Region 8 GUIDANCE FY-2011
Performance Partnership Agreements
Environmental Protection Agency

Office of Enforcement, Compliance, and Environmental Justice

Colorado
Montana
North Dakota
South Dakota
Utah
Wyoming

May 13th, 2010

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Introduction

EPA's national enforcement and compliance assurance program is multi-media in scope and breadth. The national program maximizes compliance with ten distinct federal environmental statutes through the use of compliance assistance, incentives, monitoring, and civil and criminal enforcement. OECA implements a total of 28 separate program areas dealing with prevention and control of air pollution, water pollution, hazardous waste, toxic substances, and pesticides. The statutory and regulatory requirements of these programs apply to a diverse universe of regulated entities. The majority of the work in the FY-2011 NPM is accomplished under the strategic goal "Compliance and Environmental Stewardship" in the draft FY 2009-2014 EPA Strategic Plan.

The NPM describes the key actions needed to accomplish this goal as proposed in the draft EPA *2009-2014 Strategic Plan Change Document* (http://www.epa.gov/ocfo/plan/pdfs/strategic_plan_change_document_9-30-08.pdf The Office of Enforcement and Compliance Assurance (OECA) has released their National Program Managers (NPM) Guidance document covering Administrators priorities, goals, initiatives and significant changes from the FY-2010 NPM guidance. This is included in the ECEJ Appendix 1. The NPM Guidance can also be located at the following website: http://www.epa.gov/finance/npmguidance/index.htm.

The NPM and Region 8 PPA guidance outline national program priorities and activities for enforcement and compliance regulatory programs for FY 2011. The guidance documents are prepared to assist the state in the development of an effective Performance Partnership Agreement with Region 8. This document includes updated information regarding performance commitment requirements, Regional and National priorities, EPA Administrators' priorities, Program Oversight activities, as well as core program guidance.

1. Performance Partnership Agreement (PPA) Requirements

The following section contains information regarding the maintenance of Core Programs, National Databases and Accountability measures that must be included in submitted PPA's.

A. Maintain Core Programs

The state agency must maintain and implement the core programs, as required by the federal and state statutes and rules, and as reflected in program authorizations and other formal agreements between EPA and the state.

- The FY2011 NPM Guidance provides a detailed, statute specific core program description.
- The State may also describe standard commitments in the Agreement that reflect core program activities (e.g. development of the Compliance Monitoring Strategy of the air program). Additional State specific language may be discussed during the negotiation of the Agreement, in accordance with the results of oversight results.

B. Maintain National Databases

The state agency must maintain national databases. This includes entering required data elements in a timely manner; performing appropriate data quality assurance and data validation tasks; and assuring timely, accurate, and complete information is available for retrieval by State and EPA staff and managers. The existing Final Enforcement and Compliance Data Quality Strategy and Description of Data Quality Strategy Implementation Plan Projects are included as Appendix 3 and 3a.
The Office of Compliance, Enforcement Targeting and Data Division, is developing a comprehensive Data Quality Strategy that will improve upon the disparate approaches previously used in order to provide a strategic vision and implementation schedule to assure that enforcement and compliance data can be used as an effective tool to manage our program and report on our accomplishments. This will become effective when completed. Additional details on specific activities to implement this strategy will be provided to State Agencies as they become available. Key elements include:

- Identification of key enforcement and compliance program data fields.
- Developing standards for verification and validation of the accuracy of data being entered into key data fields in each database
- Ensure full implementation of the Watch List project reporting by regional offices along with timely and complete reporting of necessary compliance and enforcement data to national databases
- Periodic random data audits and targeted data clean-ups
- Updating guidance on the input and use of certain key data fields in each database, including identifying where underlying media specific program guidance needs to be updated and/or revised
- Ensuring accurate data entry into legacy systems by state personnel.

***Suggested PPA Language**:*

"The State commits to entering required data into regional and national data systems so that federally required data fields are timely, accurate, and complete pursuant to definitions, guidance, and policy."

a. Safe Drinking Water Information System (SDWIS)
   - Ensure all enforcement actions are linked to violations in SDWIS. Exceptions to the list of currently identified orphan enforcement actions are:
     - S/E IB Compliance Meeting Conducted
     - S/E IC Tech Assistance Visit
     - S/E OY Variance/Exemption Issued
     - S/E OZ Turbidity Wavier Issued
     - S/E FE Boil Water Order
     - S/E FO Administrative Order with penalty)failure to comply with a previously issued AO (S/E FL)

- Ensure any PWS's lacking lat/long and mad code data, have been identified, corrected and submitted for the quarterly reporting process to update SDWIS/Fed.
- Ensure new regulatory violations are tracked and reported to SDWIS the quarter after occurrence. When draft guidance is issued, States should start working on tracking and implementing reporting requirements.
- To ensure that all regulatory rules are tracked and reported, states should use the most current versions of the SDWIS product. Currently SDWIS/State 2.3 and SDWIS Fed 3.2. FedRep will only support SQL and Oracle. Foxpro is no longer supported.
- Review, identify and correct in SDWIS all violations which should have return to compliance designation.
- Pursuant to SDWA guidance, ensure that all violations, enforcements and samples data are reported the quarter following their occurrence to SDWIS/Fed.
- States should report compliance assistance visits on a quarterly basis to SDWIS (a code under sanitary surveys). There is now a code for follow-up visits for formal enforcement that should be reported as they occur.

b. Permit Compliance System (PCS)/ICIS-NPDES

- EPA will evaluate the States on how they maintain their PCS database for data integrity, completeness, timeliness and accuracy on all required Water Enforcement National Database (WENDB) data elements (for those states still using PCS) (Appendix 7) and the minimum data element specified in the December 28, 2007 Addendum to the PCS Policy Statement (for those states migrated to ICIS-NPDES) (Appendix 8) for state inspections, enforcement actions, and Discharge Monitoring Reports (DMRs); as well as completeness for all permit facility, permit tracking, locational data, pipe and flow data.

- During FY2010 all states must adhere to all processes and requirements outlined in the PCS Policy Statement, including the December 28, 2007 Addendum for those states that have migrated to ICIS-NPDES (Appendix 8). .

- Because the PCS database is being replaced by the new ICIS/NPDES database, EPA has recommended that States clean up PCS missing or inaccurate facility and pipe-level information in addition to the above evaluation criteria. EPA Headquarters has identified 34 facility WENDB data elements that are to be entered into PCS for every active permit (the information to populate these fields is obtained from individual NPDES permit applications and their Statement of Basis/Rationale) (Appendix 7). EPA is working with each State to complete this effort. To facilitate the States in their data cleanup, a Data Migration Guidance Document has been compiled by Headquarters that will guide the States on how to

cleanup their PCS data. Also, Headquarters has weekly ICIS-NPDES Cleanup Calls for the States that are cleaning up their PCS data to answer any questions or concerns the States are having.

c. Air Facility Registry System (AFS)
   - Data is an integral part of the CAA compliance and enforcement program; therefore, it is essential that Regions and delegated agencies enter complete and accurate information into the national database in a timely manner. Complete, accurate and timely data is necessary for EPA, delegated agencies and the public to evaluate programs and institute corrections. A complete list of MDRs as well as the CMS and HPV Policies, can be found at the following website and in Appendix 12. http://www.epa.gov/compliance/data/systems/air/afssystem.html The PPA should include the following data related elements:
     - States will provide complete, accurate, and timely data consistent with the MDR's as well as the CMS and HPV Policies.
     - States will report the compliance results of all FCEs and negotiated PCEs into AFS as soon as practicable after a compliance determination is made.
     - States will coordinate with EPA to ensure that CMS sources are flagged in AFS for inspection, and to ensure that high priority violations and associated enforcement actions are correctly identified in AFS.
     - States will report 100% of the stack tests and the results (pass/fail) in AFS when a compliance determination has been made.
     - State will make appropriate corrections to AFS as identified by the Regions or HQ's
   - Additional State-specific language may be discussed during the negotiation of the Agreement, in accordance with results of the Oversight assessments.

C. Accountability Measures

Region 8 anticipates that each State will adopt the performance measures agreed to by EPA and ECOS. The enforcement and compliance assurance outcome and output measures should be included in the Agreement. Additional and/or alternative measures may be discussed during the Agreement negotiation period. The enforcement accountability measures are included in ECEJ Appendix 2.

2. FY2011 REGIONAL PPA AREAS OF EMPHASIS AND PRIORITIES

Each of these areas of emphasis should be considered during negotiations for the PPA for FY 2011. It is recognized that there are certain functions—like monitoring, permitting, inspecting, technical assistance, enforcement, etc.—that form the core of our work. They are the underpinnings of all we do. These special emphasis areas represent either an outgrowth of our core work, or a focusing of attention on a particular segment of these core programs. It is because of our ability to perform our

core activities that we have the opportunity to select certain areas for emphasis in the upcoming year. The following list includes the primary areas where EPA anticipates continued emphasis for FY 2011.

A. Building Partnerships With the Agriculture Community

Region 8 will work in partnership with the agricultural community, other federal agencies, states, tribes, and others to help achieve continual environmental improvement and promote environmentally sustainable production of safe, abundant supplies of food and fiber in support of the following goals:

- Restore and Maintain Water Quality
- Encourage Agriculture Pollution Prevention
- Protect Health of Agricultural Workers
- Improve Outdoor Air Quality
- Build and Maintain Productive Partnerships

B. Improving Air Quality

The overall goal is to work with our State, Tribal and federal partners to achieve and maintain healthy air quality. A particular focus will be on effectively addressing air quality impacts from energy development. Region 8 will provide oversight and technical assistance to our States and Tribes and fulfill direct implementation responsibilities. Major program emphasis areas will be:

- Permitting
- Work with states on ozone designation issues
- Work with states and Federal Land Managers on the potential establishment of a data warehouse and/or air quality analysis center to be used for NEPA and regulatory programs
- Regional Haze FIPs
- Diesel emission reductions from DERA/ARRA
- Work with Utah on PM2.5 nonattainment SIP development
- Reduce SIP Backlog as described in Consent Agreement

C. Addressing Climate Change

Many states, tribes, and municipalities in Region 8 have been proactive in addressing climate change in various ways. As part of the Climate Change priority, Region 8 will continue to recognize and support the important role of these efforts, and will reach out to identify ways in which we can provide assistance and work in collaboration to make our programs compatible and complementary. The Region 8 Climate Change priority will:

- Support Administrator's Clean Energy/Climate priority through implementation of GHG reporting rule, and work with sources to improve energy efficiency and reduce GHG emissions by leveraging existing federal, state and local programs
- Assess and plan for the effects of climate change on current and future responsibilities of the regional office

- Demonstrate environmental leadership through new building operations and outreach, including further integration of Region 8 Environmental Management System (EMS)
- Identify and implement goals and priority activities that have the highest potential to reduce greenhouse gas emissions and increase our capacity to adapt to climate variability
- Support our partners, including states and communities, in their response to the challenge of climate change through knowledge building, technical assistance, and partnerships
- Implement priority climate change activities to expedite reductions in carbon emissions

D. Energy

Region 8 contains extensive fossil fuel, mineral and renewable energy resources – so extensive that the Region is in many ways the center of the nation's energy future. With the current emphasis on resource extraction and electricity production to meet growing demand, energy projects in our Region are increasing. Region 8 programs protect air, water, land and ecosystems from the potential impacts of energy development and production and encourage energy conservation and renewables. The Region 8 Clean Energy priority focuses upon achieving the following goals and objectives:

- Support Administrator's Clean Energy/Climate goals, including support for Carbon Capture and Sequestration (CCS) readiness, and Underground Storage Tank (UST) compatibility efforts
- Region 8 decision processes for energy projects will be efficient and timely and will meet or surpass EPA regulatory requirements
- EPA's energy goals will be pursued in collaboration with states, tribes, federal agencies and other stakeholders
- Help provide affordable energy and a clean environment through improved compliance.
- Increased production of renewable and non-renewable energy and greater energy efficiency to enhance national security and economic growth
- Support projects that facilitate clean and renewable energy production and ensure transmission capacity
- Accelerate protection of public health and the environment by helping America use energy more efficiently and affordably, speeding the transition to cleaner energy sources, improving energy security and reducing greenhouse gases
- Implement Energy Act 2005 and the Energy Independence and Security Act of 2007

E. All Hazards Response

As part of efforts to improve preparedness and the ability to respond to terrorist attacks, EPA has been called upon to play a strategic role in homeland security. The president has given EPA the responsibility for safeguarding the nation's drinking water supplies and delivery systems and for responding to biological, chemical and hazardous waste risks posed by potential terrorist attacks.

Region 8 will continue to strengthen the communications network we have established with federal, state and local response authorities; enhance expertise and readiness through training and coordinated exercises; and take additional steps to secure infrastructure and hazardous materials. In the long term, our efforts will maximize the Region's capability to assure time-critical and coordinated responses to terrorist incidents and natural disasters. Region 8 will also expand the Region's capability to respond to Incidents of National Significance (INS) and continue operations during shutdown of the Regional Office or a pandemic disease outbreak.

EPA continues to focus our attention and efforts on four homeland security priority areas:

- Water Security (Sector Lead)
- Decontamination (U.S. Government Coordinator/Lead)
- Emergency Response
- Internal Preparedness including Continuity of Operations Plan (COOP) / Pandemic Flu

F. Building State and Tribal Capacity

This priority is intended to further improve the federal-state/tribal working relationships and to identify opportunities to enhance state and tribal capability to deliver environmental program services. The elements of the priority include:

- Providing resources, partnering and work-sharing, Technical assistance, Training opportunities
- Promote Innovations and flexibilities
- Collaborate on priorities
- Improve the ability to focus limited resources on priorities
- Maintain core programs within the bounds of available resources as negotiated in Performance Partnership Agreements

G. Direct Implementation

Region 8 is responsible for, and deploys significant resources to directly implement environmental programs on tribal lands and to implement programs where states are either not delegated authority or where programs cannot be delegated. Our direct implementation responsibilities are critical to our mission to protect public health and the environment. Through program implementation, permitting, inspections, compliance assistance, enforcement and performance of Superfund and NEPA activities Region 8 fulfills these direct implementation responsibilities.

Region 8 is home to 27 tribal nations with a land area of approximately 28 million acres. In almost all cases, Region 8 implements all environmental programs on these lands. Direct implementation will continue to demand attention and resources, especially as increased activities in sectors such as energy expand programmatic workloads. In addition to the metrics below direct implementation commitments can be found under *Building*

State and Tribal Capability, Energy, Climate Change Building Partnerships with the Agriculture Community, and Air Quality.

H. Sustainable and Healthy Communities

The environmental health and long-term viability of our communities continues to be a priority of both Region 8 and this Administration. Through initiatives aimed at ensuring Sustainable and Healthy Communities, EPA's goal is to foster an integrated approach to community development, with an emphasis on risk and exposure reductions, protecting Children's health and improving the lasting livability of our communities.

The Administrator identified the Promoting Healthy Communities investment and protecting at-risk communities as primary themes for agency efforts to protect public health and the environment. Increased monitoring and analytical services, including efforts in cumulative risk assessment and risk communication research, along with an emphasis on the cleanup and revitalization of contaminated properties and greater community participation are ways to achieve this cross-programmatic goal. Specifically, initiatives to reduce exposures to pollutants through Healthy School initiatives aim to improve human health for a significant number of individuals in our most at-risk communities.

Through agency initiatives and board partnerships the Region will examine opportunities for enhanced engagement in implementing sustainable practices in our communities. In addition, EPA strives to meet the President's challenge for Agencies to work together to encourage and fully assist rural, suburban and urban areas build sustainable communities using the following principles:

- Energy efficiency/water usage/footprint.
- Reducing Exposure Risks.
- Community engagement.
- Clean up/Redevelop/revitalize properties.
- Expand Availability of Green jobs.
- Support existing communities.
- Provide more transportation choices.
- Promote equitable, affordable housing.
- Enhance economic competitiveness.
- Support existing communities.
- Coordinate policies and leverage investment.
- Value communities and neighborhoods.

I. Stronger EPA

Region 8 will provide National (Lead Region) leadership for Human Resources and Human Capital Initiatives. Region 8 will collaborate with EPA Headquarters in capturing the focus and successes of "Stronger EPA" and integrating/re-branding this important work in the current Administration. Region 8 will align with OPM's Strategic Plan and their vision that the

Federal Government becomes America's Model Employer for the 21st Century. OPM's 4 broad strategic goals include:

"Hire the Best": Recruit and hire the most talented and diverse Federal workforce possible to serve the American people.

"**Respect the Workforce**: Provide the training, benefits, and work-life balance necessary for Federal employees to succeed, prosper, and advance in their careers.

"**Expect the Best**": Ensure the Federal workforce and its leaders are fully accountable and are fairly appraised while having the tools, systems, and resources to perform at the highest levels to achieve superior results.

"**Honor Service**": Ensure comparable recognition and reward for exemplary performance of current employees and honor the careers of Federal retirees.

J. American Reinvestment and Recovery Act (ARRA)

cThe Recovery Act included almost $380 million for projects and programs administered by EPA Region 8. These programs will protect and promote both "green" jobs and a healthier environment. These environmental areas include:

Clean Water State Revolving Fund and Drinking Water State Revolving Fund: Distributed over $260 million to assist communities with water quality and wastewater infrastructure needs and drinking water infrastructure needs. A portion of the funding will be targeted toward green infrastructure, water and energy efficiency, and environmentally innovative projects.

Brownfields: Nearly $4.5 million in competitive grants and loans to evaluate and clean up former industrial and commercial sites.

Diesel Emissions Reduction: Over $17 million in grants and loans to help regional, state and local governments, tribal agencies, and non-profit organizations with projects that reduce diesel emissions.

Superfund Hazardous Waste Cleanup: Over $75 million in contracts for the cleanup of hazardous sites.

Leaking Underground Storage Tanks: Nearly $10 million **t**o cleanup petroleum leaks from underground storage tanks.

K. Restoring Imperiled Waters

The Restoring Imperiled Waters initiative is a place based program which will address pressing water quality challenges facing Region 8 and the nation. Complementing and building upon the efforts in other watersheds, our efforts will achieve water quality improvements in key watersheds through targeted implementation of core water programs, leveraging more effective

partnerships, and strategic targeting of resources. In the urban sector, the program will focus on helping disadvantaged communities reconnect with their waters and collaborate with a variety of partners to improve water quality while achieving other community goals

3. OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE (OECA) ADMINISTRATORS PRIORITIES, ENFORCEMENT GOALS (FY-2011), NATIONAL ENFORCEMENT INIITIATIVES AND SIGNIFIGANT CHANGES FROM FY-2010

A. Administrators Priorities

OECA's work aligns with and implements the Administrator's priorities in the following ways:

1. Taking Action on Climate Change: Enforcement supports the Agency's climate strategy by recognizing reductions of global warming pollution in settlements of enforcement actions. OECA will be working to support the integrity of the monitoring and reporting system for global warming pollution by assuring compliance with the greenhouse gases reporting rule.

2. Improving Air Quality**:** Enforcement helps improve air quality in communities by targeting large pollution sources, especially in the utility, refinery, cement and glass industries, and taking aggressive action to bring them into compliance and to install controls that will benefit communities and improve emission monitoring. OECA is working closely with the Office of Air and Radiation to reduce toxic air pollution, through protective enforcement, permitting and standards, especially in communities that are disproportionately affected by pollution now. OECA will continue to work with States and Tribes to improve monitoring of compliance with air pollution standards and make sure that action is taken against serious violations that affect community air quality.

3. Assuring the Safety of Chemicals**:** As the Agency steps up its review of chemical safety and pushes for reform, OECA will work closely with OCSPP to achieve its goals. The enforcement program will take action when we find violations of standards for high-concern chemicals.

4. Cleaning Up Our Communities**:** Enforcement ensures that parties responsible for contamination step up to their cleanup responsibilities. By ensuring that the polluter pays whenever possible, OECA's efforts result in more cleanups, which protect more communities from exposure and returns properties to productive use. OECA will also use enforcement to spur clean up at RCRA corrective action sites where the clean up progress is stalled.

5. Protecting America's Waters**:** OECA is revamping the water enforcement program to focus on the problems that are the biggest threat to the nation's waters. At the same time, OECA will increase

oversight of the States and work to define the shared accountability of EPA, States and Tribes for clean water. OECA will improve transparency, to enlist the public in holding sources and government accountable.

6. Expanding the Conversation on Environmentalism and Working for Environmental Justice: In all the enforcement work OECA does, as described above, OECA can help protect communities by targeting enforcement in areas where we find serious noncompliance and where communities face multiple pollution threats. OECA works with other federal agencies to make sure environmental justice considerations are included in their decision making process as they prepare environmental analyses (environmental impact statements or environmental assessments) under NEPA. OECA also will make more available and understandable information on facility compliance and government response, so that people have the information they need to take action to improve their own communities.

7. Building Strong State and Tribal Partnerships: EPA shares accountability with States and Tribes for protecting the environment and public health. With the current economic challenges, it is important that EPA and its partners work efficiently and effectively to do the most we can with the resources we have. At the same time, OECA will strengthen oversight of States that implement federal environmental programs, and support States that take strong enforcement action to protect their citizens by making sure that we hold all States to a comparable standard.

B. OECA's Enforcement goals for FY2011 are to:

Aggressively go after pollution problems that make a difference in communities. Use vigorous civil and criminal enforcement that targets the most serious water, air and chemical hazards; and advance environmental justice by protecting vulnerable communities.

1 Clean water
- Clean water act action plan: revamp enforcement and work with permitting to focus on the biggest pollution problems, including
  - Get raw sewage out of the water
  - Cut pollution from animal waste
  - Reduce polluted storm water runoff
- Assure clean drinking water for all communities, including in Indian country
- Clean up great waters that matter to communities, e.g, Chesapeake Bay

2 Clean air
- Cut toxic air pollution in communities
- Reduce air pollution from largest sources, including coal fired power plants, cement, acid and glass sectors

3 Climate and clean energy
- Assure compliance with greenhouse gas reporting rule

- Encourage greenhouse gas emission reductions through settlements
- Target energy sector compliance with air, water and waste rules

4 Protect people from exposure to hazardous chemicals
- Prevent releases of hazardous chemicals that threaten public health or the environment
- Press for clean up of hazardous sites in communities: polluter pays
- Reform chemical management enforcement and reduce exposure to pesticides focus on specific areas aimed to help achieve clean water, clean air, and climate and clean energy, and to protect people from exposure to hazardous chemicals.

Reset our relationship with States: make sure we are delivering on our joint commitment to a clean and healthy environment.

1. Shared accountability
   a. Make joint progress with States and Tribes toward clean air and water goals, protection from exposure to hazardous chemicals
   b. Work toward shared focus on protecting vulnerable communities
2. Strengthened oversight
   a. Assure strong and effective State enforcement of federal environmental laws
   b. Press for consistent enforcement across States and Regions: fairness and level playing field
3. Establish new model for shared accountability and strengthened oversight, starting with water
   a. Build focus on highest priority problems into grants, enforcement and permitting agreements
   b. Define clear expectations for state performance
   c. Take federal action where not meeting minimum expectations

Improve transparency
- Make meaningful facility compliance information available and accessible using 21st century technologies
- Hold government accountable through public information on state and federal performance
- Promote better federal environmental decisions and public engagement through NEPA

C. Development of Enforcement Initiatives

To help implement these enforcement goals, OECA selects a limited number of National Enforcement Initiatives based upon significant environmental risks and noncompliance patterns. In FY 2010, EPA re-examined the existing initiatives to look for opportunities to clarify goals and measures, more accurately identify universes of sources, and, where necessary, to change the focus of an Initiative. In addition, EPA considered candidates for new National Enforcement Initiatives. After consulting with EPA programs and Regions, States, Tribes, and the public,

OECA adopted the following National Enforcement Initiatives for 2011 through 2013; more information on each is found in the media sections of the OECA NPM guidance:

1. Keeping raw sewage and contaminated stormwater runoff out of our waters
2. Cutting animal waste to protect surface and ground waters
3. Reducing widespread air pollution from the largest sources, especially the coal-fired utility, cement, glass, and acid sectors
4. Cutting toxic air pollution that affects communities' health
5. Assuring energy extraction sector compliance with environmental laws
6. Reducing pollution from mineral processing operations

D. Significant Changes from FY2010

The most significant change from the FY 2010 guidance is to focus the NPMG on the Administrator's and Assistant Administrator's goals, and on aligning enforcement and compliance priorities with those of the other EPA national program managers. To this end, the FY 2011 NPMG is organized to 1) describe the specific expectations for regions that implement the Assistant Administrator's priorities, 2) explain how the enforcement program supports the priorities of other EPA national programs, and 3) identify the new National Enforcement Initiatives for FY 2011 through FY 2013. In addition, this guidance now itemizes the relevant enforcement guidances and policies in a list instead of describing each one.

1. **Clean Water Action Plan**: OECA is currently working with EPA regions, States and the Office of Water to implement the Clean Water Act Action Plan ("the Action Plan") issued in October 2009. Since work is ongoing under the Action Plan, FY2011 will be a transition year as we revamp the Clean Water Act compliance and enforcement program to better address our nation's water quality challenges. This NPMG includes more immediate recommendations arising from the implementation of the Action Plan to improve identification of serious non-compliance problems, identify new approaches to address water source violations, and to strengthen oversight of state programs.

2. **New National Enforcement Initiatives**: OECA will start work on the National Enforcement Initiatives selected for FY 2011-13 in FY 2011. Regional expectations for the Initiatives will be made available in the third quarter of FY 2010 before the commitment levels must be agreed upon.

3. **Environmental Justice Expectations**: The NPMG includes a new environmental justice section that contains expectations for implementing the Agency's goals to advance environmental justice. In addition, each of the media chapters now addresses environmental justice expectations for using screening tools/approaches and other information to support targeting of enforcement actions and to enhance performance reporting.

4. **Federal Facilities Expectations in Media Chapters**: For the past several years, OECA has focused the Federal Facilities expectations in a separate

section. Each of the media chapters in this NPMG now specifically list expectations for the Regions regarding Federal Facilities.

5. **Indian Country Expectations in Media Chapters**: For the past several years, OECA has focused the Indian Country expectations for drinking water, compliance at schools, and dumps in a separate section. Each of the media chapters in this NPMG now specifically list expectations for the Regions regarding Indian country.

4. PROGRAM OVERSIGHT

State RCRA, NPDES, Air, and PWSS enforcement program performance will be evaluated as described in the attached draft document entitled, ***Regional Plan for Region 8's Implementation of the State Review Framework (SRF), Uniform Enforcement Oversight System (UEOS) and Other Oversight Activities for the CWA NPDES, CAA Stationary Sources, RCRA Subtitle C, and Public Water System Supervision (PWSS) Enforcement Programs through FY 2012*** and as described in the state-specific State Oversight Plan which will be forwarded to each state environmental director in draft for comment by April 30 of each year and as final no later than September 30 of each year. Oversight activities planned for FY 2011 are based on program performance as determined through the OECA/ECOS State Review Framework (SRF) and, for PWSS, Uniform Enforcement Oversight System (UEOS) evaluations as well as in the FY 2009 end-of-year reports.

National data that will be used to support the SRF reviews are available to the regions and states through OTIS management reports and states are encouraged to periodically look at the data, ensure its accuracy, and use it in managing their programs. The OTIS management reports and other information regarding the SRF are available at: http://www.epa.gov/idea/otis/stateframework.html.

> ***Suggested PPA Language***
> *"State RCRA, NPDES, Air, and PWSS enforcement program performance will be evaluated as described in the draft* ***Regional Plan for Region 8's Implementation of the State Review Framework (SRF), Uniform Enforcement Oversight System (UEOS) and Other Oversight Activities for the CWA NPDES, CAA Stationary Sources, RCRA Subtitle C, and Public Water System Supervision (PWSS) Enforcement Programs through FY 2012****(which was included with the FY 2011 PPA Guidance to States) and as described in the state-specific State Oversight Plan."*

5. PROGRAM SPECIFIC GUIDANCE

A. CAA – National Enforcement Initiatives

a. **Air Toxics in Communities**

a. **Maximum Achievable Control Technologies (MACT)**

a. The MACT program has been identified by OECA as a national priority. During the FY 2011-2013 period, the national enforcement initiative will focus on excess emissions caused by facilities failure to comply with LDAR, flaring, benzene, and excess emissions during start-up, shutdown and malfunctions. Region 8 will continue with its LDAR

efforts at MACT HH facilities and begin investigating flaring at refineries.

Suggested PPA Language
"During the FY2011-2013 period, EPA and the State will collaborate on investigating and inspecting facilities as they relate to LDAR under MACT HH and flaring at refineries. Also, facilities with benzene emissions and excess emissions during start-up, shutdown and malfunctions will also be targeted for investigations and inspections."

b. States will provide information to EPA adequate to support a complete and up-to-date universe of MACT facilities in Region 8. States will annually submit a written and electronic report to EPA by November of the fiscal year for which this guidance is forwarded, to include the MACT sources in the respective States (including the facility's name, AFS number, MACT Subpart and source size classification).
c. EPA Region 8 will also conduct lead inspections targeting facilities for those MACTs which the state has not received delegation.
d. EPA Region 8 will continue to provide guidance and assistance in rule implementation, compliance determinations, and other case by case issues where EPA may need to make a final decision.

Suggested PPA Language
"During FY 2010, the State will provide information to EPA adequate to support a complete and up-to-date universe of MACT facilities. The State will annually submit a written and electronic report to EPA by November of the fiscal year for which this guidance is forwarded, to include the MACT categories for which they have received delegation, the MACT categories for which they have not received delegation, the sources within the MACT categories for which delegation has been accepted (including the facility's name, AFS number, MACT Subpart and source size classification) and the sources within the state for which compliance with the standards has been determined."

b. **New Source Review/Prevention of Significant Deterioration (NSR/PSD)**
   a. During FY2011-2013, OECA has determined that EPA will continue its PSD/NSR enforcement efforts against refineries, coal-fired power plants, cement, sulfuric and acid, and glass manufacturing facilities. Region 8 will continue to develop and settle regional cases involving PSD/NSR compliance issues at coal-fired power plants, refineries, cement plants, sulfuric/nitric acid plants, and glass manufacturing facilities.

Suggested PPA Language:
"EPA will continue to investigate facilities for potential violations of PSD/NSR requirements focusing on Coal Fired Power Plants, Refineries, Cement Plants, Glass Manufacturers, Sulfuric/Nitric Acid Plants and Oil and Natural Gas Production facilities."

b. **Energy Extraction**
   a. OECA has selected Energy Extraction as a new sector for FY2011-2013. Region 8 will continue to focus on oil & natural gas facilities as it relates to PSD, MACT Subpart HH and Subpart ZZZZ and other areas as identified in the energy extraction strategy that will be finalized later this summer.

Suggested PPA Language:
"EPA will continue to investigate oil and natural gas facilities for potential violations of PSD, MACT Subpart HH and Subpart ZZZZ and other areas of potential concern. EPA investigations will be primarily focused on tribal lands but may include investigations of companies operating across tribal/state jurisdiction."

c. CAA – Core
   1. Additional state specific language may be discussed during the negotiation of the Agreement in accordance with the results of the enforcement programs State Review Framework.

   2. The Annual Commitment System (ACS) for FY2011 requires that draft targets (inspection numbers) be entered into the system by July 1st, 2010 and are finalized September 30th, 2010. States will provide EPA with its inspection numbers so that EPA can submit the data into the system by the required timelines.

   3. The States should continue to implement the CMS, National Stack Testing Guidance, HPV Policy, and the Area Source Implementation Guidance.

B. CWA-NPDES

a. Clean Water Act Action Plan
   - OECA is currently working with EPA regions, states and the Office of Water to implement the CWA Action Plan (the Action Plan) issued in October 2009. The Action Plan's three key elements are: 1) to focus our NPDES enforcement efforts on pollution sources that pose the greatest threats to water quality; 2) to strengthen oversight of state permitting and enforcement programs; and 3) to improve the accessibility and quality of information we provide to the public. These elements are consistent with the Assistant Administrator's goals for the compliance and enforcement program, which includes aggressively going after pollution problems that make a

difference in communities, resetting our relationships with States and making important information available to the public. In support of the Action Plan, EPA and States will:

- Conduct planning meetings between EPA and State NPDES compliance and enforcement, permitting and water quality standards personnel to identify water quality issues of greatest concern for each state, and develop collaborative annual work plans to leverage both State and EPA resources to address these issues. Plans for FY2011 will be developed by September 15, 2010 (which is prior to the FY2011 PPA cycle). FY2012 plans will be developed September 15, 2011.
- Conduct quarterly meetings between EPA and each state to discuss progress towards meeting annual permitting and enforcement commitments.

Suggested PPA Language

"The State and EPA will work together to implement the Clean Water Act Action Plan. The State and EPA will conduct planning meetings including NPDES compliance and enforcement, permitting and water quality standard personnel to identify water quality issues of greatest concern for each state, and develop collaborative annual work plans to leverage both State and EPA resources to address these issues. A collaborative work plan will be developed prior to September 30, 2010 for FY2011. FY2012 plans will be developed September 15, 2011. The State and EPA will conduct quarterly meetings to discuss progress towards meeting annual permitting and enforcement commitments."

b. NPDES National and Regional Enforcement Initiatives

- EPA will perform inspections in regional and national enforcement initiatives according to national guidance and the national 2011-2013 Performance Based Strategies and the collaborative annual work plans. The enforcement initiatives include: Municipal Wet Weather Infrastructure, which includes Sanitary Sewer Overflows (SSOs), Combined Sewer Overflows (CSOs) and Municipal Separate Storm Sewer Systems (MS4s); Concentrated Animal Feeding Operations (CAFOs); and Energy Extraction. EPA will conduct inspection follow up and enforcement for those facilities it inspects.
- States are encouraged to pilot the Wet Weather SNC Policy in FY11.

Suggested PPA Language

"EPA will perform inspections in regional and national enforcement initiatives according to national and regional guidance and the national 2011-2013 Performance Based Strategies and the collaborative annual work plans. The enforcement initiatives include: Municipal Wet Weather Infrastructure; Concentrated Animal Feeding Operations (CAFOs); and Energy Extraction. EPA will conduct inspection follow up and enforcement for those facilities it inspects. "

"States are encouraged to pilot the Wet Weather SNC Policy in FY11. "

Municipal Wet Weather Infrastructure

a. Sanitary Sewer Overflows (SSO)

- Each state should continue to implement its draft SSO response plans. SSOs must be entered into PCS/ICIS-NPDES as single event violations in accordance with the PCS Policy Statement and its addendums.

- States should commit to provide to EPA by October 15, 2010 the following information: a) an updated SSO inventory; b) the number of NPDES inspections targeted to identify SSOs; c) the number and percent of SSO inspections in priority watersheds including the name of the priority watershed; d) the number and type of informal and formal enforcement actions taken in response to SSOs; e) the percent of enforcement actions in priority watersheds for SSO; and f) a list of SSOs addressed. Copies of all SSO inspections and enforcement actions should be submitted to EPA.

- EPA and states continue to investigate municipal systems to determine whether the systems have an appropriate operation and maintenance system and adequate capacity to handle current and projected flows. Based on these investigations, EPA has set goals for addressing SSOs for large municipal systems (total treatment capacity of > 100 MGD) and medium municipal systems (total treatment capacity of > 10 MGD, < 100 MGD) and their associated satellite systems. A facility is considered "addressed" when one of the following conditions is met:

  a. The facility is under a final <u>federal</u> administrative order (AO) or entered federal civil judicial consent decree that includes an enforceable schedule with milestones to implement any necessary remedial measures, and ensure that an adequate operation and maintenance program is in place; or

  b. The facility is named in a <u>federal</u> civil judicial complaint that has been filed; or

  c. The facility is subject to an enforceable <u>state</u> administrative or judicial order <u>that meets federal requirements</u> for compliance expeditiously and includes appropriate penalties; or

  d. The facility received a <u>federal</u> investigation which documents a de minimus spill rate and that adequate capacity, operation and maintenance

procedures are in place to maintain the de minimus spill rate.

We will be discussing state-specific and EPA-specific commitments for meeting the goals of investigating and addressing medium municipal systems and their associated satellites in FY11. The level of commitment we will be asking for will be based on the number of medium systems in the state as well as the progress the state and EPA have already made towards addressing these systems. EPA will conduct a portion of the investigation and enforcement follow up for medium systems in the states.

Suggested PPA Language

enter SSOs into PCS/ICIS-NPDES as single event violations in accordance with the PCS Policy Statement and its addendums. The State will provide to EPA by October 15, 2010 a report including the following information: a) an updated SSO inventory; b) the number of NPDES inspections targeted to identify SSOs; c) the number and percent of SSO inspections in priority watersheds including the name of the priority watershed; d) the number and type of informal and formal enforcement actions taken in response to SSOs; e) the percent of enforcement actions in priority watersheds for SSO; and f) a list of SSOs addressed. Copies of all SSO inspections and enforcement actions should be submitted to EPA.

The State and EPA will conduct an investigation of the current operation and maintenance, capacity and future capacity, based on projected increase of flows, for the following systems: ____ (systems to be determined by State and EPA based on the number of medium systems in the State as well as the progress the State and EPA have already made towards addressing these systems. The systems will be identified as receiving either an EPA or State investigation.) The investigation may consist of a review of information provided by the municipalities and satellite systems, inspections of the collection systems or any other means that accurately characterizes the system.
For those systems that the State conducts the investigation, the State will provide EPA the operation and maintenance and capacity analysis for the systems identified by __ (date agreed upon by EPA and State). If the State determines that a facility does not have adequate operation/maintenance procedures, capacity or the mechanisms to ensure that the additional capacity is provided commensurate with increase in flows, the State and system will enter into an administrative or judicial action which includes an enforceable schedule and appropriate penalty. For those systems the State determines have a de minimus spill rate and are properly designed, operated and maintained, EPA will review the State analysis and will conduct any necessary follow up

(inspections, information requests, etc.) to determine if EPA can support the State's determination. For those systems which EPA conducts the investigation and determines that an enforceable schedule is warranted, EPA will take the enforcement action, or consider joint EPA/State enforcement to address the issues. In addition, other smaller municipal collection systems causing identifiable and significant public health and/or water quality impacts shall be similarly addressed."

2. Combined Sewer Overflows (CSO)
    - States with CSOs should add a commitment to include in the State End-of-Year Report: a) the name and NPDES permit number of each CSO system; b) the compliance status of the system with the nine minimum controls and a long term control plan (LTCP); and c) indicate whether or not the LTCP has been approved and if it contains an enforceable schedule to meet water quality-based effluent limits. A copy of the annual LTCP report shall also be provided by the state to EPA within thirty (30) days of receipt.

3. Storm Water
    - States should indicate in the PPA the number of inspections they intend to perform (this number should indicate the number of Phase I and Phase II MS4 audits and inspections; the number of Phase I and Phase II storm water construction inspections; and the number of storm water industrial non-construction inspections). Storm water inspections should be incorporated in the annual NPDES inspection plan which should identify the names of the targeted industrial facilities, where known, the geographic area targeted for construction inspections, and sector areas targeted. Priority should be given to conducting storm water inspections at non-filers, where there is water quality degradation, and in response to citizen complaints. States should conduct audits of Phase I MS4s every 5 years, and inspect them as needed based upon permit compliance. States should implement their Phase II audit and inspection plan to determine compliance at all Phase II MS4s within the next four years. Additional goals for the Municipal Wet Weather Infrastructure enforcement initiative will be identified by OECA in the summer, at which time EPA and states will discuss the inclusion of these goals into the FY11 PPA at that time. Commitments for conducting inspections of Phase I and II storm water construction sites and industrial sites should be based on the collaborative annual work plan and Compliance Monitoring Strategy (CMS). Storm water inspections should be entered in PCS/ICIS-NPDES or reported to

EPA manually by March 31, 2011 and September 30, 2011 if the state chooses not to enter the inspection into PCS or ICIS-NPDES. Manual reports should contain the same information that would be provided in PCS/ICIS-NPDES. Copies of all storm water inspection reports and enforcement actions should be provided to EPA.

- States shall provide EPA with a copy of their current storm water permit tracking system (or a list of all new and inactivated storm water permits) semiannually by October 31, 2010 and April 30, 2011. Quarterly, States shall provide EPA with a current number of industrial and Phase I and Phase II construction storm water permits (October 15, 2010, January 15, 2011, April 15, 2011, and July 15, 2011).

- States should agree to update the State Enforcement Response Guide (ERG) to include storm water within six months of EPA's final storm water ERG

- States that have joined EPA in a national enforcement case will agree to inspect an agreed upon subset of new sites after the consent degree is final. These inspections will be memorialized in the state's inspection plan.

Suggested PPA Language

"The State will perform ____ Phase I MS4 audits, ___ Phase I MS4 inspections, ___ Phase II MS4 audits, ___ Phase II MS4 inspections, ___ Phase I construction inspections, ____Phase II storm water construction inspections, and ____storm water industrial non-construction inspections in FY10. The number of storm water inspections the State conducts will be incorporated in the annual NPDES inspection plan which will identify the names of the targeted industrial facilities, where known, the geographic area targeted for construction inspections, and sector areas targeted. Priority will be given to conducting storm water inspections at non-filers, where there is water quality degradation, and in response to citizen complaints."

"Storm water inspections will be entered in PCS/ICIS-NPDES or reported to EPA manually by March 31, 2011 and September 30, 2011 if the State chooses not to enter the inspection into PCS or ICIS-NPDES. Manual reports should contain the same information that would be provided in PCS/ICIS-NPDES. Copies of all storm water inspection reports and enforcement actions should be provided to EPA."

"The State will provide EPA with a copy of its current storm water permit tracking system (or a list of all new and inactivated storm

water permits) semiannually by October 31, 2010 and April 30, 2011. Quarterly, the State will provide EPA a current number of industrial and Phase I and Phase II construction storm water permits (October 15, 2010, January 15, 2011, April 15, 2011, and July 15, 2011)."

"The State will update the State Enforcement Response Guide (ERG) to include storm water within six months of EPA's final storm water ERG."

"If the State has/will join EPA in a national enforcement case, it will agree to inspect an agreed upon subset of new sites after the consent degree is final. The agreed upon subset will be memorialized in the State's Inspection Plan.

4. Concentrated Animal Feeding Operations (CAFO)

- States should continue to implement and update as necessary, based on the 2008 Final CAFO rule and the collaborative annual work plan, state-specific CAFO compliance and enforcement strategies and conduct compliance assistance and enforcement as appropriate.
- States should submit by December 31, 2010, a CAFO inventory and inspection status report explaining the progress made towards inspecting CAFOs and its progress toward inventory development. Region 8 will share with States information gathered through national CAFO inventory efforts (i.e. satellite imagery, flyovers, inspections, and database reviews). Each state should agree to inspect permitted CAFOs at least once during the life of its permit. States should also commit to inspecting all unpermitted large CAFOs at least once within the next 5 years to determine whether the facility discharges, and all medium AFOs once to determine if it is a medium CAFO and requires an NPDES permit. Formal enforcement is expected for any large or medium CAFO determined to have discharged. The state should propose a number of CAFO inspections for the PPA to meet this commitment.

- States are encouraged to utilize PCS/ICIS-NPDES for their inventories. However, if States use tracking methods or systems other than PCS/ICIS-NPDES to maintain such an inventory, States will need to coordinate with the Region to ensure accessibility (such as quarterly hard copy reports) of the information, including permit, inspection, and complaint and enforcement data. States shall submit copies of all CAFO inspection reports and enforcement actions to the Region 8 NPDES Enforcement Unit. Inspections and enforcement actions at CAFOs with NPDES permits shall be entered into PCS/ICIS-NPDES. Nutrient Management Plans shall also be tracked in PCS/ICIS-NPDES as a compliance schedule item as required by the PCS Policy Statement and its addendums.

- Region 8 will conduct up to four joint/oversight CAFO inspections in each state (in addition to other oversight inspections).

- Each state shall include in its end-of-year report the number of compliance assistance workshops, training sessions, and/or presentations given for AFO/CAFO operators and/or Ag organizations.

Suggested PPA Language
*"The State agrees to implement and update as necessary, based on the 2008 Final CAFO Rule and collaborative annual work plan, state-specific CAFO compliance and enforcement strategies and conduct compliance assistance and enforcement as appropriate. The State will include in its end-of-year report the number of compliance assistance workshops, training sessions, and/or presentations given for AFO/CAFO operators and/or Ag organizations. The State will submit by December 31, 2010, a CAFO inventory and inspection status report explaining the progress made towards inspecting CAFOs, and its progress toward inventory development. Region 8 agrees to share with the State any information gathered through national CAFO inventory efforts (i.e. satellite imagery, flyovers, inspections, and database reviews). The State will inspect permitted CAFOs at least once during the life of its permit and all unpermitted large CAFOs at least once within the next 5 years to determine whether the facility discharges, and all medium AFOs at least once to determine if it is a medium CA*FO and requires an NPDES permit*. During FY10, the State commits to inspecting __ permitted CAFOs, ___ unpermitted large CAFOs, and __ medium AFOs to achieve this goal. The State will consider using PCS/ICIS-NPDES for development of its CAFO inventory. Inspections and enforcement actions at permitted CAFOs will be entered into PCS/ICIS-NPDES by the State, and Nutrient Management Plans will be tracked in PCS/ICIS-NPDES as a compliance schedule item as required by the PCS Policy Statement and its addendums. The State will provide quarterly reports to EPA (submitted 12/31, 3/31, 6/30, and 9/30) of any inventory that is maintained outside of PC/ICIS-NPDES for the tracking of CAFO permit, inspection, complaint and enforcement data. This tracking system should include information on CAFOs that have been determined to discharge. The State agrees to submitting copies of all CAFO inspection reports and enforcement actions to the Region 8 NPDES Enforcement Unit. The State agrees to EPA Region 8 conducting up to four CAFO joint/oversight inspections during FY10, in addition to other oversight inspections."*

5. Energy Extraction Sector
   - Region 8 will support the new multimedia Energy Extraction Sector enforcement initiative in FY11. This strategy is currently under development. Once finalized, EPA and states will discuss specific actions for inclusion in the FY11 PPA.

c. Improve Transparency

a. States must ensure that the minimum data requirements identified in the PCS Policy Statement and its addendums are tracked in PCS/ICIS-NPDES. States are encouraged to expand the use of PCS/ICIS-NPDES to track all NPDES compliance and enforcement activities.

b. States which are not using PCS/ICIS-NPDES to track all of its inspection and enforcement activities must report out Mid-Year (April 30, 2011) and in the End-of-Year Report its inspection activities manually. Information that must be reported includes;
    i. Number of majors inspected
    ii. Number of minors inspected
    iii. Number of storm water inspections (specify # of construction phase I and phase II inspections # of industrial inspections and MS4 phase I and II conducted)
    iv. Number of CAFO inspections
    v. Number of Biosolids inspections (if applicable)
    vi. Number of CSO and/or SSO inspections
    vii. Number of pretreatment inspections including industrial users

c. For states that are using PCS/ICIS-NPDES to track all activities, EPA will pull inspection and enforcement information from the database at midyear and end-of-year. States must enter all types of inspections in PCS/ICIS-NPDES by March 31, 2011 for midyear reporting and September 30, 2011 for End-Of-Year reporting.

d. States are encouraged to us the Interim Wet Weather Significant Noncompliance Policy for violations associated with CSOs, SSOs, CAFOs, and storm water.

e. Non-major Facilities Non-compliance Report
    - States should include a commitment to submit the annual non-major facilities noncompliance report for the period of 1/01/2010 - 12/31/2010 in accordance with 40 CFR §123.45 (c) by April 30, 2011. States may opt to maintain PCS/ICIS-NPDES and have this information pulled from PCS/ICIS-NPDES in lieu of annual reporting. States should specify in the PPA which option they are choosing for this report.

d. Federal Facilities

a. During FY11, EPA Region 8 may perform inspections at all Federal Facility construction sites that have been awarded contract dollars for site construction.

e. State EPA NPDES Inspections

a. States should submit a draft inspection plan for FY12 (October 1, 2011 -September 30, 2012) by August 1, 2011. EPA will provide comments by August 15, 2011. States should submit a final inspection plan no later than September 1, 2011. When developing the annual State/EPA NPDES inspection plan, States should address national, regional, and State priority areas and sectors which are applicable to the state.

b. States must maintain an effective inspection program in each of the water program areas. States should continue implementing the NPDES Compliance and Monitoring Strategy in FY11. The inspection plan should clearly outline how it is complying with the provisions of the strategy, including a detailed description of how its inspection commitments for both the traditional NPDES core program and national enforcement initiatives will be allocated in FY11. Minimum numbers of inspections for the core programs and priority areas are identified in the Compliance Monitoring Strategy.

c. EPA will conduct up to 10 oversight inspections in each state. These oversight inspections will be conducted to support baseline and targeted oversight, as well as the State Review Framework (SRF) review. The oversight inspections may be conducted by either: 1) accompanying state inspectors during an inspection or 2) by EPA conducting an independent inspection at the same facility at a later date to verify the state findings. EPA may also conduct additional oversight inspections in the national and regional enforcement initiative areas. EPA will target facilities for oversight inspections with states.

f. States should agree to periodically submit to EPA copies of:
    - Final settlement agreements (or state equivalent to that type of document),
    - The State's penalty calculations including justifications for adjustments and economic benefit calculations for state enforcement actions concluded during the fiscal year
    - A description of any supplemental environmental projects included in state enforcement actions concluded during the fiscal year.

g. 404/402 Enforcement Actions

a. In the interest of maximizing resources, states will agree to EPA being the lead enforcement agency on all 404 enforcement actions that have associated 402 violations, except where EPA determines combined cases may not be in the best interest of the litigation.

C. Safe Drinking Water Act (SDWA)

I. Microbial Rules

1. By November 15, 2010, provide to EPA a list of all systems that are required to filter under the SWTR, but are not yet filtering. Additionally, report those violations to SDWIS-Fed. For those still on compliance schedules, provide the schedule from the enforcement document. If any systems are not under compliance schedules, for each system provide a rationale and the proposed state action and time frame for securing an enforceable compliance schedule.

2. By November 15, 2010, provide to EPA a description of any additional actions and the time frames for completing assessments of groundwater under the influence of surface water, and the systems for which such assessments need to be completed.

II. New Rules

1. During the period when states do not yet have primacy for the rule or cannot upload the violations to SDWIS-Fed, cooperate with EPA in identifying water systems in violation of the Ground Water Rule for which EPA may need to issue enforcement actions.

2. Cooperate with EPA in identifying water systems in violation of the early implementation requirements of the Stage 2 DBP Rule and Long Term 2 Enhanced SWTR, in order for EPA to assess state enforcement activities where states have primacy.

III. SDWA Enforcement

1. Annotate the quarterly Enforcement Targeting Tool (ETT) list created by the new Enforcement Response Policy (ERP) by indicating the State actions planned for each identified priority ETT system, the projected time frame for such actions, and other relevant information that helps EPA evaluate candidates for federal enforcement. Return the annotated list to EPA within 30 days.

2. Address all priority ETT systems (through formal enforcement or appropriate return to compliance) within 6 months of their being identified as priorities, with the goal of taking action before systems reach the priority status.

3. State enforcement escalation policy:
   EPA encourages Region 8 states to consider updating their enforcement escalation policies during FY2011 since

EPA is now implementing the new ERP instead of the former SNC/exceptions approach

IV. SDWA Oversight

1. The following commitments will need to be made by the States in order for EPA to conduct Enforcement Oversight:
    a. Cooperate with EPA and provide access to State PWS files and data for EPA's on-site enforcement review at the State office.
    b. Upload all enforcement actions and applicable return to compliance codes into SDWIS-Fed quarterly.
    c. Additional State-specific language will be discussed during the negotiation of the Agreement, in accordance with results of the enforcement program's Uniform Enforcement Oversight System or End of Year Report.

C. Resource Conservation and Recovery Act (RCRA)

a. Mineral Processing and Mining Priority:
    1. The Region will continue to work with HQ and the State to define the anticipated universe for Mineral Processor and Mining priority inspections.

b. Additional State-specific language will be discussed during the negotiation of the Agreement in accordance with results of the enforcement program's State Review Framework.

c. For facilities with significant non-compliance as defined in the Agency's Enforcement Response Policy, States will need to enter SNC status in RCRAINFO and address SNC facilities through appropriate enforcement follow-up. The Region will review SNC facilities on a quarterly basis and discuss with the State enforcement strategies to address longstanding non-compliance. A written report of efforts to address SNC facilities and return them to compliance will be prepared.

d. Core Program Requirements

    a. Treatment, storage and disposal facilities: <u>Inspect at least once every two years</u> each operating treatment, storage and disposal facility, as required under SWDA §3007(e), i.e., 50% of TSDF universe annually.
    b. <u>Generators (LQGs):</u> Annually inspect at least 20% of the large quantity generator universe, so that the entire universe is inspected in five years. The large quantity generator universe is the total number of generators that reported in the most recent biennial report.

- If inspection coverage is not expected to be provided for 20% of LQGs on an annual basis, the states must provide an explanation that should include the following

    a. Information on how the RCRA compliance monitoring resources will be redirected (e.g., national priority facilities, state priority facilities, never-inspected SQGs.
    b. How LQGs will otherwise be monitored (e.g., file reviews, watch list).
    c. For states proposing to redirect resources to never-inspected SQGs, information that shows no un-inspected LQGs in RCRAInfo (not including facilities that notified in the last five years).

- Because inspections at LQGs generally require more resources than an inspection at an SQG, inspection tradeoffs - the number of SQGs substituted for LQGs - should be at a 2:1 or greater ratio. As alternative approach to this substitution scheme is described in the 2009 NPM guidance and will be discussed and evaluated with the State if requested.

Suggested PPA Language

"The State commits to implement and provide to EPA by November 15th, an inspection plan which meets the requirements of the Core Program with emphasis on never inspected LQGs, citizen complaints, and national priorities. Financial responsibility is a component of this inspection requirement."

Region and State will project the number of high priority open dumps to be investigated and/or inspected to determine the appropriateness of enforcement ot address specific incidents of illegal dumping in Indian country. Regions will commit to investigating 10% of the identified high priority open dumps using OECA's targeting strategy, to be developed in FY2010.

For non-BIA schools in Indian country, Region and State will project the number of on-site compliance assistance visits designed to ensure the proper and compliant treatment, storage and disposal of hazardous waste.

c. Federal Core Program Requirements

- State or Local Government Operated Facilities: Annually inspect each treatment, storage or disposal facility operated by states or local governments as required under SWDA §3007(d)

- Treatment, Storage and Disposal Facilities: Annually inspect at least 2 TSDs per state.
- Generators (LQGs):
    a. Annual inspect at least 2 generators per state. The region may perform the inspections in the following areas:
        1. national priority sectors,
        2. to support state referrals,
        3. to address illegal recycling,
        4. entities with violations in more than one state,
        5. environmentally sensitive environments,
        6. areas subject to environmental justice concerns,
        7. and particularly recalcitrant violators.

Suggested PPA Language
"The Region commits to work with the State to identify 2 TSDFs and 6 LQGs which the Region will inspect as lead. The LQGs will be identified from the national priority sectors, illegal recyclers, entities with violations in more than one state, environmentally sensitive environment, unpermitted surface impoundments, coal combustion waste facilities, areas of environmental justice concerns and particularly recalcitrant violators. Twenty percent (20%) of these inspections should be in Indian Country. When the universe of TSDFs and LQGs is very small a lesser number of Regional lead inspections will be negotiated. The Region commits to inspect, State or Local government TSDFs as required by Statute At least 20% of the LQG universe should be covered by combined federal and State inspections unless an alternative plan is approved under the RCRA CMS".

d. Financial Assurance

- OECA has identified financial assurance as a national priority for FY2010. This will include the review of
- Treatment, storage and disposal ("TSD") as well as corrective action facility files to ensure that the RCRA owner/operator has submitted acceptable financial assurance documentation as required in the respective permit or enforcement document.

- File reviews at the State offices, specifically to identify operator compliance with State RCRA regulations which comport to C.F.R. 264 Subpart H. The States will participate in this review process by making available their operator files, permits and enforceable documents to Region 8 staff. Determination of operator compliance are on going, and follow-up on identified concerns will be made by the States and/or

Region 8 using standard compliance or enforcement tools.

Suggested PPA Language

"The State and Region 8 will work together to move closure/post closure and corrective action facilities to compliance with financial assurance requirements through the development of enforcement cases which may be taken by either the State or EPA. Region 8 will be the lead for entities with facilities in more than one state. Regions must commit to review at least four (4) financial test and/or corporate guarantee submissions per year for compliance with the closure and post-closure regulations. Regions may instead choose to review other types of financial assurance instruments for facilities that did not have a financial assurance review during the national enforcement priority. The reviews should be formal Financial Records Reviews..

For 100% of the financial test submissions received each fiscal year with cost es over $5 million, determine whether the submission is in compliance.

DATA: Maintain RCRAInfo database

Regions are to coordinate with State to review at least four (4) financial test and/or corporate guarantee submissions per year in each State. Reviews should be formal Financial Records Reviews and take place soon after the submissions are received.