in RCRAInfo	6																			
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1c1 - #of sites with violations	200																			
1d2 - # Informal Actions; number of actions	67																			
1f2 - # Formal Actions; number of actions	7																			
1g – Total amount of assessed penalties	\$42,868																			
	State Response	Element 13 -																		
	Recommendation(s)	No further action is necessary.																		

**Element 2 — Data Accuracy: Degree to which data reported in the national system is accurately**

**Element 3 — Timeliness of Data Entry: Degree to which the Minimum Data Requirements are timely.**

2-1	This finding is a(n)	<input type="checkbox"/> Meets RCRA Program Requirements										
3-1	This finding is a(n)	<input checked="" type="checkbox"/> Area for State Attention										
		<input type="checkbox"/> Area for State Improvement – Recommendations Required										
		<input type="checkbox"/> Area for State Improvement – Recommendations Required										
	<b>Finding</b>	Generally data reported in RCRAInfo is entered accurately and maintained.										
	<b>Finding</b>	All SNCs were entered into RCRAInfo within 60-days of the first day of the inspection.										
		RCRA Element 2 is supported by data Metrics 2a, 2b, and file review.										
	<b>Explanation</b>	According to the RCRA ERP, SNCs should be entered into RCRAInfo upon determination, and not withheld to enter at a later time. The metric for this element is calculated by comparing the archived monthly SNC pulls and determining if a two month lag-time or longer exists between the date of inspection and when the SNC should be returned to compliance within 240 days, or elevated to SNC status and addressed through formal enforcement. In the RCRA summary data pull for the review period, the Nevada 2b Metric lists 82 SVs in violation for greater than 240 days.										
	<b>Metric(s) and Quantitative Value(s)</b>	<u>Data Metrics</u> Number of SV actions greater than 240 days is due primarily to Washoe County of NV. Data entry issues related to QGs failing to comply with a requirement of submitting a BRS. The NDEP has eliminated this program, and has corrected most, if not all of the data entry issues. No data entry issues with NDEP delegated program.										
	<b>State Response</b>											
	<b>Explanation</b>	File review Metric 2c measures the percentage of files where corresponding data was missing in RCRAInfo. If any of the relevant information in the inspection reports, enforcement actions, or civil and administrative enforcement actions, or civil and administrative enforcement responses is missing in RCRAInfo, the data for that file is considered inaccurate. A total of 30 files were reviewed. Twenty-seven of the 30 files had accurate data reported in RCRAInfo. Two of the files did not have Return to Compliance (RTC) entries when file information indicated otherwise. One file indicated that a violation was observed but there was no corresponding enforcement action identified in RCRAInfo (e.g., 110 Verbal Informal). These data inaccuracies do not constitute a serious pattern of missing information. However, this is an area for state attention and Nevada should ensure accuracy between files and information in RCRAInfo.										
	<b>Recommendation(s)</b>	No further action is necessary.										
	<b>Metric(s) and Quantitative Value(s)</b>	<table border="0"> <tr> <td><u>Data Metrics</u></td> <td style="text-align: right;"><u>State</u></td> </tr> <tr> <td>2a1 - # of sites SNC made on day of formal action</td> <td style="text-align: right;">1</td> </tr> <tr> <td>2a2 - # of sites SNC determinations made within one week of formal action</td> <td style="text-align: right;">0</td> </tr> <tr> <td>2b - # of sites in violation greater than 240 days</td> <td style="text-align: right;">82</td> </tr> <tr> <td>2c - % files were missing data elements in RCRAInfo</td> <td style="text-align: right;">10%</td> </tr> </table>	<u>Data Metrics</u>	<u>State</u>	2a1 - # of sites SNC made on day of formal action	1	2a2 - # of sites SNC determinations made within one week of formal action	0	2b - # of sites in violation greater than 240 days	82	2c - % files were missing data elements in RCRAInfo	10%
<u>Data Metrics</u>	<u>State</u>											
2a1 - # of sites SNC made on day of formal action	1											
2a2 - # of sites SNC determinations made within one week of formal action	0											
2b - # of sites in violation greater than 240 days	82											
2c - % files were missing data elements in RCRAInfo	10%											
	<b>State Response</b>											



<b>Element 4 — Completion of Commitments: Degree to which all enforcement/compliance commitments in relevant agreements are met and any products or projects are completed.</b>		
		Good Practice X Meets SRF Program Requirements
4-1	This finding is a(n)	<input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	<b>Finding</b>	For FY2010, Nevada met or exceeded all of the enforcement and inspection commitments in their RCRA grant workplan.
	<b>Explanation</b>	In the Nevada grant workplan for FY2010, the state included specific commitments and projections for inspection and enforcement activities. Nevada exceeded their inspection commitments of 50 LQGs, 6 TSDFs, and 500 transporter, SQGs, and CESQGs. Respectively, 75, 8, and 789 CEI or OAM inspections were conducted. EPA appreciates NDEP's attention to conducting inspections and considers this a noteworthy achievement for NDEP.
	<b>Metric(s) and Quantitative Value(s)</b>	<u>Data Metrics</u> <span style="float: right;"><u>State</u></span> 4a – Planned inspections completed <span style="float: right;">158%</span>
	<b>State Response</b>	
	<b>Recommendation(s)</b>	No further action is necessary.

<b>Element 5 — Inspection Coverage: Degree to which state completed the universe of planned inspections/compliance evaluations.</b>		
		Good Practice X Meets SRF Program Requirements
5-1	This finding is a(n)	<input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	<b>Finding</b>	Nevada exceeds inspection coverage for TSDs (one-year coverage) and LQGs (one year coverage). Nevada met two-year coverage for TSDs and did not meet the 5-year inspection coverage for LQGs.

Element 7 — Identification of Alleged Violations: Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information.	
	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Needs State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
7-1	This finding is a(n)
6-1	This finding is a(n)
	<b>Explanation</b>
	<b>Finding</b>
	<b>Finding</b>
	<b>Explanation</b>
	<b>Metric(s) and Quantitative Value(s)</b>
	<b>State Response Metric(s) and Quantitative Value(s)</b>
	<b>Explanation</b>
	<b>State Response Recommendation(s)</b>
	<b>Recommendation(s)</b>
	<b>Metric(s) and Quantitative Value(s)</b>

		6c - % of BWM inspection reports that are timely (45 days or less)	87.5%
		6c - % of SNHD inspection reports that are timely (45 days or less)	100%
		6c - % of Washoe County inspection reports that are Timely (45 days or less)	100%
		6c - % of BWM inspection reports that are timely (90 days or less)	97.5%
	<b>State Response</b>		
	<b>Recommendation(s)</b>	No further action is necessary.	

**Element 8 — Identification of SNC and HPV: Degree to which the state accurately identifies significant noncompliance/high priority violations and enters information into the national system in a timely manner.**

8-1	This finding is a(n)	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required						
	<b>Finding</b>	In the files reviewed, Nevada correctly identified SNC and/or SV violation determinations.						
	<b>Explanation</b>	<p>Data Metric 8a reviews the percent of facilities evaluated by the state during FY2010 that received a state SNC designation. It also compares the SNC identification rate with the national average. Nevada’s SNC identification rate is 0.3%, which is significantly below the national average of 2.9%. The criteria that Nevada uses to make a SNC determination are:</p> <ul style="list-style-type: none"> <li>• A FOAV and Order were issued, and</li> <li>• Alleged violator has caused actual exposure or substantial likelihood of exposure to hazardous waste or hazardous waste constituents, or</li> <li>• Alleged violator is chronic or recalcitrant, or</li> <li>• Alleged violator has deviated substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements.</li> </ul> <p>NDEP has specific criteria for use in determining SNCs. Every SNC determination must also be approved by BWM management.</p> <p>Based on a review of the files, it does not appear that the low SNC rate is due to the misclassification of SNCs as SVs. More likely, it is based on the fact the high number of CESQG inspections performed by Nevada is diluting the SNC rate.</p> <p>Data Metric 8b measures the number of SNCs determinations that were made within 150 days of the first day of inspection and reported in RCRAInfo, which is a requirement in the RCRA ERP. In FY2010, data Metric 8b indicates that 100% (1 of 1 SNCs) were entered in a timely manner.</p> <p>File Metric 8d measures the percentage of violations in the files that were accurately determined to be in SNC. In the 12 enforcement actions reviewed, none of the enforcement actions were identified as SNCs.</p>						
	<b>Metric(s) and Quantitative Value(s)</b>	<table border="0" style="width: 100%;"> <tr> <td style="width: 80%;"><u>Data Metrics</u></td> <td style="text-align: right;"><u>State</u></td> </tr> <tr> <td>8a – SNC identification rate</td> <td style="text-align: right;">0.3%</td> </tr> <tr> <td>8b - % of SNC determinations made within 150 days</td> <td style="text-align: right;">100%</td> </tr> </table>	<u>Data Metrics</u>	<u>State</u>	8a – SNC identification rate	0.3%	8b - % of SNC determinations made within 150 days	100%
<u>Data Metrics</u>	<u>State</u>							
8a – SNC identification rate	0.3%							
8b - % of SNC determinations made within 150 days	100%							
	<b>State Response</b>							

**Element 9 — Enforcement Actions Promote Return to Compliance: Degree to which enforcement actions include required corrective action (i.e., injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.**

9-1	<b>Recommendation(s)</b> This finding is a(n)	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements No further action is necessary. <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required												
	<b>Finding</b>	In the files reviewed, all enforcement responses included required actions that would bring the facility into compliance within a defined schedule.												
	<b>Explanation</b>	<p>EPA reviewed a total of 4 formal enforcement files and 11 informal enforcement facility files under Metric 9a.</p> <p>Metric 9b is the percentage of the SNC enforcement responses reviewed that returned or will return the facility to compliance. For FY2010, one SNC file was reviewed that contained documentation the facility had returned to compliance.</p> <p>Metric 9c is the percentage of SV enforcement responses reviewed that returned or will return the facility to compliance. In FY2010, 100% of the enforcement actions had documentation the facility had returned to compliance.</p>												
	<b>Metric(s) and Quantitative Value(s)</b>	<table border="0"> <tr> <td colspan="2"><u>Data Metrics</u></td> <td style="text-align: right;"><u>State</u></td> </tr> <tr> <td>9a - # of enforcement responses reviewed</td> <td></td> <td style="text-align: right;">4 formal 11 informal</td> </tr> <tr> <td>9b - % of enforcement responses that returned SNCs to compliance</td> <td></td> <td style="text-align: right;">100%</td> </tr> <tr> <td>9c - % of enforcement responses that returned SVs to compliance</td> <td></td> <td style="text-align: right;">100%</td> </tr> </table>	<u>Data Metrics</u>		<u>State</u>	9a - # of enforcement responses reviewed		4 formal 11 informal	9b - % of enforcement responses that returned SNCs to compliance		100%	9c - % of enforcement responses that returned SVs to compliance		100%
<u>Data Metrics</u>		<u>State</u>												
9a - # of enforcement responses reviewed		4 formal 11 informal												
9b - % of enforcement responses that returned SNCs to compliance		100%												
9c - % of enforcement responses that returned SVs to compliance		100%												
	<b>State Response</b>													
	<b>Recommendation(s)</b>	No further action is necessary.												

**Element 10 — Timely and Appropriate Action: Degree to which state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.**

10-1	This finding is a(n)	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required												
	<b>Finding</b>	NDEP effectively and timely manages its noncompliant facilities with appropriate enforcement responses.												
	<b>Explanation</b>	NDEP effectively and timely manages its noncompliant facilities with a variety of enforcement responses. During the FFY 2010 review period, NDEP issued 77 enforcement actions, including 70 informal actions (e.g., Verbal or Written Warning) and 7 formal actions (e.g., Findings of Alleged Violation and Order). NDEP made 3 SNC determinations during FFY 2010. For the files reviewed, it appears that NDEP addressed violations with the appropriate type of enforcement response. EPA notes, however, that for the overall FY10 enforcement numbers, a high proportion of violations were resolved through informal actions rather than formal actions. EPA believes a strong enforcement program utilizes the full range of available enforcement tools, and should include an appropriately robust use of formal enforcement actions.												
	<b>Metric(s) and Quantitative Value(s)</b>	<table border="1"> <thead> <tr> <th data-bbox="505 936 980 978"><u>Data Metrics</u></th> <th data-bbox="980 936 1360 978"><u>National Goal</u></th> <th data-bbox="1360 936 1435 978"><u>State</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="505 978 980 1020">10a - % Timely SNC actions</td> <td data-bbox="980 978 1360 1020">80%</td> <td data-bbox="1360 978 1435 1020">100%</td> </tr> <tr> <td data-bbox="505 1020 980 1094">10c - % of enforcement actions taken in a timely manner</td> <td data-bbox="980 1020 1360 1094"></td> <td data-bbox="1360 1020 1435 1094">100%</td> </tr> <tr> <td data-bbox="505 1094 980 1161">10d - % of enforcement action that are appropriate to the violations</td> <td data-bbox="980 1094 1360 1161"></td> <td data-bbox="1360 1094 1435 1161">100%</td> </tr> </tbody> </table>	<u>Data Metrics</u>	<u>National Goal</u>	<u>State</u>	10a - % Timely SNC actions	80%	100%	10c - % of enforcement actions taken in a timely manner		100%	10d - % of enforcement action that are appropriate to the violations		100%
<u>Data Metrics</u>	<u>National Goal</u>	<u>State</u>												
10a - % Timely SNC actions	80%	100%												
10c - % of enforcement actions taken in a timely manner		100%												
10d - % of enforcement action that are appropriate to the violations		100%												
	<b>State Response</b>													
	<b>Recommendation(s)</b>	No further action is necessary.												

**Element 11 — Penalty Calculation Method: Degree to which state documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.**

11-1	This finding is a(n)	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required						
	<b>Finding</b>	Nevada includes gravity-based penalty and economic benefit calculations in their penalty calculation procedures. However, economic benefit of non-compliance penalty assessment is not being pursued.						
	<b>Explanation</b>	<p>Element 11 examines the state documentation of their penalty calculations. Specifically, the metric is determining if the state penalty includes a gravity portion of the penalty, and where appropriate, economic benefit of non-compliance. The initial penalty calculations reviewed for two of the penalty cases reviewed included gravity-based calculations and considered economic benefit of non-compliance, even though economic benefit not well documented. In one of the penalty cases reviewed, the penalty was not calculated following the procedures described in “Hazardous Waste Policy and Procedure, Staff Guide” dated October 20, 2008. In this case, the facility directly negotiated the settlement with Office of the Attorney General. The reason for the direct negotiations with the Office of the Attorney General was due to the fact that this was multi-media case. Economic Benefit for non-compliance was considered in the two of the cases managed by the NDEP. The case managed by the Office of the Attorney General did not consider economic benefit of non-compliance.</p> <p>The RCRA Civil Penalty Policy (RCPP) requires that economic benefit be calculated using the BEN model or other method that produces results consistent with the national policy. The economic benefit can result from delaying or avoiding compliance costs, or when an illegal competitive advantage is achieved through noncompliance. In Section VIII of the RCPP (page 28), the policy provides penalty thresholds for pursuing economic benefit.</p> <p>Nevada should continue calculating economic benefit of non-compliance consistent with BWM’s “Hazardous Waste Policy and Procedure, Staff Guide” dated October 20, 2008, and the RCPP. Where appropriate, economic benefit for non-compliance data (i.e., actual or avoided costs encumbered by the facility) should be obtained directly from the facility. The data can be entered into the BEN model or state method that is equivalent to and consistent with national policy.</p>						
	<b>Metric(s) and Quantitative Value(s)</b>	<table border="0"> <thead> <tr> <th data-bbox="505 1518 1154 1549"><u>Data Metrics</u></th> <th data-bbox="1154 1518 1317 1549"><u>NDEP</u></th> <th data-bbox="1317 1518 1433 1549"><u>State</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="505 1549 1154 1644">11a - % of penalty calculations reviewed that consider and include, where appropriate, gravity and economic benefit consistent with national policy</td> <td data-bbox="1154 1549 1317 1644">100%</td> <td data-bbox="1317 1549 1433 1644">67%</td> </tr> </tbody> </table>	<u>Data Metrics</u>	<u>NDEP</u>	<u>State</u>	11a - % of penalty calculations reviewed that consider and include, where appropriate, gravity and economic benefit consistent with national policy	100%	67%
<u>Data Metrics</u>	<u>NDEP</u>	<u>State</u>						
11a - % of penalty calculations reviewed that consider and include, where appropriate, gravity and economic benefit consistent with national policy	100%	67%						
	<b>State Response</b>							

Element 12 — Final Penalty Assessment and Collection: Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.								
		<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements						
12-1	This finding is a(n)	<input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required						
	<b>Finding</b>	Nevada’s initial and final assessed penalties do not typically vary. All of the files, with penalties, contained documentation the penalties were collected.						
	<b>Explanation</b>	<p>The initial and final assessed penalties included in a negotiated Settlement Agreement and Final Order, if applicable, did not vary. If the alleged violator does not agree with the proposed penalty, the matter will be referred to the District Court where Nevada will seek the highest penalty amount allowed by Nevada law. For this reason, rarely does an alleged violator fail to accept the initial penalty presented by BWM.</p> <p>Nevada does maintain records of all penalty collections, as reported in Metric 12b. Of the three (3) penalty enforcement orders reviewed as part of the SRF, all had documentation that penalties were collected.</p>						
	<b>Metric(s) and Quantitative Value(s)</b>	<table border="0" style="width: 100%;"> <tr> <td style="width: 70%;"><u>Data Metrics</u></td> <td style="width: 30%; text-align: right;"><u>State</u></td> </tr> <tr> <td>12a - % of formal enforcement actions that document the difference and rational between initial and final assessed penalty</td> <td style="text-align: right;">N/A</td> </tr> <tr> <td>12b - % of final formal actions that document the collection of the final penalty</td> <td style="text-align: right;">100%</td> </tr> </table>	<u>Data Metrics</u>	<u>State</u>	12a - % of formal enforcement actions that document the difference and rational between initial and final assessed penalty	N/A	12b - % of final formal actions that document the collection of the final penalty	100%
<u>Data Metrics</u>	<u>State</u>							
12a - % of formal enforcement actions that document the difference and rational between initial and final assessed penalty	N/A							
12b - % of final formal actions that document the collection of the final penalty	100%							
	<b>State Response</b>							
	<b>Recommendation(s)</b>	No further action is necessary.						



## **V. ELEMENT 13 SUBMISSION**

*[If recognition credit or resource flexibility requested, describe here and attach relevant state and EPA documentation.]*

## **APPENDIX A: STATUS OF RECOMMENDATIONS FROM PREVIOUS REVIEWS**

During the first SRF review of Nevada’s compliance and enforcement programs, EPA Region 9 and NDEP identified a number of actions to be taken to address issues found during the review. The table below shows the status of progress toward completing those actions.

State	Status	Due Date	Media	Element	Finding	Recommendation
NV - Round 1 Total: □C0	Completed	12/31/2008	RCRA	E2 - Violations ID'ed Appropriately	Inspection reports ranged from no inspection reports to complete detailed inspections.	Inspection report information to reflect complexity of the facility and to clearly identify any potential violations observed
NV - Round 1 Total: □C0	Completed	12/31/2008	RCRA	E4 - SNC Accuracy	SNC determination below national average.	NDEP to review 2003 Enforcement Response Policy to determine if current procedures conform to with SNC identification procedures outlined in the policy.
NV - Round 1 Total: □C0	Completed	12/31/2008	RCRA	E5 - Penalty Calculations	Settlement calculations destroyed after case closure.	Revise inspection and enforcement procedures to ensure settlement calculations are maintained in case files.
NV - Round 1 Total: □C0	Completed	12/31/2008	RCRA	E6 - Penalties Collected	Penalty policies and procedures do not include economic benefit. Additionally, penalty policy includes automatic penalty reductions.	Revised penalty policy to include consideration of economic benefit and elimination modification of automatic penalty reductions.

## **APPENDIX B: OFFICIAL DATA PULL**

### OTIS State Review Framework Results

#### RCRA Data for Nevada (Review Period Ending: FY10)

Please note: For display purposes, some important explanatory details about the data metrics are not included on the metrics results screen. To see detailed information about each data metric, refer to the data metrics informational spreadsheet or data metrics plain language guide when reviewing the data - all SRF guidance is available on the OTIS SRF documents page. The data problems page indicates any known data metrics issues.

					<b>Production FY 2010 Data (Data Refresh Dates)</b>			
<b>Metric</b>	<b>Metric Type</b>	<b>Agency</b>	<b>National Goal</b>	<b>National Average</b>	<b>Nevada (Metric = x/y)<sup>0</sup></b>	<b>Count (x)</b>	<b>Universe (y)</b>	<b>Not Counted (y- x)</b>
1. Data completeness. Degree to which the minimum data requirements are complete.								
0 Recommendations.								
A	Number of Operating TSDFs in RCRAInfo	Data Quality	State		6	NA	NA	NA
	Number of Active LQGs in RCRAInfo	Data Quality	State		82	NA	NA	NA
	Number of Active SQGs in RCRAInfo	Data Quality	State		345	NA	NA	NA
	Number of all other active sites in RCRAInfo	Data Quality	State		1,315	NA	NA	NA
	Number of LQGs per latest biennial report	Data Quality	State		95	NA	NA	NA
B	Compliance monitoring: number of inspections (1 YR)	Data Quality	State		741	NA	NA	NA
	Compliance monitoring: sites inspected (1 YR)	Data Quality	State		638	NA	NA	NA
C		Data Quality	State		200	NA	NA	NA

	Number of sites with violations determined at any time (1 YR)								
	Number of sites with violations determined during the FY	Data Quality	State			142	NA	NA	NA
D	Informal actions: number of sites (1 FY)	Data Quality	State			67	NA	NA	NA
	Informal actions: number of actions (1 FY)	Data Quality	State			70	NA	NA	NA
E	SNC: number of sites with new SNC (1 FY)	Data Quality	State			2	NA	NA	NA
	SNC: number of sites in SNC (1 FY)	Data Quality	State			4	NA	NA	NA
F	Formal action: number of sites (1 FY)	Data Quality	State			7	NA	NA	NA
	Formal action: number taken (1 FY)	Data Quality	State			14	NA	NA	NA
G	Formal action: number taken (1 FY)	Data Quality	State			\$42,868	NA	NA	NA
2. Data accuracy: degree to which the minimum data requirements are accurate. 0 Recommendations.									
A	Number of sites SNC-determined on day of formal action (1 FY)	Data Quality	State			1	NA	NA	NA
	Number of sites SNC-determined within one week of formal action (1 FY)	Data Quality	State			0	NA	NA	NA
B		Data Quality	State			83	NA	NA	NA

	Number of sites in violation for greater than 240 days								
3. Timeliness of data entry, degree to which the minimum data requirements are complete. 0 Recommendations.									
A	Percent SNCs entered $\geq$ 60 days after designation (1 FY) <sup>1</sup>	Review Indicator	State			0%	NA	NA	NA
B	Comparison of Frozen Data Set	Compare the production data results under Element 1 to the frozen data. Please see <a href="#">Plain Language Guide</a> for details.							
5. Inspection coverage. Degree to which state completed the universe of planned inspections/compliance evaluations. 0 Recommendations.									
A	Inspection coverage for operating TSDFs (2 FYs)	Goal	State	100%	87.8%	100%	6	6	0
B	Inspection coverage for LQGs (1 FYs)	Goal	State	20%	24.1%	74.7%	71	95	24
C	Inspection coverage for LQGs (5 FYs)	Goal	State	100%	61.7%	91.6%	87	95	8
D	Inspection coverage for active SQGs (5 FYs)	Informational Only	State			84.6%	292	345	53
E	Inspection coverage for active CESQGs (5 FYs)	Informational Only	State			1,704	NA	NA	NA
	Inspection coverage for active transporters (5 FYs)	Informational Only	State			97	NA	NA	NA
	Inspection coverage for non-notifiers (5 FYs)	Informational Only	State			5	NA	NA	NA
	Inspection at active sites other than thos listed in 5a-d and 5e1-5e3 (5 FYs)	Informational Only	State			12	NA	NA	NA
7. Identification of alleged violations. degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information. 1 Recommendation(s)									

C	Violation identification rate at sites with inspections (1 FY)	Review Indicator	State			22.3%	142	638	496
8. Identification of SNC and HPV. degree to which state accurately identifies significant noncompliance & high priority violations and enters the information in the national system in timely manner. 1 Recommendation(s)									
A	SNC identification rate at sites with inspections (1 FY)	Review Indicator	State	1/2 National Avg	2.7%	0.3%	2	638	636
B	Percent of SNC determinations made within 150 days (1 FY)	Goal	State	100%	82.9%	50.0%	1	2	1
C	Percent of formal actions taken that received a prior SNC listing (1 FY)	Review Indicator	State	1/2 National Avg	62.2%	63.6%	7	11	4
10. Timely and appropriate action. degree to which state takes timely and appropriate enforcement actions in accordance with policy related to specific media. 0 Recommendations									
A	Percent of SNCs with formal actions/referral taken within 360 days (1 FY)	Review Indicator	State	80%	46.1%	100%	2	2	0
B	No activity indicator - number formal actions (1 FY)	Review Indicator	State			14	NA	NA	NA
12. Final penalty assessment and collection. degree to which differences between the initial and final penalty are documented in the file along with a demonstration in the file that the penalty was collected. 1 Recommendation(s)									
A	No activity indicator - penalties (1 FY)	Review Indicator	State			\$42,868	NA	NA	NA
B	Percent of final formal actions with penalty (1 FY)	Review Indicator	State	1/2 National Avg	80.5%	57.1%	4	7	3

Note: EPA Regions must archive the state official data set (first results screen) used for a state review, as these data cannot be reproduced at a later date. SRF data metrics results may change as data are updated in AFS, ICIS, PCS, and RCRAInfo. The above data set may be saved in Excel or comma delimited text format by clicking on the appropriate Save Results link above. Drilldown tables that are linked from this page also cannot be exactly reproduced after a new data refresh occurs if the state has entered or changed data. OECA does not require regions to save the drilldown facility lists in order to document their review; however, if potential problem areas are identified through regional analysis or via state dialogue, the region may want to save selected drilldown lists.

**Caveats:**

<sup>0</sup> State Metric column is generally computed from the value in the Count column (x) divided by the value in the Universe column (y).

<sup>1</sup> This metric includes SNC entry from 10/19/09 to 10/19/10. The data are updated annually at the end of each fiscal year.

## **APPENDIX C: PDA TRANSMITTAL LETTER**

Appendices C, D, and E provide the results of the Preliminary Data Analysis (PDA). The Preliminary Data Analysis forms the initial structure for the SRF report, and helps ensure that the data metrics are adequately analyzed prior to the on-site review.

This is a critical component of the SRF process because it allows the reviewers to be prepared and knowledgeable about potential problem areas before the on-site review. In addition, it gives the region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metric results.

This section, Appendix C, contains the letter transmitting the results of the Preliminary Data Analysis to the state. This letter identifies areas that the data review suggests the need for further examination and discussion during the review process.

February 15, 2011

Colleen Cripps, PhD  
Administrator  
NV Division of Environmental Protection  
901 So. Stewart Street  
Suite 4001  
Carson City, NV 89701-4209

Dear Ms. Cripps:

This letter is to confirm that EPA Region 9 is conducting the second review of Nevada Division of Environmental Protection's delegated RCRA Subtitle C and Clean Water Act NPDES enforcement programs this year under the State Review Framework (SRF2). We will also conduct a review this year of the Clark County Department of Air Quality and Environmental Management's Air Stationary Source enforcement program.

SRF2 will evaluate inspection and enforcement activity conducted by NDEP during Federal Fiscal Year 2010 (October 1, 2009 through September 30, 2010). EPA's water and waste programs have been working closely with your program staff and managers to plan and schedule these reviews. We will share our findings as the reviews progress, and you will have an opportunity to comment on the draft report prior to finalizing the review.

SRF2 is a continuation of a national effort that allows Region 9 to ensure Nevada Division of Environmental Protection meets agreed-upon minimum performance levels in providing environmental and public health protection. As before, the review will include:

- Discussions between Region 9 and NDEP program managers and staff;
- Examination of data in EPA and NDEP data systems; and
- Review of selected NDEP inspection and enforcement files and policies.

Our intent is to assist NDEP in ensuring delegated programs meet federal standards and are based on goals we have mutually agreed to. NDEP and Region 9 are partners in carrying out this



review. If we find issues, we want to address them together in the most constructive manner possible.

You may recall that EPA first used State Review Framework protocol developed by EPA and the Environmental Council of the States (ECOS) to conduct an initial round of reviews in all fifty states. NDEP was first reviewed in 2007. Upon completion of all Round 1 reviews, a work group composed of EPA, ECOS, state associations, and state agencies convened to evaluate Round 1 and revise the SRF elements, metrics, process and guidance. These revised protocols will be employed in all SRF 2 reviews.

The revised State Review Framework protocol employs standard metrics, worksheets and report templates that will be used to complete this review. In addition, EPA has designed an SRF Tracker as the repository for SRF final reports, comment letters, etc. States are encouraged to view these materials, and may comment on their own information securely via the internet ([http://www.epa-otis.gov/srf/srf\\_tracking.html](http://www.epa-otis.gov/srf/srf_tracking.html)).

All information and materials used in this review may be subject to federal and/or state disclosure laws, and may be released in response to a Freedom of Information Act Request. In addition, EPA will post the final report on a public website.

Region 9's contacts for NDEP's SRF2 review are:

Coordinator:	Julie Anderson	(415) 947-4260	<a href="mailto:anderson.julie@epa.gov">anderson.julie@epa.gov</a>
Water Review:	Ken Greenberg	(415) 972-3577	<a href="mailto:greenberg.ken@epa.gov">greenberg.ken@epa.gov</a>
	Jenee Gavette	(415) 972-3439	<a href="mailto:gavette.jenee@epa.gov">gavette.jenee@epa.gov</a>
RCRA Review:	Amy Miller	(415) 947-3530	<a href="mailto:miller.amy@epa.gov">miller.amy@epa.gov</a>
	John Schofield	(415) 972-3386	<a href="mailto:schofield.john@epa.gov">schofield.john@epa.gov</a>

As part of this review, EPA conducts preliminary assessments of the NDEP RCRA and Water

Programs based on state-verified enforcement data contained in the OTIS database. All states were informed in November, 2010 of their opportunity and deadlines to review and make corrections to their data (Attachment 1). Any remaining changes to water data can be made by February 16, 2011; final changes to RCRA data can be made by February 18. Attachment 2 transmits a summary of FY-10 data recently pulled from OTIS, for your information.

We look forward to working with you again on this project, and will strive to make the review as efficient and productive as possible.

Sincerely,

Jared Blumenfeld  
Regional Administrator

Attachment 1: November 22, 2010 letter to State Commissioners

Attachment 2: Data summary sheet

## **APPENDIX D: PRELIMINARY DATA ANALYSIS CHART**

This section provides the results of the Preliminary Data Analysis (PDA). The Preliminary Data Analysis forms the initial structure for the SRF report and helps ensure that the data metrics are adequately analyzed prior to the on-site review. This is a critical component of the SRF process because it allows the reviewers to be prepared and knowledgeable about potential problem areas before initiating the on-site portion of the review. In addition, it gives the region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metrics results.

The PDA reviews each data metric and evaluates state performance against the national goal or average, if appropriate. The PDA chart in this section of the SRF report only includes metrics where potential concerns or areas of exemplary performance are identified. (The full PDA worksheet in Appendix E contains every metric: positive, neutral, or negative.) Initial Findings indicate the observed results. Initial Findings are preliminary observations. They are used as a basis for further investigation that takes place during the file review and through dialogue with the state. Final Findings are developed only after evaluating them against the file review results where appropriate, and dialogue with the state have occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

### **RCRA**

Original Data Pulled from Online Tracking Information System (OTIS)							EPA Preliminary Analysis
Metric	Metric Description	Metric Type	Agency	National Goal	National Average	State Metric	Initial Findings
2B-S	Number of sites in violation for greater than 240 days	Data Quality	State			82	Number of facilities in violation for more than 240 days seems high.
5C-S	Inspection coverage for LQGs (5 FYs)	Goal	State	100%	61.7%	91.6%	According to the data, Nevada did not meet goal of 100% LQG coverage over 5 years. Part of this is based on variability of the LQG universe. Another reason is that Nevada does not perform inspections of LQGs inspected by the Region during the fiscal year. Nevada inspection 5 year inspection rated is significantly

Original Data Pulled from Online Tracking Information System (OTIS)							EPA Preliminary Analysis
Metric	Metric Description	Metric Type	Agency	National Goal	National Average	State Metric	Initial Findings
							above the national average.
7C-S	Violation identification rate at facilities with inspection (1 FY)	Review Indicator	State			22.3%	Rate of identification seems to be low.
8A-S	SNC identification rate at facilities with inspections (1 FY)	Review Indicator	State	1/2 National Average	2.7%	0.3%	Nevada is significantly below the national average for SNC identification. This metric indicates a problem could exist in applying the SNC definition to violations the state has discovered.
8C-S	Percent of formal actions taken that received a prior SNC listing (1 FY)	Review Indicator	State	1/2 National Average	62.6%	63.6%	Nevada is at or slightly above the national average.
10A-S	Percent of enforcement actions/referrals taken within 360 days (1 FY)	Review Indicator	State	80%	46.1%	100%	Data indicates Nevada is well above the national average.
12B-S	Percent of final formal actions with penalty (1 FY)	Review Indicator	State	1/2 National Average	80.5%	57.1%	Rate of formal actions with penalties appears to be low.

## APPENDIX E: PDA WORKSHEET

### RCRA-Nevada

Metric	Metric Description	Metric Type	Agency	National Goal	National Average	Nevada Metric Froz	Count Froz	Universe Froz	Not Counted Froz	State Discrepancy (Yes/No)	State Correction	State Data Source	Discrepancy Explanation	Evaluation	Initial Findings
R01A 1S	Number of operating TSDFs in RCRAI nfo	Data Quality	State			6	NA	NA	NA					Appears Acceptable	
R01A 2S	Number of active LQGs in RCRAI nfo	Data Quality	State			87	NA	NA	NA					Minor Issue	8.4% less LQGs than 2009 biennial report. However, LQG Status is variable.
R01A 3S	Number of active SQGs in RCRAI nfo	Data Quality	State			365	NA	NA	NA					Appears Acceptable	

R01A 4S	Number of all other active sites in RCRA Info	Data Quality	State			1,305	NA	NA	NA					Appears Acceptable	
R01A 5S	Number of LQGs per latest official biennial report	Data Quality	State			95	NA	NA	NA					Minor Issue	10 more LQGs than current active status.
R01B 1S	Compliance monitoring: number of inspections (1 FY)	Data Quality	State			741	NA	NA	NA					Appears Acceptable	
R01B 2S	Compliance monitoring: sites inspected (1 FY)	Data Quality	State			638	NA	NA	NA					Appears Acceptable	
R01C 1S	Number of sites with violations determined at any	Data Quality	State			200	NA	NA	NA					Appears Acceptable	

	time (1 FY)														
R01C 2S	Number of sites with violations determined during the FY	Data Quality	State			142	NA	NA	NA					Appears Acceptable	
R01D 1S	Informal actions : number of sites (1 FY)	Data Quality	State			67	NA	NA	NA					Appears Acceptable	
R01D 2S	Informal actions : number of actions (1 FY)	Data Quality	State			70	NA	NA	NA					Potential Concern	High number of informal actions compared to formal actions.
R01E 1S	SNC: number of sites with new SNC (1 FY)	Data Quality	State			2	NA	NA	NA					Minor Issue	See R08A0S below.

R01E 2S	SNC: Number of sites in SNC (1 FY)	Data Quali ty	State			4	NA	NA	NA					Appears Accepta ble	
R01F 1S	Formal action: numbe r of sites (1 FY)	Data Quali ty	State			7	NA	NA	NA					Appears Accepta ble	
R01F 2S	Formal action: numbe r taken (1 FY)	Data Quali ty	State			14	NA	NA	NA					Potential Concern	High number of informal actions compare d to formal actions.
R01G 0S	Total amoun t of final penalti es (1 FY)	Data Quali ty	State			\$42,8 68	NA	NA	NA					Potential Concern	5 year average approx. \$50,547. Below penalty average. Uncertain if EBN captured
R02A 1S	Numbe r of sites SNC- determ ined on day of formal	Data Quali ty	State			1	NA	NA	NA					Inconclu sive	Insufficie nt Data

	action (1 FY)														
R02A 2S	Number of sites SNC-determined within one week of formal action (1 FY)	Data Quality	State			0	NA	NA	NA					Inconclusive	No new SNC designations with which to make a finding.
R02B 0S	Number of sites in violation for greater than 240 days	Data Quality	State			82	NA	NA	NA					Potential Concern	Approx. 41% of 200 sites in violation (1C1).
R03A 0S	Percent SNCs entered 60 days after designation (1 FY)	Review Indicator	State			0.0%	0	3	3					Appears Acceptable	
R05A 0S	Inspection coverage for operating	Goal	State	100%	87.4%	100.0%	6	6	0					Appears Acceptable	Above national average.



	TSDFs (2 FYs)														
R05B0S	Inspection coverage for LQGs (1 FY)	Goal	State	20%	24.1%	74.7%	71	95	24					Appears Acceptable	Significantly above national average.
R05C0S	Inspection coverage for LQGs (5 FYs)	Goal	State	100%	61.7%	91.6%	87	95	8					Appears Acceptable	Significantly above national average.
R05D0S	Inspection coverage for active SQGs (5 FYs)	Informational Only	State			84.9%	310	365	55					Appears Acceptable	
R05E1S	Inspections at active CESQGs (5 FYs)	Informational Only	State			1,691	NA	NA	NA					Appears Acceptable	A significant number of CESQG inspections are performed by Clark and Washoe Counties.
R05E2S	Inspections at active transporters	Informational Only	State			97	NA	NA	NA					Appears Acceptable	

	(5 FYs)														
R05E 3S	Inspections at non-notifiers (5 FYs)	Informational Only	State			5	NA	NA	NA					Appears Acceptable	
R05E 4S	Inspections at active sites other than those listed in 5a-d and 5e1-5e3 (5 FYs)	Informational Only	State			12	NA	NA	NA					Appears Acceptable	
R07C 0S	Violation identification rate at sites with inspections (1 FY)	Reviewer Indicator	State			22.3 %	142	638	496					Potential Concern	Violation rate appears to be low. This could be attributed to frequent inspections performed by State.

R08A 0S	SNC identi- fication rate at sites with inspect- ions (1 FY)	Revi- ew Indic- ator	State	1/2 Natio- nal Avg	2.6%	0.3%	2	638	636					Minor Issue	Percent SNC determi- nation below national average. State performs frequent inspectio- ns of regulated communit- y.
R08B 0S	Perce- nt of SNC determi- nation s made within 150 days (1 FY)	Goal	State	100%	83.2%	50.0 %	1	2	1					Potential Concern	Below national average and goal.
R08C 0S	Perce- nt of formal actions taken that receiv- ed a prior SNC listing (1 FY)	Revi- ew Indic- ator	State	1/2 Natio- nal Avg	62.3%	63.6 %	7	11	4					Appears Accepta- ble	

R10A 0S	Percent of SNCs with formal action/referral taken within 360 days (1 FY)	Review Indicator	State	80%	46.5%	100.0%	2	2	0					Appears Acceptable
R10B 0S	No activity indicator - number of formal actions (1 FY)	Review Indicator	State			14	NA	NA	NA					Appears Acceptable
R12A 0S	No activity indicator - penalties (1 FY)	Review Indicator	State			\$42,868	NA	NA	NA					Appears Acceptable
R12B 0S	Percent of final formal actions with penalty (1 FY)	Review Indicator	State	1/2 National Avg	80.6%	57.1%	4	7	3					Appears Acceptable

## **APPENDIX F: FILE SELECTION**

Files to be reviewed are selected according to a standard protocol (available here: [http://www.epa-otis.gov/srf/docs/fileselectionprotocol\\_10.pdf](http://www.epa-otis.gov/srf/docs/fileselectionprotocol_10.pdf)) and using a web-based file selection tool (available here: [http://www.epa-otis.gov/cgi-bin/test/srf/srf\\_fileselection.cgi](http://www.epa-otis.gov/cgi-bin/test/srf/srf_fileselection.cgi)). The protocol and tool are designed to provide consistency and transparency in the process. Based on the description of the file selection process in Section A below, states should be able to recreate the results in the table in Section B.

### **A. File Selection Process**

#### **Resource Conservation and Recovery Act**

Region 9 used the file selection tool in OTIS, which follows the SRF File Selection Protocol. The universe of selection files (compliance monitoring and enforcement) from which to select was 644. According to the Protocol, the range of files for a universe that size is 20 to 35. As a result, Region picked 31 files to use for its random, representative file selection. Thirteen of these files focused on compliance monitoring and remainder focused on enforcement. These files are from a mix of the categories below and are geographically distributed across the state:

- Different sources
- Inspections or no inspections
- Violations and no violations
- SNCs or no SNCs
- Informal or formal actions
- Penalties or no penalties

## B. File Selection Table

Facility	Program ID	Evaluation	Violation	SNC	Informal Action	Formal Action	Penalty	Universe	Select
BOBBY PAGE'S DRY CLEANERS	NVR000082297	2	2	0	0	0	0	SQG	accepted representative
CAROLINA LOGISTICS SERVICES LLC	NVR000076034	1	3	0	1	0	0	LQG	accepted representative
CHAPMANS LAS VEGAS DODGE	NVD982001695	1	1	0	1	0	0	CES	accepted representative
CHARLES RIVER RESEARCH MODEL SERVICES	NVR000030023	1	0	0	0	0	0	LQG	accepted representative
COSTCO WHOLESALE #25	NVD986776169	1	3	0	1	0	0	LQG	accepted representative
DYNAGRAPHIC PRINTING INC	NVD986773620	2	1	0	0	0	0	SQG	accepted representative
E.I. DUPONT DE NEMOURS & CO	NVR000001495	1	0	0	0	0	0	LQG	accepted representative
EGADS L L C	NVR000076448	1	1	0	0	0	0	SQG	accepted representative
ERICKSON INTERNATIONAL	NVR000084996	1	6	0	1	0	0	LQG	accepted supplemental
FAIRWAY CHEVROLET COMPANY	NVD981428923	1	0	0	0	0	0	SQG	accepted representative
FEDERAL AVIATION ADMINISTRATION	NVR000083881	1	0	0	0	0	0	CES	accepted representative
FIRSTGOLD CORP	NVR000084053	1	4	0	2	0	0	LQG	accepted representative
HAMILTON COMPANY	NVD008477820	1	1	0	0	3	1,250	LQG	accepted representative
HAWTHORNE ARMY DEPOT	NV1210090006	4	19	0	0	0	0	TSD(COM)	accepted representative

Facility	Program ID	Evaluation	Violation	SNC	Informal Action	Formal Action	Penalty	Universe	Select
LAKESIDE CLEANERS	NVD982373557	2	1	0	0	0	0	CES	accepted representative
MARATHON OIL SANDS	NVR000084491	1	6	0	1	0	0	LQG	accepted representative
MINAMILL	NVR000082479	1	1	0	0	0	0	OTH	accepted representative
NEVADA CEMENT CO	NVD982430126	1	0	0	0	0	0	SQG	accepted representative
NEVADA MINERAL PROCESSING	NVR000085209	0	0	0	1	1	0	OTH	accepted representative
NEW BOMB FACILITY (HAWTHORNE ARMY DEPOT)	NV5210090010	3	2	0	0	0	0	TSD(TSF)	accepted representative
PARAMOUNT AUTO BODY INC	NVD986770097	2	0	0	0	0	0	CES	accepted representative
R. R. DONNELLEY	NVD981641434	1	0	0	0	0	0	LQG	accepted representative
SAFETY-KLEEN SYSTEMS INC	NVR000066837	4	0	0	0	0	0	TSD(TSF)	accepted representative
SEPHORA STORE 42 VENETIAN	NVR000078535	2	1	0	1	0	0	CES	accepted representative
SIERRA CHEMICAL COMPANY	NVD982518755	1	0	0	0	0	0	CES	accepted representative
SIERRA ENVIRONMENTAL MONITORING INC	NV0000305649	1	1	1	0	3	2,205	SQG	accepted representative
STERLING NEVADA LLC	NVR000083303	2	1	0	1	0	0	CES	accepted representative
THE SHERWIN WILLIAMS COMPANY RENO NV	NVR000038737	1	0	0	0	0	0	LQG	accepted representative

Facility	Program ID	Evaluation	Violation	SNC	Informal Action	Formal Action	Penalty	Universe	Select
THYSSENKRUPP VDM USA INC.	NVD092497999	1	3	0	1	0	0	LQG	accepted representative
WALMART RETURN CENTER 9195	NVR000000018	1	0	0	0	1	5,000	LQG	accepted representative
ZIONS FIRST NATIONAL BANK	NVR000085357	1	0	0	0	0	0	LQG	accepted representative



## **APPENDIX G: FILE REVIEW ANALYSIS**

This section presents the initial observations of the region regarding program performance against file metrics. Initial findings are developed by the region at the conclusion of the file review process. The initial finding is a statement of fact about the observed performance, and should indicate whether the performance indicates a practice to be highlighted or a potential issue, along with some explanation about the nature of good practice or the potential issue. The File Review Metrics Analysis Form in the report only includes metrics where potential concerns or areas of exemplary performance are identified.

Initial findings indicate the observed results. They are preliminary observations and are used as a basis for further investigation. These findings are developed only after evaluating them against the PDA results where appropriate, and talking to the state. Through this process, initial findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

The quantitative metrics developed from the file reviews are initial indicators of performance based on available information and are used by the reviewers to identify areas for further investigation. Because of the limited sample size, statistical comparisons among programs or across states cannot be made.

### **Resource Conservation and Recovery Act**

<b>RCRA Metric #</b>	<b>RCRA File Review Metric</b>	<b>Metric Value</b>	<b>Initial Findings and Conclusions</b>
<b>Metric 2c</b>	% of files reviewed where mandatory data are accurately reflected in the nation data system.	97%	30 of 31 inspection and enforcement files had data that were reflected accurately in RCRAInfo.
<b>Metric 4a</b>	Planned inspections completed	>100%	For FY2010, Nevada committed to inspections at 50 LQGs, 6 TSDFs, and 500 transporter, SQGs, and CESQGs. Respectively, 75, 19, and 789 inspections were conducted.
<b>Metric 6a</b>	# of inspection reports reviewed	44	In the 31 files selected for the file review (4 formal, 11 informal enforcement, 1 SNC, 16 evaluations) there were a total of 44 inspection reports that were found in the files and reviewed as part of the SRF review.

<b>RCRA Metric #</b>	<b>RCRA File Review Metric</b>	<b>Metric Value</b>	<b>Initial Findings and Conclusions</b>
<b>Metric 6b</b>	% of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance at the facility.	97.5%	39 of 40 of the BWM inspection reports were considered complete and provided sufficient documentation to determine compliance at the facility. The inspection reports included narrative, photographs, facility descriptions, and observed violations, if any. None of the Washoe County inspections included a good facility description. The SNHD reports did not list a specific regulatory citation(s) for any potential observed, if any.
<b>Metric 6c</b>	Inspections reports completed within a determined time-frame.	87.5%	35 of the 40 inspection reports met the recommended deadline of 45 days to complete the reports.
<b>Metric 7a</b>	% of accurate compliance determination based on the inspection reports.	100%	Based on the information provided in the 40 BWM, 2 SNHD and 2 Washoe County inspection reports, all 44 inspection reports appeared to have accurate compliance determinations.
<b>Metric 7b</b>	% of violation determinations in the files reviewed that are reported timely to the national database (within 150 days).	94.4%	There were 18 facility inspections where SVs were found, 11 facilities (94.4%) were issued informal enforcement actions within 150 days after the inspection. One facility was identified as having a violation(s) during the review period, but there is no listing in RCRAInfo of the type of enforcement action (e.g., 110-Verbal) initiated by Nevada (BWM).
<b>Metric 8d</b>	% of violations in files reviewed that were accurately determined to be SNC	100%	Of the 44 inspection reports reviewed, the Region determined that Nevada had correctly identified all SNCs.
<b>Metric 9a</b>	# of enforcement responses reviewed.	15	
<b>Metric 9b</b>	# of enforcement responses that have returned or will return a source in SNC to compliance.	100%	1 of 1 SNCs were returned to compliance.
<b>Metric 9c</b>	% of enforcement	100%	14 of 14 enforcement responses that

<b>RCRA Metric #</b>	<b>RCRA File Review Metric</b>	<b>Metric Value</b>	<b>Initial Findings and Conclusions</b>
	responses that have returned or will return SVs to compliance.		involved SVs returned, or will return, the SVs to compliance.
<b>Metric 10c</b>	% of enforcement responses reviewed that are taken in a timely manner.	100%	There were 11 SV files reviewed where informal enforcement was taken, and 100% of the files were taken in a timely manner (240 days). There was one SNC file reviewed where final enforcement was taken in FY2010. The case was concluded within the recommended 360-day time-frame.
<b>Metric 10d</b>	% of enforcement responses reviewed that are appropriate to the violations.	100%	15 of the 15 enforcement cases reviewed contained appropriate response to the violations.
<b>Metric 11a</b>	% of reviewed penalty calculations that considered gravity <u>and</u> economic benefit for non-compliance.	67%	Gravity portion of the penalty calculations reviewed for 2 of the 3 penalty cases were calculated following the Nevada RCRA policies and procedures. The 3 <sup>rd</sup> penalty action was negotiated directly with the Attorney General's office. The Attorney General's office did not following the Nevada RCRA penalty policy in determining the penalty. The Attorney General's penalty action did not considered economic benefit for non-compliance.
<b>Metric 12a</b>	% of penalties reviewed that document the difference and rationale between and initial and final assessed penalty.	100%	None of the 3 penalty actions reviewed, differed between the initial penalty and the final penalty paid by the facility.
<b>Metric 12b</b>	% of files that document collection of penalty	100%	All the penalty cases reviewed contained documentation that the penalty had been collected.

## **APPENDIX H: CORRESPONDENCE**

*[Attach correspondence between EPA and the state including, if received, comments on Draft Report and Final Report.]* **APPENDIX H: CORRESPONDENCE**

*[Attach correspondence between EPA and the state including, if received, comments on Draft Report and Final ]*



STATE OF NEVADA  
Department of Conservation & Natural Resources  
DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor  
Leo M. Drazdoff, P.E., Director  
Colleen Cripps, Ph.D., Administrator

December 14, 2011

Mr. Jared Blumenfeld, Regional Administrator  
US EPA Region IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

RE: Draft Report for Round 2 of the State Review Framework  
State of Nevada Enforcement Program reviews by EPA

Dear Mr. Blumenfeld:

We have reviewed the draft report reflecting the results of Round 2 of the State Review Framework. The report reviews compliance and enforcement activities conducted by the Nevada Division of Environmental Protection (NDEP) related to RCRA Subtitle C and the National Pollutant Discharge Elimination System of the Clean Water Act. Our comments on the findings of each of these two program reviews are attached. We have also attached a narrative for each program area to be included as Element 13 of the final report.

Our comments reflect a consistent theme that we have repeated many times over the years in our discussions with EPA. The primary goal of NDEP has always been to achieve and maintain compliance with environmental regulations. Toward that end, we invest in compliance assistance, outreach, and an active and effective field presence. We find that the effectiveness of our efforts is best measured by the rate of compliance among regulated facilities, not by the number or amount of penalties collected. We recognize that this strategy may be impractical for EPA and States with very large regulatory universes and that a more reactive approach may be needed. However, given the relatively small number of regulated facilities in Nevada and our willingness to invest State resources beyond federal grant funding, we find that our proactive, compliance-focused approach works.

Thank you for the opportunity to comment on this draft SRF. We also appreciate the positive commendations on our good inspection programs. Please factor our comments into your finalization of the 2010 SRF and include our respective Element 13 narratives.

Sincerely,

Colleen Cripps, Ph.D.  
Administrator



Page 2

Attachments

cc: David Gaskin, Deputy Administrator, NDEP  
David Emme, Deputy Administrator, NDEP  
Eric Noack, Chief, Bureau of Waste Management, NDEP  
Alan Tinney, Chief, Bureau of Water Pollution Control, NDEP  
Mr. Ken Greenberg, US EPA Region IX, WTR-7, 75 Hawthorne Street  
San Francisco, CA 94105-3901  
✓ John Schofield, US EPA Region IX, 75 Hawthorne Street San Francisco, CA  
94105-3901

NDEP Bureau of Water Pollution Control  
NPDES CWA Comments on Draft SRF II

These comments are specific to the EPA review of the National Pollutant Discharge Elimination System Program enforcement activities in the SRF report.

Before providing our comments and responses, NDEP reiterates that as with past SRF responses, the recent draft SRF would require NDEP to allocate additional time and financial resources for efforts that *will not* add any substantive value to our compliance and enforcement programs. We stress to EPA that NDEP remains one of the leanest state environmental programs in the U.S. and as such we focus our resources on achieving water pollution control compliance statewide based upon our State priorities.

With this in mind, NDEP offers the following comments to EPA:

1. Data reporting systems/architecture:

The general program overview section, page 6 of the report states that NDEP enters general permit information into ICIS. This is not correct. Per our mutual agreement (June 18, 2004 letter to John Kemmerer) on ICIS entry roles, NDEP is not responsible for entering information on general permits or storm water permits into ICIS. This reference to general permit entry should be removed.

2. Single Event Violation (SEV) entry into ICIS (Element 7):

Element 7 of the SRF report states that EPA is in consultation with NDEP on options and procedures for entering SEV's into ICIS for major NPDES facilities. This is not an accurate statement as NDEP has not agreed to entry of SEV's into ICIS. NDEP does not have sufficient staffing or funding for this additional data entry activity and to do so would take critical resources away from our compliance and enforcement program.

3. Economic Benefit Penalty Calculation Method (Element 11)

The Element 11 review recommendation is to obtain facility cost data, where appropriate, when determining the economic benefit factor in assessing noncompliance penalties. While economic benefit is not broken out as a separate line item, NDEP factors economic benefit into all its NPDES penalty determinations.

NDEP does not believe that a compliance and enforcement program should be evaluated merely by counting violations and the response to those violations. NDEP is proud of its compliance record and believes the compliance rate to be the true metric necessary to

accurately represent the effectiveness and success of a compliance and enforcement program.

If NDEP is forced to increase data entry into the national database, we will need to shift resources away from environmental protection efforts identified as priorities in Nevada. This will have a direct negative impact on our ability to ensure compliance and protect the waters of the state.

NDEP thanks you for the opportunity to comment on this draft SRF. Please contact Deputy Administrator David Gaskin at (775) 687-9302 or [dgaskin@ndep.nv.gov](mailto:dgaskin@ndep.nv.gov) if you have any questions or would like to discuss these comments further.



## **State Review Framework II Element 13 Clean Water Act**

### **Introduction**

NDEP does not believe the SRF fully defines the effectiveness of a Clean Water Act compliance and enforcement program. The 12 elements evaluate a program on its ability to identify and react appropriately to violations and subsequently track them, but ignore the important efforts implemented by a program to achieve and maintain compliance so that violations are not realized. An enforcement program's success should be measured by the compliance rate, as opposed to the violation/enforcement rate. This philosophy is the cornerstone of NDEP's successful compliance and enforcement program.

NDEP strives for compliance by working cooperatively and reasonably with the regulated community. This allows us to achieve and maintain a high level of compliance, in many cases outside of formal enforcement. In certain areas, we go above and beyond federal requirements to achieve better environmental results. For example, we require that all wastewater treatment plants be managed by certified wastewater treatment operators. We ensure that all design plans for construction of wastewater treatment plants are prepared by Nevada Licensed Professional Engineers. Such requirements greatly enhance the compliance rate for many of our NPDES facilities.

### **Inspections and Assistance**

NDEP inspects all of its eleven major NPDES facilities on an annual basis, doubling the EPA national coverage goal of inspecting the majors every two years. At each of the major Publically Owned Treatment Works inspections, NDEP performs compliance sampling inspections (CIS) over a two-day period. Additionally, we conduct compliance evaluation inspections (CEI) on at least 20% of all minor NPDES facilities statewide each year. We do this because we know inspections are a critical factor in tracking and ensuring compliance for these key dischargers. Our stormwater inspection schedule is robust, and each year NDEP far exceeds the minimum criteria of site inspections for this program.

NDEP also believes public outreach and education efforts are key to a successful compliance program. Our efforts associated with public outreach and education continue to be effective in achieving and maintaining compliance. One example is the NPDES storm water program. We provide stormwater compliance workshops each year to developers, contractors, consultants, engineers and other interested parties. In 2010, NDEP participated in ten separate training sessions with NDOT to educate all of their field stations in stormwater permit requirements. Also, we assisted in training sessions for MS4 permittees in Clark County and Washoe County.

We continue to fund our wastewater operator's Circuit Rider Program even after federal funding stopped several years ago. This is because our program has proven to be significant for achieving compliance in the State of Nevada for the rural wastewater treatment plants.

Compliance inspections conducted by NDEP CWA Program:

	<u>Minimum Required</u>	<u>SFY2010</u>	<u>SFY2011</u>
Major NPDES CEI/CIS conducted	6	11	11
Minor NPDES CEI	16	17	22
Industrial stormwater inspections	75	698	183
Construction site stormwater inspections	150	690	710

### Enforcement

NDEP uses both formal and informal enforcement to achieve compliance with all its permittees. Our priority is to get noncompliant facilities to return to compliance as quickly as possible and minimize environmental impacts. Tools that we use include Cease and Desist Orders, formal Findings of Alleged Violation and Orders, informal compliance Action Letters and Administrative Orders on Consent. Through the judicious use of these options, we are able to address compliance matters quickly and effectively.

NDEP maintains a database in which pertinent compliance and enforcement data are stored and managed. We are able to track submittal dates and follow up on failures to submit required reports. Exceedances of DMR limits are tracked to establish compliance histories of permittees. Our state database is the system of record and is available for public review. NDEP is currently enhancing the database to allow DMR data to be submitted electronically which will allow us to process DMRs more rapidly, and therefore address noncompliance issues in a timelier manner.

NDEP issues formal enforcement actions and collects penalties when necessary. Formal enforcement is implemented mainly in cases demonstrating culpability and harm to the environment, and also where corrective actions by the permittee are not being made or are not sufficient.

NDEP Enforcement Actions:

	<u>SFY2010</u>	<u>SFY2011</u>
Total NPDES Permittees	84	85
Informal enforcement actions	9	2
Formal enforcement actions	2	2
Compliance rate	<b>87%</b>	<b>94%</b>

**Conclusion**

To summarize, NDEP does not believe that a compliance and enforcement program should be evaluated merely by counting violations and the response to those violations. NDEP is proud of its compliance record and believes the compliance rate to be the true metric necessary to accurately represent the effectiveness and success of a compliance and enforcement program.



# **State Review Framework**

Nevada Division of Environmental Protection  
Clean Water Act, NPDES Program  
Round 2 Report  
for Federal Fiscal Year 2010

**Final**  
**February, 2014**

Conducted by the U. S. Environmental Protection Agency  
Region 9

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# **I. EXECUTIVE SUMMARY**

## **Major Issues**

**The SRF review of the State of Nevada identified the following major issues:**

- None.

## **Summary of Programs Reviewed**

### **II. Clean Water Act/National Pollutant Discharge Elimination System Program**

**The problems which necessitate state improvement and require recommendations and actions include:**

- NDEP does not enter single event violations (SEVs) at major facilities into EPA's ICIS-NPDES database as required by EPA's data management policies.

**The good practices include:**

- NDEP exceeded EPA's NPDES inspection goals and national averages for inspection coverage in all categories of NPDES regulated facilities in FY 2010. NDEP inspected 100 percent of major facilities, 24 percent of minor facilities and more than 20 percent of stormwater dischargers.

**Areas meeting SRF program requirements or with issues for attention and correction include:**

- NDEP routinely enters required data into EPA's ICIS-NPDES that is complete, timely, and accurate.
- NDEP's inspection reports properly document and accurately describe inspection observations, however, some of NDEP's report formats do not include all of EPA's recommended elements.
- NDEP accurately and timely identifies facility effluent limit violations by tracking major facility discharge monitoring (DMR) results in EPA's ICIS-NPDES database.
- None of Nevada's 14 major facilities were in significant noncompliance (SNC) during FY10.
- NDEP's enforcement actions reviewed by EPA were timely and appropriate, and promote a return to compliance.
- Two of the three penalty actions reviewed included appropriate gravity and economic benefit calculations. All penalties were collected in cash payments as assessed with no offsets for supplemental environmental projects.

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

The State Review Framework (SRF) is a one tool for EPA oversight of state and EPA direct implementation compliance and enforcement programs in a nationally consistent and efficient manner. Reviews examine 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).

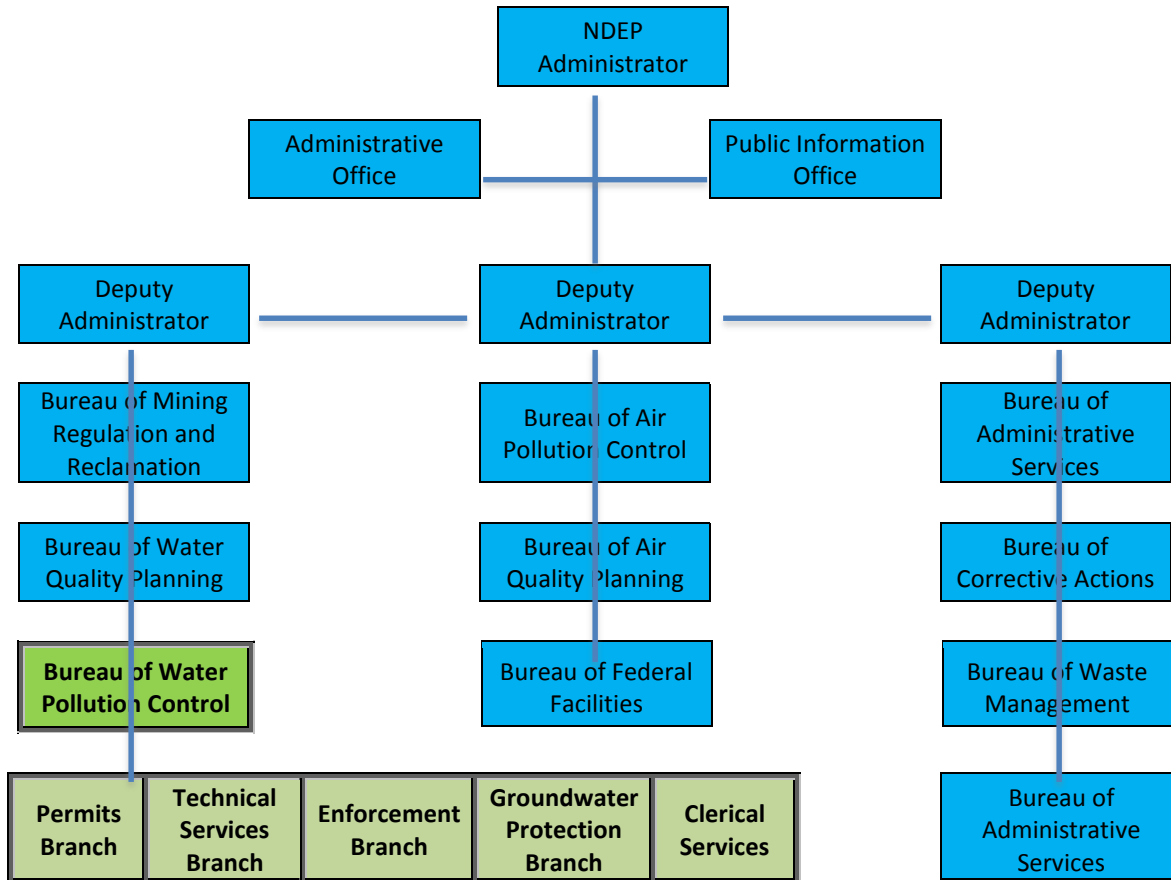
Reviews are conducted in three phases: analyzing information from the national data systems; reviewing a limited set of state files; and development of findings and recommendations. EPA and the state discuss all aspects of the review to understand the causes of issues, and to seek agreement on identifying the actions needed to address problems.

The reports generated by the reviews capture the information and agreements developed during the review process to facilitate program improvements. The reports provide factual information and do not make determinations of program adequacy. EPA also uses the information in the reports to describe enforcement and compliance at the national level and to identify issues that require a national response. Reports are not used to compare or rank state programs.



## A. GENERAL PROGRAM OVERVIEW

**Agency Structure:** The organization structure of the Nevada Division of Environmental Protection at the time of review is shown below. The NPDES compliance and enforcement program is managed within the Bureau of Water Pollution Control (see green highlighted box). At the writing of this report, NDEP was reorganizing its Bureau of Water Pollution Control to reconfigure the Branches represented in the organization chart below.



**Roles, Responsibilities, and Staffing:** For purposes of this review, only the Technical Services and Enforcement Branches are described below:

- Technical Services Branch:** Responsible for conducting inspections, as follows: NPDES major and minor facilities; NPDES general permitted sites (construction, industrial, small MS4s); groundwater; permitted remediation projects; and complaint response. Ensures that stormwater sites have filed a Notice of Intent and reviews plans and specifications for proposed facilities. This branch has six inspectors and one supervisor.
- Enforcement Branch:** Responsible for NPDES DMR review and compliance and enforcement activities related to NPDES and other facilities. Responsible for data entry into ICIS-NPDES the following items: NPDES major DMRs, NPDES major and minor permits and inspections, and formal enforcement actions. This branch has 3 staff and one

supervisor.

**Compliance/Enforcement Program Structure:** NDEP's NPDES compliance and enforcement program is centralized and conducted from one office in Carson City, Nevada.

**Local Agencies Included/Excluded From Review:** There are no NPDES program responsibilities assumed by other agencies.

**Resources:** As described above, 11 staff and supervisors are currently in place for implementing NDEP's NPDES compliance and enforcement program. The Technical Services and Enforcement Branches have three vacancies. Also, due to state budget constraints, all staff is furloughed one day each month. At the writing of this report, the Bureau of Water Pollution Control is reorganizing to support program implementation with a reduced staffing level.

**Data reporting systems/architecture:** NDEP enters the following NPDES information into EPA's ICIS-NPDES data system: major, minor, and general permits, major DMRs, major and minor inspections, and formal enforcement actions issued to major and minor facilities. The NDEP also maintains a separate data base for tracking major and minor permits and inspections, and general permitted facilities and inspections. NDEP manually reviews all minor facility DMRs and maintains a record of DMR review findings in the facility files.

## **B. MAJOR STATE PRIORITIES AND ACCOMPLISHMENTS**

**Priorities:** *[NDEP, please enter a brief summary of NPDES compliance and enforcement priorities, and how they were established (e.g., legislature, EPA national priorities, tips/complaints).]*

### **Accomplishments:**

- NDEP exceeded EPA's national NPDES inspection coverage goals and averages for all categories of inspections in FY 2010, as established by EPA's Compliance Monitoring Strategy (CMS). NDEP inspected 100 percent of major facilities, exceeding the 50 percent goal; 24 percent of minor facilities, exceeding the 20 percent goal; 29 percent of industrial stormwater facilities, exceeding the 10 percent goal; and 21 percent of Phase I and II construction facilities, exceeding the 10 percent and five percent goals.

## **C. PROCESS FOR SRF REVIEW**

Key steps in the review of NDEP's NPDES compliance program are described below.

- **Review period:** Federal Fiscal Year (FFY) 2010 (October 1, 2009 through September 30, 2010)
- **Key dates:**
  - January 20, 2011, EPA Region 9 establishes a frozen data set (via OTIS) and generates the data query for the Preliminary Data Analysis (PDA)
  - February 2, 2011, EPA Region 9 transmits the PDA spreadsheet to NDEP for

- completion, along with the frozen data set.
  - February 24, 2011, EPA initiates by letter, its SRF evaluation of NDEP's enforcement activity for FFY 2010
  - March 4, 2011, NDEP transmits the completed PDA to EPA
  - April 29, 2011, EPA transmits to NDEP a revised PDA generated from EPA Headquarters' frozen data set and requests additional information.
  - May 3, 2011, NDEP transmits the completed spreadsheet to EPA
  - May 9-10, EPA conducts the on-site SRF review at the NDEP offices in Carson City, Nevada
  - June 30, 2011, EPA completes the SRF review at EPA offices in San Francisco, California
  - July 8, 2011, EPA and NDEP teleconference to discuss the SRF review findings.
- **Communication with NDEP:** Throughout the SRF process, EPA communicated with NDEP managers via official letters, emails, and phone calls. At the on-site opening meeting with NDEP managers, EPA explained the SRF purpose, process, and schedule. The programs areas to be evaluated (commitments, inspections, enforcement, and data management) were discussed along with the methods of evaluation (file and data review and interviews). A teleconference was held with the NDEP managers to discuss the review findings.
- **State and EPA contacts for review:**
  - NDEP: Dave Gaskin, Deputy Administrator, Environmental Programs (775-687-9032)  
 Alan Tinney, Chief, Bureau of Water Pollution Control (775-687-9433)  
 Cliff Lawson, Supervisor, Permits Branch (775-687-9414)  
 Val King, Supervisor, Enforcement Branch (775-687-9427)
  - EPA: Ken Greenberg, Manager, CWA Compliance Office (415-972-3477)  
 Jenee Gavette, Environmental Protection Specialist, CWA Compliance Office (415-972-3439)

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

During the first SRF review of NDEP's compliance and enforcement programs, EPA Region 9 and Nevada identified a number of actions to be taken to address issues found during the review. All actions have been satisfactorily addressed by NDEP. Appendix A contains a comprehensive list of completed actions for reference.

## IV. FINDINGS

Findings represent the region’s conclusions regarding the issue identified. Findings are based on the initial findings identified during the data or file review, as well as from follow-up conversations or additional information collected to determine the severity and root causes of the issue. There are four types of findings:

Finding	Description
<b>Good Practices</b>	This describes activities, processes, or policies that the SRF data metrics and/or the file reviews show are being implemented exceptionally well, and which the State is expected to maintain at a high level of performance. Additionally, the report may highlight specific innovative and noteworthy activities, processes, or policies that have potential to be replicated by other States. No further action is required by either EPA or the State.
<b>Meets SRF Program Requirements</b>	This indicates that no issues of concern were identified under this Element.
<b>Areas for State Attention</b>	This describes activities, processes, or policies that SRF data metrics and/or file reviews show are being implemented with <b>minor deficiencies</b> . The State must monitor these deficiencies to strengthen its performance, but they are not significant enough to require the region to identify and track State actions to correct. This can describe a situation where a State is implementing either EPA or State policy in a manner that requires self-correction to resolve concerns identified during the review. These are single or infrequent instances that do not constitute a pattern of deficiencies or a significant problem. These are minor issues that the State should self-correct without additional EPA oversight. However, the State is expected to improve and maintain a high level of performance.
<b>Area for State Improvement— Recommendations Required</b>	This describes activities, processes, or policies that the metrics and/or the file reviews show are being implemented by the State that have <b>significant problems</b> that need to be addressed and that require follow-up EPA oversight. This can describe a situation where a State is implementing either EPA or State policy in a manner requiring EPA attention. For example, in areas where the metrics indicate that the State is not meeting its commitments, there is a pattern of incorrect implementation in updating compliance data in the data systems, there are incomplete or incorrect inspection reports, and/or there is ineffective enforcement response. These would be significant issues and not random occurrences. Recommendations are required for these problems to have well-defined timelines and milestones for completion. Recommendations will be monitored in the SRF Tracker.

**Element 1: Data completeness. Degree to which the Minimum Data Requirements are complete in EPA's national database.**

E1.01	Finding	NDEP routinely enters required data into EPA's ICIS-NPDES database.
	Finding is:	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Explanation	<p>During the FFY 2010 review period, the NDEP maintained a complete and accurate inventory of its NPDES permits by entering the following information into EPA's ICIS-NPDES database:</p> <ul style="list-style-type: none"> <li>• NPDES major individual permits: Permit ID, permit tracking, inspections, pipe schedules, permit limits, discharge monitoring report (DMR) data, and formal enforcement.</li> <li>• NPDES major general permits: Permit ID.</li> <li>• NPDES non-major (minor) individual permits: Permit ID, inspections, and formal enforcement.</li> <li>• NPDES non-major general permits: Permit ID.</li> </ul> <p>NDEP's permit limit and DMR data entry rates for major individual permits exceeds the national goals set forth in EPA's national data management policies. These policies establish data elements known as the Water Enforcement National Database (WENDB), along with standards for data in terms of completeness, accuracy, and timeliness.</p>
	Metric(s) and Quantitative Value	<p><i>1-a-1. Number of NPDES majors with individual permits: 14</i>  <i>1-a-2. Number of NPDES majors with general permits: 0</i>  <i>1-a-3. Number of NPDES non-majors with individual permits: 75 (at end of state FY).</i>  <i>1-a-4. Number of NPDES non-majors with general permits: 5 general permits.</i>  <i>1-b-1. Of majors with individual permits, the percent with permit limits present in the national database: 100% compared to the national goal of 95% and the national average entry rate of 92.9%.</i>  <i>1-b-2. DMR entry rate for those majors with individual permits with multiple outfalls present in the national database: DMR entry rate for 100% compared to the national goal of 95% and the national average entry rate of 96.9%.</i>  <i>1-b-3. Of majors with individual permits, percent with DMR data in the national database: 100% compared to the national goal of 95% and national average entry rate of 93.7%.</i>  <i>1-b-4. Rate of manual override of RNC/SNC of major facilities to a compliant status: 0</i>  <i>1-c-1, 1-c-2, 1-c-3. Of non-majors with individual permit limits, the percent with permit limits, DMRs with multiple outfalls, and DMR present in the national database: Zero. This information is not</i></p>

**Element 1: Data completeness. Degree to which the Minimum Data Requirements are complete in EPA's national database.**

	<p>required to be entered per EPA data management policy; NDEP does not enter this information into ICIS-NPDES.</p> <p><i>1-d-1, 1-d-2, 1-d-3. Noncompliance rate in database at non-major facilities individual permits, reported under the Annual Noncompliance Report, and DMR nonreceipt in database:</i> This information is not required to be entered per EPA's data management policy; NDEP does not enter this information into ICIS-NPDES.</p> <p><i>1-e-1, 1-e-2. Informal actions at major facilities:</i> Zero. NDEP had no informal actions against major facilities during the review period.</p> <p><i>1-e-3, 1-e-4. Informal actions at non-major facilities:</i> EPA's data management policy does not require states to enter informal actions against non-majors; NDEP does not enter this information in ICIS-NPDES.</p> <p><i>If: Formal actions at major and non-major facilities:</i> the NDEP normally enters its formal enforcement actions for major and minor facilities in ICIS-NPDES as required. NDEP missed entering one major facility formal action, but has since corrected the omission.</p> <p><i>1g-1, 1-g-2: Number of enforcement actions with penalties and Total State Penalties:</i> States are only required to enter penalty actions and amounts for judicial actions; NDEP had no judicial penalties during FY10 and does not enter its administrative penalty actions in ICIS-NPDES.</p> <p><i>1-g-3: Total penalties assessed pursuant to civil judicial settlements:</i> N/A, NDEP had no judicial penalties during the review period.</p> <p><i>1-g-4: Total penalties assessed pursuant to administrative actions:</i> States are not required to enter administrative penalty data in ICIS-NPDES; NDEP does not enter this information.</p> <p><i>1-g-5: Number of penalties taken by state in FY:</i> States are only required to enter penalty actions and amounts for judicial actions; NDEP had no judicial penalties during FY10 and does not enter its administrative penalty actions in ICIS-NPDES.</p>
State Response	
Recommendations	None

**Elements 2: Data accuracy. Degree to which data reported in the national system is accurately entered and maintained.**

E2.01	Finding	NDEP's inspections and enforcement actions are accurately reported to EPA's ICIS-NPDES database.
	Finding is:	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Explanation	NDEP's inspections and enforcement actions are accurately reported to EPA's ICIS-NPDES database as required by EPA's data management policies.
	Metric(s) and Quantitative Value	<i>2-a. Actions linked to violations at major facilities:</i> NDEP had no enforcement actions against majors in FFY10, therefore, N/A, <i>2-b. % of files reviewed where data is accurately reflected in the national database:</i> 100%.
	State Response	
	Recommendations	None

**Element 3: Timeliness of Data Entry. Degree to which the Minimum Data Requirements are timely.**

E3.01	Finding	The NDEP routinely enters data into EPA's ICIS-NPDES database in a timely manner.
	Finding is:	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Explanation	During the FFY 2010 review period, NDEP timely entered required data into EPA's ICIS-NPDES database as set forth in EPA's national data management policies.
	Metric(s) and Quantitative Value	<i>3a: Percent change in each of the data metrics that represent required data:</i> NDEP timely entered 100% of required data into ICIS-NPDES.
	State Response	
	Recommendations	None



**Element 4: Completion of Commitments. Degree to which all enforcement/compliance commitments in relevant agreements are met and any products or projects are completed.**

E4.01	Finding	NDEP completed their inspections in accordance with their Compliance Monitoring Strategy (CMS) inspection plan. See Element 5 findings.
	Finding is:	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Explanation	NDEP did not use the CWA 106 grant to fund their NPDES activities. Therefore they have no enforcement or compliance commitments other than the state/EPA CMS inspection plan. NDEP completed their inspections in accordance with the CMS plan (see Element 5 findings).
	Metric(s) and Quantitative Value	<i>4-a. % planned inspections completed: 100%</i> <i>4-b: Planned commitments completed: 100%, per CMS plan</i>
	State Response	
	Recommendations	None

**Element 5: Inspection Coverage. Degree to which state completed the universe of planned inspections/compliance evaluations.**

E5.01	Finding	NDEP met and exceeded EPA’s national inspection goals and averages for all categories of inspections.
	Finding is:	<input checked="" type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Explanation	<p>NDEP efficiently utilized its limited resources on inspection coverage, one of NDEP’s top priorities. NDEP met and exceeded EPA’s national inspection goals and averages for all categories of inspections.</p> <p>Inspections at Majors:            In FFY 2010, NDEP inspected each of its active NPDES major non-stormwater facilities (100% coverage), exceeding EPA’s national coverage goal of 100% of majors inspected every two years, and the national average inspection rate of 60.7%.</p> <p>Inspections at Minors:            During state FY 2010, the NDEP conducted at least one inspection at 24% of its NPDES minor facilities with individual permits, exceeding EPA’s national coverage goal of 20%.</p> <p>General Permit Inspections:            In FFY 2010, the NDEP inspected 29% of its stormwater industrial facilities and 21% of its Phase I and II construction facilities. This exceeds EPA’s national goal of 10% for industrial and 10% and 5% for construction Phase I and II.</p>
	Metric(s) and Quantitative Value	<p><i>5-a. Inspections at NPDES majors with individual permits or general permits:</i> 100% coverage compared to the national goal and national coverage average of 50% and 60.7 %.</p> <p><i>5-b-1. Inspections at NPDES non-majors with individual permits (i.e., minors):</i> 24% inspected, compared to national coverage goal of 20%.</p> <p><i>5-b-2. Inspections at NPDES non-majors with general permits:</i> N/A</p> <p><i>5-c. Other inspections performed for non-major NPDES permittees whose permit address solely stormwater, pretreatment, CAFOs, or CSOs:</i> Coverage rates are 29% of stormwater industrial facilities and 21% of Phase I and II construction sites. This exceeds EPA’s national goal of 10% for industrial and 10% and 5% for construction Phase I and II.</p>
	State Response	
	Recommendations	None

**Element 5: Inspection Coverage. Degree to which state completed the universe of planned inspections/compliance evaluations.**

**Element 6: Quality of Inspection or Compliance Evaluation Reports. Degree to which inspection or compliance evaluation reports properly document observations, are completed in a timely manner and include accurate description of observations.**

E6.01	Finding	NDEP’s inspection reports properly document and accurately describe inspection observations.
	Finding is:	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Explanation	<p>The EPA evaluated NDEP’s reports from 38 inspections conducted at 22 different facilities in FFY and FY 2010. Most of the inspection reports included a completed EPA Form 3560-3, and properly and accurately documented the following:</p> <ul style="list-style-type: none"> <li>▪ NPDES/ID number, facility name, address, and description, inspection participants;</li> <li>▪ inspection date, type and purpose, regulated activities pertinent to the inspection, regulated areas evaluated;</li> <li>▪ inspector observations, deficiencies, findings, documentary support (photos, statements, records, etc.), compliance conclusions, corrective actions taken by facilities;</li> <li>▪ inspector signature and date.</li> </ul> <p>Even though most reports included these categories, not all information was consistently included in each report. Many reports had minor omissions that did not affect the quality of the reports. Several reports omitted inspection time. A few reports did not identify the areas subject to inspection and did not clarify if the regulated areas were inspected. While most reports mentioned the “permit” or other requirements, some did not cite the requirements, and did not relate the observations back to cited requirements. NDEP does not use inspection checklists, but is considering EPA’s inspection checklist form as a model for revisions to its standard report formats. Despite the omission of certain elements from EPA’s report guidance, a majority of NDEP’s reports sufficiently documented observations to make a compliance determination.</p>

**Element 5: Inspection Coverage. Degree to which state completed the universe of planned inspections/compliance evaluations.**

<p>Metric(s) and Quantitative Value</p>	<p><i>6-a. Number of inspection reports reviewed: 38 reports from inspections of 22 facilities.</i>  <i>6-b. % of reports reviewed that are complete: 5% of the reports reviewed were complete, per EPA’s SRF review criteria (many reports had minor omissions that did not affect the report findings).</i>  <i>6-c. % of reports reviewed that provide sufficient documentation to lead to an accurate compliance determination: 97 % of the reports reviewed provide sufficient documentation.</i>  <i>6-d. % of reports reviewed that are timely: 100% of the reports reviewed were prepared timely.</i></p>
<p>State Response</p>	
<p>Recommendations</p>	<p>None</p>

**Element 7: Identification of Alleged Violations. Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information.**

E7.01	Finding	NDEP accurately and timely identifies facility effluent limit violations by tracking major DMR results in EPA’s ICIS-NPDES database.
	Finding is:	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Explanation	NDEP enters all major NPDES facility DMRs into EPA’s ICIS-NPDES database, providing NDEP with accurate information on violations at major facilities. One of Nevada’s 14 major facilities (7.1%) had one or more effluent violations in FFY 2010, lower than the national average violation rate of 52.8 percent.
	Metric(s) and Quantitative Value	<i>7-d. Percentage of major facilities with DMR violations reported to the national database:</i> One of Nevada’s 14 facilities had one or more effluent violations correctly reported to the database, representing 7.1% noncompliance, lower than the national average violation rate of 52.8 percent.
	State Response	
	Recommendations	None

**Element 7: Identification of Alleged Violations. Degree to which compliance determinations are accurately made and promptly reported in the national database based upon compliance monitoring report observations and other compliance monitoring information (e.g., facility reported information).**

E7.02	Finding	NDEP does not enter single event violations (SEVs) into EPA’s ICIS-NPDES database. However, NDEP uses its state database to track stormwater general permit SEVs observed during inspections. This is a data management issue and does not hinder NDEP’s ability to identify and track violations.
	Finding is:	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input checked="" type="checkbox"/> Area for State Improvement – Recommendations Required
	Explanation	<p>EPA’s data management policy requires that states enter SEVs in the ICIS-NPDES database for major facilities only. NDEP does not enter SEVs into EPA’s ICIS-NPDES database for majors or any other NPDES regulated facilities. SEVs are violations discovered by means other than DMR-reported effluent limit violations. Examples of SEVs include spills or violations observed during an inspection. Entering major facility SEVs in ICIS-NPDES would give EPA and the public access to a more complete listing of violations at Nevada NPDES facilities.</p> <p>Although NDEP does not enter SEVs in ICIS-NPDES, they use their state database to identify and track stormwater general permit SEVs. This has been an efficient and effective tool for NDEP to track SEVs at the large number of storm water permittees.</p>
	Metric(s) and Quantitative Value	<p><i>7-a1. Number of single-event violations at active majors reported to national system: Zero. NDEP does not enter SEVs in EPA’s ICIS-NPDES database.</i></p> <p><i>7-a2. Number of single-event violations at active non-majors reported to national system: Zero. EPA’s data management policy does not require states to enter SEVs for non-major facilities and NDEP does not enter SEVs in EPA’s ICIS-NPDES database.</i></p> <p><i>7-b. Compliance schedule violations at active majors: Zero</i></p> <p><i>7-c. Permit schedule violations at active majors: Zero.</i></p> <p><i>7-e. % of reports reviewed that led to accurate compliance determination: 97 % of the reports reviewed provide sufficient documentation.</i></p>
	State Response	
	Recommendations	EPA is now consulting with NDEP about options and procedures for entering SEVs into ICIS-NPDES so that NDEP will begin entering SEVs by December 31, 2014.



**Element 8: Identification of SNC and HPV. Degree to which State accurately identified significant noncompliance/high priority violations and enters information into the national system in a timely manner.**

E8.01	Finding	During FFY 2010, none of Nevada’s major individual facilities were in significant noncompliance (SNC), better than the national average SNC rate of 24.6%.
	Finding is:	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Explanation	NDEP prepares Quarterly Noncompliance Reports (QNCRs), which identify major individual facility violations that meet EPA’s criteria for SNC. In FFY 2010, there were no Nevada major facilities in SNC for effluent limit violations or for failure to submit required DMRs.
	Metric(s) and Quantitative Value	<i>8-a-1. Number of active majors in SNC during reporting year: Zero. None of the 14 majors were in SNC during FFY2010.</i> <i>8-a-2. Percent of active majors in SNC during the reporting year: 0%, lower than the national average of 24.6%.</i> <i>8-b. Percent of SEVs that are accurately identified as SNC or non-SNC in major facility inspection reports that were reviewed: 100%</i> <i>8-c: Percent of SNC SEVs timely reported to ICIS-NPDES: N/A</i> <i>8-d. Wet weather SNC placeholder: metric(s) likely to be developed in the future: N/A</i>
	State Response	
	Recommendations	None



**Element 9: Enforcement Actions Promote Return to Compliance. Degree to which State enforcement actions include required corrective action (i.e., injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.**

E9.01	Finding	NDEP’s enforcement actions include required corrective actions and have been effective at returning facilities to compliance. Of the 14 enforcement actions reviewed, all of the facilities returned to compliance or remain open with enforceable deadlines.
	Finding is:	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Explanation	<p>During the FFY 2010 review period, NDEP issued 96 enforcement actions, including 88 Notices of Noncompliance (NONCs), five Warning Letters, two Findings of Alleged Violation and Orders (FAVOs-formal); and one Notice of Intent to Seek Penalty. There were no violations classified as SNC during FFY 2010.</p> <p>NDEP’s NONCs are informal enforcement actions used at general permitted stormwater facilities that identify violations and may or may not include deadlines for a return to compliance or for corrective actions.</p> <p>NDEP’s warning letters are informal enforcement actions that identify violations and may or may not include deadlines for a return to compliance or for corrective actions.</p> <p>NDEP’s FAVOs are formal enforcement actions that cite the alleged violations, establish enforceable deadlines for a return to compliance, and require a meeting to show cause why NDEP should not seek a civil penalty for the cited violations. Failure to comply with an FAVO can result in judicial action. One hundred percent of the FAVOs reviewed by EPA required corrective action within a specified timeframe and the subject facilities have returned to compliance.</p> <p>When NDEP has determined that a facility has complied with warning letters and FAVOs, NDEP notifies the facility in writing and closes the case. When NDEP has determined that a facility has complied with a NONC, NDEP verbally notifies the facility, and enters the status in its database.</p> <p>The enforcement actions reviewed by EPA are listed below.</p>

**Element 9: Enforcement Actions Promote Return to Compliance. Degree to which State enforcement actions include required corrective action (i.e., injunctive relief or other complying actions) that will return facilities to compliance in a specific time frame.**

Metric(s) and Quantitative Value	<p>9.a. Number of formal/informal enforcement responses reviewed: three formal; eight informal reviewed; three penalties</p> <p>9.b. % of enforcement responses reviewed that have returned or will return a source in SNC to compliance: N/A—There were no SNC facilities during FFY2010</p> <p>9.c. % of enforcement responses reviewed that have returned or will return a source with non-SNC violations to compliance: 100%</p>
State Response	
Recommendations	None

Enforcement Actions Reviewed				
Facility		Formal	Informal	Penalty
<b>Minor</b>	Harrahs	FAVO	3/28/2010	1/25/2011
	Fountainbleau		Warning Letter	6/27/2010
	Hawthorne Army Depot		Warning Letter	3/26/2010
			Warning Letter	12/4/2009
	Ponderosa Dairy		Warning Letter	3/10/2010
<b>Small MS4</b>	Carson City	FAVO	8/19/2009	3/5/2010
<b>Unpermitted</b>	Tahoe Estates	FAVO	9/23/2009	1/26/2011
<b>Stormwater</b>	Boulder Village		NONC	8/18/2010
	Highway System SR317		NONC	2/28/2010
			NONC	4/27/2010
	Coyote Springs Valley Well		NONC	2/24/2010
<b>Totals</b>		<b>3</b>	<b>8</b>	<b>3</b>

**Element 10: Timely and Appropriate Action. Degree to which a state takes timely and appropriate enforcement actions in accordance with policy relating to specific media.**

E10.01	Finding	NDEP effectively and timely manages its noncompliant facilities with appropriate enforcement responses.
	Finding is:	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Explanation	NDEP effectively and timely manages its noncompliant facilities with a variety of enforcement responses. During the FFY 2010 review period, NDEP issued 98 enforcement actions, including 88 Notices of Noncompliance (NONCs), five Warning Letters, two Findings of Alleged Violation and Orders (FAVOs-formal); and one Notice of Intent to Seek Penalty. All of these enforcement actions were against non-major facilities. NDEP did not have any major facilities in SNC during FFY 2010. For the files reviewed, it appears that NDEP addressed violations with the appropriate type of enforcement response. EPA notes, however, that for the overall FY10 enforcement numbers, a high proportion of violations were resolved through informal actions (i.e. 93 NONCs or Warning Letters) rather than formal action (2 FAVO and 1 penalty). EPA believes a strong enforcement program utilizes the full range of available enforcement tools, and should include an appropriately robust use of formal enforcement actions.
	Metric(s) and Quantitative Value	<i>10-a. Major facilities in SNC without timely action: N/A</i> <i>10-b. % of enforcement responses reviewed that address SNC that are taken in a timely manner: N/A</i> <i>10-c. % of enforcement responses reviewed that address SNC that are appropriate to the violations: N/A</i> <i>10-d. % of enforcement responses reviewed that appropriately address non-SNC violations: 100%</i> <i>10-e. % of enforcement responses reviewed for non-SNC violations where a response was taken timely: 100%</i>
	State Response	
	Recommendations	None

**Element 11: Penalty Calculation Method. Degree to which State documents in its files that initial penalty calculation includes both gravity and economic benefit calculations, appropriately using the BEN model or other method that produces results consistent with national policy.**

E11.01	Finding	EPA reviewed three penalty actions taken by NDEP, and found that the NDEP assessed appropriate penalties that considered both gravity and economic benefit in two of the three penalties.
	Finding is:	<input type="checkbox"/> Good Practice <input type="checkbox"/> Meets SRF Program Requirements <input checked="" type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Explanation	<p>Two of the penalty actions reviewed appear to be consistent with NDEP’s <i>Enforcement Manual</i>, and appropriately considered both gravity and economic benefit. The calculated penalties were appropriate for the types and length of the violations. For the third penalty action reviewed, NDEP’s penalty calculation properly accounted for the gravity of the violations. NDEP did not add an economic benefit component to its penalty calculation despite correspondence from the discharger detailing its expenditures to comply with NDEP’s FAVO.</p> <p>Where appropriate, information on the economic benefit for non-compliance (i.e., actual or avoided costs encumbered by the facility) should be obtained directly from the facility and considered as a component of the assessed penalty. Facility cost data can be entered into the BEN model or state method that is equivalent to and consistent with EPA’s national policy.</p>
	Metric(s) and Quantitative Value	<i>Element 11-a. % of penalty calculations that consider and include where appropriate gravity and economic benefit: of the cases reviewed, 66% calculated appropriate gravity and economic benefit</i>
	State Response	
	Recommendations	

**Element 12: Final Penalty Assessment and Collection. Degree to which differences between initial and final penalty are documented in the file along with a demonstration in the file that the final penalty was collected.**

E12.01	Finding	EPA reviewed three penalty actions taken by NDEP, and found that NDEP collected all penalties as assessed. The penalty information and status are properly documented in NDEP's files.
	Finding is:	<input type="checkbox"/> Good Practice <input checked="" type="checkbox"/> Meets SRF Program Requirements <input type="checkbox"/> Area for State Attention <input type="checkbox"/> Area for State Improvement – Recommendations Required
	Explanation	For the three penalty actions reviewed by EPA, NDEP assessed a total amount of \$94,000 and collected \$94,000. Each penalty was collected as a cash payment with no supplemental environmental project as an offset.
	Metric(s) and Quantitative Value	<i>12-a. % of penalties reviewed that document the difference and rationale between the initial and final assessed penalty: 100%; NDEP properly documented that there was no difference between initial and final penalty assessments.</i> <i>12-b. % of enforcement actions with penalties that document collection of penalty: 100% documented the penalty collection.</i>
	State Response	
	Recommendations	None

## APPENDIX A: STATUS OF RECOMMENDATIONS FROM PREVIOUS REVIEWS

During the first SRF review of NDEP's compliance and enforcement programs, EPA Region 9 and Nevada identified a number of actions to be taken to address issues found during the review. The table below shows the status of progress toward completing those actions.

State	Status	Due Date	Media	E#	Element	Explanation	Finding
NV - Round 1	Completed	12/31/2009	CWA	E2	Violations ID'ed Appropriately	Nevada DEP should prepare reports for all of its storm water inspections.	Nevada DEP logs inspection findings in its storm water database and prepares written Notices of Noncompliance to document deficiencies observed during inspections. NDEP does not use an inspection checklist form or otherwise prepare reports for its storm water inspections.
NV - Round 1	Completed	12/31/2009	CWA	E1	Insp Universe	NDEP should conduct MS4 inspections.	NDEP conducted MS4 inspections at Reno and Clark County in 2008.
NV - Round 1	Completed	12/31/2009	CWA	E5	Return to Compliance	NDEP should keep copies of all enforcement actions, including NONCs, in its enforcement case files.	In 2008, NDEP ensured that copies of NONCs are placed in case files.
NV - Round 1	Completed	12/31/2009	CWA	E5	Return to Compliance	NDEP should escalate cases to formal enforcement orders, especially for significant violations, nonresponsive respondents or long duration remedies.	NDEP uses informal enforcement actions as its primary enforcement response for storm water violations.
NV - Round 1	Completed	9/30/2011	CWA	E8	Penalties Collected	NDEP should review its penalty policy and practice of diverting 100% of penalty to SEPs.	NDEP often diverts 100% of penalty to SEPs.
NV - Round 1	Completed	12/31/2009	CWA	E12	Data Complete	NDEP should enter its enforcement actions in ICIS-NPDES.	NDEP is not entering all of its enforcement actions in ICIS-NPDES.

## APPENDIX B: OFFICIAL DATA PULL

OTIS State Review Framework Drill Down				(Review Period Ending: FFY10)					
Frozen Data FY2010				FINAL PRELIMINARY DATA ANALYSIS (PDA) SHEET					
				Report Generated on 4/26/2011					
Metric	Metric Description	Metric Type	Agency	National Goal	National Average	Nevada Metric Froz	Count Froz	Universe Froz	Not Counted Froz
P01A1C	Active facility universe: NPDES major individual permits (Current)	Data Quality	Combined			14	NA	NA	NA
P01A2C	Active facility universe: NPDES major general permits (Current)	Data Quality	Combined			0	NA	NA	NA
P01A3C	Active facility universe: NPDES non-major individual permits (Current)	Data Quality	Combined			97	NA	NA	NA
P01A4C	Active facility universe: NPDES non-major general permits (Current)	Data Quality	Combined			0	NA	NA	NA
P01B1C	Major individual permits: correctly coded limits (Current)	Goal	Combined	>=; 95%	92.9%	100.0%	11	11	0
C01B2C	Major individual permits: DMR entry rate based on MRs expected (Forms/Forms) (1 Qtr)	Goal	Combined	>=; 95%	93.7%	100.0%	112	112	0
C01B3C	Major individual permits: DMR entry rate based on DMRs expected (Permits/Permits) (1 Qtr)	Goal	Combined	>=; 95%	96.9%	100.0%	11	11	0
P01B4C	Major individual permits: manual RNC/SNC override rate (1 FY)	Data Quality	Combined			0 / 0	0	0	0
P01C1C	Non-major individual permits: correctly coded limits (Current)	Informational Only	Combined			0 / 0	0	0	0
C01C2C	Non-major individual permits: DMR entry rate based on DMRs expected (Forms/Forms) (1 Qtr)	Informational Only	Combined			0 / 0	0	0	0
C01C3C	Non-major individual permits: DMR entry rate based on DMRs expected (Permits/Permits) (1 Qtr)	Informational Only	Combined			0 / 0	0	0	0
P01D1C	Violations at non-majors: noncompliance rate (1 FY)	Informational Only	Combined			0.0%	0	97	97
C01D2C	Violations at non-majors: noncompliance rate in the annual noncompliance report (ANCR)(1 CY)	Informational Only	Combined			0 / 0	0	0	0
P01D3C	Violations at non-majors: DMR non-receipt (3 FY)	Informational Only	Combined			0	NA	NA	NA
P01E1S	Informal actions: number of major facilities (1 FY)	Data Quality	State			0	NA	NA	NA
P01E2S	Informal actions: number of actions at major facilities (1 FY)	Data Quality	State			0	NA	NA	NA
P01E3S	Informal actions: number of non-major facilities (1 FY)	Data Quality	State			1	NA	NA	NA

**OTIS State Review Framework Drill Down**

(Review Period Ending: FFY10)

**FINAL PRELIMINARY DATA ANALYSIS (PDA) SHEET**

**Frozen Data FY2010**

Report Generated on 4/26/2011

Metric	Metric Description	Metric Type	Agency	National Goal	National Average	Nevada Metric Froz	Count Froz	Universe Froz	Not Counted Froz
P01E4S	Informal actions: number of actions at non-major facilities (1 FY)	Data Quality	State			1	NA	NA	NA
P01F1S	Formal actions: number of major facilities (1 FY)	Data Quality	State			0	NA	NA	NA
P01F2S	Formal actions: number of actions at major facilities (1 FY)	Data Quality	State			0	NA	NA	NA
P01F3S	Formal actions: number of non-major facilities (1 FY)	Data Quality	State			0	NA	NA	NA
P01F4S	Formal actions: number of actions at non-major facilities (1 FY)	Data Quality	State			0	NA	NA	NA
P01G1S	Penalties: total number of penalties (1 FY)	Data Quality	State			0	NA	NA	NA
P01G2S	Penalties: total penalties (1 FY)	Data Quality	State			\$0	NA	NA	NA
P01G3S	Penalties: total collected pursuant to civil judicial actions (3 FY)	Data Quality	State			\$0	NA	NA	NA
P01G4S	Penalties: total collected pursuant to administrative actions (3 FY)	Informational Only	State			\$0	NA	NA	NA
P01G5S	No activity indicator - total number of penalties (1 FY)	Data Quality	State			\$0	NA	NA	NA
P02A0S	Actions linked to violations: major facilities (1 FY)	Data Quality	State	>=, 80%		0 / 0	0	0	0
P05A0S	Inspection coverage: NPDES majors (1 FY)	Goal	State	100%	60.7%	90.9%	10	11	1
P05B1S	Inspection coverage: NPDES non-major individual permits (1 FY)	Goal	State			9.6%	9	94	85
P05B2S	Inspection coverage: NPDES non-major general permits (1 FY)	Goal	State			0 / 0	0	0	0
P05C0S	Inspection coverage: NPDES other (not 5a or 5b) (1 FY)	Informational Only	State			0.0%	0	6	6
P07A1C	Single-event violations at majors (1 FY)	Review Indicator	Combined			0	NA	NA	NA
P07A2C	Single-event violations at non-majors (1 FY)	Informational Only	Combined			0	NA	NA	NA
P07B0C	Facilities with unresolved compliance schedule violations (at end of FY)	Data Quality	Combined		22.6%	0 / 0	0	0	0
P07C0C	Facilities with unresolved permit schedule violations (at end of FY)	Data Quality	Combined		21.9%	0 / 0	0	0	0
P07D0C	Percentage major facilities with DMR violations (1 FY)	Data Quality	Combined		52.8%	7.1%	1	14	13
P08A1C	Major facilities in SNC (1 FY)	Review Indicator	Combined			0	NA	NA	NA
P08A2C	SNC rate: percent majors in SNC (1 FY)	Review Indicator	Combined		24.6%	0.0%	0	14	14



**OTIS State Review Framework Drill Down**

(Review Period Ending: FFY10)

**Frozen Data FY2010**

**FINAL PRELIMINARY DATA ANALYSIS (PDA) SHEET**

Report Generated on 4/26/2011

<b>Metric</b>	<b>Metric Description</b>	<b>Metric Type</b>	<b>Agency</b>	<b>National Goal</b>	<b>National Average</b>	<b>Nevada Metric Froz</b>	<b>Count Froz</b>	<b>Universe Froz</b>	<b>Not Counted Froz</b>
P10A0C	Major facilities without timely action (1 FY)	Goal	Combined	< 2%	18.3%	0.0%	0	14	14

## **APPENDIX C: PDA TRANSMITTAL LETTER**

Appendices C, D, and E provide the results of the Preliminary Data Analysis (PDA). The Preliminary Data Analysis forms the initial structure for the SRF report, and helps ensure that the data metrics are adequately analyzed prior to the on-site review.

This is a critical component of the SRF process because it allows the reviewers to be prepared and knowledgeable about potential problem areas before the on-site review. In addition, it gives the region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metric results.

This section, Appendix C, contains the letter transmitting the results of the Preliminary Data Analysis to the state. This letter identifies areas that the data review suggests the need for further examination and discussion during the review process.

### **EPA State Review Framework (SRF) first steps and visit to Nevada DEP**

02/02/2011 **Jenee Gavette** to: vking  
03:33 PM

Cc: Ken Greenberg, Julie Anderson, Laura Bose

From: Jenee Gavette/R9/USEPA/US

To: vking@ndep.nv.gov

Cc: Ken Greenberg/R9/USEPA/US@EPA, Julie Anderson/R9/USEPA/US@EPA, Laura Bose/R9/USEPA/US@EPA

Hi Val,

Per your recent discussions with Ken Greenberg, EPA's State Review Framework (SRF) review of Nevada's FY2010 Clean Water Act (CWA) program has been scheduled for the week of March 14, 2011. I suggest that we visit your offices on March 15-18, 2011. Please confirm if these dates are suitable.

With this e-mail, I'm sending you instructions on the State Review Framework (SRF) and, in particular, how to complete your part of the first step in the SRF process - the Preliminary Data Analysis (PDA). When the PDA is completed, we can proceed with the file selection.

This is the SRF homepage on the OTIS web site. You should be able to access this web site from your office, but not from home. From the SRF homepage, you can read SRF instructions under the "SRF Documentation" link. (I pulled a few key instructions from this Documentation page and attached them below.) Here's the homepage:

<http://www.epa-otis.gov/otis/stateframework.html>

The attached PDF (Nevada FY10 SRF OTIS Results 1.20.11) is the summary report that lists the results of the SRF data query (generated on January 20, 2011) for Nevada FY10 data for each SRF metric.



Nevada FY10 SRF OTIS Results 1.20.11.pdf

The attached excel spreadsheet (Nevada FINAL FY10 SRF OTIS Report and Metrics Frozen on 1.20.11), contains the summary report described above along with the related detailed results as further described below.

This excel spreadsheet is a download of Region 9's Nevada FY2010 data query, generated on January 20, 2011. This will be our "frozen" data set and will be used for the SRF review. The spreadsheet includes several worksheets that contain the report results and drill down data sets for each metric, where applicable. The **second** worksheet in the spreadsheet, titled "OTIS NV 2010 SRF Summary & PDA", has extra columns that can be used to record information about data discrepancies. You should complete columns K, L, M, and N. Column M is where you insert the correct number if the figures in columns G through J are incorrect. Each discrepancy/correction should be supported by a spreadsheet that provides a detailed list, by facility, that provides the pertinent information, i.e., facility name, facility type and sub-type, permit no, type of action (eg. type of inspection, type of enforcement action, etc.), and related dates, etc. This step is known as the Preliminary Data Analysis (PDA).



Nevada FINAL FY10 SRF OTIS Report and Metrics FROZEN on 1.20.11.xls

Here are instructions for the PDA. At this point, we're asking you to work only on step 1. This is the data reconciliation step in which you review the attached Nevada FY 2010 data query and resolve data discrepancies.



PDA Overview and Template 82508.pdf

Once we receive the completed PDA and complete our review, we will proceed with Step 2, file selection.

Finally, I'm attaching two files that provide an explanation of the data metrics:



cwadatametric-final-3-11-09 version 2.2.pdf Final SRF CWA PLG 3-11-2009 Version 2.2.pdf

Please submit the complete PDA by February 16, 2010 to ensure time for our review, to resolve any questions, and to allow enough time for file selection and preparation.

I will call you early next week (week of February 7, 2011) to walk you through this data reconciliation process. Also, in the meantime, please do not hesitate to contact me if you have any questions.

Jenee Gavette  
Water Division Compliance Office (WTR-7)  
U.S. Environmental Protection Agency, Region  
75 Hawthorne Street  
San Francisco, CA 94105  
415-972-3439 (phone)  
415-947-3537 (fax)  
gavette.jenee@epa.gov

**RE: SRF 2nd Round: revised PDA, file review list, and review dates--now with attachments**

04/29/2011  
01:22 PM

**Jenee Gavette** to: Valerie King

04/29/2011 01:22 PM

Cc: Ken Greenberg

From: Jenee Gavette/R9/USEPA/US  
To: Valerie King <vking@ndep.nv.gov>  
Cc: Ken Greenberg/R9/USEPA/US@EPA

Hi Val, thanks for your quick response. I will contact you next week about the particulars of our visit. Sorry, I failed to add the attachment in my previous email . . . sigh . . .

In this email, I have provided two attachments:

- I. A new PDA because EPA HQs has recently frozen the data and we now have an official data set (final FY10 SRF OTIS Report & Metrics-attached). There are a few revised numbers and the associated supporting lists are different. I copied your comments--verbatim--from your first PDA submittal and pasted them into this new PDA (green-colored entries). I also provided explanations and requests for additional info, etc. in the new PDA (see peach-colored entries).
- II. The list of files we have selected for our CWA SRF on-site review, scheduled for May 9-10, 2011. The list represents each CWA program, facility type, and includes 29 facilities that had compliance or enforcement activity--inspections, enforcement, violations, --during FFY2010). Please make available all compliance and enforcement files (DMRs, inspection reports, enforcement and penalty documents, etc.) related to each facility so that we may begin reviewing them on May 9. Please note that I need additional information for some of the facilities so that I can finalize the review list, as follows: Please provide correct information where there are questions marks (?) for Tahoe Estates, Clark County WRDs, Lander County, Ponderosa Dairy, & Carson City).

Can you please provide the requested information for the PDA and file review list, as well as comments and the correct numbers on any discrepancies you identify, and provide the requested supporting information by May 4, 2011. Please contact me if you have any questions.

Thanks, and have a good weekend.



Nevada FINAL FY10 SRF OTIS Report and Metrics FROZEN on 4.26.11.xls



NV Preliminary FY10 SRF File Review List 4.29.11.xlsx

Jenee Gavette  
Water Division Compliance Office (WTR-7)  
U.S. Environmental Protection Agency, Region  
75 Hawthorne Street  
San Francisco, CA 94105  
415-972-3439 (phone)  
415-947-3537 (fax)

[gavette.jene@epa.gov](mailto:gavette.jene@epa.gov)

## **APPENDIX D: PRELIMINARY DATA ANALYSIS CHART**

This section provides the results of the Preliminary Data Analysis (PDA). The Preliminary Data Analysis forms the initial structure for the SRF report and helps ensure that the data metrics are adequately analyzed prior to the on-site review. This is a critical component of the SRF process because it allows the reviewers to be prepared and knowledgeable about potential problem areas before initiating the on-site portion of the review. In addition, it gives the region focus during the file reviews and/or basis for requesting supplemental files based on potential concerns raised by the data metrics results.

The PDA reviews each data metric and evaluates state performance against the national goal or average, if appropriate. The PDA chart in this section of the SRF report only includes metrics where potential concerns or areas of exemplary performance are identified. (The full PDA worksheet in Appendix E contains every metric: positive, neutral, or negative.) Initial Findings indicate the observed results. Initial Findings are preliminary observations. They are used as a basis for further investigation that takes place during the file review and through dialogue with the state. Final Findings are developed only after evaluating them against the file review results where appropriate, and dialogue with the state have occurred. Through this process, Initial Findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

<b>OTIS State Review Framework Drill Down</b>				(Review Period Ending: FFY10)			
<b>Frozen Data FY2010</b>		<b>FINAL PRELIMINARY DATA ANALYSIS (PDA) SHEET</b>					
Report Generated on 4/26/2011							
<b>Metric</b>	<b>Metric Description</b>	<b>Metric Type</b>	<b>Agency</b>	<b>National Goal</b>	<b>National Average</b>	<b>Nevada Metric Frozen</b>	<b>EPA Initial Findings</b>
P01A1C	Active facility universe: NPDES major individual permits (Current)	Data Quality	Combined			14	
P01A2C	Active facility universe: NPDES major general permits (Current)	Data Quality	Combined			0	
P01A3C	Active facility universe: NPDES non-major individual permits (Current)	Data Quality	Combined			97	
P01A4C	Active facility universe: NPDES non-major general permits (Current)	Data Quality	Combined			0	Need inventory for each permit type
P01B1C	Major individual permits: correctly coded limits (Current)	Goal	Combined	>=; 95%	92.9%	100.0%	
C01B2C	Major individual permits: DMR entry rate based on MRs expected (Forms/Forms) (1 Qtr)	Goal	Combined	>=; 95%	93.7%	100.0%	
C01B3C	Major individual permits: DMR entry rate based on DMRs expected (Permits/Permits) (1 Qtr)	Goal	Combined	>=; 95%	96.9%	100.0%	
P01B4C	Major individual permits: manual RNC/SNC override rate (1 FY)	Data Quality	Combined			0 / 0	
P01C1C	Non-major individual permits: correctly coded limits (Current)	Informational Only	Combined			0 / 0	

**OTIS State Review Framework Drill Down**

(Review Period Ending: FFY10)

**Frozen Data FY2010**

**FINAL PRELIMINARY DATA ANALYSIS (PDA) SHEET**

Report Generated on 4/26/2011

Metric	Metric Description	Metric Type	Agency	National Goal	National Average	Nevada Metric Frozen	EPA Initial Findings
C01C2C	Non-major individual permits: DMR entry rate based on DMRs expected (Forms/Forms) (1 Qtr)	Informational Only	Combined			0 / 0	
C01C3C	Non-major individual permits: DMR entry rate based on DMRs expected (Permits/Permits) (1 Qtr)	Informational Only	Combined			0 / 0	
P01D1C	Violations at non-majors: noncompliance rate (1 FY)	Informational Only	Combined			0.0%	
C01D2C	Violations at non-majors: noncompliance rate in the annual noncompliance report (ANCR)(1 CY)	Informational Only	Combined			0 / 0	
P01D3C	Violations at non-majors: DMR non-receipt (3 FY)	Informational Only	Combined			0	
P01E1S	Informal actions: number of major facilities (1 FY)	Data Quality	State			0	Check if more
P01E2S	Informal actions: number of actions at major facilities (1 FY)	Data Quality	State			0	Check if more
P01E3S	Informal actions: number of non-major facilities (1 FY)	Data Quality	State			1	Check if more
P01E4S	Informal actions: number of actions at non-major facilities (1 FY)	Data Quality	State			1	Check if more
P01F1S	Formal actions: number of major facilities (1 FY)	Data Quality	State			0	Check if more
P01F2S	Formal actions: number of actions at major facilities (1 FY)	Data Quality	State			0	Check if more
P01F3S	Formal actions: number of non-major facilities (1 FY)	Data Quality	State			0	Check if more
P01F4S	Formal actions: number of actions at non-major facilities (1 FY)	Data Quality	State			0	Check if more
P01G1S	Penalties: total number of penalties (1 FY)	Data Quality	State			0	Check if any
P01G2S	Penalties: total penalties (1 FY)	Data Quality	State			\$0	Check
P01G3S	Penalties: total collected pursuant to civil judicial actions (3 FY)	Data Quality	State			\$0	Check
P01G4S	Penalties: total collected pursuant to administrative actions (3 FY)	Informational Only	State			\$0	Check
P01G5S	No activity indicator - total number of penalties (1 FY)	Data Quality	State			\$0	Check
P02A0S	Actions linked to violations: major facilities (1 FY)	Data Quality	State	>=; 80%		0 / 0	
P05A0S	Inspection coverage: NPDES majors (1 FY)	Goal	State	100%	60.7%	90.9%	Check 90.9% coverage
P05B1S	Inspection coverage: NPDES non-major individual permits (1 FY)	Goal	State			9.6%	check
P05B2S	Inspection coverage: NPDES non-major general permits (1 FY)	Goal	State			0 / 0	Need to get inventories for each type
P05C0S	Inspection coverage: NPDES other (not 5a or 5b) (1 FY)	Informational Only	State			0.0%	

**OTIS State Review Framework Drill Down**

(Review Period Ending: FFY10)

**Frozen Data FY2010**

**FINAL PRELIMINARY DATA ANALYSIS (PDA) SHEET**

Report Generated on 4/26/2011

<b>Metric</b>	<b>Metric Description</b>	<b>Metric Type</b>	<b>Agency</b>	<b>National Goal</b>	<b>National Average</b>	<b>Nevada Metric Frozen</b>	<b>EPA Initial Findings</b>
P07A1C	Single-event violations at majors (1 FY)	Review Indicator	Combined			0	Check
P07A2C	Single-event violations at non-majors (1 FY)	Informational Only	Combined			0	Check
P07B0C	Facilities with unresolved compliance schedule violations (at end of FY)	Data Quality	Combined		22.6%	0 / 0	
P07C0C	Facilities with unresolved permit schedule violations (at end of FY)	Data Quality	Combined		21.9%	0 / 0	
P07D0C	Percentage major facilities with DMR violations (1 FY)	Data Quality	Combined		52.8%	7.1%	
P08A1C	Major facilities in SNC (1 FY)	Review Indicator	Combined			0	
P08A2C	SNC rate: percent majors in SNC (1 FY)	Review Indicator	Combined		24.6%	0.0%	
P10A0C	Major facilities without timely action (1 FY)	Goal	Combined	< 2%	18.3%	0.0%	



## APPENDIX E: PDA WORKSHEET (with State and EPA Comments)

OTIS State Review Framework Drill Down (Review Period Ending: FFY10)										Report Generated on 4/26/2011									
Frozen Data FY2010				FINAL PRELIMINARY DATA ANALYSIS (PDA) SHEET															
										Entries (in green) NV's 5/3/11 PDA submittal; entries (in peach) entered by EPA on 4/26/2011.									
Metric	Metric Description	Metric Type	Agency	National Goal	National Average	NV Metric Froz	Count Froz	Universe Froz	Not Counted Froz	State Discrepancy (Y/N)	State Correction	State Data Source	State Discrepancy Explanation	EPA Initial Findings	EPA Evaluation				
P01A1C	Active facility universe: NPDES major individual permits (Current)	Data Quality	Combined			14	NA	NA	NA	N									
P01A2C	Active facility universe: NPDES major general permits (Current)	Data Quality	Combined			0	NA	NA	NA	N									
P01A3C	Active facility universe: NPDES non-major individual permits (Current)	Data Quality	Combined			97	NA	NA	NA	Y	85	State DB			Verified: 97 correct				
P01A4C	Active facility universe: NPDES non-major general permits (Current)	Data Quality	Combined			0	NA	NA	NA	Y	5		Small MS4 NVS040000, SW Mining NVR300000, SW Construction NVR100000, SW Industrial NVR050000, De Minimus NVG201000	Need inventory for each permit type	now have inventory for each type				
										Please provide inventory lists of individual facilities covered under each general permit (permit type, permittee/facility name, permit no.)									
P01B1C	Major individual permits: correctly coded limits (Current)	Goal	Combined	>=; 95%	92.9%	100.0%	11	11	0	Y	14/14	state database							
										This metric looks for correctly coded limits; it says 100% (11 out of 11) are coded correctly, which is good. I am not sure what the "2556/2556" represents. At any rate, for some reason, the report is only counting 11 as NV's universe, rather than 14. See "Major Ind Correct Coded Limits" worksheet.									
C01B2C	Major individual permits: DMR entry rate based on MRs expected (Forms/Forms) (1 Qtr)	Goal	Combined	>=; 95%	93.7%	100.0%	112	112	0	Y	56/56				OK				

Frozen Data FY2010

FINAL PRELIMINARY DATA ANALYSIS (PDA) SHEET

Entries (in green) NV's 5/3/11 PDA submittal; entries (in peach) entered by EPA on 4/26/2011.

Metric	Metric Description	Metric Type	Agency	National Goal	National Average	NV Metric Froz	Count Froz	Universe Froz	Not Counted Froz	State Discrepancy (Y/N)	State Correction	State Data Source	State Discrepancy Explanation	EPA Initial Findings	EPA Evaluation
													This metric represents the number of individual "monitoring reports" (MRs) required and submitted for each major facility. See "Major and DMR entry (MRs)" worksheet.		
C01B3C	Major individual permits: DMR entry rate based on DMRs expected (Permits/Permits) (1 Qtr)	Goal	Combined	>=; 95%	96.9%	100.0%	11	11	0	Y	14				OK
P01B4C	Major individual permits: manual RNC/SNC override rate (1 FY)	Data Quality	Combined			0 / 0	0	0	0						
P01C1C	Non-major individual permits: correctly coded limits (Current)	Informational Only	Combined			0 / 0	0	0	0						
C01C2C	Non-major individual permits: DMR entry rate based on DMRs expected (Forms/Forms) (1 Qtr)	Informational Only	Combined			0 / 0	0	0	0	Y			Not required		
C01C3C	Non-major individual permits: DMR entry rate based on DMRs expected (Permits/Permits) (1 Qtr)	Informational Only	Combined			0 / 0	0	0	0	Y			Not required		
P01D1C	Violations at non-majors: noncompliance rate (1 FY)	Informational Only	Combined			0.0%	0	97	97	Y			not required		
C01D2C	Violations at non-majors: noncompliance rate in the annual noncompliance report (ANCR)(1 CY)	Informational Only	Combined			0 / 0	0	0	0	Y			not required		
P01D3C	Violations at non-majors: DMR non-receipt (3 FY)	Informational Only	Combined			0	NA	NA	NA	Y			not required		

**Frozen Data FY2010** **FINAL PRELIMINARY DATA ANALYSIS (PDA) SHEET**

Entries (in green) NV's 5/3/11 PDA submittal; entries (in peach) entered by EPA on 4/26/2011.

Metric	Metric Description	Metric Type	Agency	National Goal	National Average	NV Metric Froz	Count Froz	Universe Froz	Not Counted Froz	State Discrepancy (Y/N)	State Correction	State Data Source	State Discrepancy Explanation	EPA Initial Findings	EPA Evaluation
P01E1S	Informal actions: number of major facilities (1 FY)	Data Quality	State			0	NA	NA	NA	Y	2		Carson City MS4 NVS04000 10/5/09 and CCWRD NV0021261 5/24/10	check if more	verified: none issued
											This metric represents the number of major facilities that had an informal enforcement action during FFY2010. If any meet this criteria, please provide a list of the facilities and include: name & permit no, enforcement type(s) and date(s).				
P01E2S	Informal actions: number of actions at major facilities (1 FY)	Data Quality	State			0	NA	NA	NA	Y	2		CCWRD NV0021261 5/24/10	check if more	verified: none issued
											This metric represents the number of informal enforcement actions at major facilities during FFY2010. If any meet this criteria, please provide a list of the enforcement actions and include: name & permit no, enforcement type(s) and date(s).				
P01E3S	Informal actions: number of non-major facilities (1 FY)	Data Quality	State			1	NA	NA	NA	Y	4			check if more	5 non-major
											This metric represents the number of minor facilities that had an informal enforcement action during FFY2010. If any meet this criteria, please provide a list of the facilities and include: name & permit no, enforcement type(s) and date(s).				
P01E4S	Informal actions: number of actions at non-major facilities (1 FY)	Data Quality	State			1	NA	NA	NA	Y	5		2 x Hawthorne NV0021946, Ponderosa Dairy NV002307, Caesars Palace NV0023191, Fontainebleau NV0023566	check if more	5 non-major; 88 general permitted
											This metric represents the number of informal enforcement actions at minor facilities during FFY2010. If any meet this criteria, please provide a list of the enforcement actions and include: name & permit no, enforcement type(s) and date(s).				
P01F1S	Formal actions: number of major facilities (1 FY)	Data Quality	State			0	NA	NA	NA					check if more	none
P01F2S	Formal actions: number of actions at major facilities (1 FY)	Data Quality	State			0	NA	NA	NA					check if more	none

**OTIS State Review Framework Drill Down (Review Period Ending: FFY10)** Report Generated on 4/26/2011

**Frozen Data FY2010** **FINAL PRELIMINARY DATA ANALYSIS (PDA) SHEET**

*Entries (in green) NV's 5/3/11 PDA submittal; entries (in peach) entered by EPA on 4/26/2011.*

Metric	Metric Description	Metric Type	Agency	National Goal	National Average	NV Metric Froz	Count Froz	Universe Froz	Not Counted Froz	State Discrepancy (Y/N)	State Correction	State Data Source	State Discrepancy Explanation	EPA Initial Findings	EPA Evaluation
P01F3S	Formal actions: number of non-major facilities (1 FY)	Data Quality	State			0	NA	NA	NA					check if more	2 facilities
P01F4S	Formal actions: number of actions at non-major facilities (1 FY)	Data Quality	State			0	NA	NA	NA	Y	1		Harrah's NV0021598 3/10/10	check if more	1 amended; 1 new
										This metric represents the number of formal enforcement actions at minor facilities during FFY2010. If any meet this criteria, please provide a list of the enforcement actions and include: name & permit no, enforcement type(s) and date(s).					
P01G1S	Penalties: total number of penalties (1 FY)	Data Quality	State			0	NA	NA	NA	Y	2		Harrah's and Tahoe Estates	check if any	verified: 1 issued during review period; others issued after review period
										Please provide a list of the penalty actions and include: facility type, name & permit no; penalty type(s) and date(s); amounts assessed; and amounts collected and dates.					
P01G2S	Penalties: total penalties (1 FY)	Data Quality	State			\$0	NA	NA	NA	Y	66,000		Harrah's and Tahoe Estates	check if any	verified: \$26,000 during review period; others penalized after review period
										Please provide a list of the penalty actions and include: facility type, name & permit no; penalty type(s) and date(s); amounts assessed; and amounts collected and dates.					
P01G3S	Penalties: total collected pursuant to civil judicial actions (3 FY)	Data Quality	State			\$0	NA	NA	NA					check	N/A

**OTIS State Review Framework Drill Down (Review Period Ending: FFY10)** Report Generated on 4/26/2011

**Frozen Data FY2010** **FINAL PRELIMINARY DATA ANALYSIS (PDA) SHEET**

*Entries (in green) NV's 5/3/11 PDA submittal; entries (in peach) entered by EPA on 4/26/2011.*

Metric	Metric Description	Metric Type	Agency	National Goal	National Average	NV Metric Froz	Count Froz	Universe Froz	Not Counted Froz	State Discrepancy (Y/N)	State Correction	State Data Source	State Discrepancy Explanation	EPA Initial Findings	EPA Evaluation
P01G4S	Penalties: total collected pursuant to administrative actions (3 FY)	Informational Only	State			\$0	NA	NA	NA	Y	37,000		Harrah's and Tahoe Estates	check	verified: \$26,000 during review period; others collected after review period
													Please provide a list of the penalty actions and include: facility type, name & permit no; penalty type(s) and date(s); amounts assessed; and amounts collected and dates.		
P01G5S	No activity indicator - total number of penalties (1 FY)	Data Quality	State			\$0	NA	NA	NA					check	1
													This metric represents the total number/amount of ALL types of penalties. Please provide a list of the penalty actions and include: facility type, name & permit no; penalty type(s) and date(s); amounts assessed; and amounts collected and dates.		
P02A0S	Actions linked to violations: major facilities (1 FY)	Data Quality	State	>=; 80%		0 / 0	0	0	0						
													This metric represents formal enforcement actions taken against major facilities with enforcement violation type EVTP in PCS or equivalent in PCS-ICIS.		
P05A0S	Inspection coverage: NPDES majors (1 FY)	Goal	State	100%	60.7%	90.9%	10	11	1	Y			13 See attachment	check 90.9% coverage	100% coverage
P05B1S	Inspection coverage: NPDES non-major individual permits (1 FY)	Goal	State			9.6%	9	94	85	Y			17 See attachment	check	14% coverage, but on track for 5 yr coverage
P05B2S	Inspection coverage: NPDES non-major general permits (1 FY)	Goal	State			0 / 0	0	0	0	Y	1162		See attachment	Need to get inventories for each type	CMS coverage goals met
P05C0S	Inspection coverage: NPDES other (not 5a or 5b) (1 FY)	Informational Only	State			0.0%	0	6	6						
P07A1C	Single-event violations at majors (1 FY)	Review Indicator	Combined			0	NA	NA	NA					check	not entered

**OTIS State Review Framework Drill Down (Review Period Ending: FFY10)** Report Generated on 4/26/2011

**Frozen Data FY2010** **FINAL PRELIMINARY DATA ANALYSIS (PDA) SHEET**

Entries (in green) NV's 5/3/11 PDA submittal; entries (in peach) entered by EPA on 4/26/2011.

Metric	Metric Description	Metric Type	Agency	National Goal	National Average	NV Metric Froz	Count Froz	Universe Froz	Not Counted Froz	State Discrepancy (Y/N)	State Correction	State Data Source	State Discrepancy Explanation	EPA Initial Findings	EPA Evaluation
P07A2C	Single-event violations at non-majors (1 FY)	Informational Only	Combined			0	NA	NA	NA					check	not entered; not required
										These metrics (A1C & A2C) represents the number of "single-event" violations (SEVs) (e.g., spills, those not reported on DMRs, etc.) at major and minor facilities during FFY2010. If NV tracks this info, please provide a list of the SEVs and include: facility type, name & permit no, SEV type(s) and date(s).					
P07B0C	Facilities with unresolved compliance schedule violations (at end of FY)	Data Quality	Combined		22.6%	0 / 0	0	0	0						
P07C0C	Facilities with unresolved permit schedule violations (at end of FY)	Data Quality	Combined		21.9%	0 / 0	0	0	0						
P07D0C	Percentage major facilities with DMR violations (1 FY)	Data Quality	Combined		52.8%	7.1%	1	14	13						
										This represents those facilities that reported one or more effluent violation on their DMRs and subsequent entry into the PCS-ICIS.					
P08A1C	Major facilities in SNC (1 FY)	Review Indicator	Combined			0	NA	NA	NA						none
P08A2C	SNC rate: percent majors in SNC (1 FY)	Review Indicator	Combined		24.6%	0.0%	0	14	14						good
P10A0C	Major facilities without timely action (1 FY)	Goal	Combined	< 2%	18.3%	0.0%	0	14	14						n/a

## **APPENDIX F: FILE SELECTION**

Files to be reviewed are selected according to a standard protocol (available here: [http://www.epa-otis.gov/srf/docs/fileselectionprotocol\\_10.pdf](http://www.epa-otis.gov/srf/docs/fileselectionprotocol_10.pdf)) and using a web-based file selection tool (available here: [http://www.epa-otis.gov/cgi-bin/test/srf/srf\\_fileselection.cgi](http://www.epa-otis.gov/cgi-bin/test/srf/srf_fileselection.cgi)). The protocol and tool are designed to provide consistency and transparency in the process. Based on the description of the file selection process in section A below, states should be able to recreate the results in the table in section B.

### **A. File Selection Process**

For NDEP's review, EPA was unable to use the web-based file selection tool described above because NPDES-ISIS was not sufficiently populated with relevant information. Therefore, using the information gathered during the Preliminary Data Analysis (PDA), EPA identified the universe of facilities and actions that should be considered during the review period. File selection was based on the "range of files based on size of universe" criteria, set forth in EPA's SRF Implementation Guidance, April 2006. Specifically, the guidance suggests reviewing between 15 and 30 files, that the files represent different categories of dischargers and include inspections and enforcement actions. The selected files included several inspections and most of the enforcement actions taken by NDEP in FFY 2010. The files selected and reviewed by EPA are listed below.

### **B. File Selection Table**

EPA FFY 2010 NEVADA DEP CWA SRF REVIEW

5/6/2011

FINAL FILE REVIEW LIST

Compliance & Enforcement Activities During 2010													
Facility Name	Program ID	Facility City/County	Inspection	Violation	SEV	SNC	Informal Action	Formal Action	Penalty	Type	Type Total		
Tahoe Estates		Lake Tahoe	0	0	1	0	0	0	0	unpermitted	1		
TRONOX Ker McGee	NV0000078	Henderson	1	0	0	0	0	0	0	Major	5		
City of Las Vegas WPCF	NV0020133	Las Vegas	1	0	0	0	0	0	0				
Truckee Meadows WRF	NV0020150	Reno	1	2	0	0	0	0	0				
Clark Cnty WRD AWT	NV0021261	Las Vegas	1	0	0	0	0	0	0				
Twin Creeks Mine	NV0021725	Golconda	1	0	0	0	0	0	0				
Storey Cnty-Virginia City	NV0020451	Virginia City	1	0	0	0	0	0	0	Minor	9		
Lander Cnty-Battle Mtn WWTP	NV0023167	?	2	0	0	0	0	0	0				
Moody Lane Reg WRF	NV0023582	Fallon	1	0	0	0	0	0	0				
Hawthorne Army Facility	NV0021946	Hawthorne	0	0	0	0	2	0	0				
Ponderosa Dairy	NV0023027	?	0	0	0	0	1	0	0				
McCarran Airport	NV0023761	Las Vegas	2	0	0	0	0	0	0				
Fountainbleau Casino & Resort	NV0023566	Las Vegas	0	0	0	0	1	0	0				
Harrahs Basement Dewatering	NV0021598	Reno	0	0	0	0	1	0	1				
U.S. Navy NAS Fallon	NV0110001	Fallon	1	0	0	0	0	0	0				
Carson City	NVSo40000	Carson City	0	0	0	0	1	0	0			Small MS4	1
Blue Diamond-Green Vly Stge	NVR050000	Clark	1	0	0	0	0	0	0			SW Ind	5
Elevation Transport	NVR050000	Elko	4	0	0	0	0	0	0				
Veka West Inc.	NVR050000	Washoe	1	0	0	0	0	0	0				
Myrnas Hot Shot & Air Freight Co.	NVR050000	Clark	2	0	0	0	0	0	0				
TS Power Plant	NVR050000	Eureka	1	0	0	0	0	0	0				
Carson City Fairgrounds/Fuji Urban Park	NVR100000	Carson City	5	0	0	0	0	0	0	SW Const	5		
Coyote Springs Valley Well & Moapa Transmission System	NVR100000	Clark	2	0	0	0	0	0	0				
Highway Systems SR 317	NVR100000	Lincoln	3	0	0	0	0	0	0				
Ruby Pipeline	NVR100000	Elko	1	0	0	0	0	0	0				
Boulder Village	NVR100000	Clark	2	0	0	0	0	0	0				
Heap Leach Facility	NVR050000	Storey	1	0	0	0	0	0	0	Mining	2		
Lone Tree Mine	NVR050000	Humboldt	1	0	0	0	0	0	0				
			<b>34</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>6</b>	<b>0</b>	<b>1</b>		<b>28</b>		



## **APPENDIX G: FILE REVIEW ANALYSIS**

This section presents the initial observations of the region regarding program performance against file metrics. Initial findings are developed by the region at the conclusion of the file review process. The initial finding is a statement of fact about the observed performance, and should indicate whether the performance indicates a practice to be highlighted or a potential issue, along with some explanation about the nature of good practice or the potential issue. The File Review Metrics Analysis Form in the report only includes metrics where potential concerns or areas of exemplary performance are identified.

Initial findings indicate the observed results. They are preliminary observations and are used as a basis for further investigation. These findings are developed only after evaluating them against the PDA results where appropriate, and talking to the state. Through this process, initial findings may be confirmed, modified, or determined not to be supported. Findings are presented in Section IV of this report.

The quantitative metrics developed from the file reviews are initial indicators of performance based on available information and are used by the reviewers to identify areas for further investigation. Because of the limited sample size, statistical comparisons among programs or across states cannot be made.

Appendix G

<b>Nevada DEP</b>		<b>Review Period: FFY 2010</b>	
<b>CWA Metric #</b>	<b>CWA File Review Metric:</b>	<b>Metric Value</b>	<b>Initial Findings and Conclusions</b>
Metric 2b	% of files reviewed where data is accurately reflected in the national data system.	did not calculate	Most WENBE elements are in system
Metric 4a	% of planned inspections completed	various	All planned inspections, per NDEP's CMS, conducted
Metric 4b	Other planned commitments completed.	N/A	NDEP does not use CWA 106 grant funds to implement its NPDES compliance and enforcement program, so there are no other relevant commitments
Metric 6a	# of inspection reports reviewed.	38	
Metric 6b	% of inspection reports reviewed that are complete.	5%	Most are incomplete, per SRF review criteria; but the minor omissions do not hinder compliance determinations.
Metric 6c	% of inspection reports reviewed that provide sufficient documentation to lead to an accurate compliance determination.	97%	One report not sufficient.
Metric 6d	% of inspection reports reviewed that are timely.	100%	

Nevada DEP		Review Period: FFY 2010	
CWA Metric #	CWA File Review Metric:	Metric Value	Initial Findings and Conclusions
Metric 7e	% of inspection reports or facility files reviewed that led to accurate compliance determinations.	97%	Most made accurate determinations.
Metric 8b	% of single event violation(s) that are accurately identified as SNC	100%	SEVs not tracked in ICIS, however, SW SEVs tracked in state database. In major files reviewed, NDEP inspections found no SEVs, therefore no SNC based on SEVs, therefore NDEP properly assessed SNC rate at its majors.
Metric 8c	% of single event violation(s) identified as SNC that are reported timely.	0%	SEVs not tracked in ICIS, however, SW SEVs timely tracked in state database; SNC criteria not used by NDEP.
Metric 9a	# of formal/informal enforcement responses reviewed	11	3 FAVOs, 4 warning letters, 4 NONCs
Metric 9b	% of enforcement responses that have returned or will return a source in SNC to compliance.	0%	N/A: no SNC facilities
Metric 9c	% of enforcement responses that have returned or will returned a source with non-SNC violations to compliance.	100%	All facilities returned to compliance or remain open with enforceable deadlines.
Metric 10b	% of enforcement responses reviewed that address SNC that are taken in a taken in a timely manner.	0%	N/A: no SNC facilities
Metric 10c	% of enforcement responses reviewed that address SNC that are appropriate to the violations.	0%	N/A: no SNC facilities
Metric 10d	% of enforcement responses reviewed that appropriately address non-SNC violations.	100%	
Metric 10e	% enforcement responses for non-SNC violations where a response was taken in a timely manner.	100%	
Metric 11a	% of penalty calculations that consider and include where appropriate gravity and economic benefit.	100% of reviewed	All documented
Metric 12a	% of penalties reviewed that document the difference and rationale between the initial and final assessed penalty.	100% of reviewed	All assessed amounts properly documented.
Metric 12b	% of enforcement actions with penalties that document	100% of reviewed	All collections documented. All were cash settlements and did not include SEPs.

Nevada DEP		Review Period: FFY 2010	
CWA Metric #	CWA File Review Metric:	Metric Value	Initial Findings and Conclusions
	collection of penalty.		

## APPENDIX H: CORRESPONDENCE



STATE OF NEVADA  
Department of Conservation & Natural Resources  
DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor  
Leo M. Drazdoff, P.E., Director  
Colleen Cripps, Ph.D., Administrator

December 14, 2011

Mr. Jared Blumenfeld, Regional Administrator  
US EPA Region IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

RE: Draft Report for Round 2 of the State Review Framework  
State of Nevada Enforcement Program reviews by EPA

Dear Mr. Blumenfeld:

We have reviewed the draft report reflecting the results of Round 2 of the State Review Framework. The report reviews compliance and enforcement activities conducted by the Nevada Division of Environmental Protection (NDEP) related to RCRA Subtitle C and the National Pollutant Discharge Elimination System of the Clean Water Act. Our comments on the findings of each of these two program reviews are attached. We have also attached a narrative for each program area to be included as Element 13 of the final report.

Our comments reflect a consistent theme that we have repeated many times over the years in our discussions with EPA. The primary goal of NDEP has always been to achieve and maintain compliance with environmental regulations. Toward that end, we invest in compliance assistance, outreach, and an active and effective field presence. We find that the effectiveness of our efforts is best measured by the rate of compliance among regulated facilities, not by the number or amount of penalties collected. We recognize that this strategy may be impractical for EPA and States with very large regulatory universes and that a more reactive approach may be needed. However, given the relatively small number of regulated facilities in Nevada and our willingness to invest State resources beyond federal grant funding, we find that our proactive, compliance-focused approach works.

Thank you for the opportunity to comment on this draft SRF. We also appreciate the positive commendations on our good inspection programs. Please factor our comments into your finalization of the 2010 SRF and include our respective Element 13 narratives.

Sincerely,

A handwritten signature in blue ink, appearing to read "Colleen Cripps".

Colleen Cripps, Ph.D.  
Administrator



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Attachments

cc: David Gaskin, Deputy Administrator, NDEP  
David Emme, Deputy Administrator, NDEP  
Eric Noack, Chief, Bureau of Waste Management, NDEP  
Alan Tinney, Chief, Bureau of Water Pollution Control, NDEP  
Mr. Ken Greenberg, US EPA Region IX, WTR-7, 75 Hawthorne Street  
San Francisco, CA 94105-3901  
✓ John Schofield, US EPA Region IX, 75 Hawthorne Street San Francisco, CA  
94105-3901



NDEP Bureau of Water Pollution Control  
NPDES CWA Comments on Draft SRF II

These comments are specific to the EPA review of the National Pollutant Discharge Elimination System Program enforcement activities in the SRF report.

Before providing our comments and responses, NDEP reiterates that as with past SRF responses, the recent draft SRF would require NDEP to allocate additional time and financial resources for efforts that *will not* add any substantive value to our compliance and enforcement programs. We stress to EPA that NDEP remains one of the leanest state environmental programs in the U.S. and as such we focus our resources on achieving water pollution control compliance statewide based upon our State priorities.

With this in mind, NDEP offers the following comments to EPA:

1. Data reporting systems/architecture:

The general program overview section, page 6 of the report states that NDEP enters general permit information into ICIS. This is not correct. Per our mutual agreement (June 18, 2004 letter to John Kemmerer) on ICIS entry roles, NDEP is not responsible for entering information on general permits or storm water permits into ICIS. This reference to general permit entry should be removed.

2. Single Event Violation (SEV) entry into ICIS (Element 7):

Element 7 of the SRF report states that EPA is in consultation with NDEP on options and procedures for entering SEV's into ICIS for major NPDES facilities. This is not an accurate statement as NDEP has not agreed to entry of SEV's into ICIS. NDEP does not have sufficient staffing or funding for this additional data entry activity and to do so would take critical resources away from our compliance and enforcement program.

3. Economic Benefit Penalty Calculation Method (Element 11)

The Element 11 review recommendation is to obtain facility cost data, where appropriate, when determining the economic benefit factor in assessing noncompliance penalties. While economic benefit is not broken out as a separate line item, NDEP factors economic benefit into all its NPDES penalty determinations.

NDEP does not believe that a compliance and enforcement program should be evaluated merely by counting violations and the response to those violations. NDEP is proud of its compliance record and believes the compliance rate to be the true metric necessary to

accurately represent the effectiveness and success of a compliance and enforcement program.

If NDEP is forced to increase data entry into the national database, we will need to shift resources away from environmental protection efforts identified as priorities in Nevada. This will have a direct negative impact on our ability to ensure compliance and protect the waters of the state.

NDEP thanks you for the opportunity to comment on this draft SRF. Please contact Deputy Administrator David Gaskin at (775) 687-9302 or [dgaskin@ndep.nv.gov](mailto:dgaskin@ndep.nv.gov) if you have any questions or would like to discuss these comments further.



## **State Review Framework II Element 13 Clean Water Act**

### **Introduction**

NDEP does not believe the SRF fully defines the effectiveness of a Clean Water Act compliance and enforcement program. The 12 elements evaluate a program on its ability to identify and react appropriately to violations and subsequently track them, but ignore the important efforts implemented by a program to achieve and maintain compliance so that violations are not realized. An enforcement program's success should be measured by the compliance rate, as opposed to the violation/enforcement rate. This philosophy is the cornerstone of NDEP's successful compliance and enforcement program.

NDEP strives for compliance by working cooperatively and reasonably with the regulated community. This allows us to achieve and maintain a high level of compliance, in many cases outside of formal enforcement. In certain areas, we go above and beyond federal requirements to achieve better environmental results. For example, we require that all wastewater treatment plants be managed by certified wastewater treatment operators. We ensure that all design plans for construction of wastewater treatment plants are prepared by Nevada Licensed Professional Engineers. Such requirements greatly enhance the compliance rate for many of our NPDES facilities.

### **Inspections and Assistance**

NDEP inspects all of its eleven major NPDES facilities on an annual basis, doubling the EPA national coverage goal of inspecting the majors every two years. At each of the major Publically Owned Treatment Works inspections, NDEP performs compliance sampling inspections (CIS) over a two-day period. Additionally, we conduct compliance evaluation inspections (CEI) on at least 20% of all minor NPDES facilities statewide each year. We do this because we know inspections are a critical factor in tracking and ensuring compliance for these key dischargers. Our stormwater inspection schedule is robust, and each year NDEP far exceeds the minimum criteria of site inspections for this program.

NDEP also believes public outreach and education efforts are key to a successful compliance program. Our efforts associated with public outreach and education continue to be effective in achieving and maintaining compliance. One example is the NPDES storm water program. We provide stormwater compliance workshops each year to developers, contractors, consultants, engineers and other interested parties. In 2010, NDEP participated in ten separate training sessions with NDOT to educate all of their field stations in stormwater permit requirements. Also, we assisted in training sessions for MS4 permittees in Clark County and Washoe County.

We continue to fund our wastewater operator's Circuit Rider Program even after federal funding stopped several years ago. This is because our program has proven to be significant for achieving compliance in the State of Nevada for the rural wastewater treatment plants.

Compliance inspections conducted by NDEP CWA Program:

	<u>Minimum Required</u>	<u>SFY2010</u>	<u>SFY2011</u>
Major NPDES CEI/CIS conducted	6	11	11
Minor NPDES CEI	16	17	22
Industrial stormwater inspections	75	698	183
Construction site stormwater inspections	150	690	710

### **Enforcement**

NDEP uses both formal and informal enforcement to achieve compliance with all its permittees. Our priority is to get noncompliant facilities to return to compliance as quickly as possible and minimize environmental impacts. Tools that we use include Cease and Desist Orders, formal Findings of Alleged Violation and Orders, informal compliance Action Letters and Administrative Orders on Consent. Through the judicious use of these options, we are able to address compliance matters quickly and effectively.

NDEP maintains a database in which pertinent compliance and enforcement data are stored and managed. We are able to track submittal dates and follow up on failures to submit required reports. Exceedances of DMR limits are tracked to establish compliance histories of permittees. Our state database is the system of record and is available for public review. NDEP is currently enhancing the database to allow DMR data to be submitted electronically which will allow us to process DMRs more rapidly, and therefore address noncompliance issues in a timelier manner.

NDEP issues formal enforcement actions and collects penalties when necessary. Formal enforcement is implemented mainly in cases demonstrating culpability and harm to the environment, and also where corrective actions by the permittee are not being made or are not sufficient.

NDEP Enforcement Actions:

	<u>SFY2010</u>	<u>SFY2011</u>
Total NPDES Permittees	84	85
Informal enforcement actions	9	2
Formal enforcement actions	2	2
Compliance rate	<b>87%</b>	<b>94%</b>

**Conclusion**

To summarize, NDEP does not believe that a compliance and enforcement program should be evaluated merely by counting violations and the response to those violations. NDEP is proud of its compliance record and believes the compliance rate to be the true metric necessary to accurately represent the effectiveness and success of a compliance and enforcement program.

NDEP Bureau of Waste Management  
RCRA Comments on Draft SRF II

**Element 1:** No Comment

**Element 2:** No Comment

**Element 3:**

The 2003 RCRA ERP requires SNC determination by a State or Region within 150 days of the initial inspection (Day Zero).

The **Description** for element 3a states “[p]ercent of SNCs that are entered to RCRAInfo more than 60 days after the determination. Measures the “lag” between the date of SNC determination and the actual reporting of the SNC determination to RCRAInfo.”

Furthermore, the **Guidance Requirement or Goal** for element 3a states “data should be entered when the determination is made (determination must be made by 150 days after Day Zero). SNC entry should not be withheld until the action is completed. EPA expects SNC data to be entered more quickly than 60 days after determination, so this metric provides some “cushion.”

Therefore, the statement in the Finding section of Element 3 “All SNCs were entered into RCRAInfo within 60-days of the first day of the inspection [Day Zero]” incorrectly states the data metric. The data metric requires SNC data entry within 60 days of SNC determination not Day Zero. NDEP has 100% compliance with the data metric. All SNCs were entered into RCRAInfo within 60 days of SNC **determination**.

**Element 4:** No Comment

**Element 5:**

NDEP’s RCRA C&E program has annual inspection goals of; 100% Treatment, Storage, and Disposal Facilities (TSDFs) annually, 100% Large Quantity Generators (LQG) of hazardous waste annually, and 100% Small Quantity Generators (SQG) of hazardous waste biennially. USEPA annually inspects a number of LQG and TSDF facilities in Nevada. In order to eliminate duplication of effort, efficient allocation of resources, and unnecessary confusion and burden to the regulatory community, USEPA inspections are counted towards NDEP’s commitment goals.

The inspection universe of LQG is established on July 1 of each state fiscal year (SFY). The RCRA C&E program established the goal to inspect all Small Quantity Generator (SQGs) facilities on a biennial cycle. The inspection universe of SQG facilities was established on July 1, 2009 for SFYs 2010-2011. The inspection universes are provided to USEPA Region IX in the form of an excel spreadsheet.

- All TSDFs were inspected during SFY2010 (6/6) 100% and SFY2011 (6/6) 100%.

- LQG non TSDf inspections SYF 2010, 99% (75/76) and SYF 2011, 99% (77/78)  
*The federal goal is 20%, or 15 facility inspections.*
- SQG inspections SFY 2010-2011 biennium, 100% (429/429)  
*There is no federal inspection goal for SQGs*

**Element 6:** No Comment

**Element 7:** No Comment

**Element 8:** No Comment

**Element 9:** No Comment

**Element 10:**

100% of enforcement actions issued by NDEP were both timely and appropriate. NDEP meets or exceeds all data metrics found in Element 10. It is difficult to comprehend why a finding of "Area for State Attention" is indicated under this circumstance. We find no additional attention is required.

**Element 11:**

Economic benefit is considered in all penalty calculations by NDEP as described in the "Hazardous Waste Policy and Procedures, Staff Guide" dated October 20, 2008.

**Element 12:** No Comment

## **State Review Framework II Element 13 RCRA**

### **Introduction**

The Nevada Division of Environmental Protection (NDEP) has an obligation to protect human health and the environment and a responsibility to safeguard our limited natural resources particularly waters of the State. One of the key elements in the protection of Nevada's water resources is the RCRA Compliance & Enforcement (C&E) Program. Recognizing the need for proactive water resource protection, NDEP has developed its RCRA C&E program maximizing the prevention of hazardous constituent releases to waters of the State. Nevada cannot afford to implement USEPA's typical RCRA C&E program that relies on reactive enforcement metrics as the measurement of success. This reactive approach is unacceptable to Nevada as it drastically increases the threat to waters of the State.

NDEP's RCRA C&E program's primary goal as a regulatory program is to gain voluntary compliance with applicable regulations throughout the regulated universe. Compliance rates are a measurement of success for the NDEP's RCRA C&E program not the number of enforcement actions or facilities designated as Significant Non-Compliers (SNC). The program has developed a number of strategies to reach its goal of voluntary compliance within the regulated universe. The most important and successful strategy employed by the program is a visible field presence. Saturating the regulated universe with compliance inspections has facilitated voluntary compliance.

An Assistance Agreement of \$750,000 per year from the USEPA supports less than 50% of the Nevada's RCRA C&E program. The amount of the Assistance Agreement has remained constant since 2004.

### **Inspections and Assistance**

A typical EPA approved RCRA C&E program attempts to inspect 20% of the generator universe annually and finds a large percentage of those facilities out-of-compliance with some facilities significantly out-of-compliance. In contrast, NDEP's RCRA C&E program has committed to EPA Region IX a goal of annual inspections for all Large Quantity Generator (LQG) of hazardous waste and all Treatment, Storage, and Disposal Facilities (TSDFs). Additionally, NDEP's RCRA C&E program has committed to EPA Region IX a goal of biennial inspections for Small Quantity Generator (SQG) of hazardous waste. USEPA annually inspects a number of LQG and TSDF facilities in Nevada. In order to eliminate duplication of effort, efficient allocation of resources, and unnecessary confusion and burden to the regulatory community, USEPA inspections are counted towards NDEP's commitment goals.

Nevada is fortunate in that the regulated universe is relatively small; approximately 1,700 facilities possess active EPA ID numbers, as compared with heavily industrialized states.

Facilities, as of July 1, 2011 with active EPA ID numbers, broken down by Handler status;



- ◆ 6 TSDf also LQG
- ◆ 78 LQG non TSDf
- ◆ 329 SQG
- ◆ 1,207 Conditionally Exempt Small Quantity Generators (CESQG)
- ◆ 100 (est.) other facilities, primarily "Used Oil" regulated activities

All Treatment, Storage, and Disposal Facilities (TSDFs) are inspected annually by the NDEP.

The inspection universe of LQG non TSDf facilities is established on July 1 of each state fiscal year (SFY). The annual LQG non TSDf inspection universe is provided to USEPA Region IX in the form of an excel spreadsheet. During SYF 2010, 99% (75/76) of the identified LQG non TSDf facilities were inspected. During SYF 2011, 99% (77/78) of the identified LQG non TSDf facilities were inspected. The federal goal is 20%, or 15 facility inspections, for SFYs 2010 and 2011.

The RCRA C&E program established the goal to inspect all Small Quantity Generator (SQGs) facilities on a biennial cycle. The inspection universe of SQG facilities was established on July 1, 2009 for SFYs 2010-2011. The biennial SQG inspection universe is provided to USEPA Region IX in the form of an excel spreadsheet. During SFY 2010-2011 biennium, 100% (429/429) of identified SQG facilities were inspected. There is no federal inspection goal for SQGs.

To expand our coverage in the two largest urban counties, the RCRA C&E program has also entered into contracts with the Southern Nevada Health District in Clark County and Washoe County District Health Department to conduct inspections at Conditionally Exempt Small Quantity Generators (CESQG) and some SQG facilities. Each county agency completes approximately 300 inspections annually from a regulated universe of approximately 500 in Clark and 400 in Washoe County. Approximately half of the CESQG universe in Nevada is inspected annually. There is no federal inspection goal for CESQGs.

Hazardous waste statutes and regulations are complicated and public finds them difficult to understand. Many small businesses lack environmental compliance staff and have a poor understanding of the statutes and regulations. In an effort to maximize compliance, the RCRA C&E program has entered into a contract with the Nevada Small Business Development Center, Business Environmental Program (BEP). The amount of the contract is \$150,000 per year.

In a free and confidential setting, the BEP provides the public and regulated community information and answers to hazardous waste management questions. The BEP also provides one-on-one free and confidential counseling on environmental management and waste minimization over the phone and through on-site visits. Additionally, BEP produces a newsletter covering environmental compliance issues and develops fact sheets on key regulatory issues and case studies.

During calendar year 2009, the BEP responded to 1,582 requests for assistance through the compliance assistance hotline, trained 233 individuals in compliance assistance seminars, completed 73 on-site consultations, distributed the "BEP Reporter" newsletter





to a targeted mailing list of 4,300 readers, and maintained a compliance assistance website which received more than 70,000 hits. The number of contacts with the public and regulated community was enormous when compared to the size of Nevada's regulated universe. Additionally, at three facilities receiving on-site BEP assistance, hazardous waste was reduced by more than 3,000 pounds.

Results from BEP's 2010 effectiveness survey include:

- ◆ 100% of the respondents found the information BEP provide was helpful for their operation
- ◆ 84% had improved operations or processes
- ◆ 100% indicated BEP helped them maintain or improve compliance with hazardous waste regulations
- ◆ 72% passed information onto other businesses or referred businesses to BEP
- ◆ 54% indicated a reduction in generated waste as a result of BEP information

### **Environmental Results Program**

The NDEP received grant funding from USEPA for an "Environmental Results Program" for dry cleaners. The program measures improvements in compliance and provides quantifiable estimates of emissions that were prevented by dry cleaners using perchloroethylene. Baseline measures were developed in the first year of the project for Washoe County and in year two for Clark County. Educational materials, including a detailed compliance manual for dry cleaners, and free training were provided to the participating dry cleaners. A Self-Certification was developed for dry cleaning businesses to conduct internal compliance audits. The program was successfully concluded with the September 30, 2011 publication of the Nevada Dry Cleaner ERP Final Report.

### **Compliance and Enforcement**

#### **Compliance**

The data metrics chosen for the State Review Framework (SRF) by the USEPA's Office of Enforcement and Compliance Assurance (OECA) only address Inspections, Enforcement Activity, and Data Integrity. Noticeably absent from the data metrics is any mention of Compliance. As stated earlier, NDEP's RCRA C&E program primary goal as a regulatory agency is to gain voluntary compliance with applicable regulations thereby protecting human health and the environment, particularly preventing releases to waters of the State.

The RCRA C&E program calculates compliance rates and reports the results to EPA Region IX quarterly. Compliance rates are calculated for the previous quarter using the following data criteria: facilities in compliance at the time of inspection, and facilities that corrected alleged violations within 90 days of the inspection are considered to be in compliance. The number of facilities in compliance divided by the total number of inspections for that quarter yields the compliance rate. The compliance rate for SFY2010 was 98% and SFY2011 was 91%. The RCRA C&E program is extremely proud of our



high compliance rates and look to these rates of compliance as a measure of program success.

The SRF neglects to consider this measure of achievement.

### **Enforcement**

The RCRA C&E program credits the high rates of compliance to the intense inspection schedule and a successful enforcement program. A successful enforcement program relies on a broad array of tools to achieve voluntary compliance not the single solution approach for every compliance issue. It is the policy of the RCRA C&E program that, whenever possible, enforcement should be progressive, generally selecting the least aggressive enforcement tool necessary to achieve compliance. While a certain degree of flexibility and discretion are permitted, procedures are in place to ensure, to the extent possible, that enforcement of the state and federal hazardous waste statutes and regulations is applied consistently within the RCRA C&E program. The selection of an appropriate enforcement action is based upon the worst alleged violation present and the facility's previous compliance history.

Enforcement Actions taken by the Nevada RCRA C&E Program are listed below.

	<u>SFY2010</u>	<u>SFY2011</u>
Informal Enforcement Actions	58	152
Formal Enforcement Actions Initiated	3	7
SNC designations	2	3

EPA Region IX has stated that all Formal Enforcement Actions, some Informal Enforcement Actions, and even some facilities without alleged RCRA violations require SNC designation. Nevada fundamentally disagrees with EPA's position that facilities receiving an Informal Enforcement Action and facilities without alleged RCRA violations are candidates for SNC designation by Nevada's RCRA C&E program. It is important to note that Nevada's program has issued Formal Enforcement Actions for relatively minor alleged violations in order to meet with facilities in Formal Show Cause Conferences. The Enforcement Conference provides an early opportunity for compliance before minor alleged violations become larger compliance issues and potential threats to human health and the environment. Under Nevada's program procedures, final SNC designations are made by the BWM Chief from recommendations developed by RCRA C&E program staff. The RCRA C&E program recommendations are based on specific information about the actual facility, processes, generated wastes, and alleged RCRA violations observed during an inspection. USEPA's position arbitrarily removes an effective enforcement tool from our program and eliminates another compliance opportunity.

It is critical for the SRF to include in the report that the Nevada RCRA C&E program continues to follow the guidelines contained in the Hazardous Waste Civil Enforcement Response Policy (ERP) document dated December 2003. In particular, Nevada's RCRA C&E program SNC designation procedure falls within the guidelines of the 2003 ERP.

The Nevada RCRA C&E program acknowledges that the number of SNC designated facilities (0.3%) is significantly below the national average (2.9%). Nevada maintains that this validates the effectiveness of our RCRA C&E program, intense field presence through inspections and compliance assistance activities. Nevada's RCRA C&E program strives to have zero tolerance for SNCs.

It appears that the goal of the federal program has shifted away from compliance to an arbitrary statistic of national average of SNC designations. For Nevada to comply with this new approach, Nevada would need to conduct less frequent inspections (20% of LQs annually instead of 100%) and eliminate compliance assistance in its entirety. This course of action would certainly increase the number of facilities that are out-of-compliance and increase the number of facilities designated as SNCs; however, this reactive approach to environmental protection is unacceptable to Nevada. The reactive approach is undesirable as it drastically increases the threat to waters of the State. Nevada prefers the proactive, preventive approach to environmental protection by complete coverage of the regulated universe through field presence and compliance assistance.

### **Conclusion**

The obligation to protect human health and the environment and a responsibility to safeguard our limited natural resources, particularly waters of the State, is not taken lightly by NDEP. NDEP developed its RCRA C&E program to maximize prevention of hazardous constituent releases. The key elements of the program are inspection saturation, aggressive compliance assistance, program innovation, and enforcement flexibility. NDEP's RCRA C&E program measures success through compliance not in the number of enforcement actions or facilities designated as Significant Non-Compliers. Nevada cannot afford to implement USEPA's typical RCRA C&E program that relies on reactive enforcement metrics as the measurement of success. Nevada's RCRA C&E program, as configured, effectively and efficiently protects human health and the environment and safeguards waters of the State

