

US EPA ARCHIVE DOCUMENT

**Appendix D**

**Inspection and Enforcement Review Protocol for CAFOs**

**Adapted from the**

***State Review Framework CWA Plain Language File Review Metrics Guide  
Final: October 10, 2008***

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## **1. Purpose of the Guide**

The purpose of the SRF Plain Language Guide (the “Guide”) is to provide guidance for review of the file metrics for the CWA/NPDES, enforcement and compliance program, under the State Review Framework. The Guide will help EPA reviewers to conduct the reviews in an efficient, effective and consistent manner. The Guide provides specific guidance on evaluating each of the metrics, including detailed reference to applicable agency policy, guidance or regulation. The Guide contains sufficient information to ensure that reviewers apply consistent interpretation of data derived from the data and file reviews, and consistently evaluate those data against applicable goals. The Guide has been adapted for use in the review of Illinois EPA’s inspection and enforcement programs for Concentrated Animal Feeding Operations (CAFOs).

## **2. Review Process**

The Region will select the files for review based on facilities previously inspected by EPA Region 5, and based on data provided to them by the Illinois EPA. It is suggested that reviewers conduct the review using the following steps:

- Start with the list of files selected for review during the on-site visits.
- Use the SRF CWA Plain Language Guide, as adapted, as a reference for additional explanation of the File Review Metrics.
- During the on-site review, discuss issues arising from the files with the state in order to understand those issues.
- Use the File Review Summary Form to array the data and to calculate the value for each metric.
- Use the File Review Analysis Form to display the File Review Metrics and to write out the initial findings.
- Initial findings should be developed subsequent to the completion of all on-site visits.

The reviewers should use the tools (i.e., File Review Checklist, and the File Review Analysis Form) that were developed to assist in documenting and retaining information obtained through the file review. The Summary Form may be modified by the reviewers to suit their needs. The only requirement is that the information obtained during the on-site file review be retained in an organized fashion as part of the review record.

## **3. Review Considerations**

In conducting a review of a state (Illinois EPA), there are several general concepts or principles to be aware of and consider. The following is a brief discussion of several of these concepts.

### **3.1 Both State and Federal Guidance are important**

While most of the goals against which a state will be evaluated are specified at the national levels, it is important to review a state against their own guidance as well. This is necessary for a variety of reasons. First, the national goal may be expressed as a range of acceptable responses, and the state may have developed guidance that more narrowly limits these responses. Additionally, the national guidance may require only that a state establish a standard (for example, current guidance for the NPDES program requires that a state establish a time frame for completing an inspection report) but not actually provide the standard. In such cases, the reviewer will need to ensure that the state has developed the required standard, and use that standard to evaluate state performance. Finally, the State may have developed an enforcement management system in consultation with EPA which may have become, due to evolution of national guidance, out of date or inaccurate. In such cases, the reviewer should make appropriate recommendations for revision of the state guidance.

### **3.2 There is a difference between areas of discussion and recommendations**

Reviewers must be careful to ensure that the results of a single file review do not unduly influence overall findings and recommendations. Where deficiencies are observed, reviewers should consider both the magnitude of the deficiency, and the frequency with which it was observed, when developing findings and recommendations. This is important in order to ensure that recommendations for improvement are proposed for only where needed. Other findings may not warrant recommendations but should nonetheless be discussed with the state and noted in the final report. For example, if the state has established a 45 day deadline for completing inspection reports, and a small number are completed after that timeframe, this should be noted to the state who may want to monitor this issue, but for the purposes of the SRF, the percent of late reports is too small to warrant a recommendation

### **3.3 State specific issues may be considered when conducting the file review**

There may be a variety of issues that affect a state's work. These issues may include: 1) resources, e.g., hiring freezes or funding to operate the program; 2) legal limitations, e.g., a lack of administrative penalty authority; and 3); retention of knowledgeable staff. If patterns appear in the data related to such issues that appear to affect state performance under any given metric the Region should identify and discuss them with the state. However, these issues would not need to be discussed in the report findings unless they appear to contribute to deficiencies identified through the review. Additionally, if there is a pattern of a state performing particularly well, the Region may wish to further investigate it to see if it may be a "good practice" that should be encouraged to be adopted by other states where possible.

### 3. Sources

The following sources are referenced in the metrics discussion which follows.

1. *The Enforcement Management System, National Pollutant Discharge Elimination System (Clean Water Act)*, 1989
2. Memo “Clarification of NPDES EMS Guidance on Timely and Appropriate Response to Significant Noncompliance Violations” from Mark Pollins, Director Water Enforcement and Betsy Smidinger, Acting Director Enforcement Planning, Targeting , May29, 2008
3. *Policy Framework for State/EPA Agreements*, August 1986, as revised
4. *Permit Compliance System (PCS) Policy Statement*, August 31, 1985, as amended in 2000.
5. Memo “ICIS Addendum to the Appendix of the 1985 PCS Policy Statement” from Michael M Stahl, Director, Office of Compliance and James A Hanlon, Director, Office of Wastewater Management, December 7, 2007
6. Memo “Final Single Event Violation Data Entry Guide for the Permit Compliance System (PCS) from David A. Hindin, Director, Enforcement Targeting and Data Division, May 22, 2006.
7. *Guidance for Preparation of Quarterly and Semi-Annual Noncompliance Reports (Per Section 123.45, Code of Federal Regulations, Title 40)* March .13, 1986 (this document is also included as an attachment to Source 1)
8. *Interim Clean Water Act Settlement Penalty Policy*, March 1, 1995.
9. Memo, “Clean Water Act National Pollutant Discharge Compliance Monitoring Strategy for the Core Program and Wet Weather Sources” from Granta Y. Nakayama, Assistant Administrator, October 17, 2007.
10. Memo “Clarification of NPDES Guidance on Timely and Appropriate Response to Significant Noncompliance (SNC) Violations, from Mark Pollins, Director, Water Enforcement Division, July 17, 2007.
11. Memo “The Office of Enforcement and Compliance Assurance’s Agency Response to the Evaluation Report: *Better Enforcement Oversight Needed for Major Facilities with Water Discharge Permits in Long-term Significant Noncompliance* (Report No. 2007-P-00023) from Granta Y Nakayama, Assistant Administrator, Aug 14, 2007.
12. Memo “Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements”, from Steven A. Herman, Assistant Administrator, June 23, 1993 (this document contains an amendment to source 3)
13. *PCS Quality Assurance Guidance Manual*, August 28, 1992
14. The Code of Federal Regulations including 40\_CFR 123.26(e)(1), 40\_CFR 123.26(e)(2), 40\_CFR 123.26(e)(5), and 40\_CFR 123.45(c).

## **5. Information needed to complete the analysis of the metrics**

In addition to the sources identified above, the reviewers will need the following documents prior to commencing the review of the metrics.

1. A pull of the data metrics for the program for the year under review. Note that as most CAFO facilities in Illinois are minor facilities that may or may not be permitted, data may not be available in OTIS.
3. Relevant state policy, guidance and regulation.
4. Environmental Performance Partnership Agreements, or related grant agreement documents, for the period under review (Oct. 1999-Oct. 2009).
5. Information on inspection coverage for CAFOs.
6. Access to relevant state databases. Increasingly, states are creating electronic records, rather than paper records. Where this is the case for files selected for review, arrangements should be made with the state, to have temporary access to the electronic databases. It may be helpful to have arranged for state personnel to be available at the time of the file review, to assist with operating this database, or locating relevant records
7. In certain cases, penalty calculations and penalty procedures have not been made available to reviewers. Reviewers should clarify before arriving for the file review, that these items will be made available (to the extent that they exist). Where the state declines to provide these items, this should be escalated immediately, and resolved prior to the file review. The basis for requesting this information is found in the appendix to Source 12. Page 2 of the appendix sets forth the expectation that state penalty procedures will be made available to US EPA and the expectation that case records be made available to USEPA is found on page 8 of the attachment. Recordkeeping is defined to include “documentation of the penalty sought”.

## **6. Analysis of the Metrics**

Several metrics used routinely in the SRF are not applicable to this review, as most CAFO facilities in Illinois are minor facilities that may or may not be permitted; inspection and enforcement data for Illinois CAFOs may not be reflected in OTIS; and the required data for review may not be available from Illinois EPA. Metrics used are discussed below. For consistency with SRF review guidance, metrics used have retained the numbering used in the SRF CWA Plain Language Guide of October 2008.

**Element 4 – Completion of Commitments.** Degree to which all enforcement and compliance commitments in relevant agreements (i.e., EnPPAs, CMS plans, authorization agreements, etc.) are met and any products or projects are completed.

Review of this metric will be a function of three factors: 1) the review period, 2) the EnPPAs for the review period, and 3) the status of the state’s compliance monitoring strategy (this is an inspection strategy developed by the state and consistent with the Federal Compliance Monitoring Strategy). (See source 9.)

In addition, the reviewers will have to rely on data from the state in reviewing state performance against the applicable CMS as CAFOs do not have fully populated inspection data in OTIS. The state and region will need to define the sources of information to be used for evaluating state compliance prior to conducting the review when feasible, or during the review as necessary.

Reviewers should evaluate CAFO compliance and enforcement related commitments in the state work plan, and the progress the state has made in meeting them. Recommendations should be included as appropriate. This should include commitments/work products in the EnPPAs, state specific CMS plans in accordance with the federal CMS policy, MOAs, MOUs, or other relevant agreements. The CAFO enforcement and compliance commitments should be identified. The purpose of this metric is to determine whether the state agency successfully completed all enforcement and compliance commitments in relevant agreements for the period under review.

Results should be analyzed and discussed in the region's report. Commitments that are not achieved, and have a direct effect on the enforcement and compliance program will be discussed in the region's report.

**Element 5 – Inspection Coverage.** Degree to which state completed the universe of planned inspections/compliance evaluations (addressing core requirements and federal, state and regional priorities).

Element 5 will be discussed in narrative fashion in the resulting review report.

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

**File Review Metric 6a – Inspection reports reviewed.**

**Description of Metric –** Number of inspection reports reviewed.

This metric establishes the universe to be used in calculating the percentages in 6b. It is likely to be a larger number than the number of inspection files reviewed. This is because, in the course of reviewing an enforcement action file, it may be necessary to review a precursor inspection. The reviews of those additional inspections should be included in the evaluation, even when they may have occurred prior to the review year.

**File Review Metric 6b – Inspection reports reviewed that are complete.**

**Description of Metric –** Percent of inspection reports reviewed that are complete.

The Inspection Report Review Guide (Appendix 4) should be completed for each inspection reviewed, and the results summarized. If a state has established additional

requirements for the content of inspection reports, these should be added to the Inspection Report Review Guide. Where all components listed in the Inspection Report Review Guide are present (including those that stem from state requirements) the report is complete. Reviewers should calculate the percent of the number of inspections calculated in metric 6a that are complete. If certain of the attributes listed in the review guide are routinely missing, these should be specifically mentioned. It may be helpful in discussions with the state if reviewers calculate the percent of the reports reviewed for which such individual attributes are missing, as well as the overall percent of reports that are complete.

**File Review Metric 6c** - Inspection reports reviewed that provide sufficient documentation to determine compliance at the facility.

**Description of Metric** – Percent of inspection reports reviewed that provide sufficient documentation to lead to an accurate compliance determination. This information is extracted from the inspection report review guide. Where inspection reports are determined to be complete by using the review guide, the report should provide sufficient information to document compliance at the facility. If a report is not complete, but the information reviewed through Parts II and III of the review guide are determined to be complete, sufficient documentation is present to determine compliance, and these reports, though lacking in certain required information, may provide sufficient information to determine compliance. For any potential noncompliance, the inspection report should include information that links permit requirements and/or a regulatory requirements to the observations made by the inspector, and provide the documentation (such as a report or record, a sample, a photograph, or a statement by facility personnel) supporting the observations. The documentation should allow the reviewer to determine whether there is sufficient information to lead to an accurate compliance determination. Reviewers should calculate the percent of reports identified in metric 6a that provide sufficient information to determine compliance. Where any inspection reports reviewed do not provide sufficient documentation to determine compliance, this finding should be discussed with the state. The discussion should address the types of information needed in the reports, and a plan for documenting the information that will be added to future inspection reports. It is important to review this finding with the state at the time the file review is being conducted in order that additional illustrative inspection reports can be reviewed, if necessary.

**File Review Metric 6d** – Inspection reports completed within the prescribed time frame.

**Description of Metric** – Percent of inspection reports reviewed that are timely.

There is no national standard for timeliness of CWA inspection report completion, so the criteria for timeliness contained in the state EMS should be used. Where the state EMS does not contain a timeframe, the reviewers should use a threshold of thirty days for timeliness evaluations (this is the timeframe that EPA has recommended for its own reports) and consider making a recommendation that the State supplement the EMS to establish a timeframe, particularly if the average time to complete reports is more than 30

days. In most cases, the EMS deadlines for completing the reports contain caveats, recognizing that there may be valid reasons for not issuing a report, or for issuing the report beyond the established deadline. In these instances, where a report has not been written, or has been completed after the prescribed deadline, the reviewers should consider the particular circumstances that resulted in the delay, and discuss them in the report. If reports that are not completed within the state's prescribed timeframe meet the exceptions provided in state guidance they should nonetheless be considered timely.

In addition to simply recording the percent of reports that were timely, reviewers may also find that discussions with the state are enhanced if mean, average and maximum timeframes are computed. This is helpful because, for example, finding that fifty percent of the reports were late but the average length of time to complete reports was less than the time allotted in state guidance should result in a different recommendation than a finding that fifty percent of the reports were late, and the average length of time to complete them exceeded the allotted time by two weeks. One issue that has arisen is how to factor in results for reports that are undated. While there is no right answer to this question, in order to ensure consistent interpretation of findings, the following guidance should be used. Where a report is undated, but the report has been sent to the permittee, or others, it is appropriate to use the date on the cover letter to evaluate the timeliness of the report. Where the report is undated and there is no other documentation that might give evidence to the date by which the report was completed, this should be noted, the report should not be considered timely, and that report should be counted in the denominator, but not the numerator, in calculating the percentage of reports that are timely.

While it will be useful for the state to be provided the findings under this metric, recommendations resulting from the findings should be considered carefully given that there is not a prescribed timeframe provided in national guidance. As noted above, if based upon the file reviews, the timeframe for report completion averages more than 30 days, and the state has not developed its own definition of timeliness, it may be appropriate to recommend that the state do so.

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

**File Review Metric 9a** – Enforcement responses reviewed.

**Description of Metric** – Number of formal/informal enforcement responses reviewed.

This metric establishes the universe to be used in calculating the percentages in 9b and 9c. NOTE: This number is not necessarily the same as the number of enforcement files reviewed. This is because, in the course of reviewing an inspection file, it may be necessary to review a subsequent enforcement action. The reviews of those additional enforcement actions should be included in the evaluation, even where they occur after the year under review.

**File Review Metric 9b** – Responses that have returned or will return a source in serious and/or chronic noncompliance to compliance.

**Description of Metric** – Percent of enforcement responses that have returned or will return a source to compliance.

Source 1 states that serious and/or chronic violations should be responded to in a timely and appropriate manner. The responses should reflect the nature and severity of the violation and, unless there is supportable justification, the response must be a formal action or a return to compliance by the permittee. In the rare circumstance when formal enforcement action is not taken, there should be a written record that clearly justifies why the alternative action (*e.g.*, informal enforcement action or permit modification) was more appropriate. This record might take the form of a “violation summary.” (Source 1 Chapter III, Attachment B, p.2 and Source 2, May 29, 2008 Supplemental Memorandum) A formal enforcement action is defined (Source 1 Chapter 2, Page 24) as one which includes injunctive relief. Consequently, the expectation in EPA’s national guidance is that ongoing serious and/or chronic violations that remain unaddressed will be subject to an enforcement action which contains requirements that will return the facility to compliance, if the facility has not already returned to compliance.

**File Review Metric 9c** – Responses that have returned or will return sources with non-serious and/or chronic violations to compliance.

**Description of Metric** – Percent of enforcement responses that have returned or will returned a source with non- serious and/or chronic violations to compliance.

Information Source 1 suggests a range of enforcement responses that may be appropriate for certain categories of violations, and suggests that states should develop similar guidance. Not all of these actions contain injunctive relief, yet they may be effective in returning a facility to compliance. The action taken should be reviewed to determine if it has returned a facility to compliance, or contains a schedule to return the facility to compliance.

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

**File Review Metric 10b** - Enforcement responses reviewed that address serious and/or chronic noncompliance in a timely manner.

**Description of Metric** – Percent of reviewed enforcement responses to address serious and/or chronic noncompliance that are taken in a timely manner.

This file review metric is used to assess the accuracy of data metric 10a. Relevant dates in the file (*e.g.*, date of enforcement action(s), date violations were determined) should be reviewed.

**File Review Metric 10c** – Enforcement actions reviewed that are appropriate to the violations.

**Description of Metric** – Percent of enforcement responses reviewed that address noncompliance are appropriate to the violations.

All serious and/or chronic violations should be responded to in a timely and appropriate manner. The responses should reflect the nature and severity of the violation and, unless there is supportable justification, the response must be a formal action or a return to compliance by the permittee. In the circumstance when formal enforcement action is not taken, there should be a written record that clearly justifies why the alternative action (e.g., informal enforcement action or permit modification was more appropriate). This record might take the form of a “violation summary.” (Source 1 Chapter III, Attachment B, p.2 and Source 2, May 2008 Supplemental Memorandum) The term “formal enforcement action” is defined in Source 1, Enforcement Response Guide, p. 11 and Chapter 2 page 24. Care must be taken to use the criteria in Chapter 2, page 24, rather than the name of a state action, to determine whether or not the action is a formal action. For example, a State NOV may contain all the necessary attributes of a formal action, whereas this is not the case for Federal NOVs. Similarly, a federal penalty order does not contain injunctive relief and therefore is not a formal enforcement action under the agency definition cited above. However, states often are able to issue penalty orders that include injunctive relief. If these orders meet the other criteria specified in the definition of formal enforcement action, then these state penalty orders would be considered formal enforcement actions. Where a state administrative action is not found to be a formal enforcement action, it is often because it does not meet the criterion of being independently enforceable.

Reviewers should determine for all enforcement files involving serious and/or chronic noncompliance at CAFO facilities, whether or not the guidance discussed above has been met. To the extent that the guidance has not been met, and there is no supporting documentation in the file to justify the exception, a recommendation should be made to adhere to the guidance.

**File Review Metric 10d** – Enforcement responses reviewed that appropriately address non- serious and/or chronic violations.

**Description of Metric** – Percent of enforcement responses reviewed that appropriately address non- serious and/or chronic violations.

This metric pertains to violations at minor permittees. The range of acceptable enforcement responses can be found in Chapter II of Source 1. If the state has established similar guidance in an EMS developed in consultation with the Region, the state guidance should be used to evaluate this metric. Each enforcement response that is not related to serious and/or chronic should be evaluated against the relevant guidance.

Particular attention should be paid to repeat or multiple violations of the same nature, as often there is an elevated response that is identified as appropriate in these cases.

Reviewers should calculate the percent of times that enforcement responses are not consistent with the applicable guidance. Where this percent is significant (considering both the size of the percentage, as well as the degree to which the individual responses vary from the recommended response) an appropriate recommendation should be made.

**File Review Metric 10e** – Enforcement responses that address non-serious and/or chronic violations in a timely manner.

**Description of Metric** – Percent of enforcement responses for non-serious and/or chronic violations where a response was taken in a timely manner.

Source 1 (Chapter 2, Appendix B, page 3) states that due to a variety of factors, no specific timeliness criteria have been established for this category of noncompliance. Source 1 (Chapter 2, Page 18) further indicates, however that states should develop appropriate timeframes for response to “obvious noncompliance”. Where a state has developed such timeframes, the timeliness of enforcement actions should be evaluated against the state standards, and recorded in the findings. Where the state has not established such standards, a recommendation to do so should be made.

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

**File Review Metric 11a** – Penalty calculations reviewed that consider and include where appropriate gravity and economic benefit.

**Description of Metric** – Percentage of penalty calculations that consider and include where appropriate gravity and economic benefit.

This metric evaluates the extent to which the state considers economic benefit and gravity in cases where penalties are proposed. EPA’s Supplement to the Policy Framework for State/EPA Enforcement agreements (Source 12) voices an expectation that states recoup at least the economic benefit a violator gained through noncompliance (page 5).

It is EPA policy not to settle for less than the amount of economic benefit of noncompliance, where it is possible to calculate it, unless (1) the benefit component is a *de minimis* amount, (2) a violator demonstrates an inability to pay, (3) there is a compelling public concern, or (4) there are litigation-related reasons for such settlement. State enforcement agencies should calculate and assess the economic benefit of noncompliance in negotiations and litigation except under these circumstances. Where state statutory authority would not specifically authorize recovery of economic benefit,

EPA still expects states to make a reasonable effort to calculate economic benefit and to attempt to recover this amount in negotiations and litigation using the states own criteria.

States are encouraged to use EPA's BEN model, but are not required to do so, as long as the model that they use a consistent alternative model. States are also expected to consider "an additional amount reflecting the seriousness of the violation" and this is referred to as the "gravity component" of the penalty. Finally, Source 12 indicates (page 8) that State and local agencies should include documentation of the penalty sought, including the calculation of economic benefit, where appropriate.

In evaluating whether or not economic benefit was considered, reviewers should determine if documentation exists to show that economic benefit was calculated. If such documentation does not exist, reviewers should determine if documentation exists showing that one of the four exceptions applies. Either of these situations indicates that economic benefit was considered.

Reviewers should record the percent of files that show that economic benefit was considered, the percent that document that gravity considered and the percent that document both were considered. Where the file reviews reveal that these factors have not been considered or that consideration has not been documented a recommendation to document that these factors have been considered should be included.

**File Review Metric 12b** – Penalties collected.

**Description of Metric** – Percent of enforcement actions with penalties that document collection of penalty.

The universe of files reviewed is those files for which penalties have been assessed, and the due date for the payment has passed. Files should be reviewed for documentation that a penalty has been paid. Where a settlement allows for a series of payments, documentation should be provided for all dates that have passed. It may be that the state has an electronic system for documenting payments made; if so, this system should be reviewed. Under Source 12, development of written penalty policies and procedures by states is strongly encouraged. A system for maintaining accurate recordkeeping is a recommended component of these policies. Where the state has no system for documenting payment and such documentation is frequently lacking in the files, a recommendation for establishing a written procedure for doing so should be made.

## **Appendix D-1 List of Acronyms**

**Note:** This is not a complete list of acronyms used in this document. It includes only those acronyms that are not frequently used in the Agency lexicon, or which have multiple meanings in the Agency lexicon.

<b>CMS</b>	Compliance Monitoring Strategy. When the reference is to the National CMS, the reference is to Source 9, above.
<b>EMS</b>	Enforcement Management System. In this document, EMS ALWAYS means Enforcement Management System. Elsewhere in the Agency, the acronym is used in reference to an Environmental Management System; however that term is not used in this document.
<b>EnPPA</b>	Environmental Performance Partnership Agreement.
<b>FFY</b>	Federal Fiscal Year (October 1 through September 30)
<b>SRF</b>	State Review Framework. In this document, SRF ALWAYS refers to the State Review Framework. If reference is made to the State Revolving Fund, that term is spelled out.

**Appendix D-2  
Clean Water Act  
File Review Checklist  
Illinois CAFO Review**

**Instructions:** This checklist is divided into three parts. The first part, containing general background information, is to be completed for all file reviews. The second part is to be completed for inspection files, and the third part for enforcement files. In certain cases, where the inspection file leads to an enforcement action, or where an enforcement action is based in whole or in part on an inspection, all parts of the checklist should be completed. To assist in evaluating Parts II, A. and II, B., an inspection report checklist has been prepared. This checklist is attached and should be completed for each inspection report reviewed. Finally, a companion document, the "Plain English Guide to the CWA Metrics" provides additional information on the purpose, meaning and relevant policy and guidance for each of the metrics, and should be consulted if questions arise in completing this file review checklist.

**Part I Background Information**

- A. State Agency Being Reviewed: Illinois**
- B. Date of the Review:**
- C. Location of the Review:**
- D. Names of State Participants:**
- E. File Reviewer:**
- F. Facility Name:**
- G. NPDES Permit Number (if applicable):**
- H. Permittee Location:  
(street address if available, and  
City where discharge occurs. If State  
has district or regional offices, that  
information should also be included)**

**I File Selection Criteria: Check each item that is selected to analyze in the facility file:**

Representative District Office _____ Permitted CAFO?: Yes _____ No _____ Facility Size: Large _____ Medium _____ Small _____ Facility Type: Feedlot _____ Dairy _____ Swine _____ Poultry _____ Other _____	Inspection: Initial _____ Follow-up _____ Permit/Compliance Schedule Violations _____ Enforcement Response: NCA _____ VN _____ CCA required _____ Penalty _____
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**Part II Inspection File Review**

**A. Is the inspection report complete? (Metric 6b)** (The CWA Inspection Checklist should be used to document this finding. An inspection is complete if all elements identified in the checklist are present).

Yes \_\_\_\_\_ No \_\_\_\_\_

**Comments:**

**B. Does the inspection report provide sufficient information so that subsequent reviewers are able to determine the compliance status of the facility? (Metric 6c)** (Generally if all components of the checklist are present, the report would provide sufficient documentation to make this finding. Where the report is not complete, it may still be possible to determine the compliance status, if at least sections IV,V and VI of the checklist are present)

Yes \_\_\_\_\_ No \_\_\_\_\_

**Comments:**

**C. 1) How long did it take to complete the inspection report? 2) Was the inspection report completed on time? (Metric 6d)** (There is no national standard for timeliness, so the criteria for timeliness contained in the state EMS should be used. Where the state EMS does not contain a timeframe, the reviewers should use a threshold of thirty days for timeliness evaluations. Reviewers should record the length of time that it took to complete the report, so that mean, average and maximum timeframes can be computed).

Number of days \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_

**Comments:**

**Was the Inspection report transmitted to the facility?**

Yes \_\_\_\_\_ No \_\_\_\_\_

**D. Did the inspection report lead to a compliance determination?**

**(Metric 7e)** Reviewer should look for evidence that a compliance determination was made and the report was signed by management or senior enforcement officers. (The state EMS will generally describe the review process and identify the personnel who are responsible for making this determination)

Yes \_\_\_\_\_ No \_\_\_\_\_

**Comments:**

**Was a discharge documented?**

Yes \_\_\_\_\_ No \_\_\_\_\_

### **Part III Enforcement File Review**

**A. Has or will the enforcement response for a violation returned the facility to compliance? (Metric 9b)** The action should be reviewed to determine if it has returned a facility to compliance, or contains a schedule to return the facility to compliance. If either of these circumstances exists, the answer is yes.

Yes \_\_\_\_\_ No \_\_\_\_\_

**Comments:**

**Did the enforcement response direct the facility to apply for a NPDES permit?**

Yes \_\_\_\_\_ No \_\_\_\_\_

**B. Were the violations addressed in a timely manner? (Metric 10b)** The relevant national guidance provides that violations must be responded to in a timely and appropriate manner. The responses should reflect the nature and severity of the violation and, unless there is supportable justification, the response must be a formal action or a return to compliance by the permittee.. In the rare circumstance when formal enforcement action is not taken, there should be a written record that clearly

justifies why the alternative action (e.g., informal enforcement action or permit modification was more appropriate. This record might take the form of a “violation summary.” The action should be reviewed to determine if this timeline was met. Particular attention should be paid to repeat or multiple violations of the same nature, as there often is an elevated response that is identified as appropriate in these cases.

Yes \_\_\_\_\_ No \_\_\_\_\_

**Comments:**

- C. **Were enforcement actions appropriate? (Metric 10c)** The relevant national guidance indicates that violations must be responded to in a timely and appropriate manner. The responses should reflect the nature and severity of the violation and, unless there is supportable justification, the response must be a formal action or a return to compliance by the permittee.. In the rare circumstance when formal enforcement action is not taken, there should be a written record that clearly justifies why the alternative action (e.g., informal enforcement action or permit modification was more appropriate. This record might take the form of a “violation summary.” The action should be reviewed to determine if it was appropriate -- *i.e.*, a formal action or written justification to support an alternative action.

Yes \_\_\_\_\_ No \_\_\_\_\_

**Comments:**

**Appendix D-3**  
**CWA Inspection Report Evaluation Guide**  
**CWA NPDES Inspection Report Completeness Checklist**

Check  
 One if  
 report is  
 complete

**Instructions:**  
 Use this checklist to assess whether the inspection report is both complete and contains sufficient information to make an accurate determination of the conditions at a facility. Use the comment fields to elaborate on the observations in the inspection report.

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No

**I. General Information**

**I.a. Inspection date(s) and Time of Inspection**

(Check “yes” only if both pieces of information are present in the inspection report. If “no” indicate missing information in the comment field below.)

**I.b. Type and purpose for the inspection.**

(The type of inspection should be included using the list of codes on the NPDES Compliance Inspection Form 3560-3 or similar state list (or nomenclature). The purpose could be a compliance inspection, a follow-up inspection, a state or national priority, etc.)

**I.c. Facility Information**

(Facility name, address, and telephone number. Check “yes” only if all pieces of information are present in the inspection report. If “no” indicate missing information in the comment field below.)

**I.d. NPDES, SPDES ID, or Other ID Number**

**I.e. Inspection participants**

(Are all major inspection participants identified in the report, including, as appropriate, federal, state, local inspectors, other agency representatives, facility representatives and consultants?)

**I.f. Comments:**

**II. Facility Information**

**II.a. Facility description and areas evaluated**

(Does the report provide general information on the type of facility (i.e., number of animals/size, type of animals, etc.), and other pertinent information such as size in acres, normal hours and days of operation, and/or number of employees?)

**II.b. Description of NPDES regulated activities pertinent to the inspection**

(Does the report describe NPDES permit(s) status (e.g., unpermitted, active, expired, under appeal, etc.); NPDES regulated activity on-site including a description of the facility operations that generate waste and discharge to navigable waters? Check “yes” only if all pieces of information are present in the inspection report. If “no” indicate missing information in the comment field below.)

NOTE: If detailed facility-specific information describing the NPDES regulated activities pertinent to the inspection being reviewed are contained in earlier inspection reports contained in the facility file, those may be cross-referenced and considered when evaluating inspection report completeness under this item, and should be noted (including

the date of the inspection report being cross referenced) in the comment field below.)

- II.c. Regulated areas evaluated during inspection**  
(Does the report identify the areas evaluated during the inspection, for example, pertinent records/reports, effluent/receiving waters, flow measurement, self-monitoring program, compliance schedules, permit conditions, facility site review, operations and maintenance, manure handling/disposal, storm water,)  
**II.d. Comments:**

### **III. Inspector Observations and Documentary Support of Observations**

- III.a. Narrative Description of Field Activities Conducted (and Sampling, if appropriate)**  
(Does the narrative describe all field activities and any sampling conducted?)
- III.b. Permit Requirement (or Regulatory Citation, if appropriate)**  
(Does the report specify the appropriate information on permit requirement(s) relevant to the inspection? If there is no permit, if available, does the report provide the relevant state or federal regulatory citation(s)?)
- III.c. Observation(s) made regarding permit requirements (or regulatory citation, if appropriate)**  
(Does the report provide specific observation(s) pertinent to the permit requirement(s) (or state or federal regulatory citation(s))?)
- III.d. Information to support the observation(s) that are made**  
(Does the report provide factual information supporting an observation in one or more of the following four categories: 1) sample(s), 2) photo(s) and a photo log (if taken and needed), 3) record(s) or report(s), or 4) statement(s) by the facility representative(s)?)
- III.e. Inspection checklists**  
(Complete this question if a checklist(s) was used pursuant to state inspection policy. If yes, specify the checklist(s) used.)
- III.f. Corrective actions**  
(Does the report provide factual information on any actions taken by facility during the inspection to address areas of concern or deficiencies (potential violations), if applicable.)
- III.g. Report date and signatures**  
(Is the inspection report signed and dated by the responsible agency representative(s)?)
- III.h. Comments:**

### **IV. Inspection Report Sufficiency**

- IV.a. Overall Assessment of Inspection Report Sufficiency**  
(Is the information contained in the inspection report (and supporting documentation) sufficient to make a compliance determination? If "no" the reviewer should describe in the comment field below the reasons for the assessment that it is not sufficient.)
- IV.b. Comments:**