

**STATE REVIEW FRAMEWORK
AND INTEGRATED CLEAN WATER
ACT PERMIT QUALITY REVIEW**

Nebraska

**Clean Water Act
Implementation in Federal Fiscal Year 2011**

**U.S. Environmental Protection Agency
Region 7, Kansas City**

**Final Report
April 15, 2013**

Note to Users

This report is structured in four parts, with one integrated review section, separate Permit Quality Review (PQR) and State Review Framework (SRF) sections, and one overarching Executive Summary. The intent of this structure is to allow the user to choose to look exclusively at just PQR or SRF information individually, or to look at issues across both permits and enforcement.

If you are interested in reviewing the CWA PQR information only, see the section titled “CWA-NPDES Permit Quality Review.”

If you are interested in reviewing the CWA SRF information only, look to the section titled “State Review Framework.”

Information in this report related to the CWA National Pollutant Discharge Elimination System (NPDES) permit reviews under the PQR and NPDES enforcement under the SRF have been integrated as part of the EPA’s 2009 Clean Water Act Action Plan.

The NPDES integrated oversight effort is a way to provide EPA with a comprehensive review of a state’s implementation of the permitting and compliance components of the NPDES program. Integrated reviews reduce the burden on states by having one joint visit and integrated report. The integrated reviews provide EPA and the public with a greater understanding of the challenges of a state NPDES program, and increases transparency through making PQR and SRF results publicly available on EPA’s website.

Integrated SRF and PQR Executive Summary

Introduction

Permit Quality Review (PQR) and State Review Framework (SRF) oversight reviews of the Nebraska Department of Environmental Quality (NDEQ) were conducted on April 16-19, 2012, by EPA Region 7 permitting and enforcement staff.

The Clean Water Act National Pollutant Discharge Elimination System (CWA-NPDES) program was reviewed under both PQR and SRF. The state's Clean Air Act (CAA) Stationary Source and Resource Conservation and Recovery Act (RCRA) Subtitle C programs were not included in this review.

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

Priority Issues to Address

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

- Inspection reports do not consistently provide information necessary to support an accurate compliance determination. Report narratives should make a connection between observations and regulatory requirements, describe field activities conducted, and collect information that supports the regulatory and compliance status of facilities.
- Formal enforcement actions and referrals to the state Attorney General, as well as some informal enforcement letters, are not consistently issued in a timely and appropriate manner.
- Permit applications do not require the necessary pollutant monitoring consistent with federal regulations. This was also a 2008 and 2011 PQR finding.
- Pretreatment regulations do not include the required provisions of the 2005 Streamlining revisions. This was a 2008 and 2011 PQR finding.

CWA-NPDES Integrated Findings

The following issues are affecting performance of both the permitting and enforcement program:

- Permit schedule violations appearing in the national database Integrated Compliance Information System (ICIS) include legitimate noncompliance needing a state response as well as violation flags that need to be updated and "turned off" with milestone achieved dates.
- Nebraska Pretreatment Program permits lack the requirement for resampling and resubmission of results following the discovery of a violation, which impacts follow-up and correction of serious discharge violations.

- Nebraska's application forms are not consistent with 40 CFR 122.21 in ensuring data submittal requirements that request discharge monitoring data to evaluate reasonable potential to cause or contribute to a violation of water quality standards (WQS).

Major PQR CWA-NPDES Findings

The PQR found the following issues to be most significant:

- Permit applications do not require applicants to submit required pollutant scans necessary to perform complete reasonable potential analysis for all potential pollutants of concern.
- Some of Nebraska's Standard and Special Conditions are less stringent than federal regulations at 40 CFR 122.41.
- Fact sheet documentation is not always complete, consistent with 40 CFR 124.8, and 124.56.
- Pretreatment regulations do not include the required provisions of the 2005 Streamlining revisions.
- Non-Categorical pretreatment permits lack either limits for BOD, TSS, and ammonia, or a justification for why local limits for these pollutants are not needed.

Major SRF CWA-NPDES Findings

The SRF review found the following issues to be most significant:

- Inspection reports do not consistently provide information necessary to support an accurate compliance determination. Report narratives should make a connection between observations and regulatory requirements, describe field activities conducted, and collect information that supports the regulatory and compliance status of facilities.
- Compliance determinations are not consistently made as a follow-up to inspection evidence. State records should clearly articulate a compliance determination, and the determination should accurately represent all evidence gathered from inspections.
- Formal enforcement actions and referrals to the state Attorney General, and some informal enforcement letters, are not consistently issued in a timely and appropriate manner. The state should follow its internal guidance for timely and appropriate use of informal and formal enforcement actions.
- Large portions, and sometimes all, of assessed penalties are frequently waived in consent orders issued by the state Attorney General for violators who demonstrate a prompt return to compliance, resulting in a reduced deterrent value of monetary penalties.

Major Follow-Up Actions

Actions to address the findings found during the PQR will be implemented and tracked in an Office of Water database. Recommendations and actions identified from the SRF review will be tracked in the SRF Tracker.

Table of Contents

CWA-NPDES Integrated SRF and PQR Review	6
I. Introduction	6
II. Coordination Between Permitting and Enforcement.....	7
III. Integrated Review Background.....	8
IV. How Report Findings Are Made.....	8
V. Common Findings.....	8
CWA-NPDES Permit Quality Review	13
I. PQR Background.....	13
II. State Permitting Program Overview.....	14
III. Core Review Findings.....	17
IV. Special Focus Area Findings	35
V. Action Items	39
State Review Framework	47
I. Background on the State Review Framework	47
II. SRF Review Process	48
III. SRF Findings.....	50
Clean Water Act Findings.....	50
Appendix A: Data Metric Analysis.....	89
Appendix B: File Metric Analysis	95
Appendix C: File Selection.....	98
Appendix D: Status of Past SRF Recommendations	104
Appendix E: Program Overview.....	107
Appendix F: SRF/PQR Correspondence.....	114
Appendix G: SRF Finding 4-1 Detailed Analysis.....	175
Appendix H: SRF Finding 4-2 Detailed Analysis.....	176
Appendix I: SRF File Review Summaries	179

CWA-NPDES Integrated SRF and PQR Review

I. Introduction

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

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

EPA conducted an integrated oversight review of the State NPDES permitting and enforcement and compliance program by combining a PQR and a State Review Framework (SRF) review on April 16-19, 2012. The PQR was designed to assess how well the State implements the requirements of the NPDES program as reflected in NPDES permits and other supporting documents. The PQR looked at four core topic areas of national importance (nutrients, pesticide general permit, pretreatment, stormwater) and one special focus area of regional importance (Concentrated Animal Feeding Operations, or CAFOs). The SRF review is designed to ensure a minimum baseline of consistent performance across states, and that EPA conducts oversight of state enforcement and compliance programs in a nationally consistent and efficient manner. The SRF review looks at 12 program elements covering data (completeness, timeliness, and quality); inspections (coverage and quality); identification of violations; enforcement actions (appropriateness and timeliness); and penalties (calculation, assessment, and collection).

The integrated review examined data and files generated and kept by the state's Department of Environmental Quality, Water Quality Division. This report focuses only on the integrated PQR and SRF NPDES program findings.

The integrated review was conducted in three phases: analyzing information from the national data systems, reviewing a limited set of state files, and development of findings and recommendations. Considerable consultation was built into the process to ensure EPA and the state understand the causes of issues, and to seek agreement on identifying the actions needed to address issues.

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

II. Coordination Between Permitting and Enforcement

The following discussion of Nebraska's NPDES permitting, compliance, and enforcement program is the product of verbal and written exchanges between EPA Region 7 and NDEQ during the week of the on-site review and outside of this review process over the course of several years. All of this information has been verified for accuracy by NDEQ during the review of the draft report. More details about how the state runs the compliance and enforcement program for specific NPDES program areas appear in Appendix E.

All of Nebraska's NPDES permitting and compliance monitoring responsibilities belong to the NDEQ Water Quality Division, while enforcement work is handled between the department's Water Quality Division and Legal Services Division. Any NPDES judicial enforcement activities in Nebraska, including all penalty actions, also involve the Attorney General (AG) Office, as explained below. Local agencies do not assume any NPDES program administration responsibilities in Nebraska.

NPDES permitting and compliance monitoring responsibilities of the Water Quality Division are divided between the Agriculture Section and the Wastewater Section. The Agriculture Section manages permitting and compliance at CAFOs, whereas the Wastewater Section manages those same activities at facilities having all other NPDES permits (e.g. wastewater, pretreatment, and stormwater). The Wastewater and Agriculture Sections have their compliance monitoring (inspection) resources spread among the central office in Lincoln and five field offices in Norfolk, Omaha, North Platte, Holdrege, and Scottsbluff.

The Wastewater and Agriculture Sections of NDEQ both include a permitting and compliance unit with the dual responsibilities of writing permits and monitoring compliance. Staff responsibilities are arranged such that the permit writer and inspector for a given facility are different individuals. Field office inspectors' coverage of facilities by county differs between the Wastewater and Agriculture sections to reflect different demographics for municipal, agricultural, and industrial dischargers.

Within the Wastewater Section are two individuals responsible for all permitting, compliance assistance, and enforcement escalation for all of Nebraska's construction and industrial stormwater sites and oversight of the state's Municipal Separate Storm Sewer Systems (MS4s). Monitoring compliance and responding to complaints regarding stormwater pollution is handled by compliance staff assigned to the various field offices.

When the Water Quality Division decides to escalate a case of non-compliance for formal enforcement, the division sends an enforcement recommendation to the Legal Services Division, which takes the lead in issuing administrative compliance orders for all cases except those deemed worthy of a penalty action. The state's authority to collect penalties in NPDES cases rests exclusively on the Attorney General, whose office issues any and all penalty orders within the judicial arena. Further details of NDEQ's interaction with the AG, the enforcement escalation process, and NDEQ's Enforcement Manual are discussed in Appendix E. There is no state authority for administrative penalties for NPDES violations.

For more background information on the permitting and enforcement programs, please refer to the PQR and SRF sections of this report.

III. Integrated Review Background

EPA's integrated review of Nebraska's NPDES permitting and enforcement programs consisted of an independent PQR conducted by EPA Region 7 and the EPA Office of Water in April 2011, followed by an integrated SRF and PQR on-site visit in April 2012. Most of the PQR findings that contribute to this integrated review were made in 2011, whereas the role of EPA's permitting staff in the 2012 on-site integrated review was to focus on core topics and special focus areas. As a result, most of the files examined for the permitting and enforcement reviews were selected independently of one another, and the processes for making those independent selections are described in successive parts of this report.

Of all the Nebraska files reviewed under the PQR and SRF, 8 core program facilities selected for the 2011 PQR were also reviewed under the SRF in 2012. All 8 of those core facilities were major dischargers. In addition, 4 CAFO files were selected by the permitting and enforcement teams working in concert in 2012. This review of 12 total common files fostered a more robust identification of findings that cut across the permitting and enforcement programs.

EPA conducted the Region 7 PQR during the 3rd quarter of FY2011. One EPA HQ Water Permits Division staff and an EPA contractor collected NPDES program information and permits from regional and state staff. Along with one EPA regional staff member, they conducted an on-site visit to NDEQ on April 4 and 5, 2011.

For the integrated PQR-SRF review conducted April 16-19, 2012, an EPA Region 7 team consisting of 5 enforcement staff, 3 permitting staff, and 2 attorneys traveled to Lincoln, Nebraska, to review files and engage NDEQ staff and managers in dialog regarding the NPDES program. A joint introductory meeting was held on the first day of the on-site review, and an exit meeting was held on the final day to highlight preliminary findings of both the permitting and enforcement reviews. Senior managers from NDEQ were present for both meetings.

Following the on-site state visit, EPA Region 7 permitting and enforcement staff worked together to formalize the findings identified during the on-site joint review, to craft recommendations for improvement, and to draft this integrated report.

IV. How Report Findings Are Made

The findings in this report were made by EPA Region 7's permitting and enforcement staff after analyzing data in the national data systems and reviewing facility files at the state. Permitting and enforcement staff consulted with state staff and each other while determining findings. Findings cover both highlights of state performance and opportunities for improvement. Where the state program was doing particularly well or was meeting all of its requirements, EPA identified such areas in this report. Where EPA found the state had opportunities to improve both permitting and enforcement, EPA suggested an appropriate course of action.

V. Common Findings

Permit Compliance Schedules

Finding: Permit schedule violations appearing in the national database include legitimate noncompliance needing a state response as well as violation flags that need to be updated and

“turned off” with milestone achieved dates. This finding was made as part of the SRF review and appears as Finding 7-1 in the “State Review Framework” part of this report, but it affects the permitting program as well as the compliance and enforcement program. Legitimate violations of permit compliance schedules are not only an enforcement concern, but they can also aggravate the state’s efforts to reissue an environmentally protective permit if the facility has not completed all required treatment process changes within the five-year term of the expiring permit.

State Response: Please see our response in Element 7-1 of the SRF review.

Recommendation: NDEQ should submit to EPA a plan with timeframe for implementing a process to remedy overdue compliance schedule violations. The process should include a mix of working with the facilities where deliverables have not been received—either informally or with enforcement actions, as appropriate—and entering achieved dates for received deliverables that have triggered overdue violations. By October 31, 2013, EPA will verify that compliance schedule violations in ICIS are being addressed consistently and appropriately. EPA and NDEQ will discuss progress on a semi-annual basis. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

Pretreatment Permit Requirements

Finding: One weakness found in all Nebraska Pretreatment Program (NPP) permits was the absence of the requirement for resampling and resubmission of results following the discovery of a violation. General Pretreatment Regulations at §403.12(g)(2) require any industrial user who experiences a violation while sampling, to notify its control authority within 24 hours and resample and resubmit the results within 30 days (there are some exceptions, however). Not only is this requirement not in any permits, but no permit holders were executing it. Primarily a permitting issue, this matter also impacts the state’s and facilities’ ability to correct violations and is a detriment to any formal enforcement that might need to be taken as a follow-up to serious discharge violations.

State Response: Nebraska has added this to all new NPP permits being issued since October 1, 2012 (Attachment B, Part I. H.). In addition, the permit tool will include the required language.

“H. Effluent Violation Repeat Sampling

The permittee shall conduct or repeat sampling and analysis and submit the results of the Repeat analysis to the Department within 30 days of becoming aware of the violation.

The results of the repeat analysis must be submitted with a copy of the previously submitted noncompliance form.”

Recommendation: NDEQ should expeditiously modify the NPP Standard Conditions to include the resampling and resubmission requirement for all future permits. NDEQ should submit to EPA a plan with timeframe for making this modification. EPA and NDEQ will discuss progress on a quarterly basis. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

Non-Categorical Local Limits

Finding: A serious deficiency common to non-Categorical permits is the lack of limits for BOD, TSS, and when appropriate, ammonia, or a justification in the fact sheet stating why limits

for these pollutants are not needed. The EPA's Local Limits guidance manual establishes criteria for when local limits for conventional pollutants are warranted and when they are not necessary. However, no non-Categorical permits that did not contain limits had any calculations or objective demonstrations justifying the absence of limits. Consequently, it was impossible to determine if those permits were protective against interference and/or pass through.

State Response: We evaluate new and reissued permits for these requirements. Most of these facilities have compatible food processing waste and we continue to place BOD, TSS and ammonia in their permits. Regulations are planned for a revision this year and we have replaced the former pretreatment coordinate so we can continue to move forward on headworks calculations and evaluation of loadings from industry on facilities.

Recommendation: The EPA's guidance manual specifies that all POTWs that are loaded, on average, at 80% or higher for conventional pollutants must have local limits controlling those pollutants and the limits written into the permits. Therefore, if a permit does not contain limits for conventional pollutants, the fact sheet should contain calculations showing that the POTW receiving the industry's discharge is less than 80% loaded for the missing pollutants. NDEQ should submit to EPA a plan with timeframe for implementing this guidance. EPA and NDEQ will discuss progress on a quarterly basis. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

Sanitary Sewer Overflow Discharges

Finding: Sanitary Sewer Overflow (SSO) discharges are discharges of raw sewage from municipal sanitary sewer systems at locations upstream of a treatment plant headworks. Discharges, such as SSOs, that are not explicitly authorized by a permit are prohibited. As a form of noncompliance, SSOs should be reported by the permittee; however, Nebraska NPDES permits do not define what constitutes a reportable SSO.

State Response: The reason we have not further defined reportable SSOs in permits is that EPA has not finalized their rule. NDEQ has dealt with SSO as a bypass for many years and has required their reporting, and does track these events.

Recommendation: NDEQ should develop language for newly issued and reissued municipal wastewater permits that articulates what constitutes a reportable SSO. The state should submit to EPA a plan with timeframe for beginning to incorporate this language into permits thereafter. EPA and NDEQ will discuss progress on a quarterly basis.

CAFO Expired General Permit Authorizations

Finding: 8 CAFO facilities maintain permit coverage under a permit that expired in 2008. It is unclear why these facilities were not reissued coverage under the current permit, or if permit applications were received to administratively extend coverage under the old permit.

State Response: NDEQ is diligently working to move permits to the new general permit.

Recommendation: NDEQ should make it a priority to move all permits authorized for coverage under the expired permit to the new permit or to individual permits. NDEQ should submit to EPA a timeframe for making this transition. EPA and NDEQ will discuss progress on a

quarterly basis. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

Permit Applications

Finding: NDEQ permit applications, which are codified in the state's regulations, are not consistent with federal requirements at 40 CFR 122.21. Permit applications do not require submittal of discharge data necessary to evaluate reasonable potential for a discharge to cause or contribute to a violation of WQS.

State Response: When application forms are revised they will be consistent with 40 CFR 122.21. Regulations update priorities are application forms and pretreatment requirements. We anticipate taking regulation changes to the Environmental Quality Council (EQC) in late 2013.

Recommendation: NDEQ should ensure municipal and non-municipal application forms are moving forward expeditiously in the state's regulatory process to be revised, and specifically, must require data consistent with federal regulations at 40 CFR 122.21. Alternatively, NDEQ has the option of removing municipal and non-municipal application forms from state regulations to provide greater flexibility to revise forms when necessary. NDEQ should submit to EPA a plan with timeframe specifying how the state will accomplish this. EPA and NDEQ will discuss progress on a quarterly basis. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

Standard Conditions

Finding: Nebraska's Standard Conditions for NPDES permits have language in several paragraphs that is paraphrased, altered, or omitted relative to the standard conditions that are required for all state and federally issued NPDES permits pursuant to 40 CFR 122.41.

State Response: NDEQ disagrees with portions of this finding. 40 CFR 122.41 references different requirements for State Programs. We have evaluated the conditions in the permit and made appropriate changes to comply with the requirements of 122.41 for state programs listed in 123.25. These requirements are 122.41 a(1) and b-n. Title 119 is consistent with 40 CFR except for the penalty amount which matches 40 CFR 122.41 (j)(5), maximum of \$10,000 for the first offense but does not match the \$20,000 for repeat offense. Our statutory limitation is \$10,000.

Recommendation: NDEQ submitted revised standard conditions for EPA review. EPA reviewed the draft standard conditions and found them to comply with 40 CFR 123.25. EPA has determined that NDEQ has satisfactorily completed this action and no further tracking is required.

Memorandum of Agreement

Finding: Nebraska's MOA is outdated and does not represent the CWA NPDES program as it is currently expected to be implemented.

State Response: NDEQ has submitted a proposed Draft MOA for EPA review.

Recommendation: NDEQ and EPA Region 7 should review Nebraska's program authorization documents and, as necessary, revise the Nebraska Memorandum of Agreement according to the final approved Guidance for NPDES MOAs Between States and EPA. EPA and NDEQ will include a commitment in the FFY 2013 Performance Partnership Grant (PPG) workplan to complete a review of Nebraska's MOA against the MOA Checklist and to commence negotiations on any necessary revisions to the MOA during the FFY 2013 performance period. Once EPA is satisfied that state and EPA actions have addressed the underlying finding, this recommendation will be considered complete. At that time, EPA Region 7 will add the completed MOA review as an addendum to the report.

CWA-NPDES Permit Quality Review

I. PQR Background

National Pollutant Discharge Elimination System (NPDES) Permit Quality Reviews (PQRs) are an evaluation of a select set of NPDES permits to determine whether permits are developed in a manner consistent with applicable requirements established in the Clean Water Act (CWA) and NPDES regulations. Through this review mechanism, EPA promotes national consistency, identifies successes in implementation of the NPDES program as well as opportunities for improvement in the development of NPDES permits.

EPA's Nebraska PQR consisted of two components, permit reviews and special focus area reviews. The permit reviews focused on core permit quality and included a review of the permit application, permit, fact sheet, correspondence, documentation, administrative process, and select core topic areas, as well as other factors.

The core permit review process involves evaluating selected permits and supporting materials using basic NPDES program criteria. Reviewers complete the core review by examining selected permits and supporting documentation, assessing these materials using standard PQR tools, and talking with permit writers regarding technical questions related to the permit development process. The core review focuses on evaluation of the aspects identified in the Central Tenets of the NPDES Permitting program. In addition, discussions between Region 7 and state staff addressed a range of topics including program status, the permitting process, relative responsibilities, organization, and staffing. Core topic area permit reviews are conducted to evaluate specific issues or types of permits in all states. The core topics reviewed in Nebraska were CAFOs, Pretreatment and the Pesticide General Permit.

EPA Reviewers selected two major municipal facilities (Tecumseh WWTF and Fremont WWTF) and two industrial facilities (Nestle Purina Petcare Company and Sheldon Station) to review because they were recently issued and reflect Nebraska's latest permitting practices.

Special focus area reviews target specific types or aspects of permits. These include special focus areas selected by EPA Regions on a state-by-state basis. Region 7 chose to address the following areas: water treatment plants, a discussion of the HQ initiative to revise Memorandum of Agreements (MOAs) and existing Action Items.

EPA Headquarters (HQ) Water Permits Division conducted a comprehensive PQR of the Nebraska NPDES Program on April 4 and 5, 2011. Due to the extensive nature of the HQ review, just one year ago and the recent receipt of the final report (May 12, 2012), EPA Region 7 decided to conduct a limited core review that included an on-site visit in Lincoln, Nebraska. The PQR review team consisted of Kimberly Hill, Donna Porter, John Dunn, and Paul Marshall. The site visit occurred April 17-19, 2012.

II. State Permitting Program Overview

A. Program Structure

The Nebraska Department of Environmental Quality (NDEQ) operates a main office located at 1200 “N” Street, Suite 400, P.O. Box 98922, Lincoln, Nebraska, 68509. The main office receives permit applications and notices of intent, generates draft permits, and fact sheets, conducts the internal review of drafts, initiates the draft permit public notice periods, and issues final permits. Some inspections of permitted facilities are also conducted from the Lincoln office.

NDEQ operates six regional field offices. The NPDES program carries out facility inspections from four of the six field offices. Compliance inspectors from the four offices also provide technical reviews of draft permits for their respective areas.

NDEQ currently has seven full time positions that write NPDES and Nebraska Pretreatment Program (NPP) permits. Only two of the positions write permits full time. Two writers share NPDES permit writing with compliance, one writer shares permit writing with compliance and enforcement, one writer shares permit writing with stormwater coordination and compliance, and one currently vacant position shares NPP writing with Industrial Stormwater (ISW) coordination. NDEQ also has draft permits prepared by an independent EPA contractor. Four permit writers are trained using the steady-state modeling technique, and one permit writer uses CorMix. Each permit writer has completed the USEPA Permit Writers Course. The more experienced staff mentors newer personnel.

The NDEQ Water Planning Unit develops total maximum daily loads (TMDLs). This unit has up to three individuals that may contribute some of their time to the TMDL process, but one is the primary TMDL coordinator.

The Planning Unit provides TMDL information, prepares the list of impaired waters, data management, develops water quality criteria and provides technical reviews of draft permits. The Water Quality Assessment Surface Water Unit and the Planning Unit collect, analyze, sort and interpret surface water data providing information for determining impairments and developing wasteload allocations. The Water Quality Assessment Groundwater Unit provides consultation on potential groundwater impacts. The Technical Assistance Unit provides technical review of draft permits and consultation involving treatment capability. The NPDES Permits Unit is further supported by one and one half staff assistants, one Records Management Section staff, one Unit Supervisor, and parts of an Environmental Engineer Section Supervisor and Acting Water Quality Division Administrator’s time.

For CAFO operations, similar activities are conducted by the main office. Applications for NPDES permit coverage are received and reviewed. The main office coordinates the permit with existing state construction and operating permits, including drafting the permit and fact sheet, completes the public notice process, and issues the final permit or issues coverage under the general permit. Inspectors are designated counties for which they are responsible for compliance inspections, annual report review, and complaint investigations. The main office also initiates and tracks enforcement activities.

The CAFO program operates from four field offices plus the Lincoln office. Inspectors are assigned specific counties and are responsible for conducting inspections and investigations, review applications for permits, review annual reports, initiate requests for enforcement, and general communications with the CAFOs in their areas.

NDEQ has two positions in the main office that draft permits for CAFOs located in the field offices' areas of coverage. In addition, there are five positions in the main office that conduct inspections and draft permits for CAFOs in other areas of the state. The draft permits follow a template permit and are based on conditions and elements of the state construction and operating permit. One position has been responsible for drafting the general permit that cover 317 authorizations. One full time staff assistant is available for CAFO permitting, including the public noticing process and the data entry.

The CAFO permit writers follow a template that has been reviewed by EPA and requires little need for changes when preparing a site-specific permit. The contents are based on the state construction and operating permit. Training for CAFO staff is met by in-house training and mentoring from experienced staff.

B. Universe and Permit Issuance

As of March 31, 2012, NDEQ is responsible for administering approximately 662 individual permits. Within this permitting universe, there are 51 major facilities and 611 minor facilities. Of the total NPDES universe, 323 of those facilities are POTWs and 339 are industrials. The NDEQ currently has twelve general NPDES permits, with 3,047 authorizations. These authorizations are included in Table 1.

Table 1

General Permit	Authorizations
Dewatering	37
Dewatering in Omaha	2
Hydrostatic Testing	7
Construction Stormwater	2107
Industrial Stormwater	491
Discharges from Remediation Sites	51
Discharges from sMS4s in Douglas, Sarpy, Washington	9
Discharges from sMS4s (statewide)	10
CAFO	317
CAFO – expired March 31, 2008	8
Concrete Grooving and Grinding Slurry	No NOI Required
Pesticide General Permit	8
Total	3047

The NDEQ continues to make great strides in addressing the State's permit backlog through implementation of its internal prioritization strategy. Its first priority is to draft permits for 1) majors; 2) 303(d) listed waters; 3) new facilities or troubled facilities; 4) expiring permits, and 5) oldest administratively extended permits. This strategy has been in effect since October 2003

and has effectively reduced the overall backlog from 48% to 12 % and the major backlog from 38% to 6%.

In the 2011 PQR, it was observed that NDEQ does not generally require major municipal applicants to provide three full priority pollutant scans, as required by 40 CFR 122.21 (j), as part of its state applications; instead, NDEQ requires data for only a basic subset of pollutants. Industrial applicants, by comparison, indicate pollutants expected to be in the discharge according to the industry. After receiving this information for new facilities, NDEQ requires permittees to report only those pollutants during the first permit term. The permit writers initially download discharge data from the previous permit term from ICIS, for review and analysis. Permit writers will review the application package to identify changes since the last permit, relevant to facility operations or treatment processes. Permit writers appear to have strong familiarity with their permittees, and are aware of when facility changes occur or new industries are introduced to a community. Fact sheets reviewed currently include a general discussion of “potential pollutants” based on the industry type and historical knowledge of the facility (in cases when it is an existing discharger). It is important to note that NDEQ has produced a draft permit attachment requiring pollutant scans for new and reissued POTWs with a design flow greater than 1 MGD but has not begun to include them into permits. NDEQ has not addressed sampling requirements for all POTWs, or the subset of POTWs with a design flow greater than or equal to 0.1 MGD as required in 40 CFR 122.21(j).

Permit writers review applicable WQS for the receiving water body and identify pollutants of concern in the discharge. NDEQ stated that typical pollutants of concern at POTWs are ammonia and total residual chlorine. Other pollutants of concern typically identified include chloride, conductivity, metals, and bacteria. Following identification of pollutants of concern, permit writers check the 303(d) list for impaired waters, identify pollutants listed, and collect basic information from the permittee regarding pollutants of concern common to the impairing pollutants. Permit writers develop WLAs for their facilities, consult staff from the Water Quality Planning Unit to verify WLAs developed are appropriate, and identify additional potential pollutants of concern. WLAs are based on water quality criteria (e.g., acute, chronic, human health); WLAs and WQBELs are calculated using the methodology presented in the TSD. In addition to establishing numeric effluent limits in permits, permit writers also include narrative requirements. In addition, permits may also include whole effluent toxicity (WET) requirements, most of which address acute toxicity, but in some cases, permit limits may be established for chronic toxicity. Permit writers are including monitoring for total nitrogen and total phosphorus in new and reissued permits.

Antibacksliding is discussed when applicable; most often in regard to ammonia. Permit writers review stream data to develop the WLA and WQBELs, compare it to existing WQBELs for that pollutant, and apply the more stringent effluent limit.

Draft NPDES permits are provided to the permittee for review and all major permits are sent to EPA during the public review period. Public notices for permits are published in the newspaper for 30 days and NDEQ lists on its website permits that are currently available for public notice. Comments are generally submitted by the permittee with few comments received from the general public. The final administrative record is maintained in the main office via the Enterprise Content Management system (ECM) where all staff has access to it. The permittee receives the original version of the final permit.

The ECM system allows direct electronic access of facility files to NDEQ employees. The system can be used directly or documents are emailed or printed. Information is shared or distributed using Microsoft Office. The State IIS system, ICIS, and outside sources are used to obtain information on streams and generate draft permits.

C. State-Specific Challenges

Nebraska consists of many small communities with aging wastewater infrastructures that are experiencing budget cuts due to losing populations. As these communities decrease in size and municipal budgets, the NDEQ continues to struggle with how to address these communities with looming infrastructure needs in a down turned economy.

D. Current State Initiatives

Nebraska is currently including monitoring for total nitrogen and total phosphorus in new and reissued permits to determine if nutrient limits should be included in permitted facilities. It has also included the review of Fish Advisories and the 303(d) list to include monitoring of legacy pollutants.

III. Core Review Findings

Basic Facility Information and Permit Application

1. Facility Information

Basic facility information is necessary to establish proper permit conditions for a facility. For example, information regarding facility type, location, processes and other factors is required by NPDES permit application regulations (40 CFR 122.21) because such information is essential for developing technically sound, complete, clear and enforceable permits. Similarly, fact sheets must include a description of the type of facility or activity subject to a draft permit.

Tecumseh WWTF (NE-0030911)

Tecumseh WWTF is a major POTW serving a population of 1677. The permit contains specific authorization to discharge information on the first page. The outfall location is not in the permit but is included in the inspection report. The fact sheet had a complete description of the plant and its processes.

The permit included secondary treatment limits for CBOD and TSS in terms of concentration. Mass limits were not included in the permit. There were WQBLs for ammonia and E. Coli and monitoring for WET was included in the permit.

Fremont WWTF (NE-0031381)

Fremont WWTF is a major POTW serving a population of about 25,000. The city has several large industrial users including Hormel Foods, Fremont Beef, and Mid-America Truck wash. Although average flows (4.27 MGD) are lower than design flows (12 MGD), the organic loading to the plant is high with an influent BOD of about 1000 mg/L. The fact sheet had a complete description of the plant and its processes, along with detailed description of the outfall location.

The permit included secondary treatment limits for CBOD and TSS in terms of concentration. Mass limits were not included in the permit. There were WQBLs for ammonia, E. Coli, Total Residual Chlorine, and WET. Calculated WET limits were below 1.0 TUa, but 1.0 TUa was used as the permit limit. For calculated limits below the detection limit of the acute test, the permit limit should be no statistically significant toxicity in the WET test as explained in the Technical Support Document for Water Quality-based Toxics Control.

Nestle Purina Petcare Company (NE-0000116)

The Nestle Company produces meat based cat food and dog food. The company has about 350 employees and discharges about 0.345 MGD to the Big Blue River.

The fact sheet had complete information with a description of the facility and the treatment process. There were flow diagrams and descriptions of the outfall location and receiving stream. Technology-based limits were set using Best Professional Judgment (BPJ) using the effluent guidelines for the meat industry for guidance. These included controls on BOD, TSS, and Ammonia. The permit included WQBLs for E. coli and Total Residual Chlorine.

NPPD Sheldon Power Station (NE-0111490)

The Sheldon Power Station fact sheet has a detailed facility description with a good description of discharge location and discharge conditions. Technology based limits were properly derived based on the steam electric ELG.

The facility has undergone significant changes during the previous permit cycle through construction and process changes. Since original construction of the facility, it had used a dammed stream as part of the treatment for the facility wastewaters, and had an ash pond. In the last 5 years, the stream has been re-routed around the plant and all discharges have been diverted to the Big Blue River through a ten mile pipe. This action has eliminated the heavy impact from the facility on the smaller stream, and through the facility has gained additional effluent discharge allowances for total dissolved solids due to the mixing capacity of the Big Blue River.

2. Permit Application Requirements

Federal regulations at 40 CFR 122.21 and 122.22 specify application requirements for facilities seeking NPDES permits. Federal forms are available, but authorized states are also permitted to use their own forms provided they include all information required by the federal regulations. This portion of the review assesses whether appropriate, complete, and timely application information was received by the state and used in permit development.

NDEQ's application forms have several omissions. Applications for major POTWs do not include priority pollutant scans to identify pollutants of concern. Pollutants of concern are based on permit history or pollutant contributions expected from known industrial users. For industrial permittees, the applications do not include the sets of monitoring requirements as required in the Federal 2C industrial permit applications. Similar to POTWs, the pollutants of concern are based on permitting history and applicable effluent guidelines.

NDEQ has agreed to put the monitoring requirements into permits as they are reissued. However, EPA is concerned that this does not address the permit application requirement in 40 CFR 122.21(j). The regulation states that applicants must provide data from a minimum of three

samples taken within four and one-half years prior to the date of the permit application and must include the data in the pollutant data summary of the application. NDEQ must continue to include the monitoring requirement as permits are reissued and expeditiously change the permit application to meet the federal requirement. This was a 2008 program review finding and should be addressed by NDEQ as soon as possible.

Other parts of the applications are complete, and require details of location, flow maps and descriptions of treatment processes, and complete descriptions of discharge locations.

State Response: When application forms are revised they will be consistent with 40 CFR 122.21. Regulations update priorities are application forms and pretreatment requirements. We anticipate taking regulation changes to the Environmental Quality Council in late 2013.

NDEQ has started requiring pollutant scans in new permits or by letter (Attachment C and D) if not included with permits issued October 1, 2012. Until application forms are revised NDEQ will include a pollutant scan reminder in the letter sent to existing facilities reminding them to submit their permit application 180 days before the permit expires. This letter is sent 270 days before permit expiration.

Technology-Based Effluent Limitations

NPDES regulations at section 125.3(a) require that permitting authorities impose technology-based treatment requirements in the permits they issue. A sampling of Nebraska's permits, fact sheets and other supporting documentation for POTWs and non-POTWs were reviewed to assess whether the "technology based effluent limitations" (TBEL) contained in them represent the minimum level of control that must be imposed in a permit.

1. TBELs for POTWs

POTWs must meet secondary or equivalent to secondary standards in accordance with the Secondary Treatment Regulations at 40 CFR Part 133 (including limits for BOD, TSS, pH, and percent removal). Thus, permits issued to POTWs, must contain limits for all of these parameters (or authorized alternatives) in accordance with the Secondary Treatment Regulations.

Nebraska's fact sheets contain detailed descriptions of plant location, treatment processes within the plant, and the handling of all waste streams including sludge production. Industrial users are listed.

TBELs for secondary treatment or equivalent to secondary treatment are properly derived in NDEQ permits and include limits for BOD (or CBOD), TSS, pH, and percent removal. Fact sheets state which limits apply, but do not include lengthy discussions of applicability.

Permits do not include mass limits for BOD and TSS. This is not required by the regulations, but the EPA urges use of both mass and concentration limits in permits when possible.

State Response: NDEQ uses design flows for mechanical WWTF to calculate mass limits in permits. NDEQ has established mass limits for secondary standards and water quality based permits since approximately 2009.

2. TBELs for Non-Municipal Dischargers

Permits issued to non-municipal dischargers must require compliance with a level of treatment performance equivalent to “Best Available Technology Economically Achievable (BAT)” or “Best Conventional Pollutant Control Technology (BCT) for existing sources, and consistent with “New Source Performance Standards (NSPS)” for new sources. Where effluent limitations guidelines (ELG) have been developed for a category of dischargers, the TBELs in a permit must be based on the application of these guidelines. If ELGs are not available, a permit must include requirements at least as stringent as BAT/BCT developed on a case-by-case basis using BPJ in accordance with the criteria outlined at 40 CFR 125.3(d).

Nebraska’s fact sheets contain detailed descriptions of plant location, treatment processes, and waste streams. The SIC code(s) for the facility are identified and permit limits are derived based on the applicable ELG. Where an ELG does not apply, the state derives permit limit using BPJ.

Water Quality-Based Effluent Limitations

The NPDES regulations at 40 CFR 122.44(d) require permits to include any requirements in addition to or more stringent than technology-based requirements where necessary to achieve state WQS, including narrative criteria for water quality. To establish such “water quality-based effluent limits” (WQBEL), the permitting authority must evaluate the proposed discharge and determine whether technology-based requirements are sufficiently stringent, and whether any pollutants or pollutant parameters could cause or contribute to an excursion above any applicable WQS.

The PQR for Nebraska assessed the processes employed by permit writers and water quality modelers to implement these requirements. Specifically, the PQR reviewed permits, fact sheets, and other documents in the administrative record to evaluate how permit writers and water quality modelers determined the appropriate WQS applicable to receiving waters, evaluated and characterized the effluent and receiving water including identifying pollutants of concern, determining critical conditions, incorporating information on ambient pollutant concentrations, and assessing any dilution considerations, determined whether limits were necessary for pollutants of concern and, where necessary, calculated such limits or other permit conditions. For impaired waters with EPA-approved TMDLs, the PQR also assessed whether and how permit writers consulted and developed limits consistent with the assumptions of those TMDLs.

For POTWs, NDEQ assumes reasonable potential for criteria for Ammonia, E. coli, WET, and pollutants limited in past permit cycles. For those pollutants, Wasteload Allocations are calculated and permit limits are derived using the methods in the Technical Support Document (TSD). For all other pollutants (WQBELs and industrial facilities), it is not clear how a Reasonable Potential Analysis (RPA) is conducted. The fact sheets reviewed state that RPAs had been conducted but lacked detail and clarity in the specifics of the RPA process (e.g., pollutant selection for evaluation). In reissued permits, RP is typically calculated on the basis of effluent limits in the current permit. Permit writers are familiar with permitted facilities. Unless processes or industrial users (e.g., pretreatment permits) have changed significantly, the permit writer would not propose additional pollutant-specific effluent limits. All permits and associated fact sheets reviewed lack a detailed discussion of pollutants of concern. The fact sheets include brief statements identifying potential pollutants in the discharge according to the activity, but

they do not discuss data available from the permit application forms or other effluent characterization data. Reviewing pollutant scans required during the permit application process would be useful in identifying pollutants of concern to alert permit writers of changes in effluent quality.

NDEQ's RPA procedure is specified in the TSD, as are its procedures for calculating WQBELs. A review of the permits, fact sheets, and permit files on-site indicated that WQBEL calculations followed the TSD procedures. However, after a review of the state's files, the procedure for conducting the RPA was not always clear.

The receiving waterbody is carefully identified and uses are identified in the fact sheet. Impaired waters are identified in the fact sheet, and permit writers assess whether the pollutant or pollutants causing the impairment will be present in the discharge.

WQBELs tend to be data driven with calculations for seasonal low flows and data sets used to set seasonal background levels for ammonia.

Monitoring and Reporting

The NPDES regulations require permittees to periodically evaluate compliance with the effluent limitations established in their permits and provide the results to the permitting authority. Monitoring and reporting conditions require the permittee to conduct routine or episodic self-monitoring of permitted discharges and where applicable, internal processes, and report the analytical results to the permitting authority with information necessary to evaluate discharge characteristics and compliance status.

Specifically, the regulations at 40 CFR 122.44(i) require NPDES permits to contain monitoring requirements sufficient to assure compliance with permit limitations, including specific requirements for the types of information to be provided and the methods for the collection and analysis of such samples. The regulations at 40 CFR 122.48, also require that permits specify the type, intervals, and frequency of monitoring sufficient to yield data which are representative of the monitored activity. The regulations at 40 CFR 122.44(i) also require reporting of monitoring results with a frequency dependent on the nature and effect of the discharge.

The fact sheet should include the basis for requiring monitoring frequency and how this frequency is representative and protective of the respective State WQS. The monitoring frequency rationale should include an explanation for when the samples are to be taken during the year, taking into account seasonal or production considerations, and where the samples are taken.

The permit application for POTWs with design flow greater than 1 MGD requires monitoring for the priority pollutants (three sets of monitoring in the permit cycle) that are still not being included in the application, (see 40 CFR 122.21(j)). The major permits reviewed by EPA were missing this information. NDEQ provided a draft copy of the pollutant scans that will be attached to new and reissued permits. However, NDEQ has not decided how it will address sampling requirements for all POTWs, and the subset of POTWs with design flows greater than or equal to 0.1 MGD as required in 40 CFR 122.21(j).

State Response: NDEQ is currently addressing pollutant scans for all facilities. NDEQ has started requiring pollutant scans in new permits or by letter (Appendix F, Attachments C and D) if not included with permits issued October 1, 2012. Until application forms are revised NDEQ will include a pollutant scan reminder in the letter sent to existing facilities reminding them to submit their permit application 180 days before the permit expires. This letter is sent 270 days before permit expiration.

Special and Standard Conditions

The regulations at 40 CFR 122.41 require that all NPDES permits, including NPDES general permits, contain an enumerated list of “standard” permit conditions. Further, the regulations at 40 CFR 122.42 require that NPDES permits for certain categories of dischargers must contain certain additional standard conditions. Permitting authorities must include these conditions in NPDES permits and may not alter or omit any standard condition, unless such alteration or omission results in a requirement more stringent than required by the Federal regulations. In addition to these required standard permit conditions, permits may also contain additional narrative requirements that are unique to a particular permittee. These case-specific narrative requirements are generally referred to as “special conditions.” Special conditions might include requirements such as: additional monitoring or special studies, best management practices (see 40 CFR 122.44(k)), and/or permit compliance schedules (see 40 CFR 122.47). Where a permit contains special conditions, such conditions must be consistent with applicable regulations.

For the most part, the NDEQ standard conditions are verbatim quotations of the Federal regulations at 40 CFR 122.41. The exceptions are as follows:

- Duty to Comply – The section is abridged and does not list the Federal penalties listed in 40 CFR 122.41(a)(2-3).

State Response: As per 40 CFR 123.25(a)(12), Section 122.41 (a)(1) and (b) through (n) – Applicable permit conditions are required. This is referenced in the beginning of 40 CFR 122.41. “§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).” Nebraska has revised the standard conditions which are attached (Attachment A) for your review. While as a practice, we do not include information in permit requirements, we reference enforcement for federal action as subject to the Clean Water Act.

- Duty to Reapply – Paraphrases the duty to reapply, but is as stringent as the Federal rule.
- Monitoring and Records – These requirements are broken into two separate sections in the permit, with references to state rules for test procedures. The state rules reference the 40 CFR Part 136 methods.
- Planned Changes – Paraphrased referring to state rules.

State Response: “The following conditions apply to all NPDES permits. Additional conditions applicable to NPDES permits are in § 122.42. All conditions applicable to NPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.”

- Monitoring Reports – Some omissions.

State Response: Without Specifics NDEQ cannot comment.

- Twenty-four Hour Reporting - Allows the director to waive written reports if there has been oral report within the 24 hour time frame. Federal rules do not allow this.

State Response: 40 CFR 122.41(l)(6)(iii) allows this. “(6) *Twenty-four hour reporting.* (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See § 122.41(g). {This appears to be an error in the 40 CFR that references “*Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.*” the correct reference is 40 CFR 122.41 (m)(ii) or other reference}.

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. (See § 122.44(g).)

(iii) The Director may waive the written report on a case-by-case basis for reports under paragraph (l)(6)(ii) of this section if the oral report has been received within 24 hours.”

- Other Non-Compliance – Paraphrases. Refers to state requirements.

State Response: The following conditions apply to all NPDES permits. Additional conditions applicable to NPDES permits are in § 122.42. “All conditions applicable to NPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.”

We have revised our Standard Conditions, (Appendix F, Attachment A), to this report for review.

Sanitary Sewer Overflow (SSO) discharges are discharges of raw sewage from municipal sanitary sewer systems at locations upstream of a treatment plant headworks. Discharges, such as SSOs, that are not explicitly authorized by a permit are prohibited. As a form of noncompliance, SSOs should be reported by the permittee; however, Nebraska NPDES permits do not define what constitutes a reportable SSO. NDEQ should develop language for newly issued and reissued municipal wastewater permits that articulates what constitutes a reportable SSO.

State Response: The reason we have not further defined reportable SSOs in permits is that EPA has not finalized their rule. NDEQ has dealt with SSO as a bypass for many years and has required their reporting, and does track these events.

Administrative Process & Documentation

The administrative process includes documenting all permit decisions, coordinating EPA and state review of the draft (or proposed) permit, providing public notice, conduct hearings (if appropriate), and responding to public comments, and defending the permit and modifying it (if necessary) after issuance. The PQR team discussed each element of the administrative process with the Nebraska permitting staff, and reviewed materials from the administrative process as they related to permits reviewed for the core permit review.

The federal NPDES regulations and NDEQ's NPDES regulations require that permittees must submit NPDES applications 180 days before permits expire. If complete applications are not submitted within the 180-day deadline, then permits cannot be administratively continued and permit coverage will terminate.

To assist permittees in submitting timely and complete permit renewal applications, NDEQ sends out a reminder letter nine months (270 days) before permit expiration. NDEQ then uses an in-house spreadsheet to track the arrival of applications.

When the applications are received, NDEQ staff does a preliminary review to determine whether the applications are complete. This first review checks for an authorized signature, complete addresses, and submission of all pages of the application. In general, these first checks are easier for municipal facilities and more difficult for industrial facilities. If a plant operator signs an application, NDEQ will return the application to ensure a signature is obtained from a "cognizant official".

After the preliminary review, applications are assigned to a permit writer for technical review and later drafting. Each permit writer is assigned to a set of counties so the permit writer can become knowledgeable about an area of the state. (This also encourages watershed-based decision making.) Permit writers review the technical aspects of the permit for completeness and work with the permittee to collect any additional pertinent and/or required information. When the application is complete, the permit writer documents the completion date and the tracking spreadsheet is updated.

NDEQ prioritizes permit issuance. New dischargers are given priority over re-issued permits and NDEQ indicates it makes every effort to be prompt in permit coverage so new facilities can begin operations as quickly as possible. Permits for new facilities are tracked on a separate, dedicated spreadsheet.

Backlogged permits are defined as permits that have been administratively extended. When permits expire before a draft is completed, NDEQ tracks the status of the backlogged permits and works to resolve issues. NDEQ also keeps separate tracking lists for EPA Priority Permits and facilities located on 303(d) listed streams.

When the permit writer creates a draft permit and fact sheet or statement of basis, the drafts are routed for internal review by specialists in compliance, Water Quality Standards (WQS) in the

Planning Unit, Technical Assistance Unit and the Groundwater Unit. The permit writer takes the comments from these individuals and updates the draft permit and fact sheet/statement of basis. Then NDEQ sends the draft permit and fact sheet/statement of basis to the permittee for review and comment. Once the last set of comments is considered, a final draft is reviewed by the Permits Unit Supervisor and, after final corrections, the permit is placed on public notice. EPA's review is concurrent with the 30 day public review period.

In the summer of 2008, the Region 7 states and EPA held a "Kaizen" event. The Kaizen process is used to find efficiency and prevent problems in production processes or administrative processes. As one of the improvements discussed in the Kaizen process, NDEQ will share with EPA earlier drafts of permits that involve difficult issues earlier in the development process.

State Response: The State supports the 2008 Region 7 Kaizen results and look forward to implementing all phases of the process improvements.

After the public notice and response to comments, the permit is reviewed one last time by the Permits Unit Supervisor and then by the Wastewater Section Environmental Engineer Section Supervisor or for CAFO the Agricultural Section Supervisor before the final permit is sent to be signed by the appropriate Director and issued.

The administrative record is the foundation that supports the NPDES permit. If EPA issues the permit, 40 CFR 124.9 identifies the required content of the administrative record for a draft permit, and 40 CFR 124.18 identifies the requirements for final permits. Authorized states are required to follow 40 CFR 123.25 and should have equally strong documentation. The record allows personnel from the permitting agency to reconstruct the justification for a given permit and defend the permit during any legal proceedings regarding the permit. The administrative record for a draft permit consists, at a minimum, of the permit application and supporting data, draft permit, fact sheet or statement of basis, all items cited in the statement of basis or fact sheet, including calculations used to derive the permit limitations, meeting reports, correspondence with the applicant and regulatory personnel, all other items supporting the file and, for new sources where EPA issues the permit, any Environmental Assessment, Environmental Impact Statement, or Finding of No Significant Impact.

NDEQ has written procedures outlining wasteload allocation, permit limit generation and NPDES permitting procedures. NPDES permits and fact sheets are generated using Microsoft Word. Formatting of the Word documents is shared among the permit writers. NDEQ is designing a permitting tool (*Tools for Environmental Permitting*) it anticipates implementing in September 2012. This permitting tool is designed to house data (e.g., discharger, surface water, and standard language) and through an Adobe-based, wizard-like tool, develops a standardized format for the permit document, and calculates WLAs and effluent limits. NDEQ indicated that eventually the permitting tool would upload effluent limits to ICIS upon the permit becoming effective. The permitting tool also tracks changes in the document, to allow for greater ease and efficiency during the review (peer and management) process. EPA's e-NPDES provide the basis for NDEQ's system; however, the project scope expanded when NDEQ realized the potential for use in developing permits in addition to managing discharger data. NDEQ has implemented Enterprise Content Management (ECM), a document and file scanning/imaging system, to allow for easier accessibility of permit documents by permit staff, EPA, and the general public. NDEQ has always had well organized and maintained files. Files are complete and bound into folders with complete indexes. Paper files were organized into three sets of folders for each

facility: General (G), Permit (P), Reports and Data (R). Sequential folders are marked as 0001 (Oldest), 0002, 0003, etc. Bar codes on each file can be used to access all the information on the file, such as a complete index of the documents in the file, check out history, etc.

Files are organized by facility and the files for a facility may cover several programs (NPDES, RCRA, LUST, etc.). Each of those programs can have multiple components. For instance, NPDES could be broken down into discharge permits, construction storm water, MS4, etc.

Within the last year or so, NDEQ has switched completely to electronic record keeping. NDEQ used the index methodology from the old records systems, but added other fields to further define the documents such as sender and recipient.

The new database is an Integrated Information System (IIS) AS 400. Incoming paper documents are scanned on a table top scanner and the processing person enters a fairly lengthy list of indexing information. This detailed indexing is the key time investment in the filing procedure, and is essential to the organizational structure and routing of the files.

The indexing is done through ECM software. The ECM software is an umbrella for all the programs that might keep records on a facility, and it has been used successfully in other branches of state government.

In the ECM system, no paper copies are produced and no paper records are kept. Incoming documents are scanned on table top scanners (or a large format scanner for maps, plans, or other large documents), indexed, and then routed by electronic means. For convenience, documents over 100 pages are scanned, but routed in hard copy form. Most documents are scanned in black and white, and colors scans (much slower and more data intensive) are only used when needed.

Scanned documents are not filed per se, but collected into boxes based on the date received and the processor. Boxes are stored, but not further indexed. NDEQ is working on a retention schedule for the boxed records.

Routing is built into the indexing, so a given employee gets a daily email listing the documents routed to them. This routing has been one of the difficult aspects of the system: if a manager is out of the office, information may not be forwarded, in the same way that a paper document can become delayed. Some employees have struggled with the email load.

A big potential success is in the streamlined response to public requests for information. At some point, all responsive records will be easily accessible electronically.

NDEQ is working on the fine points of adjusting to the new system. One of the main difficulties has been covering the full breadth of subject matter that can be covered by correspondence. This can include information from holders of general permits, individual correspondence, or records on a general subject such as storm water, general policy, etc.

NDEQ is operating the entire record keeping system with a manager, 5 full time employees, and 2 temporary employees.

1. Fact Sheet or Statement of Basis

Under 40 CFR 123.25 (a)(27) and (a)(32), 40 CFR 124.8 and 124.56, fact sheets are required for major NPDES permits, general permits, permits that incorporate a variance or warrant an explanation of certain conditions, and permits subject to widespread public interest. Current regulations require that fact sheets include:

- General facility information
 - Description of the facility or activity
 - Sketches or a detailed description of the discharge location
 - Type and quantity of waste/ pollutants discharged
- Summary rationale of permit conditions
 - Summary of the basis for draft permit conditions
 - References to the applicable statutory or regulatory provisions
 - References to the administrative record
- Detailed rationale of permit conditions
 - Explanation and calculations of effluent limitations and conditions
 - Specific explanations of:
 - Toxic pollutant limitations
 - Limitations on internal wastestreams
 - Limitations on indicator pollutants
 - Case-by-case requirements
 - Decisions to regulate non-publically owned treatment works under a separate permit
 - For EPA-issued permits, the requirements for any state certification
 - For permits with a sewage sludge land application plan, a description of how all required elements of the land application plan are addressed in the permit
 - Reasons why any requested variances do not appear justified, if applicable
- Administrative requirements
 - A description of the procedures for reaching a final decision on the draft permit, including:
 - Public comment period beginning and ending dates
 - Procedures for requesting a hearing
 - Other procedures for public participation
 - Name and telephone number of the person to contact for additional information.

The fact sheet and supporting documentation were reviewed with the administrative record of the permit file as part of the PQR to assess whether the basis or rationale for limitations and other permit decisions were documented in the development of the final permit.

Fact sheets are basically complete. Base line information is very complete with good descriptions of facilities, processes, and discharge locations. Calculations for all limits are shown. Spreadsheets and other background information are included in the files.

Better labeling of spreadsheets and more discussion and explanation of the logic behind decision-making in the calculations could help make the fact sheets more understandable by the general public.

Core Topic Areas

Core topic areas are specific aspects of the NPDES permit program that warrant review based on the specific requirements applicable to the selected topic areas. These topic areas have been determined to be important on a national level. Core topic areas are reviewed for all state PQRs.

Pesticide General Permits

NDEQ issued the Nebraska Pesticide General Permit (PGP) on November 1, 2011. The Nebraska Department of Agriculture collaborates with NDEQ to control discharges from pesticide applications by issuing restricted use licenses. NDEQ identifies waters for which permit coverage is required for these discharges in three groups. Group III waters are required to submit a Notice of Intent (NOI) and are defined as state resource waters, impaired waters, waters with endangered species, and waters within 250 feet of a public drinking water intake. Group II waters are defined as flowing or discharging water bodies but must have none of the Group III conditions. Group I waters are defined as having no flow for at least 24 hours after application, have no discharge, or have a discharge that can be controlled for a period of 24 hours after an application. The NDEQ Director has determined that Group I and Group II waters do not require a NOI.

NDEQ has issued 8 authorizations to discharge and has 6 authorizations pending. Nebraska does not anticipate it will issue an individual permit for pesticide discharges and estimates 30 authorizations issued under the PGP. NDEQ does not use an electronic NOI system and NOI data is not currently available online. NDEQ has 7 days to deny or delay NOI authorization of an NOI for Group III waters in Part I B(1)(a)(iv) and (v) of the permit. If they do not respond within 7 days, the applicator has authority to proceed with the application. The remaining Group III waters are not authorized without notice from NDEQ.

Pesticide Management Plans are reviewed by NDEQ staff and are submitted with the NOI. The Nebraska Pesticide Management Plan is named a Pesticide Use Management Plan (PUMP) and is kept on site by the applicant. Reports are required if there is a violation.

Permitting requirements for discharges associated with pest emergency situations such as mosquito applications in 303(d) waters are allowed without a NOI. If there are any endangered species issues present, NDEQ collaborates with the Nebraska Game and Parks and Commission.

Pretreatment

To obtain a reasonable understanding of the quality of Nebraska Pretreatment Program Permits, a random sampling of 10 Non-categorical NPP permits and 10 Categorical NPP permits was chosen and evaluated using the requirements for individual control mechanisms found at 40 CFR 403.8(f)(1)(iii), “(iii) Control through Permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users identified as significant under § 403.3(v), this control shall be achieved through individual permits or equivalent individual control mechanisms issued to each such User except as follows.” In addition, for Categorical industries, analysis was conducted on the adequacy of the permit for addressing Categorical Pretreatment requirements.

Categorical Industrial Nebraska Pretreatment Program Permits Reviewed

Nebraska AL Castings- Hastings: NE013337

This facility is subject to the 40 CFR 464 Metal Molding and Casting Standards, Aluminum Casting Subcategory. The facility evaporates all process water and therefore certifies no discharge on its monitoring reports. This Categorical Standard contains limits for Total Toxic Organics and lists the constituents of the covered TTO in the standard, along with an alternative monitoring indicator (oil and grease) for demonstrating compliance. However, the permit contains the list of TTOs that apply to metal finishers (40 CFR Part 433) and the certification option available to metal finishers. The permit needs to be modified to contain the correct TTO limits.

Chief Custom Products- Grand Island: NE0129771

This facility performs phosphatizing in the process of manufacturing farm products and is therefore subject to the Metal Finishing Categorical Standards 40 CFR Part 433. Overall the permit is well written, however the identification of the sampling location is somewhat general and could be strengthened by being more specific in its description.

Industrial Plating, Omaha: NE 0114642

This facility is classified as a job shop electroplater discharging less than 10,000 gallons per day and is subject to the 40 CFR Part 413 Electroplating Categorical Standards. With discharges less than 10,000 gallons per day it qualifies for a reduced list of regulated pollutants; one not containing zinc. However, this facility performs both rack and barrel zinc electroplating so it is not testing for the most probable pollutant it could be discharging. Moreover, a review of the discharge monitoring reports submitted by the industry shows that it routinely discharges above 10,000 gallons per day. NDEQ needs to monitor this industry's water usage to ensure that it is properly classified. In addition, pursuant to the definition of "new source" if this industry has completely replaced its plating lines over the years (a possibility as it has been in business prior to August 1984) it would no longer be an Electroplating industry but one subject to the Metal Finishing Categorical Standards.

Hoover- Beatrice: NE0114464

Permit terminated, not reviewed

Molex- Lincoln: NE0131776

This facility electroplates copper, nickel, tin, and sometimes lead and gold, in the manufacture of electrical connectors. As such, it is subject to the 40 CFR Part 433 Metal Finishing Standards. Its permit is well written and provides the ability to certify compliance with its TTO limits, however, the facility elects to sample semiannually instead.

Chief Transportation Products, Omaha: NE0132250

This facility is subject to the 40 CFR Part 433 Metal Finishing Standards which has a requirement to comply with a TTO limit. The Standard allows for certification in lieu of sampling if the facility has submitted, and been approved for, a solvent management plan. At Section H of the permit, this option is explained. There is no solvent management plan in the state's files (it could have been submitted years ago) and no record of one being approved; however, the industry certifies compliance with TTOs routinely. Rather than the permit stating that the holder *can* certify TTO compliance *if* it submits a solvent management plan, the permit

should state that the facility *has* submitted a solvent plan, give the approval date, and then cite the option for certification.

Radio Engineering, Omaha: NE0123374

Radio Engineering is classified as subject to the new source requirements of the 40 CFR Part 433 Metal Finishing Standards. Overall its permit is well written, however, the same comment for TTO certification as for Chief Transportation applies.

Lester Electric, Lincoln: NE0060127

Lester Electric performs phosphate conversion coating in the process of manufacturing battery chargers. It is therefore subject to the Metal Finishing Standards and must comply with a TTO limit or certify compliance. Like the two permits reviewed above, there is no statement in the permit that a solvent management plan has been submitted and approved yet the facility routinely certifies compliance with TTO limits.

Exmark, Beatrice: NE014451

This Exmark facility, at 2101 Ashland Dr. has had its permit terminated; therefore, it was not reviewed.

Vishay-Dale Plant 6, Columbus: NE0114391

This facility manufactures electrical components and in the process performs copper and silver plating. Cyanide is used in the plating operation and is treated in a destruction unit prior to discharge. The permit properly has the cyanide sampling location requirement after the destruction unit but prior to mixing with other regulated wastestreams.

**NonCategorical Nebraska Pretreatment Program
Permits Reviewed**

Henningsen Foods- David City: NE0133108

The facility has 2 outfalls, both of which discharge to the city: Outfall 001 covers egg cleaning and breaking, while Outfall 002 is the discharge from egg processing. Neither outfall contains limits; the facility is required to monitor only. A review of the fact sheet shows no reference to city's plant capacity so it cannot be determined if the facility should have limits. A review of the fact sheets for earlier permits from 2003 and 2008 also do not contain an analysis on the city's plant capacity. Moreover, the fact sheet from 2003 documents lower flows from the industry, hence, the industry has been growing over the years making it an even larger proportion of the city's loadings. More recently, a letter from the industry dated July 29, 2009 identifies that it is going to enter into an agreement with the city to provide funds for the city's plant expansion, clearly indicating the significance of its discharge to the city.

Green Plains Renewable Energy, Central City: NE0134261

The permit for Great Plains expires on September 30, 2012; however, EPA's Online Tracking Information System, OTIS, says the permit is to expire on March 31, 2015. EPA erroneously identified this facility as a Pretreatment industry during the selection process. Because it is a direct discharger, its permit was not reviewed.

Cornhusker Energy, Lexington: NE0134279

Cornhusker Energy has a permit that authorizes both a direct discharge (Outfall 001) and a discharge to the City of Lexington (Outfall 002). The portion of the permit dedicated to Outfall

001 was not reviewed as part of this analysis. Outfall 002 authorizes the industry to discharge COD, TSS, and NH₃ but does not place numerical limitations on any of them. Moreover, the fact sheet states that conventional pollutants are not being discharged in loadings that exceed the wastewater treatment plant's capacity to treat, yet provides no mathematical demonstration that this is true. BOD, which provides a direct comparison to the city's plant capacity, is not being measured or regulated by the permit. However, to justify the measurement of COD rather than BOD, the fact sheet states that a positive correlation exists between COD and BOD but does not identify what that relationship is.

An interesting element of the permit is that the industry has been authorized to discharge to the city at a pH less than 5 standard units. This is permissible by the General Pretreatment Regulations if the collection system has been designed to accept wastes of a lower pH. Contained in the file and fact sheet are letters and engineering studies showing that the permitted pH of 3.2 s.u. will not harm pipes or pumps. Hence, the fact sheet properly provides the necessary information to justify this lower limit. The sampling requirements for pH are confusing: The permit states that the sampling frequency is quarterly but specifies that the sample type as "continuous."

Tyson Foods, Omaha: NE0133868

This permit identifies three outfalls, two of which discharge to the City of Omaha. There are no limited pollutants other than pH. The fact sheet provides good details on the pretreatment units treating the industry's wastes (001 has pH adjustment, 002 is treated with a DAF unit), however, there is no discussion on the city's treatment plant capacity and whether not including BOD and TSS limits is justified.

McCain Snack Foods, Grand Island: NE0137511

The fact sheet for McCain Snack Foods properly provides calculations analyzing the City of Grand Island's plant capacity and determining the portion of the city's load that is given to McCain through the permit. This fact sheet can be used as the model for those permits that are deficient in this area.

ADM, Lincoln: NE0035157

The permit for ADM contains no numeric limits for BOD and TSS, the two pollutants discharged in quantity from this industry. There is no analysis in the fact sheet based on the receiving wastewater treatment plant's capacity so it is impossible to determine if not regulating BOD and TSS is warranted. Moreover, the fact sheet doesn't state which of the two Lincoln plants receives ADM's waste. The permit does contain limits for H₂S and dissolved sulfide limits and was recently modified to remove the Oil and Grease limit of 100 mg/l. Flows can be diverted between these facilities.

Nebraska Turkey Growers, Gibbon: NE0111791

This permit has been terminated so therefore it was not reviewed.

Swift Beef, Grand Island: NE0113891

The permit for Swift contains limits for both a direct discharge of cooling water and process discharge to the City of Grand Island. Like McCain Snack Foods (reviewed above) the numeric limits in the permit are properly based on the city's plant capacity.

Feaster Foods, Fairbury: NE0114081

Feaster Foods manufactures bacon bits and discharges about 22,000 gallons per day of wastewater. Its permit contains no BOD or TSS sampling requirements or permit limits. Moreover, there is no discussion in the fact sheet why BOD or TSS is not monitored or regulated. The General Pretreatment Regulations require all Significant Industrial Users to have a control mechanism, but there is no record provided in the fact sheet that Feaster Foods is an SIU. By definition, a non-Categorical SIU is one that discharges 25,000 gallons per day of process water, constitutes 5% of the receiving plant's flow, or has the ability to cause adverse problems to the plant. Since the city discharges about 0.5 million gallons per day, 5% of the flow load is 25,000 gallons per day, and because Feaster discharges 22,000 gpd, its flow does not qualify it as an SIU. There are no calculations showing that Feaster constitutes 5% of the BOD or TSS loads, and no discussion of any adverse affects Feaster could cause to the city's wastewater treatment plant.

Iams, Aurora: NE0133868

The Iams permit contains limits for BOD and TSS but the fact sheet does not tell how they were derived. The fact sheet does say that the limits protect the city from over loading but it does not provide any calculations as proof. Unlike the fact sheet for Feaster Foods, the Iams fact sheet discusses that Iams is an SIU as it discharges in excess of 25,000 gpd process water.

General Observations

Nebraska NPP permits are excellently composed and formatted. Tables are extremely easy to read because of the use of shaded headers. In addition, NDEQ is a regional leader in its drive for making all records available on-line. Consequently all permits are scanned and stored for retrieval as either pdf files or tiff files. However, scanning oftentimes darkens the shaded formatting making the heading unreadable. It is recommended NDEQ experiment with either lighter shading that will survive scanning or use a contrasting font that allows for proper data retention.

One weakness found in all NPP permits was the requirement for resampling and resubmission of results following the discovery of a violation. The General Pretreatment Regulations at §403.12(g)(2) require any industrial user who experiences a violation while sampling, to notify its control authority within 24 hours and resample and resubmit the results within 30 days (there are some exceptions, however). Not only is this requirement not in the permit, but no permit holders were executing it. It is highly recommended the NPP Standard Conditions be modified to include this requirement.

State Response: NDEQ has added this to our latest permits issued October 1, 2012 (Appendix F, Attachment B, Part I. H.). Also, the permit tool will include the required language.

“H. Effluent Violation Repeat Sampling

The permittee shall conduct or repeat sampling and analysis and submit the results of the repeat analysis to the Department within 30 days of becoming aware of the violation. The results of the repeat analysis must be submitted with a copy of the previously submitted noncompliance form.” See (Attachment B), Part I. H.

Another area that could be strengthened is the Pretreatment requirement at 40 CFR 403.12(f) to immediately notify the POTW of any discharge that could cause problems to the POTW, including slug loadings. The NPP permits contain requirements for immediate notification of a permit violation; however, this can be interpreted as a numeric violation and would not be timely enough to provide adequate notice for plant operators.

State Response: NDEQ has added this slug language to our latest permits issued October 1, 2012 (Appendix F, Attachment B, Part I. I.). Also, the permit tool will include the required language.

I. Notice of Potential Problems

All categorical and non-categorical Industrial Users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings.”

A serious deficiency common to non-Categorical permits is the lack of limits for BOD, TSS, and when appropriate, ammonia, or a justification in the fact sheet stating why limits for these pollutants are not needed. The EPA’s Local Limits guidance manual establishes criteria for when local limits for conventional pollutants are warranted and when they are not necessary. However, no non-Categorical permits that did not contain limits had any calculations or objective demonstrations justifying the absence of limits. Consequently, it was impossible to determine if those permits were protective against interference and/or pass through. The EPA’s guidance manual specifies that all POTWs that are loaded, on average, at 80% or higher for conventional pollutants must have local limits controlling those pollutants and the limits written into the permits. Therefore, if a permit does not contain limits for conventional pollutants, the fact sheet should contain calculations showing that the POTW receiving the industry’s discharge is less than 80% loaded for the missing pollutants.

Concentrated Animal Feeding Operations

Background

The Agriculture Section provides oversight and direction of the Livestock Waste Management Act, which includes the NPDES program for CAFOs along with inspections for all aspects of construction and operation, application reviews, and state and federal permit issuance. The Ag Section is divided into 2 units; an engineering services unit (4 FTEs) and compliance and permits unit (7 FTEs). There are 4 field offices that handle CAFOs with 2 FTEs and 3 that are essentially half-time.

As of Dec 31, 2011, 862 CAFO facilities were defined as CAFOs with 389 of those facilities covered under an NPDES permit (45%). With a few exceptions, NDEQ does not require NPDES permits for confinement facilities. All facilities are required to have a construction approval and state operating permit. The current NPDES General Permit coverage for CAFOs for open cattle feedlots expires March 31, 2013. NDEQ is in the process of revising the individual and general permit to incorporate the revisions to Title 130. An application for renewal of permit coverage will need to be received prior to October 1, 2012. It should be noted that there are still 8 facilities currently covered under the 2003 - 2008 General Permit.

Revision of statutes and regulations

Nebraska was the first state in Region 7 to revise its regulations to include the 2008 Federal CAFO Rule. On December 1, 2010, amendments to Title 130 were approved by the Environmental Quality Council (EQC). The Governor signed his approval and Title 130 became effective on June 25, 2011. Amendments to Chapter 5 (NPDES duty to apply) were approved by EQC, Attorney General and Governor and became effective on October 4, 2011.

Nutrient Management Plans

In 2010, EPA Region 7 sent out an information request under the CWA Section 308 in order to obtain and review the NMP and land application records at ten facilities in Nebraska. Results of the review indicated that the majority of facilities assessed were managing and land applying manure litter and process wastewater adequately. However, EPA did identify deficiencies at a handful of facilities.

Many facilities submitted the NMP chapter from their engineering plan. Since many of these plans were written prior to the 2003 CAFO Rule, they did not contain all of the nine minimum standards required under 40 CFR 122.42 (e)(1)(i-ix) or in their NPDES Permit. In some cases the information had not been updated over the last ten years leading to inconsistencies concerning the application fields, application agreements, and their associated maps, and soil samples taken from fields not listed in the NMP.

Many of the operation logs and NMPs lacked the relevant data needed to calculate or determine if the facility was over-applying nitrogen or phosphorus. As an example, the facility recorded the time it started and stopped pumping, but did not record the gallons pumped or what the flow rate was for the pump. Two facilities did not indicate what fields received the wastewater. At least two of the feedlots had discharged according to their operation logs. Facilities need to comply with the required “start pumping” operating levels. Not pumping because fields are being prepared to plant or to avoid crop damage is not a defensible reason to discharge under an NPDES permit.

NDEQ has hired an NMP specialist to address many of these issues. During the last year, NDEQ has made significant progress in dealing with previous NMP deficiencies. As part of an outreach effort, NDEQ held 8 meetings around the state in March 2012 to inform producers of the revisions to Title 130 that are now required in all NMPs and renewal applications by October 2012. The University of Nebraska Extension (with input from other sources) also developed a Nutrient Management Record Keeping Calendar to assist the producer in keeping the required records while NRCS has held training sessions related to the phosphorus index.

NMP Technical Standard

The basis for crop yields, crop soil test recommendations/removal rates, N mineralization rates, methods for collecting manure samples, manure analysis, N credit for legumes, and soil sampling needs to be provided in the technical standard and NMP (i.e.: Neb Guide G1450) or other similar references or methods approved by the Director.

CAFO Permit Review

EPA reviewed 4 CAFOs covered under the NE CAFO General Permit (Winner Circle Feedyard, Beer Creek Ranch, LLC, Darr Feedlot, Inc., and Bar K Cattle, LLC) to determine if the facilities and their recently submitted NMPs complied with the applicable requirements of 40 CFR 122

and 412. Only one facility, Bar K Cattle, was found to have difficulties with manure management.

Bar K Cattle:

Bar K Cattle has approximately 16,000 head of cattle with 6,404 total acres in its NMP. According to its 2010 CAFO Annual Report, the facility had zero land application acres under its control (all waste transferred). Chronic rainfall, wet fields, and a lack of control over effluent application acres led to four discharges from June to August 2010 and one in June 2011. The facility has added an application field for effluent that is now under its control. This situation would seem to indicate that a facility needs to have some acreage under its control for the application of process wastewater.

IV. Special Focus Area Findings

A. Water Treatment Plants

EPA issued a letter last year with concerns about permits issued with schedules to do technology and water quality studies at several water treatment plants. As we stated in that letter, EPA urges NDEQ to better define the requirements of the studies to assure that those studies create the necessary information needed to issue permits in the next cycle. A copy of the letter is included in Appendix F.

State Response: EPA needs to finalize its rule for water treatment plants before this can be accomplished. In anticipation of the rule, NDEQ is using BPJ to establish appropriate permit conditions. NDEQ's studies are adequate to provide the information needed to evaluate Best Professional Judgment (BPJ) to issue the next permit. NDEQ issued these permits to gather information and to remove a potential impact to an endangered species. For these reasons, NDEQ disagrees that this is a (category 1) for the State and this item should not be placed as a State requirement in the tracker.

B. Memorandum of Agreements

EPA Regional Office staff met with NDEQ management to discuss EPA's effort to review existing Memorandum of Agreements (MOAs) between the EPA and states governing the NPDES permit program. This effort is part of the Agency's activities under the October 15, 2009, Clean Water Act Action Plan, and the Interim Guidance to Strengthen Performance in the NPDES Program (June 22, 2010).

EPA HQ submitted a transmittal letter and attachments containing a Criteria for MOA Requirement, State Review Draft Checklist, and Model NPDES MOA State Review Draft to all State Environmental Directors on April 14, 2012. The transmittal letter requested states to review and comment on the documents by May 14, 2012.

The regional office staff reviewed the process outlined in the HQ transmittal letter with the NDEQ management and responded to their immediate questions and concerns. The management team was encouraged to review the documents and provide any comments to the HQ contact by the desired date.

State Response: NDEQ agrees the MOA should be amended to better reflect the interests of the parties given current program and budget issues. NDEQ submitted a proposed MOA for EPA review.

C. Existing Action Items

The Action Items consists of commitments the Region and State made during the PPA, PPG, and 106 Grant two-year work planning process in FY 2005 to improve State and Regional NPDES Programs. NDEQ has successfully completed all but two of these Action Items. The remaining Action Items are listed below:

- **Permit Issuance:** The State had 10 minor permits that had been expired longer than 10 years. To date, NDEQ has issued all but two of these permits. The remaining permits are Lindsay WWTF and Northrop Grumman Systems.

State Response: The State has issued all of these permits as of October 1, 2012.

- **Pretreatment:** An area of concern is the lack of the development and implementation of local limits for cities with IUs pursuant to 40 CFR 403(10)(e). The State has committed to work with Region 7 to develop local limits for these cities. However, initial data collection has not yet been implemented. EPA conducted the analyses and submitted in draft to NDEQ for comment but no further work was done to finalize them. NDEQ staff are slowly beginning to work on this issue. The lack of dedicated staff has put NDEQ behind schedule in completing this task.

State Response: NDEQ has hired a staff person to work on pretreatment who is currently involved in the regulatory changes and inspections of pretreatment facilities. We have been working with our communities on pretreatment issues and will work on local limits as time allows. Currently most of the issues with pretreatment in Nebraska are compatible wastes and not metals which the local limit guidance from EPA focus.

EPA Headquarters submitted a new list of Action Items in FY2008 that it believed would improve State and Regional NPDES Programs. The Regional Office negotiated this list with NDEQ to implement in FY2009. The remaining Action Items from this list are as follows:

- **Stormwater:** The State should issue permits to the four remaining small phase II MS4s. The four facilities are Lancaster County, University of Nebraska, City of Terrytown and City of Gering. NDEQ has not completed Lancaster County, University of Nebraska or Terrytown. It is determining if Gering will become part of the Scottsbluff permit. Two other permittees, Union Pacific Railroad, and Burlington Northern-Santa Fe Railroad are not designated as MS4s, but will become non-traditional MS4s. Washington County has been designated as an MS4 and has submitted an NOI, but is not authorized to discharge at this time.

State Response: Currently Gering and Terrytown are operating under a wavier because they are under the 10,000 population threshold and not located in an urbanized area as designated by the 2010 census. We have a new application for University of Nebraska Lincoln but have not received an application for University of Nebraska Omaha (UNO). We are contacting UNO. We do not believe the Union Pacific Railroad, and Burlington Northern-Santa Fe Railroad meet the qualification for an MS4 and therefore are not required to obtain an MS4 permit.

- Applications: NDEQ should ensure that all NPDES permit application forms contain all federal requirements stated in 40 CFR Part 122. NDEQ began drafting changes to its regulations which have been reviewed internally and revised but remain in draft at this time.

State Response: When application forms are revised they will be consistent with 40 CFR 122.21. Regulations update priorities are application forms and pretreatment requirements. We anticipate taking regulation changes to the EQC in late 2013.

- Permit Quality: NDEQ's permit documentation shall be complete and consistent with 40 CFR Part 124.8 – Fact Sheet. NDEQ continues to work on getting the database for its permit writing tool configured. All permit requirements and applications will be stored as electronic files in the database allowing for more complete permit documentation.

Stated Response: NDEQ continues to enhance our documentation and we have information available on the web from files scanned into the system for the last several years. We have generated a permit from our permit writing tool and will continue to work on enhancements as we continue to implement this tool.

- Monitoring: NDEQ should revise the National Pretreatment Program application to ensure it meets the requirements of the baseline monitoring report. This Action Item has not been addressed by NDEQ.

State Response: When application forms are revised they will be consistent with 40 CFR 122.21. Regulations update priorities are application forms and pretreatment requirements. We anticipate taking regulation changes to the EQC in late 2013.

During the 2011 HQ conducted PQR, the following list of Category 1 Action Items was developed and negotiated with Nebraska for inclusion into the 2011 Action Item list. The 2011 list of Action Items is as follows:

- 316: States should include section 316(b) cooling water intake structure permit conditions and a determination of Best Technology Available for existing facilities on a BPJ basis, and the basis for the determination of Best Technology Available should be documented in the fact sheet. NDEQ is evaluating 316 (b) issues and is waiting until EPA comes out with guidance.

State Response: EPA needs to finalize its rule for 316(b) before this can be accomplished. In anticipation of the rule, NDEQ is using Best Professional Judgment (BPJ) to establish appropriate permit conditions. For these reasons, NDEQ disagrees that this is a (category 1) for the State and this item should not be placed as a State requirement in the tracker.

- Core Program: NDEQ should ensure its application forms are moving forward in the regulatory process to be revised and specifically include data submittal requirements. The core review indicates NDEQ is not requesting pollutant scans and therefore, not evaluating current discharge data for reasonable potential to cause or contribute to an excursion of WQS. NDEQ indicated the forthcoming permitting tool will include requirements for data submittals in the permit documents; however, in the meantime,

NDEQ should ensure staff are evaluating the discharge for pollutants of concern and the need for WQBELs. NDEQ is beginning to attach pollutant scans into its reissued major permits.

State Response: NDEQ has started requiring pollutant scans in new permits or by letter (Attachment C and D) if not included with permits issued October 1, 2012. Until application forms are revised NDEQ will include a pollutant scan reminder in the letter sent to existing facilities reminding them to submit their permit application 180 days before the permit expires. This letter is sent 270 days before permit expiration. NDEQ is requiring a pollutant scan in our new permits or by letter (Attachment C and D) to improve data for reasonable potential and has prioritized updating our application forms with regulatory changes planned for late 2013.

- Core Program: NDEQ should improve its approach for identifying pollutants of concern and ensure the evaluation of reasonable potential is current to the facility's operations and discharge, and provide a thorough discussion in the fact sheets and supporting documentation. NDEQ acknowledges that once the pollutant scans are fully implemented they will assist in this determination.

State Response: NDEQ has used historic information reported in Discharge Monitoring Reports (DMR) to evaluate reasonable potential since the majority of the discharges in our state are very small with limited industry. We are now requiring a pollutant scan in our permits to improve data for reasonable potential even for our small communities. Many of these small communities have consistent discharges, limited or no industry. Additional data collection would impose a burden on these communities without providing additional benefit or reducing the risk of unpermitted pollutants being discharged.

- Core Program: NDEQ should expand discussions in the fact sheets regarding the status of receiving waters with respect to impairments and TMDLs, development of effluent limits (e.g., decision to express effluent limits for metals as dissolved or total), application of the mixing zone policy, and rationale for monitoring requirements (i.e., location and minimum frequency). NDEQ has agreed to include additional language in permits and fact sheets.

State Response: The new permit writers tool will assist NDEQ with proper documentation and the permit writers have been notified of this item.

- Nutrients: The State should confirm and demonstrate consideration of WQBELs for permit limit derivation and present the selection of the more stringent effluent limitation (40 CFR 122.44(d)). NDEQ is beginning to add nitrogen and phosphorus monitoring only into its permits.

State Response: NDEQ includes WQBELs in our permits. This relates back to pollutant scans which have been addressed by including the requirement in new permits or by sending notice of the requirement to permit applicants 270 days in advance of permit issuance. The State is gathering data on nutrients. Currently Nebraska has nutrient standards for lakes.

- **Nutrients:** The State should ensure that it documents its reasonable potential determinations in factsheets or administrative record where factsheets are not required (40 CFR 124.56).

State Response: The new permit writers tool will assist NDEQ with proper documentation and the permit writers have been notified of this item.

- **Pretreatment:** Nebraska needs to update its Pretreatment regulations to include the required provisions of the 2005 Streamlining revisions. NDEQ has developed some drafts but has not finalized these regulations.

State Response: When application forms are revised they will be consistent with 40 CFR 122.21. Regulations update priorities are application forms and pretreatment requirements. We anticipate taking regulation changes to the EQC in late 2013.

- **Pretreatment:** Nebraska Industrial User (IU) permits need to contain all required provisions. Specifically noted as missing are slug notification requirements at 40 CFR 403.12(f).

State Response: NDEQ has included slug notification requirements in permits issued October 2012.

- **316a:** Region 7 States should more explicitly address and document the basis for any Section 316(a) thermal variances in their permits and fact sheets.

State Response: NDEQ does have one remaining variance for Gerald Gentleman. At permit issuance we will evaluate the variance to ensure it is still valid. Current annual reports do not indicate that the variance is invalid. 316(a) but has established a permit limit.

V. Action Items

This section provides a summary of the main findings of the review and provides proposed Action Items to improve Nebraska NPDES permit programs. This list of proposed Action Items will serve as the basis for ongoing discussions between Region 7 and Nebraska as well as between Region 7 and EPA HQ. These discussions should focus on eliminating program deficiencies to improve performance by enabling good quality, defensible permits issued in a timely fashion.

The proposed Action Items are divided into three categories to identify the priority that should be placed on each Item and facilitate discussions between Regions and states.

- **Critical Findings (Category One) - Most Significant:** Proposed Action Items will address a current deficiency or noncompliance with respect to a federal regulation.
- **Recommended Actions (Category Two) - Recommended:** Proposed Action Items will address a current deficiency with respect to EPA guidance or policy.

- **Suggested Practices (Category Three)** - Suggested: Proposed Action Items are listed as recommendations to increase the effectiveness of the State or Region's NPDES permit program.

The Critical Findings and Recommended Action proposed Action Items should be used to augment the existing list of "follow up actions" currently established as an indicator performance measure and tracked under EPA's Strategic Plan Water Quality Goals and/or may serve as a roadmap for modifications to the Region's program management.

A. Basic Facility Information and Permit Application

Nebraska has developed consistent permits and fact sheets, and the forthcoming *Tools for Environmental Permitting* system suggests consistency will continue. However, NDEQ still needs to ensure discharge data are requested and evaluated during the permit application process in order to comply with requirements to evaluate the reasonable potential for a discharge to cause or contribute to a violation of a WQS. Proposed action items to help the state strengthen its NPDES permit program are the following:

- Ensure that municipal and non-municipal application forms are moving forward in the regulatory process to be revised and, specifically, must require data consistent with federal regulations at 40 CFR 122.21. (Category 1) - Milestone: NDEQ will propose regulation changes to the Environmental Quality Council (EQC) for their December 2013 council meeting. A draft of the proposed regulatory changes will be submitted to EPA for their review by July 1, 2013. If the EQC approves the regulatory changes it must be approved by the Attorney General and the Governor and registered with the Secretary of State before it becomes final. This could take up to an additional six months.
- Begin to include draft permit attachment requiring pollutant scans for new or reissued POTWs with a design flow greater than 1 MGD with applications. (Category 1) – Milestone: NDEQ began submitting letters to facilities informing them of this requirement in October 2012. However, this will remain an Action Item until facilities are submitting the information with their applications. EPA will evaluate in 6 months, or End of Year FY13, for evidence of consistent implementation.

B. Technology-Based Effluent Limitations

Proposed action items to improve implementation of technology-based effluent limitations in Nebraska's permits are the following:

- Include section 316(b) cooling water intake structure permit conditions and a determination of BAT for existing facilities on a BPJ basis. The basis for the determination of BAT should be documented in the fact sheet. The Final 316(b) rule will be published by July 25, 2013. Until that time BPJ should be used to determine BAT. (Category 2) – Milestone: Complete. NDEQ does use Best Professional Judgement (BPJ) currently and will wait until EPA actually implements the final rule before we make any changes. No further action required until EPA releases the federal rule. EPA will re-evaluate this action at that time.
- Permit materials should reevaluate any 316(a) thermal variances and 316(b) requirements at each permit renewal and document the basis in the permit fact sheet. Prior

determinations should also be documented in the fact sheet and reflected in the current permit, as appropriate. NDEQ has set limits for four open-cycle power plants on the Missouri River based on instream studies. Those limits are based on applicable state water quality standards, so a variance is not needed. The Gerald Gentleman facility has heat limits based on a 316(a) variance. NDEQ needs to document the renewal of the variance when the permit is reissued. (Category 1) - Milestone: NDEQ has one remaining variance for Gerald Gentleman. At permit issuance, NDEQ will evaluate the variance to ensure it is still valid.

- Permits do not include mass limits for BOD and TSS. This is not required by the regulations, but EPA encourages use of both mass and concentration limits in permits. (Category 3). – Complete; NDEQ does use mass and concentration limits in their permits. EPA is satisfied that NDEQ’s action has addressed the underlying finding and considers this action is complete.

C. Water Quality-Based Effluent Limitations

Nebraska does not appear to be doing reasonable potential analysis in accordance with its state’s standards for nutrients or putting WQBELs in permits. Where reasonable potential analyses for WQBELs are present in permits, NDEQ must do a better job documenting its decision about whether to include limits in permits. Proposed action items to improve implementation of WQBELs in Nebraska’s permits are the following:

- Confirm and demonstrate consideration of WQBELs for permit limit derivation and apply the more stringent effluent limitation. [40 CFR 122.44(d)] (Category 1) – Milestone: NDEQ will work to ensure that permits consistently implement this language (see response in Appendix F, PQR-C1). EPA will re-evaluate for evidence of consistent implementation in 6 months.
- Ensure that reasonable potential determinations are properly documented in fact sheets or administrative record where fact sheets are not required. (40 CFR 124.56) (Category 1) – Milestone: NDEQ will work to ensure that permits consistently implement this language (see response in Appendix F, PQR-C2). EPA will re-evaluate for evidence of consistent implementation in 6 months.
- Include ambient monitoring to assess overall nutrient-related effects on receiving waterbody quality. (Category 3) - EPA is satisfied that NDEQ’s action has addressed the underlying finding and considers this action is complete.
- Ensure that adequate documentation is provided in the fact sheet when a limit that implements an ELG is included. (Category 3) - NDEQ will work to ensure that permits consistently implement this language (Appendix F, PQR-C4). EPA will re-evaluate for evidence of consistent implementation in 6 months.
- Ensure that permits include the requirement to monitor more frequently than annually, in order to capture toxicity, consistent with the *free from* toxics WQS. (Category 3) – EPA is satisfied that NDEQ’s action has addressed the underlying finding and considers this action is complete.

D. Monitoring and Reporting

- The core review indicates NDEQ does not have an adequate data set (consistent with regulatory requirements) and, thus, is not able to perform a complete reasonable potential analysis for all potential pollutants of concern [40 CFR 122.44(d)]. (Category 1) – Milestone: NDEQ began requesting pollutant scans via a letter to all applicants in October 2012. This action item is directly related to the regulatory changes required in the permit application and will remain an action item until the regulatory revision has been approved. NDEQ will propose regulation changes to the Environmental Quality Council (EQC) for their December council meeting. A draft of the proposed regulatory changes will be submitted to EPA for their review by July 1, 2013. If the EQC approves the regulatory changes it must be approved by the Attorney general and the Governor and registered with the Secretary of State before it becomes final. This could take up to an additional six months. EPA will consider this Action Item complete at the time the regulation is in effect.
- NDEQ must address sampling requirements for all POTWs, and those with design flows greater than or equal to 0.1 MGD as required in 40 CFR 122.21(j). (Category 1) – Milestone: NDEQ began requesting pollutant scans via a letter to all applicants in October 2012. This action is directly related to NDEQ's regulatory revision of their permit applications and will remain an action item until the regulatory revision has been approved and implemented. NDEQ will propose regulation changes to the Environmental Quality Council (EQC) for their December council meeting. A draft of the proposed regulatory changes will be submitted to EPA for their review by July 1, 2013. If the EQC approves the regulatory changes it must be approved by the Attorney general and the Governor and registered with the Secretary of State before it becomes final. This could take up to an additional six months. EPA will consider this Action Item complete at the time the regulation is in effect.
- The state application for industrial permittees does not include the monitoring requirements as required in the Federal 2C industrial permit application. (Category 1) – Milestone: NDEQ will propose regulation changes to the Environmental Quality Council (EQC) for their December council meeting. A draft of the proposed regulatory changes will be submitted to EPA for their review by July 1, 2013. If the EQC approves the regulatory changes it must be approved by the Attorney general and the Governor and registered with the Secretary of State before it becomes final. This could take up to an additional six months. EPA will consider this Action Item complete at the time the regulation is in effect.

E. Special and Standard Conditions

Federal regulations do not allow permitting authorities to have standard conditions that are less stringent than federal regulations at 40 CFR 122.41. Proposed action items to improve implementation of standard and special conditions in Nebraska's permits are the following:

- Ensure that no Standard and/or Special Conditions include omissions and paraphrasing that create conditions that are less stringent than federal regulations. (Category 1) - Milestone: NDEQ has revised their Standard and Special Conditions and will begin using them in all new and reissued permits beginning April 1, 2013. EPA is satisfied that

NDEQ's action has addressed the underlying finding and considers this action is complete (Appendix F, Attachment A).

F. Administrative Process (including public notice)

Nebraska's administrative process is very efficient with the proper amount of quality control/quality assurance. The recent implementation of ECM has been beneficial and it is expected that the additional implementation of its permit writing tool will only increase efficiencies and reduce the time to draft a permit. Proposed Action Items to help Nebraska strengthen the administration process in its NPDES permit program include the following:

- It would be helpful to Nebraska constituents and for efficient exchange of information between the EPA and state if NDEQ permits were accessible online. (Category 3) - Complete; NDEQ's website has a location with the last two years of information available and future information will be available as well. EPA is satisfied that NDEQ's action has addressed the underlying finding and considers this action complete.

G. Documentation (including fact sheet)

Proposed Action Items to help Nebraska strengthen documentation in its NPDES permit program include the following:

- Expand discussions in the fact sheets to meet the minimum requirements at 40 CFR 124.8 and 124.56, to include the following:
 - Status of receiving waters with respect to impairments and TMDLs. NDEQ staff has been instructed to include a statement in the fact sheet for the July 2013 permits. NDEQ will work to ensure that permits consistently implement this language (see Appendix F, PQR-G1a). EPA will re-evaluate for evidence of consistent implementation in 6 months.
 - Development of effluent limits (e.g., decision to express effluent limits for metals as dissolved or total). NDEQ properly uses the correct limit for metals and has referenced Title 117 in the fact sheet. NDEQ will work to ensure that permits consistently implement this language (see Appendix F, PQR-G1b). EPA will re-evaluate for evidence of consistent implementation in 6 months.
 - Application of the mixing zone policy. This is not a policy but a regulation requirement in Nebraska Title 117. We are properly referencing this regulation in the fact sheet. Standard language will be included in the fact sheet for permits issued in July 2013. NDEQ will work to ensure that permits consistently implement this language (see Appendix F, PQR-G1c).
 - Rationale for monitoring requirements (i.e., location and minimum frequency). (All Category 1) – NDEQ follows its standard procedures and has instructed permit writers to add additional language to the fact sheet in the July 2013 permits. NDEQ will work to ensure that permits consistently implement this language (see Appendix F, PQR-G1d). EPA will re-evaluate for evidence of consistent implementation in 6 months.

- Improve the approach to identifying pollutants of concern and ensure the evaluation of reasonable potential is current to the facility's operations and discharge. Provide a thorough discussion in the fact sheets and supporting documentation. (Category 2) – NDEQ is requesting pollutants of concern be sampled and submitted with the applications. We have strengthened our reasonable potential analysis discussions. EPA will re-evaluate for evidence of consistent implementation in 6 months.

H. Core Topic Areas

1. Pesticide General Permit

Nebraska has done an exceptional job in implementing the Pesticide General Permit. It has collaborated with other states agencies in providing outreach and garnered assistance from other state agencies to control pesticide discharges to waters of the state. Nebraska should consider implementing an electronic NOI system for the Pesticide General Permit and other general permit NOI tracking. (Category 3)

2. Pretreatment

Nebraska's NPP permits are well composed. Proposed Action Items to help Nebraska strengthen implementation of its NPP program include the following:

- Nebraska needs to update its pretreatment regulations to include at a minimum, the required provisions of the 2005 Streamlining revisions. (Category 1) – Milestone: NDEQ will propose regulation changes to the Environmental Quality Council (EQC) for their December council meeting. A draft of the proposed regulatory changes will be submitted to EPA for their review by August 15, 2013. If the EQC approves the regulatory changes it must be approved by the Attorney General and the Governor and registered with the Secretary of State before it becomes final. This could take up to an additional 6 months. EPA will consider this Action Item complete at the time the regulation is in effect.
- Nebraska Industrial User (IU) permits need to contain all required provisions. Specifically noted as missing are slug notification requirements at 40 CFR 403.12(f). (Category 1) – Milestone: NDEQ has submitted language to include in permits for EPA review. NDEQ will work to ensure that permits consistently implement this language (see Appendix F, Attachment B). EPA will re-evaluate for evidence of consistent implementation in 6 months.
- Nebraska pretreatment permits do not include a requirement for resampling and resubmission of results following the discovery of a violation as required in 40 CFR 403.12(g)(2). (Category 1) – Milestone: NDEQ has submitted language to include in permits for EPA review. NDEQ will work to ensure that permits consistently implement this language (see Appendix F, Attachment B). EPA will re-evaluate for evidence of consistent implementation in 6 months.

3. CAFOs

Nebraska was the first state in Region 7 to revise its regulations to include the 2008 Federal CAFO Rule. NDEQ has hired a program specialist with experience and training in Nutrient Management Plans (NMP) and has engineering staff, as part of permit approval, evaluating NMP to address proper livestock waste reuse and management.

- NDEQ should make it a priority to move all permits authorized coverage under the expired permit to the current permit as soon as possible. (Category 1) – Milestone: Currently there are 5 CAFO facilities left to permit or revoke. Three application are in process. NDEQ will complete this Action Item by issuing or revoking permits by July 1, 2013. NDEQ shall report progress on this Action Item at mid-year and in their annual report.

I. Special Focus Areas

1. Water Treatment Plants

Proposed Action Item to help Nebraska strengthen its NPDES permit program includes the following:

- NDEQ should better define the requirement of the water treatment studies to assure the studies create the necessary information needed to issue permits in the next permit cycle. (Category 1) – Milestone: NDEQ will review the information requested from the Water Treatment Plants for the next permit and make the appropriate determination based on BPJ and Water Quality. The EPA will re-evaluate this Action Item as the permits are reissued.

2. Memorandum of Agreements

Proposed Action Item to help Nebraska strengthen its NPDES permit program includes the following:

- NDEQ and EPA Region 7 should review Nebraska's program authorization documents and, as necessary, revise the Nebraska Memorandum of Agreement according to the final approved Guidance for NPDES MOAs Between States and EPA. EPA and NDEQ will include a commitment in the FFY 2013 Performance Partnership Grant (PPG) workplan to complete a review of Nebraska's MOA against the MOA Checklist and to commence negotiations on any necessary revisions to the MOA during the FFY 2013 performance period. (Category 1) – Milestone: NDEQ has submitted a draft MOA for EPA review. This Action Item will be complete when the document is signed and has an effective date.

3. Existing Action Items

Proposed Action Items to help Nebraska strengthen its NPDES permit program includes the following:

- The existing Action Items shall be included in the Nebraska 2013 PPA/PPG. Nebraska should continue to address all existing Action Items to maximize its NPDES program efficiency. (Category 1) – NDEQ shall continue to report progress on these Action Items at mid-year and in their annual report.

State Review Framework

I. Background on the State Review Framework

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

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

Reviews cover these program areas:

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

Reviews are conducted in three phases:

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

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

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

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

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

II. SRF Review Process

Review period: FFY 2011

Key dates:

- Kickoff letter sent to state: February 27, 2012
- Kickoff meeting conducted: December 8, 2012
- Data metric analysis and file selection list sent to state: March 23, 2012
- On-site file review conducted: April 16-19, 2012
- Draft report sent to state: August 10, 2012
- Report finalized: April 15, 2013

Communication with the state:

EPA and NDEQ held a kick-off meeting via teleconference to discuss the general process for conducting an integrated Round 3 SRF/PQR review and how that differs from the Round 2 process. Other topics of the meeting included selection of dates for the on-site review, outstanding issues from the Round 2 review, and NDEQ's concerns about data quality and how that affects the program review. EPA agreed to send NDEQ a workplan outlining all major and intermediate milestones in the process of conducting the SRF review.

During the on-site review, EPA reviewers met with NDEQ staff, managers, and attorneys throughout the week to discuss various aspects of each NPDES program area. These conversations covered the state's internal processes for administering the NPDES enforcement program, recent and upcoming changes to those processes, and challenges facing NDEQ now and into the future. EPA has described these various aspects of the state's program in Appendix D to this report.

An exit meeting was held on the final day of the on-site review. EPA Region 7 enforcement and permitting staff presented the preliminary findings from the SRF and PQR components of the review during a single one-hour briefing. NDEQ management in attendance included the deputy directors of administration and programs and several Water Quality Division managers. EPA Region 7's program review team was joined by the permitting and enforcement branch chiefs.

Upon review of a draft of this report, NDEQ submitted a response to EPA dated November 28, 2012, that included comments addressing individual EPA findings, comments on other parts of the report, and feedback on the SRF process. EPA then engaged NDEQ in further conversation and met in person with state personnel regarding specific findings, recommendations, and target dates for completion of action items. A second round of state comments was then incorporated into the revised draft. Negotiated action items and target dates appear in the final report as well as the SRF Tracker.

The final Integrated SRF and PQR Report was transmitted via mail to NDEQ's Water Quality Division on April 30, 2013. Mike Linder, Director of NDEQ, received a copy as well.

See Appendix F for copies of key correspondence between EPA and NDEQ.

State and EPA regional lead contacts for review:

- EPA Region 7 PQR lead reviewer: Kimberly Hill
- EPA Region 7 SRF Clean Water Act lead reviewer: Michael Boeglin
- EPA Region 7 SRF coordinator: Kevin Barthol
- NDEQ Water Quality Division lead contact for the review: Steve Goans

On-site review process:

During the on-site review, EPA reviewed all compliance monitoring and enforcement information present in NDEQ's records for the 109 facilities selected by EPA. The scope of records covered only the Federal Fiscal Year (FFY) 2011 period, in addition to compliance and enforcement records with dates before and after the FFY 2011 period if those records were related to state activities in FFY 2011. For example, if an inspection file in FFY 2011 had an enforcement action associated with it, both activities will be reviewed regardless of when the enforcement action occurred. Similarly, if a facility was selected for an enforcement action dated FFY 2011, EPA reviewed not only the enforcement records but also any associated inspection records that supported the decision to take enforcement, regardless of the date of the inspections.

EPA also held conversations with NDEQ managers and staff responsible for particular NPDES program areas. EPA consulted with NDEQ throughout the week to discuss questions and concerns regarding the content of facility files.

III. SRF Findings

Findings represent EPA's conclusions regarding the issue or issues identified. They are based on:

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

There are four types of findings:

Good Practice: Activities, processes, or policies that the SRF metrics show are being implemented at the level of Meets Expectations, **and** are innovative and noteworthy, **and** can serve as models for other states. The explanation must discuss these innovative and noteworthy activities in detail. Furthermore, the state should be able to maintain high performance.

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

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

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

Clean Water Act Findings

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

Finding 1-1

Area for State Improvement

Description

The state has not entered any formal enforcement action or penalty records into ICIS.

Explanation

Nebraska issued formal enforcement actions to 18 facilities in FFY 2011, including unilateral administrative and consent orders, judicial referrals, and consent decrees. One of these actions was taken against a P.L. 92-500 non-major facility (Bruning WWTF), and another 6 actions included penalties collected judicially. Both categories are enforcement actions required to be tracked in ICIS; however, the state did not enter any of these 7 required actions into ICIS.

NDEQ staff and managers, as well as all personnel who use ICIS-NPDES, must sign an ICIS-NPDES User Agreement and Sensitive Access Rules of Behavior in order to create new enforcement action records in ICIS-NPDES. NDEQ, which has never signed the agreement, can currently enter enforcement action details into an existing record but cannot create new enforcement records.

This finding is a carry-over from SRF Rounds 1 and 2. During the SRF Round 2 review of Nebraska in FFY 2007, the state and EPA agreed to work toward negotiating an acceptable ICIS-NPDES User Agreement and Sensitive Access Rules of Behavior. NDEQ's Legal Section has been resistant to signing the User Agreement based on language in the Rules of Behavior regarding expectations and potential liabilities levied upon supervisors. After at least 9 years of negotiating with EPA Region 7 and Headquarters offices, Nebraska remains the only state in the country that still refuses to sign the User Agreement. By the time of the current Round 3 review, EPA had made substantial concessions to placate NDEQ's concerns, but negotiations have nevertheless stalled.

On a related matter, the review found that NDEQ entered most, but not all, of its inspection records for major facilities in ICIS. The national database shows that 33 majors were inspected in FFY 2011, whereas NDEQ has inspection records for 36 majors. The 3 major facility inspections not yet appearing in ICIS need to be added to the database, as they constitute Water Enforcement National Database (WENDB) data.

Relevant metrics

1f1 – Facilities with formal actions: 4 identified during Data Metrics Analysis, but the accurate number was found to be 18.
1f2 – Total number of formal actions at CWA NPDES facilities: 5 identified during Data Metrics Analysis, but the accurate number was found to be 19.

1g1 – Number of enforcement actions with penalties: 0 identified during Data Metrics Analysis, but the accurate number was found to be 6.

State response

NDEQ disagrees with EPA’s explanation. The proposed ICIS User Agreement and Sensitive Access Rules of Behavior is unacceptable to NDEQ. We submitted a revised draft to headquarters that was rejected without specific comments or counter proposal. The use of “stalled in the active negotiation and signature” is inaccurate. NDEQ is interested in finalizing a User Agreement which is acceptable.

Follow-up to the January 2013 meeting with EPA: NDEQ received a revised ICIS proposal on February 11, 2013. We are in the process of working through this agreement even though there is no federal regulation or statute requiring that ICIS must be used.

Recommendation

EPA Headquarters, Region 7, and NDEQ need to reach agreement on acceptable language in the ICIS-NPDES User Agreement so that NDEQ can sign the Agreement and begin to create complete enforcement records in ICIS. If agreement cannot be reached by June 1, 2013, the issue will be elevated to the Region 7 WWPD Director and NDEQ Associate Director for resolution within 30 days thereafter. EPA and NDEQ will discuss progress on a quarterly basis. Once EPA is satisfied that these actions have addressed the underlying finding, this recommendation will be considered complete.

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

Finding 1-2	Meets Expectations
Description	Permit limits and DMR data for the vast majority of major and minor facilities are present in ICIS.
Explanation	Based on an analysis of data metrics for FFY 2011, Nebraska’s ICIS data for permit limits and DMR data meet or exceed the national goal and/or national average for all metrics. EPA notes that this performance represents a significant improvement relative to the findings during the Round 2 SRF review in FFY 2007.
Relevant metrics	1b1 – Permit limits rate for major facilities: 100%. <ul style="list-style-type: none">• National goal: >=95% entry of permit limits.• National average: 99%. 1b2 – DMR entry rate for major facilities: 99%. <ul style="list-style-type: none">• National goal: >=95% entry of DMR data.• National average: 97% 1c1 – Permit limits rate for non-major facilities: 91%. <ul style="list-style-type: none">• National average: 66% 1c2 – DMR entry rate for non-major facilities: 91%. <ul style="list-style-type: none">• National average: 73%.
State response	NDEQ response not required.
Recommendation	None required.

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

Finding 2-1	Area for State Attention
Description	Most required data for major and minor facilities is accurately entered into ICIS, with some exceptions.
Explanation	<p>NDEQ accurately enters most Water Enforcement National Database Elements into ICIS for its major and non-major facilities, with some isolated exceptions. 3 of the 43 files reviewed under this metric did not have all required data accurately present in ICIS due to an inaccurate Notice of Violation (NOV) date (TMCO Powder Coating), a missing NOV (Nemaha WWTF), and a missing inspection (B.S. Wash, Inc.). Note that evaluation of this metric did not consider entry and accuracy of formal enforcement action records, which is discussed in Finding 1-1.</p> <p>Enforcement violation type codes are accurate and complete in ICIS only because NDEQ did not take any formal actions involving majors in FFY 2011. To date, NDEQ has never entered enforcement violation type codes for actions taken at majors prior to FFY 2011. To begin doing so, NDEQ would first need to enter the underlying formal enforcement actions, and that scenario is addressed in Finding 1-1 above.</p>
Relevant metrics	<p>2a – Number of formal enforcement actions taken against major facilities with enforcement violation type codes entered: 0</p> <ul style="list-style-type: none">• Goal: $\geq 95\%$ completion of required information. <p>2b – Files reviewed where data are accurately reflected in the national data system: $40/43 = 93\%$.</p> <ul style="list-style-type: none">• Goal: $\geq 95\%$ of data accurately reflected.
State response	NDEQ has addressed this element.
Recommendation	None required.

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

Finding 3-1	Meets Expectations
Description	Required data for major and minor facilities is entered into ICIS in a timely manner.
Explanation	Based on the files reviewed, NDEQ enters WENDB data elements into ICIS in a timely manner.
Relevant metrics	3a – Timeliness of mandatory data entered in the national data system: 41/43 = 95%. <ul style="list-style-type: none">• Goal: 100% of data entered timely.
State response	NDEQ response not required.
Recommendation	None required.

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

Finding 4-1	Meets Expectations
Description	All inspection commitments for FFY 2011 were completed.
Explanation	<p>NDEQ exceeded all inspection commitments made in the FFY 2011 Compliance Monitoring Strategy. Appendix H presents a tabular analysis of NDEQ’s performance for each of the 11 CMS inspection categories.</p> <p>Refer to metric 5 for CMS commitments aligned with inspection coverage goals that are tracked in ICIS.</p>
Relevant metrics	<p>4a – Percent of planned inspections completed: 100%</p> <ul style="list-style-type: none">• Goal: 100% of commitments.
State response	NDEQ response not required.
Recommendation	None required.

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

Finding 4-2	Area for State Attention
Description	The state completed most of its commitments from the PPG workplan for FFY 2011, with two minor but notable exceptions.
Explanation	<p>The Wastewater and Agriculture Sections of NDEQ made 22 measurable commitments – not related to compliance inspections – in the state’s PPG workplan for FFY 2011. NDEQ completed all of these commitments with the exception of the following 2 activities that were partially completed:</p> <ol style="list-style-type: none">1. NDEQ agreed to send copies of sludge reports to EPA as they are received from facilities. NDEQ provided biosolids reports upon request from EPA but did not automatically forward the reports to EPA. EPA continues to encourage Nebraska NPDES permit holders to submit biosolids reports directly to EPA.2. NDEQ agreed to complete action items in the Round 2 SRF final report, as negotiated and approved by NDEQ and EPA. NDEQ has made satisfactory progress toward completion of most action items but stalled in the active negotiation and signature of an acceptable ICIS User Agreement and Sensitive Access Rules of Behavior. The role of this document is discussed in Finding 1-1. <p>See Appendix I for a complete analysis of NDEQ’s performance in the completion of PPG workplan tasks.</p>
Relevant metrics	4b – Planned commitments completed: 20/22 = 90%. <ul style="list-style-type: none">• Goal: 100% of commitments.
State response	<p>This should not be an “Area for State Attention” since we are not delegated the Federal sludge program. The NDEQ, in the future, will be reconsidering our commitment to include sludge requirements in State NPDES permits if it leads to a negative finding in the SRF.</p> <p>Regarding item #2 above see State response for Element 1-1.</p>
Recommendation	None required.

Element 5 — Inspection Coverage: Completion of planned inspections.

Finding 5-1	Meets Expectations
Description	Inspection goals for major and non-major traditional dischargers were satisfied in FFY 2011.
Explanation	In the FFY 2011 CMS, NDEQ negotiated an inspection coverage goal for majors of 46%, or 24 of 52 facilities, and agreed to inspect 101 of 409, or 24.7%, of its traditional minors universe. NDEQ satisfied and, in the case of its minors universe, exceeded these goals.
Relevant metrics	5a – Inspection coverage--NPDES majors: $36/52 = 69\%$. 5b – Inspection coverage--NPDES non-majors: $123/409 = 30\%$.
State response	NDEQ response not required.
Recommendation	None required.

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

Finding 6-1

Area for State Improvement

Description

Inspection reports did not consistently provide information necessary to support an accurate compliance determination.

Explanation

41 of the 125 inspection reports reviewed lacked sufficient information to support a compliance determination and to inform an accurate compliance determination. Most of these 41 inspection reports relied heavily on checklists in which items are marked as unsatisfactory, marginal, or satisfactory; however, they contained very little narrative inside or outside the checklists to substantiate why marginal or unsatisfactory items were classified as such and what that classification means for the facility's compliance status. The narrative sections of reports frequently discuss recommendations for improvement but not the presence or absence of deficiencies.

Many of the 41 reports did not make a clear connection between observations in the checklists/narrative and regulatory requirements. Without a clear connection, the reviewer cannot ascertain whether the listed item is a deficiency needing correction versus only a recommendation for improved performance.

Some of the 41 instances cited above were due to insufficient preparation by the inspector before conducting the inspection. For example, a reading of the ADM Columbus and PC West-Tarnov inspection reports alongside the entire facility file suggests that the inspector did not review previous inspection reports and self-monitoring records such as DMRs prior to the inspection. Doing so is essential to account for all potential areas of noncompliance in order to produce an accurate compliance determination, and these two examples show that ongoing NPDES noncompliance documented prior to the inspection was not captured in the inspection report. This particular issue was also raised during EPA's oversight inspections in FFY 2011. Inspections at Beatrice and North Platte were oversight inspections reviewed during this program review, and in both cases the report did not account for the facility's recent compliance history. Likewise, all CAFO inspections that EPA oversaw in FFY 2011 lacked any indication that the inspector considered the facility's noncompliance history.

The 41 inspection reports without sufficient information to support a compliance determination were distributed across the NPDES program areas as follows:

	# reports lacking sufficient info	# reports reviewed	% reports lacking sufficient info
CAFOs	30	73	41%
Stormwater	1	18	6%
Pretreatment	2	10	20%
Wastewater	8	24	33%
Total	41	125	33%

EPA also identified this finding during the Round 2 SRF review of Nebraska in FFY 2007. In response, NDEQ agreed to modify its inspection checklists and reports to clearly indicate deficiencies. The finding under this metric has improved since the earlier SRF review, as reflected by checklists with more discrete options for the inspector to characterize observations. However, the use of narrative combined with checklists still stands to improve how the state communicates deficiencies at facilities.

EPA addendum in follow-up to the January 2013 meeting with NDEQ noted in the state response below: EPA acknowledges that NDEQ inspectors look for items that were noted previously as compliance problems and consider effluent violations as part of the current compliance status, as noted on the Inspection Data Sheet. If a past issue remains a compliance problem, NDEQ clarified that they note the deficiency in the inspection report; otherwise, the inspectors have no need to mention past problems.

Relevant metrics

6a – Inspection reports reviewed that provide sufficient documentation to determine compliance at the facility: 84/125 = 67%.

State response

The NDEQ uses inspection reports to document observations. A separate Notice of Violation (NOV), if necessary, accompany inspection reports and are used to notify individuals of compliance issues and previous violations of limits. Inspectors receive a printout of ICIS compliance issues or IIS event tracking and use this information along with inspection observations to complete NOVs which is where past noncompliance is addressed. NDEQ does not agree that past noncompliance issues need to be identified in the inspection report. Inspectors have ready access to file information for review when preparing for inspections. The lack of listing previous noncompliance issues does not indicate the inspector was not properly prepared. NDEQ continues to enhance its inspection tools and inspector skills. We ask EPA to recognize that NDEQ has a different but effective procedure for addressing violations.

NDEQ has discussed potential improvements to the inspection checklist and documentation of violations. Inspectors have been sent the SRF review to make them aware of potential improvements. The annual field office retreat held October 4, 2012, had a short session on how the SRF

review impacts their inspection activities. Documentation was expressed as the main area for enhancement. Past noncompliance issues will continue to be an issue for the Notice of Violation (NOV).

NDEQ proposes that EPA R7 come to NDEQ by March 2013 to specifically discuss potential modifications to the inspection reports and the use of NOVs for compliance notification. Furthermore, NDEQ requests EPA send examples and guidance that would be compatible with NDEQ process of using NOVs for official notice by December 31, 2012. We will consider adding regulatory citations to the inspection report where the information would be helpful to understand the regulatory or permit requirement in question.

Follow-up to the January 2013 meeting with EPA: NDEQ has included draft language in Attachment R1 Section SRF 6-1. NDEQ will work to ensure that Inspection Reports consistently implement this or similar language.

Recommendation

NDEQ needs to add sufficient narrative to inspection reports, either within checklists or outside of checklists, to describe whether an observation is a deficiency needing correction relative to regulatory or statutory requirements. NDEQ should modify its inspection report checklist for wastewater and CAFOs to use more precise nomenclature on observations, such as “potential violation” versus “in compliance.” NDEQ should provide copies of the modified checklists to EPA. By June 1, 2013, NDEQ should implement these changes, and EPA will consider this recommendation complete upon satisfactory implementation.

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

Finding 6-2	Area for State Improvement
Description	CAFO inspections do not consistently collect sufficient information to answer questions pertaining to the regulatory and compliance status of the facilities.
Explanation	<p>EPA reviewed 73 inspection reports associated with CAFOs and determined that in 30 instances (41%) the inspection reports did not provide sufficient information to determine the compliance status of the facility. The review found that the short form checklist, in contrast to the long form, does not collect adequate information to document whether there is any evidence that a discharge to a waterbody has occurred and what the regulatory status of the facility is and/or should be.</p> <p>NDEQ stated that during FY 2011 approximately 51% of large CAFO inspections and 100% of inspections at medium-sized facilities were documented using the short form checklist. Given that the majority of NDEQ's inspections at CAFOs utilize this short form, it is imperative that it accurately document the compliance status of these facilities.</p>
Relevant metrics	6a – Inspection reports reviewed that provide sufficient documentation to determine compliance at the facility: $84/125 = 67\%$; for CAFOs, this metric is $43/73 = 59\%$.
State response	<p>NDEQ reminds EPA that non-discharging CAFOs without NPDES permits are not under the jurisdiction of EPA and should not be used in this evaluation.</p> <p>NDEQ understands the limits of the short form and will upgrade the form to better identify compliance status by March 2013. EPA has in the past agreed that the long form would be used at least once during the term of the permit. Because of the resources required in completing the long form, the short form will continue to be a necessary alternative. The narrative portion of the short form is still available for indications of noncompliance issues.</p>
Recommendation	NDEQ should modify its approach for collecting information during inspections at medium unpermitted CAFOs to ensure that sufficient information is obtained to make determinations of discharge and regulatory status, as described in the first paragraph of the Explanation block. By June 1, 2013, NDEQ has agreed to modify appropriate checklists for medium unpermitted AFOs to determine whether they are CAFOs and need to be permitted. NDEQ will share this document with EPA by the target date. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

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

Finding 6-3

Area for State Improvement

Description

Inspection reports do not describe which field activities were conducted or capture observations of all important facility features.

Explanation

Approximately half of the inspection reports reviewed did not include a description of field activities conducted, either in narrative or tabular form. Without a clear indication of what the inspector did during the facility visit, the reader cannot confidently determine the scope of the inspection and fully understand whether particular features of the site, facility, or operation were evaluated. The distribution across NPDES program areas of inspection reports lacking a description of field activities was as follows:

	# reports without field activity info	# reports reviewed	% reports without field activity info
CAFOs	37	82	45%
Stormwater	2	18	11%
Pretreatment	0	10	0%
Wastewater	9	24	38%

Several features of facilities are particularly important in compliance inspections for certain types of facilities or for all facilities; however, those features either were not evaluated consistently or were not consistently documented as having been evaluated. First, and most commonplace, inspection reports did not indicate whether, or how much of, the facility was walked by the inspector. Second, most reports did not document any observation of receiving waters at the point of discharge. Third, some CAFO discharge investigation reports lacked any description or photography of the discharge conveyance or receiving waters. 8 CAFO inspection reports documented unpermitted facility discharges, 2 of which failed to document whether the discharge entered a water of the state. Fourth, many stormwater inspection reports did not document any observation of stormwater BMPs. NDEQ should consider modifying the inspection checklist to include statements that would make it evident that the exterior of the facility, including BMPs, was evaluated during the inspection.

Relevant metrics

6a – Inspection reports reviewed that provide sufficient documentation to determine compliance at the facility: $84/125 = 66\%$.

State response

Wastewater Treatment facilities:

NDEQ will evaluate modification of inspection procedures and tools. For Wastewater Treatment Facilities, the current procedure is observation of the entire facility. We would have documented if the entire facility was not

observed. We are considering adding a checkbox for entire facility walkthrough or partial with description. Many facilities in Nebraska can be viewed from one location because of their small size. NDEQ wastewater facility inspection procedures are to observe the receiving stream at the outfall or if inaccessible, the receiving stream downstream of the outfall or the discharge location after treatment.

The EPA State meeting timeframe proposed in item 6-1 (March 2103) should be applied here as well. A fundamental discussion on procedures for inspections and on the need to repeat those procedures in the text of an inspection report needs to occur before we can make effective changes to our Inspection reports.

Follow-up to the January 2013 meeting with EPA: NDEQ has included draft language in Attachment R1 Section SRF 6-3. NDEQ will work to ensure that Inspection Reports consistently implement this or similar language.

CAFO:

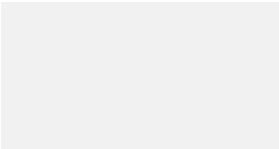
NDEQ reminds EPA that non-discharging CAFOs without NPDES permits are not under the jurisdiction of EPA and should not be used in this evaluation.

The normal process is to observe the entire facility at the time of a routine inspection, unless weather conditions prevent access to specific areas. We would normally document if an area was not observed. For example, at CAFO facilities the depth of each holding pond is recorded on the inspection form on the day of the inspection. The lack of any depth readings would indicate that part of the facility was not observed.

Also, if a CAFO discharge is being investigated, a complete facility compliance inspection may or may not be conducted. A separate Discharge Investigation Report form is available and was amended last year with language added that requires the inspector to document where the discharge originates and terminates and provide a map of such locations. We have a copy of the amended Discharge Investigation Report form is (Attachment E).

Recommendation

NDEQ should modify its inspection checklist for stormwater to account for the inspector's observation of BMPs and evaluation of the SWPPP. For wastewater inspections, NDEQ should add a checkbox or similar modification to the wastewater inspection form to indicate whether all regulated components of the facility have been observed. Observation of receiving waters should be clarified on the report forms. CAFO discharge investigation reports should include a map or other visual aid showing discharge path and whether flow from the facility would reach receiving waters. NDEQ has agreed to make these changes and should share these



documents with EPA by June 1, 2013. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

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

Finding 6-4

Area for State Attention

Description

Discharge investigations at CAFOs are not consistently conducted in a timely manner following receipt of the discharge notice.

Explanation

There is a performance issue that falls generally under Element 6. 36 of the 73 CAFO inspections reviewed were discharge investigations prompted by a self-reported discharge or a complaint. Most of the investigations were conducted within a few days of receipt of the discharge notice or complaint, but 5 investigations were not conducted until 5, 7, 9, 30, and 60 days following receipt of notice. Because wet weather conditions at a facility can be ephemeral and the circumstances under which an isolated discharge occurs can change, inspectors need to investigate alleged discharges within a few days of the occurrence in order to accurately characterize any noncompliance that might have occurred and capture any evidence of discharge that would lead to an accurate compliance determination.

Upon further discussion with NDEQ following the on-site file review, EPA understands that NDEQ's normal procedure for conducting discharge investigations at AFOs is to visit the site as soon as possible following receipt of the discharge allegation. EPA acknowledges that most, if not all, of the investigations in FFY 2011 completed outside the three-day recommended window following the alleged discharge were concentrated during an intense period of heavy rainfall throughout the state, thereby spreading inspectors thinly across the state and making timely response very challenging. Barring circumstances such as this, EPA is satisfied that NDEQ has procedures in place to promptly investigate alleged discharges from AFOs.

Relevant metrics

State response

NDEQ reminds EPA that non-discharging CAFOs without NPDES permits are not under the jurisdiction of EPA and should not be used in this evaluation.

NDEQ conducts discharge investigations as soon as possible, usually the same day or the day following a report unless there are significant widespread precipitation events. NDEQ prioritizes investigations based on potential impacts to the environment, knowledge of the facility, and location. Under normal conditions NDEQ performs inspections within a day or two of receipt of the report. As the explanation states, most of the investigations reviewed were conducted within a few days of the notice. The investigation timeframe is subject to ongoing conditions. For example, there were 114 discharges reported to NDEQ in a 5 week period

in 2010. Abnormal rainfall amounts in large areas of the state created discharge conditions for most CAFO operators and thus limited our ability to conduct all discharge inspections timely. NDEQ acknowledges the importance of a quick response to discharge reports. The NDEQ will work to ensure documentation of these wet weather observations and determinations is made and placed in the file.

Recommendation None required.

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

Finding 6-5	Area for State Attention
Description	A small portion of inspection reports are not completed in a timely manner.
Explanation	<p>124 inspection reports were evaluated under this metric, 109 of which were completed within 45 days of the inspection. In the absence of a goal for inspection report timeliness in NDEQ’s Enforcement Manual, a nationally consistent benchmark of 45 days is used for this metric. For 91 of the 124 inspection reports, EPA recorded the number of days from inspection to report completion and found the average to be 24 days.</p> <p>The 15 inspection reports not completed in a timely manner were distributed across all of NDEQ’s central and field offices and represent all NPDES program areas except pretreatment. Because the value for this metric deviates notably from the 100% goal, this finding is brought to the state’s attention as needing improved consistency.</p>
Relevant metrics	<p>6b – Inspection reports completed within the prescribed timeframe: 109/124 = 88%.</p> <ul style="list-style-type: none">• Goal: 100% of reports completed in timely manner.
State response	<p>Wastewater Facilities:</p> <p>The NDEQ has had a policy of requiring wastewater facilities inspection reports completed in three weeks and sent for internal review. With review, a 24 day turnaround is normal. NDEQ will clarify its enforcement manual on this issue. The NDEQ respectfully requests a report on EPA’s average time of report completion on inspections it conducts in Nebraska.</p> <p>CAFO:</p> <p>The SOP for conducting routine compliance inspections at CAFOs is to complete the inspection report and a draft response letter within three weeks of the inspection. NDEQ will clarify its enforcement manual on this issue. The NDEQ respectfully requests a report on EPA’s average time of report completion on inspections it conducts in Nebraska.</p>
Recommendation	None required.

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

Finding 7-1

Area for State Improvement

Description

Permit schedule violations appearing in the national database include legitimate noncompliance needing a state response as well as violation flags that need to be updated and “turned off” with milestone achieved dates.

Explanation

38 facilities, including 4 majors and 34 non-majors, had permit compliance schedule violations appearing in OTIS during one or more quarters of FFY 2011. EPA reviewed 3 of these facilities. In the cases of Lewiston and Madrid, the schedule violations appearing in OTIS were found to be legitimate, and NDEQ needs to continue working with those facilities until they achieve their scheduled milestones and NDEQ receives the corresponding deliverables required by the permit. Once the deliverables are received, NDEQ needs to enter the achieved dates into ICIS so that violation flags do not appear in future quarters on the facility’s compliance record. In the case of Plattsmouth, the scheduled milestones have been achieved, and the deliverables received, but NDEQ has not entered achieved dates in ICIS to clear the record of noncompliance. Even if deliverables are received late, entry of achieved dates will limit the appearance of noncompliance flags to only those quarters in which the deliverable was overdue but not yet received.

As a related matter, EPA reviewed 1 of the 15 facilities flagged for having compliance schedule violations in FFY 2011. Western Sugar Cooperative is a major with a compliance schedule driven by an EPA administrative order, but EPA had not entered a final achieved date in ICIS, which triggered the violation. EPA identified several major and minor facilities with similar compliance schedules in ICIS that needed to be updated and has made procedural changes to regularly update those schedule dates in the database.

Note that this finding has been included as a common finding in the “CWA-NPDES Integrated SRF and PQR Review” part of this report.

Relevant metrics

7c – Permit schedule violations: 38.
7b – Compliance schedule violations: 15.

State response

NDEQ does not presently have authority to enter schedules into ICIS. In addition, ICIS did not have an acceptable resolution code for the State to use during the periods that were reviewed. NDEQ has exerted considerable effort to update ICIS and maintain this data base. Currently, NDEQ is in the process of replacing the Compliance Specialist that entered the ICIS data. Discussions after December 31, 2012 would allow time for

the new individual to get familiar with the ICIS system.

Many of these compliance issues are in small communities with elderly, poor populations and the solution and costs of the project makes compliance complicated. We actively work with these communities. The Wastewater Section has an individual who tracks compliance issues and we have periodic meetings to discuss progress. Management meets to discuss compliance issues. NDEQ has procedure in place but would like to discuss this in more detail by March 2013 with EPA R7. EPA's experience with Tilden and Winnebago Nebraska may help provide a common issue to develop more effective strategies.

Recommendation

NDEQ should submit to EPA a plan with timeframe for implementing a process to remedy overdue compliance schedule violations. The process should include a mix of working with the facilities where deliverables have not been received—either informally or with enforcement actions, as appropriate—and entering achieved dates for received deliverables that have triggered overdue violations. By October 31, 2013, EPA will verify that compliance schedule violations in ICIS are being addressed consistently and appropriately. EPA and NDEQ will discuss progress on a semi-annual basis. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

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

Finding 7-2

Area for State Improvement

Description

Compliance determinations are not consistently made as a follow-up to evidence gathered during inspections.

Explanation

91 of the 125 inspection reports reviewed led to an accurate compliance determination; however, 34 inspection reports either did not lead to a compliance determination or resulted in a compliance determination that appears inaccurate because it did not reflect all information gathered during the inspection. This finding applies to all NPDES program areas. The distribution across NPDES program areas of inspection reports not leading to a clear and accurate compliance determination (complDet) is as follows:

	# reports not leading to a complDet	# reports reviewed	% reports not leading to a complDet
CAFOs	21	73	29%
Stormwater	3	18	17%
Pretreatment	1	10	10%
Wastewater	9	24	38%

In the case of inspection reports not leading to a compliance determination, the report and other associated documents in the file (e.g. cover letters, memos to file, etc.) did not clearly indicate whether NDEQ determined that any violations had been observed as part of the inspection. Lack of a clear compliance determination accounts for most of the 34 instances cited above.

In other instances, information in an inspection report strongly suggests that a particular observation constitutes a deficiency or violation, without explicitly saying as much, but the compliance determination ultimately made by NDEQ either indicated that violations were not found or was silent regarding the observation in question. Examples include Barneston, Behlen Manufacturing, Bruning, and CVS Pharmacy.

Finally, many wastewater inspection files included an inspection data sheet that is routed with the inspection report for use by data entry staff responsible for entering summary information about the inspection into ICIS. The inspection data sheet asks whether noncompliance was found at the facility. For many inspection files, the answer to this question was the only indication that NDEQ made a compliance determination. Reliance on the inspection data sheet is not inherently a problem but does require that NDEQ answer the question carefully. In one instance, Crofton WWTF, the inspection data sheet said the facility was in compliance, but the inspection report contradicted this assertion with evidence strongly suggesting that

violations had in fact been found.

EPA addendum in follow-up to the January 2013 meeting with NDEQ noted in the state response below: During the meeting, NDEQ better articulated its process for making determinations of compliance, including recent enhancements. NDEQ also shared an example of its improved process for using inspection reports and cover letters to identify potential violations that are under evaluation by the Department prior to making a decision about issuance of an NOV.

Relevant metrics

7e – Inspection reports reviewed that led to an accurate compliance determination: $93/125 = 74\%$.

State response

Previous violations are addressed in LOWs or NOVs not the inspection report. The inspection report is for factual observations to be used for compliance determinations. This section is similar to Element 6, therefore we request that EPA R7 come to NDEQ by March 2013 to specifically discuss potential modifications to the inspection reports and the use of NOVs for compliance notification. Furthermore, NDEQ requests EPA send examples and guidance that would be compatible with NDEQ process of using NOVs for official notice by December 31, 2012.

Obviously, EPA has a different procedure for the timing of violation determinations. Element 7 itself does not deal with the timing issue and provides flexibility in methodology.

Follow-up to the January 2013 meeting with EPA: See follow-up responses for Elements 6-1, 6-3 and 8-1.

Recommendation

By June 1, 2013, NDEQ should submit a summary of its various compliance determination mechanisms, including those that do and do not involve an NOV and under what circumstances each option is expected to be used. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

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

Finding 7-3

Area for State Improvement

Description

The state does not make prompt determinations of noncompliance based on DMR data.

Explanation

There is a performance issue that falls generally under Element 7. The NDEQ central office in Lincoln receives Discharge Monitoring Reports (DMRs) from facilities within one month following the end of each monitoring period, enters the DMR data into ICIS, and forwards a copy of DMRs to the field office or central office compliance staff responsible for monitoring each facility's compliance status. Many files reviewed by EPA included a compliance determination concerning DMR effluent violations or DMR non-receipt. Though appropriate and accurate, five of those determinations were not made until two to seven months following NDEQ's receipt of the DMRs. Those five instances include Crofton, Lodgepole, Nemaha, North Platte, and TMCO Powder Coating, representing three different field offices and the central office.

Relevant metrics

State response

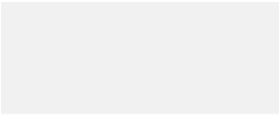
NDEQ will look into the issues surrounding timeliness of those facilities noted. NDEQ has made considerable effort on training communities to properly submit DMRs and has sent letters to communities for resubmittal for omissions. Most DMR non-receipts are for non-discharging facilities or after investigation the information from the lab was found but the DMR was not submitted. We print off non-compliance reports from ICIS and distribute them to inspectors. We are addressing DMR issues. We are willing to discuss this issue with EPA and how this will change once permittees submit directly to EPA with e-DMR.

NDEQ requests a meeting with EPA separate from the meeting proposed in Element 6-1 to further discuss DMR review, timely review and expected actions including the new e-reporting rule. This meeting should occur before March 2013 at NDEQ offices.

NDEQ follow-up: The meeting with EPA occurred in January 2013.

Recommendation

NDEQ should enhance and implement procedures that can be applied consistently among all compliance staff for reviewing and responding to DMR violations. EPA recommends that such procedures cover the spectrum of written and non-written responses that are appropriate to different types of DMR violations and record-keeping protocols for non-written responses. NDEQ should submit a report to EPA on enhancements that have been implemented by October 31, 2013. Once EPA is satisfied



that state action has addressed the underlying finding, this recommendation will be considered complete.

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

Finding 8-1

Area for State Improvement

Description

Instances of Significant Noncompliance (SNC) present in the file or alluded to in inspection reports are not brought to the facility’s attention as SNC, High Priority Violations (HPV), or otherwise serious violations needing correction.

Explanation

10 facilities had legitimate SNC violations present in the file across the categories of facilities for which SNC determinations should be made. These categories include major, non-major P.L. 92-500 (federal grant awardees), and pretreatment facilities. For major and P.L. 92-500 facilities, SNC criteria in the national program guidance closely relate to HPV criteria in the state’s Enforcement Manual. For pretreatment facilities, SNC criteria and the state’s obligation to respond accordingly are codified in federal regulation.

SNC violations for 8 of the 10 facilities were not identified to the facility as significant deficiencies needing the facility’s attention. Those facilities include Blair, Nucor Steel, Plattsmouth, Novartis Consumer Health, CJ Foods, Iams Co., Tasty Toppings, and Gibbon Packing. The first four are wastewater facilities, and violation types included effluent exceedances, SSOs, and bypasses. In the case of Blair and Plattsmouth, violations were due to flooding. While a facility cannot control this cause of violations, progress toward repair in both instances followed a protracted timeline extending beyond receding of floodwaters. NDEQ should emphasize in writing the importance of expeditiously repairing a facility in SNC to restore proper wastewater treatment. The latter four facilities are pretreatment permittees, for which 40 CFR 403.8 establishes SNC criteria and requires the control authority to take appropriate enforcement and comply with public participation requirements of 40 CFR Part 25. NDEQ’s Enforcement Manual categorizes HPVs at pretreatment facilities in accordance with the federal regulation on SNC.

Relevant metrics

8a1 – Major facilities in SNC during the reporting year: 21.

8a2 – Percent of major facilities in SNC during the reporting year: $21/54 = 39\%$.

- National average: 22%.

8b – Percentage of Single Event Violations that are accurately identified as SNC or non-SNC: $2/6 = 33\%$.

- Goal: 100% of files with appropriate determination of SNC or non-SNC.

8c – Percentage of Single Event Violations identified as SNC reported timely: $1/2 = 50\%$ (Note that not all SEVs evaluated under 8b could be evaluated under 8c).

- Goal: 100%.

7a1 – Number of major NPDES facilities with single event violations (reported to ICIS): 2.

7a2 – Number of non-major facilities with single event violations (reported to ICIS): 2.

State response

NDEQ worked with Blair and Plattsmouth during and after the flood to get or stay in compliance. NDEQ encouraged the facilities to work as quickly as possible to return to compliance. This flood was an extreme event and the river and ground water levels remained high for some time even after flood waters receded.

Sanitary Sewer Overflows (SSO) are investigated. If the SSO is actually caused by the community, the issue is addressed and documented.

We have not consistently used the terms Significant Non-Compliance (SNC) or Single Event Violations (SEV) in our discussions with communities. That may be because these terms are not defined in the Clean Water Act (CWA) or Code of Federal Regulations (CFR) but by EPA guidance or policy. NDEQ will evaluate procedures to identify and make an enforcement determination for SNC and SEV. Violation notification would be in NOVs, not the inspection report.

NDEQ request that this issue be discussed in the same meeting to address Section 7-3.

Follow-up to the January 2013 meeting with EPA: NDEQ will work to ensure reports or checklists consistently implement notification to facilities. Example of an NOV in Attachment R section SRF 8-1 and proposed checklist additions in Section SRF 6-1.

Recommendation

NDEQ should better identify SNC at pretreatment facilities as well as SNC at majors, including Single Event Violations (SEVs). NDEQ should follow its Enforcement Manual guidelines for issuing NOVs to facilities with HPVs. For pretreatment industries, NDEQ should adhere to the requirements of 40 CFR 403.8. By October 31, 2013, NDEQ should send to EPA a sample of recent pretreatment NOVs sent to facilities in SNC and an example NOV sent to a major in SNC, showing the improvements made. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

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

Finding 8-2	Meets Expectations
Description	NDEQ uses Reportable Noncompliance resolution codes to appropriately end strings of faulty DMR non-receipt and other reporting violations in ICIS.
Explanation	<p>A large number of major and non-major traditional NPDES permittees in Nebraska have had years of continuous DMR non-receipt or other reporting violation codes dictating the compliance status in ICIS and OTIS. While such codes are usually legitimate for the initial quarter when the reporting violation occurred, ICIS continues to show the violation in subsequent quarters until the missing data is satisfied or the state overrides the RNC code with an appropriate resolution code. The result is that many major facilities appear to be in SNC long after the initial reporting violation occurred, and many of the 21 majors in SNC in FFY 2011 were on the list due to such missing data. In late FFY 2011, NDEQ began to use an appropriate RNC resolution code to end the string of unwarranted non-receipt and reporting violation codes, which results in more accurate compliance data in the national databases. Starting in FFY 2012, EPA expects fewer majors to appear on the SNC list for this reason. Facilities reviewed by EPA that received an RNC resolution code in FFY 2011 include Beatrice, Fremont, McCook, MG Waldbaum, Tyson Fresh Meats, and Western Sugar Cooperative. NDEQ should continue this practice where appropriate for both major and non-major facilities.</p>
Relevant metrics	<p>7d – Major facilities in noncompliance: $40/51 = 78\%$. 7g – Non-major facilities in Category 2 noncompliance: 88. 8a1 – Major facilities in SNC during the reporting year: 21. 8a2 – Percent of major facilities in SNC during the reporting year: $21/54 = 39\%$.</p> <ul style="list-style-type: none">• National average: 22%.
State response	NDEQ response not required.
Recommendation	None required.

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

Finding 9-1

Area for State Attention

Description

Informal enforcement actions do not consistently result in violators returning to compliance.

Explanation

57 of the 64 informal enforcement actions reviewed by EPA either succeeded in getting a return to compliance or ultimately led to a formal enforcement action that legally required a return to compliance. The 7 informal actions that did not accomplish one or the other consists of Letters of Warning (LOWs) and NOVs that required actions and/or a facility response by a specified date but did not result in the facility returning to compliance, as indicated by subsequent documents in the file showing unresolved noncompliance. The 7 facilities are Nemaha, Industrial Powder Coating, Novartis Consumer Health, Tasty Toppings, 37 Land & Cattle, Sioux County Feeders, and St. George Ranch. These facilities were also not required by a subsequent state action (formal or informal) to take actions that would return the facility to compliance. In such cases, the state needs to ensure that appropriate voluntary or binding actions are required of the violator and that additional follow-up measures are taken when the required actions are not completed.

All 11 formal enforcement actions reviewed by EPA required corrective actions by the violator by a date certain.

Because this finding concerns a deficiency for a small fraction of informal actions and none of the formal actions, the finding is categorized as an Area for State Attention not requiring a trackable recommendation.

Relevant metrics

9a – Percentage of enforcement responses that return or will return a source in SNC to compliance: $68/75 = 91\%$.

- Goal: 100% of enforcement actions return a source in SNC to compliance.

State response

NDEQ actions are appropriate and we work to bring facilities back into compliance. NDEQ also attempts to make uniform determinations and apply requirements consistently. NDEQ continues to work on procedures to make sure enforcement actions are addressed. In some cases the informal enforcement action is based on a violation where there is no action required to return to compliance, except to not repeat the violation. Thus, there is no compliance timeframe.

Recommendation

None required.

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

Finding 10-1

Area for State Improvement

Description

Formal enforcement actions and referrals to the state Attorney General, as well as some informal enforcement letters, are not issued in a timely manner.

Explanation

The 76 enforcement actions reviewed under this metric included 11 formal actions (i.e. administrative orders, consent orders, AG referrals, and consent decrees) and 65 informal actions (i.e. NOV_s, LOW_s, and Corrective Action Required letters). Altogether, 27 actions were not timely, representing formal and informal enforcement actions at traditional dischargers, stormwater sites, and CAFOs.

7 of the 11 formal actions were not issued or referred within 180 days of discovery of the underlying violations. 180 days is the benchmark for timely action according to the Water Quality Division's Enforcement Manual as well as federal guidance. The time from violation discovery to formal action or AG referral for the formal actions not timely ranged from 240 to more than 400 days. In all 7 cases, informal enforcement and voluntary tools were first used to move the facility toward compliance, and in 5 of those 7 cases the preceding informal actions were themselves not issued timely, i.e. within 90 days of discovery according to state guidance. In the majority of the 7 cases, however, the initial use of informal tools did not consume the bulk of time leading up to formal enforcement; rather, the lag times from use of informal tools to the initial enforcement request, and from enforcement request to issuance of an administrative order or AG referral, were responsible for most of the duration.

45 of the 65 informal enforcement actions reviewed were issued within 90 days of violation discovery, leaving 20 (31%) that were not issued timely. 90 days is the timeframe in the Water Quality Division's Enforcement Manual for escalating noncompliance to formal enforcement if voluntary measures fail. These 20 informal actions originated from a broad cross section of NDEQ's field offices.

The distribution across NPDES program areas of formal and informal enforcement actions that were not timely is captured in the following two tables.

Formal actions not timely:

	# actions not timely	# actions reviewed	% actions not timely
CAFOs	2	4	50%
Stormwater	1	2	50%
Pretreatment	0	0	-
Wastewater	4	5	80%

Informal actions not timely:

	# actions not timely	# actions reviewed	% actions not timely
CAFOs	11	39	28%
Stormwater	3	7	43%
Pretreatment	2	6	33%
Wastewater	4	13	31%

For majors only, NDEQ did not take any formal enforcement action in FFY 2011. Metric 10a, noted below as a relevant metric, is a data and goal metric that combines state and EPA actions. EPA took formal action at one major discharger (Fairbury WWTF) to address SNC, which explains why the numerator for metric 10a is 1 and not 0.

Relevant metrics

10a – Percent of major NPDES facilities with enforcement action taken in a timely manner:

1/14 = 7%

- Goal: 100% timely action

10b – Enforcement responses reviewed that address violations in a timely manner: 49/76 = 64%.

- Goal: 100% appropriate enforcement actions.

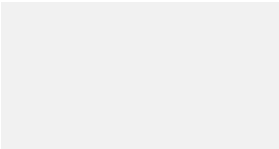
State response

The Department is reviewing its process regarding formal and informal enforcement on facilities. The Department has implemented a monthly meeting to identify and address enforcement actions. This issue will be identified for discussion at a monthly review.

NDEQ request that this issue be discussed in the same meeting to address Element 7-3.

Recommendation

NDEQ should conduct informal and formal enforcement according to state and federal guidelines for timeliness. NDEQ should review its Enforcement Manual and notify EPA of any modifications by June 1, 2013. By October 31, 2013, NDEQ should report to EPA on process enhancements it has implemented to ensure that field and central office personnel consistently escalate noncompliance, make enforcement referrals to the Legal Section, and issue formal administrative actions within timeframes established by the Enforcement Manual. NDEQ has agreed to



take these actions, and once EPA is satisfied that state actions have addressed the underlying finding, this recommendation will be considered complete.

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

Finding 10-2

Area for State Improvement

Description

NDEQ does not take appropriate enforcement actions to address violations at CAFOs.

Explanation

There is a performance issue that falls generally under Element 10. Through a review of NDEQ’s Enforcement Manual and discussions with personnel from the Agriculture Section, EPA has determined that NDEQ has no formal enforcement escalation policy for NPDES violations at CAFOs. In the absence of state guidance on priority violations and appropriate responses, EPA reviews state enforcement actions based on national program management guidance documents.

EPA reviewed 39 enforcement actions issued by NDEQ for violations associated with CAFOs. 15 of these 39 (38%) actions were informal enforcement action letters (e.g. LOWs, NOVs, and Correction Action Required letters) taken by the Agriculture Section that were not commensurate with the nature of violations, and under national guidance they should have been addressed through a formal enforcement action. 13 of the 15 informal actions were sent in response to illegal discharges of pollutants that arguably reached waters of the state. 3 of these facilities (Timmerman Feeding Corporation, RDO Ind. Feedlot, and S&A Feedlot) received two informal attempts to return them to compliance. Notwithstanding NDEQ’s statutory requirement to use voluntary means to return violators to compliance (see Appendix E), these 3 facilities, as well as several others that received only one informal letter following a long history of noncompliance, were granted generous opportunities to voluntarily change their operations to avoid escalated enforcement. None of the 15 informal actions ultimately led to formal enforcement. Because illegal discharge can be one of the most serious CWA violations, the threshold for escalating informal actions to formal enforcement to ensure a return to compliance should be lower than that for less serious violations.

Relevant metrics

State response

NDEQ reminds EPA that non-discharging CAFOs without NPDES permits are not under the jurisdiction of EPA and should not be used in this evaluation.

EPA has been consistently stating in this review that the CAFO inspection reports lack the detail to determine whether or not the CAFO was in compliance with the CWA. Yet, in this Finding EPA has made a determination that 13 of the 15 informal actions were illegal discharges EPA should explain this inconsistency.

NDEQ evaluates each non-compliance event discovered during inspections or investigations at all AFOs, not only NPDES permitted CAFOs, to determine the appropriate enforcement tool. During wet weather period discharges, the NDEQ determines whether the discharge was legal or illegal. Discharges are considered legal if rainfall exceeded the 25-year, 24-hour storm event and the livestock waste control facility was being properly managed prior to the start of the rainfall. Informal actions are used extensively to obtain compliance. However, formal actions are also used when necessary and appropriate to return the facility to compliance and to seek penalties for violations. For example, each illegal discharge into waters of the state is referred for formal enforcement.

The current decision-making on the enforcement tool of choice may not be well documented in the file. NDEQ will implement steps to make sure the file reflects the decision in each alleged discharge or other violation. NDEQ requests a meeting with EPA to discuss enforcement response policy for CAFO violations by March 2013.

Recommendation

NDEQ has agreed to develop an enforcement response policy for NPDES violations at CAFOs and should submit it to EPA for review by June 1, 2013. Once EPA is satisfied that the state has developed and begun to implement an acceptable policy, this recommendation will be considered complete.

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

Finding 10-3

Meets Expectations

Description

NOVs and informal notices of DMR non-receipt are appropriately used to return facilities with isolated reporting violations back to compliance.

Explanation

There is a performance issue that falls generally under Element 10. NDEQ sent NOVs and notices of DMR non-receipt to 8 facilities reviewed by EPA. These informal letters notified the facilities of their deficient DMRs and requested a response with the corrected or missing data. Facilities receiving these letters represent the major, non-major, and pretreatment universes and include the following: Barneston, Beatrice, Behlen Manufacturing, Grand Island, Iams Company, Nemaha, North Platte, and Valmont Industries. This use of informal enforcement is appropriate to the type of violation and should continue to be used. Also, EPA notes that this performance is an improvement over what was found during the FFY 2007 SRF Round 2 review.

Relevant metrics

State response

NDEQ response not required.

Recommendation

None required.

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

Finding 11-1

Area for State Improvement

Description

Economic benefit and gravity are consistently included in penalty calculations, but a rationale for how BEN is calculated is missing from some penalty worksheets.

Explanation

6 of the 7 penalty actions reviewed accounted for the economic benefit gained by the violator, and 7 of 7 included a gravity component. For the one instance in which economic benefit was not considered (Timm Soil Mining), NDEQ did not provide a rationale for its exclusion from the penalty calculation. While the state may use discretion to exclude economic benefit in exceptional circumstances, the file must indicate why that decision was made, as it represents a departure from the national expectation for consistency.

For 3 of the 6 cases that did account for economic benefit, NDEQ’s penalty calculation worksheet described the types of delayed and avoided costs included in the calculation, while the other 3 cases lacked such description.

EPA credits NDEQ for making notable improvement to its use of the penalty calculation worksheet, including descriptions of economic benefit and gravity, since the Round 2 review covering FFY 2007. As a follow-up to the Round 2 review, NDEQ agreed to ensure that penalty calculation information included in judicial referrals is useful to the Nebraska AG.

Relevant metrics

11a – Penalty calculations that include gravity and economic benefit: 6/7 = 86%.

- Goal: 100% of penalty calculations include gravity and BEN as appropriate.

State response

The Department recognizes the importance of ensuring a level playing field and will work to ensure that penalty calculations and settlements achieve this goal. We believe we have made gains with our penalty calculation worksheet which we share with the Attorney General in our enforcement referrals. We understand that our files do not typically include information or documentation as to the rationale for final settlements. The Department will address this concern with the Attorney General and provide a response by March 2013.

Recommendation

NDEQ referrals to the state AG should consistently include a well documented economic benefit component of penalty calculations, including specific categories of delayed and avoided costs, and should provide a rationale for any cases in which economic benefit is being excluded from the penalty. NDEQ should discuss these concerns with the

state Attorney General and provide a report of improvements to EPA by March 31, 2013. EPA and NDEQ will discuss progress on a quarterly basis. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

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

Finding 12-1	Area for State Attention
Description	Nebraska files for penalty actions generally account for the difference between proposed and final assessed penalties and contain proof that assessed penalties are collected.
Explanation	3 of the 4 penalty action files reviewed for documentation of the difference between initial and final assessed penalties contained information on how any reduction in penalty was derived. 2 of the 3 penalty action cases reviewed for verification that penalties were collected contained the required documentation. Although these proportions do not measure up to the 100% goal, only one case from a small sample size was not counted under each metric (BS Wash, Inc., and Classic Dairy, respectively), which leads EPA to conclude that NDEQ and the Nebraska AG are generally successful in their documentation under metric 12a. EPA brings the two aberrations to the state’s attention to encourage greater consistency.
Relevant metrics	12a – Documentation on difference between initial and final penalty: 3/4 = 75%. <ul style="list-style-type: none">• Goal: 100% of penalties document difference between initial and final assessed penalty. 12b – Penalties collected: 2/3 = 67%. <ul style="list-style-type: none">• Goal: 100% of penalties collected.
State response	The Department will continue to work with the Attorney General to achieve appropriate and consistent penalties for violations referred for enforcement.
Recommendation	None required.

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

Finding 12-2	Area for State Improvement
Description	Large portions of assessed penalties are frequently waived for violators who demonstrate a prompt return to compliance, resulting in a reduced deterrent value of monetary penalties.
Explanation	<p>There is a performance issue that falls generally under Element 12. 3 of the 4 settled penalty actions reviewed by EPA had a provision to assess a much smaller penalty than what NDEQ recommended to the Nebraska AG, due to the AG practice of waiving half or more of the monetary penalty contingent on a prompt return to compliance by the violator. Specifically, the entire \$10,000 and 7,500 penalties for B.S. Wash and Dinsdale Brothers, respectively, were slated to be waived on this condition. Likewise, \$5,000 of the penalty for Blue River Pork could be waived contingent on a prompt return to compliance.</p> <p>This practice of including a provision in final orders to waive a significant portion of the settled penalty significantly reduces the deterrent value of these actions.</p>
Relevant metrics	
State response	The Department will discuss this concern with the Attorney General and provide a report by March 2013. We would note that the Attorney General has filed follow-up actions to collect waiveable penalties where the facility fails to meet the specified compliance requirement in the consent decree.
Recommendation	EPA recognizes NDEQ may not have direct control over the conditions for penalty assessment that are placed in orders by the state AG; however, NDEQ and the state AG should discuss appropriate uses of waivers to discontinue or at least minimize their use. EPA will be available to assist NDEQ in these discussions upon request. NDEQ and the state AG should reach agreement on how to address this concern and provide a report to EPA on the path forward by March 31, 2013. EPA will check with the state on a quarterly basis to determine progress in this area. Once EPA is satisfied that state action has addressed the underlying finding, this recommendation will be considered complete.

Appendix A: Data Metric Analysis

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

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

Clean Water Act

Metric	Metric Name	Measure Type	Agency	National Goal	National Average	Nebraska Metric	Count	Uni-verse	Initial Finding	Explanation
1a1	Number of Active NPDES Majors with Individual Permits	Data Verification	State			51			Meets SRF Program Requirements	
1a2	Number of Active NPDES Majors with General Permits	Data Verification	State			0			Meets SRF Program Requirements	
1a3	Number of Active NPDES Non-Majors with Individual Permits	Data Verification	State			647			Meets SRF Program Requirements	Consists of non-major municipal facilities, non-major industrial direct dischargers, pre-treatment dischargers, and individually-permitted Concentrated Animal Feeding Operations.
1a4	Number of Active NPDES Non-Majors with General Permits	Data Verification	State			448			Meets SRF Program Requirements	Consists of Concentrated Animal Feeding Operations with a general permit. The state maintains an internal inventory of facilities with general stormwater permits.
1b1	Permit Limits Rate for Major Facilities	Goal	State	>= 95%	98.6%	100%	51	51	Meets SRF Program Requirements	Permit limits were coded for all major facilities.

Metric	Metric Name	Measure Type	Agency	National Goal	National Average	Nebraska Metric	Count	Uni-verse	Initial Finding	Explanation
1b2	DMR Entry Rate for Major Facilities.	Goal	State	>= 95%	96.5%	99.5%	2021	2032	Meets SRF Program Requirements	The State's performance exceeds the national goal and the national average.
1b3	Number of Major Facilities with a Manual Override of RNC/SNC to a Compliant Status	Data Verification	State			0			Meets SRF Program Requirements	The State did not execute any manual overrides of RNC or SNC codes.
1c1	Permit Limits Rate for Non-Major Facilities	Informational only	State		66.1%	90.6%	586	647	Meets SRF Program Requirements	The State's performance exceeds the national average. The 61 facilities not counted are all Concentrated Animal Feeding Operations that do not have limits in their permits.
1c2	DMR Entry Rate for Non-Major Facilities.	Informational only	State		72.6%	91.4%	8591	9402	Meets SRF Program Requirements	The State's performance exceeds the national average.
1e1	Facilities with Informal Actions	Data Verification	State			51			Meets SRF Program Requirements	All of the State's NOVs issued to majors and many of the NOVs issued to minors are included within these 51 NOVs.
1e2	Total Number of Informal Actions at CWA NPDES Facilities	Data Verification	State			61			Meets SRF Program Requirements	All of the State's NOVs issued to majors and many of the NOVs issued to minors are included within these 51 NOVs.
1f1	Facilities with Formal Actions	Data Verification	State			4			Area for State Improvement	The State issued 1 formal enforcement action to a P.L. 92-500 non-major facility in FFY 2011 but did not enter the action in ICIS, as is required for such non-majors as well as for majors and all actions with a judicial penalty component.
1f2	Total Number of Formal Actions at CWA NPDES Facilities	Data Verification	State			5			Area for State Improvement	The State issued 1 formal enforcement action to a P.L. 92-500 non-major facility in FFY 2011 but did not enter the action in ICIS, as is required for such non-majors as well as for majors and all actions with a judicial penalty component.

Metric	Metric Name	Measure Type	Agency	National Goal	National Average	Nebraska Metric	Count	Uni-verse	Initial Finding	Explanation
1g1	Number of Enforcement Actions with Penalties	Data Verification	State			0			Area for State Improvement	The State issued 6 formal enforcement actions with penalties through its Attorney General, which is in the judicial arena. All 6 of those actions needed to be entered into ICIS.
1g2	Total Penalties Assessed	Data Verification	State			\$0			Area for State Improvement	The State issued 6 formal enforcement actions with penalties through its Attorney General, which is in the judicial arena. All 6 of those actions needed to be entered into ICIS.
2a1	Number of formal enforcement actions, taken against major facilities, with enforcement violation type codes entered.	Data Verification	State			0			Meets SRF Program Requirements	The State did not issue any formal enforcement actions to major facilities in FFY 2011.
5a1	Inspection Coverage - NPDES Majors	Goal metric	State		54.4%	64.7%	33	51	Area for State Attention	33 of the 36 inspections completed by NDEQ in FFY 2011 were recorded in ICIS. The other 3 had not been, but should have been, entered.
5b1	Inspection Coverage - NPDES Non-Majors	Goal metric	State		23.7%	19%	123	647	Meets SRF Program Requirements	ICIS shows 132 inspections at non-majors in this category, compared to 133 reported under the CMS. These two nearly agreeable numbers differ by a larger margin with the 123 non-majors appearing in OTIS for this data metric. Some of the facilities absent from the OTIS list were second inspections at the same facility. OTIS counts the number of facilities inspected whereas ICIS counts the number of inspections. The other facilities absent from the OTIS list have permits relegated to inactive status.

Metric	Metric Name	Measure Type	Agency	National Goal	National Average	Nebraska Metric	Count	Uni-verse	Initial Finding	Explanation
5b2	Inspection Coverage - NPDES Non-Majors with General Permits	Goal metric	State		19.2%	0/0	0	0	Meets SRF Program Requirements	This category does not match any of the CMS inspection categories in which NDEQ made inspection commitments; hence the Nebraska metric is 0. Completion of inspections under the CMS is evaluated under Metric 4a.
7a1	Number of Major Facilities with Single Event Violations	Data Verification	State			2			Meets SRF Program Requirements	ICIS shows reporting, monitoring, and SWPPP implementation violations for 2 major facilities. File review needs to determine whether the State is identifying and tracking other SEVs.
7a2	Number of Non-Major Facilities with Single Event Violations	Informational only	State			2			Meets SRF Program Requirements	This data is not required for entry in ICIS.
7b1	Compliance schedule violations	Data Verification	State			15			Area for State Attention	4 of the 15 facilities with outstanding compliance schedule violations were majors, for which the maintenance of enforcement action compliance schedules in ICIS is a requirement. EPA will review 1 of the 4 majors on this list.
7c1	Permit schedule violations	Data Verification	State			38			Area for State Improvement	4 of the 38 facilities with outstanding permit schedule violations were majors, for which the maintenance of permit compliance schedules in ICIS is a requirement. The initial finding is justified based on the long list of 38 facilities that have either inaccurate data or violations in ICIS. EPA will review 1 of the 4 majors and 2 of the non-majors on this list.

Metric	Metric Name	Measure Type	Agency	National Goal	National Average	Nebraska Metric	Count	Uni-verse	Initial Finding	Explanation
7d1	Major Facilities in Noncompliance	Review Indicator	State		71.2%	78.4%	40	51	Area for State Improvement	The noncompliance rate for majors is greater than the national average. Some facilities are in noncompliance due to effluent or schedule violations while others have data problems. EPA will review 11 of the majors on this list representing a cross-section of the problem types.
7f1	Non-Major Facilities in Category 1 Noncompliance	Data Verification	State			509			Area for State Improvement	The 509 facilities in Category 1 non-compliance represents a large portion of the non-major facilities in Nebraska that have effluent limits in their permits. EPA will review 9 non-majors from this list.
7g1	Non-Major Facilities in Category 2 Noncompliance	Data Verification	State			88			Area for State Attention	Many of the 88 non-majors on this list appear to have DMR reporting violations, whether legitimate or not. EPA will review 3 of the non-majors from this list.
7h1	Non-Major Facilities in Noncompliance	Informational only	State			83.8%	542	647	Area for State Improvement	The 509 facilities in Category 1 non-compliance represents a large portion of the non-major facilities in Nebraska that have effluent limits in their permits. EPA will review 12 non-majors from this list, which includes all facilities in Category 1 or 2 noncompliance.
8a1	Major Facilities in SNC	Review indicator metric	State			21			Area for State Improvement	The 21 majors in SNC during FFY 2011 appear to have had myriad different violations that need further investigation. EPA will review 9 majors from this list.
8a2	Percent of Major Facilities in SNC	Review indicator metric	State		22.3%	38.9%	21	54	Area for State Improvement	Nebraska's SNC rate exceeded the national average. EPA will review 9 majors from this list.

Metric	Metric Name	Measure Type	Agency	National Goal	National Average	Nebraska Metric	Count	Uni-verse	Initial Finding	Explanation
10a1	Major facilities with Timely Action as Appropriate	Goal metric	State			7.1%	1	14	Area for State Improvement	The 13 majors without timely action during FFY 2011 appear to have had myriad different violations that need further investigation. EPA will review 4 majors from this list.

Appendix B: File Metric Analysis

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

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

Final findings are presented above in the CWA Findings section.

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

State: Nebraska							Review Year: FY 2011
CWA Metric #	Description	Numerator	Denominator	Metric Value	Goal	Initial Findings	Details
2b	Files reviewed where data are accurately reflected in the national data system: Percent of files reviewed where data in the file are accurately reflected in the national data systems	40	43	93.0%	95%	State Attention	Most required data appear to be present in ICIS, with a small number of exceptions. This metric value is just below the national goal, which warrants state attention.
3a	Timeliness of mandatory data entered in the national data system	41	43	95.3%	100%	Meets Requirements	
4a1	Percent of planned inspections completed: Majors	36	24	150.0%	100%	Meets Requirements	
4a2	Percent of planned inspections completed: Individual non-majors	124	106	117.0%	100%	Meets Requirements	
4a3	Percent of planned inspections completed: General non-majors	56	43	130.2%	100%	Meets Requirements	

4b	Planned commitments completed: CWA compliance and enforcement commitments other than CMS commitments, including work products/commitments in PPAs, PPGs, grant agreements, MOAs, MOUs or other relevant agreements	Enter Number of Yes Responses Here	Enter Total Number of Responses Here	#VALUE!	100%	State Attention	NDEQ completed most of the tasks listed in the FFY 2011 PPG workplan. Two minor exceptions are noted, which pertain to transmission of copies of sludge reports to EPA and completion of all items from the Round 2 SRF final report.
6a	Inspection reports reviewed that provide sufficient documentation to determine compliance at the facility: Percentage of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance	84	127	66.1%	100%	State Improvement	Many reports lacked enough information in checklist and narrative sections to inform a complete and accurate compliance determination.
6b	Inspection reports completed within the prescribed time frame: Percent of inspection reports reviewed that are timely	109	124	87.9%	100%	Meets Requirements	
7e	Inspection reports reviewed that led to an accurate compliance determination	93	125	74.4%	100%	State Improvement	A clear compliance determination, and in some cases an accurate determination, were not always made following inspections.
8b	Percentage of single event violation(s) that are accurately identified as SNC or Non-SNC	2	6	33.3%	100%	State Attention	4 SNC violations were not identified to facilities as significant deficiencies needing attention.
8c	Percentage of SEVs Identified as SNC Reported Timely	1	2	50.0%	100%	Meets Requirements	
9b	Percent of enforcement responses that return or will return source in SNC to compliance	68	75	91%	100%	State Attention	Informal enforcement actions did not consistently require follow-up actions by the facility and/or were not successful, without further escalation, in returning facilities to compliance.
10b	Enforcement responses reviewed that address SNC that are appropriate to the violations	60	75	80.0%	100%	State Improvement	Informal enforcement letters sent to CAFOs were not appropriate, as stand-alone enforcement tools, to address the magnitude of some violations observed.
11a	Percentage of penalty calculations reviewed that consider and include, where appropriate, gravity and economic benefit.	6	7	85.7%	100%	State Improvement	Economic benefit rationale is still lacking from half of the penalty cases reviewed that included economic benefit.

12a	Documentation on difference between initial and final penalty: Percentage of penalties reviewed that document the difference between the initial and final assessed penalty, and the rationale for that difference	3	4	75.0%	100%	Meets Requirements
12b	Penalties collected: Percentage of penalty files reviewed that document collection of penalty	2	3	66.7%	100%	Meets Requirements

Finding Categories

- Good Practice:** Activities, processes, or policies that the SRF metrics show are being implemented exceptionally well. In addition, there must also be innovative and noteworthy activities, processes, or policies that the state used to achieve these results that can serve as models for other states.
- Meets Requirements:** No performance deficiencies identified. The state is expected to maintain high performance.
- Area for State Attention:** Single or infrequent instances that do not constitute a pattern of deficiencies or a significant problem.
- Area for State Improvement:** Activities, processes, or policies that SRF data and/or file metrics show as major problems requiring EPA oversight.

Appendix C: File Selection

In the SRF, files are selected according to a standard protocol using a web-based file selection tool supplemented by state activity lists. This protocol and tool are designed to provide consistency and transparency to the process. Based on the description of the file selection process below, states should be able to recreate the results in the table that follows.

File Selection Process

EPA selected facility files to represent the various types of permits, industries, and facilities that were subject to NDEQ compliance monitoring and/or enforcement activities in FFY 2011. Nebraska had a universe of 745 NPDES permitted facilities that were subject to compliance monitoring or enforcement in FFY 2011, including the following permit groups:

- 36 core program majors;
- 133 core program minors;
- 100 pretreatment industries;
- 22 construction stormwater permittees;
- 98 industrial stormwater permittees; and
- 356 large, permitted concentrated animal feeding operations.

A total of 109 facility files were selected for the SRF review, consisting of 99 representative files, 8 PQR files, and 2 supplemental files. The 99 representative files were selected to represent compliance inspections and enforcement actions taken at facilities from the municipal and industrial groups listed above as well as from the state's 6 field offices. The relative proportions of facilities selected within each permit group largely reflect the relative spread of NDEQ's compliance monitoring and enforcement resources across the NPDES program areas.

EPA selected representative files using the Online Tracking Information System (OTIS) SRF File Selection Tool to the extent possible, which depended on the amount of data that NDEQ has entered into ICIS for the activities of interest. With compliance monitoring records in ICIS for core program majors and minors, EPA was able to select inspections from those two groups using the OTIS tool. For all other permit types, as well as for enforcement actions taken at core program facilities, EPA obtained inspection and enforcement records from NDEQ and made selections from NDEQ's lists. In both cases, the approach to facility selection was randomized as much as possible. The OTIS SRF File Selection Tool enables random selection from within each permit group, while random selection from NDEQ lists was facilitated using Excel spreadsheets.

The second category of facility files is supplemental files, which EPA selected to enable a better understanding of one potential concern raised during the Data Metrics Analysis. The SRF protocol allows the selection of targeted, supplemental facility files to aid reviewers in evaluating initial findings from the Data Metrics Analysis that could not be analyzed with confidence using randomly selected representative files alone. The particular data metric of concern in this case is 7c: Facilities with unresolved permit schedule violations.

The final category of facility files is PQR core program files. To foster EPA's process for identifying findings that cut across the permitting and enforcement programs, the 8 core program facilities reviewed under the PQR were also reviewed under the SRF. More details about the

review of common files is found in the part titled “NPDES Integrated SRF and PQR Review,” Section III.

The table that follows displays information for the 109 facilities selected for the SRF review. Information for core program majors and minors, as discussed above, is present in the national database and therefore was available via the OTIS File Selection tool. For other facilities in the table, information on violations, SEVs, and enforcement outputs is not present in the national database and was included in the table below only to the extent that EPA obtained it from NDEQ for the purpose of selecting representative files.

File Selection Table

ID Number	Facility Name	City	State Region or Inspector	Inspections	Violation	SEVs	SNC	Informal Actions	Formal Actions	Penalties	Selection Rationale
Core Program - Majors											
NE0000647	BEHLEN MANUFACTURING CO.	COLUMBUS	Northeast	0	Yes	0	SNC	0	0	0	PQR
NE0020915	BEATRICE WWTF	BEATRICE	Lincoln								Representative
NE0021121	PLATTSMOUTH WWTF	PLATTSMOUTH	Eastern	0	Yes	0	SNC	0	0	0	PQR
NE0021482	BLAIR WWTF	BLAIR	Eastern	1	Yes	0	No	0	0	0	PQR
NE0021504	MCCOOK WWTF	MCCOOK	West Central	1	Yes	2	No	0	1	0	PQR
NE0031381	FREMONT WWTF	FREMONT	Eastern	1	Yes	0	SNC	0	0	0	Representative
NE0032891	NORTH PLATTE WWTF	NORTH PLATTE	West Central	1	No	0	No	1	0	0	Representative
NE0036820	LINCOLN THERESA ST. WWTF	LINCOLN	Lincoln								PQR
NE0043702	GRAND ISLAND WWTF	GRAND ISLAND	Central	0	Yes	0	SNC	1	0	0	Representative
NE0111287	NUCOR STEEL - NORFOLK	NORFOLK	Northeast	1	Yes	0	SNC	0	0	0	PQR
NE0111686	WESTERN SUGAR COOP.	SCOTTSBLUFF	Panhandle	1	Yes	0	SNC	0	0	0	Representative
NE0113735	MG WALDBAUM COMPANY	WAKEFIELD	Northeast	1	Yes	0	SNC	0	0	0	Representative
NE0123501	TYSON FRESH MEATS	LEXINGTON	West Central	0	Yes	0	No	0	0	0	PQR
NE0130141	ADM CORN DIVISION	COLUMBUS	Northeast	1	Yes	0	SNC	0	0	0	PQR
Core Program - Minors											
NE0026565	VALMONT INDUSTRIES INC	VALLEY	Eastern	1	Yes	0	No	0	0	0	Representative
NE0045071	BRUNING WWTF	BRUNING	Lincoln	0	Yes	0	Category 1	2	0	0	Representative
NE0049123	DECATUR WWTF	DECATUR	Northeast	1	Yes	0	Category 1	0	0	0	Representative
NE0049131	CROFTON WWTF	CROFTON	Northeast	1	Yes	0	Category 1	2	0	0	Representative
NE0112119	BRIDGEPORT WWTF	BRIDGEPORT	Panhandle	1	Yes	0	Category 1	0	0	0	Representative
NE0112542	LODGEPOLE WWTF	LODGEPOLE	Panhandle	1	Yes	0	Category 1	1	0	0	Representative
NE0113891	SWIFT BEEF COMPANY	GRAND ISLAND	Central	0	Yes	0	Category 1	0	0	0	Representative
NE0121304	NEMAHA WWTF	NEMAHA	Lincoln	0	Yes	0	Category 1	0	0	0	Representative
NE0121509	KUGLER CO FERTILIZER	CULBERTSON	West Central	1	Yes	0	Category 1	1	0	0	Representative
NE0121711	BARNESTON WWTF	BARNESTON	Lincoln	1	Yes	0	Category 1	1	0	0	Representative
	DON HUWALDT		Northeast								
	BS WASH, INC.		Central								
Pretreatment											
NE0000701	NOVARTIS CONSUMER HEALTH	LINCOLN	Lincoln	0	Yes	0	No	1	0	0	Representative
NE0060011	TELEDYNE ISCO INC.	LINCOLN	Lincoln	0	Yes	0	Category 1	0	0	0	Representative
NE0060062	GENERAL DYNAMICS LINCOLN	LINCOLN	Lincoln	0	Yes	0	Category 1	0	0	0	Representative
NE0060089	BECTON DICKINSON	COLUMBUS	Northeast	0	Yes	0	Category 1	0	0	0	Representative
NE0114081	FEASTER FOODS	FAIRBURY	Lincoln	0	Yes	0	No	1	0	0	Representative
NE0114537	CNH AMERICA LLC	GRAND ISLAND	Central	0	Yes	0	Category 1	0	0	0	Representative

<u>ID Number</u>	<u>Facility Name</u>	<u>City</u>	<u>State Region or Inspector</u>	<u>Inspections</u>	<u>Violation</u>	<u>SEVs</u>	<u>SNC</u>	<u>Informal Actions</u>	<u>Formal Actions</u>	<u>Penalties</u>	<u>Selection Rationale</u>
NE0123846	GREAT PLAINS POLYMERS INC	OMAHA	Eastern	0	Yes	0	Category 1	0	0	0	Representative
NE0124061	GIBBON PACKING INC	GIBBON	Central	0	Yes	0	Category 1	0	0	0	Representative
NE0124435	HYDRAULIC COMPONENTS IND.	HARTINGTON	Northeast	0	Yes	0	Category 1	0	0	0	Representative
NE0124605	EXMARK MFG CO INC	BEATRICE	Lincoln	0	Yes	0	No	0	0	0	Representative
NE0129348	CHIEF INDUSTRIES		Central								
NE0132683	C J FOODS INC	PAWNEE CITY	Lincoln	0	Yes	0	Category 1	1	1	0	Representative
NE0133175	IAMS COMPANY (P&G)	AURORA	Central	0	Yes	0	Category 1	1	0	0	Representative
NE0133752	TMCO POWDERCOATING, INC	LINCOLN	Lincoln	0	Yes	0	Category 1	2	0	0	Representative
NE0137448	TASTY-TOPPINGS, INC.	DUNCAN	Northeast	0	Yes	0	Category 1	1	0	0	Representative
NE0137472	HUNT CLEANERS, INC.	COZAD	West Central	0	Yes	0	No	0	0	0	Representative
SW Industrial											
NER000005	Lincoln Industries, Inc.		Cunningham	Yes							
NER000696	Behlen Manufacturing Co.		B Anderson	Yes							
NER000783	Thermo King Corporation		Stittle	Yes							
NER000880	Iams Co.		Ewoldt	Yes							
NER001259	Ballantyne Strong, Inc.		B Anderson	Yes							
NER001315	Industrial Powder Coating		Cunningham					1			
	Papio Valley Auto Parts		Renner					1			
	iRock Concrete, LLC		Renner					1			
SW construction											
NER111779	Dorchester WWTF		R Anderson	Yes							
NER112420	CVS Pharmacy 04033		Ewoldt	Yes							
NER112242	Custer Campus		Stittle	Yes							
	Timm Soil Mining								1		
	Southwest Implement Inc.								1		
	Indianola WWTF		Stittle					1			
	Kenneth Deinert Residence		Renner					1			
Supplemental files for review											
NE0026051	LEWISTON WWTF	LEWISTON	Main	0	Yes	0	No	0	0	0	Supplemental
NE0040037	MADRID WWTF	MADRID	West Cen	0	Yes	0	Category 1	0	0	0	Supplemental
CAFOs											
NE0044521	COE Cattle Company		Northeast	Yes				1			
NE0097110	S&A Feedlots		Northeast	Yes				1			
NE0100625	Weltzenkamp Farms Southwest		Eastern	Yes							
NE0136123	Kroenke Farms		Eastern	Yes				1			
NE0136212	Butler County Dairy		Lincoln	Yes							

<u>ID Number</u>	<u>Facility Name</u>	<u>City</u>	<u>State Region or Inspector</u>	<u>Inspections</u>	<u>Violation</u>	<u>SEVs</u>	<u>SNC</u>	<u>Informal Actions</u>	<u>Formal Actions</u>	<u>Penalties</u>	<u>Selection Rationale</u>
NE0136361	Herd Co		Northeast	Yes							
NEG010032	37 Land & Cattle		Central	Yes				1			
NEG010051	Art Dose & Son Inc.		Central	Yes							
NEG010252	Beller Feedlot		Northeast	Yes				1			
NEG011021	Bowman Farms		Eastern	Yes							
NEG011023	Nebraksa ILS Feeders		West Central	Yes							
NEG011036	Keller Cattle Co		West Central	Yes							
NEG011037	Oahkosh Feedyard Corporation		Scotts Bluff	Yes							
NEG011043	3B Farms		Northeast	Yes				1			
NEG011048	RDO Inc Feedlot		Central	Yes				1			
NEG011049	Arbuck & Underwood Feedyard		Central	Yes				1			
NEG011052	HJR Dose		Central	Yes							
NEG011056	Darr Feedlot		West Central	Yes							
NEG011079	Bar K Cattle		Northeast	Yes				1			
NEG011080	Winner Circle Feedyard		Scotts Bluff	Yes							
NEG011089	Imperial Beef		West Central	Yes							
NEG011126	Sunderman Feedlots West		Northeast	Yes				1			
NEG011129	Mayes General Partnership West		Central						1		
NEG011147	R Benjamin Inc. Livestock		West Central	Yes							
NEG011160	Zutavern Ranch Livestock		West Central	Yes							
NEG011181	Linder Stock Farms		Central	Yes				1			
NEG011191	Adams Land & Cattle Co. South		West Central						1		
NEG011210	Nebraska Feeders McClymont		Central	Yes							
NEG011223	Mayes General Partnership East		Central	Yes							
NEG011263	Mid Plains Cattle Company		Lincoln	Yes				1			
NEG011269	Timmerman Feeding Corp.		Lincoln	Yes				1			
NEG011284	Willow Island Land & Cattle		West Central	Yes							
NEG011300	Denker Inc.		West Central	Yes							
NEG011311	B&B Cattle		Central	Yes							
NEG011317	Dinsdale Brothers Inc North		Northeast						1		
NEG011321	Beer Creek Ranch LLC		West Central	Yes							
	JD Cattle Co.		Central						1		
	Wolfden Dairy		Central	Yes							
	Niewohner Granchildren East		Northeast	Yes				1			
	Novak Pork		Northeast	Yes				1			
	PC West Tarnov		Northeast	Yes				1			
	Ortmeier Feedyard		Northeast	Yes				1			

<u>ID Number</u>	<u>Facility Name</u>	<u>City</u>	<u>State Region or Inspector</u>	<u>Inspections</u>	<u>Violation</u>	<u>SEVs</u>	<u>SNC</u>	<u>Informal Actions</u>	<u>Formal Actions</u>	<u>Penalties</u>	<u>Selection Rationale</u>
	Blue River Pork		Lincoln						1		
	PPK LLC		Lincoln	Yes				1			
	Livingston Enterprises		Lincoln	Yes							
	Prairie Land Dairy		Lincoln	Yes				1			
	Classic Dairy		Lincoln						1		
	Henry Hass & Sons Inc		Scotts Bluff	Yes				1			
	Sioux County Feeders		Scotts Bluff	Yes							
	St. George Ranch		Scotts Bluff	Yes				1			

Appendix D: Status of Past SRF Recommendations

During the Round 1 and 2 SRF reviews of Nebraska's compliance and enforcement programs, EPA Region 7 recommended actions to address issues found during the review. The following table contains all completed and outstanding actions for Round 2. There are no outstanding recommendations for Round 1. The status entries in this table are current as of March 9, 2012.

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

Round	Status	Due Date	Media	E#	Element	Finding	Recommendation
Round 2	Completed	6/18/2010	CWA	E1	Data Completeness	DMR violations for multiple major facilities are due to inaccurate permit data in ICIS-NPDES. EPA reviewed 4 of 18 majors that were flagged for missing DMRs under metric 1b2, and all 4 of them had inaccurate permit limit set data or DMR due dates in ICIS-NPDES. These inaccuracies create three distinct data quality problems.	The state and EPA will jointly investigate the reasons why facilities are on the Quarterly Non-Compliance Report (QNCR) for the second and third quarters of FFY 2009, with a focus on whether erroneous permit data in ICIS-NPDES is the underlying reason for any QNCR violations. Note that there were approximately 30 majors with QNCR violations in the third quarter of FFY 2009. To be complete by April 30, 2010.
Round 2	Completed	12/31/2011	CWA	E1	Data Completeness	DMR violations for multiple major facilities are due to inaccurate permit data in ICIS-NPDES. EPA reviewed 4 of 18 majors that were flagged for missing DMRs under metric 1b2, and all 4 of them had inaccurate permit limit set data or DMR due dates in ICIS-NPDES. These inaccuracies create three distinct data quality problems.	If the effort from Recommendation #1 reveals that 10% or more of the majors on the QNCR (i.e. 3 or more on the FFY 2009 third quarter QNCR) are on the report due to violations triggered by erroneous permit data, the state will implement a method for conducting quality assurance on permit data upon entry into ICIS-NPDES. EPA's recommended method is to run limit summary reports. If applicable, the quality assurance method is to be in place by December 31, 2010.
Round 2	Completed	6/30/2010	CWA	E1	Data Completeness	Minor facilities in violation for not submitting DMRs were not consistently sent violation notices or otherwise notified in a timely manner that submission is required. 56 facilities were flagged for non-receipt over 3 continuous years. EPA reviewed files for 8 of them, 4 of which had either DMRs missing from the files or, when DMRs were present in the file, they had not been entered in ICIS.	State will implement procedures or routines viewed as productive uses of resources, such as those identified in the state response, to streamline the accounting and review of incoming DMRs. To be in place by April 30, 2010.
Round 2	Completed	12/31/2010	CWA	E1	Data Completeness	When the state did respond to non-reporting violations, as it did with 2 NOV's in the 8 files reviewed by EPA, the enforcement response was not timely according to state and EPA definitions. A large portion of the 56 facilities flagged for DMR non-receipt are lagoon systems with intermittent discharge that did not submit required DMRs when no discharge occurred.	After the conclusion of FFY 2010, EPA and the state will evaluate the status of DMR non-receipts to assess whether sufficient progress has been made by steps 1 and 2. If the value of metrics 1d3 (3-year rolling average of non-receipts at non-majors) and 7d (DMR violations at majors) have not both declined by at least 50% relative to the FFY 2007 levels, the state will begin to run DMR non-receipt reports at the end of each quarter, as described in the Explanation for this finding. To be complete by December 31, 2010.
Round 2	Long Term Resolution	4/16/2012	CWA	E1	Data Completeness	The state did not enter in ICIS-NPDES any formal or informal enforcement actions for major or P.L. 92-500 minor facilities in FFY 2007, as required. The state also did not enter any penalty information for civil judicial settlements involving majors.	State and EPA will negotiate an acceptable ICIS user agreement by June 30, 2010.
Round 2	Long Term Resolution	4/16/2012	CWA	E1	Data Completeness	The state did not enter in ICIS-NPDES any formal or informal enforcement actions for major or P.L. 92-500 minor facilities in FFY 2007, as required. The state also did not enter any penalty information for civil judicial settlements involving majors.	EPA will assist the state with entry of formal enforcement actions as long as necessary until an acceptable ICIS user agreement is signed by the state. Once the state has signed an ICIS user agreement, EPA will provide training and any other assistance to help the state with entry of formal enforcement actions until the state can independently enter these actions. Also, the state will continue entering

							NOVs into ICIS-NPDES. To be fully implemented by December 31, 2010.
Round 2	Completed	2/28/2010	CWA	E2	Data Accuracy	With no formal enforcement actions entered in ICIS-NPDES in FFY 2007, the state did not link those actions to the corresponding violations.	State will send final enforcement documents to EPA electronically as PDFs so that EPA can enter them into ICIS-NPDES and properly link them to the corresponding violations. To be in place by February 28, 2010.
Round 2	Long Term Resolution	3/31/2012	CWA	E2	Data Accuracy	With no formal enforcement actions entered in ICIS-NPDES in FFY 2007, the state did not link those actions to the corresponding violations.	Once an acceptable ICIS-NPDES user agreement is signed by the state, EPA will provide training and any other assistance to help the state with entry of formal enforcement actions and linkage of actions to the corresponding violations. The state should be able to independently enter and link formal actions in ICIS-NPDES by December 31, 2010.
Round 2	Completed	12/31/2010	CWA	E5	Inspection Coverage	The state does not have a record for conducting inspections at 6 of 51 majors in FFY 2007. 44 major inspections had been entered into ICIS-NPDES at the time of the data analysis, and one additional inspection not in ICIS-NPDES was uncovered during EPA's file reviews.	State will continue following its protocol for ensuring timely entry of inspection data into ICIS-NPDES, with a goal of entry within 30 days following the inspection. Effectiveness of this protocol is to be demonstrated through FFY 2010, with success determined by December 31, 2010.
Round 2	Completed	6/18/2010	CWA	E6	Quality of Inspection of Compliance Evaluation Reports	Inspection reports for facilities that have an industrial stormwater permit did not discuss compliance with industrial stormwater permit requirements. EPA reviewed files for 4 such facilities and found that no inspection report discussed stormwater compliance.	State will begin using modified inspection checklists, with items for evaluating industrial stormwater and Stormwater Pollution Prevention Plan requirements, by April 30, 2010.
Round 2	Completed	12/31/2011	CWA	E6	Quality of Inspection of Compliance Evaluation Reports	19 of 44 inspection reports reviewed by EPA did not contain a clear identification of violations, despite that many of those reports included an indication that the facility could make improvements in some areas. Alternatively, if no violations were identified, the reports did not contain a statement of compliance. With the exception of complaint investigations, most inspection reports utilized a checklist format in which the inspector used very limited narrative to describe aspects and areas of the facility. In some cases, "yes" and "no" were used in the checklist table, but the absence of contextual or supporting information leaves the reviewer unable to determine whether the yes/no is an indication of satisfactory versus unsatisfactory condition or rather only an indication that the aspect or area of the facility was evaluated. More importantly, many inspection reports did not make a connection between satisfactory versus unsatisfactory performance--when indicated--and whether that performance was in compliance with the permit. With respect to CAFOs, the state documents a portion of its inspections using a one-page checklist. Subsequent reviewers might find it difficult to make a determination regarding facility compliance based on just the information in this CAFO checklist. With respect to complaint investigations, particularly those for stormwater, the state documents its investigations using a narrative-only format that did not always indicate clearly whether the facility was in compliance with the subject matter alleged in the complaint.	State will modify inspection checklists and reports to clearly indicate deficiencies and will continue using NOV letters and other mechanisms to notify entities of violations. To be implemented by December 31, 2010.

Round 2	Long Term Resolution	4/15/2012	CWA	E7	Identification of Alleged Violations	The state did not enter single-event violations (SEVs) in ICIS-NPDES in FFY 2007 and has not yet begun doing so.	EPA will develop best practices for the entry of SEVs after completing the region's first full year of SEV tracking. To be completed by December 31, 2010.
Round 2	Being Negotiated	4/15/2012	CWA	E7	Identification of Alleged Violations	The state did not enter single-event violations (SEVs) in ICIS-NPDES in FFY 2007 and has not yet begun doing so.	EPA will share the best practices with the state, at which time EPA and the state will reconsider what the state can do to begin tracking SEVs for majors in ICIS-NPDES. EPA will offer training if necessary. Information sharing and reassessment to be conducted by June 30, 2011.
Round 2	Long Term Resolution	4/15/2012	CWA	E8	Identification of SNC and HPV	EPA identified 4 distinct instances of SNC/HPV to which the state did not respond through some type of enforcement mechanism. Chief among those was non-reporting of SSOs by 3 high-priority SSO communities. EPA found that all 3 communities are out of compliance with their permit requirements for reporting SSOs. 2 of the 3 communities also did not comply with the state's request to report SSOs semi-annually.	The state will report to EPA on the status of its efforts to modify the standard language in NPDES permits for SSO violations. Status report due June 30, 2010.
Round 2	Completed	6/30/2010	CWA	E11	Penalty Calculation Method	The state did not have sufficient information in its files for 3 of the 5 judicial referrals that EPA reviewed to explain how the state calculated recommended penalties for gravity and economic benefit or to demonstrate that gravity and economic benefit were incorporated into the final pleading penalty.	State will continue using its penalty calculation worksheet, for actions referred to the Nebraska AG, to calculate gravity and economic benefit in a manner that is consistent with national policy for economic benefit calculations. State will have a dialog with its AG on the usefulness of the penalty worksheet and will report to EPA on the status of sharing information with the AG on this matter. Status report due June 30, 2010.

Appendix E: Program Overview

Agency Structure

All of Nebraska's NPDES permitting and compliance monitoring responsibilities belong to the NDEQ Water Quality Division, while enforcement work is handled between the department's Water Quality Division and Legal Services Division. Any NPDES judicial enforcement activities in Nebraska, including all penalty actions, also involve the Attorney General (AG) Office, as explained below. Local agencies do not assume any NPDES program administration responsibilities in Nebraska.

NPDES permitting and compliance monitoring responsibilities of the Water Quality Division are divided between the Agriculture Section and the Wastewater Section. The Agriculture Section manages permitting and compliance at CAFOs, whereas the Wastewater Section manages those same activities at facilities having all other NPDES permits (e.g. wastewater, pretreatment, and stormwater). The Wastewater and Agriculture Sections have their compliance monitoring resources spread among the central office in Lincoln and four field offices in Norfolk, Omaha, North Platte, and Scottsbluff.

Compliance and Enforcement Program Structure

As noted above, compliance and enforcement for the NPDES program resides entirely in the Water Quality Division. Compliance and enforcement for other media programs likewise reside in their respective program divisions.

Roles and Responsibilities

The Wastewater and Agriculture Sections of NDEQ both include a permitting and compliance unit with the dual responsibilities of writing permits and monitoring compliance. Staff responsibilities are arranged such that the permit writer and inspector for a given facility are different individuals. Field office inspectors' coverage of facilities by county differs between the Wastewater and Agriculture sections to reflect different demographics for municipal, agricultural, and industrial dischargers.

Within the Wastewater Section are two individuals responsible for all permitting, compliance assistance, and enforcement escalation for all of Nebraska's construction and industrial stormwater sites and oversight of the state's MS4s. Monitoring compliance and responding to complaints regarding stormwater pollution is handled by compliance staff assigned to the various field offices.

When the Water Quality Division decides to escalate a case of non-compliance to formal enforcement, the division sends an enforcement recommendation to the Legal Services Division, which issues administrative compliance orders for all cases except those deemed worthy of a penalty action. The state's constitution gives authority to collect penalties in NPDES cases to the state AG, whose office issues any and all penalty orders within the judicial arena.

The guidance that NDEQ follows to ensure compliance and conduct enforcement is described in the department's Enforcement Manual, which was last revised January 2002. To better understand the state's protocol for escalating non-compliance to enforcement, EPA discussed this matter with the Water Quality Division and Legal Services Division. For the purpose of this program review, EPA's definition of informal enforcement includes NOV's, LOW's, Corrective Action Required (CAR) letters, notices of incomplete DMRs, and similar warning letters. Formal enforcement includes administrative compliance orders, judicial referrals, judicial compliance and/or penalty orders, complaints, and consent decrees.

When violations of the Nebraska's Environmental Protection Act or the Livestock Waste Management Act are discovered, state law requires that NDEQ "make every effort to obtain voluntary compliance through warning, conference, or any other appropriate means prior to initiating enforcement proceedings" unless an emergency exists. In the case of reporting violations, for example, the state sends the facility a notice of missing information. CAFOs that have minor deficiencies are sometimes sent CAR letters. If the attempt to voluntarily return the facility to compliance does not succeed, or if the need for formal enforcement is anticipated upon discovery of the violation, the state sends the facility a written NOV—or occasionally a less formal LOW.

NDEQ's Enforcement Manual suggests a time limit of 90 days following discovery of a violation to achieve voluntary compliance before escalation to enforcement should begin. For matters rising to formal enforcement, the manual suggests that an administrative order or civil referral be made within 180 days of discovery. Beyond these guidelines, the state had no standard protocol in FFY 2007 for how decisions should be made and what criteria should be used to escalate a case of non-compliance beyond an NOV or other unsuccessful voluntary effort. NDEQ is currently contemplating how to accomplish enforcement escalation without relying only on case-by-case judgments to address violations.

The Wastewater Section makes a distinction between high-priority and low-priority violations that closely resembles the federal distinction between violations constituting SNC and those that are non-SNC. Violations that belong in these two categories are described in the Enforcement Manual separately for major facilities, minor facilities, and exempt facilities. This prioritization of violations might guide the state's development of a protocol with criteria for making enforcement escalation decisions.

When the Water Quality Division determines that a case merits formal enforcement, an enforcement recommendation is forwarded to the Legal Services Division. This constitutes the earliest point in the escalation process when the Legal Services Division becomes involved in a case ultimately leading to formal enforcement. A staff attorney is then assigned to develop the case and, if no penalty will be sought, to prepare an administrative order. If NDEQ determines that a penalty is appropriate, the staff attorney prepares a proposed complaint and litigation report, which includes a recommended penalty. These documents are then forwarded to the office of the state Attorney General (AG), which determines an appropriate penalty amount and prosecutes the case in the judicial arena. Because NDEQ does not have legal authority to assess administrative penalties, all penalties must be assessed in the context of a civil or criminal

judicial action taken by the AG. The AG has sole authority to issue a judicial compliance order and/or assess penalties. If penalties are deemed appropriate, the amount of any negotiated penalty is left to the discretion of the AG. NDEQ senior management is informed of the status of actions referred to the AG's office, but staff in the Legal Services Division and the Water Quality Division get inconsistent feedback regarding the basis for a final penalty assessment by the AG's office.

According to EPA's discussion with NDEQ, the Legal Services Division formulates recommended penalties based on input from the Water Quality Division and practical experience regarding nature of the violation and magnitude of penalty likely to be palatable to the courts. In its enforcement referral to Legal Services, the Water Quality Division develops recommended penalties using the Civil Penalty Policy and Guidance found in the Enforcement Manual. The policy provides guidance on the magnitude of penalty to be considered for each of four statutory factors and three mitigating factors, and it articulates this guidance on a penalty computation worksheet included in the enforcement referral.

Local Agencies Included and Excluded From Review

Nebraska does not have any local agencies involved in implementation of the NPDES program.

Resources

The Wastewater and Agriculture Sections, combined, have approximately 18 full-time equivalent staff in the central Lincoln office who are funded by a CWA Section 106 grant from EPA, in addition to section chiefs and unit supervisors. The two sections also have staff in the state's field offices, with at least one compliance staff person responsible for wastewater inspections and one for CAFO inspections in each of four field offices. Water Quality Division inspectors perform, on average, approximately 60 inspections per year per person.

The Legal Services Division consists of four full-time attorneys. This number includes the director of the division. The four attorneys are responsible for pursuing formal enforcement for not just the CWA-NPDES program but for all of NDEQ's environmental programs.

Staffing and Training

To train new employees, the Water Quality Division provides a training manual containing instructions on work flow, information tracking, and other agency requirements. New inspectors take the EPA Permit Writer's Course and shadow seasoned inspectors for a short period after joining the staff. The Legal Services Division provides occasional presentations on matters germane to the enforcement process, such as record-keeping, photo documentation, and witness preparation. All wastewater inspectors take the operator's certification course for treatment plant operation.

Data Reporting Systems and Architecture

The Water Quality Division of NDEQ uses four databases to track and report permitting, compliance, and enforcement information under the NPDES program. ICIS is used for tracking and reporting all permit and DMR information for facilities with effluent monitoring requirements. Via direct entry into ICIS, NDEQ shares such data with EPA and tracks the receipt and compliance of DMR data for violation identification.

The second database, the Integrated Information System (IIS), is an in-house system that the division uses to track all correspondence with facilities as well as all compliance monitoring activities, including dates and inspection reports. IIS also serves as the division's interface with the agency's Records Management Section, providing a catalog to identify documents in facility files. To track formal and informal enforcement actions, the state relies on a Microsoft Access database. Items tracked include Notices of Violation (NOVs), responses to NOVs as requested by the state and actually received from facilities, administrative compliance orders, penalty referrals, and milestones associated with the issuance of formal orders and any required injunctive relief. The final data system is a series of spreadsheets that NDEQ uses to track general permit authorizations issued to industrial and construction stormwater permittees. This system also tracks complaint investigations associated with stormwater permittees.

Although NDEQ is currently a direct user of ICIS, the department has the intention to eventually transition toward batch status, whereby NDEQ will enter and track permit, compliance, and enforcement data entirely into an in-house data system and batch that data to ICIS for the sole purpose of federal reporting. NDEQ will not make this transition before 2014, which is the year that Nebraska plans to have a data system in place to allow facilities to directly enter their own monitoring data.

NDEQ is developing a permitting tool made available through an EPA grant, *Tools for Environmental Permitting*, which it hopes to implement in September 2012. The tool will house data to calculate WLAs and effluent limits to develop a standard-formatted permit document. Eventually the permitting tool will upload effluent limits to ICIS once the permit becomes effective.

NDEQ has always had well organized and maintained files that were complete and bound into folders with indexes. Paper files were organized in three sets of folders for each facility: General (G), Permit (P), Reports and Data (R). Sequential folders are marked as 0001 (oldest), 0002, 0003, etc. Bar codes on each file can be used to access all the information on the file, such as a complete index of the documents in the file, check out history, etc.

Within the last year, NDEQ switched to an electronic record keeping database that uses Enterprise Content Management (ECM) software. In the ECM system, no paper copies are produced and no paper records are kept. Incoming documents are scanned and routed by electronic means. In the future, all records will be easily accessible electronically, or may be openly available on the NDEQ website.

Major State Priorities and Accomplishments

Nebraska's priorities for NPDES enforcement are communicated in the Water Quality Division's Enforcement Manual, as discussed above in the Roles and Responsibilities section. Priorities are defined in terms of hierarchy of violation severity, ranging from low to high priority violations.

Priorities for NPDES compliance, and the state's activities to monitor and assure compliance, are best discussed by NPDES program area. Following is a summary of NPDES compliance priorities and activities for wastewater, pretreatment, stormwater, and CAFOs.

Wastewater

The core element of Nebraska's NPDES compliance and enforcement program is the state's annual inspections of wastewater dischargers. NDEQ's inspection goal reflects federal regulatory requirements. The state targets more than half of all major dischargers for a comprehensive, non-sampling inspection annually. Starting in FFY 2011, NDEQ began using the flexibility of federal Compliance Monitoring Strategy guidance to exchange the commitment of inspecting a portion its majors for inspecting non-discharging lagoons, to ensure that such facilities remain exempt from NPDES permit requirements. Therefore, the approved CMS inspection goal for majors in FFY 2011 was not 100% as in past years, but rather 50%. For non-major dischargers, the state conducts a comprehensive, non-sampling inspection at approximately one-fifth of facilities each year, such that most if not all non-majors receive an inspection every five years in accordance with CMS requirements.

To document inspections, NDEQ's inspectors across all regions of the state use some variation of the department's wastewater treatment inspection. This form contains a list of entries for information to characterize the facility and various aspects of permit compliance, and it sometimes includes narrative to describe the overall compliance status of the facility.

A critical component in the state's process of screening NPDES permit violations is the review of DMRs. According to the state, NDEQ reviews all incoming DMRs against what is expected to be populated on the DMRs. If a DMR is significantly overdue or has been submitted with missing information, NDEQ frequently sends the facility a 'notice of DMR omission/missing information' in an attempt to promptly obtain missing data that is sometimes the result of a facility oversight. Facilities typically respond promptly, according to NDEQ staff.

To facilitate more consistent and accurate use of DMRs by the state's facilities, the Wastewater Section sends each new or reissued permit to the facility with a CD-ROM containing pre-formatted custom DMRs for a complete permit cycle (i.e. five years). By providing each facility all of the DMR forms it needs in advance, with each DMR reflecting the facility's monitoring requirements, the state has prevented many monitoring and reporting violations that might have otherwise occurred.

Pretreatment

The State of Nebraska was authorized to implement the Pretreatment program as a "403.10(e)" state. This means that the state has elected to implement the entire program as both the approval authority and the control authority, as it does not delegate Approved Pretreatment Programs to

municipalities. Under the General Pretreatment Regulations, all cities with publicly owned treatment works (POTWs) of greater than 5 million gallons per day (mgd) are required to develop a Pretreatment program that controls industrial discharges to its system. The state has waived this requirement and shouldered the entire burden of implementation. Analogous to the 5 mgd requirement, the state has entered into 12 Memorandums of Understanding (MOUs) with its larger cities. Responsibilities by these cities range from submitting annual reports with summaries of industrial discharger's activities, to inspecting and sampling and sharing the results with NDEQ. All permitting and enforcement activities are retained by the state.

As a 403.10(e) state, NDEQ is required to annually inspect, and independently determine compliance through annual sampling, each of its Significant Industrial Users (SIUs). NDEQ inspects each industry once per year and documents the inspection using the standard inspection checklist used for NPDES inspections. Grab sampling is performed at each SIU by NDEQ except for those SIUs in Omaha; through the MOU, the City of Omaha performs the sampling and provides the data to NDEQ. All permitted SIUs were inspected and sampled in FFY 2011.

Stormwater

NDEQ's stormwater coordinator in the Wastewater Section is responsible for all compliance monitoring and enforcement escalation for all of Nebraska's construction and industrial stormwater sites and oversight of the state's MS4s. Nebraska's compliance monitoring for construction stormwater consists primarily of investigations in response to complaints. Recently, NDEQ initiated targeted inspections of construction and industrial sites for compliance monitoring inspections. Each region is given a number of inspections to target each year. Criteria used to prioritize targeted inspections include sites that are unauthorized and/or sites with no controls.

The industrial stormwater permit was reissued on 7/1/2011. Notices of Intent to be covered under this permit are still trickling in. NDEQ has issued approximately 500 authorizations for the new permit whereas there were 1,200 authorizations under the previous permit. NDEQ cannot be sure how many entities covered under the first industrial stormwater permit failed to submit a Notice of Termination when their activities ceased. In addition to inspections in response to complaints and targeted inspections, NDEQ also performs an abbreviated industrial stormwater inspection whenever an inspection is scheduled at a facility that has either a core NPDES or Nebraska Pretreatment Program permit as well as the general industrial stormwater permit. Although the primary purpose of such inspections is to evaluate compliance with the wastewater or pretreatment permit, inspectors always review the industrial stormwater SWPPP and site inspections to determine if they are current. Sometimes they also perform a walk-through of the exterior portions of the facility to determine if materials are exposed to stormwater and if controls to prevent contamination of stormwater were present and adequate. EPA includes an evaluation of this practice in Finding 6-2.

Aside from complaints dealing with construction sites, the focus of complaint investigations also includes industrial sites subject to authorization under a stormwater general permit, although this latter category is a small fraction of the whole. If the focus of a stormwater complaint lies within the geographic jurisdiction of a permitted MS4, NDEQ forwards the complaint to the MS4 for

follow-up. The compliance staff assigned to each region of the state investigate complaints, not associated with an MS4, as they are received.

In FFY 2011, Nebraska did not have a mechanism for monitoring compliance of permitted MS4s and had not yet conducted inspections or audits of MS4s. However, NDEQ has committed to begin an MS4 inspection program in FFY 2012.

Concentrated Animal Feeding Operations (CAFOs)

General Information on CAFO Facilities:

The Agriculture Section of the Water Quality Division has responsibility for assuring NPDES compliance at all permitted CAFOs in the state. EPA estimates that there are approximately 1,000 facilities (both permitted and unpermitted) that meet the definition of a CAFO, with more than 300 of these having NPDES permits. During FFY 2011, the Agriculture Section completed 356 planned inspections of large and medium NPDES-permitted CAFOs, 247 inspections of large unpermitted CAFOs, 266 inspections of medium unpermitted CAFOs, and 90 inspections of Small Animal Feeding Operations (AFOs). The Agriculture Section, including staff in field offices, also conduct investigations of discharges self-reported by facilities as well as discharges alleged in citizen complaints.

NDEQ uses two different inspection checklists for planned CAFO and AFO inspections. The first is a "Compliance Inspection Data Sheet," also known as the 'short form' checklist, which is a one-page checklist with a section at the bottom available for remarks/comments. The other format is a "Routine Inspection Checklist for Animal Feeding Operations". Also known as the 'long form' checklist, it is a four-page checklist with a section at the end available for comments. NDEQ management indicated that the one-page checklist is used for smaller facilities or for frequent inspections, with the 4 page format being completed once every 5 years at these facilities.

Appendix F: SRF/PQR Correspondence

Included in this appendix are the following items of correspondence between EPA and NDEQ concerning the SRF and PQR review and report:

- Kickoff letter from EPA to NDEQ, sent February 27, 2012 (p. 115)
- Draft report transmittal letter from EPA to NDEQ, sent August 10, 2012 (p. 121)
- Initial comments from NDEQ on the draft report, sent November 28, 2012 (p. 124)
- Second set of NDEQ comments on the draft report, sent March 14, 2013 (p. 163)
- Permits correspondence – Water Treatment Plants (p. 172)

Kickoff letter from EPA to NDEQ, sent February 27, 2012. (See next page)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

Pat Rice, Assistant Director
Nebraska Dept. of Environmental Quality
1200 N St., Suite 400, The Atrium
Lincoln, Nebraska 68509-8922

FEB 27 2012

Dear Mr. Rice:

Through this letter, the U.S. Environmental Protection Agency Region 7 is initiating a review of Nebraska's Clean Water Act National Pollutant Discharge Elimination System enforcement program and a follow-up to the Permit Quality Review. The EPA and the Nebraska Department of Environmental Quality recently determined that most of the review will take place April 16-19, 2012, in Lincoln, as described herein.

The previous review of Nebraska's NPDES permitting and enforcement programs was conducted in November 2008 and consisted of parallel reviews of the two programs. During the next round of reviews in 2012 through 2015, the EPA will further integrate permitting and enforcement reviews in all states. However, because the EPA Headquarters and Region 7 offices recently conducted a Permit Quality Review in Nebraska in April 2011, the present program review will consist of a modified Permit Quality Review, conducted by Region 7 permitting program staff, and a review of Nebraska's NPDES enforcement program in Federal Fiscal Year 2011 using the State Review Framework.

Enclosed is a proposed agenda for the enforcement review, which will begin with a review of the Nebraska Pretreatment Program by Paul Marshall in late February or early March on a date to be arranged with you in the very near future. As discussed by the EPA and NDEQ staff, the pretreatment review will occur separate from the other program components to accommodate scheduling constraints, but the findings from the pretreatment review will be treated with the findings for both the permitting and SRF enforcement reports. The EPA NPDES permitting program staff will submit a separate agenda after consultation with the Nebraska NPDES permitting program. An exit briefing is scheduled on April 19 for us to discuss the major findings of the entire review with you.

Following are descriptions of what is entailed in the modified PQR and SRF enforcement review and the responsibilities of the EPA and the NDEQ to prepare for the on-site review.

Permits Program Visit

The EPA will conduct a modified PQR of the Nebraska NPDES permitting program. Because a HQ PQR was conducted in April 2011, this review will not focus on a core review of selected files or topic specific reviews that are usually conducted during a PQR. Instead, this review will focus on a review of outstanding Action Items which are the result of previous PQRs and Regional Program Reviews, a discussion on the status of the State's study on water treatment plants, a demonstration of the project deliverable – Permitting for Environmental Results, a permit writing tool, and an evaluation of the State-EPA Memorandum of Agreement. Consistent with the PQR, the review will also include discussions on the state's current permitting process and the effect ECM and the permit writing tool has had on this



process, staffing and resources, and training needs. The primary contact for the permitting review will be Kimberly Hill, who works under the direction of Glenn Curtis in the Wastewater and Infrastructure Management Branch. Ms. Hill will lead a team of program staff to discuss the state's program. Ms. Hill can be reached at 913-551-7841.

Enforcement Review using the State Review Framework (SRF)

The EPA will conduct the review of Nebraska's NPDES enforcement program using the State Review Framework Round 3 protocol. While this protocol closely resembles the Round 2 protocol, Region 7 has made several modifications that it will begin implementing during the 2012 SRF cycle. One of these changes involves an increase in the number of files reviewed that are associated with concentrated animal feeding operations. Region 7 has assembled a team of managers and staff to implement the review. The primary contact for the review will be Mike Boeglin, who works under the direction of Diane Huffman in the Water Enforcement Branch. Mr. Boeglin will lead a team of program staff to review files and discuss the state's program. The EPA Region 7 contact for overseeing the SRF enforcement review across all three media programs (CAA Stationary Sources, CWA NPDES, and RCRA Subtitle C) is Kevin Barthol, who works in the Region 7 Enforcement Coordination Office. Mr. Boeglin can be reached at 913-551-7252 and Mr. Barthol at 913-551-7264.

Please read Enclosure #2 for more detailed information about the SRF Round 3 process. The first step for EPA and NDEQ was to verify the official data set representing FFY 2011 activities, which has been discussed separately with your staff and will be completed by the end of February 2012. At least one week in advance of the pretreatment visit and at least three weeks prior to the main SRF visit in April, we will transmit via email the list of files selected for the respective components.

We look forward to working with you on this project. Please direct any questions to the appropriate staff contacts listed above.

Sincerely,



Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Enclosures

1. Proposed Agenda
2. Information on the SRF Process

cc: Mike Linder, Director, NDEQ
Steve Goans, NDEQ, Wastewater Section
Lisa Lund, EPA, Office of Enforcement and Compliance Assurance
Karl Brooks, EPA, Regional Administrator
Glenn Curtis, EPA, Wastewater and Infrastructure Management Branch
Diane Huffman, EPA, Water Enforcement Branch
Althea Moses, EPA, Enforcement Coordination Office
Wendy Luebbe, EPA, Program Operations and Integration

ENCLOSURE #1

Review of Nebraska's NPDES Enforcement Program
Spring 2012
Lincoln, Nebraska

Proposed Agenda

Pretreatment program review

Late February / Early March – dates to be determined

Remainder of NPDES Enforcement Program

Monday, April 16

Morning: Arrive in Lincoln approximately 11 am
Introductions and overview of the week
Get oriented to work space

Afternoon: Begin reviewing files

Tuesday and Wednesday, April 17-18

All day: Programmatic dialog and interviews with NDEQ staff

- o CAFOs
- o Stormwater
- o Core program
- o Outstanding action items from previous program review
- o Data management and impending changes
- o Enforcement response policies and internal escalation

Review files

Thursday, April 19

Morning: Finish reviewing files
EPA to caucus and consolidate findings

Afternoon: Exit conference proposed for 1pm
Return to Kansas City

Enclosure #2: Information on the SRF Process

In Federal Fiscal Years 2008-2011, EPA regions completed the second round of compliance and enforcement reviews using the State Review Framework. All authorized NPDES programs will be reviewed in FFY 2012-2015 using the SRF Round 3 protocol, which was modified from the Round 2 process based on input from EPA Headquarters, Regions, and State representatives. Nebraska will be the first state in Region 7 reviewed under SRF Round 3, and we expect to complete the NPDES enforcement review, including the final report with any negotiated action items, by August 2012.

The SRF Round 3 process closely resembles the process used during the Round 2 review in 2008. We will begin with an evaluation of data in the national data system that NDEQ entered and maintained for FFY 2011, which NDEQ had an opportunity to review and critique during the annual data verification process from December 2011 through February 2012. The next step in the Round 3 process is selection of facility files for review and EPA's preparation for the on-site review. The on-site review will consist of the following:

- Discussions between EPA and NDEQ staff regarding program management,
- Review of selected NDEQ inspection and enforcement files and policies, and
- Further examination of data in EPA and NDEQ data systems relative to what is found in facility files.

The EPA will discuss the proposed facility file selections with NDEQ and transmit the final selections to NDEQ at least one week in advance of the pretreatment program review in late February or early March and three weeks in advance of the main component of the review in April. The EPA expects the complete NPDES program file for a facility to include records for permitting, compliance monitoring, and enforcement, to the extent that such records have been created. We understand that Nebraska maintains all of these records in the central NDEQ office and will be able to pull them for the review. To assist you in pulling together all relevant records, we will include a checklist with the file selection list.

The EPA and NDEQ have the option of agreeing to examine components of the state's program that broaden the scope of traditional enforcement. This may include initiatives such as pollution prevention, compliance assistance, innovative approaches to achieving compliance, supplemental environmental projects, or programs to document and report outputs, outcomes, and indicators. We welcome NDEQ to suggest these or other such programs for inclusion in the review.

Our intent is to assist NDEQ in achieving implementation of programs that meet federal standards and are based on the goals and procedures we have agreed to in the NPDES Memorandum of Agreement and Performance Partnership Grant Workplan. EPA Region 7 and NDEQ are partners in carrying out the review. If we find issues, we want to address them in the most constructive manner possible.

Status of Outstanding Issues from the 2008 Enforcement Program Review

One component of the SRF Round 3 review is to evaluate the status of recommendations and action items from the Round 2 review conducted in 2008. The EPA and NDEQ have made progress since 2009 to complete 10 of the 15 action items in the Round 2 report, but 5 of the action items remain unresolved and have been pegged for reevaluation during the Round 3 review. During the on-site review in April, the EPA and NDEQ will continue the conversation on how to address the underlying program weaknesses that prompted the original findings and recommendations. The 5 incomplete action items include the following:

- Negotiation of acceptable language in the ICIS-NPDES sensitive access Rules of Behavior, which will enable the state to enter new enforcement action data into the national data system.
- Entry of formal enforcement actions for majors and P.L. 92-500 non-majors.
- Linkage of formal enforcement actions to underlying violations.
- Entry of Single Event Violations in ICIS-NPDES for major facilities.
- Modification of the standard language in NPDES permits for reporting of Sanitary Sewer Overflows to the state.

Role of the SRF Tracker

EPA has designed the SRF Tracker as the repository for holding all SRF products including the official data set, draft and final documents, letters, etc. It is also a management tool used to track the progress of a state review and to follow-up on the recommendations. EPA Regions will enter and update all information for their states in the SRF Tracker. The EPA Headquarters - Office of Enforcement and Compliance Assurance will use the Tracker to monitor implementation of the SRF Round 3. As stakeholders in the review, NDEQ staff are encouraged to request access to the Tracker, where you can view and comment on state information securely over the internet.

Please note that all information and materials used in this review may be subject to federal and/or state disclosure laws. The EPA will release documents from the Round 3 process in response to a properly submitted request under the Freedom of Information Act. In addition, the EPA has posted SRF Round 2 reports, recommendations, and other products on its public website and ultimately will do the same for Round 3.

Draft report transmittal letter from EPA to NDEQ, sent August 10, 2012. (See next page)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

AUG 10 2012

Marty Link, Acting Assistant Director
Nebraska Dept. of Environmental Quality
1200 N St., Suite 400, The Atrium
Lincoln, Nebraska 68509-8922

Dear Ms. Link:

Enclosed is the draft integrated report for the Environmental Protection Agency's review of the Nebraska National Pollutant Discharge Elimination System permitting and enforcement program for Federal Fiscal Year 2011. The program review was conducted April 16-19, 2012, using the Permit Quality Review and State Review Framework. The findings in the report reflect what was discussed during the program review exit conference on April 19 as well as additional findings made upon doing further analysis. With this transmittal, the EPA is requesting your response to the findings and recommendations contained in the report.

As we discussed during the exit conference, Nebraska's NPDES program has notable strengths and has improved in several areas since the last program review. The Nebraska Department of Environmental Quality has significantly reduced its overall permit backlog since 2003 and has improved the entry and accuracy of permit and Discharge Monitoring Report data in the national database. The skills of NDEQ's wastewater inspectors are enhanced through the training required to maintain treatment plant operator certification. As always, NDEQ's recordkeeping system performs to the highest standards.

The EPA also identified parts of Nebraska's NPDES program needing improvement, which you will find in three sections of the report. Under Common Findings, PQR Action Items, and SRF Findings, the report describes the types of improvements that the EPA envisions as being appropriate to resolve each finding. As part of your response, please expand upon these general descriptions by providing more specific actions with aggressive and realistic milestones. We welcome you to insert suggested actions into the corresponding sections of the report. Upon reviewing your response, we will work with you to establish agreeable language for a final report. With exceptions for any actions that may require a long-term commitment of resources, we request that all actions be planned for completion by the end of FFY 2014.

The EPA anticipates finalizing the report within the next 60 days. Please submit your response to the recommendations, along with any comments or clarifications of the findings, within the next 45 days.



If you have any questions or would like additional information, please contact Kimberly Hill at (913) 551-7841 regarding the PQR or Mike Boeglin at (913) 551-7252 regarding the SRF.

Sincerely,



Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Enclosure

cc: Mike Linder, Director, NDEQ
Tom Lamberson, Deputy Director, NDEQ
Pat Rice, NDEQ
Steve Goans, NDEQ, Wastewater Section
Glenn Curtis, EPA, Wastewater and Infrastructure Management Branch
Diane Huffman, EPA, Water Enforcement Branch
Althea Moses, EPA, Enforcement Coordination Office
Wendy Luebbe, EPA, Program Operations and Integration

Initial comments from NDEQ on the draft report, sent November 28, 2012.

Nebraska Note to Reviewers
for
State Review Framework
and
Integrated Clean Water Act Permit Quality Review
(SRF/PQR)

A copy of the SRF/PQR follows as well as a copy of the SRF/PQR in revision mode so the reviewer can identify changes throughout the document. The use of **RED strikethrough** is for deletions and **BLUE underline** is for insertions. We also identified comments with the statement: “State Comments” and “State Response” and with * to mark a reference location in the livestock comments in appendix J of the SRF/PQR.

Nebraska commented in the locations identified for a state response in the SRF and Section V. Action Items in the PQR. In addition, we commented throughout the document and in Appendix J: SRF File Review Summaries *Concentrated Animal Feeding Operations* adding corrections and responses. Many of these comments are repeated in the sections identified for our response. However, we did not comment on the tables and in several other locations of the SRF/PQR. These appear to be repeated or summarized information from other locations in the document.

Nebraska has attached draft Standard Conditions (Attachment A), resampling and slug load language (Attachment B), pollutant scan letters with pollutant list (Attachment C and D) and the Livestock Discharge Investigation Report Checklist (Attachment E) which should address some of the comments in the SRF/PQR. We have already sent a draft MOA for your review and have drafted changes to our pretreatment regulations to start the regulatory change process.

If you have questions about Nebraska’s comments please contact Steven M .Goans, P.E. at (402) 471-2580 or e-mail at steve.goans@nebraska.gov

Appendix A

Conditions applicable to all NPDES permits

The following conditions apply to all NPDES permits.

1. Information Available

- a. All permit applications, fact sheets, permits, discharge data, monitoring reports, and any public comments concerning such shall be available to the public for inspection and copying, unless such information about methods or processes is entitled to protection as trade secrets of the owner or operator under Neb. Rev. Stat. §81-1527, (Reissue 1999) and NDEQ Title 115, Chapter 4.

2. Duty to Comply

- a. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Federal Clean Water Act and the Applicable State Statutes and Regulations and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.
- b. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

3. Violations of this permit

- a. Any person who violates this permit may be subject to penalties and sanctions as provided by the Clean Water Act.
- b. Any person who violates this permit may be subject to penalties and sanctions as provided by the Nebraska Environmental Protection Act.

4. Duty to Reapply

- a. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

5. Need to Halt or Reduce Activity not a Defense

- a. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

6. Duty to Mitigate

Deleted: Additional conditions applicable to NPDES permits are in § 122.42. All conditions applicable to NPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

Deleted: ¶

(2) The Clean Water Act provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$25,000 per day for each violation. The Clean Water Act provides that any person who *negligently* violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who *knowingly* violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.¶

(3) Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Administrative penalties for Class I violations are not to exceed \$10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$25,000. Penalties for Class II violations are not to exceed \$10,000 per day for each day during which the violation continues, with the (...)

- a. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

7. Proper Operation and Maintenance

- a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective performance based on designed facility removals, effective management, adequate operator staffing and training, adequate process controls, adequate funding that reflects proper user fee schedules, adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

8. Permit Actions

- a. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

9. Property Rights

- a. This permit does not convey any property rights of any sort, or any exclusive privilege.

10. Duty to Provide Information

- a. The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

11. Inspection and Entry

- a. The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:
 - i) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 - ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 - iii) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
 - iv) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

12. Monitoring and Records

- a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

c. Records of monitoring information shall include:

- i) The date(s), exact place, time and methods of sampling or measurements;
- ii) The individual(s) who performed the sampling or measurements;
- iii) The date(s) analyses were performed;
- iv) The individual(s) who performed the analyses;
- v) The analytical techniques or methods used; and
- vi) The results of such analyses.

Deleted: and

- d. Monitoring must be conducted according to test procedures approved under NDEQ Title 119, Chapter 27 002 unless another method is required under 40 CFR subchapters N- Effluent Guidelines and Standards Parts 425 to 471 or O- Sewer Sludge Parts 501 and 503.

Deleted: 40 CFR Part 136

e. Falsifies, Tamper, or Knowingly Renders Inaccurate

- i) On actions brought by EPA, The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction: be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.
- ii) On action brought by the State, The Nebraska Environmental Protection Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction: be punished pursuant to Neb. Stat. §81-1508.01.

13. Signatory requirement

- a. All applications, reports, or information submitted to the Director shall be signed and certified.
 - i) All permit applications shall be signed as follows:
 - (a) For a corporation
 - (i) By a responsible corporate officer: For the purpose of this section, a responsible corporate officer means:

Deleted: (See § 122.22)

- (a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
 - (b) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - (b) For a partnership or sole proprietorship
 - (i) By a general partner or the proprietor.
 - (c) For a municipality, State, Federal, or other public agency
 - (i) By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:
 - (a) The chief executive officer of the agency, or
 - (b) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).
- b. Reports and Other Information
- i) All reports required by permits, and other information requested by the Director shall be signed by a person described in this section [paragraphs 12. a. i) (a),(b), or (c)], or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - (a) The authorization is made in writing by a person described in paragraphs 12. a. i) (a),(b), or (c);
 - (b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company, (a duly authorized representative may thus be either a named individual or any individual occupying a named position) and;
 - (c) The written authorization is submitted to the Director.
- c. Changes to Authorization

- i) If an authorization of paragraphs 12. a. i) (a),(b), or (c);is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.
- d. Certification
 - i) All applications, reports and information submitted as a requirement of this permit shall contain the following certification statement:
 - (a) I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.
- e. False Statement, Representation, or Certification
 - i) The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
 - ii) The Nebraska Environmental Protection Act provides criminal penalties and sanctions for false statement, representation, or certification in any application, label, manifest, record, report, plan, or other document required to be filed or maintained by the Environmental Protection Act, the Integrated solid waste Management Act, or the Livestock Waste Management Act or the rules or regulations adopted and promulgated pursuant to such acts.

14. Reporting Requirements

a. Planned Changes

- i) The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - (a) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in Title 119, Chapter 4 and 8. Or
 - (b) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Title 119, Chapter 15.
 - (c) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may

Deleted: § 122.29(b);

Deleted: § 122.42(a)(1).

justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan; The sludge program is not delegated to the State so notification to the Regional Administrator for EPA in addition to the State are required.

b. Anticipated Noncompliance

- i) The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. Transfers

- i) This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under Title 119, Chapter 24 in some cases, modification or revocation and reissuance is mandatory.

Deleted: the Clean Water Act
 Deleted: (See § 122.61;
 Deleted:)

d. Monitoring Reports

- i) Monitoring results shall be reported at the intervals specified elsewhere in this permit.
- ii) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director.
- iii) Monitoring results shall be submitted on a quarterly basis using the reporting schedule set forth below, unless otherwise specified in this permit or by the

<u>Monitoring Quarters</u>	<u>DMR Reporting Deadlines</u>
January - March	April 28
April - June	July 28
July - September	October 28
October - December	January 28

- iv) For reporting results of monitoring of sludge use or disposal practices additional reports may be required by the Regional Administrator (RA).
- v) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved in Title 119, Chapter 27, Section 002, or another method required for an industry-specific waste stream under 40 CFR subchapters N – Effluent Guidelines and Standards Parts 425 to 471 and subchapter or O – Sewer Sludge Parts 501 and 503, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director or RA.

Deleted: for

Deleted: under 40 CFR Part 136

- vi) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.
- e. Compliance schedules.
 - i) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.
- f. Twenty-four hour reporting.
 - i) The permittee shall report any noncompliance which may endanger human health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
 - ii) The following shall be included as information which must be reported within 24 hours under this paragraph.
 - (a) Any unanticipated bypass which exceeds any effluent limitation in the permit. Deleted: (See § 122.41(g).)
 - (b) Any upset which exceeds any effluent limitation in the permit.
 - (c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. Deleted: (See § 122.44(g).)
- g. The Director may waive the written report on a case-by-case basis for reports under section 14, f, ii) (a), (b) and (c) if the oral report has been received within 24 hours. Deleted: paragraph (l)(6)(ii) of this
- h. Other noncompliance.
 - i) The permittee shall report all instances of noncompliance not reported under paragraphs d., e., and f. of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph f. of this section.

Deleted: (l) (4), (5), and (6)
Deleted: (l)(6)
- i. Other information
 - i) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.
- j. Noncompliance Report Forms
 - i) Noncompliance Report Forms are available from the Department and shall be submitted with or as the written non-compliance report.

- ii) The submittal of a written noncompliance report does not relieve the permittee of any liability from enforcement proceedings that may result from the violation of permit or regulatory requirements.

15. Bypass

- a. Definitions.
 - i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
 - ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- b. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 15. c. and d. of this section.
- c. Notice.
 - i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.
 - ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph 14. f. of this section (24-hour notice).
- d. Prohibition of bypass.
 - i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:
 - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (c) The permittee submitted notices as required under paragraph 15. c. of this section.
- e. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 15. d. i)(a), (b), and (c).

Deleted: (m)(4)(i)

Deleted: of this section

16. Upset

- a. Definition.
 - i) Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations

because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

- b. Effect of an upset.
 - i) An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 16. c. of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- c. Conditions necessary for a demonstration of upset.
 - i) A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - ii) An upset occurred and that the permittee can identify the cause(s) of the upset;
 - iii) The permitted facility was at the time being properly operated; and
 - iv) The permittee submitted notice of the upset as required in paragraph 14. f. ii) (a), of this section (24 hour notice). Deleted: (1)(6)(ii)(B)
 - v) The permittee complied with any remedial measures required under paragraph (d) of this section.
- d. Burden of proof.
 - i) In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

17. Other Rules and Regulations Liability

- a. The issuance of this permit in no way relieves the obligation of the permittee to comply with other rules and regulations of the Department.

18. Severability

- a. If any provision of this permit is held invalid, the remainder of this permit shall not be affected.

Other Conditions that Apply to NPDES and NPP Permits

19. Land Application of Wastewater Effluent

- a. The permittee shall be permitted to discharge treated domestic wastewater effluent by means of land application in accordance with the regulations and standards set forth in NDEQ Title 119, Chapter 12 002. The Wastewater Section of the Department must be notified in writing if the permittee chooses to land apply effluent.

20. Toxic Pollutants

- a. The permittee shall not discharge pollutants to waters of the state that cause a violation of the standards established in NDEQ Titles 117, 118 or 119. All discharges to surface waters of the state shall be free of toxic (acute or chronic) substances which alone or in combination with other substances, create conditions unsuitable for aquatic life outside the appropriate mixing zone.

21. Oil and Hazardous Substances/Spill Notification

- a. Nothing in this permit shall preclude the initiation of any legal action or relieve the permittee from any responsibilities, liabilities or penalties under section 311 of the Clean Water Act. The permittee shall conform to the provisions set forth in NDEQ Title 126, Rules and Regulations Pertaining to the Management of Wastes. If the permittee knows, or has reason to believe, that oil or hazardous substances were released at the facility and could enter waters of the state or any of the outfall discharges authorized in this permit, the permittee shall immediately notify the Department of a release of oil or hazardous substances. During Department office hours (i.e., 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays), notification shall be made to the Nebraska Department of Environmental Quality at telephone numbers (402) 471-2186 or (877) 253-2603 (toll free). When NDEQ cannot be contacted, the permittee shall report to the Nebraska State Patrol for referral to the NDEQ Immediate Response Team at telephone number (402) 471-4545. It shall be the permittee's responsibility to maintain current telephone numbers necessary to carry out the notification requirements set forth in this paragraph.

22. Removed Substances

- a. Solids, sludge, filter backwash or other pollutants removed in the course of treatment or control of wastewater shall be disposed of at a site and in a manner approved by the Nebraska Department of Environmental Quality.
- i) The disposal of nonhazardous industrial sludges shall conform to the standards established in or to the regulations established pursuant to 40 CFR, Part 257.
- ii) The disposal of sludge shall conform to the standards established in or to the regulations established pursuant to 40 CFR, Part 503.
- iii) If solids are disposed of in a licensed sanitary landfill, the disposal of solids shall conform to the standards established in NDEQ Title 132.
- b. Publicly owned treatment works shall dispose of sewage sludge in a manner that protects public health and the environment from any adverse effects which may occur from toxic pollutants as defined in Section 307 of the Clean Water Act.
- c. This permit may be modified or revoked and reissued to incorporate regulatory limitations established pursuant to 40 CFR, Part 503.

23. Representative Sampling

- a. Samples and measurements taken as required within this permit shall be representative of the discharge. All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other waste stream, body of water or substance. Monitoring points shall not be changed without notification to the Department and with the written approval of the Director.

- i) Composite sampling shall be conducted in one of the following manners
 - (a) Continuous discharge - a minimum of one discrete aliquot collected every three hours.
 - (b) Less than 24 hours - a minimum of hourly discrete aliquots or a continuously drawn sample shall be collected during the discharge, or
 - (c) Batch discharge - a minimum of three discrete aliquots shall be collected during each discharge.
 - ii) Composite samples shall be collected in one of the following manners:
 - (a) The volume of each aliquot must be proportional to either the waste stream flow at the time of sampling or the total waste stream flow since collection of the previous aliquot.
 - (b) A number of equal volume aliquots taken at varying time intervals in proportion to flow.
 - (c) A sample continuously collected in proportion to flow, and
 - iii) Where flow proportional sampling is infeasible or non-representative of the pollutant loadings, the Department may approve the use of time composite samples.
 - iv) Grab samples shall consist of a single aliquot collected over a time period not exceeding 15 minutes.
- b. All sample preservation techniques shall conform to the methods adopted in NDEQ Title 119, Chapter 21 006 unless:
- i) In the case of sludge samples, alternative techniques are specified in the 40 CFR, Part 503, or
 - ii) Other procedures are specified in this permit.
- c. Flow Measurements
- i) Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be used to insure the accuracy and reliability of measurements. The devices shall be installed, calibrated and maintained to insure that the accuracy of the measurements. The accepted capability shall be consistent with that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of +/- 10%. The amount of deviation shall be from the true discharge rates throughout the range of expected discharge volumes. Guidance can be obtained from the following references for the selection, installation, calibration and operation of acceptable flow measurement devices:

24. Changes of Loadings to Publicly Owned Treatment Work (POTW)

- a. All POTWs must provide adequate notice to the Director of the following:
 - i) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to NDEQ Title 119, Chapter 26, if it were directly discharging those pollutants; and
 - ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
 - iii) For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTW, and any anticipated

impact of the change on the quantity or quality of effluent to be discharged from the POTW.

A. Definitions

Administrator: The Administrator of the USEPA.

Aliquot: An individual sample having a minimum volume of 100 milliliters that is collected either manually or in an automatic sampling device.

Annually: Once every calendar year.

Authorized Representative: Individual or position designated the authorization to submit reports, notifications, or other information requested by the Director on behalf of the Owner under the circumstances that the authorization is made in writing by the Owner, the authorization specifies the individual or position who is duly authorized, and the authorization is submitted to the Director.

Bimonthly: Once every other month.

Biosolids: Sewage sludge that is used or disposed through land application, surface disposal, incineration, or disposal in a municipal solid waste landfill.

Biweekly: Once every other week.

Bypass: The intentional diversion of wastes from any portion of a treatment facility.

Certifying Official: See Section 13, Standard Conditions above.

Daily Average: An effluent limitation that cannot be exceeded and is calculated by averaging the monitoring results for any given pollutant parameter obtained during a 24-hour day.

Department: Nebraska Department of Environmental Quality.

Director: The Director of the Nebraska Department of Environmental Quality.

Industrial Discharge: Wastewater that originates from an industrial process and / or is noncontact cooling water and / or is boiler blowdown.

Industrial User: A source of indirect discharge (a pretreatment facility).

Monthly Average: An effluent limitation that cannot be exceeded. It is calculated by averaging any given pollutant parameter monitoring results obtained during a calendar month.

Operator: A person (often the general contractor) designated by the owner who has day to day operational control and/or the ability to modify project plans and specifications related to the facility.

Owner: A person or party possessing the title of the land on which the activities will occur; or if the activity is for a lease holder, the party or individual identified as the lease holder; or the contracting government agency responsible for the activity.

Outfall: A discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged into Waters of the State.

Passive Discharge: A discharge from a POTW that occurs in the absence of an affirmative action and is not authorized by the NPDES permit (e.g. discharges due to a leaking valve, discharges from an overflow structure) and / or is a discharge from an overflow structure not designed as part of the POTW (e.g. discharges resulting from lagoon berm / dike breaches).

Publicly Owned Treatment Works (POTW): A treatment works as defined by Section 212 of the Clean Water Act (Public Law 100-4) which is owned by the state or municipality, excluding any sewers or other conveyances not leading to a facility providing treatment.

Semiannually: Twice every year

Significant Industrial User (SIU): All industrial users subject to Categorical Pretreatment Standards or any industrial user that, unless exempted under Chapter 1, Section 105 of NDEQ Title 119, discharges an average of 25,000 gallons per day or more of process water; or contributes a process waste stream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW; or is designated as such by the Director on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any National Pretreatment Standard or requirement.

Sludge: Any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effect.

30-Day Average: An effluent limitation that cannot be exceeded. It is calculated by averaging any given pollutant parameter monitoring results obtained during a calendar month.

Total Toxic Organics (TTO): The summation of all quantifiable values greater than 0.01 milligrams per liter (mg/l) for toxic organic compounds that may be identified elsewhere in this permit. (If this term has application in this permit, the list of toxic organic compounds will be identified, typically in the Limitations and Monitoring Section(s) and/or in an additional Appendix to this permit.)

Toxic Pollutant: Those pollutants or combination of pollutants, including disease causing agents, after discharge and upon exposure, ingestion, inhalation or assimilation into an organism, either directly from the environment or indirectly by ingestion through food chains will, on the basis of information available to the administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunction (including malfunctions in reproduction) or physical deformations in such organisms or their offspring.

Upset: An exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee, excluding such factors as operational error, improperly designed or inadequate treatment facilities or improper operation and maintenance or lack thereof.

Volatile Organic Compounds (VOC): The summation of all quantifiable values greater than 0.01 milligrams per liter (mg/l) for volatile, toxic organic compounds that may be identified elsewhere in this permit. (See the definition for Total Toxic Organics above. In many instances, VOCs are defined as the volatile fraction of the TTO parameter. If the term "VOC" has application in this permit, the list of toxic organic compounds will be identified, typically in the Limitations and Monitoring Section(s) and/or in an additional Appendix to this permit.)

Waters of the State: All waters within the jurisdiction of this state including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.

Weekly Average: An effluent limitation that cannot be exceeded. It is calculated by averaging any given pollutant parameter monitoring results obtained during a fixed calendar week. The permittee may start their week on any weekday but the weekday must remain fixed. The Department approval is required for any change of the starting day.

"X" Day Average: An effluent limitation defined as the maximum allowable "X" day average of consecutive monitoring results during any monitoring period where "X" is a number in the range of one to seven days.

B. Abbreviations

CFR: Code of Federal Regulations

kg/Day: Kilograms per Day

MGD: Million Gallons per Day

mg/L: Milligrams per Liter

NOI: Notice of Intent

NDEQ: Nebraska Department of Environmental Quality

NDEQ Title 115: *Rules of Practice and Procedure*

NDEQ Title 117: *Nebraska Surface Water Quality Standards*

NDEQ Title 118: *Ground Water Quality Standards and Use Classification*

NDEQ Title 119: *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System*

NDEQ Title 126: *Rules and Regulations Pertaining to the Management of Wastes*

NDEQ Title 132: *Integrated Solid Waste Management Regulations*

NPDES: National Pollutant Discharge Elimination System

NPP: Nebraska Pretreatment Program

POTW: Publicly Owned Treatment Works

µg/L: Micrograms per Liter

WWTF: Wastewater Treatment Facility

Part I. Other Conditions and Requirements

A. Prohibited Discharge Standards

In accordance with NDEQ Title 119, Chapter 26, the facility discharge shall not cause the introduction of pollutants into the POTW which will interfere with the operation of the POTW, including interference with its use or disposal of municipal sludge; shall not introduce pollutants into the POTW which will pass through the treatment works or otherwise be incompatible with such works; and not reduce opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

Discharges authorized under this permit:

1. Shall not create a fire or explosion hazard in the publicly owned treatment works (POTW);
2. Shall not cause corrosive structural damage to the POTW;
3. Shall not cause obstruction to the flow in the collection system;
4. Shall not cause interference or process upset at the treatment facility including slug loads;
5. Shall not contain heat in amounts that can inhibit biological activity at the POTW;
6. Shall not result in the presence of toxic gases, vapors, or fumes within a POTW in a quantity that may cause acute worker health and safety problems;
7. Shall not contain petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through; and
8. Shall not include trucked or hauled pollutants, except at discharge points designated by the POTW. Prior approval shall be obtained from the Department and the appropriate POTW.

B. Notification of Additional Pollutant Potential

The Department and the appropriate POTW shall be notified prior to any system changes, production increases and/or the use of any new chemicals or additives that may result in a significant increase in the discharge of pollutants.

C. Reporting Results below Detection Limitation

The minimum detection limit (MDL) is defined as the minimum level at which the analytical system gives acceptable calibration points. If the analytical results are below the MDL, then the reported value on the DMR shall be a numerical value less than the MDL. For example, if the MDL is equal to 0.005 and sample analysis finds the concentration in the sample to be less than the MDL, the result should be reported as <0.005.

D. Notification of City POTW

The permittee shall submit copies of all Discharge Monitoring Reports (DMRs) and non-compliance reports to the Nebraska Department of Environmental Quality and to the appropriate contact at the City Publicly Owned Treatment Works. This includes the immediate and 24 hour reporting requirements set forth in Appendix A, Part D. Contact addresses and telephone numbers current at the time of permit development are listed in the following paragraphs:

NPDES Permits and Compliance Unit
Nebraska Department of Environmental Quality
1200 N Street, The Atrium, Suite 400
P.O. Box 98922
Lincoln, NE 68509-8922
Telephone Number (402) 471-4220

City of
PO Box
, Nebraska
Telephone Number

E. Wastes Trucked or Hauled to the POTW

Prior Departmental and city approval shall be obtained for any waste and wastewater disposal practice that involves the trucking or hauling of waste to the POTW.

F. Best Management Practices

The permittee shall employ Best Management Practices for identifying and minimizing potential pollutant loading sources being discharged. The practices shall address processes as well as maintenance and management procedures that include, but not limited to, material storage and handling, employee training, recordkeeping, cleaning procedures, water conservation, and spill prevention.

G. Additional Monitoring

The Department may require increases in the monitoring frequencies set forth in this permit to address new information concerning a discharge, evidence of potential non-compliance, suspect water quality in a discharge, evidence of water quality impacts in the receiving stream or waterway, or other similar concerns.

The Department may require monitoring for additional parameters not specified in this permit to address new information concerning a discharge, evidence of potential non-compliance, suspect water quality in a discharge, evidence of water quality impacts in the receiving stream or waterway, or other similar concerns.

H. Effluent Violation Repeat Sampling

The permittee shall conduct or repeat sampling and analysis and submit the results of the repeat analysis to the Department within 30 days of becoming aware of the violation. The results of the repeat analysis must be submitted with a copy of the previously submitted noncompliance form.

I. Notice of Potential Problems

All categorical and non-categorical Industrial Users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings.

J. Sludge Disposal or Use

The permittee shall dispose of all solid wastes and sludges in accordance with the Department's regulations, and shall get Departmental approval prior to land applying any waste.

K. Permit Modification, Reopening, Suspension, and Revocation

This permit may be reopened and modified after public notice and opportunity for a public hearing may be requested for reasons specified in NDEQ Title 119 - *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System*, Chapter 24. This permit may be modified or revoked pursuant to this regulation, including violations of discharge limits or the *Prohibited Discharge Standards* set forth in this permit.

L. Modification of Attachments

The attachments to this permit (e.g. forms and guidance) may be changed without a formal modification of this permit.

M. TO Certification

The permittee may certify compliance with the Total Toxic Organic (TTO) parameter in lieu of testing using the following procedure, unless the Department specifically requests monitoring:

1. Develop a toxic organic management plan;
2. Submit the toxic organic management plan to the Department for review and acceptance;
3. Make revisions to the plan as requested by the Department;
4. Annually review the plan and submit any revisions to the Department for review and acceptance;
5. Provide the following certification statement on or, as an attachment to, the discharge monitoring reports.

"Based upon my inquiry of the person or persons directly responsible for managing compliance with the permit limitation for total toxic organics (TTO), I certify that, to the best of my knowledge and belief, no dumping of concentrated toxic organics into the wastewaters has occurred since filing of the last discharge monitoring report. I further certify that this facility is implementing the toxic organic management plan submitted to the NPDES Program at the Nebraska Department of Environmental Quality."

The TTO certification is valid for the term of the permit. The permittee must recertify compliant with the TTO parameter within 180 days after permit reissuance or begin sampling in accordance with the terms and conditions of the permit. TTO sampling and analysis must be conducted and reported to the Department. This submission must include analysis results and a copy of the updated Toxic Organic Management Plan.

National Pollutant Discharge Elimination System (NPDES) Pollutant Screen

RE:

NDEQ ID:

Program ID: PCS NE

Dear

The Clean Water Act regulations promulgated under 40 CFR 122.21 requires all publically owned treatment works (POTWs) to provide data from a minimum of three samples taken within four and one-half years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall and the analytical results provided with the NPDES permit application. At a minimum, all POTWs must provide analytical results for the following pollutants:

- Biochemical oxygen demand (BOD-5 or CBOD-5)
- Fecal coliform (unless *E. coli* is a current permit requirement)
- Design Flow Rate
- pH
- Temperature
- Total suspended solids

POTWs with an effluent design flow equal to or greater than 0.1 million gallons per day (MGD) must additionally sample for:

- Ammonia (as N)
- Chlorine (total residual, TRC), if chlorine is used for disinfection
- Dissolved oxygen
- Nitrate/Nitrite
- Kjeldahl nitrogen
- Oil and grease
- Phosphorus
- Total dissolved solids

If the POTW has an effluent design flow equal to or greater than 0.1 MGD or the permittee is a city with an approved pretreatment program, **Attachment 1. Additional Pollutant Monitoring for Selected POTWs**, is provided.

All POTWs are required to submit NPDES Combined Form 1 & 2A, *National Pollutant Discharge Elimination System Permit Application for a Facility Discharging Domestic Wastewater* six months prior to permit expiration. These requirements must be met at that time and the analytical results attached. If any pollutants listed above or in Attachment 1 are monitored in the accompanying NPDES permit, redundant sampling will not be necessary. If you have questions, please feel free to call me at 402-471-1367.

Sincerely,

Reuel Anderson, Supervisor
NPDES Permits and Compliance Unit
Water Quality Division

Attachment 1. Additional Pollutant Monitoring for Selected POTWs

The permittee shall monitor the effluent for the parameters set forth in the Tables below using the analytical methods in 40 CFR 136. The monitoring is required during the current permit term and the analytical data obtained from the monitoring shall be submitted as an attachment to the next NPDES permit application.

Table 1: Metals Monitoring						
Parameters	Units	Effluent Data	Analytical method	Method detection limit	Monitoring Frequency ^(b)	Sample Type
Antimony, Total Recoverable	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Arsenic, Total Recoverable	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Beryllium, Total Recoverable	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Cadmium, Total Recoverable	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Chromium, Total Recoverable	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Copper, Total Recoverable	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Lead, Total Recoverable	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Mercury, Total Recoverable	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Nickel, Total Recoverable	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Selenium, Total Recoverable	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Silver, Total Recoverable	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Thallium, Total Recoverable	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Zinc, Total Recoverable	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Footnotes						

Table 2: Inorganic Compounds

Parameters	Units	Effluent Data	Analytical method	Method detection limit	Monitoring Frequency ^(b)	Sample Type
Cyanide	mg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Chloride	mg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Total Phenolic Compounds	mg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Total Phosphorus	mg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Hardness, as CaCO ₃	mg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Footnotes						

Table 3: VOC Monitoring

Parameters	Units	Effluent Data	Analytical method	Method detection limit	Monitoring Frequency ^(b)	Sample Type
Acrolein	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Acrylonitrile	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Benzene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Bromoform	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Carbon Tetrachloride	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Chlorobenzene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Chlorodibromomethane	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Chloroethane	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
2-Chloroethylvinyl Ether	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Chloroform	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Dichlorobromomethane	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
1,1-Dichloroethane	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
1,2-Dichloroethane	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Trans 1,2-Dichloroethylene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite

Footnotes

Table 4: VOC Monitoring

Parameters	Units	Effluent Data	Analytical method	Method detection limit	Monitoring Frequency ^(b)	Sample Type
1,1-Dichroethylene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
1,2-Dichloropropane	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
1,3-Dichloropropylene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Ethylbenzene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Methyl Bromide	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Methyl Chloride	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Methylene Chloride	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
1,1,2,2-Tetrachloroethane	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Tetrachloroethylene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Toluene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
1,1,1-Trichloroethane	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
1,1,2-Trichloroethane	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Trichloroethylene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Vinyl Chloride	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite

Footnotes

Table 5: Acid Extractable Compounds

Parameters	Units	Effluent Data	Analytical method	Method detection limit	Monitoring Frequency ^(b)	Sample Type
p-Chloro-m-Cresol	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
2-Chlorophenol	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
2,4-Dichlorophenol	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
2,4-Dimethylphenol	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
4,6-Dinitro-o-Cresol	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
2,4-Dinitrophenol	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
2-Nitrophenol	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
4-Nitrophenol	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Pentachlorophenol	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Phenol	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
2,4,6-Trichlorophenol	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite

Footnotes

Table 6: Base Neutral Compounds

Parameters	Units	Effluent Data	Analytical method	Method detection limit	Monitoring Frequency ^(b)	Sample Type
Acenaphthene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Acenaphthylene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Anthracene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Benzidine	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Benzo(a)anthracene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Benzo(a)pyrene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
3,4 Benzo-fluoranthene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Benzo(ghi)perylene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Benzo(k)fluoranthene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Bis (2-chloroethoxy)methane	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Bis (2-chloroethyl)ether	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Bis (2-chloroisopropyl)ether	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Bis (2-ethylhexyl)phthalate	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
4-bromophenyl phenylether	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Butyl benzyl phthalate	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite

Footnotes

Table 7: Base Neutral Compounds

Parameters	Units	Effluent Data	Analytical method	Method detection limit	Monitoring Frequency ^(b)	Sample Type
2-Chloronaphthalene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
4-Chorphenyl phenyl ether	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Chrysene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Di-N-butyl phthalate	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Di-N-octyl phthalate	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Dibenzo(A,H) anthracene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
1,2-Dichorobenzene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
1,3-Dichlorobenzene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
1,4-Dichlorobenzene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
3,3-Dichlorobenzidine	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Diethyl phthalate	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Dimethyl phthalate	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
2,4-Dinitrotoluene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
2,6-Dinitrotolune	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
1,2-Diphenylhydrazine	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite

Footnotes

Table 8: Base Neutral Compounds

Parameters	Units	Effluent Data	Analytical method	Method detection limit	Monitoring Frequency ^(b)	Sample Type
Fluoranthene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Fluorene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Hexachlorobenzene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Hexachlorobutadiene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Hexachlorocyclopentadiene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Hexachloroethane	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Indeno(1,2,3-CD)pyrene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Isophorone	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Naphthalene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Nitrobenzene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
N-nitrosodi-n-propylamine	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
N-nitrosodimethylamine	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
N-nitrosodiphenylamine	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Phenanthrene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
Pyrene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite
1,2,4-Trichlorobenzene	µg/L	Report	Report	Report	3 tests per permit term	24 hour composite

Footnotes

Attachment D of NDEQ's initial comments on draft report – Industrial Pollutant Scan Letter and Lists

Jeff Briggs
Green Plains Ord, LLC
9420 Underwood Ave. STE 100
Omaha, NE 68814

National Pollutant Discharge Elimination System (NPDES) Pollutant Screen
RE: Green Plains Ord, LLC
NDEQ ID: 85861
Program ID: PCS NE0137812

Dear Mr. Briggs

The Clean Water Act regulations promulgated under 40 CFR 122.21 requires dischargers to sample their effluent for a specific list of pollutants and provide the analytical results with the NPDES permit application. Direct dischargers of process wastewater must provide effluent data in accordance with **Attachment 1, *Sampling and Analysis Requirements for Process Wastewater Discharges for the NPDES Permit Renewal Application***. Direct dischargers of non-process wastewater must provide effluent data in accordance with **Attachment 2, *Sampling and Analysis Requirements for Non-Process Wastewater Discharges for the NPDES Permit Renewal Application***. The requirements must be completed for each outfall as applicable.

All permittees are required to submit the NPDES application six months prior to permit expiration. The above requirements must be met at that time and the analytical results attached. If any pollutants listed above or in the attachments are monitored in the accompanying NPDES permit, redundant sampling will not be necessary. If you have questions, please feel free to call me at 402-471-1367.

Sincerely,

Reuel Anderson, Supervisor
NPDES Permits and Compliance Unit
Water Quality Division

Attachments: *Attachment 1, Sampling and Analysis Requirements for Process Wastewater Discharges for the NPDES Permit Renewal Application*
 Attachment 2, Sampling and Analysis Requirements for Non-Process Wastewater Discharges for the NPDES Permit Renewal Application.

Attachment 1 – Sampling and Analysis Requirements for Process Wastewater Discharges for the NPDES Permit Renewal Application

Except for stormwater discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for NPDES permits which discharge process wastewater shall provide the information in Section A through to the Department.

A. General Required Sampling and Analysis

Every applicant must report quantitative data for every outfall directly discharging process wastewater for the following pollutants:

1. Biochemical Oxygen Demand (BOD₅)
2. Chemical Oxygen Demand
3. Total Organic Carbon
4. Total Suspended Solids
5. Ammonia (as N)
6. Temperature (both winter and summer)
7. pH

The Director may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in Section A if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

B. Industry Specific Sampling and Analysis

Each applicant with processes in one or more primary industry category (see Section C) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

1. The organic toxic pollutants in the fractions designated in Table I for the applicant's industrial category or categories unless the applicant qualifies as a small business under paragraph (g)(8) of 40 CFR 122.21. Table II lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes (see Part D).
2. The pollutants listed in Table III (the toxic metals, cyanide, and total phenols).
3. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.
4. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in table II or table III (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (g)(7)(v) of 40 CFR 122.21 are discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under paragraph (g)(8) of 40 CFR 122.21 is not required to analyze for pollutants listed in table II (the organic toxic pollutants).

5. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in table V (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.
6. Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:
 - a. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or
 - b. Knows or has reason to believe that TCDD is or may be present in an effluent.

C. Applicable Primary Industry Categories

Adhesives and sealants	Ore mining
Aluminum forming	Organic chemicals manufacturing
Aluminum forming	Paint and ink formulation
Auto and other laundries	Pesticides
Battery manufacturing	Petroleum refining
Coal mining	Pharmaceutical preparations
Coil coating	Photographic equipment and supplies
Copper forming	Plastics processing
Electrical and electronic components	Plastic and synthetic materials manufacturing
Electroplating	Porcelain enameling
Explosives manufacturing	Printing and publishing
Foundries	Pulp and paper mills
Gum and wood chemicals	Rubber processing
Inorganic chemicals manufacturing	Soap and detergent manufacturing
Iron and steel manufacturing	Steam electric power plants
Leather tanning and finishing	Textile mills
Mechanical products manufacturing	Timber products processing
Nonferrous metals manufacturing	

Table I—Testing Requirements for Organic Toxic Pollutants by Industrial Category for Existing Dischargers

Industrial category	GC/MS Fraction ¹			
	Volatile	Acid	Base/neutral	Pesticide
Adhesives and Sealants	2	2	2	
Aluminum Forming	2	2	2	
Auto and Other Laundries	2	2	2	2
Battery Manufacturing	2		2	
Coal Mining	2	2	2	2
Coil Coating	2	2	2	
Copper Forming	2	2	2	
Electric and Electronic Components	2	2	2	2
Electroplating	2	2	2	
Explosives Manufacturing		2	2	
Foundries	2	2	2	
Gum and Wood Chemicals	2	2	2	2
Inorganic Chemicals Manufacturing	2	2	2	
Iron and Steel Manufacturing	2	2	2	
Leather Tanning and Finishing	2	2	2	2
Mechanical Products Manufacturing	2	2	2	
Nonferrous Metals Manufacturing	2	2	2	2
Ore Mining	2	2	2	2
Organic Chemicals Manufacturing	2	2	2	2
Paint and Ink Formulation	2	2	2	2
Pesticides	2	2	2	2
Petroleum Refining	2	2	2	2
Pharmaceutical Preparations	2	2	2	
Photographic Equipment and Supplies	2	2	2	2
Plastic and Synthetic Materials Manufacturing	2	2	2	2
Plastic Processing	2			
Porcelain Enameling	2		2	2
Printing and Publishing	2	2	2	2
Pulp and Paper Mills	2	2	2	2
Rubber Processing	2	2	2	
Soap and Detergent Manufacturing	2	2	2	
Steam Electric Power Plants	2	2	2	
Textile Mills	2	2	2	2
Timber Products Processing	2	2	2	2

¹The toxic pollutants in each fraction are listed in Table II.

²Testing required.

Table II—Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GS/MS)

Volatiles		
1V acrolein	11V chloroform	22V methylene chloride
2V acrylonitrile	12V dichlorobromomethane	23V 1,1,2,2-tetrachloroethane
3V benzene	14V 1,1-dichloroethane	24V tetrachloroethylene
5V bromoform	15V 1,2-dichloroethane	25V toluene
6V carbon tetrachloride	16V 1,1-dichloroethylene	26V 1,2-trans-dichloroethylene
6V carbon tetrachloride	17V 1,2-dichloropropane	27V 1,1,1-trichloroethane
7V chlorobenzene	18V 1,3-dichloropropylene	28V 1,1,2-trichloroethane
8V chlorodibromomethane	19V ethylbenzene	29V trichloroethylene
9V chloroethane	20V methyl bromide	31V vinyl chloride
10V 2-chloroethylvinyl ether	21V methyl chloride	
Acid Compounds		
1A 2-chlorophenol	5A 2,4-dinitrophenol	9A pentachlorophenol
2A 2,4-dichlorophenol	6A 2-nitrophenol	10A phenol
3A 2,4-dimethylphenol	7A 4-nitrophenol	11A 2,4,6-trichlorophenol
4A 4,6-dinitro-o-cresol	8A p-chloro-m-cresol	
Base/Neutral		
1B acenaphthene	17B 4-chlorophenyl phenyl ether	32B fluorene
2B acenaphthylene	18B chrysene	33B hexachlorobenzene
3B anthracene	19B dibenzo(a,h)anthracene	34B hexachlorobutadiene
4B benzidine	20B 1,2-dichlorobenzene	35B hexachlorocyclopentadiene
5B benzo(a)anthracene	21B 1,3-dichlorobenzene	36B hexachloroethane
6B benzo(a)pyrene	22B 1,4-dichlorobenzene	37B indeno(1,2,3-cd)pyrene
7B 3,4-benzofluoranthene	23B 3,3'-dichlorobenzidine	38B isophorone
8B benzo(ghi)perylene	24B diethyl phthalate	39B naphthalene
9B benzo(k)fluoranthene	25B dimethyl phthalate	40B nitrobenzene
10B bis(2-chloroethoxy)methane	26B di-n-butyl phthalate	41B N-nitrosodimethylamine
11B bis(2-chloroethyl)ether	27B 2,4-dinitrotoluene	42B N-nitrosodi-n-propylamine
12B bis(2-chloroisopropyl)ether	28B 2,6-dinitrotoluene	43B N-nitrosodiphenylamine
13B bis(2-ethylhexyl)phthalate	29B di-n-octyl phthalate	44B phenanthrene
14B 4-bromophenyl phenyl ether	30B 1,2-diphenylhydrazine (as azobenzene)	45B pyrene
15B butylbenzyl phthalate		46B 1,2,4-trichlorobenzene
16B 2-chloronaphthalene	31B fluoranthene	
Pesticides		
1P aldrin	10P dieldrin	19P PCB-1254
2P alpha-BHC	11P alpha-endosulfan	20P PCB-1221
3P beta-BHC	12P beta-endosulfan	21P PCB-1232
4P gamma-BHC	13P endosulfan sulfate	22P PCB-1248
5P delta-BHC	14P endrin	23P PCB-1260
6P chlordane	15P endrin aldehyde	24P PCB-1016
7P 4,4'-DDT	16P heptachlor	25P toxaphene
8P 4,4'-DDE	17P heptachlor epoxide	
9P 4,4'-DDD	18P PCB-1242	

Table IV—Conventional and Nonconventional Pollutants Required to Be Tested by Existing Dischargers if Expected to be Present

Bromide	Phosphorus, Total	Boron, Total
Chlorine, Total Residual	Radioactivity	Cobalt, Total
Color	Sulfate	Iron, Total
Fecal Coliform	Sulfide	Magnesium, Total
Fluoride	Sulfite	Molybdenum, Total
Nitrate-Nitrite	Surfactants	Manganese, Total
Nitrogen, Total Organic	Aluminum, Total	Tin, Total
Oil and Grease	Barium, Total	Titanium, Total

Table V—Toxic Pollutants and Hazardous Substances Required To Be Identified by Existing Dischargers if Expected To Be Present

Toxic Pollutants		
Asbestos		
Hazardous Substances		
Acetaldehyde	Dinitrobenzene	Nitrotoluene
Allyl alcohol	Diquat	Parathion
Allyl chloride	Disulfoton	Phenolsulfonate
Amyl acetate	Diuron	Phosgene
Aniline	Epichlorohydrin	Propargite
Benzonitrile	Ethion	Propylene oxide
Benzyl chloride	Ethylene diamine	Pyrethrins
Butyl acetate	Ethylene dibromide	Quinoline
Butylamine	Formaldehyde	Resorcinol
Captan	Furfural	Strontium
Carbaryl	Guthion	Strychnine
Carbofuran	Isoprene	Styrene
Carbon disulfide	Isopropanolamine	2,4,5-T (2,4,5-Trichlorophenoxy acetic acid)
Chlorpyrifos	Dodecylbenzenesulfonate	
Coumaphos	Kelthane	TDE (Tetrachlorodiphenylethane)
Cresol	Kepone	2,4,5-TP [2-(2,4,5-Trichlorophenoxy) propanoic acid]
Crotonaldehyde	Malathion	
Cyclohexane	Mercaptodimethur	Trichlorofan
2,4-D (2,4-Dichlorophenoxy acetic acid)	Methoxychlor	Triethanolamine
	Methyl mercaptan	dodecylbenzenesulfonate
Diazinon	Methyl methacrylate	Triethylamine
Dicamba	Methyl parathion	Trimethylamine
Dichlobenil	Mevinphos	Uranium
Dichlone	Mexacarbate	Vanadium
2,2-Dichloropropionic acid	Monoethyl amine	Vinyl acetate
Dichlorvos	Monomethyl amine	Xylene
Diethyl amine	Naled	Xylenol
Dimethyl amine	Napthenic acid	Zircon

D. Suspensions

The Environmental Protection Agency has suspended the requirements of 40 CFR 122.21(g)(7)(ii)(A) and Table I as they apply to certain industrial categories. The suspensions are as follows:

1. At 46 FR 2046, Jan. 8, 1981, the Environmental Protection Agency suspended until further notice §122.21(g)(7)(ii)(A) as it applies to coal mines.
2. At 46 FR 22585, Apr. 20, 1981, the Environmental Protection Agency suspended until further notice §122.21(g)(7)(ii)(A) and the corresponding portions of Item V-C of the NPDES application Form 2c as they apply to:
 - a. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (Subpart C—Low water use processing of 40 CFR part 410), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.
 - b. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (subpart B of 40 CFR part 440), and testing and reporting for all four fractions in all other subcategories of this industrial category.
 - c. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.
3. At 46 FR 35090, July 1, 1981, the Environmental Protection Agency suspended until further notice §122.21(g)(7)(ii)(A) and the corresponding portions of Item V-C of the NPDES application Form 2c as they apply to:
 - a. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR part 454), and testing and reporting for the pesticide and base/neutral fractions in all other subcategories of this industrial category.
 - b. Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.
 - c. Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.
 - d. Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR part 430); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K), Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).
 - e. Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

4. For the duration of the suspensions, therefore, Table I effectively reads:

Table I—Testing Requirements for Organic Toxic Pollutants by Industry Category

Industry category	GC/MS fraction ²			
	Volatile	Acid	Neutral	Pesticide
Adhesives and sealants	1	1	1	
Aluminum forming	1	1	1	
Auto and other laundries	1	1	1	1
Battery manufacturing	1		1	
Coal mining				
Coil coating	1	1	1	
Copper forming	1	1	1	
Electric and electronic compounds	1	1	1	1
Electroplating	1	1	1	
Explosives manufacturing		1	1	
Foundries	1	1	1	
Gum and wood (all subparts except D and F)	1	1		
Subpart D—tall oil rosin	1	1	1	
Subpart F—rosin-based derivatives	1	1	1	
Inorganic chemicals manufacturing	1	1	1	
Iron and steel manufacturing	1	1	1	
Leather tanning and finishing	1	1	1	
Mechanical products manufacturing	1	1	1	
Nonferrous metals manufacturing	1	1	1	1
Ore mining (applies to the base and precious metals/Subpart B)		1		
Organic chemicals manufacturing	1	1	1	1
Paint and ink formulation	1	1	1	
Pesticides	1	1	1	1
Petroleum refining	1			
Pharmaceutical preparations	1	1	1	
Photographic equipment and supplies	1	1	1	
Plastic and synthetic materials manufacturing	1	1	1	1
Plastic processing	1			
Porcelain enameling				
Printing and publishing	1	1	1	1
Pulp and paperboard mills—see Page C8				
Rubber processing	1	1	1	
Soap and detergent manufacturing	1	1	1	
Steam electric power plants	1	1		
Textile mills (Subpart C—Greige Mills are exempt from this table)	1	1	1	
Timber products processing	1	1	1	1

¹Testing required.

²The pollutants in each fraction are listed in Table II.

Pulp and Paperboard Mills:

Subpart ³	VOA	Acid	GS/MS fractions	
			Base/neutral	Pesticides
A	2	1	2	1
B	2	1	2	2
C	2	1	2	2
D	2	1	2	2
E	1	1	2	1
F	1	1	2	2
G	1	1	2	2
H	1	1	2	2
I	1	1	2	2
J	1	1	1	2
K	1	1	2	2
L	1	1	2	2
M	1	1	2	2
N	1	1	2	2
O	1	1	2	2
P	1	1	2	2
Q	1	1	2	1
R	2	1	2	2
S	1	1	2	1
T	1	1	2	1
U	1	1	1	2

¹Must test.

²Do not test unless “reason to believe” it is discharged.

³Subparts are defined in 40 CFR Part 430.

Attachment 2

Sampling and Analysis Requirements for Non-Process Wastewater Discharges for the NPDES Permit Renewal Application

Except for stormwater discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for NPDES permits which discharge only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the information in Section A and B to the Department.

E. Required Sampling and Analysis for Permit Renewal

Quantitative data for the pollutants or parameters listed below is required, unless testing is waived by the Director. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136. When analysis of pH, temperature, residual chlorine, oil and grease, or fecal coliform (including *E. coli*), and Enterococci (previously known as fecal streptococcus) and volatile organics is required, grab samples must be collected for those pollutants. For all other pollutants, a 24-hour composite sample, using a minimum of four (4) grab samples, must be used unless specified otherwise at 40 CFR Part 136. For a composite sample, only one analysis of the composite of aliquots is required. New discharges must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

1. Biochemical Oxygen Demand (BOD₅).
2. Total Suspended Solids (TSS).
3. Fecal Coliform (if believed present or if sanitary waste is or will be discharged).
4. Total Residual Chlorine (if chlorine is used).
5. Oil and Grease.
6. Chemical Oxygen Demand (COD) (if non-contact cooling water is or will be discharged).
7. Total Organic Carbon (TOC) (if non-contact cooling water is or will be discharged).
8. Ammonia (as N).
9. Discharge Flow.
10. pH.
11. Temperature (Winter and Summer).

The Director may waive the testing and reporting requirements for any of the pollutants or flow listed above if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

F. New Discharges

If the outfall is a new discharge, the applicant must complete and submit quantitative data for the above parameters no later than two years after commencement of discharge. However, the applicant need not submit data for parameters which he has already monitored and reported under the discharge monitoring requirements of his NPDES permit.

ATTACHMENT E DISCHARGE INVESTIGATION REPORT

Nebraska Department of Environmental Quality

INVESTIGATED BY: _____ DATE DISCHARGE REPORTED: _____

DATE(S) OF DISCHARGE: #1: _____ TIME: _____ A.M. P.M.

#2: _____ TIME: _____ A.M. P.M.

DATE OF INVESTIGATION: _____ TIME OF INVESTIGATION: _____ A.M. P.M.

LEGAL DESCRIPTION OF DISCHARGE LOCATION:

_____, _____, SECTION _____, TOWNSHIP _____ N, RANGE _____ E W _____ COUNTY

_____, _____, SECTION _____, TOWNSHIP _____ N, RANGE _____ E W _____ COUNTY

NAME OF OPERATION: _____ IIS # _____ NOT IN IIS OR UNKNOWN

CONTACT PERSON (ON-SITE): _____ TITLE: _____

OWNER'S ADDRESS: _____ CITY/STATE/ZIP: _____

PHONE: (____) _____ - _____ E-MAIL: _____

DOES THE OPERATION HAVE A PERMIT? YES NO PERMIT TYPE(S): _____

NAME OF PERSON REPORTING DISCHARGE: _____ PHONE: (____) _____

IS THIS PERSON ASSOCIATED WITH OPERATION? YES NO

IF YES, ASSOCIATION WITH OPERATION: _____

DETAILS OF DISCHARGE:

1. WHEN DID THE DISCHARGE OCCUR? (rain, night, land application, etc.): _____

2. WHAT WAS RESPONSIBLE OR CAUSED THE DISCHARGE? _____

3. WHERE DID THE DISCHARGE ORIGINATE AND TERMINATE? (attach map) _____

4. DESCRIBE THE NATURE OF THE DISCHARGE AND HOW IT OCCURRED. _____

5. WAS THE START PUMP AND PRE-WINTER LEVEL REACHED BEFORE THE DISCHARGE? _____

6. IS THE STAFF GAUGE CORRECT? _____

SUMMARY OF INVESTIGATION: _____

SIGNATURE OF INVESTIGATOR(S) _____ DATE SIGNED: _____

Second set of NDEQ comments on the draft report, sent March 14, 2013.



Dave Heineman
Governor

STATE OF NEBRASKA

DEPARTMENT OF ENVIRONMENTAL QUALITY
Michael J. Linder
Director
5th - 406, The Plaza
1250 N Street
P.O. Box 54922
Lincoln, Nebraska 68509-0922
Phone (402) 471-2186
Fax (402) 471-2909
website: www.deq.state.nv.us

MAR 14 2013

Karl Brooks
U.S. EPA Region VII
11201 Renner Blvd.
Lenexa, KS 66219

RE: Nebraska Second Round Comments
National Pollutant Discharge Elimination System (NPDES)
Permit Quality Review (PQR) and
State Review Framework (SRF)

Dear Mr. Brooks:

In April 2012 EPA Region VII started the PQR/SRF combined review of the Nebraska NPDES program. A draft report was sent to Nebraska for comment in August 2012. Nebraska submitted a response and supporting documents in November 2012.

In our response we requested a meeting with the SRF group to clarify some comments. The meeting was held in January 2013 and allowed for a better understanding of the issues and what is needed to satisfy these issues. We received some modified comments from EPA after this meeting and our attached response is based on these comments. The attached document, SRF findings recommendations proposed final language 2-1-2013 contains our comments.

We received PQR comments to our November response in February. We held a conference call with the PQR group in mid February. We have attached a response based on these comments. The attached document NDEQ PQR of Integrated Report contains our comments.

As a supplement to these documents we have included a table, Nebraska Permit Quality Review and State Review Framework Action Items, to identify action items that have been addressed and those that still need addressed. From this table you can see that Nebraska has made many changes in the NPDES program before the review began or upon receipt of comments.

This concludes our response to the PQR/SRF review. We would support a lessons learned session since it may be beneficial for future reviews and help to shorten the process and reduce the burden on both EPA and the State.

Sincerely,

Michael J. Linder
Director

CC: Glen Curtis
Diane Huffman

This attachment supplements NDEQ’s responses to the combined Permit Quality Review/ State Review Framework.

The labels for the Permit Quality Review are designated as PQR -. The section A, B, C ... is listed next with the number designating the corresponding bulleted paragraph. Example PQR-C1. The State Review Framework is labeled SRF with the section following, for example SRF 6-1

**PQR-C1. Water Quality – Based Effluent Limitations
WQBEL or ELG more stringent documentation**

Below is an example of a WQBEL and ELG based comparison and selection from an existing fact sheet:

b. Ammonia Discharge Limits

Ammonia limits are based on a comparison of the WQBELs and the ELGs. Where the WQBELs or the ELGs are more stringent, they have been included in the draft permit as required by Title 119, Chapter 17.

The direct comparison was displayed as follows:

Water Quality Based Permit Limit Calculations for: Ammonia				Effluent Limitation Guideline for Ammonia		
	Spring	Summer	Winter	Spring	Summer	Winter
Acute WLA	63.20	24.82	50.66			
Chronic WLA	40.42	3.05	237.83			
Acute LTA	10.250	6.190	26.720			
Chronic LTA	12.118	1.341	169.987			
Concentration Based Permit Limits:						
<i>Maximum Daily (mg/L)</i>	<i>63.2</i>	<i>5.4</i>	<i>50.7</i>	8.0	8.0	8.0
<i>Average Monthly (mg/L)</i>	<i>22.8</i>	<i>2.35</i>	<i>33.8</i>	4.0	4.0	4.0
Mass Based Permit Limits:						
<i>Maximum Daily (kg/day)</i>	<i>837</i>	<i>73</i>	<i>671</i>	106	109	106
<i>Average Monthly (kg/day)</i>	<i>302</i>	<i>32.0</i>	<i>447</i>	53	54.5	53
Whole Effluent Toxicity Limits **Based on CV of 0.3						
	Spring	Summer	Winter			
Acute WLA	0.57	0.64	0.65			
Chronic WLA	1.00	1.00	1.00			
Acute LTA	0.30	0.34	0.34			
Chronic LTA	0.71	0.71	0.71			
Acute Toxicity (TUa)	0.57	0.64	0.65			
Chronic Toxicity (TUc)	1.36	1.36	1.36			
Permit Limits:						
<i>Acute Toxicity (TUa)</i>	1.00	1.00	1.00			

When an ELG requires calculation, that documentation would be similar to that shown in section PQR-C4 below.

**PQR-C2. Water Quality – Based Effluent Limitations
Documentation of reasonable potential in Fact Sheet**

Below is a recent fact sheet example of reasonable potential documentation:

b. Basis for removal of temperature limits and inclusion of monitoring

Temperature standard to protect aquatic life are set forth in NDEQ Title 117 Nebraska Surface Water Standards in Chapter 3 General Criteria for Aquatic Life. According to the requirements of Title 117, the temperature of a receiving water shall not be increased by a total of more than 5 °F from ambient outside the mixing zone and for warm waters, the maximum limit is 90 °F. CORMIX was used to model the change in temperature downstream from the Chief Ethanol, Inc. facility. These results were used to develop a maximum end of pipe temperature such that the downstream temperature was not raised by more than 5 °F and did not exceed 90 °F. The temperature data reported during the previous permit term was used in reasonable potential calculations. The results of these calculations indicated no reasonable potential exists for the effluent from Chief Ethanol to cause an exceedance on instream criteria. Therefore report only monitoring is included in the permit.

Limit = 136 °F	Average = 77.6 °F	Std Dev = 3.7 °F
CV = 3.7/77.6 = 0.05	RP Factor = 1.2	Max = 88 °F
Reasonable Potential = 1.2*88 = 105.6 °F < 136 °F		

NOTE: This type of documentation will be included as it applies to nitrates based on agricultural season designations.

**PQR-C4. Water Quality – Based Effluent Limitations
ELG documentation**

Below are two examples of ELG calculation documentation from existing fact sheets:

Example 1.

Effluent Limitation Guideline Summary

Effluent Limitations Guidelines (ELG)
40 CFR Part 432 Meat and Poultry Products Point Source Category
Subpart B Complex Slaughterhouse
432.22 Effluent Limitations Attainable by the Application of the
Best Practicable Control Technology Currently Available (BPT)

Table 1. BPT Effluent Limitations at 40 CFR Part 432.22

Parameter	Dly. max.*	Monthly ave.*	Units
BOD5	0.42	0.21	g/kg
TSS	0.50	0.25	g/kg
Oil & Grease	0.16	0.08	g/kg

* g/1000 kg live weight killed (LWK)

The ELG also includes a limitation for fecal coliform bacteria and ammonia. The fecal coliform limit is a maximum of 400 colony forming units per 100 mL at any time. The ammonia limit is a daily maximum of 8.0 mg/l and a monthly average of 4 mg/l.

Table 2. Production Based Permit Limits

Parameter	Dly. max.	30 day ave.	Units	Production in LWK/day	
BOD5	1,303	651	kg/day	6,840,000	lbs

TSS	1,551	776	kg/day	=	
Oil & Grease	496	248	kg/day	3,102,041	kg

kg per day/month = (categorical standard x LWK/day)/1000

Example 2.

a. Basis for TSS Discharge Limitations and Monitoring

Total Suspended Solids limits have been established by EPAs building block approach for developing permits. The facility falls under three categorical limits sets in 40 CFR. The calculations are listed in the table below. These limits are calculated on the Live Weight Killed (LWK) for the facility.

FS 12: TSS Limits Calculated for Outfall 001					
40 CFR	Weight	Multiplier Monthly Av. (lbs/1000 lbs)	Value (lbs/day) Monthly Av.	Multiplier Daily Max (lbs/1000 lbs)	Value (lbs/day) Daily Maximum
40 CFR 432.22	6,360,000	0.25	1590	0.5	3180
40 CFR 432.25(b)(2)	5,040,756	0.04	202	0.08	403
40 CFR 432.12(a)(2)	2,835,756	0.04	113	0.08	227
40 CFR 425.64	364,000	2.1	764	4.7	1,711
			2669		5521

**PQR-G1a. Documentation (including fact sheet)
Status of receiving waters with respect to impairments and TMDLs.**

Below is a example from an existing fact sheet:

Impairments and Parameters of Concern for the North Fork of the Big Nemaha River (NE2-12500)

Impairments: *E. coli*, Impaired aquatic community

Parameters of Concern: *E. coli*, Unknown

Below is proposed additional language:

A TMDL has been prepared for this impairment. The TMDL is a 30 day geometric mean of 126/100 ml for *E. coli*. The draft permit limit satisfies the TMDL.

In some cases a TMDL may not be prepared. The fact sheet will state a TMDL is not prepared, is in development, or the cause of the impairment is unknown as indicated in the most current integrated report.

**PQR-G1b. Documentation (including fact sheet)
Expand sheet – metals limits**

Title 117, Chapter 4 provides that the criteria for metals, with the exception of mercury, apply to dissolved concentrations. The following is copied from a fact sheet when dissolved metals were applied:

b. Dissolved Zinc

The dissolved zinc parameter is being retained in the draft permit. In addition to the existing summer season limitations, spring and winter season limitations have been included based on reasonable potential, water quality criteria, and to support the Anti Degradation Review. Mass limits have been included as required by Title 119, Chapter 18. The summer season limits in the current permit are more restrictive than those calculated in the draft and are retained to satisfy the anti-backsliding provision of Title 119, Chapter 17. The summer mass limits are calculated from the existing concentration limits and the reported median maximum Facility flow for the season. Wasteload and limit calculations are included as Attachment 4.

Attachment 4 would be the support documentation developed from Excel spreadsheets and attached to the fact sheet. Further clarification can be achieved by adding:

The monthly average and daily maximum limitations specified in the draft permit are water quality-based criteria in accordance with NDEQ Title 117.

Total metal parameters are usually associated with an ELG or categorical limitation. The following is copied from an existing fact sheet when total metals were applied:

b. Basis for Metals, Cyanide, TSS, and TTO Limits and Monitoring Requirements

Limits and monitoring requirements for cadmium, chromium, copper, lead, nickel, silver, zinc, cyanide, total suspended solids (TSS), and total toxic organics (TTO) are set forth in 40 CFR, Part 433 for existing point sources. These limits and monitoring requirements are continued in the permit. Quarterly monitoring is required in the permit.

**PQR-G1c. Documentation (including fact sheet)
Mixing zone requirements**

Current example from an existing fact sheet:

c. Water Quality Based Effluent Limits

Water quality monitoring and limitations are included in the permit to protect the receiving stream from the discharge of toxic substances in toxic amounts. In NDEQ Title 117, *Nebraska Surface Water Quality Standards*, water quality criteria are established for whole effluent toxicity (WET), conductivity, temperature, chloride, chlorine, and pH. If there is a reasonable potential to cause an instream excursion of the water quality criteria for any pollutants of concern, then limitations are included in the NPDES permit.

Proposed language:

b. Water Quality Based Effluent Limits

Water quality monitoring and limitations are included in the permit to protect the receiving stream from the discharge of toxic substances in toxic amounts. In NDEQ Title 117, *Nebraska Surface Water Quality Standards*, the water quality criteria for specific pollutants are determined as acute and chronic instream criteria. The NDEQ develops seasonal (spring, summer, winter) wasteload allocations (WLA) to protect these criteria. Title 117, Chapter 2, promulgates the use of mixing zones when developing acute and chronic WLAs. Mixing zones are limited to as small an area and volume of a receiving stream as is practical to prevent interference with or

impairment of any beneficial uses. Maximum limitations on the length and width of mixing zones are applicable based on the receiving water use classification. If there is a reasonable potential to cause an instream excursion of the water quality criteria for a parameter, then limitations are included in the NPDES permit. The permit limitations are established from the WLAs according to the procedures given in the *Technical Support Document for Water Quality-based Toxics Control (TSD)*. WLA and limitation worksheets for the permit are attached.

The following tables are from NDEQ's WLA calculation worksheet and provide examples where information is found that shows the application of the mixing zone. The relevant information is highlighted.

General Information						
Facility	Receiving Water	Title 117 ID:	Prepared By:	Date	Review by:	Date
	West Fork of the Big Blue River	BB3-30000				

Assigned Beneficial Uses						
State Resource Water	Aquatic Life Use Class	Recreation (Y/N)	Agriculture (A/B)	Water Supply	Aesthetics	Key Species
N	B	N	A	N	Y	None Listed
Is the waterbody on the current 303(d) List?		N	Does the Facility Discharge 303(d) Listed Pollutant?			N

Receiving Stream Information						
Known Stream Flow (cfs)	Known Average Velocity (ft/s)	Known Average Depth (ft)	Known Average Width (ft)	Stream Slope (ft/mile)	Ls/Lv	Chronic Mixing Zone to 5000 Ft?
33600	3.73	13.95	645	2	1.45	no

Spring				Summer				Winter			
Chronic NH3 WLA	% Stream	Acute NH3 WLA	% Stream	Chronic NH3 WLA	% Stream	Acute NH3 WLA	% Stream	NH3 WLA	% Stream	Acute NH3 WLA	% Stream
550.97	16.8	2050.40	3.8	405.86	16.6	2427.79	3.78	862.75	17.0	1613.66	3.8
Chronic WLA	% Stream	Acute WLA	% Stream	Chronic WLA	% Stream	Acute WLA	% Stream	Chronic WLA	% Stream	Acute WLA	% Stream
3.34	17.18	1.15	3.81	4.10	16.97	1.42	3.78	3.45	17.18	1.00	3.84

**PQR-G1d. Documentation (including fact sheet)
Rationale for monitoring requirements**

NDEQ has guidance for establishing monitoring frequencies in NPDES permits. This current guidance is based on design flow. The guidance also states that frequency may be increased based on water quality excursions, enforcement actions, poor operation and maintenance or the number of significant industrial users. NDEQ also uses EPA’s NPDES Permit Writers’ Manual, Chapter 8, Section 8.1.3 as additional guidance. NDEQ will include in future fact sheets a statement identifying the rationale. An example of this statement is as follows:

“Monitoring frequency is based on the Department’s guidance for facilities with a design flow of 0.10 to 0.99 millions of gallons per day (MGD).”

A deviation from this guidance will require an additional description supported by the guidance referenced above. The description will include the specific reason, (i.e. compliance history).

SRF 6-1. Inspection Report – Consistent Compliance Determination

Existing inspection reports document compliance through the use of modifiers associated with the observations in a checklist. These modifiers will be more consistent and are suggested as follows:

y = indicates compliance, m = marginal, indicates a possible deficiency, pv = indicates a potential violation, na = not applicable

Below are examples from an inspection report observation checklist:

Discharge Monitoring Reports	y	3 years of DMR records are complete and available.
Discharge Monitoring Report Compliance	pv	A noncompliance for TSS was reported for January 2013. The monthly average was exceeded by 18 mg/L. The exceedance was reported within 24 hours and followed by a written report within 5 days. The written report identified the cause as a result of clarifier cleaning operations. A description of the mitigation is not included.
Splitter Box(s)	m	Accumulated sludge needs to be cleaned from the influent splitter box.
Lagoon (s)	pv	A stand of cattails is observed growing in the northwest corner of the lagoon.
Sample Handling	pv	Samples collected for pH are not analyzed within the 15 minute holding time.

The checklist will include the following three additional checkboxes to identify violations:

Potential Significant Non-Compliance Violations (SNC)	n	List
Potential Single Event	n	List

Violations (SEV)		
Other Non – SNC or SEV Violations	n	List

When a situation is considered marginal, the comments and suggestions section of the report should include a recommendation the facility needs more attention in this area, but no further response is necessary. NDEQ will include a section in the inspection reports that clarifies when a potential violation (pv) is identified in report observations. The section is suggested as follows:

SUMMARY OF POTENTIAL VIOALTIONS (pv)

1. Title 119 - *Rules and Regulations Pursuant to the Issuance of Permits Under the National Pollutant Discharge Elimination System (NPDES)*.
 - a. Failure to comply with secondary treatment requirements. Facility files indicate the monthly average concentration for total suspended solids (TSS) was exceeded for the monitoring period ending January 1, 2013. This is a violation of Title 119, Chapter 21.
 - b. Failure to comply with permit conditions. Samples collected for pH are not analyzed within the 15 minute holding time. This is a violation of Title 119, Chapter 27.
2. Title 123-*Operation and Maintenance of Wastewater Works*.
 - a. Failure to comply with operation and maintenance regulations. Cattails are observed growing in the northwest corner of the wastewater lagoon. This is a violation of Title 123, Chapter 11.

This summary will reflect a pv documented in the observation section. This summary in turn will tie into the comments and suggestions:

COMMENTS AND SUGGESTIONS

1. Secondary treatment standards require POTWs practicing a combination of physical and biological treatment to remove biodegradable organics and suspended solids. These standards are adopted in Title 119, Chapter 21. The Violation of these standards can be considered significant noncompliance (SNC) and may require further action at the Department’s request.
2. Samples collected for the purpose of monitoring effluent pH must be analyzed within the 15 minute holding time. This requirement is established in 40 CFR 136 and adopted by reference in Title 119, Chapter 27. The operator was made aware of this during the site inspection and has changed his procedure to ensure the 15 minute holding time is adhered to.
3. Title 123, Chapter 11, requires emergent vegetation such as cattails are to be removed promptly as they appear. Further infestation may damage the lagoon liner, attract wildlife that can damage the dikes, act as a pathogen vector attractant, or inhibit the treatment ability of the WWTF. To prevent further infestation the Department recommends the cattails be removed as soon as possible.

SRF 6-3. Inspection Report – Consistent Compliance Determination

Entire Facility Inspected	n	If no describe what was observed.
---------------------------	---	-----------------------------------

SRF 8-1. SNC needs brought to facility attention

In section SRF 6-1 above, the example describes a potential violation is identified as a monthly average concentration exceedance for TSS. Internally at NDEQ it would be determined a single event violation and significant noncompliance under the technical review criteria. The facility would be notified through a Notice of Violation (NOV). An example NOV, minus administrative details, is included below:

Dear Mayor Smith:

This Notice of Violation is being issued to the City of XXXXX WWTF for violations of Title 119, *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System*. The violations were determined during a facility inspection and file review conducted on January 24, 2013.

The Department documented the following:

- A. **Failure to comply with secondary treatment requirements.** Facility files indicate the monthly average concentration for total suspended solids (TSS) was exceeded by 18 mg/L for the monitoring period ending January 1, 2013 as a result of clarifier cleaning maintenance. This is a violation of Title 119, Chapter 21.

Regulations that have been referenced are available online at the Department's website: www.dcg.state.ne.us

In order to cease and/or mitigate these violations the Department requests that you provide the following:

1. **Within 30 days** from the date of this Notice of Violation, identify and provide in writing, a best management practice (BMP) to prevent effluent violations during routine operations and maintenance activities.

The Department requests that you voluntarily comply with these corrective measures. Compliance with this request does not mean that enforcement action relative to these violations will not be considered. We will evaluate your prompt compliance and will consider your efforts to determine if enforcement action is warranted. Enforcement action may include issuance of an administrative order, or referral to the Attorney General for penalties of up to \$10,000 per day per violation, and/or injunctive relief.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

Mr. Steve Goans
Nebraska Department of
Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922

MAR 28 2011

Dear Mr. Goans:

This letter regards National Pollutant Discharge Elimination System (NPDES) permits issued by the Nebraska Department of Environmental Quality (NDEQ) in 2009 and 2010 for several Water Treatment Plants (WTPs). These permits allowed the direct discharge of lime sludge and included permits for the Nebraska City Water Treatment Plant (WTP) (NE0111368), Florence Potable WTP (NE0000914), Platte South Potable WTP (NE0000906), and Plattsmouth Potable WTP (NE0132446). The Environmental Protection Agency (EPA) has now had an opportunity to carefully review these four WTP permits and has several concerns regarding their appropriateness under the Clean Water Act (CWA) NPDES program, as follows:

Water Quality Based Effluent Limitations (WQBELs)

- o Nebraska WQS set criteria for pH within the range of 6.5 to 9.0 SUa. The upper limit of 9.0 was removed for Outfalls 001, 002 and 005 of the Florence permit and Outfalls 001 and 002 of the Platte South permit, although this limit was included in the previous version of these permits. In lieu of the upper pH limits in the Florence permit and Outfall 002 for the Platte South permit, the permits include monitoring-only requirements and allow two to four years for the facilities to complete a study to determine if the discharges will attain the pH standard at the end of the acute mixing zone. With regard to Outfall 001 at the Platte South facility, which has been determined to cause pH impairment to Zweibel Creek, the permit allows three years to close the outfall and transfer all of the facility's discharges to the Missouri River outfall.

- The permits for MUD Platte South and Nebraska City do not include WQBELs for Total Residual Chlorine (TRC), although there are applicable water quality criteria for the receiving waters and chlorine is known to be present in each discharge. Nor is there discussion in the permits' fact sheets regarding this pollutant. The 2008 fact sheet for Nebraska City includes a determination that there should be monthly average and daily maximum TRC limits for both Outfalls, but there are monitoring-only limits imposed in the permit.
- The Florence permits contain only monitoring requirements for total suspended solids (TSS) and allow a three year study for all outfalls to evaluate water quality impacts of the solids and evaluate selected technologies. The Platte South permit contains a similar provision for Outfall 002.

The NPDES permit regulations at 40 CFR § 122.47 require that a compliance schedule only be included in an NPDES permit where "appropriate" and require compliance with the final effluent limitation "as soon as possible." Additionally, the regulations require any NPDES

permit establishing a compliance date of more than one year from permit issuance to set forth interim requirements and dates for their achievement and/or progress reports. A 2007 memorandum from James A. Hanlon, Director of the Office of Wastewater Management, addresses EPA's principles under 40 CFR § 122.47 regarding the use of compliance schedules to achieve WQBELs (see enclosed memo). The above referenced WTP permits did not follow, and/or did not demonstrate through clear and adequate information in the met sheets that they followed, the principles set forth in the Hanlon memo. Several key principles from the Hanlon memo that are of concern include:

1. A demonstration that the compliance schedules were appropriate.
2. A demonstration that the discharger cannot immediately comply with the WQBEL.
3. A demonstration that compliance will be achieved as soon as possible.
4. Inclusion of at least annual interim requirements for all schedules.
5. Establishment of final effluent limitations.
6. A certain date for achieving compliance with WQBELs.

Technology-Based Limitations for TSS

- The compliance schedules for TSS in the permits noted above do not clearly indicate in all circumstances whether they are for achieving compliance with WQBELs or technology-based effluent limitations.
 - o None of the permits make a finding of the appropriate Best Conventional Pollutant Control Technology (BCI) or documented a Best Professional Judgment (BPJ) finding using any of the requirements of 40 CFR § 125.3.
 - e The compliance schedule directions for the studies to "evaluate selected technologies" in the Florence and Platt South permits do not appear to require all of the information required under 40 CFR § 125.3 to complete a BPJ analysis.

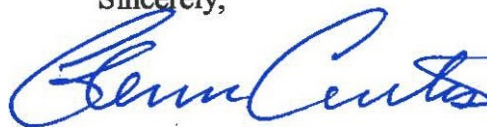
- The 2008 fact sheet for the Nebraska City permit includes a statement that monthly average and daily maximum limits are appropriate, but there are no limits imposed in the final permit.

The provisions of 40 CFR § 122.47 prohibit the use of compliance schedules to achieve compliance with technology-based effluent limitations if the date for compliance with those limits has already passed. The date for compliance with BCT provisions was March 1989. If the permitting authority believes that a new analysis of technology-based limitations should be performed through a BPJ analysis, then the final limits should be included in the permit and the BPJ analysis should be implemented through an enforcement mechanism, such as an administrative order.

EPA has coordinated with the Iowa Department of Natural Resources (IDNR) to prepare a request for information under the authority of Section 308 of the CWA to gain information needed for development of BPJ-derived technology-based permit limitations for the Council Bluffs Water Works. That letter was sent to Council Bluffs on March 7, 2011. A copy is enclosed for your information. We urge NDEQ to consider sending a similar letter to the WTP facilities in Nebraska to assure that complete information needed to assess BPJ technology requirements and water quality-based permit limits is available.

EPA looks forward to working with you on this issue. Please contact me at 913-551-7726 to further discuss.

Sincerely,



Glenn Curtis, Chief
Wastewater and Infrastructure
Management Branch

Enclosures

Appendix G: SRF Finding 4-1 Detailed Analysis

State: Nebraska

Review Period: FFY 2011

Metric 4a

Percent of planned inspections completed: Planned inspections per the negotiated CMS Plan completed in the review year. Calculate as a percentage by category where the numerator = number of inspections completed; denominator = number of inspections planned.

Metric	Universe	# inspections completed	# committed to inspect	Percentage
4a1	Majors	36	24	150.0%
4a2	Minors, Total inspections	124	106	117.0%
4a3	Minors: Comprehensive, 303d (subset of 4a2)	119	101	117.8%
4a4	NonDischarging Lagoons	56	43	130.2%
4a5	Pre-Treatment	104	104	100.0%
4a6	Construction Storm water Inspections	22	0	-
4a7	Industrial Storm water	98	30	326.7%
4a8	Large and Medium CAFO inspections - permitted	356	125	284.8%
4a9	Large Unpermitted CAFO inspections	247	70	352.9%
4a10	Medium Unpermitted CAFO inspections	266	20	1330.0%
4a11	Small AFO inspections	90	20	450.0%

Appendix H: SRF Finding 4-2 Detailed Analysis

WW Section	State Commitment	Accomplishments	Data Source	Evaluation*	Initial Findings
Commitment 1	Negotiate, finalize, and implement an annual Compliance Monitoring Strategy (CMS) for the subsequent FFY.	Jointly developed a CMS plan, per EPA's 10/17/07 CMS Guidance. Conducted inspections according to CMS commitments.	ICIS, State database, Conversations between EPA and state	Appears Acceptable	Jointly developed a CMS plan, per EPA's 10/17/07 CMS Guidance. Conducted inspections according to CMS commitments.
Commitment 2	Address non-compliance issues per the NDEQ enforcement manual, procedures and policies	4 formal enforcement actions provided to EPA	State NPDS database; Conversation between EPA and the state	Appears Acceptable	NDEQ provides copies of enforcement actions to EPA for entry
Commitment 3	Input WENDB data elements into ICIS for major NPDES permitted dischargers.	Provided WENDB data elements inputted by NDEQ	ICIS	Appears Acceptable	NDEQ appears to be fulfilling this commitment on an ongoing basis
Commitment 4	Provide access to copies of compliance inspection reports and transmittal letters for facilities, upon request	NDEQ provided documents on requests through Records Management	State database	Appears Acceptable	NDEQ appears to be fulfilling this commitment on an ongoing basis
Commitment 5	Provide copies of final enforcement orders and judicial actions (mail or e-mail)	NDEQ provided associated documents	Conversation between EPA and the state	Appears Acceptable	NDEQ appears to be fulfilling this commitment on an ongoing basis
Commitment 6	Complete action items in State Review Framework (SRF) program review and final report, as negotiated and approved by NDEQ and EPA.	Final SRF report for FY07 Action Items:	Conversation between EPA and the state	TBD	Evaluation to be completed during FY11 SRF Review
Commitment 7	Ensure that any new database/system to be used for batching to ICIS-NPDES will be able to accommodate all WENDB	Coordinate state, regional EPA and HQ EPA on development and implementation	EPA correspondence file	TBD	No reported progress during FY11; Will address during FY11 SRF Review
Commitment 8	Verify the quality of ICIS-NPDES data prior to creation of frozen data	EPA HQ will initiate data verification process following the end of the fiscal year. NDEQ reviewed data for FY11 and corrected data issues in ICIS prior to data being frozen.	ICIS, OTIS	Appears Acceptable	NDEQ reviewed data for FY11 and corrected data issues in ICIS prior to data being frozen for SRF Review.
Commitment 9	Provide copies of any CSO enforcement related correspondence (mail or e-mail), as requested	No enforcement actions related to CSO taken during FY11	Conversation between EPA and the state	Ongoing	Flooding during 2011 prevented inspections of CSO communities during FY11. NDEQ to conduct 2 CSO inspections during FY12.
Commitment 10	Certify or recertify onsite professionals. Provide training and testing.	Total population of certified professionals = 586 for FY11	PPG Report	Appears Acceptable	NDEQ appears to be fulfilling this commitment on an ongoing basis

WW Section	State Commitment	Accomplishments	Data Source	Evaluation*	Initial Findings
Commitment 11	Investigate, respond, followup on compliants. Cooperate with state and local agencies on Onsite Wastewater Treatment (OWT) issues.	Compliants received = 103, Compliants closed = 123, Local gov. OWT related inspections = 10, OWT Advisory Committee Meetings = 3	PPG Report	Appears Acceptable	NDEQ appears to be fulfilling this commitment on an ongoing basis
Commitment 12	For Major permittees, a Quarterly Non-Compliance Report (QNCR) as specified and further qualified in EPA guidance.	Submitted a QNCR for each quarter during FY11	Conversation between EPA and the state	Appears Acceptable	NDEQ appears to be fulfilling this commitment on an ongoing basis
Commitment 13	Provide the necessary information to EPA to update the Watch List Report	NDEQ provided responses for each quarter's Watch List inquiries	Conversation between EPA and the state	Appears Acceptable	NDEQ appears to be fulfilling this commitment on an ongoing basis
Commitment 14	For Major permittees, submit summary information for those permittees with two or more violations of the same monthly average permit limitation in a six month period.	Submitted summary information for the Semi-Annual Statistical Summary (SSSR)	SSSR	Appears Acceptable	NDEQ appears to be fulfilling this commitment on an ongoing basis
Commitment 15	Provide information to EPA for update of Annual Non-Compliance Report (ANCR) for minors	NDEQ provided response to ANCR generated by HQ	Regional and State Reporting Criteria for CY2010 NPDES Nonmajors Statistical Non-Compliance Reports	Appears Acceptable	NDEQ appears to be fulfilling this commitment on an ongoing basis
Commitment 16	Provide Enforcement Activities Semi-Annual Report of all enforcement activities taken in the FFY against any major facility.	NDEQ provided copies of all formal enforcement actions taken during FY11	Enforcement Activity Report	Appears Acceptable	NDEQ appears to be fulfilling this commitment on an ongoing basis
Commitment 17	Send copies of sludge reports to EPA as received. EPA continues to encourage permit holders to submit sludge reports directly to EPA.	NDEQ provided bio-solid reports upon request from EPA, but does not automatically forward the reports to EPA.	Conversation between EPA and the state	Minor Issue	NDEQ should forward original or copies of sludge reports to EPA following receipt of the reports.
Commitment 18	Submit an annual storm water and MS4 report for the FFY	NDEQ submitted information with Annual Report	Annual PPG Report	Appears Acceptable	NDEQ appears to be fulfilling this commitment on an ongoing basis
Commitment 19	Report number of inspections	NDEQ submitted information with Annual Report	Annual PPG Report	Appears Acceptable	NDEQ appears to be fulfilling this commitment on an ongoing basis
Commitment 20	Report number of enforcement actions semi-annually	34 - LOW; 19 - NOV; 1 - Administrative Order; 5 - Consent Decrees issued w/ penalties	Annual PPG Report	Appears Acceptable	NDEQ appears to be fulfilling this commitment on an ongoing basis

WW Section	State Commitment	Accomplishments	Data Source	Evaluation*	Initial Findings
Commitment 21	Update Title 130 to bring into harmony with new federal rules	Amendments to Title 130 effective 6/25/11	Annual PPG Report	Appears Acceptable	NDEQ appears to be fulfilling this commitment on an ongoing basis
Commitment 22	Provide copies of final enforcement orders and judicial actions (mail or e-mail)	NDEQ provided electronic copy of 2 actions	Correspondence between EPA and State	Appears Acceptable	NDEQ appears to be fulfilling this commitment on an ongoing basis
*Evaluation Criteria:					
Minor Issues/Appears Acceptable -- No EPA recommendation required.					
Potential Concern -- Not a significant issue. Issues that the state may be able to correct without specific recommendation. May require additional analysis.					
Significant Issue -- File review shows a pattern that indicates a significant problem. Will require an EPA Recommendation.					

Appendix I: SRF File Review Summaries

This appendix to the report includes a summary of findings for each of the 109 facility files reviewed by EPA. Each summary discusses NDEQ's compliance monitoring and enforcement activities with the facility that occurred during the FFY 2011 review period or that began or continued during the preceding or subsequent year(s).

ADM Columbus (NE0103141)

Inspection date(s) and # days to report: 5/13/11 (7)

Inspection notes: The inspector found the facility to be in compliance. Nearly every item was found to be satisfactory including the indication of "Yes" in the box corresponding to DMR compliance. The inspector even noted awards the facility had won. The inspection report was transmitted with the standard transmittal letter on 6/15/11.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: This facility has a long history of noncompliance with effluent limits, mostly chloride, TRC, and TSS. There are many letters of noncompliance to the facility from NDEQ in the file. On 11/11/2011, NDEQ sent ADM an NOV capturing all of the effluent exceedances from the 4th quarter 2009, 1st quarter 2010, 3rd quarter 2010, 1st quarter 2011, and 3rd quarter 2011. In response the facility conducted a mixing zone study and suggested a permit modification to NDEQ. The findings of the inspection report are not consistent with the DMRs and other documents in the file and suggest the inspector had not reviewed documents prior to the inspection or while preparing his report.

Beatrice WWTF (NE0020915)

Inspection date(s) and # days to report: 9/21/2011 (51)

Inspection notes: The inspection report narrative discusses several shortcomings in the facility's operations relative to regulatory requirements, and this discussion comports with findings in the report checklist. However, neither the report nor its cover letter to the facility reach any conclusions about the compliance status of the facility.

Enforcement action date(s): NOV – 12/3/2010

Enforcement action notes: The NOV cited a failure to submit quarterly DMRs in the fourth quarter of calendar year 2009 and the first quarter of calendar year 2010, as noted during a records review conducted as part of a 6/2/2010 inspection. It also notes that the missing reports were received by NDEQ on 6/16/2010. The NOV was an appropriate use of enforcement but does not appear to be the reason for the facility's return to compliance, as it wasn't issued until six months after violation discovery and many months after the facility had submitted the missing DMRs.

Other notes: The DMR non-receipt violations addressed by the NOV constituted SNC.

The 9/21/2011 inspection also served as an EPA oversight of the NDEQ inspector. The constructive findings from the oversight inspection were that the inspector made verbal observations regarding hold time excursions for two parameters but did not discuss those observations in the report. Other findings included lack of any receiving stream observations, no specification of a date by which the facility should correct deficiencies identified in the inspection report, and no clear compliance determination. In addition, the oversight inspection

found an absence of compliance history as part of the inspection (see “Other notes” for North Platte, below).

Behlen Manufacturing Company (NE0000647)

Inspection date(s) and # days to report: 3/10/2010 (9); 4/5/2011 (35).

Inspection notes: Both inspection reports followed the same format, with general facility information on the first page followed by a complete description of the facility’s processes and treatment equipment. The permit issuance and renewal dates are listed in the inspection reports on the final page; it would be helpful to have this information on the front cover page with all the other general permit information. Neither report contained a description of the investigative activities performed during the inspection or the specific observations from the inspection. A checklist was filled in, but no additional comments were added. There were no conclusions within the body of the inspection reports themselves to indicate the compliance status of the facility. The inspection coding sheets for each inspection included a checkmark to indicate “in compliance” but also included a checkmark in the field for “effluent observation” indicating “turbid” with regard to the 2010 inspection and “solids present” with regard to the 2011 inspection.

Enforcement action date(s): Notice of DMR non-receipt – July 2011.

Enforcement action notes: NDEQ issued a notice of DMR non-receipt for failure to include page 3 of a DMR due in April – June 2011, requiring Behlen to resubmit the corrected DMR.

Other notes: None

Blair WWTF (NE0021482)

Inspection date(s) and # days to report: 2/11/2011 (14).

Inspection notes: The inspection report included general facility information on the first page followed by a description of the facility’s processes and treatment equipment. The permit issuance and renewal dates are listed in the inspection on the final page; it would be helpful to have this information on the front cover page with all the other general permit information. The report contained no description of the investigative activities performed during the inspection or the specific observations from the inspection. Checklists for overall mechanical processes and sludge handling processes were filled in, but little to no additional comments were added. There were no conclusions within the body of the inspection report itself to indicate the compliance status of the facility. There are no questions in the checklist regarding SSOs or bypasses and no additional information regarding these matters was added to the inspection narrative.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: The facility experienced SSOs, bypasses and bacteria violations in mid-2011 that were concurrent with extensive flooding in the area. These violations were noted in the City’s DMRs. There is no documentation in the files reviewed to indicate whether NDEQ confirmed that the nature of the reported violations was attributable to the flooding.

Fremont WWTF (NE0031381)

Inspection date(s) and # days to report: 12/28/2010 (14)

Inspection notes: A reading of the report checklist and narrative did not indicate whether any deficiencies were found at the facility, and the cover letter for the report indicated that NDEQ was reviewing the report for violations. The only evidence of a compliance determination took

the form of an “Inspection Data Sheet” that was routed internally with the report. This data sheet asks the question “Did you observe deficiencies,” which was answered “No.”

Enforcement action date(s): None

Enforcement action notes: None

Other notes: The file included several one-time and semi-annual reports of SSOs, which documented many SSOs from Fremont’s system. The file had no other correspondence from the review period regarding SSOs.

Grand Island (NE0043702)

Inspection date(s) and # days to report: None

Inspection notes: None

Enforcement action date(s): NOV – 1/7/2011

Enforcement action notes: The NOV addressed a missing sludge DMR for September 2010 and was issued by the state within 90 days of the due date of the DMR. The facility promptly submitted the missing DMR on 1/11/2011, citing administrative error as the cause of the delay. A follow-up letter from NDEQ dated 1/26/2011 acknowledges receipt of the DMR and closes out the issue.

Other notes: The DMR non-receipt violation addressed by the NOV constituted SNC.

Lincoln – Theresa St. WWTF (NE0036820)

Inspection date(s) and # days to report: None

Inspection notes: None

Enforcement action date(s): None

Enforcement action notes: None

Other notes: This facility was selected as a Permit Quality Review file. EPA did not identify any issues with discharges or permit language that would have an association with PQR findings.

McCook WWTF (NE0021504)

Inspection date(s) and # days to report: 2/28/11 (7)

Inspection notes: The inspector marked two items as marginal in the inspection report: effluent flow measurement may need to be calibrated, and failure of January 2011 toxicity test. The narrative states that the chronic toxicity test will be repeated and the cause of the failure was thought to be rejected wastewater from the WWTF. The toxicity test was repeated in March 2011 and the city passed. The inspection report was transmitted with the standard transmittal letter on 3/30/11.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

MG Waldbaum Company (NE0113735)

Inspection date(s) and # days to report: 6/17/2011 (12)

Inspection notes: The inspection report does not note any deficiencies, and neither does the cover letter transmitting the report to the facility. The only indication of a compliance determination by NDEQ is the Inspection Data Sheet routed internally with the report. This data sheet asks the question “Did you observe deficiencies,” which was answered “No.”

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

North Platte WWTF (NE0032891)

Inspection date(s) and # days to report: 9/20/2011 (7)

Inspection notes: The inspection report discussed two potential violations regarding implementation of the facility's Storm Water Pollution Prevention Plan – specifically, a failure to conduct site inspections and a failure to define outfalls in the SWPPP. Observations supporting these deficiencies were noted in the report checklist as well as the supporting narrative; however, nowhere in written correspondence or internal memos or forms did NDEQ articulate a compliance determination regarding these deficiencies (i.e. if they were violations needing correction).

Enforcement action date(s): NOV – 8/10/2011

Enforcement action notes: The NOV was issued to address missing DMR data for dissolved metals and toxicity that were due 4/28/2011. This response was appropriate to address a non-SNC violation and was issued independently of the subsequent inspection on 9/20/2011. The NDEQ compliance officer in the field office first reviewed the DMRs for deficiencies on 5/25/2011. Based on the due date of the DMR data, the NOV was not a timely response within 90 days following discovery of the violation, with a presumption that the NDEQ central office data steward should have been aware of the deficiency, or been able to inform compliance staff of it, prior to 5/25/2011. The facility submitted a response to the NOV that resolved the violation.

Other notes: The 9/20/2011 inspection was also an EPA oversight inspection. The constructive finding from the oversight inspection of this facility and others was that NDEQ's inspectors do not consistently discuss a facility's inspection and compliance history in inspection reports, raising the question of how well informed inspectors are concerning compliance history prior to doing inspections. The oversight inspection report also noted the lack of a clear compliance determination.

Nucor Steel (NE0111287)

Inspection date(s) and # days to report: 2/11/2011 (7).

Inspection notes: The inspection report included general facility information on the first page followed by a complete description of the facility's processes and treatment equipment. The permit issuance and renewal dates are listed in the inspection report on the final page; it would be helpful to have this information on the front cover page with all the other general permit information. The report contained no description of the investigative activities performed during the inspection or the specific observations from the inspection. A checklist was filled in, but no additional comments were added. There were no conclusions within the body of the inspection report itself to indicate the compliance status of the facility. At the time of the inspection, the facility was under a compliance schedule in the permit for bacteria, but the inspection does not mention the status of compliance schedule activities.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: There were two quarters of SNC level ammonia violations in FY2011 (after the date of the February 2011 inspection). There was no information in the file relating to NDEQ's

review of or response to the violations. The violations did not continue following the 2 quarters of noncompliance.

Plattsmouth WWTF (NE0021121)

Inspection date(s) and # days to report: None

Inspection notes: None

Enforcement action date(s): None

Enforcement action notes: None

Other notes: This facility was selected as a Permit Quality Review file. EPA did not identify any issues with discharges or permit language that would have an association with PQR findings.

The facility reported SNC effluent limit violations for the first two quarters of FFY 2011 due to “extreme flooding [that] caused damage to piping and plant.” The flooding responsible for that damage occurred in 2010. Then, in the third and fourth quarters of FFY 2011, extreme flooding beginning in May further aggravated the damage from the previous year that the facility had not yet repaired. This second round of flooding resulted in reports of Analysis Not Conducted (ANC) by the facility in the third and fourth quarters. NDEQ did not respond in writing to the facility’s situation. Although an enforcement response was not warranted following such extraordinary circumstances, some level of notice to the facility following the first round of flooding would have been appropriate to encourage the facility to make repairs as expeditiously as possible once floodwaters receded. According to NDEQ management, NDEQ staff did work extensively with emergency management teams following the 2010 floods and visited the facility periodically.

Plattsmouth was also flagged for three permit schedule violations whereby milestones were marked unachieved in OTIS. Upon discussion with NDEQ staff, EPA learned that the facility did submit the required plans and reports. It was not clear whether all the reports had been received on time; however, all three milestones marked past due by OTIS should have been updated by NDEQ to show the actual received date of the plan or report.

Tyson Fresh Meats – Lexington (NE0123501)

Inspection date(s) and # days to report: None

Inspection notes: None

Enforcement action date(s): None

Enforcement action notes: None

Other notes: This facility was selected as a Permit Quality Review file. EPA did not identify any issues with discharges or permit language that would have an association with PQR findings.

The facility has a recently reissued permit with limits for chloride, bacteria, and ammonia that are more stringent than those in the old permit, as well as new limits for total nitrogen. The file had self-reported documentation of several minor non-SNC violations during FFY 2011 that EPA and NDEQ would not consider “actionable” violations.

Western Sugar Cooperative (NE0111686)

Inspection date(s) and # days to report: 6/16/2011 (40)

Inspection notes: The inspection report checklist states that “Riprap is needed along the eastern bank of Pond 3;” however, for this item of the checklist, the inspector entered ‘Y’ for satisfactory. A reader might interpret the checklist to mean that the absence of riprap did not constitute a deficiency or violation, but the narrative portion of the report presents further

contrast by reinforcing the need for the facility to remedy the absence of riprap. The report does not present enough information, such as a comparison of regulatory requirements against observations, to determine the compliance status of the facility; nor does the file indicate whether the state made a compliance determination following this inspection.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: Western Sugar was flagged for an overdue compliance schedule violation whereby a milestone was marked unachieved in OTIS. EPA learned that the underlying enforcement action is an EPA order with a final “estimated termination date” of 6/3/2011. EPA entered the actual received date for the milestone, thereby accurately showing the facility as being in compliance.

The facility also had a SNC reporting violation in the third quarter of FFY 2011, which NDEQ manually resolved with an appropriate RNC resolution code.

Core Program – Non-majors

Barneston WWTP (NE0121711)

Inspection date(s) and # days to report: 4/18/2011 (7).

Inspection notes: The inspection report included general facility information on the first page followed by a description of the facility’s processes and treatment equipment. The report contained no description of the investigative activities performed during the inspection or the specific observations from the inspection. Photos of the facility were included in the report, but no samples were taken or records reviewed. The checklist for overall mechanical processes was filled in, but little to no additional comments were added. The inspection indicates that there were “no violations” but also includes statements that DMRs are being incorrectly filled out and that the monitoring location is problematic. There are no questions in the checklist regarding SSOs or bypasses and no additional information regarding these matters was added in the inspection narrative.

Enforcement action date(s): Notice of DMR Non-receipt – January 2011.

Enforcement action notes: NDEQ issued a Notice of DMR Non-receipt for Quarterly DMRs and 2009-2010 annual influent DMR, due 10/28/2011. The City submitted the missing DMRs within 30 days of receipt of the NOV, as required by the NOV.

Other notes: None

Bridgeport WWTF (NE0112119)

Inspection date(s) and # days to report: 3/15/11 (90)

Inspection notes: The compliance inspection was documented with an inspection checklist. The facility description included specific treatment system information and the permit information included that the permit was Active with the permit expiration date. The inspector reviewed recent DMR data, the lagoon and collection system and observed that the influent monitoring was incomplete. The checklist thoroughly captured the treatment processes involved. The inspector made good use of photographs (including a photo of the outfall), aerial photos, and diagrams. The inspector observed the receiving stream and documented the status.

There was no mention of SSO tracking, bio-solids handling, or inspection of the lift stations or pumps.

Enforcement action date(s): The checklist states that an NOV would be issued. No NOV or follow-up letter explaining a compliance determination was in the file.

Enforcement action notes: OTIS does not show that an NOV has been issued to date.

Other notes: DMR history was reviewed and incomplete DMRs were found during the inspection.

Bruning WWTF (NE0045071)

Inspection date(s) and # days to report: 8/31/2010 (77)

Inspection notes: The inspection report cites numerous problems, including pH method, documentation of date and time on analytical reports, failure to report fecal coliform, and failure to report influent sampling. In the “Suggestions and Observations” section, the report lists regulatory requirements that the reader can infer as being associated with the aforementioned problems. A cover letter said that NDEQ was reviewing the report for violations.

Enforcement action date(s): NOV – 12/9/2010; AO – 11/2/2011

Enforcement action notes: NDEQ made a compliance determination regarding the inspection report with the NOV; however, the NOV omitted some of the deficiencies mentioned in the inspection report that the reader was led to believe were highly likely to be violations. The NOV was issued 100 days following inspection, which is outside the 90-day window for voluntarily resolving or escalating the matter. The NOV requested 30- and 90-day responses from the facility. The Wastewater Section made an enforcement referral to the Legal Section 9 months following inspection, and the AO was issued more than 5 months later. The sequence of enforcement responses was appropriate for the violations, but all of the enforcement tools were employed outside the NDEQ’s established timeframes. The AO required milestones and completion dates for construction of an upgrade to the WWTF, all of which post-date this file review.

Other notes: Because Bruning is a P.L. 92-500 grant-awarded non-major, NDEQ was expected to identify SNC violations as such. However, effluent exceedances and DMR non-receipts that occurred prior to the inspection rose to the level of SNC (i.e. High-Priority violations according to state guidance) but were not brought to the attention of the facility as such, neither in the inspection report nor through other correspondence.

B. S. Wash (Buckshot Livestock Truck Wash) (NE0138274)

Inspection date(s) and # days to report: 2/4/2010 (5).

Inspection notes: General data about the permit and the inspection was included in the inspection report, but there was little to no information about the facility itself. The inspection report included an overview of field activities performed and observations during the inspection; no checklist was used. The report was signed and dated and a copy was transmitted to the facility. There was minimal written information in the report to explain the compliance status of the facility, but there were some good photos. An NOV was issued following the inspection.

Enforcement action date(s): NOVs – 9/30/2005, 2/28/2007, 3/1/2007, and 3/30/2010; Referral – (w/in 180 days of 2010 inspection); Consent Order.

Enforcement action notes: The Referral was sent from NDEQ to the Nebraska Attorney General’s office within 180 days of the 2/4/2010 inspection, but there had previously been an inspection in January 2008 as well as 3 previous NOVs. The referral included a description of the violations and a penalty calculation worksheet with an initial penalty recommendation. The AG settled the action for specified injunctive relief (to be completed beyond the date of EPA’s

file review) and a penalty of \$10,000. The penalty, however, will be waived if the Defendant stays in compliance with the terms of the Consent Decree for 9 months. The Consent Decree was modified to extend the compliance schedule and to impose stipulated penalties for failing to meet interim and final schedule deadlines.

Other notes: Because the facility is a minor, none of the inspection or enforcement information was entered into ICIS.

Crofton WWTF (NE0049131)

Inspection date(s) and # days to report: 1/5/2011 (9)

Inspection notes: The inspection report consisted of a checklist and limited narrative covering only comments and suggestions without describing what field activities were conducted at the facility. The comments and suggestions did, however, make it clear that there were reporting deficiencies for four consecutive quarters of missing influent and sludge DMRs, from October 2009 through September 2010. In contrast, the “Did you observe deficiencies” question on the Inspection Data Sheet had been answered “no” despite the ultimate compliance determination, which was conveyed in an NOV (below).

Enforcement action date(s): NOV – 3/16/2011

Enforcement action notes: The NOV addressed failure to submit DMRs, which was documented in the 1/5/2011 inspection report. For DMRs due as late as October 28, 2010, corresponding to the monitoring period ending September 2010, NDEQ should have discovered these violations prior to the January inspection. The date of the NOV followed discovery of the violations by fewer than 90 days, and it required the facility to submit all influent and sludge samples due since September 2010 within 30 days of the NOV and to outline measures taken to correct these violations.

Other notes: This facility was flagged for Category 1 violations and non-major facility noncompliance under SRF metric 7. The underlying violations were deficient sludge and influent reporting, which the state addressed with an NOV.

Decatur WWTF (NE0049123)

Inspection date(s) and # days to report: 9/7/2011 (8)

Inspection notes: The inspector indicated that there were effluent limit exceedances in the inspection checklist by appropriately marking “no” in the “DMR compliance” box. The WWTF exceeded nitrogen ammonia on 4/13/2011. The DMR states the city does not know why the exceedance occurred and that it did not notice the violation until July. The WWTF exceeded fecal coliform on 5/25/2011 and states on the DMR it was due to heavy rains. The WWTF exceeded fecal on 7/27/2011 and states on the DMR that an aeration motor had failed and was later repaired. It appears NDEQ made a determination of compliance and after sending the inspection report using the standard cover letter on 11/4/2011, there is nothing further in the file regarding this inspection. An overall determination of compliance reflects that no further effluent exceedances had been documented following the July 2011 fecal excursion.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

Don Huwaldt d/b/a Don Huwaldt Trucking (discharge without permit)

Inspection date(s) and # days to report: 2/12/2010 (1).

Inspection notes: This investigation, documented through a memorandum to NDEQ management, was specifically performed to support a potential enforcement action against an illegal discharge from a truck wash. The report contained limited preliminary information and focused on documenting the discharge and detailing the facilities. Photos, but no samples, were taken. The report was dated with the investigator's name but was not signed.

Enforcement action date(s): NOV – 5/7/2010; Complaint/Administrative Compliance Order – 2/11/2011; Administrative Consent Order – 6/24/2011.

Enforcement action notes: NDEQ received a tip from the Neb. Natural Resource District that discharges from the Truck Wash were entering a stream. NDEQ performed a site visit/investigation, issued an NOV and referred the matter to the legal department for a compliance order. The NOV was timely issued within about 90 days of the investigation. There is a gap between the issuance of the NOV and issuance of the Compliance Order with little documentation regarding any actions or communications in the intervening period. The Compliance Order and subsequent Consent Order included adequate injunctive relief to require the facility to comply (either cease operations causing discharge or by date certain submit construction permit application and construct appropriate full-retention facilities). There was no penalty in the order. At the time of the file review, NDEQ had not performed, but plans to schedule, a follow-up inspection to ensure compliance.

Other notes: Because there is no permit for this facility, there are few records in NDEQ's system regarding the facility. The legal file does not itself include a significant amount of information regarding communications with the facility, additional inspections or any actions taken outside the scope of the compliance order and consent order, including backup documentation (e.g., the evidentiary record for the actions).

Kugler Co. Fertilizer Plant (NE0121509)

Inspection date(s) and # days to report: 11/15/2010 (3).

Inspection notes: The inspection report included general facility and permit information with a description of the facility's processes and the general site layout. The report contained little description of the investigative activities performed during the inspection or the specific observations from the inspection. A checklist for overall mechanical processes was filled in, but little to no additional comments were added. The report included photos and a description of a scum or residue covering rocks at the outfall, but no samples were taken. The report noted that the discharge was of an unknown pollutant.

Enforcement action date(s): NOV – 1/3/2011; follow-up to NOV response – 2/2/2011; compliance assistance visit – 2/28/2011.

Enforcement action notes: The NOV was timely issued following the inspection (about 45 days), and NDEQ followed up on the facility's response to the NOV within about 2 weeks with additional communications. Soon thereafter, NDEQ made another site visit for compliance assistance. The timing was appropriate to address and correct violations by a cooperative facility.

Other notes: If the facility had not been cooperative in addressing the violations, there might not have been adequate evidence in the inspection report to initiate and prosecute an enforcement action.

Lodgepole WWTF (NE0112542)

Inspection date(s) and # days to report: 8/18/2011 (110)

Inspection notes: The inspection report contained all of the items on the NPDES Inspection File Evaluation Checklist and provided sufficient information to support a compliance determination. The report narrative clearly stated what violations were identified. This inspection was conducted subsequent to the DMR records reviews that prompted the NOV described below.

Enforcement action date(s): NOV – 8/2/2011; Consent Order – 11/11/2011

Enforcement action notes: Lodgepole reported monthly and non-monthly exceedances of ammonia, BOD, and TSS in March and October of 2009 and again in March and July of 2010. These exceedances coincided with most, if not all, of the controlled discharges that Lodgepole reported during this two-year period. The NDEQ field office reviewed the DMRs for violations on 9/9/2010—approximately 7 months after NDEQ received the latest 2009 DMR with violations—and again on 2/24/2011—approximately 4 months after receiving notice of the 2010 violations. These lag times between DMR receipt and DMR review are rather lengthy. NDEQ followed the latter DMR review with a request for enforcement to the Legal Section less than one month later on 3/18/2011. It wasn't until 8/2/2011, or more than 5 months after the latter DMR review, however, that NDEQ sent the facility an NOV notifying Lodgepole of its excessive effluent exceedances. The NOV noted that enforcement would be considered but did not explicitly request a response from the facility.

On 11/11/2011, 8 months following the program's enforcement request to Legal, NDEQ and Lodgepole signed a consent order requiring a return to compliance by 10/1/2012. The reason for this lag time was negotiation between Lodgepole and the state on how the consent order should account for a high water table where the third lagoon was to be built. The third lagoon was part of Lodgepole's conversion from a two-celled controlled discharge system to a three-celled complete retention system. The final consent order did not include any penalties.

Other notes: None

Nemaha WWTF (NE0121304)

Inspection date(s) and # days to report: None

Inspection notes: None

Enforcement action date(s): NOVs – 10/25/2010, 12/19/2011

Enforcement action notes: NDEQ issued the first of the two NOVs to address missing DMRs from March 2008 through June 2010. The NOV was sent fewer than 90 days following the last due date of the string of missing DMRs and required the facility to submit noncompliance reports, copies of analytical results, and a description of how it will address failure to submit DMRs. The file did not contain any records indicating that Nemaha had responded to this NOV. The second NOV addressed similar missing DMRs from the December 2010 through September 2011 monitoring periods and was issued less than two months following the last DMR due date for this monitoring period. NDEQ received a response from the facility dated 1/9/2012 and sent an NOV closure letter to the facility dated 1/20/2012 to indicate that no further actions were planned.

Other notes: The earlier NOV has not been entered into ICIS but is a required record for P.L. 92-500 non-majors, including this facility.

Swift Beef Company (NE0113891)

Inspection date(s) and # days to report: 9/1/2010 (5); 3/16/2011 (6).

Inspection notes: Both inspections include facility and permit specific information as well as a description of the regulated processes inspected, but they do not indicate if all process were

actually inspected or just selected processes. The 3/16/2011 inspection report was completed on a “municipal” instead of industrial inspection report template. There was no description of the inspection process or procedures in either inspection. The checklist for the September 2010 inspection report indicates noncompliance, but there is no further information explaining what the violations were. The March 2011 inspection report indicates the DMRs for the facility are okay, but gives no further assessment of compliance or noncompliance and many factual observations were not compared to or assessed against compliance requirements. There were some ammonia and pH violations in early 2010 that were not discussed in the September 2010 inspection report. Neither report provides much more than observations about the facility; there is no clear assessment of compliance. Both inspection reports were signed, dated and sent to the facility.

Enforcement action date(s): No enforcement actions related to the inspection reports.

Enforcement action notes: This facility was selected based on execution of a formal enforcement action in FFY 2011. At the time of this program review, EPA and Nebraska were negotiating a Consent Decree with Swift regarding Pretreatment violations, which has now been entered. Because the violations that were the subject of the CD occurred prior to FFY 2011 and were not discovered primarily by NDEQ, EPA did not review the state’s involvement in the enforcement action as part of this program review.

Other notes: None

Supplemental Files for Review

Lewiston WWTF (NE0026051)

Selection rationale: This facility was selected to ensure that EPA reviewed a sufficient number of facilities with permit schedule violations appearing in ICIS, given that permit schedule violations were flagged as a concern during the data metrics analysis.

Findings: OTIS shows three unachieved permit schedule milestones. The first milestone in the permit is submittal of design and specifications for a WWTF upgrade to meet final E. coli limits, with a due date of 4/1/2009. At one-year intervals, two subsequent milestones are to initiate construction of the upgrade and to operate the WWTF to meet final E. coli limits. NDEQ staff revealed that the facility has not yet satisfied any of these requirements.

The compliance schedule violations in OTIS are legitimate, and the state needs to get the facility back on track in a timely fashion. The compliance record is also littered with CBOD, ammonia, and TSS violations. NDEQ sent an NOV to the City on 4/27/2010, citing the failure to submit the first deliverable due one year earlier as well as poor operation and maintenance discovered during a 3/18/2010 complaint investigation. An NOV was a timely response to the operation and maintenance citation, but it followed the due date of the first permit milestone by more than a year. The City did not respond to the NOV. An administrative order from NDEQ dated 6/16/2010 addressed the same violations as the NOV and did elicit a written response from the facility on 7/8/2010. The City’s letter stated that a facility plan from the consulting engineer would be sent to the state within days, and NDEQ received the plan. The two subsequent milestones due in 2010 and 2011 have not been satisfied. Therefore, NDEQ needs to update ICIS to show receipt of the first deliverable and to continue working with the City, given that Lewiston remains in violation of its permit and order.

Madrid WWTF (NE0040037)

Selection rationale: This facility was selected to ensure that EPA reviewed a sufficient number of facilities with permit schedule violations appearing in ICIS, given that permit schedule violations were flagged as a concern during the data metrics analysis.

Findings: The first milestone in the permit is submittal of a facility plan / engineering report with plans and specifications for any modification to the WWTF necessary to meet final ammonia limits, with a due date of 9/1/2007. Subsequent milestones have unspecified dates contingent on approval by NDEQ of preceding milestones. The violation appearing in OTIS was for unachieved completion of construction by 1/1/2009. NDEQ staff revealed that the facility has not yet moved into a construction phase because the City has had difficulty getting a suitable plan from the consulting engineer. The most recent letter in the file from Madrid to NDEQ included the contradictory statement that “plans have been submitted for lagoons.”

The compliance schedule violation in OTIS is legitimate, and the state needs to get the facility back on track in a timely fashion. The compliance record is also littered with CBOD, ammonia, and TSS violations. An administrative complaint and compliance order from NDEQ dated 6/17/2009 was issued to address CBOD exceedances and requires the facility to complete construction of wastewater facility improvements by 10/1/2011.

Once the facility has satisfied its overdue permit schedule milestones, NDEQ should update OTIS with the actual achieved dates for those milestones.

*Pretreatment Industries***CJ Foods (NE0132683)**

Inspection date(s) and # days to report: None

Inspection notes: None

Enforcement action date(s): NOV – 1/7/2011

Enforcement action notes: The NOV was issued for failure to submit reports for the second and third calendar quarters of 2010. The second quarter report, covering the March through June 2010 time period, was due no later than 7/28/2010 and would constitute Significant Noncompliance (SNC) when it had not been received by 8/28/2010. The report for the third quarter was due no later than 10/28/2010 (part of FFY 2011) and constituted SNC when it was not received by 11/28/2011. The NOV did not cite the facility for being in SNC, but it should have done so.

CJ Foods responded to the NOV on 2/1/2011, claiming that it had submitted both reports on time via first class U.S. mail and again at the EPA inspection of 12/8/2010. It further stated that all subsequent reports would be submitted by certified mail. NDEQ acknowledged CJ's response in a letter to them dated 3/7/2011 and stated that no further action was warranted.

Other notes: None

Feaster Foods (NE0114081)

Inspection date(s) and # days to report: None

Inspection notes: None

Enforcement action date(s): NOV – 1/19/2011

Enforcement action notes: NDEQ issued the NOV following a file review of 1/6/2011, whereby NDEQ determined that Feaster had exceeded its daily maximum temperature limit in July, August, and September of 2012. The facility was also cited for failing to notify NDEQ within 24 hours of the violation followed by written notification within five days.

The industry replied promptly on 1/21/2011 stating that it believed its temperature probe was in the wrong location and that it had been relocated. The industry returned to compliance.

Other notes: None

Iams Company (NE0133175)

Inspection date(s) and # days to report: None

Inspection notes: None

Enforcement action date(s): NOV – 1/7/2011

Enforcement action notes: NDEQ issued the NOV following a file review of 12/21/2010 that determined Iams had not submitted its quarterly monitoring report due on October 28, 2010. The facility responded on 1/12/2011 claiming it had submitted the report on 10/14/2010 and enclosed a copy of a faxed document from that date.

The NOV did not identify that Iams was in Significant Noncompliance but should have, as the report had not been received by 11/28/2011, which was the end of the 30-day period when SNC is triggered.

Other notes: None

Norvartis Consumer Health (NE0000701)

Inspection date(s) and # days to report: None

Inspection notes: None

Enforcement action date(s): NOV – 9/14/2011

Enforcement action notes: Norvartis was issued an NOV by NDEQ for acetone violations reported on 4/28/2011 and 8/9/2011. The industry replied to the NOV on 9/27/2011 stating that it were unable to determine how acetone was being generated in its system. On 10/17/2011, the industry submitted additional sampling results still showing acetone violations. These violations constituted SNC, and NDEQ's response was appropriate. However, the facility has continued to measure high acetone exceedances even after responding to the NOV. Therefore, the informal enforcement did not resolve the matter.

Other notes: Norvartis is subject to the 40 CFR Part 439 Pharmaceutical Categorical Pretreatment Standards which contain a limit for acetone. Although Norvartis does not use acetone during its manufacturing processes, it does appear to generate it as a byproduct.

Tasty Toppings (NE0137448)

Inspection date(s) and # days to report: None

Inspection notes: None

Enforcement action date(s): NOV – 1/3/2011

Enforcement action notes: Tasty Toppings, a salad dressing manufacturer, received an NOV following an NDEQ inspection conducted on 12/1/2010. The NOV cited Tasty Toppings for violating the effluent limits contained in its permit, interference potential, and for obstruction of flow. There were no calculations in the file showing how interference potential was determined. Interference potential would be inferred if the limits in Tasty Toppings' permit are based on the plant capacity of the Duncan wastewater treatment plant. However, a review of the fact sheet

states that the BOD limit (300 mg/l), the TSS limit (350 mg/l), and the Oil and Grease limit (100 mg/l) are based on the city's sewer use ordinance limits. These are common surcharge limits and not technically derived. Therefore, it cannot be said that violating them establishes interference potential without further evaluation.

The data set of violations indicated that Tasty Toppings was in SNC; however, SNC was not cited in the NOV as it should have been.

Other notes: None

TMCO Powdercoating, Inc. (NE0133752)

Inspection date(s) and # days to report: None

Inspection notes: None

Enforcement action date(s): NOV – 3/16/2011

Enforcement action notes: NDEQ inspected TMCO Powdercoating on 1/20/2011 and followed with the NOV because the inspection determined the facility had failed to submit required monitoring data between July 2008 and October 2010. The industry had overlooked submitting monthly flow information when its permit had been changed to require only semiannual sampling.

Rather than detecting the reporting violation only during the course of an inspection, NDEQ should have issued the NOV years earlier as a result of regularly reviewing DMRs submitted by the facility.

Other notes: None

Becton Dickinson (NE0060089)

Inspection date(s) and # days to report: 6/28/2011 (10)

Inspection notes: At the time of inspection, the industry was operating under an administratively extended permit, as its permit had expired on 12/31/2008. The inspection report was transmitted to the facility on 8/10/2011.

The inspection report stated that Becton Dickinson was in the process of installing additional pretreatment systems, of which chromium precipitation was included. The report was not clear if this was an upgrade, a replacement for an existing chromium precipitation system, or a completely new addition. The report did not discuss why this system was needed, whether because of past violations of chrome or because a new manufacturing process was being added that would discharge chrome.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

Chief Industries (NE0129348)

Inspection date(s) and # days to report: 1/19/2011 (13)

Inspection notes: The inspection covered all significant elements of the facility's operation and permit requirements. It is not the practice to take photographs, so none were included. The report was completed five days later and transmitted to the facility on 2/9/2011.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

CNH America, LLC (NE0114537)

Inspection date(s) and # days to report: 5/5/2011 (13)

Inspection notes: From the report, the reviewer is able to determine important information such as the manufacturing process, regulated process and applicable Categorical standard (40 CFR Part 433 Metal Finishing), regulated flow, and pretreatment system employed to achieve and maintain compliance.

The report was completed in 13 days but took awhile to get through the system. Completed on 5/18/2011, it was processed on 5/24 and concurred on by the supervisor on 6/2. It wasn't mailed, however, until 6/20.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

Exmark Manufacturing Co. (NE0124605)

Inspection date(s) and # days to report: 5/3/2011 (7)

Inspection notes: The standard NDEQ inspection checklist was used. While no photos were taken, the report was complete and comprehensive. The report was completed within seven days and transmitted to the facility 22 days later on 5/25/2011.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

General Dynamics (NE0060062)

Inspection date(s) and # days to report: 2/15/2011 (16)

Inspection notes: Overall, the inspection report contained sufficient information to determine the facility's manufacturing processes, the applicable environmental regulations and permit limits, and the compliance of the facility. The inspection report was transmitted to the facility on 3/10/2011.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

Gibbon Packing (NE0124061)

Inspection date(s) and # days to report: 10/19/2010 (6)

Inspection notes: The inspection found the facility to be in compliance with its recently modified permit of 7/1/2010, which consisted of increasing the limits of what could be discharged to the City of Gibbon. The report was completed in six days and transmitted to Gibbon Packing on 11/12/2010. The inspection discussed that Gibbon had been consistently violating its limits in the past but did not identify whether the violations constituted Significant Noncompliance.

Enforcement action date(s): None

Enforcement action notes: Shortly after the inspection report was sent to Gibbon Packing, the facility began violating its limits again. Gibbon Packing was not one of the facilities for which an NOV was issued in FY 2011, but some type of enforcement would have been appropriate.

Other notes: None

Great Plains Polymers (NE0123846)

Inspection date(s) and # days to report: 12/6/2010 (11)

Inspection notes: While no photos were taken, the inspection report description captured all of the information needed to understand the workings of the facility and its permit requirements. The report was completed in 11 days and transmitted to the facility on 1/14/2011.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

Hunt Cleaners (NE0137472)

Inspection date(s) and # days to report: 6/15/2011 (5)

Inspection notes: In general, the report was thorough; however, it did not discuss adequately the facility's permit requirements but stated that Hunt Cleaners may have BOD problems in the future because of limited capacity at the Cozad WWTP. The report also contained some good photographs in support of the narrative observations.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

Hydraulic Components (NE0124435)

Inspection date(s) and # days to report: 8/18/2011 (27)

Inspection notes: The inspection report was completed in 27 days. The report contained an aerial photograph of the property and a wastewater flow schematic, both of which assisted in understanding the operations at the plant. The narrative, however, did not identify what the facility manufactures so it difficult to gauge the operations inspected.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

Teledyne ISCO (NE0060011)

Inspection date(s) and # days to report: 5/10/2011 (13)

Inspection notes: The inspection report was completed 13 days following the inspection but not mailed to the facility until 6/15/2011. Overall, the report was well written and contained all of the information necessary to determine the facility's manufacturing and regulated processes and compliance information.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

*Industrial Stormwater***Ballantyne Strong, Inc. (NER001259)**

Inspection date(s) and # days to report: 3/11/2011 (11)

Inspection notes: The stormwater inspection was an add-on to the pretreatment inspection done at the facility. The inspection contained observations related to a review of stormwater related

paperwork. The inspection also included a walk-through of the exterior of the facility and the observation that an improvement had been made to the metal load-out area to prevent contaminants from contacting stormwater. The inspection appears adequate insofar as providing all that was necessary to make an accurate compliance determination. The facility was found to be in compliance. The standard transmittal cover letter was dated 3/30/2011.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

Behlen Manufacturing Co. (NER000696)

Inspection date(s) and # days to report: 4/5/2011 (36)

Inspection notes: The inspection was an add-on to the core industrial inspection done at the facility. The inspection contained observations related to a review of stormwater related paperwork. It is unclear if the inspector also performed a walk-through of the perimeter and exterior grounds of the facility to determine if pollutants are exposed to stormwater and if appropriate stormwater controls are in place. By extension, sufficient information was not provided to support a compliance determination. The standard transmittal cover letter was dated 5/25/11.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

Iams Co. (NER000880)

Inspection date(s) and # days to report: 2/23/2011 (10)

Inspection notes: The inspection was an add-on to the pretreatment inspection done at the facility. The inspection contained observations related to a review of stormwater related paperwork. The inspection also included a walk-through of the exterior of the facility. The inspection report appears adequate, and the facility was found to be in compliance. The standard transmittal cover letter was dated 3/10/2011.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

Industrial Powder Coating (NER001315)

Inspection date(s) and # days to report: 2/23/2011 (8)

Inspection notes: The inspector found that the site failed to meet the requirements for no exposure (NEC) and failed to obtain permit authorization. The inspection report was transmitted with the standard cover letter on 3/10/2011.

Enforcement action date(s): NOV – 3/16/2011, 21 days after the inspection.

Enforcement action notes: The NOV cited failure to meet requirements for NEC and failure to obtain permit authorization. The NOV required completion of a SWPPP. There were several emails in the file documenting progress on development of the SWPPP but that the facility wouldn't meet the NOV deadline to do so. NDEQ performed a second inspection on 12/6/2011, which EPA did not evaluate using the NPDES Inspection File Evaluation Checklist. The inspector found the facility failed to meet the deadline to develop a SWPPP as detailed in the NOV. NDEQ transmitted this inspection with language stating they are evaluating whether to do

enforcement and tell them what fines may be. This is the last item in the file. It is unclear if the facility completed an adequate SWPPP and achieved compliance.

Other notes: None

iRock Concrete, LLC (no permit number)

Inspection date(s) and # days to report: 7/28/2010 (75)

Inspection notes: The inspector observed that the site discharged wastewater and process water to waters of the state and to land without a permit. The inspection report was transmitted to the facility on 11/1/2010 with the NOV.

Enforcement action date(s): NOV – 11/1/2010, 96 days after the inspection was conducted.

Enforcement action notes: The NOV cited failure to obtain authorization and non-stormwater discharges including the discharge of process and waste waters to waters of the state. The NOV required the facility to 1) immediately take steps to minimize pollutant discharges from the site; 2) immediately initiate development of a non-stormwater management strategy to eliminate the discharge of process wash waters; 3) immediately initiate development of a SWPPP in compliance with permit requirements; 4) within 90 days submit a SWPPP to NDEQ; and 5) within 90 days submit a NOI to NDEQ. The only response to the NOV observed in the file was an NOI submitted 12/30/2011, just over one year after the NOV was issued. The NOI is the most recent item in the file. The file did not contain a permit authorization.

Other notes: Based on the documentation in the file, it cannot be determined if the site achieved compliance.

Lincoln Industries, Inc. (NER000005)

Inspection date(s) and # days to report: 2/26/2011 (5)

Inspection notes: The inspection was an add-on to the pretreatment inspection done at the facility. The inspection contained observations related to a review of stormwater related paperwork. The inspection also included a walk-through of the exterior of the facility. The inspection report appears adequate, and the facility was found to be in compliance. The standard transmittal cover letter was dated 3/16/2011.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

Papio Valley Auto Parts (NER001116)

Inspection date(s) and # days to report: 10/4/2010 (3)

Inspection notes: The inspection found several violations of the industrial stormwater permit. The inspection report was transmitted with the NOV on 12/9/2010.

Enforcement action date(s): NOV – 12/9/2010.

Enforcement action notes: The NOV was sent 66 days after the inspection. The NOV cited failure to implement and maintain the SWPPP, failure to conduct inspections, failure to conduct SWPPP reviews, failure to implement spill prevention and response procedures, and failure to implement an employee training program. NDEQ received three responses to the NOV from the consultant hired to help the site owner achieve compliance with the permit. The responses indicate that all violations cited in the NOV were addressed. The last (2/7/2011) response in the file states that equipment had been ordered to address one of the violations but had not yet been

received. If that equipment was received, installed, and used properly, the site likely achieved compliance.

Other notes: None

Thermo King Corporation (NER000783)

Inspection date(s) and # days to report: 3/17/2011 (4)

Inspection notes: The inspection was an add-on to the pretreatment inspection done at the facility. The inspection contained observations related to a review of stormwater related paperwork. It is unclear if the inspector also performed a walk-through of the perimeter and exterior grounds of the facility to determine if pollutants are exposed to stormwater and if appropriate stormwater controls are in place. The standard transmittal cover letter was dated 4/21/2011.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

Construction Stormwater

Custer Campus (NER112242)

Inspection date(s) and # days to report: 12/2/2010 (7)

Inspection notes: Several deficiencies were observed, including 1) no entrance sign, 2) no designated concrete washout area, 3) no documented site-inspection reports, and 4) the site entrance needed maintenance. The standard transmittal cover letter was dated 1/14/2011.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: The inspection report contained language stating that the site operator told the inspector he would address the deficiencies.

CVS Pharmacy (NER112420)

Inspection date(s) and # days to report: 9/28/2011 (6)

Inspection notes: The facility was found to be in compliance and the inspection states, "The facility has taken proper precautions for erosion control and to prevent runoff. No track-out was observed along Old Cheney." However, photo #2 is a picture of the main entrance to the site along Old Cheney. There was significant track-out along the entrance and out onto the public road. A car can be seen along the public roadway and it was in a cloud of dust caused by the severe track-out on the roadway. There is a discrepancy between the conclusion in the narrative report and the photo. The standard transmittal cover letter was dated 11/4/2011.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

Dorchester WWTF (NER111779)

Inspection date(s) and # days to report: 8/3/2011 (26)

Inspection notes: The facility was found to be in compliance, as stated in the report, and this finding corresponds with the inspector's observations. Construction of the WWTF's new lagoon

had just been completed at the time of the inspection. The standard transmittal cover letter was dated 10/17/2011.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

Indianola WWTF (NER111673)

Inspection date(s) and # days to report: 9/29/2010 (5)

Inspection notes: The inspector observed several deficiencies including failure to provide access to all records (NOI, permit, SWPPP) and failure to properly maintain site entrances. The inspection was transmitted twice; first with the NOV on 10/27/2010 and again with the standard cover letter on 11/12/2010.

Enforcement action date(s): NOV – 10/27/2010, 28 days after the inspection.

Enforcement action notes: The NOV cited the deficiencies listed above and required that the entrance be immediately maintained, that all required paperwork be kept on site, and that a copy of the SWPPP be submitted to NDEQ within 15 days. The SWPPP was received by NDEQ on 11/8/2010. It is unknown if the site complied with the other requirements of the NOV because the NOV did not require submittals to NDEQ regarding the other violations.

Other notes: None

Kenneth Deinert Residence (no permit)

Inspection date(s) and # days to report: 5/26/2011 (27); 8/4/2011 (7)

Inspection notes: Both inspections were based on complaints. The inspections include findings of noncompliance. The site was not permitted at the time of the inspections. In addition to the failure to apply for a permit and develop and implement a SWPPP, there was a nearly complete lack of structural and non-structural controls including the failure to stabilize large portions of the site, which resulted in sediment running offsite and into a waterbody (presumably an unnamed tributary). The owner was not on site during at least the first inspection. Both inspection reports were transmitted with the standard cover letter on 8/23/2011.

Enforcement action date(s): NOV – 9/1/2011

Enforcement action notes: The NOV was sent 31 days after the second inspection and 97 days after the first inspection. The NOV cited failure to obtain authorization and a lack of erosion and sediment controls which caused the discharge of sediment to nearby receiving waters. The NOV required 1) immediate steps to minimize discharge of pollutants through proper application and maintenance of controls; 2) immediately begin preparing a SWPPP that complies with the requirements of the permit; 3) submit an NOI within 30 days; and 4) within 30 days, incorporate all required elements of a SWPPP into the SWPPP for the site and submit a copy of the SWPPP to NDEQ.

Other notes: The Respondent never replied to the NOV. Authorization under the general permit was never sought. NDEQ performed a third inspection of the site on 10/10/2011. At that time controls had been installed and temporary and permanent stabilization had occurred on portions of the site. Construction was nearly complete. The 10/10/2011 inspection report was transmitted on 11/4/2011.

Southwest Implement, Inc. (NER112161)

Inspection date(s) and # days to report: 12/28/2010 (6); 5/12/2011 (6)

Inspection notes: The inspections both revealed deficiencies. The first inspection report documents the failure to have an entrance sign; failure to document inspections; failure to have a trained inspector; failure to include details for all SWPPP elements; and failure to implement all BMPs. The inspection was transmitted to the facility with the standard cover letter on 1/14/2011. The second inspection revealed nearly the identical deficiencies, including failure to have an entrance sign; failure to document inspections; failure to have a trained inspector; failure to include details for all SWPPP elements; and failure to implement all BMPs and some vehicle track-out. The second inspection was transmitted with the standard cover letter on 6/16/2011.

Enforcement action date(s): NOV – 7/18/2011, 202 days after the first inspection and 67 days after the second inspection. Enforcement request to Legal Section – 7/27/2011.

Enforcement action notes: The NOV cites the deficiencies observed during the inspections and requires Southwest Implement to maintain entrances immediately; immediately start documenting self site inspections; immediately post a proper sign near the main entrance; immediately install BMPs and repair all damaged BMPs; and to submit a copy of the SWPPP within 15 days. NDEQ received a response to the NOV on 7/29/2011, which included a copy of the SWPPP, pictures that illustrate some stabilization, and an NOT. The NOT was denied by NDEQ on 9/2/2011.

In addition to the Request for Enforcement dated 7/27/2011, the file also contains a 9/6/2011 letter from Michael Linder to the state AG asking AG to represent NDEQ in the matter and seek penalty. An undated and unsigned complaint cites failure to provide proper signage, failure to conduct and record self site inspections, and the failure to minimize erosion on disturbed areas. The complaint “prays a decision will be granted in the form of a civil penalty together with the costs of this action.”

A 9/29/2011 email from Blake Johnson, Assistant AG, to Blayne Renner forwards a memo from the Respondent demonstrating the actions taken to comply. EPA notes that there were still unstabilized areas.

NDEQ performed two additional site visits on 6/14/2011 and 8/19/2011, which reveal improvements in the condition of the site but still show areas without BMPs and with inadequate stabilization.

Other notes: The NDEQ attorney assigned to the case developed a penalty calculation in the amount of \$21,500, which includes \$4,500 for economic benefit. The economic benefit calculation describes several areas where the Respondent saved money by not taking action and/or not installing controls. The calculation method and result are similar to how EPA would calculate economic benefit. It is unclear from the file if the complaint has been issued; negotiations between the AG and the Respondent are ongoing.

Timm Soil Mining (NER111337)

Inspection date(s) and # days to report: 10/22/2010 (4) & 10/10/2011 (3)

Inspection notes: The inspections both revealed deficiencies. The site lacked a proper basin, BMPs and stabilization. Site inspections had not been conducted or documented. The SWPPP and NOI were not on site. The SWPPP was not updated to reflect actual site conditions. The file did not contain the standard cover letter for either inspection.

Enforcement action date(s): NOV – 12/7/2010, 46 days after the inspection. Enforcement request to Legal Section – 12/3/2010. The complaint is signed and dated 3/11/2011, 140 days after the 10/22/2010 inspection.

Enforcement action notes: The NOV cites the deficiencies observed during the inspections and requires that Mr. Timm: Immediately inspect the site for inadequate controls and update the SWPPP; immediately implement all controls; immediately address maintenance of existing controls; initiate development of a drastic slopes stabilization plan that addresses steep slopes; and within 20 days submit a written report, SWPPP and photos documenting changes made to the site. No response to the NOV was ever received by NDEQ.

The 3/11/2011 complaint requires Mr. Timm to cease soil mining until he is in compliance with his original 1/7/2009 SWPPP or with a revised (and approved by NDEQ) SWPPP, and to initiate stabilization within 120 days.

The file contains a penalty calculation, completed by the NDEQ attorney assigned to the case, in the amount of \$55,040. The penalty does not include a calculation of economic benefit but does contain a notation stating economic benefit was not computed.

Other notes: The state AG continues to negotiate the case. There is an email from the NDEQ attorney to the AG's office dated 8/5/2011 stating that Mr. Timm wanted someone from NDEQ to look at the site and see the improvements he made. NDEQ performed an inspection on 10/10/2011. The inspector observed that many violations observed during the previous inspection were still ongoing including poor vegetation on slopes, continued erosion of slopes, no stabilized outlet structure in the basin, no submittal of a required slope stabilization plan to NDEQ, and the failure to prepare steep slopes prior to attempts at stabilization. This email is the most current item in the file.

It should be noted that NDEQ performed complaint investigations at this site in August 2007, April 2008, and November 2008. The 12/7/2010 NOV was the first issued at this site.

Concentrated Animal Feeding Operations

General Comments from NDEQ on CAFO Facilities:

The inspection reports do not normally list all the historical events that have occurred at an operation. The inspector has access to the entire file, either in paper files or electronic files, to use prior to conducting the inspection. Through the frequent visits to an operation, the inspector develops a knowledge of an operation that isn't always reflected in the inspection report, but still available for compliance determination.

The inspection report is also not used to list the compliance status of an operation. The inspection is to gather data and evidence to assist program managers in making decisions. Noncompliance action is documented in corrective action letters, letters of warning, notice of violation, or requests for enforcement action.

37 Land & Cattle (NEG010032)

Inspection date(s) and # days to report: 8/21/2008 (14), 7/7/2011 (6)

Inspection notes: The first inspection was a complaint and discharge investigation documented on the Discharge Investigation Checklist. The checklist did not provide a detailed facility description or a description of the NPDES activity pertinent to the inspection, nor did the checklist cover regulated areas or activities evaluated during the inspection or make it clear what was and was not inspected. **In addition, the Inspector's Observations section did not provide a

clear description of the permit requirements that the inspection would be evaluating against. The inspector noted that the discharge entered Lost Creek.

The second discharge investigation was documented with the discharge checklist. The same issues were noted, with the lack of information from the checklist as listed above.

Enforcement action date(s): 8/11/2011

Enforcement action notes: The NOV was issued for failure to complete construction and illegal discharges.

Other notes: A discharge occurred on 6/5/2008, but the investigation was not conducted until *8/21/08* **The second discharge occurred on 7/5/2011 and NDEQ investigated it on 7/7/2011. Information from the file determined that the facility had discharges on 8/16/2006, 4/24/2007, 6/5/2008, 7/5/2011, and 10/7/2011. The last of these occurred after the NOV was issued.

State Response: The discharge investigation is done to determine compliance with a certain discharge and not an evaluation of the entire operation. Several discharges at other CAFOs occurred at the same time because of rainfall events.

3 B Farms (NEG011043)

Inspection date(s) and # days to report: 3/10/2011 (14); 9/8/2011 (12)

Inspection notes: 3/10/2011 - Initial inspection found faults with several areas of the facility. Photographs were not collected during the initial inspection. **A compliance determination was made in the inspection report. An LOW was issued; however, the inspection checklist was not sent to the facility. **

The second inspection (9/8/2011) was conducted as a follow-up that focused primarily on the areas of non-compliance noted during the initial inspection. The follow up inspection contained photographs of the corrected areas. The inspection determined that the feedstock storage area was exempt from permit requirements. The inspection checklists were not sent to the facility.

Enforcement action date(s): None

Enforcement action notes: NDEQ worked with the facility and conducted 3 inspections to achieve voluntary compliance. A formal action was not taken given the return to compliance and nature of violations.

Other notes: None

State Response: Photos were not taken during this inspection because most of the non compliance was record keeping. Policy is to send a copy of the inspection report with the response letter. The lack of a checkmark on the routing slip does not mean the report was not sent to the operation.

Adams Land & Cattle Co - South (NEG011191)

Ongoing EPA Enforcement – file not evaluated

Arbuck & Underwood Feedyard (NEG011049)

Inspection date(s) and # days to report: 7/7/2011 (within 45 days), 1/6/2011 (within 45 days)

Inspection notes: The first inspection was a routine compliance inspection documented with the routine inspection checklist. The checklist provided adequate information except for not providing a thorough narrative of the field activities conducted. Photographs were not taken

during the inspection. The inspection report did not provide a specific compliance determination, but a separate letter provided the determination.

The second inspection was a discharge investigation documented with the discharge checklist. The checklist did not provide a thorough description of the facility operations, permit status, activities covered during the inspection, or the permit requirements that were evaluated against during the inspection. The inspector did not collect photographs or collect samples during the investigation. From the information provided in the inspection report, it was unclear what NDEQ determined to be the compliance status. It was also unclear whether the discharge reached waters of the state.

Enforcement action date(s): LOW – 8/23/2011

Enforcement action notes: The LOW addressed failure to submit an NMP, failure to dewater, failure to meet increased recordkeeping requirements, and the failure to pump when facility was above ‘must-pump’ status. However, the action did not address the fact that the facility was not in compliance with its NDPES permit at the time of the discharge and, therefore, the discharge was not authorized. This appears to be a situation that called for escalation of noncompliance to enforcement action above an LOW.

Other notes: Some inspection information was not contained in the inspection report, but was found in other parts of the file.

Art Dose & Sons Inc. (NEG010051)

Inspection date(s) and # days to report: 7/7/2011 (w/in 45 days)

Inspection notes: A discharge investigation was documented with the discharge checklist. The checklist did not provide a thorough description of the facility description, permit status, activities covered during the inspection, or the permit requirements that were evaluated against during the inspection. The inspector did collect photographs, but did not collect samples during the investigation. From the information provided in the inspection report, it was unclear what NDEQ determined was the compliance status. The investigation stated that the discharge did not reach the receiving stream.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: It did not appear that any follow-up activity was conducted or documented. The facility’s discharge notification report states that discharge reached the stream, but the inspection report states that no discharge entered waters of the state.

B&B Cattle (NEG011311)

Inspection date(s) and # days to report: 11/16/2010 (16)

Inspection notes: The compliance inspection was documented with the compliance short form checklist. The checklist did not provide a thorough description of the NPDES activities pertinent to the inspection or the regulated areas evaluated during the inspection. **The checklist also did not provide a narrative description of field activities conducted or a description of the permit requirements that were evaluated against. Two photographs were taken during the inspection and included in the report. The reviewer was able to determine the compliance status of the facility.

Enforcement action date(s): Corrective Action Required Letter – 12/2/2010.

Enforcement action notes: The transmittal letter for the inspection report, which also served as the CAR letter, described deficiencies and requested corrective action within 30 days.

Other notes: None

State Response: The short form was never intended to cover all regulated NPDES activities. The current practice is to use the long form at least once during the permit term as agreed to by EPA.

Bar K Cattle (NEG011079)

Inspection date(s) and # days to report: 5/20/2010 (32), 8/25/2010, 6/29/2011 (within 45 days), 12/5/2011 (within 45 days),

Inspection notes: An NDEQ compliance inspection that took place May 2010, the same month the facility was sold, indicated the facility had multiple violations and was not in compliance, although the types of violations indicate corrective actions may have been needed long before the sale. Inspection checklists were used to document the inspections. No photographs, samples, or records were collected during the inspection. The facility was given a timeframe to complete required actions.

NDEQ conducted a discharge investigation on 8/25/2010 after 4 discharges occurred from June to August. **Another discharge investigation was made on 6/29/2011. NDEQ then issued an LOW, as holding ponds were above must pump levels prior to discharge. An inspection on 12/5/2011 was conducted to follow-up on issues noted in the LOW. Pictures were taken and the compliance status determined.

Enforcement action date(s): LOW – 8/15/2011

Enforcement action notes: Multiple discharges were addressed with one LOW. This use of enforcement so late following the earlier discharges was neither timely nor appropriate.

Other notes: The facility has had continued issues with land application of wastewater and discharges. New ownership took over in 2010. The issue is complicated because the former owner of the feedlot has control of the application acres. The facility recently acquired its own acreage for land application.

State Response: Discharge #1 report was 6/18/10 and #2 report was 6/28/10, both investigated on 7/15/10. Discharge #3 report was 7/26/10 and #4 report was 8/11/01, both investigated on 8/25/10. First two discharges were among 27 reported in the area following two rounds of extremely heavy rains. The last two discharges were an ongoing issue regarding land application under very wet conditions.

Beer Creek Ranch, LLC (NEG011321)

Inspection date(s) and # days to report: 5/18/2010 (within 45 days)

Inspection notes: NDEQ conducted a post-construction inspection following an expansion from 999 head to 7,000. The inspection had very detailed photos of all of the constructed waste retention structures. The report had a checklist and the construction was approved. The checklist was sent to the file. No-follow-up was needed.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

Beller Feedlot (NEG010252)

Inspection date(s) and # days to report: 7/8/2010 (120)

Inspection notes: NDEQ conducted a discharge investigation following discharge notifications of 6/21-25/2010, 6/10-17/2010, 6/14/2010, 6/28/2010, 6/6/2008, 6/4/2008, 8/23/2007, and 6/6/2007. Photographs were taken during the inspection and included in the report. The inspection report does not document if the discharge reached waters of the state or impacted the receiving stream or if any sampling was conducted. The LOW was sent to the facility, but not the inspection checklist.

Enforcement action date(s): LOW - 11/8/2010

Enforcement action notes: This use of enforcement was not appropriate. Multiple discharges from the facility were not addressed by escalated enforcement, as would have been appropriate.

Other notes: The number of discharges reported (2007 – 2010) was not consummated by a timely onsite investigation following the discharge notifications.

Blue River Pork, Inc. (72219)

Inspection date(s) and # days to report: 08/14/2008 (34)

Inspection notes: On 6/11/2008, NDEQ conducted a Post Construction inspection for the Livestock Waste Control Facility (LWCF) following issuance of the Construction Operating Permit that stated the LWCF was not to be operated until written approval was received from NDEQ. On 8/14/2008, NDEQ conducted the inspection of the site and determined that swine were occupying the buildings and animal waste was flowing to the LWCF. The inspection did not provide a description of NPDES regulated activities pertinent to the inspection. Photographs were collected during the inspection. The state did not transmit the inspection checklist to the facility, and there is not enough information in the report to determine the compliance status of the facility. NDEQ also did not provide a compliance determination at the time of the inspection. On 8/29/08, NDEQ received Certification of Approval and the As Built Plans from the facility. NDEQ conducted several exchanges with the facility prior to issuing an NOV and ultimately making an Enforcement Request. On 7/10/2009, NDEQ issued an Approval to Operate letter to the facility.

Enforcement action date(s): NOV – 12/10/2008; CD – 2/11/2011

Enforcement action notes: NDEQ had several information requests and exchanges with the facility prior to issuing the NOV approximately 120 days after the initial inspection. The Enforcement Request was made on 7/10/2009 and a Consent Decree, for non-NPDES violations, signed on 2/11/2011. A penalty was assessed that consisted of \$1,250 in monetary penalty and a \$1,250 SEP with \$5,000 waived; the initial proposed penalty was \$12,000.

Other notes: The case closure date was 8/15/2011.

Bowman Farms (NEG011021)

Inspection date(s) and # days to report: 7/11/2011 (10)

Inspection notes: The compliance inspection was documented with the Compliance Short Form. The inspection checklist provided an adequate facility description and permit status and the description of NPDES activities covered by the inspection was adequate. In addition the written narrative description of the field activities, observations, and description of permit requirements was also adequate. No photographs were taken during the inspection. Information gathered during the inspection lead to a Corrective Action Required Letter with no timeframe for correcting deficiencies. The letter addressed failure to maintain adequate storage levels.

Enforcement action date(s): Corrective Action Required Letter – 7/12/2011

Enforcement action notes: NDEQ was able to achieve voluntary compliance, even though the Corrective Action Required Letter did not include timeframes for correcting deficiencies.

Other notes: None

Butler County Dairy (NE0136212)

Inspection date(s) and # days to report: 5/19/2011 (6)

Inspection notes: A routine compliance inspection served as a follow-up to issues noted during previous inspections concerning recordkeeping. The inspection was documented using the Compliance Checklist and determined that the facility was missing annual reports. The checklist was sent to the facility with a cover letter that required the facility to submit the missing reports. The reports were received by NDEQ.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: Voluntary compliance was achieved; no other issues were observed concerning record keeping.

Classic Dairy (71321)

Inspection date(s) and # days to report: 8/24/2009 (within 45 days)

Inspection notes: The inspection was a discharge investigation, via a complaint, where the inspector collected photographs, but no samples were taken. The inspection focused primarily on the areas affected by the discharge and was not a complete inspection. An NOV was issued based on the findings of the investigation.

Enforcement action date(s): NOV – 10/22/2009; Enforcement Request – April 2010

Enforcement action notes: The use of an NOV and enforcement referral were appropriate. A penalty was issued to the facility. The initial penalty was similar to the amount sought by EPA for similar violations; however, final settlement was significantly lower than the initial proposed amount.

Other notes: Could not find evidence in the file that the penalty had been collected.

COE Cattle Company (NE0044521)

Inspection date(s) and # days to report: 10/25/2010 (within 45 days); 5/25/2011 (29 days)

Inspection notes: The first inspection checklist contained adequate information, except the narrative description of the inspection activities was lacking. The second inspection only observed the areas impacted by the discharge and did not observe the entire facility or review records to determine if these factors may have been involved in the discharge. Photographs were taken during the first inspection, while no photographs were taken during the second.

Enforcement action date(s): NOV – 6/23/2011

Enforcement action notes: The first inspection was followed by a Corrective Action Letter, while the second inspection was followed less than one month by an NOV requiring repairs to a berm and other actions by a date certain.

Other notes: Information in the file shows elevated Nitrate, Chlorides, etc. in groundwater monitoring. The violation was an avoidable discharge resulting from the operator's negligence. A penalty would have been justified and appropriate. **

State Response: Enforcement action with penalties was requested.

Darr Feedlot (NEG011056)

Inspection date(s) and # days to report: 4/12/2011 (within 45 days); 8/23/2011 (within 45 days)

Inspection notes: The initial inspection identified deficiencies, and the second inspection was a follow-up indicating that not all of the compliance issues were addressed. A follow-up informal Corrective Action letter required the remaining deficiencies to be corrected by 11/15/2011; however, there is nothing in the file to indicate that the issues were addressed by the timeline provided. Perhaps the supporting records had not yet been scanned into the electronic records system. The inspector utilized inspection checklists to document both inspections.

Enforcement action date(s): Corrective Action Required letter – date not recorded by EPA.

Enforcement action notes: The file does not contain records to enable the reviewer to determine whether the facility had returned to compliance.

Other notes: None

Denker, Inc. (NEG011300)

Inspection date(s) and # days to report: 5/19/2011 (within 45 days)

Inspection notes: The inspection was documented with the Compliance Short Form checklist. The checklist did not provide a detailed description of NPDES regulated activities pertinent to the inspection or regulated areas evaluated during the inspection. ** In addition, the checklist did not provide a narrative description of field activities conducted or a description of the permitted activities the inspection evaluated against. Photographs were collected during the inspection.

Enforcement action date(s): None

Enforcement action notes: The inspection report did not make a clear compliance determination, and no follow-up letter was sent to the facility.

Other notes: None

State Response: The short form was never intended to cover all regulated NPDES activities. The current practice is to use the long form at least once during the permit term as agreed to by EPA.

Dinsdale Brothers Inc. - North (65954)

Inspection date(s) and # days to report: 2/14/2010 (43)

Inspection notes: A discharge investigation was documented with the Discharge Checklist. The investigation focused on areas concerned with discharge and did not evaluate the entire facility. The checklist did not provide a description of permit requirements evaluated or observations made regarding permit requirements. No samples were collected of the discharge. Photographs were collected during the inspection and corrective actions were required during the inspection. An NOV was issued to the facility, but the discharge checklist was not sent to the facility.

Enforcement action date(s): NOV – Sent within 90 days of discharge investigation; Enforcement Request – 12/30/2009; Administrative Order – 7/15/2010; Consent Decree – 01/19/2011

Enforcement action notes: A penalty was assessed that consisted of a \$7,500 monetary penalty and a \$7,500 SEP with \$7,500 waived. The initial proposed penalty was \$51,300.

Other notes: Case closure date was 9/2/2011. This is a facility with a long history of violations, involving an NOV issued in 2006 for failure to complete construction of a holding pond for the South Lot. That violation went unresolved until enforcement action was taken in 2009.

Discharges were reported on 1/4/2009, 1/5/2009, 2/3/2010, and 2/4/2010, where all instances were during winter months and involved land application errors or malfunctions. Questions were

not asked why the facility was pumping during winter with snow on the ground. **An NOV was issued to the facility within 90 days, but the checklist was not sent to the facility.

State Response: There is no general prohibition on applying during the winter or on snow.

Henry Hass & Sons, Inc. (81546)

Inspection date(s) and # days to report: 8/24/2011 (within 45 days)

Inspection notes: A compliance inspection was conducted at a medium-sized CAFO facility. The inspection was documented using the Compliance Short Form. The checklist does not allow for an accurate description of the operation, specifically whether the facility is a Medium CAFO or consideration of conveyances. The permit status was not documented in the report. The inspector did include a few photographs with the report. From the file it was unclear whether the inspection report was sent to the facility, and the report did not provide a clear compliance determination. An NOV was issued to the facility, but it did not include sufficient information to support enforcement.

Enforcement action date(s): NOV – 9/28/2011

Enforcement action notes: The NOV did not contain a timeline for correcting issues. The NOV told the facility to provide a schedule for completion. The reviewer was unable to determine from information in the file whether the facility had returned to compliance.

Other notes: The reviewer could not conduct a full review of the file. It appears that there are several records not provided for the facility. It also appears that this is an unpermitted facility that has been operating for years and that NDEQ started an effort to require a permit, but there is a large information gap in the file to fully document the facility's actual efforts.

Herd Co. (NE0136361)

Inspection date(s) and # days to report: 1/25/2011 (within 45 days); 6/7/2011 (within 45 days)

Inspection notes: The first inspection contained minimal information and focused on the area of the discharge. The inspections were documented on one page checklists with minimal information describing the facility and inspection activities, and they did not include photographs, sampling, or supporting information. The inspections did not address why the facility was applying liquid waste to frozen ground. **

Enforcement action date(s): None

Enforcement action notes: None

Other notes: The first inspection report notes that liquids were pumped from a ditch but frozen portions would have to wait until spring. No follow-up information was in the file. The file shows that significant controls were added to the facility in 2011.

State Response: There is no general prohibition for applying on frozen soil.

HJR Dose (NEG011223)

Inspection date(s) and # days to report: 4/11/2011 (within 45 days); 7/7/2011 (within 45 days)

Inspection notes: The first inspection was a routine inspection documented with the checklist. The completed checklist did not provide a very thorough narrative of the activities conducted. A few photographs were taken from the road, but no samples were collected. The inspector did not determine whether discharge entered waters of the state but made statements about the flatness of the terrain.

The second inspection was a discharge investigation documented with the discharge checklist. The checklist did not provide a thorough description of the facility, permit status, activities covered during the inspection, or the permit requirements that were evaluated against during the inspection. The inspector did collect photographs during the inspection. It was unclear whether the state transmitted the inspection report to the facility. From the information provided in the inspection report, it was unclear what NDEQ determined to be the compliance status.

Enforcement action date(s): Corrective Action Required letter – date not recorded by EPA.

Enforcement action notes: NDEQ appeared satisfied that the discharge was a one-time event that did not require follow-up.

Other notes: The second inspection report alludes to the fact that the facility was below the must pump level before the discharge but above it at the time of the discharge.

Imperial Beef (NEG011089)

Inspection date(s) and # days to report: 6/13/11 (internal memo); 7/7/11 (internal checklist)

Inspection notes: The 6/13/11 discharge investigation was documented with a discharge checklist and memo to the file. The memo identified problems with reading holding pond levels and land application issues. NDEQ's observations state that the wastewater did not reach waters of the state. Photographs were taken, copies of pump records, and maps were included in the file. The report noted Corrective Actions taken during the inspection. The checklist or the memo was not transmitted to the facility. There was not sufficient information in the file to determine what the compliance status of the facility was.

The 7/7/11 compliance inspection was documented with the inspection checklist following a request for an inspection on 7/7/11. The request was for expansion from 4,200 head to 52,500 head. The checklist provided a narrative description of the activities conducted and observations made regarding permit requirements. Photographs were collected during the inspection. From the inspection report there was not sufficient information for the reviewer to determine the compliance status of the facility; however approval was granted for the expansion of the operation.

Enforcement action date(s): No enforcement taken.

Enforcement action notes: Enforcement was not appropriate - No LOW or other informal enforcement actions issued for permit violations prior to the discharge occurring.

Other notes: NDEQ did not observe the site until 9 days after receiving verbal notification of the discharge. The amount of wastewater pumped to the pasture was approximately 7.9 million gallons and caused a pool that covered 15 acres. Expansion was allowed 1 month after discharging 7.9 million gallons.

JD Cattle Company (66560)

Inspection date(s) and # days to report: 6/11/2008 (70), 6/29/2010 (31)

Inspection notes: The first inspection was a discharge investigation documented on the Discharge Investigation Checklist. The checklist did not provide a detailed facility description, permit status, description of the NPDES activity pertinent to the inspection, nor did the checklist cover regulated areas or activities evaluated during the inspection or make it clear what was and was not inspected. In addition, the inspector's observations did not provide a clear description of the permit requirements that the inspection would be evaluating against. The inspector collected

samples and took photographs to document findings. The inspection report documented a fish kill in waters of the state.

The second inspection was also a discharge investigation documented with the discharge checklist. The same issues with lack of information from the checklist are noted. The inspector collected photographs only during the investigation.

Enforcement action date(s): NOV – 9/23/2008 and 12/2/2010; Complaint and compliance order – 1/4/2011; Consent Decree – 3/16/2012

Enforcement action notes: Complaint/Order was issued 1/4/2011 for illegal discharges and failure to notify NDEQ. The enforcement referral to the state AG resulted in a consent decree with penalty.

Other notes: None

Keller Cattle Co. (NEG011036)

Inspection date(s) and # days to report: 10/12/2010 (8); 11/23/2011 (15)

Inspection notes: Both inspections were documented using NDEQ checklists. Neither checklist provided a detailed narrative description of field activities conducted or a description of permit requirements evaluated. The inspection reports did include a narrative of what observations were made during the inspections but did not provide sufficient information to support a clear compliance determination.

Enforcement action date(s): Corrective Action Required letters – 10/20/2010 & 12/9/2011

Enforcement action notes: Corrective Actions Required letters were issued following the inspections to address violations of failure to meet pump down levels, to conduct nutrient analysis, and to remove sludge, with initial compliance due on 5/15/2012.

Other notes: None

Kroenke Farms (NE0136123)

Inspection date(s) and # days to report: 7/1/2010 (within 45 days)

Inspection notes: The compliance inspection report contained a very brief description of the areas covered during the inspection. The number of head at the facility was unable to be determined from the inspection checklist. No photographs, maps, or facility records were collected by the inspector. The inspection checklist did make a compliance determination and an LOW was issued.

Enforcement action date(s): LOW – date not recorded by EPA.

Enforcement action notes: None

Other notes: The July 2010 inspection was the last inspection for the facility found in the file and/or computer.

Linder Stock Farm (NEG011181)

Inspection date(s) and # days to report: 6/20/2011 (9)

Inspection notes: The inspection was a discharge investigation, documented on the Discharge Investigation Checklist. The checklist did not provide a detailed facility description, permit status, description of the NPDES activity pertinent to the inspection, or description of regulated areas or activities evaluated during the inspection to make it clear what was and was not inspected. In addition, the Inspectors Observations section did not provide a clear description of the permit requirements that the inspection would be evaluating against. The inspector collected copies of records that were reviewed and took photographs to document findings. The

inspection report does not adequately document where the water from the discharge was going or whether the water reached waters of the state. **

Enforcement action date(s): LOW – 7/9/2011

Enforcement action notes: Because the inspector did not explain in the report whether the discharge reached waters of the state, the reviewer was unable to determine if an LOW was an appropriate enforcement response.

Other notes: The discharge occurred on 6/20/2011, and an investigation was conducted the same day.

State Response: The 21-page 6/29/11 memo that accompanied the discharge investigation outlines the source of the discharge and where the discharge flowed.

Livingston Enterprises (70926)

Inspection date(s) and # days to report: 3/23/2011 (1), 3/26/2011 (1)

Inspection notes: A discharge investigation was followed by a re-inspection needed for expansion. Both inspections were documented with checklists. The discharge investigation consisted of an evaluation of the area where the discharge occurred, while the re-inspection viewed the area involved in the facility expansion. It was unclear if the entire facility was observed and if all other areas of the facility, including records, were inspected. The initial discharge inspection should have required corrective actions. The inspector did not observe a discharge to waters of the state and observed that the discharge had pooled in a pasture. No report was sent to the facility following the discharge investigation or the proposed expansion inspection. Neither inspection report leads to a compliance determination.

Enforcement action date(s): None

Enforcement action notes: Voluntary compliance was used to correct deficiencies noted during the inspection, even though no report was sent to the facility. An LOW could have been issued for discharges from the facility. Some type of enforcement would have been appropriate.

Other notes: The discharge was reported to NDEQ and the inspector conducted the investigation 5 days after receiving the discharge notification. The inspector noted in the discharge investigation report that the discharge did not reach waters of the state.

Mayes General Partnership - East (NEG011223)

Inspection date(s) and # days to report: 5/23/2011 (20)

Inspection notes: The inspection was a discharge investigation documented with the discharge checklist. The checklist did not provide a thorough description of permit requirements that were evaluated against during the inspection. The inspector did collect photographs during the inspection. The state did not transmit the inspection report to the facility. From the information provided in the report, it was unclear what NDEQ determined to be the compliance status. The inspector did not determine whether discharge entered waters of the state.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: There was a documented discharge with no violations identified and no formal action taken.

Mayes General Partnership - West (NEG011229)

Inspection date(s) and # days to report: 8/1/2007 (27), 6/16/2010 (within 45 days), 6/21/2010 (within 45 days), 5/6/2011 (not clear)

Inspection notes: The first inspection, a discharge investigation, was documented with a memo to the file. The memo did not include a facility description or provide a permit status. A description of permit requirements that were evaluated against during the inspection was also lacking. Photographs were taken during the inspection

The second and third inspections were also discharge investigations, documented with memos to the file. The memos contained limited facility and permit related information and were not sent to the facility. The investigations were prompted by multiple discharges.

The final inspection was documented with the inspection checklist, which lacked a narrative description of field activities conducted and did not provide a clear description of the permit requirements that were evaluated against. Photographs were collected during the inspection. From the inspection report there was not sufficient information for the reviewer to determine the compliance status of the facility.

Enforcement action date(s): NOV – 9/18/2007; AG Complaint – 11/12/10.

Enforcement action notes: A letter from the AG notes that the facility returned to compliance.

Other notes: Multiple discharges occurred during 2010.

Mid Plains Cattle Company (NEG011263)

Inspection date(s) and # days to report: 8/4/2010 (57); 12/15/2011 (4)

Inspection notes: The first inspection was a discharge and complaint investigation following the receipt of a complaint on 7/28/2010. The inspection report also states that the same complainant had contacted NDEQ “about a month prior also.” The inspector observed the site and completed a discharge checklist. No photographs or samples were collected by the inspector, but the inspector did include rainfall records and holding pond level records. The inspector noted that run-on from the adjacent road ditch overtopped the berm and entered the holding pond. The inspector allowed the facility to pump the holding pond to a field and drainage ditch but did not document whether impacts were occurring in the receiving stream.

NDEQ conducted the second inspection as a follow-up to the first inspection. The inspector observed holding ponds and reviewed records and the facility’s Nutrient Management Plan. NDEQ determined that the facility had returned to compliance.

Enforcement action date(s): LOW – Late 2010.

Enforcement action notes: An LOW was issued for two separate discharge events in June and July 2010. Additional enforcement beyond informal tools would have been appropriate.

Other notes: EPA has concerns with the amount of time that elapsed from the first to the second complaint, and then after the second complaint was received, before NDEQ conducted an investigation at the site. In addition, the LOW contradicts what the Discharge Review Checklist states. The LOW states that the facility was over the Start Pump Level when the two discharge events began, whereas the Discharge Review Checklist states that the discharge was caused by excessive rain. No design recommendations were given, nor an engineering evaluation required, in order to prevent a future recurrence of such discharges.

Nebraska Feeders - McClymont (NEG011210)

Inspection date(s) and # days to report: 3/31/2011 (not sure); 5/26/2011 (30)

Inspection notes: The first compliance inspection was documented with the short form checklist. The checklist did not provide a thorough description of NPDES activities pertinent to the

inspection or the regulated areas evaluated during the inspection. **The checklist also did not provide a narrative description of field activities conducted or a description of the permit requirements that were evaluated against. Photographs were taken during the inspection. The reviewer was unable to determine the compliance status of the facility. The inspector did collect photographs during the inspection. It was unclear whether the state transmitted the inspection report to the facility. From the information provided in the inspection report, it was unclear what NDEQ determined to be the compliance status of the facility.

The memo documenting the second inspection, which was a discharge investigation, contained limited facility and permit related information and was not sent to the facility. It also did not provide a clear compliance determination.

Enforcement action date(s): Corrective Action Required letter – 4/27/2011

Enforcement action notes: The Corrective Action required letter accompanied the March 2011 inspection letter issued the same day on 4/27/2011.

Other notes: None

State Response: The discharge investigation is done to determine compliance with a certain discharge and not an evaluation of the entire operation.

Nebraska ILS Feeders (8147)

Inspection date(s) and # days to report: 01/13/2011 (within 45 days)

Inspection notes: The report for this compliance inspection utilized the Compliance Short Form inspection checklist. The checklist contained rudimentary information about the facility and did not mention the proposed expansion of the facility. **The inspector collected photographs during the inspection and observed that nitrate levels were elevated in groundwater monitoring. The checklist did not contain sufficient information to make a compliance determination and did not require any actions by the facility.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

State Response: The short form was never intended to cover all regulated NPDES activities. The current practice is to use the long form at least once during the permit term as agreed to by EPA.

Niewohner Grandchildren East (89575)

Inspection date(s) and # days to report: 10/21/2012 (within 45 days); 10/31/2011 (within 45 days)

Inspection notes: Two discharge investigations were conducted and documented on the Discharge Investigation Checklists. The checklists did not provide a detailed facility description, permit status, description of the NPDES activity pertinent to the inspection, or make it clear what was and was not inspected. In addition, the Inspectors Observations section did not provide a clear description of the permit requirements that the inspection would be evaluating against. The inspector did not collect samples but did take photographs. The inspection reports did not provide sufficient information to determine the compliance status of the facility. Also, the files were not clear whether the state transmitted the inspection reports to the facility.

Enforcement action date(s): NOV – 10/27/2011

Enforcement action notes: The NOV was issued to address discharge to a road ditch, even though the discharge did not reach waters of the state.

Other notes: In both instances, if samples would have been collected, they would have put the issue to rest following citizen complaints, as the complainants disagreed with NDEQ's findings.

Novak Pork (87024)

Inspection date(s) and # days to report: 6/9/2011 (10); 10/25/2011 (20)

Inspection notes: The first inspection was conducted following a letter from NDEQ to the facility dated 7/17/2009. That letter was sent to address recordkeeping violations, and an LOW for the same violations was sent 11/17/2009. A Compliance Assistance visit was also conducted on 7/20/2010, and NDEQ found issues with recordkeeping that resulted in the 6/9/2011 inspection and subsequent NOV. The inspection report documented ongoing permit violations. The inspection checklist did not mention or have a space for whether the permit is active or expired. **Records were reviewed to determine compliance. No photographs were taken during the inspection. The Inspection report makes note of trees in the holding pond and that the staff gauge needed repair; No pictures were taken or included in the report to document the non-compliance. A copy of the inspection checklist was sent to the facility with the NOV.

A follow-up inspection was documented with a memo to the file. The memo contains very limited information about activities at the facility or facility history. The purpose of the inspection was to respond to a Request for Inspection due to facility expansion. The memo to file addresses issues noted from the 6/9/2011 inspection but does not state whether the facility returned to compliance. The reviewer might assume from presence of the enforcement request that the facility was not in compliance.

Enforcement action date(s): NOV – 6/17/2011; Enforcement Request – 10/25/2011

Enforcement action notes: At the time of this review, no formal enforcement actions have been taken following the enforcement request.

Other notes: No compliance determination was made in the follow-up inspection.

State Response: This is a non-NPDES permitted operation but rather operating under a state permit, which does not expire.

Oshkosh Feedyard (NEG011037)

Inspection date(s) and # days to report: 9/28/2011 (70)

Inspection notes: A routine compliance inspection was conducted as a follow-up to a Post Construction Inspection made of the silage area in order to determine if violations found in the Post Construction Inspection had been addressed. Photographs were taken during the inspection and demonstrate that remaining issues were addressed prior to the inspection. The facility was determined to be operating in compliance with the permit. A copy of the inspection checklist was sent to the facility.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

Ortmeier Feedyard (NE0104264)

Inspection date(s) and # days to report: 6/10/2010 (180); *8/24/10* (50)

Inspection notes: The first inspection was a discharge investigation following discharge notifications on 6/10/2010 and 8/2/2010. The discharge investigation checklist was used to document the inspection. No samples of the discharge were collected. **The report gave no explanation of whether the discharge reached waters of the state. There were no photos documenting the investigation. **The inspection documented a medium CAFO facility with a discharge to a manmade conveyance. Corrective actions were required during the inspection. No clear compliance determination was made, but a Letter for Corrective Actions was issued along with an LOW.

The second inspection was a follow-up inspection documented using the Short Compliance inspection checklist. Photographs were taken during the investigation. Issues noted in the earlier Corrective Actions Letter were found to have been addressed. A follow-up inspection letter was sent to the facility 50 days following the inspection.

Enforcement action date(s): LOW – date not recorded by EPA.

Enforcement action notes: Enforcement was not taken but would have been appropriate, given that multiple discharges from the facility were documented.

Other notes: The NPDES permit was terminated on 12/21/2010.

State Response: Discharge was a flash flood that was done at the time of investigation. There was nothing to photograph except a grassed waterway in a field.

PC West - Tarnov (67079)

Inspection date(s) and # days to report: 9/27/2010 (55); 6/28/2011 (Internal Memo, date uncertain)

Inspection notes: The first inspection was a discharge investigation and utilized the Discharge Investigation Checklist. There was not a space on the checklist to note whether the facility has a NPDES permit or if the permit is active or expired. The inspection report notes that the discharge did not reach waters of the state. No photographs or samples were collected during the inspection. NDEQ issued an NOV but did not send a copy of the checklist to the facility. The facility had a similar discharge in 2005, after which an NOV was issued; however, the inspection reports did not provide a compliance history of the facility.

The second inspection was a follow-up inspection documented with an internal memo. There were no photographs taken. The inspection did not specifically address previous non-compliance or provide a compliance history. Because NDEQ wrote only an internal memo and no inspection report, the facility did not receive any correspondence indicating its compliance status.

Enforcement action date(s): NOV – 11/20/2010

Enforcement action notes: The NOV required a Discharge Notification Report (after the fact), a revised O&M Plan, and an updated Site Map to be redrawn. The NOV did not require a NPDES Permit for the discharge, and the facility was allowed to keep the State permit. Further enforcement was not taken but would have been appropriate given the history of multiple discharges.

Other notes: The facility had a similar discharge in 2005, after which an NOV was also issued.

PPK, LLC (73298) / Lagoon Pumping & Dredging (custom applicator)

Inspection date(s) and # days to report: 10/5/2010 (29)

Inspection notes: The inspection was in response to a discharge from a custom applicator during land application. Animal waste left the land application area and entered a nearby waterway, which was dammed, and the waste was pumped from the waterway to the adjacent crop ground. The inspection included photographs taken and a map depicting the area where the discharge originated; however, no samples were collected from the waterway. An LOW was issued. The inspection checklist states that the closest stream was evaluated and makes note that animal waste did not reach the stream, because the dammed waterway prevented the waste from reaching the perennial stream. The LOW does not mention using future BMPs or other measures to prevent a recurrence of the discharge.

Enforcement action date(s): LOW – 11/3/2010

Enforcement action notes: The LOW was issued for discharge into waters of the state. It required a written report to be submitted. NDEQ received a written report and the facility had returned to compliance, making this action for a first-time discharge appropriate.

Other notes: None

Prairie Land Dairy (73762)

Inspection date(s) and # days to report: 2/23/2011 (84); 5/2/2011 (29)

Inspection notes: The earlier inspection was a Drive-by reconnaissance of uncontrolled Feed Stock Storage and uncontrolled pens, and it was documented by a Memo to the File with an LOW being sent to the facility. Each inspection included photographs of the problem areas. The second inspection was a Post Construction Inspection to address corrective actions taken and was documented by a checklist. Both inspections included memos to the file; however, only the LOW was sent to the facility.

Enforcement action date(s): LOW – 3/24/2011

Enforcement action notes: The LOW required voluntary compliance with NPDES requirements. Following the LOW response, NDEQ sent two additional letters requesting additional information as a follow-up to the inspections.

Other notes: On 10/18/2011, NDEQ issued an Approval to Operate LWCF after receiving all requested information.

R Benjamin Inc. Livestock (NEG011147)

Inspection date(s) and # days to report: 4/7/2010 (within 45 days); 9/29/2011 (within 45 days)

Inspection notes: Two compliance inspections were documented with the Compliance Short Form. ** The inspection checklists provided an adequate facility description and permit status; however, the description of NPDES activities covered by the inspection was limited. In addition, the written narrative description of field activities, observations, and permit requirements evaluated was lacking with both checklists. Photographs were taken during the second inspection. While the first inspection report was sent to the facility, the file is unclear whether the second report was sent or not. The reviewer was able to determine from the reports, with difficulty, what the compliance status was following the inspection.

Enforcement action date(s): None

Enforcement action notes: The information gathered from both inspections on the checklists would not be sufficient to support an enforcement case.

Other notes: None

State Response: The short form was never intended to cover all regulated NPDES activities. The current practice is to use the long form at least once during the permit term as agreed to by EPA.

RDO Inc. Feedlot (NEG011048)

Inspection date(s) and # days to report: 6/11/2010 (55); 5/26/2011 (18)

Inspection notes: The first inspection was a complaint and discharge investigation documented on the Discharge Investigation Checklist. The checklist did not provide a detailed facility description or a description of the NPDES activity pertinent to the inspection, nor did it cover regulated areas or activities evaluated during the inspection or make it clear what was and was not inspected. In addition, the Inspectors Observations section did not provide a clear description of the permit requirements that the inspection would be evaluating against.

The second inspection was also a discharge investigation documented with the discharge checklist. The same issues were noted with the lack of information from the checklist, as listed above.

Enforcement action date(s): LOW – 11/18/2010; NOV – 7/5/2011

Enforcement action notes: The LOW was issued to address illegal discharge and failure to report. No records could be found in the file for either LOW or NOV to indicate whether the facility had returned to compliance.

Other notes: The LOW and NOV were issued for multiple discharges to wetlands, and no formal enforcement action was taken or penalty assessed.

S&A Feedlots (NE0097110)

Inspection date(s) and # days to report: 1/7/2011 (within 45 days); 7/14/2010 (within 45 days); 8/31/2011 (within 45 days)

Inspection notes: The first and third inspections were discharge investigations documented with the discharge checklists. The checklists did not provide a thorough description of facility activities, permit status, activities covered during the inspection, or the permit requirements that were evaluated against during the inspection. ** The inspector did not collect photographs or samples during the investigations. From information provided in the inspection reports, it was unclear what NDEQ determined to be the compliance status.

The January 2011 inspection was a routine compliance inspection documented with the routine inspection checklist. The checklist provided adequate information except for not providing a thorough narrative of field activities conducted. One photograph was taken during the inspection. Sufficient information led to a compliance determination.

Enforcement action date(s): Three LOWs – dates not recorded by EPA.

Enforcement action notes: Three LOWs were issued to attempt to bring the facility back to compliance. No formal enforcement action was taken but would have been warranted given the nature of discharge violations and lagoon management.

Other notes: Elevated nitrate levels were observed in groundwater monitoring.

State Response: The discharge investigation is done to determine compliance with a certain discharge and not an evaluation of the entire operation.

Sioux County Feeders (72523)

Inspection date(s) and # days to report: 5/12/2011 (within 45 days); 5/24/2011 (within 45 days)

Inspection notes: The first inspection was a discharge investigation documented with the discharge checklist. The inspector collected photographs of the discharge that showed significant flow to a field owned by the operator, but the inspection report does not directly state whether flow entered waters of the state. The inspection report does not state whether discharge was authorized. However, the inspection report made a clear compliance determination that resulted in an NOV being issued.

The second inspection was a compliance inspection documented using the Compliance Short Form. The inspection report made a clear compliance determination that resulted in an NOV being issued to the facility. It is unclear from the file if either of the reports were sent to the facility.

Enforcement action date(s): NOV – date not recorded by EPA.

Enforcement action notes: The NOV was issued for two discharges in the same month. No referral or formal enforcement action was initiated. Enforcement would have been appropriate.

Other notes: The state file appears to have a 2009-2011 information gap. The discharge identified in 2009 appears to have prompted an effort to require the 6,000-head operation near Scott's Bluff to obtain a NPDES Permit.

St. George Ranch (69825)

Inspection date(s) and # days to report: 11/30/2011 (within 45 days)

Inspection notes: The inspection was documented on the Compliance Inspection Short Form checklist. Photographs were collected by the inspector during the inspection. The short form did not cover the facility description or compliance history in sufficient detail. For the extent of noncompliance, the short form does not adequately describe the situation. The inspection report was completed timely, but there is no clear compliance determination made in the inspection checklist.

Enforcement action date(s): LOW – 3/28/2011; Corrective Action Required letter following inspection.

Enforcement action notes: A Corrective Action Required letter cited no NPDES permit and lack of runoff controls. The operation was allowed time to submit documentation, an application, and to go through the permitting process for nearly a decade. Extensions of time were requested and granted for construction completion. For example, an April 2010 letter to the facility stated that a NPDES permit application was required from the facility by 2/1/2011. The lack of formal enforcement by the time of the November 2011 inspection was not appropriate.

The LOW cited failure to certify completion of controls by an old deadline of 8/15/2001.

Other notes: According to a public notice on 7/21/2011, still no construction had been completed. The facility operated for years, but no formal enforcement action was considered.

Sunderman West (NEG011126)

Inspection date(s) and # days to report: 7/8-14/2010 (within 45 days); *6/22/10 *(within 45 days)

Inspection notes: The first discharge investigation was documented with the discharge checklist. The inspection only focused on the discharge and did not include complete facility information, description of permit requirements, or observations made regarding permit requirements. ** No consideration was given to permit compliance prior to the discharge.

The second discharge investigation was documented on the Discharge Investigation Checklist. The checklist did not provide a detailed narrative description of field activities

conducted. Photographs were taken by the inspector. The inspection led to a compliance determination.

Enforcement action date(s): Corrective Action Required letter and LOW – dates not recorded by EPA.

Enforcement action notes: The Corrective Action Required letter was sent to the facility following the first investigation, with a response time schedule of “as soon as possible.” The LOW was issued following the second inspection. A 2012 document in the file demonstrated that complying actions had been taken.

Other notes: It was unclear whether the discharge was due to chronic rainfall. No sample analysis was conducted to determine compliance or impact. The facility utilized the discharge as an opportunity to lower the holding pond levels below levels necessary to protect structures. Even liquids from other basins with adequate storage available were transferred to the full lagoon to allow pumping to the creek.

State Response: The discharge investigation is done to determine compliance with a certain discharge and not an evaluation of the entire operation.

Timmerman Feeding Corporation (NEG011269)

Inspection date(s) and # days to report: 4/15/2009 (30); 5/26/2010 (Uncertain); 7/8/2010 (57); 4/27/2011 (7); 10/5/2011 (16)

Inspection notes: The 2009 and May 2010 compliance inspections were documented with the compliance checklist. The checklist provided adequate general facility information. The inspections did not provide an accurate permit status or cover what regulated areas were evaluated during the inspection. The checklist did not provide sufficient information in order to determine the compliance status of the facility.

In July 2010, a discharge investigation was documented with the discharge checklist. The discharge checklist did not provide a facility description; a description of NPDES regulated activities pertinent to the inspection, or the regulated areas/activities evaluated during the inspection. The inspector’s observations did not provide a narrative description of field activities conducted or a description of permit requirements evaluated against. Photographs were taken during the investigation. There was not enough information in the report for the reader to determine the compliance status of the facility. It was unclear if the report was sent to the facility. This investigation was followed with the 10/4/2010 LOW.

A July 2011 complaint investigation was documented with a checklist. The checklist did not provide a facility description, a permit status, a description of NPDES regulated activities pertinent to the inspection, or the regulated areas/activities evaluated during the inspection. The inspector’s observations did not provide a narrative description of field activities conducted or a description of permit requirements evaluated against. Photographs were not taken during the inspection. The inspection report was not transmitted to the facility. The checklist did not lead to a compliance determination.

The final inspection in October 2011 was documented with the short form checklist. The inspection did not provide a description of NPDES regulated activities pertinent to the inspection or the regulated activities evaluated. The checklist did not provide a narrative description of field activities conducted or provide a description of permit requirements that were evaluated against. Photographs were not taken during the inspection.

Enforcement action date(s): LOW – 10/4/2010; Corrective Action Required letter – 10/21/2011

Enforcement action notes: The LOW was issued to address discharges, and the corrective action letter was issued following the last inspection. The sequence of five inspections with multiple discharges and permit violations, but no escalation to formal enforcement, was not an appropriate use of enforcement tools.

Other notes: Discharges from the facility occurred on 6/21/2010 and 7/15-17/2010.

Weltzenkamp Farms (NE0100625)

Inspection date(s) and # days to report: 7/1/2011 (24)

Inspection notes: A compliance inspection and discharge investigation were combined during the same inspection, in part as a response to verbal notification of a discharge received by NDEQ on 6/20/11. Two checklists were completed during the inspection. Photographs, pump logs, and holding pond levels were collected and recorded; however no sampling of the discharge was performed. The inspector documented that the discharge reached waters of the state. NDEQ required corrective actions at the time of the investigation. The Compliance checklist was sent to the facility, but the Discharge Investigation checklist was not. No clear compliance determination was made in the cover letter to the facility or the checklist.

Enforcement action date(s): None

Enforcement action notes: No LOW or NOV was issued for a discharge reaching waters of the state. At a minimum, informal enforcement would have been appropriate. The inspector documented that the facility was not operating below the start pump level.

Other notes: None

Willow Island Land & Cattle (NEG011284)

Inspection date(s) and # days to report: 2/10/2011 (within 45 days)

Inspection notes: The compliance inspection was documented with the Compliance Short Form. The inspection checklist provided an adequate facility description and permit status, and the description of NPDES activities covered by the inspection was adequate. However, the narrative description of field activities, areas observed during the inspection, and description of permit requirements lacked sufficient detail. Photographs were taken during the inspection. Information gathered during the inspection led to a Corrective Action Required letter with no timeframes for correction of deficiencies.

Enforcement action date(s): Corrective Action Required letter – date not recorded by EPA.

Enforcement action notes: NDEQ was able to achieve compliance informally, even though the Corrective Action Required Letter did not include timeframes for correcting deficiencies.

Other notes: A 2012 follow-up inspection identified different permit-related violations.

Wolfden Dairy (74449)

Inspection date(s) and # days to report: 6/8/2011

Inspection notes: A routine Animal Feeding Operation inspection was documented using the inspection checklist. The inspection checklist captured the inspector's observations but did not provide a clear description of the permit status for the facility. The checklist also did not provide a thorough narrative description of field activities conducted.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None

Zutavern Ranch Livestock (NEG011160)

Inspection date(s) and # days to report: 8/2/2011 (7)

Inspection notes: A routine compliance inspection was documented using the compliance checklist. From the inspection checklist, the reviewer was unable to determine the current permit status of the facility or whether the facility was permitted with an operating permit or a NPDES permit. The inspector did not include supporting information such as photographs with the inspection checklist. There was not a clear compliance determination given in the inspection checklist.

Enforcement action date(s): None

Enforcement action notes: None

Other notes: None