

STATE REVIEW FRAMEWORK

Delaware

**Clean Water Act, Clean Air Act, and
Resource Conservation and Recovery Act
Implementation in Federal Fiscal Year 2013**

**U.S. Environmental Protection Agency
Region III, Philadelphia**

Executive Summary

Introduction

The U.S. Environmental Protection Agency's (EPA) enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Delaware Department of Natural Resources and Environmental Control (DNREC).

EPA based these SRF findings on FY2013 data, file review metrics, and conversations with program management and staff. EPA will track recommended actions from the review in the SRF Tracker and publish reports and recommendations on EPA's Enforcement and Compliance History Online (ECHO) web site.

Areas of Strong Performance

Clean Air Act (CAA)

- EPA found the Compliance Monitoring Reports (CMRs) to be extremely well written and organized, and believe that the format used in completing the CMRs could be used as a model for other states.
- EPA found the penalty files to be complete and thorough including all penalty collection documentation.

Resource, Conservation, and Recovery Act (RCRA)

- DNREC's RCRA program was thorough in entry of required data; they accurately captured all return to compliance dates for each individual violation, and entered all violations discovered through both field inspections and record reviews.
- DNREC's RCRA program inspections were thorough and met all of the inspection coverage requirements within the timelines established in EPA's Enforcement Response Plan.

National Pollutant Discharge Elimination System (NPDES)

- DNREC and the delegated agencies have a good inspection presence for NPDES sources.

Priority Issues to Address

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

During the SRF review year (FY2013), DNREC's NPDES programs and the delegated agencies did not address NPDES noncompliance through formal enforcement responses. The EPA Round 3 SRF review determined that the DNREC NPDES enforcement program did not issue any formal enforcement actions during the SRF review year but rather utilized informal enforcement

responses and follow-up inspections to encourage resolutions of violations. Previously, the EPA Round 2 SRF review determined that DNREC's NPDES program routinely conducted repeat inspections to encourage resolution of violations including Significant Non-compliance (SNC). The Round 3 SRF review also determined that DNREC's NPDES program did not consistently escalate enforcement since entering into a Management Agreement with EPA in June 2006.

DNREC must review and revise the 2012 Delaware Interim Compliance and Enforcement Response Guidance (CERG) to ensure consistency with national timely and appropriate enforcement guidance, and develop a plan for EPA approval that addresses appropriate enforcement. EPA Region III will conduct enhanced oversight of violation resolution in Delaware. EPA will consider direct enforcement for violations identified by DNREC that have not been resolved in an appropriate manner.

Most Significant CWA-NPDES Program Issues¹

- DNREC's NPDES industrial stormwater, construction stormwater program, and the delegated agencies (City of Newark and Kent Conservation District) do not enter or upload minimum data requirements into Integrated Compliance Information System (ICIS) for NPDES non-major permits. DNREC should submit a data management plan to EPA which includes an end date upon which required data contained in state data systems are entered or uploaded to ICIS.
- DNREC has issued one discharge permit to a Concentrated Animal Feeding Operations (CAFO) since program approval in 2011. There is a permit back log with approximately 450 Notices of Intent (NOIs) from facilities requesting discharge authorization. DNREC did not perform any NPDES compliance inspections during the SRF review year FY2013. EPA is monitoring the implementation of the Delaware CAFO program including the completion of a general permit through the annual 106 grant agreement and the NPDES Permitting and Enforcement Clean Water Action Work Planning process.

Most Significant CAA Stationary Source Program Issues

- Only 29% (2 of 7) of High Priority Violators (HPVs) were addressed in accordance with the timely and appropriate timeframes in the HPV policy in effect at the time of the review. DNREC must revise their SOP to reflect the new HPV policy, effective October 1, 2014, and outline DNREC procedures for taking timely enforcement actions.

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

- Only 56% (34 of 61) of the Full Compliance Evaluations (FCEs) were entered into Air Facility System (AFS) in accordance with the data management guidance. Specifically, data action type “FS” needs improvement. Within 90 days of the final report, DNREC should submit and implement revised procedures to EPA which ensure the timely reporting of compliance monitoring minimum data requirements (MDRs), specifically inspections. EPA will monitor the improvement of the timely reporting through existing oversight calls and other periodic data reviews.

Most Significant RCRA Subtitle C Program Issues - None

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I. Background on the State Review Framework

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

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

Reviews cover:

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

EPA conducts SRF reviews in three phases:

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

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

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

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

II. SRF Review Process

Review period: Fiscal Year 2013

Key dates: May 9, 2014 Kick-off Meeting with DNREC

July 8 - 10, 2014 NPDES File Review

June 2 - 4, 2014 CAA File Review

June 2 - 4, 2014 RCRA File Review

State and EPA key contacts for review:

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CAA Program:

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III. SRF Findings

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

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

There are three categories of findings:

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

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

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

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

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

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

CWA Findings

CWA Element 1 — Data						
Finding 1-1	Meets or Exceeds Expectations					
Summary	Finding: DNREC consistently uploads NPDES data for individual major and non-major municipal and industrial waste water permits into the national database.					
Explanation	DNREC met or exceeded the national average for metrics 1b1 and 1b2. Under metric 2b, the DNREC SRF file review identified 19/23 or 82% of the major municipal and industrial waste water minimum data elements were accurately reported in the national data system.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	1b1 Permit limit rate for major facilities	>95%	98.4%	-	-	95%
	1b2 DMR entry rate for major facilities	>95%	97.1%	-	-	99.7%
	2b Files reviewed where data are accurately reflected in the national data system	N/A		19	23	82.6%
State response						
Recommendation						

CWA Element 1 — Data

Finding 1-2	Area for State Improvement
Summary	<p>Finding: DNREC’s NPDES Municipal Separate Storm Sewer System (MS4), industrial stormwater, construction stormwater and CAFO programs do not enter or upload NPDES minimum data requirements into the national data system.</p> <p>In addition (Kent Conservation District (KCD) and City of Newark, delegated to implement construction stormwater, do not enter or upload NPDES MDRs into the national data system.</p>
Explanation	<p>EPA’s file review found that the DNREC’s MS4, industrial stormwater and construction stormwater programs maintain internal databases to track inspection, compliance and enforcement information but do not enter NPDES data into the DNREC Environmental Navigator (DEN), Delaware’s central state data system that uploads data to ICIS (metric 2b and 5b2). The in-house databases maintained by the MS4, industrial stormwater and construction programs include a subset of the MDR elements required in ICIS and serve as an adequate vehicle to track NPDES compliance monitoring and enforcement activities.</p> <p>CAFO files were not reviewed as part of this SRF. DNREC has received approximately 450 NOIs from facilities seeking NPDES discharge coverage, however, DNREC has only issued one CAFO permit since EPA program approval in FY2011. DNREC did not have any inspection activities as defined by applicable policy and guidance during the period of review. See finding 2-3.</p> <p>The construction stormwater file reviews conducted at the delegated agencies determined that KCD maintains an internal database for tracking NOI and the City of Newark utilizes an electronic filing system for NOIs. In addition, KCD has access to DNREC’s internal tracking database, MUDDTRACKER in which they input plan review, construction and maintenance review data. Effective May 2014, DNREC consolidated its Office of Information and Technology with all of other Delaware state agencies under the Delaware Department of Technology and Information (DTI). DNREC plans to modify its central state database to incorporate the ability to upload all state NPDES data into the national data system but no date has been established to complete this activity.</p>

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2b Files reviewed where data are accurately reflected in the national data system (sw-con)	-	-	0	15	0%
2b Files reviewed where data are accurately reflected in the national data system (MS4)	-	-	1	2	50%	
2b Files reviewed where data are accurately reflected in the national data system (ind sw)	-	-	0	9	0%	
2b Files reviewed where data are accurately reflected in the national data system (KCD)	-	-	0	15	0%	
2b Files reviewed where data are accurately reflected in the national data system (Newark)	-	-	0	15	0%	
5b2 Inspection coverage of NPDES non-majors with general permits	N/A	6.8%	-	-	0%	

State response

DNREC is concerned with Region III’s finding that data entry into ICIS for non-majors is a “most significant CWA-NPDES Program Issue.” DNREC is reporting data for non-majors in accordance with our Delegation Agreement. The Round 1 and 2 SRF reports note that non-major permit information is not entered into the national database. Although the SRF Reports note this, there was no directive, requirement, or communication from Region III included in the reports that non-major permit information is required to be entered into the ICIS national database.

The NPDES/Construction Stormwater program notes that the SRF Round 2 report (from 2008) clearly stated that the program did not report MDRs into ICIS, and since that time, the EPA Region III Water Program has not communicated to the program that this was required, nor was any training offered. As previously mentioned by EPA Water staff, and after review by the program, the 106 CWA Grant does not reference any requirement for the NPDES construction general permit program to input into ICIS.

The DNREC Construction Stormwater program delegates program elements to the conservation districts, municipalities and towns. At this time, there is no integrated database to allow the Delegated Agencies to upload information into ICIS.

DNREC in cooperation with Delaware Department of Agriculture (DDA) have performed initial site assessments on all facilities for which we have NOIs. DDA and DNREC continue to make site visits in inspecting for compliance with their Nutrient Management Plan or Animal Waste Management Plan and CAFO requirements, even though these visits cannot be counted as formal compliance inspections.

	<p>Under the proposed NPDES e-Reporting Rule, DNREC plans to modify its central state database to incorporate the ability to upload the data requirements outlined in Appendix A into the national data system.</p>
<p>Recommendation</p>	<p>EPA has communicated expectations to DNREC regarding major and minor source MDRs on numerous occasions. EPA does acknowledge that it has not explicitly stated that these MDRs are also applicable to stormwater delegated agencies. DNREC should ensure entry of MDRs into ICIS for all NPDES major and non-major facilities regulated under the CWA-NPDES programs. Within 120 days of issuance of the final SRF report, DNREC should submit a data management plan to EPA which should include an end date upon which required data contained in state data systems are uploaded to ICIS, procedures to ensure complete, accurate and timely reporting of all NPDES permit, compliance and enforcement MDRs including the NPDES data maintained by delegated agencies. The procedures should also include DNREC oversight of NPDES data management by the delegated agencies and ensure that data is entered into the system. EPA will monitor DNREC and delegated agencies progress to improve data as established in the EPA approved data management plan. EPA will monitor data accuracy through the Delaware annual data metric analysis and regular communication with all DNREC NPDES MS4, industrial stormwater, construction stormwater, and CAFO programs through standardized quarterly management calls. The recommendation will be considered complete once the data management plan has been fully executed and DNREC and the delegated agencies are entering all MDRs.</p>

CWA Element 2 — Inspections

Finding 2-1	Area for State Attention					
Summary	Finding: DNREC’s NPDES program met or exceeded FY2013 CMS commitments for the metrics listed below with the exception of the compliance monitoring commitments for the CAFO program.					
Explanation	<p>DNREC met or exceeded FY2013 CMS commitments as measured under metrics 4a7, 4a8, 4a9 and 5b2. However, DNREC does not enter or upload the data relevant to each of those metrics. DNREC maintains internal databases to track the NPDES compliance monitoring activities for the MS4, industrial stormwater, construction stormwater listed below they do not enter NPDES inspection data for metrics 4a7, 4a8, 4a9 and 5b2 into the central Delaware Navigator state database which uploads NPDES data into the national data system. See Finding 1-2.</p> <p>CAFO files were not reviewed as part of this SRF, as only one permit has been issued. See Finding 1-2 and 2-3.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	4a4 Major CSO inspections	N/A	N/A	1	1	100%
	4a7 Phase I & II MS4 audits or inspections	N/A	N/A	2	1	200%
	4a8 Industrial stormwater inspections	N/A	N/A	169	73	231%
	4a9 Phase I and II stormwater construction inspections	N/A	N/A	-	317	>10%
	5b2 Inspection coverage of NPDES non-majors with general permits	N/A	6.8%	-	-	20.8%
State response						
Recommendation						

CWA Element 2 — Inspections

Finding 2-2	Meets or Exceeds Expectations
Summary	<p>Finding: DNREC’s NPDES municipal and industrial wastewater program, industrial stormwater and construction stormwater programs and the City of Newark construction stormwater program consistently produced complete inspection reports with sufficient documentation to determine compliance as measured under metric 6a.</p> <p>DNREC’s NPDES municipal and industrial wastewater program, industrial stormwater and construction stormwater programs and the City of Newark construction stormwater program consistently completed inspection reports within the prescribed Delaware state policy timeframes as measured under metric 6b.</p> <p>DNREC exceeded its FY2013 CMS and the national averages for inspection coverage for NPDES for municipal and industrial waste water (e.g. majors and non-majors) with individual permits as measured under metrics 5a1 and 5b1.</p>
Explanation	<p>DNREC’s municipal and industrial wastewater programs developed complete inspections reports that provided sufficient documentation to determine compliance in 23 out of 23 reports reviewed.</p> <p>DNREC’s industrial stormwater program provided complete inspection reports with sufficient documentation to determine compliance in 8 out of 9 reports reviewed by EPA. In the DNREC construction stormwater program, the file review identified 19 out of 19 inspection reports complete with sufficient documentation to determine compliance. The SRF file review of the City of Newark (delegated local agency for NPDES construction stormwater program) identified 21 out of 21 inspection reports with complete information and sufficient documentation.</p> <p>The SRF file review under metric 6b determined that DNREC’s municipal and industrial wastewater program averaged 23 days for completing an inspection report and the construction stormwater program averaged 6 days for completing a report. DNREC’s industrial stormwater program completed 8 out of 9 inspection reports averaging 12 days for completing a timely inspection report as measured under metric 6b. The City of Newark averaged 2 days for completion of inspection reports as measured under metric 6b.</p> <p>DNREC inspected 95% of the NPDES majors and 81.3% of NPDES non-majors as measured under metrics 5a1 and 5b1 respectively.</p>

Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	6a Inspection reports complete and sufficient to determine compliance at the facility (DE municipal and industrial – M&I)	100%	N/A	23	23	100%
6a Inspection reports complete and sufficient to determine compliance at the facility (DE con-sw)	100%	N/A	19	19	100%	
6a Inspection reports complete and sufficient to determine compliance at the facility (DE Ind-sw)	100%	N/A	8	9	88.9%	
6a Inspection reports complete and sufficient to determine compliance at the facility (Newark)	100%	N/A	21	21	100%	
6b Inspection reports completed within prescribed timeframe (DE M&I)	100%	N/A	22	23	95.7%	
6b Inspection reports completed within prescribed timeframe (DE con-sw)	100%	N/A	18	19	94.7%	
6b Inspection reports completed within prescribed timeframe (DE ind-sw)	100%	N/A	8	9	88.8%	
6b Inspection reports completed within prescribed timeframe (Newark)	100%	N/A	20	21	95.2%	
5a1 Inspection coverage of NPDES majors	N/A	53.1%	-	-	95%	
5b1 Inspection coverage of NPDES non-majors with individual permits	-	25.2%	-	-	86.3%	
State response						
Recommendation						

CWA Element 2 — Inspections

Finding 2-3	Area for State Improvement
Summary	<p>Finding: DNREC’s FY2013 CMS commitment for Sanitary Sewer Overflow (SSO) compliance monitoring is on an as-needed basis (metric 4a5). DNREC internally tracks SSO inspections but specific SSO compliance monitoring information was not available during the period of review or at the time of the SRF review.</p> <p>For the SRF review year FY2013, DNREC did not perform any NPDES inspections of large/medium CAFOs (metric 4a10).</p> <p>Under metric 6a, the file review of DNREC’s MS4 program identified one out of two complete inspection reports that contained sufficient documentation to determine compliance. In addition, the file review identified 15 out of 22 complete KCD inspection reports with sufficient documentation to determine compliance.</p>
Explanation	<p>DNREC conducts SSO inspections on an as-needed basis. The state tracks SSO compliance monitoring activities through an internal database but was unable to provide specific SSO inspection numbers at the time of review (metric 4a5). EPA was unable to determine DNREC’s SSO inspection frequency because DNREC does not have a formal tracking system to capture SSO data.</p> <p>DNREC did not perform any NPDES compliance inspections during FY2013 as measured under metric 4a10. DNREC promulgated CAFO regulations in November 2011. DNREC finalized the first CAFO permit during FY2013 (April 2013) and is currently processing/evaluating approximately 370 NOI. DNREC estimates a five year timeframe from the date of promulgation of the regulations until CAFO permit issuance to the complete universe (2016). During FY2013, DNREC conducted 89 site visits to evaluate NOI submissions. DNREC intends to perform an on-site inspection of each permitted facility once every five year permit term.</p> <p>DNREC performed two MS4 compliance inspections during FY2013. The SRF file review under metric 6a identified one complete inspection report that included sufficient documentation to make a compliance determination (Newark/University of Delaware (UD)). The SRF file review of the Dover MS4 inspection determined that DNREC did not complete an inspection report and moved to enforcement related discussions due to significant compliance issues requiring immediate follow-up.</p>

The DNREC MS4 program did not complete two inspection reports within the timeframe prescribed in the DE state policy. DNREC finalized the inspection report for Newark/UD MS4 in 90 days. DNREC did not issue an inspection report for the Dover MS4 inspection due to the identification of significant violations during the inspection. DNREC pursued immediate enforcement follow-up to address violations identified during the inspection (metric 6b).

The review of KCD’s construction stormwater program identified that 68% of inspection reports included complete information with sufficient documentation to determine compliance as measured under metric 6a. Seven KCD reports reviewed did not include sufficient documentation or specific observations necessary to determine compliance.

The file review determined that the KCD construction stormwater program did not complete six inspection reports within the timeframe prescribed in the DE state policy. KCD inspectors typically complete inspection reports that same day as the inspection. However, the file review identified six reports that did not include a final date and/or signature indicating a final report.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
4a5 SSO inspections	N/A	N/A	0	0	0%
4a10 Medium and large NPDES CAFO inspections	N/A	N/A	0	0	0%
6a Inspection reports complete and sufficient to determine compliance at the facility (DE MS4)	N/A	N/A	1	2	50%
6a Inspection reports complete and sufficient to determine compliance at the facility (KCD)	N/A	N/A	15	22	68.2%
6b Inspection reports completed within prescribed timeframe (DE MS4)	N/A	N/A	0	2	0%
6b Inspection reports completed within prescribed timeframe (KCD)	N/A	N/A	16	22	72.7%

State response

Permitting of CAFOs has lagged behind expectations; however, with our current movement from individual to general permitting, we do anticipate making our original commitment of getting all facilities permitted within 5 years of regulation promulgation.

As the report notes, 89 site visits were conducted in FY2013. That is approximately 20% of our NOI universe, which would comply with our goal of inspecting facilities once per permit term. These site visits do look

to ensure compliance with Nutrient or Animal Waste Management Plans, and anticipated CAFO requirements.

The primary reason that DNREC does not meet the EPA inspection metric is, as noted in Finding 1-2, because these visits do not qualify as inspection activities because NPDES permits have not been issued. The work is being done, just not in a form recognized by EPA as formal inspections under an issued NPDES CAFO permit. As such, we would find that this finding should not qualify as a most significant program issue and should instead be noted in the findings area.

The construction stormwater program uses Certified Construction Reviewer (CCR) inspection reports to aid the regulatory agency in the review of the construction project. However, each Delegated Agency conducts a regulatory review of their construction projects. Therefore, it is not necessary to include the CCR reports in the SRF review.

Recommendation

Relative to metric 4a10, EPA Region III will monitor the implementation progress of the Delaware’s CAFO program through the annual 106 grant agreement and the NPDES Permitting and Enforcement Clean Water Action Work Planning process.

Relative to metric 6a and 6b, DNREC and KCD inspection reports need to be completed in a timely manner and consistent with EPA policy and guidance and provide the necessary information and documentation to make a compliance determination. DNREC should ensure that NPDES inspection reports include all required information as set forth by DNREC guidance, EPA’s 2004 NPDES Compliance Inspection Manual and the national CWA-NPDES program office and include final dates and signatures. Within 120 days of issuance of the final SRF report, DNREC should review the state/EPA NPDES inspection guidance, develop and submit a plan for EPA approval to ensure timely and consistent production of inspection reports containing the necessary documentation to make a compliance determination. The plan should include implementation timeframes for activities included in the plan and procedures for state oversight of any NPDES compliance monitoring program implemented by delegated agencies.

Actions to resolve issues identified in the plan must be incorporated into DNREC policy within 180 days of EPA’s approval of the plan. Also, within 90 days of the final report, DNREC should provide all delegated agencies the most current version of the DNREC inspection checklist for NPDES stormwater construction inspections. In addition, within one year

of the final report, DNREC should provide inspection training on the revised report procedures to DNREC staff and the delegated agencies. EPA will consider the recommendation complete after one year as verified through supplemental inspection file analyses and performance verification conducted as part of the routine quarterly enforcement calls with DNREC.

CWA Element 3 — Violations

Finding 3-1	Meets or Exceeds Expectations
Summary	<p>Finding: DNREC consistently identified single event violations (SEV) at NPDES major facilities and reported them in the national data system (metric 7a1).</p> <p>Delaware’s percentage of NPDES major facilities in noncompliance as reported in the national data system is within the range of the national average (metric 7d1).</p> <p>The DNREC NPDES municipal and industrial wastewater programs, industrial stormwater and construction stormwater programs consistently produce inspection reports with sufficient documentation leading to an accurate compliance determination (metric 7e).</p> <p>The City of Newark construction stormwater program consistently produces inspection reports with sufficient documentation leading to an accurate compliance determinations (metric 7e).</p> <p>DNREC reported six NPDES non-major facilities with individual permits in Category 1 noncompliance (metric 7f1).</p> <p>DNREC reported 22 NPDES non-major facilities with individual permits in Category 2 noncompliance (metric 7g1).</p> <p>DNREC reported four NPDES major facilities in SNC during the FY2013 SRF review year (metric 8a2).</p> <p>DNREC consistently identifies SEVs as SNC or non-SNC at NPDES major facilities (metric 8b).</p>
Explanation	<p>During the review period of FY2013, DNREC identified and reported seven SEVs at NPDES major facilities as measured under data metric 7a1.</p> <p>DNREC reported 60% of major facilities in noncompliance with discharge monitoring report (DMR) violations as measured under data metric 7d1.</p> <p>The file review determined that DNREC’s NPDES municipal and industrial waste water program made an accurate compliance determination in 21 out of 23 inspection reports as measured under file metric 7e. The construction stormwater program made accurate compliance determinations in 19 out of 19 inspection reports and the industrial</p>

stormwater program made accurate compliance determinations in 8 out of 9 inspections reports as measured under file metric 7e.

The file review determined that the City of Newark’s construction stormwater program made accurate compliance determinations in 19 out of 21 inspection reports as measured under metric 7e.

The data as reported in the national data system under data metric 7f1 and 7g1 corresponds to the Delaware Annual Non-Compliance Report (ANCR) coinciding with the FY2013 SRF review timeframe.

The FY2013 SRF Data Metric Analysis (DMA) identified four out of twenty NPDES major facilities in SNC. Delaware’s percentage of SNC NPDES majors is within the range of the national average (24.4%) as measured by metric 8a2.

The file review identified six out of seven SEV violations as SNC or non-SNC at NPDES major facilities as measured under metric 8b.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
7a1 Number of major facilities with single event violations	N/A	N/A	-	-	7
7d1 Major facilities in noncompliance	N/A	63.10%	12	20	60%
7e Inspection reports reviewed that led to an accurate compliance determination (DE M&I)	100%	N/A	21	23	91.3%
7e Inspection reports reviewed that led to an accurate compliance determination (DE con-sw)	100%	N/A	19	19	100%
7e Inspection reports reviewed that led to an accurate compliance determination (DE ind-sw)	100%	N/A	8	9	88.9%
7e Inspection reports reviewed that led to an accurate compliance determination (Newark)	100%	N/A	19	21	90.5%
7f1 Non-major facilities in Category 1 noncompliance	N/A	N/A	-	-	6
7g1 Non-major facilities in Category 2 noncompliance	N/A	N/A	-	-	22
8a2 Percentage of major facilities in SNC	N/A	24.4%	4	20	20%
8b Single-event violations accurately identified as SNC or non-SNC	N/A	N/A	6	7	85.7%
Choose an item.					

State response

Recommendation

CWA Element 3 — Violations

Finding 3-2	Area for State Improvement					
Summary	<p>Finding: DNREC’s MS4 program does not consistently produce inspection reports with sufficient documentation that lead to an accurate compliance determination (metric 7e).</p> <p>KCD does not consistently produce inspection reports with sufficient documentation leading to an accurate compliance determination (metric 7e).</p> <p>DNREC does not consistently identify and report on a timely basis SEVs as SNC (metric 8c).</p>					
Explanation	<p>The file review determined that DNREC’s MS4 program made an accurate compliance determination in 1 out of 2 inspection reports as measured under file metric 7e. DNREC did not issue an inspection report for an inspection of the Dover MS4 but did pursue immediate enforcement to address violations identified during the inspection.</p> <p>The KCD file review identified accurate compliance determinations in 15 out of 22 inspection reports as measured under metric 7e. Seven inspection reports did not contain sufficient documentation to make an accurate compliance determination. In addition, the files reviewed for the seven inspection reports did not include any information to confirm that KCD made a compliance determination as a result of the inspection.</p> <p>The file review determined that DNREC identified and reported in a timely manner two out of three SEVs as SNC. The NPDES municipal and industrial file review of Bridgewater WWTP determined that DNREC did not make an accurate compliance determination and failed to identify SEVs as SNC violations in the national data system.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	7e Inspection reports reviewed that led to an accurate compliance determination (MS4)	100%	N/A	1	2	50%
	7e Inspection reports reviewed that led to an accurate compliance determination (KCD)	100%	N/A	15	22	68.2%
	8c Percentage of SEVs identified as SNC reported timely at major facilities	100%	N/A	3	3	66%

State response	
Recommendation	<p>Relative to metric 7e, DNREC and KCD inspection reports need to consistently provide the necessary information and documentation to support an accurate compliance determination. DNREC should ensure that NPDES inspection reports include all required information as set forth by DNREC guidance, EPA’s 2004 NPDES Compliance Inspection Manual, and the national CWA-NPDES program office. Within 120 days of issuance of the final SRF report, DNREC should review the EPA and State NPDES inspection guidance, develop and submit a plan for EPA approval to ensure consistent production of inspection reports containing the necessary documentation to make an accurate compliance determination.</p> <p>The plan should include completion dates for all activities referenced within. Also, within 90 days of the final report, DNREC should provide all delegated agencies the most current version of the DNREC inspection checklist for NPDES stormwater construction inspections and actions to resolve issues identified must be incorporated into DNREC policy. In addition, within one year of the final report, DNREC should provide the inspection training on the revised report procedures to DNREC staff and the delegated agencies. EPA will consider the recommendation complete after one year as verified through supplemental file analyses and performance verification conducted as part of the routine quarterly enforcement calls with DNREC.</p> <p>Relative to metric 8c, DNREC needs to improve consistency of SEVs identified through inspections at NPDES majors and timely report SNC in the national data system. DNREC will identify and implement procedures to improve the identification of SEVs as SNC with timely reporting into the national data system.</p> <p>Within 120 days of issuance of a final SRF report, in addition to data entry actions identified under Element 1, DNREC must review the 2012 CERGL, as well as national SEV/SNC guidance, and develop procedures for EPA approval that address identification of SEVs at NPDES major facilities and timely reporting of SEV as SNCs in the national data system. The procedures will resolve issues identified through this review and must be incorporated into DNREC policy within 120 days of EPA approval.</p> <p>EPA will monitor DNREC’s progress through the annual data metric (DMA) analysis and consider the recommendation complete when the DMA indicates the revised procedures have substantially improved DNREC’s identification of SEVs and escalation to SNC with timely reporting into the national data system.</p>

CWA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations																													
Summary	<p>Finding: The DNREC MS4 program addresses violations with enforcement responses that return or will return as source in violation to compliance (metric 9a).</p> <p>The DNREC MS4 enforcement program initiates enforcement responses that address violations in an appropriate manner (metric 10b).</p>																													
Explanation	<p>The SRF file review of DNREC’s MS4 program identified 1 out of 1 enforcement action that returned the Newark/UD Phase II MS4 to compliance as measured under metric 9a. DNREC’s MS4 inspection identified violations and issued a Manager’s Deficiency Letter (MDL) within 30 days of the inspection (informal enforcement). The Newark MS4 resolved the violations and returned to compliance within 90 days of receiving the MDL.</p> <p>The file review of DNREC’s MS4 program identified one out of one enforcement response that addressed violations in an appropriate manner as measured under metric 10b. DNREC addressed violations identified during an FY2013 inspection of the Newark/UD MS4 with informal enforcement that returned the permittee to compliance in a timely manner.</p>																													
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>9a Percentage of enforcement responses that return or will return source in violation to compliance (MS4)</td> <td>N/A</td> <td>N/A</td> <td>1</td> <td>1</td> <td>100%</td> </tr> <tr> <td>10b Enforcement responses reviewed that address violations in an appropriate manner (DE MS4)</td> <td>100%</td> <td>N/A</td> <td>1</td> <td>1</td> <td>100%</td> </tr> <tr> <td>10b Enforcement responses reviewed that address violations in an appropriate manner (DE M&I)</td> <td>100%</td> <td>N/A</td> <td>4</td> <td>5</td> <td>80%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	9a Percentage of enforcement responses that return or will return source in violation to compliance (MS4)	N/A	N/A	1	1	100%	10b Enforcement responses reviewed that address violations in an appropriate manner (DE MS4)	100%	N/A	1	1	100%	10b Enforcement responses reviewed that address violations in an appropriate manner (DE M&I)	100%	N/A	4	5	80%
Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #																									
9a Percentage of enforcement responses that return or will return source in violation to compliance (MS4)	N/A	N/A	1	1	100%																									
10b Enforcement responses reviewed that address violations in an appropriate manner (DE MS4)	100%	N/A	1	1	100%																									
10b Enforcement responses reviewed that address violations in an appropriate manner (DE M&I)	100%	N/A	4	5	80%																									
State response																														
Recommendation																														

CWA Element 4 — Enforcement

Finding 4-2	Area for State Improvement
Summary	<p>Finding: The Round 3 SRF file review found that DNREC does not consistently address violations with formal enforcement responses that return facilities to compliance and appropriately address violations. The DNREC NPDES enforcement program did not issue any formal enforcement actions during the SRF review year.</p> <p>The DNREC NPDES municipal and industrial wastewater program did not addresses violations with enforcement responses that return or will return a source in violation to compliance (metric 9a) and did not issue any formal enforcement actions against NPDES major facilities during the SRF review period of FY2013 (metric 10a1).</p> <p>The DNREC NPDES industrial stormwater program does not consistently address violations with enforcement responses that return or will return a source in violation to compliance (metric 9a) and does not consistently address violations in an appropriate manner (metric 10b).</p> <p>The DNREC NPDES construction stormwater program does not consistently address violations with enforcement responses that return or will return a source in violation to compliance (metric 9a)and does not consistently address violations in an appropriate manner (metric 10b).</p>
Explanation	<p>The SRF file review identified 3 out of 5 enforcement responses issued by the DNREC NPDES municipal and industrial wastewater program that addressed violations with enforcement responses that returned the facility to compliance or included a compliance schedule as measured under metric 9a. DNREC pursued informal enforcement actions with two facilities; however, the facilities failed to return to compliance (Bridgewater WWTP, and Kent Regional WWTP). DNREC addressed violations identified through DMRs and onsite inspections with a MDL issued to each facility.</p> <p>The file review included 3 enforcement actions, 1 of the 3 enforcement responses issued by the DNREC NPDES construction stormwater program that addressed violations with enforcement responses that returned the facility to compliance or included a compliance schedule as measured under metric 9a. DNREC issued a notice of violation (NOV) to Croda Inc. which addressed ongoing violations and unauthorized construction activity. A subsequent inspection determined that the facility did not return to compliance. DNREC has escalated to formal enforcement through the Delaware Attorney General’s legal panel in FY2014. The second facility,</p>

New Dover High School, received an NOV addressing violations identified through on-site inspections. Subsequent inspections performed by DNREC identified on-going noncompliance without escalation.

The file review identified 2 out of 5 enforcement responses issued by the DNREC NPDES industrial stormwater program that addressed violations with enforcement responses that returned the facility to compliance or included a compliance schedule as measured under metric 9a. DNREC issued informal enforcement against two facilities for violation identified through inspections that failed to return to compliance (DELDOT and A-1.) DNREC is currently involved in ongoing discussions with DELDOT to resolve compliance issues identified during the inspection. The SRF review team could not verify A-1's return to compliance at the time of review. With regard to the third facility, DNREC's solid waste program issued a formal enforcement action (Secretary's Order) against the facility in FY2013 which did not address NPDES violations associated with the facility's operation but will address facility operations that lead to permit noncompliance. The SRF review team could not verify the facility's current compliance with the NPDES permit at the time of review.

The DNREC NPDES enforcement program did not issue any formal enforcement actions against NPDES major facilities during the SRF review period of FY2013 as measured under metric 10a1.

The file review of DNREC's construction stormwater program identified 0 out of 3 enforcement responses that addressed violations in an appropriate manner as measured under metric 10b. With regard to the first facility, DNREC issued a NOV to Croda Inc. which addressed ongoing violations and unauthorized construction activity. A subsequent inspection determined that the facility did not return to compliance as a result of the enforcement response. DNREC has escalated to formal enforcement through the Delaware Attorney General's legal panel. The second facility, New Dover High School, received an NOV addressing violations identified through on-site inspections. After issuance of the NOV, DNREC identified on-going noncompliance through subsequent inspections without an enforcement response. The third facility, Laurel High School, received an NOV addressing violations identified through DNREC on-site inspections. EPA's review of subsequent DNREC inspection reports identified ongoing noncompliance at the site without an enforcement response.

The file review of DNREC's industrial stormwater program identified 2 out of 5 enforcement responses that addressed violations in an appropriate manner as measured under metric 10b. (see explanation for metric 9a)

The Round 3 SRF file review identifies issues with DNREC enforcement actions failing to return facilities to compliance and appropriately addressing violations. The Round 2 SRF review determined that DNREC’s NPDES program routinely conducted repeat inspections to encourage resolution of violations including SNC. The review also determined that DNREC’s NPDES program did not escalate enforcement since entering into a Management Agreement with EPA in June 2006.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
9a Percentage of enforcement responses that return or will return source in violation to compliance (DE M&I)	100%	N/A	3	5	60%
9a Percentage of enforcement responses that return or will return source in violation to compliance (DE con-sw)	100%	N/A	1	3	33.3%
9a Percentage of enforcement responses that return or will return source in violation to compliance (DE ind-sw)	100%	N/A	2	5	40%
10a1 Major facilities with timely action as appropriate	98%	N/A	0	0	NA
10b Enforcement responses reviewed that address violations in an appropriate manner (DE con-sw)	100%	N/A	0	3	0%
10b Enforcement responses reviewed that address violations in an appropriate manner (DE ind-sw)	100%	N/A	2	5	40%

State response

DNREC’s NPDES Program relies heavily on enforcement actions, such as Notices of Violation, which EPA considers to be informal to achieve compliance.

In our universe we find tools such as Manager’s Deficiency Letters and Notices of Violation to be highly effective at bringing facilities into compliance. EPA’s SRF report, however, focuses solely on “formal enforcement” actions which require a penalty assessment and, as such, portrays to the average reader that DNREC has not taken any enforcement in FY2013.

DNREC would like to see clarification regarding EPA’s definitions of formal and informal enforcement included in the report. DNREC’s success at achieving compliance via informal enforcement actions should also be referenced.

DNREC, although not in the review period for this report, has taken enforcement actions with penalties in the past when it finds escalation is warranted, and is currently working on several penalty packages. DNREC utilizes the use of a penalty action as one of its enforcement tools; however, DNREC does not utilize penalties when compliance can be effectively achieved through other means. Compliance and protection of the environment are the goals of the NPDES program, and the program utilizes all enforcement tools in a manner we find most effective in achieving those goals.

This finding needs to be discussed more with EPA and agreement made. It should then also be memorialized in the CERG.

Recommendation

DNREC will revise and implement procedures that will improve their performance issuing enforcement responses that return facilities to compliance and consistently address violations that includes escalation for repeat violations with appropriate penalties that consider gravity and economic benefit.

Within 120 days of issuance of a final SRF report, DNREC must review and revise the 2012 CERG to ensure consistency with national timely and appropriate enforcement guidance, and develop a plan for EPA approval that addresses appropriate formal enforcement. The plan should include more specific guidance and timeframes addressing formal enforcement escalation for ongoing noncompliance and a specific timeframe for implementing the plan. EPA will coordinate with DNREC to identify recalcitrant facilities that present long-term noncompliance issues and assess enforcement alternatives which may include referring facilities for federal enforcement. EPA will monitor DNREC's progress and consider the recommendation complete as verified through a limited review of DNREC's enforcement files during quarterly management calls.

EPA will conduct enhanced oversight of violation resolution in Delaware. EPA will consider direct enforcement for violations identified by DNREC that have not been resolved in an appropriate manner. This enhanced oversight shall continue until such time that DNREC has revised policy and guidance, and demonstrated it will take timely and appropriate enforcement with penalties.

CWA Element 5 — Penalties

Finding	Area for State Improvement					
Summary	EPA could not make a finding for this element because DNREC did not take formal enforcement with penalties during the FY2013 SRF review period.					
Explanation	The DNREC NPDES enforcement program did not issue any formal enforcement actions against NPDES major or non-major facilities during the SRF review period of FY2013 as measured under metrics 11a, 12a, and 12b.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	11a Penalty calculations reviewed that consider and include gravity and economic benefit	100%	N/A	0	0	NA
	12a Documentation of the difference between initial and final penalty and rationale	100%	N/A	0	0	NA
	12b Penalties collected	100%	N/A	0	0	NA
State response						
Recommendation	See recommendation for element 4-2.					

CAA Findings

CAA Element 1 — Data						
Finding 1-1	Meets or Exceeds Expectations					
Summary	The majority of the data was entered into the AFS completely, accurately and timely.					
Explanation	The majority of metrics included in this element were complete, accurate, and timely with the exception of the Timely Reporting of Compliance Monitoring MDRs (metric 3b1). In addition, the HPV discovery rate at majors (metric 8a) was above the national average.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	2b Accurate MDR data in AFS	100%	NA	23	25	92.0%
	3a2 Untimely entry of HPV determinations	0	NA	NA	NA	1
	3b2 Timely reporting of stack test dates and results	100%	75.4%	140	157	89.2%
	3b3 Timely reporting of enforcement MDRs	100%	68.7%	18	19	94.7%
	5a FCE coverage: majors and mega-sites	100%	88.5%	32	32	100%
	5b FCE coverage: SM-80s	100%	93.3%	29	30	96.7%
	5c FCE coverage: synthetic minors (non-SM 80s) that are part of CMS plan	100%	NA	0	0	NA
	5d FCE coverage: minor facilities that are part of CMS plan	100%	NA	0	0	NA
	5e Review of Title V annual compliance certifications	100%	81.3%	53	57	93.0%
	7b1 Violations reported per informal actions	100%	NA	10	10	100%
	7b3 Violations reported per HPV identified	100%	NA	3	3	100%
	8a HPV discovery rate at majors	NA	4%	3	58	5.2%

State response	
Recommendation	None

CAA Element 1 — Data

Finding 1-2	Area for State Improvement					
Summary	DNREC entered 75% of its compliance monitoring MDRs into AFS in a timely manner.					
Explanation	While this metric has notably improved from 37.9% in Round 2 to 75.2% in Round 3, the FY 2013 data demonstrates that a deficiency still exists in reporting compliance monitoring data timely. To determine where the problem exists, the review team looked at the underlying data included in metric 3b1. It showed that 98% (51 of 52) of the Title V Annual Certifications were entered into AFS in a timely manner, while only 56% (34 of 61) of the FCEs were entered into AFS in a timely manner. Specifically, data action type “FS” (inspections) needs improvement. According to DNREC, the untimely reporting of inspections is caused by a staff delay in getting the inspection report to the data manager for entry in AFS.					
Relevant metrics						
	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	3b1 Timely reporting of compliance monitoring MDRs	100%	80.9%	85	113	75.2%
State response						
Recommendation	Within 90 days of the final report, DNERC should submit and implement revised procedures to EPA which ensure the timely reporting of compliance monitoring MDRs, specifically inspections. The procedures should be designed to address the causes of the untimely reporting. EPA will monitor the improvement of the timely reporting through existing oversight calls and other periodic data reviews conducted by EPA.					

CAA Element 2 — Inspections

Finding	Meets or Exceeds Expectations					
Summary	DNREC met the negotiated frequency for compliance evaluations of the CMS sources and reviewed a majority of the Title V Annual Compliance Certifications. All CMRs reviewed provided sufficient documentation to determine facility compliance and all of the facility files reviewed contained sufficient information that documented the FCE elements.					
Explanation	<p>Delaware completed all CMS commitments for majors in FY 2013. One CMS SM-80 source was missed, but completed in November 2013. The review team believes this to be an isolated situation.</p> <p>Based on recommendations made in the Round 2 SRF review, DNREC developed and implemented the use of an inspection report template for CMRs which determines compliance with each permit condition. It should be noted that the review team found the CMRs to be extremely well written and organized, and believe that the format used in completing the CMRs could be used as a model for other states.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	5a FCE coverage: majors and mega-sites	100%	88.5%	32	32	100%
	5b FCE coverage: SM-80s	100%	93.3%	29	30	96.7%
	5c FCE coverage: synthetic minors (non-SM 80s) that are part of CMS plan	100%	NA	0	0	NA
	5d FCE coverage: minor facilities that are part of CMS plan	100%	NA	0	0	NA
	5e Review of Title V annual compliance certifications	100%	81.3%	53	57	93.0%
	6a Documentation of FCE elements	100%	NA	20	20	100%
	6b Compliance monitoring reports reviewed that provide sufficient documentation to determine facility compliance	100%	NA	20	20	100%
State response						

Recommendation

None

CAA Element 3 — Violations

Finding	Meets or Exceeds Expectations					
Summary	DNREC did a thorough and comprehensive job in making HPV determinations and accurately reported violations to AFS in FY 2013.					
Explanation	Twenty four (24) of 25 facility compliance determinations reviewed by the EPA review team were accurately reported to AFS. EPA believes that the one facility compliance determination that was not accurately reported to AFS is an isolated incident. In addition, all violations reviewed (i.e., HPV vs. non-HPV) were accurate and the HPV discovery rate at majors (metric 8a) was above the national average.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	7a Accuracy of compliance determinations	100%	NA	24	25	96.0%
	8a HPV discovery rate at majors	NA	4.0%	3	58	5.2%
	8c Accuracy of HPV determinations	100%	NA	14	14	100%
State response						
Recommendation	None					

CAA Element 4 — Enforcement

Finding 4-1	Meets or Exceeds Expectations					
Summary	DNREC included corrective actions in formal responses, and took appropriate enforcement action consistent with the HPV policy.					
Explanation	All formal enforcement responses reviewed required the facility to return to compliance if they had not already done so at the time of the execution of the Consent Agreement. In addition, both enforcement responses reviewed by the EPA team were determined to be appropriate.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	9a Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified timeframe	100%	NA	5	5	100%
	10b Appropriate enforcement responses for HPVs	100%	NA	2	2	100%
State response						
Recommendation	None					

CAA Element 4 — Enforcement

Finding 4-2	Area for State Improvement					
Summary	Based on the Round 3 SRF review, DNREC did not consistently take timely action to address HPVs.					
Explanation	Only 2 of 7 HPVs addressed by DNREC were executed in a timely manner (i.e., by Day 270). According to DNREC, 3 of the 5 untimely enforcement responses were due to the fact that there were multiple HPVs at a facility and DNREC was trying to address all of the active HPVs with one agreement. There is no specific explanation for the remaining two untimely responses.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	10a Timely action taken to address HPVs	100%	67.5%	2	7	28.6%
State response						
Recommendation	DNREC needs to take timely enforcement action to address HPVs in accordance with the new HPV policy. Effective October 1, 2014, the new HPV policy now requires HPVs to be addressed by Day 180. If not addressed by Day 180, DNREC must demonstrate to the Region that it has a case-specific development and resolution timeline. Within 60 days of the final report, DNREC must revise their standard operating procedures to reflect the new HPV policy and outline DNREC procedures for taking timely enforcement actions.					

CAA Element 5 — Penalties

Finding	Meets or Exceeds Expectations					
Summary	DNREC did a thorough and comprehensive job in documenting penalty calculations including the difference between the initial and final penalties, where applicable.					
Explanation	All of the penalty calculations reviewed included the gravity and economic benefit components and where applicable, documented the difference between the initial and final penalties. In general, the EPA review team found the penalty files to be complete and thorough. Finally, all documentation of the penalties collected in FY 2013 was found in the files.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	11a Penalty calculations include gravity and economic benefit	100%	NA	4	4	100%
	12a Documentation on difference between initial and final penalty	100%	NA	2	2	100%
	12b Penalties collected	100%	NA	3	3	100%
State response						
Recommendation	None					

RCRA Findings

RCRA Element 1 — Data																																																																																									
Finding Choose an item.	Meets or Exceeds Expectations																																																																																								
Summary	No data entry problems were identified.																																																																																								
Explanation	2b - DNREC was thorough in data entry; they accurately captured all return to compliance dates (for each individual violation), and entered all violations discovered through both field inspections and record reviews. We found only one apparent instance of inaccurate data being entered into RCRAInfo (one informal enforcement action had the wrong date entered); however, the NOV was not able to be successfully delivered through the US Postal Service, and was hand-delivered two months after date of issuance. Since the State considers the date of delivery to be the official date of the enforcement action, the data associated with the date of the informal enforcement action was, in fact, entered correctly into RCRAInfo.																																																																																								
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>2a Long-standing secondary violators</td> <td>-</td> <td>-</td> <td>-</td> <td>-</td> <td>2</td> </tr> <tr> <td>2b Complete and accurate entry of mandatory data</td> <td>100%</td> <td>-</td> <td>30</td> <td>30</td> <td>100%</td> </tr> <tr> <td>5a Two-year inspection coverage for operating TSDFs</td> <td>100%</td> <td>87.6%</td> <td>1</td> <td>1</td> <td>100%</td> </tr> <tr> <td>5b Annual inspection coverage for LQGs</td> <td>20%</td> <td>21%</td> <td>17</td> <td>49</td> <td>34.7%</td> </tr> <tr> <td>5c Five-year inspection coverage for LQGs</td> <td>100%</td> <td>66.6%</td> <td>43</td> <td>49</td> <td>87.8%</td> </tr> <tr> <td>5d One-year inspection coverage for active SQGs</td> <td>-</td> <td>11%</td> <td>72</td> <td>393</td> <td>18.3%</td> </tr> <tr> <td>5e1 Number of inspections at conditionally exempt SQGs</td> <td>-</td> <td>-</td> <td>-</td> <td>-</td> <td>60</td> </tr> <tr> <td>5e2 Number of inspections at transporters</td> <td>-</td> <td>-</td> <td>-</td> <td>-</td> <td>7</td> </tr> <tr> <td>5e3 Number of inspections at non-notifiers</td> <td>-</td> <td>-</td> <td>-</td> <td>-</td> <td>0</td> </tr> <tr> <td>5e4 Number of inspections at facilities not covered by metrics 2c through 2f3</td> <td>-</td> <td>-</td> <td>-</td> <td>-</td> <td>126</td> </tr> <tr> <td>7b Violations found during inspections</td> <td>-</td> <td>34.8%</td> <td>40</td> <td>115</td> <td>34.8%</td> </tr> <tr> <td>8a SNC identification rate</td> <td>-</td> <td>1.7%</td> <td>0</td> <td>115</td> <td>0%</td> </tr> <tr> <td>10a Timely enforcement taken to address SNC</td> <td>80%</td> <td>77.3%</td> <td>0</td> <td>1</td> <td>0%</td> </tr> </tbody> </table>					Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2a Long-standing secondary violators	-	-	-	-	2	2b Complete and accurate entry of mandatory data	100%	-	30	30	100%	5a Two-year inspection coverage for operating TSDFs	100%	87.6%	1	1	100%	5b Annual inspection coverage for LQGs	20%	21%	17	49	34.7%	5c Five-year inspection coverage for LQGs	100%	66.6%	43	49	87.8%	5d One-year inspection coverage for active SQGs	-	11%	72	393	18.3%	5e1 Number of inspections at conditionally exempt SQGs	-	-	-	-	60	5e2 Number of inspections at transporters	-	-	-	-	7	5e3 Number of inspections at non-notifiers	-	-	-	-	0	5e4 Number of inspections at facilities not covered by metrics 2c through 2f3	-	-	-	-	126	7b Violations found during inspections	-	34.8%	40	115	34.8%	8a SNC identification rate	-	1.7%	0	115	0%	10a Timely enforcement taken to address SNC	80%	77.3%	0	1	0%
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5a Two-year inspection coverage for operating TSDFs	100%	87.6%	1	1	100%																																																																																				
5b Annual inspection coverage for LQGs	20%	21%	17	49	34.7%																																																																																				
5c Five-year inspection coverage for LQGs	100%	66.6%	43	49	87.8%																																																																																				
5d One-year inspection coverage for active SQGs	-	11%	72	393	18.3%																																																																																				
5e1 Number of inspections at conditionally exempt SQGs	-	-	-	-	60																																																																																				
5e2 Number of inspections at transporters	-	-	-	-	7																																																																																				
5e3 Number of inspections at non-notifiers	-	-	-	-	0																																																																																				
5e4 Number of inspections at facilities not covered by metrics 2c through 2f3	-	-	-	-	126																																																																																				
7b Violations found during inspections	-	34.8%	40	115	34.8%																																																																																				
8a SNC identification rate	-	1.7%	0	115	0%																																																																																				
10a Timely enforcement taken to address SNC	80%	77.3%	0	1	0%																																																																																				
State response																																																																																									

Recommendation

RCRA Element 2 — Inspections

Finding Choose an item.	Meets or Exceeds Expectations					
Summary	Inspections are thorough and completed within timelines established by EPA’s Enforcement Response Plan.					
Explanation	<p>5c - Of the six facilities not inspected, one was inspected by EPA, one generated waste under the supervision of EPA’s Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Remedial Project Manager (RPM), and four submitted Biennial Reports for the first time in 2011 (“new” Large Quantity Generator (LQGs)). Therefore, there are no facilities in LQG status for the entire five-year cycle which have not been inspected for compliance with RCRA requirements.</p> <p>6a - All inspection reports contained a thorough narrative and appropriate checklist(s); half also contained additional information or documentation such as photos, training documents, etc.</p> <p>6b - The number of days to complete inspection reports ranged between 7 and 163, with the average being 35 days. In only one instance was the 150-day timeliness criteria not met.</p>					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	5a Two-year inspection coverage of operating TSDFs	100%	87.6%	1	1	100%
	5b Annual inspection coverage of LQGs	20%	21%	17	49	34.7%
	5c Five-year inspection coverage of LQGs	100%	66.6%	43	49	87.8%
	5d Five-year inspection coverage of active SQGs	-	11%	72	393	18.3%
	5e1 Five-year inspection coverage of active conditionally exempt SQGs	-	-	-	-	60
	5e2 Five-year inspection coverage of active transporters	-	-	-	-	7
	5e3 Five-year inspection coverage of active non-notifiers	-	-	-	-	0
	5e4 Five-year inspection coverage of active sites not covered by metrics 2c through 2f3	-	-	-	-	126
	6a Inspection reports complete and sufficient to determine compliance	100%	-	30	30	100%
	6b Timeliness of inspection report completion	100%	-	29	30	96.7%

State response	
Recommendation	

RCRA Element 3 — Violations

Finding Choose an item.	Meets or Exceeds Expectations																																															
Summary	Violations and SNC/Secondary Violation (SV) determinations were found to be made appropriately.																																															
Explanation	<p>7a - The State is thorough in their documentation of violations. The inspection reports document violations which are enforceable and deficiencies which do not rise to the level of enforcement (due to “fair notice” issues, for example). In addition, complying actions are identified, to effect the change in behavior required for compliance.</p> <p>8c - All facilities in violation identified during the review period were determined to be SV. We found no instances where we disagreed with the State’s SNC/SV determination.</p>																																															
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>2a Long-standing secondary violators</td> <td>-</td> <td>-</td> <td>-</td> <td>-</td> <td>2</td> </tr> <tr> <td>7a Accurate compliance determinations</td> <td>100%</td> <td>-</td> <td>29</td> <td>29</td> <td>100%</td> </tr> <tr> <td>7b Violations found during inspections</td> <td>-</td> <td>34.8%</td> <td>40</td> <td>115</td> <td>34.8%</td> </tr> <tr> <td>8a SNC identification rate</td> <td>-</td> <td>1.7%</td> <td>0</td> <td>115</td> <td>0%</td> </tr> <tr> <td>8b Timeliness of SNC determinations</td> <td>100%</td> <td>77.8%</td> <td>0</td> <td>0</td> <td>N/A</td> </tr> <tr> <td>8c Appropriate SNC determinations</td> <td>100%</td> <td>-</td> <td>29</td> <td>29</td> <td>100%</td> </tr> </tbody> </table>					Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	2a Long-standing secondary violators	-	-	-	-	2	7a Accurate compliance determinations	100%	-	29	29	100%	7b Violations found during inspections	-	34.8%	40	115	34.8%	8a SNC identification rate	-	1.7%	0	115	0%	8b Timeliness of SNC determinations	100%	77.8%	0	0	N/A	8c Appropriate SNC determinations	100%	-	29	29	100%	
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8c Appropriate SNC determinations	100%	-	29	29	100%																																											
State response																																																
Recommendation																																																

RCRA Element 4 — Enforcement

Finding Choose an item.	Meets or Exceeds Expectations																													
Summary	Enforcement is appropriate to the violations. In one instance, formal enforcement action did not meet the timeliness goal, however, this instance is not indicative of the overall enforcement program.																													
Explanation	<p>9a - In 18 instances, the facility returned to compliance before the issuance of the enforcement action (in some instances, complying actions were taken during the inspection). In each of the other 12 instances, the enforcement action resulted in the facility's return to compliance.</p> <p>10a - In one instance, DNREC did not meet the timeliness criteria for taking formal action to identify SNC (this SNC had been identified in the year prior to the review period). The lengthy list of violations arose largely from the facility's change in status (they had been a Small Quantity Generator (SQG) who episodically jumped to LQG status; immediately prior to the inspection they became, and remained an LQG. DNREC notified the facility of the violation in less than a month, and immediately began addressing the violations, with a recommendation (for formal enforcement) to the Enforcement Panel within 4½ months, and settlement 10 months later.</p> <p>10b - All violations were addressed with appropriate enforcement action; all violating facilities (identified during the review period) were determined to be SV, and all were addressed with an informal enforcement action.</p>																													
Relevant metrics	<table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>State N</th> <th>State D</th> <th>State % or #</th> </tr> </thead> <tbody> <tr> <td>9a Enforcement that returns violators to compliance</td> <td>100%</td> <td>-</td> <td>12</td> <td>12</td> <td>100%</td> </tr> <tr> <td>10a Timely enforcement taken to address SNC</td> <td>80%</td> <td>77.3%</td> <td>0</td> <td>1</td> <td>0%</td> </tr> <tr> <td>10b Appropriate enforcement taken to address violations</td> <td>100%</td> <td>-</td> <td>29</td> <td>29</td> <td>100%</td> </tr> </tbody> </table>						Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #	9a Enforcement that returns violators to compliance	100%	-	12	12	100%	10a Timely enforcement taken to address SNC	80%	77.3%	0	1	0%	10b Appropriate enforcement taken to address violations	100%	-	29	29	100%
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State response																														
Recommendation																														

RCRA Element 5 — Penalties

Finding Choose an item.	Meets or Exceeds Expectations					
Summary	Penalties consider both gravity and economic benefit, and collections are documented.					
Explanation	Each penalty calculation was well documented in the DNREC’s files, considering both gravity and economic benefit component. Each file documented the difference between the initial and final penalty. DNREC made use of a multi-day gravity component for some instances where multiple days of violation could be demonstrated, and we encourage them to continue their focus on this penalty approach. The files contained documentation of the collection of each assessed penalty.					
Relevant metrics	Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
	11a Penalty calculations include gravity and economic benefit	100%	-	3	3	100%
	12a Documentation on difference between initial and final penalty	100%	-	3	3	100%
	12b Penalties collected	100%	-	3	3	100%
State response						
Recommendation						

Appendix

Delaware's National Pollutant Discharge Elimination system (NPDES) program implementation - Background information and file selection focus

DNREC is divided into three offices: Office of the Secretary, Office of Environmental Protection, and Office of Natural Resources. The Division of Water (DW), located within the Office of Environmental Protection, and the Division of Watershed Stewardship (DWS), located within the Office of Natural Resources, are the entities most involved in the NPDES program implementation and management processes.

DW administers the majority of the state's water quality programs, including those for surface water, groundwater, drinking water, wetlands and subaqueous lands, and laboratory certification. The division administers the state's NPDES program. The Surface Water Discharges Section issues permits for industrial and municipal wastewater treatment systems (including stormwater) and sludge management issues.

DWS is responsible for promoting coastal, urban, and agricultural land use practices that protect water quality and public health. Its CWA activities include development of water quality standards, section 305(b) watershed assessment reports, section 303(d) lists (i.e., lists of impaired waters), and total maximum daily loads (TMDLs). The division also assesses/monitors wetlands, develops best management practices (BMPs) to restore streams and wetlands, and administers the state's CWA nonpoint-source pollution program. Through its Drainage and Stormwater Section, the division administers the state's sediment and stormwater management program. Specifically, the state and its delegated agencies review and approve stormwater management engineering plans, inspect sediment control operations during construction, inspect permanent stormwater facilities once construction is completed, provide guidance, training, and education on stormwater management and control techniques.

Local agencies have been delegated authority for MS4 program elements 1–3. Delegated agencies are therefore responsible for maintaining their own data systems; reviewing sediment and stormwater management plans (SSMPs); maintaining a list of active and inactive permittees; and performing active and post-construction inspections. DNREC is responsible for enforcement activities under state law. However, delegated agencies can take action under their own ordinances. The delegated Agencies include: DelDOT (rights of way statewide); Kent Conservation District; New Castle County (Department of Land Use and Department of Special Services); Sussex Conservation District; and the incorporated areas of New Castle Conservation District, City of Newark, City of Wilmington, and the Town of Middletown.

DNREC authorizes delegation for periods up to three years. Local agencies must reapply for delegation on a triennial basis. Local agencies must have standards that are as stringent as those of the state. They must submit their applications on or before January 1 of the year immediately preceding the fiscal year for which delegation or renewal of delegation is sought. All delegation determinations are subject to public review and comment.

Delaware's sediment and stormwater management requirements are pertinent to residential, commercial, industrial, or institutional projects that will disturb 5,000 square feet of land or

more. In general, agricultural land management practices and emergency projects are exempt from the requirements. Responsible parties are required to submit SSMPs, or an application for a waiver, to the appropriate plan review authority. They are also required to submit a *Notice of Intent (NOI) for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit*² to DNREC. In general, Delaware does not issue individual NPDES permits for construction stormwater discharges.

Municipal Separate Storm Sewers Systems (MS4)

Delaware currently has one Phase I and three Phase II MS4s, for a total of four MS4 permits. The Phase I permit is a joint permit among New Castle County (NCC), the Delaware Department of Transportation (DelDOT), and the 11 jurisdictions listed in the Table below (referred to as NCC permit). The Phase II permits are for DelDOT (Kent County), City of Dover, and City of Newark. The Town of Middletown and City of Wilmington have requested to become Phase II permittees under their own permits, as opposed to co-permittees on the Phase I permit. As required, the Phase I MS4 permit is an individual permit. The permits for the Phase II MS4s are also individual; the state does not currently have a general MS4. In FY2013, EPA completed an inspection of New Castle County and DelDot (two separate compliance inspections). Based on the information above, and the small MS4 universe, only 2 MS4s are being reviewed as part of the Round 3 SRF.

Industrial Stormwater

The Surface Water Discharges Section (SWDS) of the DW is responsible for developing and issuing DNREC's NPDES permits for industrial stormwater. The permits are listed on the file selection spreadsheet.

CAFO/Agriculture

DNREC maintains delegation for enforcement of NPDES permits issued to CAFOs. However, the Delaware Department of Agriculture (DDA) has primary enforcement authority for an integral part of the NPDES permits issued for CAFOs. Any construction activity occurring in the state that requires a detailed Sediment and Storm Water Plan also requires federal NPDES general permit coverage. Submittal of a NOI for Stormwater Discharges Associated with Construction Activity together with approval of the detailed SSWP provides sites with permit coverage to be authorized to discharge storm water associated with construction activity.

DNREC has issued 1 CAFO NPDES permit since program authorization in FY2011 and no activity occurred in the data year of review, FY2013. DDA conducted site visits and not inspections in data year FY2013, therefore there is no information to review for compliance and enforcement activities in the CAFO universe.

Construction

DNREC processed over 3,000 NOIs for construction activities for data year FY2013. As discussed above under the background, DWS is responsible for construction implementation and oversight of the delegated Agencies. Following the SRF Round 3 File Selection protocol, the EPA will review DNREC's DWS program and two delegated agencies, Kent County and the City of Newark. DNREC presented anecdotal information that enforcement has not been completed in the data year of review FY2013.