



Department of
**Environment &
Conservation**

Public Hearing
Water Quality, Oil and Gas Board
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, Nashville
and via WebEx
April 19, 2022 – 10:00am

*If you wish to make Public Comment, please fill out a yellow comment card, or if virtual please email Drake.Smarch@tn.gov or message the chat box. Include what you want to comment on, and you will to be placed in line.

Welcome!

- Roll call of Board members present.
- Opening remarks from the Division of Water Resources Director, Jennifer Dodd

Board Minutes

- Presentation of minutes from October 2021
- Roll call **vote** for approval of minutes.
- Minutes are available on the Board's website: <https://www.tn.gov/environment/about-tdec/boards-and-commissions/board-tennessee-board-of-water-quality--oil-and-gas.html>

General Public Comment

- If you wish to make a public comment:
 - In-Person
 - Fill out a yellow comment card
 - Virtual
 - Let the host know in the Chat Box
 - Email Drake.Smarch@tn.gov



Department of
**Environment &
Conservation**

**Office of General Council Updates and
Initial Order Appeal: Rogers Group v TDEC**

Stephanie Durman



Department of
**Environment &
Conservation**

Compliance and Enforcement Update on State Review Framework and Significant Noncompliance

Water Quality, Oil and Gas Board



State Review Framework (SRF)

What is the State Review Framework?

- The State Review Framework (SRF) consistently assesses EPA and state enforcement of the Clean Water Act (CWA), the Clean Air Act (CAA), and Resource Conservation and Recovery Act (RCRA).
- EPA provides the state SRF reports. These SRF reports allow EPA to identify recommendations for improvement to ensure fair and consistent enforcement and compliance programs across the states.
- Enforcement and Compliance History Online (ECHO) includes several SRF tools, which are available to assess data metrics and verify the information annually, which calculates the data used for quadrennial SRF reviews.

ECHO Tools FFY21 Example

FY2021 Frozen CWA Data for Tennessee

Data Verification metrics reflect frozen, verified data. SRF metrics are calculated using the frozen, verified data set.

[Download All CWA Data for 2021](#)

[Download Table Data](#)

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Tennessee	Count	Universe	Not Counted
Element 1 - Data									
1b5	Permit limit data entry rate for major and non-major facilities	Goal	State	>= 95%	96.8%	99.8%	910	912	2
			EPA	>= 95%	99.2%	0/0	0	0	0
1b6	DMR data entry rate for major and non-major facilities	Goal	State	>= 95%	95.2%	98.615%	20724	21015	291
			EPA	>= 95%	98.6%	0/0	0	0	0

ECHO Tools FFY21 Example

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Tennessee	Count	Universe	Not Counted
Element 2 - Inspections									
5a1	Inspection coverage of NPDES majors	Goal	State	100% of state CMS plan	47.7%	74.1%	120	162	42
			EPA	100% of state CMS plan	1.5%	1.2%	2	162	160
5b1	Inspection coverage of NPDES non-majors with individual permits	Goal	State	100% of state CMS plan	23.3%	33.2%	303	914	611
			EPA	100% of state CMS plan	.4%	.3%	3	914	911
5b2	Inspection coverage of NPDES non-majors with general permits	Goal	State	100% of state CMS plan	5.2%	11.1%	1204	10832	9628
			EPA	100% of state CMS plan	.1%	0%	1	10832	10831

ECHO Tools FFY21 Example

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Tennessee	Count	Universe	Not Counted
Element 3 - Violations									
7j1	Number of major and non-major facilities with single-event violations reported in the review year	Review Indicator	State			7			
			EPA			0			
7k1	Major and non-major facilities in noncompliance	Review Indicator	State		16.7%	5%	591	11907	11316
			EPA		8.7%	0/0	0	0	0
8a3	Percentage of active major facilities in SNC and non-major facilities in Category I noncompliance during the reporting year	Review Indicator	State		6.3%	1.8%	213	11898	11685
			EPA		4.5%	0/0	0	0	0
Element 4 - Enforcement									
10a1	Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations	Review Indicator	State		18.4%	33.3%	3	9	6
			EPA		4.2%	0%	0	9	9

ECHO Tools FFY22 Example

FY2022 Production CWA Data for Tennessee

Data Verification metrics reflect current production data. SRF metrics are calculated using the current production data set.

[Download All CWA Data for 2022](#)

[Download Table Data](#)

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Tennessee	Count	Universe	Not Counted
Element 1 - Data									
1b5	Permit limit data entry rate for major and non-major facilities	Goal	State	>= 95%	97%	99.9%	886	887	1
			EPA	>= 95%	99.5%	0/0	0	0	0
1b6	DMR data entry rate for major and non-major facilities	Goal	State	>= 95%	50.1%	55.178%	11381	20626	9245
			EPA	>= 95%	54.1%	0/0	0	0	0

ECHO Tools FFY22 Example

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Tennessee	Count	Universe	Not Counted
Element 2 - Inspections									
5a1	Inspection coverage of NPDES majors	Goal	State	100% of state CMS plan	14.3%	32.7%	53	162	109
			EPA	100% of state CMS plan	.7%	0%	0	162	162
5b1	Inspection coverage of NPDES non-majors with individual permits	Goal	State	100% of state CMS plan	10.5%	13.4%	119	886	767
			EPA	100% of state CMS plan	.3%	.3%	3	886	883
5b2	Inspection coverage of NPDES non-majors with general permits	Goal	State	100% of state CMS plan	2%	4.2%	449	10816	10367
			EPA	100% of state CMS plan	0%	0%	1	10816	10815

ECHO Tools FFY22 Example

Metric ID	Metric Name	Metric Type	Agency	National Goal	National Average	Tennessee	Count	Universe	Not Counted
Element 3 - Violations									
7j1	Number of major and non-major facilities with single-event violations reported in the review year	Review Indicator	State			3			
			EPA			0			
7k1	Major and non-major facilities in noncompliance	Review Indicator	State		14.6%	3.8%	453	11866	11413
			EPA		7.8%	0/0	0	0	0
8a3	Percentage of active major facilities in SNC and non-major facilities in Category I noncompliance during the reporting year	Review Indicator	State		5.1%	1.2%	144	11856	11712
			EPA		3.8%	0/0	0	0	0
Element 4 - Enforcement									
10a1	Percentage of major NPDES facilities with formal enforcement action taken in a timely manner in response to SNC violations	Review Indicator	State		14.3%	50%	1	2	1
			EPA		3%	0%	0	2	2

Recent SRF Review FFY19 Report Highlights

- TDEC DWR exceeded both national goals for the entry of permit limits and discharge monitoring reports into the national database for NPDES major and non-major facilities.
- TDEC DWR met or exceeded most of its FY19 Compliance Monitoring Strategy (CMS) and CWA §106 Workplan commitments.
- TDEC's DWR NPDES inspection reports were complete, provided appropriate documentation to determine compliance at the facility and were timely.
- TDEC DWR consistently documented accurate NPDES compliance determinations.
- TDEC DWR consistently documented any differences between the initial penalty calculation and the final assessed penalty as well as the collection of penalties.
- Accuracy of data between files reviewed and data reflected in the national data system needs attention.

For Additional SRF Information

- Program Information: <https://www.epa.gov/compliance/state-review-framework>
- Report Information: <https://www.epa.gov/compliance/state-review-framework-srf-tennessee-final-reports>
- NPDES Electronic Reporting: <https://www.tn.gov/environment/program-areas/wr-water-resources/netdmr-and-electronic-reporting.html>



**Significant Noncompliance
(SNC)**

Noncompliance Categories

- Category I Noncompliance: quantifiable; consists of effluent limit, compliance schedule, and reporting violations meeting criteria of a specified magnitude, frequency, and/or duration, for example:
 - Violations of monthly average effluent limits for Group I and Group II pollutants identified in Appendix A of 40 CFR §123.45:
 - 40% (for Group I conventional pollutants) or 20% (for Group II toxic pollutants) over the effluent limit for 2 months in a 6 month period; any (Group I or II) monthly average effluent exceedance for 4 mo. in 6 mo. period .
 - Required reports (e.g., DMR, pretreatment, final compliance) late by 30 days.
- Category II Noncompliance: all other violations of concern that do not meet Category I criteria.
- Violations that meet Category I or II criteria are called “reportable noncompliance” or “RNC”.

Group I and II pollutants

*40 CFR § 123.45 -
Noncompliance and
program reporting
by the Director.*

Group I pollutants

SNC conventional pollutants:

TRC=1.4

(40% exceedance of limit)

Oxygen demand

- Biochemical oxygen demand
- Chemical oxygen demand
- Total oxygen demands
- Total organic carbon
- Other

Minerals

- Calcium
- Chloride
- Fluoride
- Magnesium
- Sodium
- Potassium
- Sulfur
- Sulfate
- Total alkalinity
- Total hardness
- Other minerals

Solids

- Total Suspended Solids (residues)
- Total Dissolved Solids (residues)
- Other

Nutrients

- Inorganic phosphorus compounds

- Inorganic nitrogen compounds
- Other

Metals

- Aluminum
- Cobalt
- Iron
- Vanadium

Detergents and oils

- MBAS
- NTA
- Oil and grease
- Other detergents or algaecides

Group II pollutants

SNC toxic pollutants: TRC= 1.2

(20% exceedance of limit)

Metals (all forms)

Other metals not specifically listed under Group I

Inorganic

- Cyanide
- Total residual chlorine

Organics

All organics are Group II except those specifically listed under Group I

What is Significant Noncompliance (SNC)?

- SNC violations are calculated in EPA's database based on reported data from DMRs, enforcement orders, and other NPDES permit reports.
- Violations that meet the SNC criteria must be chronic and/or severe, including:
 - effluent violations over EPA's technical review criteria,
 - chronic late DMR submission and DMR non-receipt violations,
 - single event violations, and
 - permit schedule and enforcement order schedule violations.

How is SNC used?

- To prioritize enforcement investigation and response.
- NPDES Program (TDEC) performance expectations from EPA to take the appropriate enforcement actions for those in SNC.
- Once in SNC the facility will show up on the Quarterly Noncompliance Report (QNCR):
 - Enforcement actions are required from TDEC:
 - Informal Enforcement Action referred to as a Notice of Violation (NOV). These are alternative actions and case-by-case.
 - Formal Enforcement Action referred to as an Order. A facility can receive a NOV and be placed under an Order. It is EPA's expectation to proceed with formal enforcement.
- It should be noted that a facility does not have to show on the QNCR/SNC to receive enforcement action from TDEC, if they are in violation of the Act or their permit.

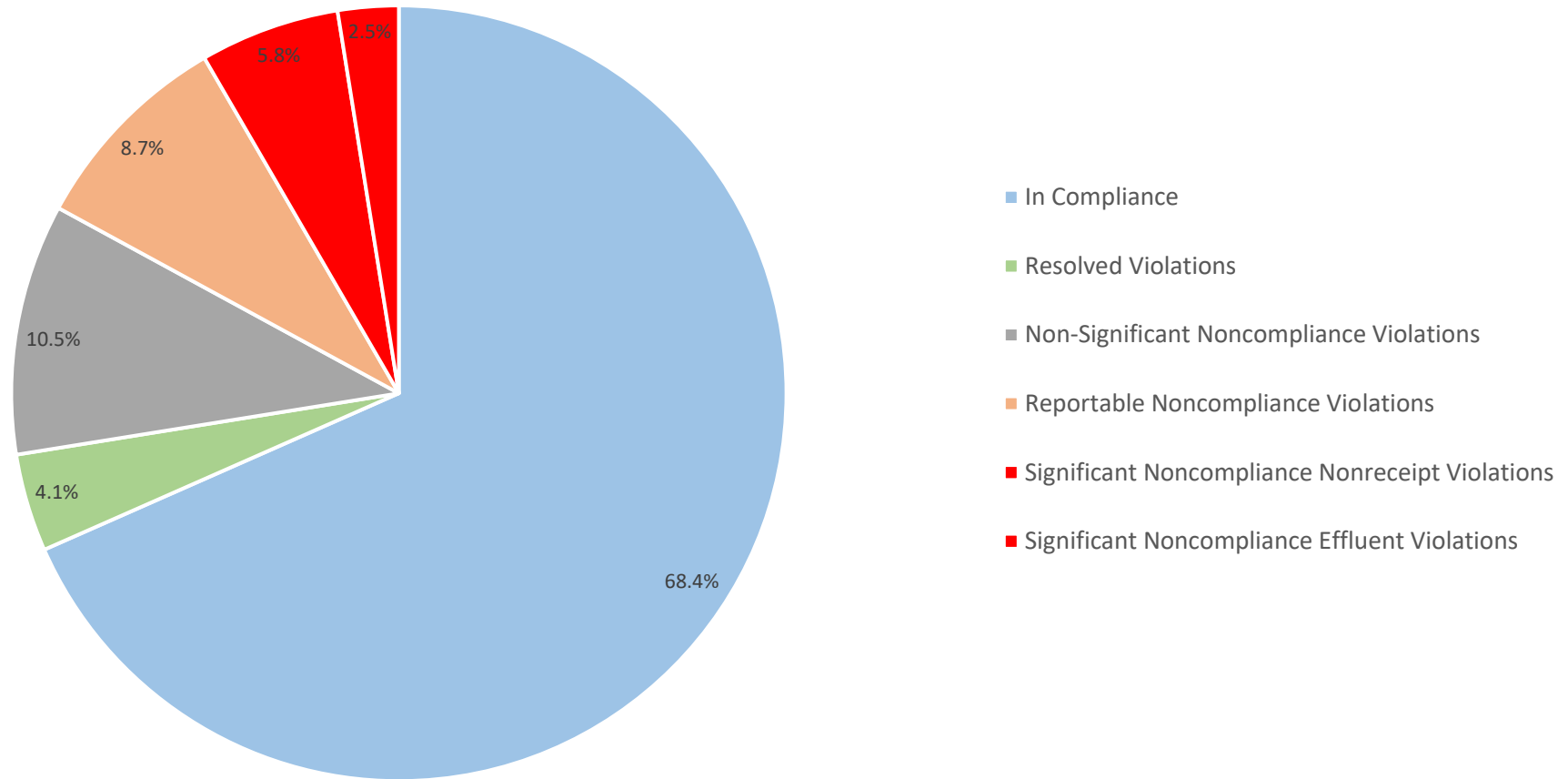
Quarterly Noncompliance Report (QNCR)

- States are required to provide a narrative report to EPA about each facility on the QNCR, including:
 - the history of the site,
 - current rehabilitation work being done,
 - findings during recent inspections, and
 - ongoing formal or informal enforcement.
- All major and minor individual NPDES permittees who submit DMRs were evaluated for SNC.

EPA's Significant Noncompliance (SNC) Reduction Goals

- EPA released a strategic plan for FY2018-2022.
 - National 50% reduction in SNC rate by September 30, 2022
- A 50% SNC reduction would be from 20.3% to 10.1% by the end of FY2022.
- Improve completeness and accuracy of national compliance and enforcement data.
- Focus on working with states to address all NPDES individual permit facilities with serious violations.

Official Tennessee Facilities Compliance – 2022Q1



Email notifications from NetDMR

- Current notifications are automatically generated from NetDMR:
 - DMR submission processing confirmation emails,
 - DMR Due Date reminder emails,
 - and Notice of DMR Non-Receipt emails.
- New notification: Notice of Potential SNC Violation Status
 - Identifies effluent violations that are chronic and/or severe but have not yet been flagged as being in SNC
 - Generated based on data reported on DMRs in NetDMR
 - Sent to users who are registered as signatories for the NPDES permit in NetDMR

For Additional SNC Information

- Seth.McCormick@tn.gov and Sarah.Elias@tn.gov can be contacted about SNC questions.
- National Compliance Initiative: <https://www.epa.gov/enforcement/national-compliance-initiative-reducing-significant-non-compliance-national-pollutant>
- Resources for NPDES Permittees and Other Organizations: <https://www.epa.gov/enforcement/national-compliance-initiative-reducing-significant-non-compliance-snc-npdes-permits>
- ECHO Dashboard: <https://echo.epa.gov/>



Questions?



Department of
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Division of Water Resources Updates

Jennifer Dodd – Director – Division of Water Resources

DWR Updates

- New Fleming Training Center Manager
 - John Lawrence
- ARP Non-Competitive Grant Review Opening
- Rules Approved; Effective 5/15/2022
- MS4 Permit Update
- TMSP Permit Update
- PFAS

Any Old Business?

Thank you for joining us.
Any questions, please direct to
Drake.Smarch@tn.gov