

**FY 2020-2021 NATIONAL PROGRAM GUIDANCE**

Office of Water

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>The subsection titled “Performance Measure Streamline” describes the benefits of Lean Management and EPA’s effort to reduce water program performance measures to the small set of Core Measures attached as Appendix A.</p> <p>During the core measure engagement process, we were informed and relied upon the representation that the creation of a list of core measures would not impact the performance measures identified in the Water Program Guidance. It is now clear that representation was incorrect and misleading.</p> <p>Further, while claiming to seek to better understand Tribal priorities during engagement on the topic, the input that Tribal representatives shared with the Office of Water regarding the core measures appears to have been totally ignored. 11 Tribal-specific measures, many of which represented the highest Tribal priorities, are now gone; of the remaining 3 measures that mention Tribes or Indian country, the 2 related to NPDES permits did not rank on any Tribal priority lists.</p> <p>We urge the Office of Water to reconsider the removal of the Tribally-identified highest priority measures, and to reinstitute at least those identified by the National Tribal Water Council as most significant. These include measures related to Tribal access to safe drinking water and basic sanitation, as well as those addressing other high Tribal priorities such as monitoring, protecting and improving the quality of Tribal waters.</p>	<p><i>Alan Bacock, Region 9 RTOC Tribal Co-Chair</i></p>	<p>Pages 1-2 &amp; App A</p>	<p>Thank you for your comment. We apologize for any miscommunication. Beginning in FY 2019 all Office of Water core measures must be tracked on a monthly or at least a quarterly basis.</p> <p>Because the data supporting the former six tribal-specific measures relating to safe drinking water and basic sanitation are largely tracked by entities other than the EPA (i.e., the Indian Health Service and state of Alaska) and are only able to be supplied to the EPA on an annual basis, they did not meet the measure requirements of the Agency and, therefore, were ineligible to be considered as FY 2019 National Water Program core measures. While these historic tribal measures will not be part of the National Water Program’s core measures, the Agency will continue to track and report this information. The EPA plans to annually post the prior year’s drinking water and clean water tribal performance results to its website. Those metrics will continue to be the:</p> <ul style="list-style-type: none"> <li>• Percent of the population in Indian country served by community water systems that receive drinking water that meets all applicable health-based drinking water standards.</li> <li>• Percent of ‘person months’ (i.e., all persons served by community water systems times 12 months) during which community water systems in Indian country provide drinking water that meets all applicable health-based drinking water standards.</li> <li>• Number of tribal community water systems (CWSs) that have undergone a sanitary survey within the past three years (five years for outstanding performers or those ground water systems approved to provide 4-log treatment of viruses).</li> <li>• Number of American Indian and Alaska Native homes provided access to safe drinking water in coordination with other federal agencies.</li> </ul>	<p>No change made to the guidance.</p>

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<p>Measures related to Tribal access to safe drinking water and basic sanitation are of particular importance given the disparity that continues to exist with respect to such access between Tribal homes (over 10% continue to lack access) and non-Indian homes (less than 1% lack access). EPA has a critical role to play, along with other federal agencies, to address this disparity, and we expect to see this critical human health issue in Indian country remain as an Agency priority.</p>			<ul style="list-style-type: none"> <li>• Number of American Indian and Alaska Native homes provided access to basic sanitation in coordination with other federal agencies.</li> <li>• Percent of serviceable rural Alaska homes with access to drinking water supply and wastewater disposal.</li> </ul> <p>For the water quality standards program, the EPA has removed two previous tribal-specific measures (i.e., the number of tribes that have water quality standards approved by the EPA, and the number of tribes with recently updated water quality standards); however, the EPA continues to publish the tribal Water Quality Standards (WQS) approval information, together with approved and pending treated in a manner similar to a state (TAS) applications, on its website.<sup>1</sup> The EPA also has a core measure to track the backlog of state and tribal water quality standards revisions not yet acted upon.</p> <p>With respect to water quality monitoring, the EPA previously had two tribal-specific measures: (1) Number of tribes that currently receive funding under section 106 of the Clean Water Act that have developed and begun implementing monitoring strategies that are appropriate to their Water Quality (WQ) program consistent with EPA Guidance, which had almost been completely realized; and (2) Identifying monitoring stations on tribal lands that are showing no degradation in water quality. The EPA is no longer collecting data on either measure.</p> <p>The Agency continues to work closely with other federal agencies to address the challenges of tribal communities. In addition to supporting the implementation of the Drinking Water Infrastructure Grants Tribal Set-Aside, Tribal Public Water System Supervision (PWSS), and the National Water Operator Certification Program, the EPA is launching three new grant programs under the Water Infrastructure Improvements for the Nation (WIIN) Act to support lead testing in schools, disadvantage</p>	

<sup>1</sup> Water Quality Standards approval information: <https://www.epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts>.

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			communities and reducing lead exposure in distribution systems. The EPA continues to be part of the Infrastructure Task Force (ITF), and as part of this effort continues to post to EPA’s website the results of the tribal access to safe drinking water and health-based measures. This information is used to inform resource and technical assistance for the tribal public water systems.	
<p>“Key Strategies” are identified to implement the strategic measure to reduce the number of community water systems out of compliance with health-based standards. The phrase in the description of these strategies that specifically deals with Tribal communities is difficult to understand as written, and also overlooks aspects of access to safe drinking water that continue to require the Agency’s attention. We recommend the phrase “boost the EPA’s direct implementation in tribal communities by coordinating with other federal agencies ... to include implementation of disparate tribal drinking water programs” to instead read <b>“boost the EPA’s direct implementation activities in tribal communities by coordinating with other federal agencies ... to include funding and technical assistance to address both infrastructure and operation &amp; maintenance needs to reduce the disparity in access to safe drinking water that continues to exist.”</b></p>	<p><i>Alan Bacock, Region 9 RTOC Tribal Co-Chair</i></p>	<p>Page 2</p>	<p>Thank you for your comment and suggested edit. Current funding requirements allow the Agency to support infrastructure projects, training, and technical assistance.</p>	<p>No change to the guidance.</p>
<p>The subsection “Priority Actions for EPA/State/Tribal collaboration” associated with the strategic measures to reduce the number of community water systems out of compliance with health-based standards does not actually mention Tribes. We recommend adding a bullet that reads <b>“Continue to collaborate with other Federal Agencies and Tribes through the Infrastructure Task Force to address Tribal community drinking water and</b></p>	<p><i>Alan Bacock, Region 9 RTOC Tribal Co-Chair</i></p>	<p>Pages 2-3</p>	<p>Thank you for your comment and suggested edit. Current funding requirements allow the Agency to support infrastructure projects, training, and technical assistance.</p>	<p>Added reference to tribes and additional language to the referenced subsection of the guidance.</p>

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<b>wastewater infrastructure and operation &amp; maintenance needs”</b>				
We support the strategic measure to reduce the number of square miles of watershed with surface waters not meeting standards by 37,000 square miles, but note that the proposed rule to narrow the definition of WOTUS, and thereby reduce the waters subject to federal or federally-approved standards, will make achievement of this measure significantly more difficult. We therefore encourage the Office of Water, along with the Army Corps, to maintain a broad definition of jurisdictional water.	<i>Alan Bacock, Region 9 RTOC Tribal Co-Chair</i>	Page 4	The Agency will carefully consider the public comments received on the proposed rule to revise the definition of “waters of the United States” before taking final action. The EPA notes that as discussed in the economic analysis and resource and programmatic assessment for the proposed rule, many state programs regulate and protect waters that are outside the jurisdictional scope of the Clean Water Act.	No change to the guidance.
We are pleased to see “ <b>Address Nonpoint Source (NPS) Pollution</b> ” as the first bullet under the heading of “Priority Action for EPA/State/Tribal collaboration” and encourage EPA to continue to fund the CWA § 319 program to facilitate this priority.	<i>Alan Bacock, Region 9 RTOC Tribal Co-Chair</i>	Page 4	Thank you for your comment. The EPA’s funding levels will be determined through the annual federal appropriations process.	No change to the guidance.
The National Tribal Water Council should be mentioned in the bullet titled “ <b>Communicate with Partners.</b> ”	<i>Alan Bacock, Region 9 RTOC Tribal Co-Chair</i>	Page 4	Thank you for your comment. We support the addition of the National Tribal Water Council. We adjusted the narrative to reflect your recommended change.	Added language to the guidance in response to the comment.
The last sentence of the first paragraph under the heading of PROGRAM-SPECIFIC GUIDANCE references reliance on ETEPs to assist in conducting federal environmental program activities in Indian country, including direct implementation and technical and financial assistance. This sentence should be deleted.  As provided in the 2013 GAP Guidance, ETEPs are intended to inform GAP workplans and to reference in measuring performance under GAP. “Established” ETEPs	<i>Alan Bacock, Region 9 RTOC Tribal Co-Chair</i>	Page 6	Collaboration with tribes is guided by multiple policies and documents that outline EPA/tribal roles, responsibilities, and goals. As stated in the EPA Strategic Plan, which guides the National Program Guidances, EPA-Tribal Environmental Plans are a “joint planning document” which “identify tribal, EPA, and shared priorities, and the roles and responsibilities for addressing those priorities.” See Office of International and Tribal Affairs response to comments for additional information. Their guidance can be found at: <a href="https://www.epa.gov/planandbudget/national-program-guidances">https://www.epa.gov/planandbudget/national-program-guidances</a> .	No change to the guidance.

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<p>contain provisions specifically to serve this purpose and were not intended by the Tribes that have approved ETEPs to inform any other aspect of the relationship between Tribes and EPA.</p> <p>If the Agency wants to consider and propose a regulation or policy to more broadly rely on ETEPs to define the relationship between various EPA offices including OW and Tribes, it should do this in an action separate from the NPMG development process, after thorough and meaningful government-to-government consultation as required by EPA’s 2011 Policy on Consultation and Coordination with Indian Tribes.</p>				
<p>“Also, the EPA will develop or sustain national forums to help coordinate work in infrastructure program implementation.” Can an example of a national forum or more detail be added? Do infrastructure programs include PWSS, DWSRF, and Capacity Development/Operator Certification/Security/Source Water Protection programs?</p>	ASDWA	Page 2	Thank you for your comment. The Agency will continue to support national forums such as the Capacity Development & Operator Certification Workshops, Office of Research and Development/Office of Water Small System Workshops, among others in an effort to increase program collaboration, share best practices, and maximize training and technical assistance to primacy agencies, public water systems and other water sector stakeholders to ensure safe drinking water.	Added an example of national forums to the guidance in response to the comment.
<p>“Ensure data accuracy and completeness” – please coordinate these efforts with the Office of Enforcement and Compliance for their drinking water NCI as not to burden the states with additional reporting and coordination on their end. OGWDW has conducted a number of data quality initiatives in the past few years and those projects should be examined to avoid duplication of effort and also help reduce the burden on states.</p>	ASDWA	Page 2	Thank you for your comment. The EPA will look at past data quality initiatives and conduct internal coordination with other offices to complete this report.	No change to the guidance.

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<p>Please clarify that the activities under Workforce Development will include coordination with state and association/NGO partners and will target beyond operators including state staff and others, as confirmed on the 4/16 call with state partners.</p>	ASDWA	Page 6	Thank you for your comment. The narrative has been changed in response to your comment.	The narrative has been changed in response to the comment.
<p>ECOS encourages EPA to continue work with states to bring clarity and certainty to the identification of assumable and non-assumable waters including the development of clear instruction for states and tribes seeking to assume to §404 Program</p>	ECOS	Page 5	The EPA is committed to continuing our collaborative effort to engage states and tribes as we develop this rule.	No change to the guidance.
<p><b>(Pages 4-5)</b>  LDEQ opposes the performance measure requiring that all permitting-related decisions be reached within six months by September 30, 2022, regardless of whether or not permit applications are deemed administratively complete.</p> <p>LPDES permit applications are often submitted to LDEQ without all of the information necessary to make a permitting decision (required analytical data, inaccurate flow rates, missing production rates, missing subpart fractions, etc.). LDEQ Water Permits Division (WPD) staff spend a considerable amount of time and resources obtaining additional information, verifying the accuracy of flow balance diagrams, laboratory data, etc. If additional effluent and/or ambient water quality data are required, LDEQ must consider the time needed (a minimum of 60 additional days) to collect samples, allow a laboratory to analyze the samples, and generate the appropriate reports. Should</p>	LDEQ	Pages 4-5	At this time, this measure applies to the EPA-issued permits only. The EPA believes that for the EPA-issued permits, it is appropriate to look at the time between when a permit application is first received and when the permit is issued when evaluating the six months target. This approach provides incentives for the EPA to improve the permit application preparation and submittal process so as to minimize delays in permit issuance. Additionally, the EPA is working to streamline all aspects of the permitting processing, including consultations, where applicable.	No change to the guidance.

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<p>this performance measure be implemented, LDEQ will begin denying permit issuance on the basis that the permit application is not administratively complete. The denial of a permit application will increase, rather than decrease, the time frame for issuing a final permit decision, which is contra indicatory of the goal of this measure.</p> <p>In addition to processing days needed to obtain an accurate and administratively complete discharge application, some LDEQ permit time frames are mandated by state and federal regulations and Memorandums of Understanding or Agreement (MOU or MOA). Specific procedures with established time frames include:</p> <ol style="list-style-type: none"> <li><b>1. Louisiana State Historic Preservation Officer (LSHPO) Reviews.</b> New Facility locations (including expansions at an existing site) requires coordination with LSHPO to ensure conservation of historic properties under the National Historic Preservation Act. In Accordance with the MOU between LDEQ and LSHPO, LSHPO shall have 30 days to provide comments on the development of the permit for discharge. If LSHPO identifies a historic property during this process, additional time is required for the applicant to perform cultural resource surveys prior to obtaining their discharge permit.</li> <li><b>2. U.S. Fish and Wildlife Service (USFWS) Review of 316(b) Impingement Plans.</b> A permit application for a facility that is subject to 316(b) requirements must be sent to USFWS for review, prior to drafting a permit.</li> </ol>				

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<p>The USFWS is allowed 60 days for review and comment of the permit application. Should USFWS submit comments, additional time is required to address the comments.</p> <p>3. <b>Permit Applicant Technical Review.</b> Louisiana Office of the Secretary Regulations (LAC 33:1.1507.C) requires that the permittee be granted a technical review of the working draft permit for a period of 10 business days, prior to EPA review and/or public notice. Additional time beyond the 10 business days may be required to address applicant comments.</p> <p>4. <b>EPA Region 6 Review of Preliminary Draft Permits.</b> In accordance with the MOA between EPA Region 6 and LDEQ, LDEQ is required to submit all major preliminary draft permit (specifically request by Region 6 staff) to EPA for review for 30 days. In addition, LDEQ must submit all master general permits to EPA Region 6 for a review of 90 days. The specified time frames are often extended to address Region 6 comments.</p> <p>5. <b>Public Notice of Draft Permit.</b> All draft permit actions require a public notice period of at least 30 days. If significant public interested is shown, a public hearing may be requested. If granted, the public hearing must also be noticed for a minimum of 30 days (this could be in addition to the 30 days allocated for the draft permit action public notice).</p> <p>When taking into consideration that a hearing is <u>not</u> requested (using the aforementioned time frames),</p>				



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<p>only a maximum of 50 days is available to actively review a permit application, obtain additional information as needed, draft the permit, and route the permit for supervisory review. The most major industrial and municipal permits, this time frame is unachievable.</p> <p>LDEQ currently has measures in place to ensure timely issuance of LPDES permitting actions. For example, Louisiana Office of Secretary Regulations (LAC 33:1.1505.C.1) requires LDEQ to render a final permit decision for new facilities and major permit modifications within 300 processing days from the application submission date. Further, LDEQ implements an expedite permitting program, as outline in the Louisiana Office of the Secretary Regulations (LAC 33:1.1801). The expedited permitting program allows a permit applicant to pay an additional fee (equal to staff overtime pay) in order to achieve the desired final issuance date (please not, processing times are subject to the regulatory time frames mentioned above). In addition, LDEQ operates under the EPA Performance Partnership Grant (PPG), which requires WPD to remain 90% current on all permits issued. The current state and federal regulations, the expediated permitting program, and the PPG ensure that permit decisions are made in a timely manner, which is achievable for the Department.</p>				
<p><b><u>Section I: Explanation of Key Changes</u></b>  General comment - Under the Agency’s streamlining outreach effort the NTWC identified thirteen (13) core tribal measures that are vital for tracking tribal water program results and management activities. Each of these priorities were categorized and ranked for consideration as core measures under the ELMS</p>	NTWC	Page 1	<p>Beginning in FY 2019 all Office of Water core measures must be tracked on a monthly or at least a quarterly basis.</p> <p>Because the data supporting the former six tribal-specific measures relating to safe drinking water and basic sanitation are largely tracked by entities other than the EPA (i.e., the Indian Health Service and state of Alaska) and are only able to be supplied to the EPA on an annual basis,</p>	No change to the guidance.

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<p>process. None of the tribal measures identified by the NTWC were considered as core measures and eleven (11) of the thirteen (13) tribal specific measures have been removed from the draft NWPG. Of the remaining three measures that mention tribes or Indian Country, the two (2) related to tracking the backlog of NPDES permits did not rank any tribal priority list, including the NTWC's listing.</p> <p>The NTWC is particularly concerned with the removal of measures related to tribal access to safe drinking water and basic sanitation, as well as tribal priorities related to monitoring, protecting and improving the quality of tribal waters. We encourage the Office of Water (OW) to reconsider the removal of these extremely important tribal measures and reinstitute some of the tribal measures which the NTWC identified as "Absolutely Essential" and "Highly Significant" (SDW-22, SDW-SP3, WQ-23, WQ-24, WQ-SP14a, and WQ-SP14B).</p>			<p>they did not meet the measure requirements of the Agency and, therefore, were ineligible to be considered as FY 2019 National Water Program core measures. While these historic tribal measures will not be part of the National Water Program's core measures, the Agency will continue to track and report this information. The EPA plans to annually post the prior year's drinking water and clean water tribal performance results to its website. Those metrics will continue to be the:</p> <ul style="list-style-type: none"> <li>• Percent of the population in Indian country served by community water systems that receive drinking water that meets all applicable health-based drinking water standards.</li> <li>• Percent of 'person months' (i.e., all persons served by community water systems times 12 months) during which community water systems in Indian country provide drinking water that meets all applicable health-based drinking water standards.</li> <li>• Number of tribal community water systems (CWSs) that have undergone a sanitary survey within the past three years (five years for outstanding performers or those ground water systems approved to provide 4-log treatment of viruses).</li> <li>• Number of American Indian and Alaska Native homes provided access to safe drinking water in coordination with other federal agencies.</li> <li>• Number of American Indian and Alaska Native homes provided access to basic sanitation in coordination with other federal agencies.</li> <li>• Percent of serviceable rural Alaska homes with access to drinking water supply and wastewater disposal.</li> </ul> <p>For the water quality standards program, the EPA has removed two previous tribal-specific measures (i.e., the number of tribes that have water quality standards approved by the EPA, and the number of tribes with recently updated water quality standards); however, the EPA continues to publish the tribal Water Quality Standards (WQS) approval information, together with approved and pending treated in a manner</p>	

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			<p>similar to a state (TAS) applications, on its website.<sup>2</sup> The EPA also has a core measure to track the backlog of state and tribal water quality standards revisions not yet acted upon.</p> <p>With respect to water quality monitoring, the EPA previously had two tribal-specific measures: (1) Number of tribes that currently receive funding under section 106 of the Clean Water Act that have developed and begun implementing monitoring strategies that are appropriate to their Water Quality (WQ) program consistent with EPA Guidance, which had almost been completely realized; and (2) Identifying monitoring stations on tribal lands that are showing no degradation in water quality. The EPA is no longer collecting data on either measure.</p> <p>The Agency continues to work closely with other federal agencies to address the challenges of tribal communities. In addition to supporting the implementation of the Drinking Water Infrastructure Grants Tribal Set-Aside, Tribal Public Water System Supervision (PWSS), and the National Water Operator Certification Program, the EPA is launching three new grant programs under the Water Infrastructure Improvements for the Nation (WIIN) Act to support lead testing in schools, disadvantage communities and reducing lead exposure in distribution systems. The EPA continues to be part of the Infrastructure Task Force (ITF), and as part of this effort continues to post to EPA’s website the results of the tribal access to safe drinking water and health-based measures. This information is used to inform resource and technical assistance for the tribal public water systems.</p>	
<p><b><i>Section II: Operationalization of Strategic Measures</i></b>  “Key Strategies” are identified to implement the strategic measures to reduce community water system non-compliance with health-based standards. The phrase that identifies tribal strategies needs further clarification.</p>	NTWC	Page 2	Thank you for your comment. We have changed the word in that section in response to this comment.	Made word change in Section II of the guidance.

<sup>2</sup> Water Quality Standards approval information: <https://www.epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts>.

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Specifically, the portion of the sentence which reads...”to include implementation of <u>disparate</u> tribal drinking water programs”. The NTWC understands the challenges of implementing tribal drinking water programs, perhaps the word “distinct” would better serve the definition.				
<p><b>Priority Actions for EPA/State/Tribal collaboration</b></p> <p>General comment -The strategic measure to reduce the number of square miles of watershed with surface water is not meeting standards by 37,000 square miles. Despite strong collaboration between Federal, State and Tribal Partnerships, the NTWC believes that this measure would be difficult to achieve given the current effort underway to narrow the definition of jurisdictional waters.</p>	NTWC	Page 4	The EPA has set ambitious targets in the FY 2018-2022 Strategic Plan. The Agency will carefully consider the public comments received on the proposed rule to revise the definition of “waters of the United States” before taking final action. The EPA notes that as discussed in the economic analysis and resource and programmatic assessment for the proposed rule, many state programs regulate and protect waters that are outside the jurisdictional scope of the Clean Water Act. Tribes also can protect waters under tribal law.	No change to the guidance.
<p><b>Address Nonpoint Source (NPS) Pollution</b></p> <p>General comment- The NTWC support all the strategies identified in addressing nutrient pollution impacting our nation’s waters, including reinstating funding to the tribal NPS 319 program in the FY 2020 President’s budget.</p>	NTWC	Page 4	Thank you for your comment. The EPA’s funding levels will be determined through the annual federal appropriations process.	No change to the guidance.
<p><b>Focus on Rule of Law and Process</b></p> <p>General comment – The NTWC recommends that the 404- program assumption language which clarifies which waters can be assumed under approved state jurisdiction explicitly require that permit processes within ceded territory not present an onerous burden on tribes’ exercise of treaty-protected rights, including activities designed to conserve and protect those rights.</p>	NTWC	Page 4	The EPA will consider this comment as we develop our proposed rule to modernize the state/tribal assumption regulations. The EPA is committed to continuing our collaborative effort to engage states and tribes as we develop this rule.	No change to the guidance.
<p><b>Communicate with Partners</b></p> <p>Comment recommendation – include continual engagement with the Nation Tribal Water Council and</p>	NTWC	Page 4	Thank you for your comment. We have added tribal organizations to that section in response to this comment.	Added tribal organizations to the section on how we communicate with

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National Tribal Caucus as organizations that assist the agency, states, and tribes in environmental matters affecting tribal jurisdictions.				partners.
<p><b>Program Specific Guidance</b>  Comment recommendation – The last sentence of the first paragraph, referencing to reliance on ETEPs to assist in conducting federal environmental program activities in Indian country, including direct implementation and technical and financial assistance, should be removed.</p> <p>If the Agency wants to broaden its reliance on ETEPs to define the relationship between various offices including OW and Tribes, it should proceed with an action separate from the NPMG process, after thorough and meaningful government-to-government consultation has occurred.</p>	NTWC	Page 6	<p>Collaboration with tribes is guided by multiple policies and documents that outline EPA/tribal roles, responsibilities, and goals. As stated in the EPA Strategic Plan, which guides the National Program Guidances, EPA-Tribal Environmental Plans are a “joint planning document” which “identify tribal, EPA, and shared priorities, and the roles and responsibilities for addressing those priorities.” See Office of International and Tribal Affairs response to comments for additional information. Their guidance can be found at: <a href="https://www.epa.gov/planandbudget/national-program-guidances">https://www.epa.gov/planandbudget/national-program-guidances</a>.</p>	No change to the program guidance.
<p><b>By September 30, 2022, reduce the number of square miles of watershed with surface water not meeting standards by 37,000 square miles.</b></p> <ul style="list-style-type: none"> <li>The key strategies state that EPA is committed to assisting states to adopt updated water quality standards that support designated uses. Updating our water quality standards to EPA’s recommendations will do nothing to reduce the number of miles of impairments. For example, by adopting EPA’s recommended mercury standards, we significantly increased the watersheds not meeting our standards. Adopting nutrient standards will certainly not improve our percent of impaired waters.</li> </ul>	South Dakota Department of Environment and Natural Resources	Page 4	<p>The EPA has set ambitious targets for the measures included in the FY 2018-2022 Strategic Plan. We recognize it will take more than setting water quality standards to achieve this goal, but it is one tool for addressing the impairments in the Nation’s waters.</p> <p>In reference to the section 319 funding, Congress makes the final decision on appropriated funds for the EPA.</p> <p>The EPA will carefully consider South Dakota’s comment on implications of the proposed rule to revise the definition of “waters of the United States” as we develop a final rule.</p>	No change made to the guidance.

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<ul style="list-style-type: none"> <li>EPA says: <i>Nonpoint source pollution, including excess nutrient pollution, is one of America’s most widespread, costly, and challenging environmental problems.</i></li> <li>We agree and that is why EPA should stop efforts to eliminate or defund the 319 Program.</li> <li>EPA’s “Focus on Rule of Law and Process discussion” talks about “modernizing Clean Water Act section 404 program assumption regulations.” With the proposed waters of the US definition, EPA seems to be pulling back significantly from which waters are subject to federal jurisdiction. In particular, many wetlands in South Dakota will no longer be considered WOTUS under the proposed regulation. South Dakota does not have a similar program and does not have the resources to assume a 404-style program to protect our waters of the state, much less take on the 404 permitting program for WOTUS in South Dakota. This will create a void in protection with no plan or resources to address it.</li> </ul>				
<p><b><i>By September 30, 2022, reach all permitting-related decisions within six months.</i></b></p> <ul style="list-style-type: none"> <li>We would ask that the following language be added to this guidance “of receiving a complete application.”</li> <li>Anything EPA can do to help states streamline, improve, or address Endangered Species Act consultation issues would be helpful.</li> </ul>	<p><i>South Dakota Department of Environment and Natural Resources</i></p>	<p>Page 4</p>	<p>At this time, this measure applies to the EPA-issued permits only. The EPA believes that for the EPA-issued permits, it is appropriate to look at the time between when a permit application is first received and when the permit is issued when evaluating the six months target. This approach provides incentives for the EPA to improve the permit application preparation and submittal process so as to minimize delays in permit issuance. Additionally, the EPA is working to streamline all aspects of the permitting processing, including consultations, where applicable.</p>	<p>No changes to the guidance.</p>

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<p><b><i>Providing Regulatory Certainty</i></b>            In this section, EPA talks about states using their 401 certification authorities to protect wetlands. However, as noted above, many of our wetlands would no longer be subject to federal jurisdiction under the proposed WOTUS regulation. Our 401 certification authority begins and ends with the issuance of a federal permit. If there is no federal permit, we have no authority under Section 401.</p>	<p><i>South Dakota Department of Environment and Natural Resources</i></p>	<p>Page 5</p>	<p>As discussed in the supporting documents for the proposed rule to revise the definition of “waters of the United States,” the EPA recognizes that where federal permits or licenses would not be required for non-jurisdictional waters, 401 certification would not be required.</p>	<p>No changes to the guidance.</p>
<p><b><i>Workforce Development</i></b></p> <ul style="list-style-type: none"> <li>EPA says “Roughly one-third of water treatment facility operators will be eligible to retire in the next 10 years.” It is unclear if this includes wastewater treatment facility operators. We recommend they also be included. In our state, we estimate the percentage of wastewater operators eligible to retire in the next 10 years to be higher than one third.</li> <li>The implementation of ATTAINS is listed as a new and high priority item. EPA was unprepared to accept the Integrated Report through ATTAINS in 2018. South Dakota was one of the few states that submitted information through ATTAINS and we had to spent a lot of time helping to troubleshoot the system.</li> </ul>	<p><i>South Dakota Department of Environment and Natural Resources</i></p>	<p>Page 6</p>	<p>Thank you for your comment. The language is changed to state “water and wastewater treatment facility operators.” The number (“Roughly one-third”) is a national estimate and may vary from state to state. Some states will have higher or lower estimates.</p> <p>Thank you for your assistance to troubleshoot the redesigned ATTAINS. We are making monthly deployments to improve the efficiency of the system.</p>	<p>Added “...and wastewater” to section on Workforce Development.</p>

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<p><b>Section 106 Grant Guidance</b> On page 10, the draft guidance states:</p> <p><i>Section 106 grant guidance covers the core water pollution control activities: water quality standards, water quality monitoring, impaired waters listing and total maximum daily loads (TMDL) development, NPDES permitting, enforcement and compliance, <b>and assumed programs for dredge and fill permitting and enforcement.</b></i>[emphasis added]</p> <p>Looking at the FY 2018-2019 guidance, it does allow states to use 106 money to administer dredge and fill programs, but these programs have never been listed as a core water pollution control activity. For example, on page 20 of the final FY 2018-2019 guidance, it says:</p> <p><i>This grant guidance covers only the core water pollution control activities; water quality standards, water quality monitoring, impaired waters listing and total maximum daily loads development, National Pollutant Discharge Elimination System permitting and enforcement and compliance.</i></p> <p>At this time we do not believe EPA is adequately funding existing state core program areas. EPA should not take funding away from existing core program areas to incentivize state dredge and fill programs.</p>	<p><i>South Dakota Department of Environment and Natural Resources</i></p>	<p>Page 10</p>	<p>The section 106 guidance has always included NPDES permitting and enforcement as a core activity, but the EPA acknowledges that the section 404 state assumed dredged and fill permit program has not been specifically identified as a core water program activity. However, promoting cooperative federalism through increasing state and tribal assumption of the Clean Water Act section 404 program is a priority of the national water program. Therefore, the introductory paragraph was revised and the text on the assumption of the section 404 program will be reflected in the bulleted list of section 106 priorities. Please note, states can use their 106 funds for 404 assumed dredged and fill program. Using section 106 funds to implement the section 404 program is at a state's discretion.</p>	<p>Edits made to the section 106 section of the guidance.</p>