

# **STATE REVIEW FRAMEWORK**

## **New Hampshire**

### **Clean Water Act Implementation in Federal Fiscal Year 2014**

**U.S. Environmental Protection Agency  
Headquarters, Washington, D.C.**

**Final Report  
May 25, 2016**

# Executive Summary

## Introduction

EPA Headquarters enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the EPA Region 1 New Hampshire CWA NPDES Program.

EPA bases SRF findings on data and file review metrics, and conversations with program management and staff. EPA tracks recommended actions from the review in its own internal tracking database, the SRF Tracker and publish reports and recommendations on EPA's ECHO web site (<http://www2.epa.gov/compliance/state-review-framework-compliance-and-enforcement-performance>).

## Areas of Strong Performance

- Permit, effluent limit and other non-compliance events data are consistently entered in the Integrated Compliance Information System (ICIS).
- Inspection coverage at major and non-major facilities meets and exceeds inspection commitments in FY2014. Inspection reports are generally sufficient to determine compliance at the facility and completed in a timely manner.
- Region 1 staff make accurate NPDES compliance determinations through inspections of NH facilities.
- Region 1 is generally documenting penalty calculations and collections.

## Priority Issues to Address

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

- Many single-event violations (SEVs) are not accurately identified as SNC or non-SNC
- Most single-event violations (SEVs) identified as SNC are not being reported timely at major facilities.

## CWA-NPDES Integrated SRF-PQR Findings

- This section will be updated upon completion of the 2014 Permit Quality Review report

## Most Significant PQR CWA-NPDES Findings

- This section will be updated upon completion of the 2014 Permit Quality Review report

## Table of Contents

|  |          |
|--|----------|
| <b>I. CWA-NPDES Integrated SRF and PQR Review .....</b>    | <b>1</b> |
| <b>II. CWA-NPDES Permit Quality Review .....</b>           | <b>2</b> |
| <b>III. Background on the State Review Framework .....</b> | <b>3</b> |
| <b>IV. SRF Review Process .....</b>                        | <b>5</b> |
| <b>V. SRF Findings .....</b>                               | <b>6</b> |
| Clean Water Act Findings.....                              | 7        |

# **I. CWA-NPDES Integrated SRF and PQR Review**

**[This section will be updated upon completion of the 2015 Permit Quality Review report]**

## **II. CWA-NPDES Permit Quality Review**

**[This section will be updated upon completion of the 2015 Permit Quality Review report]**

### III. Background on the State Review Framework

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

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

Reviews cover:

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

EPA conducts SRF reviews in three phases:

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

EPA builds consultation into the SRF to ensure that the reviewers and the state or Region under review 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.

## **Region and state relationship for enforcement**

The New Hampshire Department of Environmental Services (DES, NH DES) does not have delegation of the Clean Water Act (CWA) NPDES Enforcement Program. However, DES implements a state authorized water enforcement program that is similar to the CWA NPDES enforcement program.

The DES conducts facility inspections and complaint investigations for traditional NPDES facilities in New Hampshire each year (in 94% of the files reviewed by SRF reviewers, DES completed the inspection), giving equal attention to major and minor facilities based on prior performance. Within 30 days of completing each inspection, DES sends EPA Region 1 a completed federal inspection 3560 form for ICIS data entry together with a copy of the correspondence sent to the Permittee. The DES also actively reviews NPDES discharge data. The state inspectors review each DMR submitted by major and minor facilities, contact Permittees when reporting errors are discovered, require data report correction and resubmittal, and document the problem in the DMR issues spreadsheet.

Additionally, DES occasionally initiates and tracks formal and informal enforcement actions. The majority of enforcement in New Hampshire is taken by EPA. A copy of each state-initiated enforcement document is provided to EPA Region 1 for its records. The DES reviews and provides comments on all deliverables submitted in response to state enforcement actions, and reviews and provides written comments on significant deliverables (e.g., long-term combined sewer overflow abatement plans, facility designs and specifications, etc.) submitted by facilities under EPA-initiated actions.

## **Regional organizational structure and responsibilities**

Region 1 directly implements the NPDES program for New Hampshire. The NPDES responsibilities are handled by four offices at Region 1. Permits are issued by the Office of Environmental Protection (OEP) with legal support from the Office of Regional Counsel. The Office of Environmental Stewardship (OES) handles inspections with some support from OEP for pre-treatment inspections and from the Office of Environmental Measurement and Evaluation (OEME) for sampling inspections. OES employs both technical and legal experts, who develop and settle enforcement cases. OES data staff code New Hampshire permits into ICIS-NPDES and enter New Hampshire discharge monitoring report data, enforcement milestones and report receipt dates, as well as any inspections or enforcement actions conducted by NH DES.

The Office of Environmental Stewardship (OES) is an enforcement and assistance office with both attorneys and technical staff. Within OES, Technical Enforcement is split into four groups: air, water, RCRA/EPCRA, and Toxics/Pesticides. OES has a regulatory legal group which takes cases developed by the technical groups.

## **IV. SRF Review Process**

**Review period:** FY2014

**Key dates:**

- Data Metric Analysis (DMA) and File Selection list sent to the region:
  - CWA: April 9, 2015 (DMA); April 21, 2015 (File Selection).
  - CWA: April 9, 2015 (Metric 4a Table)
- Remote file review conducted
  - CWA: April 24, 2015 – June 30, 2015
- Technical Draft Report sent to region
  - CWA: July 29, 2015
- Final Draft Report
  - CWA: March 25, 2016
- Report finalized
  - CWA: May 25, 2016

**State and EPA key contacts for review:**

- Denny Dart: Region 1 Chief, Water Technical Enforcement Unit
- Lucy Casella: Region 1 Coordinator
- Elizabeth Walsh: SRF Reviewer
- Martha Segall: SRF Reviewer
- Michael Mason: SRF Reviewer
- Cassandra Rice: SRF Reviewer
- Jonathan Pettit: SRF Reviewer



## V. SRF Findings

Findings represent EPA's conclusions regarding the state or Region's 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 or Region's last SRF review;
- Follow-up conversations with state agency or EPA regional personnel;
- Review of previous SRF reports, Memoranda of Agreement, or other data sources; and
- 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 or implementing EPA region 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 or EPA region should correct the issue without additional oversight. SRF reviewers may make recommendations to improve performance, but they 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 the EPA reviewers will monitor them for completion between SRF reviews in the SRF Tracker.

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

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

- **Metric ID Number and Description:** The metric's SRF identification number and a description of what the metric measures.
- **Natl Goal:** The national goal, if applicable, of the metric, or the CMS commitment that the state and/or EPA region has made.
- **Natl Avg:** The national average across all states, territories, and the District of Columbia.
- **State N:** For metrics expressed as percentages, the numerator.
- **State D:** The denominator.
- **State % or #:** The percentage, or if the metric is expressed as a whole number, the count.

## Clean Water Act Findings

| CWA Element 1 — Data  |  |          |          |          |               |  |                                  |           |          |          |          |               |  |     |     |    |    |     |   |     |     |      |      |     |   |      |  |    |    |     |
|---|--|----------|----------|----------|---------------|--|----------------------------------|-----------|----------|----------|----------|---------------|--|-----|-----|----|----|-----|---|-----|-----|------|------|-----|---|------|--|----|----|-----|
| <b>Finding 1-1</b>  | <b>Meets or Exceeds Expectations</b>   |          |          |          |               |  |                                  |           |          |          |          |               |  |     |     |    |    |     |   |     |     |      |      |     |   |      |  |    |    |     |
| <b>Summary</b>  | Region 1 consistently enters permit, effluent limit and other non-compliance events data in the Integrated Compliance Information System (ICIS).   |          |          |          |               |  |                                  |           |          |          |          |               |  |     |     |    |    |     |   |     |     |      |      |     |   |      |  |    |    |     |
| <b>Explanation</b>  | <p>Region 1 entered 96% of permit limits for major facilities (metric 1b1). The region entered 99% of discharge monitoring reports (metric 1b2) for major facilities. Given the national goal of <math>\geq 95\%</math>, these results exceed the national performance expectation.</p> <p>Information in 31 of 34 files reviewed (91%) accurately reflected information in the ICIS database.</p> <p>In one file, the complete file was unable to be reviewed. The permit was not electronically available.</p> <p>In one file, minor issues were found when comparing permit to information listed on the DFR that added up to a “no” for metric 2b during the file review. Such minor discrepancies included zip code, SIC, phone number, latitude/longitude information, and permit expiration date.</p> |          |          |          |               |  |                                  |           |          |          |          |               |  |     |     |    |    |     |   |     |     |      |      |     |   |      |  |    |    |     |
| <b>Relevant metrics</b>   | <table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>Region N</th> <th>Region D</th> <th>Region % or #</th> </tr> </thead> <tbody> <tr> <td>1b1 Permit limit rate for major facilities</td> <td>95%</td> <td>69%</td> <td>47</td> <td>49</td> <td>96%</td> </tr> <tr> <td>1b2 DMR entry rate for major facilities</td> <td>95%</td> <td>99%</td> <td>1322</td> <td>1323</td> <td>99%</td> </tr> <tr> <td>2b Files reviewed where data are accurately reflected in the national data system</td> <td>100%</td> <td></td> <td>31</td> <td>34</td> <td>91%</td> </tr> </tbody> </table>   |          |          |          |               |  | Metric ID Number and Description | Natl Goal | Natl Avg | Region N | Region D | Region % or # | 1b1 Permit limit rate for major facilities | 95% | 69% | 47 | 49 | 96% | 1b2 DMR entry rate for major facilities | 95% | 99% | 1322 | 1323 | 99% | 2b Files reviewed where data are accurately reflected in the national data system | 100% |  | 31 | 34 | 91% |
| Metric ID Number and Description  | Natl Goal  | Natl Avg | Region N | Region D | Region % or # |  |                                  |           |          |          |          |               |  |     |     |    |    |     |   |     |     |      |      |     |   |      |  |    |    |     |
| 1b1 Permit limit rate for major facilities  | 95%  | 69%      | 47       | 49       | 96%           |  |                                  |           |          |          |          |               |  |     |     |    |    |     |   |     |     |      |      |     |   |      |  |    |    |     |
| 1b2 DMR entry rate for major facilities   | 95%  | 99%      | 1322     | 1323     | 99%           |  |                                  |           |          |          |          |               |  |     |     |    |    |     |   |     |     |      |      |     |   |      |  |    |    |     |
| 2b Files reviewed where data are accurately reflected in the national data system | 100%   |          | 31       | 34       | 91%           |  |                                  |           |          |          |          |               |  |     |     |    |    |     |   |     |     |      |      |     |   |      |  |    |    |     |
| <b>Region response</b>  |  |          |          |          |               |  |                                  |           |          |          |          |               |  |     |     |    |    |     |   |     |     |      |      |     |   |      |  |    |    |     |
| <b>Recommendation</b>   |  |          |          |          |               |  |                                  |           |          |          |          |               |  |     |     |    |    |     |   |     |     |      |      |     |   |      |  |    |    |     |

## CWA Element 2 — Inspections

### Finding 2-1 Meets or Exceeds Expectations

**Summary** Inspection coverage at major and non-major facilities meets and exceeds inspection commitments in FY2014.

**Explanation** Region 1 directly implements the NPDES program in New Hampshire and inspection coverage is accomplished utilizing both EPA and state inspectors. NH-DES completed nearly half (47%) of the inspections.

New Hampshire and Region 1 together conducted 109 inspections, nine more inspections than the 100 they committed to in their CMS plan (see Table 1).

Table 1: Inspections by category

|         | Region 1       |                | NHDES          |                |
|---------|----------------|----------------|----------------|----------------|
|         | Activity Count | CMS Commitment | Activity Count | CMS Commitment |
| Majors  | 3              | 0              | 48             | 49             |
| Minors  | 0              | 0              | 16             | 19             |
| General | 0              | 0              | 42             | 32             |
|         | 3              | 0              | 106            | 100            |

According to the NPDES Enforcement Management System, non-sampling inspection reports should be completed within 30 days and sampling reports within 45 days. While only one of the 30 files reviewed was not timely, the region took on average 11 days to complete its reports, with none taking longer than 49 days.

While Region 1 met its CMS commitment, the region did not commit to CMS goals in accordance with CMS policy in 2014, especially in the area of stormwater. According to the ICIS, the state and EPA conducted six industrial stormwater inspections in FY14, meeting their CMS commitment. However, the NPDES CMS sets a goal for annual inspections of 10% (30 of 300) of the Phase I and 5% (15 of 300) for Phase II stormwater construction universe. Region 1 committed to less than 1% (2 of 300) of the Phase I and II construction universe.

### Relevant metrics

| Metric ID Number and Description                   | Natl Goal              | Natl Avg | Region N | Region D | Region % or # |
|--|------------------------|----------|----------|----------|---------------|
| 4a1 Pretreatment compliance inspections and audits | 100% of CMS Commitment |          | 2        | 0        | -             |

|  |                        |     |    |      |
|--|------------------------|-----|----|------|
| 4a2 Significant Industrial User inspections for SIUs discharging to non-authorized POTWs | 100% of CMS Commitment | N/A | 0  | N/A  |
| 4a4 Major CSO inspections  | 100% of CMS Commitment | N/A | 0  | N/A  |
| 4a5 SSO inspections  | 100% of CMS Commitment | N/A | 0  | N/A  |
| 4a7 Phase I & II MS4 audits or inspections   | 100% of CMS Commitment | N/A | 0  | N/A  |
| 4a8 Industrial stormwater inspections  | 100% of CMS Commitment | 6   | 0  | 600% |
| 4a9 Phase I and II stormwater construction inspections                                   | 100% of CMS Commitment | 2   | 2  | 100% |
| 4a10 Medium and large NPDES CAFO inspections   | 100% of CMS Commitment | 0   | 0  | -    |
| 5a1 Inspection coverage of NPDES majors  | 100% of CMS Commitment | 51  | 49 | 104% |
| 5b1 Inspection coverage of NPDES non-majors with individual permits                      | 100% of CMS Commitment | 16  | 19 | 84%  |
| 5b2 Inspection coverage of NPDES non-majors with general permits                         | 100% of CMS Commitment | 42  | 32 | 131% |
| 6b Timeliness of inspection report completion  | 100%                   | 29  | 30 | 97%  |
| <b>Region response</b>   |                        |     |    |      |
| <b>Recommendation</b>  |                        |     |    |      |

## CWA Element 2 — Inspections

|                         |  |                  |                 |                 |                 |                      |
|-------------------------|--|------------------|-----------------|-----------------|-----------------|----------------------|
| <b>Finding 2-2</b>      | <b>Area for Regional Attention</b>   |                  |                 |                 |                 |                      |
| <b>Summary</b>          | Inspection reports provided sufficient documentation to support a compliance determination in a most cases.  |                  |                 |                 |                 |                      |
| <b>Explanation</b>      | Based on a review of enforcement files, twenty-four of 30 inspection reports in the New Hampshire DES files contained sufficient documentation to determine compliance status. Inspection reports completed by EPA Region 1 provided adequate documentation to support compliance determinations. Inspection reports completed by New Hampshire, generally provided sufficient documentation to support compliance determination. Six inspection files completed by the state did not contain sufficient documentation, three had an incomplete checklist, two files had insufficient observational detail from the inspector, and in one file DMR violations were not discussed and should have been in a letter to the facility. In one NH-DES file, the memo to the facility noted deficiencies but the recommendation should have been required instead of optional. |                  |                 |                 |                 |                      |
| <b>Relevant metrics</b> | <b>Metric ID Number and Description</b>  | <b>Natl Goal</b> | <b>Natl Avg</b> | <b>Region N</b> | <b>Region D</b> | <b>Region % or #</b> |
|                         | 6a Inspection reports complete and sufficient to determine compliance at facility.   | 100%             |                 | 24              | 30              | 80%                  |
| <b>Region response</b>  | Region 1 is able to devote about 1.5 technical FTE and one data FTE to New Hampshire CWA implementation, which does not allow for full inspection coverage under the CMS. NH-DES has an “Alteration of Terrain” permit program, which accomplishes the goals of the NPDES Construction Stormwater permit program, but is not an approved NPDES permit. <a href="http://des.nh.gov/organization/divisions/water/lrm/summary.htm">http://des.nh.gov/organization/divisions/water/lrm/summary.htm</a>   |                  |                 |                 |                 |                      |
| <b>Recommendation</b>   |  |                  |                 |                 |                 |                      |

### CWA Element 3 — Violations

|                         |  |                  |                 |                 |                 |                      |
|-------------------------|--|------------------|-----------------|-----------------|-----------------|----------------------|
| <b>Finding 3-1</b>      | <b>Meets or Exceeds Expectations</b>   |                  |                 |                 |                 |                      |
| <b>Summary</b>          | Region 1 and New Hampshire make accurate NPDES compliance determinations through inspections of facilities.  |                  |                 |                 |                 |                      |
| <b>Explanation</b>      | <p>In 93% of the case files reviewed, Region 1 and the state of New Hampshire made an accurate determination of compliance.</p> <p>In several files reviewed, where accurate compliance determinations were made, the state identified deficiencies in the cover letters to the Permittee. These would include: Operation and Maintenance (O&amp;M) and safety issues, sampling procedure issues, and Best Management Practice (BMP) plan documentation. These included Single Event Violations (SEVs) and, in some instances, significant non-compliance (SEV-SNC) that were not listed in the DFR.</p> |                  |                 |                 |                 |                      |
| <b>Relevant metrics</b> | <b>Metric ID Number and Description</b>  | <b>Natl Goal</b> | <b>Natl Avg</b> | <b>Region N</b> | <b>Region D</b> | <b>Region % or #</b> |
|                         | 7e Inspection reports reviewed that led to an accurate compliance determination  | 100%             |                 | 28              | 30              | 93%                  |
| <b>Region response</b>  |  |                  |                 |                 |                 |                      |
| <b>Recommendation</b>   |  |                  |                 |                 |                 |                      |

## CWA Element 3 — Violations

| <b>Finding 3-2</b>   | <b>Area for Regional Improvement</b>  |                                  |           |          |               |          |               |                                       |  |     |    |    |     |   |  |     |    |    |     |  |      |  |   |   |     |
|--|---|----------------------------------|-----------|----------|---------------|----------|---------------|---------------------------------------|--|-----|----|----|-----|---|--|-----|----|----|-----|--|------|--|---|---|-----|
| <b>Summary</b>   | <p>Many single-event violations (SEVs) are not accurately identified as SNC or non-SNC</p> <p>Most single-event violations (SEVs) identified as SNC are not being reported timely at major facilities.</p>  |                                  |           |          |               |          |               |                                       |  |     |    |    |     |   |  |     |    |    |     |  |      |  |   |   |     |
| <b>Explanation</b>   | <p>Single event violations (SEVs) are violations of the CWA NPDES requirements documented during a compliance inspection, reported by the facility, determined through other compliance monitoring methods by regulatory authority, or unauthorized bypasses or discharges. SEVs do not include violations generated automatically, e.g., effluent violations from a discharge monitoring report (DMR), or compliance schedule violations, by ICIS-NPDES.</p> <p>Metric 7a1 indicates that no SEVs were reported for majors, however, EPA found 7 SEVs in the files reviewed. In 5 of these 7 the SEV was accurately identified in the file, but not on the 3560-3 data entry form. In 1 of the 2 files where the 3560-3 was correct, the SEV should have been coded as an SNC in ICIS.</p> <p>Reviewers found 2 of 7 SEVs that should have been identified as SNC violations.</p> <p>Metric 8c, measures timeliness of reporting to ICIS. Two of the three SEVs identified as SNC reported timely at major facilities had SEVs identified by NH DES that were not reported in ICIS in a timely manner as required. As stated in the Regional Guidance for Tracking Clean Water Act (CWA) NPDES Inspection Related Violations and Wet Weather Significant Noncompliance, October 15, 2008, “All single event violations and associated RNC detection codes should be reported in the data system before the QNCR reporting deadlines in 40 CFR 123.45(d),” which are generally 60 days after the end of a quarterly period.</p> |                                  |           |          |               |          |               |                                       |  |     |    |    |     |   |  |     |    |    |     |  |      |  |   |   |     |
| <b>Relevant metrics</b>  | <table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>Region N</th> <th>Region D</th> <th>Region % or #</th> </tr> </thead> <tbody> <tr> <td>7d1 Major facilities in noncompliance</td> <td></td> <td>71%</td> <td>41</td> <td>49</td> <td>84%</td> </tr> <tr> <td>8a2 Percentage of major facilities in SNC</td> <td></td> <td>21%</td> <td>12</td> <td>52</td> <td>23%</td> </tr> <tr> <td>8b Single-event violations accurately identified as SNC or non-SNC</td> <td>100%</td> <td></td> <td>5</td> <td>7</td> <td>71%</td> </tr> </tbody> </table>  | Metric ID Number and Description | Natl Goal | Natl Avg | Region N      | Region D | Region % or # | 7d1 Major facilities in noncompliance |  | 71% | 41 | 49 | 84% | 8a2 Percentage of major facilities in SNC |  | 21% | 12 | 52 | 23% | 8b Single-event violations accurately identified as SNC or non-SNC | 100% |  | 5 | 7 | 71% |
| Metric ID Number and Description                                   | Natl Goal   | Natl Avg                         | Region N  | Region D | Region % or # |          |               |                                       |  |     |    |    |     |   |  |     |    |    |     |  |      |  |   |   |     |
| 7d1 Major facilities in noncompliance                              |   | 71%                              | 41        | 49       | 84%           |          |               |                                       |  |     |    |    |     |   |  |     |    |    |     |  |      |  |   |   |     |
| 8a2 Percentage of major facilities in SNC                          |   | 21%                              | 12        | 52       | 23%           |          |               |                                       |  |     |    |    |     |   |  |     |    |    |     |  |      |  |   |   |     |
| 8b Single-event violations accurately identified as SNC or non-SNC | 100%  |                                  | 5         | 7        | 71%           |          |               |                                       |  |     |    |    |     |   |  |     |    |    |     |  |      |  |   |   |     |

|                        |   |      |   |   |     |
|------------------------|---|------|---|---|-----|
|                        | 8c Percentage of SEVs identified as SNC reported timely at major facilities   | 100% | 1 | 3 | 33% |
| <b>Region response</b> | Region 1 is committed to improving entry into ICIS of Single Event Violations identified by NH-DES and Region 1. We may use a process other than the 3560 inspection form.  |      |   |   |     |
| <b>Recommendation</b>  | <p>By 120 days from the completion of this report, Region 1 will provide the Office of Compliance a plan, negotiated with the State of New Hampshire, that describes a process for identifying SEVs as SNC and how the Region will report SEVs identified in state inspections into ICIS-NPDES.</p> <p>By December 31, 2016, Region 1 will provide the Office of Compliance (OC) proof that SEVs in New Hampshire are accurately being identified as SNC or non-SNC. If OC determines that the SEVs are reported accurately and timely, OC will close out the recommendation.</p> |      |   |   |     |



**CWA Element 4 — Enforcement**

| <b>Finding 4-1</b>  | <b>Area for Regional Attention</b>  |          |          |          |               |  |                                  |           |          |          |          |               |   |      |  |   |    |     |   |       |     |   |   |    |   |      |  |     |     |     |
|---|---|----------|----------|----------|---------------|--|----------------------------------|-----------|----------|----------|----------|---------------|---|------|--|---|----|-----|---|-------|-----|---|---|----|---|------|--|-----|-----|-----|
| <b>Summary</b>  | <p>When the region did take enforcement, the actions were generally appropriate; some (34%) did not return the source to compliance.</p> <p>Region 1 did not take timely enforcement on any of the 4 major facilities with SNC violations.</p>  |          |          |          |               |  |                                  |           |          |          |          |               |   |      |  |   |    |     |   |       |     |   |   |    |   |      |  |     |     |     |
| <b>Explanation</b>  | <p>Enforcement responses did not consistently reflect a return to compliance (File Metric 9a). Based on the files reviewed, 34% (4 of 11 files) of enforcement responses did not return or were expected to return a facility to compliance. In several instance, reviewers identified issues where facilities did not return to compliance despite the enforcement response taken by the region indicating the enforcement response of the region did not or would not return the source in violation to compliance. These instances were identified by the detailed facility reports (DFRs) as being in noncompliance despite the enforcement response taken by the region as discussed in the file. Because we are referring to only 4 files of 11, we believe this is an area for attention considering the universe is small for this metric.</p> <p>Data Metric 10a1 reports the percentage of major facilities with formal enforcement actions within 1 year after consecutive quarters of SNC effluent violations, QNCR DMR non-receipt, or QNCR compliance schedule violations. This metric shows that Region 1 did not take timely enforcement on any of the 4 major facilities with SNC violations.</p> <p>OECA reviewed 30 facilities files with 129 violations under metric 10b, which evaluates whether appropriate enforcement action was taken in response to violations. Region 1 generally addressed violations in an appropriate manner in 107 of the 129 instances.</p> |          |          |          |               |  |                                  |           |          |          |          |               |   |      |  |   |    |     |   |       |     |   |   |    |   |      |  |     |     |     |
| <b>Relevant metrics</b>   | <table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>Region N</th> <th>Region D</th> <th>Region % or #</th> </tr> </thead> <tbody> <tr> <td>9a Percentage of enforcement responses that return or will return source in violation to compliance</td> <td>100%</td> <td></td> <td>7</td> <td>11</td> <td>64%</td> </tr> <tr> <td>10a1 Major facilities with timely action as appropriate</td> <td>&gt;=98%</td> <td>29%</td> <td>0</td> <td>4</td> <td>0%</td> </tr> <tr> <td>10b Enforcement responses reviewed that address violations in an appropriate manner</td> <td>100%</td> <td></td> <td>107</td> <td>129</td> <td>83%</td> </tr> </tbody> </table>  |          |          |          |               |  | Metric ID Number and Description | Natl Goal | Natl Avg | Region N | Region D | Region % or # | 9a Percentage of enforcement responses that return or will return source in violation to compliance | 100% |  | 7 | 11 | 64% | 10a1 Major facilities with timely action as appropriate | >=98% | 29% | 0 | 4 | 0% | 10b Enforcement responses reviewed that address violations in an appropriate manner | 100% |  | 107 | 129 | 83% |
| Metric ID Number and Description  | Natl Goal   | Natl Avg | Region N | Region D | Region % or # |  |                                  |           |          |          |          |               |   |      |  |   |    |     |   |       |     |   |   |    |   |      |  |     |     |     |
| 9a Percentage of enforcement responses that return or will return source in violation to compliance | 100%  |          | 7        | 11       | 64%           |  |                                  |           |          |          |          |               |   |      |  |   |    |     |   |       |     |   |   |    |   |      |  |     |     |     |
| 10a1 Major facilities with timely action as appropriate   | >=98%   | 29%      | 0        | 4        | 0%            |  |                                  |           |          |          |          |               |   |      |  |   |    |     |   |       |     |   |   |    |   |      |  |     |     |     |
| 10b Enforcement responses reviewed that address violations in an appropriate manner                 | 100%  |          | 107      | 129      | 83%           |  |                                  |           |          |          |          |               |   |      |  |   |    |     |   |       |     |   |   |    |   |      |  |     |     |     |

|                        |  |
|------------------------|--|
| <b>Region response</b> | <p>An enforcement action will resolve past violations in ICIS, but it will not resolve violations which occur after enforcement action issuance. In some cases, the order or consent decree requires significant planning and capital investment before the facility can achieve compliance.</p> <p>Because of limited resources, Region 1 must pursue the cases with environmental impact, leaving many non-reporting violations unaddressed. In 2014, Region 1 referred an industrial stormwater discharger for judicial action, collected penalty on an industrial stormwater facility, and issued an order to an industrial facility in New Hampshire.</p> |
| <b>Recommendation</b>  |  |

**CWA Element 5 — Penalties**

| <b>Finding 5-1</b>   | <b>Meets or Exceeds Expectations</b>  |          |          |          |               |  |                                  |           |          |          |          |               |  |      |  |   |   |      |   |      |  |   |   |      |                         |      |  |   |   |      |
|--|---|----------|----------|----------|---------------|--|----------------------------------|-----------|----------|----------|----------|---------------|--|------|--|---|---|------|---|------|--|---|---|------|-------------------------|------|--|---|---|------|
| <b>Summary</b>   | Region 1 is documenting penalty calculations, reductions and collections.   |          |          |          |               |  |                                  |           |          |          |          |               |  |      |  |   |   |      |   |      |  |   |   |      |                         |      |  |   |   |      |
| <b>Explanation</b>   | In all cases, the region is documenting essential information with regard to its penalties. Of the penalties reviewed, the region had documentation showing payment. (This was typically in the form of a copy of the check.) Penalties included detailed documentation of gravity and economic benefit calculations. No penalties were reduced from their initial amounts.   |          |          |          |               |  |                                  |           |          |          |          |               |  |      |  |   |   |      |   |      |  |   |   |      |                         |      |  |   |   |      |
| <b>Relevant metrics</b>  | <table border="1"> <thead> <tr> <th>Metric ID Number and Description</th> <th>Natl Goal</th> <th>Natl Avg</th> <th>Region N</th> <th>Region D</th> <th>Region % or #</th> </tr> </thead> <tbody> <tr> <td>11a Penalty calculations reviewed that consider and include gravity and economic benefit</td> <td>100%</td> <td></td> <td>2</td> <td>2</td> <td>100%</td> </tr> <tr> <td>12a Documentation of the difference between initial and final penalty and rationale</td> <td>100%</td> <td></td> <td>0</td> <td>0</td> <td>100%</td> </tr> <tr> <td>12b Penalties collected</td> <td>100%</td> <td></td> <td>2</td> <td>2</td> <td>100%</td> </tr> </tbody> </table> |          |          |          |               |  | Metric ID Number and Description | Natl Goal | Natl Avg | Region N | Region D | Region % or # | 11a Penalty calculations reviewed that consider and include gravity and economic benefit | 100% |  | 2 | 2 | 100% | 12a Documentation of the difference between initial and final penalty and rationale | 100% |  | 0 | 0 | 100% | 12b Penalties collected | 100% |  | 2 | 2 | 100% |
| Metric ID Number and Description   | Natl Goal   | Natl Avg | Region N | Region D | Region % or # |  |                                  |           |          |          |          |               |  |      |  |   |   |      |   |      |  |   |   |      |                         |      |  |   |   |      |
| 11a Penalty calculations reviewed that consider and include gravity and economic benefit | 100%  |          | 2        | 2        | 100%          |  |                                  |           |          |          |          |               |  |      |  |   |   |      |   |      |  |   |   |      |                         |      |  |   |   |      |
| 12a Documentation of the difference between initial and final penalty and rationale      | 100%  |          | 0        | 0        | 100%          |  |                                  |           |          |          |          |               |  |      |  |   |   |      |   |      |  |   |   |      |                         |      |  |   |   |      |
| 12b Penalties collected  | 100%  |          | 2        | 2        | 100%          |  |                                  |           |          |          |          |               |  |      |  |   |   |      |   |      |  |   |   |      |                         |      |  |   |   |      |
| <b>Region response</b>   |   |          |          |          |               |  |                                  |           |          |          |          |               |  |      |  |   |   |      |   |      |  |   |   |      |                         |      |  |   |   |      |
| <b>Recommendation</b>  |   |          |          |          |               |  |                                  |           |          |          |          |               |  |      |  |   |   |      |   |      |  |   |   |      |                         |      |  |   |   |      |