UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
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SEP 23 2013

Mr. John E. Skvarla
Secretary
North Carolina Department of
Environment and Natural Resources
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Dear Secretary Skvarla:

The Environmental Protection Agency (EPA) Region 4 would like to thank you and your staff for participating in the State Review Framework (SRF) evaluation of the North Carolina Department of Environment and Natural Resources (DENR) enforcement and compliance program. Region 4 is appreciative of the cooperation and assistance provided by DENR during the review, and the straightforward communication and collaboration displayed by your staff in working with us throughout the review process.

Please find enclosed the final Round 3 SRF report. This report includes an evaluation of DENR's enforcement and compliance activities for the RCRA Subtitle C program, the Clean Water Act NPDES program and the Clean Air Act Stationary Source program for federal fiscal year 2011. The report recognizes that DENR implements effective compliance and enforcement activities in many of the elements evaluated in the SRF, and identifies recommendations for improvement to strengthen performance in nine specific areas. We would also like to take this opportunity to recognize DENR for the proactive response to recommendations for improvement. We look forward to working with you and your staff as you develop and implement procedures to address the recommendations.

Please extend our thanks to everyone involved for their cooperation in the development of this report. We look forward to continuing the strong partnership that we share with DENR in our joint efforts to improve the environment for all of our citizens. If you have any questions or concerns regarding the enclosed report, please feel free to contact me or Scott Gordon, the Associate Director of OEA, at (404) 562-9741.

Sincerely,

V. Anne Heard

V. Anne Heard
Acting Regional Counsel and Director
Office of Environmental Accountability

Enclosure

# STATE REVIEW FRAMEWORK REVIEW

## North Carolina

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

**U.S. Environmental Protection Agency**
**Region 4, Atlanta**

**Final Report**
**September 18, 2013**

# SRF Executive Summary

## Introduction

The Clean Water Act (CWA) State Review Framework (SRF) review of the North Carolina Department of Environment and Natural Resources (DENR) was conducted the week of January 7, 2013. The Resource Conservation and Recovery Act (RCRA) and the Clean Air Act (CAA) on-site file reviews were conducted during the week of November 26, 2012.

This report includes reviews of the Clean Water Act National Pollutant Discharge Elimination System (CWA-NPDES) program, the Clean Air Act (CAA) Stationary Source program, and Resource Conservation and Recovery Act (RCRA) Subtitle C program.

SRF findings are based on file metrics derived from file reviews, data metrics, and conversations with program staff.

## SRF Priority Issues to Address

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

- North Carolina DENR needs to improve how they document penalty calculations to include the consideration of economic benefit and the rationale for any difference between the initial and final penalty assessed.

- North Carolina DENR needs to improve the accuracy of data entry in the NPDES Integrated Compliance Information System (ICIS-NPDES).

- North Carolina DENR needs to improve the timeliness and appropriateness of CWA enforcement actions and ensure that actions promote a return to compliance.

## Major SRF CWA-NPDES Program Findings

- The accuracy of Minimum Data Requirements (MDRs) reported by DENR into ICIS-NPDES needs improvement. This was identified as an Area for State Improvement during the Round 2 review. EPA recommends that DENR submit and implement revised procedures to EPA to address the causes of inaccurate reporting. EPA will monitor improvement through existing oversight calls and other periodic data reviews.

- Inspection reports do not consistently include all required elements and are not consistently completed in a timely manner. This was identified as an issue during the Round 2 review. EPA recommends that DENR submit and implement revised procedures to ensure that inspection reports include all required elements and that they are completed in a timely manner. EPA will assess progress of improvements through existing oversight calls and other periodic reviews.

- Enforcement actions do not consistently result in violators returning to compliance. This was an issue raised during the Round 2 review. EPA recommends that DENR take steps to ensure a return to compliance by including injunctive relief, compliance schedules and other conditions in their Civil Penalty Assessments. EPA will assess progress in implementation of improvements through existing oversight calls and other periodic reviews.

- Significant Non-Compliers (SNCs) are not addressed in a timely and appropriate manner. This was an issue raised in the Round 2 review. EPA recommends that DENR take formal enforcement actions to address SNCs. Formal enforcement actions should include injunctive relief, compliance schedules and other conditions of formal enforcement. EPA will monitor progress through existing oversight and other periodic reviews.

- DENR needs to improve the documentation of penalty calculations to include the consideration of economic benefit. This issue was raised in the Round 2 review. EPA recommends that DENR implement procedures to document that enforcement cases are evaluated for gravity and economic benefit. EPA will monitor progress through existing oversight calls.

## Major SRF CAA Stationary Source Program Findings

- DENR met its enforcement and compliance commitments made in state/EPA agreements and met the negotiated frequency for compliance evaluations for major sources and synthetic minor sources.

- DENR does not adequately document the consideration of economic benefit in penalty calculations. This was identified as an Area for State Attention during the Round 2 review. EPA recommends that DENR submit and implement procedures to ensure appropriate documentation of both gravity and economic benefit in penalty calculations, using the BEN model or other appropriate method. For verification, all final penalty worksheets for federal reportable violations should be submitted to EPA Region 4 for review for the six months following issuance of the final SRF report.

## Major SRF RCRA Subtitle C Program Findings

- DENR needs to ensure that the generator status of facilities in the North Carolina Dry Cleaner & Solvent Clean-up program is correct. Because some of the facilities in this program were incorrectly identified as Large Quality Generators (LQGs), DENR did not meet the RCRA five-year inspection coverage requirement. EPA Region 4 will monitor the modifications to generator status and inspections through RCRA Grant Workplans and RCRAInfo.

- DENR does not document the consideration of economic benefit in penalty calculations. This was identified as an Area for Improvement during the Round 2 review. EPA encourages DENR to continue to monitor and advance proposed legislation to amend the Hazardous Waste Penalty Computation Authority to allow for assessing penalties for the economic benefit of noncompliance. Additionally, DENR should alert EPA on steps to incorporate economic benefit considerations into penalty calculations if the legislation is approved.

## Major Follow-Up Actions

Recommendations and actions identified from the SRF review will be tracked in the SRF Tracker.

# 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 in a four year cycle. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2012 and will continue through FY 2017.

# II. SRF Review Process

**Review period**: FY 2011

**Key dates:**

- Kickoff letter sent to state: September 24, 2012
- Data metric analysis and file selection lists were sent to the state in September and November 2012.
- The RCRA and CAA on-site file reviews were conducted during the week of November 26, 2012.
- The CWA on-site file review was conducted the week of January 7, 2013.
- Draft report sent to state: April 19, 2013
- Report finalized: September 18, 2013

**Communication with the state**: In the fall every year management from EPA Region 4 Office of Environmental Accountability meet with State Enforcement staff to provide information on enforcement priorities for the year ahead and to discuss enforcement and compliance issues of interest to the state and EPA. The meeting with NC DENR staff occurred on September 5, 2012 and the schedule for conducting an integrated SRF-PQR review of NC using FY 2011 was discussed. A follow up letter was sent September 24, 2012 outlining the process.

Appendix F contains copies of correspondence between EPA and DENR.

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

| | North Carolina DENR | EPA Region 4 |
|---|---|---|
| SRF Coordinator | Robin Smith and Mitch Gillespie<br>Trina Ozer | Becky Hendrix, SRF Coordinator<br>Kelly Sisario, OEA Branch Chief |
| CAA | Michael Pjetraj | Mark Fite, OEA Technical Authority<br>Wendell Reed, Air Enforcement Branch |
| CWA | Jeff Poupart | Ronald Mikulak, OEA Technical Authority<br>Laurie Lindquist, Clean Water Enforcement Branch |
| RCRA | Dexter Matthews | Shannon Maher, OEA Technical Authority<br>Nancy McKee, RCRA and OPA Enforcement and Compliance Branch |

# III. SRF Findings

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

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

There are 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

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

| | |
|---|---|
| **Finding 1-1** | **Meets Expectations** |
| **Description** | DENR has ensured that the minimum data requirements (MDRs) were entered into the Integrated Compliance Information System (ICIS). |
| **Explanation** | Element 1 is supported by SRF Data Metrics 1a through 1g and measures the completeness of data in the national data system. EPA provided the FY2011 data metric analysis (DMA) to DENR in November 2012. No issues were identified for Element 1 in the DMA.<br><br>Element 1 includes 15 data verification metrics which the State has the opportunity to verify annually. For the sake of brevity, these metrics are not listed here, but can be found in the DMA in Appendix A. |
| **Relevant metrics** | Data Metrics 1a – 1g |
| **State response** | No comment on this finding. |
| **Recommendation** | |

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

**Finding 2-1** **Area for State Improvement**

**Description** The accuracy of MDR data reported by DENR into ICIS needs improvement. Discrepancies between information found in the State's files and ICIS were identified in 61% of the files reviewed.

**Explanation** File Review Metric 2b measures files reviewed where data are accurately reflected in the national data system. Of the 41 files reviewed, 39% (16 of 41) of the files documented MDRs being reported accurately into ICIS. Thirty files had single or multiple discrepancies identified. Common discrepancies or inconsistencies between the Online Tracking and Information System (OTIS) Detailed Facility Reports (DFR) and the State's compliance/enforcement (C/E) files were related to: penalty amounts (13), inspection reports (13), enforcement actions (13), addresses or facility's name (11), Daily Monitoring Report (DMR) Violations (7), and non-DMR violations (3).

Data accuracy was an Area for State Improvement identified during the Round 2 SRF review. Steps taken by the State in response to the Round 2 recommendation have addressed the Round 2 issue, however additional data accuracy issues were identified in Round 3. Data accuracy, therefore, remains an Area for State Improvement.

**Relevant metrics** 2b: Files reviewed where data are accurately reflected in the national data system: 16/41 = 39%

- National Goal 95%

**State response** The tool used by EPA does not completely relay all the data that the state uploads to ICIS-NPDES. EPA's tool, the OTIS Detailed Facility Report (DFR), indicated that the state was not providing all required data to EPA as part of the MDRs. The State contends that it is uploading the required data. The State is not required to report Discharge Monitoring Report (DMR) violations. The state does report NPDES permit limits/monitoring requirements and DMR data. EPA generates DMR violations based on the submitted data. Therefore, the absence of some DMR violations on the Detailed Facility Report (DFR) is an EPA issue, not a deficiency on the part of the state. Regarding penalty amounts, the State does upload both the penalty amounts assessed and collected to ICIS-NPDES but is not required to upload the penalty amounts remitted; thus this is not a deficiency as the state is not required to provide this data to ICIS-NPDES. The State agrees that data accuracy was an area for State improvement in Round 2 but disagrees with the contention that it was not fully addressed. The Round 2 SRF file metric 2b write-up dealt with Whole Effluent Toxicity

requirements and was addressed. It is not related to the findings stated above.

**Recommendation** By March 31, 2014, DENR should submit revised procedures to EPA which ensure the accurate reporting of enforcement and compliance MDRs into ICIS. EPA is available to advise the State on possible solutions to any data translation issues. The procedures should be designed to address the causes of the inaccurate reporting. EPA's Clean Water Enforcement Branch (CWEB) will monitor the improvement of the accuracy of the State's MDR data entry through the existing oversight calls and other periodic data reviews. If by September 30, 2014, these periodic reviews indicate that the revised procedures appear to be adequate to meet the national goal, the recommendation will be considered completed. It is also suggested that the State explore the use of an electronic filing system to assist in the management of compliance and enforcement data and information.

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

| | |
|---|---|
| **Finding 3-1** | **Unable to make a finding** |
| **Description** | Element 3 is designed to measure the timeliness of mandatory data entered into the national data system. Sufficient information to verify the timeliness of data entry, however, does not currently exist. |
| **Explanation** | EPA's Office of Enforcement and Compliance Assistance (OECA) is currently reviewing this Element and the inability to make a finding based on the current design of ICIS. Modifications of this Element may be reflected in future SRF reviews. |
| **Relevant metrics** | |
| **State response** | N/A – EPA did not provide a finding. |
| **Recommendation** | |

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

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

**Description** DENR met most of their inspection commitments outlined in their FY 2011 Compliance Monitoring Strategy (CMS) Plan, their FY 2011 CWA §106 Workplan, and other non-inspection C/E commitments in their FY 2011 CWA §106 Workplan.

**Explanation** Element 4 measures planned inspections completed (Metric 4a) and other planned C/E activities completed (Metric 4b). The National Goal for this Element is for 100% of commitments to be met. Under Metric 4a, the State met or exceeded all FY 2011 inspection commitments with the exception of construction storm water inspections in which the State met 88% of its commitment. Because the expectation is that all CMS and Workplan commitments will be met and since the State did not meet its Workplan commitment in only one Metric, this is an Area for State Attention. Under Metric 4b, the State met or exceeded its planned C/E activities related to data management requirements; reporting/enforcement requirements; pretreatment facilities requirements; and policy, strategy and management requirements.

**Relevant metrics**

| Metric # and Description | # Committed | # Completed |
|---|---|---|
| 4a1: Pretreatment compliance inspections | 42 | 61 |
| 4a1: Pretreatment compliance audits | 21 | 26 |
| 4a2: Significant industrial users (SIU) inspections for SIUs discharging to non-authorized POTWs | 0 | 0 |
| 4a3: EPA/State oversights of SIU inspections by approved POTWs | 0 | 0 |
| 4a4: Major CSO inspections | 0 | 0 |
| 4a5: SSO inspections ( Majors) | 46 | 101 |
| 4a5: SSO inspections (Minors) | 36 | 111 |
| 4a6: Phase I MS4 audits/inspections | 1 | 1 |
| 4a7: Phase II MS4 audits/inspections | 10 | 11 |
| 4a8: Industrial storm water (SW) inspections (Individual) | 17 | 40 |
| 4a8: Industrial storm water (SW) inspections (General Permit) | 377 | 652 |
| 4a9: Phase I/II construction SW inspections | 1200 | 1,056 |
| 4a10: Inspections of large/medium NPDES permitted CAFOs | 17 | 17 |
| 4a11: Inspections of non-permitted CAFOs | 0 | 0 |
| 4b: Other planned commitments completed | 6 | 6 |

- National Goal 100%

**State response** The state is committed to meeting its inspection commitments and has developed procedures to ensure commitments are met. Inspection requirements for FY 12 were fully met.

**Recommendation**

**CWA Element 5 — Inspection Coverage: Completion of planned inspections.**

**Finding 5-1** **Meets Expectations**

**Description** Inspection goals for major and non-major traditional dischargers were met in FY 2011.

**Explanation** Element 5 addresses inspection coverage as reflected in the CMS. In the FY 2011 CMS, DENR negotiated an inspection coverage goal of 112 major facilities (50% of the permit universe of 223), 205 non-majors with individual permits (20% of the permit universe of 1,027), and 170 non-majors with general permits (10% of the permit universe of 1,703). DENR exceeded these goals.

**Relevant metrics**

| Metric: Universe | Completed/Committed |
|---|---|
| 5a1: Inspection coverage of NPDES majors | 171/112 (153%) |
| 5b1: Inspection coverage of NPDES non-majors with individual permits | 522/205 (255%) |
| 5b2: Inspection coverage of NPDES non-majors with general permits | 370/170 (218%) |

- National Goal 100% of CMS Plan commitments

**State response** No comment on this finding.

**Recommendation**

**CWA 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, while providing "sufficient" documentation to determine compliance, did not consistently provide "complete" information and were not consistently completed in a timely manner.

**Explanation** Metric 6a addresses inspection reports reviewed that provide sufficient documentation to determine compliance at the facility. Of the 31 files for which inspection reports were reviewed, 28 (90%) were found to have "sufficient" information to support a compliance determination. However, 28 were found to lack "complete" information as outlined in EPA's Compliance Inspection Manual. Many of the 28 reports that were found to lack complete information to support a compliance determination did not make a clear connection between observations noted in the inspection checklist/inspection report and the relevant regulatory or permit requirements (see pages 2-34 and 2-35 of EPA's July 2004 NPDES Compliance Inspection Manual). Without these regulatory/permit citations, the reviewer cannot clearly determine compliance nor ascertain whether the listed item is a deficiency needing correction versus a recommendation for improved performance. Additionally, many of the inspection reports were missing other important or critical information that hindered EPA's review of compliance determinations made. Issues with the inspection reports are summarized below:

| Inspection Report Issue | Number of Inspection Reports |
|---|---|
| Did not include regulatory/permit citations; | 26 |
| Did not describe the NPDES-regulated activity or facility operations being inspected; | 18 |
| Were unsigned and/or undated; | 13 |
| Did not describe nor identify the receiving surface waters or the discharge; | 12 |
| Were incomplete (areas evaluated during an inspection were not documented; e.g., Records/Reports, Laboratory, Effluent/Receiving Waters, etc.); | 8 |
| Were mislabeled (e.g., the inspection activity did not match the Inspection Report that was coded into ICIS); | 5 |
| Were unclear regarding compliance status, permit status or observed violations; or | 4 |

| | |
|---|---|
| Did not include the names and/or phone numbers of the facility's representatives. | 1 |

Metric 6b addresses inspection reports completed within prescribed timeframes. DENR's Enforcement Management System (EMS) for NPDES Program Areas (2011) establishes timeliness goals for report distribution of 30 days from the date of inspection or of receipt of lab results, if sampling is involved. Thirty-four of the files reviewed contained inspection reports that were evaluated under this metric. 22 (65%) of the 34 files for non-sampling inspections were completed within 30 days of the inspection. The average number of days from inspection to report completion was found to be 23 days; with the reports that were not timely ranging from 36 days to 100 days. Additionally, of the inspection reports that were reviewed and determined not to be timely, 6 reports were not dated and were, therefore, considered not to be timely. The degree to which the State's inspection reports were complete and timely was an issue that was raised during the Round 2 SRF review. Steps taken by the State in response to the Round 2 recommendation have not fully addressed this issue. Because the values for Metrics 6a and 6b deviate notably from the 100% goal, this Element remains an Area for State Improvement.

**Relevant metrics**

6a: Inspection reports reviewed that provide sufficient documentation to determine compliance at the facility: 28/31 = 90%.

6b: Inspection reports completed within prescribed timeframes: 22/34 = 65%

**State response**

Regarding the recommendation that the state ensure Inspection Reports are completed in a timely manner, this was a finding in the previous SRF report, and the state has implemented procedures to ensure inspection reports are completed in a timely manner. However, there was overlap between when the state received the final report from the previous SRF (March 2011) and the review period for this current SRF (FY2011) October 2010-September 2011. Therefore, changes implemented by the state to ensure timeliness were not fully represented in the assessed period.

**Recommendation**

DENR should continue to implement revised procedures which ensure that Inspection Reports include all required elements and that Inspection Reports are completed in a timely manner. EPA's CWEB will assess progress in implementation of the improvements through existing oversight calls and other periodic reviews. If by September 30, 2014, these periodic reviews indicate that sufficient improvement in preparing

and finalizing Inspection Reports is observed, this recommendation will be considered complete.

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

| | |
|---|---|
| **Finding 7-1** | **Meets Expectations** |
| **Description** | The inspection reports reviewed were found to lead to an accurate compliance determination. |
| **Explanation** | Metric 7e addresses inspection reports reviewed that led to an accurate compliance determination. Of the 34 files containing inspection reports, 31 contained reviewable compliance determinations. Of these 31 files with compliance determinations, 28 (90%) of the files led to an accurate compliance determination. As noted in the CWA SRF Plain Language Guide, if a report is not generally complete, it may still contain sufficient documentation to determine compliance. Numerous DENR inspection reports did not contain "complete" information (i.e., lack of a regulatory citation in the inspection report, unsigned or undated reports, etc.) as noted in Element 6, but did contain "sufficient" documentation to determine compliance. |
| **Relevant metrics** | 7e: Inspection reports reviewed that led to an accurate compliance determination: 28/31 = 90%<br>• National Goal 100% |
| **State response** | No comment on this finding. |
| **Recommendation** | |

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

| | |
|---|---|
| **Finding 8-1** | **Meets Expectations** |
| **Description** | DENR's identification, reporting and tracking of major facilities in SNC and single-event violations (SEVs) that were determined as a result of an inspection meet expectations. |
| **Explanation** | Data Metric 8a2 is a Review Indicator Metric that addresses the percent of major facilities in SNC. DENR identified that 15% of their major facilities are in SNC – the National Average is 22%. Metric 8b addresses the percentage of SEVs that are accurately identified as SNC or non-SNC. The file review identified 5 instances of SEVs that resulted from the State's inspections. Of these 5 instances, 100% were accurately reflected as SNC or non-SNC. Metric 8c addresses the percentage of SEVs identified as SNC that are reported timely at major facilities. There were no major facility SNCs that were identified as SEVs, therefore, a finding for this metric is not applicable. |
| **Relevant metrics** | 8a2: Percent of Major Facilities in SNC: 15%<br>• National Average: 22%<br><br>8b: Percentage of Single-Event Violations that are accurately identified as SNC or non-SNC: 5/5 = 100%.<br>• National Goal 100%<br><br>8c: Percentage of SEVs identified as SNC that are reported timely at major facilities: NA<br>• National Goal 100% |
| **State response** | No comment on this finding. |
| **Recommendation** | |

**CWA 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 Improvement** |
| **Description** | Enforcement actions do not consistently result in violators returning to compliance. |
| **Explanation** | File Review Metric 9a shows the percentage of enforcement responses that have returned or will return a non-compliant major facility to compliance. From a review of the files, 63% (12 of 19) of the major facilities had documentation in the files showing that the facility had returned to compliance, or that the enforcement action required the facility to return to compliance within a certain timeframe. The State's Civil Penalty Assessments (CPAs) that are issued do not regularly indicate nor document that corrective action is required to remedy non-compliance and do not indicate a timeframe for a return to compliance. Of the 19 major facilities in non-compliance, 8 of the facilities for which a Notice of Violation (NOV)/CPA was issued had a single Discharge Monitoring Report (DMR) exceedance. The OTIS DFR for these facilities indicated that no further exceedances were reported for the pollutant of concern indicating that the facility had apparently returned to compliance despite the lack of required corrective action or a timeframe for a return to compliance in the CPA. Since these 8 facilities appear to have been returned to compliance, they were considered as part of the 12 facilities showing a return to compliance. Of the remaining 4 facilities showing a return to compliance, 3 noted corrective actions to be taken by the facility in the NOV/CPA and the facilities did appear to return to compliance; and 1facility was issued a Special Order by Consent that did include required corrective actions and a timeline for return to compliance. Of the 7 facilities that did not have documentation of a return to compliance, there was either no enforcement response in the file, or CPAs/NOVs were issued that did not contain required corrective actions or timeframes for a return to compliance and the OTIS DFRs reflected continued noncompliance. The degree to which the State's enforcement actions promoted a return to compliance was an issue that was raised during the Round 2 SRF review. Since the steps taken by the State in response to the Round 2 recommendation have not fully addressed this issue, this Element remains an Area for State Improvement. |
| **Relevant metrics** | 9a: Percentage of enforcement responses that returned or will return a source in violation to compliance: 12/19 = 63%<br>• National Goal 100% |

**State response**

In 2011 the state began implementing two new types of formal enforcement actions. The tools to address facilities that have continuing non-compliance are either a settlement agreement for civil penalty assessments with compliance dates or a Duty to Mitigate Corrective Action Plan. Since the SRF Round 2 report was received after the beginning of evaluated date period of Round 3, use of these new tools was not reflected in the facility files selected. State statute and rule do not allow for the issuance of orders by consent for operational (no treatment upgrade required issues) and orders without consent require a vote by the Environmental Management Commission and could not be issued in a timely manner. DWQ has and may again consider requesting delegation of this type of order.

**Recommendation**

The State should continue to take steps to improve the timeliness and appropriateness of SNC addressing actions by taking formal enforcement actions that include injunctive relief, compliance schedules, and other conditions of formal enforcement. The timeliness and appropriateness of SNC addressing actions will be monitored by the CWEB through the existing oversight calls between DENR and EPA and other periodic reviews. If by September 30, 2014, these reviews indicate that the State is taking formal enforcement actions that include injunctive relief, compliance schedules and other conditions of formal enforcement, the recommendation will be considered complete.

**CWA 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** | SNCs are not being addressed in a timely and appropriate manner. |
| **Explanation** | Data Metric 10a1 indicates that DENR completed 18% (2/11) of the enforcement actions that address SNC violations for major facilities in a timely manner. The State's Enforcement Management System for NPDES Program Areas (dated 7/29/2011) notes that at NPDES major facilities, all SNC violations where the facility does not return to compliance within 60 days of the first Quarterly Noncompliance Report (QNCR) should be addressed through formal enforcement action, unless there is supportable justification why an alternative action (informal enforcement action or permit modification) is more appropriate. The goal for this metric is 98%. File Metric 10b focuses on the State's enforcement responses that address SNC that are appropriate to the violations. Of the eight facilities with SNC, the State issued a CPA or Special Order on Consent (SOC) for seven of the facilities. The State's CPAs, however, do not contain injunctive relief, compliance schedules or other conditions of formal enforcement. According to the EPA's "Guidance for Oversight of NPDES Programs" dated May 1987, a formal enforcement action is one "that requires actions to achieve compliance, specifies a timetable, contains consequences for noncompliance that are independently enforceable without having to prove the original violation and subjects the person to adverse legal consequences for non-compliance." Therefore, while the State did document an enforcement response for 7 of the 8 facilities with SNC, only the facility for which a SOC was issued contained an appropriate formal enforcement response as defined by EPA guidance. Therefore, of the 8 facilities with SNC, 2 of the files reviewed (25%) contained an appropriate enforcement response. The degree to which the State takes timely and appropriate enforcement actions was an issue raised during the Round 2 SRF review. Steps taken by the State in response to the Round 2 recommendation have not fully addressed the issue and this Element remains as an Area for State Improvement. |
| **Relevant metrics** | 10a1: Major NPDES facilities with timely action, as appropriate:<br>2/11 = 18%<br>• National Goal 98%<br><br>10b: Enforcement responses reviewed that address SNC that are appropriate to the violations: 2/8 = 25%<br>• National Goal 100% |

**State response** SNCs were addressed in a timely and appropriate manner by the state 18% of the time, exceeding the national average of 15.4%. The state has developed new enforcement tools to assist in addressing SNC violations. However, there was overlap between when the state received the final report from the previous SRF (March 2011) and the review period for this current SRF (FY2011) October 2010-September 2011; therefore, changes implemented by the state to ensure timeliness were not fully represented in the assessed period.

**Recommendation** DENR should continue to implement revised procedures to improve the timeliness and appropriateness of SNC addressing actions, including formal enforcement responses that include injunctive relief, compliance schedules and other conditions of formal enforcement. These procedures should identify and address the causes that contribute to actions that are not timely or appropriate, and should include notification to EPA when the complexity of a case may warrant additional time, and identify other enforcement mechanisms available when negotiations become protracted. The timeliness and appropriateness of SNC addressing actions will be monitored by the CWEB through the existing oversight calls between DENR and EPA. If by September 30, 2014, these periodic reviews indicate progress toward meeting the national goal, the recommendation will be considered complete.

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

| | |
|---|---|
| **Finding 11-1** | **Area for State Improvement** |
| **Description** | In the enforcement cases reviewed, none of DENR's penalties included documentation of the rationale for the gravity and economic benefit (EB) components of penalty calculations. |
| **Explanation** | Element 11 examines the State's documentation of their penalty calculations, including the State's calculation of gravity and economic benefit. The State utilizes CPAs in instances where permit limits have been exceeded. Penalty assessments are based on consideration of eight (8) assessment factors in accordance with NC General Statute (NCGS) 143B-282.1(b) and NCGS 143-215.6A(c). These factors are: 1) degree and extent of harm; 2) duration and gravity; 3) effect on water quantity and quality; 4) cost of rectifying damage; 5) amount saved by noncompliance; 6) willful or intentional noncompliance; 7) prior compliance record; and 8) enforcement costs. Of the twenty-six enforcement files in which penalties were assessed, most of the CPAs were supported by a memo outlining how the "Assessment Factors" were considered. Gravity and economic benefit were often mentioned in the "Assessment Factors" memo, but penalty calculations, including the State's calculation of gravity and economic benefit, were not documented in any of the files reviewed. The State's CPAs also include a breakdown of the penalty as an amount per violation and enforcement processing costs, however, no rationale for these amounts was provided in any of the files reviewed. The degree to which the State documents gravity and economic benefit in penalty calculations was an issue raised during the Round 2 SRF review. Steps taken by the State in response to the Round 2 recommendation have not fully addressed the issue and this Element remains an Area for State Improvement. |
| **Relevant metrics** | 11a: Penalty calculations reviewed that document the State's penalty calculations, including the calculation of gravity and economic benefit: 0/26 = 0%<br>• National Goal 100% |
| **State response** | As a result of the finding in the previous SRF report, the state developed a draft Economic Benefit Guidance document and forwarded it to EPA for review and comment. Since the state has not received EPA's comments, the state has not finalized the draft guidance. |
| **Recommendation** | By March 31, 2014, DENR should ensure that all CWA enforcement cases |

are evaluated for both gravity and economic benefit (using the BEN model or a state method that is equivalent to and consistent with national policy), and that the evaluation is documented in the State's penalty calculations. The State's progress in improving the documentation of penalty calculations will be monitored by the CWEB through the existing oversight calls between DENR and EPA. If by September 30, 2014, these periodic reviews indicate progress toward meeting the national goal, the recommendation will be considered complete.

**CWA 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** | DENR's enforcement actions did not regularly document the rationale for any difference between the initial and final assessed penalty and did not regularly provide information documenting the collection of all final penalties. |
| **Explanation** | Metric 12a provides the percentage of enforcement actions that documented the difference and rationale between the initial and final assessed penalty. Of the 26 enforcement actions reviewed, 22 files (85%) provided documentation between the initial and final assessed penalty. In the 4 instances where the differences between the initial and final penalties were not documented, the amount of the penalty that was reduced or remitted was not in the file documentation. The State's CPAs provide an opportunity for the facility owner/operator to submit a written request for remission of all or a portion of the penalty assessed. The 4 instances noted above, did not contain file documentation or the rationale for the State's actions on these remission requests. Metric 12b provides the percentage of enforcement files reviewed that document the collection of a penalty. Of the 25 cases evaluated, 20 (80%) of the cases documented the collection of the penalty. It is also interesting to note that many of these enforcement cases with penalties involved remitted penalty amounts. Additionally, as noted in Element 2, thirteen of these cases had the penalty assessment amount entered into ICIS but not the remitted or reduced penalty amount that was paid. |
| **Relevant metrics** | 12a: Documentation of the difference between the initial and final penalty and rationale: 22/26 (85%)<br>• National Goal 100%<br><br>12b: Penalties collected: 20/25 (80%)<br>• National Goal 100% |
| **State response** | The lack of documentation for penalties collected was a staff training issue and has been addressed and corrected. |
| **Recommendation** | |

# Clean Air Act Findings

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

**Finding 1-1** **Meets Expectations**

**Description** DENR has entered all of their minimum data requirements (MDRs) into the AFS; although, frozen data does not reflect corrections made to stack test data in response to EPA's Round 2 recommendation, further review indicates that AFS now reflects the corrected stack test data.

**Explanation** Element 1 of the SRF is designed to evaluate the extent to which the State enters MDRs into the national data system. No issues were identified in the Data Metrics Analysis (DMA) for the majority of the Element 1 metrics. However, the values for metrics 1i1, 1i2, & 1i3 (all "0") do not reflect corrections made by DENR to address one of EPA's Round 2 recommendations. DENR advises that they could not make the necessary corrections to their data system until EPA finalized changes to the Information Collection Request (ICR) in January 2012. DENR completed computer code modifications and data corrections in June 2012, but this was after the data was frozen in March 2012. Therefore, DENR's corrections were not reflected in the DMA data pull for the Round 3 SRF review.EPA has verified that the stack test data is correct in AFS, as reflected by the current production data values below:

1i1 – Number of Stack Tests with Passing Results: 187
1i2 – Number of Stack Tests with Failing Results: 3
1i3 – Number of Stack Tests with Pending Results: 7

EPA recognizes the extensive efforts made by DENR to their data systems to address the stack test reporting problem. In consideration of the concerns raised by DENR in their state comments and based on further review, EPA has determined this element Meets Expectations.

**Relevant metrics**

1i1 – Number of Stack Tests with Passing Results: 0
1i2 – Number of Stack Tests with Failing Results: 0
1i3 – Number of Stack Tests with Pending Results: 0

**State response** The North Carolina DAQ has corrected all source test reporting issues as timely as possible. The issues arose out of erroneous instruction from EPA Region 4. As indicated in EPA's narrative, there is nothing left for DAQ to correct and therefore the finding of "Area for State Attention" should be changed to "Meets Expectations"

**Recommendation**

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

**Finding 2-1** **Area for State Attention**

**Description** The MDR data reported by DENR into AFS is generally accurate. However, discrepancies between the files and AFS were identified in 20% of the files reviewed.

**Explanation** File Review Metric 2b indicates that 28 of the 35 files reviewed (80%) documented all MDRs being reported accurately into AFS. The remaining seven files had one or more discrepancies identified. A number of files had inaccurate or missing air program codes (e.g. MACT, NSPS) or subparts in AFS. Others had discrepancies related to key activities (PCE, NOV, etc.) versus what was reported in AFS. Finally, several files had minor discrepancies such as an incorrect zip, SIC, etc. This incorrect data in AFS could result in inaccurate information being released to the public, and it could potentially hinder EPA's oversight and targeting efforts. Although some of these data accuracy issues were identified as an Area for State Improvement during the Round 2 SRF review, the state has made progress in improving the accuracy of their data in AFS. Since these are infrequent deficiencies that do not constitute a significant pattern and the State has self-corrected, this Element is designated as an Area for State Attention.

**Relevant metrics** 2b – Accurate MDR Data in AFS: 28/35 = 80%

- National Goal 100%

**State response** The EPA's AFS Minimum Data Requirements (MDRs) encompass 26 items per facility, of which there may be multiple entries for a specific MDR at each facility (multiple air programs, multiple subparts within an air program, pollutants, actions, etc). The review of NC DAQs files relative to our AFS data indicated that there were 7 of 35 facilities with at least 1 of 26 elements in error, yielding a data accuracy of 80%. To clarify, a single MDR error would create a 2.9% error rate. Considering that there are 26 MDRs, the error rate is not representative of all MDRs. The errors that EPA identified and DAQs correction:
Facility 2 – SIC code in permit differed from AFS - neither SIC code is incorrect for the facility, but we have made them consistent.
Facility 8 – NSPS subpart missing from AFS – subpart has been added to AFS.
Facility 9 - NSPS subpart missing from AFS – subpart has been added to AFS.
Facility 11 - NSPS subpart missing from AFS – subpart has been added to AFS.

Facility 22 – Landfill is owned by the government, but coded as a private entity - DAQ has coded facility as government owned.
Facility 24 - NOV date shown as 12/3/10 in AFS, but 12/7/10 in file – The NOV was written and entered into our data system on a Friday. The supervisor signed the NOV the following Tuesday.

**Recommendation**

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

| | |
|---|---|
| **Finding 3-1** | **Meets Expectations** |
| **Description** | MDRs are being entered timely into AFS. |
| **Explanation** | The data metrics for Element 3 indicate that DENR is entering MDRs for compliance monitoring and enforcement activities into AFS within the appropriate timeframe. EPA notes with respect to Metric 3b2 that DENR's increase in upload frequency from the State data system to AFS appears to have contributed to improved timeliness of stack test MDRs. Although one HPV determination was entered late, the overall rate of timely entry is 92% (11 of 12). Therefore, this element Meets Expectations. |
| **Relevant metrics** | 3a1 – Timely Entry of HPV Determinations: 11<br>3a2 – Untimely Entry of HPV Determinations: 1<br>• National Goal: 0<br>3b1 – Timely Reporting of Compliance Monitoring MDRs: 1217/1246 = 97.6%<br>• National Goal 100%<br>3b2 – Timely Reporting of Stack Test MDRs: 189/198 = 95.4%<br>• National Goal 100%<br>3b3 – Timely Reporting of Enforcement MDRs: 152/160 = 95%<br>• National Goal 100% |
| **State response** | NC DAQ has increased our data upload frequency to twice per month in an effort to meet the timely data entry associated with source test data. MACT testing is very prevalent. MACT sources have 60 days from the date of the test to submit the report, as compared to 30 days for most other sources. Since the state must review and submit results to the EPA within 120 days of the test, the state has only 60 days to review more complicated MACT testing. Due to the nature of monthly uploads, a test could be reviewed a day after the upload and exceed the 120 days (effectively 60 days) review and reporting requirement. Therefore, we have decided to expend additional staff time and therefore money to report twice per month in order to more fully comply with the reporting requirement. |
| **Recommendation** | |

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

| | |
|---|---|
| **Finding 4-1** | **Meets Expectations** |
| **Description** | DENR met all enforcement and compliance commitments outlined in their FY 2010/2011 Compliance Monitoring Strategy (CMS) Plan and their FY 2011 Air Planning Agreement. |
| **Explanation** | Element 4 evaluates whether the State met its obligations under the CMS plan and the Air Planning Agreement (APA) with EPA. DENR follows a traditional CMS plan, which requires them to conduct a full compliance evaluation (FCE) every 2 years at Major sources and every 5 years at Synthetic Minor 80% (SM80) sources. DENR met these obligations by completing 100% of planned FCEs at both Major and SM80 sources. In addition, DENR met all of its enforcement and compliance commitments (100%) under the FY 2011 Air Planning Agreement with EPA Region 4. Therefore, this element Meets Expectations. |
| **Relevant metrics** | 4a1 – Planned Evaluations Completed: Title V Major FCEs: 311/311= 100%<br>• National Goal 100%<br>4a2 – Planned Evaluations Completed: SM80 FCEs: 640/640=100%<br>• National Goal 100%<br>4b – Planned Commitments Completed: CAA compliance and enforcement commitments other than CMS commitments: 12/12=100%<br>• National Goal 100% |
| **State response** | NC DAQ strives to inspect all Major and Synthetic Minor facilities each year. We believe that this level of contact with facilities provides better compliance assistance and either reduces violations or reduces the duration of violations. In addition, we strive to inspect all minor sources once every two years. |
| **Recommendation** | |

**CAA Element 5 — Inspection Coverage: Completion of planned inspections.**

| | |
|---|---|
| **Finding 5-1** | **Meets Expectations** |
| **Description** | DENR met the negotiated frequency for compliance evaluations of CMS sources and reviewed Title V Annual Compliance Certifications. |
| **Explanation** | Element 5 evaluates whether the negotiated frequency for compliance evaluations is being met for each CMS source, and whether the State completes the required review of Title V Annual Compliance Certifications. DENR met the national goal for all of the relevant metrics, so this element Meets Expectations. |
| **Relevant metrics** | 5a – FCE Coverage Major: 303/303 = 100%<br>• National Goal 100%<br>5b – FCE Coverage SM-80: 626/626 = 100%<br>• National Goal 100%<br>5e – Review of Title V Annual Compliance Certifications Completed: 271/283 = 95.8%<br>• National Goal 100% |
| **State response** | NC DAQ exceeds the national requirements by setting a goal to inspect and complete an FCE at all TV and SM sources every year. Additionally, we plan to physically inspect all minor facilities once every two years. We believe that the compliance assistance and guidance that we can provide during these inspections greatly assists facilities in understanding our rules, their permit and compliance with the permit. We believe that this level of contact with facilities provides better compliance assistance and either reduces violations or reduces the duration of violations. |
| **Recommendation** | |

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

| | |
|---|---|
| **Finding 6-1** | **Meets Expectations** |
| **Description** | Facility files document the completion of required FCE elements, and compliance monitoring reports (CMRs) provide sufficient documentation to determine compliance at the facility. |
| **Explanation** | Element 6 evaluates the extent to which state compliance evaluations document all the elements of an FCE required by the CMS Guidance and provide an adequate assessment and documentation of facility operations such that an appropriate compliance determination can be made. DENR met the national goal for all relevant metrics, so this element Meets Expectations. |
| **Relevant metrics** | 6a – Documentation of FCE elements: 34/35 = 97.1%<br>• National Goal 100%<br>6b – Compliance Monitoring Reports (CMRs) that provide sufficient documentation to determine compliance of the facility: 34/35 = 97.1%<br>• National Goal 100% |
| **State response** | No comment on this finding. |
| **Recommendation** | |

**CAA 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 Attention** |
| **Description** | In a few instances, compliance determinations were not accurately reported into AFS, or compliance could not be adequately determined based on inspection reports and other compliance monitoring information. |
| **Explanation** | For 4 of the 35 sources reviewed (11%) during the file review, EPA identified concerns with DENR's compliance determination. DENR identified a violation at three of the sources and issued an NOV, but the compliance status in AFS was not changed to reflect this. The fourth source did not have sufficient information in the inspection report for EPA to evaluate the State's compliance determination. Since this situation does not constitute a significant pattern of deficiencies, and the State can self-correct without additional EPA oversight, this is designated as an Area for State Attention. |
| **Relevant metrics** | 7a – Accuracy of Compliance Determinations: 31/35 = 88.6%<br>• National Goal 100%<br>7b1 – Alleged Violations Reported Per Informal Enforcement Actions: 106/118 = 89.8%<br>• National Goal 100%<br>7b2 – Alleged Violations Reported Per HPV Identified: 8/10 = 80%<br>• National Goal 100% |
| **State response** | Compliance status was not changed due to a programming error in our data system that specifically affected late TV ACCs or other procedural violations that were assigned to the generic pollutant rather than a violation that could be pinned to a specific pollutant. Programming changes were completed March 2013 to correct this error. |
| **Recommendation** | |

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

| | |
|---|---|
| **Finding 8-1** | **Meets Expectations** |
| **Description** | DENR and EPA Region 4 jointly determine which violations are HPVs, and EPA enters them into AFS per mutual agreement in the Air Planning Agreement. As a result, HPVs are accurately identified and entered into the national system in a timely manner. |
| **Explanation** | Element 8 is designed to evaluate the accuracy and timeliness of the State's identification of high priority violations. DENR met the national goal for all relevant metrics, so this element Meets Expectations. |
| **Relevant metrics** | 8c – Accuracy of HPV Determinations: 12/12 = 100%<br>• National Goal 100% |
| **State response** | No comment on this finding. |
| **Recommendation** | |

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

| | |
|---|---|
| **Finding 9-1** | **Meets Expectations** |
| **Description** | Enforcement actions include required corrective action that will return facilities to compliance in a specified timeframe. |
| **Explanation** | All enforcement action files reviewed (13 of 13) returned the source to compliance. For enforcement actions that were penalty only actions, the files documented the actions taken by the facility to return to compliance prior to issuance of the penalty. DENR met the national goal for all relevant metrics, so this element Meets Expectations. |
| **Relevant metrics** | 9c – Formal enforcement returns facilities to compliance: 13/13 = 100%<br>• National Goal 100% |
| **State response** | No comment on this finding. |
| **Recommendation** | |

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

| | |
|---|---|
| **Finding 10-1** | **Meets Expectations** |
| **Description** | HPVs are being addressed in a timely and appropriate manner. |
| **Explanation** | Element 10 is designed to evaluate the extent to which the State takes timely and appropriate action to address HPVs. DENR met the national goal for all relevant metrics, so this element Meets Expectations. |
| **Relevant metrics** | 10a – Timely action taken to address HPVs: 13/13 = 100%<br>• National Goal 100%<br>10b – Appropriate Enforcement Responses for HPVs: 12/13 = 92.3%<br>• National Goal 100% |
| **State response** | NC DAQ applied our Tiered Enforcement policy as required by state law. Under Tiered Enforcement, a first time record-keeping violation did not rise to the level of an HPV. |

**Recommendation**

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

| | |
|---|---|
| **Finding 11-1** | **Area for State Improvement** |
| **Description** | Initial penalty calculations do not adequately document the consideration of economic benefit using the BEN model or other method to produce results consistent with national policy and guidance. |
| **Explanation** | File Review Metric 11a indicates that only one out of 13 files (7.7%) provided adequate documentation of the State's consideration of economic benefit. Where economic benefit was considered, there was no evidence that the BEN model or similar was used to calculate it. The Clean Air Act Section 113(e)(1) requires EPA to consider the economic benefit of noncompliance in assessing Federal penalties. In addition, the requirement for delegated programs to document the calculation and recovery of economic benefit is reinforced in the 1993 Steve Herman memo entitled "Oversight of State and Local Penalty Assessments: Revisions to the Policy Frame work from State/EPA Enforcement Agreements." In addition, though it does not apply directly to State penalties, EPA's "Clean Air Act Stationary Source Civil Penalty Policy" provides additional guidance on the recovery of economic benefit under the CAA. The failure to document consideration of economic benefit was identified as an Area for State Attention during the Round 2 SRF review. Therefore, this element is designated as an Area for State Improvement. |
| **Relevant metrics** | 11a – Penalty calculations reviewed that consider and include gravity and economic benefit: 1/13 = 7.7%<br>• National Goal 100% |
| **State response** | North Carolina General Statute GS 143B-282.1(b) requires the program to consider both the economic benefit and gravity in penalty calculations. NCDAQ will continue to follow the statutory factors when assessing penalties, and will follow the penalty tree developed for specific violations. NCDAQ will use the BEN model when it is deemed appropriate to do so. |
| **Recommendation** | By December 31, 2013, DENR should submit and implement procedures to ensure appropriate documentation of both gravity and economic benefit in penalty calculations, appropriately using the BEN model or other method that produces results consistent with national policy. For verification purposes, all final penalty worksheets for federally reportable violations should be submitted to AEEB for review for the six months following issuance of the final SRF report. If, by March 31, 2014, appropriate penalty calculation documentation is being observed, this |

recommendation will be considered completed.

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

| | |
|---|---|
| **Finding 12-1** | **Meets Expectations** |
| **Description** | Differences between the initial and final penalty and collection of the final penalty are documented in the file. |
| **Explanation** | The metrics for Element 12 indicate that DENR files document any difference, if any, between the initial and final penalty. For all of the 13 penalty actions reviewed, the files reflected adequate documentation of the rationale for any difference between the initial and final penalty.<br>In addition, the State maintains documentation of final penalty payments in the file. Therefore this element Meets Expectations. |
| **Relevant metrics** | 12a – Documentation on difference between initial and final penalty and rationale: 13/13 = 100%<br>• National Goal 100%<br>12b – Penalties collected: 13/13 = 100%<br>• National Goal 100% |
| **State response** | No comment on this finding. |
| **Recommendation** | |

## Resource Conservation and Recovery Act Findings

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

**Finding 1-1** Meets Expectations

**Description** DENR's Minimum Data Requirements for compliance monitoring and enforcement activities were complete in RCRAInfo.

**Explanation** RCRA Element 1 is supported by SRF Data Metrics 1a through 1g, and measures the completeness of the data in RCRAInfo, which is the National Database for the RCRA Program. EPA provided the FY 2011 RCRA data metric analysis (DMA) to DENR in September 2012. No issues were identified for Element 1 in the DMA, so this element Meets Expectations.

**Relevant metrics**

**State response** No comment on finding.

**Recommendation**

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

**Finding 2-1** **Meets Expectations**

**Description** The majority of relevant information for compliance and enforcement data was included in the files and accurately entered into RCRAInfo.

**Explanation** In the RCRA Enforcement Response Policy (ERP), a secondary violator (SV) should be resolved within 240 days or elevated to a significant non-complier (SNC) status. In the RCRA DMA for DENR, data metric 2a indicated that there were five SV facilities that had violations open for longer than 240 days. The state evaluated the list of SVs and established root causes for the longstanding SVs:

- Two facilities that did not have complete return to compliance data entered;
- One facility that was referred to Superfund;
- One facility that needed additional time to certify compliance;
- One facility that should have been elevated to SNC status, but was impacted by another ongoing federal agency enforcement action. The facility has since entered into a consent agreement, and SNC information has since been entered into RCRAInfo.

File Review Metric 2b verifies that data in the file is accurately reflected in RCRAInfo. A file is considered inaccurate if the information about the facility regulatory status, the inspection reports, enforcement actions, or compliance documentation is missing or reported inaccurately in RCRAInfo. For File Review Metric 2b, 40 files were reviewed and 37 files (or 92.5%) had accurate data input into RCRAInfo. Examples of inaccurate data in the remaining three files include incorrect dates or missing information for compliance/enforcement activities.
The DMA and file review analysis reflect only minor problems with data accuracy which do not represent systemic problems. EPA considers state performance for data accuracy as meeting SRF expectations.

**Relevant metrics**

| | State |
|---|---|
| 2a – Longstanding Secondary Violators | 5 |
| 2b – Accurate Entry of mandatory data | 92.5% (37/40) |

**State response** No comment on finding.

**Recommendation**

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

| | |
|---|---|
| **Finding 3-1** | **Unable to evaluate and make a finding** |
| **Description** | Sufficient evidence to establish a finding for this Element does not currently exist. |
| **Explanation** | Element 3 measures the timely entry of data into RCRAInfo. The RCRA ERP requires all violation data to be entered by Day 150 from the first day of inspection, and other types of data entered by timelines established in state policies, MOAs, PPA/PPGs, etc.<br><br>In reviewing files, there is no method of determining *when* data was entered into RCRAInfo, only if the data was accurate (covered under Element 2). RCRAInfo does not have a date stamp to show when data is entered, therefore a determination of timely data entry could not be made. |
| **Relevant metrics** | |
| **State response** | No comment on finding. |
| **Recommendation** | |

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

| | |
|---|---|
| **Finding 4-1** | **Meets Expectations** |
| **Description** | North Carolina met the FY 2011 Grant commitments for non-inspection commitments. |
| **Explanation** | Metric 4a measures the percentage of non-inspection commitments completed in the fiscal year of the SRF review, such as compliance assistance and enforcement actions. In their FY 2011 grant workplan, DENR committed to 65 compliance assistance visits and 8 formal administrative enforcement actions. DENR's FY 2011 End-of-Year report documented that the state met both of these commitments. |
| **Relevant metrics** | 4a - Planned non-inspection commitments completed 100% |
| **State response** | No comment on finding. |
| **Recommendation** | |

**RCRA Element 5 — Inspection Coverage: Completion of planned inspections.**

**Finding 5-1** **Area for State Improvement**

**Description** DENR did not meet the five-year inspection coverage for Large Quantity Generators (LQGs).

**Explanation** Element 5 measures three types of required inspection coverage that are outlined in the EPA RCRA Compliance Monitoring Strategy: (1) 100% coverage of operating Treatment Storage Disposal (TSD) facilities over a two-year period, (2) 20% coverage of LQGs every year, and (3) 100% coverage of LQGs every five years. As indicated in the DMA, DENR met the TSD and one-year LQG inspection coverage. The five-year LQG inspection coverage was 68.5%, which is significantly below the national goal of 100% inspection coverage. There were 167 LQGs that were not inspected between FY 2007-FY 2011, and 165 of these facilities are part of the North Carolina Dry Cleaner & Solvent Clean-up program. A review of the 2011 RCRA Biennial Reporting system data indicates that the clean-up program facilities did not actually meet the waste generation threshold for LQG status. If these facilities were removed from the LQG universe calculation, the five-year inspection coverage would equate to 99.4%, which meets national goal expectations. North Carolina is evaluating the reclassification of these facilities according to their potential RCRA generator status as Small Quantity Generators or Conditionally Exempt Small Quantity Generators.

**Relevant metrics**

| Data Metric | State | National Goal |
|---|---|---|
| 5a – Two-year inspection coverage for operating TSDFs (23/23) | 100% | 100% |
| 5b – Annual inspection coverage for LQGs (274/530) | 51.7% | 20% |
| 5c – Five-year inspection coverage For LQGs (363/530) | 68.5% | 100% |

**State response** The total number of facilities not receiving an inspection within five years should be changed to 165 instead of 167 as listed above. The two facilities not in the NC DSCA Program were Piedmont Natural Gas and YRC. Piedmont Natural Gas had been listed as a LQG for approximately two years for this review period. It was originally issued an NCS number (state number) for a complaint. It was later issued an EPA Identification number on 3/6/2009 but the evaluation and enforcement data was not immediately transferred to the newly issued EPA Identification number. This data has been added to RCRAInfo. The other facility listed as a LQG was YRC; it was issued a NCP ID number (state provisional number). YRC notified as a LQG on 3/2/2010 and on 5/17/2010 the generator status was changed to

"NG". Provisional ID numbers are issued for a period of 90 days to aid a facility in an immediate need to handle hazardous waste generation. Therefore, neither facility should have been included in the query. A facility in the NC DSCA Program typically generates hazardous waste as a LQG on an infrequent basis (usually 1-3 months) due to remediation activities. The NC DSCA staff will closely monitor site remediation activities and ensure sites are downgraded from a LQG to the appropriate generator status as required. This action will reduce the total number of active LQGs in RCRAInfo.

**Recommendation** By December 31, 2013, NCDENR shall re-evaluate the current LQG universe and reclassify the appropriate RCRA generator status, as necessary, any facilities listed as LQGs under the North Carolina Dry Cleaner & Solvent Clean-up program that do not meet LQG generator status. Any of the 167 uninspected LQG facilities (referenced above) that remain in the LQG universe should be inspected by September 30, 2014. In addition, any modifications to the generator universe should be reflected in RCRAInfo and any subsequent RCRA Grant Workplans.

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

**Finding 6-1** **Meets Expectations**

**Description** DENR's inspection reports were completed in a timely manner, and provided sufficient documentation to determine compliance at the facility.

**Explanation** File Review Metric 6a assesses the completeness of inspection reports and whether the reports provide sufficient documentation to determine compliance at the facility. Of the inspection reports reviewed, 94.1% (32 of 34) were complete and had sufficient documentation to determine compliance at the facility. The reports were consistently thorough in the inspection findings, and had supporting documentation and photographs included in the reports. File Review Metric 6b measures the timely completion of inspection reports. DENR does not have a state-specific timeline for the completion of inspection reports, so the RCRA ERP timeline of 150 days was used as a timeline. According to the ERP, violation determination should be made within 150 days of the first day of inspection. In the file review, it was found that 100% of the reports were completed in this timeframe.

**Relevant metrics**

| File Metric | State | National Goal |
|---|---|---|
| 6a – Percentage of inspection reports that are complete and provide documentation to determine compliance (32/34) | 94.1% | 100% |
| 6b – Percentage of inspection reports that are completed timely (33/33) | 100% | 100% |

**State response** No comment on finding.

**Recommendation**

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

**Finding 7-1** **Meets Expectations**

**Description** North Carolina makes accurate RCRA compliance determinations.

**Explanation** File Review Metric 7a assesses whether accurate compliance determinations were made based on a file review of inspection reports and other compliance monitoring activity. The file review indicated that 97.5% of the facilities (39 of 40) had accurate compliance determinations. Data Metric 7b is a review indicator that evaluates the violation identification rate for inspections conducted during the year of review. In the DMA, DENR's violation identification rate for FY 2011 was 6.2%, which was significantly below the national average of 32.5%. The low identification rate was initially identified as a concern by EPA, in the event that the state was not properly identifying violations during compliance monitoring activities. During the file review, EPA evaluated inspections and related compliance monitoring activity to examine if violations were not being identified correctly. It was found that DENR makes accurate compliance determinations, and meets the SRF expectations for the compliance monitoring activities reviewed. DENR's high RCRA compliance rate may be attributed to the state's longstanding compliance assistance and outreach programs. Historically, the state has held RCRA LQG workshops to ensure proper management of hazardous waste at these regulated facilities, as well as pre-compliance visits to newly regulated RCRA LQGs to provide guidance on policy and compliance expectations. There is also continuous compliance assistance and outreach to all of the RCRA regulated community through other programs and site visits throughout the year.

**Relevant metrics**

| File Metric | State | National Goal |
|---|---|---|
| 7a – Percentage of inspection reports that led to accurate compliance determination (39/40) | 97.5% | 100% |
| Data Metric | | |
| 7b – Violations found during inspection | 6.2% | N/A |

**State response** No comment on finding.

**Recommendation**

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

**Finding 8-1** **Meets Expectations**

**Description** North Carolina correctly identified the majority of SNCs facilities, and entered the SNC data into RCRAInfo in a timely manner.

**Explanation** Data Metric 8a identifies the percent of facilities that received a SNC designation in FY 2011, the year of data reviewed for DENR's SRF evaluation. In the DMA, DENR's SNC identification rate was 1.2% which was below the national average of 2.1%. In the DMA the low SNC identification rate was identified as a potential concern, in the event that the state was not properly identifying SNC facilities. During the file review, EPA evaluated inspections and related compliance monitoring activity to examine if SNCs were not being identified correctly. It was found that DENR makes accurate SNC determinations, as 93.8% of the SNC determinations were found to be accurate in the file review (as discussed in Metric 8c below). Data Metric 8b measures the number of SNC determinations that were made within 150 days of the first day of inspection. Timely SNC designation is important so that significant problems are addressed in a timely manner. In FY 2011, DENR reported 93.3% (14 of 15) of their SNC designations by Day 150, near to the national goal of 100%. File Review Metric 8c measures the percentage of violations in the files that were accurately determined to be a SNC. Of the files reviewed, there was only one facility that was SNC-caliber, but was designated a Secondary Violator by the state and the violations were addressed through informal enforcement. Thus, the percentage of files reviewed where the violation was accurately determined to be a SNC was 93.8% (15 of 16 SNC facilities). Overall, North Carolina meets the SRF expectations for the correct identification of significant noncompliance and the timely entry of SNC data into RCRAInfo.

**Relevant metrics**

| | State | National Goal |
|---|---|---|
| 8a – SNC identification rate | 1.2% | N/A |
| 8b – Percentage of SNC determinations entered into RCRAInfo by Day 150 (14/15) | 93.3% | 100% |
| 8c – Percentage of violations in files reviewed that were accurately determined to be SNCs (15/16) | 93.8% | 100% |

**State response** No comment on finding.

**Recommendation**

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

**Finding 9-1** **Meets Expectations**

**Description** North Carolina consistently issues enforcement responses that have returned or will return a facility in SNC or SV to compliance.

**Explanation** File Review Metric 9a shows the percentage of SNC enforcement responses reviewed that have documentation that the facility has returned or will return to compliance. From a review of the files, 100% (15 of 15) of the SNC facilities had documentation in the files showing that the facility had returned to compliance, or that the enforcement action required the facility to return to compliance within a certain timeframe. File Review Metric 9b gives the percentage of SV enforcement responses reviewed that have documentation that the facility has returned or will return to compliance. In the files review100% of the SVs (16 of 16) had documentation showing that the facility had returned to compliance, or that the enforcement action required them to return to compliance within a certain timeframe. Overall, North Carolina meets the SRF expectations for the issuance of enforcement actions that return facilities to compliance.

**Relevant metrics**

| File Metric | State | National Goal |
|---|---|---|
| 9a - Percentage of enforcement responses that have or will return site in SNC to compliance (15/15) | 100% | 100% |
| 9b - Percentage of enforcement responses that have or will return a SV to compliance (16/16) | 100% | 100% |

**State response** No comment on finding.

**Recommendation**

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

**Finding 10-1** **Meets Expectations**

**Description** DENR takes timely and appropriate enforcement actions.

**Explanation** Data Metric 10a indicated that DENR completed 88.9% (8 of 9) of the formal enforcement actions at SNC facilities within 360 days of the first day of inspection, the timeline outlined in the RCRA ERP. DENR exceeded the national goal of 80% of enforcement actions meeting this timeline. File Review Metric 10b assesses the appropriateness of enforcement actions for SVs and SNCs, as defined by the RCRA ERP. In the files reviewed 96.8% of the facilities with violations (30 of 31) had an appropriate enforcement response to addressing the identified violations. There was one facility that should have been designated as a SNC that was addressed as an SV through informal enforcement response. Overall, North Carolina meets the SRF expectations for taking timely and appropriate enforcement actions.

**Relevant metrics**

| Data Metric | State | National Goal |
|---|---|---|
| 10a: Timely enforcement to address SNCs (8/9) | 88.9% | 80% |
| File Metric | | |
| 10b: Percentage of files with appropriate enforcement responses (30/31) | 96.8% | 100% |

**State response** No comment on finding.

**Recommendation**

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

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

**Description** North Carolina's penalties included a gravity component in each enforcement case reviewed. There was no consideration of economic benefit in any RCRA penalty calculations.

**Explanation** Element 11a examines the state documentation of penalty calculations. Specifically, file review metric 11a determines if the state penalty includes *both* gravity and economic benefit considerations. Eleven penalty calculations were reviewed, and all included a gravity component in the penalty calculation, however none of penalties included the consideration of economic benefit. This issue was identified as an Area for State Improvement in the SRF Round 2 report, which indicated that the North Carolina Hazardous Waste penalty authority does not specifically include a provision for assessing penalties for the economic benefit of noncompliance. This finding will continue to be an Area for State Improvement in the SRF Round 3, as 0% of the enforcement cases reviewed had the complete penalty documentation for both gravity and economic benefit of noncompliance. In October 2012, DENR drafted proposed legislation for the 2013 North Carolina Legislative session to amend the Hazardous Waste Penalty Computation Authority *"to add monetary saving resulting from noncompliance to the factors to be considered in setting administrative penalties for violations of the Hazardous Waste law and regulations."* The recovery of economic benefit is essential in removing incentives for noncompliance, and DENR has taken appropriate steps to pursue this provision in their penalty authority.

**Relevant metrics**

| | State | National Goal |
|---|---|---|
| 11a – Penalty calculations consider and include a gravity and economic benefit (0 of 11) | 0% | 100% |

**State response** North Carolina will continue to monitor the proposed legislation that will include economic benefit in penalty calculations. DENR will notify EPA when legislative approval is given.

**Recommendation** EPA encourages DENR to continue to monitor and advance the proposed legislation to include economic benefit in penalty calculations, to the extent possible. If legislation is approved, DENR should alert EPA on next steps for incorporation of economic benefit considerations into penalty calculations.

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

**Finding 12-1** Meets Expectations

**Description** The majority of DENR enforcement actions provided the rationale between the initial and final assessed penalty. There was documentation of all final penalty collections.

**Explanation** Metric 12a provides the percentage of formal enforcement actions that documented the difference and rationale between the initial and final assessed penalty. A total of 17 enforcement actions were reviewed, and 16 of the cases, or 94.1% included a rationale for any penalty adjustments. Rationale for penalty adjustments are essential in maintaining consistency and providing transparency; noting offsets for supplemental environmental projects or inability to pay issues; and ensuring that the final penalties recover any economic benefit due to noncompliance. Metric 12b provides the percentage of enforcement files reviewed that document the collection of a penalty. In 100% of the files reviewed, there was evidence that DENR had collected penalties, or were in the process of seeking collection of penalties from enforcement actions. DENR met the national goals for all of the relevant metrics, and this element Meets Expectations.

**Relevant metrics**

| | State | National Goal |
|---|---|---|
| 12a – Formal enforcement actions that document the difference and rationale between the initial & final penalty (16 of 17) | 94.1 % | 100% |
| 12b – Final formal actions that documented the collection of a final penalty (17 of 17) | 100% | 100% |

**State response** No comment on finding.

**Recommendation**

# 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 ID | Metric Name | Metric Type | Agency | National Goal | National Average | North Carolina | Count | Universe | Not Counted | Initial Findings | Explanation |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1a1 | Number of Active NPDES Majors with Individual Permits | Data Verification | State | | | 220 | | | | Meets Expecta-tions | |
| | 1a2 | Number of Active NPDES Majors with General Permits | Data Verification | State | | | 0 | | | | | |
| | 1a3 | Number of Active NPDES Non-Majors with Individual Permits | Data Verification | State | | | 1,024 | | | | Meets Expecta-tions | |
| | 1a4 | Number of Active NPDES Non-Majors with General Permits | Data Verification | State | | | 4,902 | | | | Meets Expecta-tions | |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1b1 | Permit Limits Rate for Major Facilities | Goal | State | >= 95% | 98.6% | 100% | 220 | 220 | 0 | Meets Expecta-tions | |
| | 1b2 | DMR Entry Rate for Major Facilities. | Goal | State | >= 95% | 96.5% | 99.7% | 5,126 | 5,139 | 13 | Meets Expecta-tions | |
| | 1b3 | Number of Major Facilities with a Manual Override of RNC/SNC to a Compliant Status | Data Verification | State | | | 8 | | | | Meets Expecta-tions | |
| | 1c1 | Permit Limits Rate for Non-Major Facilities | Informa-tional only | State | | 66.1% | 96.4% | 987 | 1,024 | 37 | | |
| | 1c2 | DMR Entry Rate for Non-Major Facilities. | Informa-tional only | State | | 72.6% | 7.7% | 980 | 12,726 | 11,746 | | |
| | 1e1 | Facilities with Informal Actions | Data Verification | State | | | 504 | | | | Meets Expecta-tions | |
| | 1e2 | Total Number of Informal Actions at CWA NPDES Facilities | Data Verification | State | | | 3,340 | | | | Meets Expecta-tions | |
| | 1f1 | Facilities with Formal Actions | Data Verification | State | | | 213 | | | | Meets Expecta-tions | |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1f2 | Total Number of Formal Actions at CWA NPDES Facilities | Data Verification | State | | | 1648 | | | | Meets Expecta-tions | |
| | 1g1 | Number of Enforcement Actions with Penalties | Data Verification | State | | | 405 | | | | Meets Expecta-tions | |
| | 1g2 | Total Penalties Assessed | Data Verification | State | | | $497,582 | | | | Meets Expecta-tions | |
| | 2a1 | Number of formal enforcement actions, taken against major facilities, with enforcement violation type codes entered. | Data Verification | State | | | 204 | | | | Meets Expecta-tions | |
| | 5a1 | Inspection Coverage - NPDES Majors | Goal metric | State | | 54.4% | 78.2% | 172 | 220 | 48 | Meets Expecta-tions | |
| | 5b1 | Inspection Coverage - NPDES Non-Majors | Goal metric | State | | 23.7% | 51% | 522 | 1,024 | 502 | Meets Expecta-tions | |
| | 5b2 | Inspection Coverage - NPDES Non-Majors with General Permits | Goal metric | State | | 19.2% | 18.1% | 885 | 4,902 | 4017 | Meets Expecta-tions | |
| | 7a1 | Number of Major Facilities with Single Event | Data Verification | State | | | 6 | | | | Meets Expecta-tions | |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Violations | | | | | | | | | | |
| | 7a2 | Number of Non-Major Facilities with Single Event Violations | Informa-tional only | State | | | 114 | | | | | |
| | 7b1 | Compliance schedule violations | Data Verification | State | | | 1 | | | | Meets Expecta-tions | |
| | 7c1 | Permit schedule violations | Data Verification | State | | | 0 | | | | Meets Expecta-tions | |
| | 7d1 | Major Facilities in Noncompliance | Review Indicator | State | | 71.2% | 55.5% | 122 | 220 | 98 | Meets Expecta-tions | |
| | 7f1 | Non-Major Facilities in Category 1 Noncompliance | Data Verification | State | | | 1,057 | | | | Meets Expecta-tions | |
| | 7g1 | Non-Major Facilities in Category 2 Noncompliance | Data Verification | State | | | 9 | | | | Meets Expecta-tions | |
| | 7h1 | Non-Major Facilities in Noncompliance | Informa-tional only | State | | 47.5% | 92% | 942 | 1,024 | 82 | | |
| | 8a1 | Major Facilities in SNC | Review indicator metric | State | | | 42 | | | | Meets Expecta-tions | |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 8a2 | Percent of Major Facilities in SNC | Review indicator metric | State | | 22.3% | 15.3% | 42 | 275 | 233 | Meets Expecta-tions | Follow-up: Why is there a difference between the universe of 275 in 8a2 and 220 in 1a1? |
| | 10a1 | Major facilities with Timely Action as Appropriate | Goal metric | State | | 15.4% | 18.2% | 2 | 11 | 9 | State Improve-ment | Goal metric is 98% - although NC exceeds the National Average investigate further in file review. |

## Clean Air Act

| Metric ID | Metric Name | Metric Type | Agency | National Goal | National Average | North Carolina | Count | Universe | Not Counted | North Carolina (w/o Locals) | Initial Finding | Explanation |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1a1 | Number of Active Major Facilities (Tier I) | Data Verification | State | | | 327 | | | | 299 | Meets Expectations | Adjusted from statewide value of 327 to remove local program data |
| 1a2 | Number of Active Synthetic Minors (Tier I) | Data Verification | State | | | 763 | | | | 648 | Meets Expectations | Adjusted from statewide value of 763 to remove local program data |
| 1a3 | Number of Active NESHAP Part 61 Minors (Tier I) | Data Verification | State | | | 6 | | | | 4 | Meets Expectations | Adjusted from statewide value of 6 to remove local program data |
| 1a4 | Number of Active CMS Minors and Facilities with Unknown Classification (Not counted in metric 1a3) that are Federally-Reportable (Tier I) | Data Verification | State | | | 9 | | | | 8 | Meets Expectations | Minor sources included in FY11 CMS plan; <1% of universe; used to select files to ensure district representation; adjusted from statewide value of 9 to remove local program data |
| 1a5 | Number of Active HPV Minors and Facilities with Unknown Classification (Not counted in metrics 1a3 or 1a4) that are Federally-Reportable (Tier I) | Data Verification | State | | | 0 | | | | 0 | Meets Expectations | |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1a6 | Number of Active Minors and Facilities with Unknown Classification Subject to a Formal Enforcement Action (Not counted in metrics 1a3, 1a4 or 1a5) that are Federally-Reportable (Tier II) | Data Verification | State | | | 3 | | | | 3 | Meets Expectations | Sources with formal enforcement actions within prior 3 years are federally reportable; <1% of universe. |
| 1b1 | Number of Active Federally-Reportable NSPS (40 C.F.R. Part 60) Facilities | Data Verification | State | | | 595 | | | | 527 | Meets Expectations | Adjusted from statewide value of 595 to remove local program data |
| 1b2 | Number of Active Federally-Reportable NESHAP (40 C.F.R. Part 61) Facilities | Data Verification | State | | | 19 | | | | 9 | Meets Expectations | Adjusted from statewide value of 19 to remove local program data |
| 1b3 | Number of Active Federally-Reportable MACT (40 C.F.R. Part 63) Facilities | Data Verification | State | | | 525 | | | | 477 | Meets Expectations | Adjusted from statewide value of 525 to remove local program data |
| 1b4 | Number of Active Federally-Reportable Title V Facilities | Data Verification | State | | | 311 | | | | 283 | Meets Expectations | Adjusted from statewide value of 311 to remove local program data |
| 1c1 | Number of Tier I Facilities with an FCE (Facility Count) | Data Verification | State | | | 1072 | | | | 959 | Meets Expectations | Adjusted from statewide value of 1072 to remove local program data |
| 1c2 | Number of FCEs at Tier I Facilities (Activity Count) | Data Verification | State | | | 1076 | | | | 959 | Meets Expectations | Adjusted from statewide value of 1076 to remove local program data |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1c3 | Number of Tier II Facilities with FCE (Facility Count) | Data Verification | State | | | 0 | | | | 0 | Meets Expectations | |
| 1c4 | Number of FCEs at Tier II Facilities (Activity Count) | Data Verification | State | | | 0 | | | | 0 | Meets Expectations | |
| 1d1 | Number of Tier I Facilities with Noncompliance Identified (Facility Count) | Data Verification | State | | | 172 | | | | 160 | Meets Expectations | Adjusted from statewide value of 172 to remove local program data |
| 1d2 | Number of Tier II Facilities with Noncompliance Identified (Facility Count) | Data Verification | State | | | 2 | | | | 2 | Meets Expectations | |
| 1e1 | Number of Informal Enforcement Actions Issued to Tier I Facilities (Activity Count) | Data Verification | State | | | 152 | | | | 143 | Meets Expectations | Adjusted from statewide value of 152 to remove local program data |
| 1e2 | Number of Tier I Facilities Subject to an Informal Enforcement Action (Facility Count) | Data Verification | State | | | 124 | | | | 118 | Meets Expectations | Adjusted from statewide value of 124 to remove local program data |
| 1f1 | Number of HPVs Identified (Activity Count) | Data Verification | State | | | 12 | | | | 12 | Meets Expectations | |
| 1f2 | Number of Facilities with an HPV Identified (Facility Count) | Data Verification | State | | | 11 | | | | 11 | Meets Expectations | |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1g1 | Number of Formal Enforcement Actions Issued to Tier I Facilities (Activity Count) | Data Verification | State | | | 15 | | | | 15 | Meets Expectations | |
| 1g2 | Number of Tier I Facilities Subject to a Formal Enforcement Action (Facility Count) | Data Verification | State | | | 14 | | | | 14 | Meets Expectations | |
| 1g3 | Number of Formal Enforcement Actions Issued to Tier II Facilities (Activity Count) | Data Verification | State | | | 0 | | | | 0 | Meets Expectations | |
| 1g4 | Number of Tier II Facilities Subject to a Formal Enforcement Action (Facility Count) | Data Verification | State | | | 0 | | | | 0 | Meets Expectations | |
| 1h1 | Total Amount of Assessed Penalties | Data Verification | State | | | $235,159 | | | | $235,159 | Meets Expectations | |
| 1h2 | Number of Formal Enforcement Actions with an Assessed Penalty | Data Verification | State | | | 13 | | | | 13 | Meets Expectations | |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1i1 | Number of Stack Tests with Passing Results | Data Verification | State | | | 47 | | | | 0 | State Attention | Adjusted from statewide value of 47 to remove local program data. However, frozen data does not reflect corrections made by NC in FY12 in response to EPA's Round 2 recommendation; NC waited for EPA to finalize changes related to stack test data reporting in the ICR before making modifications to their computer codes; production data value for this metric is 187, so no recommendation is indicated. |
| 1i2 | Number of Stack Tests with Failing Results | Data Verification | State | | | 0 | | | | 0 | State Attention | Frozen data does not reflect corrections made by NC in FY12 in response to EPA's Round 2 recommendation; NC waited for EPA to finalize changes related to stack test data reporting in the ICR before making modifications to their computer codes; production data value for this metric is 3; no recommendation is indicated. |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1i3 | Number of Stack Tests with Pending Results | Data Verification | State | | | 2 | | | | 0 | State Attention | Adjusted from statewide value of 2 to remove local program data. However, frozen data does not reflect corrections made by NC in FY12 in response to EPA's Round 2 recommendation: NC waited for EPA to finalize changes related to stack test data reporting in the ICR before making modifications to their computer codes; production data value for this metric is 7; no recommendation is indicated. |
| 1i4 | Number of Stack Tests with No Results Reported | Data Verification | State | | | 0 | | | | 0 | Meets Expectations | |
| 1i5 | Number of Stack Tests Observed & Reviewed | Data Verification | State | | | 170 | | | | 117 | Meets Expectations | Adjusted from statewide value of 170 to remove local program data |
| 1i6 | Number of Stack Tests Reviewed Only | Data Verification | State | | | 81 | | | | 80 | Meets Expectations | Adjusted from statewide value of 81 to remove local program data |
| 1j | Number of Title V Annual Compliance Certifications Reviewed | Data Verification | State | | | 315 | | | | 287 | Meets Expectations | Adjusted from statewide value of 315 to remove local program data |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2a | Major Sources Missing CMS Source Category Code | Review Indicator | State | | | 1 | | | | 1 | Meets Expectations | Source appears to have new Title 5 permit |
| 3a1 | Timely Entry of HPV Determinations | Review Indicator | State | | | 11 | | | | 11 | Meets Expectations | |
| 3a2 | Untimely Entry of HPV Determinations | Goal | State | 0 | | 1 | | | | 1 | Meets Expectations | 11 of 12 (92%) HPVs were timely |
| 3b1 | Timely Reporting of Compliance Monitoring Minimum Data Requirements | Goal | State | 100% | 78.6% | 97.3% | 1353 | 1391 | 38 | 97.6% (1217/1246) | Meets Expectations | Adjusted from statewide value of 97.3% to remove local program data; half of late entries were in Wilmington RO. |
| 3b2 | Timely Reporting of Stack Test Minimum Data Requirements | Goal | State | 100% | 75.5% | 96% | 241 | 251 | 10 | 95.4% (189/198) | Meets Expectations | Adjusted from statewide value of 96% to remove local program data |
| 3b3 | Timely Reporting of Enforcement Minimum Data Requirements | Goal | State | 100% | 76.1% | 92.9% | 157 | 169 | 12 | 95% (152/160) | Meets Expectations | Adjusted from statewide value of 92.9% to remove local program data |
| 5a | FCE Coverage Major | Goal | State | 100% | 90% | 100% | 328 | 328 | 0 | 100% (303/303) | Meets Expectations | Adjusted to remove local program data; metric remains 100% |
| 5b | FCE Coverage SM-80 | Goal | State | 100% | 90.6% | 99.8% | 655 | 656 | 1 | 100% (626/626) | Meets Expectations | Adjusted from statewide value of 99.8% to remove local program data |
| 5c | FCE Coverage Synthetic Minors (non SM-80) | Goal | State | 100% | 66.7% | 100% | 1 | 1 | 0 | NA | NA | NA |
| 5d | FCE Coverage Minors | Goal | State | 100% | 11.7% | 0/0 | 0 | 0 | 0 | NA | NA | NA |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 5e | Review of Title V Annual Compliance Certifications Completed | Goal | State | 100% | 72.5% | 96.1% | 299 | 311 | 12 | 95.8% (271/283) | Meets Expectations | Adjusted from statewide value of 96.1% to remove local program data |
| 7b1 | Alleged Violations Reported Per Informal Enforcement Actions (Tier I only) | Goal | State | 100% | 62.2% | 89.5% | 111 | 124 | 13 | 89.8% (106/118) | State Attention | Supplemental Review; adjusted from statewide value of 89.5% to remove local program data |
| 7b2 | Alleged Violations Reported Per Failed Stack Tests | Review Indicator | State | | 54% | 0/0 | 0 | 0 | 0 | 0/0 | Meets Expectations | Production data shows the 3 sources with a failed stack test reflect proper compliance status. |
| 7b3 | Alleged Violations Reported Per HPV Identified | Goal | State | 100% | 69.6% | 80% | 8 | 10 | 2 | 80% (8/10) | State Improvement | Supplemental Review; both sources in Fayetteville Regional Office. |
| 8a | HPV Discovery Rate Per Major Facility Universe | Review Indicator | State | | 3.9% | 3.1% | 10 | 327 | 317 | 3.3% (10/299) | State Attention | Adjusted from statewide value of 3.1% to remove local program data NC discovery rate slightly below national average, discuss HPV identification process with State. |
| 8b | HPV Reporting Indicator at Majors with Failed Stack Tests | Review Indicator | State | | 20.5% | 0/0 | 0 | 0 | 0 | 0/0 | Meets Expectations | Production data shows both Major sources with failed stack test were designated as HPV. |
| 10a | HPV cases which meet the timeliness goal of the HPV Policy | Review Indicator | State | | 63.7% | 100% | 14 | 14 | 0 | 100% (14/14) | Meets Expectations | |

## Resource Conservation and Recovery Act

| Metric | Metric Name | Metric Type | Agency | National Goal | National Average | North Carolina | Count | Universe | Not Counted | Initial Finding | Comments |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1a1 | Number of operating TSDFs | Data Verification | State | | | 23 | | | | Meets SRF Expectations | |
| 1a2 | Number of active LQGs | Data Verification | State | | | 471 | | | | Meets SRF Expectations | |
| 1a3 | Number of active SQGs | Data Verification | State | | | 1872 | | | | Meets SRF Expectations | |
| 1a4 | All other active sites | Data Verification | State | | | 4883 | | | | Meets SRF Expectations | |
| 1a5 | Number of BR LQGs | Data Verification | State | | | 530 | | | | Meets SRF Expectations | |
| 1b1 | Number of sites inspected | Data Verification | State | | | 1018 | | | | Meets SRF Expectations | |
| 1b2 | Number of inspections | Data Verification | State | | | 1622 | | | | Meets SRF Expectations | |
| 1c1 | Number of sites with new violations during review year | Data Verification | State | | | 88 | | | | Meets SRF Expectations | |
| 1c2 | Number of sites in violation at any time during the review year regardless of determination date | Data Verification | State | | | 112 | | | | Meets SRF Expectations | |

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|---|---|---|---|---|---|---|---|---|---|---|---|
| 1d1 | Number of sites with informal enforcement actions | Data Verification | State | | | 62 | | | | Meets SRF Expectations | |
| 1d2 | Number of informal enforcement actions | Data Verification | State | | | 65 | | | | Meets SRF Expectations | |
| 1e1 | Number of sites with new SNC during year | Data Verification | State | | | 15 | | | | Meets SRF Expectations | |
| 1e2 | Number of sites in SNC regardless of determination date | Data Verification | State | | | 27 | | | | Meets SRF Expectations | |
| 1f1 | Number of sites with formal enforcement actions | Data Verification | State | | | 38 | | | | Meets SRF Expectations | |
| 1f2 | Number of formal enforcement actions | Data Verification | State | | | 53 | | | | Meets SRF Expectations | |
| 1g | Total dollar amount of final penalties | Data Verification | State | | | $227,075 | | | | Meets SRF Expectations | |
| 1h | Number of final formal actions with penalty in last 1 FY | Data Verification | State | | | 10 | | | | Meets SRF Expectations | |
| 2a | Long-standing secondary violators | Review Indicator | State | | | 5 | | | | Area for State Attention | Five secondary violators did not meet RCRA ERP guidelines by RTC by day 240, or reclassified as SNC. |

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|---|---|---|---|---|---|---|---|---|---|---|---|
| 5a | Two-year inspection coverage for operating TSDFs | Goal | State | 100% | 89.4% | 100% | 23 | 23 | 0 | Meets SRF Expectations | |
| 5b | Annual inspection coverage for LQGs | Goal | State | 20% | 22.6% | 51.7% | 274 | 530 | 256 | Meets SRF Expectations | |
| 5c | Five-year inspection coverage for LQGs | Goal | State | 100% | 62.9% | 68.5% | 363 | 530 | 167 | Area for State Improvement | Inspection coverage is significantly below national goal of 100%. |
| 5d | Five-year inspection coverage for active SQGs | Informational Only | State | | 11% | 27.8% | 521 | 1872 | 1351 | Meets SRF Expectations | |
| 5e1 | Five-year inspection coverage at other sites (CESQGs) | Informational Only | State | | | 397 | | | | Meets SRF Expectations | |
| 5e2 | Five-year inspection coverage at other sites (Transporters) | Informational Only | State | | | 53 | | | | Meets SRF Expectations | |
| 5e3 | Five-year inspection coverage at other sites (Non-notifiers) | Informational Only | State | | | 0 | | | | Meets SRF Expectations | |
| 5e4 | Five-year inspection coverage at other sites (not covered by metrics 5a-5e3) | Informational Only | State | | | 1273 | | | | Meets SRF Expectations | |
| 7b | Violations found during inspections | Review Indicator | State | | 32.5% | 6.2% | 62 | 997 | 935 | Area for State Improvement | Violation identification rate is significantly below national average. This preliminary finding will be evaluated during the file review. |

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|---|---|---|---|---|---|---|---|---|---|---|---|
| 8a | SNC identification rate | Review Indicator | State | | 2.1% | 1.2% | 12 | 997 | 985 | Area for State Attention | SNC identification rate is lower than the national average. This preliminary finding will be evaluated during the file review. |
| 8b | Timeliness of SNC determinations | Goal | State | 100% | 81.7% | 93.3% | 14 | 15 | 1 | Meets SRF Expectations | Only one SNC was entered after 150 days (at day319). |
| 10a | Timely enforcement taken to address SNC | Review Indicator | State | 80% | 81.8% | 88.9% | 8 | 9 | 1 | Meets SRF Expectations | |

# 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.

## Clean Water Act

| State: NC | | | | | | | Year Reviewed: 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:** Percentage of files reviewed where data in the file are accurately reflected in the national data systems | 16 | 41 | 39% | 95% | State Improvement | |
| 3a | **Timeliness of mandatory data entered in the national data system** | NA | NA | NA | 100% | NA | |
| 4a1 | **Pretreatment compliance inspections and audits** | 61 | 42 | 145.2% | 100% | Meets Expectations | |
| 4a2 | **Significant industrial user (SIU) inspections for SIUs discharging to non-authorized POTWs** | 0 | 0 | NA | 100% | NA | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| **4a3** | **EPA and state oversight of SIU inspections by approved POTWs** | 0 | 0 | NA | 100% | NA | |
| **4a4** | **Major CSO inspections** | 0 | 0 | NA | 100% | NA | |
| **4a5** | **SSO inspections** | 101 | 46 | 219.6% | 100% | Meets Expectations | |
| **4a6** | **Phase I MS4 audits or inspections** | 1 | 1 | 100.0% | 100% | Meets Expectations | |
| **4a7** | **Phase II MS4 audits or inspections** | 11 | 10 | 110.0% | 100% | Meets Expectations | |
| **4a8** | **Industrial stormwater inspections** | 40 | 17 | 235.3% | 100% | Meets Expectations | |
| **4a9** | **Phase I and II stormwater construction inspections** | 1056 | 1200 | 88.0% | 100% | State Attention | |
| **4a10** | **Inspections of large and medium NPDES-permitted CAFOs** | 17 | 17 | 100.0% | 100% | Meets Expectations | |
| **4a11** | **Inspections of non-permitted CAFOs** | 0 | 0 | NA | 100% | NA | |
| **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 | 6 | 6 | 100.0% | 100% | Meets Expectations | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 6a | **Inspection reports reviewed that provide sufficient documentation to determine compliance at the facility** | 28 | 31 | 90.3% | 100% | Meets Expectations | |
| 6b | **Inspection reports completed within prescribed timeframe:** Percentage of inspection reports reviewed that are timely | 22 | 34 | 64.7% | 100% | State Improvement | |
| 7e | **Inspection reports reviewed that led to an accurate compliance determination** | 28 | 31 | 90.3% | 100% | Meets Expectations | |
| 8b | **Single-event violation(s) accurately identified as SNC or non-SNC** | 5 | 5 | 100.0% | 100% | Meets Expectations | |
| 8c | **Percentage of SEVs Identified as SNC Reported Timely:** Percentage of SEVs accurately identified as SNC that were reported timely | 0 | 0 | NA | 100% | NA | |
| 9a | **Percentage of enforcement responses that return or will return source in SNC to compliance** | 12 | 19 | 63.2% | 100% | State Improvement | |
| 10b | **Enforcement responses reviewed that address violations in a timely manner** | 2 | 8 | 25% | 100% | State Improvement | |
| 11a | **Penalty calculations that include gravity and economic benefit:** Percentage of penalty calculations reviewed that consider and include, where appropriate, gravity and economic benefit | 0 | 26 | 0.0% | 100% | State Improvement | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 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 | 22 | 26 | 84.6% | 100% | State Attention | |
| 12b | **Penalties collected:** Percentage of penalty files reviewed that document collection of penalty | 20 | 26 | 80% | 100% | State Attention | |

**Finding Categories**

**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.

**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.

**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.

**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.

## Clean Air Act

| State: North Carolina | | | | | | | Year Reviewed: FY 2011 |
|---|---|---|---|---|---|---|---|
| **CAA Metric #** | **CAA File Review Metric Description** | **Numerator** | **Denominator** | **Percentage** | **Goal** | **Initial Findings** | **Details** |
| 2b | **Accurate MDR data in AFS:** Percentage of files reviewed where MDR data are accurately reflected in AFS | 28 | 35 | 80.0% | 100% | State Attention | 4 files had inaccurate/missing air program codes or subparts; 1 file had minor discrepancies (gov't ownership); 2 files had inaccuracies related to key actions (NOVACC). |
| 4a1 | **Planned evaluations completed:** Title V Major FCEs | 311 | 311 | 100.0% | 100% | Meets Requirements | |
| 4a2 | **Planned evaluations completed:** SM-80 FCEs | 640 | 640 | 100.0% | 100% | Meets Requirements | |
| 4a3 | **Planned evaluations completed:** Synthetic Minor FCEs | 0 | 0 | N/A | 100% | | |
| 4a4 | **Planned evaluations completed:** Other Minor FCEs | 5 | 0 | N/A | 100% | | |
| 4a5 | **Planned evaluations completed:** Title V Major PCEs | 0 | 0 | N/A | 100% | | |
| 4a6 | **Planned evaluations completed:** SM-80 PCEs | 0 | 0 | N/A | 100% | | |
| 4a7 | **Planned evaluations completed:** Synthetic Minor PCEs | 0 | 0 | N/A | 100% | | |
| 4a8 | **Planned evaluations completed:** Other Minor PCEs | 0 | 0 | N/A | 100% | | |
| 4b | **Planned commitments completed:** CAA compliance and enforcement commitments other than CMS commitments | 12 | 12 | 100.0% | 100% | Meets Requirements | |
| 6a | **Documentation of FCE elements:** Percentage of FCEs in the files reviewed that meet the definition of a FCE per the CMS policy | 34 | 35 | 97.1% | 100% | Meets Requirements | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 6b | **Compliance Monitoring Reports (CMRs) or facility files reviewed that provide sufficient documentation to determine compliance of the facility:** Percentage of CMRs or facility files reviewed that provide sufficient documentation to determine facility compliance | 34 | 35 | 97.1% | 100% | Meets Requirements | |
| 7a | **Accuracy of compliance determinations:** Percentage of CMRs or facility files reviewed that led to accurate compliance determinations | 31 | 35 | 88.6% | 100% | State Attention | 3 sources had violations indicated (NOV, HPV), but compliance status was not changed in AFS; another source had insufficient information in inspection report to make an accurate compliance determination. |
| 8c | **Accuracy of HPV determinations:** Percentage of violations in files reviewed that were accurately determined to be HPVs | 12 | 12 | 100.0% | 100% | Meets Requirements | |
| 9a | **Formal enforcement responses that include required corrective action that will return the facility to compliance in a specified time frame:** Percentage of formal enforcement responses reviewed that include required corrective actions that will return the facility to compliance in a specified time frame | 13 | 13 | 100.0% | 100% | Meets Requirements | |
| 10a | **Timely action taken to address HPVs:** Percentage of HPV addressing actions that meet the timeliness standard in the HPV Policy | 13 | 13 | 100.0% | 100% | Meets Requirements | |
| 10b | **Appropriate Enforcement Responses for HPVs:** Percentage of enforcement responses for HPVs that appropriately address the violations | 12 | 13 | 92.3% | 100% | Meets Requirements | |
| 11a | **Penalty calculations reviewed that consider and include gravity and economic benefit:** Percentage of penalty calculations reviewed that consider and include, where appropriate, gravity and economic benefit | 1 | 13 | 7.7% | 100% | State Improvement | All but one penalty action reviewed did not document the rationale for a "zero" economic benefit, and there was no evidence that the BEN model or similar was used where EB was shown. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 12a | **Documentation on difference between initial and final penalty and rationale:** Percentage of penalties reviewed that document the difference between the initial and final assessed penalty, and the rationale for that difference | 13 | 13 | 100.0% | 100% | Meets Requirements | |
| 12b | **Penalties collected:** Percentage of penalty files reviewed that document collection of penalty | 13 | 13 | 100.0% | 100% | Meets Requirements | |

**Finding Category Descriptions**

**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.

**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.

**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.

**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.

**Resource Conservation and Recovery Act**

**State: North Carolina**

**Year Reviewed: FY 2011**

| RCRA Metric # | Name and Description | Numerator | Denominator | Metric % | Goal | Initial Findings | Details |
|---|---|---|---|---|---|---|---|
| 2b | **Accurate entry of mandatory data:** Percentage of files reviewed where mandatory data are accurately reflected in the national data system | 37 | 40 | 92.5% | 100% | Meets Requirements | |
| 3a | **Timely entry of mandatory data:** Percentage of files reviewed where mandatory data are entered in the national data system in a timely manner | 0 | 0 | N/A | 100% | | Cannot make a finding, no method to determine timeliness data entry in file review. |
| 4a | **Planned non-inspection commitments completed:** Percentage of non-inspection commitments completed in the review year | 2 | 2 | 100.0% | 100% | Meets Requirements | |
| 6a | **Inspection reports complete and sufficient to determine compliance:** Percentage of inspection reports reviewed that are complete and provide sufficient documentation to determine compliance | 32 | 34 | 94.1% | N/A | Meets Requirements | |
| 6b | **Timeliness of inspection report completion:** Percentage of inspection reports reviewed that are completed in a timely manner | 33 | 33 | 100.0% | 100% | Meets Requirements | |
| 7a | **Accurate compliance determinations:** Percentage of inspection reports reviewed that led to accurate compliance determinations | 39 | 40 | 97.5% | 100% | Meets Requirements | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| **8c** | **Appropriate SNC determinations:** Percentage of files reviewed in which significant noncompliance (SNC) status was appropriately determined during the review year | 15 | 16 | 93.8% | 100% | Meets Requirements | |
| **9a** | **Enforcement that returns SNC sites to compliance:** Percentage of enforcement responses that have returned or will return a site in SNC to compliance | 15 | 15 | 100.0% | 100% | Meets Requirements | |
| **9b** | **Enforcement that returns SV sites to compliance:** Percentage of enforcement responses that have returned or will return a secondary violator to compliance | 16 | 16 | 100.0% | 100% | Meets Requirements | |
| **10b** | **Appropriate enforcement taken to address violations:** Percentage of files with enforcement responses that are appropriate to the violations | 30 | 31 | 96.8% | 100% | Meets Requirements | |
| **11a** | **Penalty calculations include gravity and economic benefit:** Percentage of reviewed penalty calculations that consider and include, where appropriate, gravity and economic benefit | 0 | 11 | 0.0% | 100% | **Area for Improvement** | |
| **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 | 16 | 17 | 94.1% | 100% | Meets Requirements | |
| **12b** | **Penalties collected:** Percentage of files that document collection of penalty | 17 | 17 | 100.0% | 100% | Meets Requirements | |
| **Finding Categories** | | | | | | | |

| |
|---|
| **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. |
| **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. |
| **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. |
| **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. |

# Appendix C: File Selection

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

## Clean Water Act

### File Selection Process

Using the OTIS File Selection Tool, 41 Representative Files were selected for review as part of Round 3 of the North Carolina State Review Framework (SRF) review to be conducted from January 7 - 11, 2013. As specified in the SRF File Selection Protocol, between 35 and 40 files are to be selected for a state with a universe greater than 1,000 facilities. Since North Carolina's universe is greater than 1,000; 41 files were selected for the SRF review. The Permit Quality Review (PQR)/SRF Integrated File Selection Process calls for additional files to be selected and reviewed as part of the integrated review. Common files that will be reviewed by permits and enforcement staff include files selected for the PQR core review and all files randomly selected from the Regional Special Focus Areas.

There are 220 major individual permits, 1,024 non-major individual permits and 4,902 non-major general permits in the North Carolina universe of facilities. Of the 41 files to review: 58.5 percent (or 24) of the files selected are majors, and 41.5 percent (or 17) of the files are non-majors.

For the major facilities, the North Carolina universe was sorted based on Inspections, Significant Noncompliance (SNC), Single Event Violations (SEV), Violations, Informal/Formal Actions and Penalties. Twenty-four major facilities were then randomly selected for a file review.

For non-major facilities, the North Carolina universe was also sorted based on Inspections, SNC, SEVs, Violations, Informal/Formal Actions and Penalties. Seventeen non-major facilities were then randomly selected for a file review.

Using the sorting criteria noted above, the 41 facilities selected for the SRF file review include facilities with a total of 56 inspections, 8 SEVs, 26 informal actions (ranging from 1-6 informal actions per facility for a total of 64 informal actions), 26 formal actions (ranging from 1-9 formal actions per facility for a total of 63 formal actions), and 26 penalties (ranging from $149 to $12,626).

Of the 41 files selected for the SRF review, 13 of the files were those selected for the integrated PQR/SRF review as follows: 9 are Core Permits (4 Industrial Permits and 5 Nutrients); and 4 are Special Focus Area Permits (Whole Effluent Toxicity). The remaining files are for SRF purposes, however, several files selected for the SRF review do include other Region 4 Special Focus Areas (Turbidity and Chlorophyll a).

**File Selection Table**

| | NPDES ID | City | Zip | Permit | Inspection | Violation | SEV | SNC | Informal Enforce-ment | Formal Enforce-ment | Penalty | Universe | Selection |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | NC0000078 | BREVARD TOWN | 28712 | | 1 | Yes | 0 | No | 1 | 1 | $551 | Major | R |
| 2 | NC0001112 | WILMINGTON | 28402 | | 3 | Yes | 0 | No | 0 | 0 | $0 | Major | R |
| 3 | NC0001881 | BRIDGETON | 28519 | | 0 | Yes | 0 | No | 1 | 1 | $284 | Major | R |
| 4 | NC0003298 | RIEGELWOOD | 28456 | | 2 | Yes | 0 | SNC | 0 | 0 | $0 | Major | R |
| 5 | NC0003760 | KINSTON | 28502 | | 1 | Yes | 0 | SNC | 0 | 2 | $1,836 | Major | R |
| 6 | NC0004243 | MARION | 28752 | | 3 | Yes | 0 | SNC | 4 | 3 | $4,151 | Major | R |
| 7 | NC0004308 | BADIN | 28009 | | 1 | Yes | 0 | SNC | 0 | 2 | $472 | Major | R |
| 8 | NC0004812 | MCADENVILLE | 28101 | | 3 | Yes | 0 | SNC | 4 | 5 | $5,802 | Major | R |
| 9 | NC0005126 | HARMONY | 28634 | | 1 | Yes | 0 | Category 1 | 0 | 6 | $7,386 | Non-Major | R |
| 10 | NC0006190 | MAIDEN | 28650 | | 3 | Yes | 0 | No | 0 | 1 | $1,335 | Major | R |
| 11 | NC0006254 | PATTERSON | 28661 | | 2 | Yes | 0 | Category 1 | 0 | 2 | $2,384 | Non-Major | R |
| 12 | NC0007536 | STANTONSBURG | 27883 | | 1 | Yes | 0 | Category 1 | 1 | 0 | $0 | Non-Major | R |
| 13 | NC0020290 | BURNSVILLE | 28714 | | 1 | Yes | 0 | Category 1 | 4 | 1 | $186 | Non-Major | R |
| 14 | NC0020435 | PINETOPS | 27864 | | 0 | Yes | 0 | Category 1 | 3 | 1 | $154 | Non-Major | R |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 15 | NC0020664 | SPINDALE | 28160 | | 1 | Yes | 1 | SNC | 5 | 0 | $0 | Major | R |
| 16 | NC0020800 | ANDREWS | 28901 | | 2 | Yes | 1 | No | 1 | 0 | $0 | Major | R |
| 17 | NC0020940 | MURPHY | 28906 | | 3 | Yes | 0 | SNC | 0 | 4 | $6,514 | Major | R |
| 18 | NC0020966 | GASTONIA | 28052 | | 0 | Yes | 0 | Category 1 | 6 | 1 | $687 | Non-Major | R |
| 19 | NC0021369 | COLUMBUS | 28722 | | 1 | Yes | 0 | Category 1 | 2 | 0 | $0 | Non-Major | R |
| 20 | NC0021423 | SPRUCE PINE | 28777 | | 1 | No | 0 | No | 2 | 0 | $0 | Major | R |
| 21 | NC0021717 | WILKESBORO | 28697 | | 3 | No | 0 | No | 0 | 0 | $0 | Major | R |
| 22 | NC0021865 | CHADBOURN | 28431 | | 1 | Yes | 1 | No | 1 | 0 | $0 | Major | R |
| 23 | NC0023736 | LENOIR | 28645 | | 0 | Yes | 0 | No | 2 | 3 | $2,951 | Major | R |
| 24 | NC0023876 | BURLINGTON | 27215 | | 3 | Yes | 0 | No | 1 | 0 | $0 | Major | R |
| 25 | NC0025011 | ELIZABETH CITY | 27909 | | 1 | Yes | 0 | SNC | 1 | 2 | $3,568 | Major | R |
| 26 | NC0025054 | OXFORD | 27565 | | 0 | Yes | 0 | No | 2 | 0 | $0 | Major | R |
| 27 | NC0025381 | LAKE LURE | 28746 | | 1 | Yes | 1 | Category 1 | 4 | 4 | $5,768 | Non-Major | R |
| 28 | NC0025691 | LITTLETON | 27850 | | 2 | Yes | 0 | Category 1 | 0 | 1 | $302 | Non-Major | R |
| 29 | NC0026921 | PARKTON | 28371 | | 1 | Yes | 0 | Category 1 | 4 | 1 | $3,069 | Non-Major | R |
| 30 | NC0030813 | JACKSONVILLE | 28540 | | 1 | Yes | 1 | Category 1 | 3 | 0 | $0 | Non-Major | R |
| 31 | NC0032077 | GRIFTON | 28530 | | 2 | Yes | 1 | No | 0 | 2 | $3,943 | Major | R |
| 32 | NC0036196 | NEWTON | 28658 | | 1 | Yes | 0 | No | 0 | 1 | $585 | Major | R |
| 33 | NC0036269 | CONCORD | 28025 | | 0 | No | 0 | No | 1 | 0 | $0 | Major | R |
| 34 | NC0040266 | KNIGHTDALE | 27545 | | 1 | Yes | 1 | Category 1 | 0 | 1 | $909 | Non-Major | R |
| 35 | NC0044024 | ALBEMARLE | 28001 | | 1 | Yes | 1 | Category 1 | 1 | 3 | $2,761 | Non-Major | R |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 36 | NC0056561 | MAGGIE VALLEY | 28751 | | 3 | No | 0 | No | 0 | 0 | $0 | Major | R |
| 37 | NC0059099 | DURHAM | 27703 | | 1 | Yes | 0 | Category 1 | 5 | 3 | $578 | Non-Major | R |
| 38 | NC0059218 | LEXINGTON | 27292 | | 2 | Yes | 0 | Category 1 | 1 | 9 | $12,626 | Non-Major | R |
| 39 | NC0078344 | TAR HEEL | 28392 | | 1 | Yes | 0 | No | 4 | 0 | $0 | Major | R |
| 40 | NC0086070 | EDNEYVILLE | 28727 | | 1 | Yes | 0 | Category 1 | 0 | 2 | $784 | Non-Major | R |
| 41 | NC0087947 | RIEGELWOOD | 28456 | | 0 | Yes | 0 | Category 1 | 1 | 1 | $149 | Non-Major | R |

## Clean Air Act

### File Selection Process

Using the OTIS File Selection Tool, 35 files were selected for review during the November 2012 file review visit. As specified in the File Selection Protocol, since the North Carolina universe includes 970 sources, 30 to 35 files must be reviewed.

Representative Files

The file review will focus on sources with compliance and enforcement activities occurring during the review period (FY11). Therefore, the targeted number of files to review was determined to be approximately 35 files. Since some supplemental files will need to be selected, the initial breakdown for representative files will be about 15 files each for both enforcement and compliance monitoring, leaving the remaining 5 files available for supplemental review.

**Enforcement files:** In order to identify files with enforcement related activity, the facility list was sorted to identify those facilities which had formal and/or informal enforcement actions during the review period (FY11). There were 14 sources with a formal enforcement action in FY11, so all of these were selected for review.

**Compliance files:** There were 944 remaining sources with full compliance evaluations (FCEs) during FY11. This list was sorted by district (using the LCON code) to ensure equal representation among districts, and every 63rd file was selected in order to identify 15 files.

Supplemental Files

**Metric 7b1:** The Data Metrics Analysis (DMA) indicated 12 sources had been issued a notice of violation (NOV) in FY11, but the compliance status code for that source had not been changed to reflect the violation. Three of these sources (all from the Fayetteville regional office) had already been identified as representative files (3701700043, 3715500166, and 3716500048), so one additional source from the Wilmington regional office was selected for supplemental review (3712900343).

**Metric 7b3:** The DMA identified 2 sources that were designated as having a high priority violation (HPV), but the compliance status code was not changed to reflect the violation. Both of these sources had already been selected as representative files.

**District Distribution:** North Carolina has 7 regional offices. Based on the representative and supplemental file selections described above, the distribution of files was fairly even for four of the regional offices, but the Fayetteville, Washington and Wilmington regional offices were

under-represented. Therefore, five additional supplemental files (3712300061, 3706100123, 3701900013, 3712900013, and 3704900194) were selected from these three areas in order to achieve an even distribution of files from each regional office, as shown in the table below.

| LCON | Regional Office | Representative | Supplemental | Total |
|---|---|---|---|---|
| 01 | Asheville | 5 | 0 | 5 |
| 03 | Mooresville | 5 | 0 | 5 |
| 04 | Winston Salem | 5 | 0 | 5 |
| 05 | Raleigh | 5 | 0 | 5 |
| 06 | Fayetteville | 4 | 1 | 5 |
| 07 | Washington | 4 | 1 | 5 |
| 08 | Wilmington | 1 | 4 | 5 |
| Total | | 29 | 6 | 35 |

**File Selection Table**

| | ID Number | City | ZIP CODE | LCON | Universe | FCE# | Stack Tests Failed | Violations | HPVs | Informal Actions | Formal Actions | Penalties | Flag Value |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 3711100164 | MARION NORTH COVE | 28752 | 01 | Major | 1 | 0 | 1 | 1 | 2 | 2 | 9455 | representative |
| 2 | 3708700020 | WAYNESVILLE | 28786 | 01 | Synthetic Minor | 1 | 0 | 0 | 0 | 0 | 0 | 0 | representative |
| 3 | 3702700101 | LENOIR | 28645 | 01 | Major | 1 | 0 | 1 | 2 | 4 | 1 | 1172 | representative |
| 4 | 3717300067 | BRYSON CITY | 28713 | 01 | Synthetic Minor | 1 | 0 | 1 | 0 | 2 | 0 | 0 | representative |
| 5 | 3712100016 | SPRUCE PINE | 28777 | 01 | Synthetic Minor | 1 | 0 | 1 | 1 | 2 | 1 | 0 | representative |
| 6 | 3715900054 | SALISBURY | 28146 | 03 | Synthetic Minor | 1 | 0 | 0 | 0 | 0 | 0 | 0 | representative |
| 7 | 3703500011 | NEWTON | 28636 | 03 | Synthetic Minor | 1 | 0 | 0 | 0 | 0 | 0 | 0 | representative |
| 8 | 3717900189 | MONROE | 28110 | 03 | Synthetic Minor | 1 | 0 | 1 | 0 | 0 | 1 | 139583 | representative |
| 9 | 3716700013 | NORWOOD | 28128 | 03 | Major | 1 | 0 | 1 | 0 | 0 | 1 | 2186 | representative |
| 10 | 3702500155 | CONCORD | 28027 | 03 | Major | 1 | 0 | 0 | 0 | 0 | 0 | 0 | representative |
| 11 | 3705700222 | THOMASVILLE | 27360 | 04 | Major | 1 | 0 | 1 | 0 | 0 | 1 | 1474 | representative |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 12 | 3705700116 | THOMASVILLE | 27360 | 04 | Major | 1 | 0 | 0 | 0 | 0 | 0 | 0 | representative |
| 13 | 3719300001 | NORTH WILKESBORO | 28659 | 04 | Major | 1 | 0 | 1 | 0 | 0 | 1 | 12570 | representative |
| 14 | 3708100035 | HIGH POINT | 27260 | 04 | Synthetic Minor | 1 | 0 | 0 | 0 | 0 | 0 | 0 | representative |
| 15 | 3715100276 | ASHEBORO | 27203 | 04 | Synthetic Minor | 1 | 0 | 0 | 0 | 0 | 0 | 0 | representative |
| 16 | 3707700040 | OXFORD | 27565 | 05 | Major | 1 | 0 | 0 | 0 | 0 | 0 | 0 | representative |
| 17 | 3706300144 | DURHAM | 27710 | 05 | Major | 1 | 0 | 1 | 1 | 2 | 1 | 8321 | representative |
| 18 | 3706500033 | TARBORO | 27886 | 05 | Synthetic Minor | 1 | 0 | 0 | 0 | 0 | 0 | 0 | representative |
| 19 | 3718100092 | HENDERSON | 27537 | 05 | Synthetic Minor | 1 | 0 | 0 | 0 | 0 | 0 | 0 | representative |
| 20 | 3703700015 | MONCURE | 27559 | 05 | Major | 1 | 0 | 1 | 1 | 3 | 1 | 42571 | representative |
| 21 | 3701700043 | ELIZABETHTOWN | 28337 | 06 | Major | 1 | 0 | 0 | 1 | 2 | 1 | 2171 | representative |
| 22 | 3715500166 | LUMBERTON | 28358 | 06 | Major | 1 | 0 | 0 | 1 | 2 | 1 | 2171 | representative |
| 23 | 3712500059 | CARTHAGE | 28327 | 06 | Synthetic Minor | 1 | 0 | 0 | 0 | 0 | 0 | 0 | representative |
| 24 | 3712300061 | MT GILEAD | 27306 | 06 | Major | 1 | 0 | 1 | 1 | 2 | 0 | 0 | supplemental |
| 25 | 3716500048 | WAGRAM | 28396 | 06 | Synthetic Minor | 1 | 0 | 0 | 0 | 1 | 0 | 0 | representative |
| 26 | 3714700021 | GREENVILLE | 27835 | 07 | Major | 1 | 0 | 1 | 0 | 1 | 1 | 2291 | representative |
| 27 | 3714700104 | GREENVILLE | 27834 | 07 | Major | 1 | 0 | 0 | 0 | 0 | 0 | 0 | representative |
| 28 | 3701300071 | AURORA | 27806 | 07 | Major | 1 | 0 | 1 | 1 | 2 | 1 | 8135 | representative |
| 29 | 3704900194 | NEW BERN | 28562 | 07 | Synthetic Minor | 1 | 0 | 0 | 0 | 0 | 0 | 0 | supplemental |
| 30 | 3704900104 | VANCEBORO | 28586 | 07 | Major | 1 | 0 | 1 | 1 | 2 | 1 | 3059 | representative |
| 31 | 3706100123 | MT OLIVE | 28365 | 08 | Tier I Minor | 1 | 0 | 0 | 0 | 0 | 0 | 0 | supplemental |
| 32 | 3701900013 | LELAND | 28451 | 08 | Major | 1 | 0 | 0 | 0 | 0 | 0 | 0 | supplemental |
| 33 | 3712900343 | WILMINGTON | 28401 | 08 | Major | 1 | 0 | 0 | 0 | 1 | 0 | 0 | supplemental |
| 34 | 3712900013 | WILMINGTON | 28412 | 08 | Tier I Minor | 1 | 0 | 0 | 0 | 0 | 0 | 0 | supplemental |
| 35 | 3704700125 | RIEGELWOOD | 28456 | 08 | Major | 1 | 0 | 0 | 0 | 0 | 0 | 0 | representative |

## Resource Conservation and Recovery Act

### File Selection Process

Using the OTIS File Selection Tool, 40 files were selected for review during the November 2012 file review visit. As outlined in the SRF File Selection Protocol, between 35 and 40 files must be reviewed for states with more than 1000 compliance and enforcement activities during the review period. The North Carolina Department of Environment & Natural Resources (DENR) had 1,038 RCRA activities during FY2011, and a total of 40 files were selected for review. The general process used to identify the files to be reviewed follows:

A random, representative selection of facilities was completed using the OTIS File Selection Tool. As outlined in the SRF File Selection Protocol, at least half of the facilities selected should have compliance monitoring activity, and if possible, half should have enforcement activity. There are seven Regional Offices of DENR which perform the Department's duties on a local level. Since the Regional Office locator information was not available through the SRF File Selection tool, files could not be selected to include representative files from each regional office.

**Enforcement files:** In order to identify files with enforcement related activity, the North Carolina RCRA FY2011 facility list was sorted to identify those facilities which had a formal enforcement action during the review period. There were 40 facilities with a formal enforcement action in FY2011 in North Carolina. A total of 20 "representative" formal enforcement files were randomly selected to include a mix of RCRA facility types (TSD, LQG, SQG, etc.).

**Compliance Monitoring files:** For the remaining 20 files, the OTIS File Selection Tool was then sorted on the "Informal Action" column and ten facilities that received informal enforcement action were selected. The remaining ten files were then selected from facilities that had inspections during FY2011, but did not have any informal or formal enforcement action during that period. In both instances, a mix of RCRA facility types was included in the selection.

There were no supplemental files selected as part of the file review

## File Selection Table

| | Facility Name | Program ID | City | Evaluation | Violation | SNC | Informal Action | Formal Action | Penalty | Universe |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | MAACO OF WILMINGTON | NCR000002428 | WILMINGTON | 1 | 2 | 0 | 0 | 4 | 33,918 | CES |
| 2 | EVO CORP | NCD982114803 | WINSTON SALEM | 2 | 6 | 1 | 0 | 3 | 8,291 | TRA |
| 3 | PRINTCOM INC | NCR000149484 | RALEIGH | 2 | 3 | 1 | 0 | 3 | 3,900 | CES |
| 4 | UNITED METAL FINISHING INC | NCD986177129 | GREENSBORO | 1 | 5 | 0 | 0 | 3 | 12,410 | SQG |
| 5 | BASF CORP FIBERS DIVISION ENKA | NCD052813250 | ENKA | 1 | 0 | 0 | 0 | 2 | 0 | OTH |
| 6 | CATS-BOD S TRYON BUS GARAGE | NC0991302662 | CHARLOTTE | 2 | 1 | 0 | 1 | 2 | 440 | CES |
| 7 | AIRBORN COATINGS | NCD981859358 | MOUNT HOLLY | 1 | 2 | 0 | 0 | 1 | 5,000 | OTH |
| 8 | BAYER CROPSCIENCE | NCD980600274 | DURHAM | 1 | 1 | 0 | 1 | 1 | 38 | SQG |
| 9 | BIOTECH INDUSTRIES | NC0991302670 | NEWTON | 2 | 1 | 0 | 1 | 1 | 500 | OTH |
| 10 | BRISCO INC | NCD986175750 | SWANNANOA | 2 | 6 | 1 | 0 | 1 | 0 | CES |
| 11 | COUNTY MOTOR COMPANY INC | NCD982173387 | GRAHAM | 0 | 1 | 0 | 1 | 1 | 38 | SQG |
| 12 | DAIMLER TRUCKS | NCD018652339 | CLEVELAND | 2 | 0 | 0 | 0 | 1 | 5,324 | TSD(LDF) |
| 13 | DEL-TON INC | NCR000150433 | ELIZABETHTOWN | 3 | 2 | 1 | 0 | 1 | 0 | SQG |
| 14 | ION BOND | NCR000013094 | GREENSBORO | 0 | 2 | 0 | 1 | 1 | 453 | SQG |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 15 | NUWAY SPEAKER PRODUCTS | NCD986182442 | CLINTON | 0 | 0 | 0 | 0 | 1 | 96,500 | OTH |
| 16 | PM ELECTROPLATING | NCD003468600 | HIGH POINT | 1 | 2 | 1 | 0 | 1 | 0 | OTH |
| 17 | POWDER COATING SERVICES INC | NCR000150342 | GASTONIA | 2 | 6 | 1 | 0 | 1 | 0 | SQG |
| 18 | PRECISION ALLOYS | NCR000135418 | RALEIGH | 2 | 1 | 0 | 2 | 1 | 540 | LQG |
| 19 | STRANDBERG ENGINEERING LABS | NCD982128977 | GREENSBORO | 0 | 1 | 0 | 1 | 1 | 29 | CES |
| 20 | TWIN STATE BATTERY & CHARGER SERVICE | NCS000000516 | NEWTON | 1 | 2 | 1 | 0 | 1 | 0 | CES |
| 21 | WARLICK PAINT COMPANY, INC | NCD003236841 | STATESVILLE | 1 | 3 | 0 | 0 | 1 | 1,650 | LQG |
| 22 | MAX DAETWYLER CORP | NCD986189033 | HUNTERSVILLE | 2 | 1 | 0 | 1 | 0 | 0 | CES |
| 23 | NEW HANOVER REGIONAL MEDICAL CENTER | NCD982141335 | WILMINGTON | 2 | 4 | 0 | 1 | 0 | 0 | LQG |
| 24 | IBC SPECIALISTS | NCR000146977 | GASTONIA | 2 | 2 | 0 | 1 | 0 | 0 | LQG |
| 25 | BAKER FURNITURE CO. | NCD059141184 | CONNELLY SPRINGS | 2 | 1 | 0 | 1 | 0 | 0 | LQG |
| 26 | HAIRFIELD VAULT COMPANY | NCS000001688 | NEWTON | 2 | 1 | 0 | 1 | 0 | 0 | OTH |
| 27 | CAPE FEAR COMMUNITY COLLEGE | NC0000202556 | WILMINGTON | 2 | 7 | 0 | 1 | 0 | 0 | SQG |
| 28 | SPONGEX, LLC | NCR000005926 | TARBORO | 2 | 2 | 0 | 1 | 0 | 0 | SQG |
| 29 | PHOTO CHEMICAL SYSTEMS INC | NCD000831065 | KNIGHTDALE | 2 | 1 | 0 | 1 | 0 | 0 | SQG |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 30 | GENERAL TIMBER, INC | NCD057034449 | SANFORD | 2 | 3 | 0 | 1 | 0 | 0 | TSD(LDF) |
| 31 | CLARIANT CORPORATION - MOUNT HOLLY WEST | NCD085074821 | MOUNT HOLLY | 2 | 1 | 0 | 1 | 0 | 0 | TSD(TSF) |
| 32 | AMERICAN TRUCK CENTER INC | NCD986188464 | WINTERVILLE | 1 | 0 | 0 | 0 | 0 | 0 | CES |
| 33 | GATES RUBBER CO - ASHE COUNTY | NCD152479606 | JEFFERSON | 1 | 0 | 0 | 0 | 0 | 0 | CES |
| 34 | JESSUP AUTO SALES INC | NCS000001810 | ELEZABETH CITY | 1 | 0 | 0 | 0 | 0 | 0 | CES |
| 35 | GIBRALTAR PACKAGING GROUP, INC | NCD981932031 | MOUNT GILEAD | 1 | 0 | 0 | 0 | 0 | 0 | LQG |
| 36 | STANLEY FURNITURE COMPANY, INC. | NCD024770125 | ROBBINSVILLE | 1 | 0 | 0 | 0 | 0 | 0 | LQG |
| 37 | MALLINCKRODT LLC | NCD042091975 | RALEIGH | 1 | 0 | 0 | 0 | 0 | 0 | TSD(COM) |
| 38 | NEXEO SOLUTIONS, LLC | NCD061263315 | CHARLOTTE | 48 | 0 | 0 | 0 | 0 | 0 | TSD(LDF) |
| 39 | TARTS RECYCLING | NCS000001440 | DUNN | 5 | 6 | 1 | 0 | 0 | 0 | OTH |
| 40 | ENTHALPY ANALYTICAL | NCR000148403 | DURHAM | 1 | 6 | 0 | 0 | 0 | 0 | OTH |

# Appendix D: Status of Past SRF Recommendations

During the Round 1 and 2 SRF reviews of Select a state's compliance and enforcement programs, Select office recommended actions to address issues found during the review. The following table contains all outstanding recommendations for Round 1, and all completed and outstanding actions for Round 2. The statuses in this table are current as of Select date.

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

| Round | Status | Due Date | Media | Area | Element Name | Finding | Action | Completion Verification |
|---|---|---|---|---|---|---|---|---|
| 2 | Completed | 3/31/2012 | CAA | E2 | Data Accuracy | The majority of data reported into the national system appears to be accurately entered and maintained. However, stack test results are not always accurately entered and maintained in AFS. | By July 31, 2011, DAQ should revise their procedures for stack test data management to ensure that Pass/Fail/Pending codes (PP/FF/99) for all stack tests are reported in the AFS results code field, and pending codes are updated within 120 days of the stack test date. A draft of these revised procedures should be submitted to EPA (AEEB) for review by June 30, 2011. In addition, by June 30, 2011, DAQ, in consultation with Region 4's AEEB, should correct in AFS the missing results codes for FY2008 and FY2009 and the other inaccurate data identified during the review. Region 4's AEEB will monitor the required data corrections. | Plan submitted 7/13/11 by DAQ advising that coding changes would be needed to data system (IBEAM) to address recommendation. DAQ also indicated that proposed changes could not be implemented until EPA's Information Collection Request (ICR) had been finalized (i.e. approved by OMB). The ICR update included a change to the required time frame for entry of stack test dates and results, requiring delegated agencies to enter both the stack test date and the result within 120 days of the test. With the ICR approval in January 2012, DAQ advised EPA on 6/5/12 that the necessary changes had been made to their data system. A review of the FY12 "to date" data indicates that stack tests are now being properly uploaded into AFS with an appropriate results code. Also, Metric 3b2 indicates that 96.8% (179/185) of these stack tests were reported into AFS within 120 days. |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 2 | Completed | 6/15/2011 | CWA | E2 | Data Accuracy | Generally, data reported into PCS is accurately entered and maintained, but data is not accurately entered for violations and NOVs of Whole Effluent Toxicity (WET) requirements. | Within three months of the date of the Final SRF Report, North Carolina should properly code into PCS all WET limits and specifically include toxicity limits. Immediately, North Carolina should ensure that any new facilities that require WET limits are properly coded into PCS. Immediately, North Carolina should begin entering all WET data into PCS, including but not limited to any additional tests that are conducted following a failure. Region 4's Clean Water Enforcement Branch (CWEB) will continue to monitor the required level of WET data entry into PCS and discuss results with North Carolina during routine quarterly Watch List meetings. EPA's WET Coordinator will determine when this action is completed. North Carolina should utilize the current standard operating procedures, or update as necessary, to ensure accurate entry of all required data into PCS. | The State has entered the WET permit limits into PCS and the WET violations have shown up in the PCS enforcement report. R4 CWEB continues to monitor through periodic meetings. |
| 2 | Completed | 9/30/2011 | CWA | E4 | Completion of Commitments | North Carolina met most compliance and enforcement commitments in their FY2008 CWA §106 Grant Workplan. However, three planned inspection grant commitments were not met. | North Carolina should promptly take actions to fulfill the commitments in the CWA §106 Grant Workplan including the completion of all inspection commitments. Beginning in FY 2011, North Carolina should meet all §106 workplan commitments by September 30 of the fiscal year. EPA Region 4 Clean Water Enforcement Branch will continue to monitor progress of this recommendation through the annual CWA §106 grant review process. | R4 CWEB confirms that 106 workplan commitments are being met. |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 2 | Completed | 7/15/2011 | CWA | E6 | Quality of Inspection of Compliance Evaluation Reports | North Carolina's inspection reports were determined to be complete. However, in a few instances, the reports lacked the necessary documentation so proper compliance determinations could be drawn. The review identified issues with the timeliness of completing inspection reports. | Within four months of the date of the Final SRF Report, North Carolina should develop and implement a final action plan to ensure timely completion of inspection reports. North Carolina should submit to EPA for review the draft action plan and implementation strategy. | The State submitted its Implementation strategy for timely completing inspection reports to Region 4 on 8/2/11. R4's CWEB continues to monitor implementation of the State's Strategy through periodic meetings. |
| 2 | Working | 3/31/2013 | CWA | E9 | Enforcement Actions Promote Return to Compliance | North Carolina's enforcement actions generally do not include complying or corrective action that will return facilities to compliance in a specified time frame. | North Carolina should immediately utilize formal enforcement actions to address SNCs and other violations, as appropriate. These actions should include injunctive relief, compliance schedules, and other conditions of formal enforcement that are incorporated into administrative consent or unilateral orders. Region CWEB will monitor and take necessary action, as appropriate, to ensure formal enforcement actions are used to address SNCs and other violations. Quarterly, EPA and North Carolina will discuss enforcement activity during Watch List meetings. EPA will determine when North Carolina has sufficiently met this SRF requirement. | |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 2 | Completed | 7/15/2011 | CWA | E10 | Timely and Appropriate Action | North Carolina does not take appropriate enforcement action for their SNCs and generally does not take timely enforcement action for SNCs in accordance with the NPDES Enforcement Management System (EMS). | Within four months of the date of the Final SRF Report, North Carolina, in consultation with EPA Region 4 Clean Water Act Enforcement Branch, should:(1) Modify the EMS to reflect the need to address SNCs through formal enforcement.(2) Ensure that appropriate and timely enforcement is used to address SNCs in accordance with the NPDES EMS.EPA Region 4 Clean Water Enforcement Branch will evaluate the number of formal enforcement responses executed and timeliness of SNCs through the quarterly CWA Watch List review process and will discuss with the State the causes and recommended solutions to improve SNC timely and appropriate enforcement response during the Quarterly Watch List Meeting. | The State submitted its revised EMS on 8/3/11. R4 CWEB continues to monitor appropriate and timely enforcement to address SNCs through periodic meetings. |
| 2 | Working | 3/31/2013 | CWA | E11 | Penalty Calculation Method | North Carolina does not document the gravity and economic benefit components consistent with EPA's penalty policy. | Within four months of the date of the final report, North Carolina should develop and implement final procedures for the documentation of gravity and economic benefit calculations, appropriately using the BEN model or other equivalent method that produces results consistent with EPA national policy. North Carolina should submit draft procedures to EPA for review before finalization. | |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 2 | Completed | 3/31/2013 | RCRA | E2 | Data Accuracy | Reporting and maintaining accurate data in RCRAInfo is a concern in North Carolina. Relevant information was either missing from the file or inaccurately reported in RCRAInfo. | Within three months after the final issuance of the NC SRF Report, North Carolina should implement procedures for entering SNN evaluation codes in RCRAInfo. The EPA RCRA & OPA Enforcement & Compliance Branch (ROECB) is available to assist the state in the development of these procedures. | For SRF Round 2 recommendation for improvement, EPA R4 reviewed the procedures implemented by the DENR to ensure proper coding in SNN data into RCRAInfo. All data is now being entered correctly into RCRAInfo, and the recommendation is considered complete as of Nov. 30, 2012 |
| 2 | Long Term Resolution | 9/30/2013 | RCRA | E11 | Penalty Calculation Method | North Carolina includes gravity-based penalty calculations in its initial penalty calculations, but its files do not document that economic benefit has been calculated or considered. | Six months after the issuance of the final SRF Report, North Carolina should submit the penalty worksheets and supporting economic benefit calculations for all formal enforcement actions taken during that six-month period. The civil penalty calculation methods should include economic benefit calculations using the BEN model or a state method that is equivalent to and consistent with national policy. Progress towards completion will be formally measured and additional actions taken as necessary based on the evaluation. | |

# Appendix E: Program Overview

The information contained in this section, including agency structure, resources, data reporting systems, and accomplishments and priorities was provided by North Carolina DENR and was not verified by EPA for SRF report.

**Agency Structure**

The North Carolina Department of Environment and Natural Resources (DENR) is the lead stewardship agency for the preservation and protection of North Carolina's natural resources. The organization, which has offices in Raleigh, Asheville, Fayetteville, Mooresville, Washington, Wilmington and Winston-Salem, administers regulatory programs designed to protect air quality, water quality, and the public's health. DENR also offers technical assistance to help businesses, farmers, local governments, and the public understand and comply with regulatory requirements. DENR encourages responsible behavior with respect to the environment through education programs provided at DENR facilities and through the state's school system. Through its natural resource divisions, DENR works to protect fish, wildlife and wilderness areas. The agency's activities range from ensuring the safety of drinking water to managing state parks and forests for safe and enjoyable outdoor recreation experiences.

The department is organized into the Secretary's office and staff, administration, divisions, programs, regional offices, boards, councils and commissions.

North Carolina DENR is the lead stewardship agency for the preservation and protection of the state's natural resources. Some administrative and management staff report to the Assistant Secretary for Administration. Natural resource programs report to the Assistant Secretary for Natural Resources. Environmental regulatory programs report to the Assistant Secretary for the Environment. Environmental regulatory programs are administered through seven of the department's divisions and offices.

**Administration**

**Secretary's Office:** The Secretary's Office leads and manages the department in its implementation of state and federal environmental laws and management of the state's natural resources. The Secretary's Office coordinates department activities with those of other state and federal agencies. Staff in the Secretary's Office also provides the primary contact with state legislators and other elected officials in the development of environmental and natural resource policies.

**Division of Environmental Assistance and Outreach:** The Division of Environmental Assistance and Outreach provides non-regulatory technical assistance to help business, industry, local governments and individual citizens understand and meet federal and state permits and regulations, reduce their environmental impacts, increase the recovery of recyclable materials, and practice environmental leadership.

**Division of Budget, Planning and Analysis:** This division is responsible for the oversight of the development, monitoring and maintenance of the department's budget.

**Office of the Controller:** The Office of the Controller is the organization responsible for providing a variety of accounting and financial services for the department.

**Office of Environmental Education and Public Affairs:** The Office of Environmental Education and Public Affairs communicates information about the department's activities to media and the public. The office responds to media inquiries, coordinates responses to public records requests and provides outreach on issues of public concern. The office also encourages, supports and promotes environmental education programs in North Carolina by developing educational materials and curricula.

**Division of Human Resources:** The Division of Human Resources is responsible for providing human resources services to support and enhance employees, managers and applicants.

**Division of Information Technology Services:** This division serves as DENR's central point of contact for information technology coordination, guidance, integration and planning.

**Division of Purchase and Services:** The Division of Purchase and Services is the business manager for DENR and oversees commodity and service procurement, building construction, acquisition of real property and risk management.

**Division of Administration (Regional Offices):** DENR has seven regional offices located in Asheville, Fayetteville, Mooresville, Raleigh, Washington, Wilmington and Winston-Salem. The regional offices provide administrative and technical staff to support DENR's various division field personnel located in the regional offices.

**Environmental Protection Divisions**

**Division of Water Resources:** The Division of Water Resources is responsible for state water supply planning, drought monitoring and response, funding of water resource projects and approval of interbasin transfers. The Division maintains a network of groundwater monitors and has undertaken an effort to develop water supply models for each of the state's river basins. The division's Public Water Supply Section implements the requirements of the federal Safe Drinking Water Act in the state, providing technical assistance and permitting public water systems.

**Division of Energy, Mineral and Land Resources:** The Division of Energy, Mineral and Land Resources promotes the wise use and protection of North Carolina's land and geologic resources. Within the division, Land Quality Section programs regulate and provide technical assistance related to mining, dam safety and sedimentation control, and exploration and development of energy; the North Carolina Geological Survey performs scientific investigations, provides technical assistance and maps the state's geological resources; and the division as a whole supports public education in the earth sciences. Under 2012 legislation, the division provides staff to the new North Carolina Mining and Energy Commission, which is engaged in developing regulatory standards for onshore oil and gas exploration and development.

**Division of Coastal Management:** The Division of Coastal Management implements a

permitting program for development in environmentally sensitive areas within the 20 coastal counties. The Division works closely with local governments to strengthen the use of land use planning as a tool for protecting coastal resources and encouraging economic development. The Division also funds beach and waterfront access projects and manages the state's coastal reserves. The system of coastal reserves includes several National Estuarine Research Reserve sites.

**Division of Water Quality (DWQ):** The DWQ issues permits, monitors permit compliance, evaluates water quality and is the state's enforcement agency for violations of water and groundwater quality regulations. The Division also assists publicly-owned and municipal wastewater and water treatment plants through technical aid and financing. DWQ is comprised of a central office in Raleigh and seven regional offices, each with a regional supervisor for surface water that directly reports to the Surface Water Section Chief. The seven regional offices perform the vast majority of the compliance inspections, respond to complaints and environmental emergencies such as spills, perform ambient monitoring, and generate most of the enforcement actions including civil penalty cases. The central office issues permits to major and minor facilities and general permits, and processes more complex enforcement actions. The central office is made up of six sections: Planning, Laboratory, Surface Water, Aquifer Protection and Environmental Sciences and Infrastructure Financing. The Surface Water Section Chief supervises both Point Source and Wetlands & Storm water Branches. The Wetlands and Storm water Branch contains units which administer the NPDES Storm water permitting and compliance programs. The Points Source Branch contains units which administer permitting and compliance activities for the NPDES wastewater program.

**Division of Air Quality (DAQ):** The DAQ regulates air quality through technical assistance to industries and enforcement of state and federal air pollution standards. The Division issues permits, implements federal ambient air quality standards, monitors the air quality of the state and oversees a vehicle inspection/maintenance program. The DAQ is comprised of a central office and seven regional offices, each with a regional supervisor that directly reports to the Deputy Director. The seven regional offices perform the bulk of the compliance inspections at all facility classes, permit minor & synthetic minor facilities, respond to complaints and perform ambient monitoring. The central office issues permits to major facilities, finalizes enforcement actions and manages four distinct sections: Technical Services, Permitting, Planning and Ambient Monitoring.

**Division of Waste Management (DWM):** The mission of the DWM is to prevent harmful releases of waste to the environment and clean up existing contamination. The DWM utilizes a philosophy of waste prevention, aggressive completion of cleanups, creative solutions to continued use, reuse, and redevelopment of contaminated properties throughout all permitting and remediation programs. The Division is headed by a Division Director and Deputy Director. DWM's programs are implemented by four sections: Hazardous Waste (RCRA), Solid Waste, Superfund, and Underground Storage Tanks. An additional staff office implements the state's Brownfields Program. The Hazardous Waste Section (HWS) is headquartered in Raleigh. Compliance and Enforcement staff members are located throughout the state in home-based offices and thus there are no Hazardous Waste Section staff members located in formal regional offices or districts involved in implementation of the RCRA compliance and enforcement

program. Like staff in the regional offices, the staff members working out of home-based offices are located closer to the communities they serve. Home-based staff members work in areas where a regional office is not located.

**Natural Resources Divisions**

**Aquariums:** The state's three aquariums, located near Manteo, Atlantic Beach and Wilmington, promote awareness, understanding and appreciation of North Carolina's aquatic resources.

**Division of Marine Fisheries:** The Division of Marine Fisheries is dedicated to ensuring sustainable marine and estuarine fisheries and habitats for the benefit and health of the people of North Carolina.

**Division of Parks and Recreation:** The mission of the Division of Parks and Recreation is to protect North Carolina's natural diversity, provide and promote outdoor recreation opportunities, and exemplify and encourage good stewardship of natural resources.

**Ecosystem Enhancement Program:** The mission of the Ecosystem Enhancement Program is to restore, enhance, preserve and protect North Carolina's natural resources for future generations while supporting responsible economic development.

**Museum of Natural Sciences:** The purpose of the Museum of Natural Sciences is to enhance the public's understanding and appreciation of the natural environment in ways that emphasize the natural diversity of North Carolina and the southeastern United States; relate the region to the natural world as a whole; and engage the public in understanding the scientific research that affects their lives.

**Office of Conservation, Planning and Community Affairs:** The Office of Conservation, Planning and Community Affairs provides scientific and policy information and incentives to guide and support conservation actions of North Carolina's conservation agencies, organizations and citizens. The office fosters partnerships that inform and support conservation and promotes resilient communities in our state.

**Zoological Park:** The state Zoological Park is designed to portray and reflect the natural environment of the species on display at the numerous exhibits.

## Compliance and Enforcement Program Structure

North Carolina DENR's central office is located in Raleigh. Seven DENR Regional Offices, located in Asheville, Fayetteville, Mooresville, Raleigh, Washington, Wilmington and Winston-Salem, perform the department's duties on a local level. The Divisions listed above conduct compliance assurance and enforcement activities. There is no centralized multimedia enforcement office at DENR. The central office is largely responsible for policy decision, guidelines, regulatory interpretations, and formal enforcement actions, while the regional offices and the 16 home-based RCRA staff members conduct compliance assurance activities and informal enforcement actions (e.g. notices of violation).

## Roles and Responsibilities

Enforcement processes in DENR begin with the discovery of a violation. This discovery may be through an inspection of the regulated site by a regional inspector or it may come from routine monitoring reports that the responsible party (RP) is required to submit on a schedule. DENR also responds to citizen complaints. Complaints are referred to the appropriate program staff for investigation; if the investigation finds that a violation occurred, enforcement action follows. When a violation is discovered, the inspector will consult with the supervisor to decide the next step of enforcement. Most programs have an enforcement coordinator in the central office in Raleigh who will work with the regional office staff to begin the enforcement process.

Depending on the nature of the violation, enforcement options may include a notice of deficiency (NOD), notice of violation (NOV), administrative order by consent (AOC), or a unilateral compliance order. Both a NOD and a NOV identify any corrective action that the violator is required to take and set a deadline for compliance. First time violators usually receive an NOV; there may be no further enforcement action if the violator promptly corrects the violation. Failure to meet a compliance deadline generally results in a civil penalty assessment. Other factors that may lead to a civil penalty or increase the amount of the penalty include the degree of harm resulting from the violation and the past compliance history of the violator. Most programs have the authority to use temporary restraining orders or injunctions to compel compliance if issuance of an NOV and request for corrective action has not been effective.

Although the enforcement process varies somewhat among the different programs, generally enforcement staff prepare an enforcement package that goes through management review within the Division. In some programs, the Attorney General's Office is actively involved in drafting civil penalty assessments; in others, the civil penalty assessment is developed within the program and the Attorney General's Office becomes involved if there is an appeal of the penalty or a request for judicial collection of the penalty once appeals have been exhausted. All requests for injunctive relief go to the Attorney General's Office. If the enforcement action merits a request for injunctive relief to stop an ongoing violation or to compel corrective action, the Attorney General's Office files suit in Superior Court to request the appropriate court order.

When an RP receives an enforcement action, they have several options available. The RP may pay the penalty, request a reduced penalty through informal settlement or remission, or the RP may appeal the decision to the Office of Administrative Hearings (OAH). An appeal to the OAH, must the filed within thirty days. If there is a hearing, the Administrative Law Judge will decide whether the penalty is supported by the evidence and consistent with applicable law. This decision can be appealed through Superior Court, Court of Appeals, or to the State Supreme Court.

## Local Agencies Included and Excluded From Review

There are three local agencies in North Carolina delegated below the state level to conduct work in the air programs evaluated under the SRF: Mecklenburg County Department of Environmental Protection, Western North Carolina Regional Air Pollution Control Agency, and Forsyth County

Environmental Affairs Department. A review of the Forsyth County local program was conducted during Round 1. Mecklenburg County is slated for Round 3 review in a later year. As a result, no local agencies were included in the SRF Round 3 review of the state program.

## Resources

**CAA Resources:** The DAQ maintains approximately 63 fulltime equivalent (FTEs) staff available to implement the state's compliance monitoring and enforcement program. These FTEs are composed of staff from the regional and central offices. The duties of the regional staff include, but are not limited to, conducting compliance evaluations (i.e., inspections), responding to complaints, attending source tests, reviewing reports and notifications, determining compliance status, issuing NOVs and developing enforcement cases, and entering compliance and enforcement activities into the database. The duties of the central office staff include, but are not limited to, reviewing source test reports, Continuous Opacity Monitoring Systems/Continuous Emissions Monitoring Systems (COMS/CEMs) reports, and enforcement cases. The DAQ maintains approximately 45 FTEs for compliance and enforcement activities in the regional offices and approximately 18 FTEs in the central office.

The DAQ budget has resulted in resource constraints that make hiring staff to fill vacancies difficult. The DAQ management carefully evaluates all vacancies on a case-by-case basis. Some vacant positions have been permanently eliminated. Despite these challenges, the DAQ continues to meet its compliance goals and to maintain a successful and effective enforcement program.

| Sections | Offices | Positions | Direct Compliance/ Enforcement Positions | FTEs |
|---|---|---|---|---|
| Director's Office /Section Chiefs | | 12 | 2 | 1.24 |
| Business Office | | 8 | 0 | 0 |
| Central Permitting | | 28 | 0 | 0 |
| Planning | | 25 | 0 | 0 |
| Central Ambient | | 28 | 0 | 0 |
| Technical Services | | | | |
| | Stationary Source Compliance | 16 | 13 | 8.06 |
| | Mobile Sources | 10 | 8 | 4.96 |
| | Toxics Protection | 14 | 5 | 3.1 |
| Regional Offices | | | | |
| | Asheville | 14 | 9 | 5.58 |
| | Fayetteville | 12 | 9 | 5.58 |
| | Mooresville | 22 | 14 | 8.68 |
| | Raleigh | 23 | 13 | 8.06 |
| | Washington | 13 | 9 | 5.58 |
| | Wilmington | 13 | 8 | 4.96 |
| | Winston-Salem | 21 | 11 | 6.82 |
| **Totals** | | **259** | **101** | **62.62** |

An FTE is based on 63% of work year (2,080 hours) devoted to compliance and enforcement. The remainder of the year is allocated to other DAQ activities, holidays and other anticipated leave time.

**CWA Resources:** There are 98 FTEs available to implement the state's NPDES Wastewater, NPDES Storm water, compliance monitoring and enforcement program. Of the 98 FTEs, 36 are located in the central office. The remaining FTEs are distributed by Regional Offices as follows:

- Asheville Region 7 FTEs
- Fayetteville Region 9 FTEs
- Mooresville Region 7 FTEs
- Raleigh Region 13 FTEs
- Washington Region 10 FTEs

- Wilmington Region 7 FTEs
- Winston-Salem Region 9 FTEs

Overall the Division has experienced a 16% decrease in workforce since 2007. The cause of this reduction was primarily a loss of state appropriated funding. DWQ had a $15.4 M state appropriation in FY09, which has been reduced to $11.5 M (a 25% reduction) in FY13. Meanwhile, federal grants (other than American Recovery and Reinvestment Act of 2009 funds) remain flat and permit fees have decreased by $500,000 from peak collections. The cuts necessitated by the reduction in state appropriations were met by a combination of position cuts and decreases in operating costs.

**RCRA Resources:** There are currently 44 FTEs in the Hazardous Waste Section, 28 of which are located in the Raleigh headquarters office and 16 of which are home-based throughout the state. While the 16 home-based staff are spread across the state geographically, there are more in areas that see more activity, such as Mecklenburg County, than in more rural areas. There are a total of 13 inspectors and three supervisors assigned to implement the compliance assistance and inspection program (these are the home-based staff members). An additional three technical staff members and one attorney (assigned to the Office of the Attorney General) are responsible for preparing enforcement actions against facilities found to be in violation of RCRA standards. The compliance and enforcement program is overseen by a Branch Head.

## Staffing and Training

**CAA:** DAQ management carefully evaluates all vacancies on a case-by-case basis. Twenty-seven positions have been permanently eliminated since 2010. The DAQ follows the guidance provided by DENR in recruiting and selecting qualified staff. A copy of DENR's policy can be found at http://portal.DENR.org/web/hr/policy-and-procedure. In addition, the DAQ is committed to creating a learning oriented environment to develop knowledge, skills, and abilities of employees. The DAQ has developed a training matrix (http://daq.state.nc.us/employee/training/DAQ-Training_Matrix.pdf) that outlines the minimal training requirements for each specific position. The DAQ provides employees with directions, resources, and guidance on training and development. Required OSHA training occurs annually and other training is offered via webinars, conferences and classes as funding allows.

**CWA (North Carolina DWQ Hiring Program):** North Carolina employs a merit-based recruitment and selection plan. This plan evolved from Senate Bill 886 that was passed by the North Carolina Legislature in 1997. The purpose of the merit-based recruitment and selection plan is to fill positions subject to the State Personnel Act from among the most qualified individuals based on the requirements of the job. The individual selected for the position must be chosen from the pool of the most qualified candidates. The adoption in 2012 of Neogov®, an on-line employment listing and application tool, has significantly increased the size of applicant pool and increased overall quality.

**RCRA:** The compliance and enforcement program is fully staffed at the present time and is not expecting to be significantly impacted in the near future by vacancies. Training is provided

when it is applicable to job duties and funding is available. Staff turnover is not a significant issue in the RCRA program.

## Data Reporting Systems and Architecture

**CAA:** The DAQ uses a J2EE/Oracle based Internet-enabled enterprise application and database system, called IBEAM, for all its enforcement and compliance data. A summary of the architecture of IBEAM can be found at http://portal.DENR.org/web/its/ibeam. A user group composed of DAQ staff and IT personnel worked for many years to develop compliance and enforcement modules in IBEAM for housing data that is reported to the EPA national data system. The user group also developed QA/QC rules to ensure that the data is entered into IBEAM accurately and in a timely manner. Compliance and enforcement data meeting the EPA's MDRs are downloaded from IBEAM and fed to AFS twice per month. The frequency of data uploads was doubled in 2012 in order to more fully comply with timeliness requirements in the 2011 Information Collection Request.

**CWA Basinwide Information Management System (BIMS):** The BIMS application system development effort started in late 1998. This work effort converted and integrated scores of diverse application systems across the organization into one consolidated data repository and user interface. BIMS provides the DENR DWQ user communities with a tool that facilitates a cohesive working environment across unique, but related, operational areas. All BIMS users share a common interface and a central, integrated database. The BIMS is customized to support the business conducted by over 300 DWQ end users and 100 municipalities across the state. Additional internal and external users are continuously being added. BIMS architecture includes JAVA, Struts, EJB, and DB2. Data is entered into BIMS daily by various users who enter permit, DMR, compliance monitoring and enforcement data into BIMS daily. After staff review, this data is subsequently uploaded to EPA's database system. During December 2012, DWQ's data was migrated from EPA's old database system (PCS) to its modern system, ICIS-NPDES.

**RCRA:** The HWS serves as the Implementer of Record for RCRAInfo and enters all North Carolina compliance and enforcement information within five days of receipt. The HWS staff routinely updates programmatic modules of the database (including the Compliance/Enforcement module) using direct data entry, and staff and supervisors routinely verify data accuracy and ensure that corrections are made as required.

Hazardous waste notifications (EPA Form 8700-12) are managed by the Financial Management and Information Unit personnel, with data entered manually. Handler information is entered within five days of receipt which allows EPA to view the changes that occur in the universe. The entering of data into the national database allows EPA instant access to data elements that are required by EPA.

## Major State Priorities and Accomplishments

**CAA Priorities:** The following are the compliance and enforcement priorities for DAQ:

- Responding to complaints from the public. Complaints should be addressed as soon as practically possible. Most of the complaints involve open burning, and consequently, the DAQ has a strong open burning investigation and enforcement program.
- Inspecting permitted facilities:
  - Conducting inspections or full compliance evaluations (FCEs) and on-site visits at all title V facilities and all synthetic minor facilities annually.
  - Conducting inspections at all true minor permitted facilities every two years.
  - Meeting the EPA's Compliance Monitoring Strategy.
- Maintaining a strong, fair, effective, and transparent enforcement program.
- Maintaining written guidelines that outline appropriate enforcement actions. The written guidance is routinely reviewed and updated so that it reflects the current policies and procedures of DENR and the DAQ.
- Reinforcing the written guidelines through regular meetings with regional and central office permitting and compliance staff.
- Providing updates of enforcement activities on the DAQ's website and to the public.

**CAA Accomplishments:** The DAQ's compliance and enforcement program covers both permitted facilities and non-permitted entities. The DAQ spends a great deal of its time and resources on compliance and enforcement of non-permitted entities, and none of this effort is reflected in the SRF. The DAQ's compliance and enforcement accomplishments for FY 2011 are listed below:

*General Accomplishments:*

- Conduct outreach to the permitted and unpermitted regulated community
- Provide content for industry group workshops (for example, MCIC)
- Attend conferences and speak to industry representatives to explain our rules and processes to insure facilities have the tools to meet their compliance obligations

*Permitted Facilities:*

- Observed 140 source tests
- Approved 128 Test protocols
- Reviewed 170 Source tests
- Conducted 2,450 inspections
- Issued 264 notices of violations
- Assessed 46 civil penalty assessments to permitted facilities, totaling $235,700
- Issued two Special Orders by Consent, requiring $30,000 in upfront penalties

*Non-permitted Entities*

- Received 1,397 complaints, including complaints regarding odors, open burning, fugitive dust, and visible emissions.
- Conducted 571 onsite investigations
- Issued 456 notices of violations
- Assessed 105 civil penalty assessments to non-permitted entities (primarily open burning violators), totaling $114,967

**CWA Priorities:** In line with EPA's goals and objectives, the DWQ seeks to protect and enhance water quality where it is adversely affected by pollution. The Division will accomplish this by operating effective planning and monitoring programs, operating effective and efficient permitting and compliance programs, effectively planning and implementing funding to achieve the core goals and effectively managing and leading staff to ensure the Division is capable of fulfilling its mission.

**CWA Accomplishments:** The following are the compliance and enforcement accomplishments provided by DWQ:

*Tiered Enforcement Strategy and Notification:* Pursuant to North Carolina session laws passed in 2011, a tiered enforcement policy and notification were adopted by the Division. The new requirement that the permittees be given written notification 10 days before an enforcement action is generated spurred dialogue that resulted in corrective actions and increased compliance. The adoption of a tiered enforcement approach to better address certain lower level violations such as minor paperwork errors has allowed increased attention and resources towards more serious compliance issues.

*Inspections Conducted and Penalties Assessed:*

- Inspections conducted: 9102
- Compliance Evaluation Inspections: 3847
- Other inspection types: 5,255
- Civil penalty assessments issued: 527
- Total penalties (including enforcement costs): $824,199.

**RCRA Priorities:** During FY 11, the HWS continued to demonstrate its commitment to protecting human health and the environment through a holistic approach to compliance and enforcement. This was accomplished with a proactive compliance and monitoring program that focused on national and state priorities. Continuing priorities included

1) never inspected generators;
2) facilities that were the subject of citizen complaints;
3) non-notifier facilities that were believed to have generated hazardous waste; and
4) recalcitrant or repeat violators.

North Carolina also placed a priority on inspecting hazardous waste transporters and transfer stations. The Mercury Switch Removal Program, a state initiative established by the General Assembly in 2007, continues to be a state priority.

**RCRA Accomplishments:**

*The Mercury Switch Removal Program*
During FY 2011 the HWS continued implementing requirements of the Mercury Switch Removal Program. North Carolina legislation requires the removal of convenience lighting assemblies from "end-of-life" automobiles prior to crushing, shredding and recycling. Currently North Carolina ranks number 3 in the nation for removal efficiency. These results were achieved through the efforts of four office staff members providing program support and 10 field staff

members performing 450 site evaluations in FY 2011. With 95 pounds of mercury collected in FY 2011, more than 678 pounds of mercury have been collected and recycled in North Carolina since the start of the NC Mercury Switch Removal Program. The mercury switches removed were managed as universal waste. The removal of these switches from the scrap metal waste stream is expected to significantly reduce mercury emissions from steel mills.

*Large Generator Workshops*
For the 19th year, during the months of April and May of 2011, Compliance Branch staff conducted four Generator Workshops across the state. The training sessions focused on regulations, new initiatives, section/branch policies and proposed legislation and rules applicable to large quantity generators (i.e., facilities that generate greater than 2,200 pounds of hazardous waste in one calendar month) and they allowed for audience interaction. Over 340 stakeholders from various industries, military installations, universities, and municipalities attended the workshops. Historically, the compliance rate has exceeded 94% for the attending facilities.

*Inspection Coverage*
The HWS inspected over 50% of large quantity generators and 8.5% of small quantity generators of hazardous waste during FY 2011. This significantly exceeds the yearly RCRA grant requirements.

*Environmental Outcome Measures*
During FY 2011, compliance and enforcement activities resulted in the protection of approximately 1,048 individuals from potentially injurious exposure to hazardous waste. In addition, 187 tons of solid hazardous waste and 20,824 gallons of liquid hazardous wastes that were identified as being mismanaged were addressed by appropriate enforcement action.

*Pre-Compliance Site Visits*
A new Large Quantity Generator that notifies of its hazardous waste activities is targeted for a pre-compliance visit. Within 90 days of receiving the notification for hazardous waste activity, the compliance staff conducts a site visit to provide guidance and instructions regarding hazardous waste policy and compliance expectations in an effort to improve initial compliance and to establish a relationship with the regulated entity.

# Appendix F: SRF Correspondence

**Kick-off letter**

September 24, 2012

Mr. Dee A. Freeman
Secretary
North Carolina Department of
Environment and Natural Resources
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Dear Secretary Freeman:

As discussed with Robin Smith and North Carolina Department of Environment and Natural Resources (DENR) enforcement managers on September 5, 2012, Region 4 is initiating a review of DENR's enforcement and compliance programs. This review will be conducted using the Round 3 State Review Framework (SRF) protocol, and will consist of a review of DENR's Clean Air Act (CAA) Stationary Source program, Resource Conservation and Recovery Act (RCRA) Subtitle C program and an integrated review of the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NDPDES) program, which will include an NPDES Permit Quality Review (PQR) along with the Round 3 CWA SRF. The SRF and NPDES PQR will be conducted by regional staff and will be based on inspection and enforcement activities from federal fiscal year 2011 and from permitting actions taken during federal fiscal years 2011 and 2012.

While discussions are beginning between our staff and yours regarding logistics and scheduling, we thought it would be helpful to provide additional background and context for the upcoming review.

**SRF Background**

The SRF is a continuation of a national effort that allows EPA to ensure that State agencies meet agreed-upon minimum performance levels in providing environmental and public health protection. The SRF looks at twelve 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 review is conducted in three phases: analyzing information from the national data systems, reviewing a limited set of state files, and the development of findings and recommendations.

North Carolina's CAA, RCRA and CWA NPDES enforcement and compliance programs have been reviewed under the SRF protocol in 2006 and 2009. A copy of these reports can be found on the SRF website at: http://www.epa.gov/compliance/state/srf/

**Permit Quality Review and the Integrated Review Background**

EPA reviews state NPDES programs every four years as part of the PQR process. The PQR assesses the State's implementation of the requirements of the NPDES program as reflected in the permit and other supporting documents (e.g., fact sheet, calculations, etc.).

As part of the Clean Water Act Action Plan, the Office of Water (OW) and the Office of Enforcement and Compliance Assurance (OECA) have developed a process to integrate oversight of state NPDES permitting and enforcement programs by integrating the SRF and the PQR at the regional level. In FY2011, a workgroup was formed to revise the PQR process, and develop guidance for implementation of these reviews. The revised PQR process will continue to assess how well states implement NPDES program requirements as reflected in permits and other supporting documents, and shifts responsibility for conducting reviews from EPA Headquarters to the regional offices. This integrated approach will also provide a better appreciation of the work and challenges of a state NPDES program by coordinating the SRF and PQR processes, and allow increased transparency by making the PQR and SRF results publically available on EPA's website.

For your information, a Permitting for Environmental Results review of North Carolina's NPDES program was conducted in 2004 and can be accessed at http: //www.epa.gov/npdes/pubs/northcarolina_final_profile.pdf. A subsequent file review was conducted in 2009 by EPA HQ staff.

**Overview of the Process for Reviews**

Staff from the Region's Office of Environmental Accountability (OEA) and the Water Protection Division will be conducting the SRF/PQR integrated review. As mentioned previously the SRF will also include a review of the State's CAA and RCRA programs. An integral part of the integrated review process is the visit to state agencies. State visits for this review will include:

- Discussions between Region 4 and DENR program managers and staff
- Examination of data in EPA and DENR data systems
- Review of selected permitting, inspection and enforcement files and policies

The EPA Region 4 SRF coordinator for the review is Becky Hendrix and she can be reached at (404) 562-8342 and by email at hendrix.becky@epa.gov. The contacts for PQR are Pamala Myers (wastewater) who can be reached at (404)562-9421 and by email at myers.pamala@epa.gov, and Mike Mitchell (storm water) who can be reached at (404)562-9303 and by email at mitchell.michael@epa.gov. To facilitate the on-site file and permit review and to ensure that we maintain effective and open communication between our offices, we will be coordinating with program contacts who have been identified by your management. We will also work closely with Robin Smith as the point of contact for management review.

Following the SRF file review, which is scheduled for late November, Region 4 will summarize findings and recommendations in a draft report. Your management and staff will be provided an opportunity to review the draft report and provide a response to the findings, which will be incorporated in the final report.

Region 4 and DENR are partners in carrying out the review. If any areas for improvement are identified, we will work with you to address them in the most constructive manner possible. As we have discussed, we are committed to conducting these reviews as efficiently as possible and we will work with your staff to ensure this is accomplished.

**Next Steps**

In October we will provide the DENR points of contact with an analysis of the SRF CWA, CAA and RCRA Data Metrics that will be used for the review, along with a list of selected facility enforcement files to be reviewed. Later in the fiscal year, the Regional PQR coordinator will provide a list of permits to be reviewed and contact you to set a schedule for the PQR file review. We will continue to work with your staff to coordinate convenient times for our on-site file reviews.

Should you have questions or wish to discuss this matter in greater detail, please feel free to contact either of us through Scott Gordon, Associate Director of OEA, at (404) 562-9741.

Sincerely,

/s/

Mary J. Wilkes
Regional Counsel and Director of the
Office of Environmental Accountability

/s/

James D. Giattina
Director
Water Protection Division

CAA DMA and File Selection correspondence
September 26, 2012

From: Mark Fite/R4/USEPA/US
To: michael.pjetraj@DENR.gov
Cc: Beverly Spagg/R4/USEPA/US, Dick DuBose/R4/USEPA/US, Wendell Reed/R4/USEPA/US@EPA, Steve Hitte/R4/USEPA/US, Becky Hendrix/R4/USEPA/US
Date: 09/26/2012 08:31 AM
Subject: North Carolina DMA and File Selection

Michael-

I've attached below the Data Metric Analysis (DMA) and file selection list for the Round 3 North Carolina SRF review. As we discussed, we plan to conduct the file review in your offices the week of November 26, 2012. The DMA is new for Round 3 (replaces the PDA used in Round 2). It provides our analysis of the verified data NC has entered into AFS for FY11, and highlights any potential concerns based on that data. I've also included the file selection logic, which explains the process used to select the files. The last attachment is the kick-off letter we sent to the DENR secretary on Monday.

It's my understanding that you will secure the files needed from your regional offices and make them available to us in either electronic or hard copy format at your office in Raleigh. As you may recall from the Round 2 review, we will want to look at documentation related to any inspections and formal or informal enforcement actions conducted at these sources during FY11. More specifically, for each source, please make available for our review the following types of documentation: inspection reports, notices of violation, compliance or administrative orders, penalty calculations, penalty justification, penalty payment documentation, stack test reports/reviews, Title 5 annual compliance certification reviews, etc. In addition, we'll also need access to the most recent Air permit for each source. If the state has developed or revised guidance or policy documents related to compliance and

enforcement, we will want copies of those as well (you can send those to me in advance, if you wish). Examples include penalty policies, inspection guidance, enforcement procedures, etc.

I wanted to confirm a few logistical details as well. Wendell Reed and I plan to fly from Atlanta to Raleigh on Monday morning (11/26). We haven't been able to book our flights yet, but if possible, let's tentatively plan an opening conference around 11 AM on Monday morning. I usually like to do a brief Power Point presentation at this meeting - do you have a proxima/projector we could use? (If not, I can bring one). We will also need an office or conference room in which to "spread out" and review files.

We'll also want to have a closing conference sometime Friday morning. My management likes to participate in these, so as we get closer to the date, we will want to firm up a mid-morning time slot (maybe 10 am) so we can get back to Atlanta that afternoon.

I look forward to seeing you again in November. Please let me know if you have any questions.

Mark J. Fite
Technical Authority (CAA, EPCRA, FIFRA, TSCA)
Enforcement & Compliance Planning & Analysis Branch
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth St., SW
Atlanta, GA 30303
fite.mark@epa.gov
404.562.9740

## CWA DMA and File Selection Correspondence
November 20, 2012

Jeff/Vanessa:

I've attached below the Data Metric Analysis (DMA) and file selection list for the Round 3 North Carolina SRF review. As we discussed, we plan to conduct the file review in your offices the week of January 7, 2013. The DMA is new for Round 3 (replaces the PDA used in Round 2). It provides our analysis of the verified data NC has entered into ICIS for FY11, and highlights any potential concerns based on that data. I've also included the file selection logic, which explains the process used to select the files. The last attachment is the kick-off letter we previously sent to the DENR secretary.

It's my understanding that you will secure the files needed from your regional offices and make them available to us in either electronic or hard copy format at your office in Raleigh. As you may recall from the Round 2 review, we will want to look at documentation related to any inspections and formal or informal enforcement actions conducted at these sources during FY11. More specifically, for each facility, please make available for our review the following types of documentation: inspection reports, notices of violation, compliance or administrative orders, penalty calculations, penalty justification, penalty payment documentation, etc. If the state has developed or revised guidance or policy documents related to compliance and enforcement, we will want copies of those as well (you can send those to me in advance, if you wish). Examples include penalty policies, inspection guidance, enforcement procedures, etc.

I wanted to confirm a few logistical details as well. Laurie Lindquist (the NC Pacesetter from the Clean Water Enforcement Branch) and I plan to be in your office Monday morning (1/7). Let's tentatively plan an opening conference around 9 AM on Monday morning. We will also need an office or conference room in which to "spread out" and review files during the week.

Additionally, since the SRF reviews are now being integrated with the Permit Quality Review (PQR), Region 4's Permit Program staff who will be conducting the PQR portion of the integrated SRF/PQR review will be likely be in the office to conduct the NC PQR.

We'll also want to have a closing conference sometime Friday morning. My management likes to participate in these, so as we get closer to the date, we will want to firm up a mid-morning time slot.

I look forward to seeing you January. Please let me know if you have any questions.

Thanks - Ron

Ronald J. Mikulak
Water Technical Authority
Enforcement & Compliance Planning and Analysis Branch
Office of Environmental Accountability
EPA - Region 4

COMMUNICATION WITH NC DENR ON RCRA FILE REVIEW
September 30, 2012

| | |
|---|---|
| From: | Shannon Maher/R4/USEPA/US |
| To: | dexter.matthews@DENR.gov, elizabeth.cannon@DENR.gov, mike.williford@DENR.gov, helen.cotton@DENR.gov |
| Cc: | Cesar Zapata/R4/USEPA/US@EPA, Nancy McKee/R4/USEPA/US@EPA, Steve Hitte/R4/USEPA/US@EPA, Becky Hendrix/R4/USEPA/US@EPA, Kelly Sisario/R4/USEPA/US@EPA, Doug McCurry/R4/USEPA/US@EPA |
| Date: | 09/13/2012 04:50 PM |
| Subject: | NC RCRA SRF - Data Metric Analysis & File Selections |

Hi everyone,

As discussed in the meeting between EPA Region 4 and NC DENR last week, the State Review Framework (SRF) Round 3 evaluation for NC DENR is scheduled to take place during the fall of 2012. Yesterday I confirmed with Dexter Matthews and Liz Cannon the dates for the RCRA file review, which will take place the week of November 26-30, 2012. To kick-off the SRF process, I am forwarding the following materials for your review:

(1) EPA's analysis of North Carolina's RCRA SRF data metrics (using the FY2011 "frozen data" on EPA's OTIS website);
(2) the files that have been selected for the SRF RCRA file reviews (40 total);
(3) the file selection logic document that provides the process used to select the files.

Nancy McKee, the EPA North Carolina State Coordinator from the RCRA & OPA Enforcement & Compliance Branch, will also take part in the file review. The opening conference would likely take place late morning/early afternoon on Monday, November 26, with an exit conference on Friday morning, November 30. To help frame the file review, if the state has developed guidance or policy documents related to compliance and enforcement, could you forward those to me in advance of the onsite visit? Examples include penalty policies, inspection guidance, enforcement procedures, etc., either specific to the RCRA program or for DENR in general.

After you have had time to review the materials, I would propose a conference call sometime in October to walk through the SRF data metrics and the file review process. I will be out of the office for the next couple of weeks, and will touch base with you when I return to work to see about setting up a call. I look forward to meeting with you in November, and please let me know if you have any questions.

Thanks,
Shannon Maher
U.S. Environmental Protection Agency - Region 4
Office of Environmental Accountability

TRANSMITTAL OF DRAFT REPORT TO NCDENR
April 19, 2013

To: mitch.gillespie@ncdenr.gov
Dear Mr. Gillespie:

As I had referenced in my telephone massage, attached is draft of the NC SRF review for your review and comment. We appreciate the cooperation from the staff at North Carolina DENR during the file reviews and report development. The professionalism and courtesy shown to EPA helped smooth the process tremendously.

EPA requests that DENR review the report, and where there are comments on the findings, provide these in the designated "State Response" section in each element in the report. DENR may also want to update the information that you provided previously for the General Program Review section (Appendix E). Comments on the draft SRF report are requested within 30 days and can be sent electronically to Becky Hendrix at hendrix.becky@epa.gov.

If your staff have specific questions related to the SRF findings, the SRF program reviewers can be contacted directly. Contact information is as follows:

CAA
Mark Fite
(404) 562-9740

CWA
Ron Mikulak
(404) 562-9233

RCRA
Shannon Maher
(404) 562-9623

In addition, Becky Hendrix, the SRF Coordinator, can set up a multi-party conference call if that would be beneficial.

As you know, the Round 3 review includes an NPDES Permit Quality Review (PQR). That review will be initiated later in the year, and the results will be included in the final report. DENR will have an

opportunity to review the PQR and provide comments before the report is finalized. Questions regarding the PQR should be addressed to Chris Thomas at thomas.chris@epa.gov, and (404) 562-9459

Please contact me if you have any questions about the report or need additional time for your review. You can reach me at (404) 562-9741. We look forward to working with you to finalize the review. Thank you for your cooperation on this effort. Scott Gordon

## Hines, Andrea

**From:** Ireland, Laurie
**Sent:** Tuesday, August 28, 2018 11:32 AM
**To:** Hines, Andrea
**Cc:** Gordon, Scott
**Subject:** Email pertaining to FOIA 18-010711 FW: NC /R4 EPA Enforcement Visit 2016
**Attachments:** 010_DEQ 2016-11-15 DEQ Differential Audit response to the EPA - cover letter.pdf; 011_2016 05 19 Ltr from EPA Reg 4 Preformance Review ocr.pdf; 020_CAA 2016-11-03 CAA Differential Audit response to the EPA.pdf; 021_CAA 2016-11-03 CAA ECHO.pdf; 022_CAA Penalty tree econ benefit.pdf; 030_CWA 2016-11-03 CWA Differential Audit response to the EPA.pdf; 031_CWA Example Sedimentation Construction Stormwater Inspection Report.pdf; 032_CWA Example Construction Stormwater General Permit NCG01 Permit Renewal 2016.pdf; 033_CWA Example Combined SPCA NPDES Construction NOV.pdf; 034_CWA Penalty_CPA_Guidelines 10.16.2015.pdf; 035_CWA Example Initial Penalty Worksheet LQS 16-001.pdf; 036_CWA Example Continuing Civil Penalty Worksheet.pdf; 037_CWA Example Civil Penalty Assessment Checklist.pdf; 038_CWA NC File Selection for Diff Oversight 102716.pdf; 039_CWA Draft Tiered Enforcement Guidance 091416.pdf; 040_RCRA 2016-11-03 RCRA Differential Audit response to the EPA.pdf; 041_RCRA Econmic Benefit Penalty Policy - EBN.pdf; 042_RCRA Pages from SL2013-413.pdf; 050_SL 2011-398 Report on Tiered Enforcement Policy Development.pdf

Andrea,

Below is NC's response to EPA regarding our Differential Oversight Review. However, the attached documents to the email are not opening for me. Not all of them are relevant to the FOIA as some of the individual files are related to Air and RCRA. However, I previously saved the relevant CWA documents and will forward in separate email. Wasn't sure if you needed the email thread itself (most of it also not relevant to request) for the FOIA.

Thanks,
Laurie

**From:** Pjetraj, Michael [mailto:michael.pjetraj@ncdenr.gov]
**Sent:** Tuesday, November 15, 2016 1:48 PM
**To:** Sisario, Kelly <Sisario.Kelly@epa.gov>
**Cc:** Scott, Michael <michael.scott@ncdenr.gov>; Ireland, Laurie <Ireland.Laurie@epa.gov>
**Subject:** RE: NC /R4 EPA Enforcement Visit 2016

Kelly, Scott & Laurie,
I received a late agenda addition request:
Michael – we have a Public Water Supply topic for the data discussion:
SDWIS – Enforcement Targeting Tool (ETT) priority system historic 1993 data clean up.

Also, DEQ management finalized the cover letter and contents for the 5/10/16 Differential Oversight Response Letter.

Please find a series of files attached.

I will have a printed copy available for you on Wednesday.

Thanks
Michael

**Michael Pjetraj, P.E.**
Stationary Source Compliance Branch Supervisor
Division of Air Quality
North Carolina Department of Environmental Quality

919-707-8497 office
michael.pjetraj@ncdenr.gov

217 West Jones Street
1641 Mail Service Center
Raleigh, NC 27699-1641

Nothing Compares

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**From:** Sisario, Kelly [mailto:Sisario.Kelly@epa.gov]
**Sent:** Tuesday, November 01, 2016 10:44 AM
**To:** Pjetraj, Michael <michael.pjetraj@ncdenr.gov>
**Subject:** RE: NC /R4 EPA Enforcement Visit 2016

We can work all of these in.....thanks!

**From:** Pjetraj, Michael [mailto:michael.pjetraj@ncdenr.gov]
**Sent:** Tuesday, November 1, 2016 9:50 AM
**To:** Sisario, Kelly
**Subject:** RE: NC /R4 EPA Enforcement Visit 2016

Kelly,
Apologies for the earlier email – I did not intend to hit send.

Here are the additional items we would request on the agenda.
Thank you

- An update on the new EJ 2020 initiative by EPA and how it impacts compliance programs.
- Training opportunities on economic benefit calculation including BEN & other methodologies
- Request the EPA discuss the SDWA items early on in the meeting so that the public water supply staff can attend the portion they are needed

**Michael Pjetraj, P.E.**

Stationary Source Compliance Branch Supervisor
Division of Air Quality
North Carolina Department of Environmental Quality

919-707-8497 office
michael.pjetraj@ncdenr.gov

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**From:** Sisario, Kelly [mailto:Sisario.Kelly@epa.gov]
**Sent:** Wednesday, October 26, 2016 8:21 AM
**To:** Pjetraj, Michael <michael.pjetraj@ncdenr.gov>
**Subject:** Re: NC /R4 EPA Enforcement Visit 2016

Michael,
We will have a short discussion on SDWA during the meeting. It is listed under Regional Priorities in the attachment to the annual letter. We can put that topic earlier or later in the meeting if Jay wants to bring in someone just for the SDWA discussion.
Kelly

On Oct 26, 2016, at 7:30 AM, Pjetraj, Michael <michael.pjetraj@ncdenr.gov> wrote:

> Hello Kelly,
> Can you assist me with Jay's question below?
> I agree with Jay that only CWA issues will be discussed, but please verify.
>
> Thanks
> Michael
>
> **Michael Pjetraj, P.E.**
> Stationary Source Compliance Branch Supervisor
> Division of Air Quality
> North Carolina Department of Environmental Quality
>
> 919-707-8497 office
> michael.pjetraj@ncdenr.gov
>
> 217 West Jones Street
> 1641 Mail Service Center
> Raleigh, NC 27699-1641
>
> <image002.png>

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**From:** Zimmerman, Jay
**Sent:** Tuesday, October 25, 2016 10:52 AM
**To:** Pjetraj, Michael <michael.pjetraj@ncdenr.gov>
**Subject:** RE: NC /R4 EPA Enforcement Visit 2016

Michael,

Can you touch base with the EPA and determine (from a DWR perspective) whether the meeting will focus primarily on issues related to the Clean Water Act or Safe Drinking Water Act programs? I think historically these meetings focused on wastewater related issues (CWA) and not on the public water supply (SDWA), but I order for me to prepare I'd like to make sure.

Thanks
J

S. Jay Zimmerman, P.G.
Director
Division of Water Resources
1617 Mail Service Center, Raleigh, NC 27699-1617
Ph# (919) 707-9027
web page: http://www.ncwater.org/

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**From:** Pjetraj, Michael
**Sent:** Tuesday, October 25, 2016 7:55 AM
**To:** Davis, Tracy <tracy.davis@ncdenr.gov>; Zimmerman, Jay <jay.zimmerman@ncdenr.gov>; Scott, Michael <michael.scott@ncdenr.gov>; Holman, Sheila <sheila.holman@ncdenr.gov>; Reeder, Tom <tom.reeder@ncdenr.gov>; Culpepper, Linda <linda.culpepper@ncdenr.gov>
**Cc:** Vandervaart, Donald <donald.vandervaart@ncdenr.gov>; Evans, John <john.c.evans@ncdenr.gov>; Bush, Ted <ted.bush@ncdenr.gov>
**Subject:** RE: NC /R4 EPA Enforcement Visit 2016

Hello,
The NC / EPA Region 4 Enforcement visit is scheduled for Wednesday 11/16

Kelly Sisario, EPA, sent me an email yesterday (see below) requesting any DEQ agenda topics.
Please forward any items that you would like to include on the agenda by this Friday 10/28/16.

Thank you
Michael

**Michael Pjetraj, P.E.**
Stationary Source Compliance Branch Supervisor
Division of Air Quality

North Carolina Department of Environmental Quality

919-707-8497 office
michael.pjetraj@ncdenr.gov

217 West Jones Street
1641 Mail Service Center
Raleigh, NC 27699-1641

<image001.png>

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**From:** Sisario, Kelly [mailto:Sisario.Kelly@epa.gov]
**Sent:** Monday, October 24, 2016 3:08 PM
**To:** Pjetraj, Michael <michael.pjetraj@ncdenr.gov>
**Cc:** Gordon, Scott <Gordon.Scott@epa.gov>
**Subject:** NC Annual Enforcement Meeting

Hey Michael,
I am starting to pull together the Agenda, Annual Data Metrics Analysis and Trend Data to send to you all a couple weeks ahead of our meeting in the middle of November. Do you all have any agenda topics you would like to include? Also, do you still plan to send the NC response to the Differential Oversight letter to us prior to the meeting? It would be helpful for us to have it at least 10-14 days before so we can be prepared for our discussion.
Thanks,
Kelly

-----Original Appointment-----
**From:** Pjetraj, Michael
**Sent:** Thursday, September 08, 2016 1:45 PM
**To:** Davis, Tracy; Zimmerman, Jay; Scott, Michael; Holman, Sheila; Reeder, Tom
**Cc:** Vandervaart, Donald; Evans, John; Bush, Ted
**Subject:** NC /R4 EPA Enforcement Visit 2016
**When:** Wednesday, November 16, 2016 12:30 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** DENR_GS - Rm 4001 - 20 Seats - Cardinal

Hello,

The EPA Region 4 Enforcement meeting is typically attended by EPA representatives, a representative from the DEQ Secretary's Office; Directors from DAQ, DWR, DEMLR, DWM and DEACS. EPA representatives will include Scott Gordon, Kelly Sisario, and Lori Ireland. Kelly indicated that they are available the week of November 14th:

- Monday 11/14 PM
- Tuesday 11/15

- Wednesday 11/16
- Thursday 11/17 – must leave in the afternoon

In viewing all of your calendars, Wednesday November 16th in the afternoon was the best fit. Please reply quickly so that I can confirm with Region 4 & they can make travel arrangements.

Kelly indicated the meeting will last 3-4 hours. The agenda will likely include National Enforcement Initiatives, Regional priorities, EPA review of NC data submittals, and observed NC data trends. Please forward to me any agenda items that you would like to discuss.

As you know, I will be coordinating the response to the EPA's Differential Oversight Audit of the DEQ Divisions. The response will be a part of the discussion with Region 4. I have had an initial meeting with DEMLR and DWR. I will be meeting with DWM this Friday & plan to have follow up meetings with DWR. I plan to create a draft response that I can provide to the EPA prior to the November meeting. More information to come...

We are currently scheduled for the 4th floor conference room. I have contacted Mallori Morris & if the Executive Board Room becomes available, I will adjust the meeting invite.

Thanks in advance for your follow-up, and let me know if you have questions.

**Michael Pjetraj, P.E.**
Stationary Source Compliance Branch Supervisor
Division of Air Quality
North Carolina Department of Environmental Quality

919-707-8497 office
michael.pjetraj@ncdenr.gov

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Environmental
Quality

PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

November 15, 2016

J. Scott Gordon, Director
Office of Enforcement Coordination
US EPA Region 4
Atlanta Federal Center
61 Forsyth St.
Atlanta Georgia 30303-8960

Dear Mr. Gordon:

We appreciate your May 10, 2016 letter detailing your review of the annual data metrics. While your review was focused on the North Carolina Department of Environmental Quality (DEQ) enforcement, it is important to realize that environmental quality is the ultimate measure of a program's effectiveness. Enforcement should not be evaluated separately because it is only a single element of an overall strategy to protect the environment. That strategy includes enforcement, planning, monitoring, rule development, outreach, training, permitting, education, and scientific analysis.

Separately, evaluating a single element of an overall strategy is of limited value particularly when the overall strategy has resulted in unquestionable success, like in North Carolina. It might be appropriate to review a state's strategy, and elements of that strategy, when the strategy has been demonstrated to be ineffective like California and New York. For example, in those states the strategies put in place for air quality have resulted in decades of failure to achieve the National Ambient Air Quality Standards (NAAQS). In contrast, North Carolina's air quality strategy has proven to be successful where it matters.

North Carolina meets all federal NAAQS for the first time in over 20 years and there have been similar successes. Compliance rates in our water program are up and drinking water supplies are the safest they have been in decades. In 2016 North Carolina passed the Connect NC bond that will invest over $300 million in water infrastructure needs across the state. With respect to coal ash, North Carolina was the first state to comprehensively address this issue which had been ignored for decades by both state and federal officials.

Of particular concern with respect to differential oversight was the isolated use of metrics and the drawing of inferences or conclusions based on this raw data. For instance, your May 10, 2016 letter observes, quite correctly, a "drop in enforcement outputs." However, the number of enforcement actions does not translate into environmental quality. In fact, the most obvious answer to explain a drop in enforcement outputs is an increase in compliance. The drop is due both to historical enforcement efforts as well as outreach, training, permitting, and better

communication. This overall strategy has increased compliance rates in North Carolina resulting in better environmental outcomes.

Your letter sought to better understand the impact of the tiered enforcement program implemented in North Carolina in 2012. That program, as part of an overall strategy to protect the environment, has been very successful. The tiered enforcement allows staff to quickly identify less environmentally impactful deficiencies and spend more time addressing more serious issues. As an enforcement management mechanism, the tiered approach has resulted in better environmental outcomes. Rather than simply amassing more administrative actions, North Carolina's tiered enforcement specifically eschews expending resources, like uploading databases, on minor deficiencies and instead focuses on actual environment outcomes.

We believe that the primary benefit of the review is the realization that the current differential oversight review process focuses too much on data metrics and less on environmental outcomes. Given the overall success of North Carolina's environmental programs we believe our agencies can work together to improve the oversight process so that it takes into account environmental quality rather than bureaucratic notches.

Thorough evaluation and insightful critiques of North Carolina's environmental regulatory programs is always welcome. DEQ strives to be a leader in the southeast and across the nation in regulatory program implementation. As you will see in the following responses, there are many items that we can agree on. There are other areas that we will continue to evaluate. We will always ensure that protection of the environment and sound scientific analysis are the standards that will guide our decisions.

One issue that was identified across multiple DEQ programs, as well as a national issue, is the determination of economic benefit associated with a violation. DEQ is seeking training for staff to better determine the economic benefit associated with a violation. We request and welcome EPA's assistance in providing this training.

We can agree that DEQ and EPA will continue to work on resolving any outstanding issues. We look forward to our meeting in Raleigh later this month.

Sincerely,

Donald R. van der Vaart

Enclosure

cc: Mr. John Evans, Chief Deputy Secretary

cc: Mr. Tom Reeder, Assistant Secretary for the Environment
Ms. Sheila Holman, Director, Division of Air Quality
Mr. Michael Scott, Director, Division of Waste Management
Mr. Jay Zimmerman, Director, Division of Water Resources
Mr. Tracy Davis, Director, Division of Energy, Mineral & Land Resources

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

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MAY 19 2016

Department of Environment
and Natural Resources

MAY 10 2016

Mr. Donald R. van der Vaart
Secretary
North Carolina Department of Environmental Quality
217 West Jones Street
Raleigh, North Carolina 27603

Dear Mr. van der Vaart:

I am writing as a follow up to our discussions last November concerning the initial findings of the Environmental Protection Agency Region 4 differential oversight review of the North Carolina Department of Environmental Quality (NCDEQ) enforcement programs. The EPA initiated the review in response to performance trends observed in NCDEQ's State Review Framework (SRF) metrics during the Annual Data Metrics Analysis (ADMA). The FY14 ADMA for North Carolina revealed significant downward trends over the prior four years (FY11-FY14) in several key enforcement related metrics, including drops in informal and formal enforcement actions, penalties, and significant non-compliance designations. The drop in enforcement outputs and outcomes coincides with several legislative and policy changes made in 2011 which became effective in FY12.

The EPA notified NCDEQ in early 2015 that additional review was needed to determine if the State was meeting its delegated responsibilities for compliance assurance implementation. To advance EPA's understanding of NCDEQ's programs, review teams consisting of Office Enforcement Coordination (OEC) staff and representatives for the Clean Air Act (CAA), Clean Water Act (CWA) and Resource Conservations and Recovery Act (RCRA) conducted a differential oversight review of records of recent violations and enforcement activities. These reviews were completed in FY15, and a summary of the results was shared with your senior enforcement managers in our annual EPA/State compliance assurance meeting on November 9, 2015.

While there is still much work to be done, I am encouraged to see recent improvements reflected in the oversight file reviews and some of the FY15 ADMA metrics, and I wanted to acknowledge the progress in these areas. These improvements are a step in the right direction and I hope they can form the foundation for further progress. However, consistent with the Agency's **National Strategy for Improving Oversight of State Enforcement Performance,** the EPA will continue to pursue appropriate escalation actions to address the concerns we have identified if adequate progress is not made.

These efforts may include additional EPA Oversight of inspections and enforcement, independent EPA actions, and reviews of program authorization.

My sense from our meeting in November was that NCDEQ enforcement managers agreed with the EPA's findings and sought specific input on areas of resolution. I look forward to establishing specific steps toward improvement. As always, feel free to contact me to discuss any ideas or concerns.

Sincerely,

J. Scott Gordon
Director
Office of Enforcement Coordination

Enclosure

cc: Mr. John Evans, Chief Deputy Secretary
Mr. Tom Reeder, Assistant Secretary for the Environment
Ms. Sheila Holman, Dir4ector, Division of Air Quality
Mr. Michael Scott, Director, Division of Waste Management
Ms. Kim Colson, Director, Division of Water Infrastructure
Mr. Jay Zimmerman, Director, Division of Water Resources
Mr. Tracy Davis, Director, Division of Energy, Mineral & Land Resources

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and Natural Resources

**Enclosure**

EPA's expectations for the performance of North Carolina's compliance assurance programs are laid out in a collection of program-specific agreements and national policy documents for each program, including, but not limited to the documents indicated below:

Overarching:

- Revised Policy Framework for State/EPA Enforcement Agreements
- Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Agreements

CAA:

- NCDEQ Air Planning Agreement for the CAA Section 105 grant
- NCDEQ CAA Compliance Monitoring Strategy (CMS) Plan
- Clean Air Act Stationary Source Compliance Monitoring Strategy
- Timely and Appropriate Enforcement Response to High Priority Violations
- Guidance on Federally-Reportable Violations for Clean Air Act Stationary Sources

CWA:

- NCDEQ CWA Section 106 grant work plan
- NCDEQ NPDES EMS Plan
- NCDEQ/Region 4 CWA Memorandum of Agreement
- CWA NPDES Compliance Monitoring Strategy
- CWA NPDES Enforcement Management System

RCRA:

- NCDEQ RCRA grant work plan
- NCDEQ/Region 4 RCRA Memorandum of Agreement
- Compliance Monitoring Strategy for the RCRA Subtitle C Program and Appendices
- RCRA Hazardous Waste Enforcement Response Policy
- RCRA Civil Penalty Policy

EPA evaluated the performance of North Carolina's major regulatory programs during the Round 3 SRF review, which was completed in September 2013 based on FY2011 activities. The following areas were identified as the priority issues affecting the State's performance:

- For all three media (CAA, CWA, & RCRA), improvement was needed in the documentation of penalty calculations, to include the consideration of economic benefit and the rationale for any difference between the initial and final penalty assessed;
- Improvement was needed in the accuracy of data entry in the NPDES Integrated Compliance Information System (ICIS-NPDES);
- Improvement was needed in the timeliness and appropriateness of CWA enforcement actions, and these actions needed to promote a return to compliance.

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A summary of all of the findings is included in the table below:

| Review Element | CWA | CAA | RCRA |
|---|---|---|---|
| Element 1 - Data Completeness | Meets | Meets | Meets |
| Element 2 - Data Accuracy | Improvement | Attention | Meets |
| Element 3 - Timeliness of Data Entry | No Finding | Meets | No Finding |
| Element 4 - Completion of Commitments | Attention | Meets | Meets |
| Element 5 - Inspection Coverage | Meets | Meets | Improvement |
| Element 6 - Quality of Inspection Reports | Improvement | Meets | Meets |
| Element 7 - Identification of Violations | Meets | Attention | Meets |
| Element 8 - Identification of HPVs | Meets | Meets | Meets |
| Element 9 - Enforcement Promotes Compliance | Improvement | Meets | Meets |
| Element 10 - Timely and Appropriate Action | Improvement | Meets | Meets |
| Element 11 - Penalty Calculation Method | Improvement | Improvement | Improvement |
| Element 12 - Final Penalty Assessment & Collection | Attention | Meets | Meets |

Despite progress in addressing some of the areas for improvement, EPA observed significant downward trends in NCDEQ's performance metrics during the FY14 Annual Data Metrics Analysis (ADMA). Between the years of FY11 to FY14, several key enforcement related metrics showed a significant decline, including drops in informal and formal enforcement actions[1], penalties, and significant non-compliance designations.

This drop in North Carolina's enforcement outputs and outcomes coincides with several legislative and policy changes made in 2011 which became effective in FY12. First, North Carolina's Regulatory Reform Act of 2011 (Session Law 2011-398) required the Secretary to "develop a uniform policy for notification of deficiencies and violations for all regulatory programs within the Department…"[2] The resulting Uniform Violation Notification Policy for the Department of Environment and Natural Resources (often referred to as the "Tiered Enforcement Policy") asserts "that violations of rules typically fit into three categories – 1. Recordkeeping and paperwork that result in little or no harm to the environment or public health; 2. More serious infractions that could result in harm to the environment or public health; and 3. Violations that have clearly impacted the environment or public health. The policy will formally recognize the tiered approach, so that a "Tier 1" violation will be met with a less severe response than a "Tier 3" violation."[3]

The policy also establishes three forms of notice which generally correlate with these violation tiers: Notice of Deficiency (NOD) for Tier 1 violations; Notice of Violation (NOV) for Tier 2 violations; and Notice of Recommendation for Enforcement for Tier 3 violations, which is typically accompanied by a subsequent civil penalty assessment.[4]

Our data analysis and differential oversight reviews identified several direct consequences of the application of NCDEQ's Tiered Enforcement Policy which we believe weaken the State's compliance assurance programs. First, fewer violations are being reported to EPA (and the public) due to the fact

[1] NCDEQ has asked EPA for clarification on the definition of formal enforcement. This varies by program, but EPA has prepared the document Informal and Formal Enforcement Action Definitions which may provide some clarity.
[2] North Carolina Session Law 2011-398, Section 61.
[3] Uniform Violation Notification Policy for the Department of Environment and Natural Resources, p. 2.
[4] *Ibid.*

that NODs are not being entered into the national data systems. This practice not only falls short of EPA's policy expectations (e.g. CAA FRV policy), but it significantly reduces transparency to both EPA and the public. Next, our review confirmed that numerous sources were cited for violations utilizing the NOD or NOV, sometimes on multiple occasions, but without appropriate escalation to the more severe formal enforcement response, which compromised a key goal of "credible national deterrence to noncompliance."[5] Evidence of this was that sources were frequently cited multiple times for the same types of violations.

Another significant legislative development in 2011 which had direct impacts to NCDEQ's enforcement programs was the passage of North Carolina Session Law 2011-145, which amends Part 1 of Article 7 of Chapter 143B of the General Statutes by adding a new section as follows:

> "§ 143B-279.16. Civil penalty assessments.
>
> (a) The purpose of this section is to provide to the person receiving a notice of violation of an environmental statute or an environmental rule a greater opportunity to understand what corrective action is needed, receive technical assistance from the Department of Environment and Natural Resources, and to take the needed corrective action. It is also the purpose of this section to provide to the person receiving the notice of violation a greater opportunity for informally resolving matters involving any such violation.
>
> (b) In order to fulfill the purpose set forth in subsection (a) of this section, the Department of Environment and Natural Resources shall, effective July 1, 2011, extend the period of time by 10 days between the time the violator is sent a notice of violation of an environmental statute or an environmental rule and the subsequent date the violator is sent an assessment of the civil penalty for the violation."[6]

Based on our differential oversight review findings, NCDEQ's implementation of this legislative action has resulted in fewer formal penalty actions being issued. Again, this raises concerns about effective deterrence and providing a "level playing field" for sources throughout the country.

Keeping in mind the Federal policy frame outlined here, as well as the recent state legislative and policy revisions discussed, we have summarized our program specific findings below, with recommended next steps for each area of concern.

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[5] Revised Policy Framework for State/EPA Enforcement Agreements, p. 1.
[6] North Carolina Session Law 2011-145, p. 164.

## Clean Air Act

**Background:** The FY14 Clean Air Act ADMA revealed significant downward trends over the prior four years in several key metrics, with a precipitous drop occurring between FY13 and FY14. As an example, CAA metric for assessed penalties dropped by 93% statewide, from about $235,000 in FY11 to just under $17,000 in FY14. During the same period, the number of facilities with informal and formal enforcement actions also dropped dramatically (52% and 79%, respectively). In addition, facilities with an HPV determination dropped by 64%. Though EPA makes HPV determinations on behalf of NC, this drop in HPVs results from fewer NOVs being presented to EPA for review.

| Metric ID | Metric Name | 2011 | 2012 | 2013 | 2014 |
|---|---|---|---|---|---|
| 1e2 | Number of Facilities with an Informal Enforcement Action (Facility Count) | 124 | 73 | 61 | 59 |
| 1f1 | Number of HPVs Identified (Activity Count) | 12 | 13 | 8 | 4 |
| 1g1 | Number of Formal Enforcement Actions Issued to Tier I Facilities (Activity Count) | 15 | 14 | 12 | 9 |
| 1g2 | Number of Tier I Facilities Subject to a Formal Enforcement Action (Facility Count) | 14 | 10 | 12. | 3 |
| 1h1 | Total Amount of Assessed Penalties | $235,159 | $95,356 | $97,629 | $16,865 |
| 1h2 | Number of Formal Enforcement Actions with an Assessed Penalty | 13 | 9 | 11 | 3 |
| 8a | HPV Discovery Rate Per Major Facility Universe | 3.1% | 2.8% | 2.4% | 0.9% |

The Division of Air Quality (DAQ) revised their Facility Guidelines, Penalty Tree, and Open Burning Guidelines on March 19, 2012, to address the requirements of the Tiered Enforcement Policy. EPA applauds NCDEQ's development of a penalty policy, which is encouraged in EPA's guidance entitled "Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Agreements", which states the following:

> "State and local enforcement agencies are strongly encouraged to develop written penalty policies, criteria, or procedures for penalty assessments. EPA will then review and evaluate, but not formally approve, these penalty policies, criteria or procedures for consistency with the general penalty criteria...."[7]

However, Region 4 was not given an opportunity to review these revisions, which would have put us on notice about the potential impacts of the Tiered Enforcement Policy, and given us a chance to provide feedback with respect to the policy's compliance with EPA guidance and penalty criteria.

[7] Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Agreements, p. 2.

To further evaluate whether the drop in enforcement was warranted, EPA staff conducted a differential oversight review of 20 sources with recent violations and enforcement activities. A summary of the key findings is outlined below.

**Outstanding issues:**

**Element 3 – Violations:** Inaccurate determination/failure to report FRVs and HPVs

Half of the facilities reviewed had either a missing FRV or HPV. Although many violations identified as "Tier 1" according to the Tiered Enforcement Policy may be federally reportable violations, DAQ did not report these violations into ICIS-Air when they were cited using a NOD. In addition, DAQ has historically relied on EPA to enter HPV data into the national system, but changes are needed to the protocols for reporting to ensure that HPVs are properly entered in the new data system. Missing HPV: *Darnel, Mann & Hummel; Momentive Specialty Chemicals; Stericycle.* Missing FRV: *Domtar; Iredell; J.T. Russell; Lampe & Malphrus; OMNOVA; Unilin*

Next Steps:

- DAQ is required to report FRVs into ICIS-Air. Many of the violations DAQ cites in NODs are specifically identified as FRVs in the new FRV policy, including late reports, late source tests, and failure to maintain records, and DAQ has not been reporting these FRVs into ICIS-Air. DAQ needs to immediately begin reporting all FRVs, including those addressed by a NOD, into ICIS-Air.
- EPA strongly recommends that DAQ begin reporting HPVs into ICIS-Air as soon as the needed programing is completed. EPA also notes that DAQ is required to enter all MDR data for all enforcement actions, including both informal and formal enforcement actions.

**Element 4 – Enforcement:**

**Metric 9a - Enforcement actions that do not return sources to compliance**

**Chronic non-compliance not addressed through appropriate escalation and deterrence**

During the differential oversight review, EPA identified 12 sources which were repeatedly cited by DAQ for non-compliance, often for similar offenses, but without any formal action. When escalation occurred, it did not ultimately result in a formal penalty action being taken. These sources included the following: *Darnel, Domtar, Enviva, Glenoit, Goldsboro, Iredell, Special Fab, Mann & Hummel, Murphy Brown, OMNOVA, North Carolina Central University, and Unilin.*

**Inconsistent application of state enforcement policies**

The differential oversight review identified several facilities for which the Tiered Enforcement Policy or Facility Guidelines, Penalty Tree, and Open Burning Guidelines were not consistently applied, or where the appropriate escalation prescribed by the policy were relaxed even when sources had poor compliance records. Facilities where EPA noted this occurrence include the following: *Domtar, Glenoit, Goldsboro,*

*J.T Russell, Lampe & Malphrus, Momentive, Murphy Brown, North Carolina Central University, Stericycle, and Unilin.*

Next Steps:

- The Tiered Enforcement Policy provides for both adequate compliance and deterrence actions to be effectively taken. Penalties can be sought after just one prior notice to the company, but DAQ is not exercising this discretion. EPA recommends utilizing the discretion available to DAQ within the policy to enhance environmental protection, while maintaining compliance with existing enforcement agreements and policy documents.
- Repeat violations can be an indication of ineffective environmental management by industry all the way up to systematic and/or intentional non-compliance. EPA recommends that DAQ take a broader view of a company's compliance record to ensure that these issues are addressed.

**Element 5 – Penalties:**

**Metric 11a: Economic benefit is not adequately calculated or assessed**

The Round 3 SRF review identified economic benefit in penalties as an Area for State Improvement. The differential oversight review confirmed that DAQ efforts to calculate, assess and recover economic benefit are not adequate and consistent with EPA policy, as indicated by the following examples:

For the N.S. Flexibles case (SOC 2014-002), the source exceeded its PSD-avoidance limit for VOCs, which should have automatically triggered PSD permitting and BACT analysis for VOCs. Instead, DAQ entered into an SOC with the facility, allowing them to continue operations and apply for either a Plant-wide Applicability Limit (PAL) or a PSD permit. In the interim, DAQ assessed stipulated penalties ($1000/mo.) for each month the source exceeded its limit. DAQ describes this as the "pragmatic approach" of enforcing on the facility while allowing operations to continue. No effort was made by DAQ to calculate the economic benefit associated with continued operation of the facility above the applicable emission limit, so it is unclear whether the penalty of $10,000 is adequate to recover the economic benefit gained.

For a second facility, Domtar, DAQ identified PSD violations. The company built a lignin solids removal plant (LSRP) without going through the PSD permitting process, asserting to DAQ that no actual emissions increases (above the significance threshold) would result from the project. However, increases in H2S and TRS (total reduced Sulphur) did occur, and the company operated throughout 2013 and 2014 before contacting DAQ and reducing production levels. DAQ entered an SOC with the company (SOC 2015-01) which allows the company to take the LSRP to full production, resulting in an estimated 24.7 tpy of TRS and 22.7 tpy of H2S emissions. The SOC establishes a compliance schedule and assesses a penalty of $100,000, which clearly does not recover the economic benefit associated with plant operations beginning in February 2013 and continuing through the June 2018 compliance date in the SOC.

In the Carl Rose case, after failing a PM source test, the source continued operating for 7 months before successfully passing a retest. DAQ's penalty of $2,000 was taken from the penalty matrix, but did not reflect any consideration for the economic benefit associated with continued operation in the interim.

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Next Steps:

- Provide EPA with the current policy and procedures in place related to calculation, assessment, and recovery of economic benefit.
- If no coherent policies or procedures are in place, work with EPA to develop them consistent with the expectations laid out in EPA's "Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Agreements".[8]

[8] *Ibid*, p. 5

Clean Water Act

**Background:** The FY14 Clean Water Act (CWA) Annual Data Metrics Analysis (ADMA) revealed a downward trend over FY11-FY14 in enforcement related metrics. For example, the total penalties assessed in FY14 at facilities with National Pollutant Discharge Elimination System (NPDES) permits are 58% lower than those assessed in FY11. The number of penalty enforcement actions decreased 46% from FY11 to FY14.

| Metric ID | Metric Name | 2011 | 2012 | 2013 | 2014 |
|---|---|---|---|---|---|
| 1f1 | Facilities with Formal Actions | 213 | 166 | 135 | 119 |
| 1f2 | Total Number of Formal Actions at CWA NPDES Facilities | 412 | 342 | 287 | 221 |
| 1g1 | Number of Enforcement Actions with Penalties | 405 | 289 | 285 | 219 |
| 1g2 | Total Penalties Assessed | $497,582 | $417,499 | $328,180 | $210,437 |
| 10a1 | Major facilities with Timely Action as Appropriate | 18.2% | 0% | 0.50% | 0% |

In August 2015, EPA Region 4 conducted a Differential Oversight (DO) review of 33 CWA enforcement files to evaluate if the state's enforcement responses followed NCDEQ's policies and were consistent with EPA's 1989 Enforcement Management System (EMS): NPDES Enforcement Response Policy as well as NCDEQ's EMS plan. Files reviewed included conventional major and minor wastewater facilities, and construction, industrial, and Municipal Separate Storm Sewer System (MS4) stormwater facilities. Of the 33 NPDES files reviewed, EPA found that the State issued numerous NOVs and/or Civil Penalty Assessments (CPAs) to a facility with no return to compliance. In addition, EPA observed multiple construction stormwater inspections with non-compliance noted at a single facility without any enforcement response. A summary of the key findings is outlined below.

**Outstanding issues:**

**Element 2 – Inspections**

**Metric 6a - Inspection reports are not complete and sufficient to determine compliance at the facility**

EPA reviewed inspection reports for completeness and as the foundation for any State enforcement response. Two major observations were noted:

- Construction stormwater: The State's inspection reports often identified areas of noncompliance; however, once an area of noncompliance was identified, the subsequent inspection report did not note if that area of noncompliance had been addressed by the facility.
- MS4: The four MS4 audit/inspection reports reviewed contained little to no information to make a compliance determination; only the date and time of the inspection and the facility name and location were included in the reports. All four inspections were done on the same day during the same time frame.

> "Three objectives should be met during a routine compliance inspection [and] the inspection should be performed in a manner designed to: (1) Determine compliance status with regulations, permit conditions, and other program requirements; (2) Verify the accuracy of information submitted by permittees; and (3) Verify the adequacy of sampling and monitoring conducted by the permittee." [9]

- Based on the content of the inspection reports, the Region does not consider these inspections to meet the requirements of EPA's Inspection Manual for a Compliance Evaluation Inspection or an MS4 audit.[10]

Next Steps:

- Develop and implement procedures to ensure complete and sufficient inspection reports for both wastewater and stormwater programs.
- Conduct inspector training for state inspectors to ensure base knowledge and consistent implementation of inspection procedures.

## Element 4 – Enforcement

### Metric 9a - Enforcement responses do not demonstrate a return to compliance

The DO review found that in the 24 files in which a return to compliance was evaluated, 10 of the files were determined to demonstrate a return to compliance (42%).

### File Metric 10b - Enforcement responses do not address violations in an appropriate manner

The DO review evaluated 26 files for appropriate enforcement responses; eight of those files were determined to have an appropriate enforcement response. Four of the 26 files contained formal enforcement actions.

The SRF Round 3 review previously identified File Metrics 9a and 10b as Areas for State Improvement, and EPA recommended the use of timely and appropriate formal enforcement actions to promote a return to compliance. In its "National Guidance for Oversight of NPDES Programs," EPA defines a formal action as "one that requires actions to achieve compliance, specifies a timetable, contains

[9] NPDES Compliance Inspection Manual, p. 1-1.
[10] MS4 Program Evaluation Guidance, p. 23

consequences for noncompliance that are independently enforceable without having to prove the original violation, and subjects the person to adverse legal consequences for noncompliance."[11]

The State often does well at notifying a permittee of violations, a critical first step toward compliance; however, as observed during the review, the State often issued numerous NOVs and/or CPAs, which are both informal actions[12], to a facility with no apparent return to compliance. For example, the Hermitage House Rest Home Wastewater Treatment Plant (WWTP) was issued 22 NOVs and 15 CPAs in one fiscal year with no return to compliance. Lake Lure WWTP and Phillips Plating Company are other examples where numerous informal actions were issued and no return to compliance was achieved. In the six construction stormwater files, EPA observed that the State either issued numerous Inspection Reports indicating noncompliance with no enforcement response and no apparent return to compliance; or the State issued a NOV with a return to compliance date-certain and then documented continued noncompliance after that compliance date had passed, with no additional enforcement follow-up.

Four files reviewed contained formal enforcement actions, such as a Special Order on Consent (SOC) or a Settlement Agreement. One file, Richlands WWTP, was issued a Special Order on Consent; however, the facility failed to meet the established milestone dates and only returned to compliance when the NPDES permit was rescinded and a new WWTP came online.

As mentioned previously, the State issued numerous NOVs and/or CPAs with no apparent escalation to the next level of enforcement response. While Tier 3 of the Tiered Enforcement Policy allows for a "Notice of Recommendation for Enforcement Action", it does not describe what that enforcement action would be. There also appears to be little or no follow-up once the State has already issued numerous CPAs under Tier 3. For example, eight files reviewed had more than one CPA issued per year to a facility. While penalizing the source may be appropriate as an initial response to promote compliance, the state may need to take additional measures to ensure that sources with repeated violations are brought back into compliance.

Five of the six construction stormwater files reviewed were determined to have numerous inspections with noncompliance with no NPDES enforcement response. One construction stormwater file, ONSLO-2012-081, had eight consecutive inspections documenting noncompliance without an NPDES enforcement response. Another construction stormwater file, WAKE-2014-046, had an NOV with a return to compliance date-certain, and a subsequent inspection noted additional violations, but there was no escalation of enforcement response or additional action.

The move of the stormwater enforcement programs from the Division of Water Resources (formerly the Division of Water Quality) to the Division of Energy, Minerals, and Land Resources appeared to result in some confusion related to enforcement protocols. EPA maintains that the expectations outlined in the CWA MOA and the ERP should remain unchanged despite the organizational changes.

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[11] National Guidance for Oversight of NPDES Programs, p. 19

[12] The 2011 Division of Water Quality (DWQ) EMS lists NOVs and CPAs as examples of informal enforcement actions in Table 1. DWQ NPDES Program Enforcement Response Guide

Next Steps for Enforcement:

- Develop and implement enforcement actions that meet EPA's definition of formal enforcement and promote a return to compliance for both wastewater and stormwater facilities
- Revise the EMS to incorporate changes resulting from the NCDEQ reorganization (i.e. moving stormwater enforcement program to the Division of Energy, Minerals, and Land Resources), and to address the Tiered Enforcement Policy, such that implementation of NC enforcement programs meet EPA policy expectations.

## Element 5 – Penalties

**Metric 11a - Penalty calculations do not document and include gravity and economic benefit:** Similar to the findings of the Round 3 SRF Report, most of the files did not contain penalty calculations. Of the eleven files reviewed in which penalty calculations were evaluated, two files were determined to include penalty calculations (18%).

**Metric 12a – No documentation of the rationale for difference between initial penalty calculation and final penalty**

The files did not regularly document the rationale for the difference between the initial and final assessed penalty. In several files, the facility provided documentation while requesting a remission of the penalty, but the State did not document the rationale for remitting the penalty. Of the eight files reviewed in which documentation of the rationale for the difference between the initial and final penalties were evaluated, only two files included the documentation (25%).

**Metric 12b – No documentation showing penalties were collected**
Most of the files did not contain evidence of penalty collection. Of the ten files reviewed in which penalty collection was evaluated, only two files were determined to include penalty collections (20%).

Next Steps for Penalties:

- Develop and consistently implement procedures for calculation of gravity and economic benefit
- Document both gravity and economic benefit calculations in the file
- Evaluate whether any economic benefit (delayed or avoided costs) was gained in each case and document specific rationale, even in cases with no economic benefit realized
- Develop and implement procedures to document the rationale for differences between the initial and final assessed penalties
- Develop and implement procedures to document the evidence of penalty collection.

Resource Conservation and Recovery Act

**Background:** In the spring of 2015, EPA Region 4 conducted a file review of the NCDEQ RCRA program to evaluate if the state's enforcement responses were consistent with EPA's Hazardous Waste Enforcement Response Policy. In 100% of the 22 files reviewed, the DEQ RCRA program correctly identified violations, took appropriate enforcement, and ensured that the violators returned to compliance.

**Outstanding issues:**

**Element 5 – Penalties:**

During all three rounds of the SRF, EPA has identified economic benefit in penalties as an Area for State Improvement. The NCDEQ RCRA program did not have the legal authority to assess and collect economic benefit in penalties during this time. In response to the Round 3 SRF recommendation, the state sought and, in 2013, was granted the authority to recover the economic benefit of noncompliance in RCRA penalty assessments from the NC legislature. EPA applauds these efforts.

During the differential oversight file review, EPA recommended that when the state determines that economic benefit is not realized that a rationale for that decision be provided in the penalty documentation. Now that the state has the authority to recover economic benefit, EPA recommends that an analysis of the potential for economic benefit from noncompliance be conducted for each penalty action.

Next Steps:

- Fully evaluate whether any economic benefit from noncompliance was gained in each case (e.g., through delayed or avoided costs);
- As outlined in the RCRA Civil Penalty Policy, calculate economic benefit where appropriate using the BEN model or other method that produces results consistent with national policy;
- When no economic benefit is assessed in the penalty calculation, document the specific rationale for why no economic benefit was realized.

Case Name: _____
Case Number: _____
County: _____
Regional Office: _____

# WORKSHEET

## CIVIL PENALTY ASSESSMENT FOR SPCA VIOLATIONS

(Criteria: NCGS 113A-64-(a); 15A NCAC 04C .0106)

A. Type(s) of Violation ____, ____, ___, ___, ___, $_____

B. Degree and Extent of the Harm Caused by the Violation. $_____

| | |
|---|---|
| Severe | $300 to $5000 |
| Moderate | $100 to $300 |
| Slight | $0 to $100 |
| None | $0 |

C. Adherence to Plan/Effectiveness of Plan Submitted by Violator (Effectiveness of Steps Taken to Correct Violations). $_____

D. Prior Record of Violator in Complying or Failing to Comply with the Act and Rules. $_____

E. Whether the Violation was Committed Willfully. $_____

F. Amount of Money the Violator Saved by His Noncompliance. $_____

G. Cost of Rectifying the Damage. $_____

H. Staff Investigative Costs. $_____

TOTAL PENALTY $_____

ACTUAL PENALTY $_____

Date of Violation: _____

_____
Date

_____
Chief of Program Ops, DEMLR or Regional Engineer

Revised 08/14/2006 TGH

## VIII. EFFECT OF ECONOMIC BENEFIT OF NONCOMPLIANCE

The Agency's 1984 Policy on Civil Penalties mandates the recapture of any significant economic benefit of noncompliance (EBN) that accrues to a violator from noncompliance with the law. Enforcement personnel shall evaluate the economic benefit of noncompliance when penalties are calculated. A fundamental premise of the 1984 Policy is that economic incentives for noncompliance are to be eliminated. If, after the penalty is paid, violators still profit by violating the law, there is little incentive to comply. Therefore, it is incumbent on all enforcement personnel to calculate economic benefit. An "economic benefit" component should be calculated and added to the gravity-based penalty component when a violation results in "significant" economic benefit to the violator, as defined below. Economic benefit can result from a violator delaying or avoiding compliance costs, or when the violator achieves an illegal competitive advantage through its noncompliance.

The following are examples of regulatory areas for which violations are likely to result in significant economic benefits: groundwater monitoring, financial requirements, closure/ post-closure, surface impoundment retrofitting, improper land disposal of restricted waste, clean-up of discharges, Part B permit application submittals, and minimum technology requirements.

For certain RCRA requirements, the economic benefit of noncompliance may be relatively insignificant (*e.g.*, failure to submit a report on time). In the interest of simplifying and expediting an enforcement action, enforcement personnel may forego the inclusion of the benefit component where it appears that the amount of the component is likely to be less than the applicable amount shown in the chart below for <u>all</u> violations alleged in the complaint.

| When the gravity-based and multi-day total penalty is: | EBN should be pursued if it totals: |
|---|---|
| $30,000 or less | at least $3,000 |
| $30,001 to $49,999 | at least 10% of the proposed penalty |
| $50,000 or more | $5,000 or more |

In order to determine this, a calculation of economic benefit should be conducted for each violation that is estimated to have an economic benefit penalty of greater than $200 unless it is obvious that the relevant EBN total (from the right side of the above chart) will not be reached. The total economic benefit amount (all violations added together) should be compared to the chart to determine whether an economic benefit component should be included in the proposed penalty. Any decision not to seek an economic benefit penalty and the rationale for such a

decision should be documented on the Penalty Computation Worksheet or analogous regional office penalty calculation summary.

In some cases, a corporate entity related to the violating facility (*e.g.*, a parent corporation) may actually realize an economic benefit as a result of noncompliance by the violating facility. For example, a subsidiary company may be able to supply a product to a parent company at a cost significantly below its competitors due to noncompliance with RCRA requirements. The parent company may then sell that product (or utilize it in the manufacturing of a different product) and realize the benefit from reduced costs of the supplier subsidiary. When information to support such a calculation is available, enforcement personnel may consider economic benefits that accrue to related corporate entities in calculating a specific penalty.

It is generally the Agency's policy not to settle cases for an amount less than the economic benefit of noncompliance. However, the Agency's 1984 Policy on Civil Penalties explicitly sets out three general areas where settling the total penalty amount for less than the economic benefit may be appropriate. Since the issuance of the 1984 Policy, the Agency has added a fourth exception for cases where ability to pay is a factor.[25] The four exceptions are:

- the economic benefit component consists of an insignificant amount (see the chart above for the minimum amounts to pursue);
- there are compelling public concerns that would not be served by taking a case to trial;
- it is unlikely, based on the facts of the particular case as a whole, that EPA will be able to recover the economic benefit in litigation; and
- the company has documented an inability to pay the total proposed penalty.

If a case is settled for less than the economic benefit component, a justification must be included on the Penalty Computation Worksheet or in an appropriate section of the analogous regional penalty calculation summary.

## A. ECONOMIC BENEFIT FROM DELAYED COSTS AND AVOIDED COSTS

### 1. Background

This section discusses two types of economic benefit from noncompliance in determining the economic benefit component:

- benefit from delayed costs; and

[25]See Section IX.A.3.d. below.

- benefit from avoided costs.

Delayed costs are expenditures which have been deferred by the violator's failure to comply with the requirements. The violator eventually will have to spend the money in order to achieve compliance. Delayed costs are either capital costs (essentially equipment) or one-time nondepreciable costs (*e.g.*, cleaning up a spill).[26] Examples of violations which result in savings from delayed costs are:

- failure to timely install groundwater monitoring equipment;
- failure to timely submit a Part B permit application; and
- failure to timely develop a waste analysis plan.

Avoided costs are expenditures which will never be incurred. Avoided costs include the usual operating and maintenance costs which would include any annual periodic costs such as leasing monitoring equipment. Examples of violations which result in savings from avoided costs are:

- failure to perform annual and semi-annual groundwater monitoring sampling and analysis;
- failure to use registered hazardous waste transporters (where the violator will not be responsible for cleaning up the waste);
- failure to perform waste analysis before adding waste to tanks, waste piles, incinerators; and
- failure to install secondary containment around a tank, where such a containment is never installed because the violator chooses closure rather than correction and continued operation.[27]

2. Calculation of Economic Benefit from Delayed and Avoided Costs

Since 1984, it has been Agency policy to use either the BEN computer model or "the rule of thumb" approach to calculate the economic benefit of noncompliance.[28] The rule of thumb approach is a straight forward method to calculate economic savings from delayed and avoided

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[26]See BEN Users Manual for further guidance on this subject at pages 3-9 to 3-10.

[27]While this cost is an avoided one, it does not fit into the annual cost category in the BEN model. This is an avoided one-time nondepreciable expense and requires a slightly modified BEN analysis. See BEN Users Manual for further guidance on this subject at page 3-11.

[28]"Guidance for Calculating the Economic Benefit of Noncompliance for a Civil Penalty Assessment" November 5, 1984 (Codified as Policy Number PT.1-5 of the General Enforcement Policy Compendium) at pages 2-3.

compliance expenditures. It is discussed more fully in the policy document "A Framework for Statute-Specific Approaches to Penalty Assessments" at pages 7-9.[29] It is now available in a Lotus spreadsheet.[30] Enforcement personnel may use the rule of thumb approach whenever the economic benefit penalty is not substantial (generally under $10,000) and use of an expert financial witness may not be warranted.

For economic benefit penalties that are more substantial (generally more than $10,000), enforcement personnel should use the BEN model to calculate noncompliance economic benefits. The primary purpose of the BEN model is to calculate economic savings for settlement purposes.[31] The model can perform a calculation of economic benefit from delayed or avoided costs based on data inputs, including inputs that consist of optional data items and standard values already contained in the program (see BEN Worksheet in the Appendix, Section X). As discussed in the BEN Users Manual, unless case-specific reasons dictate otherwise, enforcement personnel should rely on the least expensive costs of compliance (i.e., facility expenditures) in calculating economic benefit penalties.

Enforcement personnel should have a copy of the revised BEN User's Manual (September 1999).[32] The User's Manual describes how to use BEN, a computer program that calculates the economic benefit from delayed and avoided costs for any type of entity, including Federal facilities. It is designed to aid enforcement personnel with procedures for utilizing BEN, and to explain the program's results.[33] Except for smaller economic benefit calculations where the "rule

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[29]This document is dated February 16, 1984 (Codified as Policy Number PT.1-2 of the General Enforcement Policy Compendium)

[30]The Rule of Thumb Spreadsheet and information on its use is available to EPA enforcement personnel from the Multimedia Enforcement Division of the Office of Regulatory Enforcement.

[31]While the BEN model can be used to develop a proposed penalty for an administrative hearing, enforcement personnel must be prepared to present a financial expert witness to support the penalty calculation. In the appropriate circumstances, Agency personnel, with the assistance of a financial expert, can use case-specific information, relevant regional knowledge and past experience in the calculation of the economic benefit component. Regardless of which approach is taken, all calculations must be documented in the case file.

[32]Both the BEN model and the BEN User's Manual are downloadable from the Agency's website at www.epa.gov.

[33] In addition to the Manual "Estimating Costs for the Economic Benefits of RCRA Noncompliance" (September 1997), enforcement personnel are encouraged to use whatever cost documentation is available to calculate RCRA compliance costs (*e.g.*, contractors and

of thumb" approach is appropriate, BEN supersedes previous methodologies used to calculate the economic benefit for civil penalties. Enforcement personnel should also consult the Manual "Estimating Costs for the Economic Benefits of RCRA Noncompliance" (September 1997). When using this RCRA Costs Manual, enforcement personnel should ensure that figures set forth in that Manual reflect current figures given the time elapsed since the Manual was first issued.

The economic benefit component should be calculated initially for the maximum period of noncompliance. Enforcement personnel should then determine whether that amount should be reduced for any reasons (*e.g.*, possible application of statute of limitations)[34]. However, enforcement personnel should be prepared to support the calculation of economic benefit for the entire period of noncompliance if there is any uncertainty regarding potential reductions that may have been identified.

The economic benefit calculation should also take into account the entire period that a violator enjoys the benefit. In almost all cases, the violator will enjoy the financial benefit until the economic benefit penalty is paid. Therefore, this calculation should be based on a penalty payment date corresponding roughly with the relevant hearing date. At the hearing, Agency personnel should be prepared to argue to the Presiding Officer that the violator will continue to enjoy the economic benefit until the penalty is paid and the relevant time period should include any time periods after the hearing prior to penalty payment.

## B. ADDITIONAL INFORMATION ON ECONOMIC BENEFIT

In addition to delayed and avoided costs, an economic benefit may accrue to a violator in the form of an illegal competitive advantage. In this type of economic benefit, the illegal activity results in a financial gain that the violator would not otherwise realize if the violation had not been committed. Illegal competitive advantage cases are fundamentally different from those that routinely rely on BEN-type calculations, and they also arise less frequently. Care should be taken to insure that any calculation of illegal competitive advantage does not include profits attributable to lawful operations of the facility or delayed or avoided costs already accounted for in the BEN calculation. In most cases, a violating facility will realize either benefits from

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commercial brochures). If it is disputed, the burden will then shift to the respondent to present cost documentation to the contrary to be entered and run in BEN. Data provided by respondent relating to economic benefit should not be run in BEN unless its accuracy and legitimacy have been verified by the Region. Additionally, OSW's Guidance Manual: Cost Estimates for Closure and Post-Closure Plans, November, 1986, provides information regarding cost estimates for input data for BEN.

[34]Statute of limitations considerations may not be relevant for the calculation of economic benefit where, for example, the benefit results from violations that continue to the time the enforcement action is initiated.

delayed/avoided costs or from an illegal competitive advantage; however, where the circumstances support it, any penalty amount based on benefits due to illegal competitive advantage should be added to any other type of economic benefit that bas been calculated. For information regarding methodologies for calculating a penalty based on illegal competitive advantage, EPA enforcement personnel should consult with the Multimedia Enforcement Division in OECA. (Note: As of the date of this Policy, financial technical advice for Agency personnel is available from the Helpline at (888) 326-6778. This service and/or telephone number is subject to change without notice.)

## IX. ADJUSTMENT FACTORS AND EFFECT OF SETTLEMENT

### A. ADJUSTMENT FACTORS

#### 1. Background

As mentioned in Section VI of this document, the seriousness of the violation is considered in determining the gravity-based penalty component. The reasons the violation was committed, the intent of the violator, and other factors related to the violator are not considered in choosing the appropriate cell from the matrix. However, any system for calculating penalties must have enough flexibility to make adjustments that reflect legitimate differences between separate violations of the same provision. RCRA Section 3008(a)(3) states that in assessing penalties, EPA must take into account any good faith efforts to comply with the applicable requirements. EPA's 1984 Civil Penalty Policy sets out several other adjustment factors to consider. These include the degree of willfulness and/or negligence, history of noncompliance, ability to pay, and other unique factors. This RCRA Policy also includes an additional adjustment factor for environmental projects undertaken by the respondent.

#### 2. Recalculation of Penalty Amount

Before EPA considers mitigating the penalty proposed for an administrative hearing and applies the adjustment factors, it may be necessary, under certain circumstances, for enforcement personnel to recalculate the gravity-based or economic benefit component of the penalty figure. If new information becomes available after the issuance of the proposed penalty which makes it clear that the initial calculation of the penalty is in error, enforcement personnel should adjust this figure. Enforcement personnel should document on the Penalty Computation Worksheet or the analogous regional office penalty calculation summary the basis for recalculating the gravity-based or economic benefit component of the penalty.

For example, if after the issuance of the proposed penalty, information is presented which indicates that less waste is involved than was believed when the proposed penalty was issued, it may be appropriate to recalculate the gravity-based penalty component. Thus, if enforcement personnel had originally believed that the violator had improperly stored ten barrels of acutely

The Division of Air Quality (DAQ) would like to thank you for the opportunity to respond to the EPA's May 10, 2016 letter discussing the findings of the March 2015 Differential Oversight Review. The letter stated that:

> *"The FY14 ADMA for North Carolina revealed significant downward trends over the prior four years (FY11-FY14) in several key enforcement related metrics, including drops in informal and formal enforcement actions, penalties, and significant non-compliance designations."*

The DAQ believes that there have been fluctuations in compliance and enforcement activities in North Carolina, but that the majority of fluctuations are commensurate with national trends as can be viewed in the ECHO trends analysis dashboards..[1][2]

The DAQ also respectfully inquires about the North Carolina State Review Framework (SRF) and Differential Oversight results and conclusions relative to SRFs performed in other EPA regions and states. While the EPA has provided metrics dashboards and results of SRFs.[3], the EPA's Office of Inspector General (OIG) comments on inconsistent evaluation of agencies in 2011.[4] are a concern. We applaud the EPA's efforts to more consistently evaluate all agencies and look forward to EPA comparison reports and tools.

The DAQ agrees with the EPA when it states:

> *"we believe it is important to recognize and state within the OIG report that the SRF is only one of many tools which are used by EPA for analyzing facility-specific data and the effectiveness of compliance and enforcement programs. Such tools are used more frequently than the SRF and therefore provide a more continuous dialogue and fuller assessment of state and local compliance monitoring and data programs."*.[5]

Our interactions with EPA Region 4 staff have been fully cooperative and transparent over the decades. During the summer of 2016, an EPA staff inspector conducted an oversight inspection evaluation with DAQ engineers. The preliminary verbal results are that NC DAQ performs excellent and thorough inspections; however, NC DAQ inspection reports do not fully document the level of work that DAQ puts into the inspection. Our program performs more than 1200 permitted facility inspections per year. We strive to balance ensuring compliance through site visits with accurately, efficiently, and concisely documenting our findings. EPA Office of Enforcement Coordination staff stated during an October 2016 meeting that since SRFs and Differential Reviews are file reviews, all they can evaluate is the content in the specific documentation requested. We respectfully submit that the targeted approach of the Differential Review does not provide for a holistic assessment of the DAQ's compliance and enforcement program.

We would like to work together with EPA as partners in compliance and enforcement. In the letter, you discussed agreements with the states:

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[1] https://echo.epa.gov/trends/comparative-maps-dashboards/state-air-dashboard?view=performance&state=NC
[2] Attached ECHO trends screenshot as of October 2016
[3] https://www.epa.gov/compliance/state-review-framework-compliance-and-enforcement-performance
[4] https://www.epa.gov/sites/production/files/2015-10/documents/20111209-12-p-0113.pdf
[5] https://www.epa.gov/sites/production/files/2016-05/documents/20160503-16-p-0164.pdf

> *"EPA's expectations for the performance of North Carolina's compliance assurance programs are laid out in a collection of program-specific agreements and national policy documents for each program, including, but not limited to the documents indicated below:"*

As you may recall, during the November 9, 2015, meeting, staff for both EPA and North Carolina were unfamiliar with any compliance agreements due to the age of the agreements. Subsequently, DAQ staff contacted Scott Gordon and other EPA R4 staff multiple times to initiate discussions on these agreements. To date we have not been successful in initiating new agreements with the EPA.

The two "Overarching" policies that are listed on the enclosure page are from 1993 and 1986. While these policies and memos have not been the centerpiece discussion (or sidebar) of numerous conference calls and meetings with the EPA over the years, we are more than willing to focus on the content of the documents. Specifically, I would point out the following in the "Revised Policy Framework for State/EPA Enforcement Agreements"[6] (1986):

> *"7. What Does it Mean to Reach Agreement?*
> *To the extent possible, these agreements should reflect mutual understandings and expectations for the conduct of Federal and State enforcement programs. At a minimum, EPA Regions must: (1) be clear and ensure there are "no surprises"; (2) make arrangements with the States so that actions taken are constructive and supportive; and (3) tailor the application of the national program guidance to the States' programs and authorities. Where mutual agreement cannot be achieved, clear unilateral statements of policy will have to suffice, with commitments to try to seek further agreements over time. Areas where agreements have not been reached should be clearly identified for senior Agency management attention."*

We are energized and enthusiastic to begin the process of reaching new agreements with our partner agency in Region 4.

Notices of Deficiency (NODs) were added to our compliance/enforcement guidelines to address minor issues as required by state law. Tiered Enforcement[7] is a concept that all regulatory agencies engage in. Not all violations have the same environmental impact and different responses are appropriate. The EPA's Federally Reportable Violation and High Priority Violation policies can be viewed as decision making tools and a form of EPA tiered enforcement. NODs were not entered into AFS and are not entered into ICIS. NODs result from minor issues that the state agency is addressing and is not ignoring. We document these issues and require corrective action. However, we believe that they are minor (ex: a report with compliant content that is submitted one day late) and should not result in a facility being

[6] https://www.epa.gov/sites/production/files/2013-11/documents/enforce-agree-mem.pdf
[7] https://ncdenr.s3.amazonaws.com/s3fs-public/Air%20Quality/enf/Tiered_Enforcement.pdf

recorded as "In Violation".[8][9] for a quarter to half a year in the EPA's ECHO.[10] data system. Many regulatory agencies use a variety of tools to ensure facilities comply with minor procedural requirements. The DAQ ensures compliance and provides appropriate enforcement responses for recalcitrant violators and emission standard exceedances.

Page 6 of the letter included an excerpt of the 1993 Herman memo titled "Oversight of State and Local Penalty Assessments: Revisions to the Policy Frame work from State/EPA Enforcement Agreements."[11] The quoted paragraph in the policy goes on to say:

> *"This approach is intended to be flexible in recognizing State-statutory language and regulations concerning penalty authority, while also seeking to achieve minimally consistent national criteria for an effective program."*

The letter also states that DAQ did not provide the EPA an opportunity to review modifications to the DAQ penalty guidance. The DAQ has provided EPA Region 4 with copies of our enforcement guidance, handbook, and statutory requirements consistently and in a transparent manner. The DAQ explicitly considered the High Priority Violation (HPV) criteria and purposely avoided placing any HPV in a lower tier where monetary penalties may not be considered.

Under Element 3, the letter indicated that there were "missing" HPVs and FRV designations in ICIS-Air. The DAQ respectfully disagrees with this conclusion. The DAQ goes to great lengths to appropriately identify violations, notice facilities of violations and assess penalties when appropriate. As we have discussed with EPA staff, many of these "missed" data elements were due to two fold issues: 1) the switchover from the AFS to ICIS data system was fraught with issues on the EPA's side. The DAQ was one of the first JAVA states to successfully submit our data. The inability to report HPVs and FRVs during this period is not representative of DAQ performance. 2) The defunct AFS system did not have a method to record an FRV. The DAQ has had a long standing policy of submitting all data to the EPA for all facilities – including minor sources. All NOVs were continuously sent to the EPA's data system for more than the past 20 years. Differentiating which NOVs were FRVs was not possible until EPA's ICIS came on line.

Under Element 4, the letter indicates that we should use discretion within the Tiered Enforcement policy to enhance environmental protection and that we take a broader view of a company's compliance record to ensure the issues are addressed. We agree with the recommendations to analyze our program and the implementation of statutory requirements. We will address issues at facilities with the entire toolbox we have available in order to ensure that

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[8] EPA's ECHO data system presents a facility's CAA status as either "In Violation" or blank since October 2014 for facilities across the nation. NC DAQ has gone to great lengths to provide accurate data on a facility's compliance status and is concerned that the EPA would present the status as blank (prior to October 2016, the data was erroneously presented as "Not Available"). We believe that when a facility is in compliance, their data on EPA ECHO should state they are in compliance. We also believe that the public has a right to accurately view the duration of non-compliance and not be presented with quarter or semi-annual bands of non-compliance for short term minor procedural violations.

[9] See attached screen shot from ECHO

[10] https://echo.epa.gov/help/facility-search/search-criteria-help#enfcomp

[11] https://www.epa.gov/sites/production/files/2013-11/documents/oversgt-penal-mem.pdf

the citizens and environment of North Carolina are protected and that regulated facilities comply with their obligations.

Under Element 5, the letter indicates that our efforts to calculate, assess, and recover economic benefit are not adequate and consistent with EPA Policy. The DAQ seeks to balance the suggestions of EPA policy with our obligations under North Carolina law. Consideration of the amount saved by non-compliance is a factor in every Civil Penalty assessment that the DAQ executes. Specific calculation and documentation of economic benefit for consideration when deciding on a penalty is reserved for severe violations. Our enforcement procedures, which the Office of Enforcement Coordination and EPA Region 4 compliance and enforcement staff have a copy of, discusses our approach to economic benefit. In one of the cases discussed, the emissions after final resolution of the violation would be equivalent to the emissions prior to the violation. Therefore, our analysis, grounded in environmental protection, resulted in adequate penalties and actions required. The DAQ will continue to communicate with our Region 4 compliance partners about our enforcement actions, penalty amounts and collections procedures. Additionally, the DAQ has actively sought training in the determination and calculation of economic benefit associated with violations. Any assistance the EPA can provide would be appreciated.

**The specific "Next Steps" suggested in the letter were:**

***Element 5 – Penalties - Next Steps:***

- *Provide EPA with the current policy and procedures in place related to calculation, assessment, and recovery of economic benefit.*
- *If no coherent policies or procedures are in place, work with EPA to develop them consistent with the expectations laid out in EPA's "Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Agreements".*[12].

The NC DAQ has offered and provided EPA Region 4 and the EPA's Office of Enforcement Coordination copies of our entire enforcement handbook. Whenever staff from the Office of Enforcement Coordination have been on-site, we have made ample space available, given access to our network with specific folders prepared with all applicable files and provided paper copies of our procedures as requested.

The current procedure is attached to this letter and has been formally in place since 2008, although we acted similarly prior to 2008. The procedure indicates the kind of cases and threshold level at which we may determine economic benefit. The DAQ Director is obligated to consider eight statutory factors when assessing a penalty.[13] which states:

> *"...Penalties up to the maximum authorized may be based on any one or combination of the following factors: ....(5) The amount of money saved by noncompliance."*

The DAQ considers the cost of non-compliance, but under statute, is not obligated to asses or collect the entire amount.

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[12] https://www.epa.gov/sites/production/files/2013-11/documents/oversgt-penal-mem.pdf

[13] http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143B/GS_143B-282.1.html

The DAQ will strive to more thoroughly document the consideration of economic benefit in civil penalty assessments. And as stated previously, we are investigating various training for determining the economic benefit of a violation. Any assistance that the EPA can provide would be appreciated.

***Element 3 – Violations - Next Steps:***

- *DAQ is required to report FRVs into ICIS-Air. Many of the violations DAQ cites in NODs are specifically identified as FRVs in the new FRV policy, including late reports, late source tests, and failure to maintain records, and DAQ has not been reporting these FRVs into ICIS-Air. DAQ needs to immediately begin reporting all FRVs, including those addressed by a NOD, into ICISAir.*
- *EPA strongly recommends that DAQ begin reporting HPV s into ICIS-Air as soon as the needed programing is completed. EPA also notes that DAQ is required to enter all MDR data for all enforcement actions, including both informal and formal enforcement actions.*

The NC DAQ has a long history of entering all violations for all classes of facilities, including true minors. We have documented our concerns about ECHO and our use of NODs on page 2 of this document. We will perform a closer evaluation of our use of NODs. Increased escalation of our enforcement response will also be evaluated. We do believe that states should have the ability to resolve issues with facilities when there has been no environmental harm or emissions exceedances, without causing the facility to appear in violation for a quarter or half a year in the ECHO system. We will evaluate our enforcement procedures and incorporate any needed modifications so that we better define when a violation has occurred and report it appropriately.

Although the HPV program is a federal oversight program, we will enter the appropriate data and therefore minimize errors that have been included in our data evaluations. The NC DAQ has initiated internal specification development and programming so that we can enter our HPV data via electronic data transfer into ICIS. The time and monetary resources associated with the modification will be a limiting factor; however, the project will be prioritized within all other required data management projects.

***Element 4 – Enforcement - Next Steps:***

- *The Tiered Enforcement Policy provides for both adequate compliance and deterrence actions to be effectively taken. Penalties can be sought after just one prior notice to the company, but the DAQ is not exercising this discretion. EPA recommends utilizing the discretion available to DAQ within the policy to enhance environmental protection, while maintaining compliance with existing enforcement agreements and policy documents.*
- *Repeat violations can be an indication of ineffective environmental management by industry all the way up to systematic and/or intentional non-compliance. EPA recommends that DAQ take a broader view of a company's compliance record to ensure that these issues are addressed*

As we have indicated, the DAQ will re-evaluate our implementation of tiered enforcement and ensure correct escalation when needed. However, the DAQ disagrees with the blanket statement that we are not exercising correct discretion. The Differential Oversight Review was a targeted project that focused on 20 facilities who had received more than one NOD. The EPA requested the data from NCDAQ and we promptly supplied the data. The DAQ reiterates that we, just like the EPA, do not treat all violations the same and therefore escalation of enforcement action must depend on the facts of the violation and not simply action counts. A minor procedural issue and an emissions exceedance event will draw far different and appropriate responses from the DAQ.

A more holistic evaluation of our program and data would indicate that since the initiation of Tiered Enforcement in 2011:

- The DAQ has taken 1764 compliance actions on 1078 facilities.
- 462 facilities (42.9%) were issued a single NOD and no other actions were required. The majority of these facilities were classified as true minor facilities.
- 83 facilities (7.7%) were issued 2 or 3 NODs with no other action. The majority of these facilities were classified as true minor facilities.
- 93 facilities (8.6%) were issued an NOD and then escalated to a subsequent NOV (informal enforcement action)
- 175 facilities (16.2%) were issued an NOV (informal enforcement action) and no other actions were required
- 40 facilities (3.7%) were issued multiple NOVs (informal enforcement action) and no other actions were required.
- 31 facilities (2.9%) were directly issued formal enforcement actions without any previous action
- 52 facilities (4.8%) were issued multiple actions including formal enforcement
- 49 facilities (4.5%) were issued multiple actions including informal enforcement
- The remaining 8.7% have had a variety of actions, each addressing the specific situation.

**STATE OF NORTH CAROLINA**
**DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**
**DIVISION OF WATER QUALITY**

# GENERAL PERMIT – NCG 010000

**TO DISCHARGE STORMWATER UNDER THE**
**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**
**for**

# CONSTRUCTION ACTIVITIES

In compliance with the provision of North Carolina General Statute 143-215.1, other lawful standards and regulations promulgated and adopted by North Carolina Environmental Management Commission and the Federal Water Pollution Control Act as amended:

> All owners or operators of stormwater point source discharges associated with construction activities including clearing, grading or excavation activities resulting in the disturbance of land greater than or equal to one acre, or that are part of a common plan of development of that size, are hereby authorized to discharge stormwater to the surface waters of North Carolina or to a separate storm sewer system conveying stormwater to the surface waters in accordance with the terms and conditions set forth herein. Failure to receive coverage under this permit or violations of any of the conditions listed may result in assessment of state or federal civil or criminal penalties for each day of violation.

The General Permit shall become effective on August 1, 2016.
The General Permit shall expire at midnight on July 31, 2018.

Signed this day July 22, 2016

*Original Signed by Toby Vinson*

for Tracy Davis, Director
Division of Energy, Mineral and Land Resources
By the Authority of the Environmental Management Commission

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## SECTION I
## COVERAGE UNDER THE GENERAL PERMIT

Until this State of North Carolina General Permit expires or is modified or revoked, the permittee is authorized to discharge stormwater in accordance with the terms and conditions of this permit and in accordance with an approved Erosion and Sedimentation Control Plan by the North Carolina Division of Land Resources, Land Quality Section, or a delegated local program under the provisions and requirements of North Carolina General Statutes in Article 4 of Chapter 113A to the surface waters of North Carolina or to a separate storm sewer system. The permit, along with state statutes (N.C.G.S. 143-215.1) and rules (NCAC 2H .0100) relating to stormwater permitting are designed to work together to assure compliance with the NPDES requirements of the Clean Water Act. Furthermore, North Carolina rules in Title 15A NCAC 2H .0126 adopt by reference the federal stormwater permitting requirements.

Any other point source discharge to surface waters of the state is prohibited unless covered by another permit, authorization or approval. The discharges allowed by this General Permit shall not cause or contribute to violations of North Carolina Water Quality Standards for surface waters and wetlands (15A NCAC 2B .0200). Discharges allowed by this permit must meet all applicable water quality certification or permit requirements as outlined in 15A NCAC 2H .0500 and 2H .1300. This permit does not relieve the permittee from responsibility for compliance with any other applicable federal, state, or local law, rule, standard, ordinance, order, judgment, or decree.

**This General Permit is applicable to point source discharges from construction activities disturbing one or more acres of land.** The application to the Division of Land Resources or a delegated local program for approval of a local Erosion and Sedimentation Control Plan (E&SC Plan) shall be considered to take the place of a Notice of Intent for coverage under this General Permit for those projects requiring this Permit coverage. Coverage under this General Permit shall become effective upon issuance of an approval for the E&SC Plan by the Division of Land Resources or delegated local program that includes the following:

a. Designation on the plans where the specific ground stabilization requirements apply as per Section II.B.2 of this permit.
b. Designs of basins with surface withdrawal as per Section II.B.4 of this permit.

Prior to the commencement of construction and land disturbing activities, approval of the E&SC Plan shall be obtained.

**This General Permit revision reflects changes made in the federal regulations effective February 1, 2010.** The federal regulations were a result of litigation that mandated that construction activities over a certain size must contain additional specifications that would result in reduced wastes and sediment loading reaching the nation's waters. The Division of Water Quality and the Division of Land Resources established a Construction General Permit Technical Advisory Group (CTAG) to provide them guidance in developing the permit. The CTAG was comprised of 14 members who represented a broad range of environmental, regulatory, government and development interests. A Draft Construction General Permit was prepared and made available for review on May 13, 2011. A public meeting was held on June7th. This permit reflects the input received during the twelve- month development process.

Any owner or operator not wishing to be covered or limited by this General Permit may apply for an individual NPDES permit in accordance with NPDES procedures in 15A NCAC 2H .0100, stating the reasons supporting the request. Any application for an individual permit should be made at least 180 days prior to the time the permit is needed unless waived, by the Director.

This General Permit does not cover activities or discharges covered by an individual NPDES permit until the individual permit has expired or has been rescinded. Any person conducting an activity covered by an

individual permit but which could be covered by this General Permit may request that the individual permit be rescinded and coverage under this General Permit be provided.

The Division of Water Quality partners with the Division of Land Resources to implement a complete program for construction site coverage that includes state sedimentation control and NPDES stormwater control. The Division of Land Resources implements their control programs through an Erosion and Sedimentation Control Plan (E&SC Plan) issued for each construction site in the state disturbing one or more acres of land. An E&SC Plan is required for each site by the Division of Land Resources or a delegated local government program. The NPDES Construction Stormwater permit (NCG010000) is attached to Erosion and Sedimentation Control Plan approvals. The permittee is responsible for abiding by the conditions of both of these documents.

The Sedimentation Pollution Control Act of 1973 places a duty upon the Sedimentation Control Commission to "develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques appropriate for use by persons engaged in land-disturbing activities." The Sedimentation Control Commission and the Division of Land Resources have adopted the North Carolina Erosion and Sediment Control Planning and Design Manual as the document to provide that guidance for use at all constructions sites in the state. The individual Erosion and Sedimentation Control Plans are developed based on this guidance and become a condition of the Division of Water Quality's Construction Stormwater General Permit. As provided in this permit, "deviation from the approved E&SC Plan, or approved amendment to that plan, shall constitute a violation of the terms and conditions of this general permit."

## SECTION II
## STORMWATER POLLUTION PREVENTION REQUIREMENTS

The State construction-related stormwater pollution prevention program provides for: (a) identification of the potential sources of stormwater pollution at the individual construction site; (b) description of the stormwater control measures to reduce or eliminate pollutants in stormwater discharges from the construction site; and (c) identification of the procedures the operator will implement to comply with the terms and conditions of this general permit and the Erosion and Sedimentation Control Plan (E&SC Plan). In North Carolina, the approved **Erosion and Sedimentation Control Plan** for the site, and the **NCG01 Construction General Permit** are considered the **Stormwater Pollution Prevention Plan (SWPPP)** for that site. These two documents, and any specifically-added water quality conditions for that site, contain the provisions necessary to meet the federal regulatory requirements of the NPDES program including provisions implementing the Effluent Limitations Guidelines effective at the time of this permit.

## SECTION II.A. - STORMWATER POLLUTION PREVENTION REQUIREMENTS IN THE EROSION AND SEDIMENTATION CONTROL PLAN

The Erosion and Sedimentation Control program is mandated and funded according to state statutes. The majority of the technology-based requirements needed to satisfy the federal stormwater pollution prevention specifications are addressed in the approved E&SC Plan. Each applicant for an E&SC Plan approval is required to comply with a "checklist" of over 50 site-specific conditions*. The categories of these conditions include:

1) location information,
2) site features,
3) control measures,
4) drainage features,
5) stormwater calculations,
6) stabilization,
7) ownership information and
8) construction sequencing.

*The individual requirements to be addressed in each E&SC Plan application can be found at http://portal.ncdenr.org/web/lr/erosion . See "Plan check list for designers."

## SECTION II.B. - STORMWATER POLLUTION PREVENTION REQUIREMENTS IN THE NC CONSTRUCTION GENERAL PERMIT

In addition to the stormwater pollution prevention controls found in the E&SC Plan, this Construction General Permit contains additional conditions that must be met in order to comply with the NPDES program requirements. They are as follows:

### 1) Construction Site Pollutants

Permittee must manage activities on the site such that water quality standards are not violated from site activities or allowed discharges. In addition to stream pollution from sediment discharge, other activities on construction and development sites can result in pollutants reaching the state's waters. EPA has prepared guidance documents that provide best management practices that address many activities. See http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=min_measure&min_measure_id=4

The following activities, and others on a site-specific basis, require oversight throughout the construction and development process to assure that all water quality standards are protected:

a) Equipment Operation and Maintenance - Equipment utilized during the construction activity on a site must be operated and maintained in such a manner as to prevent the potential or actual pollution of the surface or ground waters of the state. Fuels, lubricants, coolants, and hydraulic fluids, or any other petroleum products, shall not be discharged onto the ground or into surface waters. Spent fluids shall be cleaned up and disposed of in a manner so as not to enter the waters, surface or ground, of the state and in accordance with applicable state and federal regulations.

b) Material Handling - Herbicide, pesticide, and fertilizer usage during the construction activity shall be consistent with the Federal Insecticide, Fungicide, and Rodenticide Act and shall be in accordance with label restrictions.

c) Building Material Waste Handling
   i) All wastes composed of building materials shall be disposed of in accordance with North Carolina General Statutes, Chapter 130A, Article 9 - Solid Waste Management, and rules governing the disposal of solid waste (North Carolina Administrative Code Section 15A NCAC 13B).
   ii) Locate areas dedicated for management of land clearing and demolition debris, construction and domestic waste, and hazardous or toxic waste. This location shall be at least 50 feet away from storm drain inlets and surface waters unless it can be shown that no other alternatives are reasonably available.
   iii) Dumping of paint and other liquid building material wastes in storm drains is prohibited.
   iv) Litter and Sanitary Waste - The permittee shall control the management and disposal of litter and sanitary waste from the site.

d) Location of Stock Piles - Locate earthen-material stock pile areas at least 50 feet away from storm drain inlets and surface waters unless it can be shown that no other alternatives are reasonably available.

e) Handling of Concrete
   i) Concrete materials onsite, including excess concrete, must be controlled and managed to avoid contact with surface waters, wetlands or buffers. No concrete or cement slurry shall be discharged from the site. (Note that discharges from onsite concrete plants require coverage under a separate NPDES permit – NCG140000.)
   ii) Any hardened concrete residue will be disposed of, or recycled on site, in accordance with local and state solid waste regulations.

**2) Ground Stabilization**

a) Soil stabilization shall be achieved on any area of a site where land-disturbing activities have temporarily or permanently ceased according to the following schedule:
   i) All perimeter dikes, swales, ditches, perimeter slopes and all slopes steeper than 3 horizontal to 1 vertical (3:1) shall be provided temporary or permanent stabilization with ground cover as soon as practicable but in any event within 7 calendar days from the last land-disturbing activity.
   ii) All other disturbed areas shall be provided temporary or permanent stabilization with ground cover as soon as practicable but in any event within 14 calendar days from the last land-disturbing activity.

b) Conditions - In meeting the stabilization requirements above, the following conditions or exemptions shall apply:
   i) Extensions of time may be approved by the permitting authority based on weather or other site-specific conditions that make compliance impracticable.
   ii) All slopes 50' in length or greater shall apply the ground cover within 7 days except when the slope is flatter than 4:1. Slopes less than 50' shall apply ground cover within 14 days except when slopes are steeper than 3:1, the 7 day-requirement applies.
   iii) Any sloped area flatter than 4:1 shall be exempt from the 7-day ground cover requirement.
   iv) Slopes 10' or less in length shall be exempt from the 7-day ground cover requirement except when the slope is steeper than 2:1.
   v) Although stabilization is usually specified as ground cover, other methods, such as chemical stabilization, may be allowed on a case-by-case basis.
   vi) For portions of projects within the Sediment Control Commission-defined "High Quality Water Zone" (15A NCAC 04A. 0105), stabilization with ground cover shall be achieved as soon as practicable but in any event on all areas of the site within 7 calendar days from the last land-disturbing act.
   vii) Portions of a site that are lower in elevation than adjacent discharge locations and are not expeeted to discharge during construction may be exempt from the temporary ground cover requirements if identified on the approved E&SC Plan or added by the permitting authority.

**3) Self Inspection and Reporting Requirements**

Minimum self inspection and reporting requirements are as follows unless otherwise approved in writing by the Division of Water Quality.

a) A rain gauge shall be maintained in good working order on the site unless another rain-monitoring device has been approved by the Division of Water Quality.

b) A written record of the daily rainfall amounts shall be retained and all records shall be made available to Division of Water Quality or authorized agent upon request. If no daily rain gauge observations are made during weekend or holiday periods, and no individual-day rainfall information is available, the cumulative rain measurement for those un-attended days will determine if a site inspection is needed. (Note: if no rainfall occurred, the permittee must record "zero").

c) Erosion and sedimentation control measures shall be inspected to ensure that they are operating correctly. Inspection records must be maintained for each inspection event and for each measure. At a minimum, inspection of measures must occur at the frequency indicated below:
   i) All erosion and sedimentation control measures must be inspected by or under the direction of the permittee at least once every seven calendar days, and
   ii) All erosion and sediment control measures must be inspected by or under the direction of the permittee within 24 hours after any storm event of greater than 0.50 inches of rain per 24 hour period.

d) Once land disturbance has begun on the site, stormwater runoff discharge outfalls shall be inspected by observation for erosion, sedimentation and other stormwater discharge characteristics such as clarity, floating solids, and oil sheens. Inspections of the outfalls shall be made at least once every seven calendar days and within 24 hours after any storm event of greater than 0.50 inches of rain per 24 hour period.

e) Inspections are only required to be made during normal business hours. When adverse weather conditions would cause the safety of the inspection personnel to be in jeopardy, the inspection can be delayed until it is deemed safe to perform these duties. (Times when inspections were delayed because of safety issues should be noted in the Inspection Record.) If the inspection cannot be done on that day, it must be completed on the following business day.

f) Twenty-four Hour Reporting for visible sediment deposition
   i) The permittee shall report to the Division of Water Quality central office or the appropriate regional office any visible sediment being deposited in any stream or wetland or any noncompliance which may endanger health or the environment. (See Section VIII of this permit for contact information.) Any information shall be provided orally or electronically within 24 hours from the time the permittee became aware of the circumstances.
   ii) A written submission shall be provided to the appropriate regional office of the Division of Water Quality within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the sediment deposition and actions taken to address the cause of the deposition. The Division of Water Quality staff may waive the requirement for a written report on a case-by-case basis.

g) Records of inspections made during the previous 30 days shall remain on the site and available for agency inspectors at all times during normal working hours, unless the Division of Water Quality provides a site-specific exemption based on unique site conditions that make this requirement not practical. Older records must be maintained for a period of three years after project completion and made available upon request. The records must provide the details of each inspection including observations, and actions taken in accordance with this permit. The permittee shall record the required rainfall and monitoring observations on the Inspection Record form provided by the Division or a similar inspection form that is inclusive of all of the elements contained in the Division's form. Use of electronically-available records, in lieu of the required paper copies for inspection will be allowed if shown to provide equal access and utility as the hard-copy records.

h) Inspection records must include, at a minimum, the following:
   i) Control Measure Inspections: Inspection records must include at a minimum: 1) identification of the measures inspected, 2) date and time of the inspection, 3) name of the person performing the inspection, 4) indication of whether the measures were operating properly, 5) description of maintenance needs for the measure, 6) corrective actions taken (7) date of actions taken, as well as the date and amounts of rainfall received.
   ii) Stormwater Discharge Inspections: Inspection records must include at a minimum: 1) identification of the discharge outfall inspected, 2) date and time of the inspection, 3) name of the person performing the inspection, 4) evidence of indicators of stormwater pollution such as oil sheen, floating or suspended solids or discoloration, 5) indication of visible sediment leaving the site, 6) actions taken to correct/prevent sedimentation and 7) date of actions taken.
   iii) Visible Sedimentation Found Outside the Site Limits: Inspection records must include: 1) an explanation as to the actions taken to control future releases, 2) actions taken to clean up or stabilize the sediment that has left the site limits and 3) the date of actions taken.
   iv) Visible Sedimentation Found in Streams or Wetlands: All inspections should include evaluation of streams or wetlands onsite or offsite (where accessible) to determine if visible sedimentation has occurred.

i) Visible Stream Turbidity - If the discharge from a site results in an increase in visible stream turbidity, inspection records must record that evidence and actions taken to reduce sediment contributions. Sites discharging to streams named on the state's 303(d) list as impaired for sediment-related causes may be required to perform additional monitoring, inspections or

application of more-stringent management practices if it is determined that the additional requirements are needed to assure compliance with the federal or state impaired-waters conditions. If a discharge covered by this permit enters a stream segment that is listed on the Impaired Stream List for sediment-related causes, and a Total Maximum Daily Load (TMDL) has been prepared for those pollutants, the permittee must implement measures to ensure that the discharge of pollutants from the site is consistent with the assumptions and meets the requirements of the approved TMDL. The Division of Water Quality 303(d) list can be found at: http://h2o.enr.state.nc.us/tmdl/General_303d.htm/

**4.) Sediment Basins**

Sediment basins and traps shall meet the following requirements:

a) Outlet structures shall be utilized that withdraw water from the surface.

b) For basins or traps that have a drainage area of less than 1.0 acre, draw-down designs specified in the Division of Land Resources or delegated local program requirements are acceptable.

c) Chemical treatment

   i) All treatment chemicals must be stored in leak-proof containers that are kept under storm-resistant cover or surrounded by secondary containment structures designed to protect adjacent surface waters.

   ii) All treatment chemicals must be used in accordance with dosing specifications and application rates provided by the manufacturer, supplier and as specified by the Division of Water Quality.

   iii) The Permittee must only use chemicals that have been approved by the NC Division of Water Quality and posted on their "North Carolina Division of Water Quality Approved PAMS/Flocculants List" found on their web site at: http://portal.ncdenr.org/web/wq/ws/su .

   iv) The Permittee must route stormwater treated with polymers, flocculants, or other treatment chemicals through sediment trapping, filtering, and/or settling devices(s) to ensure adequate removal of sediment flocculent prior to discharge to surface waters.

d) Discharge requirement - Discharges must meet the statutory requirements of the Sediment Pollution Control Act and utilize the provisions of Section 6.74 of the Erosion and Sediment Control Planning and Design Manual to assure that buffers and vegetated areas will be used to reduce the potential for visible siltation outside of the 25% buffer zone nearest the land-disturbing activity.

**5.) Discharges to Special or Threatened Waters**

a) Disturbed areas within one mile of and draining to waters where federally-listed threatened or endangered aquatic species are present shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. These projects shall also use control measures that are designed, installed and maintained in accordance with criteria set forth in 15A NCAC 04B .0124 – Design Standards in Sensitive Watersheds. The Division of Water Quality may require additional/alternative protection measures or require coverage under an individual Construction NPDES Stormwater permit. Other management practices may be acceptable if these designs are shown by the applicant, to the satisfaction of the Director, to provide equivalent protection.

b) Construction activities in High Quality Waters Zones require quicker ground stabilization provisions as specified in Section II.B.2.b. of the permit.

## SECTION III
## FRAMEWORK OF PERMIT COVERAGE

During the period beginning on the effective date of the permit and lasting until expiration, the Permittee is authorized to discharge stormwater associated with construction activity including clearing, grading and excavation activities resulting in the disturbance of land and related support activities. Such discharges shall be controlled, limited and monitored as specified in this permit.

1) Continuation of Previously Permitted Projects - Projects and their corresponding activities permitted under the previous version of the NC general permit for construction activities will continue to be valid with the previous permit conditions and will be considered covered under this general permit.

2) Projects submitted prior to the effective date of the permit – Complete project applications that were received prior to the effective date of this permit, but not approved by the permitting authority until after approval of this NPDES permit, can rely on design and management practices effective at the time of application submittal.

3) Implementation of the Erosion and Sedimentation Control Plan (E&SC Plan):
   a) The Permittee must implement and follow the E&SC Plan, which has been approved by the Division of Land Resources or local delegated program.. The approved E&SC Plan is considered a condition of this general permit.
   b) Deviation from the approved E&SC Plan, or approved amendment, shall constitute a violation of the terms and conditions of this general permit except that deviation from the approved plan will be allowed:
      i) to correct an emergency situation where sediments are being discharged off the site, or,
      ii) when minor modifications have been made that result in an alteration or relocation of an erosion or sedimentation control measure and does not affect the ability of the measure to perform as intended.
   c) Allowed deviations must be noted on the approved E&SC Plan and maintained at the job site.
   d) Prior to the commencement of any land disturbance onsite, and during the construction activities, a copy of the approved E&SC Plan and this NPDES construction permit shall be maintained on the site. These documents must be kept current and up to date.

4) BMPs and Control Measures - Consistent with the provisions contained in this permit and the E&SC Plan, the permittee must select, install, implement and maintain best management practices (BMPs) and control measures that minimize pollutants in the discharge to meet the requirements of this permit.

5) Additional Action - If there is evidence indicating that the stormwater discharges from the site are impacting or have the potential to impact surface waters or wetlands, the Division of Water Quality may take appropriate actions including any or all of the following:
   a) take compliance and enforcement action;
   b) require the permittee to include and implement appropriate control and restoration measures;
   c) require the permittee to develop and implement additional site-specific stormwater pollution prevention measures;
   d) require the permittee to obtain an individual permit.

6) When an Individual Permit may be Required - The Director may require any owner/operator authorized to discharge under a certificate of coverage issued pursuant to this general permit to apply for and obtain an individual permit or a general permit with additional conditions. Any interested person may petition the Director to require an individual permit pursuant to 15A NCAC 2H .0127. Cases where an individual permit may be required include, but are not limited to, the following:
   a) The receiving stream is of a unique quality and the standard conditions may not provide adequate protection;
   b) The discharger is a significant contributor of pollutants;
   c) Conditions at the permitted site change, altering the constituents and/or characteristics of the discharge such that the discharge no longer qualifies for a General Permit;

d) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
e) The discharge violates the terms or conditions of this general permit;
f) Effluent limitations are promulgated for the point sources covered by this general permit;
g) A Water Quality Management Plan containing requirements applicable to such point sources is approved after the issuance of this general permit.

7) When an Individual Permit may be Requested - Any permittee operating under this general permit may request to be excluded from the coverage of this general permit by applying for an individual permit. When an individual permit is issued to an owner/operator the applicability of this general permit is automatically terminated on the effective date of the individual permit.

## SECTION IV
## OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1) Proper Operation and Maintenance - The permittee shall at all times properly operate and maintain all control measures 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 general permit.
2) Need to Halt or Reduce not a Defense - It shall not be a defense for a permittee in an enforcement action that it was necessary to halt or reduce the permitted activity in order to maintain compliance with the condition of this general permit.
3) Bypassing of Stormwater Control Facilities
   a) 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 or as part of a planned action specified in the approved Erosion and Sedimentation Control Permit. These bypasses are not subject to the provisions of Paragraphs b. and c. of this section.
   b) 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; including an evaluation of the anticipated quality and effect of the bypass.
      ii) Unanticipated bypass - The permittee shall submit notice to the Division contact (See Section VIII.) within 24 hours of the occurrence of an unanticipated bypass.
   c) Prohibition of Bypass
   Bypass is prohibited and the Director may take enforcement action against a permittee for bypass, unless:
      i) Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;
      ii) There were no feasible alternatives to the bypass, such as the use of auxiliary control facilities, retention of stormwater or maintenance during normal periods of equipment downtime or dry weather. This condition is not satisfied if adequate backup controls 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
      iii) The permittee submitted notices as required under Paragraph b. of this section.
   d) 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 c. of this section.
4) Upsets
   a) Definition - "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 or control facilities,

inadequate treatment or control facilities, lack of preventive maintenance, or careless or improper operation.

b) Effect of an Upset - An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of paragraph c. of this condition 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 - A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
   i) An upset occurred and that the permittee can identify the cause(s) of the upset;
   ii) The permitted facility was at the time being properly operated;
   iii) The permittee submitted notice of the upset as required in this general permit, and,
   iv) The permittee complied with any remedial measures required in this general permit.

d) Burden of Proof - In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

5) Inspection and Entry - The permittee shall allow the Director or an authorized representative (including an authorized contractor acting as a representative of the Director), upon the presentation of credentials and other documents as may be required by law, to:
   a) 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 general permit;
   b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this general permit;
   c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this general permit; and
   d) Sample or monitor at reasonable times, for the purposes of assuring general permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

## SECTION V
## PERMIT ADMINISTRATION AND COMPLIANCE ISSUES

1) Time of compliance – Erosion and sedimentation control measures shall be maintained, and self-monitoring shall continue, after the completion of construction and development until the establishment of permanent ground cover sufficient to restrain erosion or until the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved and the agency that approved the plan has been notified. If the financially responsible party has conveyed ownership or control of the tract of land for which the Erosion and Sedimentation Control Plan has been approved, the new owner or person in control shall conduct and document self-monitoring until the establishment of permanent ground cover sufficient to restrain erosion.

   Upon establishment of permanent ground cover sufficient to restrain erosion, the permittee shall request an inspection by the permitting authority to verify the adequacy of the ground cover. Coverage under the permit shall end when a Sedimentation Inspection Report is issued documenting the final stabilization of the site with adequate permanent ground cover. The signed Sedimentation Inspection Report shall serve as a notice of termination.

2) Operation efficiency - During construction and until the completion of construction or development and the establishment of permanent stabilization, the permittee shall provide the operation and maintenance necessary to operate the storm water control measures and all erosion and sedimentation control measures at optimum efficiency.

3) Corrective action - If inspections required by this permit identify a need for maintenance of control measures, modifications or additions to control measures, or corrective actions to control sediment

or other pollutants these actions must be performed as soon as possible and before the next storm event to maintain the effectiveness of the control measures.

4) Duty to Comply - The permittee must comply with all conditions of this general permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; certificate of coverage termination, revocation and reissuance, or modification; or denial of a certificate of coverage upon renewal application.
   a) 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.
   b) 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 $27,000 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.
   c) Under state law, a daily civil penalty of not more than twenty-five thousand dollars ($25,000) per violation may be assessed against any person who violates or fails to act in accordance with the terms, conditions, or requirements of a permit. [Ref: NC General Statute 143-215.6A].
   d) Any person may be assessed an administrative penalty by the Administrator of the U.S. Environmental Protection Agency for violating section 301, 302, 306, 307, 308, 318 or 405 of the Clean Water 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 $16,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $37,500. Penalties for Class II violations are not to exceed $16,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $177,500.

5) Duty to Mitigate - The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this general permit that has a reasonable likelihood of adversely affecting human health or the environment.

6) Civil and Criminal Liability - Except as provided in Section IV.3. of this permit regarding bypassing of stormwater control facilities, nothing in this general permit shall be construed to relieve the permittee from any responsibilities, liabilities, or penalties for noncompliance pursuant to NCGS 143-215.3, 143-215.6A, 143-215.6B, 143-215.6C or Section 309 of the Federal Act, 33 USC 1319. Furthermore, the permittee is responsible for consequential damages, such as fish kills, even though the responsibility for effective compliance may be temporarily suspended.
7) Oil and Hazardous Substance Liability - Nothing in this general permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under NCGS 143-215.75 et seq. or Section 311 of the Federal Act, 33 USC 1321. Furthermore, the permittee is responsible for consequential damages, such as fish kills, even though the responsibility for effective compliance may be temporarily suspended.
8) Property Rights - The issuance of this general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.
9) Severability - The provisions of this general permit are severable, and if any provision of this general permit, or the application of any provision of this general permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this general permit, shall not be affected thereby.
10) Duty to Provide Information - 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 the certificate of coverage issued pursuant to this general permit or to determine compliance with this general permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this general permit.
11) Signatory Requirements
    a) All applications, reports, or information submitted to the Director shall be signed and certified as follows:
        i) For a corporation: by a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means: (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 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.
        ii) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
        iii) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.
    b) All reports required by the general permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
        i) The authorization is made in writing by a person described above;
        ii) The authorization specified 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 well field, superintendent, a 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

iii) The written authorization is submitted to the Director.

c) Any person signing a document under paragraphs a. or b. of this section shall make the following certification:

"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 gather and evaluate 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 fines and imprisonment for knowing violations."

12) Penalties for Tampering -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 general permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than two years per violation, or by 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.

13) General Permit Modification, Revocation and Reissuance, or Termination - The issuance of this general permit does not prohibit the Director from reopening and modifying the general permit, revoking and reissuing the general permit, or terminating the general permit as allowed by the laws, rules, and regulations contained in Title 40, Code of Federal Regulations, Parts 122 and 123; Title 15A of the North Carolina Administrative Code, Subchapter 2H .0100; and North Carolina General Statute 143-215.1 et. seq.

14) Availability of Reports - Except for data determined to be confidential under NCGS 143-215.3(a)(2) or Section 308 of the Federal Act, 33 USC 1318, all reports prepared in accordance with the terms shall be available for public inspection at the offices of the Division of Water Quality. As required by the Act, discharge data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in NCGS 143-215.6B or in Section 309 of the Federal Act.

15) Penalties for Falsification of Reports - The Clean Water Act 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 general permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than two years per violation, or by both.

16) Anticipated Noncompliance - The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with the general permit requirements.

17) Other Information - Where the permittee becomes aware that it failed to submit any relevant facts in any report to the Director, it shall promptly submit such facts or information.

18) Limitations Reopener - This general permit shall be modified or alternatively, revoked and reissued, to comply with any applicable effluent guideline or water quality standard issued or approved under Sections 302(b) (2) (c), and (d), 304(b) (2) and 307(a) of the Clean Water Act, if the effluent guideline or water quality standard so issued or approved:

a) contains different conditions or is otherwise more stringent than any effluent limitation in the general permit; or

b) controls any pollutant not limited in the general permit.

c) The general permit as modified or reissued under this paragraph shall also contain any other requirements in the Act then applicable.

## SECTION VI
## DISCHARGE MONITORING AND TURBIDITY LIMITATIONS

This General Permit does not include requirements for numeric limits for discharges from construction sites. However, the next reissuance of this North Carolina Construction General Permit (NCG 01) is scheduled for five years from the date of approval of this permit and will contain effluent limitations as required in *Subpart B-Construction and Development Effluent Guidelines* of Part 450 of the Code of Federal Regulations.

## SECTION VII
## DEFINITIONS

1) Act or "the Act" or CWA - The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251, et. seq.
2) Best Management Practices (BMPs) - Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operation procedures, and management practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
3) Bypass - The intentional diversion of stormwater from any portion of a stormwater control facility.
4) Control Measures - Refers to any BMP or other structural or non-structural practices and procedures used to prevent or reduce the discharge of pollutants including practices to control erosion and sedimentation.
5) Director - The Director of the Division of Water Quality.
6) Division - The Division of Water Quality, Department of Environment, and Natural Resources.
7) EMC - The North Carolina Environmental Management Commission.
8) Erosion and Sedimentation Control Plan - A plan developed in compliance with the North Carolina Sedimentation Pollution Control Act of 1973 to prevent the erosion and deposition of sediment and other materials into the waters of the State from construction or other land-disturbing activities that disturb one or more acres of land. Each plan must be approved by the NC Sedimentation Control Commission or a program delegated by the Commission to a local government.
9) Ground cover - Any vegetative growth or other material which, when applied to the soil surface, renders the soil surface stable against accelerated erosion.
10) Normal Business Hours - These are generally considered to be between the hours of 6 a.m. and 6 p.m., or when workers are normally present on the construction site. Weekends and federal holidays are not considered normal business hours unless construction activities are taking place on the site during those times.
11) Permitting Authority - The permitting authority is the agency that issues the permit. The Division of Water Quality is the delegated NPDES permitting authority and issues this permit. However, some erosion and sedimentation control activities are performed by Division of Land Resources or the locally-delegated programs. Other activities may be shared by the two divisions and the local programs. The Land Quality Section of the Division of Land Resources and the Surface Water Protection Section of the Division of Water Quality maintain a Memorandum of Understanding that specifies specific roles of the two divisions and the local programs and will be used to assign specific control and oversight activities between the agencies.
12) Permanently Cease - When all or part of the land disturbing activity is complete and no additional alteration or disturbance of the land surface is planned prior to final stabilization.
13) Permanent Stabilization - When all soil disturbing activity is completed and exposed soils have been stabilized with a vegetative cover with a density of at least 80% or covered with a structural stabilization method. Permanent perennial vegetation may include the use of sod, shrubs and ground cover plants mixed with mulching, aggregate or other landscaping techniques. Structural methods include concrete, asphalt, retaining wall or other stabilization techniques.

14) Permittee -The person, firm or organizational entity that signed as the financially responsible party on the Erosion and Sedimentation Control Plan.
15) Point Source Discharge - Any discernible, confined and discrete conveyance, including but specifically not limited to, any pipe, ditch, channel, tunnel, conduit, discrete fissure, or container from which pollutants are or may be discharged to waters of the state.
16) Soil Stabilization - The use of vegetative, physical or chemical coverage techniques that will restrain accelerated erosion on disturbed soils for temporary or permanent control needs.
17) Stormwater Pollution Prevention Plan (SWPPP) – The elements of the State's stormwater pollution prevention program that provide the technology-based requirements designed to protect the state's waters from the adverse impacts of sediments. In North Carolina, the combination of the NCG01 Construction General and the Erosion and Sedimentation Control Plan are considered the SWPPP. It should be noted that on sites that involve multiple or complex sources of pollution, the Division may require additional control measures as needed to assure that water quality is protected and these additional measures will also be considered part of the SWPPP.
18) Temporarily Cease - When all or part of the site that is and will remain un-worked for a period of days but where site land disturbing activity is not complete and additional land disturbing activity is planned.
19) Temporary Stabilization – When the establishment of ground cover over all disturbed areas (such as mulching, rolled erosion control products, vegetation, or other material) renders the surface stable against accelerated erosion. Stabilization shall be achieved with the establishment of a uniform and evenly-distributed (i.e., without large bare areas) ground cover with a cover density of at least 80%.
20) Severe property damage – Substantial physical damage to property, damage to the control measures that cause them to become inoperable, or substantial and permanent loss of natural resources that 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.

## SECTION VIII
## N.C. DIVISION OF WATER QUALITY CONTACTS

**Asheville Regional Office**
2090 U.S. Highway 70
Swannanoa, NC 28778
828-296-4500
FAX 828-299-7043

**Fayetteville Regional Office**
Systel Building,
225 Green St., Suite 714
Fayetteville, NC 28301-5094
910-433-3300
FAX 910-486-0707

**Mooresville Regional Office**
610 East Center Ave.
Mooresville, NC 28115
704-663-1699
FAX 704-663-6040

**Winston-Salem Regional Office**
585 Waughtown Street
Winston-Salem, NC 27107
336-771-5000
FAX 336-771-4630

**Washington Regional Office**
943 Washington Square Mall
Washington, NC 27889
252-946-6481
FAX 252-975-3716

**Wilmington Regional Office**
127 Cardinal Drive Extension
Wilmington, NC 28405
910-796-7215
FAX 910-350-2004

**Raleigh Regional Office**
3800 Barrett Drive
Raleigh, NC 27609
919-791-4200
FAX 919-571-4718

Raleigh Regional Office
Mail to:
1628 Mail Service Center
Raleigh, NC 27699-1628

Two regulatory divisions within the DEQ implement parts of the CWA. The Division of Energy, Mineral and Land Resources (DEMLR) implements the storm water portion of the act evaluated under the SRF and Differential Oversight review. The remainder of the CWA implementation that is part of this review is the responsibility of the Division of Water Resources (DWR). DWR and DEMLR would like to thank you for the opportunity to respond to the EPA's May 10, 2016 letter discussing the findings of the March 2015 Differential Oversight Review.

***Element 2 – Inspections:***
*Metric 6a - Inspection reports are not complete and sufficient to determine compliance at the facility*
***Next Steps:***

- *Develop and implement procedures to ensure complete and sufficient inspection reports for both wastewater and stormwater programs.*
- *Conduct inspector training for state inspectors to ensure base knowledge and consistent implementation of inspection procedures.*

For construction storm water, under Element 2 – Inspections, DEMLR has been using a combined stormwater and erosion and sedimentation control inspection report[1] to document compliance with the Construction Stormwater General Permit[2] and approved erosion and sedimentation control plan (one combined inspection with one combined report by one inspector). In addition, since our November discussions with EPA, DEMLR has implemented changes in our program to begin utilizing a combined notice of violation (NOV) for construction projects[3]. This process assures that any time there is a violation on a site under our State Sedimentation Pollution Control Act (SPCA) that we are also issuing an NOV under the Construction NPDES program. Regional staff have been utilizing this process and the combined NOV since the end of 2015. If a delegated local government erosion and sedimentation control program issues an NOV under the SPCA, DEMLR has been issuing an NOV under the Construction NPDES program to ensure appropriate and consistent enforcement across all regulatory regimes.

For MS4 inspections, DEMLR undertakes extensive efforts in our MS4 programs to stay in contact with the local governments and continue to provide updated information on programs goals and expectations. We accomplish this through statewide meetings coordinated through local government and industry groups (NC APWA, NC SWANC, etc.). With resource constraints, like all states have, we have looked at alternatives to continue to have these contacts and also provide inspection/audits to meet EPA requirements by focusing inspection/audits on key areas. We will review our efforts here to assure that we can meet program requirements more completely. We would also note that we have been keeping EPA updated on efforts DEMLR has been working on with local government partners to come up with a sustainable process for MS4 program oversight. We feel there are models other than the traditional inspection/audit process that would better serve our program in the future. DEMLR has

[1] Attached – example Keystone Group inspection
[2] Attached – example General Permit
[3] Attached – example Keystone Group NOV

provided an early draft of information on our Sustainability program effort to Region IV staff. We are very interested in EPA's evaluation of this effort so we can begin implementation. We have acknowledged that the effort is not exactly like the approaches that EPA has used in the past, but we feel it does meet the interest on the federal level for sustainable programs. We believe that this approach is effective for North Carolina and would prefer not to revert to previous approaches that may not be sustainable long term.

One major problem area in the national programs for NPDES stormwater is the lack of stormwater specific training information for the state permit writers and inspectors. Training information is largely geared toward Wastewater aspects. DEMLR has worked with EPA Region IV staff to begin a process of training for our regional office inspectors. Region IV staff were in NC in February 2016 to conduct industrial stormwater inspections and to provide training and convey expectations to our regional staff. DEMLR and DWR have recently finalized an MOU to address how our agencies will coordinate to handle various parts of our programs (including NPDES issues). As part of this process, DWR will assist with internal training for DEMLR staff associated with stormwater permit inspection and enforcement along with coordination between the agencies in handling in-stream water quality issues. EPA Region IV is also planning to provide additional inspector training for DEMLR staff for construction sites and plans to hold a Stormwater Inspector Training Course in 2017 that addresses all program areas in the NPDES Stormwater Program. There is an agenda drafted for this training and hopefully funding will be available to implement this training in 2017.

The EPA did not include any negative findings relative to the wastewater inspections. Additionally, DWR provided results of EPA NPDES audits, including inspection reports, and stated that they were determined to be satisfactory. The existing inspectors are highly competent. However, DWR has had significant turnover in those positions in the past year. Therefore, in an effort to prevent an erosion of the quality of the existing NPDES wastewater inspection program, DWR has setup a workgroup to update and enhance existing training efforts to improve the quality and consistency across the state.

***Element 4 - Enforcement***

*Metric 9a - Enforcement responses do not demonstrate a return to compliance*
*File Metric l0b - Enforcement responses do not address violations in an appropriate manner*

***Next Steps for Enforcement:***

- *Develop and implement enforcement actions that meet EPA's definition of formal enforcement and promote a return to compliance for both wastewater and storm water facilities*
- *Revise the EMS to incorporate changes resulting from the NCDEQ reorganization (i.e. moving stormwater enforcement program to the Division of Energy, Minerals, and Land Resources), and to address the Tiered Enforcement Policy, such that implementation of NC enforcement programs meet EPA policy expectations*

For construction stormwater, as noted under Element 2, DEMLR has worked to institute a consistent use of a combined inspection report and NOV framework across the state and will continue training efforts with the involvement of Region IV staff. DEMLR continuously reviews overall enforcement protocols.[4]. It should be noted that when minor deficiencies are discovered during the combined stormwater and erosion and sedimentation control inspections, a deadline for compliance is generally given within the inspection report (NODs are not used in these programs) to prompt timely compliance. If a portion of the deficiencies are addressed and correction of other minor deficiencies are underway and will be completed within a short period of time after the given deadline, DEMLR does not always pursue the next tier of enforcement (NOV). The next tier of enforcement (NOV and possibly an initial civil penalty) is used for projects that have major environmental issues still outstanding that were not resolved by the given deadlines or require immediate enforcement action regardless of the compliance deadline given. The move from an NOV to the next tier of enforcement (civil penalty and/or injunctive relief) is evaluated in the same manner as previously indicated in that the degree and extent of harm and the timeliness and effectiveness of the violator's actions to gain compliance are considered.

In order to ensure timely and appropriate follow-up, DEMLR has provisions in each inspector's work performance plan that they are to track and inspect any sites that have been issued an NOV or been referred for enforcement every two weeks and elevate the enforcement as necessary based upon their findings. Regional supervisors will work with their staff to more closely manage this aspect to ensure that timely and appropriate enforcement actions are taken until the subject sites are brought back into compliance with both programs.

DEMLR works with DWR staff on the review and update of systems and policies to ensure data is accurately entered and maintained in the ICIS system and that "next steps" in enforcement are pursued as appropriate. Efforts have been taken to try and provide better data access, but there are currently some DEMLR data areas that are undergoing major adjustments to address a system that has not worked as intended to track sediment and construction information. In addition, it appears that not all NOVs issued have been reported/counted as CWA formal actions

[4] See attached "Penalty_CPA_Guidelines 10.16.2015," "Initial Penalty Worksheet LQS 16-001," "Continuing Civil Penalty Worksheet," and "Civil Penalty Assessment Checklist"

(we intend to address this going forward). DEMLR staff have had discussions with EPA Region IV staff on these issues and are working with state DIT staff to have data transferred in a spreadsheet upload to EPA. In addition, DEMLR continues to work with DWR staff as we attempt to meet e-reporting requirements. We have indicated to EPA that these efforts have been impacted by a lack of resources on the IT side as well as permitting staff resources that have been redirected over the last few years. We will continue to provide EPA updates as we have established in our work plan commitments.

DEMLR will review existing actions to ensure they meet the definition of formal enforcement and determine where additional changes may need to be implemented to address EPA concerns. At this time, DEMLR has implemented changes that we feel are responsive, especially in the construction stormwater program. As we move forward with the additional inspector training noted for the coming year, we will also work to evaluate any additional adjustments that might be needed from an enforcement standpoint. DEMLR will coordinate these efforts with the DWR staff to ensure consistency in NPDES programs.

For NPDES wastewater permits issued by DWR, the EPA reviewed the compliance files for 16 facilities. EPA indicated that the state does a good job identifying violations, notifying permittees of violations, and assessing civil penalties for those violations. EPA also concluded that this represents a good "first step" in returning a facility to compliance. However, EPA then indicated their opinion that the state did not undertake appropriate steps to bring the facilities back in to compliance.

The facilities selected all had some level of chronic noncompliance. As such, we do not feel the review is indicative of the status of the overall statewide compliance program. The vast majority of facilities in the state operate in compliance with their NPDES permits. In addition, the timeframe for the data review was from 10/01/2013 to 09/30/2014. Review of the present status of the 16 facilities on the list indicate that 14 have identified and implemented some type of long term solution and are presently operating in compliance today.[5]

The overall deficiencies identified in the compliance program for facilities with chronic compliance issues warrant some actions by the state to further improve the program.

At present, DWR has numerous tools at our disposal that satisfy EPAs definition of formal actions to bring facilities into compliance. The list includes:

- Special Orders by Consent
- Compliance Agreements
- Judicial Injunctions
- Judicial Orders by Consent
- Special Orders Without Consent (authority with EMC not DWR)

EPA defines a formal action as "one that requires actions to achieve compliance, specifies a timetable, contains consequences for noncompliance that are independently enforceable without having to prove the original violations, and subjects the person to adverse legal consequences for

[5] See attached spreadsheet with comments

noncompliance". In an effort to increase the effectiveness of the compliance program, DWR is exploring the possibility of having the Special Orders Without Consent delegated so that it might be used more frequently. Presently, the authority to administer these orders resides with the North Carolina Environmental Management Commission. DWR will explore delegation from the Commission to the Division to increase the efficiency of administering such orders as well as the frequency. DWR is assessing changes in procedure that would allow the civil penalty assessments issued by the state to meet the definition of an EPA formal action. In addition, DWR is presently reviewing and updating the existing tiered enforcement policy and its implementation[6] to require a greater escalation in civil penalty amounts for repeat or chronic noncompliance.

DWR is in the process of updating the EMS to account for organizational changes that have occurred over the past several years. We expect to complete the updates and present them to EPA for review by the end of Fiscal year 2017. DEMLR believes that the relocation of the Stormwater Program from DWR to DEMLR has added efficiencies to the implementation of both programs by allowing DEMLR to integrate the inspection and enforcement programs. As a result, this change has improved communication between the programs and enhanced (not reduced) opportunities to streamline enforcement by allowing DEMLR (rather than two separate agencies) to determine which program is best suited to pursue enforcement action based upon the program that has sufficient documentation to substantiate the violations and ultimately prevail in court if challenged.

[6] See attached DWR "Draft Guidance for Tiered Enforcemer t" March 16, 2012

***Element 5 – Penalties***
*Metric 11a - Penalty calculations do not document and include gravity and economic benefit:*
*Metric 12a - No documentation of the rationale for difference between initial penalty calculation*
*and final penalty*
*Metric 12b - No documentation showing penalties were collected*
***Next Steps for Penalties:***

- *Develop and consistently implement procedures for calculation of gravity and economic benefit*
- *Document both gravity and economic benefit calculations in the file*
- *Evaluate whether any economic benefit (delayed or avoided costs) was gained in each case and document specific rationale, even in cases with no economic benefit realized*
- *Develop and implement procedures to document the rationale for differences between the initial and final assessed penalties*
- *Develop and implement procedures to document the evidence of penalty collection.*

As DEMLR enforcement actions are initiated by the regional office but processed for civil penalties and injunctive relief through case closure by the Raleigh Central Office, a separate enforcement case file is located in the Raleigh Central Office that contains all the documentation generated after issuance of the NOV showing the escalation of enforcement for the project in question (some of this supplemental enforcement related information may not be located in the regional office files). This Raleigh Central Office case file contains information such as the civil penalty calculation worksheet (which includes consideration of economic benefit among other factors), memos and phone logs of conversations between Central staff and Attorney General's Office attorneys regarding preparation for upcoming contested case hearings and consideration of settlement offers, rationale for settlement of penalties, settlement agreement negotiations and final documents, and payment of the civil penalties or actions taken by our attorneys to collect outstanding penalties. DEMLR does acknowledge that while we conduct combined inspections and issue combined NOVs, we have tended to enforce violations at project sites under the SPCA Act due to sedimentation issues that also resulted in water quality impairment. DEMLR will focus on those sites where water quality violations can be substantiated and pursue enforcement under the Construction Stormwater General Permit with respect to civil penalties and injunctive relief so that there is a better distribution of enforcement cases between the two programs.

DEMLR considers economic benefit when the benefit can be determined. If it cannot be determined, there are other criteria for which the penalty may be based. In calculating economic benefit in civil penalty assessments, the elements considered include but are not necessarily limited to the design costs, permit fees, material and installation costs of BMPs and/or any other apparent savings that might be applicable. In regard to penalty settlements, those settlements often reflect the value of costs saved by the State in not going to mediation or litigation. DEMLR will review existing procedures and will update/create any needed information to assure that necessary documentation is included in case files.

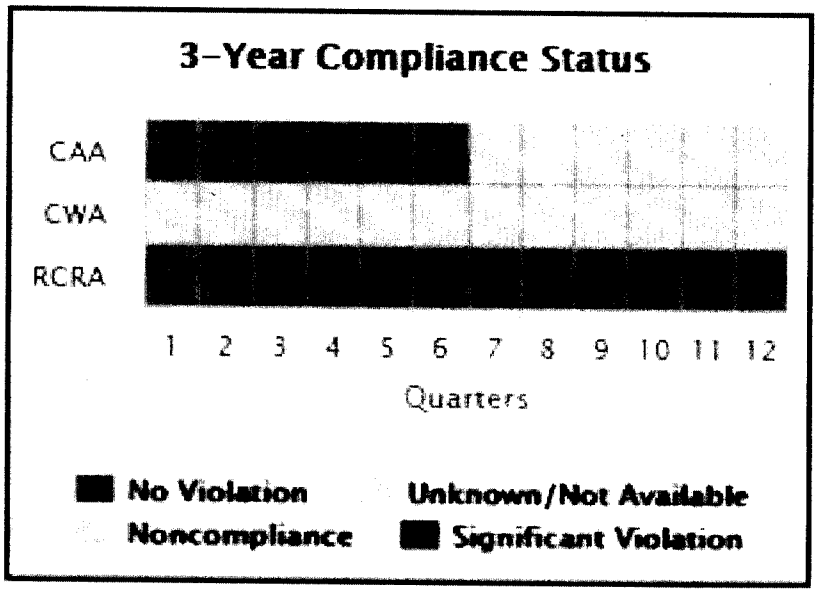
DWR is developing a policy that details how to account for economic benefit derived from noncompliance when assessing civil penalties. The division is evaluating the methods included in the policy with other Departmental entities to ensure statewide consistency.

DWR is developing a spreadsheet based tool for statewide use that will detail how civil penalties are developed. The spreadsheet will detail the calculation of civil penalties and will include a section for economic benefit derived from noncompliance as well as the gravity of the violation. We anticipate updating our enforcement procedures so the calculations will become part of the official compliance file. A narrative protocol on how to use the new assessment tool is being developed in conjunction to ensure consistency of application throughout the state. Documentation of how economic benefit from noncompliance and gravity will be part of the established protocol.

DEMLR tracks penalties in the NPDES stormwater program in the BIMS database. Sediment penalties are tracked in an Access database. Both databases allow the tracking of dates for assessment, when penalties are paid and when or if penalties are forwarded to the Attorney General's (AG) office for collection along with responses to the collection process. Since the AG's office is responsible for delinquent penalty collections, we cannot update our file documents until we receive a collection confirmation or file closure letter from the AG. In those instances, where the penalty comes to our office directly, we copy and make note of the payment, deposit the penalty in the penalty account (which goes to the local school board, not DEQ) and forward a copy of the payment to the AG. We still have to wait for the collection confirmation or file closure letter from the AG to put final documentation in the file. In reference to NPDES cases, DEMLR will work with DWR to assure that we are utilizing the same approaches on the NPDES cases.

DWR has an extensive process for reviewing requests for penalty remissions and documenting both the decision and the rationale. However, due to changes in the file management system over recent years, those documents are either not completely retained and/or stored in a central location. The entirety of DWR is transitioning from paper file storage systems to electronic storage systems including the NPDES program. Once that transition is complete, all files will be stored electronically for easy retrieval. In the interim, DWR will review is present paper file management and storage system to address the issues raised in the EPA report.

The process for penalty collection involves DWR first attempting to collect assessed penalties. If those attempts are unsuccessful, then the cases are forwarded to the DEQ General Council Office for further collections efforts. When those efforts result in monies being collected, the information of the collected amount is entered into the BIMS database. The paperwork for those efforts should be then forwarded to DWR staff. Again due to space constraints, the systematic collection and coordination of that paperwork is not saved in the files consistently. During the migration toward an electronic file management, DWR is updating and standardizing post assessment file management processes. While retention of paper copies of collected penalties needed improvement, all the information was correctly entered and stored in our BIMS database.


3-Year Compliance Status
CAA
CWA
RCRA
1 2 3 4 5 6 7 8 9 10 11 12
Quarters
No Violation
Noncompliance
Unknown/Not Available
Significant Violation

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Analyze Trends: State Air Da...

File Edit View Favorites Tools Help

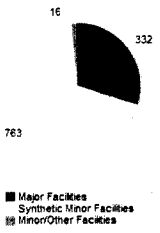
All | Drinking Water | Hazardous Waste | Pesticides | Water

State North Carolina  Dashboard View Performance Dashboard

## Facilities

Fiscal Year 2014  Agency State

Number of Federally-Reportable Facilities

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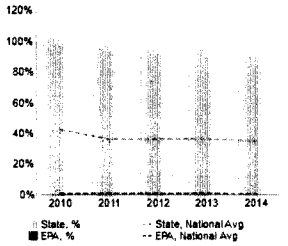
## Compliance Evaluations

View More Annual FCE Rate All Facilities

% of Facilities with a Full Compliance Evaluation

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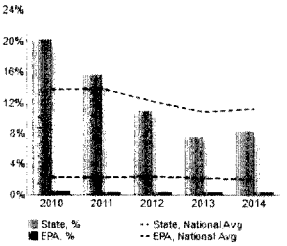
## Violations

View More Violation Rate All Facilities

% of Facilities with an Alleged Violation

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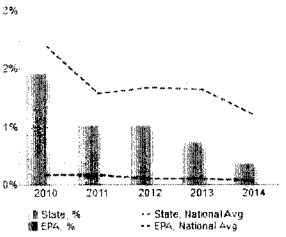
## High Priority Violations (HPV)

View More Facilities with an HPV

% of Facilities (Major and Synthetic Minor) with an HPV

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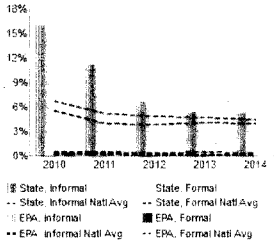
## Enforcement Actions

View More All Facilities Subject to Enforcement

% of All Facilities Subject to Enforcement

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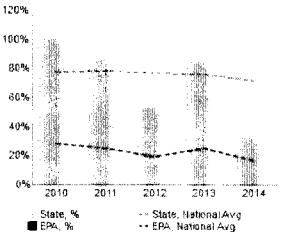
## Penalties

View More Actions with Penalty at All Facilities

% of Formal Enforcement Actions that Include a Penalty - All Facilities

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The Division of Waste Management (DWM) would like to thank you for the opportunity to respond to the EPA's May 10, 2016 letter discussing the findings of the March 2015 Differential Oversight Review. The primary findings related to the RCRA program implemented by the DWM were related to penalties and the calculation of economic benefit. As discussed in the Department's cover letter, the DEQ is investigating training on determination of economic benefit under multiple statutes.

**The specific "Next Steps" suggested in the letter were:**

***Element 5 – Penalties - Next Steps:***

- *Fully evaluate whether any economic benefit from noncompliance was gained in each case ( e.g.,through delayed or avoided costs);*
- *As outlined in the RCRA Civil Penalty Policy, calculate economic benefit where appropriate using the BEN model or other method that produces results consistent with national policy;*
- *When no economic benefit is assessed in the penalty calculation, document the specific rationale for why no economic benefit was realized*

In response to Round 3 SRF recommendation, N.C. sought and, in 2013, was granted the authority to consider the economic benefit of noncompliance in RCRA penalty assessment from the NC legislature[1]. Since 2013, the NC RCRA program has assessed the amount of economic benefit a facility has received due to noncompliance on all orders. The only time economic benefit would not be added to the penalty would be based on the Economic Benefit Penalty Policy document (attached). If the economic benefit is not significant and below the amounts found in the chart, no economic benefit is added to the penalty.

[1] http://www.ncoah.com/rules/H74RegulatoryReformActof2013.pdf

NCDENR

North Carolina Department of Environment and Natural Resources

Beverly Eaves Perdue
Governor

Dee Freeman
Secretary

**MEMORANDUM**

TO: JOINT SELECT REGULATORY REFORM COMMITTEE
The Honorable David Rouzer, Chair
The Honorable Marilyn Avila, Co-Chair
The Honorable Pat McElraft, Co-Chair
The Honorable Harry Brown, Co-Chair

FROM: Kari Barsness KKB
Director of Legislative and Intergovernmental Affairs

SUBJECT: Report on Tiered Enforcement Policy Development

DATE: October 1, 2011

Pursuant to Section 61 of S.L. 2011-398, the Secretary is required to report on the development of a tiered enforcement policy in the department. The report shall be submitted to the Joint Select Regulatory Reform Committee by October 1, 2011. Please see the attached report to satisfy this reporting requirement.

If you have any questions or need additional information, please contact me by phone at (919) 715-4189 or via e-mail at Kari.Barsness@ncdenr.gov.

cc: Robin Smith, Assistant Secretary for Environment
Sheila Holman, Division of Air Quality
Ted Tyndall, Division of Coastal Management
Jim Simons, Division of Land Resources
Dexter Matthews, Division of Waste Management
Tom Reeder, Division of Water Resources
Coleen Sullins, Division of Water Quality
Kristin Walker, Fiscal Research Division
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September 29, 2011

# Report to the Environmental Review Commission and the Joint Select Regulatory Reform Committee

## Uniform Violation Notification Policy for the Department of Environment and Natural Resources

Introduction

The Regulatory Reform Act of 2011 (referred to herein as the Act) that became law on July 25, 2011, directs the "Secretary of Environment and Natural Resources to develop a uniform policy for notification of deficiencies and violations for all of the regulatory programs within the Department of Environment and Natural Resources (DENR)." The Act further specifies that the different types of notification be based on the potential or actual level of harm to public health, the environment, and the natural resources of the state. The report on the development of the notification policy is to be submitted to the Environmental Review Commission and the Joint Select Regulatory Reform Committee no later than October 1, 2011, and the policy is to be implemented no later than February 1, 2012.

The purpose of this document is to report on development of the uniform notification policy for DENR. The notification policy has been based on a tiered enforcement structure so that the enforcement response is commensurate with the environmental violation or deficiency. In developing the notification policy, DENR reviewed the policies of the United States Environmental Protection Agency (US EPA) and the environmental regulatory programs of other States as required by the Act.

DENR regulatory programs have always used a tiered enforcement approach in dealing with environmental deficiencies and violations. DENR's *Principles of Enforcement* (March 31, 2000)[1] emphasize that enforcement decisions should be proportional to the degree of potential harm and that enforcement actions should increase in severity for regulated entities with poor compliance histories.

Under the framework provided by DENR's Principles of Enforcement, each regulatory program has maintained a certain level of autonomy in dealing with environmental enforcement. Some autonomy is necessary because individual programs operate under different statutes and rules. Any DENR notification policy or tiered enforcement structure must balance consistency across programs with enough flexibility to allow each program to act in accordance with its statutes and rules.

[1] DENR's *Principles of Enforcement* is available at http://portal.ncdenr.org/web/guest/enforcement-principles.

Implementation

DENR will implement a three-tiered approach to enforcement, with the severity of enforcement response increasing for each tier. The new policy is consistent with the way many divisions are already implementing compliance and enforcement programs. The policy recognizes that violations of rules typically fit into three categories – 1. recordkeeping and paperwork that result in little or no harm to the environment or public health; 2. more serious infractions that could result in harm to the environment or public health; and 3. violations that have clearly impacted the environment or public health. The policy will formally recognize the tiered approach, so that a "Tier 1" violation will be met with a less severe response than a "Tier 3" violation. A general description of the three enforcement tiers is provided below, and examples of violations within a tier are found in Appendix 1 for each regulatory division in DENR.

The tiers described below are intended to allow flexibility in responding to regulatory violations or deficiencies. With the tiered structure, a regulatory program can tailor its enforcement response as necessary to address the specific circumstance of a given violation.

Tier 1 Violations

Tier 1 violations represent minor violations resulting in little or no harm to the environment or public health. Tier 1 violations are of minor duration and gravity. The violations are not committed willfully or intentionally. Tier 1 violations often represent the first offense committed by the violator.

A Notice of Deficiency is normally issued for Tier 1 violations.

Tier 2 Violations

Tier 2 violations represent more serious violations where there is documented or moderate to severe potential for harm to the environment or public health. Tier 2 violations can be of moderate duration and gravity. Tier 2 violation notifications would typically be issued to violators with a prior history of noncompliance with regulations. Tier 2 violations can also include continued noncompliance with Tier 1 violations.

A Notice of Violation (NOV) is normally issued for Tier 2 violations. A consent order or other form of compliance schedule may be warranted for Tier 2 violations, depending on the circumstances.

Tier 3 Violations

Tier 3 violations represent the most serious violations where there is documented significant or high potential for environmental or public health harm. Tier 3 violations can be of significant duration and gravity. Also, violations that are committed willfully and intentionally are categorized as Tier 3 violations. Tier 3 violation notifications would typically be issued to violators with a significant prior history of noncompliance with regulations. Tier 3 violations can also include continued noncompliance with Tier 2

violations. Civil penalties, consent orders, injunctions, and other enforcement tools are expected with Tier 3 violations.

A Notice of Recommendation for Enforcement and subsequent civil penalty or other enforcement action described above are normally issued for Tier 3 violations.

Enforcement Actions that Fall Outside the Tier Structure

The tiered enforcement policy does not cover special enforcement actions such as administrative orders for compliance; special orders by consent; or judicial actions for injunctive relief intended to address imminent threats to public health, safety or the environment or to address a continuing violation. Use of those enforcement actions are governed by specific statutory criteria.

A number of DENR programs have specific authority to use administrative orders for compliance. Under Article 9 of Chapter 130A (which includes statutes related to solid waste and hazardous waste), several sections provide specific authority for compliance orders as well as broad authority to issue orders to abate public health nuisances (G.S. 130A-19) and orders to abate an imminent hazard (G.S. 130A-20) in Article 1. Compliance Orders under Ch. 130A are normally issued with a penalty. Federal rules at 40 CFR 239.8 and 256.21 require that a state have authority to issue compliance orders as a condition for approval of state solid waste programs. Federal rules at 40 CFR 271.16 have a similar requirement for state agencies administering hazardous waste programs under delegation from EPA.

Under the state Dam Safety Act, G.S. 143-215(b) authorizes DENR to issue a Dam Safety Order if it finds any dam is not maintained in good repair; is dangerous to life and property; or does not satisfy minimum streamflow release requirements. The order directs the owner of the dam to perform the necessary maintenance or repair or to remove the dam, at the owner's expense, within a specified time. G.S. 143-215(c) authorizes the Department to immediately seek injunctive relief or take measures necessary to provide emergency protection of life and property without issuing an order,

The Division of Water Quality issues Special Orders by Consent under the authority of NCGS 143-215.2. (By rule, the Environmental Management Commission has delegated the authority to issue these orders to the director of the Division of Water Quality.) Special orders by consent are typically used in situations where a wastewater treatment system cannot comply with its permit and infrastructure improvements will be needed to bring the system into compliance. The orders allow the system time to make the needed improvements (avoiding additional penalties for continuing violation in the meantime). It also provides for stipulated penalties if the system fails to make the improvements on the schedule agreed to in the consent order. These orders have a direct analog to those issued by the EPA under the Clean Water Act for these violations and often allow the wastewater system to avoid federal enforcement action.

Special Orders can also be issued without the consent of the permitted facility. This option has very rarely been used and the authority to issue orders without consent lies only with the Environmental Management Commission.

All DENR environmental regulatory programs have authority to seek an injunction in appropriate circumstances. Generally, a request for injunctive relief is only appropriate where there is a threat to public health, safety or the environment and the program and/or the violator has failed to respond to notice of violation and civil penalties.

Enforcement Policies of Other States

As required by the act, DENR reviewed the notification policies of states within the US EPA Region 4[2] and the local agencies within North Carolina to gain an understanding of other approaches to enforcement. The policies of Virginia, which is not a US EPA Region 4 state, were also reviewed for this report. Uniformity across agencies does not exist because each agency has its own approach to enforcing environmental regulations. However, agencies typically follow a structure of tiered enforcement. A summary of the notification policies and enforcement structure of the states and local agencies reviewed for this report is presented below and is broken out by environmental media.

Air Quality

The Division of Air Quality (DAQ) staff canvassed states and local agencies via phone and reviewed enforcement information on websites to obtain an overview of their enforcement policies and procedures. All state and local agencies use a tiered enforcement strategy with minor violations being met with warning letters or NOVs without penalty, and more serious violations being subject to NOVs, civil penalties, and/or orders. Seven of the eight states surveyed issue warning letters or some similar type of letter for minor violations. Tennessee is the only state that does not use warning letters, while South Carolina indicated that they issue warning letters very rarely (~1 to 2 percent of the time). Local agencies in North Carolina issue only NOVs in most cases. Only Western North Carolina Regional Air Quality Agency in Buncombe County issues warning letters to minor facilities.

Water Quality

NC DWQ surveyed other state programs through an Association of Interstate Water Pollution Control Administrators (ASIWPCA) email list. Staff members from nine state water quality programs responded. Seven of nine respondents indicated the use of a "tiered" enforcement response strategy, though all did not employ that specific term. Tier 1 responses were very similar across the states surveyed, with emphasis on violations that had caused no environmental harm and "paperwork" violations.

[2]US EPA Region 4 states are Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. Three local air quality programs operate in North Carolina - Forsyth County, Mecklenburg County, and Western North Carolina Regional Air Quality Agency (Buncombe County).

Water Resources

States in Region 4 were surveyed as to their enforcement approach. States indicated that while terminology used may be different, the approach to enforcement directly paralleled the approach taken in North Carolina, whereby the severity of the violation led to increased levels of enforcement. All states including North Carolina have primary enforcement authority for Safe Drinking Water Act implementation and therefore for federal violations must follow USEPA enforcement directives.

Land Resources

Surrounding states were contacted by the Division of Land Resources to investigate their approach to enforcement the following is a summary of the results of that investigation for each of the regulatory programs within the division:

Dam Safety Program:

The enforcement approaches used by the states contacted varies. Virginia issues a "certificate to operate" for a dam. If the dam is not in compliance with state law a conditional certificate with requirements is issued. If that is not complied with then a "Special Order" is issued by the secretary of the Department of Conservation and Recreation. Tennessee and South Carolina Issue NOV's if the NOV's don't bring compliance then these states have several levels of orders such as Director's Orders, Inspection and Repair Orders and Maintenance Orders. If these Orders don't bring compliance then the cases are referred to the department's general counsel and to court.

Mining Program:

Enforcement approaches are generally similar in each of the surrounding states. If an inspection finds non-compliance a Notice of Deficiency or Non-Compliance is issued. In Georgia, an NOV is then issued. If these are not complied with then bond forfeiture and civil penalties are pursued.

Erosion and Sedimentation Control Program:

All of the states contacted issue a warning letter of some type with a deadline. If the letter is not complied with then a civil penalty, stop work order or restoration order may be issued.

Waste Management

States in US EPA Region 4 were canvassed via phone and/or information gained via state internet websites. All states had enforcement approaches in a manner consistent with a tiered approach depending on the severity of the violation. For authorized federal grant programs, states must follow US EPA enforcement guidelines just as North Carolina does.

Coastal Management

The Division of Coastal Management (DCM) staff requested information through the Coastal States Organization Information Request network and researched other states Coastal Management Enforcement policies on the internet. Those that provided information indicates a consistent enforcement response to match the degree to which a violation causes or could cause harm and are categorized as such (i.e., minor, moderate, and major). All the responses, however, had varying options for enforcement and most have non-hierarchy tiered enforcement.

US EPA's Enforcement Policy

As required by the Act, DENR reviewed the notification policy of the US EPA. The results of this review are presented below and are broken out by environmental media.

Air Quality

The US EPA's policy for enforcement of air quality violations is provided in its Timely and Appropriate Enforcement Response to High Priority Violations (HPVs) policy of December 1998[3], which provides a method of prioritizing air quality violations for enforcement purposes. The HPV policy applies to any "major"[4] stationary source of air pollution that is in violation of a federally-enforceable regulation. The policy also applies to "synthetic minor"[5] facilities meeting specific criteria. Additional violations, whether at major or minor sources, may rise to the level of a high priority violation on a case-by-case basis.

As stated in the HPV policy, the "[US] EPA expects that all violations of air pollution regulations, whether meeting the HPV criteria or not, will be addressed by states, local agencies, or US EPA." That being said, an air quality violation can be labeled as an HPV in one of three ways. The violation may fall under the General HPV Criteria. It also may fit the HPV Matrix Criteria based on magnitude or duration. Finally, the violation may be categorized as an HPV at the discretion of the state or local agency and US EPA.

The US EPA expects states and local agencies to address HPV cases in accordance with guidance laid out in its Timely and Appropriate Enforcement Response to HPVs. The HPV guidance establishes milestones dates triggered from the date of violation discovery. States and local agencies must meet the milestones for issuing NOVs or similar type letters and addressing violations. Under the HPV guidance, a violation is addressed with "a legally-enforceable and expeditious administrative or judicial order...[or]... referral to

[3] The Timely and Appropriate Enforcement Response to High Priority Violations policy is available at http://www.epa.gov/compliance/resources/policies/civil/caa/stationary/issue-ta-rpt.pdf.
[4] A major source is defined under 40 CFR 70.2.
[5] A synthetic minor facility is a facility that accepts federally-enforceable permit limitations to avoid being a classified as a major facility.

the state Attorney General or federal Department of Justice for an adjudicatory enforcement hearing or judicial action." In practical terms, a violation is addressed when a civil penalty is assessed or a consent order is signed. The US EPA has federal oversight to ensure that the state and local agencies are handling HPVs appropriately. If the US EPA determines that agencies are not making appropriate progress towards addressing a violation or that the penalty is not sufficient, the US EPA can overfile for a given case. The US EPA will continue tracking the HPV until it is resolved. Complete resolution of the case occurs when the violator has returned to compliance and all penalties assessed against the violation have been paid. The US EPA and states or local agencies meet monthly to discuss the HPV until the case has been fully resolved.

Milestones associated with an HPV are also tracked in the US EPA's compliance and enforcement data system known as AFS. The DAQ recognizes that the HPVs are an US EPA construct and under the Memorandum of Understanding with the US EPA, the DAQ has not agreed to take on the burden of identifying and tracking HPVs. Instead, the DAQ meets monthly with the US EPA Region 4 to discuss HPV cases. The US EPA Region 4 determines which cases meet the HPV criteria and assumes all responsibility for entering and tracking HPVs in AFS.

Water Quality

General information about EPA's enforcement information is located online at http://www.epa.gov/oecaerth/basics/enforcement.html. From that website: "If violations of the environmental statutes and regulations are found, generally a NOV is issued to the violator. In some instances, a warning letter may instead be issued for first-time violations that are neither highly significant in nature, nor present an imminent hazard or endangerment." Activities beyond these initial actions include information audits, "show cause" meetings, civil penalty assessments and injunctive relief.

Water Resources

The US EPA's policy for enforcement of violations under the Safe Drinking Water Act is provided in its Drinking Water Enforcement Response Policy of December 2009. The policy uses and Enforcement Targeting Tool (ETT) to prioritize regulated public water systems for enforcement. According to the policy, the goals are to 1) align public water system violations of the Safe Drinking Water Act within a prioritization that is more protective of public health, 2) view public water system compliance status comprehensively, 3) ensure that both EPA and the states act on and resolve drinking water violations, 4) recognize the validity of informal enforcement response efforts while ensuring that, if these efforts have proven ineffective, enforceable and timely action is taken, 5) ensure that EPA and the states escalate enforcement efforts based on the prioritization approach, and 6) increase the effectiveness of state and federal enforcement targeting efforts by providing a "tool" that calculates comprehensive noncompliance status for all systems and identifies those systems not meeting national expectations as set by EPA. It also provides an additional resource for identifying systems possibly in need of other State/EPA assistance in the areas of Capacity Development and Sustainability.

The policy can be found at http://cfpub.epa.gov/compliance/resources/policies/civil/sdwa/. Each quarter, EPA provides the ETT list to states and requires states take action to address public water systems with an ETT score of 11 or greater.

Land Resources

Dam Safety Program;
EPA does not have a comparable program.

Mining Program;
EPA does not have a comparable program.

Erosion and Sedimentation Control Program;
The US EPA's policy for enforcement of erosion and Sedimentation Control is under Section 309 of the Clean Water Act.

Waste Management

The US EPA's policy for enforcement of hazardous waste and underground storage tank violations under the Resource Conservation and Recovery Act (RCRA) are provided in its UST/LUST Enforcement Procedures Guidance Manual OSWER Directive 9610.11 of May 1990, and the Hazardous Waste Civil Enforcement Response Policy (ERP) of December 2003. These provide a method of prioritizing violations for enforcement purposes. Significant Non-Compliers (SNCs) are violators that have caused actual exposure or a substantial likelihood of exposure to hazardous waste or its constituents; are chronic or recalcitrant violators; or deviate substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements.

Coastal Management

None provided specifically for coastal management.

# Appendix 1

## *Examples of Tiered Enforcement for DENR's Divisions*

## Appendix 1A – Division of Air Quality

### Definitions of Enforcement Tiers for the Division of Air Quality

Tier 1 Violation (Written Notice of Deficiency)

- Minor violations of permit conditions or regulations resulting in no excess or unpermitted air emissions to the environment

Tier 2 Violation (Written Notice of Violation)

- Second violation of a Tier 1 violation
- First time violation of several Tier 1 violations (e.g., first time record keeping where several months of daily records are missed, etc.)
- A small amount of unpermitted equipment at a permitted facility
- Violation where there is a potential for excess air emissions to the environment (e.g., improper operation and maintenance, parametric monitoring violation, certain air toxics violations, 112(r) violation, etc.)

Tier 3 Violation (Written Civil Penalty Assessment/Notice of Recommendation for Enforcement Action)

- Third violation of a Tier 1 violation
- Second violation of a Tier 2 violation
- First time violation of several Tier 2 violations (e.g., a first time occurrence of not properly operating and maintaining several control devices, etc.)
- A significant amount of unpermitted equipment at a permitted facility OR an unpermitted facility
- Violation where there is a documented excess of air emission to the environment (e.g., failed source test, exceeding a permitted limit, opacity violation, etc.)
- Any violation shown to be committed willfully and/or knowingly

# Appendix 1B – Division of Water Quality

## Definitions of Enforcement Tiers

The purpose of the following guidance is to provide a framework for tiered enforcement within the Division of Water Quality (DWQ). A three tiered approach of increasing severity is provided to allow DWQ to more effectively match enforcement action with the various possible scenarios requiring a division response. Each Tier includes the general conditions that include factors and considerations for establishing that a scenario falls within that Tier level. Additionally, examples for each Tier have been provided to help determine an appropriate enforcement action for different scenarios. However, for any included example it is possible that the conditions under which that example occurred could warrant a more or less severe enforcement action.

### Tier 1 (Written Notice of Deficiency)

**General Conditions:** minor violations; no environmental harm; not willful or intentional; minor duration and gravity

**Examples:**

1. Late reporting (e.g., standard monitoring report forms)
2. Failure to meet permit schedules
3. Minor operational deficiencies (e.g., inadequate chlorination)
4. Minor design deviation (e.g., 100 vs. 150 gal. tanks)
5. Minor record keeping (e.g., missing data point[s])
6. Failure to apply for renewal of permit
7. Failure to pay fees within specified timeframe
8. Inadequate maintenance
9. Non-repeat limit exceedance
10. Well construction violations (e.g., non-threat to health such as no well tag)
11. Failure to provide notice (e.g., designer's certification, certificate of completion, deed notification)
12. Partial implementation of permit conditions (e.g., sending out education materials 1x/year versus required 2x/year)
13. Minor (0-10%) exceedance of NPDES wastewater permit limit.

### Tier 2 (Written Notice of Violation)

**General Conditions:** more serious violations; potential for environmental harm; potentially willful or intentional violations; potential for impact human health; prior record of non-compliance or violations; moderate duration and gravity

**Examples:**

1. Repeat of Tier 1 issue (e.g., chronic late reporting)
2. Multiple Tier 1 issues
3. Failure to respond/correct Tier 1 issues within specified timeframe
4. Failure to notify (of repeat minor or any major operational deficiencies)
5. Major operational deficiencies (e.g., no chlorination)
6. Major design deviation
7. Operating without permit (e.g., minimal environmental risks)
8. Missing reports (standard monitoring report forms)
9. Inadequate maintenance (may affect effluent limit)
10. Multiple limit exceedances
11. Over-application/ponding without discharge
12. Well construction violations (e.g., may affect health or the resource)
13. Failure to implement program elements or permit conditions (e.g., failure to issue pretreatment permits, no Stormwater Pollution Prevention Plan)
14. Significant (11-20%) exceedance of NPDES wastewater permit limit.

**Note:** Notice of Deficiency may not be required prior to issuing Notice of Violation

**Tier 3 (Written Civil Penalty Assessment / Notice of Intent / Notice of Recommendation for Enforcement Action)**

**General Conditions:** major violations; environmental harm done or high potential for environmental harm; willful and/or Intentional violations; impact to human health or high potential for impact to human health; non-compliance that results in significant cost savings; Prior record of non-compliance or violations; major duration and gravity

**Examples:**

1. Repeat of Tier 2 issue
2. Multiple Tier 2 issues
3. Failure to respond/correct Tier 2 issues within specified timeframe
4. Failure to notify (e.g., major operational deficiencies)
5. Operating without permit (e.g., major operation, 401 certification)
6. Illegal discharge (e.g., any volume if surface water standards are violated, fish kill, etc.)
7. Greater than 20% exceedance of NPDES wastewater permit limit

**Note:** Per Session Law 2011-145 (HB-200), an NOV must be received by a violator at least ten days prior to the issuance of any Civil Penalty Assessment (CPA).

## Appendix 1C – Division of Water Resources

### Definitions of Enforcement Tiers for the Division of Water Resources Ground Water Management Branch - Capacity Use Area

Tier 1 Violation (Written Notice of Deficiency)

- Minor violations of permit conditions or regulations that may result in excessive or unpermitted ground water withdrawals. There was no environmental harm caused and it was not willful or intentional. It occurred over a minor duration of time. (Examples: Late reporting of compliance forms, operating with an expired permit, non-repeat limit exceedance)

Tier 2 Violation (Written Notice of Violation)

- Second violation of a Tier 1 violation
- First time violation of a significant number of Tier 1 violations
- Violation where there is a potential for adverse impacts to the natural resource through unsustainable ground water withdrawals (Examples: operating without a permit where minimal environmental risks exist, multiple limit exceedance, declining water levels or salt water intrusion, etc.)

**Note:** Notice of Deficiency may not be required prior to issuing Notice of Violation

Tier 3 Violation (Written Civil Penalty Assessment/Notice of Recommendation for Enforcement Action)

- Third violation of a Tier 1 violation
- Second violation of a Tier 2 violation
- First time violation of a significant number of Tier 2 violations
- Any violation shown to be committed willfully and/or knowingly
- Operating without a permit (ex. major operation over 1 million gallons per day)
- Violation where there are adverse impacts to the natural resource through unsustainable ground water withdrawals (Examples: declining water levels, salt water intrusion, etc.)

**Note:** Notice of Violation may not be required prior to issuing Civil Penalty Assessment. A Notice of Recommendation for Enforcement Action may be submitted prior to assessment of any penalty.

## Appendix 1C – Division of Water Resources

### Definitions of Enforcement Tiers for the Public Water Supply Section

The following describes the framework for tiered enforcement implemented by the DWR, Public Water Supply (PWS) Section in accordance with the uniform policy for notification of deficiencies and violations for regulatory programs within the Department of Environment and Natural Resources.

Deficiencies and Violations Determined by Protection and Enforcement Branch (Regional Office)

In accordance with federal rules adopted by reference and conditions specified in primacy documentation for the Drinking Water Program, the PWS Section has defined "Deficiencies" that must be entered into the Safe Drinking Water Information System (SDWIS) database maintained by EPA. Each of the specified "Deficiencies" has a default severity of "Minor" or "Significant," although each "Deficiency" constitutes a violation of the *Rules Governing Public Water Systems*."

Based on the eight (8) EPA specified categories of a sanitary survey (i.e., inspection) for a public water system and current rules we have 132 Deficiencies and 25 Significant Deficiencies.

*Tier 1 Violations (Written Notice of Deficiency)*

When regional office staff identify any of the 132 Deficiencies, they notify the owner of the water system in writing by issuing a "Notice of Deficiency." This notice specifies the rule that has been violated and a deadline for resolving the deficiency.

*Tier 2 Violations (Written Notice of Violation)*

If a deficiency is not corrected by the deadline specified in a "Notice of Deficiency" letter, the regional staff may issue a "Notice of Violation" specifying a revised deadline and that failure to resolve the deficiency may result in the issuance of an Administrative Penalty. Depending on violator's response and/or the potential or actual harm to public health, the PWS Section may issue an Administrative Order or Administrative Penalty.

*Tier 3 Violations (Notice of Violation and Administrative Order/Penalty)*

When regional staff identify any of the 25 Significant Deficiencies, they issue a "Notice of Violation" as required by EPA rules adopted by reference. An Administrative Order or Administrative Penalty is expected to follow a Significant Deficiency Notice of Violation.

Violations Determined by the Compliance Services Branch

The Compliance Services Branch is responsible for enforcing state and federal drinking water regulations relating to water quality, filtration and disinfection. The US EPA has granted North Carolina primacy for the implementation and enforcement of the federal requirements and has established violation and enforcement codes with reporting timelines as conditions of our primacy agreements. Therefore, in accordance with the federal rules adopted by reference and our primacy agreements, the Compliance Services Branch is obligated to cite violations and follow-up with enforcement actions, as necessary, in response to numerous types of drinking water violations including, but not limited to, monitoring and reporting violations, maximum contaminant level violations, treatment technique violations, public notification violations and various lead and copper rule related violations. The violations and enforcement actions issued by the Compliance Services Branch as they relate to the uniform violation notification policy are described below:

*Tier 1 Violations (N/A)*
This level (warning letter) is not applicable to the Branch's required enforcement actions.

*Tier 2 Violations (Notice of Violation and Administrative Order)*
Notices of Violation and Administrative Orders are initially issued for the various types of drinking water violations listed above. Each violation is cited and the requirements and deadline for returning to compliance are indicated in these letters.

*Tier 3 Violations (Administrative Penalty)*
Administrative penalties are follow-up enforcement actions that are issued to systems that fail to resolve the previously cited violation by the required deadline.

# Appendix 1D – Division of Waste Management

## Definitions of Enforcement Tiers for the Division of Waste Management

Tier 1 Violation (Written Notice of Deficiency)

- Minor violations of permit conditions or regulations resulting in no excess or unpermitted releases to the environment
- Not submitting permit information within timeframe

Tier 2 Violation (Written Notice of Violation)

- Second violation of a Tier 1 violation or failure to meet the compliance schedule for a Tier I enforcement action
- First time violation of a significant number of Tier 1 violations
- Violation where there is a potential for excess releases to the environment (e.g., improper operation and maintenance, parametric monitoring violation, lack of or improper labeling of waste containers, employee training not documented or performed within proper timeframe, etc.)

Tier 3 Violation (Written Civil Penalty Assessment/Notice of Recommendation for Enforcement Action)

- Third violation of a Tier 1 violation
- Second violation of a Tier 2 violation or failure to meet the compliance schedule for at Tier II enforcement action
- First time violation of a significant number of Tier 2 violations
- Violation where there is a documented release to the environment
- Any violation shown to be committed willfully and/or knowingly

## Appendix 1E – Division of Coastal Management

### Definitions of Enforcement Tiers for the Division of Land Resources

The Division of Coastal Management (DCM) has the responsibility of making civil assessments on behalf of the Coastal Resources Commission (CRC) pursuant to G.S. 113A-126(d) and NCAC 7J.0409(f). Local governments with Implementation and Enforcement Grants with the Department of Environment and Natural Resources (DENR) have the responsibility of enforcing the Coastal Area Management Act (CAMA) pursuant to G.S. 113A-117, of restraining violators pursuant to G.S. 113A-126(b) and of notifying violators that they are in violation of CAMA pursuant to G.S. 113A-126(c).

In determining the amount of the assessment, the CRC shall consider the following factors:

a) The degree and extent of harm, including, but not limited to, harm to the natural resources of the State, to the public health, or to private property resulting from the violation;
b) The duration and gravity of the violation;
c) The effect on water quality, coastal resources, or public trust uses;
d) The cost of rectifying the damage;
e) The amount of money saved by noncompliance;
f) Whether the violation was committed willfully or intentionally;
g) The prior record of the violator in complying or failing to comply with programs over which the Commission has regulatory authority; and
h) The cost to the State of the enforcement procedures.

The primary objective of DCM is resource recovery through restoration or mitigation of the damaged environment. Meeting this objective restores the loss of public resources. A secondary objective is the protection of adjoining riparian property owner rights, including rights of access. The Department and State also incur certain expenses of investigating unauthorized development and processing these violations through the required procedures.

The DCM staff has implemented an informal enforcement policy for minor development violations that was approved by the CRC on 03/08/1985. This policy has certain criteria that will allow a person, without previous violations, work still in progress, and work done (and proposed) is consistent with current CRC rules, to stop work and apply for and obtain a CAMA Minor Development Permit to resume work without issuance of a formal Notice of Violation, thus avoiding a civil penalty. This policy currently remains in effect and is documented in the Local Permit Officer training manual. This same policy would be implemented for major development violations with the exception of significant dredge and fill violations such as unauthorized excavation and/or filling in estuarine or public trust waters or coastal wetlands.

On 05/08/1989, the DCM director at the time, Mr. George Everett, issued authority to the District Managers which allowed the division to issue a "proposed" civil penalty assessment to violators. This procedure allowed the respondents to assume responsibility for the violation and pay the proposed civil penalty through an informal assessment process rather than being formally

assessed a civil penalty. If the respondent wishes to appeal the amount of the penalty or request a settlement or remission, then a formal civil penalty is issued. This procedure is unique to DCM and is currently in effect for DCM. Since 2003, there have only been six requests for settlement or appeal. The CRC rules states the Director shall issue a notice of assessment when restoration of adversely impacted resources is complete.

Since 2007, DCM has enhanced its compliance-monitoring program in which four new positions (one in each district office) were created to specifically monitor CAMA permitted projects. The main purpose of these positions is to monitor permitted CAMA projects to be proactive in the prevention of violations. When monitoring a project, if staff finds a permittee in noncompliance with the terms and conditions of the CAMA permit, staff advises the permittee of the deficiencies with an opportunity to bring the project into compliance without formal enforcement action. This depends, of course, on the compliance history of the violator and the factors found NCGS 113A-126(d). Since the implementation of the compliance positions, the compliance rate of permitted projects has not dropped below 96% compliance.

**Definitions of Enforcement Tiers for the Division of Coastal Management**

Tier 1 Violation (Letter of Concern or Warning Letter)

- "Minor development" violations of the Coastal Resources Commission's rules for permittable offenses, work still in progress, and no previous CAMA violations.
- "Major development" violations of the Coastal Resources Commission's rules for offenses that could have been permitted under a General Permit, work still in progress, no previous CAMA violations, does not involve dredge and fill activity in estuarine or public trust waters or coastal wetlands.

Tier 2 Violation (Notice of Non-Compliance)

- Second violation of a Tier 1 violation or failure to meet the compliance schedule for a Tier 1 violation (i.e, stopping work and applying for a permit to continue work).
- "Minor development" violations of the Coastal Resources Commission's rules for permittable offenses, work completed, and no previous CAMA violations.
- "Major development" violations of the Coastal Resources Commission's rules for offenses that could have been permitted under a General Permit, work completed, no previous CAMA violations, does not involve dredge and fill activity in estuarine or public trust waters or coastal wetlands.
- Non-permittable Minor or Major development, however, resources are recoverable through restoration of the impacted area to pre-development condition and brought into compliance within the specified schedule, excluding dredge and fill activity associated with unauthorized excavation and filling activities in estuarine and/or public trust waters.

Tier 3 Violation (Notice of Violation with Civil Penalty/Injunction)

- Third violation of a Tier 1 violation

- Second violation of a Tier 2 violation
- Unauthorized dredge and fill activity within estuarine and/or public trust waters.
- Continuing minor or major development violation due to failure or refusal to restore or bring project into compliance.
- Violation is of such a degree, gravity, or duration that significant environmental harm has been documented (i.e., unrecoverable resources) or high potential for environmental harm exists.
- Willful and intentional violations.

# Appendix 1F – Division of Land Resources

### Definitions of Enforcement Tiers for the Division of Land Resources

The Division of Land Resources administers the three regulatory programs of mine reclamation, erosion and sedimentation control and safety of dams. All three programs generally follow the same three tier enforcement, which consists of a notice of deficiency for minor violations, a notice of violation for repeat and significant violations and civil penalty or injunctive relief to gain compliance.

## Tier 1 (Written Notice of Deficiency)

**General Conditions:** minor violations or where no significant environmental harm or danger to the public would be expected in the near term.

**Examples:**

1. Failure to obtain permit for minor modification of approved activity;
2. Erosion and sedimentation control measure installed, but not in accordance to approved plan;
3. Control measures appear inadequate, but little or no offsite impact has occurred so far;
4. Impounding a lake before receiving final approval;
5. Failure to submit required reports;
6. First notice of the failure to reclaim a mine within two years of termination of mining.

## Tier 2 (Written Notice of Violation)

**General Conditions:** more serious violations that either are repeat violation or are causing or could cause significant environmental damage or a hazard to public safety or adjoining properties;. Note that the notice of violation for the safety of dams program is called a "Dam Safety Order."

**Examples:**

1. Mining company violation of the permit limitations for ground vibration, airblasts and flyrock;
2. Significant offsite sedimentation;
3. Excavating too close to an adjoining property;
4. Failure to maintain the required minimum stream flow release,
5. Seepage of slope stability problems with a dam;
6. Starting the activity without first obtaining the required permit or plan approval.

## Tier 3 (Civil Penalty, Injunctive Relief, Bond Forfeiture)

**General Conditions:** repeated violations or major violations causing environmental harm or threat to public or property;

**Examples:**

1. Serious problem with dam structure or spillway that poses immediate threat to dam;
2. Abandonment of site without correcting violations;
3. Failure to respond to Notice of Violation or other Tier 2 Violation within specified schedule;
4. Violation of permit or plan approval conditions that is causing or could cause significant environmental damage or hazard to adjoining persons or property.

# SEDIMENTATION/CONSTRUCTION STORMWATER INSPECTION REPORT

North Carolina Department of Environmental Quality

*Land Quality Section: 450 West Hanes Mill Road, Suite 300, Winston-Salem, NC 27105, Phone: 336-776-9800*

COUNTY: Davidson PROJECT: FRIEDBERG VILLAGE PHASES 1 & 2 RIVER BASIN: YADKIN-PEE DEE

PERSON FINANCIALLY RESPONSIBLE: W. Scott Wallace, Keystone Group, Inc. PROJECT # David-2013-015

ADDRESS: 3708 Alliance Drive Greensboro NC 27407 CASE #

1. **PROJECT LOCATION:** Queensbury Drive Clemmons NC
   Pictures: YES Video: Digital: X
2. **Weather and Soil Conditions:** 60'S, CLEAR, SOIL VERY WET **First Inspection:** NO
3. **Is site currently under Notice of Violation?** NO
4. **Is the site in compliance with S.P.C.A. and rules?** NO
5. **Violations:**
   b. Failure to follow approved plan - G.S. 113A-57(5)and Failure to implement the erosion and sedimentation control plan, NCG 010000 Section III. 3) (a)
   e. Insufficient measures to retain sediment on site - G.S. 113A-57(3)
   f. Failure to take all reasonable measures - 15A N.C.A.C. 4B.0105
   g. Inadequate buffer zone, G.S. 113A-57(1) - G.S. 113A-57(1)
   j. Failure to maintain measures - 15A N.C.A.C. 4B.0113
   k. Failure to self-inspect - G.S. 113A-54.1(e) and 15A N.C.A.C. 4B.0131
6. **Is the site in compliance with NPDES Permit NCG 010000?:** NO
   p. Failure to meet self inspection and reporting requirements NCG 010000 Section II. B. 3)(c-i)
   s. Failure to install and maintain BMPs and control measures NCG 010000 Section III. (4)
   t. Failure to operate and maintain control measures Failure to operate and maintain control measures, NCG 010000 Section IV, (1)
   u. Bypass of stormwater control facilities NCG 010000 Section IV (3)
7. **Has Sedimentation Damage occurred since last inpections?** YES
   **Lake/natural watercourse on the tract:** YES **Lake/natural watercourse off the tract:** YES **Other Property:**
   **Description:** INTO STREAM BELOW SEWER LINE INSTALLATION AND BELOW BUILDING LOTS #35 AND #36.
   **Degree of Damage:** 2) MODERATE
   **Stormwater Discharge Outfall with high turbidity or sedimentation loss:**
8. **Contact Made with (name):** NO ONE ON SITE **Title:**
   **Inspection Report:** SENT TO PERSON FINANCIALLY RESPONSIBLE **Date Given/Sent:** NOV 13, 2015

**Report By:** Matthew E. Gantt, PE **Others Present:**

**Date of Inspection:** NOV 12 2015 **Time Arriving on Site:** 12:15 **Time Leaving Site:** 1:50

cc; SWALLACE@GOKEYSTONE.COM

9. **Corrective Actions Needed:**

1. Repair and replace all damaged silt fence below active home construction below buildings #35, #36 and #37. Drop inlets along Queensbury Drive are being filled with sediment due to lack of silt fence maintenance.

2. Properly install the stone energy dissipation device at the storm water outlet pipe at the end of pipe #56 at Queensbury Drive. Install the rock dam at the outlet of pipe #56 as shown on sheet 6B of the approved sediment and erosion control plan. Sediment is washing through the storm water system and discharging into the creek at the base of the fill slope.

3. Stabilize all eroding slopes at the end of Queensbury Drive with a ground cover that is sufficient to prevent further erosion of the slope.

4. Remove the stone pad located in the creek between phases 2 and 4. This sewer line installation was not permitted in the approved plans for Phase 2 or Phase 4. A revised plan will be required for the sewer line installation.

5. Repair the small sediment trap installed below building #35 at the end of Queensbury Drive. The sediment trap is no longer functional due to being overwhelmed with sediment.

6. Install additional sediment control measures at the end of Queensbury Drive to prevent further sediment loss into the stream between Phase 2 and Phase 4.

7. Provide copies of all NPDES records and self-inspection reports to this office for review.

10. **COMMENTS:**

1. A significant amount of sediment has been lost into the stream between Phase 2 and Phase 4. Most of the sediment in the stream appears to have come off of the Phase 2 project.

2. Measures must be taken immediately to prevent further off-site sedimentation below Phase 2.

3. This site will be placed under Notice of Violation at this time. An initial one-day civil penalty assessment of up to $5,000 will also be recommended for this project. You are encouraged to correct these violations as soon as possible to prevent further daily civil penalty assessments..

**GENERAL ASSEMBLY OF NORTH CAROLINA**
**SESSION 2013**

**SESSION LAW 2013-413**
**HOUSE BILL 74**

AN ACT TO IMPROVE AND STREAMLINE THE REGULATORY PROCESS IN ORDER TO STIMULATE JOB CREATION, TO ELIMINATE UNNECESSARY REGULATION, TO MAKE VARIOUS OTHER STATUTORY CHANGES, AND TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS.

The General Assembly of North Carolina enacts:

## PART I. IMPROVE RULE-MAKING PROCESS

**SECTION 1.** G.S. 150B-2 is amended by adding a new subdivision to read:

"(7a) "Policy" means any nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by an agency which is intended and used purely to assist a person to comply with the law, such as a guidance document."

**SECTION 2.** G.S. 150B-21.4 reads as rewritten:

"**§ 150B-21.4. Fiscal notes on rules.**

(a) State Funds. – Before an agency ~~publishes in the North Carolina Register the proposed text of~~ adopts a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes it must ~~submit the text of the proposed rule change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the Office of State Budget and Management and~~ obtain certification from the Office of State Budget and Management that the funds that would be required by the proposed rule change are available. The agency shall submit the text of the proposed rule change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the Office at the same time as the agency submits the notice of text for publication pursuant to G.S. 150B-21.2. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Office of State Budget and Management must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(a1) DOT Analyses. – In addition to the requirements of subsection (a) of this section, any agency that adopts a rule affecting environmental permitting of Department of Transportation projects shall conduct an analysis to determine if the rule will result in an increased cost to the Department of Transportation. The analysis shall be conducted and submitted to the Board of Transportation ~~before~~ when the agency ~~publishes the proposed text of the rule change in the North Carolina Register.~~submits the notice of text for publication. The agency shall consider any recommendations offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation may submit any objection to the rule it may have to the Rules Review Commission. If the Rules Review Commission receives an objection to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule shall only become effective as provided in G.S. 150B-21.3(b1).

(b) Local Funds. – Before an agency ~~publishes in the North Carolina Register the proposed text of~~adopts a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Office of State Budget and Management as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, the North Carolina

(3) The temporary ~~cellular~~ cellular, radio, or television tower shall only remain in place until the expiration of the declared disaster.

(c) The modification, replacement, removal, or addition of antennas on ~~cellular~~ cellular, radio, or television towers in an area surrounding a major military installation shall be exempt from obtaining the endorsement required by this Article provided the modification, replacement, removal, or addition does not increase the vertical height of the structure."

**CLARIFY THAT EXTENDED-DURATION PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS AUTHORIZED BY S.L. 2012-187 ARE PERMITS FOR OPERATION AS WELL AS CONSTRUCTION**

**SECTION 48.(a)** Section 15.1 of S.L. 2012-187 reads as rewritten:

"**SECTION 15.1.** No later than July 1, 2013, the Commission for Public Health shall adopt rules to allow applicants for sanitary landfills the option to (i) apply for a permit to construct and operate a five-year phase of landfill development and apply to amend the permit to construct and operate subsequent five-year phases of landfill development; or (ii) apply for a permit to construct and operate a 10-year phase of landfill development and apply to amend the permit to construct and operate subsequent 10-year phases of landfill development, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of each amendment for subsequent phases of development. No later than July 1, 2013, the Commission shall also adopt rules to allow applicants for permits for transfer stations the option to (i) apply for a permit with a five-year duration to construct and operate a transfer station; or (ii) apply for a permit with a 10-year duration to construct and operate a transfer station, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of any amendment to the permit. In developing these rules, the Department of Environment and Natural Resources shall examine the current fee schedule for permits for sanitary landfills and transfer stations as set forth under G.S. 130A-295.8 and formulate recommendations for adjustments to the current fee schedule sufficient to address any additional demands associated with review of permits issued for 10-year phases of landfill development and the issuance permits with a duration of up to 10 years for transfer stations. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before December 1, 2012. The rules required by this section shall not become effective until the fee schedule set forth under G.S. 130A-295.8 is amended as necessary to address any additional demands associated with review of permits issued for 10-year phases of landfill development and the issuance of permits with a duration of up to 10 years to construct and operate transfer stations."

**SECTION 48.(b)** If Senate Bill 328, 2013 Regular Session, becomes law, then Section 48(a) of this act is repealed.

**ADD A FACTOR FOR CONSIDERATION IN ASSESSING SOLID WASTE PENALTIES**

**SECTION 49.** G.S. 130A-22 reads as rewritten:

"**§ 130A-22. Administrative penalties.**

...

(d) In determining the amount of the penalty in subsections (a), (b) and (c), the Secretary and the Secretary of Environment and Natural Resources shall consider ~~the degree and extent of the harm caused by the violation and the cost of rectifying the damage.~~all of the following factors:

(1) Type of violation.
(2) Type of waste involved.
(3) Duration of the violation.
(4) Cause (whether resulting from a negligent, reckless, or intentional act or omission).
(5) Potential effect on public health and the environment.
(6) Effectiveness of responsive measures taken by the violator.
(7) Damage to private property.
(8) The degree and extent of harm caused by the violation.
(9) Cost of rectifying any damage.
(10) The amount of money the violator saved by noncompliance.

(11) The violator's previous record in complying or not complying with the provisions of Article 9 of this Chapter, Article 11 of this Chapter, or G.S. 130A-325, and any regulations adopted thereunder, as applicable to the violation in question.

...."

**LIMIT LOCAL GOVERNMENT REGULATION OF STORAGE, RETENTION, OR USE OF NONHAZARDOUS RECYCLED MATERIALS**

**SECTION 50.** G.S. 130A-309.09A is amended by adding a new subsection to read:

"(h) The storage, retention, and use of nonhazardous recyclable materials, including asphalt pavement, rap, or roofing shingles, shall be encouraged by units of local government. A unit of local government shall not impede the storage, retention, or use of nonhazardous recyclable materials in properly zoned storage facilities through the regulation of the height or setback of recyclable material stockpiles, except when such facilities are located on lots within 200 yards of residential districts."

**AMEND THE DEFINITION OF "BUILT-UPON AREA" FOR PURPOSES OF IMPLEMENTING STORMWATER PROGRAMS**

**SECTION 51.(a)** G.S. 143-214.7 is amended by adding a new subsection to read:

"(b2) For purposes of implementing stormwater programs, "built-upon area" means impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or gravel."

**SECTION 51.(b)** Subdivision (7) of Section 2 of S.L. 2006-246 is repealed.

**SECTION 51.(c)** Subdivision (3) of subsection (a) of Section 2 of S.L. 2008-211 is repealed.

**SECTION 51.(d)** The Environmental Management Commission shall amend its rules to be consistent with the definition of "built-upon area" set out in subsection (b2) of G.S. 143-214.7, as enacted by Section 51(a) of this act.

**SECTION 51.(e)** The Environmental Review Commission shall study State stormwater programs, including how partially impervious surfaces are treated in the calculation of built-upon area under those programs. The Environmental Review Commission shall report its findings and recommendations to the 2014 Regular Session of the 2013 General Assembly.

**SECTION 51.(f)** This section is effective when it becomes law, and subsection (b2) of G.S. 143-214.7, as enacted by subsection (a) of this section, applies to projects for which permit applications are received on or after that date.

**EXEMPT PONDS THAT ARE CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES FROM RIPARIAN BUFFER RULES**

**SECTION 52.(a)** Except as required by federal law or in an imminent threat to public health or safety, (i) the temporary rules adopted July 22, 1997, January 22, 1998, April 22, 1998, and June 22, 1999, and the permanent rule adopted and effective August 1, 2000, as 15A NCAC 02B .0233 regarding the protection and maintenance of existing riparian buffers in the Neuse River Basin; (ii) the temporary rule adopted January 1, 2000, and the permanent rule adopted and effective August 1, 2000, as 15A NCAC 02B .0259 regarding the protection and maintenance of existing riparian buffers in the Tar-Pamlico River Basin; (iii) the permanent rule adopted and effective August 11, 2009, Session Law 2009-216, Session Law 2009-484, and the permanent rule, as amended, effective September 1, 2011, as 15A NCAC 02B .0267 regarding the protection and maintenance of existing riparian buffers in the Jordan Water Supply Watershed; (iv) the permanent rule adopted effective April 1, 1999, and the permanent rule, as amended, effective June 1, 2010, as 15A NCAC 02B .0250 regarding the protection and maintenance of existing riparian buffers in the Randleman Lake Water Supply Watershed; (v) the temporary rule effective June 30, 2001, and the permanent rule effective August 1, 2004, as 15A NCAC 02B .0243 regarding the protection and maintenance of existing riparian buffers in the Catawba River Basin; (vi) the permanent rule adopted and effective February 1, 2009, as 15A NCAC 02B .0605 and the permanent rule adopted and effective February 1, 2009, as 15A NCAC 02B .0607 regarding the protection and maintenance of existing riparian buffers in the Goose Creek Watershed (Yadkin Pee-Dee River Basin); and (vii) any similar rule adopted for

Case Name: ???
Case Number: LQS ???
LQS Project Number: ???- ???- ???
County: ???

GUIDELINES FOR ASSESSING CIVIL PENALTIES FOR VIOLATIONS OF THE SEDIMENTATION POLLUTION CONTROL ACT

I. The following guidelines are to be used to assist the Director, Division of Energy, Mineral, and Land Resources, in determining the amounts of civil penalties to be assessed under the SPCA in a fair and consistent manner.

II. The following guidelines should be applied in determining the amounts of civil penalties:

A. Type of Violation. Check the applicable violations of the Sedimentation Pollution Control Act of 1973 and rules:

☐ a. No approved plan, G.S. 113A-54(d)(4), G.S. 113A-57(4) and 15A NCAC 4B .0107(c).

☐ b. Failure to follow approved plan, G.S. 113A-57(5).

☐ c. Revised plan required, G.S. 113A-54.1(b) and 15A NCAC 4B .0118(a)

☐ d. Failure to provide adequate groundcover, G.S. 113A-57(3) and 15A NCAC 4B .0107(b).

☐ e. Insufficient measures to retain sediment on site, G.S. 113A-57(3).

☐ f. Failure to take all reasonable measures, 15A NCAC 4B .0105.

☐ g. Inadequate buffer zone, G.S. 113A-57(1).

☐ h. Graded slopes and fills too steep, G.S. 113A-57(2).

☐ i. Unprotected exposed slopes, G.S. 113A-57(2).

☐ j. Failure to maintain erosion control measures, 15A NCAC 4B .0113.

☐ k. Other (describe):

B. Degree and Extent of the Harm Caused by the Violation.

1. Describe the resource affected by off-site sedimentation.

???

2. What was the size and extent of the resource damage?
???

3. a. Describe the type of erosion.
???

   b. Estimate the volume of sedimentation damage to a lake/natural watercourse or other property. (Check one)
???

☐ (1)None
☐ (2)1-9 cubic yards
☐ (3)10-99 cubic yards
☐ (4)100-999 cubic yards
☐ (5)1000 or more cubic yards

4. When was the violation discovered?
???

5. When was the NOV received?
???

6. Is the site still in violation?
???

7. Degree of sedimentation damage. (Check one)

☐ Lake/Natural Watercourse on the tract
☐ Lake/Natural Watercourse off the tract
☐ Other Property

☐ a. Severe
☐ b. Moderate
☐ c. Slight
☐ d. None

C. <u>Adherence to Plan / Effectiveness of Plan Submitted by Violator</u>.

1. Was there an approved plan prior to beginning the land-disturbing activity?
???

2. Was the approved plan adequately implemented?
???

3. Was a revised plan required?
???

4. Was the revised plan adequately implemented?
???

5. Effectiveness of steps taken to correct violations: (Check one)
???

☐ a. No steps
☐ b. Basically ineffective
☐ c. Mixed results
☐ d. Wholly effective

D. Prior Record of the Violator in Complying or Failing to Comply With The Sedimentation Act and Rules.

1. Was this person previously under an NOV for this site?
???
2. Has this person previously received an NOV for violations at other sites? If yes, explain.
???
3. Has this person ever been subject to prior enforcement action?
???
4. To what kind of enforcement action has this person been subject? (Check all that apply)
???
☐ a. Injunction
☐ b. Civil penalty

5. Overall, does the person have a good record of compliance with SPCA and rules? Explain.
???

E. Whether the Violation was Committed Willfully.

1. Does the violator have a prior record? *See D above*.
2. Did the violator have knowledge of the law prior to beginning the land-disturbing activity?
???
3. Are there any other factors which would make this violation willful or not willful?
???

F. Amount of Money the Violator Saved by His Noncompliance.

1. What costs were saved by the violator by his noncompliance, if known?
???
Ease or difficulty of compliance based on circumstances of site. (Check one.)

☐ a. Difficult

☐ b. Average
☐ c. Easy
☐ d. Unknown

G. Cost of Rectifying the Damage.

1. Has the damage been corrected?
   ???
2. If so, what was the cost, if known, of correction?
   ???
3. If not, is it practical for the damage to be corrected?
   ???

H. Staff Investigative Costs. (Check one)

☐ a. Below Average
☐ b. Average
☐ c. Above Average

Estimate the Following Hours/Mileage/Materials Used in Investigation:
(*Hours spent can include inspection time, paperwork time, meeting time, etc.)*

| Position | Hours | Mileage | Materials/Equipment |
|---|---|---|---|

Prepared by: _____

Reviewed by: _____
Assistant Regional Engineer

Date: _____

Reviewed by: _____
Regional Engineer or
Chief of Program Ops

Date: _____

# Draft Guidance for Tiered Enforcement

## March 16, 2012

**General Implementation**

DENR will implement a three-tiered approach to enforcement, with the severity of enforcement response increasing for each tier. The new policy is consistent with the way many divisions are already implementing compliance and enforcement programs. The policy recognizes that violations of rules typically fit into three categories:1) recordkeeping and paperwork that result in little or no harm to the environment or public health, 2) more serious infractions that could result in harm to the environment or public health, and 3) violations that have clearly impacted the environment or public health.

**Tier 1 Violations (Notice of Deficiency (NOD))** – Tier 1 violations represent minor violations resulting in little or no harm to the environment or public health. Tier 1 violations are of minor duration and gravity. The violations are not committed willfully or intentionally. Tier 1 violations often represent the first offense committed by the violator. A Notice of Deficiency is normally issued for Tier 1 violations.

**Tier 2 Violations (Notice of Violation (NOV))** – Tier 2 violations represent more serious violations where there is documented or moderate to severe potential for harm to the environment or public health. Tier 2 violations can be of moderate duration and gravity. Tier 2 violation notifications would typically be issued to violators with a prior history of noncompliance with regulations. Tier 2 violations can also include continued noncompliance with Tier 1 violations. A Notice of Violation (NOV) is normally issued for Tier 2 violations. A consent order or other form of compliance schedule may be warranted for Tier 2 violations, depending on the circumstances.

**Tier 3 Violations (Civil Penalties (CPA) or Other Methods)** – Tier 3 violations represent the most serious violations where there is documented significant or high potential for environmental or public health harm. Tier 3 violations can be of significant duration and gravity. Also, violations that are committed willfully and intentionally are categorized as Tier 3 violations. Tier 3 violation notifications would typically be issued to violators with a significant prior history of noncompliance with regulations. Tier 3 violations can also include continued noncompliance with Tier 2 violations. Civil penalties, consent orders, injunctions, and other enforcement tools are expected with Tier 3 violations. A Notice of Recommendation for Enforcement and subsequent civil penalty or other enforcement action described above is normally issued for Tier 3 violations.

General Approach – It should be noted the ultimate decision whether to issue a Notice of Deficiency (NOD) or a Notice of Violation (NOV) is left to the inspector in consultation with the Regional Office Supervisor. The discussion above and the matrix presented below are provided for guidance in making those decisions. The approach taken with the table below is to have violations that are due to errors of paperwork or record keeping (or minor in nature) to result in issuance of an NOD.

| Program Area | Notification Type | Inspections |
|---|---|---|
| **Wetlands/ Buffers** | | |
| | Tier 1–NOD | • Failure to Provide Certificate of Completion<br>• Minor condition violations (*e.g. failure to provide protective fencing at commencement of project, failure to provide deed notification*)<br>• Submission of partial of incomplete paperwork or reports (e.g. monitoring reports)<br>• Minor buffer impacts (*e.g. removing < 3 trees*) |

| | | |
|---|---|---|
| | Tier 2–NOV | • Any stream or wetland standards violations<br>• Failure to Obtain 401 WQC or IWP (*minimal environmental risks*)<br>• Failure to Obtain a Buffer Authorization/Variance (*minimal environmental risks*)<br>• Major buffer impacts (*e.g. failure to provide diffuse flow, removing > 3 trees*)<br>• Major condition violations (*e.g. impacts beyond those permitted, impacts before mitigation or approved stormwater management plan, not following the plan (e.g. perched pipe)*)<br>• Repeat of Tier 1-NOD violations<br>• Multiple Tier 1-NOD violations<br>• Unresolved issues from previous Tier 1 violations |
| | Tier 3 – CPA/NOI/NORE | • Major stream or wetland standards violations<br>• Major buffer impact violations<br>• Failure to Obtain 401 WQC or IWP<br>• Failure to Obtain a Buffer Authorization/Variance<br>• Repeat of Tier 2-NOV violations<br>• Multiple Tier 2-NOV violations<br>• Unresolved issues from previous Tier 2 violations<br>• Failure to respond to requested information from Tier 2 letter<br>• Failure to correct Tier 2 issues within specified timeframe |
| **State Stormwater** | | |
| | Tier 1–NOD | • Failure to renew (for high density)<br>• Failure to Modify (minor mod)<br>• Minor O&M failures<br>• Failure to Provide Designer's Certification<br>• Minor permit violations (*e.g. minor erosion issues on stormwater basins, trash in basins, etc.*) |
| | Tier 2–NOV | • Failure to Obtain a State Sw Permit (*minimal environmental risks*)<br>• Failure to Modify (major mod)<br>• Major O&M failures<br>• Major condition violations (*e.g. more BUA than permitted, failure to construct as approved, failure to construct/operate prior to COs, off-site drainage that exceeds BMP capacity*)<br>• Repeat of Tier 1-NOD violations<br>• Multiple Tier 1-NOD violations<br>• Unresolved issues from previous Tier 1 violations |

| | | |
|---|---|---|
| | Tier 3 – CPA/NOI/NORE | • Failure to Obtain a State Sw Permit<br>• Repeat of Tier 2-NOV violations<br>• Multiple Tier 2-NOV violations<br>• Unresolved issues from previous Tier 2 violations<br>• Failure to respond to requested information from Tier 2 letter<br>• Failure to correct Tier 2 issues within specified timeframe |
| **NPDES Industrial Stormwater** | | |
| | Tier 1–NOD | • Failure to renew<br>• Failure to pay annual fee<br>• Failure to Modify<br>• Minor SPPP implementation violations (*e.g. failure to provide employee training*)<br>• Minor permit violations (*e.g. partial omissions in paperwork/record keeping, missing data from sampling events*) |
| | Tier 2–NOV | • Failure to Obtain a NPDES Industrial Stormwater Permit (*minimal environmental risks*)<br>• Major condition violations (*e.g. no SPPP Plan, no SPPP implementation, no sampling performed or submitted, unauthorized bypass*)<br>• Repeat of Tier 1-NOD violations<br>• Multiple Tier 1-NOD violations<br>• Unresolved issues from previous Tier 1 violations |
| | Tier 3 – CPA/NOI/NORE | • Failure to Obtain a NPDES Industrial Stormwater Permit<br>• Repeat of Tier 2-NOV violations<br>• Multiple Tier 2-NOV violations<br>• Unresolved issues from previous Tier 2 violations<br>• Failure to respond to requested information from Tier 2 letter<br>• Failure to correct Tier 2 issues within specified timeframe |
| **NPDES Construction Stormwater** | | |
| | Tier 1–NOD | • Failure to provide rain gauge on site<br>• Failure to provide rain gauge data for $\leq$ 4 weeks<br>• Failure to provide inspection records for $\leq$ 4 weeks<br>• Failure maintain E&SC plans onsite<br>• Minor O&M failures (*e.g. small section of silt fence needs repair*) |

| | | |
|---|---|---|
| | Tier 2–NOV | • Failure to Obtain a NPDES Construction Stormwater Permit (*minimal environmental risks*)<br>• Failure to provide rain gauge data for > 4 weeks<br>• Failure to provide inspection records for > 4 weeks<br>• Failure to provide adequate groundcover<br>• Failure to provide surface withdrawal from sediment basins<br>• Failure to maintain stockpiles away from storm drain inlets or surface waters<br>• Failure to provide adequate handling of concrete<br>• Unauthorized bypass<br>• Major O&M failures (*e.g. failed sediment basin, no silt fence*)<br>• Repeat of Tier 1-NOD violations<br>• Multiple Tier 1-NOD violations<br>• Unresolved issues from previous Tier 1 violations |
| | Tier 3 – CPA/NOI/NORE | • Failure to Obtain a NPDES Construction Stormwater Permit<br>• Repeat of Tier 2-NOV violations<br>• Multiple Tier 2-NOV violations<br>• Unresolved issues from previous Tier 2 violations<br>• Failure to respond to requested information from Tier 2 letter<br>• Failure to correct Tier 2 issues within specified timeframe |
| **NPDES Wastewater** | | |
| | Tier 1–NOD | • Late reporting of monitoring data<br>• Minor operational deficiencies<br>• Minor design deviation (e.g.100 vs 150 gallon tanks)<br>• Minor recordkeeping errors (missing data points)<br>• Inadequate maintenance as long as it is minor in nature<br>• Minor (0-10%) exceedance of NPDES wastewater permit limit that are non-repeat violations<br>• Partial implementation of permit conditions |

| | | |
|---|---|---|
| | Tier 2–NOV | • Repeat of Tier 1 violations<br>• Multiple Tier 1 violations<br>• Unresolved issues from previous Tier 1violations<br>• Failure to respond to requested information from Tier 1 letter<br>• Failure to correct Tier 1 issues within specified timeframe<br>• Failure to notify of major operational deficiencies, or repeated minor operational deficiencies<br>• Major operational deficiencies<br>• Failure to report monitoring data<br>• Major design deviations<br>• Operating without permit (e.g., minimal environmental risks)<br>• Failure to provide monitoring data<br>• Inadequate maintenance that may affect effluent limit<br>• Multiple limit exceedances<br>• Failure to implement permit conditions<br>• Significant (11-20%) exceedance of NPDES wastewater permit limit. |
| | Tier 3 – CPA/NOI/NORE | • Repeat of Tier 2 violations<br>• Multiple Tier 2 violations<br>• Unresolved issues from previous Tier 2 violations<br>• Failure to respond to requested information from Tier 2 letter<br>• Failure to correct Tier 2 issues within specified timeframe<br>• Operating without permit<br>• Illegal Discharge<br>• Greater than 20% exceedance of NPDES wastewater permit limit. |
| **Collections/Systems** | | |
| | Tier 1–NOD | • Partial Implementation of Permit Conditions<br>• Sending out FOG education material only once per year (requirement is twice per year)<br>• Not having CIP<br>• Missing contingency plan or emergency signage on pump station for less than 20% of stations (in other words 80% of stations have the plan or signs)<br>• Minor documentation gaps |
| | Tier 2–NOV | • Failure to Implement Permit Conditions<br>• Unresolved issues from previous NOD |

| | | |
|---|---|---|
| | Tier 3 – CPA/NOI/NORE | • Repeat of Tier 2 violations<br>• Multiple Tier 2 violations<br>• Unresolved issues from NOV |
| **Pretreatment** | | |
| | Tier 1–NOD | • Partial Implementation of Permit Conditions<br>• Missing data,<br>• No approval letters for IUPs,<br>• Partial paperwork,<br>• Partial program implementation |
| | Tier 2–NOV | • Any Significant Noncompliance<br>• Unresolved issues from previous NOD<br>• Not issuing permits,<br>• No SIU inspections,<br>• No approval elements (SUO, LMP, ERP),<br>• Not implementing program<br>• Unresolved violations from previous NOD |
| | Tier 3 – CPA/NOI/NORE | • Repeat of Tier 2 violations<br>• Multiple Tier 2 violations<br>• Unresolved issues from NOV |
| **Aquatic Toxicology** | | |
| | Tier 1a- Warning Letter | • Incorrect effluent concentration used in pass/fail test<br>• Low Dissolved Oxygen in passing toxicity test<br>• Deficient data reporting on AT form<br>• AT sent to wrong address<br>• Minor pH deviations<br>• Minor test temperature deviations<br>• Insufficient number of test concentrations<br>• Insufficient number of treatment replicates<br>• Incorrect data analysis |

| | | |
|---|---|---|
| | Tier 1b–NOD | • Missing ORC signatures<br>• Wrong sample type (grab/composite)<br>• No Flow event not reported with AT form<br>• AT form received up to 15 days late<br>• Incorrect test organism<br>• Incorrect test type |
| | Tier 2–NOV | • Any significant non compliance<br>• Unresolved issues from Tier 1 |
| | Tier 3 – CPA/NOI/NORE | • Repeat of Tier 2 violations<br>• Multiple Tier 2 violations<br>• Unresolved issues from NOV |

**Additional Guidance**

*Effective Date* – All decisions made on or after February 1, 2012 regardless of the date the violations were identified shall be processed using this guidance.

*Processing of Tier 1 Letters* – The new module for tracking Tier 1 violations (NOD module) will not be ready for the February 1, 2012 effective date. The ROs will need to save any Tier 1 Letters (NOD) for possible future entry into BIMS pending its upgrade. The CO will provide the Regional Offices the type of tracking information that may be desired during the interim period that the Tier 1 letters cannot be entered into BIMS. Once the BIMS upgrade is completed, a decision will be made on whether to enter the data into the system.

*Violations Observed on Multiple Tiers* -- In the event that an inspection (or review of a DMR) results in multiple violations (i.e. some Tier 1 violations, some Tier 2 violations, etc.), the highest Tier violation will establish the compliance response. As an example, an inspection results in two Tier 1 violations and one Tier 2 violation. The resulting correspondence sent to the permittee would be a Tier 2 Letter (NOV).

*Templates for Use by Staff* – The DWQ central office will provide templates for use by staff. The templates will be posted in a centralized location. For consistency sake, it is imperative that staff use the templates as the basis for all correspondence. Alterations for individual situations are permitted on as needed basis. However, the staff is expected to limit the variation to the minimum amount needed.

**Escalation of Violations to Higher Tiers**

*Failure to Respond* – Since the type of violations that are categorized Tier 1 violations will be minor in nature (i.e. larger minor paperwork violations with no environmental harm), most Tier 1 notices will not require a response from the violator. However, it understood that sometimes circumstances may warrant additional information. As such, when a response is requested from the permittee/violator and one is not sent to DWQ in the specified timeframe escalation to next Tier of compliance is appropriate.

*Timeframe for Repeat Violations for Escalation* – Review of the policy provides for escalation from a lower tier to higher tier for repeat violations. However, it does not specify a timeframe that the repeat violation needed to occur to qualify for escalation. As an example, a DMR is submitted with a Tier 1 violation for BOD. The same facility has a second Tier 1 violation for BOD 14 months later. Does the second violation constitute a repeat violation that would allow for escalation to a Tier 2? The timeframe for determining repeat violations will typically be 12 months. Thus, in the example listed above the second violation would still be considered a Tier 1 violation and treated as such. However, no guidance can foresee all possible contingencies. Therefore, compliance discretion can be used in cases where the staff determines the violations are significant enough to warrant a stronger compliance response.

Environmental Quality

PAT MCCRORY
*Governor*

DONALD R. VAN DER VAART
*Secretary*

November 13, 2015

**NOTICE OF VIOLATIONS OF THE**

**SEDIMENTATION POLLUTION CONTROL ACT**

**AND**

**GENERAL PERMIT - NCG 010000**
**TO DISCHARGE STORMWATER UNDER THE**
**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**
**FOR**
**CONSTRUCTION ACTIVITIES**

**CERTIFIED MAIL 7015 0640 0005 6272 4041**
**RETURN RECEIPT REQUESTED**

Keystone Group, Inc.
Attn: W. Scott Wallace, Registered Agent
3708 Alliance Drive
Greensboro, NC 27407-2016

RE: Project Name: Friedburg Village, Phase 2
Project ID: DAVID-2013-015
County: Davidson
Compliance Deadlines: 10 days from receipt for SPCA violations
10 days from receipt by certified mail for
Construction Stormwater Permit NCG 010000 violations

Dear Mr. Wallace:

On November 12, 2015, personnel of this office inspected a project located on Queensbury Drive, Winston-Salem in Davidson, County, North Carolina. This inspection was performed to determine compliance with the North Carolina Sedimentation Pollution Control Act (SPCA) of 1973 and General Permit - NCG 010000 to Discharge Stormwater Under The National Pollutant Discharge Elimination System for Construction Activities (Construction Stormwater Permit NCG 010000). The inspection revealed a land-disturbing activity of approximately 5.4 acres being conducted.

It is our understanding that you and/or your firm are responsible for this land-disturbing activity. The

purpose of this letter is to inform you that this activity was found to be in violation of the SPCA, G.S. 113A-50 to 66, Title 15A, North Carolina Administrative Code (NCAC), Chapter 4 and Construction Stormwater Permit NCG 010000. If you feel that you are not responsible for the following violations, please notify this office immediately.

**The violations of the SPCA that were found are:**

1. Failure to conduct a land-disturbing activity in accordance with the approved erosion and sedimentation control plan. G.S. 113A-57(5).

2. Failure when a land-disturbing activity that will disturb more than one acre is undertaken on a tract, to install sedimentation and erosion control devices sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract. G.S. 113A-57(3).

3. Failure to take all reasonable measures to protect all public and private property from damage by such land-disturbing activities. 15A NCAC 4B .0105.

4. Failure to retain along a lake or natural watercourse a buffer zone of sufficient width to confine visible siltation by natural or artificial means within the 25 percent of that portion of the buffer zone nearest the land-disturbing activity. G.S. 113A-57(1).

5. Failure to install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of the SPCA, and rules adopted thereunder, during or after the development of a site. 15 NCAC 4B .0113.

6. Failure to conduct or adequately document self-inspections . G.S. 113A-54.1(e) and 15A NCAC 4B .0131 .

**The violations of the Construction Stormwater Permit NCG 010000 that were found are:**

1. Failure to implement the erosion and sedimentation control plan. The Permittee must implement and follow the erosion and sedimentation control plan. The approved erosion and sedimentation control plan is considered a condition of Construction Stormwater Permit NCG 010000. NCG 010000 Section III. 3) (a)

2. Failure to meet self-inspection and reporting requirements. NCG 010000 Section II. B. 3)

a. A rain gauge shall be maintained in good working order on the site

b. A written record of the daily rainfall amounts shall be retained and all records shall be made available upon request.

c. Erosion and sedimentation control measures shall be inspected to ensure that they are operating correctly. Inspection records must be maintained for each inspection event and for each measure. At a minimum, inspection of measures must occur at the frequency indicated below:
   i. All erosion and sedimentation control measures must be inspected by or under the direction of the permittee at least once every seven calendar days,
   ii. All erosion and sediment control measures must be inspected by or under the direction of the permittee within 24 hours after any storm event of greater than 0.50 inches of rain per 24 hour period.

d. Once land disturbance has begun on the site, stormwater runoff discharge outfalls shall be inspected by observation for erosion, sedimentation and other stormwater discharge characteristics such as clarity, floating solids, and oil sheens. Inspections of the outfalls shall be made at least once every seven calendar days and within 24 hours after any storm event of greater than 0.50 inches of rain per 24 hour period.

3. Failure to install and maintain BMPs and control measures, NCG 010000 Section III. 4)
The permittee must select, install, implement and maintain best management practices (BMPs) and control measures that minimize pollutants in the discharge to meet the requirements of this permit.

4. Failure to operate and maintain control measures, NCG 010000 Section IV, 1)
The permittee shall at all times properly operate and maintain all control measures 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 general permit .

5. Bypass of stormwater control facilities, NCG 010000 Section IV 3)
Bypass of stormwater control facilities is prohibited except as allowed by permit conditions.

To correct these violations, you must:

1. 1. Repair and replace all damaged silt fence below active home construction below buildings #35, #36 and #37. Drop inlets along Queensbury Drive are being filled with sediment due to lack of silt fence maintenance.
2. Properly install the stone energy dissipation device at the storm water outlet pipe at the end of pipe #56 at Queensbury Drive. Install the rock dam at the outlet of pipe #56 as shown on sheet 6B of the approved sediment and erosion control plan. Sediment is washing through the storm water system and discharging into the creek at the base of the fill slope.
3. Stabilize all eroding slopes at the end of Queensbury Drive with a ground cover that is sufficient to prevent further erosion of the slope.
4. Remove the stone pad located in the creek between phases 2 and 4. This sewer line installation was not permitted in the approved plans for Phase 2 or Phase 4. A revised plan will be required for the sewer line installation.
5. Repair the small sediment trap installed below building #35 at the end of Queensbury Drive. The sediment trap is no longer functional due to being overwhelmed with sediment.
6. Install additional sediment control measures at the end of Queensbury Drive to prevent further sediment loss into the stream between Phase 2 and Phase 4.
7. Provide copies of all NPDES and self-inspection reports to this office for review.

**SPCA Violations**

The violations of the SPCA cited herein may be referred to the Director of the Division of Energy, Mineral and Land Resources (Director) for appropriate enforcement action, including civil penalty assessments for an initial one-day violation and/or a continuing violation. The penalty for an initial one-day violation of the SPCA may be assessed in an amount not to exceed $5,000.00. The Division of Energy, Mineral and Land Resources is not required to provide a time period for compliance before assessing an initial penalty for the violations of the SPCA cited herein. Please be advised that a civil penalty may be assessed for the initial day of violations of the SPCA regardless of whether the violations are corrected within the time period set out below.

In addition, if the violations of the SPCA cited herein are not corrected within 10 days from receipt calendar days of receipt of this Notice, this office may request that the Director take appropriate legal action against you for continuing violations pursuant to NCGS 113A-61.1 and 113A-64. A penalty may be assessed from the date of the violation of the SPCA, pursuant to NCGS 113A-64(a)(1), and for each day of a continuing violation of the SPCA in an amount not to exceed $5,000.00 per day.

**Construction Stormwater Permit NCG 010000 Violations**

The violations of the Construction Stormwater Permit NCG 010000 cited herein may be referred to the Director of the Division of Energy, Mineral and Land Resources (Director) for appropriate enforcement action, including civil penalty assessments for a continuing violation. This Notice serves as a letter of proposed civil penalty assessment. You have 10 calendar days from receipt of this Notice by certified mail to cease the violations listed above, and to submit in writing reasons why the civil penalty should not be assessed.

Accordingly, you are directed to respond to this letter in writing within 10 calendar days of receipt of this Notice by certified mail. Your response should be sent to this regional office at the letterhead address and include the following:

1. The date by which the corrective actions listed above have been or will be completed.

2. Rainfall data and self-inspection or self-monitoring records from August 20, 2015 to November 12, 2015.

3. A plan of action to prevent future violations.

4. A plan for restoration of sedimentation damage.

5. Reasons why a civil penalty should not be assessed.

Pursuant to G.S. 143-215.6A, these violations and any future violations are subject to a civil penalty assessment of up to a maximum of $25,000.00 per day for each violation. Your above-mentioned response to this correspondence, the degree and extent of harm to the environment and the duration and gravity of the violation(s) will be considered in any civil penalty assessment process that may occur.

Please be advised that any new land-disturbing activity associated with this project should not begin until the area presently disturbed is brought into compliance with the SPCA and Construction Stormwater Permit NCG 010000. When corrective actions are complete, you should notify this office so that work can be inspected. You should not assume that the project is in compliance with the SPCA and Construction Stormwater Permit NCG 010000 until we have notified you. After installation, all erosion control measures must be maintained in proper working order until the site is completely stabilized.

We solicit your cooperation, and would like to avoid taking further enforcement action. At the same time, it is your responsibility to understand and comply with the requirements of the SPCA and Construction Stormwater Permit NCG 010000. Copies of the relevant statute and administrative rules may be examined at this office or will be sent to you upon request. Should you have questions concerning this notice or the requirements of the SPCA and Construction Stormwater Permit NCG 010000 please contact me at your earliest convenience.

Sincerely,

Matthew E. Gantt, P.E.
Regional Engineer
Land Quality Section

Enclosures: Sedimentation Inspection Report

cc: State Sedimentation Specialist

Case Name: _____
Case Number: _____
County: _____
Regional Office: _____

# WORKSHEET

## CIVIL PENALTY ASSESSMENT FOR SPCA VIOLATIONS

(Criteria: NCGS 113A-64-(a); 15A NCAC 04C .0106)

A. Type(s) of Violation ____, ____, ___, ___, ___, $_____/day

B. Degree and Extent of the Harm Caused by the Violation. $_____/day

| | |
|---|---|
| Severe | $300 to $5000 |
| Moderate | $100 to $300 |
| Slight | $0 to $100 |
| None | $0 |

C. Adherence to Plan/Effectiveness of Plan Submitted by Violator (Effectiveness of Steps Taken to Correct Violations). $_____/day

D. Prior Record of Violator in Complying or Failing to Comply with the Act and Rules. $_____/day

E. Whether the Violation was Committed Willfully. $_____/day

F. Amount of Money the Violator Saved by His Noncompliance. $_____/day

G. Cost of Rectifying the Damage. $_____/day

H. Staff Investigative Costs. $_____/day

TOTAL PENALTY/day $_____/day

ACTUAL PENALTY /day $_____/day

Total Penalty = _____ X _____ = $_____

Actual Penalty/day X Number of days

Date of Violation: _____

_____
Date

_____
Chief of Program Ops, DEMLR or
Regional Engineer

Revised 08/14/2006 TGH

Penalty determination systems are usually comprised of four major components: 1) A gravity-based component, 2) a multiplier factor for repeat violations or multi-day or continuous violations, 3) a factor to adjust the gravity-based component and multiplier for case-specific circumstances, and 4) a determination of the economic benefit gained through non-compliance. The DAQ's General Penalty Tree and the Open Burning Penalty Tree address the gravity-based component of penalty calculations. Multiplier factors and adjustments for case-specific circumstances are also addressed in these documents. However, the General Penalty Tree and the Open Burning Penalty Tree do not fully address the economic benefit associated with non-compliance. Therefore, this document is intended to provide procedures for how and when to include an economic-based component in a penalty calculation.

When a company has derived significant savings or profits from its failure to comply with its air pollution control requirements, the amount of economic benefit from noncompliance gained by the violator should be calculated and added to the gravity based penalty amount. A benefit occurs when a source has avoided or delayed the expense associated with achieving compliance. The economic advantage may result from failure to do the following:

- Install and maintain equipment needed to meet emission standards
- Make process changes needed to lessen pollution or meet regulatory requirements.
- Comply with testing, reporting, and permitting requirement of the State's environmental regulatory scheme.

Usually the economic benefit calculation for delayed compliance will be most applicable in violation cases where: 1) achieving compliance requires the installation of new control equipments, 2) achieving compliance requires modifications to control equipment or process changes costing more than $25,000, or 3) postponing compliance was likely to have yielded significant savings in operation and maintenance expenses for sources. For programmatic reasons, the economic benefit factor will generally not be considered in a penalty assessment unless there is a clear cut economic benefit exceeding $2,000. Also, the economic benefit calculation will not be used for procedural violations such as notification, record keeping or reporting unless the violation was of very long duration or the violation was extensive.

In some situations, a rough estimate of the economic benefit component of the penalty may be sufficient. As a screening tool or for less complex penalty situations, a simple estimating technique will be used where the delayed expense (C) is multiplied by the prime interest rate (I) and the time in years (T). The equation is C x I x T = Estimated Economic Benefit.

In other situations where the above estimating procedures do not adequately capture the actual economic benefit of noncompliance, or where a detailed economic analysis is needed to fully quantify all the delayed and avoided costs, the EPA's BEN model will be used to compute the economic benefit component. The BEN model is available online at EPA's website. Estimates of costs and profits used in the BEN model should be based on the best information that is available to the staff, including contractors, brochures, local and national periodicals, and the company's own data and should be specific to the locale.

If the violator claims that the economic benefit of noncompliance is less than the amount calculated by the staff, the burden is on the violator to present verifiable data on actual costs, savings, and profits. If the data is verified, then it can be used for the calculation. To a certain extent, the natural tendency of violators to complain about their high costs of compliance may be dampened by the fact that high costs result in a higher gain for them during their period of noncompliance.

| | ID Number | County | Admin Region | Universe | Permit Components | Inspections | Violation | Single Event | SNC | Informal Actions | Formal Actions | Penalties | Summary |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | NC0051969 Hermitage House Rest Home WWTP | New Hanover | WIRO | Non-Major | | 1 | Yes | 1 | Category 1 | 22 | 15 | $14,831 | The Division entered into a settlement agreement with the facility on January 12, 2012 to settle existing civil penalties. The agreement required upgrades at the facility. The upgrades have been implemented. The facility in now under new ownership and in compliance. |
| 2 | NC0023230 Richlands WWTP | Onslow | WIRO | Non-Major | POTW | 5 | Yes | 0 | Category 1 | 10 | 7 | $14,362 | During the time of the EPA record review, DWR had already reached an agreement to have the facility decommissioned. Since that time, the facility has been decommissioned and the flow directed to another facility. |
| 3 | NC0024244 Long Creek WWTP | Stanly | MRO | Major | Biosolids, POTW, Pretreatment | 3 | Yes | 0 | SNC | 4 | 6 | $11,597 | DWR entered into a compliance agreement with the facility on March 14, 2013. The agreement was completed in January 2016. The facility is compliant. |
| 4 | NC0020389 Benson WWTP | Johnston | RRO | Major | POTW, Pretreatment | 2 | Yes | 1 | SNC | 8 | 4 | $10,240 | The Town of Benson had an aerial sewer line collapse in 2011. The line was bypassed and isolated for several years while repairs where affected. In 2013, the septic wastewater stored in the collapsed line was introduced to the wasterwater treatment plant. This input occurred at a time of high rainfall. As such, the plant was overwhelmed beyond its treatment capacity. The subsequent plant upset lasts for months. The Town was assessed a $10,000 civil penalty by DWR. The problems with the upset and the civil penalty have been resolved. In addition, the Town has undertaken a four phase program to systematically assess and upgrade its collection system to reduce long standing I&I issues. Since 2014, there has been only one violation reported at the facility. |
| 5 | NC0060534 Brevard WWTP | Transylvania | ARO | Major | POTW | 1 | Yes | 0 | SNC | 8 | 4 | $9,090 | The problem with this facility was was due to high BOD discharges from the Oskar Blues Brewery. The need for pretreatment of the brewery discharge prior to it entering the Brevard collection system was identifed. DWR entered into a compliance agreement with the City of Brevard in October of 2014. The compliance agreement is being executed and will be completed in 2017. The facility has been in compliance since 2015. |
| 6 | NC0047091 Silver Maples Community | Cabarrus | MRO | Non-Major | | 0 | Yes | 0 | Category 1 | 5 | 3 | $1,422 | This facility has been plagued with recurring compliance issues for years. The facility is old and located in the floodplain of the Rocky River. As such, it is subject to frequent flooding. There have been numerous violations over the years. DWR has been working with the facility to identify a long term solution to the problem. In April of 2016, the facility entered into an agreement with the Water & Sewer Authority of Cabarrus County to connect their system to the Authorty's collection system. The anticipated connection date is Sepetmber 2106. |
| 7 | NC0060224 Jonas Ridge Adult Care Facility WWTP | Burke | ARO | Non-Major | | 0 | Yes | 0 | Category 1 | 7 | 3 | $1,380 | A new facility built and put into use in 2013. There have been no penalties since January 2014. There are outstanding penalties that need to be resolved. |
| 8 | NC0025381 Lake Lure WWTP | Rutherford | ARO | Non-Major | POTW | 0 | Yes | 0 | Category 1 | 14 | 2 | $3,045 | This is a long standing problem facility. The collection system for the facility is under the lake. Subsequent I&I has resulted as the system has aged causing numerous problems with compliance. In addition, the facility is old and the Town lacks the necessary monetary resources to properly upgrade and operate it. DWR is working with the Town of Lake Lure to connect to the Town of Spindale facility. Negotiations are ongoing and all parties posituve that an agreement can be reached and implemented. Money has been identified and procured for the connection to Spindale as has all necessary rights-of-way. The project has entered the planning with teh construction phase soon to follow. |
| 9 | NC0026573 Catawba River PCF | Burke | ARO | Major | Biosolids, POTW, Pretreatment | 0 | Yes | 0 | SNC | 3 | 1 | $15,000 | Multiple violations of permit limits as well as operational deficiences at the facility were noted prior to 2014. A SOC with a compliace date of July 2014 was succesfully completed. There were no violations at the facility from December 2013 through November 2015. There were violations for TSS and BOD in December 2015 due to very heavy rainfall. A civil penalty was assessed. No additional violations have occurred. |
| 10 | NC0031879 Corpening Creek WWTP | McDowell | ARO | Major | Biosolids, POTW | 0 | Yes | 0 | SNC | 5 | 1 | $0 | A compliance agreement was entered into in the spring of 2014. The Town initiated a series of projects to identify and reduce I&I. The compliance agreemenrt was extended an additional year by both parties because the Town had been aggressive in its efforts to fix multiple areas of concerns. The State and the Town continue to work diligently to complete the improvements. |
| | NC0036641 | | | | | | | | | | | | |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 11 | Fletcher Academy, Inc. | Henderson | ARO | Non-Major | | 0 | Yes | 0 | Category 1 | 12 | 1 | $648 | Fletcher Academy has a lagoon system that has become filled with solids due to poor maintenance over an extended period of time. As a result, it continues to be in chronic noncompliance. The permittee has implemeted a number of operational iniatives over the years with little effect. As such, the facility now recognizes that it has two basic options. One, it can connect the Cane Creek Water & Sewer Dustric system. Two, they can build a new facility. After completing an engineering alternatives analysis, the facility has stated a preference to connect to the local collection system, and has pledged $1,025,000 to complete the project. If connection is not an option, the facility is committed to constructing a new WWTP. DWR is working with all parties to resolve this faciliy's long standing problems. |
| 12 | NC0000692<br>Archin USA | Chatham | RRO | Major | | 1 | Yes | 0 | SNC | 0 | 0 | $0 | The facility had a accident in 2015 that released approximately 127,000 pounds of formaldehyde and phenol to the atmosphere. The vapor condensed and fell to the ground as liquid. DWR worked with local officials and EPA to help cleanup the spill and resolve the problem. This incident is the only violation at the facility since 2014. the facilit is considered to be in compliance by DWR. |
| 13 | NC0001881<br>Phillips Plating | Craven | WARO | Major | | 1 | Yes | 0 | SNC | 3 | 0 | $0 | Phillips Plating manufacturing process tends to be episodic and diverse depending on the type of product they are producing at the time. Consequently, the facilty's treatment system sometimes inadequately treats the resulting wastewater. DWR has worked with the permittee diligently over the years and has a good working relationship. There were no civil penalty assessments from June 2011 through October 2104. There were series of violations in 2015 and 2016 for nickel. Given the eposodic nature of the discharge and the variability and complexity of the facility's process, it is difficult to anticipate future compliance problems that may arise. We will continue to identify violations if they occur and work with the permittee to resolve them. |
| 14 | NC0006351<br>Chemical Specialties | Cabarrus | MRO | Major | | 0 | Yes | 0 | SNC | 0 | 0 | $0 | Chemical Specialities has an old lagoon system that did not discharge for approximately 10 years due to reduced production and lower annual average rainfall amounts at the facility. Around 2013, the production had increased in conjunction with the return of more normal rainfall. The subsequent discharges form the facility resulted in multiple violations of the permit for Zinc. In addition, the facility failed multiple toxicity tests in 2015. Working with DWR to resolve the problems, the facility changed their treatment process. Instead of adding MgOH to the effluent, they started adding a lime slurry. The result was an increase to the pH of the wasetwater. The higher pH resulted in increased precipitation of zinc from the waste stream. The facility has had no additional violatiosn since 2015. In addition, the facility approached the Water & Sewer Authority of Cabarrus County to see if they would agree to a connection to the Authority's collection system. The Authority declined. Chemical Specialties is in the prcoess of designing and building a new treatment plant on site. |
| 15 | NC0024210<br>East Side WWTP | Guilford | WSRO | Major | Biosolids, POTW, Pretreatment | 2 | Yes | 0 | SNC | 1 | 0 | $0 | The apparent noncompliance was a byproduct of reporting incapabilities between BIMS (DWR database) and ICIS (EPA database) databases. Apparently, outfall 001 setup in BIMS was identified by the EPA database as an external discharging outfall, when, in reality, it is an internal outfall for complany use only. The problem has been fixed and there have been no "violations" since 2014. |
| 16 | NC0026751<br>Windsor WWTP | Bertie | WARO | Major | POTW | 0 | Yes | 0 | SNC | 0 | 0 | $0 | Windsor is a small town with limited resources. There have been sporadic incidents over the years with plant upsets that ultimately get reolved. DWR has worked with the permittee to help them resolve their long standing issues. The facility has had one violation since 2014. |

**LAND QUALITY SECTION**
**EROSION & SEDIMENT CONTROL**

***Information concerning Civil Penalty Assessment Cases***

Enforcement cases received from the field offices should include two complete sets of documents for both civil daily and initial penalties. The documents should be in chronological order with the newest document on top.

The following information should be included in the enforcement package:

1. County and location of subject property. (Describe location in proximity to nearby towns, roads, railroads, watercourses, developments, etc.)

2. The Financial and Responsibility Ownership (FRO) form which includes the following information. Person financially responsible for land-disturbing activity and owner if different from person financially responsible (Give full name and address and source of information, such as tax rolls, deeds, subdivision plats, admissions of agents, etc.) Purpose of land-disturbing activity if known. (Residential, commercial, etc., and source of information).

3. Copy of deed showing current owner.

4. Size of tract being developed.

5. Size and location(s) of disturbed acres(s). (If more than one area is being disturbed, give size and location of each one. Use map if desirable).

6. Copy of Notice of Violation(s) (NOV), receipt of delivery of NOV by certified mail or the sheriff, other correspondence, notes on telephone calls, inspection reports, memo's to file, documentation that compliance inspection was scheduled, Plan Receipt Letter(s), Plan Approval or Disapproval Letter(s), etc.

7. Chronological history of events.

8. Photographs or slides taken during compliance inspection with corresponding map showing location of pictures, direction photos were taken, and date taken.

9. Complete Civil Penalty Assessment Guidelines.

10. Cover Letter, Civil Penalty Assessment, and worksheet. Cover Letter and Civil Penalty Assessment should submitted electronically and hardcopy.

11. Copy of green cards for all certified mail correspondence.

The deed, FRO, and any cover memo should be placed on top of other documentation.

## Hines, Andrea

**From:** Ireland, Laurie
**Sent:** Tuesday, August 28, 2018 11:34 AM
**To:** Hines, Andrea
**Cc:** Gordon, Scott
**Subject:** Email pertaining to FOIA 18-010711 (NC Differential Oversight Response-CWA Documents)
**Attachments:** 038_CWA NC File Selection for Diff Oversight 102716.pdf; 039_CWA Draft Tiered Enforcement Guidance 091416.pdf; 010_DEQ 2016-11-15 DEQ Differential Audit response to the EPA - cover letter.pdf; 011_2016 05 19 Ltr from EPA Reg 4 Preformance Review ocr.pdf; 030_CWA 2016-11-03 CWA Differential Audit response to the EPA.PDF; 031_CWA Example Sedimentation Construction Stormwater Inspection Report.pdf; 032 _CWA Example Construction Stormwater General Permit NCG01 Permit Renewal 2016.pdf; 033_CWA Example Combined SPCA NPDES Construction NOV.PDF; 034_CWA Penalty_CPA_Guidelines 10.16.2015.pdf; 035_CWA Example Initial Penalty Worksheet LQS 16-001.pdf; 036_CWA Example Continuing Civil Penalty Worksheet.pdf; 037_CWA Example Civil Penalty Assessment Checklist.pdf

Laurie E. Ireland

Water Technical Authority
Office of Enforcement Coordination
US EPA Region 4
61 Forsyth Street
Atlanta, GA 30303
404.562.9249
ireland.laurie@epa.gov

| | ID Number | County | Admin Region | Universe | Permit Components | Inspections | Violation | Single Event | SNC | Informal Actions | Formal Actions | Penalties | Summary |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | NC0051969<br>Hermitage House Rest Home WWTP | New Hanover | WIRO | Non-Major | | 1 | Yes | 1 | Category 1 | 22 | 15 | $14,831 | The Division entered into a settlement agreement with the facility on January 12, 2012 to settle existing civil penalties. The agreement required upgrades at the facility. The upgrades have been implemented. The facility in now under new ownership and in compliance. |
| 2 | NC0023230<br>Richlands WWTP | Onslow | WIRO | Non-Major | POTW | 5 | Yes | 0 | Category 1 | 10 | 7 | $14,362 | During the time of the EPA record review, DWR had already reached an agreement to have the facility decommissioned. Since that time, the facility has been decommissioned and the flow directed to another facility. |
| 3 | NC0024244<br>Long Creek WWTP | Stanly | MRO | Major | Biosolids, POTW, Pretreatment | 3 | Yes | 0 | SNC | 4 | 6 | $11,597 | DWR entered into a compliance agreement with the facility on March 14, 2013. The agreement was completed in January 2016. The facility is compliant. |
| 4 | NC0020389<br>Benson WWTP | Johnston | RRO | Major | POTW, Pretreatment | 2 | Yes | 1 | SNC | 8 | 4 | $10,240 | The Town of Benson had an aerial sewer line collapse in 2011. The line was bypassed and isolated for several years while repairs where affected. In 2013, the septic wastewater stored in the collapsed line was introduced to the wasterwater treatment plant. This input occurred at a time of high rainfall. As such, the plant was overwhelmed beyond its treatment capacity. The subsequent plant upset lasts for months. The Town was assessed a $10,000 civil penalty by DWR. The problems with the upset and the civil penalty have been resolved. In addition, the Town has undertaken a four phase program to systematically assess and upgrade its collection system to reduce long standing I&I issues. Since 2014, there has been only one violation reported at the facility. |
| 5 | NC0060534<br>Brevard WWTP | Transylvania | ARO | Major | POTW | 1 | Yes | 0 | SNC | 8 | 4 | $9,090 | The problem with this facility was was due to high BOD discharges from the Oskar Blues Brewery. The need for pretreatment of the brewery discharge prior to it entering the Brevard collection system was identifed. DWR entered into a compliance agreement with the City of Brevard in October of 2014. The compliance agreement is being executed and will be completed in 2017. The facility has been in compliance since 2015. |
| 6 | NC0047091<br>Silver Maples Community | Cabarrus | MRO | Non-Major | | 0 | Yes | 0 | Category 1 | 5 | 3 | $1,422 | This facility has been plagued with recurring compliance issues for years. The facility is old and located in the floodplain of the Rocky River. As such, it is subject to frequent flooding. There have been numerous violations over the years. DWR has been working with the facility to identify a long term solution to the problem. In April of 2016, the facility entered into an agreement with the Water & Sewer Authority of Cabarrus County to connect their system to the Authorty's collection system. The anticipated connection date is Sepetmber 2106. |
| 7 | NC0060224<br>Jonas Ridge Adult Care Facility WWTP | Burke | ARO | Non-Major | | 0 | Yes | 0 | Category 1 | 7 | 3 | $1,380 | A new facility built and put into use in 2013. There have been no penalties since January 2014. There are outstanding penalties that need to be resolved. |
| 8 | NC0025381<br>Lake Lure WWTP | Rutherford | ARO | Non-Major | POTW | 0 | Yes | 0 | Category 1 | 14 | 2 | $3,045 | This is a long standing problem facility. The collection system for the facility is under the lake. Subsequent I&I has resulted as the system has aged causing numerous problems with compliance. In addition, the facility is old and the Town lacks the necessary monetary resources to properly upgrade and operate it. DWR is working with the Town of Lake Lure to connect to the Town of Spindale facility. Negotiations are ongoing and all parties posituve that an agreement can be reached and implemented. Money has been identified and procured for the connection to Spindale as has all necessary rights-of-way. The project has entered the planning with teh construction phase soon to follow. |
| 9 | NC0026573<br>Catawba River PCF | Burke | ARO | Major | Biosolids, POTW, Pretreatment | 0 | Yes | 0 | SNC | 3 | 1 | $15,000 | Multiple violations of permit limits as well as operational deficiences at the facility were noted prior to 2014. A SOC with a compliace date of July 2014 was succesfully completed. There were no violations at the facility from December 2013 through November 2015. There were violations for TSS and BOD in December 2015 due to very heavy rainfall. A civil penalty was assessed. No additional violations have occurred. |
| 10 | NC0031879<br>Corpening Creek WWTP | McDowell | ARO | Major | Biosolids, POTW | 0 | Yes | 0 | SNC | 5 | 1 | $0 | A compliance agreement was entered into in the spring of 2014. The Town initiated a series of projects to identify and reduce I&I. The compliance agreemenrt was extended an additional year by both parties because the Town had been aggressive in its efforts to fix multiple areas of concerns. The State and the Town continue to work diligently to complete the improvements. |
| | NC0036641 | | | | | | | | | | | | |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 11 | Fletcher Academy, Inc. | Henderson | ARO | Non-Major | | 0 | Yes | 0 | Category 1 | 12 | 1 | $648 | Fletcher Academy has a lagoon system that has become filled with solids due to poor maintenance over an extended period of time. As a result, it continues to be in chronic noncompliance. The permittee has implemeted a number of operational iniatives over the years with little effect. As such, the facility now recognizes that it has two basic options. One, it can connect the Cane Creek Water & Sewer Dustric system. Two, they can build a new facility. After completing an engineering alternatives analysis, the facility has stated a preference to connect to the local collection system, and has pledged $1,025,000 to complete the project. If connection is not an option, the facility is committed to constructing a new WWTP. DWR is working with all parties to resolve this faciliy's long standing problems. |
| 12 | NC0000892<br>Arclin USA | Chatham | RRO | Major | | 1 | Yes | 0 | SNC | 0 | 0 | $0 | The facility had a accident in 2015 that released approximately 127,000 pounds of formaldehyde and phenol to the atmosphere. The vapor condensed and fell to the ground as liquid. DWR worked with local officials and EPA to help cleanup the spill and resolve the problem. This incident is the only violation at the facility since 2014. the facilit is considered to be in compliance by DWR. |
| 13 | NC0001881<br>Phillips Plating | Craven | WARO | Major | | 1 | Yes | 0 | SNC | 3 | 0 | $0 | Phillips Plating manufacturing process tends to be episodic and diverse depending on the type of product they are producing at the time. Consequently, the facilty's treatment system sometimes inadequately treats the resulting wastewater. DWR has worked with the permittee diligently over the years and has a good working relationship. There were no civil penalty assessments from June 2011 through October 2104. There were series of violations in 2015 and 2016 for nickel. Given the eposodic nature of the discharge and the variability and complexity of the facility's process, it is difficult to anticipate future compliance problems that may arise. We will continue to identify violations if they occur and work with the permittee to resolve them. |
| 14 | NC0006351<br>Chemical Specialties | Cabarrus | MRO | Major | | 0 | Yes | 0 | SNC | 0 | 0 | $0 | Chemical Specialities has an old lagoon system that did not discharge for approximately 10 years due to reduced production and lower annual average rainfall amounts at the facility. Around 2013, the production had increased in conjunction with the return of more normal rainfall. The subsequent discharges form the facility resulted in multiple violations of the permit for Zinc. In addition, the facility failed multiple toxicity tests in 2015. Working with DWR to resolve the problems, the facility changed their treatment process. Instead of adding MgOH to the effluent, they started adding a lime slurry. The result was an increase to the pH of the wasetwater. The higher pH resulted in increased precipitation of zinc from the waste stream. The facility has had no additional violatiosn since 2015. In addition, the facility approached the Water & Sewer Authority of Cabarrus County to see if they would agree to a connection to the Authority's collection system. The Authority declined. Chemical Specialties is in the prcoess of designing and building a new treatment plant on site. |
| 15 | NC0024210<br>East Side WWTP | Guilford | WSRO | Major | Biosolids, POTW, Pretreatment | 2 | Yes | 0 | SNC | 1 | 0 | $0 | The apparent noncompliance was a byproduct of reporting incapabilities between BIMS (DWR database) and ICIS (EPA database) databases. Apparently, outfall 001 setup in BIMS was identified by the EPA database as an external discharging outfall, when, in reality, it is an internal outfall for complany use only. The problem has been fixed and there have been no "violations" since 2014. |
| 16 | NC0026751<br>Windsor WWTP | Bertie | WARO | Major | POTW | 0 | Yes | 0 | SNC | 0 | 0 | $0 | Windsor is a small town with limited resources. There have been sporadic incidents over the years with plant upsets that ultimately get reolved. DWR has worked with the permittee to help them resolve their long standing issues. The facility has had one violation since 2014. |

Environmental Quality

PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

November 15, 2016

J. Scott Gordon, Director
Office of Enforcement Coordination
US EPA Region 4
Atlanta Federal Center
61 Forsyth St.
Atlanta Georgia 30303-8960

Dear Mr. Gordon:

We appreciate your May 10, 2016 letter detailing your review of the annual data metrics. While your review was focused on the North Carolina Department of Environmental Quality (DEQ) enforcement, it is important to realize that environmental quality is the ultimate measure of a program's effectiveness. Enforcement should not be evaluated separately because it is only a single element of an overall strategy to protect the environment. That strategy includes enforcement, planning, monitoring, rule development, outreach, training, permitting, education, and scientific analysis.

Separately, evaluating a single element of an overall strategy is of limited value particularly when the overall strategy has resulted in unquestionable success, like in North Carolina. It might be appropriate to review a state's strategy, and elements of that strategy, when the strategy has been demonstrated to be ineffective like California and New York. For example, in those states the strategies put in place for air quality have resulted in decades of failure to achieve the National Ambient Air Quality Standards (NAAQS). In contrast, North Carolina's air quality strategy has proven to be successful where it matters.

North Carolina meets all federal NAAQS for the first time in over 20 years and there have been similar successes. Compliance rates in our water program are up and drinking water supplies are the safest they have been in decades. In 2016 North Carolina passed the Connect NC bond that will invest over $300 million in water infrastructure needs across the state. With respect to coal ash, North Carolina was the first state to comprehensively address this issue which had been ignored for decades by both state and federal officials.

Of particular concern with respect to differential oversight was the isolated use of metrics and the drawing of inferences or conclusions based on this raw data. For instance, your May 10, 2016 letter observes, quite correctly, a "drop in enforcement outputs." However, the number of enforcement actions does not translate into environmental quality. In fact, the most obvious answer to explain a drop in enforcement outputs is an increase in compliance. The drop is due both to historical enforcement efforts as well as outreach, training, permitting, and better

communication. This overall strategy has increased compliance rates in North Carolina resulting in better environmental outcomes.

Your letter sought to better understand the impact of the tiered enforcement program implemented in North Carolina in 2012. That program, as part of an overall strategy to protect the environment, has been very successful. The tiered enforcement allows staff to quickly identify less environmentally impactful deficiencies and spend more time addressing more serious issues. As an enforcement management mechanism, the tiered approach has resulted in better environmental outcomes. Rather than simply amassing more administrative actions, North Carolina's tiered enforcement specifically eschews expending resources, like uploading databases, on minor deficiencies and instead focuses on actual environment outcomes.

We believe that the primary benefit of the review is the realization that the current differential oversight review process focuses too much on data metrics and less on environmental outcomes. Given the overall success of North Carolina's environmental programs we believe our agencies can work together to improve the oversight process so that it takes into account environmental quality rather than bureaucratic notches.

Thorough evaluation and insightful critiques of North Carolina's environmental regulatory programs is always welcome. DEQ strives to be a leader in the southeast and across the nation in regulatory program implementation. As you will see in the following responses, there are many items that we can agree on. There are other areas that we will continue to evaluate. We will always ensure that protection of the environment and sound scientific analysis are the standards that will guide our decisions.

One issue that was identified across multiple DEQ programs, as well as a national issue, is the determination of economic benefit associated with a violation. DEQ is seeking training for staff to better determine the economic benefit associated with a violation. We request and welcome EPA's assistance in providing this training.

We can agree that DEQ and EPA will continue to work on resolving any outstanding issues. We look forward to our meeting in Raleigh later this month.

Sincerely,

Donald R. van der Vaart

Enclosure

cc: Mr. John Evans, Chief Deputy Secretary

cc: Mr. Tom Reeder, Assistant Secretary for the Environment
Ms. Sheila Holman, Director, Division of Air Quality
Mr. Michael Scott, Director, Division of Waste Management
Mr. Jay Zimmerman, Director, Division of Water Resources
Mr. Tracy Davis, Director, Division of Energy, Mineral & Land Resources

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
REGION 4
ATLANTA FEDERAL CENTER
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MAY 10 2016

Mr. Donald R. van der Vaart
Secretary
North Carolina Department of Environmental Quality
217 West Jones Street
Raleigh, North Carolina 27603

Dear Mr. van der Vaart:

I am writing as a follow up to our discussions last November concerning the initial findings of the Environmental Protection Agency Region 4 differential oversight review of the North Carolina Department of Environmental Quality (NCDEQ) enforcement programs. The EPA initiated the review in response to performance trends observed in NCDEQ's State Review Framework (SRF) metrics during the Annual Data Metrics Analysis (ADMA). The FY14 ADMA for North Carolina revealed significant downward trends over the prior four years (FY11-FY14) in several key enforcement related metrics, including drops in informal and formal enforcement actions, penalties, and significant non-compliance designations. The drop in enforcement outputs and outcomes coincides with several legislative and policy changes made in 2011 which became effective in FY12.

The EPA notified NCDEQ in early 2015 that additional review was needed to determine if the State was meeting its delegated responsibilities for compliance assurance implementation. To advance EPA's understanding of NCDEQ's programs, review teams consisting of Office Enforcement Coordination (OEC) staff and representatives for the Clean Air Act (CAA), Clean Water Act (CWA) and Resource Conservations and Recovery Act (RCRA) conducted a differential oversight review of records of recent violations and enforcement activities. These reviews were completed in FY15, and a summary of the results was shared with your senior enforcement managers in our annual EPA/State compliance assurance meeting on November 9, 2015.

While there is still much work to be done, I am encouraged to see recent improvements reflected in the oversight file reviews and some of the FY15 ADMA metrics, and I wanted to acknowledge the progress in these areas. These improvements are a step in the right direction and I hope they can form the foundation for further progress. However, consistent with the Agency's **National Strategy for Improving Oversight of State Enforcement Performance,** the EPA will continue to pursue appropriate escalation actions to address the concerns we have identified if adequate progress is not made.

These efforts may include additional EPA Oversight of inspections and enforcement, independent EPA actions, and reviews of program authorization.

My sense from our meeting in November was that NCDEQ enforcement managers agreed with the EPA's findings and sought specific input on areas of resolution. I look forward to establishing specific steps toward improvement. As always, feel free to contact me to discuss any ideas or concerns.

Sincerely,

J. Scott Gordon
Director
Office of Enforcement Coordination

Enclosure

cc: Mr. John Evans, Chief Deputy Secretary
Mr. Tom Reeder, Assistant Secretary for the Environment
Ms. Sheila Holman, Dir4ector, Division of Air Quality
Mr. Michael Scott, Director, Division of Waste Management
Ms. Kim Colson, Director, Division of Water Infrastructure
Mr. Jay Zimmerman, Director, Division of Water Resources
Mr. Tracy Davis, Director, Division of Energy, Mineral & Land Resources

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**Enclosure**

EPA's expectations for the performance of North Carolina's compliance assurance programs are laid out in a collection of program-specific agreements and national policy documents for each program, including, but not limited to the documents indicated below:

Overarching:

- Revised Policy Framework for State/EPA Enforcement Agreements
- Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Agreements

CAA:

- NCDEQ Air Planning Agreement for the CAA Section 105 grant
- NCDEQ CAA Compliance Monitoring Strategy (CMS) Plan
- Clean Air Act Stationary Source Compliance Monitoring Strategy
- Timely and Appropriate Enforcement Response to High Priority Violations
- Guidance on Federally-Reportable Violations for Clean Air Act Stationary Sources

CWA:

- NCDEQ CWA Section 106 grant work plan
- NCDEQ NPDES EMS Plan
- NCDEQ/Region 4 CWA Memorandum of Agreement
- CWA NPDES Compliance Monitoring Strategy
- CWA NPDES Enforcement Management System

RCRA:

- NCDEQ RCRA grant work plan
- NCDEQ/Region 4 RCRA Memorandum of Agreement
- Compliance Monitoring Strategy for the RCRA Subtitle C Program and Appendices
- RCRA Hazardous Waste Enforcement Response Policy
- RCRA Civil Penalty Policy

EPA evaluated the performance of North Carolina's major regulatory programs during the Round 3 SRF review, which was completed in September 2013 based on FY2011 activities. The following areas were identified as the priority issues affecting the State's performance:

- For all three media (CAA, CWA, & RCRA), improvement was needed in the documentation of penalty calculations, to include the consideration of economic benefit and the rationale for any difference between the initial and final penalty assessed;
- Improvement was needed in the accuracy of data entry in the NPDES Integrated Compliance Information System (ICIS-NPDES);
- Improvement was needed in the timeliness and appropriateness of CWA enforcement actions, and these actions needed to promote a return to compliance.

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A summary of all of the findings is included in the table below:

| Review Element | CWA | CAA | RCRA |
|---|---|---|---|
| Element 1 - Data Completeness | Meets | Meets | Meets |
| Element 2 - Data Accuracy | Improvement | Attention | Meets |
| Element 3 - Timeliness of Data Entry | No Finding | Meets | No Finding |
| Element 4 - Completion of Commitments | Attention | Meets | Meets |
| Element 5 - Inspection Coverage | Meets | Meets | Improvement |
| Element 6 - Quality of Inspection Reports | Improvement | Meets | Meets |
| Element 7 - Identification of Violations | Meets | Attention | Meets |
| Element 8 - Identification of HPVs | Meets | Meets | Meets |
| Element 9 - Enforcement Promotes Compliance | Improvement | Meets | Meets |
| Element 10 - Timely and Appropriate Action | Improvement | Meets | Meets |
| Element 11 - Penalty Calculation Method | Improvement | Improvement | Improvement |
| Element 12 - Final Penalty Assessment & Collection | Attention | Meets | Meets |

Despite progress in addressing some of the areas for improvement, EPA observed significant downward trends in NCDEQ's performance metrics during the FY14 Annual Data Metrics Analysis (ADMA). Between the years of FY11 to FY14, several key enforcement related metrics showed a significant decline, including drops in informal and formal enforcement actions[1], penalties, and significant non-compliance designations.

This drop in North Carolina's enforcement outputs and outcomes coincides with several legislative and policy changes made in 2011 which became effective in FY12. First, North Carolina's Regulatory Reform Act of 2011 (Session Law 2011-398) required the Secretary to "develop a uniform policy for notification of deficiencies and violations for all regulatory programs within the Department…"[2] The resulting Uniform Violation Notification Policy for the Department of Environment and Natural Resources (often referred to as the "Tiered Enforcement Policy") asserts "that violations of rules typically fit into three categories – 1. Recordkeeping and paperwork that result in little or no harm to the environment or public health; 2. More serious infractions that could result in harm to the environment or public health; and 3. Violations that have clearly impacted the environment or public health. The policy will formally recognize the tiered approach, so that a "Tier 1" violation will be met with a less severe response than a "Tier 3" violation."[3]

The policy also establishes three forms of notice which generally correlate with these violation tiers: Notice of Deficiency (NOD) for Tier 1 violations; Notice of Violation (NOV) for Tier 2 violations; and Notice of Recommendation for Enforcement for Tier 3 violations, which is typically accompanied by a subsequent civil penalty assessment.[4]

Our data analysis and differential oversight reviews identified several direct consequences of the application of NCDEQ's Tiered Enforcement Policy which we believe weaken the State's compliance assurance programs. First, fewer violations are being reported to EPA (and the public) due to the fact

[1] NCDEQ has asked EPA for clarification on the definition of formal enforcement. This varies by program, but EPA has prepared the document Informal and Formal Enforcement Action Definitions which may provide some clarity.
[2] North Carolina Session Law 2011-398, Section 61.
[3] Uniform Violation Notification Policy for the Department of Environment and Natural Resources, p. 2.
[4] *Ibid.*

that NODs are not being entered into the national data systems. This practice not only falls short of EPA's policy expectations (e.g. CAA FRV policy), but it significantly reduces transparency to both EPA and the public. Next, our review confirmed that numerous sources were cited for violations utilizing the NOD or NOV, sometimes on multiple occasions, but without appropriate escalation to the more severe formal enforcement response, which compromised a key goal of "credible national deterrence to noncompliance."[5] Evidence of this was that sources were frequently cited multiple times for the same types of violations.

Another significant legislative development in 2011 which had direct impacts to NCDEQ's enforcement programs was the passage of North Carolina Session Law 2011-145, which amends Part 1 of Article 7 of Chapter 143B of the General Statutes by adding a new section as follows:

> "§ 143B-279.16. Civil penalty assessments.
>
> (a) The purpose of this section is to provide to the person receiving a notice of violation of an environmental statute or an environmental rule a greater opportunity to understand what corrective action is needed, receive technical assistance from the Department of Environment and Natural Resources, and to take the needed corrective action. It is also the purpose of this section to provide to the person receiving the notice of violation a greater opportunity for informally resolving matters involving any such violation.
>
> (b) In order to fulfill the purpose set forth in subsection (a) of this section, the Department of Environment and Natural Resources shall, effective July 1, 2011, extend the period of time by 10 days between the time the violator is sent a notice of violation of an environmental statute or an environmental rule and the subsequent date the violator is sent an assessment of the civil penalty for the violation."[6]

Based on our differential oversight review findings, NCDEQ's implementation of this legislative action has resulted in fewer formal penalty actions being issued. Again, this raises concerns about effective deterrence and providing a "level playing field" for sources throughout the country.

Keeping in mind the Federal policy frame outlined here, as well as the recent state legislative and policy revisions discussed, we have summarized our program specific findings below, with recommended next steps for each area of concern.

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[5] Revised Policy Framework for State/EPA Enforcement Agreements, p. 1.
[6] North Carolina Session Law 2011-145, p. 164.

## Clean Air Act

**Background:** The FY14 Clean Air Act ADMA revealed significant downward trends over the prior four years in several key metrics, with a precipitous drop occurring between FY13 and FY14. As an example, CAA metric for assessed penalties dropped by 93% statewide, from about $235,000 in FY11 to just under $17,000 in FY14. During the same period, the number of facilities with informal and formal enforcement actions also dropped dramatically (52% and 79%, respectively). In addition, facilities with an HPV determination dropped by 64%. Though EPA makes HPV determinations on behalf of NC, this drop in HPVs results from fewer NOVs being presented to EPA for review.

| Metric ID | Metric Name | 2011 | 2012 | 2013 | 2014 |
|---|---|---|---|---|---|
| 1e2 | Number of Facilities with an Informal Enforcement Action (Facility Count) | 124 | 73 | 61 | 59 |
| 1f1 | Number of HPVs Identified (Activity Count) | 12 | 13 | 8 | 4 |
| 1g1 | Number of Formal Enforcement Actions Issued to Tier I Facilities (Activity Count) | 15 | 14 | 12 | 9 |
| 1g2 | Number of Tier I Facilities Subject to a Formal Enforcement Action (Facility Count) | 14 | 10 | 12 | 3 |
| 1h1 | Total Amount of Assessed Penalties | $235,159 | $95,356 | $97,629 | $16,865 |
| 1h2 | Number of Formal Enforcement Actions with an Assessed Penalty | 13 | 9 | 11 | 3 |
| 8a | HPV Discovery Rate Per Major Facility Universe | 3.1% | 2.8% | 2.4% | 0.9% |

The Division of Air Quality (DAQ) revised their Facility Guidelines, Penalty Tree, and Open Burning Guidelines on March 19, 2012, to address the requirements of the Tiered Enforcement Policy. EPA applauds NCDEQ's development of a penalty policy, which is encouraged in EPA's guidance entitled "Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Agreements", which states the following:

> "State and local enforcement agencies are strongly encouraged to develop written penalty policies, criteria, or procedures for penalty assessments. EPA will then review and evaluate, but not formally approve, these penalty policies, criteria or procedures for consistency with the general penalty criteria...."[7]

However, Region 4 was not given an opportunity to review these revisions, which would have put us on notice about the potential impacts of the Tiered Enforcement Policy, and given us a chance to provide feedback with respect to the policy's compliance with EPA guidance and penalty criteria.

[7] Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Agreements, p. 2.

To further evaluate whether the drop in enforcement was warranted, EPA staff conducted a differential oversight review of 20 sources with recent violations and enforcement activities. A summary of the key findings is outlined below.

**Outstanding issues:**

**Element 3 – Violations:** Inaccurate determination/failure to report FRVs and HPVs

Half of the facilities reviewed had either a missing FRV or HPV. Although many violations identified as "Tier 1" according to the Tiered Enforcement Policy may be federally reportable violations, DAQ did not report these violations into ICIS-Air when they were cited using a NOD. In addition, DAQ has historically relied on EPA to enter HPV data into the national system, but changes are needed to the protocols for reporting to ensure that HPVs are properly entered in the new data system. Missing HPV: *Darnel, Mann & Hummel; Momentive Specialty Chemicals; Stericycle.* Missing FRV: *Domtar; Iredell; J.T. Russell; Lampe & Malphrus; OMNOVA; Unilin*

Next Steps:

- DAQ is required to report FRVs into ICIS-Air. Many of the violations DAQ cites in NODs are specifically identified as FRVs in the new FRV policy, including late reports, late source tests, and failure to maintain records, and DAQ has not been reporting these FRVs into ICIS-Air. DAQ needs to immediately begin reporting all FRVs, including those addressed by a NOD, into ICIS-Air.
- EPA strongly recommends that DAQ begin reporting HPVs into ICIS-Air as soon as the needed programing is completed. EPA also notes that DAQ is required to enter all MDR data for all enforcement actions, including both informal and formal enforcement actions.

**Element 4 – Enforcement:**

**Metric 9a - Enforcement actions that do not return sources to compliance**

**Chronic non-compliance not addressed through appropriate escalation and deterrence**

During the differential oversight review, EPA identified 12 sources which were repeatedly cited by DAQ for non-compliance, often for similar offenses, but without any formal action. When escalation occurred, it did not ultimately result in a formal penalty action being taken. These sources included the following: *Darnel, Domtar, Enviva, Glenoit, Goldsboro, Iredell, Special Fab, Mann & Hummel, Murphy Brown, OMNOVA, North Carolina Central University, and Unilin.*

**Inconsistent application of state enforcement policies**

The differential oversight review identified several facilities for which the Tiered Enforcement Policy or Facility Guidelines, Penalty Tree, and Open Burning Guidelines were not consistently applied, or where the appropriate escalation prescribed by the policy were relaxed even when sources had poor compliance records. Facilities where EPA noted this occurrence include the following: *Domtar, Glenoit, Goldsboro,*

*J.T Russell, Lampe & Malphrus, Momentive, Murphy Brown, North Carolina Central University, Stericycle, and Unilin.*

Next Steps:

- The Tiered Enforcement Policy provides for both adequate compliance and deterrence actions to be effectively taken. Penalties can be sought after just one prior notice to the company, but DAQ is not exercising this discretion. EPA recommends utilizing the discretion available to DAQ within the policy to enhance environmental protection, while maintaining compliance with existing enforcement agreements and policy documents.
- Repeat violations can be an indication of ineffective environmental management by industry all the way up to systematic and/or intentional non-compliance. EPA recommends that DAQ take a broader view of a company's compliance record to ensure that these issues are addressed.

**Element 5 – Penalties:**

**Metric 11a: Economic benefit is not adequately calculated or assessed**

The Round 3 SRF review identified economic benefit in penalties as an Area for State Improvement. The differential oversight review confirmed that DAQ efforts to calculate, assess and recover economic benefit are not adequate and consistent with EPA policy, as indicated by the following examples:

For the N.S. Flexibles case (SOC 2014-002), the source exceeded its PSD-avoidance limit for VOCs, which should have automatically triggered PSD permitting and BACT analysis for VOCs. Instead, DAQ entered into an SOC with the facility, allowing them to continue operations and apply for either a Plant-wide Applicability Limit (PAL) or a PSD permit. In the interim, DAQ assessed stipulated penalties ($1000/mo.) for each month the source exceeded its limit. DAQ describes this as the "pragmatic approach" of enforcing on the facility while allowing operations to continue. No effort was made by DAQ to calculate the economic benefit associated with continued operation of the facility above the applicable emission limit, so it is unclear whether the penalty of $10,000 is adequate to recover the economic benefit gained.

For a second facility, Domtar, DAQ identified PSD violations. The company built a lignin solids removal plant (LSRP) without going through the PSD permitting process, asserting to DAQ that no actual emissions increases (above the significance threshold) would result from the project. However, increases in H2S and TRS (total reduced Sulphur) did occur, and the company operated throughout 2013 and 2014 before contacting DAQ and reducing production levels. DAQ entered an SOC with the company (SOC 2015-01) which allows the company to take the LSRP to full production, resulting in an estimated 24.7 tpy of TRS and 22.7 tpy of H2S emissions. The SOC establishes a compliance schedule and assesses a penalty of $100,000, which clearly does not recover the economic benefit associated with plant operations beginning in February 2013 and continuing through the June 2018 compliance date in the SOC.

In the Carl Rose case, after failing a PM source test, the source continued operating for 7 months before successfully passing a retest. DAQ's penalty of $2,000 was taken from the penalty matrix, but did not reflect any consideration for the economic benefit associated with continued operation in the interim.

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Next Steps:

- Provide EPA with the current policy and procedures in place related to calculation, assessment, and recovery of economic benefit.
- If no coherent policies or procedures are in place, work with EPA to develop them consistent with the expectations laid out in EPA's "Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Agreements".[8]

[8] *Ibid*, p. 5

Clean Water Act

**Background:** The FY14 Clean Water Act (CWA) Annual Data Metrics Analysis (ADMA) revealed a downward trend over FY11-FY14 in enforcement related metrics. For example, the total penalties assessed in FY14 at facilities with National Pollutant Discharge Elimination System (NPDES) permits are 58% lower than those assessed in FY11. The number of penalty enforcement actions decreased 46% from FY11 to FY14.

| Metric ID | Metric Name | 2011 | 2012 | 2013 | 2014 |
|---|---|---|---|---|---|
| 1f1 | Facilities with Formal Actions | 213 | 166 | 135 | 119 |
| 1f2 | Total Number of Formal Actions at CWA NPDES Facilities | 412 | 342 | 287 | 221 |
| 1g1 | Number of Enforcement Actions with Penalties | 405 | 289 | 285 | 219 |
| 1g2 | Total Penalties Assessed | $497,582 | $417,499 | $328,180 | $210,437 |
| 10a1 | Major facilities with Timely Action as Appropriate | 18.2% | 0% | 0.50% | 0% |

In August 2015, EPA Region 4 conducted a Differential Oversight (DO) review of 33 CWA enforcement files to evaluate if the state's enforcement responses followed NCDEQ's policies and were consistent with EPA's 1989 Enforcement Management System (EMS): NPDES Enforcement Response Policy as well as NCDEQ's EMS plan. Files reviewed included conventional major and minor wastewater facilities, and construction, industrial, and Municipal Separate Storm Sewer System (MS4) stormwater facilities. Of the 33 NPDES files reviewed, EPA found that the State issued numerous NOVs and/or Civil Penalty Assessments (CPAs) to a facility with no return to compliance. In addition, EPA observed multiple construction stormwater inspections with non-compliance noted at a single facility without any enforcement response. A summary of the key findings is outlined below.

**Outstanding issues:**

**Element 2 – Inspections**

**Metric 6a - Inspection reports are not complete and sufficient to determine compliance at the facility**

EPA reviewed inspection reports for completeness and as the foundation for any State enforcement response. Two major observations were noted:

- Construction stormwater: The State's inspection reports often identified areas of noncompliance; however, once an area of noncompliance was identified, the subsequent inspection report did not note if that area of noncompliance had been addressed by the facility.
- MS4: The four MS4 audit/inspection reports reviewed contained little to no information to make a compliance determination; only the date and time of the inspection and the facility name and location were included in the reports. All four inspections were done on the same day during the same time frame.

> "Three objectives should be met during a routine compliance inspection [and] the inspection should be performed in a manner designed to: (1) Determine compliance status with regulations, permit conditions, and other program requirements; (2) Verify the accuracy of information submitted by permittees; and (3) Verify the adequacy of sampling and monitoring conducted by the permittee." [9]

- Based on the content of the inspection reports, the Region does not consider these inspections to meet the requirements of EPA's Inspection Manual for a Compliance Evaluation Inspection or an MS4 audit.[10]

Next Steps:

- Develop and implement procedures to ensure complete and sufficient inspection reports for both wastewater and stormwater programs.
- Conduct inspector training for state inspectors to ensure base knowledge and consistent implementation of inspection procedures.

**Element 4 – Enforcement**

**Metric 9a - Enforcement responses do not demonstrate a return to compliance**

The DO review found that in the 24 files in which a return to compliance was evaluated, 10 of the files were determined to demonstrate a return to compliance (42%).

**File Metric 10b - Enforcement responses do not address violations in an appropriate manner**
The DO review evaluated 26 files for appropriate enforcement responses; eight of those files were determined to have an appropriate enforcement response. Four of the 26 files contained formal enforcement actions.

The SRF Round 3 review previously identified File Metrics 9a and 10b as Areas for State Improvement, and EPA recommended the use of timely and appropriate formal enforcement actions to promote a return to compliance. In its "National Guidance for Oversight of NPDES Programs," EPA defines a formal action as "one that requires actions to achieve compliance, specifies a timetable, contains

[9] NPDES Compliance Inspection Manual, p. 1-1.
[10] MS4 Program Evaluation Guidance, p. 23

consequences for noncompliance that are independently enforceable without having to prove the original violation, and subjects the person to adverse legal consequences for noncompliance."[11]

The State often does well at notifying a permittee of violations, a critical first step toward compliance; however, as observed during the review, the State often issued numerous NOVs and/or CPAs, which are both informal actions[12], to a facility with no apparent return to compliance. For example, the Hermitage House Rest Home Wastewater Treatment Plant (WWTP) was issued 22 NOVs and 15 CPAs in one fiscal year with no return to compliance. Lake Lure WWTP and Phillips Plating Company are other examples where numerous informal actions were issued and no return to compliance was achieved. In the six construction stormwater files, EPA observed that the State either issued numerous Inspection Reports indicating noncompliance with no enforcement response and no apparent return to compliance; or the State issued a NOV with a return to compliance date-certain and then documented continued noncompliance after that compliance date had passed, with no additional enforcement follow-up.

Four files reviewed contained formal enforcement actions, such as a Special Order on Consent (SOC) or a Settlement Agreement. One file, Richlands WWTP, was issued a Special Order on Consent; however, the facility failed to meet the established milestone dates and only returned to compliance when the NPDES permit was rescinded and a new WWTP came online.

As mentioned previously, the State issued numerous NOVs and/or CPAs with no apparent escalation to the next level of enforcement response. While Tier 3 of the Tiered Enforcement Policy allows for a "Notice of Recommendation for Enforcement Action", it does not describe what that enforcement action would be. There also appears to be little or no follow-up once the State has already issued numerous CPAs under Tier 3. For example, eight files reviewed had more than one CPA issued per year to a facility. While penalizing the source may be appropriate as an initial response to promote compliance, the state may need to take additional measures to ensure that sources with repeated violations are brought back into compliance.

Five of the six construction stormwater files reviewed were determined to have numerous inspections with noncompliance with no NPDES enforcement response. One construction stormwater file, ONSLO-2012-081, had eight consecutive inspections documenting noncompliance without an NPDES enforcement response. Another construction stormwater file, WAKE-2014-046, had an NOV with a return to compliance date-certain, and a subsequent inspection noted additional violations, but there was no escalation of enforcement response or additional action.

The move of the stormwater enforcement programs from the Division of Water Resources (formerly the Division of Water Quality) to the Division of Energy, Minerals, and Land Resources appeared to result in some confusion related to enforcement protocols. EPA maintains that the expectations outlined in the CWA MOA and the ERP should remain unchanged despite the organizational changes.

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[11] National Guidance for Oversight of NPDES Programs, p. 19

[12] The 2011 Division of Water Quality (DWQ) EMS lists NOVs and CPAs as examples of informal enforcement actions in Table 1. DWQ NPDES Program Enforcement Response Guide

Next Steps for Enforcement:

- Develop and implement enforcement actions that meet EPA's definition of formal enforcement and promote a return to compliance for both wastewater and stormwater facilities
- Revise the EMS to incorporate changes resulting from the NCDEQ reorganization (i.e. moving stormwater enforcement program to the Division of Energy, Minerals, and Land Resources), and to address the Tiered Enforcement Policy, such that implementation of NC enforcement programs meet EPA policy expectations.

## Element 5 – Penalties

**Metric 11a - Penalty calculations do not document and include gravity and economic benefit:** Similar to the findings of the Round 3 SRF Report, most of the files did not contain penalty calculations. Of the eleven files reviewed in which penalty calculations were evaluated, two files were determined to include penalty calculations (18%).

**Metric 12a – No documentation of the rationale for difference between initial penalty calculation and final penalty**

The files did not regularly document the rationale for the difference between the initial and final assessed penalty. In several files, the facility provided documentation while requesting a remission of the penalty, but the State did not document the rationale for remitting the penalty. Of the eight files reviewed in which documentation of the rationale for the difference between the initial and final penalties were evaluated, only two files included the documentation (25%).

**Metric 12b – No documentation showing penalties were collected**
Most of the files did not contain evidence of penalty collection. Of the ten files reviewed in which penalty collection was evaluated, only two files were determined to include penalty collections (20%).

Next Steps for Penalties:

- Develop and consistently implement procedures for calculation of gravity and economic benefit
- Document both gravity and economic benefit calculations in the file
- Evaluate whether any economic benefit (delayed or avoided costs) was gained in each case and document specific rationale, even in cases with no economic benefit realized
- Develop and implement procedures to document the rationale for differences between the initial and final assessed penalties
- Develop and implement procedures to document the evidence of penalty collection.

Resource Conservation and Recovery Act

**Background:** In the spring of 2015, EPA Region 4 conducted a file review of the NCDEQ RCRA program to evaluate if the state's enforcement responses were consistent with EPA's Hazardous Waste Enforcement Response Policy. In 100% of the 22 files reviewed, the DEQ RCRA program correctly identified violations, took appropriate enforcement, and ensured that the violators returned to compliance.

**Outstanding issues:**

**Element 5 – Penalties:**

During all three rounds of the SRF, EPA has identified economic benefit in penalties as an Area for State Improvement. The NCDEQ RCRA program did not have the legal authority to assess and collect economic benefit in penalties during this time. In response to the Round 3 SRF recommendation, the state sought and, in 2013, was granted the authority to recover the economic benefit of noncompliance in RCRA penalty assessments from the NC legislature. EPA applauds these efforts.

During the differential oversight file review, EPA recommended that when the state determines that economic benefit is not realized that a rationale for that decision be provided in the penalty documentation. Now that the state has the authority to recover economic benefit, EPA recommends that an analysis of the potential for economic benefit from noncompliance be conducted for each penalty action.

Next Steps:

- Fully evaluate whether any economic benefit from noncompliance was gained in each case (e.g., through delayed or avoided costs);
- As outlined in the RCRA Civil Penalty Policy, calculate economic benefit where appropriate using the BEN model or other method that produces results consistent with national policy;
- When no economic benefit is assessed in the penalty calculation, document the specific rationale for why no economic benefit was realized.

Two regulatory divisions within the DEQ implement parts of the CWA. The Division of Energy, Mineral and Land Resources (DEMLR) implements the storm water portion of the act evaluated under the SRF and Differential Oversight review. The remainder of the CWA implementation that is part of this review is the responsibility of the Division of Water Resources (DWR). DWR and DEMLR would like to thank you for the opportunity to respond to the EPA's May 10, 2016 letter discussing the findings of the March 2015 Differential Oversight Review.

***Element 2 – Inspections:***
*Metric 6a - Inspection reports are not complete and sufficient to determine compliance at the facility*
***Next Steps:***

- *Develop and implement procedures to ensure complete and sufficient inspection reports for both wastewater and stormwater programs.*
- *Conduct inspector training for state inspectors to ensure base knowledge and consistent implementation of inspection procedures.*

For construction storm water, under Element 2 – Inspections, DEMLR has been using a combined stormwater and erosion and sedimentation control inspection report[1] to document compliance with the Construction Stormwater General Permit[2] and approved erosion and sedimentation control plan (one combined inspection with one combined report by one inspector). In addition, since our November discussions with EPA, DEMLR has implemented changes in our program to begin utilizing a combined notice of violation (NOV) for construction projects[3]. This process assures that any time there is a violation on a site under our State Sedimentation Pollution Control Act (SPCA) that we are also issuing an NOV under the Construction NPDES program. Regional staff have been utilizing this process and the combined NOV since the end of 2015. If a delegated local government erosion and sedimentation control program issues an NOV under the SPCA, DEMLR has been issuing an NOV under the Construction NPDES program to ensure appropriate and consistent enforcement across all regulatory regimes.

For MS4 inspections, DEMLR undertakes extensive efforts in our MS4 programs to stay in contact with the local governments and continue to provide updated information on programs goals and expectations. We accomplish this through statewide meetings coordinated through local government and industry groups (NC APWA, NC SWANC, etc.). With resource constraints, like all states have, we have looked at alternatives to continue to have these contacts and also provide inspection/audits to meet EPA requirements by focusing inspection/audits on key areas. We will review our efforts here to assure that we can meet program requirements more completely. We would also note that we have been keeping EPA updated on efforts DEMLR has been working on with local government partners to come up with a sustainable process for MS4 program oversight. We feel there are models other than the traditional inspection/audit process that would better serve our program in the future. DEMLR has

[1] Attached – example Keystone Group inspection
[2] Attached – example General Permit
[3] Attached – example Keystone Group NOV

provided an early draft of information on our Sustainability program effort to Region IV staff. We are very interested in EPA's evaluation of this effort so we can begin implementation. We have acknowledged that the effort is not exactly like the approaches that EPA has used in the past, but we feel it does meet the interest on the federal level for sustainable programs. We believe that this approach is effective for North Carolina and would prefer not to revert to previous approaches that may not be sustainable long term.

One major problem area in the national programs for NPDES stormwater is the lack of stormwater specific training information for the state permit writers and inspectors. Training information is largely geared toward Wastewater aspects. DEMLR has worked with EPA Region IV staff to begin a process of training for our regional office inspectors. Region IV staff were in NC in February 2016 to conduct industrial stormwater inspections and to provide training and convey expectations to our regional staff. DEMLR and DWR have recently finalized an MOU to address how our agencies will coordinate to handle various parts of our programs (including NPDES issues). As part of this process, DWR will assist with internal training for DEMLR staff associated with stormwater permit inspection and enforcement along with coordination between the agencies in handling in-stream water quality issues. EPA Region IV is also planning to provide additional inspector training for DEMLR staff for construction sites and plans to hold a Stormwater Inspector Training Course in 2017 that addresses all program areas in the NPDES Stormwater Program. There is an agenda drafted for this training and hopefully funding will be available to implement this training in 2017.

The EPA did not include any negative findings relative to the wastewater inspections. Additionally, DWR provided results of EPA NPDES audits, including inspection reports, and stated that they were determined to be satisfactory. The existing inspectors are highly competent. However, DWR has had significant turnover in those positions in the past year. Therefore, in an effort to prevent an erosion of the quality of the existing NPDES wastewater inspection program, DWR has setup a workgroup to update and enhance existing training efforts to improve the quality and consistency across the state.

***Element 4 - Enforcement***

*Metric 9a - Enforcement responses do not demonstrate a return to compliance*
*File Metric 10b - Enforcement responses do not address violations in an appropriate manner*

***Next Steps for Enforcement:***

- *Develop and implement enforcement actions that meet EPA's definition of formal enforcement and promote a return to compliance for both wastewater and storm water facilities*
- *Revise the EMS to incorporate changes resulting from the NCDEQ reorganization (i.e. moving stormwater enforcement program to the Division of Energy, Minerals, and Land Resources), and to address the Tiered Enforcement Policy, such that implementation of NC enforcement programs meet EPA policy expectations*

For construction stormwater, as noted under Element 2, DEMLR has worked to institute a consistent use of a combined inspection report and NOV framework across the state and will continue training efforts with the involvement of Region IV staff. DEMLR continuously reviews overall enforcement protocols.[4]. It should be noted that when minor deficiencies are discovered during the combined stormwater and erosion and sedimentation control inspections, a deadline for compliance is generally given within the inspection report (NODs are not used in these programs) to prompt timely compliance. If a portion of the deficiencies are addressed and correction of other minor deficiencies are underway and will be completed within a short period of time after the given deadline, DEMLR does not always pursue the next tier of enforcement (NOV). The next tier of enforcement (NOV and possibly an initial civil penalty) is used for projects that have major environmental issues still outstanding that were not resolved by the given deadlines or require immediate enforcement action regardless of the compliance deadline given. The move from an NOV to the next tier of enforcement (civil penalty and/or injunctive relief) is evaluated in the same manner as previously indicated in that the degree and extent of harm and the timeliness and effectiveness of the violator's actions to gain compliance are considered.

In order to ensure timely and appropriate follow-up, DEMLR has provisions in each inspector's work performance plan that they are to track and inspect any sites that have been issued an NOV or been referred for enforcement every two weeks and elevate the enforcement as necessary based upon their findings. Regional supervisors will work with their staff to more closely manage this aspect to ensure that timely and appropriate enforcement actions are taken until the subject sites are brought back into compliance with both programs.

DEMLR works with DWR staff on the review and update of systems and policies to ensure data is accurately entered and maintained in the ICIS system and that "next steps" in enforcement are pursued as appropriate. Efforts have been taken to try and provide better data access, but there are currently some DEMLR data areas that are undergoing major adjustments to address a system that has not worked as intended to track sediment and construction information. In addition, it appears that not all NOVs issued have been reported/counted as CWA formal actions

[4] See attached "Penalty_CPA_Guidelines 10.16.2015," "Initial Penalty Worksheet LQS 16-001," "Continuing Civil Penalty Worksheet," and "Civil Penalty Assessment Checklist"

(we intend to address this going forward). DEMLR staff have had discussions with EPA Region IV staff on these issues and are working with state DIT staff to have data transferred in a spreadsheet upload to EPA. In addition, DEMLR continues to work with DWR staff as we attempt to meet e-reporting requirements. We have indicated to EPA that these efforts have been impacted by a lack of resources on the IT side as well as permitting staff resources that have been redirected over the last few years. We will continue to provide EPA updates as we have established in our work plan commitments.

DEMLR will review existing actions to ensure they meet the definition of formal enforcement and determine where additional changes may need to be implemented to address EPA concerns. At this time, DEMLR has implemented changes that we feel are responsive, especially in the construction stormwater program. As we move forward with the additional inspector training noted for the coming year, we will also work to evaluate any additional adjustments that might be needed from an enforcement standpoint. DEMLR will coordinate these efforts with the DWR staff to ensure consistency in NPDES programs.

For NPDES wastewater permits issued by DWR, the EPA reviewed the compliance files for 16 facilities. EPA indicated that the state does a good job identifying violations, notifying permittees of violations, and assessing civil penalties for those violations. EPA also concluded that this represents a good "first step" in returning a facility to compliance. However, EPA then indicated their opinion that the state did not undertake appropriate steps to bring the facilities back in to compliance.

The facilities selected all had some level of chronic noncompliance. As such, we do not feel the review is indicative of the status of the overall statewide compliance program. The vast majority of facilities in the state operate in compliance with their NPDES permits. In addition, the timeframe for the data review was from 10/01/2013 to 09/30/2014. Review of the present status of the 16 facilities on the list indicate that 14 have identified and implemented some type of long term solution and are presently operating in compliance today.[5]

The overall deficiencies identified in the compliance program for facilities with chronic compliance issues warrant some actions by the state to further improve the program.

At present, DWR has numerous tools at our disposal that satisfy EPAs definition of formal actions to bring facilities into compliance. The list includes:

- Special Orders by Consent
- Compliance Agreements
- Judicial Injunctions
- Judicial Orders by Consent
- Special Orders Without Consent (authority with EMC not DWR)

EPA defines a formal action as "one that requires actions to achieve compliance, specifies a timetable, contains consequences for noncompliance that are independently enforceable without having to prove the original violations, and subjects the person to adverse legal consequences for

[5] See attached spreadsheet with comments

noncompliance". In an effort to increase the effectiveness of the compliance program, DWR is exploring the possibility of having the Special Orders Without Consent delegated so that it might be used more frequently. Presently, the authority to administer these orders resides with the North Carolina Environmental Management Commission. DWR will explore delegation from the Commission to the Division to increase the efficiency of administering such orders as well as the frequency. DWR is assessing changes in procedure that would allow the civil penalty assessments issued by the state to meet the definition of an EPA formal action. In addition, DWR is presently reviewing and updating the existing tiered enforcement policy and its implementation[6] to require a greater escalation in civil penalty amounts for repeat or chronic noncompliance.

DWR is in the process of updating the EMS to account for organizational changes that have occurred over the past several years. We expect to complete the updates and present them to EPA for review by the end of Fiscal year 2017. DEMLR believes that the relocation of the Stormwater Program from DWR to DEMLR has added efficiencies to the implementation of both programs by allowing DEMLR to integrate the inspection and enforcement programs. As a result, this change has improved communication between the programs and enhanced (not reduced) opportunities to streamline enforcement by allowing DEMLR (rather than two separate agencies) to determine which program is best suited to pursue enforcement action based upon the program that has sufficient documentation to substantiate the violations and ultimately prevail in court if challenged.

[6] See attached DWR "Draft Guidance for Tiered Enforcement" March 16, 2012

***Element 5 – Penalties***

*Metric 11a - Penalty calculations do not document and include gravity and economic benefit:*

*Metric 12a - No documentation of the rationale for difference between initial penalty calculation*
*and final penalty*

*Metric 12b - No documentation showing penalties were collected*

***Next Steps for Penalties:***

- *Develop and consistently implement procedures for calculation of gravity and economic benefit*
- *Document both gravity and economic benefit calculations in the file*
- *Evaluate whether any economic benefit (delayed or avoided costs) was gained in each case and document specific rationale, even in cases with no economic benefit realized*
- *Develop and implement procedures to document the rationale for differences between the initial and final assessed penalties*
- *Develop and implement procedures to document the evidence of penalty collection.*

As DEMLR enforcement actions are initiated by the regional office but processed for civil penalties and injunctive relief through case closure by the Raleigh Central Office, a separate enforcement case file is located in the Raleigh Central Office that contains all the documentation generated after issuance of the NOV showing the escalation of enforcement for the project in question (some of this supplemental enforcement related information may not be located in the regional office files). This Raleigh Central Office case file contains information such as the civil penalty calculation worksheet (which includes consideration of economic benefit among other factors), memos and phone logs of conversations between Central staff and Attorney General's Office attorneys regarding preparation for upcoming contested case hearings and consideration of settlement offers, rationale for settlement of penalties, settlement agreement negotiations and final documents, and payment of the civil penalties or actions taken by our attorneys to collect outstanding penalties. DEMLR does acknowledge that while we conduct combined inspections and issue combined NOVs, we have tended to enforce violations at project sites under the SPCA Act due to sedimentation issues that also resulted in water quality impairment. DEMLR will focus on those sites where water quality violations can be substantiated and pursue enforcement under the Construction Stormwater General Permit with respect to civil penalties and injunctive relief so that there is a better distribution of enforcement cases between the two programs.

DEMLR considers economic benefit when the benefit can be determined. If it cannot be determined, there are other criteria for which the penalty may be based. In calculating economic benefit in civil penalty assessments, the elements considered include but are not necessarily limited to the design costs, permit fees, material and installation costs of BMPs and/or any other apparent savings that might be applicable. In regard to penalty settlements, those settlements often reflect the value of costs saved by the State in not going to mediation or litigation. DEMLR will review existing procedures and will update/create any needed information to assure that necessary documentation is included in case files.

DWR is developing a policy that details how to account for economic benefit derived from noncompliance when assessing civil penalties. The division is evaluating the methods included in the policy with other Departmental entities to ensure statewide consistency.

DWR is developing a spreadsheet based tool for statewide use that will detail how civil penalties are developed. The spreadsheet will detail the calculation of civil penalties and will include a section for economic benefit derived from noncompliance as well as the gravity of the violation. We anticipate updating our enforcement procedures so the calculations will become part of the official compliance file. A narrative protocol on how to use the new assessment tool is being developed in conjunction to ensure consistency of application throughout the state. Documentation of how economic benefit from noncompliance and gravity will be part of the established protocol.

DEMLR tracks penalties in the NPDES stormwater program in the BIMS database. Sediment penalties are tracked in an Access database. Both databases allow the tracking of dates for assessment, when penalties are paid and when or if penalties are forwarded to the Attorney General's (AG) office for collection along with responses to the collection process. Since the AG's office is responsible for delinquent penalty collections, we cannot update our file documents until we receive a collection confirmation or file closure letter from the AG. In those instances, where the penalty comes to our office directly, we copy and make note of the payment, deposit the penalty in the penalty account (which goes to the local school board, not DEQ) and forward a copy of the payment to the AG. We still have to wait for the collection confirmation or file closure letter from the AG to put final documentation in the file. In reference to NPDES cases, DEMLR will work with DWR to assure that we are utilizing the same approaches on the NPDES cases.

DWR has an extensive process for reviewing requests for penalty remissions and documenting both the decision and the rationale. However, due to changes in the file management system over recent years, those documents are either not completely retained and/or stored in a central location. The entirety of DWR is transitioning from paper file storage systems to electronic storage systems including the NPDES program. Once that transition is complete, all files will be stored electronically for easy retrieval. In the interim, DWR will review is present paper file management and storage system to address the issues raised in the EPA report.

The process for penalty collection involves DWR first attempting to collect assessed penalties. If those attempts are unsuccessful, then the cases are forwarded to the DEQ General Council Office for further collections efforts. When those efforts result in monies being collected, the information of the collected amount is entered into the BIMS database. The paperwork for those efforts should be then forwarded to DWR staff. Again due to space constraints, the systematic collection and coordination of that paperwork is not saved in the files consistently. During the migration toward an electronic file management, DWR is updating and standardizing post assessment file management processes. While retention of paper copies of collected penalties needed improvement, all the information was correctly entered and stored in our BIMS database.

Case Name: ???
Case Number: LQS ???
LQS Project Number: ???- ???- ???
County: ???

# GUIDELINES FOR ASSESSING CIVIL PENALTIES FOR VIOLATIONS OF THE SEDIMENTATION POLLUTION CONTROL ACT

I. The following guidelines are to be used to assist the Director, Division of Energy, Mineral, and Land Resources, in determining the amounts of civil penalties to be assessed under the SPCA in a fair and consistent manner.

II. The following guidelines should be applied in determining the amounts of civil penalties:

A. Type of Violation. Check the applicable violations of the Sedimentation Pollution Control Act of 1973 and rules:

☐ a. No approved plan, G.S. 113A-54(d)(4), G.S. 113A-57(4) and 15A NCAC 4B .0107(c).

☐ b. Failure to follow approved plan, G.S. 113A-57(5).

☐ c. Revised plan required, G.S. 113A-54.1(b) and 15A NCAC 4B .0118(a)

☐ d. Failure to provide adequate groundcover, G.S. 113A-57(3) and 15A NCAC 4B .0107(b).

☐ e. Insufficient measures to retain sediment on site, G.S. 113A-57(3).

☐ f. Failure to take all reasonable measures, 15A NCAC 4B .0105.

☐ g. Inadequate buffer zone, G.S. 113A-57(1).

☐ h. Graded slopes and fills too steep, G.S. 113A-57(2).

☐ i. Unprotected exposed slopes, G.S. 113A-57(2).

☐ j. Failure to maintain erosion control measures, 15A NCAC 4B .0113.

☐ k. Other (describe):

B. Degree and Extent of the Harm Caused by the Violation.

1. Describe the resource affected by off-site sedimentation.

???

2. What was the size and extent of the resource damage?
???

3. a. Describe the type of erosion.
???

b. Estimate the volume of sedimentation damage to a lake/natural watercourse or other property. (Check one)
???

☐ (1)None
☐ (2)1-9 cubic yards
☐ (3)10-99 cubic yards
☐ (4)100-999 cubic yards
☐ (5)1000 or more cubic yards

4. When was the violation discovered?
???

5. When was the NOV received?
???

6. Is the site still in violation?
???

7. Degree of sedimentation damage. (Check one)

☐ Lake/Natural Watercourse on the tract
☐ Lake/Natural Watercourse off the tract
☐ Other Property

☐ a. Severe
☐ b. Moderate
☐ c. Slight
☐ d. None

C. <u>Adherence to Plan / Effectiveness of Plan Submitted by Violator</u>.

1. Was there an approved plan prior to beginning the land-disturbing activity?
???

2. Was the approved plan adequately implemented?
???

3. Was a revised plan required?
???

4. Was the revised plan adequately implemented?
???

5. Effectiveness of steps taken to correct violations: (Check one)
???

☐ a. No steps
☐ b. Basically ineffective
☐ c. Mixed results
☐ d. Wholly effective

D. Prior Record of the Violator in Complying or Failing to Comply With The Sedimentation Act and Rules.

1. Was this person previously under an NOV for this site?
???
2. Has this person previously received an NOV for violations at other sites? If yes, explain.
???
3. Has this person ever been subject to prior enforcement action?
???
4. To what kind of enforcement action has this person been subject? (Check all that apply)
???
☐ a. Injunction
☐ b. Civil penalty

5. Overall, does the person have a good record of compliance with SPCA and rules? Explain.
???

E. Whether the Violation was Committed Willfully.

1. Does the violator have a prior record? *See D above.*
2. Did the violator have knowledge of the law prior to beginning the land-disturbing activity?
???
3. Are there any other factors which would make this violation willful or not willful?
???

F. Amount of Money the Violator Saved by His Noncompliance.

1. What costs were saved by the violator by his noncompliance, if known?
???
Ease or difficulty of compliance based on circumstances of site. (Check one.)

☐ a. Difficult

☐ b. Average
☐ c. Easy
☐ d. Unknown

G. Cost of Rectifying the Damage.

1. Has the damage been corrected?
   ???
2. If so, what was the cost, if known, of correction?
   ???
3. If not, is it practical for the damage to be corrected?
   ???

H. Staff Investigative Costs. (Check one)

☐ a. Below Average
☐ b. Average
☐ c. Above Average

Estimate the Following Hours/Mileage/Materials Used in Investigation:
*(Hours spent can include inspection time, paperwork time, meeting time, etc.)*

| Position | Hours | Mileage | Materials/Equipment |
|---|---|---|---|

Prepared by: _____

Reviewed by: _____
Assistant Regional Engineer

Date: _____

Reviewed by: _____
Regional Engineer or
Chief of Program Ops

Date: _____

**STATE OF NORTH CAROLINA**
**DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**
**DIVISION OF WATER QUALITY**

# GENERAL PERMIT – NCG 010000

**TO DISCHARGE STORMWATER UNDER THE**
**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**
**for**

# CONSTRUCTION ACTIVITIES

In compliance with the provision of North Carolina General Statute 143-215.1, other lawful standards and regulations promulgated and adopted by North Carolina Environmental Management Commission and the Federal Water Pollution Control Act as amended:

> All owners or operators of stormwater point source discharges associated with construction activities including clearing, grading or excavation activities resulting in the disturbance of land greater than or equal to one acre, or that are part of a common plan of development of that size, are hereby authorized to discharge stormwater to the surface waters of North Carolina or to a separate storm sewer system conveying stormwater to the surface waters in accordance with the terms and conditions set forth herein. Failure to receive coverage under this permit or violations of any of the conditions listed may result in assessment of state or federal civil or criminal penalties for each day of violation.

The General Permit shall become effective on August 1, 2016.
The General Permit shall expire at midnight on July 31, 2018.

Signed this day July 22, 2016

*Original Signed by Toby Vinson*

*for* Tracy Davis, Director
Division of Energy, Mineral and Land Resources
By the Authority of the Environmental Management Commission

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## SECTION I
## COVERAGE UNDER THE GENERAL PERMIT

Until this State of North Carolina General Permit expires or is modified or revoked, the permittee is authorized to discharge stormwater in accordance with the terms and conditions of this permit and in accordance with an approved Erosion and Sedimentation Control Plan by the North Carolina Division of Land Resources, Land Quality Section, or a delegated local program under the provisions and requirements of North Carolina General Statutes in Article 4 of Chapter 113A to the surface waters of North Carolina or to a separate storm sewer system. The permit, along with state statutes (N.C.G.S. 143-215.1) and rules (NCAC 2H .0100) relating to stormwater permitting are designed to work together to assure compliance with the NPDES requirements of the Clean Water Act. Furthermore, North Carolina rules in Title 15A NCAC 2H .0126 adopt by reference the federal stormwater permitting requirements.

Any other point source discharge to surface waters of the state is prohibited unless covered by another permit, authorization or approval. The discharges allowed by this General Permit shall not cause or contribute to violations of North Carolina Water Quality Standards for surface waters and wetlands (15A NCAC 2B .0200). Discharges allowed by this permit must meet all applicable water quality certification or permit requirements as outlined in 15A NCAC 2H .0500 and 2H .1300. This permit does not relieve the permittee from responsibility for compliance with any other applicable federal, state, or local law, rule, standard, ordinance, order, judgment, or decree.

**This General Permit is applicable to point source discharges from construction activities disturbing one or more acres of land.** The application to the Division of Land Resources or a delegated local program for approval of a local Erosion and Sedimentation Control Plan (E&SC Plan) shall be considered to take the place of a Notice of Intent for coverage under this General Permit for those projects requiring this Permit coverage. Coverage under this General Permit shall become effective upon issuance of an approval for the E&SC Plan by the Division of Land Resources or delegated local program that includes the following:

a. Designation on the plans where the specific ground stabilization requirements apply as per Section II.B.2 of this permit.
b. Designs of basins with surface withdrawal as per Section II.B.4 of this permit.

Prior to the commencement of construction and land disturbing activities, approval of the E&SC Plan shall be obtained.

**This General Permit revision reflects changes made in the federal regulations effective February 1, 2010.** The federal regulations were a result of litigation that mandated that construction activities over a certain size must contain additional specifications that would result in reduced wastes and sediment loading reaching the nation's waters. The Division of Water Quality and the Division of Land Resources established a Construction General Permit Technical Advisory Group (CTAG) to provide them guidance in developing the permit. The CTAG was comprised of 14 members who represented a broad range of environmental, regulatory, government and development interests. A Draft Construction General Permit was prepared and made available for review on May 13, 2011. A public meeting was held on June7th. This permit reflects the input received during the twelve- month development process.

Any owner or operator not wishing to be covered or limited by this General Permit may apply for an individual NPDES permit in accordance with NPDES procedures in 15A NCAC 2H .0100, stating the reasons supporting the request. Any application for an individual permit should be made at least 180 days prior to the time the permit is needed unless waived, by the Director.

This General Permit does not cover activities or discharges covered by an individual NPDES permit until the individual permit has expired or has been rescinded. Any person conducting an activity covered by an

individual permit but which could be covered by this General Permit may request that the individual permit be rescinded and coverage under this General Permit be provided.

The Division of Water Quality partners with the Division of Land Resources to implement a complete program for construction site coverage that includes state sedimentation control and NPDES stormwater control. The Division of Land Resources implements their control programs through an Erosion and Sedimentation Control Plan (E&SC Plan) issued for each construction site in the state disturbing one or more acres of land. An E&SC Plan is required for each site by the Division of Land Resources or a delegated local government program. The NPDES Construction Stormwater permit (NCG010000) is attached to Erosion and Sedimentation Control Plan approvals. The permittee is responsible for abiding by the conditions of both of these documents.

The Sedimentation Pollution Control Act of 1973 places a duty upon the Sedimentation Control Commission to "develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques appropriate for use by persons engaged in land-disturbing activities." The Sedimentation Control Commission and the Division of Land Resources have adopted the North Carolina Erosion and Sediment Control Planning and Design Manual as the document to provide that guidance for use at all constructions sites in the state. The individual Erosion and Sedimentation Control Plans are developed based on this guidance and become a condition of the Division of Water Quality's Construction Stormwater General Permit. As provided in this permit, "deviation from the approved E&SC Plan, or approved amendment to that plan, shall constitute a violation of the terms and conditions of this general permit."

## SECTION II
## STORMWATER POLLUTION PREVENTION REQUIREMENTS

The State construction-related stormwater pollution prevention program provides for: (a) identification of the potential sources of stormwater pollution at the individual construction site; (b) description of the stormwater control measures to reduce or eliminate pollutants in stormwater discharges from the construction site; and (c) identification of the procedures the operator will implement to comply with the terms and conditions of this general permit and the Erosion and Sedimentation Control Plan (E&SC Plan). In North Carolina, the approved **Erosion and Sedimentation Control Plan** for the site, and the **NCG01 Construction General Permit** are considered the **Stormwater Pollution Prevention Plan (SWPPP)** for that site. These two documents, and any specifically-added water quality conditions for that site, contain the provisions necessary to meet the federal regulatory requirements of the NPDES program including provisions implementing the Effluent Limitations Guidelines effective at the time of this permit.

## SECTION II.A. - STORMWATER POLLUTION PREVENTION REQUIREMENTS IN THE EROSION AND SEDIMENTATION CONTROL PLAN

The Erosion and Sedimentation Control program is mandated and funded according to state statutes. The majority of the technology-based requirements needed to satisfy the federal stormwater pollution prevention specifications are addressed in the approved E&SC Plan. Each applicant for an E&SC Plan approval is required to comply with a "checklist" of over 50 site-specific conditions*. The categories of these conditions include:

1) location information,
2) site features,
3) control measures,
4) drainage features,
5) stormwater calculations,
6) stabilization,
7) ownership information and
8) construction sequencing.

*The individual requirements to be addressed in each E&SC Plan application can be found at http://portal.ncdenr.org/web/lr/erosion . See "Plan check list for designers."

## SECTION II.B. - STORMWATER POLLUTION PREVENTION REQUIREMENTS IN THE NC CONSTRUCTION GENERAL PERMIT

In addition to the stormwater pollution prevention controls found in the E&SC Plan, this Construction General Permit contains additional conditions that must be met in order to comply with the NPDES program requirements. They are as follows:

### 1) Construction Site Pollutants

Permittee must manage activities on the site such that water quality standards are not violated from site activities or allowed discharges. In addition to stream pollution from sediment discharge, other activities on construction and development sites can result in pollutants reaching the state's waters. EPA has prepared guidance documents that provide best management practices that address many activities. See http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=min_measure&min_measure_id=4

The following activities, and others on a site-specific basis, require oversight throughout the construction and development process to assure that all water quality standards are protected:

a) Equipment Operation and Maintenance - Equipment utilized during the construction activity on a site must be operated and maintained in such a manner as to prevent the potential or actual pollution of the surface or ground waters of the state. Fuels, lubricants, coolants, and hydraulic fluids, or any other petroleum products, shall not be discharged onto the ground or into surface waters. Spent fluids shall be cleaned up and disposed of in a manner so as not to enter the waters, surface or ground, of the state and in accordance with applicable state and federal regulations.

b) Material Handling - Herbicide, pesticide, and fertilizer usage during the construction activity shall be consistent with the Federal Insecticide, Fungicide, and Rodenticide Act and shall be in accordance with label restrictions.

c) Building Material Waste Handling
   i) All wastes composed of building materials shall be disposed of in accordance with North Carolina General Statutes, Chapter 130A, Article 9 - Solid Waste Management, and rules governing the disposal of solid waste (North Carolina Administrative Code Section 15A NCAC 13B).
   ii) Locate areas dedicated for management of land clearing and demolition debris, construction and domestic waste, and hazardous or toxic waste. This location shall be at least 50 feet away from storm drain inlets and surface waters unless it can be shown that no other alternatives are reasonably available.
   iii) Dumping of paint and other liquid building material wastes in storm drains is prohibited.
   iv) Litter and Sanitary Waste - The permittee shall control the management and disposal of litter and sanitary waste from the site.

d) Location of Stock Piles - Locate earthen-material stock pile areas at least 50 feet away from storm drain inlets and surface waters unless it can be shown that no other alternatives are reasonably available.

e) Handling of Concrete
   i) Concrete materials onsite, including excess concrete, must be controlled and managed to avoid contact with surface waters, wetlands or buffers. No concrete or cement slurry shall be discharged from the site. (Note that discharges from onsite concrete plants require coverage under a separate NPDES permit – NCG140000.)
   ii) Any hardened concrete residue will be disposed of, or recycled on site, in accordance with local and state solid waste regulations.

**2) Ground Stabilization**

a) Soil stabilization shall be achieved on any area of a site where land-disturbing activities have temporarily or permanently ceased according to the following schedule:
   i) All perimeter dikes, swales, ditches, perimeter slopes and all slopes steeper than 3 horizontal to 1 vertical (3:1) shall be provided temporary or permanent stabilization with ground cover as soon as practicable but in any event within 7 calendar days from the last land-disturbing activity.
   ii) All other disturbed areas shall be provided temporary or permanent stabilization with ground cover as soon as practicable but in any event within 14 calendar days from the last land-disturbing activity.

b) Conditions - In meeting the stabilization requirements above, the following conditions or exemptions shall apply:
   i) Extensions of time may be approved by the permitting authority based on weather or other site-specific conditions that make compliance impracticable.
   ii) All slopes 50' in length or greater shall apply the ground cover within 7 days except when the slope is flatter than 4:1. Slopes less than 50' shall apply ground cover within 14 days except when slopes are steeper than 3:1, the 7 day-requirement applies.
   iii) Any sloped area flatter than 4:1 shall be exempt from the 7-day ground cover requirement.
   iv) Slopes 10' or less in length shall be exempt from the 7-day ground cover requirement except when the slope is steeper than 2:1.
   v) Although stabilization is usually specified as ground cover, other methods, such as chemical stabilization, may be allowed on a case-by-case basis.
   vi) For portions of projects within the Sediment Control Commission-defined "High Quality Water Zone" (15A NCAC 04A. 0105), stabilization with ground cover shall be achieved as soon as practicable but in any event on all areas of the site within 7 calendar days from the last land-disturbing act.
   vii) Portions of a site that are lower in elevation than adjacent discharge locations and are not expeeted to discharge during construction may be exempt from the temporary ground cover requirements if identified on the approved E&SC Plan or added by the permitting authority.

**3) Self Inspection and Reporting Requirements**

Minimum self inspection and reporting requirements are as follows unless otherwise approved in writing by the Division of Water Quality.

a) A rain gauge shall be maintained in good working order on the site unless another rain-monitoring device has been approved by the Division of Water Quality.

b) A written record of the daily rainfall amounts shall be retained and all records shall be made available to Division of Water Quality or authorized agent upon request. If no daily rain gauge observations are made during weekend or holiday periods, and no individual-day rainfall information is available, the cumulative rain measurement for those un-attended days will determine if a site inspection is needed. (Note: if no rainfall occurred, the permittee must record "zero").

c) Erosion and sedimentation control measures shall be inspected to ensure that they are operating correctly. Inspection records must be maintained for each inspection event and for each measure. At a minimum, inspection of measures must occur at the frequency indicated below:
   i) All erosion and sedimentation control measures must be inspected by or under the direction of the permittee at least once every seven calendar days, and
   ii) All erosion and sediment control measures must be inspected by or under the direction of the permittee within 24 hours after any storm event of greater than 0.50 inches of rain per 24 hour period.

d) Once land disturbance has begun on the site, stormwater runoff discharge outfalls shall be inspected by observation for erosion, sedimentation and other stormwater discharge characteristics such as clarity, floating solids, and oil sheens. Inspections of the outfalls shall be made at least once every seven calendar days and within 24 hours after any storm event of greater than 0.50 inches of rain per 24 hour period.

e) Inspections are only required to be made during normal business hours. When adverse weather conditions would cause the safety of the inspection personnel to be in jeopardy, the inspection can be delayed until it is deemed safe to perform these duties. (Times when inspections were delayed because of safety issues should be noted in the Inspection Record.) If the inspection cannot be done on that day, it must be completed on the following business day.

f) Twenty-four Hour Reporting for visible sediment deposition

   i) The permittee shall report to the Division of Water Quality central office or the appropriate regional office any visible sediment being deposited in any stream or wetland or any noncompliance which may endanger health or the environment. (See Section VIII of this permit for contact information.) Any information shall be provided orally or electronically within 24 hours from the time the permittee became aware of the circumstances.

   ii) A written submission shall be provided to the appropriate regional office of the Division of Water Quality within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the sediment deposition and actions taken to address the cause of the deposition. The Division of Water Quality staff may waive the requirement for a written report on a case-by-case basis.

g) Records of inspections made during the previous 30 days shall remain on the site and available for agency inspectors at all times during normal working hours, unless the Division of Water Quality provides a site-specific exemption based on unique site conditions that make this requirement not practical. Older records must be maintained for a period of three years after project completion and made available upon request. The records must provide the details of each inspection including observations, and actions taken in accordance with this permit. The permittee shall record the required rainfall and monitoring observations on the Inspection Record form provided by the Division or a similar inspection form that is inclusive of all of the elements contained in the Division's form. Use of electronically-available records, in lieu of the required paper copies for inspection will be allowed if shown to provide equal access and utility as the hard-copy records.

h) Inspection records must include, at a minimum, the following:

   i) Control Measure Inspections: Inspection records must include at a minimum: 1) identification of the measures inspected, 2) date and time of the inspection, 3) name of the person performing the inspection, 4) indication of whether the measures were operating properly, 5) description of maintenance needs for the measure, 6) corrective actions taken (7) date of actions taken, as well as the date and amounts of rainfall received.

   ii) Stormwater Discharge Inspections: Inspection records must include at a minimum: 1) identification of the discharge outfall inspected, 2) date and time of the inspection, 3) name of the person performing the inspection, 4) evidence of indicators of stormwater pollution such as oil sheen, floating or suspended solids or discoloration, 5) indication of visible sediment leaving the site, 6) actions taken to correct/prevent sedimentation and 7) date of actions taken.

   iii) Visible Sedimentation Found Outside the Site Limits: Inspection records must include: 1) an explanation as to the actions taken to control future releases, 2) actions taken to clean up or stabilize the sediment that has left the site limits and 3) the date of actions taken.

   iv) Visible Sedimentation Found in Streams or Wetlands: All inspections should include evaluation of streams or wetlands onsite or offsite (where accessible) to determine if visible sedimentation has occurred.

i) Visible Stream Turbidity - If the discharge from a site results in an increase in visible stream turbidity, inspection records must record that evidence and actions taken to reduce sediment contributions. Sites discharging to streams named on the state's 303(d) list as impaired for sediment-related causes may be required to perform additional monitoring, inspections or

application of more-stringent management practices if it is determined that the additional requirements are needed to assure compliance with the federal or state impaired-waters conditions. If a discharge covered by this permit enters a stream segment that is listed on the Impaired Stream List for sediment-related causes, and a Total Maximum Daily Load (TMDL) has been prepared for those pollutants, the permittee must implement measures to ensure that the discharge of pollutants from the site is consistent with the assumptions and meets the requirements of the approved TMDL. The Division of Water Quality 303(d) list can be found at: http://h2o.enr.state.nc.us/tmdl/General_303d.htm/

**4.) Sediment Basins**

Sediment basins and traps shall meet the following requirements:

a) Outlet structures shall be utilized that withdraw water from the surface.

b) For basins or traps that have a drainage area of less than 1.0 acre, draw-down designs specified in the Division of Land Resources or delegated local program requirements are acceptable.

c) Chemical treatment

   i) All treatment chemicals must be stored in leak-proof containers that are kept under storm-resistant cover or surrounded by secondary containment structures designed to protect adjacent surface waters.

   ii) All treatment chemicals must be used in accordance with dosing specifications and application rates provided by the manufacturer, supplier and as specified by the Division of Water Quality.

   iii) The Permittee must only use chemicals that have been approved by the NC Division of Water Quality and posted on their "North Carolina Division of Water Quality Approved PAMS/Flocculants List" found on their web site at: http://portal.ncdenr.org/web/wq/ws/su .

   iv) The Permittee must route stormwater treated with polymers, flocculants, or other treatment chemicals through sediment trapping, filtering, and/or settling devices(s) to ensure adequate removal of sediment flocculent prior to discharge to surface waters.

d) Discharge requirement - Discharges must meet the statutory requirements of the Sediment Pollution Control Act and utilize the provisions of Section 6.74 of the Erosion and Sediment Control Planning and Design Manual to assure that buffers and vegetated areas will be used to reduce the potential for visible siltation outside of the 25% buffer zone nearest the land-disturbing activity.

**5.) Discharges to Special or Threatened Waters**

a) Disturbed areas within one mile of and draining to waters where federally-listed threatened or endangered aquatic species are present shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. These projects shall also use control measures that are designed, installed and maintained in accordance with criteria set forth in 15A NCAC 04B .0124 – Design Standards in Sensitive Watersheds. The Division of Water Quality may require additional/alternative protection measures or require coverage under an individual Construction NPDES Stormwater permit. Other management practices may be acceptable if these designs are shown by the applicant, to the satisfaction of the Director, to provide equivalent protection.

b) Construction activities in High Quality Waters Zones require quicker ground stabilization provisions as specified in Section II.B.2.b. of the permit.

## SECTION III
## FRAMEWORK OF PERMIT COVERAGE

During the period beginning on the effective date of the permit and lasting until expiration, the Permittee is authorized to discharge stormwater associated with construction activity including clearing, grading and excavation activities resulting in the disturbance of land and related support activities. Such discharges shall be controlled, limited and monitored as specified in this permit.

1) Continuation of Previously Permitted Projects - Projects and their corresponding activities permitted under the previous version of the NC general permit for construction activities will continue to be valid with the previous permit conditions and will be considered covered under this general permit.

2) Projects submitted prior to the effective date of the permit – Complete project applications that were received prior to the effective date of this permit, but not approved by the permitting authority until after approval of this NPDES permit, can rely on design and management practices effective at the time of application submittal.

3) Implementation of the Erosion and Sedimentation Control Plan (E&SC Plan):
   a) The Permittee must implement and follow the E&SC Plan, which has been approved by the Division of Land Resources or local delegated program.. The approved E&SC Plan is considered a condition of this general permit.
   b) Deviation from the approved E&SC Plan, or approved amendment, shall constitute a violation of the terms and conditions of this general permit except that deviation from the approved plan will be allowed:
      i) to correct an emergency situation where sediments are being discharged off the site, or,
      ii) when minor modifications have been made that result in an alteration or relocation of an erosion or sedimentation control measure and does not affect the ability of the measure to perform as intended.
   c) Allowed deviations must be noted on the approved E&SC Plan and maintained at the job site.
   d) Prior to the commencement of any land disturbance onsite, and during the construction activities, a copy of the approved E&SC Plan and this NPDES construction permit shall be maintained on the site. These documents must be kept current and up to date.

4) BMPs and Control Measures - Consistent with the provisions contained in this permit and the E&SC Plan, the permittee must select, install, implement and maintain best management practices (BMPs) and control measures that minimize pollutants in the discharge to meet the requirements of this permit.

5) Additional Action - If there is evidence indicating that the stormwater discharges from the site are impacting or have the potential to impact surface waters or wetlands, the Division of Water Quality may take appropriate actions including any or all of the following:
   a) take compliance and enforcement action;
   b) require the permittee to include and implement appropriate control and restoration measures;
   c) require the permittee to develop and implement additional site-specific stormwater pollution prevention measures;
   d) require the permittee to obtain an individual permit.

6) When an Individual Permit may be Required - The Director may require any owner/operator authorized to discharge under a certificate of coverage issued pursuant to this general permit to apply for and obtain an individual permit or a general permit with additional conditions. Any interested person may petition the Director to require an individual permit pursuant to 15A NCAC 2H .0127. Cases where an individual permit may be required include, but are not limited to, the following:
   a) The receiving stream is of a unique quality and the standard conditions may not provide adequate protection;
   b) The discharger is a significant contributor of pollutants;
   c) Conditions at the permitted site change, altering the constituents and/or characteristics of the discharge such that the discharge no longer qualifies for a General Permit;

d) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
e) The discharge violates the terms or conditions of this general permit;
f) Effluent limitations are promulgated for the point sources covered by this general permit;
g) A Water Quality Management Plan containing requirements applicable to such point sources is approved after the issuance of this general permit.

7) When an Individual Permit may be Requested - Any permittee operating under this general permit may request to be excluded from the coverage of this general permit by applying for an individual permit. When an individual permit is issued to an owner/operator the applicability of this general permit is automatically terminated on the effective date of the individual permit.

## SECTION IV
## OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1) Proper Operation and Maintenance - The permittee shall at all times properly operate and maintain all control measures 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 general permit.
2) Need to Halt or Reduce not a Defense - It shall not be a defense for a permittee in an enforcement action that it was necessary to halt or reduce the permitted activity in order to maintain compliance with the condition of this general permit.
3) Bypassing of Stormwater Control Facilities
   a) 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 or as part of a planned action specified in the approved Erosion and Sedimentation Control Permit. These bypasses are not subject to the provisions of Paragraphs b. and c. of this section.
   b) 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; including an evaluation of the anticipated quality and effect of the bypass.
      ii) Unanticipated bypass - The permittee shall submit notice to the Division contact (See Section VIII.) within 24 hours of the occurrence of an unanticipated bypass.
   c) Prohibition of Bypass
      Bypass is prohibited and the Director may take enforcement action against a permittee for bypass, unless:
      i) Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;
      ii) There were no feasible alternatives to the bypass, such as the use of auxiliary control facilities, retention of stormwater or maintenance during normal periods of equipment downtime or dry weather. This condition is not satisfied if adequate backup controls 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
      iii) The permittee submitted notices as required under Paragraph b. of this section.
   d) 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 c. of this section.
4) Upsets
   a) Definition - "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 or control facilities,

inadequate treatment or control facilities, lack of preventive maintenance, or careless or improper operation.

b) Effect of an Upset - An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of paragraph c. of this condition 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 - A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
   i) An upset occurred and that the permittee can identify the cause(s) of the upset;
   ii) The permitted facility was at the time being properly operated;
   iii) The permittee submitted notice of the upset as required in this general permit, and,
   iv) The permittee complied with any remedial measures required in this general permit.

d) Burden of Proof - In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

5) Inspection and Entry - The permittee shall allow the Director or an authorized representative (including an authorized contractor acting as a representative of the Director), upon the presentation of credentials and other documents as may be required by law, to:
   a) 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 general permit;
   b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this general permit;
   c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this general permit; and
   d) Sample or monitor at reasonable times, for the purposes of assuring general permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

## SECTION V
## PERMIT ADMINISTRATION AND COMPLIANCE ISSUES

1) Time of compliance – Erosion and sedimentation control measures shall be maintained, and self-monitoring shall continue, after the completion of construction and development until the establishment of permanent ground cover sufficient to restrain erosion or until the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved and the agency that approved the plan has been notified. If the financially responsible party has conveyed ownership or control of the tract of land for which the Erosion and Sedimentation Control Plan has been approved, the new owner or person in control shall conduct and document self-monitoring until the establishment of permanent ground cover sufficient to restrain erosion.

   Upon establishment of permanent ground cover sufficient to restrain erosion, the permittee shall request an inspection by the permitting authority to verify the adequacy of the ground cover. Coverage under the permit shall end when a Sedimentation Inspection Report is issued documenting the final stabilization of the site with adequate permanent ground cover. The signed Sedimentation Inspection Report shall serve as a notice of termination.

2) Operation efficiency - During construction and until the completion of construction or development and the establishment of permanent stabilization, the permittee shall provide the operation and maintenance necessary to operate the storm water control measures and all erosion and sedimentation control measures at optimum efficiency.

3) Corrective action - If inspections required by this permit identify a need for maintenance of control measures, modifications or additions to control measures, or corrective actions to control sediment

or other pollutants these actions must be performed as soon as possible and before the next storm event to maintain the effectiveness of the control measures.

4) Duty to Comply - The permittee must comply with all conditions of this general permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; certificate of coverage termination, revocation and reissuance, or modification; or denial of a certificate of coverage upon renewal application.
   a) 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.
   b) 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 $27,000 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.
   c) Under state law, a daily civil penalty of not more than twenty-five thousand dollars ($25,000) per violation may be assessed against any person who violates or fails to act in accordance with the terms, conditions, or requirements of a permit. [Ref: NC General Statute 143-215.6A].
   d) Any person may be assessed an administrative penalty by the Administrator of the U.S. Environmental Protection Agency for violating section 301, 302, 306, 307, 308, 318 or 405 of the Clean Water 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 $16,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $37,500. Penalties for Class II violations are not to exceed $16,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $177,500.

5) Duty to Mitigate - The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this general permit that has a reasonable likelihood of adversely affecting human health or the environment.

6) Civil and Criminal Liability - Except as provided in Section IV.3. of this permit regarding bypassing of stormwater control facilities, nothing in this general permit shall be construed to relieve the permittee from any responsibilities, liabilities, or penalties for noncompliance pursuant to NCGS 143-215.3, 143-215.6A, 143-215.6B, 143-215.6C or Section 309 of the Federal Act, 33 USC 1319. Furthermore, the permittee is responsible for consequential damages, such as fish kills, even though the responsibility for effective compliance may be temporarily suspended.
7) Oil and Hazardous Substance Liability - Nothing in this general permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under NCGS 143-215.75 et seq. or Section 311 of the Federal Act, 33 USC 1321. Furthermore, the permittee is responsible for consequential damages, such as fish kills, even though the responsibility for effective compliance may be temporarily suspended.
8) Property Rights - The issuance of this general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.
9) Severability - The provisions of this general permit are severable, and if any provision of this general permit, or the application of any provision of this general permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this general permit, shall not be affected thereby.
10) Duty to Provide Information - 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 the certificate of coverage issued pursuant to this general permit or to determine compliance with this general permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this general permit.
11) Signatory Requirements
    a) All applications, reports, or information submitted to the Director shall be signed and certified as follows:
        i) For a corporation: by a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means: (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 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.
        ii) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
        iii) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.
    b) All reports required by the general permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
        i) The authorization is made in writing by a person described above;
        ii) The authorization specified 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 well field, superintendent, a 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

iii) The written authorization is submitted to the Director.

c) Any person signing a document under paragraphs a. or b. of this section shall make the following certification:

"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 gather and evaluate 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 fines and imprisonment for knowing violations."

12) Penalties for Tampering -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 general permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than two years per violation, or by 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.

13) General Permit Modification, Revocation and Reissuance, or Termination - The issuance of this general permit does not prohibit the Director from reopening and modifying the general permit, revoking and reissuing the general permit, or terminating the general permit as allowed by the laws, rules, and regulations contained in Title 40, Code of Federal Regulations, Parts 122 and 123; Title 15A of the North Carolina Administrative Code, Subchapter 2H .0100; and North Carolina General Statute 143-215.1 et. seq.

14) Availability of Reports - Except for data determined to be confidential under NCGS 143-215.3(a)(2) or Section 308 of the Federal Act, 33 USC 1318, all reports prepared in accordance with the terms shall be available for public inspection at the offices of the Division of Water Quality. As required by the Act, discharge data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in NCGS 143-215.6B or in Section 309 of the Federal Act.

15) Penalties for Falsification of Reports - The Clean Water Act 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 general permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than two years per violation, or by both.

16) Anticipated Noncompliance - The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with the general permit requirements.

17) Other Information - Where the permittee becomes aware that it failed to submit any relevant facts in any report to the Director, it shall promptly submit such facts or information.

18) Limitations Reopener - This general permit shall be modified or alternatively, revoked and reissued, to comply with any applicable effluent guideline or water quality standard issued or approved under Sections 302(b) (2) (c), and (d), 304(b) (2) and 307(a) of the Clean Water Act, if the effluent guideline or water quality standard so issued or approved:

a) contains different conditions or is otherwise more stringent than any effluent limitation in the general permit; or

b) controls any pollutant not limited in the general permit.

c) The general permit as modified or reissued under this paragraph shall also contain any other requirements in the Act then applicable.

## SECTION VI
## DISCHARGE MONITORING AND TURBIDITY LIMITATIONS

This General Permit does not include requirements for numeric limits for discharges from construction sites. However, the next reissuance of this North Carolina Construction General Permit (NCG 01) is scheduled for five years from the date of approval of this permit and will contain effluent limitations as required in *Subpart B-Construction and Development Effluent Guidelines* of Part 450 of the Code of Federal Regulations.

## SECTION VII
## DEFINITIONS

1) Act or "the Act" or CWA - The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251, et. seq.
2) Best Management Practices (BMPs) - Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operation procedures, and management practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
3) Bypass - The intentional diversion of stormwater from any portion of a stormwater control facility.
4) Control Measures - Refers to any BMP or other structural or non-structural practices and procedures used to prevent or reduce the discharge of pollutants including practices to control erosion and sedimentation.
5) Director - The Director of the Division of Water Quality.
6) Division - The Division of Water Quality, Department of Environment, and Natural Resources.
7) EMC - The North Carolina Environmental Management Commission.
8) Erosion and Sedimentation Control Plan - A plan developed in compliance with the North Carolina Sedimentation Pollution Control Act of 1973 to prevent the erosion and deposition of sediment and other materials into the waters of the State from construction or other land-disturbing activities that disturb one or more acres of land. Each plan must be approved by the NC Sedimentation Control Commission or a program delegated by the Commission to a local government.
9) Ground cover - Any vegetative growth or other material which, when applied to the soil surface, renders the soil surface stable against accelerated erosion.
10) Normal Business Hours - These are generally considered to be between the hours of 6 a.m. and 6 p.m., or when workers are normally present on the construction site. Weekends and federal holidays are not considered normal business hours unless construction activities are taking place on the site during those times.
11) Permitting Authority - The permitting authority is the agency that issues the permit. The Division of Water Quality is the delegated NPDES permitting authority and issues this permit. However, some erosion and sedimentation control activities are performed by Division of Land Resources or the locally-delegated programs. Other activities may be shared by the two divisions and the local programs. The Land Quality Section of the Division of Land Resources and the Surface Water Protection Section of the Division of Water Quality maintain a Memorandum of Understanding that specifies specific roles of the two divisions and the local programs and will be used to assign specific control and oversight activities between the agencies.
12) Permanently Cease - When all or part of the land disturbing activity is complete and no additional alteration or disturbance of the land surface is planned prior to final stabilization.
13) Permanent Stabilization - When all soil disturbing activity is completed and exposed soils have been stabilized with a vegetative cover with a density of at least 80% or covered with a structural stabilization method. Permanent perennial vegetation may include the use of sod, shrubs and ground cover plants mixed with mulching, aggregate or other landscaping techniques. Structural methods include concrete, asphalt, retaining wall or other stabilization techniques.

14) Permittee -The person, firm or organizational entity that signed as the financially responsible party on the Erosion and Sedimentation Control Plan.
15) Point Source Discharge - Any discernible, confined and discrete conveyance, including but specifically not limited to, any pipe, ditch, channel, tunnel, conduit, discrete fissure, or container from which pollutants are or may be discharged to waters of the state.
16) Soil Stabilization - The use of vegetative, physical or chemical coverage techniques that will restrain accelerated erosion on disturbed soils for temporary or permanent control needs.
17) Stormwater Pollution Prevention Plan (SWPPP) – The elements of the State's stormwater pollution prevention program that provide the technology-based requirements designed to protect the state's waters from the adverse impacts of sediments. In North Carolina, the combination of the NCG01 Construction General and the Erosion and Sedimentation Control Plan are considered the SWPPP. It should be noted that on sites that involve multiple or complex sources of pollution, the Division may require additional control measures as needed to assure that water quality is protected and these additional measures will also be considered part of the SWPPP.
18) Temporarily Cease - When all or part of the site that is and will remain un-worked for a period of days but where site land disturbing activity is not complete and additional land disturbing activity is planned.
19) Temporary Stabilization – When the establishment of ground cover over all disturbed areas (such as mulching, rolled erosion control products, vegetation, or other material) renders the surface stable against accelerated erosion. Stabilization shall be achieved with the establishment of a uniform and evenly-distributed (i.e., without large bare areas) ground cover with a cover density of at least 80%.
20) Severe property damage – Substantial physical damage to property, damage to the control measures that cause them to become inoperable, or substantial and permanent loss of natural resources that 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.

## SECTION VIII
## N.C. DIVISION OF WATER QUALITY CONTACTS

**Asheville Regional Office**
2090 U.S. Highway 70
Swannanoa, NC 28778
828-296-4500
FAX 828-299-7043

**Fayetteville Regional Office**
Systel Building,
225 Green St., Suite 714
Fayetteville, NC 28301-5094
910-433-3300
FAX 910-486-0707

**Mooresville Regional Office**
610 East Center Ave.
Mooresville, NC 28115
704-663-1699
FAX 704-663-6040

**Winston-Salem Regional Office**
585 Waughtown Street
Winston-Salem, NC 27107
336-771-5000
FAX 336-771-4630

**Washington Regional Office**
943 Washington Square Mall
Washington, NC 27889
252-946-6481
FAX 252-975-3716

**Wilmington Regional Office**
127 Cardinal Drive Extension
Wilmington, NC 28405
910-796-7215
FAX 910-350-2004

**Raleigh Regional Office**
3800 Barrett Drive
Raleigh, NC 27609
919-791-4200
FAX 919-571-4718

Raleigh Regional Office
Mail to:
1628 Mail Service Center
Raleigh, NC 27699-1628

Environmental Quality

PAT MCCRORY
*Governor*

DONALD R. VAN DER VAART
*Secretary*

November 13, 2015

**NOTICE OF VIOLATIONS OF THE**

**SEDIMENTATION POLLUTION CONTROL ACT**

**AND**

**GENERAL PERMIT - NCG 010000**
**TO DISCHARGE STORMWATER UNDER THE**
**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**
**FOR**
**CONSTRUCTION ACTIVITIES**

**CERTIFIED MAIL 7015 0640 0005 6272 4041**
**RETURN RECEIPT REQUESTED**

Keystone Group, Inc.
Attn: W. Scott Wallace, Registered Agent
3708 Alliance Drive
Greensboro, NC 27407-2016

RE: Project Name: Friedburg Village, Phase 2
Project ID: DAVID-2013-015
County: Davidson
Compliance Deadlines: 10 days from receipt for SPCA violations
10 days from receipt by certified mail for
Construction Stormwater Permit NCG 010000 violations

Dear Mr. Wallace:

On November 12, 2015, personnel of this office inspec' ɜd a project located on Queensbury Drive, Winston-Salem in Davidson, County, North Carolina. ˜ his inspection was performed to determine compliance with the North Carolina Sedimentation P llution Control Act (SPCA) of 1973 and General Permit - NCG 010000 to Discharge Stormwat r Under The National Pollutant Discharge Elimination System for Construction Activities (Constru tion Stormwater Permit NCG 010000). The inspection revealed a land-disturbing activity of appro imately 5.4 acres being conducted.

It is our understanding that you and/or your firm are res onsible for this land-disturbing activity. The

purpose of this letter is to inform you that this activity was found to be in violation of the SPCA, G.S. 113A-50 to 66, Title 15A, North Carolina Administrative Code (NCAC), Chapter 4 and Construction Stormwater Permit NCG 010000. If you feel that you are not responsible for the following violations, please notify this office immediately.

## The violations of the SPCA that were found are:

1. Failure to conduct a land-disturbing activity in accordance with the approved erosion and sedimentation control plan. G.S. 113A-57(5).

2. Failure when a land-disturbing activity that will disturb more than one acre is undertaken on a tract, to install sedimentation and erosion control devices sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract. G.S. 113A-57(3).

3. Failure to take all reasonable measures to protect all public and private property from damage by such land-disturbing activities. 15A NCAC 4B .0105.

4. Failure to retain along a lake or natural watercourse a buffer zone of sufficient width to confine visible siltation by natural or artificial means within the 25 percent of that portion of the buffer zone nearest the land-disturbing activity. G.S. 113A-57(1).

5. Failure to install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of the SPCA, and rules adopted thereunder, during or after the development of a site. 15 NCAC 4B .0113.

6. Failure to conduct or adequately document self-inspections . G.S. 113A-54.1(e) and 15A NCAC 4B .0131 .

## The violations of the Construction Stormwater Permit NCG 010000 that were found are:

1. Failure to implement the erosion and sedimentation control plan. The Permittee must implement and follow the erosion and sedimentation control plan. The approved erosion and sedimentation control plan is considered a condition of Construction Stormwater Permit NCG 010000. NCG 010000 Section III. 3) (a)

2. Failure to meet self-inspection and reporting requirements. NCG 010000 Section II. B. 3)

a. A rain gauge shall be maintained in good working order on the site

b. A written record of the daily rainfall amounts shall be retained and all records shall be made available upon request.

c. Erosion and sedimentation control measures shall be inspected to ensure that they are operating correctly. Inspection records must be maintained for each inspection event and for each measure. At a minimum, inspection of measures must occur at the frequency indicated below:
   i. All erosion and sedimentation control measures must be inspected by or under the direction of the permittee at least once every seven calendar days,
   ii. All erosion and sediment control measures must be inspected by or under the direction of the permittee within 24 hours after any storm event of greater than 0.50 inches of rain per 24 hour period.

d. Once land disturbance has begun on the site, stormwater runoff discharge outfalls shall be inspected by observation for erosion, sedimentation and other stormwater discharge characteristics such as clarity, floating solids, and oil sheens. Inspections of the outfalls shall be made at least once every seven calendar days and within 24 hours after any storm event of greater than 0.50 inches of rain per 24 hour period.

3. Failure to install and maintain BMPs and control measures, NCG 010000 Section III. 4)
The permittee must select, install, implement and maintain best management practices (BMPs) and control measures that minimize pollutants in the discharge to meet the requirements of this permit.

4. Failure to operate and maintain control measures, NCG 010000 Section IV, 1)
The permittee shall at all times properly operate and maintain all control measures 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 general permit .

5. Bypass of stormwater control facilities, NCG 010000 Section IV 3)
Bypass of stormwater control facilities is prohibited except as allowed by permit conditions.

To correct these violations, you must:

1. 1. Repair and replace all damaged silt fence below active home construction below buildings #35, #36 and #37. Drop inlets along Queensbury Drive are being filled with sediment due to lack of silt fence maintenance.
2. Properly install the stone energy dissipation device at the storm water outlet pipe at the end of pipe #56 at Queensbury Drive. Install the rock dam at the outlet of pipe #56 as shown on sheet 6B of the approved sediment and erosion control plan. Sediment is washing through the storm water system and discharging into the creek at the base of the fill slope.
3. Stabilize all eroding slopes at the end of Queensbury Drive with a ground cover that is sufficient to prevent further erosion of the slope.
4. Remove the stone pad located in the creek between phases 2 and 4. This sewer line installation was not permitted in the approved plans for Phase 2 or Phase 4. A revised plan will be required for the sewer line installation.
5. Repair the small sediment trap installed below building #35 at the end of Queensbury Drive. The sediment trap is no longer functional due to being overwhelmed with sediment.
6. Install additional sediment control measures at the end of Queensbury Drive to prevent further sediment loss into the stream between Phase 2 and Phase 4.
7. Provide copies of all NPDES and self-inspection reports to this office for review.

**SPCA Violations**

The violations of the SPCA cited herein may be referred to the Director of the Division of Energy, Mineral and Land Resources (Director) for appropriate enforcement action, including civil penalty assessments for an initial one-day violation and/or a continuing violation. The penalty for an initial one-day violation of the SPCA may be assessed in an amount not to exceed $5,000.00. The Division of Energy, Mineral and Land Resources is not required to provide a time period for compliance before assessing an initial penalty for the violations of the SPCA cited herein. Please be advised that a civil penalty may be assessed for the initial day of violations of the SPCA regardless of whether the violations are corrected within the time period set out below.

In addition, if the violations of the SPCA cited herein are not corrected within 10 days from receipt calendar days of receipt of this Notice, this office may request that the Director take appropriate legal action against you for continuing violations pursuant to NCGS 113A-61.1 and 113A-64. A penalty may be assessed from the date of the violation of the SPCA, pursuant to NCGS 113A-64(a)(1), and for each day of a continuing violation of the SPCA in an amount not to exceed $5,000.00 per day.

**Construction Stormwater Permit NCG 010000 Violations**

The violations of the Construction Stormwater Permit NCG 010000 cited herein may be referred to the Director of the Division of Energy, Mineral and Land Resources (Director) for appropriate enforcement action, including civil penalty assessments for a continuing violation. This Notice serves as a letter of proposed civil penalty assessment. You have 10 calendar days from receipt of this Notice by certified mail to cease the violations listed above, and to submit in writing reasons why the civil penalty should not be assessed.

Accordingly, you are directed to respond to this letter in writing within 10 calendar days of receipt of this Notice by certified mail. Your response should be sent to this regional office at the letterhead address and include the following:

1. The date by which the corrective actions listed above have been or will be completed.

2. Rainfall data and self-inspection or self-monitoring records from August 20, 2015 to November 12, 2015.

3. A plan of action to prevent future violations.

4. A plan for restoration of sedimentation damage.

5. Reasons why a civil penalty should not be assessed.

Pursuant to G.S. 143-215.6A, these violations and any future violations are subject to a civil penalty assessment of up to a maximum of $25,000.00 per day for each violation. Your above-mentioned response to this correspondence, the degree and extent of harm to the environment and the duration and gravity of the violation(s) will be considered in any civil penalty assessment process that may occur.

Please be advised that any new land-disturbing activity associated with this project should not begin until the area presently disturbed is brought into compliance with the SPCA and Construction Stormwater Permit NCG 010000. When corrective actions are complete, you should notify this office so that work can be inspected. You should not assume that the project is in compliance with the SPCA and Construction Stormwater Permit NCG 010000 until we have notified you. After installation, all erosion control measures must be maintained in proper working order until the site is completely stabilized.

We solicit your cooperation, and would like to avoid taking further enforcement action. At the same time, it is your responsibility to understand and comply with the requirements of the SPCA and Construction Stormwater Permit NCG 010000. Copies of the relevant statute and administrative rules may be examined at this office or will be sent to you upon request. Should you have questions concerning this notice or the requirements of the SPCA and Construction Stormwater Permit NCG 010000 please contact me at your earliest convenience.

Sincerely,

Matthew E. Gantt, P.E.
Regional Engineer
Land Quality Section

Enclosures: Sedimentation Inspection Report

cc: State Sedimentation Specialist

Case Name: _____
Case Number: _____
County: _____
Regional Office: _____

# WORKSHEET

## CIVIL PENALTY ASSESSMENT FOR SPCA VIOLATIONS

(Criteria: NCGS 113A-64-(a); 15A NCAC 04C .0106)

A. Type(s) of Violation ____, ____, ___, ___, ___, $_____/day

B. Degree and Extent of the Harm Caused by the Violation. $_____/day

| | |
|---|---|
| Severe | $300 to $5000 |
| Moderate | $100 to $300 |
| Slight | $0 to $100 |
| None | $0 |

C. Adherence to Plan/Effectiveness of Plan Submitted by Violator (Effectiveness of Steps Taken to Correct Violations). $_____/day

D. Prior Record of Violator in Complying or Failing to Comply with the Act and Rules. $_____/day

E. Whether the Violation was Committed Willfully. $_____/day

F. Amount of Money the Violator Saved by His Noncompliance. $_____/day

G. Cost of Rectifying the Damage. $_____/day

H. Staff Investigative Costs. $_____/day

TOTAL PENALTY/day $_____/day

ACTUAL PENALTY /day $_____/day

Total Penalty = _____ X _____ = $ _____
Actual Penalty/day X Number of days

Date of Violation: _____

_____
Date

_____
Chief of Program Ops, DEMLR or Regional Engineer

Revised 08/14/2006 TGH

Case Name: _____
Case Number: _____
County: _____
Regional Office: _____

# WORKSHEET

## CIVIL PENALTY ASSESSMENT FOR SPCA VIOLATIONS

(Criteria: NCGS 113A-64-(a); 15A NCAC 04C .0106)

A. Type(s) of Violation ____, ____, ____, ____, ____. $_____

B. Degree and Extent of the Harm Caused by the Violation. $_____

| | |
|---|---|
| Severe | $300 to $5000 |
| Moderate | $100 to $300 |
| Slight | $0 to $100 |
| None | $0 |

C. Adherence to Plan/Effectiveness of Plan Submitted by Violator (Effectiveness of Steps Taken to Correct Violations). $_____

D. Prior Record of Violator in Complying or Failing to Comply with the Act and Rules. $_____

E. Whether the Violation was Committed Willfully. $_____

F. Amount of Money the Violator Saved by His Noncompliance. $_____

G. Cost of Rectifying the Damage. $_____

H. Staff Investigative Costs. $_____

TOTAL PENALTY $_____

ACTUAL PENALTY $_____

Date of Violation: _____

_____
Date

_____
Chief of Program Ops, DEMLR or
Regional Engineer

Revised 08/14/2006 TGH

# Draft Guidance for Tiered Enforcement

## March 16, 2012

**General Implementation**

DENR will implement a three-tiered approach to enforcement, with the severity of enforcement response increasing for each tier. The new policy is consistent with the way many divisions are already implementing compliance and enforcement programs. The policy recognizes that violations of rules typically fit into three categories: 1) recordkeeping and paperwork that result in little or no harm to the environment or public health, 2) more serious infractions that could result in harm to the environment or public health, and 3) violations that have clearly impacted the environment or public health.

**Tier 1 Violations (Notice of Deficiency (NOD))** – Tier 1 violations represent minor violations resulting in little or no harm to the environment or public health. Tier 1 violations are of minor duration and gravity. The violations are not committed willfully or intentionally. Tier 1 violations often represent the first offense committed by the violator. A Notice of Deficiency is normally issued for Tier 1 violations.

**Tier 2 Violations (Notice of Violation (NOV))** – Tier 2 violations represent more serious violations where there is documented or moderate to severe potential for harm to the environment or public health. Tier 2 violations can be of moderate duration and gravity. Tier 2 violation notifications would typically be issued to violators with a prior history of noncompliance with regulations. Tier 2 violations can also include continued noncompliance with Tier 1 violations. A Notice of Violation (NOV) is normally issued for Tier 2 violations. A consent order or other form of compliance schedule may be warranted for Tier 2 violations, depending on the circumstances.

**Tier 3 Violations (Civil Penalties (CPA) or Other Methods)** – Tier 3 violations represent the most serious violations where there is documented significant or high potential for environmental or public health harm. Tier 3 violations can be of significant duration and gravity. Also, violations that are committed willfully and intentionally are categorized as Tier 3 violations. Tier 3 violation notifications would typically be issued to violators with a significant prior history of noncompliance with regulations. Tier 3 violations can also include continued noncompliance with Tier 2 violations. Civil penalties, consent orders, injunctions, and other enforcement tools are expected with Tier 3 violations. A Notice of Recommendation for Enforcement and subsequent civil penalty or other enforcement action described above is normally issued for Tier 3 violations.

General Approach – It should be noted the ultimate decision whether to issue a Notice of Deficiency (NOD) or a Notice of Violation (NOV) is left to the inspector in consultation with the Regional Office Supervisor. The discussion above and the matrix presented below are provided for guidance in making those decisions. The approach taken with the table below is to have violations that are due to errors of paperwork or record keeping (or minor in nature) to result in issuance of an NOD.

| Program Area | Notification Type | Inspections |
|---|---|---|
| **Wetlands/ Buffers** | | |
| | Tier 1–NOD | • Failure to Provide Certificate of Completion<br>• Minor condition violations (*e.g. failure to provide protective fencing at commencement of project, failure to provide deed notification*)<br>• Submission of partial of incomplete paperwork or reports (e.g. monitoring reports)<br>• Minor buffer impacts (*e.g. removing < 3 trees*) |

| | | |
|---|---|---|
| | Tier 2–NOV | • Any stream or wetland standards violations<br>• Failure to Obtain 401 WQC or IWP (*minimal environmental risks*)<br>• Failure to Obtain a Buffer Authorization/Variance (*minimal environmental risks*)<br>• Major buffer impacts (*e.g. failure to provide diffuse flow, removing > 3 trees*)<br>• Major condition violations (*e.g. impacts beyond those permitted, impacts before mitigation or approved stormwater management plan, not following the plan (e.g. perched pipe)*)<br>• Repeat of Tier 1-NOD violations<br>• Multiple Tier 1-NOD violations<br>• Unresolved issues from previous Tier 1 violations |
| | Tier 3 – CPA/NOI/NORE | • Major stream or wetland standards violations<br>• Major buffer impact violations<br>• Failure to Obtain 401 WQC or IWP<br>• Failure to Obtain a Buffer Authorization/Variance<br>• Repeat of Tier 2-NOV violations<br>• Multiple Tier 2-NOV violations<br>• Unresolved issues from previous Tier 2 violations<br>• Failure to respond to requested information from Tier 2 letter<br>• Failure to correct Tier 2 issues within specified timeframe |
| **State Stormwater** | | |
| | Tier 1–NOD | • Failure to renew (for high density)<br>• Failure to Modify (minor mod)<br>• Minor O&M failures<br>• Failure to Provide Designer's Certification<br>• Minor permit violations (*e.g. minor erosion issues on stormwater basins, trash in basins, etc.*) |
| | Tier 2–NOV | • Failure to Obtain a State Sw Permit (*minimal environmental risks*)<br>• Failure to Modify (major mod)<br>• Major O&M failures<br>• Major condition violations (*e.g. more BUA than permitted, failure to construct as approved, failure to construct/operate prior to COs, off-site drainage that exceeds BMP capacity*)<br>• Repeat of Tier 1-NOD violations<br>• Multiple Tier 1-NOD violations<br>• Unresolved issues from previous Tier 1 violations |

| | | |
|---|---|---|
| | Tier 3 – CPA/NOI/NORE | • Failure to Obtain a State Sw Permit<br>• Repeat of Tier 2-NOV violations<br>• Multiple Tier 2-NOV violations<br>• Unresolved issues from previous Tier 2 violations<br>• Failure to respond to requested information from Tier 2 letter<br>• Failure to correct Tier 2 issues within specified timeframe |
| **NPDES Industrial Stormwater** | | |
| | Tier 1–NOD | • Failure to renew<br>• Failure to pay annual fee<br>• Failure to Modify<br>• Minor SPPP implementation violations (*e.g. failure to provide employee training*)<br>• Minor permit violations (*e.g. partial omissions in paperwork/record keeping, missing data from sampling events*) |
| | Tier 2–NOV | • Failure to Obtain a NPDES Industrial Stormwater Permit (*minimal environmental risks*)<br>• Major condition violations (*e.g. no SPPP Plan, no SPPP implementation, no sampling performed or submitted, unauthorized bypass*)<br>• Repeat of Tier 1-NOD violations<br>• Multiple Tier 1-NOD violations<br>• Unresolved issues from previous Tier 1 violations |
| | Tier 3 – CPA/NOI/NORE | • Failure to Obtain a NPDES Industrial Stormwater Permit<br>• Repeat of Tier 2-NOV violations<br>• Multiple Tier 2-NOV violations<br>• Unresolved issues from previous Tier 2 violations<br>• Failure to respond to requested information from Tier 2 letter<br>• Failure to correct Tier 2 issues within specified timeframe |
| **NPDES Construction Stormwater** | | |
| | Tier 1–NOD | • Failure to provide rain gauge on site<br>• Failure to provide rain gauge data for $\leq$ 4 weeks<br>• Failure to provide inspection records for $\leq$ 4 weeks<br>• Failure maintain E&SC plans onsite<br>• Minor O&M failures (*e.g. small section of silt fence needs repair*) |

| | | |
|---|---|---|
| | Tier 2–NOV | • Failure to Obtain a NPDES Construction Stormwater Permit (*minimal environmental risks*)<br>• Failure to provide rain gauge data for > 4 weeks<br>• Failure to provide inspection records for > 4 weeks<br>• Failure to provide adequate groundcover<br>• Failure to provide surface withdrawal from sediment basins<br>• Failure to maintain stockpiles away from storm drain inlets or surface waters<br>• Failure to provide adequate handling of concrete<br>• Unauthorized bypass<br>• Major O&M failures (*e.g. failed sediment basin, no silt fence*)<br>• Repeat of Tier 1-NOD violations<br>• Multiple Tier 1-NOD violations<br>• Unresolved issues from previous Tier 1 violations |
| | Tier 3 – CPA/NOI/NORE | • Failure to Obtain a NPDES Construction Stormwater Permit<br>• Repeat of Tier 2-NOV violations<br>• Multiple Tier 2-NOV violations<br>• Unresolved issues from previous Tier 2 violations<br>• Failure to respond to requested information from Tier 2 letter<br>• Failure to correct Tier 2 issues within specified timeframe |
| **NPDES Wastewater** | | |
| | Tier 1–NOD | • Late reporting of monitoring data<br>• Minor operational deficiencies<br>• Minor design deviation (e.g.100 vs 150 gallon tanks)<br>• Minor recordkeeping errors (missing data points)<br>• Inadequate maintenance as long as it is minor in nature<br>• Minor (0-10%) exceedance of NPDES wastewater permit limit that are non-repeat violations<br>• Partial implementation of permit conditions |

| | | |
|---|---|---|
| | Tier 2–NOV | • Repeat of Tier 1 violations<br>• Multiple Tier 1 violations<br>• Unresolved issues from previous Tier 1violations<br>• Failure to respond to requested information from Tier 1 letter<br>• Failure to correct Tier 1 issues within specified timeframe<br>• Failure to notify of major operational deficiencies, or repeated minor operational deficiencies<br>• Major operational deficiencies<br>• Failure to report monitoring data<br>• Major design deviations<br>• Operating without permit (e.g., minimal environmental risks)<br>• Failure to provide monitoring data<br>• Inadequate maintenance that may affect effluent limit<br>• Multiple limit exceedances<br>• Failure to implement permit conditions<br>• Significant (11-20%) exceedance of NPDES wastewater permit limit. |
| | Tier 3 – CPA/NOI/NORE | • Repeat of Tier 2 violations<br>• Multiple Tier 2 violations<br>• Unresolved issues from previous Tier 2 violations<br>• Failure to respond to requested information from Tier 2 letter<br>• Failure to correct Tier 2 issues within specified timeframe<br>• Operating without permit<br>• Illegal Discharge<br>• Greater than 20% exceedance of NPDES wastewater permit limit. |
| **Collections/Systems** | | |
| | Tier 1–NOD | • Partial Implementation of Permit Conditions<br>• Sending out FOG education material only once per year (requirement is twice per year)<br>• Not having CIP<br>• Missing contingency plan or emergency signage on pump station for less than 20% of stations (in other words 80% of stations have the plan or signs)<br>• Minor documentation gaps |
| | Tier 2–NOV | • Failure to Implement Permit Conditions<br>• Unresolved issues from previous NOD |

| | | |
|---|---|---|
| | Tier 3 – CPA/NOI/NORE | • Repeat of Tier 2 violations<br>• Multiple Tier 2 violations<br>• Unresolved issues from NOV |
| **Pretreatment** | | |
| | Tier 1–NOD | • Partial Implementation of Permit Conditions<br>• Missing data,<br>• No approval letters for IUPs,<br>• Partial paperwork,<br>• Partial program implementation |
| | Tier 2–NOV | • Any Significant Noncompliance<br>• Unresolved issues from previous NOD<br>• Not issuing permits,<br>• No SIU inspections,<br>• No approval elements (SUO, LMP, ERP),<br>• Not implementing program<br>• Unresolved violations from previous NOD |
| | Tier 3 – CPA/NOI/NORE | • Repeat of Tier 2 violations<br>• Multiple Tier 2 violations<br>• Unresolved issues from NOV |
| **Aquatic Toxicology** | | |
| | Tier 1a- Warning Letter | • Incorrect effluent concentration used in pass/fail test<br>• Low Dissolved Oxygen in passing toxicity test<br>• Deficient data reporting on AT form<br>• AT sent to wrong address<br>• Minor pH deviations<br>• Minor test temperature deviations<br>• Insufficient number of test concentrations<br>• Insufficient number of treatment replicates<br>• Incorrect data analysis |

| | | |
|---|---|---|
| | Tier 1b–NOD | • Missing ORC signatures<br>• Wrong sample type (grab/composite)<br>• No Flow event not reported with AT form<br>• AT form received up to 15 days late<br>• Incorrect test organism<br>• Incorrect test type |
| | Tier 2–NOV | • Any significant non compliance<br>• Unresolved issues from Tier 1 |
| | Tier 3 – CPA/NOI/NORE | • Repeat of Tier 2 violations<br>• Multiple Tier 2 violations<br>• Unresolved issues from NOV |

**Additional Guidance**

*Effective Date* – All decisions made on or after February 1, 2012 regardless of the date the violations were identified shall be processed using this guidance.

*Processing of Tier 1 Letters* – The new module for tracking Tier 1 violations (NOD module) will not be ready for the February 1, 2012 effective date. The ROs will need to save any Tier 1 Letters (NOD) for possible future entry into BIMS pending its upgrade. The CO will provide the Regional Offices the type of tracking information that may be desired during the interim period that the Tier 1 letters cannot be entered into BIMS. Once the BIMS upgrade is completed, a decision will be made on whether to enter the data into the system.

*Violations Observed on Multiple Tiers* -- In the event that an inspection (or review of a DMR) results in multiple violations (i.e. some Tier 1 violations, some Tier 2 violations, etc.), the highest Tier violation will establish the compliance response. As an example, an inspection results in two Tier 1 violations and one Tier 2 violation. The resulting correspondence sent to the permittee would be a Tier 2 Letter (NOV).

*Templates for Use by Staff* – The DWQ central office will provide templates for use by staff. The templates will be posted in a centralized location. For consistency sake, it is imperative that staff use the templates as the basis for all correspondence. Alterations for individual situations are permitted on as needed basis. However, the staff is expected to limit the variation to the minimum amount needed.

**Escalation of Violations to Higher Tiers**

*Failure to Respond* – Since the type of violations that are categorized Tier 1 violations will be minor in nature (i.e. larger minor paperwork violations with no environmental harm), most Tier 1 notices will not require a response from the violator. However, it understood that sometimes circumstances may warrant additional information. As such, when a response is requested from the permittee/violator and one is not sent to DWQ in the specified timeframe escalation to next Tier of compliance is appropriate.

*Timeframe for Repeat Violations for Escalation* – Review of the policy provides for escalation from a lower tier to higher tier for repeat violations. However, it does not specify a timeframe that the repeat violation needed to occur to qualify for escalation. As an example, a DMR is submitted with a Tier 1 violation for BOD. The same facility has a second Tier 1 violation for BOD 14 months later. Does the second violation constitute a repeat violation that would allow for escalation to a Tier 2? The timeframe for determining repeat violations will typically be 12 months. Thus, in the example listed above the second violation would still be considered a Tier 1 violation and treated as such. However, no guidance can foresee all possible contingencies. Therefore, compliance discretion can be used in cases where the staff determines the violations are significant enough to warrant a stronger compliance response.

**LAND QUALITY SECTION**
**EROSION & SEDIMENT CONTROL**

***Information concerning Civil Penalty Assessment Cases***

Enforcement cases received from the field offices should include two complete sets of documents for both civil daily and initial penalties. The documents should be in chronological order with the newest document on top.

The following information should be included in the enforcement package:

1. County and location of subject property. (Describe location in proximity to nearby towns, roads, railroads, watercourses, developments, etc.)

2. The Financial and Responsibility Ownership (FRO) form which includes the following information. Person financially responsible for land-disturbing activity and owner if different from person financially responsible (Give full name and address and source of information, such as tax rolls, deeds, subdivision plats, admissions of agents, etc.) Purpose of land-disturbing activity if known. (Residential, commercial, etc., and source of information).

3. Copy of deed showing current owner.

4. Size of tract being developed.

5. Size and location(s) of disturbed acres(s). (If more than one area is being disturbed, give size and location of each one. Use map if desirable).

6. Copy of Notice of Violation(s) (NOV), receipt of delivery of NOV by certified mail or the sheriff, other correspondence, notes on telephone calls, inspection reports, memo's to file, documentation that compliance inspection was scheduled, Plan Receipt Letter(s), Plan Approval or Disapproval Letter(s), etc.

7. Chronological history of events.

8. Photographs or slides taken during compliance inspection with corresponding map showing location of pictures, direction photos were taken, and date taken.

9. Complete Civil Penalty Assessment Guidelines.

10. Cover Letter, Civil Penalty Assessment, and worksheet. Cover Letter and Civil Penalty Assessment should submitted electronically and hard copy.

11. Copy of green cards for all certified mail correspondence.

The deed, FRO, and any cover memo should be placed on top of other documentation.

# SEDIMENTATION/CONSTRUCTION STORMWATER INSPECTION REPORT

North Carolina Department of Environmental Quality

*Land Quality Section: 450 West Hanes Mill Road, Suite 300, Winston-Salem, NC 27105, Phone: 336-776-9800*

COUNTY: Davidson PROJECT: FRIEDBERG VILLAGE PHASES 1 & 2 RIVER BASIN: YADKIN-PEE DEE

PERSON FINANCIALLY RESPONSIBLE: W. Scott Wallace, Keystone Group, Inc. PROJECT # David-2013-015

ADDRESS: 3708 Alliance Drive Greensboro NC 27407 CASE #

1. PROJECT LOCATION: Queensbury Drive Clemmons NC
   Pictures: YES Video: Digital: X
2. Weather and Soil Conditions: 60'S, CLEAR, SOIL VERY WET First Inspection NO
3. Is site currently under Notice of Violation? NO
4. Is the site in compliance with S.P.C.A. and rules? NO
5. Violations:
   b. Failure to follow approved plan - G.S. 113A-57(5)and Failure to implement the erosion and sedimentation control plan, NCG 010000 Section III. 3) (a)
   e. Insufficient measures to retain sediment on site - G.S. 113A-57(3)
   f. Failure to take all reasonable measures - 15A N.C.A.C. 4B.0105
   g. Inadequate buffer zone, G.S. 113A-57(1) - G.S. 113A-57(1)
   j. Failure to maintain measures - 15A N.C.A.C. 4B.0113
   k. Failure to self-inspect - G.S. 113A-54.1(e) and 15A N.C.A.C. 4B.0131
6. Is the site in compliance with NPDES Permit NCG 010000?: NO
   p. Failure to meet self inspection and reporting requirements NCG 010000 Section II. B. 3)(c-i)
   s. Failure to install and maintain BMPs and control measures NCG 010000 Section III. (4)
   t. Failure to operate and maintain control measures Failure to operate and maintain control measures, NCG 010000 Section IV, (1)
   u. Bypass of stormwater control facilities NCG 010000 Section IV (3)
7. Has Sedimentation Damage occurred since last inpections? YES
   Lake/natural watercourse on the tract: YES Lake/natural watercourse off the tract: YES Other Property:
   Description: INTO STREAM BELOW SEWER LINE INSTALLATION AND BELOW BUILDING LOTS #35 AND #36.
   Degree of Damage: 2) MODERATE
   Stormwater Discharge Outfall with high turbidity or sedimentation loss:
8. Contact Made with (name): NO ONE ON SITE Title:
   Inspection Report: SENT TO PERSON FINANCIALLY RESPONSIBLE Date Given/Sent: NOV 13, 2015

Report By: Matthew E. Gantt, PE Others Present:

Date of Inspection: NOV 12 2015 Time Arriving on Site: 12:15 Time Leaving Site: 1:50

cc; SWALLACE@GOKEYSTONE.COM

Revision Date 10/16/2015

9. **Corrective Actions Needed:**

1. Repair and replace all damaged silt fence below active home construction below buildings #35, #36 and #37. Drop inlets along Queensbury Drive are being filled with sediment due to lack of silt fence maintenance.

2. Properly install the stone energy dissipation device at the storm water outlet pipe at the end of pipe #56 at Queensbury Drive. Install the rock dam at the outlet of pipe #56 as shown on sheet 6B of the approved sediment and erosion control plan. Sediment is washing through the storm water system and discharging into the creek at the base of the fill slope.

3. Stabilize all eroding slopes at the end of Queensbury Drive with a ground cover that is sufficient to prevent further erosion of the slope.

4. Remove the stone pad located in the creek between phases 2 and 4. This sewer line installation was not permitted in the approved plans for Phase 2 or Phase 4. A revised plan will be required for the sewer line installation.

5. Repair the small sediment trap installed below building #35 at the end of Queensbury Drive. The sediment trap is no longer functional due to being overwhelmed with sediment.

6. Install additional sediment control measures at the end of Queensbury Drive to prevent further sediment loss into the stream between Phase 2 and Phase 4.

7. Provide copies of all NPDES records and self-inspection reports to this office for review.

10. **COMMENTS:**

1. A significant amount of sediment has been lost into the stream between Phase 2 and Phase 4. Most of the sediment in the stream appears to have come off of the Phase 2 project.

2. Measures must be taken immediately to prevent further off-site sedimentation below Phase 2.

3. This site will be placed under Notice of Violation at this time. An initial one-day civil penalty assessment of up to $5,000 will also be recommended for this project. You are encouraged to correct these violations as soon as possible to prevent further daily civil penalty assessments..

## Hines, Andrea

**From:** Ireland, Laurie
**Sent:** Tuesday, August 28, 2018 12:05 PM
**To:** Hines, Andrea
**Subject:** Email pertaining to FOIA 18-010711 FW: EPA Region 4 Differential Oversight Letter to North Carolina
**Attachments:** NC Differential Oversight letter 50916.pdf; North Carolina Differential Oversight Overview .docx

**From:** Gordon, Scott
**Sent:** Tuesday, May 10, 2016 1:28 PM
**To:** Giattina, James <Giattina.Jim@epa.gov>; Farmer, Alan <Farmer.Alan@epa.gov>; Kemker, Carol <Kemker.Carol@epa.gov>; Heard, Anne <Heard.Anne@epa.gov>; Wilkes, Mary <Wilkes.Mary@epa.gov>; Lapierre, Kenneth <Lapierre.Kenneth@epa.gov>; Hicks, Javoyne <Hicks.Javoyne@epa.gov>
**Cc:** Lincoln, Larry <Lincoln.Larry@epa.gov>; Wise, Allison <Wise.Allison@epa.gov>; Marraccini, Davina <Marraccini.Davina@epa.gov>; Delli-Gatti, Dionne <Delli-Gatti.Dionne@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Diaz, Denisse <Diaz.Denisse@epa.gov>; Truman, Bill <Truman.Bill@epa.gov>; Pallas, Jeff <Pallas.Jeff@epa.gov>; Spagg, Beverly <Spagg.Beverly@epa.gov>; Toney, Anthony <Toney.Anthony@epa.gov>; Sisario, Kelly <Sisario.Kelly@epa.gov>; Fite, Mark <Fite.Mark@epa.gov>; Ireland, Laurie <Ireland.Laurie@epa.gov>; Maher, Shannon <Maher.Shannon@epa.gov>
**Subject:** RE: EPA Region 4 Differential Oversight Letter to North Carolina

So let me give you a document that is NOT password protected this time.....

**From:** Gordon, Scott
**Sent:** Tuesday, May 10, 2016 11:27 AM
**To:** Jim Giattina <Giattina.Jim@epa.gov>; Alan Farmer <Farmer.Alan@epa.gov>; Kemker, Carol <Kemker.Carol@epa.gov>; Anne Heard <Heard.Anne@epa.gov>; Mary Wilkes <Wilkes.Mary@epa.gov>; Lapierre, Kenneth <lapierre.kenneth@epa.gov>; Hicks, Javoyne <Hicks.Javoyne@epa.gov>
**Cc:** Lincoln, Larry <Lincoln.Larry@epa.gov>; Allison Wise <Wise.Allison@epa.gov>; Davina Marraccini <Marraccini.Davina@epa.gov>; Delli-Gatti, Dionne <Delli-Gatti.Dionne@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Denisse Diaz <Diaz.Denisse@epa.gov>; Truman, Bill <Truman.Bill@epa.gov>; Pallas, Jeff <Pallas.Jeff@epa.gov>; Spagg, Beverly <Spagg.Beverly@epa.gov>; Toney, Anthony <Toney.Anthony@epa.gov>; Kelly Sisario <Sisario.Kelly@epa.gov>; Fite, Mark <Fite.Mark@epa.gov>; Ireland, Laurie <Ireland.Laurie@epa.gov>; Shannon Maher <Maher.Shannon@epa.gov>
**Subject:** EPA Region 4 Differential Oversight Letter to North Carolina

Attached is a pdf of the letter sent to Secretary van der Vaart regarding concerns with the compliance and enforcement responses specifically in the Clean Air Act & Clean Water Act programs. I have also attached an overview document that identified the root issues and areas of focus.

I plan to let the State absorb the letter this week & reach out to them to discuss the path forward next week.

If you have any questions or comments please call.

Thanks,

Scott

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 09 2016

Mr. Donald R. van der Vaart
Secretary
North Carolina Department of Environmental Quality
217 West Jones Street
Raleigh, North Carolina 27603

Dear Secretary van der Vaart:

I am writing as a follow up to our discussions last November concerning the initial findings of the Environmental Protection Agency Region 4 (EPA) differential oversight review of the North Carolina Department of Environmental Quality (NCDEQ) enforcement programs. EPA initiated the review in response to performance trends observed in NCDEQ's State Review Framework (SRF) metrics during the Annual Data Metrics Analysis (ADMA). The FY14 ADMA for North Carolina revealed significant downward trends over the prior four years (FY11 – FY14) in several key enforcement related metrics, including drops in informal and formal enforcement actions, penalties, and significant non-compliance designations. The drop in enforcement outputs and outcomes coincides with several legislative and policy changes made in 2011 which became effective in FY12.

EPA notified NCDEQ in early 2015 that additional review was needed to determine if the State was meeting its delegated responsibilities for compliance assurance implementation. To advance EPA's understanding of NCDEQ's programs, review teams consisting of Office Enforcement Coordination (OEC) staff and representatives for the Clean Air Act (CAA), Clean Water Act (CWA), and Resource Conservation and Recovery Act (RCRA) conducted a differential oversight review of records of recent violations and enforcement activities. These reviews were completed in FY15, and a summary of the results was shared with your senior enforcement managers in our annual EPA/State compliance assurance meeting on November 9, 2015.

As promised during our meeting, I have included with this letter a more detailed description and examples of the concerns our reviews have identified. Additionally, I have also articulated proposed steps I believe are needed to address each issue. I suggest that NCDEQ and EPA schedule a meeting in Raleigh or Atlanta within the next few weeks to begin outlining a plan for addressing the identified concerns.

While there is still much work to be done, I am encouraged to see recent improvements reflected in the oversight file reviews and some of the FY15 ADMA metrics, and I wanted to acknowledge the progress in these areas. These improvements are a step in the right direction, and I hope they can form the foundation for further progress. However, consistent with the Agency's National Strategy for Improving Oversight of State Enforcement Performance, EPA will continue to pursue appropriate escalation actions to address the concerns we have identified if adequate progress is not made. These efforts may

include additional EPA oversight of inspections and enforcement, independent EPA actions, and reviews of program authorization.

My sense from our meeting in November was that NCDEQ enforcement managers agreed with EPA's findings and sought specific input on areas of resolution. I look forward to establishing specific steps toward improvement. As always, feel free to contact me to discuss any ideas or concerns.

Sincerely,

J. Scott Gordon
Director
Office of Enforcement Coordination

Enclosure

cc: Mr. John Evans, Chief Deputy Secretary
Mr. Tom Reeder, Assistant Secretary for the Environment
Ms. Sheila Holman, Director, Division of Air Quality
Mr. Michael Scott, Director, Division of Waste Management
Ms. Kim Colson, Director, Division of Water Infrastructure
Mr. Jay Zimmerman, Director, Division of Water Resources
Mr. Tracy Davis, Director, Division of Energy, Mineral & Land Resources

bcc: Carol Kemker, Acting Director, Air, Pesticides and Toxics Management Division
Beverly Spagg, Chief, Air Enforcement and Toxics Branch
James Giattina, Director, Water Protection Division
Denisse Diaz, NPDES Permitting and Enforcement Branch
Alan Farmer, Director, Resource Conservation and Restoration Division
Bill Truman, Acting Chief, Enforcement and Compliance Branch

**Enclosure**

EPA's expectations for the performance of North Carolina's compliance assurance programs are laid out in a collection of program-specific agreements and national policy documents for each program, including, but not limited to the documents indicated below:

Overarching:

- Revised Policy Framework for State/EPA Enforcement Agreements
- Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Agreements

CAA:

- NCDEQ Air Planning Agreement for the CAA Section 105 grant
- NCDEQ CAA Compliance Monitoring Strategy (CMS) Plan
- Clean Air Act Stationary Source Compliance Monitoring Strategy
- Timely and Appropriate Enforcement Response to High Priority Violations
- Guidance on Federally-Reportable Violations for Clean Air Act Stationary Sources

CWA:

- NCDEQ CWA Section 106 grant work plan
- NCDEQ NPDES EMS Plan
- NCDEQ/Region 4 CWA Memorandum of Agreement
- CWA NPDES Compliance Monitoring Strategy
- CWA NPDES Enforcement Management System

RCRA:

- NCDEQ RCRA grant work plan
- NCDEQ/Region 4 RCRA Memorandum of Agreement
- Compliance Monitoring Strategy for the RCRA Subtitle C Program and Appendices
- RCRA Hazardous Waste Enforcement Response Policy
- RCRA Civil Penalty Policy

EPA evaluated the performance of North Carolina's major regulatory programs during the Round 3 SRF review, which was completed in September 2013 based on FY2011 activities. The following areas were identified as the priority issues affecting the State's performance:

- For all three media (CAA, CWA, & RCRA), improvement was needed in the documentation of penalty calculations, to include the consideration of economic benefit and the rationale for any difference between the initial and final penalty assessed;
- Improvement was needed in the accuracy of data entry in the NPDES Integrated Compliance Information System (ICIS-NPDES);
- Improvement was needed in the timeliness and appropriateness of CWA enforcement actions, and these actions needed to promote a return to compliance.

A summary of all of the findings is included in the table below:

| Review Element | CWA | CAA | RCRA |
|---|---|---|---|
| Element 1 - Data Completeness | Meets | Meets | Meets |
| Element 2 - Data Accuracy | Improvement | Attention | Meets |
| Element 3 - Timeliness of Data Entry | No Finding | Meets | No Finding |
| Element 4 - Completion of Commitments | Attention | Meets | Meets |
| Element 5 - Inspection Coverage | Meets | Meets | Improvement |
| Element 6 - Quality of Inspection Reports | Improvement | Meets | Meets |
| Element 7 - Identification of Violations | Meets | Attention | Meets |
| Element 8 - Identification of HPVs | Meets | Meets | Meets |
| Element 9 - Enforcement Promotes Compliance | Improvement | Meets | Meets |
| Element 10 - Timely and Appropriate Action | Improvement | Meets | Meets |
| Element 11 - Penalty Calculation Method | Improvement | Improvement | Improvement |
| Element 12 - Final Penalty Assessment & Collection | Attention | Meets | Meets |

Despite progress in addressing some of the areas for improvement, EPA observed significant downward trends in NCDEQ's performance metrics during the FY14 Annual Data Metrics Analysis (ADMA). Between the years of FY11 to FY14, several key enforcement related metrics showed a significant decline, including drops in informal and formal enforcement actions[1], penalties, and significant non-compliance designations.

This drop in North Carolina's enforcement outputs and outcomes coincides with several legislative and policy changes made in 2011 which became effective in FY12. First, North Carolina's Regulatory Reform Act of 2011 (Session Law 2011-398) required the Secretary to "develop a uniform policy for notification of deficiencies and violations for all regulatory programs within the Department…"[2] The resulting Uniform Violation Notification Policy for the Department of Environment and Natural Resources (often referred to as the "Tiered Enforcement Policy") asserts "that violations of rules typically fit into three categories – 1. Recordkeeping and paperwork that result in little or no harm to the environment or public health; 2. More serious infractions that could result in harm to the environment or public health; and 3. Violations that have clearly impacted the environment or public health. The policy will formally recognize the tiered approach, so that a "Tier 1" violation will be met with a less severe response than a "Tier 3" violation."[3]

The policy also establishes three forms of notice which generally correlate with these violation tiers: Notice of Deficiency (NOD) for Tier 1 violations; Notice of Violation (NOV) for Tier 2 violations; and Notice of Recommendation for Enforcement for Tier 3 violations, which is typically accompanied by a subsequent civil penalty assessment.[4]

Our data analysis and differential oversight reviews identified several direct consequences of the application of NCDEQ's Tiered Enforcement Policy which we believe weaken the State's compliance assurance programs. First, fewer violations are being reported to EPA (and the public) due to the fact

[1] NCDEQ has asked EPA for clarification on the definition of formal enforcement. This varies by program, but EPA has prepared the document Informal and Formal Enforcement Action Definitions which may provide some clarity.
[2] North Carolina Session Law 2011-398, Section 61.
[3] Uniform Violation Notification Policy for the Department of Environment and Natural Resources, p. 2.
[4] *Ibid.*

that NODs are not being entered into the national data systems. This practice not only falls short of EPA's policy expectations (e.g. CAA FRV policy), but it significantly reduces transparency to both EPA and the public. Next, our review confirmed that numerous sources were cited for violations utilizing the NOD or NOV, sometimes on multiple occasions, but without appropriate escalation to the more severe formal enforcement response, which compromised a key goal of "credible national deterrence to noncompliance."[5] Evidence of this was that sources were frequently cited multiple times for the same types of violations.

Another significant legislative development in 2011 which had direct impacts to NCDEQ's enforcement programs was the passage of North Carolina Session Law 2011-145, which amends Part 1 of Article 7 of Chapter 143B of the General Statutes by adding a new section as follows:

> "§ 143B-279.16. Civil penalty assessments.
>
> (a) The purpose of this section is to provide to the person receiving a notice of violation of an environmental statute or an environmental rule a greater opportunity to understand what corrective action is needed, receive technical assistance from the Department of Environment and Natural Resources, and to take the needed corrective action. It is also the purpose of this section to provide to the person receiving the notice of violation a greater opportunity for informally resolving matters involving any such violation.
>
> (b) In order to fulfill the purpose set forth in subsection (a) of this section, the Department of Environment and Natural Resources shall, effective July 1, 2011, extend the period of time by 10 days between the time the violator is sent a notice of violation of an environmental statute or an environmental rule and the subsequent date the violator is sent an assessment of the civil penalty for the violation."[6]

Based on our differential oversight review findings, NCDEQ's implementation of this legislative action has resulted in fewer formal penalty actions being issued. Again, this raises concerns about effective deterrence and providing a "level playing field" for sources throughout the country.

Keeping in mind the Federal policy frame outlined here, as well as the recent state legislative and policy revisions discussed, we have summarized our program specific findings below, with recommended next steps for each area of concern.

---

[5] Revised Policy Framework for State/EPA Enforcement Agreements, p. 1.

[6] North Carolina Session Law 2011-145, p. 164.

## Clean Air Act

**Background:** The FY14 Clean Air Act ADMA revealed significant downward trends over the prior four years in several key metrics, with a precipitous drop occurring between FY13 and FY14. As an example, CAA metric for assessed penalties dropped by 93% statewide, from about $235,000 in FY11 to just under $17,000 in FY14. During the same period, the number of facilities with informal and formal enforcement actions also dropped dramatically (52% and 79%, respectively). In addition, facilities with an HPV determination dropped by 64%. Though EPA makes HPV determinations on behalf of NC, this drop in HPVs results from fewer NOVs being presented to EPA for review.

| Metric ID | Metric Name | 2011 | 2012 | 2013 | 2014 |
|---|---|---|---|---|---|
| 1e2 | Number of Facilities with an Informal Enforcement Action (Facility Count) | 124 | 73 | 61 | 59 |
| 1f1 | Number of HPVs Identified (Activity Count) | 12 | 13 | 8 | 4 |
| 1g1 | Number of Formal Enforcement Actions Issued to Tier I Facilities (Activity Count) | 15 | 14 | 12 | 9 |
| 1g2 | Number of Tier I Facilities Subject to a Formal Enforcement Action (Facility Count) | 14 | 10 | 12 | 3 |
| 1h1 | Total Amount of Assessed Penalties | $235,159 | $95,356 | $97,629 | $16,865 |
| 1h2 | Number of Formal Enforcement Actions with an Assessed Penalty | 13 | 9 | 11 | 3 |
| 8a | HPV Discovery Rate Per Major Facility Universe | 3.1% | 2.8% | 2.4% | 0.9% |

The Division of Air Quality (DAQ) revised their Facility Guidelines, Penalty Tree, and Open Burning Guidelines on March 19, 2012, to address the requirements of the Tiered Enforcement Policy. EPA applauds NCDEQ's development of a penalty policy, which is encouraged in EPA's guidance entitled "Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Agreements", which states the following:

> "State and local enforcement agencies are strongly encouraged to develop written penalty policies, criteria, or procedures for penalty assessments. EPA will then review and evaluate, but not formally approve, these penalty policies, criteria or procedures for consistency with the general penalty criteria...."[7]

However, Region 4 was not given an opportunity to review these revisions, which would have put us on notice about the potential impacts of the Tiered Enforcement Policy, and given us a chance to provide feedback with respect to the policy's compliance with EPA guidance and penalty criteria.

[7] Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Agreements, p. 2.

To further evaluate whether the drop in enforcement was warranted, EPA staff conducted a differential oversight review of 20 sources with recent violations and enforcement activities. A summary of the key findings is outlined below.

**Outstanding issues:**

**Element 3 – Violations:** Inaccurate determination/failure to report FRVs and HPVs

Half of the facilities reviewed had either a missing FRV or HPV. Although many violations identified as "Tier 1" according to the Tiered Enforcement Policy may be federally reportable violations, DAQ did not report these violations into ICIS-Air when they were cited using a NOD. In addition, DAQ has historically relied on EPA to enter HPV data into the national system, but changes are needed to the protocols for reporting to ensure that HPVs are properly entered in the new data system. Missing HPV: *Darnel, Mann & Hummel; Momentive Specialty Chemicals; Stericycle.* Missing FRV: *Domtar; Iredell; J.T. Russell; Lampe & Malphrus; OMNOVA; Unilin*

Next Steps:

- DAQ is required to report FRVs into ICIS-Air. Many of the violations DAQ cites in NODs are specifically identified as FRVs in the new FRV policy, including late reports, late source tests, and failure to maintain records, and DAQ has not been reporting these FRVs into ICIS-Air. DAQ needs to immediately begin reporting all FRVs, including those addressed by a NOD, into ICIS-Air.
- EPA strongly recommends that DAQ begin reporting HPVs into ICIS-Air as soon as the needed programing is completed. EPA also notes that DAQ is required to enter all MDR data for all enforcement actions, including both informal and formal enforcement actions.

**Element 4 – Enforcement:**

**Metric 9a - Enforcement actions that do not return sources to compliance**

**Chronic non-compliance not addressed through appropriate escalation and deterrence**

During the differential oversight review, EPA identified 12 sources which were repeatedly cited by DAQ for non-compliance, often for similar offenses, but without any formal action. When escalation occurred, it did not ultimately result in a formal penalty action being taken. These sources included the following: *Darnel, Domtar, Enviva, Glenoit, Goldsboro, Iredell, Special Fab, Mann & Hummel, Murphy Brown, OMNOVA, North Carolina Central University, and Unilin.*

**Inconsistent application of state enforcement policies**

The differential oversight review identified several facilities for which the Tiered Enforcement Policy or Facility Guidelines, Penalty Tree, and Open Burning Guidelines were not consistently applied, or where the appropriate escalation prescribed by the policy were relaxed even when sources had poor compliance records. Facilities where EPA noted this occurrence include the following: *Domtar, Glenoit, Goldsboro,*

*J.T Russell, Lampe & Malphrus, Momentive, Murphy Brown, North Carolina Central University, Stericycle, and Unilin.*

Next Steps:

- The Tiered Enforcement Policy provides for both adequate compliance and deterrence actions to be effectively taken. Penalties can be sought after just one prior notice to the company, but DAQ is not exercising this discretion. EPA recommends utilizing the discretion available to DAQ within the policy to enhance environmental protection, while maintaining compliance with existing enforcement agreements and policy documents.
- Repeat violations can be an indication of ineffective environmental management by industry all the way up to systematic and/or intentional non-compliance. EPA recommends that DAQ take a broader view of a company's compliance record to ensure that these issues are addressed.

**Element 5 – Penalties:**

**Metric 11a: Economic benefit is not adequately calculated or assessed**

The Round 3 SRF review identified economic benefit in penalties as an Area for State Improvement. The differential oversight review confirmed that DAQ efforts to calculate, assess and recover economic benefit are not adequate and consistent with EPA policy, as indicated by the following examples:

For the N.S. Flexibles case (SOC 2014-002), the source exceeded its PSD-avoidance limit for VOCs, which should have automatically triggered PSD permitting and BACT analysis for VOCs. Instead, DAQ entered into an SOC with the facility, allowing them to continue operations and apply for either a Plant-wide Applicability Limit (PAL) or a PSD permit. In the interim, DAQ assessed stipulated penalties ($1000/mo.) for each month the source exceeded its limit. DAQ describes this as the "pragmatic approach" of enforcing on the facility while allowing operations to continue. No effort was made by DAQ to calculate the economic benefit associated with continued operation of the facility above the applicable emission limit, so it is unclear whether the penalty of $10,000 is adequate to recover the economic benefit gained.

For a second facility, Domtar, DAQ identified PSD violations. The company built a lignin solids removal plant (LSRP) without going through the PSD permitting process, asserting to DAQ that no actual emissions increases (above the significance threshold) would result from the project. However, increases in H2S and TRS (total reduced Sulphur) did occur, and the company operated throughout 2013 and 2014 before contacting DAQ and reducing production levels. DAQ entered an SOC with the company (SOC 2015-01) which allows the company to take the LSRP to full production, resulting in an estimated 24.7 tpy of TRS and 22.7 tpy of H2S emissions. The SOC establishes a compliance schedule and assesses a penalty of $100,000, which clearly does not recover the economic benefit associated with plant operations beginning in February 2013 and continuing through the June 2018 compliance date in the SOC.

In the Carl Rose case, after failing a PM source test, the source continued operating for 7 months before successfully passing a retest. DAQ's penalty of $2,000 was taken from the penalty matrix, but did not reflect any consideration for the economic benefit associated with continued operation in the interim.

Next Steps:

- Provide EPA with the current policy and procedures in place related to calculation, assessment, and recovery of economic benefit.
- If no coherent policies or procedures are in place, work with EPA to develop them consistent with the expectations laid out in EPA's "Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Agreements".[8]

[8] *Ibid*, p. 5

Clean Water Act

**Background:** The FY14 Clean Water Act (CWA) Annual Data Metrics Analysis (ADMA) revealed a downward trend over FY11-FY14 in enforcement related metrics. For example, the total penalties assessed in FY14 at facilities with National Pollutant Discharge Elimination System (NPDES) permits are 58% lower than those assessed in FY11. The number of penalty enforcement actions decreased 46% from FY11 to FY14.

| Metric ID | Metric Name | 2011 | 2012 | 2013 | 2014 |
|---|---|---|---|---|---|
| 1f1 | Facilities with Formal Actions | 213 | 166 | 135 | 119 |
| 1f2 | Total Number of Formal Actions at CWA NPDES Facilities | 412 | 342 | 287 | 221 |
| 1g1 | Number of Enforcement Actions with Penalties | 405 | 289 | 285 | 219 |
| 1g2 | Total Penalties Assessed | $497,582 | $417,499 | $328,180 | $210,437 |
| 10a1 | Major facilities with Timely Action as Appropriate | 18.2% | 0% | 0.50% | 0% |

In August 2015, EPA Region 4 conducted a Differential Oversight (DO) review of 33 CWA enforcement files to evaluate if the state's enforcement responses followed NCDEQ's policies and were consistent with EPA's 1989 Enforcement Management System (EMS): NPDES Enforcement Response Policy as well as NCDEQ's EMS plan. Files reviewed included conventional major and minor wastewater facilities, and construction, industrial, and Municipal Separate Storm Sewer System (MS4) stormwater facilities. Of the 33 NPDES files reviewed, EPA found that the State issued numerous NOVs and/or Civil Penalty Assessments (CPAs) to a facility with no return to compliance. In addition, EPA observed multiple construction stormwater inspections with non-compliance noted at a single facility without any enforcement response. A summary of the key findings is outlined below.

**Outstanding issues:**

**Element 2 – Inspections**

**Metric 6a - Inspection reports are not complete and sufficient to determine compliance at the facility**

EPA reviewed inspection reports for completeness and as the foundation for any State enforcement response. Two major observations were noted:

- Construction stormwater: The State's inspection reports often identified areas of noncompliance; however, once an area of noncompliance was identified, the subsequent inspection report did not note if that area of noncompliance had been addressed by the facility.
- MS4: The four MS4 audit/inspection reports reviewed contained little to no information to make a compliance determination; only the date and time of the inspection and the facility name and location were included in the reports. All four inspections were done on the same day during the same time frame.

> "Three objectives should be met during a routine compliance inspection [and] the inspection should be performed in a manner designed to: (1) Determine compliance status with regulations, permit conditions, and other program requirements; (2) Verify the accuracy of information submitted by permittees; and (3) Verify the adequacy of sampling and monitoring conducted by the permittee." [9]

- Based on the content of the inspection reports, the Region does not consider these inspections to meet the requirements of EPA's Inspection Manual for a Compliance Evaluation Inspection or an MS4 audit.[10]

Next Steps:

- Develop and implement procedures to ensure complete and sufficient inspection reports for both wastewater and stormwater programs.
- Conduct inspector training for state inspectors to ensure base knowledge and consistent implementation of inspection procedures.

**Element 4 – Enforcement**

**Metric 9a - Enforcement responses do not demonstrate a return to compliance**

The DO review found that in the 24 files in which a return to compliance was evaluated, 10 of the files were determined to demonstrate a return to compliance (42%).

**File Metric 10b - Enforcement responses do not address violations in an appropriate manner**
The DO review evaluated 26 files for appropriate enforcement responses; eight of those files were determined to have an appropriate enforcement response. Four of the 26 files contained formal enforcement actions.

The SRF Round 3 review previously identified File Metrics 9a and 10b as Areas for State Improvement, and EPA recommended the use of timely and appropriate formal enforcement actions to promote a return to compliance. In its "National Guidance for Oversight of NPDES Programs," EPA defines a formal action as "one that requires actions to achieve compliance, specifies a timetable, contains

[9] NPDES Compliance Inspection Manual, p. 1-1.
[10] MS4 Program Evaluation Guidance, p. 23

consequences for noncompliance that are independently enforceable without having to prove the original violation, and subjects the person to adverse legal consequences for noncompliance."[11]

The State often does well at notifying a permittee of violations, a critical first step toward compliance; however, as observed during the review, the State often issued numerous NOVs and/or CPAs, which are both informal actions[12], to a facility with no apparent return to compliance. For example, the Hermitage House Rest Home Wastewater Treatment Plant (WWTP) was issued 22 NOVs and 15 CPAs in one fiscal year with no return to compliance. Lake Lure WWTP and Phillips Plating Company are other examples where numerous informal actions were issued and no return to compliance was achieved. In the six construction stormwater files, EPA observed that the State either issued numerous Inspection Reports indicating noncompliance with no enforcement response and no apparent return to compliance; or the State issued a NOV with a return to compliance date-certain and then documented continued noncompliance after that compliance date had passed, with no additional enforcement follow-up.

Four files reviewed contained formal enforcement actions, such as a Special Order on Consent (SOC) or a Settlement Agreement. One file, Richlands WWTP, was issued a Special Order on Consent; however, the facility failed to meet the established milestone dates and only returned to compliance when the NPDES permit was rescinded and a new WWTP came online.

As mentioned previously, the State issued numerous NOVs and/or CPAs with no apparent escalation to the next level of enforcement response. While Tier 3 of the Tiered Enforcement Policy allows for a "Notice of Recommendation for Enforcement Action", it does not describe what that enforcement action would be. There also appears to be little or no follow-up once the State has already issued numerous CPAs under Tier 3. For example, eight files reviewed had more than one CPA issued per year to a facility. While penalizing the source may be appropriate as an initial response to promote compliance, the state may need to take additional measures to ensure that sources with repeated violations are brought back into compliance.

Five of the six construction stormwater files reviewed were determined to have numerous inspections with noncompliance with no NPDES enforcement response. One construction stormwater file, ONSLO-2012-081, had eight consecutive inspections documenting noncompliance without an NPDES enforcement response. Another construction stormwater file, WAKE-2014-046, had an NOV with a return to compliance date-certain, and a subsequent inspection noted additional violations, but there was no escalation of enforcement response or additional action.

The move of the stormwater enforcement programs from the Division of Water Resources (formerly the Division of Water Quality) to the Division of Energy, Minerals, and Land Resources appeared to result in some confusion related to enforcement protocols. EPA maintains that the expectations outlined in the CWA MOA and the ERP should remain unchanged despite the organizational changes.

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[11] National Guidance for Oversight of NPDES Programs, p. 19

[12] The 2011 Division of Water Quality (DWQ) EMS lists NOVs and CPAs as examples of informal enforcement actions in Table 1. DWQ NPDES Program Enforcement Response Guide

Next Steps for Enforcement:

- Develop and implement enforcement actions that meet EPA's definition of formal enforcement and promote a return to compliance for both wastewater and stormwater facilities
- Revise the EMS to incorporate changes resulting from the NCDEQ reorganization (i.e. moving stormwater enforcement program to the Division of Energy, Minerals, and Land Resources), and to address the Tiered Enforcement Policy, such that implementation of NC enforcement programs meet EPA policy expectations.

## Element 5 – Penalties

**Metric 11a - Penalty calculations do not document and include gravity and economic benefit:** Similar to the findings of the Round 3 SRF Report, most of the files did not contain penalty calculations. Of the eleven files reviewed in which penalty calculations were evaluated, two files were determined to include penalty calculations (18%).

**Metric 12a – No documentation of the rationale for difference between initial penalty calculation and final penalty**

The files did not regularly document the rationale for the difference between the initial and final assessed penalty. In several files, the facility provided documentation while requesting a remission of the penalty, but the State did not document the rationale for remitting the penalty. Of the eight files reviewed in which documentation of the rationale for the difference between the initial and final penalties were evaluated, only two files included the documentation (25%).

**Metric 12b – No documentation showing penalties were collected**
Most of the files did not contain evidence of penalty collection. Of the ten files reviewed in which penalty collection was evaluated, only two files were determined to include penalty collections (20%).

Next Steps for Penalties:

- Develop and consistently implement procedures for calculation of gravity and economic benefit
- Document both gravity and economic benefit calculations in the file
- Evaluate whether any economic benefit (delayed or avoided costs) was gained in each case and document specific rationale, even in cases with no economic benefit realized
- Develop and implement procedures to document the rationale for differences between the initial and final assessed penalties
- Develop and implement procedures to document the evidence of penalty collection.

Resource Conservation and Recovery Act

**Background:** In the spring of 2015, EPA Region 4 conducted a file review of the NCDEQ RCRA program to evaluate if the state's enforcement responses were consistent with EPA's Hazardous Waste Enforcement Response Policy. In 100% of the 22 files reviewed, the DEQ RCRA program correctly identified violations, took appropriate enforcement, and ensured that the violators returned to compliance.

**Outstanding issues:**

**Element 5 – Penalties:**

During all three rounds of the SRF, EPA has identified economic benefit in penalties as an Area for State Improvement. The NCDEQ RCRA program did not have the legal authority to assess and collect economic benefit in penalties during this time. In response to the Round 3 SRF recommendation, the state sought and, in 2013, was granted the authority to recover the economic benefit of noncompliance in RCRA penalty assessments from the NC legislature. EPA applauds these efforts.

During the differential oversight file review, EPA recommended that when the state determines that economic benefit is not realized that a rationale for that decision be provided in the penalty documentation. Now that the state has the authority to recover economic benefit, EPA recommends that an analysis of the potential for economic benefit from noncompliance be conducted for each penalty action.

Next Steps:

- Fully evaluate whether any economic benefit from noncompliance was gained in each case (e.g., through delayed or avoided costs);
- As outlined in the RCRA Civil Penalty Policy, calculate economic benefit where appropriate using the BEN model or other method that produces results consistent with national policy;
- When no economic benefit is assessed in the penalty calculation, document the specific rationale for why no economic benefit was realized.

# North Carolina Differential Oversight
## Summary of Background and Findings

- Each year, the Office of Enforcement Coordination (OEC) evaluates state performance trends based on the SRF metrics in the Annual Data Metrics Analysis (ADMA).
- The FY14 ADMA for North Carolina revealed significant downward trends over the last four years (FY11 – FY14) in several key enforcement related metrics, with a precipitous drop occurring between FY13 and FY14.
- The drop in enforcement outputs and outcomes coincides with the issuance of the "Tiered Enforcement Policy" developed in October 2011 in response to North Carolina's Regulatory Reform Act of 2011.
- Based on the performance trend drops across the media programs, Region 4 notified North Carolina Department of Natural Resources that additional review was needed to determine if the State was meeting their delegated responsibilities in regard to compliance assurance implementation. To advance EPA's understanding of NCDENR's programs, review teams consisting of Office Enforcement Coordination (OEC) staff and representatives for the Clean Air Act, Resource Conservation and Recovery Act and the Clean Water Act conducted a differential oversight review of records of recent violations and enforcement activities. These reviews were completed in FY15 and the facts that underlie the results were shared with the State.
- These efforts are designed to remain consistent with the agency's *National Strategy for Improving Oversight of State Enforcement Performance.*
- The following key findings were identified in two of the three media, specifically the Clean Air Act & the Clean Water Act.
    - *Enforcement actions that do not return sources to compliance*
    - *Penalties for which economic benefit is not adequately calculated or assessed*
    - *Chronic non-compliance not addressed through appropriate escalation and deterrence*
    - *Inaccurate determination/failure to report FRVs and HPVs*
    - *Inconsistent application of state enforcement policies*

## Hines, Andrea

**Subject:** FW: Email pertaining to FOIA 18-010711 FW: DEMLR's Initial Comments Regarding May 2016 EPA Differential Oversight Review Report
**Attachments:** DEMLR Stormwater Response to EPA Differential Oversight Letter of 5.10.2016.docx

**From:** Gordon, Scott
**Sent:** Friday, August 19, 2016 9:58 AM
**To:** Ireland, Laurie <Ireland.Laurie@epa.gov>; Ireland, Sean <Ireland.Sean@epa.gov>; Diaz, Denisse <Diaz.Denisse@epa.gov>; O'Lone, Dan <Olone.Dan@epa.gov>; Janovitz, Sara <Janovitz.Sara@epa.gov>
**Cc:** Sisario, Kelly <Sisario.Kelly@epa.gov>
**Subject:** Fw: DEMLR's Initial Comments Regarding May 2016 EPA Differential Oversight Review Report

For your review

---

**From:** Davis, Tracy <tracy.davis@ncdenr.gov>
**Sent:** Friday, August 19, 2016 9:55 AM
**To:** Gordon, Scott
**Cc:** Vinson, Toby; Bennett, Bradley
**Subject:** DEMLR's Initial Comments Regarding May 2016 EPA Differential Oversight Review Report

Scott,

Many thanks to you and your staff for meeting with us to discuss the above report on August 17, 2016. As promised, attached are DEMLR's initial responses to the applicable elements noted in the report (these are obviously supplemented by the comments we provided during our August 17 call).

Further information (copies of the various documents we discussed showing how we implement our enforcement program in NC) is being compiled and we hope have it to you by the end of next week.

Thanks, Tracy

**Tracy E. Davis, PE, CPM**

Director

Division of Energy, Mineral, and Land Resources

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# DEMLR Responses to the Stormwater Aspects of EPA's Differential Oversight Letter dated May 10, 2016:

## Element 2 – Inspections

- Construction stormwater – DEMLR has been using a combined stormwater and erosion and sedimentation control inspection report to document compliance with the Construction Stormwater General Permit and approved erosion and sedimentation control plan (one combined inspection with one combined report by one inspector). In addition, since our November discussions with EPA, DEMLR has implemented changes in our program to begin utilizing a combined NOV for construction projects. This process assures that any time there is a violation on a site under our State Sedimentation Pollution Control Act (SPCA) that we are also issuing an NOV under the Construction NPDES program. Regional staff have been utilizing this process and the combined NOV since the end of 2015. If a delegated local government erosion and sedimentation control program issues an NOV under the SPCA, DEMLR has been issuing an NOV under the Construction NPDES program to ensure appropriate and consistent enforcement across all regulatory regimes.
- MS4 Inspections –DEMLR undertakes extensive efforts in our MS4 programs to stay in contact with the local governments and continue to provide updated information on programs goals and expectations. We accomplish this through statewide meetings coordinated through local government and industry groups (NC APWA, NC SWANC, etc.). With resource constraints, like all states have, we have looked at alternatives to continue to have these contacts and also provide inspection/audits to meet EPA requirements by focusing inspection/audits on key areas. We will review our efforts here to assure that we can meet program requirements more completely. We would also note that we have been keeping EPA updated on efforts DEMLR has been working on with local government partners to come up with a sustainable process for MS4 program oversight. We feel there are models other than the traditional inspection/audit process that would better serve our program in the future. DEMLR has recently provided an early draft of information on our Sustainability program effort to Region IV staff.
- Training – One major problem area in the national programs for NPDES stormwater is the lack of stormwater specific training information for the state permit writers and inspectors. Training information is largely geared toward Wastewater aspects. DEMLR has worked with EPA Region IV staff to begin a process of training for our regional office inspectors. Region IV staff were in NC in February 2016 to conduct industrial stormwater inspections and to provide training and convey expectations to our regional staff. We anticipate further training in the late summer/early fall for construction stormwater inspections.

## Element 4 – Enforcement

- Construction Stormwater – As noted under Element 2, DEMLR has worked to institute a consistent use of a combined inspection report and NOV framework across the state and will continue with training efforts with the involvement of Region IV staff. DEMLR will also review overall enforcement protocols and work with DWR staff on any needed review and update of systems and policies to ensure data is accurately entered and maintained in the ICIS system and that "next steps" in enforcement are pursued as appropriate. It should be noted that when minor deficiencies are noted during the combined stormwater and erosion and sedimentation control inspections, a deadline for compliance is generally given within the inspection report (NODs are not used in these programs) to prompt timely compliance. If a portion of the deficiencies are addressed and the remaining deficiencies are not completed by the deadline, are underway, and will be resolved within a short period of time after the given deadline, DEMLR does not always pursue the next tier of enforcement (NOV). The next tier of enforcement (NOV and possibly an initial civil penalty) is used for projects that have major environmental issues still outstanding that were not resolved by the given deadlines or require immediate enforcement action regardless of the

compliance deadline given. The move from an NOV to the next tier of enforcement (civil penalty and/or injunctive relief) is evaluated in the same manner as previously indicated in that the degree and extent of harm and the timeliness and effectiveness of the violator's actions to gain compliance are considered.

- Timely and Appropriate Follow-up - DEMLR has provisions in each inspector's work performance plan that they are to track and inspect any sites that have been issued an NOV or been referred for enforcement every two weeks and elevate the enforcement as necessary based upon their findings. Regional supervisors will work with their staff to more closely manage this aspect to ensure that timely and appropriate enforcement actions are taken until the subject sites are brought back into compliance with both programs.

**Element 5 – Penalties**

- Documentation of Enforcement and Rationale for Settlement – As enforcement actions are initiated by the regional office but processed for civil penalties and injunctive relief through case closure by the Raleigh Central Office, a separate enforcement case file is located in the Raleigh Central Office that contains all the documentation generated after issuance of the NOV showing the escalation of enforcement for the project in question (some of this supplemental enforcement related information may not be located in the regional office files). This Raleigh Central Office case file contains information such as the civil penalty calculation worksheet (which includes consideration of economic benefit among other factors), memos and phone logs of conversations between Central staff and Attorney General's Office attorneys regarding preparation for upcoming contested case hearings and consideration of settlement offers, rationale for settlement of penalties, settlement agreement negotiations and final documents, and payment of the civil penalties or actions taken by our attorneys to collect outstanding penalties. DEMLR does acknowledge that while we conduct combined inspections and issue combined NOVs, we have tended to enforce violations at project sites under the SPCA Act due to sedimentation issues that also resulted in water quality impairment. DEMLR will focus on those sites where water quality violations can be substantiated and pursue enforcement under the Construction Stormwater General Permit with respect to civil penalties and injunctive relief so that there is a better distribution of enforcement cases between the two programs.
- Relocation of Stormwater Program from DWR to DEMLR - DEMLR believes that the relocation of the Stormwater Program from DWR to DEMLR has added efficiencies to the implementation of both programs by allowing DEMLR to integrate the inspection and enforcement programs. As a result, this change has improved communication between the programs and enhanced (not reduced) opportunities to streamline enforcement by allowing DEMLR (rather than two separate agencies) to determine which program is best suited to pursue enforcement action based upon the program that has sufficient documentation to substantiate the violations and ultimately prevail in court if challenged.

## Hines, Andrea

**Subject:** FW: Email pertaining to FOIA 18-010711 FW: NC DENR - CWA State Differential Oversight file review
**Attachments:** NC file selection for diff oversight.docx

**From:** Mikulak, Ron
**Sent:** Thursday, July 2, 2015 12:58 PM
**To:** (jeff.poupart@ncdenr.gov) <jeff.poupart@ncdenr.gov>
**Cc:** (vanessa.manuel@ncdenr.gov) <vanessa.manuel@ncdenr.gov>; Ireland, Laurie <Ireland.Laurie@epa.gov>
**Subject:** RE: NC DENR - CWA State Differential Oversight file review

Jeff – as a follow-up to my earlier email on our planned visit to NC during the week of 8/3 to conduct files reviews in support our CWA differential oversight review, the list of facilities that we would like to look at is attached. This list includes majors, non-majors, construction stormwater, industrial stormwater and MS4s.

Please contact me with any questions about this list or the timing of the file review.

Thanks – Ron

Ronald J. Mikulak
Water Technical Authority
Office of Enforcement Coordination
EPA - Region 4

Email: mikulak.ronald@epa.gov
Phone number: 404-562-9233

**From:** Mikulak, Ron
**Sent:** Monday, June 29, 2015 12:06 PM
**To:** (jeff.poupart@ncdenr.gov)
**Cc:** (vanessa.manuel@ncdenr.gov); Ireland, Laurie; Diaz, Denisse; Sisario, Kelly
**Subject:** NC DENR - CWA State Differential Oversight file review

Jeff,

As you know, EPA has initiated a review of DENR's FY2014 compliance and enforcement actions for the CAA, CWA and RCRA programs. These state differential oversight reviews were reiterated by Scott Gordon during the State Water Directors' Meeting in Atlanta in April. The RCRA and CAA file review portions of these reviews have already been conducted. As Laurie Ireland has also mentioned in discussions with Vanessa Manuel and Bradley Bennett recently, we are planning to do the CWA portion soon.

Laurie and I are planning to come to your office during the week of August 3rd to conduct the file review in support of this differential oversight review. It would be similar to the SRF review, but would have a greater focus on the State's enforcement response to noncompliance. In some cases, we would also need to see the recent inspection reports to better understand the context of the State's enforcement response. We would, however, not be looking at SRF elements related to data accuracy, inspection report timeliness, and grant commitment, etc.

Also - in 2011, DENR established a "Tiered Enforcement Policy" that specifies a three-tiered approach for responding to environmental violations. This file review will be used to ensure that DENR's new enforcement

policy is consistent with the enforcement response policies set forth in other State or EPA policies and guidance.

I will send you a list of the facilities to be included in this review in the next day or so.

Please contact me if there are any questions or concerns.

Thanks - Ron

Ronald J. Mikulak
Water Technical Authority
Office of Enforcement Coordination
EPA - Region 4

Email: mikulak.ronald@epa.gov
Phone number: 404-562-9233

List of NC Facilities for CWA Differential Oversight Review (July 2015)

| | ID Number | County | Universe | Permit Components | Inspections | Violation | Single Event Violations | SNC | Informal Actions | Formal Actions | Penalties |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | NC0051969 Hermitage House Rest Home WWTP | New Hanover | Non-Major | | 1 | Yes | 1 | Category 1 | 22 | 15 | $14,831 |
| 2 | NC0023230 Richlands WWTP | Onslow | Non-Major | POTW | 5 | Yes | 0 | Category 1 | 10 | 7 | $14,362 |
| 3 | NC0024244 Long Creek WWTP | Stanly | Major | Biosolids, POTW, Pretreatment | 3 | Yes | 0 | SNC | 4 | 6 | $11,597 |
| 4 | NC0020389 Benson WWTP | Johnston | Major | POTW, Pretreatment | 2 | Yes | 1 | SNC | 8 | 4 | $10,240 |
| 5 | NC0060534 Brevard WWTP | Transylvania | Major | POTW | 1 | Yes | 0 | SNC | 8 | 4 | $9,090 |
| 6 | NC0047091 Silver Maples Community | Cabarrus | Non-Major | | 0 | Yes | 0 | Category 1 | 5 | 3 | $1,422 |
| 7 | NC0060224 Jonas Ridge Adult Care Facility WWTP | Burke | Non-Major | | 0 | Yes | 0 | Category 1 | 7 | 3 | $1,380 |

| | ID Number | County | Universe | Permit Components | Inspections | Violation | Single Event Violations | SNC | Informal Actions | Formal Actions | Penalties |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 8 | NC0025381 Lake Lure WWTP | Rutherford | Non-Major | POTW | 0 | Yes | 0 | Category 1 | 14 | 2 | $3,045 |
| 9 | NC0026573 Catawba River PCF | Burke | Major | Biosolids, POTW, Pretreatment | 0 | Yes | 0 | SNC | 3 | 1 | $15,000 |
| 10 | NC0031879 Corpening Creek WWTP | McDowell | Major | Biosolids, POTW | 0 | Yes | 0 | SNC | 5 | 1 | $0 |
| 11 | NC0036641 Fletcher Academy, Inc. | Henderson | Non-Major | | 0 | Yes | 0 | Category 1 | 12 | 1 | $648 |
| 12 | NC0000892 Arclin USA | Chatham | Major | | 1 | Yes | 0 | SNC | 0 | 0 | $0 |
| 13 | NC0001881 Phillips Plating | Craven | Major | | 1 | Yes | 0 | SNC | 3 | 0 | $0 |
| 14 | NC0006351 Chemical Specialties | Cabarrus | Major | | 0 | Yes | 0 | SNC | 0 | 0 | $0 |
| 15 | NC0024210 East Side WWTP | Guilford | Major | Biosolids, POTW, Pretreatment | 2 | Yes | 0 | SNC | 1 | 0 | $0 |

| | ID Number | County | Universe | Permit Components | Inspections | Violation | Single Event Violations | SNC | Informal Actions | Formal Actions | Penalties |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 16 | NC0026751 Windsor WWTP | Bertie | Major | POTW | 0 | Y es | 0 | SNC | 0 | 0 | $0 |
| 17 | NCS000005 Umicore Autocatalyst Recycling | Robeson | Non-Major | | 1 | No | 0 | No | 0 | 0 | $0 |
| 18 | NCS000202 United States Gypsum Co | | Non-Major | | 1 (FY13) | No | 0 | No | 0 | 0 | $0 |
| 19 | NCS000158 Cascade Die Casting/Atlantic | | Non-Major | | 1 (FY13) | Yes | 1 | No | 1 | 0 | $0 |
| 20 | NCS000077 Dow Corning Corporation | | Non-Major | | 1 | No | 0 | No | 0 | 0 | $ |
| 21 | NCS000043 Loxco | | Non-Major | | 1 (FY13) | No | 0 | No | 0 | 0 | $0 |
| 22 | NCS000023 Good Earth Horticulture, Inc. | | Non-Major | | 1 (FY13) | Yes | 1 | No | 1 | 0 | $0 |
| 23 | NCS000522 US Polymers | Mecklenburg | Non-Major | Storm Water Industrial | 1 (FY13) | Yes | 1 | No | 1 | 0 | $0 |
| 24 | NCS000247 Winston Salem MS4 | | MS4 | | 1 | | | | | | |
| 25 | NCS000248 Greensboro MS4 | | MS4 | | 1 | | | | | | |

| | ID Number | County | Universe | Permit Components | Inspections | Violation | Single Event Violations | SNC | Informal Actions | Formal Actions | Penalties |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 26 | NCS000423 Concord City - Small MS4 | | MS4 | | 1 | | | | | | |
| 27 | NCS000427 Cary Town - Small MS4 | | MS4 | | 1 | | | | | | |
| 28 | ONSLO-2012-071 | | Construction Stormwater | | | | | | | | |
| 29 | ONSLO-2012-081 | | Construction Stormwater | | | | | | | | |
| 30 | ONSLO-2012-084 | | Construction Stormwater | | | | | | | | |
| 31 | TRANS-2014-003 | | Construction Stormwater | | | | | | | | |
| 32 | HOKE-2013-045 | | Construction Stormwater | | | | | | | | |
| 33 | WAKE-2014-046 | | Construction Stormwater | | | | | | | | |